JUDICIAL NOMINATING COMMISSION

SEVENTH JUDICIAL CIRCUIT OF FLORIDA

CIRCUIT COURT APPLICATION

OF

K. MARK JOHNSON

JUDICIAL NOMINATING COMMISSION
SEVENTH JUDICIAL CIRCUIT OF FLORIDA

CIRCUIT COURT APPLICATION

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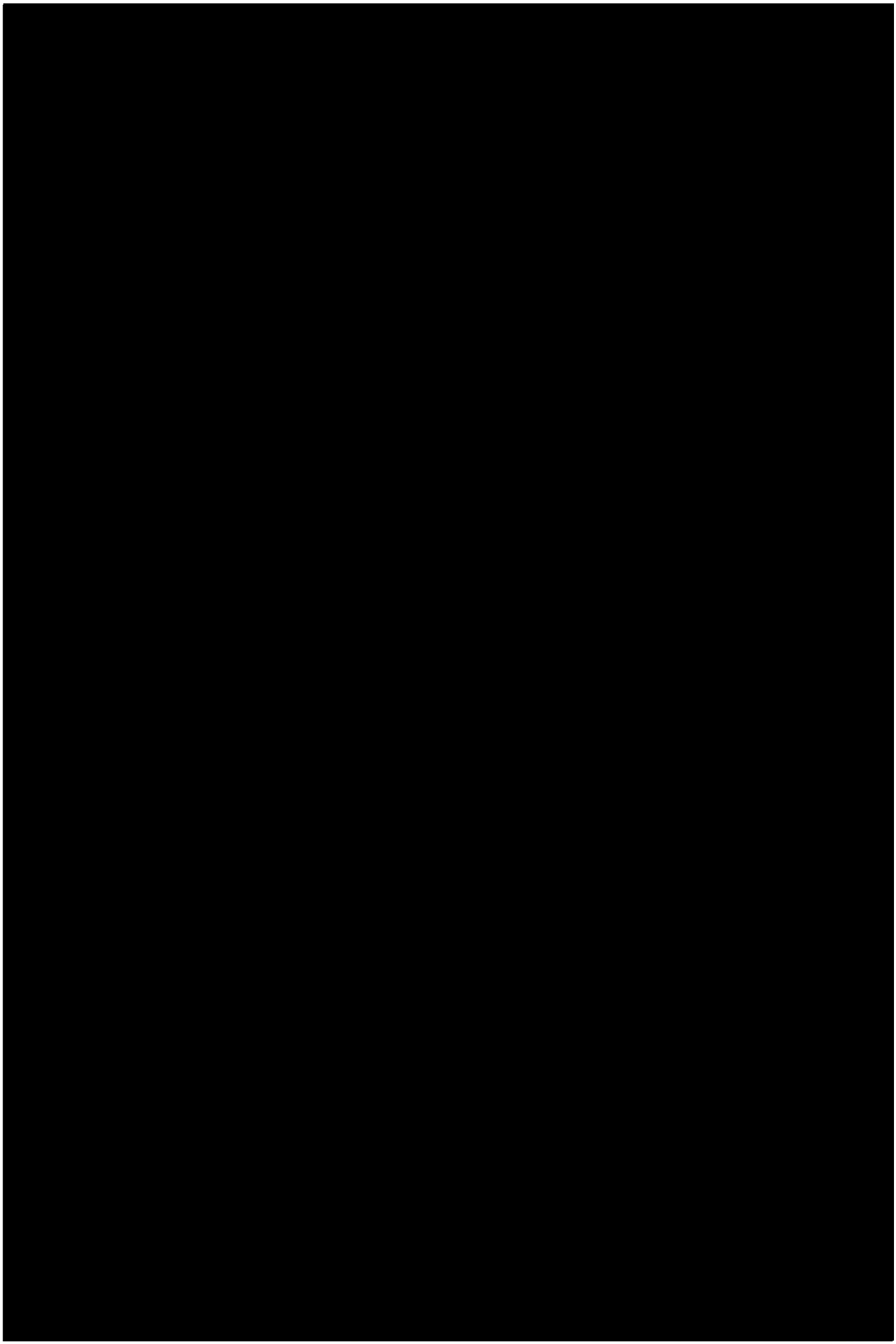
TAB 1



TAB 2

APPLICATION FOR NOMINATION TO THE SEVENTH JUDICIAL CIRCUIT COURT

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

DATE: August 8, 2018 Florida Bar No.: 0378320

GENERAL: Social Security No.: [redacted]

1. Name: Kenneth Mark Johnson E-mail: kmjohnson1974@yahoo.com

   Date Admitted to Practice in Florida: October 2, 2000

   Date Admitted to Practice in other States: N/A

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

   Assistant State Attorney, Homicide Investigations Unit,
   Office of the State Attorney, Seventh Judicial Circuit

3. Business address: 2446 Dobbs Rd.

   City: St. Augustine County: St. Johns State: FL ZIP: 32086

   Telephone: (904) 209-1300 FAX: (904) 209-1313

4. Residential address: [redacted]

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

   Since: November 2009 Telephone: [redacted]

5. Place of birth: Murfreesboro, TN

   Date of birth: March 30, 1974 Age: 44

6a. Length of residence in State of Florida: 40 years

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

   If so, in what county are you registered? St. Johns County

7. Marital status: Married

   If married: Spouse's name: Ralenda Thornton Johnson

   Date of marriage: December 29, 2001

   Spouse's occupation: Currently, stay-at-home mom

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

I have never been previously married or divorced.

8. Children:

Name(s)	*Age(s)*	*Occupation(s)*	*Residential address(es)*
[redacted]	13	Student	Same as applicant
	11	Student	Same as applicant
	5	Student	Same as applicant

9. Military Service (including Reserves):

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

Rank at time of discharge _____ Type of discharge _____

Awards or citations _____

HEALTH:

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

No

11a. During the last ten years have you been hospitalized or have you consulted a professional or have you received treatment or a diagnosis from a professional for any of the following: Kleptomania, Pathological or Compulsive Gambling, Pedophilia, Exhibitionism or Voyeurism?

Yes ☐ No ☒

If your answer is yes, please direct 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 impairment reduced or ameliorated because you receive ongoing treatment (with or without medication) or participate in a monitoring or counseling program?

Yes ☐ No ☐ N/A

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 and entity requesting that you submit to the test, the outcome of your refusal and the reason why you refused to submit to such a test.

No

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

No

EDUCATION:

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

Schools	***Class Standing***	***Dates of Attendance***	***Degree***
Faith Christian School, Milton, Florida	Valedictorian	8/1988 – 5/1992	H.S. Diploma
Pensacola Junior College, Pensacola, Florida	Unknown (3.43 GPA)	8/1992 – 12/1994	Associate of Arts, Criminal Justice
Florida State University, Tallahassee, Florida	Unknown (3.20 GPA)	1/1995 – 12/1996	Bachelor of Science, Criminology
Stetson University College of Law, Gulfport, Florida	Top 53%	8/1997 – 5/2000	Juris Doctor

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

- William F. Blews Pro Bono Service Award, Stetson University College of Law, Spring 2000
- Honor Roll, Stetson University College of Law, Fall 1999
- Associate Justice, Moot Court Board, Stetson University College of Law, 1999-2000
- Best Brief Award recipient, 1998 Nance, Cacciatore, Sisserson, Duryea & Hamilton Moot Court Competition
- Third Place Brief Category recipient, Fall 1998 Intramural Writing Competition
- Second Place recipient, Fall 1998 Phi Alpha Delta Closing Argument Competition
- *Pi Gamma Mu* Social Science Honor Society, Florida State University, 1996
- Southern Scholarship Foundation recipient, Florida State University, Spring 1995 – Fall 1996
- Academic Honors, Pensacola Junior College, Spring 1993
- Academic Honors, Pensacola Junior College, Fall 1993
- American Legion Award, Faith Christian School, 1992
- Administrator's Award, Faith Christian School, 1992

NON-LEGAL EMPLOYMENT:

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

Date	***Position/Description***	***Employer***	***Address***
6/1995 – 8/1995	Lifeguard	Georgia FFA-FCCLA Center	720 FFA-FHA Rd., Covington, Georgia 30014
6/1996 – 7/1996	Lifeguard	Georgia FFA-FCCLA Center	720 FFA-FHA Rd., Covington, Georgia 30014
1/1997 – 5/1997	Delivery driver	Pizza Hut	5149 Dogwood Dr., Milton, Florida 32570

1/1997 – 5/1997	Sales Associate	K-Mart	6050 Hwy. 90, Milton, Florida 32570 (closed)
6/1997 – 7/1997	Lifeguard	Georgia FFA-FCCLA Center	720 FFA-FHA Rd., Covington, Georgia 30014
2/2000 – 5/2000	Student Clerk	Stetson University College of Law Library	1401 61st St. South, Gulfport, FL 33707

PROFESSIONAL ADMISSIONS:

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

Court or Administrative Body	*Date of Admission*
The Florida Bar	October 2, 2000
United States Court of Appeals for the Eleventh Circuit	December 6, 2001
United States District Court, Middle District of Florida	December 14, 2001

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

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

Position	***Name of Firm / Agency***	***Address***	***Dates***
Law Clerk	Gibbs Law Firm, P.A.	5666 Seminole Blvd., Seminole, Florida 33772	6/1998 – 8/1998 6/1999 – 8/1999
Certified Legal Intern	Office of the State Attorney, Sixth Judicial Circuit	14250 49th St. N., Clearwater, Florida 33762	1/2000 – 5/2000
Associate Attorney	Gibbs Law Firm, P.A.	5666 Seminole Blvd., Seminole, Florida 33772	9/2000 – 11/2003
Assistant State Attorney	Office of the State Attorney, Second Judicial Circuit	301 S. Monroe St., Ste. 475, Tallahassee, Florida 32301	1/2004 – 1/2009

Assistant State Attorney	Office of the State Attorney, Seventh Judicial Circuit	251 N. Ridgewood Ave,, Daytona Beach, Florida 32114	1/2009 – 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.

For nearly 10 years, I have had the privilege to serve as a prosecutor within the Homicide Investigations Unit (HIU) of the State Attorney's Office of the Seventh Judicial Circuit. Within that unit, I am a part of a team of attorneys, investigators, and support staff who assist local law enforcement during their investigation of any homicide or suspicious death that occurs within St. Johns, Flagler, and Putnam counties. My duties involve advising law enforcement concerning the numerous constitutional and statutory issues that may arise during their investigation, including the drafting and execution of search warrants and the sufficiency of evidence in the prosecution of a case. When a decision to file a criminal charge has been made, I am responsible for all aspects of the prosecution, including presenting the case to a grand jury for an indictment, responding to discovery demands, conducting depositions, and, finally, trying the case before a jury. While my client is technically the State of Florida, I also work closely with the family members of homicide victims. It is my responsibility, along with the victim advocates within our office, to guide them through the difficult legal process, keep them informed of upcoming court proceedings, and answer any questions they may have about the case.

During my term as a homicide prosecutor, I had the opportunity to serve for 3.5 years as the Division Chief of our office in Putnam County, which employs approximately 20 staff, including attorneys, secretaries, victim advocates and investigators. In that role, I had the responsibility of overseeing all office operations, training new attorneys, and working closely with local judges, clerks, and law enforcement in working to ensure that our criminal justice system operated efficiently and fairly.

Prior to working for the State Attorney's Offices in St. Augustine and Tallahassee, I practiced for three years with a law firm that specialized in assisting churches, schools, non-profit organizations, and individuals with legal advice on issues such as tax, zoning, contract, employment, and constitutional law. Our firm also frequently represented individual clients in personal injury and wrongful death claims as well as estate planning. During my time with the firm, I generally handled cases involving real property and constitutional claims.

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

Court			Area of Practice		
Federal Appellate	_____	%	Civil	_____	%
Federal Trial	_____	%	Criminal	100	%
Federal Other	_____	%	Family	_____	%
State Appellate	_____	%	Probate	_____	%

State Trial	100	%	Other	%
State Administrative		%		
State Other		%		
		%		
TOTAL	100	%	100	%

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

Jury? 80 Non-jury? 20

Arbitration? 0 Administrative Bodies? 0

25. Within the last ten years, have you ever been formally reprimanded, sanctioned, demoted, disciplined, placed on probation, suspended or terminated by an employer or tribunal before which you have appeared? If so, please state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action.

No

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

No

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

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

1. *State of Florida v. James Colley, Jr.*, St. Johns Co. Case #2015-1248-CF

   a. Defense counsel: Terry Shoemaker, [redacted] & Garry Wood, [redacted]

   b. State counsel: Jennifer Dunton (1st Chair), [redacted] & Mark Johnson (2nd Chair)

   - *See Tab 3 for News4Jax article on the James Colley trial.*

2. *State of Florida v Kevin Daniels*, Putnam Co. Case #2014-0973-CF

   a. Defense counsel: Garry Wood (phone number provided above)

   b State counsel: Mark Johnson (1st Chair) & James Nealis (2nd Chair), [redacted]

3. *State of Florida v. Luis Toledo*, Volusia Co. Case #2013-102888-CFDL

   a. Defense counsel: Jeffrey Deen, [redacted]; Michael Nielsen, [redacted]; and Michael Nappi, [redacted]

   b. State counsel: Mark Johnson (1st Chair) & Ryan Will (2nd Chair), [redacted]

   - *See Tab 4 for News Chief article on the Luis Toledo trial.*

4. *State of Florida v. Sean Bush*, St. Johns Co. Case #2011-1604-CF

   a. Defense counsel: Ray Warren, [redacted] & Rosemarie Peoples, [redacted]

   b. State counsel: Mark Johnson (1st Chair) & Jennifer Dunton (2nd Chair)

   - *See Tab 5 for St. Augustine Record article on the Sean Bush trial*

5. *State of Florida v. Sergio Morgan-Wideman*, St. Johns Co Case #2015-0800-CF

   a. Defense counsel: Rosemarie Peoples & Ray Warren (phone numbers provided above)

   b. State counsel: Mark Johnson (1st Chair) & Jennifer Dunton (2nd Chair)

6. *State of Florida v. Porfirio Torres*, Putnam Co. Case #2013-1168-CF

   a. Defense counsel: Clyde M. Taylor, Jr., [redacted]

   b. State counsel: Mark Johnson

27b. For your last 6 cases, which were settled in mediation or settled without mediation or trial, list the names and telephone numbers of trial counsel on all sides and court case numbers (include appellate cases).

1. *State of Florida v. Jordan Henries*, St. Johns Co. Case #2017-0714-CF

   a. Defense counsel: Terry Shoemaker, [redacted]

   b. State counsel: Mark Johnson

2. *State of Florida v. Bobby Earl Gore*, Flagler Co. Case #2017-0410-CF

   a. Defense counsel: Ray Warren, [redacted]

   b. State counsel: Mark Johnson

3. *State of Florida v. Carl Devore*, Flagler Co. Case #2016-0621-CF

   a. Defense counsel: Sharon Feliciano, [redacted]

   b. State counsel: Mark Johnson

4. *State of Florida v. Andre Robinson*, St. Johns Co. Case #2015-1250-CF

   a. Defense counsel: Ann Finnell, [redacted]

   b. State counsel: Mark Johnson

5. *State of Florida v. Peter Hughes*, St. Johns Co. Case #2010-0765-CF

   a. Defense counsel: Sung Lee, [redacted] and Richard Kuritz, [redacted]

   b. State counsel: Mark Johnson

6. *State of Florida v. Barbara Jean Mundy*, Putnam Co. Case #2009-0464-CF

   a. Defense counsel: Steven Laurence, [redacted]

   b. State counsel: Mark Johnson

27c. During the last five years, how frequently have you appeared at administrative hearings?

_0_ average times per month

27d. During the last five years, how frequently have you appeared in Court?

_10-15_ average times per month

27e. During the last five years, if your practice was substantially personal injury, what percentage of your work was in representation of plaintiffs? ___0___% Defendants? _0_%

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

During my tenure with the State Attorney's Office in Tallahassee, I was a line misdemeanor and felony prosecutor. Throughout that time, I was assigned and handled a caseload that consistently averaged several hundreds of cases. I was lead counsel on all these cases and was, thus, solely responsible for all aspects of the litigation. This included reviewing police reports, witness statements and physical evidence to make charging decisions, conducting depositions, as well as trying the cases before a jury. As a result, I was in court on a near-daily basis. My caseload was large enough that during the 2006-07 time period I tried 36 jury trials, 20 of which I tried in a single year.

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

None

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

1. State of Florida vs. Luis Toledo	
Case No.	2013-102888-CFDL (Volusia Co.)
Judge:	Raul Zambrano
State Counsel:	Mark Johnson (1st Chair) & Ryan Will (2nd Chair)
Defense Counsel:	Jeffrey Deen, Michael Nielsen, & Michael Nappi
Trial dates:	October 2 – November 3, 3017
Appellate decision:	None (as of yet)

In this case, Luis Toledo, a former leader of the Latin Kings gang, was charged with murder following the disapperance of his wife, Yessenia Suarez, and her two young children, Michael and Thalia Otto. On October 22, 2013 – the day they were last seen alive, Toledo discovered that his wife was having an affair with a co-worker after downloading a hidden application on her cell phone that allowed him to see all her text messages, emails, and internet searches. He angrily confronted his wife and her co-worker at their job site, and the police were called. Later that evening, Mrs. Suarez made the decision to leave her mother's home and return to her house with her children. Sometime after midnight, Toledo killed them and disposed of their bodies in an unknown location. Evidence connecting Toledo to their disappearance was discovered the following day after a neighbor, from whom Toledo requested help moving his wife car, led law enforcement to a number of articles Toledo had discarded. Blood spatter, which matched the DNA of Thalia Otto, was found in Toledo's bathroom, on one of his boots, and on a car trunk mat that Toledo had thown in a dumpster. Toledo further incriminated himself through multiple statements and a suicide attempt at the Volusia Co. Sheriff's Office.

This case was consequential for a number of reasons. First, it involved the rare and extraordinary murder prosecution where the victims' bodies were never recovered. According to Tad DiBiase, a former federal prosecutor and expert in this field, there have only been approximately 500 "no body" cases prosecuted in recorded history. As a result, the case presented unique and

challenging legal issues, such as establishing *corpus delicti* as well as cause and manner of death. The second significant feature of the case was that it generated heavy media coverage, which forced a change of venue to St. Johns Co. Lastly, the U.S. Supreme Court's opinion in *Hurst v. Florida*, ruling that Florida's death penalty scheme as designed was unconstitutional, was released days before the trial was scheduled to commence. This decision set off a flury of additional lawsuits and legislative hearings, which further delayed the trial because it was unclear what rules would apply to pending death penalty litigation. Eventually, through the resolution of the lawsuits and the passage of remedial legislation, the law was settled. Following a month-long trial, Toledo was convicted of the murders of his wife and her two children. During the penalty phase of the trial, the jury returned a 10-2 verdict, which, following *Hurst* and its immediate progeny, required the imposition of a life sentence without the possibility of parole.

2. State of Florida vs. Quentin Truehill, Kentrell Johnson & Peter Hughes	
Case Nos.	2010-0763-CF; 2010-0764-CF & 2010-0765-CF (St. Johns Co.)
Judge:	Raul Zambrano
State Counsel:	Applicant (1st Chair) & Jason Lewis (2nd Chair)
Defense Counsel::	Jim Valerino & Ray Warren (Truehill) Junior Barrett & Randall Richardson (Johnson) Richard Kuritz & Sung Lee (Hughes)
Trial dates:	February 3 – March 7, 2014 (Truehill) June 9-24, 2014 (Johnson)
Appellate decisions:	*Truehill v. State*, 211 So.3d 930 (Fla. 2017). *Johnson v. State*, 238 So.3d 726 (Fla. 2018).

On the night of April 1, 2010, Quentin Truehill, Kentrell Johnson & Peter Hughes kidnapped Vincent Binder, a graduate student at Florida State University, robbed him of his debit card, and then transported him alive all the way to St. Augustine where they brutally hacked him to death. Binder's body was left in a vacant field. The defendants then used the victim's debit card to withdraw hundreds of dollars in cash to finance the rest of their trip to Miami. A few days prior to the kidnapping, they had escaped from a jail in Louisiana, stole a truck, and then began robbing people to finance their flight out of Louisiana and into Florida. As they were passing through Pensacola, they robbed a cleaning lady at an apartment complex during which they attempted to kill her by repeatedly striking her in the head with a large knife. The attack resulted in several of her fingers being amputated. The defendants then made their way to Tallahassee, where again they attempted to rob several people before making contact with Binder. One of the murder weapons used to murder Binder was the same knife used in the attempted killing of the cleaning lady in Pensacola. The victim was missing for almost a full month as law enforcement in Tallahassee and FDLE attempted to locate him. The defendants were subsequently arrested in Miami and charged with kidnapping. Vincent Binder's body was eventually located in St. Johns Co. where a grand jury indictment was obtained against the defendants for first degree murder and other crimes.

The case was significant to me on several fronts. First, I personnally connected with the case because I had worked for the State Attorney's Office in Tallahassee for five years and attended Florida State University. Second, the case was, by far, the most extensive and complicated murder case I have ever tried. The trials were severed, so each defendant had to be tried separately. The case involved approximately 10 different crime scenes from Louisiana to Miami, Florida; multiple law enforcement agencies from different jurisdictions; and hundreds of pieces of evidence. At trial, we called 50-60 witnesses, who lived in jurisdictions as far away as Montana, Louisiana, Alabama, and several counties

within Florida. Following their trials, Truehill and Johnson were convicted of 1st degree murder, and the juries in each case handed down unanimous verdicts for the death penalty years before *Hurst* required it. Peter Hughes eventually entered a guilty plea in exchange for a life sentence. Johnson's death sentence was later overturned by the Florida Supreme Court on the grounds that he was entitled to receive a life sentence due to some negotiations he had engaged in with the State Attorney's Office in Tallahassee prior to Binder's body being discovered in St. Augustine. Truehill's death sentence was upheld by the Florida Supreme Court.

- *See Tab 6 for a News4Jax article on the Quentin Truehill trial.*

3. State of Florida vs. Sean Bush	
Case No.	2011-1604-CF (St. Johns Co.)
Judge:	Howard Maltz
State Counsel:	Mark Johnson (1st Chair) & Jennifer Dunton (2nd Chair)
Defense Counsel::	Ray Warren & Rosemarie Peoples
Trial dates:	July 17, 2017 – August 4, 2017
Appellate decisions:	None (as of yet)

On May 31, 2011, Nicole Bush was found in her home barely alive and covered in blood. Previously she had separated from her husband, Sean Bush, and purchased her own home which she moved into with her two sons. In the days leading up to her murder, she informed the defendant that she intended to file for divorce and had begun filling out the paperwork to do so. Mr. Bush had already begun planning to murder Nicole, asking for help to find a gun and conducting research on how to build a silencer for a .22 pistol he eventually obtained. He decided to carry it out on Memorial Day weekend when he had custody of their two sons. In the early morning hours of May 31, he left his home, drove to Nicole's house, turned off her alarm system, then put a pillow over her head as she slept and shot her multiple times in the head. When the shooting did not kill her, Mr. Bush stabbed her several times, then used an aluminum baseball bat to beat her repeatedly. He then attempted to hide the bloody baseball bat in the living room couch before leaving. The victim eventually managed to call a friend, who then contacted law enforcement. Nicole Bush later died at the hopital, leaving behind her two young boys.

The first reason this case was significant is because it was one of the first, if not the first, case to be tried in the State of Florida following the decision in *Hurst* to require a unamimous verdict for the death penalty. Second, it was a largely circumstantial case because the victim was not able to identify her attacker to medical and law enforcement personnel upon their arrival. The case hinged on a very complicated DNA test of the handle of the aluminum bat, which an expert was able to conclude had been handled by Mr. Bush, despite his repeated claims not to have known about the bat. The investigation also revealed that Mr. Bush was in dire financial straights and stood to gain over $800,000.00 from a life insurance policy, which he attempted to collect on following the murder. The jury found Mr. Bush guilty of first degree murder and then returned a unanimous verdict for the death penalty after learning during the penalty phased that the defendant had attempted to kill a previous ex-wife in New Jersey.

4. State of Florida v. James Colley, Jr.	
Case No.	2015-1248-CF (St. Johns Co.)
Judge:	Howard Maltz
State Counsel:	Jennifer Dunton (1st Chair) & Mark Johnson (2nd Chair)
Defense Counsel::	Terry Shoemaker & Garry Wood
Trial dates:	July 9-25, 2018
Appellate decisions:	None (as of yet)

On August 27, 2015, James Colley obtained two handguns, drove to his estranged wife's home, fired several shots into the back of the house, then entered the home and killed his wife and her best friend. The murders were captured in their entirety by the recorded 911 calls made by each of the victims. After the shooting, Colley fled to Virginia where he was arrested and taken into custody.

This case was significant for two reasons. First, it highlighted the growing problem of domestic-abuse-related homicides that seem to be on the rise in our circuit. The Colley case was the fourth consecutive trial I litigated that involved a husband killing his wife. Second, it involved the rare defense of involuntary intoxication. Between the defense and the State, six doctors had been retained to address this unique claim at trial. However, after filing its required notice of the defense and informing the jury of its intent to present evidence of intoxication, the defense suprisingly abandoned the defense mid-trial, opting instead to present the evidence as mitigation during the potential penalty phase. The jury convicted Mr. Colley of the first degree murders of his wife and friend and then returned a unamimous verdict for the death penalty after considering the defendant's claim of impairment at the time of the murders. Mr. Colley is currently awaiting a *Spencer* hearing and final sentencing.

5. State of Florida v. Timothy Fletcher	
Case No.	2009-0648-CF (Putnam Co.)
Judge:	Wendy Berger
State Counsel:	Mark Johnson (1st Chair) & Jason Lewis (2nd Chair)
Defense Counsel::	Garry Wood
Trial dates:	May 21 – June 12, 2012
Appellate decisions:	*Fletcher v. State*, 168 So.3d 186 (Fla. 2015)

On April 15, 2009, Timothy Fletcher and Doni Ray Brown escaped from the Putnam Co. Jail using a hydraulic jack that Fletcher had obtained from a jail transport van, hid in a walking cast, and smuggled into his cell. After stealing a nearby truck, they drove the home of Helen Googe, Fletcher's step-grandmother. They broke into the house and forced Googe to open a safe in which Fletcher believed she kept a large sum of cash. When Fletcher discovered that there was no money in the safe, he manually strangled Googe to death, stole her credit cards and car, and then fled to Kentucky. At trial, the jury found Fletcher guilty of first degree murder and recommended a death sentence by an 8-to-4 vote and the trial court subsequently sentenced him to death. On direct appeal in 2015, the Florida Supreme Court upheld the death sentence. However, that sentence was later overturned

as a result the *Hurst* decision. Fletcher is currently awaiting retrial on the sentencing portion of his case.

This case was significant in that involved attracted national media attention following the "Escape from Alcatraz"-like breakout. The case was featured on "America's Most Wanted" with John Walsh and was later the subject of an episode on the Discovery Channel's "I (Almost) Got Away With It." The fact that Fletcher manually strangled his step-grandmother to death over the fact that she did not have money to finance his escape from custody made the crime particularly appalling.

- *See Tab 7 for a St. Augustine Record article on the Timothy Fletcher trial.*

6. State of Florida v. Richard Madieros	
Case No.	2009-0648-CF (Putnam Co.)
Judge:	Wendy Berger
State Counsel:	Mark Johnson (1st Chair) & Robert Mathis (2nd Chair)
Defense Counsel::	Valli Quetti & Jim Valerino
Trial dates:	August 22-26, 2011
Appellate decisions:	*Medeiros v. State*, 108 So.3d 1109 (Fla. 5th DCA 2013).

On February 6, 2009, the body of Alyce Bowles, a 92-year old widow and resident of the Sawgrass community of Ponte Vedra, was found within her home. She had been bound around the legs with tape, beaten in the head and stabbed in the back multiple times. There was no obvious suspect or motive. The only evidence obtained from the crime scene was a small amount of DNA from the back of the tape. Some of Mrs. Bowles' blood was found on a light switch, but DNA from the blood was found to contain a mixture that included a male DNA profile. The investigation had no solid leads, and it seemed destined to become a cold case. Several months later, detectives with the St. Johns Co. Sheriff's Office received a tip about a man by the name of Richard Medeiros, who had been arrested in Jacksonville Beach after he randomly attacked another older woman with a hammer. The detectives were able to obtain a DNA sample from Medeiros, which was found to match DNA from the tape and the light switch in Alyce Bowles' home.

This case was noteworthy for several reasons. First, was how SJSO detectives obtained the tip about Mederios. The woman who he attacked in Jacksonville Beach was a real estate agent. Following her assault, she researched Medeiros and discovered that he had once lived across the street from Alyce Bowles and her husband. That tip was the turning point in solving the case. The other striking aspect of the case was that the complete randomness of the murder, coupled with Medeioros' unprovoked attack on the real estate agent, seemed to bear the hallmarks of a serial killing. To this day, it is unknown why Medeiros brutally killed Alyce Bowles or attempted to kill the female real estate agent. No connection could ever be made between Medeiros and unsolved crimes in the various state jurisdictions in which he had lived during his adult life. Following a trial, a jury found Medeiros guilty of 1st degree murder, and he was subsequently sentenced to life in prison without the possibility of parole. The 5th District Court of Appeals later upheld his conviction. Three years after he was found guilty, Medeiros died in prison of natural causes.

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

I have included with this application the following three writing samples of which I was the sole author:

- State's Sentencing Memorandum, *State v. Quentin M. Truehill*, St. Johns Co. Case #2010-0763-CF (May 1, 2014). *See Writing Sample #1 provided at Tab 8.*

- State's Response to Defendant's Motion for Post-Conviction Relief, *State v. Randy Seal*, Putnam Co. Case #2004-1683-CF (Nov. 16, 2010). *See Writing Sample #2 provided at Tab 9.*

PRIOR JUDICIAL EXPERIENCE OR PUBLIC OFFICE:

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

No

32b. List any prior quasi-judicial service:

Dates	*Names of Agency*	*Position Held*

None.

Type of issues heard:

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

No

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

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

N/A

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

N/A

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

N/A

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

N/A

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

N/A

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

N/A

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

N/A

BUSINESS INVOLVEMENT:

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

N/A

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

No

33c. State whether during the past five years you have received any fees or compensation of any kind, other than for legal services rendered, from any business enterprise, institution, organization, or association of any kind. If so, identify the source of such compensation, the nature of the business enterprise, institution, organization or association involved and the dates such compensation was paid and the amounts.

None

POSSIBLE BIAS OR PREJUDICE:

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

None

MISCELLANEOUS:

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

Yes _____ No ___X___ If "Yes" what charges? _____

Where convicted? _____ Date of Conviction: _____

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

Yes _____ No ___X___ If "Yes" what charges? _____

Where convicted? _____ Date of Conviction: _____

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

Yes _____ No ___X___ If "Yes" what charges? _____

Where convicted? _____ Date of Conviction: _____

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

No

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

No

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

No

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

No

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

No

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

No

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

No

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

No

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

No

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

No

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

Yes ☒ No ☐ If no, please explain.

_____

43b. Have you ever paid a tax penalty?

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

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

No

HONORS AND PUBLICATIONS:

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

None

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

Patriotic Employer, presented by the Office of the Secretary of Defense, Employer Support of the Guard and Reserve (during tenure as Division Chief of Putnam SAO)

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

On March 6, 2018, I gave a lecture to detectives with law enforcement agencies from St. Johns, Flagler and Putnam counties on legal issues involved with search and arrest warrants.

On February 22, 2018, I (along with ASAs Jason Lewis and Jennifer Dunton) hosted a symposium for homicide and narcotics detectives with law enforcement agencies from St. Johns, Flagler and Putnam counties to discuss investigative strategies for cases involving overdose-related deaths.

On January 10, 2017, I gave a lecture to homicide detectives with law enforcement agencies from St. Johns, Putnam, and Flagler counties on 4th Amendment issues.

On December 4, 2015, I (along with ASA Jason Lewis) conducted a training with Traffic Homicide Investigators with the Florida Highway Patrol on legal issues related to traffic homicide cases.

On July 20, 2015 and May 5, 2014, I (along with ASA Jennifer Dunton) gave lectures to new detectives at the Daytona State Advance Technology College concerning legal issues involved with Body Cameras, Social Media, and Technology.

On October 10, 2014 and December 6, 2013, I gave lectures to new misdemeanor prosecutors within the State Attorney's Office on the ethical and legal issues involved in Closing Arguments.

On July 24, 2013, I organized a series of lectures for deputies with the Putnam Co. Sheriff's Office on the following topics: Case Handling; Miranda Issues; Report Writing & Testimony Preparation; Search & Seizure Issues; and Joint & Constructive Possession Issues. I personally gave the lectures on Case Handling and Joint & Constructive Possession Issues.

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.

The Florida Bar, member

Putnam County Bar Association, member

St. Johns County Bar Association, member

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

Rotary Club of Palatka, member (2013 – Present)

Stewart-Marchman Act Foundation, Board of Directors (2015 – Present)

Crescent Beach Baptist Church (St. Augustine), member (2009 – Present) & Secretary of the Board of Deacons (2018)

Maranatha Baptist Church (Tallahassee), member (2004-08) & Trustee (2007-08)

Westgate Baptist Church (Tampa), member (2001-03)

Bible Baptist Church (St. Petersburg), member (2000-01)

Federalist Society, member (2000-03; 2018)

48c. List your hobbies or other vocational interests.

I enjoy spending time with family; traveling; and watching my kids play sports, participate in band concerts, and drama performances. I also personally enjoy running, hiking, grilling, camping, and reading about American history.

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.

Crescent Beach Baptist Church, where I am currently a member and serve as Secretary of its Board of Deacons, does condition membership in the church on an individual's profession of like faith. However, it does not restrict attendance at its services or participation in any of its programs in any way. In fact, one its primary missions is to reach out to all member of the community, minister to them, and encourage them to attend and take part in all of its programs. The same is true for all other churches where I was previously a member. I intend to continue as a member of CCBC if I am selected to serve on the bench.

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

During my tenure as an Associate Attorney with the Gibbs Law Firm (2000-03), our practice frequently represented and performed legal services for churches, schools, non-profit organizations, and individuals on a pro bono basis. I did receive a modest salary from the firm for my work on these projects, but our office did not typically receive payment from many of the clients for the work performed on their behalf.

Since that time, however, my employment with the State of Florida has precluded me from performing any legal pro bono work. However, I have donated to Jacksonville Area Legal Aid for the many pro bono services they provide to the public, including St. Johns and Putnam counties.

SUPPLEMENTAL INFORMATION:

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

In the past five years, I have attended CLE programs on death penalty issues, ethical obligations under Brady & Giglio, Florida law updates, trial procedure, and technology, among other subject areas.

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

No

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

Throughout my career as a prosecutor, I have personally tried over 100 cases. As a result of this extensive litigation experience, I have developed a strong working knowledge of the Florida Evidence Code and case law that would well serve the parties and counsel that appear before me. Also, my tenure as a Division Chief, overseeing all office operations and managing a staff of approximately 20 lawyers, secretaries, and investigators, has given me many of the leadership and organizational skills that are necessary for a judge to manage a docket and move cases efficiently, but fairly, toward resolution.

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

I have extensive experience litigating in a subject area that involves some of the most consequential and complex issues in criminal law. These cases have been challenged and tested by some of the best, brightest, and most talented trial lawyers in the area. Most of the cases I have handled in recent years have literally involved life and death decisions. While some of these decisions have involved seeking the death penalty on behalf of the State, I have also had to disappoint the family members of victims and

other interested parties where it was my judgment that pursuing a capital sentence was not supported by the law or evidence. I am also frequently called upon to review cases in which I have to decide whether there is sufficient evidence to bring a criminal charge against an individual in the first place. Sometimes, these judgments are not easy where an enormous amount of investigative effort and resources have been spent. This is particularly difficult when an investigation has exhausted all leads and the case, at that moment, is as strong as it likely ever will be. There have been many occasions where I have had to make the difficult decision that the evidence was not sufficient to move forward with a criminal charge. In other cases, I have had to concede that evidence would be inadmissible on constitutional or statutory grounds before a crime was ever charged or a motion to suppress filed. Furthermore, I have had cases where an individual was victimized by another family member and I knew that proceeding forward with a charge would irrevocably and negatively alter the relationships within that family. Having to face these hard decisions have taught me that my duty, first and foremost, is to the rule of law, regardless of which side the law favors. In this way, I have already been in the position to make the types of legally complicated and emotionally challenging decisions that judges are called upon to make every day. As a result, I believe I am well-prepared to serve as a circuit judge.

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

This is my first application to any judicial nominating commission.

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

Thank you for allowing me the opportunity to apply for this position. I look forward to meeting you during the upcoming interviews. If there are any additional materials or information you would like prior to the interviews, please do not hesitate to contact me.

REFERENCES:

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

Name	Address	Telephone number
Hon. Edward E. Hedstrom, Circuit Judge (retired)	601 St. Johns Ave., Palatka, FL 32177	[redacted]
Hon. Howard M. Maltz, Circuit Judge	4010 Lewis Speedway, Rm. 344 St. Augustine, FL 32084	[redacted]
Hon. R.J. Larizza, State Attorney	251 North Ridgewood Ave., Daytona Beach, FL 32114	[redacted]
Hon. Matthew M. Foxman, Circuit Judge	251 North Ridgewood Ave., Daytona Beach, FL 32114	[redacted]
Hon. Chris Miller, Volusia County Judge	101 N. Alabama Ave., Deland, FL 32724	[redacted]
Hon. Joe Boatwright, Putnam County Judge	P.O. Box 758 Palatka, FL 32178	[redacted]
Hon. Dennis Hollingsworth St. Johns Co. Tax Collector	4030 Lewis Speedway, St. Augustine, FL 32084	[redacted]
Hon. Hunter Conrad, St. Johns Co. Clerk of Court	4010 Lewis Speedway, St. Augustine, FL 32084	[redacted]
Chief Robert Hardwick, St. Augustine Beach Police Dept.	2300 A1A South, St. Augustine, FL 32080	[redacted]
James Valerino, Assistant Public Defender (retired)	429 Forest Ln. Kissimmee, FL 34746	[redacted]

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.

Date this 8th day of August, 2018.

Kenneth Mark Johnson
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: $57,749.93 (2018)

   List Last 3 years: $98,249.91 (2017) $98,000.00 (2016) $97,416.59 (2015)

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: $57,749.93 (2018)

   List Last 3 years: $98,249.91 (2017) $98,000.00 (2016) $97,416.59 (2015)

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

   Current year to date: $0.00 (2018)

   List Last 3 years: $0.00 (2017) $0.00 (2016) $0.00 (2015)

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

   Current year to date: $0.00 (2018)

   List Last 3 years: $0.00 (2017) $0.00 (2016) $0.00 (2015)

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 August 4, 2018 was $-5,762.32.

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 $ 30,000

ASSETS INDIVIDUALLY VALUED AT OVER $1,000:

DESCRIPTION OF ASSET (specific description is required – see instructions p. 3)	VALUE OF ASSET
Bank accounts (Bank of America, BB&T & Community First Credit Union)	$16,371.04
Florida Retirement Account (Investment Plan)	$160,943.49

PART C - LIABILITIES

LIABILITIES IN EXCESS OF $1,000 (See instructions on page 4): NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
Navient (student loan), P.O. Box 9533, Wilkes-Barre, PA 18773-9555	$53,189.41
BB&T (mortgage), P.O. Box 2167, Greenville, SC 29602-2167	$159,887.44

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

PART D - INCOME

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

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

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

NAME OF SOURCE OF INCOME EXCEEDING $1,000	ADDRESS OF SOURCE OF INCOME	AMOUNT

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

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

OATH

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

SIGNATURE

STATE OF FLORIDA

COUNTY OF ST. JOHNS

Sworn to (or affirmed) and subscribed before me this 6th day of **August,** 2018 by _____

Michelle M. Smith

(Signature of Notary Public—State of Florida)

Michelle M. Smith

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

Personally Known ✓ *OR* Produced Identification

Type of Identification Produced _____

MICHELLE M. SMITH
Commission # GG 081466
Expires June 19, 2021
Bonded Thru Troy Fain Insurance 800-385-7019

INSTRUCTIONS FOR COMPLETING FORM 6:

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

PART A – NET WORTH

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

To total the value of your assets, add:

(1) The aggregate value of household goods and personal effects, as reported in Part B of this form;

(2) The value of all assets worth over $1,000, as reported in Part B; and

(3) The total value of any assets worth less than $1,000 that were not reported or included in the category of "household goods and personal effects."

To total the amount of your liabilities, add:

(1) The total amount of each liability you reported in Part C of this form, except for any amounts listed in the "joint and several liabilities not reported above" portion; and,

(2) The total amount of unreported liabilities (including those under $1,000, credit card and retail installment accounts, and taxes owed).

PART B – ASSETS WORTH MORE THAN $1,000

HOUSEHOLD GOODS AND PERSONAL EFFECTS:

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

ASSETS INDIVIDUALLY VALUED AT MORE THAN $1,000:

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

How to Identify or Describe the Asset:

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

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

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

How to Value Assets:

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

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

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

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

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

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

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

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

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

PART C—LIABILITIES

LIABILITIES IN EXCESS OF $1,000:

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

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

How to Determine the Amount of a Liability:

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

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

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

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

Examples:

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

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

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

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

PART D – INCOME

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

PRIMARY SOURCES OF INCOME:

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

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

Examples:

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

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

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

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

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

SECONDARY SOURCE OF INCOME:

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

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

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

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

Examples:

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

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

PART E – INTERESTS IN SPECIFIED BUSINESS

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

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

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

JUDICIAL APPLICATION DATA RECORD

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

(Please Type or Print)

Date: 8/8/2018

JNC Submitting To: Seventh Judicial Circuit Court

Name (please print): Kenneth Mark Johnson

Current Occupation: Assistant State Attorney

Telephone Number: [redacted] Attorney No.: 0378320

Gender (check one): ☒ Male ☐ Female

☒

Male

☐ Female

Ethnic Origin (check one):

☒ White, non Hispanic

☐ Hispanic

☐ Black

☐ American Indian/Alaskan Native

☐ Asian/Pacific Islander

County of Residence: St. Johns

FLORIDA DEPARTMENT OF LAW ENFORCEMENT

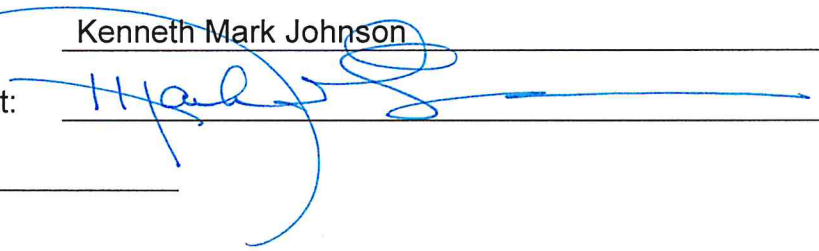
DISCLOSURE PURSUANT TO THE FAIR CREDIT REPORTING ACT (FCRA)

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: Kenneth Mark Johnson

Signature of Applicant: 

Date: 8/8/2018

TAB 3

https://www.news4jax.com/news/florida/st-johns-county/jury-recommends-death-penalty-for-james-colley-jr

St Johns County

Jury recommends death penalty for James Colley Jr.

St. Johns County man gunned down wife, her best friend in 2015 rampage
By Francine Frazier - Senior web producer, Elizabeth Campbell - Reporter
Posted: 12:28 PM, July 25, 2018Updated: 11:41 PM, July 25, 2018

ST. AUGUSTINE, Fla. - James Colley Jr. should be executed by the state for the 2015 shooting deaths of his estranged wife and her best friend. The jury that convicted Colley last week of the murders of Amanda Colley, 36, and Lindy Dobbins, 39, took less than three hours to return the unanimous recommendation of the death penalty in both murders.

Assistant State Attorney Jennifer Dunton called the jury's recommendation "bittersweet." "It's not an easy process the jury has go through, but we're very happy they considered case the same way we did and it brings some measure of justice and closure for Amanda and Lindy."

Circuit Judge Howard Maltz will consider the jury's recommendation, along with arguments presented by the prosecution and defense, and will hand down his sentence for Colley, 38, at a later date.

Colley will have a Spencer hearing on Oct. 2, which gives him another chance to present evidence that could convince Maltz to set aside the jury's recommendation and sentence him to life. Maltz can still choose to do so, but that would be an unusual decision, considering the unanimous recommendation that is now required for any death penalty sentence in Florida.

Death or life?

Assistant State Attorney Kenneth Johnson argued Wednesday that Colley had plenty of chances on Aug. 27, 2015, to decide not to murder his estranged wife, but instead he continued with the shooting

rampage because "he was on a mission." That rampage also claimed the life of Amanda Colley's best friend, Lindy Dobbins.

Johnson said Colley planned the shooting because he was losing control of Amanda, who was in a relationship with someone new, and Colley couldn't let her go.

"Remember that real people were involved. They were human beings, and now they're dead. They're dead because of one man -- the selfish choices he made," Johnson said, pointing at Colley in court.

The jury decided the state successfully proved the murders were "cold, calculated and premeditated," and also "heinous, atrocious and cruel" -- two of the aggravating factors that could warrant the death penalty.

To prove his point about the heinous nature of the crimes, Johnson recounted the brutal details of the murders, including the nine gunshot wounds Amanda suffered, and again played the 911 calls that recorded the women's deaths and their pleas for Colley to stop.

Johnson said Colley had "no conscience, no pity" as he repeatedly pulled the trigger.

"Whatever he thought about Amanda Colley, he was not the judge, jury and executioner of her character. What she did, did not deserve a death sentence," Johnson said.

But what Colley did does, he argued.

The jury unanimously agreed, despite the defense's plea that they show mercy and recommend Colley spend the rest of his life in prison.

The three other aggravating factors the state argued were already proven when the jury convicted Colley last week of two counts of first-degree murder, two counts of attempted first-degree murder, two burglary counts and a count of aggravated stalking, Johnson said:

1. Colley was previously (or simultaneously) convicted of a capital felony or felony involving use of violence.
2. The murders were committed while Colley was in the commission of a burglary.
3. The victim had an injunction against the killer at the time of the murder (applies only to Amanda Colley).

The jury said the state proved all of the aggravating factors beyond a reasonable doubt and that although some mitigating circumstances existed, they did not outweigh the aggravating factors.

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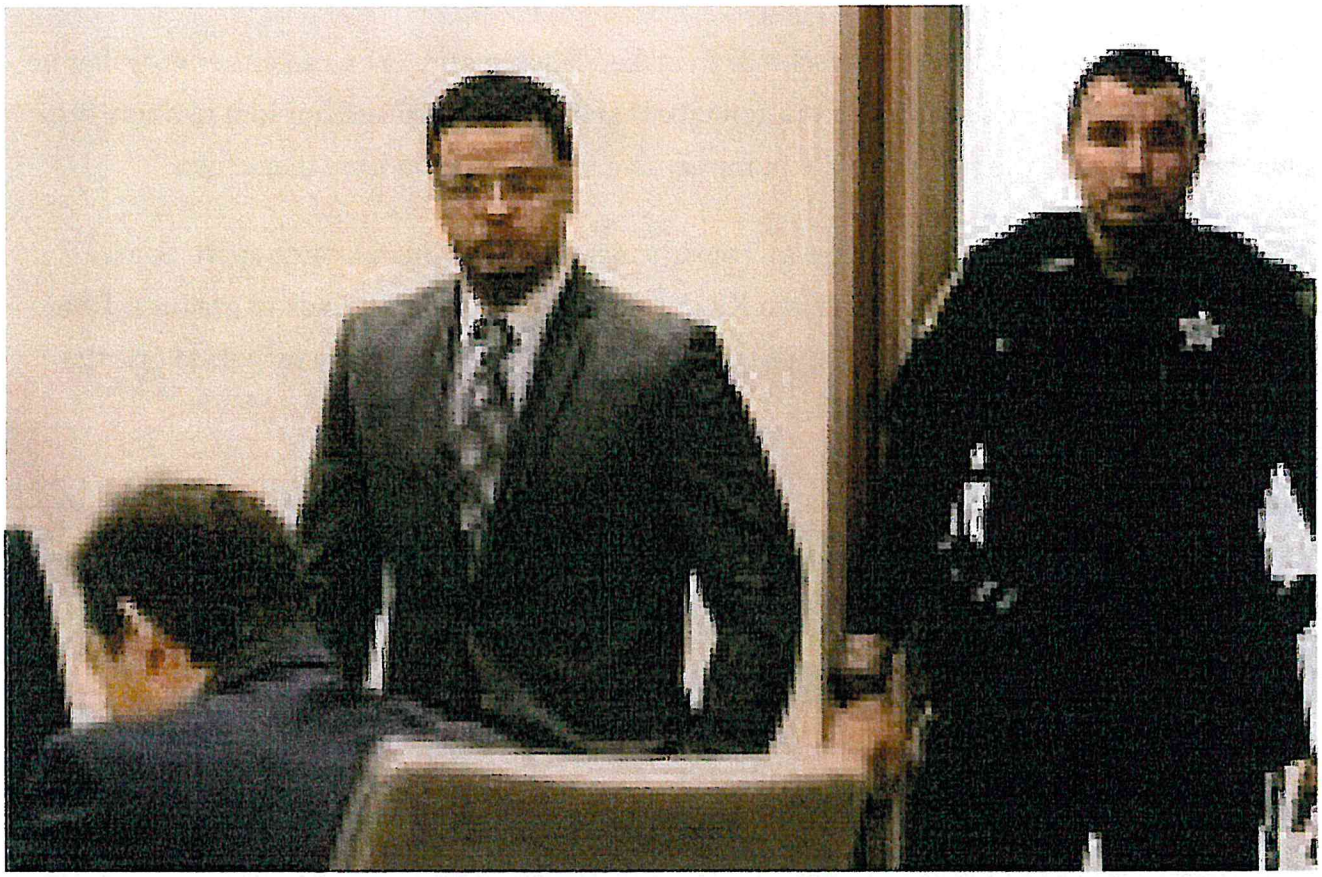
TAB 4

NEWS CHIEF

Jury deliberates whether Luis Toledo should live or die



Frank Fernandez @frankfff
Nov 3, 2017 at 8:38 PM
Nov 3, 2017 at 8:39 PM

ST. AUGUSTINE — Jurors have begun deciding whether to recommend that Luis Toledo be sentenced to death for killing two children or spend the rest of his life in prison.

Luis Toledo, 35, was convicted of second-degree murder a week ago for killing his wife, Yessenia Suarez, 28. He faces up to life on that charge. Toledo also was convicted of first-degree murder in the deaths of her children Thalia Otto, 9, and Michael Elijah Otto, 8.

The same panel of nine women and three men that convicted Toledo began deliberating at 2:53 p.m. on whether he should receive the death penalty.

Assistant State Attorney Mark Johnson told jurors during his closing arguments that Toledo killed the children to eliminate them as witnesses in hopes of avoiding arrest for killing their mother.

"There can be nothing more cold-hearted than the murder of an innocent child," Johnson said.

Defense attorney Michael Nielsen asked jurors to think of Toledo as a bird in their palm.

"Luis is in your hand and you have a choice to make," Nielsen said. "You can either vote that he should be killed and tossed away or you can take that little Luis bird and put him in a tiny little cage. Let him go for the rest of his life in misery in a little cage. You have that choice."

The killings took place four years ago as Toledo's marriage with Suarez came apart. Suarez worked in human resources at American K9 in Lake Mary and was on track to graduate from Rollins College in the spring of 2014. She was unhappy with the marriage to Toledo and the recurring conflicts.

Suarez had an affair with a co-worker named Kevin Dredden at American K9, consummating it during a business trip to Alabama in early October 2013. She also told Toledo she wanted a divorce. Toledo suspected she was having an affair and installed spyware on her phone.

Toledo confirmed his suspicions of an affair on Oct. 22, 2013. Prosecutors said the next morning, between 1:03 a.m. and 5 or 5:30 a.m., Toledo killed his wife and then killed the children to eliminate them as witnesses.

Toledo then disposed of the bodies which have not been found.

Jurors are now working on their final task in the trial which began with jury selection on Oct. 2 at the Richard O. Watson Judicial Center. Jurors must first unanimously agree that there is at least one aggravating factor that supports imposing death on Toledo. If they agree on that, then they must weigh aggravating factors versus mitigating circumstances.

Under a new state law, jurors must unanimously recommend death for the judge to have the option of imposing death. If the jury vote is not unanimous, then Toledo must be sentenced to life in prison without parole.

Johnson, who is working the case along with Ryan Will, gave the jurors several aggravating factors during his closing arguments:

• Toledo killed the two children to eliminate them as witnesses and avoid arrest.

• The murders were cold, calculated and premeditated.

• The children were younger than 12.

• The children were particularly vulnerable because Toledo was in a position of familial or custodial authority over them.

• Toledo had a prior violent felony in 1999 when he and two other men armed themselves with a gun and burst into a man's home in Davie, robbing him of some jewels and other items. The murder of Suarez also counts for this aggravator as does the murder of either one of the children.

Johnson, in his closing, said there was no excuse for the killing of the innocent children. Johnson said kids when they get scared in the middle of the night run to their parent's room.

"On this particular night when they went to their mother's and defendant's bedroom they were running to a death trap," Johnson said.

Blood spots found in the home showed that Toledo first attacked Thalia just outside the master bathroom. The spots show she fell to the floor and was hit again. She tried to escape into the master bathroom. That's where Toledo finished off the girl, Johnson said.

Nielsen, who defended Toledo along with Jeff Deen and Michael Nappi, argued in his closing that defense psychological experts said Toledo had a damaged frontal lobe from traumatic brain injuries and concussions he had suffered throughout his life. That brain damage kept him from being able to control his impulses. Nielsen also said that Toledo was admitted to a mental health hospital for seven months when he was 9-years-old. He said records showed Toledo suffered from bipolar disorder.

Johnson argued that his own expert had said that the defense expert could not say that Toledo had brain damage simply based on a PET scan. He also said there was no medical record that Toledo had ever suffered a traumatic brain injury and the only time he was diagnosed with bipolar disorder was while in prison. He had not been diagnosed with that since his release in 2007.

TAB 5

THE ST. AUGUSTINE RECORD
staugustine.com
COVERING THE ANCIENT CITY AND ST. JOHNS COUNTY SINCE 1894

Sentencing in Bush case scheduled for December

By Jared Keever
Posted Nov 4, 2017 at 12:01 AM

The St. Johns County courthouse saw two death penalty murder cases inch toward conclusion Friday morning as jurors were set to decide the fate of a Volusia County defendant who was convicted of three counts of murder last month, and Circuit Judge Howard Maltz heard witness testimony and attorneys' final arguments before deciding whether to affirm or override a jury's decision to impose the death sentence in the state's case against Sean Alonzo Bush.

It was a busy day for Assistant State Attorney Mark Johnson who, in a brief set of arguments Friday morning at the conclusion of what is called a Spencer hearing, told Maltz that he believed the five aggravating factors that the he and Assistant State Attorney Jennifer Dunton proved to a jury in August were sufficient for imposition of the death penalty for Bush, who was convicted earlier that same month of killing his estranged wife, Nicole Bush.

Less than an hour after appearing before Maltz in the third-floor courtroom, Johnson was scheduled to be on the second floor of the courthouse appearing before a jury and Circuit Judge Raul Zambrano to make closing arguments in the penalty phase of the case against Luis Toledo, who was convicted last of killing his wife and her two children in 2013. The state is seeking the death penalty.

(For more on that Volusia County case, see the story on page 3.)

Jurors convicted Bush in early August of first-degree murder for killing Nicole Bush, who was found shot, beaten with an aluminum baseball bat and stabbed in her Julington Creek home in May 2011. She died later that same day in a Jacksonville hospital.

Jurors voted unanimously for a death sentence on Aug. 17 after finding that, among other things, the murder was done for financial gain, was "heinous, atrocious and cruel," and was "cold, calculated and premeditated."

Johnson told Maltz Friday that it was those last two factors that were the most important in the case. Not only had Bush planned the killing, Johnson argued, by searching the Internet for ways to build to silencer for a gun and disconnecting the security system in Nicole Bush's home, but when shooting her six times did not kill her, he "transitioned" to the "heinous, atrocious and cruel" act of trying to beat her to death with the bat.

"This is a proportionate sentence," Johnson said.

Most of the morning's hearing though was given over to Bush's defense attorney Rosemarie Peoples, with the Public Defender's Office, who, just as she had in the penalty phase, argued that Bush's difficult childhood in Newark, New Jersey, where he was raised, virtually homeless, by a schizophrenic mother and was witness to, and victim of, various forms of abuse was a sufficient mitigating factor to spare her client's life.

She also called a former prison warden who testified that Bush appears to have adjusted to a life of incarceration and would be a benefit to the general population in a state prison where he could mentor younger inmates instead of living out his last days in near-solitary confinement on death row.

In her closing argument, Peoples argued that Bush was not among the "worst of the worst" defendants for whom the death penalty should be reserved and pointed to infamous Florida defendants, Ted Bundy and Danny Rolling, for contrast.

She also drew on trial testimony from the first responding Sheriff's deputy at the scene, who testified that Nicole Bush said, before she died, that she did not know who attacked her.

In one of the only times he as spoken at length during courtroom proceedings, Bush told Maltz that he feels "horrible for the family," but said he did not kill his wife.

"While I appreciate the magnitude of the situation, I am innocent and I maintain that," he said.

Maltz scheduled sentencing in the case for Dec. 18.

TAB 6

https://www.news4jax.com/news/local/jury-votes-12-0-for-death-penalty-in-fsu-students-killing

News4JAX

Jury votes 12-0 for death penalty in FSU student's killing

Prison escapee convicted of kidnapping man, dumping body in St. Augustine

Posted: 10:40 PM, February 18, 2014; Updated: 10:40 PM, February 18, 2014

ST. JOHNS COUNTY, Fla. - A 12-member jury has unanimously recommended the death penalty for a man it convicted last month of kidnapping and murdering a Florida State University student.

Quentin Truehill, 26, was the first of three suspects to stand trial in the killing of Vincent Binder (pictured below) in 2010. The jury that convicted Truehill of first-degree murder spent hours Friday deliberating whether to recommend the death penalty or let him face life in prison without parole.

The sentencing phase of the trial lasted all week, with testimony from both sides. The judge will make the ultimate decision on sentencing sometime in the next few weeks.

Vincent Binder

"The jury sent a very strong message with a unanimous 12-vote verdict. So we are pleased that finally at least one measure of justice has been done," Assistant State Attorney Mark Johnson said.

A large group of Binder's family was in the courtroom to hear the killer's suggested sentence.

"It's a bittersweet moment for them," Johnson said. "A trial like this reminds them of what they have lost. He was a very unique individual. He had a bright future ahead of him."

Truehill, Peter Hughes, 26, and Kentrell Johnson, 43, (pictured below) were jail escapees from Louisiana.

Binder was abducted in Tallahassee and his body was dumped along State Road 16 in St. Augustine. It become known in court that Binder died of multiple stab wounds.

After friends reported Binder missing on April 8, 2010, the Tallahassee Police Department said it began reviewing Binder's phone and financial information. The review led investigators to Miami.

St. Johns County Sheriff's Office booking photos of Peter Hughes and Kentrell Johnson

Tallahassee police said they were notified by the South Florida U.S. Marshals Violent Fugitive Task Force that it had located a stolen pickup truck believed to be used by three prison escapees from Louisiana. Investigators linked the three fugitives to Tallahassee and possibly to the disappearance of Binder.

U.S. marshals apprehended the fugitives on April 12, 2010.

Investigators said they later received information from one of the fugitives that further linked them to Binder's disappearance.

Florida Department of Law Enforcement agents searching for evidence in conjunction with the case found Binder's body in a field near the intersection of Interstate 95 and State Road 16.

Hughes and Johnson are awaiting trials. The state will also seek the death penalty in their cases if they're convicted.

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TAB 7

THE ST. AUGUSTINE RECORD
staugustine.com
COVERING THE ANCIENT CITY AND ST. JOHNS COUNTY SINCE 1894

Murder trial 'like movie script' with man facing possibility of execution if found guilty

By Douglas Jordan
Posted May 24, 2012 at 12:01 AM

Timothy Fletcher, who had been listening intently and taking notes, lowered his head and stared at his yellow legal pad as Putnam County Sheriff's Detective Lynn Nicely described finding the body of 66-year-old Helen Key Googe - Fletcher's step-grandmother - face down in her living room on April 15, 2009.

Fletcher, 28, is charged with the first-degree murder of Googe, along with escape from the Putnam County jail, home invasion robbery, grand theft of a motor vehicle and burglary of a motor vehicle.

He has pleaded not guilty.

A jury of seven men and five women will decide Fletcher's fate in the capital murder case. If he is convicted, Fletcher faces death by lethal injection or life in prison.

His escape along with his cell mate, Doni Ray Brown, reads like a movie script and resulted in a nationwide manhunt that made headlines all over the country. The pair made it all the way to Kentucky before they returned to Putnam County, where they were caught three days later.

Fletcher's trial, which began Wednesday after two days of jury selection, was moved to St. Augustine because of publicity surrounding the escape and crime spree in Putnam County.

Looking gaunt and chewing gum, he stood before Circuit Court Judge Wendy Berger dressed in a light gray shirt, dark slacks and a blue tie. Occasionally whispering to his attorney, he remained stone-faced through the proceedings.

Assistant state attorneys Mark Johnson and Jason Lewis called 14 witness during preliminary testimony in the trial, which is expected to continue through the week.

Much of Wednesday's early testimony was related to the escape, which afterward pointed to serious security issues at the Putnam County jail, resulting in multiple disciplinary actions, the resignation of the jail director and the firing of one corrections officer.

The state alleges that the two men broke out of the jail, located in Palatka, around 2 a.m. on April 15, 2009.

According to a sheriff's investigation report, Fletcher had smuggled a car jack back into the jail that he had stolen from a jail transport van after a court appearance. He had been wearing a cast on his left leg, which helped him conceal it from corrections officers.

It was also disclosed during an investigation that Fletcher had not been patted down before re-entering the jail and being placed into a holding cell.

Johnson showed the jury video footage of Fletcher, who appeared to be laboring to hide something, in the holding cell with other prisoners.

Once back inside, Fletcher stuffed the jack in an overhead fixture in his cell, where it stayed for 12 days before the pair made their escape.

The men reportedly used the jack to remove a sink and toilet in the cell, then sneaked through a utility hallway to an outside door. Outside, they made their way under one fence, then climbed through another that was rusty and in a state of disrepair.

According to authorities, the escapees then ran across a field and tried unsuccessfully to steal at least two vehicles before grabbing a red and white pickup truck from Louis Tire Store on Highway 17 North. Next, they drove it to Googe's home in Bardin, where Fletcher once lived.

Authorities say the two men killed Googe, who had worked for the Putnam County Tax Collector's office for more than 30 years prior to her retirement, and stole her Lincoln Town Car, heading across several states. Her car was later found in Kentucky, prompting police to go to her home, where they found her body.

Fletcher had originally been in jail after being arrested on March 3, 2009, on three counts of failure to appear on an aggravated assault charge, and Brown had been arrested Aug. 17, 2008, and charged with robbery with a firearm.

State testimony continues through this week, after which the defense will present its case.

TAB 8

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

STATE OF FLORIDA

v. CASE NO. 2010-763-CF

QUENTIN M. TRUEHILL,

Defendant.
_____/

STATE'S SENTENCING MEMORANDUM

COMES NOW, the State of Florida, by and through the undersigned Assistant State Attorney, and files this sentencing memorandum to present the State's legal authority, facts and argument supporting the imposition of the death penalty in this cause as follows:

CASE HISTORY

On May 10, 2010, a St. Johns County Grand Jury returned a True Bill and Indictment against the Defendant, Quentin Marcus Truehill, for Kidnapping to Facilitate a Felony and First Degree Murder. Upon presentment of the charging documents to the Circuit Court, an arrest warrant was issued. On May 14, 2010, the Defendant was arrested in Leon County, Florida, and transported to St. Johns County to stand trial for the these charges.

Jury selection began on Monday, February 3, 2014. On Tuesday, February 18, 2014, the jury chosen returned verdicts of guilty as charged on both counts. The penalty phase commenced on Monday, March 3, 2014, and during that phase the State requested and the Court allowed the jury to be presented with evidence and to receive argument as to the following six (6) aggravating circumstances:

1. The capital felony was committed by a person previously convicted of a felony and under sentence of imprisonment.

2. The Defendant was previously convicted of a felony involving the use or threat of violence to the person.

3. The capital felony was committed while the Defendant was engaged, or an accomplice, in the commission of . . . a kidnapping and/or robbery.

4. The capital felony was committed for the purpose of avoiding or preventing a lawful arrest.

5. The capital felony was especially heinous, atrocious or cruel.

6. The capital felony was a homicide and was committed in a cold, calculated and premeditated manner without the pretense of moral or legal justification.

In an effort to establish mitigating circumstances, the defense presented a number of witnesses and items of evidence during the penalty phase of the trial and a Spencer hearing. The evidence submitted by the defense primarily involved allegations and opinions regarding the Defendant's age, childhood, mental condition, and life experiences. The primary piece of evidence presented in mitigation was the testimony of Dr. Frederick Sautter, a psychologist from New Orleans, Louisiana, who opined that, as a

result of a number of traumatic events, the Defendant suffered from posttraumatic stress disorder that he alleged had a substantial influence on him during the commission of the crimes in question.

At the conclusion of the presentation of evidence and closing arguments, the jury retired and returned with an advisory verdict that recommended the death penalty by a unanimous vote of 12-0. This Court must now consider the evidence and argument presented at the guilt and penalty phases of the trial and at the Spencer hearing in accordance with the law to determine whether the appropriate sentence in this case is a sentence of life in prison without the possibility of parole or the death penalty.

AGGRAVATING CIRCUMSTANCES

1. **Florida Statutes § 921.141(5)(a): The capital felony was committed by a person previously convicted of a felony and under sentence of imprisonment.**

2. **Florida Statutes § 921.141(5)(b): The Defendant was previously convicted of a felony involving the use or threat of violence to the person.**

The existence of these aggravating circumstances is proven by the admission of certified copies of the Defendant's convictions and sentences for the crimes of Armed Robbery and Manslaughter. At the time of his escape from the Avoyelles Parish Jail in Marksville, Louisiana and the murder of Vincent Binder, the Defendant was serving a sentence of 40 years hard labor out of Rapides Parish, Louisiana, for crime of Armed Robbery and 30 years hard labor out of Lafayette Parish, Louisiana, after being convicted

of Manslaughter. In the Armed Robbery conviction, the Defendant was sentenced on June 23, 2007. He was sentenced on the Manslaughter conviction on July 21, 2007.

In addition to the certified convictions, the State presented the testimony of Kristine Keegan, a qualified fingerprint examiner with the St. Johns County Sheriff's Office. Ms. Keegan compared the Defendant's known fingerprints to those attached to the certified copy of the Armed Robbery conviction and testified during the penalty phase that they matched.

Former Assistant District Attorney Keith Stutes from Lafayette Parish, Louisiana also identified the Defendant in court as the person who pleaded guilty to and was convicted of Manslaughter. Mr. Stutes also testified that, during the plea colloquy in that case, the Defendant admitted to shooting the victim in the face, then, after the victim fell to the ground, standing over the victim and shooting him three more times in the chest. This evidence demonstrated beyond a reasonable doubt that, while the Defendant may have pleaded to the charge of Manslaughter, the crime involved a greater violent offense. *See Miller v. State*, 42 So.3d 204, 225-26 (Fla. 2010).

With this evidence, the State has proven these aggravating circumstances beyond any reasonable doubt. The Florida Supreme Court has observed that the "prior violent felony" aggravator is one of the "most weighty in Florida's sentencing calculus." *Sireci v. Moore*, 825 So.2d 882, 887 (Fla. 2002). For this reason and those outlined above, the State submits that the Court should give this aggravating circumstance great weight.

3. **Florida Statutes § 921.141(5)(d): The capital felony was committed while the Defendant was engaged, or an accomplice, in the commission of . . . a kidnapping and/or robbery.**

The State has also proven this aggravating factor beyond a reasonable doubt. Evidence was submitted to the jury that the murder of Vincent Binder occurred during the commission of both a kidnapping and a robbery.

During the guilt phase of the trial, Beth Frady and Rebecca Edwards testified that at approximately midnight on April 1-2, 2010, Vincent Binder left their apartment in Tallahassee to walk home. Video from a surveillance camera was also introduced showing the Defendant at an ATM inside the Half Time Keg convenience less than 30 minutes later. Also admitted into evidence were credit card records that revealed that the Defendant had used the ATM at that time and location to withdraw $160.00 from Binder's credit card account. Importantly, Vincent Binder never appeared on the store surveillance video using his credit card.

Binder's wallet was later found in a pair of jeans located in a Miami hotel where the Defendant was staying. The victim's credit card and driver's license were seized at a Miami Wachovia bank where the Defendant personally attempted to withdraw $1,300.00 from the victim's bank account.

On April 28, 2010, Vincent Binder's deceased body was found lying in a vacant field on Commercial Drive in St. Augustine, approximately 200 miles away from Tallahassee. Dr. Frederick Hobin, who performed an autopsy on Binder's body, testified that Binder has suffered approximately 5-10 chopping-type injuries to the head that were

consistent with a Rambo-style knife that was found covered in the victim's blood in Miami. Dr. Hobin also found that they victim had suffered multiple defensive injuries to his left arm, hands, and fingers.

Dr. Hobin also testified that the injuries inflicted on Vincent Binder would have caused a substantial amount of bleeding. Philipp Balunan, a crime scene technologist with the Florida Department of Law Enforcement, processed the black Chevy truck that the Defendant and his cohorts used to travel from Louisiana, through Tallahassee and St. Augustine, to Miami. At trial, Mr. Balunan testified that he processed or visually inspected both the interior and exterior of the truck, including the truck bed, for the presence of blood and found none. This evidence proves beyond a reasonable doubt that the Defendant and his cohorts kidnapped Vincent Binder from Tallahassee, robbed him of his credit card, used his credit card at multiple locations between Tallahassee and Miami, and transported Binder alive to St. Augustine, where they murdered him during the commission of the ongoing kidnapping and robbery.

Notwithstanding the above, the proof of this aggravating circumstance is most clearly reflected by the jury's unanimous verdict finding the Defendant guilty of Kidnapping beyond a reasonable doubt. As summarized, this verdict was supported by an overwhelming array of evidence presented during the guilt phase of the trial. Accordingly, this Court should give this aggravator great weight.

4. **Florida Statutes § 921.141(5)(e): The capital felony was committed for the purpose of avoiding or preventing a lawful arrest.**

The State asserts that this aggravating factor applies because the dominant motive for the murder of Vincent Binder was to eliminate him as a witness to the Defendant's crimes. This aggravating circumstance has been repeatedly upheld in cases where the victim was abducted from the scene of one crime and then taken to a remote area and killed for no other apparent motive. *See Jones, v. State*, 748 So.2d 1012, 1027 (Fla. 199); *Preston v. State*, 607 So.2d 404, 409 (Fla. 1993); *Hall v. State*, 614 So.2d 473, 477 (Fla. 1993); *Routly v. State*, 440 So.2d 1257 (Fla. 1983). *See also*, *Cole v. State*, 36 So.3d 597, 607-08 (Fla. 2010); *Card v. State*, 803 So.2d 613, 625-26 (Fla. 2001).

In *Jones v. State*, 748 So.2d at 1027, the Florida Supreme Court ruled that the "avoid arrest" aggravator was supported by competent, substantial evidence based on the following findings by the trial court in that case:

> "[T]he facts are clear that the Defendant selected [the victim] . . . in order to rob her and obtain money to purchase to crack cocaine . . . . However, there was [no] reason for the Defendant to kill the victim after he had obtained her money to buy crack cocaine. The Defendant had abducted the victim from the parking lot in Duval County and had used the victim's ATM card approximately two hours later in Nassau County, where he extracted $300 from the ATM machine. He could not have used this card any other way than obtaining the PIN number from the victim. Once the money had been obtained from the machine the Defendant had no reason to kill the victim, yet he transported her to Baker County where her body was left in a wooded area . . . . By transporting [the victim] to the remote location in Baker County where he killed her, the only reasonable inference that the Court can glean from the evidence was that he intended to eliminate her as a witness to [the] crime."

These facts are virtually identical to those the State has proven in the instant case. Video evidence presented at trial shows beyond a reasonable doubt that the Defendant kidnapped Vincent Binder and, less than 30 minutes later, used his credit card at an ATM machine inside the Half Time Keg convenience store in Tallahassee. The purpose for obtaining this money was to finance the Defendant's continuous escape from custody. Credit card records show that the Defendant was able to withdraw $160.00 from the ATM machine. The records also show that Binder's credit card was used to obtain more money from a number of ATM machines in the Miami / Opa Locka, Florida area. The Defendant could not have withdrawn this money from these ATM machines without obtaining the PIN number from Vincent Binder.

Once the Defendant was able to obtain the PIN number to Vincent Binder's credit card and was able to use it successfully to withdraw money from the ATM in Tallahassee, there was absolutely no reason to kill him. However, the Defendant continued to confine Binder in the back of the black Chevy truck, which was used to transport him to St. Augustine. Once there, the Defendant and his collaborators drove him to a dark, isolated field and murdered him.

Accordingly, there can be no reasonable doubt that the Defendant's dominate motive for killing Vincent Binder was to eliminate him as a witness. The State submits that this aggravating circumstance should be given <u>great weight.</u>

5. Florida Statutes § 921.141(5)(h): The capital felony was especially heinous, atrocious, or cruel.

In *Rogers v. State*, the Florida Supreme Court held:

> In order for the HAC aggravating factor to apply, the murder must be conscienceless or pitiless and unnecessarily torturous to the victim. A finding of HAC is appropriate only when a murder evinces extreme and outrageous depravity as exemplified either by the desire to inflict a high degree of pain or utter indifference to or enjoyment of the suffering of another.

783 So.2d 980, 994 (Fla. 2003) (citations omitted). The evidence presented during the guilt phase of this trial leaves this Court with no reasonable doubt that the murder of Vincent Binder was characterized by all the elements of this definition. Accordingly, a finding of HAC in this case is appropriate.

The evidence introduced at trial clearly shows that shortly after midnight on April 2, 2010, the Defendant, along with Kentrell Johnson and Peter Hughes, kidnapped Vincent Binder as he was walking home from his friends' apartment in Tallahassee. After successfully using Binder's credit card at an ATM machine minutes later, the Defendant and his partners in crime continued to confine Binder to the back of the black Chevy pickup truck they had stolen in Louisiana, rather than releasing him unharmed.

They then transported Binder from Tallahassee to St. Augustine, a journey of over 200 miles that took between five (5) and six (6) hours. Binder was alive for the entirety of this trip, throughout which he had an extraordinarily long time to contemplate not only the probability that he was going to die, but also how death would be inflicted on him.

Twice before arriving in St. Augustine, the Defendant and his cohorts stopped to use Binder's credit card to buy gas and ask for directions, each time raising, and then extinguishing Binder's hope that he would be released alive.

Sometime before dawn, the Defendant and his accomplices decided that the time had come to dispose of Vincent Binder. They pulled off of I-95 at State Road 16 in St. Augustine and snaked their way to Commercial Drive, where they found a vacant field. They then pulled over and removed Binder from the truck. Based on the distance between the roadway and the location where Binder's mutilated body would later be found, the evidence shows that the Defendant and his accomplices then either led or chased Binder over 450 feet across the field where they executed him with at least two (2) knives.

Vincent Binder did not die a quick and easy death. To the contrary, the evidence shows that he suffered great physical and emotional pain as he fought for his life against impossible odds.

During the trial, Dr. Frederick Hobin, a forensic pathologist who performed an autopsy on the body of Vincent Binder, testified that the victim suffered between five (5) and ten (10) blows to the head with a heavy, sharp instrument; four stab wounds to the left lower back with a second knife; a broken left arm; and between two and four incised and hacking wounds to his hands and fingers. Dr. Hobin also testified that the injuries to Binder's left arm, hands, and fingers were consistent with the victim, in a struggle against his attackers, raising his arm and hands over his head in a defensive posture to protect

himself from the blows of one of the murder weapons. Dr. Hobin opined that these defensive injuries showed that Vincent Binder was conscious and alive for at least the initial portion of the attack.

Dr. Michael Warren, a forensic anthropologist, also testified that Binder had suffered a minimum of six (6) blows to the head with a heavy, sharp instrument and had sustained at least three (3) "nightstick" type injuries to the ulna bone of his left forearm. Two (2) of the blows inflicted on Binder's left arm literally chopped into the bone, leaving hack marks, while one (1) or more additional blows actually broke the ulna bone in two. Dr. Warren concurred with Dr. Hobin's opinion that these injuries to Binder's left arm were classic defensive wounds. Photographs of the injuries to Binder's body were offered into evidence supporting the testimony of Dr. Hobin and Dr. Warren.

a. Consciousness / Awareness of Impending Death:

The Florida Supreme Court has consistently upheld findings that a murder was heinous, atrocious or cruel in beating and stabbing deaths if the evidence also showed that the victim was conscious and aware of impending death. *See King v. State*, 130 So.3d 676, 684 (Fla. 2013) (citing *Douglas v. State*, 878 So.2d 1246, 1261 (Fla. 2006) and *Bogle v. State*, 655 So.2d 1103, 1109 (Fla. 1995)) (beating deaths); *Guardado v. State*, 965 So.2d 108, 115-16 (Fla. 2007) (beating and stabbing death); *Buzia v. State*, 926 So.2d 1203, 1212-14 (Fla. 2006) and cases cited therein (beating deaths); *Dennis v. State*, 817 So.2d 741, 766 (Fla. 2002); *Aguirre-Jarquin v. State*, 9 So.3d 593, 608-09 (Fla. 2009) (stabbing death); *Schoenwetter v. State*, 931 So.2d 857, 874 (Fla. 2006) (stabbing

death); *Perez v. State*, 919 So.2d 347, 378-79 (Fla. 2006) and cases cited therein (stabbing deaths); *Cox v. State*, 819 So.2d 705, 720 (Fla. 2002) (stabbing death); *Francis v. State*, 808 So.2d 110, 134-35 (Fla. 2002) (stabbing death); *Pittman v. State*, 646 So.2d 167, 172-73 (Fla. 1994) and cases cited therein (stabbing deaths).

It has also repeatedly found the existence of defensive wounds extremely relevant to the determination of a victim's consciousness and awareness. *See King*, 130 So.3d at 684 (citing *Guardado v. State*, 965 So.2d 108, 116 (Fla. 2007); *Boyd v. State*, 910 So.2d 167, 191 (Fla. 2005); *Dennis v. State*, 817 So.2d 741, 766 (Fla. 2002); *Roberts v. State*, 510 So.2d 885, 894 (Fla. 1987); *Heiney v. State*, 447 So.2d 210, 216 (Fla. 1984). Nevertheless, the Florida Supreme Court has also emphasized that it has never required a minimum number of defensive wounds in order to sustain a finding of HAC. *King*, 130 So.3d at 685. *See also Heiney*, 447 So.2d at 211, 215-16 (Fla.1984) (holding that the record amply supported a finding of HAC where the victim suffered defensive wounds only to the back side of the victim's hands and wrists).

In this case, Vincent Binder was obviously aware of his impending death. The physical evidence and the presence of defensive injuries prove that he was conscious and fighting for his life. Dr. Hobin and Dr. Warren were clear in their testimony that the medical and anthropological evidence showed that Vincent Binder engaged in a violent struggle to defend himself from his attackers. The evidence shows that, as he was being attacked, Binder used his left arm and hands to shield his head and body from the deadly blows of the eventual murder weapon. From this response, it is reasonable to conclude

that Vincent Binder feared for his life and was doing what little was within his power to save it. There can be no question that as the almost half dozen blows chopped into his left arm and hands, breaking his left arm and severing the fingers on his right hand, Vincent Binder experienced great physical pain and suffering at the hands of the Defendant and his cohorts before he eventually succumbed to their vicious attack.

b. Fear, Emotional Strain & Terror of the Victim:

The Florida Supreme Court has also explained that the actual length of the victim's consciousness is not the only factor relevant to the determination of the HAC aggravating circumstance. *Davis v. State*, 121 So.3d 462, 498 (Fla. 2013). It has consistently held that the "fear, emotional strain, and terror of the victim during the events leading up to the murder may make an otherwise quick death especially heinous, atrocious, or cruel." *Lynch v. State*, 841 So.2d 362, 369 (Fla. 2003) (citing *James v. State*, 695 So.2d 1229, 1235 (Fla. 1997), *Francis v. State*, 808 So.2d 110, 125 (Fla. 2001); and *Farina v. State*, 801 So.2d 44, 53 (Fla. 2001). Moreover, in determining whether the HAC factor is present, the focus should be on the victim's perceptions of the circumstances as opposed to those of the perpetrator. *Id.* (citing *Farina*, 801 So.2d at 53, and *Hitchcock v. State*, 578 So.2d 685, 692 (Fla. 1990).

Looking through these lenses, the Florida Supreme Court has, in numerous cases, affirmed a finding of HAC when the evidence has shown that the victim was abducted, transported to a remote location, and executed. *See Baker v. State*, 71 So.3d 802, 821 (Fla. 2011); *Parker v. State*, 873 So.2d 270, 287 (Fla. 2004); *Cave v. State*, 727 So.2d

227, 229 (Fla. 1999); *Alston v. State*, 723 So.2d 148, 160-61 (Fla. 1998); *Preston v. State*, 607 So.2d 404 (Fla. 1992); *Routly v. State*, 440 So.2d 1257, 1264-65 (Fla. 1983); *Smith v. State*, 424 So.2d 726, 728, 733 (Fla. 1983); *Griffin v. State*, 414 So.2d 1025, 1029 (Fla. 1982); *Steinhorst v. State*, 412 So.2d 332, 339-40 (Fla. 1982); *Knight v. State*, 338 So.2d 201, 202, 205 (Fla. 1976). The common element in these cases is that, before death occurred, the victims were subjected to agony over the prospect that death was soon to occur. *Routly*, 440 So.2d at 1265.

There can be no reasonable doubt that Vincent Binder suffered fear, emotional strain, and terror during the events leading up to the actual killing. He was abducted in the middle of the night from the streets of Tallahassee, robbed of his wallet and credit card, and then taken on a terrifying ride that extended over 200 miles and approximately five (5) to six (6) hours.

Again, the evidence shows that Binder was alive throughout this entire journey, giving him an excruciatingly lengthy time to deliberate on when and how he would be murdered. The Defendant and his cohorts stopped at least twice during the trip, which no doubt raised the victim's hope of survival, only to be crushed when they continued on.

Sometime before sunrise, the Defendant and his accomplices decided that the time had come to get rid of Vincent Binder. They pulled off of I-95 at State Road 16 in St. Augustine and found a dark, vacant field on Commercial Drive. They then pulled over and removed Binder from the truck. Any remaining hope of survival to which Vincent Binder might have clung up until that point no doubt vanished upon his arrival at this

dark and isolated location. Because there was no other reason for them to have stopped in this area, he could have come to no other conclusion than that they selected this spot for the specific purpose to kill him.

Given that his body was found over 450 feet from the roadway it is reasonable to conclude either that Vincent Binder was frog-marched to his execution site in the field or was chased down after managing to break free and attempting to escape. Either way, the fear and terror that must have been going on in Vincent Binder's mind as he contemplated the end of his life cannot be fathomed.

The evidence in this case, as outlined above, clearly proves that the Defendant's murder was especially heinous, atrocious, or cruel. Like the "prior violent felony" aggravator, HAC is among "the most weighty in Florida's sentencing calculus," *Sireci*, 825 So.2d at 887, and has been considered sufficient by itself to sustain a death sentence, *see Butler v. State*, 842 So.2d 817 (Fla. 2003). Accordingly, the State submits that this aggravating circumstance should be given great weight.

6. Florida Statutes § 921.141(5)(i): The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification.

To establish the CCP aggravating factor, Florida law requires the State to prove that: (1) the killing must have been the product of cool and calm reflection and not an act prompted by emotional frenzy, panic, or a fit of rage ("cold"); (2) the defendant must have had a careful plan or prearranged design to commit murder before the killing

("calculated"); (3) the defendant must have exhibited heightened premeditation ("premeditation"); and (4) the defendant had no pretense of legal or moral justification. *Lynch v. State*, 841 So.2d 362, 371 (Fla. 2003) (citing *Evans v. State*, 800 So.2d 182, 192 (Fla. 2001). "The CCP aggravator pertains specifically to the state of mind, intent, and motivation of the defendant." *Wright v. State*, 19 So.3d 277, 298 (Fla. 2009).

a. "Cold":

As stated above, the first element that the State must prove is that the murder was "cold," in the sense that that the killing was "the product of cool and calm reflection and not an act prompted by emotional frenzy, panic, or a fit of rage." *Lynch*, 841 So.2d at 371. "[E]xecution-style killing is by its very nature a 'cold' crime." *Id.* at 372.

The evidence in this case leads to no other reasonable conclusion than that the murder of Vincent Binder was an execution. Long before the Defendant and his cohorts arrived in St. Augustine with the victim as their captive, he had everything he could want or obtain from Binder. He had already obtained Binder's credit card, along with the PIN, and had successfully used it once to withdraw money from an ATM and three times to purchase gas. When they exited I-95 in St. Augustine just before dawn on April 2, 2010, they made their way to a vacant field along Commercial Drive, which at that hour was a dark, isolated area where they could easily dispatch Vincent Binder without being discovered. There was no other reason for the Defendant and his accomplices to have been at that location except to execute Vincent Binder.

b. "Calculated":

Second, to prove that a murder was "calculated," "the defendant must have had a careful plan or prearranged design to commit murder before the fatal incident." *Id.* at 371. "The calculated element applies in cases where the defendant arms himself in advance, kills execution-style, plans his actions, and has time to coldly and calmly decide to kill." *Wright v. State*, 19 So.3d 277, 299 (Fla. 2009).

As explained previously, the only explanation for the fact that the Defendant and his accomplices continued their kidnapping of Vincent Binder even after they had obtained his credit card and PIN number and used it successfully was that they planned from the beginning to eventually murder him and prevent him from ever being a witness against them. The careful and calculated nature of Binder's murder is proven even more so by the evidence that the Defendant armed himself with the murder weapon prior to the killing. The Rambo-style knife that DNA evidence proved was the weapon that was used to hack Binder to death was not one of mere happenstance. James Mose, the operator of the black Chevy truck the Defendant and his accomplices stole, testified that the knife was not his and that it was not in the truck at the time it was stolen. Therefore, the knife wasn't simply a weapon that the Defendant happened upon at the time of the killing. Long before Binder's murder, the Defendant sought out and obtained the knife to be used to commit murder when the opportunity presented itself.

c. "Premeditated":

Third, the State must show that the circumstances of the crime must indicate that the defendant killed the victim with heightened premeditation. *See Lynch*, 841 So.2d at 371. "Heightened premeditation necessary for CCP is established where . . . the defendant had ample opportunity to release the victim but instead, after substantial reflection, 'acted out the plan [he] had conceived during the extended period in which [the] events occurred.'" *Turner v. State*, 37 So.3d 212, 225-26 (Fla. 2010) (quoting *Alston v. State*, 723 So.2d 148, 162 (Fla. 1998)), *cert. denied*, 131 S.Ct. 426, 178 L.Ed. 2d 332 (2010). "[T]his element exists where a defendant has the opportunity to leave the crime scene with the victims alive but, instead, commits the murders." *Wright*, 19 So.3d at 300.

The existence of heightened premeditation cannot be reasonably doubted in this case. The Defendant had between five (5) and six (6) hours to contemplate and reflect on what he and his accomplices would do with Vincent Binder. He had ample opportunities to release Binder unharmed, including the multiple occasions when they stopped between Tallahassee and St. Augustine to purchase gas or ask for directions. Instead, the Defendant chose to continue on with his prearranged plan to murder Vincent Binder.

d. "No Pretense of Moral or Legal Justification":

Finally, the State must demonstrate that the murder was committed without any pretense of moral or legal justification. *See Lynch*, 841 So.2d at 371. "[A] pretense of moral or legal justification is any colorable claim based at least partly on uncontroverted

and believable factual evidence or testimony that, but for its incompleteness, would constitute an excuse, justification, or defense to the homicide." *Walls v. State*, 641 So.2d 381, 388 (Fla. 1994).

It hardly needs to be said that there is not one scintilla of evidence that even remotely suggests that the Defendant in this case had any pretense of moral or legal justification in killing Vincent Binder. The proof is overwhelmingly to the contrary.

The evidence in this case proves beyond a reasonable doubt that the Defendant's murder of Vincent Binder was cold, calculated, and premeditated. The Florida Supreme Court has also classified CCP as one of the most serious aggravating circumstances set out in the statutory sentencing scheme. *Suggs v. State*, 923 So.2d 419, 436 (Fla. 2005) (citing *Larkins v. State*, 739 So.2d 90, 95 (Fla. 1999)). Therefore, the Court should give this aggravating factor great weight.

MITIGATING CIRCUMSTANCES

At the Defendant's request, the jury received instructions pertaining to the following statutory mitigating circumstances, pursuant to Florida Statutes § 921.141(6)(b), (d), (e), (f), and (g):

1. The capital felony was committed while the Defendant was under the influence of extreme mental or emotional disturbance.

2. The Defendant was an accomplice in the capital felony committed by another person and his or her participation was relatively minor.

3. The Defendant acted under extreme duress or under the substantial domination of another person.

4. The capacity of the Defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.

5. The age of the Defendant at the time of the crime.

During closing argument, the defense argued that the following non-statutory circumstances should be considered as "other factors in the Defendant's background that [should] mitigate against imposition of the death penalty" under Florida Statutes § Section 921.141(6)(h):

6. The Defendant was affected by his father's extra-marital relationship.

7. The Defendant was affected by his parents' divorce.

8. The Defendant was affected by his father's remarriage.

9. The Defendant played basketball in high school.

10. The Defendant graduated from high school.

11. The Defendant was affected by his father not attending his high school graduation.

12. The Defendant enrolled in an automobile collision repair course.

13. The Defendant helped his girlfriend's family evacuate New Orleans after Hurricane Katrina.

14. The Defendant was affected by the fact that he was unable to obtain assistance from FEMA following Hurricane Katrina.

15. The Defendant lost two homes.

16. The Defendant participated in community service.

17. The Defendant went fishing with his brother.

18. The Defendant worked at Baskin Robbins.

19. The Defendant has family that supports and loves him.

20. Lack of future dangerousness.

21. The Defendant has exhibited good behavior while incarcerated in jail.

22. The Defendant will adjust well to prison.

23. The Defendant was a follower, not a leader.

24. The Defendant witnessed his father abuse his mother.

25. The Defendant witnessed his father abuse his siblings.

26. The Defendant was abused by his father.

27. The Defendant grew up in a dysfunctional family.

28. The Defendant had a girlfriend whose child died of SIDS.

29. The Defendant had a girlfriend who was shot and killed.

30. The Defendant was present when a school shooting took place.

31. The Defendant had no support from his siblings.

32. The Defendant suffered trauma as a result of Hurricane Katrina.

33. The Defendant was never treated for mental health or emotional problems.

34. The Defendant suffers from post-traumatic stress disorder (PTSD).

The State asserts that the mitigating circumstances offered by the defense in this case should not be given great weight. To the extent that this Court finds that mitigation does exist and assigns it some level of weight, the State further argues that such mitigation does not outweigh the aggravating circumstances that have been proven beyond a reasonable doubt in the murder of Vincent Binder. Because some of the

mitigating circumstances offered by the defense are supported by the same evidence, the State will, in some cases, combine its response to these claims.

1. Florida Statutes § 921.141(b): The capital felony was committed while the Defendant was under the influence of extreme mental or emotional disturbance.

To establish that the murder of Vincent Binder was committed while the Defendant was under the influence of extreme mental or emotional disturbance, the defense relied upon the testimony of Dr. Gregory Sautter, a psychologist from New Orleans, Louisiana. During the penalty phase, Dr. Sautter opined that the Defendant suffers from Post-Traumatic Stress Disorder ("PTSD"). His diagnosis was based on number of traumatic events the Defendant was alleged to have experienced, including verbal and physical abuse by his father, a school shooting he witnessed, the shooting death of a former girlfriend, and surviving Hurricane Katrina.

An essential element in the proof of this mitigator is the requirement that the defense show that a defendant was *under the influence* from an extreme mental or emotional disturbance *at the time of the murder.* Evidence that the circumstances of a homicide involved a coherent and well-thought-out plan can demonstrate that the defendant's commission of the crime was not influenced by the disturbance at the time. *See Hoskins v. State*, 965 So.2d 1, 17 (Fla. 2007); *Philmore v. State*, 820 So.2d 919, 935-37 (Fla. 2002) (emphasis added). Moreover, with regard to the issue of expert psychological evaluations of a defendant's mental health, the Florida Supreme Court has explained that "expert testimony alone does not require a finding of extreme mental or

emotional disturbance." Even uncontroverted opinion testimony can be rejected, especially when it is hard to reconcile with the other evidence presented in the case. *Hoskins*, 965 So.2d at 16; *Philmore*, 820 So.2d at 936 (quoting *Knight v. State*, 746 So.2d 423, 436 (Fla. 1998).

In *Hoskins v. State*, the defense presented unrebutted expert testimony that the defendant suffered from a brain abnormality that could result in reduced ability to control impulsive behavior. Nevertheless, the Florida Supreme Court held that the trial court's rejection of this mitigator was appropriate where the evidence also showed that the defendant placed the victim in the truck of his car and drove her around for six (6) hours before obtaining a shovel, transporting her to a remote location, and strangling her to death. 965 So.2d at 17. In *Philmore v. State*, the defense offered expert opinion that the defendant suffered from a psychotic disturbance that contributed to his criminal behavior and perhaps brain damage and PTSD. As in *Hoskins*, the Supreme Court in *Philmore* held the trial court's refusal to recognize this evidence as mitigation was supported by substantial, competent evidence where the expert's testimony was strongly rebutted by the State's expert witness and where the defendant – in the process of carrying out a plan to steal a car – abducted the victim, robbed her, then drove her to a remote location and shot her. *Philmore*, 820 So.2d at 936-37.

In this case, Dr. Sautter testified that he was of the opinion that that the Defendant's behavior was "strongly affected" by PTSD during the murder. He did agree, though, that PTSD did not "cause" the Defendant to commit the murder.

However, Dr. Sautter admitted that he neither knew anything about the circumstances of the kidnapping and murder of Vincent Binder nor what the Defendant was thinking or feeling at the time he committed these crimes. He conceded that he never asked the Defendant any of these questions or even reviewed a single report relating to the crimes. In fact, he erroneously believed that Vincent Binder had been shot to death.

On the other hand, Dr. Gregory Prichard, a forensic psychologist called by the State, testified that, in addition to conducting his own face-to-face evaluation of the Defendant, he spent approximately 17 hours reviewing records in the case. These records included police reports concerning the kidnapping and murder of Vincent Binder as well as the previous crimes committed by the Defendant. Dr. Prichard emphasized that it was critically important to review these records in order to determine whether PTSD, if legitimately present, had any influence over the Defendant at the time of Vincent Binder's murder.

Dr. Prichard testified that, while he agreed that the Defendant had experienced some traumatic events in his life, he did not agree that they rose to the level of causing PTSD. He further emphasized that what limited criteria the Defendant did meet for a diagnosis of PTSD had absolutely no influence on the Defendant's participation in the kidnapping and murder of Vincent Binder.

Even if this Court were to agree with Dr. Sautter's opinion that the Defendant has PTSD, it should disregard his testimony that it the Defendant was "strongly affected" by

the disorder at the time of the murder. Dr. Sautter did not ask the Defendant a single question about the circumstances of the murder or even review a single police report documenting the same. It is virtually impossible for him to have reached this conclusion without any knowledge of the facts of the case or what was going through the Defendant's mind at the time.

This stands in stark contrast with the testimony of Dr. Prichard, who after spending 17 hours reviewing reports in the case and conducting his own evaluation, rejected Dr. Sautter's diagnosis and opinion that the Defendant was under the influence of PTSD at the time he murdered Vincent Binder.

Even apart from Dr. Prichard's testimony, Dr. Sautter's opinion cannot be reconciled with the evidence establishing that the murder of Vincent Binder followed a coherent and well-thought-out plan. Similar to the facts in *Hoskins and Philmore*, the Defendant kidnapped Binder for the specific purpose of robbing him, continued to confined him to the back of a truck for five (5) to six (6) hours, drove him to a remote location approximately 200 miles from his home, and then executed him. These circumstances clearly show that the Defendant was not under the influence of an extreme mental or emotional disturbance at the time of the murder.

Accordingly, the State asserts that this mitigating circumstance was not proven at trial. Thus, it should not be given any weight.

2. **Florida Statutes § 921.141(d): The Defendant was an accomplice in the capital felony committed by another person and his participation was relatively minor.**

3. **Florida Statutes § 921.141(e): The Defendant acted under extreme duress or under the substantial domination of another person.**

In closing argument, the defense argued that the evidence showed that Co-Defendant Kentrell Johnson was the one who actually killed Vincent Binder and that the Defendant's role was relatively minor. It also argued that the Defendant acted under extreme duress or the substantial domination of Kentrell Johnson. In support of this argument, the defense pointed to the relative age and size differences between the Defendant and Johnson as well the testimony of Shirley Marcus, who agreed with the defense that, during their stay with her in Miami, it seemed that Johnson was the leader in that he would frequently tell the Defendant and Co-Defendant Peter Hughes what to do.

However, the evidence is overwhelmingly clear that the Defendant was no shrinking violet and that he played a leading, if not a starring role in the kidnapping and murder of Vincent Binder and the crimes leading up to those events. The video from the Avoyelles Parish Jail in Marksville, Louisiana, clearly show the Defendant attacking a corrections officer with a homemade shank while his unarmed co-defendants forced another officer to open a door leading to the outside. The video from the Half-Time convenience store in Tallahassee shows the Defendant using the victim's credit card to withdraw money from an ATM. Additionally, Shirley Marcus testified that when she drove the Defendant and his cohorts to the Wachovia Bank in Miami to withdraw money

from Vincent Binder's bank account, it was the Defendant who filled out the withdrawal slip and handed it, along with the victim's driver's license and credit card, to her to give to the teller. Furthermore, the victims of three other robberies – Brenda Jo Brown, Mario Rios, and Chris Pavlish – all identified the Defendant as the one who brandished a weapon during the attacks. The weapon that Brown and Rios identified with the Defendant was the knife that DNA evidence confirmed was used to kill Vincent Binder.

The evidence in this case could not more strongly refute the claim that the Defendant was a minor participant in Vincent Binder's murder or that his involvement was forced upon him by Kentrell Johnson. Accordingly, the Court should reject these mitigating circumstances.

4. Florida Statutes § 921.141(f): The capacity of the Defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.

To establish this mitigating factor, the defense relied *solely* on the expert testimony of Dr. Gregory Sautter. However, following a lengthy discussion concerning Dr. Sautter's opinion that the Defendant suffered from PTSD, defense counsel explicitly asked him his opinion as it related to this mitigating factor. Dr. Sautter's candid answer quickly sums up the evidence in this case:

> Mr. Warren: In your opinion, does PTSD affect or impair an individual, and in this case, Quentin Truehill's capacity to appreciate the criminality of his conduct?
>
> Dr. Sautter: I don't know.

Little more needs to be said to establish that the defense did not prove this mitigating circumstance. Therefore, the Court should assign it no weight.

5. Florida Statutes § 921.141(g): The age of the Defendant at the time of the crime.

It has been established that the Defendant was 22 years of age at the time Vincent Binder was murdered. The State does not dispute this fact.

However, there is no *per se* rule that pinpoints a particular age as an automatic factor in mitigation. *Peek v. State*, 395 So.2d 492, 498 (Fla. 1980). The Florida Supreme Court has frequently held that "a sentencing court may decline to find age as a mitigating factor even in cases where the defendants were twenty to twenty-five years old at the time their offenses were committed." *Caballero v. State*, 851 So.2d 655, 661 (Fla. 2003) (upheld rejection of age as a mitigating factor where defendant was 20 years old). *See also*, *Mungin v. State*, 689 So.2d 1026, 1031 (Fla. 1995) (upheld rejection of age as a mitigating factor where defendant was 24-years-old, had no neurological impairment, and did not graduate from high school); *Garcia v. State*, 492 So.2d 360, 367 (Fla. 1986) (20-year-old defendant); *Mills v. State*, 476 So.2d 172, 179 (Fla. 1985) (22-year-old defendant).

Furthermore, the Florida Supreme Court has observed that "age is simply a fact, every murderer has one." *State v. Ballard*, 956 So.2d 470, 475 (Fla. 2007); *Ramirez v. State*, 739 So.2d 569, 582 (Fla. 1999); *Mungin* , 689 So.2d at 1031; *Garcia*, 492 So.2d at 367; *Echols v. State*, 484 So.2d 568, 575 (Fla. 1985) *cert. denied*, 479 U.S. 871, 107 S.Ct.

241, 93 L.Ed. 166 (1986). "Chronological age standing alone is of little import." *Campbell v. State*, 679 So.2d 720, 726 (Fla. 1996). If it is to be accorded any significant weight, it must be linked with some other characteristic of the defendant or the crime such as immaturity or senility. *Echols*, 484 So.2d at 575.

While the defense called Dr. Frederick Sautter to testify that the Defendant suffered from PTSD, it offered no evidence from him or any other mental health expert that the Defendant suffered from an intellectual disability or was otherwise psychologically immature. To the contrary, evidence of the Defendant's trade skills, his past actions in leading people out of danger, and his criminal conduct in this case, show a person with a high level of intelligence and maturity.

During the penalty phase, the defense introduced evidence that, during high school, the Defendant was employed at an automobile collision repair shop. While working there, he repaired his grandfather's car that had been involved in a crash. According to his mother, the Defendant did an "excellent job." The Defendant eventually graduated from high school, and then began courses in collision repair at Louisiana Technical College in New Orleans.

The defense also presented evidence about the Defendant's "heroic" actions in directing his girlfriend and her family out of New Orleans in aftermath of Hurricane Katrina. Eleanor Smith, the mother of the Defendant's girlfriend, testified about his efforts to obtain a boat and car and lead her and her family safely out of the city after the

massive flooding that occurred. These are not the actions of an unsophisticated, timid adolescent.

The planning and leadership role the Defendant took in committing the crimes in this case also show a person with a high level of maturity and intelligence. His use of a homemade shank during his escape from the Avoyelles Parish Jail shows that the Defendant was part of a well-thought-out plan to escape. His action in assaulting the corrections officer with the shank and attacking Brenda Jo Brown, Mario Rios, and Chris Pavlish with a weapon demonstrates, not a passive role in these crimes, but a violently assertive one. Furthermore, his use of Vincent Binder's credit card to withdraw money from ATMs and his attempt to use the victim's credit card, driver's license, and a deposit slip to extract money directly from a bank reveals a bold and cunning intellect.

In sum, there is no evidence that the Defendant's age was coupled with immaturity, whether as a result of an intellectual disability or psychological weakness. To the contrary, the evidence shows that the Defendant clearly operated as an intelligent and assertive leader who was mature beyond his years. It is not enough that the Defendant simply happened to be 22 years old at the time of the murder. Therefore, the Court should find that this mitigating circumstance has not been established and assign it no weight.

6. **The Defendant was affected by his father's extra-marital relationship.**
7. **The Defendant was affected by his parents' divorce.**
8. **The Defendant was affected by his father's remarriage.**

As a mitigating factor, the defense claims that the Defendant was affected by his father having an extra-marital relationship with Miranda Farr, his parents' subsequent divorce, and his father's remarriage. The State agrees that the Defendant's parents, Marshall and Valli Truehill, divorced in July of 1999 and that his father married Miranda Farr in December of that same year. And, it is difficult to contest the claim that the Defendant's father had an extra-marital relationship with Miranda Farr while he was still married to the Defendant's mother. The State is even willing to concede that these events were upsetting to the Defendant. What the State does dispute, however, is the extent to which these events affected the Defendant and his claim that they had a substantial impact on his decision to participate in the kidnapping and gruesome murder of Vincent Binder.

Again, the latest of these events – the father's marriage to Miranda Farr – took place in December of 1999. The murder of Vincent Binder, which occurred in April of 2010, occurred over 10 years later. Given the remote nature of these events from the crimes at issue, it is unreasonable to conclude that they have any significance as a mitigating factor. Accordingly, the Court should assign this mitigating circumstance little, if any weight.

9. The Defendant played basketball in high school.

The State does not dispute the fact that the Defendant played basketball in high school. However, it is unfathomable to conceive how the Defendant's participation in a recreational activity several years ago could mitigate even slightly his participation in the gruesome murder of Vincent Binder. Involvement in a team sport often has the positive benefit of teaching teamwork, discipline, hard work, sacrifice, playing fair and by the rules, setting and achieving goals, and overcoming adversity. Unfortunately, the Defendant's actions in this case demonstrate that he perhaps only learned the value of teamwork. The Court should reject this as a mitigating factor.

10. The Defendant graduated from high school.

The defense submitted evidence in the form of testimony and a diploma that established that the Defendant graduated in 2005 from John McDonogh High School in New Orleans. The State accepts this evidence as true.

Nevertheless, the Defendant's achievement of a high school diploma only highlights the fact that he was provided the tools to be a productive and law-abiding member of society. However, the Defendant chose to throw all of that away and, within two years of graduating from high school, began committing violent felonies. This mitigating circumstance, if found, should be given minimal weight.

11. The Defendant was affected by his father not attending his high school graduation.

The State does not dispute the claim that the Defendant's father did not attend his high school graduation. However, this circumstance, too, should only be given minimal weight.

12. The Defendant enrolled in an automobile collision repair course.

Testimony was presented that the Defendant began taking college-level courses in automobile collision repair at Louisiana Technical College in New Orleans. While evidence was also offered that this instruction was abruptly halted as a result of Hurricane Katrina, it was also established that the Defendant decided not to continue that education when the opportunity later presented itself. The Defendant's mother testified that, following their resettlement in Lafayette, Louisiana, he attempted to enroll in another collision repair course there, but he was required to go through a screening process since the school there did not accept a transfer of his enrollment in the school in New Orleans. She further testified that he missed the screening because he had a flat tire on his way to the school and never went back. It was shortly after this time that the Defendant turned to a life of crime.

His decision to not continue his education is tragic not only because society may have benefitted from his training and labor, but also because Vincent Binder would probably be alive today if the Defendant had only followed a different path. The Court should give this mitigating factor minimal weight.

13. The Defendant helped his girlfriend's family evacuate New Orleans after Hurricane Katrina.

The State does not contest the basic claim that the Defendant helped his girlfriend's family evacuate New Orleans following Hurricane Katrina. This evidence was offered by the defense through the testimony of Eleanor Smith, the mother of the Defendant's girlfriend. As has already been argued, the Defendant's actions in this regard demonstrated his maturity and ability to overcome adversity. Nevertheless, the State argues that the Court should assign this mitigator little weight.

14. The Defendant was affected by the fact that he was unable to obtain assistance from FEMA following Hurricane Katrina.

During her penalty phase testimony, the Defendant's mother stated that, following Hurricane Katrina, she and her father relocated to Lafayette, Louisiana. The Defendant, who evacuated New Orleans separately with his girlfriend, Sharell Smith, found lodging at a shelter in Broussard, Louisiana, which is about 20 miles from Lafayette. Eventually, the Defendant's mother was able to buy a house in Lafayette, which she moved into with her father. The decision was made at some point thereafter to allow her fiancée to move into the house as well.

Valli Truehill also testified that, during this same timeframe, the Defendant was still living in the shelter. Previously, he had decided to live separately from his mother because he needed to find a place that would allow him to keep his dog. When his mother purchased the house, he asked if he could move in. However, the house, which was occupied by that time by his mother, her father and her fiancée, was full.

During this time, the Defendant applied for housing assistance from FEMA, but was turned down because he was on his mother's registration. In other words, the housing assistance his mother was receiving from FEMA already accounted for him. According to Valli Truehill, the Defendant became extremely frustrated that FEMA had denied him assistance and that he was not able to live with her. He was angry that she was receiving money for him to have a place to live, but was denying him a place in her house in favor of her fiancée.

At a certain point in time, the Defendant's anger over these circumstances reached a breaking point. According to his mother, he came over to her house one day and was allowed in by her fiancée. The Defendant then walked directly into the garage and slashed three (3) tires on her car.

The defense argues that the Defendant's frustration and anger as a result of being denied assistance from FEMA should be considered as a mitigating factor in the murder of Vincent Binder. However, the account provided by his own mother reveals an individual with an entitlement mentality and who was willing to lash out violently when he didn't get what he thought was rightfully his. The Court should reject this claim.

15. The Defendant lost two homes.

During the penalty phase, the defense presented evidence that the Defendant was required to leave two homes, one as a result of foreclosure and the other as a result of Hurricane Katrina. The State does not dispute these events, but asserts that they should only be given slight weight as mitigating factors.

16. The Defendant participated in community service.

The Defendant's brother, Marshall Truehill, III, testified during the penalty phase that the Defendant participated in community service through their father's church while he was growing up. This evidence dovetailed with the testimony of Valli Truehill, that the Defendant's father tried to instill in his children a love of their community by having them perform neighborhood service projects. The State does not dispute this evidence.

It should be noted, however, that no evidence was presented that the Defendant voluntarily performed community service as an adult when he was out from under his father's authoritative upbringing. Such evidence would have been a more significant example of the Defendant's character as it relates to this mitigation claim. Accordingly, the Court should only give it slight weight.

17. The Defendant went fishing with his brother when they were children.
18. The Defendant worked at Baskin Robbins.

During the penalty phase, the Defendant's brother shared a few anecdotes about occasions when he and the Defendant went fishing as children. The Defendant's mother also testified that for a period of three or four months during high school, the Defendant worked at a Baskin Robbins ice cream shop. During the penalty phase, she recounted a story about how she and the rest of the family would go to the shop while the Defendant was working, order ice cream, and sit and watch as he worked. The State does not dispute the truth of these sentimental accounts; rather it argues that they should be given no weight.

19. The Defendant has family that supports and loves him.

Regarding this proposed mitigation, the State does not argue that these statements are untrue. However, this evidence again only highlights the fact that the Defendant had the resources to be a productive and law-abiding member of society. He chose to throw that away by committing violent crimes and, in turn, disappointing his family. This mitigating circumstance should be given little weight.

20. Lack of future dangerousness.
21. The Defendant has exhibited good behavior while incarcerated in jail.
22. The Defendant will adjust well to prison.

The defense claims three (3) mitigating factors that it presented through the testimony of prison expert James Aiken. The primary thrust of Mr. Aiken's testimony was his opinion that the Defendant did not represent a future danger if incarcerated for life. He also concluded that the Defendant would adjust well to prison. These opinions, Mr. Aiken stated, were based on his review of jail records that he said showed that the Defendant was compliant and had displayed good behavior throughout the four years he has been incarcerated in the St. Johns County Jail awaiting trial.

In *Bevel v. State*, 983 So.2d 505, 520 (Fla. 2008), the Florida Supreme Court affirmed the trial court's rejection as mitigation the claim that the defendant was a good inmate and did well in the structured environment of a jail. This claim had been rebutted by evidence that the defendant in that case had exhibited aggressiveness, had been involved in physical fights or assaults, and had received two (2) disciplinary reports for being in an unauthorized area and disregarding an order to stop running laps in an indoor

area. The trial court had also based its decision to reject this mitigation on the fact that the defendant had previously been incarcerated after a prior conviction for attempted robbery and then had committed the murders at issue less than a year after his release.

Despite Mr. Aiken's testimony that the Defendant in this case was well-behaved in the St. Johns County Jail, he admitted on cross-examination that the Defendant had received four (4) disciplinary reports during his incarceration there. Mr. Aiken acknowledged that one of these reports documented an incident in which the Defendant threatened to bash in a correction officer's head.

Additionally, the Defendant in this case, like the defendant in *Bevel*, was incarcerated in jail shortly before he participated in the victim's murder. However, the Defendant's behavior here in relation to his prior incarceration is even more egregious and was in closer proximity. The defendant in *Bevel* murdered the victim less than a year *following his release* from prison. In this case, the Defendant *escaped* from jail before he and his cohorts went on a crime spree that culminated in the kidnapping and murder of Vincent Binder three (3) days later.

The Defendant's past violent criminal conduct also repudiates the defense's claim that he represents a lack of future dangerousness. It has been said that the best predictor of the future conduct is past behavior. The defense stated during closing arguments that the circumstances of Vincent Binder's murder will not reoccur if the Defendant receives a life sentence. However, this is not a fact; it is a prediction – and one that gambles on an individual who has already killed, not once, but *twice* before. The evidence does not

support the claim that the Defendant does not represent a future danger. In fact, the proof is overwhelmingly to the contrary.

23. The Defendant was a follower, not a leader.

The defense attempted to establish this mitigating factor through the testimony of Walter Goodwin, one of the Defendant's high school principals, and Miranda Farr Truehill, the Defendant's step-mother. Both described the Defendant as a "follower." It also pointed again to the testimony of Shirley Marcus to support their argument that the Defendant followed orders from Kentrell Johnson, "who was always bossing him around." The State asserts the several reasons why this testimony should be disregarded.

First, testimony of Walter Goodwin and Miranda Farr Truehill offered hardly any specific explanations or details about *why* they considered the Defendant to be follower. The closest either got to providing a specific example was Mr. Goodwin's relatively vague statement that the Defendant preferred to be "one of the guys" instead of "being out in front" while in high school. This language could be used to describe just about every teenage male in high school.

Second, much time had passed between the time when Walter Goodwin testified and when he last had contact with the Defendant. Mr. Goodwin stated that the last time he saw the Defendant was when he left John McDonogh High School in 2004. This would have been six (6) years prior to the kidnapping and murder of Vincent Binder. During that time, the Defendant graduated from high school, endured Hurricane Katrina, and been found guilty of organizing the robbery of a man at gunpoint and shooting and

killing another. Even if he had been a follower in high school, he, like many other young adults in life, grew up and learned how to take charge.

Third, their testimony was strongly rebutted by Dr. Prichard, a psychologist who testified that that the Defendant appeared to him in his evaluation to be very smart, independent, assertive and opinionated. These observations by Dr. Prichard were corroborated by a transcript of the sentencing hearing that followed the Defendant's conviction for Armed Robbery in [location], Louisiana in [date/year]. That transcript revealed that the judge in that case made the following finding of fact, which Dr. Prichard read into the record:

> The offender was a leader or his violation was in concert with one or more persons with whom the offender occupied a position of organizer, a supervisory position or . . . other position of management.

Accordingly, Dr. Prichard testified that the Defendant was, in his opinion, more of a leader than a follower.

As for the testimony of Shirley Marcus, the evidence of the Defendant's participation in the crimes involved in this case unequivocally refutes the notion that the Defendant was a vassal of Kentrell Johnson. As explained previously, his actions in attacking the jail guard with a shank during his escape, using the victim's credit card, filling out a withdrawal slip to extract money from the victim's bank account, and attacking other victims with the same knife used to kill the victim all show conclusively that the Defendant took a leading role in the kidnapping and murder of Vincent Binder.

Based on the above, the State asserts that this mitigating circumstance has not been proven. Therefore the Court should not give it any weight.

24. The Defendant witnessed his father abuse his mother.
25. The Defendant witnessed his father abuse his siblings.
26. The Defendant was abused by his father.
27. The Defendant grew up in a dysfunctional family.

The State accepts that the Defendant's home during the time that his parents were married was one that experienced moments of turmoil and dysfunction, particularly during the time leading up to his parents' divorce. During the penalty phase, the defense offered testimony from members of the Defendant's family that described his father, Marshall Truehill, Jr., as abusive and controlling during this time.

Some of this evidence, however, was conflicting. For example, while the Defendant's mother and sister testified that his father physically abused him and the other siblings, the Defendant's brother said there was no abuse outside of normal corporal punishment. The Defendant's step-mother, Miranda Farr Truehill, testified similarly. Nevertheless, the State will accept that the Defendant likely witnessed or experienced behavior in the home during his childhood that some people may characterize as harsh or abusive.

However, as the Defendant's mother admitted on cross-examination, the testimony concerning the family's bad times did not tell the whole story. Valli Truehill stated that there were many happy times as well. She acknowledged that Marshall Truehill, Jr. was a loving father who provided for his family. And, while he was a strict disciplinarian, he

sought to instill in his children strong moral values and a love for their community. Accordingly, he involved them in church activities and community service projects.

The Defendant's father also provided financial assistance to his children even after high school, helping the Defendant's sister Brianna pay for college and medical school. And, although the Defendant's mother testified that Marshall Truehill was guilty of slightly favoring his daughters over his sons, his generosity did not end with his daughters. Following the Defendant's graduation from high school, his father bought him a Mustang sports car to help the Defendant get around.

Furthermore, the alleged incidents of abuse, which everyone in the household either witnessed or suffered from, apparently did not negatively affect the Defendant's four siblings. The Defendant's oldest sister Brianna graduated from LSU medical school and currently works as an OB/GYN in Arizona. His second oldest sister, Tracy, is also employed in Arizona as an administrative officer of a franchise and has also worked as an actress and model. His brother Marshall owns his own marketing and television production business in Houston, Texas. His youngest sister, Jessica, is a professional ballet dancer and costume designer for movies and television shows in Los Angeles, California. All of them appear to be very well-adjusted and highly successful in their respective careers.

Finally, there was no evidence presented that any abuse occurred after the Defendant's parents' divorce in July of 1999. In fact, the Defendant's mother and step-mother both testified that they could not recall a single incident. Valli Truehill also

testified that, following the divorce, the Defendant primarily lived with her and that during that time the only form of discipline she imposed on the Defendant was talking to him and restricting his activities, such as watching TV and playing video games. Therefore, at the time he murdered Vincent Binder, at least a decade had passed since the Defendant had witnessed or experienced any abuse at the hands of his father or anyone else.

The State will concede that this mitigating circumstance has been established. However, in light of the above, the Court should only assign it little weight.

28. The Defendant had a girlfriend whose child died of SIDS.
29. The Defendant had a girlfriend who was shot and killed.

During closing argument, the defense argued that two (2) mitigating circumstances the jury should consider was testimony that the Defendant had a girlfriend by the name of Amber Brown who had a child who died of SIDS and that she was later shot and killed. This testimony was somewhat confusing, incomplete, and perhaps conflicting for a number of reasons. First, there was testimony from Eleanor Smith that her daughter, Sharell Smith, was the Defendant's girlfriend at the time he helped them evacuate from New Orleans following Hurricane Katrina in 2005. Second, Dr. Prichard testified that during his review of the information pertaining to the shooting of Amber Brown, he learned that she was shot by an individual by the name of Curtis Brown, who was described as her boyfriend.

No evidence was presented that established when these incidents occurred, when the Defendant had a relationship with Miss Brown, or if he was in this relationship at the time the child passed away. From the small amount of information that is in the record, it is possible that the Defendant's relationship with her, if there ever was one, was so remote in time that these events were negligible in its impact. It seems that if they had as profound an effect on the Defendant as is being claimed, the circumstances of these events would have been developed more than in a few passing references. To the extent that the Court finds that this mitigating circumstance was established, the State argues that it should be given minimal, if any, weight.

30. The Defendant was present when a school shooting took place.

The State does not dispute that the Defendant was present when a shooting took place at John McDonogh High School in New Orleans. While there was no evidence presented during the trial concerning the exact date of the shooting, the State will stipulate, based on documented news accounts, that it took place on April 14, 2003 – almost exactly 7 years prior to the murder of Vincent Binder.

The State will also concur that this mitigating factor has been established. However, because of the remoteness in time between this event and the victim's murder, the State contends that it should only be given little weight.

31. The Defendant had no support from his siblings.

During the penalty phase, the defense presented testimony from Dr. Sautter that the Defendant felt abandoned when all of his siblings moved away from home to pursue

their college education and careers. The State does not contest this claim, but submits that it only warrants minimal weight.

32. The Defendant suffered trauma as a result of Hurricane Katrina.

The defense presented evidence that the Defendant was present when Hurricane Katrina struck New Orleans and then evacuated the city once the flooding began in its aftermath. The State does not question these accounts or the proposition that this experience was traumatic. However, Hurricane Katrina occurred five years prior to the murder of Vincent Binder. And, according to Dr. Prichard, whatever trauma the Defendant experienced as a result had no influence on his involvement in the murder of Vincent Binder. Therefore, the Court should only give this mitigating factor little weight.

33. The Defendant was never treated for mental health problems.
34. The Defendant suffers from post-traumatic stress disorder (PTSD).

These mitigating circumstances are premised on the finding that the Defendant has suffered from mental health problems. The only evidence presented at trial concerning such a diagnosis was Dr. Sautter's testimony that the Defendant suffered from PTSD. However, in light of the testimony of Dr. Prichard, who rejected Dr. Sautter's analysis, the State disputes the foundation on which these mitigating factors rest. Accordingly, it asserts the Court should give it no weight.

CONCLUSION

In conclusion, the mitigating circumstances that were presented in this case are insubstantial when weighed against any of the six (6) aggravating circumstances proved beyond a reasonable doubt. In a capital case, the death penalty is appropriate even if one aggravator is found and outweighs (or is not outweighed by) the mitigation found to have been established. *Foster v. State*, 369 So.2d 928 (Fla. 1979). The aggravating circumstances in this case should be given great weight. The mitigation in this case is so weak that even if the State only proved one of the aggravating circumstances presented, that factor (any one you chose) would outweigh the mitigation presented. The "prior violent felony," HAC, and CCP aggravators are three (3) of the most serious set out in the death penalty statute. The State has proven all three (3) of these aggravating factors beyond a reasonable doubt, and each of them alone justifies a death sentence in this case.

The jury in this case returned a death recommendation by a vote of 12-0. A unanimous vote is a rare occurrence, which in itself should send a strong message that a death sentence is appropriate. Furthermore, as this Court is aware, the law requires it to give the jury's recommendation great weight in its determination of a proper, legal penalty for the violent and vicious murder of Vincent Binder.

Respectfully, the State submits to the Court that the death penalty is an appropriate, lawful and justified sentence for the Defendant and requests this Court to sentence Quentin Marcus Truehill to death.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Sentencing Memorandum has been furnished by electronic mail, hand delivery, and/or U.S. Mail to James R. Valerino and Raymond Warren, counsel for Quentin M. Truehill, Office of the Public Defender, 4010 Lewis Speedway, Suite #1101, St. Augustine, FL 32084, this 1st day of May, 2014.

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TAB 9

IN THE CIRCUIT COURT OF THE
SEVENTH JUDICIAL CIRCUIT, IN AND
FOR PUTNAM COUNTY, FLORIDA

STATE OF FLORIDA,

vs. CASE NO. 2004-1683-CF-52

RANDY SEAL,

Defendant.
_____/

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PUTNAM COUNTY FLORIDA

STATE'S RESPONSE TO DEFENDANT'S MOTION FOR POST-CONVICTION RELIEF

COMES NOW, the State of Florida, by and through the undersigned Assistant State Attorney, and files this Response to the Defendant's Motion for Post-Conviction Relief pursuant to Rule 3.850, Florida Rules of Criminal Procedure. The State moves that Claim 3 (on the limited issue of whether Mike Clifford should have been called to provide alibi testimony) and Claim 18 (as numbered herein) be set for an evidentiary hearing and that the remaining claims be summarily denied or dismissed with leave to amend, within 30 days, those claims that have been found to be legally insufficient. As support for its response, the State argues the following:

INTRODUCTION

On October 18, 2004, a Putnam County grand jury returned an indictment and true bill against the Defendant, Randy Wayne Seal, for the charges of First Degree Murder and First Degree Arson of an Occupied Structure. On November 9, 2005, the

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State of Florida filed a Notice of Intent to Seek Death Penalty, pursuant to Section 921.141, Florida Statutes, and Rule 3.202, Florida Rules of Criminal Procedure.

The Defendant was tried on these charges before a Putnam County petit jury from May 14 to May 24, 2007. At the conclusion of the trial, the jury found the Defendant guilty as charged and recommended a sentence of life imprisonment. On June 4, 2007, the trial court, as required by law, followed the jury's recommendation and sentenced the Defendant to life in the Florida Department of Corrections. Throughout the discovery, trial and sentencing phases, the Defendant was represented by the Office of the Public Defender.

On December 21, 2007, the Defendant filed a direct appeal with the Fifth District Court of Appeals. His appeal was limited to challenging the trial court's admission of Williams Rule evidence and denial of his motion to exclude test results and opinion testimony related to evidence not available to the defense for independent testing. Initial Br. of Appellant (Dec. 21, 2007). On February 3, 2009, the 5th DCA affirmed the judgment of the trial court in a *per curiam* opinion. *Seal v. State*, 1 So.3d 381 (Fla. 5th DCA 2009). A Mandate was issued by the appeals court on February 25, 2009.

In June 2010, the Defendant filed a *pro se* Motion for Post-Conviction Relief, supplemented with a memorandum of law and an exhibits appendix. The Motion,

memorandum and appendix are timely filed and adequately verified with an unnotarized oath as required by Rule 3.850, Florida Rules of Criminal Procedure.

In his Motion, the Defendant labels 18 claims for post-conviction relief. However, several of the claims are sequentially misnumbered. A close examination of the Motion show that he sets forth in total essentially 20 grounds for relief, and this response renumbers the claims accordingly. Eighteen of these complaints involve allegations of ineffective assistance of counsel, one claims the existence of newly discovered evidence, and one asserts a cumulative error charge.

EVIDENTIARY STANDARD

I. *Ineffective Assistance of Counsel Claims:*

Claims of ineffective assistance of trial counsel are evaluated using the two-part test announced in *Strickland v. Washington*, 466 U.S. 668 (1984). For such a claim to be meritorious, a claimant must (1) identify particular acts or omissions of the trial lawyer that fall below the wide range of reasonably competent performance under prevailing professional standards and (2) show that there is a reasonable probability that, but for the (alleged) clear and substantial deficiency in counsel's performance, the result of the proceeding would have been different.

Under *Strickland*, the defendant as the moving party bears the burden of overcoming a strong presumption of counsel's reasonable and effective performance. *State v. Patterson*, 966 So.2d 471, 477 (Fla. 2d DCA 2007) (citing *Cabrera v. State*,

766 So.2d 1131, 1133 (Fla. 2d DCA 2000)). In addition to this presumption, an examination of trial counsel's performance must be considered from trial counsel's perspective under the circumstances at the time of trial, *Patterson*, 966 So.2d at 471, and strategic or tactical decisions by counsel made after a thorough investigation are virtually unchallengeable, *Cabrera*, 766 So.2d at 1133.

A defendant asserting a claim of ineffective assistance of counsel is not entitled to a hearing if (1) the motion, files and record in the case conclusively show that that the defendant is not entitled to any relief, and (2) the motion or a particular claim is legally insufficient. *Williamson v. State*, 994 So.2d 1000, 1006 (Fla. 2008) (quoting *Freeman v. State*, 761 So.2d 1055, 1061 (Fla. 2000). A defendant's post-conviction motion is legally insufficient if the allegations contained therein are conclusory. His motion must allege specific facts that, when considered in the totality of the circumstances, demonstrate a deficiency on the part of counsel that is detrimental to the defendant. *State v. Coney*, 845 So.2d 120, 135 (Fla. 2003). Even when the allegations are sufficiently specific, a court may summarily deny a claim for relief when it is clear that the prejudice component is not satisfied. *Kennedy v. State*, 547 So.2d 912, 914 (Fla. 1989) (citing *Maxwell v. Wainwright*, 490 So.2d 927, 932 (Fla. 1986)).

II. *Newly Discovered Evidence / Recantation Claims:*

A defendant must meet two requirements to obtain relief based on newly discovered evidence. First, the evidence must have been unknown to the trial court, the party, or counsel by the time of trial, and it must appear that the defendant or his counsel could not have known of such evidence by the use of diligence. Second, the newly discovered evidence must be of a nature that it would probably produce an acquittal on retrial or a less severe sentence. *Davis v. State*, 26 So.3d 519, 526 (Fla. 2009) (citing *Jones v. State*, 709 So.2d 512, 521 (Fla. 1998).

Specifically, newly discovered evidence in the form of recanted testimony is treated by Florida law with suspicion and, thus, will mandate relief only under two conditions. First, the court must be satisfied that the recantation is true. Second, it must be clear that the witness's testimony will change to such an extent as to render probable a different verdict. *Armstrong v. State*, 642 So.2d 730, 735 (Fla. 1994).

ARGUMENT

Claim 1: Ineffective Assistance of Counsel Defense Counsel Failed to Move to Suppress Defendant's Statements

The Defendant's primary allegation in Claim 1 is that he was prejudiced by his attorneys' failure to file a motion to suppress statements he made to law enforcement immediately following his arrest. This claim also contains the Defendant's charge that counsel failed to object and move to strike the statements after they were introduced at trial. But, since those claims are merely subsidiary complaints

involving the same legal issues, the State will only directly address the Defendant's principal allegation.

On September 29, 2004, the Defendant was arrested for the murder of Tscharna Hampton by officers with the Putnam County Sheriff's Office and the State Attorney's Office. At trial, Det. Christopher Middleton of the Putnam County Sheriff's Office testified that just after the arrest the Defendant made the statement, "You guys got me. I know what I did. I'm going away for a long time." Tr. Transcr. vol. X, 1471:12-13 (May 21, 2007). Investigator Christopher Stallings of the State Attorney's Office similarly testified that he heard the Defendant say, "I'm not going anywhere. For what I did, I'm going away for a long time." Tr. Transcr. vol. X, 1487:22-24.

The Defendant complains that these statements were taken in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966). His claim is based on two assertions. First, he alleges that he had not been read his *Miranda* rights prior to the statements being given. Second, he (inconsistently) admits that *Miranda* warnings were given, but claims that they were defective because he was not told that he had the right to counsel during questioning. The record clearly refutes both of these allegations.

Investigator Kevin Perry testified at trial that he read the Defendant his *Miranda* rights immediately after placing him under arrest and prior to his contact with Det. Chris Middleton. Tr. Transcr. vol. X, 1454:3-1456:13 (May 21, 2007). He

also testified that he advised the Defendant of all four of the *Miranda* warnings. Tr. Transcr. vol. X, 1454:3-1455:15. This matter had previously been addressed by defense counsel at a deposition, and Inv. Perry's testimony at that time was no different. Depo. Inv. Kevin Perry 30:8-10 (Dec. 20, 2006). There is no evidence in the record contrary to these facts, and the Defendant does not identify any in his motion.

Even if *Miranda* warnings were not adequately given, the record clearly establishes that the Defendant's post-arrest statements were not in response to interrogation or its functional equivalent. Detective Middleton testified at trial that after the Defendant's roadside arrest, he was guarding the Defendant while the officers were awaiting a vehicle that would transport the Defendant to jail. During this time, the Defendant complained that the way his hands were handcuffed was causing him discomfort. When Det. Middleton responded by repositioning the handcuffs, the Defendant began exhibiting signs of aggression. Upon observing this, Det. Middleton simply told the Defendant to calm down. It was then that the Defendant made the statements at issue. Tr. Transcr. vol. X, 1468:22-1471:13. This account was corroborated by the testimony of Inv. Chris Stallings, Tr. Transcr. vol. X, 1486:3-1487:24, and there is no contrary evidence in the record.

"*Miranda* safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent." *Rhode Island v. Innis*, 446

U.S. 300-01 (1980). For *Miranda* purposes, the functional equivalent of interrogation can be defined as "any words or actions designed to elicit an incriminating response." *Francis v. State*, 808 So.2d 110, 128 (Fla. 2001). A practice that the police should know is reasonably likely to evoke an incriminating response from a suspect thus amounts to interrogation. *Everett v. State*, 893 So.2d 1278, 1284 (Fla. 2004). "[E]xpressly exempted from the definition of 'interrogation' [is] routine police contact 'normally attendant to arrest and custody.'" *Id.* at 1285 (quoting *Innis*, 446 U.S. at 301). Voluntary incriminating statements, however, not made in response to an officer's questioning are freely admissible. *Christopher v. State*, 583 So.2d 642, 645 (Fla. 1991) (quoting *U.S. v. Suggs*, 775 F.2d 1538, 1541 (11th Cir. 1985).

The record evidence shows that the Defendant's statements were not in response to any direct questioning by officers designed to elicit an incriminating response. Nor was Det. Middleton's conduct of a nature that he would have known that it was likely to evoke an incriminating response from the Defendant. To the contrary, Det. Middleton's actions clearly fall within the description of "routine police contact normally attendant to arrest and custody." The statements volunteered by the Defendant were not the result of custodial interrogation.

Accordingly, the Defendant's trial counsel was not deficient in failing to move to suppress the statements. The record clearly shows that if defense counsel had filed

a motion to suppress the Defendant's statements, it likely would have been denied. Therefore, Claim 1 of the Defendant's motion should be summarily denied.

Claim 2: Ineffective Assistance of Counsel
Defense Counsel Failed to Timely Conduct Independent Testing on Evidence

In his second allegation for relief, the Defendant asserts that he is entitled to post-conviction relief due to his trial attorneys' failure to timely request access to several pieces of crime scene evidence for the purpose of independent testing. The record conclusively establishes that the Defendant is not entitled to relief on this claim. Therefore, denial is appropriate.

Prior to the trial in this cause, it was discovered that a piece of wood flooring believed to have been taken into evidence from the crime scene was missing and that aluminum evidence cans that held the victim's clothing had become rusted. The State held that these items contained evidence of an accelerant, namely gasoline, that had been used to start the fire in question. Upon disclosure of the status of the evidence, the defense immediately moved to exclude the items (and expert opinion testimony related to them) from being admitted at trial on the grounds that the loss of the wood and the rusting of the cans made independent testing impossible. *See* Mot. Exclude Test Results and/or Op. Test. Due to Destruction Evid. (Dec. 13, 2006).

Following a hearing, the trial court denied the motion to exclude on several grounds. First, it found that the Defendant was unable to show any bad faith connected with the loss or destruction of the evidence. Further, it reasoned that the

evidence did not have any exculpatory value that was apparent prior to being lost or destroyed. Finally, it held that the Defendant could not demonstrate that independent testing could have shown different results on the items that were tested by the State. *See* Or. Denying Mot. Exclude Test Results and Or. Denying, In Part, Op. Test. Due to Destruction of Evid. 5-6 (May 2, 2007). As noted previously, the Defendant appealed this ruling to the 5th DCA, and the appellate court found no error in that decision. Initial Br. of Appellant (Dec. 21, 2007); *Seal v. State*, 1 So.3d 381 (Fla. 5th DCA 2009).

In *Kelley v. State*, 486 So.2d 578 (Fla. 1986), the defendant filed a direct appeal of his murder conviction on the ground that the destruction of certain evidence violated his due process rights. The Florida Supreme Court recognized that in such a case, the appropriate analysis was to determine whether the destruction was a result of bad faith on the part of the State and whether the defendant suffered prejudice as a result. *Id.* at 581. The Court found that neither condition existed and affirmed the conviction. *Id.* at 581-82, 586.

Kelley later filed a motion for post-conviction relief and appealed its summary denial. *Kelley v. State*, 3 So.3d 970 (Fla. 2009). One of the grounds of the motion and appeal was the destruction of evidence disposition forms, which the defendant claimed would have led to the discovery of exculpatory evidence. The Florida Supreme Court rejected Kelley's post-conviction appeal, finding that the record

conclusively showed that the forms were not exculpatory and, therefore, he suffered no prejudice as a result of their destruction. *See id.* at 972-73.

The Court then observed that Kelley was improperly attempting to use the destruction of the forms to relitigate his unsuccessful direct appeal regarding the destroyed evidence. Noting its repeated findings that he could not show prejudice by the destruction of the evidence, the Court held that Kelley was procedurally barred from raising the matter through a motion for post-conviction relief. *Id.* at 973.

The Defendant's effort here in repackaging this claim in a motion for post-conviction relief is no different than Kelley's. The instant trial court found that the Defendant had not been prejudiced by the accidental loss or destruction of the evidence in this case, and the 5th DCA affirmed that ruling. *Seal v. State*, 1 So.3d 381 (Fla. 5th DCA 2009). Therefore, like Kelley, the Defendant here is estopped from relitigating this issue through the post-conviction mechanism.

Even if he was not, the record conclusively shows that the Defendant would not be entitled to relief under either part of the *Strickland* test. For that reason, too, summary denial would be appropriate.

Addressing the performance prong, the Defendant cannot establish that defense counsel failed to perform a related legal duty. A common thread in the case law governing the issue of lost or contaminated evidence is the principle that the responsibility for maintaining evidence lies with the State, not defense counsel.

When the State fails in that obligation, the remedy is the exclusion of the evidence if the defendant is prejudiced. *See Arizona v. Youngblood*, 488 U.S. 51 (1989). In this case, defense counsel was able to discover the destruction of the evidence before trial and then made a reasonable and competent effort to exclude the test results and opinion testimony associated with that evidence. *Compare Guzman v. State*, 868 So.2d 498, 510 (Fla. 2004) (holding that defense counsel was not deficient for failing to discover the destruction of evidence before trial),

Also, the Defendant does not, neither can he, provide evidence that had the defense requested the evidence more promptly, it would have been available at that time for independent testing. In order to do so, he would have to establish when the evidence was lost or contaminated. The evidence may have been lost or contaminated within days or weeks after being collected. With regard to the piece of wood flooring, it is entirely possible that it may have never been collected.

Even if he was able to present such evidence, he cannot establish prejudice without a showing that the evidence had exculpatory value that was apparent before it was lost or destroyed. *Guzman*, 868 So.2d at 509. *See also*, *State v. Muro*, 909 So.2d 448, 453 (Fla. 4th DCA 2005) (citing *California v. Trombetta*, 467 U.S. 479, 489 (1984)). The record demonstrates that not only is the Defendant unable to show that the evidence had any exculpatory value, but rather that the opposite is true. The State presented evidence, which the trial jury chose to believe, that the victim's clothing

had tested positive for gasoline and that photographs of burn patterns indicated that an accelerant had been used to cause the victim's death. Tr. Transcr. vol. VIII, 1224:22-1227:14; VII, 961:25-980:5 (May 17, 2007).

The record shows that this matter was litigated extensively prior to trial. When it was discovered that some of the items had been lost or contaminated, trial counsel did what a competent attorney would do under the circumstances: move to exclude all test results and opinion testimony related to the evidence. Nevertheless, the trial court denied that motion on the grounds that the Defendant could not show prejudice, and the 5th DCA has affirmed that ruling.

Finally, the Defendant sets forth no new, specific facts that require the court to reevaluate his claim of prejudice. He does not identify any apparent exculpatory qualities the evidence possessed or explain how any independent testing would have produced results different from the State's. For all these reasons, the Defendant's claim should be denied.

Claim 3: Ineffective Assistance of Counsel
Defense Counsel Failed to Interview, Depose or Call Witnesses

In the Defendant's third claim, he faults his attorneys for not interviewing, deposing or otherwise investigating witnesses that may have provided helpful testimony if called on his behalf at trial. The majority of this claim is legally insufficient and should be summarily denied. As explained below, one portion of the claim is sufficiently pleaded and, therefore, is entitled to a hearing.

In order to characterize the failure to conduct a deposition as a specific omission, a defendant must identify what evidence would have been discovered had counsel taken the deposition. *Davis v. State*, 928 So.2d 1089, 1117 (Fla. 2005) (citing *Magill v. State*, 457 So.2d 1367 (Fla. 1984)). The Defendant's claim as it relates to Lt. John Loftus, Ricardo Lopez, Lt. Phil Roman, Maj. Spradley, Maj. Ron McCradle, Ofc. Dorton, Charity Lions, Patricia Copeland, Det. Azula, Keith Pardon, and Sheriff Taylor Douglas fails to meet this requirement. Nowhere in the paragraphs he dedicates to criticizing his attorneys for not deposing these witnesses does the Defendant ever identify what specific evidence would have been discovered as a result of the depositions. He merely speculates about testimony that might have been helpful to his case. Therefore, the Defendant's claim as it relates to these witnesses should be denied.

With regard to his claim as it relates to alleged alibi witness Mike Clifford, the Defendant appears to have sufficiently alleged a claim that requires a hearing. The failure to investigate and summon alibi witnesses can constitute ineffective assistance. *Comfort v. State*, 597 So.2d 944, 945 (Fla. 2d DCA 1992) (citing *Young v. State*, 511 So.2d 735 (Fla. 2d DCA 1987). While counsel may have had legitimate tactical reasons for not calling such a witness, such a conclusion is rarely appropriate for summary denial of post-conviction relief. *Id.* (citing *Dauer v. State*, 570 So.2d 314 (Fla. 2d DCA 1990).

A study of trial counsels' presentation of evidence during their opening statement and case-in-chief demonstrates that their defense strategy was to present evidence that the fire was accidental, rather than intentionally set. It is certainly reasonable to conclude that the omission of Mike Clifford's alibi testimony was a strategic decision by defense counsel. Calling an admitted drug dealer to testify that the Defendant was purchasing crack cocaine at the time that the fire occurred certainly could have distracted the jury from a more credible theory of defense. However, because the reason this witness was not called is unclear from the record, a hearing is required to clarify it.

Claim 4: Ineffective Assistance of Counsel
Defense Counsel Failed to File a Motion for Change of Venue

Defendant's fourth claim alleges that his attorneys rendered defective representation when they failed to file a motion for change of venue. When a defendant is claiming post-conviction relief for his attorney's failure to move for a change of venue, he must, at a minimum, "bring forth evidence that there is a reasonable probability that the trial court would have, or at least should have, granted a motion for change of venue if defense counsel had presented such a motion to the court." *State v. Knight*, 866 So.2d 1195, 1209 (Fla. 2003) (quoting *Meeks v. Monroe*, 216 F.3d 951, 961 (11th Cir. 2000). This claim for relief falls woefully short of this standard.

To determine if a change of venue is necessary to protect a defendant's rights, the Florida Supreme Court has set forth the following test:

> The test for determining a change of venue is whether the general state of mind of the inhabitants of a community is so infected by knowledge of the incident and accompanying prejudice, bias, and preconceived opinions that jurors could not possibly put these matters out of their minds and try the case solely on the evidence presented in the courtroom.

Knight, 866 So.2d at 1209 (quoting *Rolling v. State*, 695 So.2d 278, 284 (Fla. 1997) and *McCaskill v. State*, 344 So.2d 1276, 1278 (Fla. 1977)). When a motion for change of venue is filed, a trial court should evaluate (1) the extent and nature of any pretrial publicity and (2) the difficulty encountered in actually selecting a jury. *Id.*

Furthermore, the existence of pretrial publicity in a case does not necessarily lead to an inference of partiality or require a change of venue. Rather, pretrial publicity must be examined with attention to a number of circumstances, including (1) when the publicity occurred in relation to the time of the crime and the trial; (2) whether the publicity was made up of factual or inflammatory stories; (3) whether the publicity favored the prosecution's side of the story; (4) the size of the community exposed to the publicity; and (5) whether the defendant exhausted all of his peremptory challenges in seating the jury. *Id.*

To begin, there is no record evidence that there was extensive and inflammatory pretrial publicity in this case. In his exhibits appendix, the Defendant provided only six newspaper articles that were printed prior to the trial (the other

articles were printed during or after the trial). Four of the six pretrial articles were published soon after the incident occurred, which was approximately three (3) years prior to the trial. These same articles did not mention the Defendant as a suspect. In fact, two of the articles reported that the fire was not considered suspicious at the time of publication.

In *Provenzano v. State*, 561 So.2d 541 (Fla. 1990), the defendant appealed a summary denial of his motion that his trial attorney was ineffective in failing to move for a change of venue because of pretrial publicity. The Supreme Court of Florida found that the denial was proper for two reasons.

First, it found that the trial court did not have great difficulty in impaneling a fair and impartial jury. Of the 87 veniremen summoned for jury duty in the case, only 27 of them expressed fixed opinions as to the defendant's guilt due to information received prior to trial. *See id.* at 544. The trial court dismissed for cause every potential juror with a hint of prejudice.

Second, the Florida Supreme Court found that the record in *Provenzano* clearly reflected that the defendant had approved of the jury that was chosen to decide his guilt. It found that his satisfaction was plainly demonstrated by his acquiescence in the jury's composition after consultation with his trial attorney and by his decision not to use all of his peremptory challenges. *See id.* at 545.

In the instant case, 53 individuals were called for jury selection, which took place over a two-day period. Of the 53, only seven (7) individuals had heard or read about the case in the news. Tr. Transcr. vol. III, 321:20-340:3 (May 15, 2007). Only two (2) individuals, Judy Johns and Monica Hendrieth, clearly indicated that they had fixed opinions of the defendant's guilt as a result of the news coverage. Both were immediately excused for cause. Tr. Transcr. vol. III, 323:13-325:7; 327:4-329:20. One other potential juror, Catherine Gresham, sparked some debate concerning whether news reports she had read would adversely affect her ability to be fair and impartial. However, she was not seated as a juror when the selections were finalized. Tr. Transcr. vol. III, 332:5-336:4, vol. IV, 571:20-573:6, 580:15-582:18.

Of the seven (7) who read news reports of the case, only two (2), Wendy Hancock and Lalita Thomas, were eventually selected by the State and the defense to serve on the jury. Tr. Transcr. vol. IV, 580:15-582:18 (May 15, 2007). Ms. Thomas was an alternate who did not participate in deciding the eventual verdict. Tr. Transcr. vol. IV, 581:19-25. As for Ms. Hancock, she indicated that she had read newspaper reports about the incident mostly just after it occurred, which was three (3) years prior to the commencement of the trial. Tr. Transcr. vol. III, 326:11-17. In any event, both Hancock and Thomas clearly stated that they held no fixed opinions concerning the Defendant's guilt and could set aside anything they had read about the case. Tr. Transcr. vol. III, 326:22-327:1, 330:15-332:4.

More importantly, however, the Defendant specifically advised the trial court that he was satisfied with the jury that he and the State selected. Tr. Transcr. vol. V, 602:24-603:3, 621:20-622:3 (May 16, 2007). The Defendant also implicitly expressed his satisfaction by choosing not to use all of his peremptory challenges. The record reflects that he exercised only seven (7) peremptory challenges out of the 10 he was entitled to by law. Tr. Transcr. vol. IV, 583:3-7 (May 15, 2007).

Using the standards set forth by the Florida Supreme Court in *Knight* and comparing the record in the instant case with *Provenzano*, the Defendant's motion clearly fails to establish a reasonable probability that the trial court should have granted a motion for change of venue if his attorneys would have filed one. Accordingly, this claim should be summarily denied.

Claim 5: Ineffective Assistance of Counsel
Defense Counsel Failed to Move for a Bench Trial

In Claim 5, the Defendant complains that his attorneys should have moved for a bench trial due to the complex, scientific nature of the evidence that was offered at trial. This claim is without merit.

The Defendant sets forth two reasons why a bench trial should have been requested. First, he asserts that the trial judge was more equipped to understand the "overwhelming complexity of scientific evidence" that was introduced at trial. Second, he points to several pieces of evidence that were ruled inadmissible to the

trial jury and argues that the judge would have been able to consider those items during a bench trial.

As to the first reason, the Defendant fails to identify any evidence whatsoever that the jury did not actually understand the scientific evidence admitted at trial. He merely assumes that they did not or that a trial judge would have understood it better. He also assumes that the verdict would have been different if the trial judge had been asked to weigh the facts presented at trial. However, assumptions are not facts, and a defendant must set forth facts to establish that his attorney was ineffective and that such ineffectiveness was prejudicial. The Defendant's motion falls short on both counts.

The second reason the Defendant sets forth as support for this claim stands on no firmer ground. A judge can no more consider inadmissible evidence at a bench trial than a jury can. In fact, a judge at a bench trial is presumed to have disregarded any evidence that would be inadmissible at a jury trial. *Guzman v. State*, 868 So.2d 498, 510-11 (Fla. 2003). Thus, the allegation set forth in this claim should be dismissed.

Claim 6: Ineffective Assistance of Counsel
Defense Counsel Failed to Move for the Impaneling of a New Jury

In his sixth claim, the Defendant charges his attorney with failing to request that the Court impanel a new jury. The Defendant appears to claim that since the jury selection process resulted in a greater number of women than men on the jury, he was

the victim of gender bias once evidence of his prior abuse of the victim was offered into evidence. His claim is based on the assumption that women are more predisposed than men to convict when evidence of prior domestic abuse is presented. This claim is rich in irony, but empty on evidence.

Again, the Defendant's allegation assumes prejudice merely from the gender composition of the jury. He sets forth no proof of the bias he imagines existed. In fact, his allegation appears to be guilty of the same gender bias of which he accuses the trial jury. This claim is baseless and should accordingly be rejected.

Claim 7: Ineffective Assistance of Counsel
Defense Counsel Failed to Move for Sequestration of the Jury

Defense counsel's failure to request that the jury be sequestered for the duration of the trial is the issue in the Defendant's seventh post-conviction claim. Transcripts of the trial proceedings confirm that the jury was not sequestered for the nine days between the first presentation of evidence and the verdict. They likewise contain no reference to a motion or request by the defense for that to be done. Nevertheless, this claim is legally insufficient.

A showing that there is a reasonable probability that trial counsel's failure to ensure that the jury be sequestered actually compromised the defendant's right to a fair trial is required to support a claim of ineffective assistance of counsel. *Pope v. State*, 569 So.2d 1241, 1245 (Fla. 1990). Again, conclusory allegations are insufficient. It is not enough to claim that an attorney should have performed a

particular duty, but did not. A defendant must allege that the failure to perform prejudiced him in a particular way. If a defendant does not articulate specifically how the outcome of a trial was affected by counsel's failure to request sequestration of the jury, then summary denial is proper. *See id.*

The factual support the Defendant asserts in favor of relief on this claim mentions only that one juror discussed his case over lunch with her husband and one or more friends. However, the trial transcript does not indicate that the Defendant or any other individual brought this to the Court's attention during the course of the trial. So, there is no corroboration that this discussion ever occurred.

Even assuming the truth of his allegation, the Defendant does not specify the substance of the juror's discussion, what influence it may have had on the juror, or how it contributed to the guilty verdict against him. As such, this claim is without factual support and should be summarily denied.

Claim 8: Ineffective Assistance of Counsel
Defense Counsel Failed to Argue Effectively Against Williams' Rule Evidence

The Defendant alleges that his attorneys did not argue "effectively" against Williams Rule evidence that was offered against him by the State. This claim is refuted by the record.

The trial transcripts clearly show that defense counsel consistently and repeatedly objected to the admission of Williams Rule evidence offered by the State. *See* Objection to State's Use of Alleged Collateral Crimes Evid. (Feb. 15, 2007); Tr.

Transcr. vol. X, 1359:17-1361:21, 1370:8-13, 1392:8-13, 1412:12-17 (May 21, 2007). These objections preserved the issue for direct appeal, which the Defendant filed. Initial Br. of Appellant (Dec. 21, 2007). Following a full briefing on the issue and a review of the record, the 5th DCA affirmed the trial court's ruling that allowed the evidence. *Seal v. State*, 1 So.3d 381 (Fla. 5th DCA 2009).

In this post-conviction motion, the Defendant repackages his direct appeal and criticizes as "woefully and harmfully inadequate" defense counsel's efforts to provide the trial court with legal precedent to support its objection to the State's Williams Rule evidence. The record shows that the Defendant's claim is false.

On May 10, 2007, defense counsel filed a response to the trial court's order allowing the State to introduce Williams Rule or similar fact evidence at trial. Def.'s Response Ct. Or. Dated 8 May 2007 (May 10, 2007). In that memorandum, counsel cited no less than eight appellate court opinions supporting their opposition to the introduction of the State's evidence. In his claim that counsel failed to provide the trial with sufficient precedent to persuade the court that introduction of the evidence would be in error, the Defendant fails to cite any precedent overlooked by counsel that would have resulted in a different ruling by the trial court. Accordingly, this claim is woefully inadequate and compels a denial on the merits.

Claim 9: Ineffective Assistance of Counsel
Defense Counsel Failed to Argue Against Admission of "Pour Pattern" Evidence

In his ninth claim for relief, the Defendant faults his attorneys for failing to argue against admission of photographs and testimony concerning incriminating "pour patterns." The record evidence contradicts this allegation.

Prior to and throughout trial, defense counsel consistently and repeatedly objected to the admission of evidence, including photographs, relating to a "pour pattern" on the grounds that evidence related to the pour pattern had been lost. *See* Def.'s Mot. Exclude Test Results and/or Op. Test. Due Destruction of Evid. (Dec. 13, 2006); Tr. Transcr. vol. V, 635:18-637:16 (May 16, 2007); vol. VI, 876:15-25, 934:8-938:4, 939:20-949:8, 952:8-14, 952, 967:7-968:2 (May 16, 2007). There is no allegation in the Defendant's post-conviction motion that is more refuted by the record than this one, which was highly contested even before the trial began. Therefore, this false claim should be summarily denied.

Claim 10: Ineffective Assistance of Counsel
Defense Counsel Failed to Object to Tainted Identification Testimony

The Defendant, in his tenth claim, complains that his attorneys failed to object at trial to allegedly tainted identification testimony. This charge is without merit.

James Spahn, the witness at issue, testified that two years prior to the murder of the victim, he had witnessed a white male repeatedly beating and kicking a white female at a residence near a family member's home he was visiting. Tr. Transcr. vol.

X, 1370:20-1392:1 (May 21, 2007). He also testified that the police immediately responded to the scene and was able to take the Defendant into custody there following a brief foot pursuit. Tr. Transcr. vol. X, 1386:3-1388:13. During that testimony, Spahn identified the Defendant as the perpetrator of the beating and the individual taken into custody. Tr. Transcr. vol. X, 1376:10-24; 1387:15-1388:13. Another witness later identified the victim of the beating as Tscharna Hampton. Tr. Transcr. vol. X, 1395:18-1401:7.

On cross-examination, defense counsel attempted to impeach Spahn's in-court identification by bringing to light three facts. First, they had Spahn admit that the date of the beating incident was the one and only time he had seen the white male. Second, they brought out that Spahn had testified in a deposition approximately a year before the trial that he doubted that he would be able to recognize the Defendant if he saw him again. Lastly, the defense had him acknowledge that investigators had shown him a series of photographs that included the Defendant about two weeks prior to the trial. Tr. Transcr. vol. X, 1389:20-1391:6.

In *Armstrong v. State*, 862 So.2d 705 (Fla. 2003) (*Armstrong II*), the defendant appealed a summary denial of his claim that his trial attorney was ineffective in failing to object to an allegedly unreliable in-court identification. The Florida Supreme Court took into account three facts in addressing the defendant's post-conviction motion. First, testimony from other witnesses corroborated the

allegedly tainted identification testimony. Second, although the witness was initially unsure whether he could identify the defendant, he was able to do so shortly after the murder in question. Third, the jury was made aware of the witness's initial uncertainty. Finding that the outcome of the case would not have been different had the defendant's attorney objected to the in-court identification, the Supreme Court found that the claim was without merit and that summary denial was appropriate. *See id.* at 711-12.

The circumstances of the Defendant's instant claim are similar to those in *Armstrong* in all the important aspects. The Defendant was arrested on scene after he attempted to flee from responding officers, sufficiently corroborating Spahn's later in-court identification. Tr. Transcr. vol. X, 1386:3-1388:13. *See also* Arrest Rpt. Dep. Davis Platt (Jun. 1, 2003). This is significant because in *Armstrong*, like most cases in which this issue arises, the defendant fled the scene and was not identified until a photo lineup was presented for a while after the fact. *See Armstrong v. State*, 642 So.2d 730, 733 (Fla. 1994) (*Armstrong I*); *Armstrong II*, 862 So.2d at 712. Here, the record evidence establishes that the Defendant was in Spahn's continuance presence from the moment Spahn first witnessed the incident until the Defendant was arrested. Although Spahn indicated in a deposition three years after the incident that he "doubted" at that time whether he would recognize the Defendant if he saw him again, he did identify the Defendant immediately after the incident. Depo. James N.

Spahn 42:14-16 (Mar. 13, 2006); Arrest Rpt. Dep. Davis Platt; Victim / Witness State. James N. Spahn, Jr. (Jun. 1, 2003). Finally, defense counsel, by emphasizing Spahn's uncertainty and investigators' efforts to refresh his memory, competently attempted to convince the jury on cross-examination that his in-court identification was the result of improper influence and thus unreliable.

The record demonstrates that Defendant's trial counsel was not deficient in failing to object to Spahn's identification testimony. Furthermore, it shows that he suffered no prejudice, particularly in light of counsel's vigorous efforts to impeach the identification on cross-examination. Accordingly, this claim should be summarily denied.

Claim 11: Ineffective Assistance of Counsel
Defense Counsel Failed to Object to Autopsy Photographs

The eleventh claim the Defendant sets forth in his Motion for Post-Conviction Relief is defense counsel's failure to object to the admission and publication of autopsy photographs at trial. He complains that defense counsel allowed the jury to be exposed to enlarged photographs for a prolonged period of time and failed to object to their relevance and gruesomeness. This allegation appears to be contradicted by the record.

The Defendant's claim that defense counsel did not pose any objection to the admission of the autopsy photographs is incorrect. The trial transcript establishes that only five (5) autopsy photographs were offered by the State and entered into evidence

at trial. Tr. Transcr. vol. IX, 1289:15-16; 1291:17; 1292:12-22 (May 18, 2007). The defense objected to three (3) of the photographs, arguing that they were "irrelevant, immaterial, . . . graphic and gruesome." Tr. Transcr. vol. IX, 1290:6-18; 1292:14-15. The trial court overruled the objection and permitted the State to publish the photographs. Tr. Transcr. vol. IX, 1392:16-1293:3.

As for the Defendant's claim that trial counsel was ineffective is permitting prolonged publication of the enlarged autopsy photographs, his claim lacks factual support. Nowhere in his motion does the Defendant specify the length of time the photographs, individually or collectively, were displayed to the jury. His claim is based on conjecture. In fact, an examination of the record, to the extent it may shed light on this allegation, uncovers evidence contrary to the Defendant's speculative conclusion. The portion of the trial transcript that extends from the moment the first photograph was published to the jury to the conclusion of the medical examiner's direct examination takes up only about 10 pages or approximately 250 lines of dialogue. Tr. Transcr. vol. IX, 1293:8-1303:5. Assuming the few objectionable autopsy photographs were displayed throughout this period of testimony, the record indicates that this was the case for only a short period of time. Therefore, this claim should be denied.

Claim 12: Ineffective Assistance of Counsel
Defense Counsel Failed to Object to Court's Denial of Juror's Request for Clarification of Walter Godfrey's Testimony

The Defendant's twelfth claim faults trial counsel for failing to object to the trial court's denial of a juror's request for clarification of the testimony of defense witness Walter Godfrey. In reality, the Defendant's complaint is that defense counsel did not prevail on the court to change its ruling. The claim is not related to the performance of trial counsel, but rather a disagreement with the trial court. This is not cognizable in a motion for post-conviction relief. If there is legal support to conclude that the trial court's ruling was wrong, then that is a matter for direct appeal. Thus, this claim should be dismissed.

Claim 13: Ineffective Assistance of Counsel
Defense Counsel Failed to Object to the Expert Qualifications of Robert Johnson

The Defendant next claims that his attorneys were ineffective because they did not object to the qualifications of State witness Robert Johnson as a fire investigation, cause and origin expert. This claim, both in terms of performance and prejudice, is refuted by the record.

Defense counsel, prior to and during the trial, consistently and strongly objected to Robert Johnson's qualifications to testify as a fire cause and origin expert. *See* Mot. in Limine Exclude Test. Robert Johnson Regarding Cause and Origin of Fire in Cause (Dec. 13, 2006); Tr. Transcr. vol. V, 636:2-18; VI, 863:15-23 (May 16, 2007); vol. VII, 978:16-25 (May 17, 2007). When the trial overruled counsel's

objection, the defense vigorously and extensively impeached Johnson's training, education and experience on voir dire and cross-examination. Tr. Transcr. vol. VI, 838:16-862:17 (May 16, 2007); VIII, 1072:2-1188:12 (May 18, 2007). The objections themselves conclusively show that counsel performed competently on behalf of the Defendant. Even if counsel had not objected to Johnson's qualifications, their impeachment of him demonstrates that the Defendant would not have been prejudiced by the omission anyway. Therefore, this claim should be denied.

Claim 14: Newly Discovered Evidence
State Witness Recanted Her Trial Testimony

In his fourteenth argument for relief, the Defendant asserts a claim of newly discovered evidence. Specifically, he alleges that State witness Linda Rogers has recanted her trial testimony. This claim, like those alleging ineffective assistance of counsel, is without merit.

At trial, Linda Rogers essentially testified that she saw the Defendant and the victim at a bar on the day of the murder. Shortly before the victim met her death, she witnessed the Defendant become angry, assault the victim and force her to leave the bar after the victim put on lipstick against the Defendant's well-known wishes. Tr. Transcr. vol. V, 640:14-656:13 (May 16, 2007).

In support of his recantation claim, the Defendant attaches an unsworn, unnotarized letter purportedly from Linda Rogers. The only relevant statement in

that letter reads, "I was made to testify trying for them to prove you & her were fighting that day (sic)."

Florida law treats recantations with suspicion and, thus, requires a new trial only if the court is satisfied that the recantation is true and that the witness's testimony will change to such an extent as to render probable a different verdict. *Armstrong v. State*, 642 So.2d 730, 735 (Fla. 1994). While an evidentiary hearing is "usually required to make such a determination," summary denial is authorized where "the purported recantation testimony is neither sworn nor particularized." *See Brooks v. State*, 972 So.2d 958 (Fla. 5th DCA 2007); *Moss v. State*, 943 So.2d 946, 948 (Fla. 4th DCA 2006)); *Davidson v. State*, 638 So.2d 626 (Fla. 3rd DCA 1994). *But see Butler v. State*, 946 So.2d 30, 31 (Fla. 2d DCA 2006); *Keen v. State*, 855 So.2d 117, 118 (Fla. 2d DCA 2003); *Smith v. State*, 837 So.2d 1185, 1186 (Fla. 4th DCA 2003).

Because the letter offered as evidence by the Defendant is not sworn, the Court may, under precedent from the 5th DCA, deny the Defendant's claim without an evidentiary hearing. Notwithstanding this deficiency, however, the claim can be rejected on the substance of the letter as well.

In short, the statement referred to by the Defendant as support for his claim cannot be read as a recantation of her trial testimony. In the letter, Linda Rogers does not state that the substance of her trial testimony was false. She only states that she was "made to testify" about a fight between the Defendant and the victim on the day

of the murder. Compelling a witness to testify at trial is not uncommon or improper. State law permits both parties to serve subpoenas on witnesses to mandate their presence for trial. Fla. Stat. § 48.031 (2010). In fact, the Florida and United States Constitutions guarantee defendants the right to compulsory process for witnesses. Art. 1, §16(a), Fla. Const.; U.S. Cont. amend VI. Frequently, witnesses are reluctant to testify, even when the substance of the testimony they would provide is truthful. The statement offered by the Defendant is not inconsistent with the frequent need to compel a witness to testify truthfully concerning a relevant issue at trial. For that reason, this claim can and should be denied on the merits.

Claim 15: Ineffective Assistance of Counsel
Defense Counsel Failed to Argue for a Mistrial, Directed Verdict, Suppression of Evidence, Judgment of Acquittal & New Trial

In his fifteenth claim for post-conviction relief, the Defendant sets forth general allegations that his attorneys did not argue for a mistrial, a directed verdict, suppression of certain evidence, a judgment of acquittal, and a new trial. Most of the Defendant's specific complaints in this claim are rehashed arguments that his attorneys failed to timely request independent testing and were generally unprepared for trial. He also repeats his grievance that they failed to file a motion to suppress. These charges have been addressed in preceding responses, which will not be repeated here. As for the other allegations, the record clearly refutes them.

The trial transcript shows that defense counsel argued for a mistrial no less than nine (9) times during the trial. Tr. Transcr. vol. V, 636:2-18; 638:2-4; 638:12-13 (May 16, 2007); vol. VI, 796:10-19 (May 16, 2007); vol. XIII, 1843:21-1848:25 (May 22, 2007); vol. XIV, 2101:21-2102:5 (May 23, 2007); vol. XV, 2157:7-21; 2249:1-3 (May 23, 2007); vol. XVII, 2435:6-8 (May 24, 2007). One of these motions addressed the same claim of prosecutorial misconduct that the Defendant alleges counsel failed to object to. The Defendant does not specifically identify in this claim any other circumstances where defense counsel should have moved for a mistrial, but did not.

Likewise, the record conclusively demonstrates that trial counsel moved for a directed verdict or judgment of acquittal. Tr. Transcr. vol. XI, 1563:14-1566:12 (May 21, 2007); Tr. Transcr. vol. XVI, 2382:18-2384:1 (May 23, 2007). The Defendant's allegations that counsel's arguments were inadequate are conclusory and fail to make a *prima facie* case that, but for counsel's omission, a judgment of acquittal would have been granted.

Lastly, the record is clear that defense counsel filed a motion and argued extensively for a new trial. *See* Mot. New Trial (May 31, 2007); Tr. Transcr. vol. XVIII, 2596:14-2605:5 (Jun. 4, 2007). Thus, these allegations are without merit and do not warrant a hearing.

Claim 16: Ineffective Assistance of Counsel
Defense Counsel Failed to Impeach State Witnesses

In his sixteenth claim for relief, the Defendant alleges that his attorneys were ineffective by failing to impeach the State's witnesses. The Defendant dedicates almost 40 pages of his motion to this claim and therein criticizes defense counsel's cross-examination of every single State witness. This is exactly the sort of hindsight claim by a defendant who has received an adverse verdict that *Strickland* and its progeny caution trial courts to be wary of. *Strickland*, 466 U.S. at 689.

Again, summary denial of a post-conviction claim is appropriate when the prejudice element of *Strickland* is clearly unsupported. *Kennedy v. State*, 547 So.2d 912, 914 (Fla. 1989) (citing *Maxwell v. Wainwright*, 490 So.2d 927, 932 (Fla. 1986)). To demonstrate prejudice in a claim such as this, a defendant must demonstrate that the impeaching evidence would have "provided 'a reasonable probability' . . . that the outcome of the proceeding would have been different." *Marquand v. State*, 850 So.2d 417, 427 (Fla. 2002).

The Defendant motion fails miserably on this score. Despite the voluminous allegations made, nowhere in his motion does the Defendant attempt to reasonably specify how he was prejudiced by the failure of his attorneys to impeach all of the State's witnesses to his satisfaction. Accordingly, this claim is legally insufficient and warrants summary denial.

Claim 17: Ineffective Assistance of Counsel
Defense Counsel Gave Affirmative Misadvice to Not Testify at Trial

The Defendant's seventeenth claim charges that his trial counsel affirmatively misadvised him of the risk he faced if he chose to testify on his own behalf. This claim is legally insufficient.

The record shows that at the conclusion of the defense's case-in-chief, defense counsel informed the trial court that the Defendant, with the advice of counsel, had decided not to testify on his own behalf. The court then conducted a colloquy in which it informed the Defendant that the final decision to testify or not was, notwithstanding his attorneys' advice, his decision alone. The Defendant responded that it was his decision not to testify. Tr. Transcr. vol. XV, 2286:18-2288:22 (May 23, 2007).

Defendant now alleges that his decision was influenced by trial counsel's warning that the State, on cross-examination, would "force" him to reveal past criminal charges against him. He asserts that this advice was incorrect because the State's examination on this issue was legally limited and that they could not admit any past criminal charges against the Defendant unless he "opened the door."

Even assuming his allegation of deficient performance to be true, his claim does not sufficiently identify how he was prejudiced as a result. In order for the Defendant to adequately claim that the verdict would have been different if he had testified, he must at the very least specify what his testimony would have been. *See*

Bell v. State, 965 So.2d 48, 59 (Fla. 2007). Because he does not do so, his claim is legally insufficient and requires dismissal.

Claim 18: Ineffective Assistance of Counsel
Defense Counsel Failed to Pursue Four Alternative Theories of Innocence

The Defendant next claims that his trial attorneys were ineffective in failing to investigate and present evidence indicating that any one of four alternative suspects had a motive to kill the victim and may have murdered the victim. These individuals include the victim's son, a jealous lover, the victim's father, and a vengeful drug dealer.

First, the Defendant first faults trial counsel for failing to present evidence that the victim's son may have started the fire that caused the victim's death. He asserts that depositions taken from the victim's ex-husband, Jess Horstman, and her daughter, Melinda "Mindy" Hampton, support his claim that this was a viable defense that the defense should have been pursued. During his deposition, Horstman did testify that the victim's teenage son, Derrick, had been investigated in 2000 for being involved in a house fire in Clay County. Dep. Jess Horstman 26:21-27:14 (Dec. 4, 2006). Mindy Hampton also testified in her deposition of her and her siblings' knowledge of the Defendant's abuse of her mother, the victim in this case. Depo. Melinda Hampton 7:10-25; 8:22-12:8; 15:1-5; 21:4-27:13 (Mar. 13, 2006).

Second, the Defendant charges his attorneys should have submitted to the jury evidence that Tamara Denton committed the crime. He claims that both he and the

victim were involved in an open sexual relationship with Tamara Denton, who eventually became jealous of the victim's attention to the Defendant.

Third, the Defendant points to the victim's father as a viable alternative suspect not pursued by trial counsel. The Defendant claims that the victim had written a book entitled "My Life Story" in which she alleged that her father had sexually abused her for many years.

Finally, the Defendant claims that the victim's work as a confidential drug informant offered the viable possibility of a fourth suspect. He alleges that, on one occasion, someone slashed the tires and broke the windows of the victim's car, and it was suspected that the damage caused was in direct retaliation for the victim's work as an informant for the Bradford County Sheriff's Office.

When evaluating a post-conviction claim that defense counsel did not pursue an alternative theory of innocence, a defendant is entitled to an evidentiary hearing if he presents sufficient facts in support of that claim that cannot be conclusively refuted by the record. *Victory v. State*, 981 So.2d 1240, 1242 (Fla. 5th DCA 2008). Any dispute concerning the credibility of the alleged facts or a claim that the omission of such evidence was a strategic decision can only be resolved by the trial court after considering additional evidence. *See id.* Therefore, an evidentiary hearing is necessary to determine the merits of the Defendant's allegations in this claim.

Claim 19: Ineffective Assistance of Counsel
Defense Counsel Failed to Object to Prosecutorial Misconduct

In his last individual claim for post-conviction relief, the Defendant maintains that his attorneys failed to object to multiple instances of alleged prosecutorial misconduct. This claim again consists of several rehashed arguments previously addressed as well as hypercritical grievances concerning the prosecutors' conduct at trial that range from amplifying the evidence to exhibiting disparaging facial expressions.

The arguments that have already been addressed include the objections to Robert Johnson's expert testimony and James Spahn's identification of the Defendant. As argued previously, these claims should be summarily denied.

The Defendant's allegations concerning the prosecution's cross examination of John Lentini are also without merit. At trial, Lentini testified for the defense that the State experts' findings of gasoline in the crime scene were based on flawed science and even went so far as to characterize their experts as "practicing witchcraft." Tr. Transcr. vol. XV, 2160:13-25 (May 23, 2007). On cross-examination, the prosecutor asked Lentini whether he would be willing to smell the gas the Defendant poured on the victim. The Defendant asserts that such a question amounted to prosecutorial misconduct and that defense counsel was negligent in failing to object.

In order to validly make this claim, the Defendant must first show that the question was improper to begin with. While slightly argumentative, it was not inappropriate to challenge an expert with evidence that the State in good faith believes contradicts his findings. Evidence of the genuineness of the State's belief is found in the transcript of its closing argument. There, the State issued the same challenge to the jurors that it gave to Lentini. It suggested that they open the same can and determine for themselves if they could smell gasoline. Tr. Transcr. vol. XVII, 2433:22-2434:17 (May 24, 2007). The jury was the ultimate judge of the facts. If the State had overreached and issued that challenge without a good faith basis, then it would likely have lost credibility with the jury. The defense was not ineffective for failing to object to this perfectly legitimate question.

The Defendant's complaint concerning the statements related to Lentini that were made during cross-examination and closing argument are likewise without merit. The Defendant maintains that he was prejudiced when the prosecutor, in response to the defense expert testifying how much he expected the defense to pay him for his services, stated, "Not bad for two months." He also complains of the State's characterization of Lentini as "arrogant or "flippant" during her closing argument. However, the record conclusively establishes, and the Defendant plainly admits, that the defense objected to these comments. Tr. Transcr. vol. XV, 2247:18-2249:4 (May 23, 2007); vol. XVII, 2433:25-2434:14 (May 24, 2007).

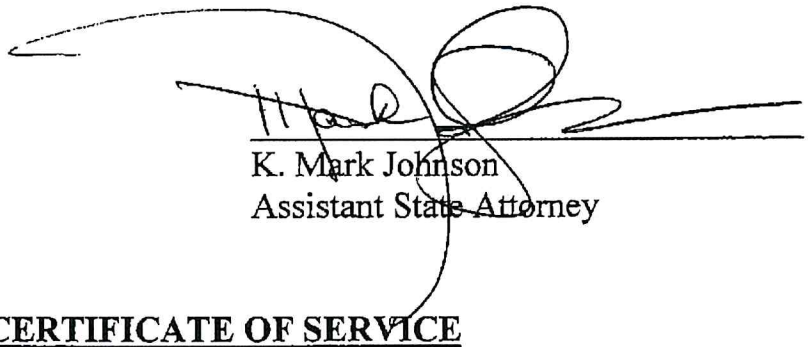
The trial transcript likewise shows that the defense objected to the off-hand characterization of the crime scene as "the home where the arson occurred" within a question to Det. Ross Heaton. Tr. Transcr. vol. VI, 812:10-15 (May 16, 2007). The remainder of the Defendant's claims that defense counsel failed to object to instances of alleged prosecutorial misconduct are simply frivolous. Thus, all the allegations in this claim should be summarily dismissed.

Claim 20: Ineffective Assistance of Counsel
Cumulative Errors

In his twentieth allegation for post-conviction relief, the Defendant asserts a cumulative error claim. However, "where individual claims of error alleged are either procedurally barred or are without merit, the claim of cumulative error must fail." *State v. Duncan*, 894 So.2d 817, 832 (Fla. 2004) (citing *Griffin v. State*, 866 So.2d 1, 22 (Fla. 2003); *Downs v. State*, 740 So.2d 506, 509 n.5 (Fla. 1999).

The State submits that this claim should be held in abeyance until an evidentiary hearing is held on Claims 3 (limited to whether Mike Clifford should have been called to provide alibi testimony) and 18. If relief is denied at that time, then the State would then submit that summary denial would be appropriate as to this cumulative error claim as well.

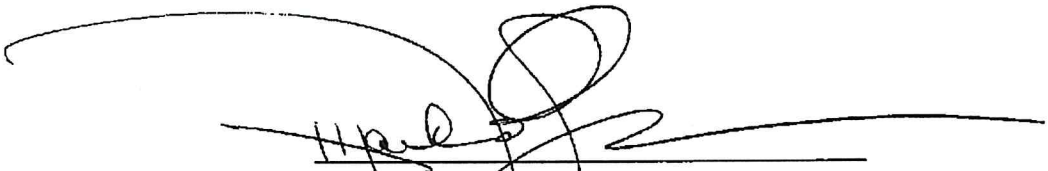
Respectfully submitted,



K. Mark Johnson
Assistant State Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Response has been furnished by U.S. Mail to the Honorable Terrence J. LaRue, Circuit Court Judge, 410 St. Johns Ave., Suite 300, Palatka, Florida 32177; and to Defendant Randy Seal, DC# 285154, Graceville Correctional Facility, 5168 Ezell Rd., Graceville, FL 32440, this 16th day of November, 2010.



K. Mark Johnson
Assistant State Attorney
Florida Bar No.: 0378320
2155 Old Moultrie Rd., Suite 105
St. Augustine, FL 32086
(904) 209-1300

TAB 10

Form **1040** Department of the Treasury—Internal Revenue Service (99)

U.S. Individual Income Tax Return

2017 OMB No. 1545-0074 IRS Use Only—Do not write or staple in this space.

For the year Jan. 1–Dec. 31, 2017, or other tax year beginning , 2017, ending , 20 See separate instructions.

Your first name and initial	Last name	Your social security number
Kenneth M	Johnson	[redacted]
If a joint return, spouse's first name and initial	Last name	Spouse's social security number
Ralenda T	Johnson	[redacted]

Home address (number and street). If you have a P.O. box, see instructions. [redacted] Apt. no.

▲ Make sure the SSN(s) above and on line 6c are correct.

City, town or post office, state, and ZIP code. If you have a foreign address, also complete spaces below (see instructions). [redacted]

Foreign country name | Foreign province/state/county | Foreign postal code

Presidential Election Campaign
Check here if you, or your spouse if filing jointly, want $3 to go to this fund. Checking a box below will not change your tax or refund. ☐ You ☐ Spouse

Filing Status

Check only one box.

1 ☐ Single
2 ☒ Married filing jointly (even if only one had income)
3 ☐ Married filing separately. Enter spouse's SSN above and full name here. ▶
4 ☐ Head of household (with qualifying person). (See instructions.) If the qualifying person is a child but not your dependent, enter this child's name here. ▶
5 ☐ Qualifying widow(er) (see instructions)

Exemptions

6a ☒ **Yourself.** If someone can claim you as a dependent, **do not** check box 6a
b ☒ **Spouse**

c **Dependents:** (1) First name Last name	(2) Dependent's social security number	(3) Dependent's relationship to you	(4) ✓ if child under age 17 qualifying for child tax credit (see instructions)
[redacted]		Daughter	☒
		Son	☒
		Son	☒
			☐

If more than four dependents, see instructions and check here ▶ ☐

d Total number of exemptions claimed

Boxes checked on 6a and 6b 2
No. of children on 6c who:
• **lived with you** 3
• **did not live with you due to divorce or separation (see instructions)**
Dependents on 6c not entered above
Add numbers on lines above ▶ 5

Income

Attach Form(s) W-2 here. Also attach Forms W-2G and 1099-R if tax was withheld.

If you did not get a W-2, see instructions.

7	Wages, salaries, tips, etc. Attach Form(s) W-2	7	159,056.
8a	**Taxable** interest. Attach Schedule B if required	8a	
b	**Tax-exempt** interest. **Do not** include on line 8a 8b		
9a	Ordinary dividends. Attach Schedule B if required	9a	
b	Qualified dividends 9b		
10	Taxable refunds, credits, or offsets of state and local income taxes	10	
11	Alimony received	11	
12	Business income or (loss). Attach Schedule C or C-EZ	12	
13	Capital gain or (loss). Attach Schedule D if required. If not required, check here ▶ ☐	13	
14	Other gains or (losses). Attach Form 4797	14	
15a	IRA distributions 15a b Taxable amount	15b	
16a	Pensions and annuities 16a b Taxable amount	16b	
17	Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E	17	
18	Farm income or (loss). Attach Schedule F	18	
19	Unemployment compensation	19	
20a	Social security benefits 20a b Taxable amount	20b	
21	Other income. List type and amount	21	
22	Combine the amounts in the far right column for lines 7 through 21. This is your **total income** ▶	22	159,056.

Adjusted Gross Income

23	Educator expenses 23		
24	Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106 or 2106-EZ 24		
25	Health savings account deduction. Attach Form 8889 25		
26	Moving expenses. Attach Form 3903 26		
27	Deductible part of self-employment tax. Attach Schedule SE 27		
28	Self-employed SEP, SIMPLE, and qualified plans 28		
29	Self-employed health insurance deduction 29		
30	Penalty on early withdrawal of savings 30		
31a	Alimony paid b Recipient's SSN ▶ 31a		
32	IRA deduction 32		
33	Student loan interest deduction 33	495.	
34	Tuition and fees. Attach Form 8917 34		
35	Domestic production activities deduction. Attach Form 8903 35		
36	Add lines 23 through 35	36	495.
37	Subtract line 36 from line 22. This is your **adjusted gross income** ▶	37	158,561.

Tax and Credits	38	Amount from line 37 (adjusted gross income)		38	158,561.
	39a	Check if: ☐ **You** were born before January 2, 1953, ☐ Blind. ☐ **Spouse** was born before January 2, 1953, ☐ Blind. **Total boxes checked ▶ 39a**			
	b	If your spouse itemizes on a separate return or you were a dual-status alien, check here ▶ **39b** ☐			
Standard Deduction for— • People who check any box on line 39a or 39b **or** who can be claimed as a dependent, see instructions. • All others: Single or Married filing separately, $6,350 Married filing jointly or Qualifying widow(er), $12,700 Head of household, $9,350	40	**Itemized deductions** (from Schedule A) **or** your **standard deduction** (see left margin)		40	32,489.
	41	Subtract line 40 from line 38		41	126,072.
	42	**Exemptions.** If line 38 is $156,900 or less, multiply $4,050 by the number on line 6d. Otherwise, see instructions		42	20,250.
	43	**Taxable income.** Subtract line 42 from line 41. If line 42 is more than line 41, enter -0-		43	105,822.
	44	**Tax** (see instructions). Check if any from: **a** ☐ Form(s) 8814 **b** ☐ Form 4972 **c** ☐		44	17,933.
	45	**Alternative minimum tax** (see instructions). Attach Form 6251		45	
	46	Excess advance premium tax credit repayment. Attach Form 8962		46	
	47	Add lines 44, 45, and 46 ▶		47	17,933.
	48	Foreign tax credit. Attach Form 1116 if required	48		
	49	Credit for child and dependent care expenses. Attach Form 2441	49	171.	
	50	Education credits from Form 8863, line 19	50		
	51	Retirement savings contributions credit. Attach Form 8880	51		
	52	Child tax credit. Attach Schedule 8812, if required	52	550.	
	53	Residential energy credits. Attach Form 5695	53		
	54	Other credits from Form: **a** ☐ 3800 **b** ☐ 8801 **c** ☐	54		
	55	Add lines 48 through 54. These are your **total credits**		55	721.
	56	Subtract line 55 from line 47. If line 55 is more than line 47, enter -0- ▶		56	17,212.
Other Taxes	57	Self-employment tax. Attach Schedule SE		57	
	58	Unreported social security and Medicare tax from Form: **a** ☐ 4137 **b** ☐ 8919		58	
	59	Additional tax on IRAs, other qualified retirement plans, etc. Attach Form 5329 if required		59	
	60a	Household employment taxes from Schedule H		60a	
	b	First-time homebuyer credit repayment. Attach Form 5405 if required		60b	
	61	Health care: individual responsibility (see instructions) Full-year coverage ☒		61	0.
	62	Taxes from: **a** ☐ Form 8959 **b** ☐ Form 8960 **c** ☐ Instructions; enter code(s)		62	
	63	Add lines 56 through 62. This is your **total tax** ▶		63	17,212.
Payments	64	Federal income tax withheld from Forms W-2 and 1099	64	18,444.	
If you have a qualifying child, attach Schedule EIC.	65	2017 estimated tax payments and amount applied from 2016 return	65		
	66a	**Earned income credit (EIC)** No	66a		
	b	Nontaxable combat pay election **66b**			
	67	Additional child tax credit. Attach Schedule 8812	67		
	68	American opportunity credit from Form 8863, line 8	68		
	69	Net premium tax credit. Attach Form 8962	69		
	70	Amount paid with request for extension to file	70		
	71	Excess social security and tier 1 RRTA tax withheld	71		
	72	Credit for federal tax on fuels. Attach Form 4136	72		
	73	Credits from Form: **a** ☐ 2439 **b** ☐ Reserved **c** ☐ 8885 **d** ☐	73		
	74	Add lines 64, 65, 66a, and 67 through 73. These are your **total payments** ▶		74	18,444.
Refund	75	If line 74 is more than line 63, subtract line 63 from line 74. This is the amount you **overpaid**		75	1,232.
	76a	Amount of line 75 you want **refunded to you.** If Form 8888 is attached, check here ▶ ☐		76a	1,232.
Direct deposit? See instructions.	b	Routing number [redacted] ▶ **c** Type: ☒ Checking ☐ Savings			
	d	Account number [redacted]			
	77	Amount of line 75 you want **applied to your 2018 estimated tax** ▶	77		
Amount You Owe	78	**Amount you owe.** Subtract line 74 from line 63. For details on how to pay, see instructions ▶		78	
	79	Estimated tax penalty (see instructions)	79		

Third Party Designee Do you want to allow another person to discuss this return with the IRS (see instructions)? ☐ **Yes.** Complete below. ☒ **No**

Designee's name ▶ | Phone no. ▶ | Personal identification number (PIN) ▶

Sign Here Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and accurately list all amounts and sources of income I received during the tax year. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Joint return? See instructions. Keep a copy for your records.

Your signature	Date	Your occupation	Daytime phone number
		Attorney	[redacted]
Spouse's signature. If a joint return, **both** must sign.	Date	Spouse's occupation	If the IRS sent you an Identity Protection PIN, enter it here (see inst.)
		Director of Operations	

Paid Preparer Use Only

Print/Type preparer's name	Preparer's signature	Date	Check ☐ if self-employed	PTIN
Firm's name ▶ Self-Prepared			Firm's EIN ▶	
Firm's address ▶			Phone no.	

SCHEDULE A (Form 1040)

Department of the Treasury
Internal Revenue Service (99)

Itemized Deductions

▶ Go to *www.irs.gov/ScheduleA* for instructions and the latest information.
▶ Attach to Form 1040.
Caution: If you are claiming a net qualified disaster loss on Form 4684, see the instructions for line 28.

OMB No. 1545-0074

2017

Attachment Sequence No. **07**

Name(s) shown on Form 1040: Kenneth M & Ralenda T Johnson

Your social security number: [redacted]

Medical and Dental Expenses		**Caution:** Do not include expenses reimbursed or paid by others.			
	1	Medical and dental expenses (see instructions)	1		
	2	Enter amount from Form 1040, line 38 | 2 | 158,561.			
	3	Multiply line 2 by 7.5% (0.075)	3	11,892.	
	4	Subtract line 3 from line 1. If line 3 is more than line 1, enter -0-			4
Taxes You Paid	5	State and local **(check only one box):**			
		a ☐ Income taxes, **or**	5		
		b ☐ General sales taxes			
	6	Real estate taxes (see instructions)	6	2,025.	
	7	Personal property taxes	7		
	8	Other taxes. List type and amount ▶	8		
	9	Add lines 5 through 8			9 2,025.
Interest You Paid	10	Home mortgage interest and points reported to you on Form 1098	10	8,340.	
	11	Home mortgage interest not reported to you on Form 1098. If paid to the person from whom you bought the home, see instructions and show that person's name, identifying no., and address ▶	11		
Note: Your mortgage interest deduction may be limited (see instructions).	12	Points not reported to you on Form 1098. See instructions for special rules	12		
	13	Mortgage insurance premiums (see instructions)	13	0.	
	14	Investment interest. Attach Form 4952 if required. See instructions	14		
	15	Add lines 10 through 14			15 8,340.
Gifts to Charity	16	Gifts by cash or check. If you made any gift of $250 or more, see instructions	16	21,824.	
If you made a gift and got a benefit for it, see instructions.	17	Other than by cash or check. If any gift of $250 or more, see instructions. You **must** attach Form 8283 if over $500	17	300.	
	18	Carryover from prior year	18		
	19	Add lines 16 through 18			19 22,124.
Casualty and Theft Losses	20	Casualty or theft loss(es) other than net qualified disaster losses. Attach Form 4684 and enter the amount from line 18 of that form. See instructions			20
Job Expenses and Certain Miscellaneous Deductions	21	Unreimbursed employee expenses—job travel, union dues, job education, etc. Attach Form 2106 or 2106-EZ if required. See instructions. ▶	21		
	22	Tax preparation fees	22		
	23	Other expenses—investment, safe deposit box, etc. List type and amount ▶	23		
	24	Add lines 21 through 23	24		
	25	Enter amount from Form 1040, line 38 | 25 |			
	26	Multiply line 25 by 2% (0.02)	26		
	27	Subtract line 26 from line 24. If line 26 is more than line 24, enter -0-			27
Other Miscellaneous Deductions	28	Other—from list in instructions. List type and amount ▶			28
Total Itemized Deductions	29	Is Form 1040, line 38, over $156,900?			
		☐ **No.** Your deduction is not limited. Add the amounts in the far right column for lines 4 through 28. Also, enter this amount on Form 1040, line 40.			29 32,489.
		☒ **Yes.** Your deduction may be limited. See the Itemized Deductions Worksheet in the instructions to figure the amount to enter.			
	30	If you elect to itemize deductions even though they are less than your standard deduction, check here ▶ ☐			

Form **2441**

Department of the Treasury
Internal Revenue Service (99)

Child and Dependent Care Expenses

► Attach to Form 1040, Form 1040A, or Form 1040NR.

► Go to *www.irs.gov/Form2441* for instructions and the latest information.

1040 / 1040A / 1040NR — 2441

OMB No. 1545-0074

2017

Attachment Sequence No. **21**

Name(s) shown on return

Kenneth M & Ralenda T Johnson

Your social security number [redacted]

Part I **Persons or Organizations Who Provided the Care—You must** complete this part.
(If you have more than two care providers, see the instructions.)

1 (a) Care provider's name	(b) Address (number, street, apt. no., city, state, and ZIP code)	(c) Identifying number (SSN or EIN)	(d) Amount paid (see instructions)
Turning Point Christian Academy	3500 State Rd. 16 St Augustine FL 32092	TAXEXEMPT	857.

Did you receive **dependent care benefits?** — **No** → Complete only Part II below.
— **Yes** → Complete Part III on the back next.

Caution: If the care was provided in your home, you may owe employment taxes. If you do, you can't file Form 1040A. For details, see the instructions for Form 1040, line 60a, or Form 1040NR, line 59a.

Part II **Credit for Child and Dependent Care Expenses**

2 Information about your **qualifying person(s).** If you have more than two qualifying persons, see the instructions.

(a) Qualifying person's name First	Last	(b) Qualifying person's social security number	(c) **Qualified expenses** you incurred and paid in 2017 for the person listed in column (a)
[redacted]			857.

3	Add the amounts in column (c) of line 2. **Don't** enter more than $3,000 for one qualifying person or $6,000 for two or more persons. If you completed Part III, enter the amount from line 31	3	857.
4	Enter your **earned income.** See instructions	4	92,076.
5	If married filing jointly, enter your spouse's earned income (if you or your spouse was a student or was disabled, see the instructions); **all others**, enter the amount from line 4	5	66,980.
6	Enter the **smallest** of line 3, 4, or 5	6	857.
7	Enter the amount from Form 1040, line 38; Form 1040A, line 22; or Form 1040NR, line 37 — 7: 158,561.		

8 Enter on line 8 the decimal amount shown below that applies to the amount on line 7

If line 7 is: Over	But not over	Decimal amount is
$0	$15,000	.35
15,000	17,000	.34
17,000	19,000	.33
19,000	21,000	.32
21,000	23,000	.31
23,000	25,000	.30
25,000	27,000	.29
27,000	29,000	.28
$29,000	$31,000	.27
31,000	33,000	.26
33,000	35,000	.25
35,000	37,000	.24
37,000	39,000	.23
39,000	41,000	.22
41,000	43,000	.21
43,000	No limit	.20

8		8	.20
9	Multiply line 6 by the decimal amount on line 8. If you paid 2016 expenses in 2017, see the instructions	9	171.
10	Tax liability limit. Enter the amount from the Credit Limit Worksheet in the instructions. — 10: 17,933.		
11	**Credit for child and dependent care expenses.** Enter the **smaller** of line 9 or line 10 here and on Form 1040, line 49; Form 1040A, line 31; or Form 1040NR, line 47	11	171.

a Employee's social security number [redacted]	Payroll organization code 21-50-07-00-000	Intradepartment number 0000002000
b Employer identification number 59-6001874	1 Wages, tips, other compensation 92,075.93	2 Federal income tax withheld 10,370.22
c Employer's name, address, and ZIP code State of Florida Chief Financial Officer 200 E Gaines Street Tallahassee, Florida 32399-0356	3 Social security wages 95,023.43	4 Social security tax withheld 5,891.45
	5 Medicare wages and tips 95,023.43	6 Medicare tax withheld 1,377.84
	7 Social security tips	10 Dependent care benefits
d Control number 004803 01/05	11 Nonqualified plans	12a See instructions for box 12 DD 18,715.20
e Employee's first name, mi, and last name KENNETH M JOHNSON [redacted]	13 Statutory employee ☐ Retirement plan ☒ Third-Party sick pay ☐	12b
	14 Other 125 3,226.48	12c
		12d
		12e
f Employee's address and ZIP code		

15 State Employer's state ID number	16 State wages, tips, etc.	17 State income tax	18 Local wages, tips, etc.	19 Local income tax	20 Locality name

FORM **W-2** **WAGE AND TAX STATEMENT** **2017**

OMB No. 1545-0008

Department of the Treasury - Internal Revenue Service

Copy B - **To Be Filed With Employee's FEDERAL Tax Return**
This information is being furnished to the Internal Revenue Service

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a Employee's social security number [redacted]	Payroll organization code 21-50-07-00-000	Intradepartment number 0000002000
b Employer identification number 59-6001874	1 Wages, tips, other compensation 92,075.93	2 Federal income tax withheld 10,370.22
c Employer's name, address, and ZIP code State of Florida Chief Financial Officer 200 E Gaines Street Tallahassee, Florida 32399-0356	3 Social security wages 95,023.43	4 Social security tax withheld 5,891.45
	5 Medicare wages and tips 95,023.43	6 Medicare tax withheld 1,377.84
	7 Social security tips	10 Dependent care benefits
d Control number 004803 01/05	11 Nonqualified plans	12a See instructions for box 12 DD 18,715.20
e Employee's first name, mi, and last name KENNETH M JOHNSON [redacted]	13 Statutory employee ☐ Retirement plan ☒ Third-Party sick pay ☐	12b
	14 Other 125 3,226.48	12c
		12d
		12e
f Employee's address and ZIP code		

15 State Employer's state ID number	16 State wages, tips, etc.	17 State income tax	18 Local wages, tips, etc.	19 Local income tax	20 Locality name

FORM **W-2** **WAGE AND TAX STATEMENT** **2017**

OMB No. 1545-0008

Department of the Treasury - Internal Revenue Service

Copy C - **For EMPLOYEE'S RECORDS**
AA727W Rev. 03/29/2017

This information is being furnished to the Internal Revenue Service. If you are required to file a tax return, a negligence penalty or other sanction may be imposed on you if this income is taxable and you fail to report it.