APPLICATION FOR NOMINATION TO THE SEVENTH JUDICIAL CIRUIT COURT

Instructions: *Respond fully to the questions asked below. Please make all efforts to include your full answer to each question in this document. You may attach additional pages, as necessary, however it is discouraged. In addition to the application, you must provide a recent color photograph to help identify yourself.*

Full Name: Andrew John Urbanak **Social Security No.: REDACTED**

Florida Bar No.: 76713 **Date Admitted to Practice in Florida:** 4/12/2010

1. Please state your current employer and title, including any professional position and any public or judicial office you hold, your business address and telephone number.

   Office of the State Attorney, R.J. Larizza, Seventh Judicial Circuit
   Assistant State Attorney
   251 N. Ridgewood Avenue, Daytona Beach, Florida 32114
   386-238-4894

2. Please state your current residential address, including city, county, and zip code. Indicate how long you have resided at this location and how long you have lived in Florida. Additionally, please provide a telephone number where you can be reached (preferably a cell phone number), and your preferred email address.

   REDACTED

3. State your birthdate and place of birth.

   REDACTED
   Key West, Florida

4. Are you a registered voter in Florida (Y/N)?

   Yes.

5. Please list all courts (including state bar admissions) and administrative bodies having special admissions requirements to which you have ever been admitted to practice, giving the dates of admission, and if applicable, state whether you have ever been suspended or resigned. Please explain the reason for any lapse in membership.

   Florida Bar: 04/12/2010

6. Have you ever been known by any aliases? If so, please indicate and when you were known by such alias.

No.

EDUCATION:

7. List in reverse chronological order each secondary school, college, university, law school or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, the date the degree was received, class standing, and graduating GPA (if your class standing or graduating GPA is unknown, please request the same from such school).

Barry University School of Law
Orlando, Florida
09/2007 – 01/2010
Juris Doctor: 01/23/2010
Class Rank: 2nd
GPA: 3.500

University of Southern Maine
Gorham/Portland, Maine
09/2001 – 08/2005
Bachelor's in Criminology: 08/20/2005
GPA: 3.31

Middlebury Union High School
Middlebury, Vermont
08/1997 – 06/2001
High School Diploma: 06/2001
GPA: Unknown

8. List and describe any organizations, clubs, fraternities or sororities, and extracurricular activities you engaged in during your higher education. For each, list any positions or titles you held and the dates of participation.

Barry University School of Law:

- **Barry Law Review (2008 – 2010)**

University of Southern Maine:

- **Varsity Men's Tennis (2001 – 2004)**

Middlebury Union High School:

- **Varsity Men's Tennis (1997-2001)**
- **National Honor Society (2000 – 2001)**

EMPLOYMENT:

9. List in reverse chronological order all full-time jobs or employment (including internships and clerkships) you have held since the age of 21. Include the name and address of the employer, job title(s) and dates of employment. For non-legal employment, please briefly describe the position and provide a business address and telephone number.

Office of the State Attorney, R.J. Larizza, Seventh Judicial Circuit
251 N. Ridgewood Avenue, Daytona Beach, Florida 32114
Assistant State Attorney
11/2013 – Present

Office of the Public Defender, Blaise Trettis, Eighteenth Judicial Circuit
101 Eslinger Way, Sanford, Florida 32773
Assistant Public Defender
11/2011 – 11/2013

Kubicki Draper, P.A.
201 S. Orange Avenue, Orlando, Florida 32801
Associate Attorney
05/2011 – 11/2011

Fifth District Court of Appeal
300 S. Beach Street, Daytona Beach, Florida 32114
Law Clerk to the Honorable William Palmer
12/2009 – 05/2011

Office of the Public Defender, James Russo, Eighteenth Judicial Circuit
2725 Judge Fran Jamieson Way, Melbourne, FL 32940
Internship During Law School
2008 – 2009

Office of the Secretary of the Senate
3 State House Station, Augusta, Maine 04330
(207) 287-1540
01/2007 – 05/2007
(Operated the topic board and voting system)

Bally Total Fitness (*Now Closed*)
275 Marginal Way, Portland, Maine 04101

(207) 828-9900
09/2006 – 01/2007
(Reception and sales)

Ryan & Smith Painting
750 West Shore Road, Salisbury, Vermont 05769
Phone Number: Unknown
06/2005 – 08/2006
(Painter)

10. 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.

Currently, I am one of two assistant state attorneys assigned to the homicide investigations unit for the southern part of the Seventh Judicial Circuit. I handle first-degree murder cases and some second-degree murder cases from the commission of the homicide through trial. This includes being called out during the investigation, providing investigative assistance to law enforcement, making filing decisions, contact with the victims' next of kin, all pre-trial litigation and preparation, trial, and sentencing. My job also includes litigation of post-conviction matters, including ineffective assistance of counsel, newly discovered evidence, Graham/Miller resentencing, and death penalty resentencing.

As a member of the unit, I am on call 24 hours a day every other week. Since COVID restrictions were lifted in Spring of 2021, I have tried 20 murder cases as a lead attorney (this includes death penalty resentencing trials) and have sat as second chair for one murder case. Six of these 21 cases were death penalty trials.

Prior to my role in the homicide unit, I spent four years as a member of the career criminal unit/sex crimes unit. As a part of the unit, I tried cases involving 10-20-Life, prison releasee reoffender, and sex crimes. I was also responsible for supervising two other felony attorneys while in this position.

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

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 %	TOTAL	100 %

If your appearance in court the last five years is substantially different from your prior practice, please provide a brief explanation:

12. In your lifetime, how many (number) of the cases that you tried to verdict, judgment, or final decision were:

Jury? Over 100 Non-jury? ____

Arbitration? ____ Administrative Bodies? ____

Appellate? ____

13. Please list every case that you have argued (or substantially participated) in front of the United States Supreme Court, a United States Circuit Court, the Florida Supreme Court, or a Florida District Court of Appeal, providing the case name, jurisdiction, case number, date of argument, and the name(s), e-mail address(es), and telephone number(s) for opposing appellate counsel. If there is a published opinion, please also include that citation.

None.

14. 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.

15. 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 full.

No.

16. For your last six cases, which were tried to verdict or handled on appeal, either before a jury, judge, appellate panel, arbitration panel or any other administrative hearing officer, list the names, e-mail addresses, and telephone numbers of the trial/appellate counsel on all sides and court case numbers (include appellate cases). *This question is optional for sitting judges who have served five years or more*.

Case No.: 2022 101412 CFDL
State v. Sammy McKnight
08/12/2024 – 08/16/2024

State: Andrew J. Urbanak, Esq.

Erica Kane, Esq.
kanee@sao7.org
(386) 239-7710

Defense: Sara Altes, Esq.
altes.sara@pd7.org
(386) 239-7730

Michael Kapit, Esq.
kapit.michael@pd7.org
(386) 239-7730

Case No.: 2022 305371 CFDB
State v. Zion Counts
07/08/2024 – 07/11/2024

State: Andrew J. Urbanak, Esq.

Defense: Brian Smith, Esq.
smith.brian@pd7.org
(386) 254-3758

Courtney Davison, Esq.
davison.courtney@pd7.org
(386) 313-4545

Case No.: 2020 102538 CFDL
State v. Marvin Bryant
06/17/2024 – 06/20/2024

State: Andrew J. Urbanak, Esq.

Michele Simonsen, Esq.
simonsenm@sao7.org
(386) 239-7710

Defense: Adam Dala, Esq.
dala.adam@pd7.org
(386) 822-5770

Joshua Mott, Esq.
mott.joshua@pd7.org
(386) 822-5770

Case No.: 1991 006795 CFAES
State v. James Guzman
03/11/2024 – 03/22/2024

State: Andrew J. Urbanak, Esq.

Defense: Candace Hawthorne, Esq.
alawyerch@gmail.com
(352) 742-5200

Case No.: 2019 306190 CFDB
State v. Aziz Felder
10/23/2023 – 10/26/2023

State: Andrew J. Urbanak, Esq.

Michael Willard, Esq.
willardm@sao7.org
(386) 822-6400

Defense: Candace Hawthorne, Esq.
alawyerch@gmail.com
(352) 742-5200

Case No.: 2021 303347 CFDB
State v. Othal Wallace
09/05/2023 – 09/16/2023

State: Andrew J. Urbanak, Esq.

R.J. Larizza, Esq.
larizzar@sao7.org
(386) 239-7714

Jason Lewis, Esq.
lewisj@sao7.org
(904) 209-1300

Defense: Terry Shoemaker, Esq.
terry@theshoelaw.com
(904) 872-7463

Tim A. Pribisco, Jr., Esq.
tim@theshoelaw.com
(904) 872-7463

Garry Wood, Esq.
Garrywood2011@hotmail.com
(386) 326-3993

Allison Miller, Esq.
allison@rwlaw.org
(727) 256-1660

17. For your last six cases, which were either 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). *This question is optional for sitting judges who have served five years or more.*

Case No.: 2024 102177 CFDB & 2024 103426 CFDB
State v. Montel Miles

State: Andrew J. Urbanak, Esq.

Defense: Steven Robinson, Esq.
stevenrobinson@cfl.rr.com
(386) 506-7223

Case No.: 2020 102539 CFDL
State v. Jaide Caporale

State: Andrew J. Urbanak, Esq.

Defense: Kenneth Gallagher, Esq.
orlandolawyer@yahoo.com
(407) 897-1119

Case No.: 2021 304353 CFDB
State v. Deandre Anderson

State: Andrew J. Urbanak, Esq.

Defense: David Joffe, Esq.
davidjjoffe@aol.com
(954) 723-0007

Case No.: 2022 300067 CFDB
State v. Micayla Yusko

State: Andrew J. Urbanak, Esq.

Defense: Jeffery Deen, Esq.
jdeen@rc5state.com
(407) 862-2529

Case No.: 2023 102118 CFDL
State v. Sammy McKnight

State: Andrew J. Urbanak, Esq.

Defense: Sara Altes, Esq.
altes.sara@pd7.org
(386) 239-7730

Case No.: 2022 300066 CFDB
State v. Tyden Guinn

State: Andrew J. Urbanak, Esq.

Defense: Candace Hawthorne, Esq.
alawyerch@gmail.com
(352) 742-5200

18. During the last five years, on average, how many times per month have you appeared in Court or at administrative hearings? If during any period you have appeared in court with greater frequency than during the last five years, indicate the period during which you appeared with greater frequency and succinctly explain.

Fifteen to twenty times a month depending on my trial schedule.

19. If Questions 16, 17, and 18 do not apply to your practice, please list your last six major transactions or other legal matters that were resolved, listing the names, e-mail addresses, and telephone numbers of the other party counsel.

N/A

20. During the last five years, if your practice was greater than 50% personal injury, workers' compensation or professional malpractice, what percentage of your work was in representation of plaintiffs or defendants?

N/A

21. List and describe the five most significant cases which you personally litigated giving the case style, number, court and judge, the date of the case, the names, e-mail addresses, and telephone numbers of the other attorneys involved, 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.

State v. Robert Hayes
Case No.: 2019 306634 CFDB
Circuit Court, Seventh Judicial Circuit
Honorable Raul Zambrano
02/07/2022 – 03/02/2022

State: Andrew J. Urbanak, Esq.

Jason Lewis, Esq.
lewisj@sao7.org
(904) 209-1300

Defense: Francis Shea, Esq.
legal@attorneyshea.com
(904) 399-1966

Christopher Anderson, Esq.
chrisaab1@gmail.com
(904) 716-3974

I was lead counsel in the case State v. Robert Hayes. This case was significant because it ended the unsolved saga of the Daytona Beach Serial Killer. Hayes murdered three women, from December 2005 through February 2006, in the Daytona Beach area. The case remained unsolved until 2016 despite the investment of significant resources by local and state law enforcement agencies. A CODIS hit with a 2016 murder in Palm Beach County led to the identification of Hayes through the use of genetic genealogy.

Prior to trial, the Court ruled in the State's favor and allowed the introduction of similar fact evidence from the Palm Beach County homicide in 2016. Hayes was convicted of all three counts by a jury but was spared from the death penalty. His murder case in Palm Beach County remains pending at this time.

State v. Troy Victorino/Jerone Hunter
Case No.: 2004 001378 CFAWS & 2004 001380 CFAWS
Circuit Court, Seventh Judicial Circuit
Honorable Randell Rowe, III
04/10/2023 – 05/16/2023

State:	Heatha Trigones, Esq. trigonesh@sao7.org (386) 239-7710
	Andrew J. Urbanak, Esq.
Defendant Victorino:	Ann Finnell, Esq. afinnell@fmnlawyers.com (904) 791-1101
	Gonzalo Andux, Esq. gandux@fmnlawyers.com (904) 791-1101
Defendant Hunter:	Garry Wood, Esq. Garrywood2011@hotmail.com (386) 326-3993
	Allison Miller, Esq. allison@rwlaw.org (727) 256-1660

I was assisting counsel to Assistant State Attorney Heatha Trigones for the death penalty resentencing proceeding for Troy Victorino and Jerone Hunter, who both had previously been convicted of multiple counts of first-degree murder and sentenced to death. The case is commonly known as the "Xbox Murders." Near the conclusion of the two-week jury selection, Florida's death penalty law was amended and signed into law by Governor DeSantis. The change removed the unanimity requirement of a jury recommendation and replaced it with an 8-4 majority.

I filed a motion with the Court seeking a ruling regarding which version of Florida's death penalty statute the Court intended to apply once the jury was sworn. The Court subsequently, after swearing the jury, ruled that it would proceed under the unanimity statute.

Working with the Attorney General's Office, a stay was sought and granted by the Fifth District Court of Appeal. The Fifth District Court of Appeal issued an order directing the

Court to apply the new law (8-4 majority) and relinquished jurisdiction back to the trial court. The Fifth District Court of Appeal later issued an opinion regarding its ruling. *See State v. Victorino/Hunter*, 2023 WL 6174344 (Fla. 5th DCA 2023).

Due to juror complications, the Court declared a mistrial on May 16, 2023. The matter remains pending before the Court at this time.

State v. Robert Haar
Case No.: 2017 301344 CFDB
Circuit Court, Seventh Judicial Circuit
Honorable Matthew Foxman
01/22/2019 – 01/24/2019

State: Andrew J. Urbanak, Esq.

Defense: Rachel Brothers, Esq.
Brothers.rachel@pd7.org
(386) 239-7730

Ryan Belanger, Esq.
Belanger.ryan@pd7.org
(386) 239-7730

The prosecution of Robert Haar was made possible due to funding from the Florida Legislature for the testing of old sexual assault kits. When the victim's sexual assault kit was submitted to the Florida Department of Law Enforcement, a CODIS hit occurred with Mr. Haar, who was subsequently interviewed, arrested, and prosecuted for his brutal rape of the then 14-year-old victim in 1997. The case brought attention to the backlog of sexual assault kits throughout Florida that needed to be examined by Florida Department of Law Enforcement. Mr. Haar was sentenced to life in prison for his crime.

State v. Gregory Bender
Case No.: 2018 100625 CFDL
Circuit Court, Seventh Judicial Circuit
Honorable Dawn Nichols
05/24/2021 – 5/28/2021

State: Andrew J. Urbanak, Esq.

Ashley Terwilleger, Esq.
terwillegera@sao7.org
(386) 239-7710

Defense: Richard Parker, Esq.
rparker@sao18.org
(407) 457-8300

Robert Mandell, Esq.
rmandell@fightforyou.org
(407) 956-1180

In the above matter, I was lead counsel for the State. Mr. Bender murdered his ex-girlfriend's new fiancé in an effort to renew his romantic relationship with her. Mr. Bender resided in an affluent community in Windermere, Florida, and carefully planned and executed the murder of the victim in Deltona. The case was widely publicized due to the relationships between the parties and Mr. Bender's crucial mistake of leaving a murder plan in his home office trash can. The case was profiled in an episode of CBS' 48 Hours and an episode of Tubi's Love you to Death.

State v. Othal Wallace
Case No.: 2021 303347 CFDB
Circuit Court, Seventh Judicial Circuit
Honorable Raul Zambrano
09/05/2023 – 09/16/2023

State: Andrew J. Urbanak, Esq.

R.J. Larizza, Esq.
larizzar@sao7.org
(386) 239-7714

Jason Lewis, Esq.
lewisj@sao7.org
(904) 209-1300

Defense: Terry Shoemaker, Esq.
terry@theshoelaw.com
(904) 872-7463

Tim A. Pribisco, Jr., Esq.
tim@theshoelaw.com
(904) 872-7463

Garry Wood, Esq.
Garrywood2011@hotmail.com
(386) 326-3993

Allison Miller, Esq.
allison@rwlaw.org
(727) 256-1660

I, along with State Attorney R.J. Larizza and Chief of Homicide Jason Lewis, prosecuted Othal Wallace for the 2021 murder of a Daytona Beach Police Department Officer. The case was tried in Clay County after the Defendant's motion for change of venue was granted. The case received local and national media attention before, during, and after the trial. The entire incident was recorded on the officer's body worn camera.

The jury deliberated for over a day, and found Wallace guilty of manslaughter with a firearm. He was later sentenced by Judge Raul Zambrano to the maximum sentence of 30 years state prison.

Following the verdict and sentence, our office worked with legislators to create the "Officer Jason Raynor Act" which was filed with the Senate on December 27, 2023 (Senate Bill 1092). The bill died in the Senate Appropriations Committee on Criminal and Civil Justice in early March.

22. Attach at least two, but no more than three, examples of legal writing which you personally wrote. If you have not personally written any legal documents recently, you may attach a writing sample for which you had substantial responsibility. Please describe your degree of involvement in preparing the writing you attached.

Attachment #1: **State v. James Guzman**, Motion to Reinstate Death Penalty, 03/13/2020

Attachment #2: **State v. Victorino/Hunter**, Amended Motion to Utilize New Statutory Death Penalty Sentencing Procedures of Section 921.141, 04/21/2023

PRIOR JUDICIAL EXPERIENCE OR PUBLIC OFFICE

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

No.

24. If you have previously submitted a questionnaire or application to this or any other judicial nominating commission, please give the name(s) of the commission, the approximate date(s) of each submission, and indicate if your name was certified to the Governor's Office for consideration.

On January 8, 2024, I submitted an application to the Seventh Judicial Circuit Court Nominating Commission and was certified to the Governor's Office on January 24, 2024.

On March 19, 2024, I submitted an application to the Seventh Judicial Circuit Court Nominating Commission and was certified to the Governor's Office on April 10, 2024.

25. List any prior quasi-judicial service, including the agency or entity, dates of service, position(s) held, and a brief description of the issues you heard.

N/A

26. If you have prior judicial or quasi-judicial experience, please list the following information:

(i) the names, phone numbers and addresses of six attorneys who appeared before you on matters of substance;
(ii) the approximate number and nature of the cases you handled during your tenure;
(iii) the citations of any published opinions; and
(iv) descriptions of the five most significant cases you have tried or heard, identifying the citation or style, attorneys involved, dates of the case, and the reason you believe these cases to be significant.

N/A

27. Provide citations and a brief summary of all of your orders or opinions where your decision was reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, attach copies of the opinions.

N/A

28. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, attach copies of the opinions.

N/A

29. Has a complaint about you ever been made to the Judicial Qualifications Commission? If so, give the date, describe the 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

30. Have you ever held an attorney in contempt? If so, for each instance state the name of the attorney, case style for the matter in question, approximate date and describe the circumstances.

N/A

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

N/A

NON-LEGAL BUSINESS INVOLVEMENT

32. 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

33. Since being admitted to the Bar, have you ever engaged in any occupation, business or profession other than the practice of law? If so, explain and provide dates. If you received any compensation of any kind outside the practice of law during this time, please list the amount of compensation received.

No.

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.

PROFESSIONAL ACCOMPLISHMENTS AND OTHER ACTIVITIES

35. List the titles, publishers, and dates of any books, articles, reports, letters to the editor, editorial pieces, or other published materials you have written or edited, including materials published only on the Internet. Attach a copy of each listed or provide a URL at which a copy can be accessed.

None.

36. List any reports, memoranda or policy statements you prepared or contributed to the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. Provide the name of the entity, the date published, and a summary of the document. To the extent you have the document, please attach a copy or provide a URL at which a copy can be accessed.

None.

37. List any speeches or talks you have delivered, including commencement speeches, remarks, interviews, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place they were delivered, the sponsor of the presentation, and a summary of the presentation. If there are any readily available press reports, a transcript or recording, please attach a copy or provide a URL at which a copy can be accessed.

08/2019
Daytona State College Detective's Academy

10/19/2021
Florida Prosecuting Attorney Association Conference - Boot Camp
Presented a lecture on jury selection tactics to new prosecutors.

10/16/2023
Florida Prosecuting Attorney Association Conference - Boot Camp
Presented two lectures to new prosecutors. The first lecture was on trial objections and the second lecture was on interviewing witnesses.

12/05/2023
National District Attorney Association Conference - Complex Issues in Homicide Cases
Presented a case study on cold case homicides titled "Justice Served Cold."

02/05/2024
Father Lopez Catholic High School – AP Government and Politics
Appeared as a guest speaker on the executive branch of government.

04/27/2024
Local Legend Student Conference by Sisters Build Network for Girls, Inc. & MAN UP Mentoring, Inc.
Appeared as a guest speaker to discuss legal profession with attendees.

10/21/2024
Florida Prosecuting Attorney Association Conference - Boot Camp
Presented a lecture on interviewing witnesses to new prosecutors.

38. Have you ever taught a course at an institution of higher education or a bar association? If so, provide the course title, a description of the course subject matter, the institution at which you taught, and the dates of teaching. If you have a syllabus for each course, please provide.

None.

39. List any fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement. Include the date received and the presenting entity or organization.

Barry University School of Law

Graduated Magna Cum Laude
Top 10% Academic Scholarship (2008 – 2010)

University of Southern Maine

Dean's List (Fall 2001, Fall 2002, Fall 2003, and Fall 2004)
Scholar Athlete Award (2002, 2003, and 2004)
Merit Scholarship Recipient (2001 – 2005)

State Attorney's Office

Trial Top Gun Award (2018, 2019, 2022, 2023)
Stephen Boyles Award (2019)

Daytona Beach Police Department

Distinguished Service Citation Award (06/2023)
Appreciation Award for Dedication (11/2023)

40. Do you have a Martindale-Hubbell rating? If so, what is it and when was it earned?

No.

41. List all bar associations, legal, and judicial-related committees of which you are or have been a member. For each, please provide dates of membership or participation. Also, for each indicate any office you have held and the dates of office.

Volusia County Bar Association (2022 - Current)
Dunn Blount Inns of Court (2017-2020, 2023 – Current)

42. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in the previous question to which you belong, or to which you have belonged since graduating law school. For each, please provide dates of membership or participation and indicate any office you have held and the dates of office.

Florida Prosecuting Attorney Association Education Committee Member (2017 – Current)

43. Do you now or have you ever belonged to a 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 (other than a church, synagogue, mosque or other religious institution), national origin, or sex (other than an educational institution, fraternity or sorority)? If so, state the name and nature of the club(s) or organization(s), relevant policies and practices and whether you intend to continue as a member if you are selected to serve on the bench.

No.

44. Please describe any significant pro bono legal work you have done in the past 10 years, giving dates of service.

None.

45. Please describe any hobbies or other vocational interests.

I enjoy spending time with my wife, family, and close friends, and always in the company of my dog. I try to spend as much time enjoying the outdoors as possible by regularly walking, running, and taking advantage of Volusia's beautiful beaches. I enjoy reading historical biographies.

46. Please state whether you have served or currently serve in the military, including your dates of service, branch, highest rank, and type of discharge.

N/A

47. Please provide links to all social media and blog accounts you currently maintain, including, but not limited to, Facebook, Twitter, LinkedIn, and Instagram.

https://www.instagram.com/andrewurbanak?igsh=YXJzOXZkZ2ZrZTAz&utm_source=qr

FAMILY BACKGROUND

48. Please state your current marital status. If you are currently married, please list your spouse's name, current occupation, including employer, and the date of the marriage. If you have ever been divorced, please state for each former spouse their name, current address, current telephone number, the date and place of the divorce and court and case number information.

Married: REDACTED
Date: 09/26/2018
Occupation: Freelance Court Reporter

Divorced: Halley James Urbanak
Address: Unknown
Phone Number: Unknown
Email: halley.james.821@gmail.com
01/11/2016, Volusia County
Case No.: 2015 33609 FMCI

49. If you have children, please list their names and ages. If your children are over 18 years of age, please list their current occupation, residential address, and a current telephone number.

None.

CRIMINAL AND MISCELLANEOUS ACTIONS

50. Have you ever been convicted of a felony or misdemeanor, including adjudications of guilt withheld? If so, please list and provide the charges, case style, date of conviction, and terms of any sentence imposed, including whether you have completed those terms.

No.

51. Have you ever pled nolo contendere or guilty to a crime which is a felony or misdemeanor, including adjudications of guilt withheld? If so, please list and provide the charges, case style, date of conviction, and terms of any sentence imposed, including whether you have completed those terms.

12/2001 – Addison County, Vermont
I received a citation for consumption of alcohol by a minor. I was 18 at the time and had been at my neighbor's home consuming alcoholic beverages when law enforcement arrived at the residence. I received pre-trial diversion, and the case was dismissed. I attempted to obtain records related to this incident from Addison County, Vermont, but none were available.

08/11/2003 – Vermont Superior Court, Addison County, Vermont
Case No.: 497-8-03
Possession of Malt Beverages (minor)
Pled Guilty – Adjudicated – sentenced to probationary term which was completed.
I received a citation for the above incident in early July of 2003. I was 20 years old at the time and was camping at a state park with friends when we were approached by the park ranger. I was not eligible for pre-trial diversion because of the prior incident in December of 2001.

52. Have you ever been arrested, regardless of whether charges were filed? If so, please list and provide sufficient details surrounding the arrest, the approximate date and jurisdiction.

No.

53. Have you ever been a party to a lawsuit, either as the plaintiff, defendant, petitioner, or respondent? If so, please supply the case style, jurisdiction/county in which the lawsuit was filed, case number, your status in the case, and describe the nature and disposition of the matter.

Andrew J. Urbanak v. Halley J. Urbanak
Circuit Court, Seventh Judicial Circuit
Case No.: 2015 33609 FMCI
Petitioner
Dissolution of Marriage

54. To your knowledge, has there ever been a complaint made or filed alleging malpractice as a result of action or inaction on your part?

Public Defender's Office
While working as an assistant public defender in the Eighteenth Judicial Circuit, a client's friend filed a complaint with the Florida Bar alleging ineffective assistance of counsel/malpractice. The Florida Bar dismissed the complaint without investigation.

State Attorney's Office
While working as an assistant state attorney in the Seventh Judicial Circuit, a defendant I was prosecuting for first-degree murder filed a complaint with the Florida Bar claiming that I had mishandled his case. The Florida Bar found that the complaint did not fall within the purview of the Florida Bar's grievance system framework and closed the matter.

55. To the extent you are aware, have you or your professional liability carrier ever settled a claim against you for professional malpractice? If so, give particulars, including the name of the client(s), approximate dates, nature of the claims, the disposition and any amounts involved.

No.

56. 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, provide the particulars of each finding or investigation.

No.

57. To your knowledge, within the last ten years, have any of your current or former co-workers, subordinates, supervisors, customers, clients, or the like, ever filed a formal complaint or accusation of misconduct including, but not limited to, any allegations involving sexual harassment, creating a hostile work environment or conditions, or discriminatory behavior against you with any regulatory or investigatory agency or with your employer? If so, please state the date of complaint or accusation, specifics surrounding the complaint or accusation, and the resolution or disposition.

No.

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

No.

59. Have you ever filed a personal petition in bankruptcy or has a petition in bankruptcy been filed against you, this includes any corporation or business entity that you were involved with? If so, please provide the case style, case number, approximate date of disposition, and any relevant details surrounding the bankruptcy.

No.

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

No.

61. Please explain whether you have complied with all legally required tax return filings. To the extent you have ever had to pay a tax penalty or a tax lien was filed against you, please explain giving the date, the amounts, disposition, and current status.

I have complied with all legally required tax return filings.

HEALTH

62. Are you currently addicted to or dependent upon the use of narcotics, drugs, or alcohol?

No.

63. 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? If your answer is yes, please direct each such professional, hospital and other facility to furnish the Chairperson of the Commission any information the Commission may request with respect to any such hospitalization, consultation, treatment or diagnosis. ["Professional" includes a Physician, Psychiatrist, Psychologist, Psychotherapist or Mental Health Counselor.] Please describe such treatment or diagnosis.

No.

64. 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 two or three nights, experiencing periods of hyperactivity, spending money profusely with extremely poor judgment, suffering 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. If yes, please explain.

No.

65. 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? If yes please explain the limitation or impairment and any treatment, program or counseling sought or prescribed.

No.

66. 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, provide full details as to court, date, and circumstances.

No.

67. 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 or State law provisions.)

No.

68. 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 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.

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

No.

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

No.

SUPPLEMENTAL INFORMATION

71. Describe any additional education or experiences you have which could assist you in holding judicial office.

In my legal background, I have been able to observe the effects of litigation, be it civil or criminal, on people individually. Whether it be a victim, their family, a defendant, a defendant's family, witnesses, members of the community, and colleagues, the legal system can impact lives in so many different ways. A small judicial ruling can seem momentous to some and miniscule to others. I have practiced in front of dozens of judges in Volusia and Seminole County. The very best of these judges respected the people, the litigants, and, most importantly, the law in every ruling, action, and word in the courtroom. Their respect was consistent and set an example for those that practiced and appeared before them. They were always aware of the impact their words and rulings could have. I believe I have the experience, wisdom, and respect for the law to follow their example.

72. Explain the particular contribution you believe your selection would bring to this position and provide any additional information you feel would be helpful to the Commission and Governor in evaluating your application.

I have been fortunate to have a diverse legal career that included being on both sides of the criminal courtroom, working in civil practice, and appellate practice.

I sought to attend law school because of my passion for the history of our country and the laws that were born out of that history. I aspired to become a trial attorney from the outset of my interest in the legal field. Instead, when coming out of law school in December of 2009, I accepted a position clerking for the Honorable William Palmer at the Fifth District Court of Appeal. I began working immediately upon graduation while at the same time studying for the winter Florida Bar Exam. I spent 18 months clerking for Judge Palmer and working closely with his senior law clerk. I relished the opportunity to observe and learn from Judge Palmer.

In 2011, I left the court and spent a brief six months working for an insurance defense firm in Orlando. While my time there was brief, I quickly absorbed the rules of procedure and became familiar with the broad rules of civil discovery. I left because of my desire to be in the courtroom on a regular basis as a trial attorney.

I began working with the Public Defender's Office in the Eighteenth Judicial Circuit in November of 2011 and remained there for two years. It was trial by fire during my time at the Public Defender's Office. New attorneys learned by being in the courtroom on a daily basis, regularly trying multiple cases in one week in county court. In two years, I tried over 40 cases and had the opportunity to sit second chair on a first-degree murder trial for the first time. I also filed multiple appeals and writs to the circuit court, several of which were successful on the merits.

I left the Public Defender's Office for multiple reasons in November of 2013. Among those reasons was a desire to return to Volusia County, where I had lived during my time working for the Fifth District Court of Appeal; another was a sense that I could better contribute to my community as a prosecutor than as a public defender; and lastly was the new challenge that being a prosecutor presented. Joining the State Attorney's Office in the Seventh Circuit was one of the wisest decisions of my life.

As a prosecutor, I spent less than six months in county court before I was promoted to a felony division where I handled common felony cases. In less than a year, I was again advanced to the career criminal/sex crimes unit where I spent four years before my promotion to my current position with the homicide investigation unit just prior to the COVID pandemic. While working in the homicide unit, I have handled the most serious cases, from a serial killer to fathers who have murdered their infant children. Over the last

four years, I have worked with and against the most skilled criminal litigators in the Seventh Circuit on cases with the highest possible stakes.

I will bring my broad experience, extensive trial background, passion and reverence for history and the law to the position if selected by the Committee and ultimately by the Governor.

REFERENCES

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

Honorable Joan Anthony
125 E. Orange Avenue
Daytona Beach, Florida 32114
janthony@circuit7.org
(386) 257-6099

Honorable Elizabeth A. Blackburn
251 N. Ridgewood Avenue, 2nd Floor
Daytona Beach, Florida 32114
eblackburn@circuit7.org
(386) 239-7790

Honorable James R. Clayton (retired)
REDACTED

Honorable Karen A. Foxman
251 N. Ridgewood Avenue, 2nd Floor
Daytona Beach, Florida 32114
kfoxman@circuit7.org
(386) 239-7793

R.J. Larizza, Esq.
State Attorney, Seventh Judicial Circuit
251 N. Ridgewood Avenue
Daytona Beach, Florida 32114
larizzar@sao7.org
(386) 239-7710

Jason Lewis, Esq.
Assistant State Attorney, Seventh Judicial Circuit
Chief of Homicide
2446 Dobbs Road
St. Augustine, Florida 32086
jlewis@sao7.org
REDACTED

Honorable Dawn D. Nichols
1769 E. Moody Boulevard
Bunnell, Florida 32110
dnichols@circuit7.org
(386) 313-4510

Honorable Terence R. Perkins (retired)
REDACTED

Steven Robinson, Esq.
533 Seabreeze Blvd. Ste. 300
Daytona Beach, Florida 32118
stevenrobinson@cfl.rr.com
REDACTED

David Shekhter, Esq.
Politis & Matovina, P.A.
20 Airport Road, Suite C
Palm Coast, Florida 32164
david@politislawfirm.com
(386) 246-0911

CERTIFICATE

I have read the foregoing questions carefully and have answered them truthfully, fully and completely. I hereby waive notice by and authorize The Florida Bar or any of its committees, educational and other institutions, the Judicial Qualifications Commission, the Florida Board of Bar Examiners or any judicial or professional disciplinary or supervisory body or commission, any references furnished by me, employers, business and professional associates, all governmental agencies and instrumentalities and all consumer and credit reporting agencies to release to the respective Judicial Nominating Commission and Office of the Governor any information, files, records or credit reports requested by the commission in connection with any consideration of me as possible nominee for appointment to judicial office. Information relating to any Florida Bar disciplinary proceedings is to be made available in accordance with Rule 3-7.1(l), Rules Regulating The Florida Bar. I recognize and agree that, pursuant to the Florida Constitution and the Uniform Rules of this commission, the contents of this questionnaire and other information received from or concerning me, and all interviews and proceedings of the commission, except for deliberations by the commission, shall be open to the public.

Further, I stipulate I have read and understand the requirements of the Florida Code of Judicial Conduct.

Dated this 23rd day of October, 2024.

Andrew J. Orbanek
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: 118,113.18

   Last Three Years: 144,705.67 117,959.04 (2022) 103,220.84 (2021)

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: 78,322.12

   Last Three Years: 98,039.39 80,758.71 (2022) 71,679.88 (2021)

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_____

   Last Three Years: _____0_____ _____0_____ _____0_____

4. State the amount 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_____

   Last Three Years: _____0_____ _____0_____ _____0_____

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

   Current Year-To-Date: _____0_____

   Last Three Years: _____0_____ _____0_____ _____0_____

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 10/21/2024, was $1,016,208

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
REDACTED	$425,600
2022 Jeep Wrangler 4XE	$33,931
15 Valencia Circle., DeBary, FL 32713 (joint tenancy with right of survivorship)	$258,000
733 Pineland Avenue, Venice, FL 34285 (joint tenancy with right of survivorship)	$254,300
Vanguard IRA	$37,460
State of Florida Deferred Compensation	$37,000
Chase Savings Account	$505
Chase Checking Account	$3,847
Ally Savings Account	$84,284
Ally Money Market Account (joint holder)	$29,757
State Employee Pension Plan (contribution amount)	$31,099

PART C - LIABILITIES

LIABILITIES IN EXCESS OF $1,000 (See instructions on page 4): NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
Mortgage: Rocket Loans, 28596 Network Place, Chicago, IL 60673	$172,986
Auto Loan: Community First Credit Union, 3581 N Ponce De Leon Blvd., St. Augustine, FL 32084	$36,589

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE: **NAME AND ADDRESS OF CREDITOR**	**AMOUNT OF LIABILITY**

PART D - INCOME

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

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

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

NAME OF SOURCE OF INCOME EXCEEDING $1,000	ADDRESS OF SOURCE OF INCOME	AMOUNT
State of Florida	251 N. Ridgewood Avenue, Daytona Beach, FL	$160,602.72

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 BUSINESS' INCOME	ADDRESS OF SOURCE	PRINCIPAL BUSINESS ACTIVITY OF SOURCE
None			

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

	BUSINESS ENTITY #1	BUSINESS ENTITY #2	BUSINESS ENTITY #3
NAME OF BUSINESS ENTTITY	None		
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 Volusia

Sworn to (or affirmed) and subscribed before me this 22nd day of October, 2024 by Andrew Urbanak

Teresa Tucker Nelson

(Signature of Notary Public—State of Florida)

TERESA TUCKER NELSON

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

Personally Known ✓ OR Produced Identification

Type of Identification Produced

TERESA TUCKER NELSON
Commission # HH 140439
Expires August 21, 2025
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, including all schedules, W2's and attachments, 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 you, 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: October 22, 2024

JNC Submitting To: Seventh Judicial Circuit

Name (please print): Andrew J. Urbanak

Current Occupation: Assistant State Attorney

Telephone Number: **REDACTED**

Attorney No.: 76713

Gender (check one):	[X]	Male [ ] Female
Ethnic Origin (check one):	[X]	White, non-Hispanic
	[ ]	Hispanic
	[ ]	Black
	[ ]	American Indian/Alaskan Native
	[ ]	Asian/Pacific Islander

County of Residence: Volusia

FLORIDA DEPARTMENT OF LAW ENFORCEMENT

DISCLOSURE PURSUANT TO THE
FAIR CREDIT REPORTING ACT (FCRA)

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

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

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

Andrew John Urbanak
Printed Name of Applicant

Signature of Applicant

Date: 10/23/24

I, Andrew John Urbanak, am an Assistant State Attorney for the Seventh Judicial Circuit. Pursuant to section 119.071 of the Florida Statutes, I request that my home address, telephone number, date of birth, social security number, and photograph be redacted from public record. I request that the name, date of birth, and home address of my wife be redacted from public record also.

Andrew J. Urbanak

Date: 10/23/24

Attachment #1

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

CASE NO.: 1991 006795 CFAES

STATE OF FLORIDA

VS.

JAMES GUZMAN
DEFENDANT.
_____/

MOTION TO REINSTATE DEATH PENALTY

COMES NOW, R.J. LARIZZA, State Attorney for the Seventh Judicial Circuit of Florida, by and through the undersigned Assistant State Attorney, and moves this Court to Reinstate the Defendant's death sentence imposed by Judge Terrance Perkins on August 30th, 2016. In support of this motion, the State would submit the following:

Facts & Procedural History

1. On August 12th, 1991, officers from the Daytona Beach Police Department discovered the body of [redacted] in a motel room. In addition to the body of [redacted] the police located a samurai sword in the motel room. The subsequent autopsy examination by Dr. Terrance Steiner revealed nineteen stab wounds to [redacted] body, including a fatal wound to [redacted] left chest which cut [redacted] pulmonary artery and punctured his left lung. The cause of death was identified as blood loss and shock due to the multiple wounds.

   At the time of the homicide the Defendant was living with Martha Cronin who testified at trial that the Defendant told her that he had killed [redacted] with a samurai sword. Ms. Cronin also stated that the Defendant was in possession of a ring with blood on it that Ms. Cronin knew belonged to [redacted]. Ms. Cronin told the Defendant to get rid of the ring. The Defendant subsequently left their hotel room and upon his return informed Ms. Cronin that he had given the victim's ring to a drug dealer named "Paco". Police were able to locate "Paco" and recover the victim's ring. "Paco", whose real name is Leroy Gadson, Jr., testified at trial that Guzman had traded the gold ring for drugs in August of 1991.

The State also presented the testimony of Guzman's former cell-mate, to whom Guzman had confessed. Two witnesses, Robert Harris and Margaret Post, who testified that Guzman and [redacted] were seen together on August 10th, 1991, prior to the murder. Leroy Parker, a crime-lab analyst testified that the samurai sword was consistent with the blood spatter evidence at the scene and another analyst, Kelly May, testified that Guzman's fingerprints were on [redacted] vehicle and the phone inside of his motel room.

2. On January 7th, 1992, the Defendant was indicted for First Degree Murder and Armed Robbery with a Deadly Weapon. Since the indictment the Defendant has had three jury trials. The first trial concluded on September 23rd, 1992, when the jury convicted the Defendant on both counts in the indictment. The Defendant was subsequently sentenced to death by Judge Robert Rawlins. The Florida Supreme Court subsequently reversed the Defendant's judgment and sentence and remanded the case to the trial court for a new trial. *See Guzman v. State*, 644 So. 2d 996 (Fla. 1994). Judge William C. Johnson, Jr., found the Defendant guilty on December 11th, 1996, following a bench trial. The Defendant was again sentenced to death. However, the U.S. District Court, Middle District of Florida, granted the Defendant's petition for writ of habeas corpus, which was later affirmed by the Eleventh Circuit Court of Appeals. *See Guzman v. Sec'y, Dep't of Corrs.*, 698 F. Supp. 2d 1317 (M.D. Fla. 2010); *Guzman v. Sec'y, Dep't of Corrs.*, 663 F.3d 1336 (11th Cir. 2011). After the second reversal, the Defendant's case proceeded to a third trial in 2016.
3. On April 27th, 2016, the Defendant was convicted of both charges in the indictment following a jury trial. At the penalty phase, the jury unanimously found four aggravating factors; previous conviction of a felony involving the use or threat of violence, commission of the murder during the course of committing a robbery, commission for the purpose of avoiding or preventing a lawful arrest, and HAC. *See* Attached Exhibit "A" (special jury verdict form dated May 3rd, 2016). Eleven of the twelve jurors recommended a death sentence for the Defendant. On August 30th, 2016, Judge Terrance Perkins issued a Sentencing Order in which he found that the State had proven all of the aggravating factors found by the jury beyond a reasonable doubt. At the conclusion of the Order Judge Perkins imposed a death sentence upon the Defendant.

4. On appeal, the Florida Supreme Court affirmed the Defendant's convictions in an opinion dated February 22nd, 2018. *See Guzman v. State*, 238 So. 3d 146 (Fla. 2018). However, the Florida Supreme Court vacated the Defendant's death sentence based upon the Court's opinion in *Hurst v. State*, 202 So. 3d 40 (Fla. 2016), and remanded to the trial court for a new penalty phase.

Argument

In *Apprendi v. New Jersey*, 530 U.S. 466, (2000), the United States Supreme Court held that the Sixth Amendment's Due Process Clause, applicable to the states through the Fourteenth Amendment, required a jury to find beyond a reasonable doubt any fact that authorized an increase in the prison sentence permissible in the absence of such a factual finding. Apprendi had pleaded guilty to illegal possession of a firearm, punishable under New Jersey law by a maximum of ten years' imprisonment. In a separate sentencing proceeding, the trial court found by a preponderance of the evidence that Apprendi had also violated a New Jersey hate crime statute. That judicial finding resulted in Apprendi being sentenced to a term of imprisonment two years above the statutory maximum for the possession of firearm offense. The Supreme Court assuaged concerns about *Apprendi's* application to capital sentencing by rejecting the argument that "the principles guiding" its decision "render invalid state capital sentencing schemes requiring judges, after a jury verdict holding a defendant guilty of a capital crime, to find specific aggravating factors before imposing a sentence of death." *Id.* at 496. The Court distinguished capital cases because the offenses of conviction in those cases already subjected the defendant to a sentence of death. The finding of aggravating factors merely guided the judge's choice of life or death. *Id.*

Two years later, however, the Court decided *Ring v. Arizona*, 536 U.S. 584 (2002). In *Ring*, the Court held that the Sixth Amendment required a jury, not a judge, to find the presence of an aggravating circumstance that made a defendant eligible for the death penalty. Between

1973 and 2016, the sentencing phase of a Florida capital case consisted of a trial at which the judge and jury heard evidence relevant to the nature of the crime and the character of the defendant, including statutory aggravating and mitigating circumstances. *See, e.g.* Fla. Stat. § 921.141(1) (2011). After the conclusion of evidence the jury deliberated and rendered an advisory sentence to the court. *See, e.g.,* Fla. Stat. § 921.141(2). The trial judge was required to give great weight to the jury's recommendation, but had the responsibility of independently weighing the aggravating and mitigating circumstances before imposing the sentence. If the court imposed a sentence of death, it was required to issue written findings explaining that sufficient aggravating circumstances existed to warrant imposition of the death sentence, and that the mitigating circumstances were insufficient to outweigh the aggravating circumstances.

The United States Supreme Court rejected numerous challenges to Florida's capital sentencing scheme between 2002 and 2016. *See, e.g., Evans v. Sec'y,* 699 F.2d 1249 (11th Cir. 2012), cert. denied, *Evans v. Crews,* 569 U.S. 994 (2012). In *Hurst v. Florida*, 136 S.Ct. 616 (2016), the United States Supreme Court held for the first time that "Florida's sentencing scheme, which required the judge alone to find the existence of an aggravating circumstance, is therefore unconstitutional." *Id.* at 624. The Court reiterated its decision in *Ring* that the Sixth Amendment did not allow a sentencing judge, acting alone, to find an aggravating circumstance necessary for the imposition of the death penalty. *Id.*

The opinion left Florida's Supreme Court to decide whether the *Ring* error in Hurst's case was harmless. In *Hurst v. State*, 202 So. 3d 40 (Fla. 2016), the Florida Supreme Court answered that question in the negative, and went much further. The Court found as follows:

> Before the trial judge may consider imposing a sentence of death, the jury in a capital case must unanimously and expressly find all the aggravating factors that were proven beyond a reasonable doubt, unanimously find that the aggravating

> factors are sufficient to impose death, unanimously find that the aggravating factors outweigh the mitigating factors, and unanimously recommend a sentence of death.

Id. at 57.

The Court's expansive holding threw capital litigation into chaos throughout the state, and led the Florida legislature to substantially alter Florida's capital sentencing statutes in 2017. *See* Ch. 2017-1, Laws of Florida (2017). *Hurst v. State* was soon followed by *Mosley v. State*, 209 So. 3d 1248 (Fla. 2016), where the Court held that its decision in *Hurst* retroactively applied to death sentences that were final on or after June 24th, 2002, the date *Ring* issued.

However, on January 23rd, 2020, the Florida Supreme Court righted what it admitted was a wrongful interpretation of *Hurst* in *State v. Poole*, 2020 WL 370302 (Fla. Jan. 23, 2020). In *Poole*, the Court declared that "*[w]ithout legal justification*, this Court used *Hurst v. Florida*—a narrow and predictable ruling that should have had limited practical effect on the administration of the death penalty in our state as an occasion to disregard decades of settled Supreme Court and Florida precedent." *Poole*, 2020 WL 370302 at 14. (Emphasis added). In so ruling, this Court suggested that its prior decision in *Hurst v. State* violated article II, section 3, of the Florida Constitution by usurping law-making authority from the legislative branch. *See Poole*, at 15 ("[w]e simply have restored discretion that *Hurst v. State* wrongly took from the political branches."). Elsewhere in the opinion, the Court suggested that *Hurst v. State* also violated article 1, section 17, by imposing Eighth Amendment protections beyond that required by the U.S. Supreme Court. S*ee Poole*, 2020 WL 370302 at 13 ("[l]ast, lest there be any doubt, we hold that our state constitution's prohibition on cruel and unusual punishment, article I, section 17, does not require a unanimous jury recommendation—or any jury recommendation—before a death sentence can be imposed."). With regard to the additional capital sentencing requirements unconstitutionally imposed by the decision in *Hurst v. State*, the Court clarified that any aggravator

is sufficient to impose a sentence of death; therefore, no additional sufficiency determination is required. *See Poole*, 2020 WL 370302 at 11:

> Our Court was wrong in *Hurst v. State* when it held that the existence of an aggravator and the sufficiency of an aggravator are two separate findings, each of which the jury must find unanimously. Under longstanding Florida law, there is only one eligibility finding required: the existence of one or more statutory aggravating circumstances.

With regard to the additional *Hurst v. State* requirement of a unanimous jury recommendation, the Court held:

> We further erred in *Hurst v. State* when we held that the Eighth Amendment requires a unanimous jury recommendation of death. The Supreme Court rejected that exact argument in *Spaziano v. Florida*, 468 U.S. 447 (1984). *See Spaziano*, 468 U.S. at 465; *see also Harris v. Alabama*, 513 U.S. 504, 515 (1995) ("The Constitution permits the trial judge, acting alone, to impose a capital sentence."). We are bound by Supreme Court precedents that construe the United States Constitution.
>
> *Poole*, 2020 WL 370302 at 12.

Poole makes clear that *Hurst* was wrongly decided in all but one aspect – that the jury must unanimously find at least one aggravating circumstance to render the defendant eligible for the death penalty. The Sixth Amendment does not require jury sentencing or jury findings on the selection of any particular penalty in a capital case. The United States Supreme Court reiterated this in *McKinney v. Arizona*, 589 U.S.--- (2020). In *McKinney*, decided on February 26th, 2020, the Court held that an Arizona death row inmate was not entitled to the empanelment of a jury to decide whether to sentence him to death after a court determined that the trial court did not properly consider relevant mitigating circumstances. Instead, the Arizona Supreme Court properly weighed the aggravating and mitigating circumstances in deciding to re-impose a death sentence. The Court held that *Hurst v. Florida* did not require the empanelment of a new jury because "just as in an ordinary sentencing proceeding, a jury (as opposed to a judge) is not constitutionally required to

weigh the aggravating and mitigating circumstances or to make the ultimate sentencing decision within the relevant sentencing range." *Slip Op.* at 4-5. The Court rejected the argument that McKinney was entitled to a new jury decision because he had been granted relief on direct review in a post-conviction proceeding. *Slip Op.* at 7. The Court stated in a footnote that its holding did not suggest that a State, by use of a collateral label, was permitted to conduct a new trial proceeding in violation of current constitutional standards. *Id.*

As to the second and third additional requirements, weighing and recommendation, the Court expressly stated that "[n]either *Hurst v. Florida*, nor the Sixth or Eighth Amendment, nor the Florida Constitution mandates that the jury make the section 941.121(3)(b) [weighing] selection finding or that the jury recommend a sentence of death." *Poole*, 2020 WL 370302 at 11; *see also id.* at 13 ("[t]here is no basis in state or federal law for treating as elements the additional unanimous jury findings and recommendation that we mandated in *Hurst v. State*.").

Additionally, the Court clarified that weighing aggravating circumstances and mitigating factors "is not a 'fact' that exposes the defendant to a greater punishment than that authorized by the jury's guilty verdict." *Poole*, 2020 WL 370302 at 12. Accordingly, that determination need not be made by a jury because the Eighth Amendment does not require jury sentencing in capital cases. *Id.* (citing *Hurst v. Florida*, 136 S. Ct. at 621).

This Court's decision in *Poole* recognizing that weighing and selection are not required *Hurst/Ring* findings is not subject to fair debate and is supported by an almost unbroken wall of precedent. *See, e.g., Castillo v. State*, 135 Nev. 126, 129–30, 442 P.3d 558, 560–61 (2019) (rejecting weighing as a required factual finding, holding "[l]ike *Apprendi* and *Ring*, *Hurst* clearly limits its reach to facts that expose a defendant to a higher sentence."); *State v. Mason*, 153 Ohio St. 3d 476, 483, 108 N.E.3d 56, 64, *cert. denied*, 139 S. Ct. 456 (2018) (stating that "[n]early every

court that has considered the issue has held that the Sixth Amendment is applicable to only the fact-bound eligibility decision concerning an offender's guilt of the principle offense and any aggravating circumstances" and that "weighing is not a fact-finding process subject to the Sixth Amendment.") (string citation omitted); *Underwood v. Royal*, 894 F.3d 1154, 1184-86 (10th Cir. 2018) (holding that the Court's decision in *Hurst v. Florida* was limited to aggravating circumstances and did not extend to mitigating circumstances or weighing).

Poole's Application to Guzman

Guzman's case is indistinguishable from *Poole*. In both cases, the jury unanimously found the defendant guilty of a contemporaneous felony (the commission of the murder during the course of a robbery), thereby satisfying any Sixth Amendment requirement for death sentence eligibility. *See Poole*, 2020 WL 370302 at 15. In addition to the jury finding the Defendant guilty of the charged robbery beyond a reasonable doubt during the guilt phase, the Guzman jury also returned a special verdict form which included their unanimous finding of other aggravators. The jury found that the State had proven beyond a reasonable doubt (1) "that James Guzman was previously convicted of a felony involving the use or threat of violence to another person", (2) "that the First Degree Murder was committed while James Guzman was in the commission of Robbery", (3) "that the First Degree Murder was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody", and (4) "that the First Degree Murder was especially heinous, atrocious or cruel[.]" The Florida Supreme Court upheld the aggravator (the robbery conviction) on direct appeal. Since the Eighth Amendment does not require jury sentencing, there is no Constitutional basis for a jury to perform any weighing or recommendation function. *See Id.* at 13. For the reasons articulated by the Florida Supreme Court in *Poole*, the jury's unanimous findings satisfy the requirement of *Hurst* that the "jury must unanimously find the existence of a

statutory aggravating circumstance beyond a reasonable doubt." *State v. Poole*, No. SC18-245, 2020 WL 370302, at *1 (Fla. Jan. 23, 2020).

The Florida Supreme Court has unequivocally receded from *Hurst* in *Poole* on the very issue applicable to this case. *Hurst* is no longer valid precedent in the State of Florida. In *Poole*, the Court repudiated the expansive language in *Hurst v. State* requiring additional findings not required by the Supreme Court in *Hurst*. These additional findings, the ones relied upon by the Defendant to obtain reversal of his death sentence, were inconsistent with prior precedent from both the Florida Supreme Court and the United States Supreme Court. *See Poole*, No. SC18-245, 2020 WL 370302, at 14 ("[w]ithout legal justification, this Court used *Hurst v. Florida* -- a narrow and predictable ruling that should have had limited practical effect on the administration of the death penalty in our state as an occasion to disregard decades of settled Supreme Court and Florida precedent."). Because the jury convicted the Defendant of robbery and later found four aggravating circumstances on the special verdict form, an aggravating factor was unanimously found by the jury to be proven beyond a reasonable doubt. It is submitted that this Court should follow the clear language of the *Poole* opinion and reinstate the Defendant's death sentence.[1] *See* generally *Marshall v. State*, 44 Fla. L. Weekly D2561 (Fla. 2d DCA Oct. 18, 2019) (declining to enforce its previous decision ordering a resentencing, holding that "[b]ecause our reasoning in

[1] In addition to the incalculable emotional toll on victims' family members, it would be an enormous waste of both the bench and bars' time, as well as citizens' time who are called for jury duty to require new penalty phases based on a decision that the Florida Supreme Court in *State v. Poole* acknowledged was incorrectly decided on a myriad of levels. Those errors include mischaracterizing weighing as a fact; requiring a unanimous jury recommendation of death; and, ignoring the Florida Constitution's conformity clause regarding the Eighth Amendment when it held that all the jury's additional findings and final recommendation had to be made unanimously. *State v. Poole*, 2020 WL 370302 at *11-*13; *State v. Poole*, 2020 WL 370302 at *8 (noting the United States Supreme Court's decision in *Hurst v. Florida* "did not address Hurst's Eighth Amendment argument"). In light of the number and magnitude of the legal errors in *Hurst v. State*, this Court should not require the prosecutors and citizens of Florida to have to go through the empty formality and enormous waste of resources of a new penalty phase based on a decision that is no longer the law in Florida.

Marshall has been superseded by the supreme court in Franklin, we deny Marshall's motion to enforce mandate.)[2]

WHEREFORE, the State respectfully requests that this Court enter an Order Reinstating the Defendant's Death Sentence consistent with the Florida Supreme Court's *Poole* opinion.

R.J. LARIZZA
STATE ATTORNEY

By: _____

Andrew J. Urbanak, Esq.
Assistant State Attorney
Florida Bar No.: 76713

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy hereof has been furnished by mail/electronic delivery to Candace Hawthorne, Esq., 319 East Main Street, Tavares, Florida 32778, on March 13th, 2020.

_____

Andrew J. Urbanak, Esq.
Assistant State Attorney
Florida Bar No.: 76713
251 North Ridgewood Avenue
Daytona Beach, Florida 32124
(386) 239-7710

[2] See Attached Exhibit "B" (orders reinstating the death sentence from the First, Fourth, and Fifth Judicial Circuits).

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

STATE OF FLORIDA

CASE NO. 1991-6795 CFAES

VS.

JAMES GUZMAN
_____/

FINDINGS AS TO ALLEGED AGGRAVATING FACTORS

We, the jury, find as to each aggravating factor alleged by the State in this case:

(answer each question)

Do you unanimously find that the State of Florida has proven beyond a reasonable doubt the aggravating factor that James Guzman was previously convicted of a felony involving the use or threat of violence to another person?

Yes ✓ No_____

Do you unanimously find that the State of Florida has proven beyond a reasonable doubt the aggravating factor that the First Degree Murder was committed while James Guzman was in the commission of Robbery?

Yes ✓ No_____

Do you unanimously find that the State of Florida has proven beyond a reasonable doubt the aggravating factor that the First Degree Murder was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody?

Yes ✓ No_____

Do you unanimously find that the State of Florida has proven beyond a reasonable doubt the aggravating factor that the First Degree Murder was especially heinous atrocious or cruel?

Yes ✓ No_____

FILED
IN OPEN COURT
MAY 03 2016
Clerk Circuit & County Court Volusia County, FL

SO SAY WE ALL.
Dated at Daytona Beach, Volusia County, Florida, this 3rd day of May, 2016.

FOREPERSON
1 Joseph B Cowart

Exhibit "A"

VERDICT REGARDING SENTENCE

We, the jury, find as follows, as to the defendant in this case:

(check only one)

_____ The jury determined a sentence of life imprisonment without the possibility of parole for twenty five years be imposed upon James Guzman.

✓ The jury, by a vote of 11 to 1 determined the death penalty should be imposed upon James Guzman.

SO SAY WE ALL.

Dated at Daytona Beach, Volusia County, Florida, this 3rd day of May, 2016.

FOREPERSON

Joseph B Cowart

IN THE CIRCUIT COURT, FIRST JUDICIAL CIRCUIT
IN AND FOR WALTON COUNTY, FLORIDA

STATE OF FLORIDA,

CASE NO.: 2009-CF-257

v.

THOMAS FORD MCCOY, JR.,

Defendant.

ORDER VACATING THE ORDER GRANTING THE DEFENDANT'S MOTION TO VACATE JUDGMENTS OF CONVICTION AND SENTENCE WITH SPECIAL REQUEST FOR LEAVE TO AMEND
and
ORDER REINSTATING THE DEFENDANT'S SENTENCE OF DEATH

WITH DIRECTIONS TO THE CLERK

THIS CAUSE came before the court for review at a status conference that was convened on February 6, 2020. The defendant; Ms. Marci McCoy, Assistant Public Defender; and Mr. Spiro Kypreos, Assistant Public Defender; were present before the court. Mr. John Molchan, Assistant State Attorney, appeared by telephone.

The defendant was sentenced to death in the instant case on March 26, 2012. The Supreme Court of Florida issued a mandate and opinion affirming the defendant's sentence of death on March 17, 2014. On November 8, 2017, the court ordered a new penalty phase proceeding pursuant to an order granting the defendant's Florida Rules of Criminal Procedure 3.851 motion. The relief granted was based on the authority of Hurst v. State, 202 So. 3d 40 (Fla. 2016). However, on January 23, 2020, the Supreme Court of Florida issued the opinion in

Exhibit "B"

State v. Poole, 45 Fla. L. Weekly S41 (Fla. Jan. 23, 2020), that partially receded from Hurst and held that a jury need only unanimously find the existence of one statutory aggravator.[1]

Consequently, the court sua sponte finds the defendant's sentence of death should be reinstated. The court reaches this conclusion because of the change in authority demonstrated by Poole. In following the requirements set out by Poole, the court notes that the defendant was found guilty by a jury and convicted of aggravated assault on a law enforcement officer with a firearm. Therefore, this court's November 2017 order granting the defendant's rule 3.851 motion to vacate the defendant's sentence of death should be vacated. Considering this information, further penalty phase proceedings are not necessary and the instant case should be removed from the felony docket.

Accordingly, it is hereby **ORDERED** that:

1) The order granting the defendant's Motion to Vacate Judgments of Conviction and Sentence with Special Request for Leave to Amend and Order Scheduling Hearing, filed November 8, 2017, is **VACATED**.
2) The defendant's sentence of death, which was imposed by this court on March 26, 2012, is **REINSTATED**.
3) The **Clerk of Court** is **DIRECTED** to prepare and transmit a uniform commitment to custody of the Florida Department of Corrections package.

[1] State v. Poole, 45 Fla. L. Weekly S41, S46 (Fla. Jan. 23, 2020) ("This Court clearly erred in *Hurst v. State* by requiring that the jury make any finding beyond the section 921.141(3)(a) eligibility finding of one or more statutory aggravating circumstances. Neither *Hurst v. State*, nor the Sixth or Eighth Amendment, nor the Florida Constitution mandates that the jury make the section 941.121(3)(b) selection finding or that the jury recommend a sentence of death.").

DONE AND ORDERED in Chambers in DeFuniak Springs, Walton County, Florida.

eSigned by KELVIN WELLS
on 02/10/2020 10:15:36 J3uxMuju

KELVIN C. WELLS
CIRCUIT JUDGE

KCW/elk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing order has been furnished by electronic delivery to:

JOHN MOLCHAN, Assistant State Attorney
Office of the State Attorney
190 West Government Street, Pensacola, Florida 32501
by electronic delivery to: jmolchan@osa1.org

SPIRO KYPREOS, Assistant Public Defender
Office of the Public Defender
190 Government Street, Pensacola, Florida 32501
by electronic delivery to: Spiro_Kypreos@pd1.fl.gov

MARCI MCCOY, Assistant Public Defender
Office of the Public Defender
190 Government Street, Pensacola, Florida 32501
by electronic delivery to: Marci_McCoy@pd1.fl.gov

ALEX ALFORD
Clerk of Court

eSigned by TRACY MORRISON
on 02/12/2020 12:05:26 LMWWXXbX

BY:
Deputy Clerk

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NO.: 16-1999-CF-01156-AXXX

DIVISION: CR-D

STATE OF FLORIDA

v.

JAMES. B. BELCHER,
Defendant.
_____/

ORDER GRANTING STATE'S MOTION TO REINSTATE SENTENCE OF DEATH

This matter is before this Court on the "State's Motion to Reinstate the Sentence of Death," filed on February 14, 2020. Defendant filed a Response on February 24, 2020. This Court held a hearing on February 28, 2020.

I. Procedural History

On March 30, 2001, a jury found Defendant guilty of First Degree Murder (Count One) and Sexual Battery with Great Force (Count Two). On April 11, 2001, the jury recommended the death penalty by a nine-to-three vote.

On May 17, 2001, this Court sentenced Defendant to death on Count One and a concurrent twenty-five-year term of imprisonment on Count Two. This Court found three aggravating factors: (1) Prior Violent Felony; (2) Capital Felony Committed While Engaged in the Commission of a Sexual Battery; and (3) Heinous, Atrocious, and Cruel ("HAC"). After considering and weighing the above-listed aggravating factors and fifteen mitigating circumstances, this Court found the aggravating factors far outweighed the mitigating circumstances and sentenced Defendant to death.

On July 10, 2013, the Florida Supreme Court issued a Mandate affirming Defendant's convictions and sentences. Belcher v. State, 851 So. 2d 678 (Fla. 2003). On December 1, 2003, Defendant's convictions and sentences became final through the denial of certiorari by the United States Supreme Court. Belcher v. Florida, 540 U.S. 1054 (2003).

On August 23, 2005, this Court issued an Order denying Defendant's rule 3.851 motion for postconviction relief. On June 14, 2017, Florida Supreme Court issued a Mandate affirming the denial of Defendant's rule 3.851 motion.

On June 19, 2017, Defendant filed a Petition for Writ of Habeas Corpus in the Florida Supreme Court, claiming his death sentence—which was based on a nonunanimous jury recommendation—was unconstitutional under Hurst v. State, 202 So. 3d 40 (Fla. 2016). On November 2, 2017, the Florida Supreme Court issued an Order granting Defendant's Petition, vacating his death sentence, and remanding the case for a new penalty phase trial. Belcher v. Jones, 228 So. 3d 530 (Fla. 2017). The new penalty phase is scheduled to begin on June 1, 2020.

II. Discussion and Analysis

In the instant Motion, the State asks this Court to reinstate Defendant's death sentence based on State v. Poole, 45 Fla. L. Weekly S40 (Fla. Jan. 23, 2020). The State argues the Order remanding the case for a new penalty phase trial is no longer controlling because it is superseded by the intervening Florida Supreme Court decision in Poole.

A. *Florida Supreme Court Opinion in Poole*

As detailed above, the Florida Supreme Court remanded this case for a new penalty phase based on Hurst because the jury rendered a nonunanimous, nine-to-three recommendation of death. Poole, however, concluded that the court erred in Hurst by holding that the "Eighth Amendment requires a unanimous jury recommendation of death." Poole, 45 Fla. L. Weekly

S40 at 31-32. Poole makes clear the jury is constitutionally required to make only one finding: "the existence of one or more statutory aggravating circumstances." Id. at 27.

According to Poole, there are two principles underlying the Supreme Court's capital punishment cases. Id. at 24. One is an eligibility finding, the other a selection finding. Id. The eligibility decision narrows the class of those that commit murder to persons eligible for a more severe sentence. Id. The selection decision involves whether a person eligible for the death penalty should receive the sentence. Id.

Poole went on to say that, pursuant to Hurst, the jury needs to find only the existence of at least one aggravator for the eligibility requirement, and not a separate finding as to the sufficiency of an aggravator(s) for the selection determination. Id. at 27-28. The court reasoned that a jury must find facts, such as the existence of an aggravating factor, and not make subjective determinations as to the sufficiency of an aggravating factor. Id. at 29-30.

Applying Poole to the case at bar, Defendant's trial and death sentence are constitutional. At trial, by finding Defendant guilty of Sexual Battery with Great Force, the jury implicitly found that the capital felony in Count One was committed while Defendant was engaged in a sexual battery. See Davis v. State, 703 So. 2d 1055, 1061 (Fla. 1997) ("A contemporaneous conviction for sexual battery warrants finding in aggravation that the murder was committed while engaged in the commission of a sexual battery."). Moreover, the State presented evidence of Defendant's three prior violent felonies. See Frances v. State, 970 So. 2d 806, 822 (Fla. 2007) (noting that Apprendi expressly exempts prior violent felonies from the factual findings that must be unanimously found by a jury to increase the penalty for a crime); Jones v. State, 855 So. 2d 611, 619 (Fla. 2003) (stating that the prior violent felony aggravator is "a factor which under Apprendi and Ring need not be found by the jury"). These two facts—taken together or individually—satisfy the eligibility requirement in Poole.

B. *Disregarding the Mandate*

A trial court's role in carrying out a mandate is a purely ministerial act, and the trial court usually does not have authority to "modify, nullify, or evade the mandate." Manata v. State, 226 So. 3d 1027, 1028 (Fla. 1st DCA 2017). Appellate courts, however, have carved out a narrow exception to this rule: A "clear example of a case in which an exception to the general rule [binding the parties to the law of the case] should be made results from an intervening decision by a higher court contrary to the decision reached on the former appeal . . . ." Marshall v. State, 44 Fla. L. Weekly D2561 (Fla. 2d DCA Oct. 18, 2019); see also Morales v. State, 580 So. 2d 788 (Fla. 3d DCA 1991) (declining to enforce the mandate that was superseded by intervening decisions of Florida Supreme Court).

Defendant cites Brunner Enters., Inc. v. Dep't. of Revenue, 452 So. 2d 550 (Fla. 1984) and State v. Owen, 696 So. 2d 715 (Fla. 1997), for the proposition that a trial court does not have authority to disregard a mandate. These cases, however, are distinguishable. To start, Brunner and Owen addressed intervening United States Supreme Court opinions that the Florida Supreme Court had yet to address. See Brunner, 452 So. 2d at 552 ("We are the only court that has the power to change the law of the case established by this Court."). Further, contrary to Owen's refusal to reinstate a *conviction* after a change in the law, Florida decisional law does permit reinstating a *sentence* after a change in the law. See, e.g., Marshall, 44 Fla. L. Weekly D2561; Morales, 580 So. 2d at 788.

Here, the Florida Supreme Court has issued the Poole opinion, which is contrary to and impacts its prior Order. It is clear from its prior Order that the Florida Supreme Court remanded this case for a new penalty phase because there was not a unanimous jury recommendation of death. Because Poole recedes from the unanimous-jury-recommendation-of-death requirement

in Hurst, and because Defendant otherwise satisfies the requirements of Poole, this Court finds it appropriate to disregard the prior Order and reinstate the sentence of death.

Accordingly, it is **ORDERED** that:

1. The "State's Motion to Reinstate the Sentence of Death," filed on February 14, 2020, is **GRANTED**;

2. Defendant sentence of death as to Count One is hereby **REINSTATED** and the judgment and sentence order entered on May 17, 2001 stands; and

3. Defendant shall have thirty (30) days from the date this Order is filed to take an appeal, by filing a Notice of Appeal with the Clerk of the Court.

DONE AND ORDERED in Jacksonville, Duval County, Florida, on March 2nd, 2020.

MARK BORELLO
Circuit Judge

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Case No.: 16-1999-CF-01156-AXXX
/tbc

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT,
OF THE STATE OF FLORIDA, IN AND FOR LAKE COUNTY

STATE OF FLORIDA

CASE NO. 2011-CF-000105-03

VS

DONALD OTIS WILLIAMS

ORDER GRANTING STATE'S MOTION TO REINSTATE DEATH SENTENCE

This matter is before this Court on the "State's Motion to Reinstate Death Sentence," filed on January 28, 2020. The Defendant filed a response on February 21, 2020. The State filed a supplemental memorandum on February 10, 2020. The Defendant filed a response on March 2, 2020. This Court held a hearing on March 5, 2020.

I. Procedural History

On August 29, 2013, Williams was convicted of the Robbery, Kidnapping and First Degree Murder of victim Janet Patrick. On September 4, 2013, by a vote of 9 to 3, the jury advised and recommended the Court impose the death penalty. On February 28, 2014, the Court sentenced the defendant to death as to Count I, First Degree Murder. The Court sentenced the Defendant to life in prison as to Count I, Kidnapping, and to 15 years in prison as to Count II, robbery. The Court ordered the sentences as to Counts I and II be served consecutively to each other and consecutive to the sentence of death imposed as to Count III.

The Court found five aggravating factors, four of which were unanimous: the Defendant was on felony probation at the time of the murder, the Defendant was previously convicted of a felony involving the use or threat of violence to a person, the murder was committed while the Defendant was involved in a kidnapping, the murder was committed for pecuniary gain, and the victim of the murder was particularly vulnerable due to advanced age or disability. After considering and weighing the above listed aggravating factors and the mitigating circumstances

the trial judge found the aggravating factors far outweighed the mitigating circumstances and sentenced the Defendant to death. This Court adopts all findings and rulings of the previous trial judge in the original sentencing Order.

The Florida Supreme Court affirmed the defendant's convictions but remanded the case for re-sentencing pursuant to *Hurst v. State*, 202 So. 3d 40 (Fla. 2016). *Williams v. State*, 209 So. 3d 543 (Fla. 2017). A mandate was issued by the Florida Supreme Court on February 9, 2017. The new penalty phase is scheduled to begin on April 13, 2020.

II. Discussion and Analysis

The State asks this Court to reinstate Defendant's death sentence based on *State v. Poole*, 45 Fla. L. Weekly S40 (Fla. Jan.23, 2020). The State argues the mandate remanding the case for a new penalty phase is no longer controlling because it is superseded by the intervening Florida Supreme Court decision in *Poole*.

Applying *Poole* to the case at bar, the Defendant's trial and death sentence are constitutional. At trial, by finding Defendant guilty of Kidnapping, the jury found that the capital felony in Count Three was committed while Defendant was engaged in a kidnapping. See *Davis v. State*, 703 So. 2d 1055, 1061 (Fla. 1997) ("A contemporaneous conviction for sexual battery warrants finding in aggravation that the murder was committed while engaged in the commission of a sexual battery."). Moreover, the State presented evidence of Defendant's prior violent felony conviction. See *Frances v. State*, 970 So. 2d 806, 822 (Fla.2007) (noting that *Apprendi* expressly exempts prior violent felonies from the factual findings that must be unanimously found by a jury to increase the penalty for a crime); *Jones v. State*, 855 So. 2d 611,619 (Fla. 2003) (stating that the prior violent felony aggravator is "a factor which under *Apprendi* and *Ring* need not be found by the jury").

Additionally, after the penalty phase in the Defendant's case, the jury advised and recommended the Court impose the death penalty by a vote of 9 to 3 (Advisory Sentence, attached as Exhibit 1). The jury completed a special verdict form (attached as Exhibit 2) which showed that the jury unanimously found the following aggravating factors: Williams was on felony probation at the time of the murder; Williams was previously convicted of a felony involving the use of violence; the murder was committed while Williams was involved in a kidnapping; and, the victim was particularly vulnerable due to advanced age or disability. These facts-taken together or individually-satisfy the eligibility requirement in *Poole*.

This Court is bound to consider and follow the current law which, in this case, is *Poole*. Under *Poole*, there is no error in the death sentence, and the Defendant shall not receive the windfall of a resentencing proceeding to which he is not entitled. Because there has been no resentencing proceeding yet, that proceeding is not "over," and there is no finality interest in that proceeding until the defendant has been sentenced. The procedural decision ordering resentencing is the procedural first step in the resentencing process, which will not conclude until sentence is imposed in accord with *current* law, as explicated in *Poole*. It is clear from the mandate that the Florida Supreme Court remanded this case for a new penalty phase because there was not a unanimous jury recommendation of death. Because *Poole* recedes from the unanimous-jury-recommendation-of-death requirement in *Hurst*, and because Defendant otherwise satisfies the requirements of *Poole*, this Court finds it appropriate to disregard the mandate and reinstate the sentence of death.

Accordingly, it is ORDERED that:

1. The "State's Motion to Reinstate Death Sentence" filed on January 28, 2020, is GRANTED;

2. The Defendant's sentence of death as to Count III is hereby REINSTATED and the

judgment and sentence order entered on February 28, 2014, stands; and

3. Defendant shall have thirty (30) days from the date this Order is filed to take an appeal, by filing a Notice of Appeal with the Clerk of the Court.

DONE AND ORDERED at Tavares, Lake County, Florida, this the 10th day of March, 2020.

Mark Hill
CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above has been furnished to Donald Otis Williams, DC#, Union Correctional Institution, P.O. Box 1000, Raiford, FL 32083; Ana Gomez Mallada, 320 W Oakland Park Blvd, Fort Lauderdale, FL 33311; Emily Curington and Kenneth Nunnelley, Office of State Attorney, 550 W Main St - P O Box 7800, Tavares, FL 32778, eservicelake@sao5.org, by hand or mail delivery or electronic service or facsimile, this 10 day of March, 2020.

/s/
Deputy Clerk

Ex 1

2011 CF 105 (04)
DONALD OTIS WILLIAMS

ADVISORY SENTENCE

We the jury find as follows as to the defendant in this case (Check one only)

X 1. A majority of the jury, by a vote of 9 to 3, advises and recommends to the court that it impose the death penalty upon DONALD OTIS WILLIAMS.

___ 2. The jury advises and recommends to the court that it impose a sentence of life imprisonment upon DONALD OTIS WILLIAMS without the possibility of parole.

Dated this 4th day of September, 2013.

Filed in Open Court
Fifth Judicial Circuit

SEP 04 2013

Lake County, Florida

Ronald K. Smith
Foreperson

RONALD K. SMITH

Case: 2011 CF 000105
Dkt: CFO

1193
DH

Ex 2

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR LAKE COUNTY

STATE OF FLORIDA

vs. CASE NO: 2011-CF-105-04

DONALD OTIS WILLIAMS /

Defendant

Filed in Open Court
Fifth Judicial Circuit
SEP 04 2013
Lake County, Florida

AGGRAVATING FACTORS AS TO COUNT III

Check all appropriate:

X 1. A majority of the jury, by a vote of 12 to 0, finds the following aggravating circumstance has been established beyond a reasonable doubt:

The defendant was on felony probation at the time of the murder.

X 2. A majority of the jury, by a vote of 12 to 0, finds the following aggravating circumstance has been established beyond a reasonable doubt:

The defendant has previously been convicted of a felony involving the use of violence.

X 3. A majority of the jury, by a vote of 12 to 0, finds the following aggravating circumstance has been established beyond a reasonable doubt:

The murder was committed while the defendant was involved in a kidnapping.

X 4. A majority of the jury, by a vote of 9 to 3, finds the following aggravating circumstance has been established beyond a reasonable doubt:

The murder was committed for pecuniary gain.

X 5. A majority of the jury, by a vote of 12 to 0, finds the following aggravating circumstance has been established beyond a reasonable doubt:

The victim of this murder was particularly vulnerable due to advanced age or disability.

1194
DH

Attachment #2

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

CASE NO: 2004 001378 CFAWS
CASE NO: 2004 001380 CFAWS

STATE OF FLORIDA

VS.

TROY VICTORINO,
DEFENDANT

JERONE HUNTER,
DEFENDANT
_____/

AMENDED MOTION TO UTILIZE NEW STATUTORY DEATH PENALTY SENTENCING PROCEDURES OF SECTION 921.141

COMES NOW, R.J. LARIZZA, State Attorney for the Seventh Judicial Circuit, by and through the undersigned Assistant State Attorney, files this Motion to Utilize the New Statutory Death Penalty Sentencing Procedures of Section 921.141 of the Florida Statutes (2023), and in support thereof would submit the following:

1. The Defendants in the above captioned cases are both before the Court for resentencing on four death sentences imposed following their original sentencing proceeding almost 20 years ago. The Defendants are being tried together.
2. The initial questioning of potential jurors began on Monday, April 10th, 2023, in Deland, Florida.
3. On the morning of April 20th, 2023, the parties were still in the process of questioning potential jurors. At approximately 10:00 A.M., Governor Ron Desantis signed into law Senate Bill 450. Senate Bill 450 stated that it is to "take effect upon becoming a law" (which occurs when the Governor signs the bill).

4. At the time the new death penalty law became effective the parties were still questioning potential jurors.
5. When the State became aware that the death penalty law had changed, the undersigned Assistant State Attorney filed a "Motion to Utilize New Statutory Death Penalty Sentencing Procedures of Section 921.141".
6. The Court reserved ruling. The Court indicated on the record that its general position was that the trial already commenced and therefore the outdated version of section 921.141 would apply to this matter.
7. The State announced that the defense had the right to question the potential jurors on their ability to follow the new law. The defense stated that it had no questions on this topic.
8. The State informed the court that it would like an opportunity to question the jurors about their ability to follow the new law. The Court denied the State's request to question the remainder of the panel regarding the lawful procedure in section 921.141 (2023).
9. The State requested that the Court refrain from swearing the jury until the Court ruled on the State's Motion regarding the new statutory procedure in section 921.141. The Court declined the State's request.
10. Roughly three hours after the new law went into effect, the Court then swore the jury over the State's repeated objections.
11. Senate Bill 450, now enacted and signed into law by the Governor of the State of Florida, amends sections 921.141 and 921.142 of the Florida Statutes, relating to the procedures for the imposition of the death penalty in Florida. Section 921.141(2)(c) of the Florida Statutes now provides as follows regarding the jury's recommendation:

> (c) If at least eight jurors determine that the defendant should be sentenced to death, the jury's recommendation to the court must be a sentence of death. If fewer than eight jurors determine that the defendant should be sentenced to death, the jury's recommendation to the court must be a sentence of life imprisonment without the possibility of parole.

Fla. Stat. 921.141(2)(c) (2023).

Section (3) of the new statute (IMPOSITION OF SENTENCE OF LIFE IMPRISONMENT OR DEATH) is amended to reflect the following:

(a) If the jury has recommended a sentence of:

...

2. Death, and at least eight jurors recommend a sentence of death, the court, after considering each aggravating factor found by the jury and all mitigating circumstances, may impose a sentence of life imprisonment without the possibility of parole or a sentence of death. The court may consider only an aggravating factor that was unanimously found to exist by the jury. The court may impose a sentence of death only if the jury unanimously finds at least one aggravating factor beyond a reasonable doubt.

Fla. Stat. 921.141(3)(a)2 (2023).

Finally, subsection (4) was amended to require a written order from the sentencing judge for both a sentence of life imprisonment and death. It also requires that the court include "in its written order the reasons for not accepting the jury's recommended sentence, if applicable." Fla. Stat. 921.141(4) (2023).

12. The changes noted in section 921.141 of the Florida Statutes are procedural in nature and must be the law utilized by this Court in the Defendants' resentencing trial. A procedural law is one in which the law provides or regulates the steps by which a defendant who violated a law is punished. *Love v. State*, 286 So. 3d 177, 185 (Fla. 2019) (citing *State v. Garcia*, 229 So. 2d 236, 238 (Fla. 1969)).

This issue has been previously addressed in an analogous situation by the United States Supreme Court, interpreting procedural changes to Florida's death penalty statute. In *Dobbert v. Florida*, 97 S.Ct. 2290 (1977), an appeal from the Florida Supreme Court, the Supreme Court of the United States addressed an *ex post facto* claim of the defendant related to Florida's death penalty statute. During the period of time between the commission of his crime and his trial, Florida amended section 921.141 removing the presumption of a death penalty absent a recommendation of the jury for mercy. *Id.* at 2299. The new procedure provided for a separate sentencing proceeding, presentation of mitigating circumstances, an advisory opinion of the jury, and final determination by the trial judge. *Id.* The defendant argued to the Court that the change in the sentencing procedure deprived him of his right to have the jury determine what penalty should be imposed, without review by the trial judge. *Id.* at 2297-2298. The Court found that the

change in the law was procedural. *Id.* at 2298. The Court noted that even though a change in the law may work to the disadvantage of a defendant, a procedural change is not *ex post facto*. *Id.* (citing *Hopt v. Utah*, 4 S.Ct. 202 (1884); *Thompson v. Missouri*, 18 S.Ct. 922 (1898)). The Court stated that the change in the statute simply altered the methods utilized in determining whether the death penalty was to be imposed; there was no change in the quantum of punishment attached to the crime of First Degree Murder. *Id.* In order for a law to be *ex post facto*, it must be more onerous than the prior law. *Id.*

The changes contained in the now current version of section 921.141 are clearly procedural, like those addressed in *Dobbert*, as they do not increase the punishment and First Degree Murder. As such, they must be the laws applied to the Defendants in these matters, like the procedural changes discussed in *Dobbert*.

13. The Court's preliminary thoughts were that the new law becomes effective "when the trial starts." As the Court is aware, the commencement of trial occurs at different times for different purposes. For speedy trial purposes, rule 3.191(c) of the Florida Rules of Criminal Procedure, states that trial commences when the jury panel is sworn for voir dire examination. *See McDermott v. State*, 383 So. 2d 712, 714 (Fla. 2d DCA 1980) (stating that "[w]hen the jury panel was sworn for voir dire examination, the trial was deemed to have commenced for the purpose of the speedy trial rule.") (citing *Moore v. State*, 368 So. 2d 1291 (Fla. 1979)). For purposes of double jeopardy, jeopardy attaches when the jury is impaneled and sworn. *See Knight v. State*, 211 So. 3d 1, 11 (Fla. 2016) (stating that double jeopardy attaches when the jury is impaneled and sworn in).
14. The new procedural law should be effective when jeopardy attached, which in this case occurred after the governor signed the bill. The legal conclusion that trial does not commence until a jury is impaneled and sworn (other than for speedy trial purposes) is further supported by the distinction between the oaths taken by prospective jurors and selected jurors, which was notably pointed out and emphasized to the panels by counsel for Mr. Hunter during voir dire. A juror does not swear to "render a true verdict **according to the law** and the evidence" until after they have been selected and impaneled. Fla. R. Crim. P. 3.360 (Oath of Trial Jurors). When the twelve jurors and three alternate jurors

swore to follow the law on the afternoon of April 20th, 2023, section 921.141 (2023) had been signed into law, as such, this oath was to follow the present version of 921.141 (2023).

15. The defense may argue that the jurors had been questioned about the unanimity requirement prior to the Governor signing the bill. If so, the State has 4 responses: First, the defense had the opportunity prior to the swearing of the jury to inquire of the jurors about their ability to follow the new procedural law. Both Defendants rejected the opportunity to make any such inquiries. Second, the jurors' oath when they were sworn was to follow the law as instructed by the Judge. It does not matter what procedure the jurors are instructed to follow; the important issue is for the jurors to follow the procedure as instructed by the Judge. Third, during voir dire, the topic of the possible change in the law arose when certain jurors brought up the issue. At that time the Court instructed the jurors that the law that they needed to follow would be the law that the Court instructed them on. Fourth, the Defendants' interest in selecting jurors remained the same regardless of what procedural law was going to apply. Both Defendants wanted jurors who would lean against imposition of the death penalty. The change in the procedural law during the voir dire process did not affect the Defendants' motivation in selecting jurors.
16. Defendants have no right to the application of any procedure other than that in effect at the time this Court instructs the jurors. That Defendants did not stand trial sooner can only be attributed to their own efforts to avoid the consequences of their conduct.

WHEREFORE, the undersigned Assistant State Attorney requests that this Court enter an Order ruling that section 921.141 (2023) of the Florida Statutes is to be the law governing the Defendants' sentencing proceeding.

R.J. LARIZZA
STATE ATTORNEY

By: _____

Andrew J. Urbanak
Assistant State Attorney
Florida Bar No.: 76713
ESERVICEVOLUSIA@SAO7.ORG

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy hereof has been furnished by e-file/delivery to: Ann Finnell, Gonsalo Andux, Garry Wood and Allison Miller, on April 21st, 2023.

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Photograph