

KAITLYN M. PAYNE

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September 15, 2025

Mr. Travis Mydock  
Chair Seventh Judicial Nominating Commission  
Seventh Judicial Circuit  
Saint Johns County, Florida

Dear Mr. Mydock and the Honorable Commissioners,

I want to sincerely thank you for your time and consideration. I also want to extend my gratitude to the entire Judicial Nominating Commission for reviewing my application and granting me the opportunity to be considered for the Circuit Court Judge appointment here in the Seventh Judicial Circuit.

My ties to this community run deep. Since arriving in Florida at just eighteen (18) years old, my life has been fully and completely devoted to the people living within the Seventh Judicial Circuit. I am wholeheartedly committed to serving this community honorably, and if granted the opportunity to sit on the Circuit Court bench, to treating everyone who appears before me with fairness, equality, and respect.

Over the course of my prosecutorial career spanning nearly twelve years with the State Attorney's Office, combined with my current work in private practice covering multiple facets of the law, I have developed the experience, knowledge, and temperament required to serve effectively as a Judge. I am confident that, if honored with this appointment, I will defend the seat vigorously when it comes time for reelection. You can trust that my experience and expertise in running campaigns will serve me well if that time comes.

I humbly ask that you consider sending my name forward to the Governor for his consideration. I promise you, and the committee, that if I am selected for this great responsibility, I will not disappoint.

Thank you again for your time, your consideration, and for your service on the Seventh Judicial Circuit Judicial Nominating Commission. It means a great deal to me and to the community we both serve.

Respectfully,



Kaitlyn Mairs Payne

**JUDICIAL NOMINATING COMMISSION**

**SEVENTH JUDICIAL CIRCUIT OF FLORIDA**

**APPLICATION FOR NOMINATION TO THE SEVENTH  
JUDICIAL CIRCUIT OF FLORIDA CIRCUIT COURT**

**KAITLYN MAIRS PAYNE**



# APPLICATION FOR NOMINATION TO THE SEVENTH JUDICIAL CIRCUIT 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:** Kaitlyn Mairs Payne **Social Security No.:** [REDACTED]

**Florida Bar No.:** 99539 **Date Admitted to Practice in Florida:** 9/27/2012

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.

**The Law Office of Shorstein and Lee, LLC.**  
**Associate Attorney**  
**310 Paseo Reyes Drive**  
**Saint Augustine, Florida 32095**

**Alternate Address:**  
**305 Kingsley Lake Drive Suite 701**  
**Saint Augustine, Florida 32092**

**Telephone:** 904-829-3035

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]

**I have lived at the above address since February 2020. I have resided in Florida since August 2005.**

**I can be reached on my cell phone at [REDACTED]**

**My Preferred E-mail Address is [REDACTED]**

3. State your birthdate and place of birth.

**I was born on March 22, 1987 in Saint Peters Hospital located in New Brunswick, New Jersey 08901**

4. Are you a registered voter in Florida (Y/N)? **Y**
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 Supreme Court (Florida Bar), admitted on September 27, 2012**

**I have not been suspended or resigned from admission in the above jurisdiction.**

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

**Prior to my marriage on July 21, 2019, I was known by Kaitlyn Nicole Mairs.**

#### **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).

#### **Florida Coastal School of Law**

Attended January 2010 to May 2012

Juris Doctor, Received May 5, 2012

#### **New York Law School**

Attended June to July 2011

Summer Semester

Degree not received or requested

#### **Flagler College**

Attended August 2005 to April 2009

Bachelor of the Arts, received April 25, 2009

Major in English, Double Minor in Pre Law and History

**Spotswood High School**

Attended September 2001 to June 2005  
High School Diploma, Received June 2005

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.

**Florida Coastal School of Law**

**Student Bar Association Senator, 2011-2012**

**Florida Coastal Republicans Association, 2011**

**Jacksonville Area Legal Aid, Volunteer, 2011**

**Flagler College**

**Commencement Speaker for the 2009 Class**

**Presidents Award for Leadership- 2009**

**Flagler College Strategic Planning Committee- 2009**

**The American Israel Public Affairs Committee, Delegate- 2009**

**Leadership Saint Johns County Presenter- 2008**

**College Leadership Florida, Delegate- 2008**

**Darwin E. White Scholarship- 2007-2009**

**Student Government Association**

President-Partial Fall Semester 2007-2009

Vice President- Partial Fall Semester 2007

Senator of the Year Award- 2007

Campus Concerns Director-2006-2007

Member- 2005-2006

**Phil Alpha Omega- Women's Community Service Club**

Sisterhood Award- 2007

Social Committee Chair- 2007-2008

**The Academy of Florida Independence Colleges and Universities**

Vice Organizational Chair- 2008-2009

Regional Chair- 2006-2008

**Flagler College Cheerleading Team**

Coaches Award- 2006

Captain- 2005- 2006

**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.

**The Law Office of Shorstein and Lee, LLC.**

Associate Attorney, August 19, 2024- Present  
310 Paseo Reyes Drive  
Saint Augustine, Florida 32092/  
305 Kingsley Lake Drive Suite 701  
Saint Augustine, Florida 32092

**Flagler College**

Adjunct Criminal Law Professor  
August 2024 to December 2024  
74 King Street Saint Augustine, Florida 32084

**Office of the State Attorney- 7<sup>th</sup> Judicial Circuit**

**State Attorney R.J. Larizza**

Career Criminal & Sex Crimes Attorney  
October 2022 to July 2024  
4010 Lewis Speedway Saint Augustine, Florida 32084

**Office of the State Attorney- 7<sup>th</sup> Judicial Circuit**

**State Attorney R.J. Larizza**

Drug Unit and Internet Crimes Against Children Attorney  
September 2019- October 2022  
4010 Lewis Speedway Saint Augustine, Florida 32084

**Rover.com**

Pet Sitter  
January 2016-January 2019  
711 Capitol Way S., Suite 204, Olympia, WA 98501  
(Online application-based employment involving providing care for animals)

**Office of the State Attorney- 7<sup>th</sup> Judicial Circuit**  
**State Attorney R.J. Larizza**  
Felony Trial Attorney  
September 2014- September 2019  
4010 Lewis Speedway Saint Augustine, Florida 32084

**Office of the State Attorney- 7<sup>th</sup> Judicial Circuit**  
**State Attorney R.J. Larizza**  
Misdemeanor Trial Attorney  
March 2014 to September 2014  
4010 Lewis Speedway Saint Augustine, Florida 32084

**Office of the State Attorney- 7<sup>th</sup> Judicial Circuit**  
**State Attorney R.J. Larizza**  
Misdemeanor Trial Attorney  
February 2013 to February 2014  
251 North Ridgewood Avenue, Daytona Beach, Florida 32114

**Accelerated Tax Solutions**  
Tax Attorney  
August 2012 to January 2013  
9428 Baymeadows Rd Suite 550, Jacksonville, FL 32256

**Office of the State Attorney- 7<sup>th</sup> Judicial Circuit**  
**State Attorney R.J. Larizza**  
Certified Legal Intern  
January 2012 to May 2012  
Saint Augustine, Florida 32084

**Jacksonville Area Legal Aid**  
Family Law Clinic Assistant  
September 2011- December 2011  
126 W Adams St # 101, Jacksonville, FL 32202

**Mayo and Russ (now Mayo Law)**  
Legal Intern  
May 2011- August 2011  
743 State Route 18 East Brunswick, New Jersey 08816

**Rick Mullaney**  
**Duval County Mayoral Campaign**  
Assistant to the Campaign Manager  
2010 to March 2011

*Explanation of Non-Legal Employment- During law school, I was offered the unique opportunity to help lead a mayoral campaign in Jacksonville, Florida. At the beginning, the campaign team consisted of just myself and two other staff members, allowing me to take on a wide range of responsibilities. I had always been drawn to public service and envisioned contributing either as a candidate or behind the scenes. This experience clarified that my true passion was in running for a public service position myself. While the campaign did not result in a win, it solidified my understanding of where I wanted my future path to head. In my role, I organized campaign events, coordinated host committees led telethon efforts, and participated in extensive grassroots outreach, including door-to-door canvassing to help build voter awareness and engagement.*

**Judge Emmet F. Ferguson III**

Judicial Intern

2010

Jacksonville, Florida

**Harrys Seafood Bar & Grille**

Hostess/Server/Bartender

September 2009- May 2010

46 Avenida Menendez, St. Augustine, FL 32084

(904) 824-7765

*Explanation of Non-Legal Employment- To help provide funding for my law school education I worked as a hostess, server, and occasional bartender at a local establishment in downtown Saint Augustine, Florida.*

**Dane Construction (Patrick Buckley)**

Administrative Assistant

2009

401 Livingston Avenue, New Brunswick NJ 08901

(732) 247-2351

*Explanation of Non-Legal Employment- In this role, I supported the owner of the company in organizing and managing business transactions related to large-scale commercial construction projects, gaining valuable insight into business operations and deal structures.*

**Saint Johns County School District**

Extended Day Aid at R.B. Hunt Elementary School

2008-2009

125 Magnolia Dr, St. Augustine, FL 32080

*Explanation of Non-Legal Employment- In this position, I provided after-school support by assisting with homework, facilitating educational activities and science experiments, leading recreational sports, and guiding students through current events research in the computer lab. This experience deepened my commitment to youth development and community engagement.*

**Leon Law Office**

Personal Legal Assistant

2007

5095 US Hwy 1 S, St. Augustine, FL, 32086

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 an Associate Attorney within the Law Office of Shorstein and Lee, LLC located in Saint Johns County, Florida. The firm has been around since 2006. Working with such an established firm has allowed me to come in and hit the ground running in the short amount of time since I began my employment. I have been able to work on criminal defense cases ranging from juvenile to first degree punishable by life felonies. Further, I represent clients in civil matters, including the preparation of Estate Planning documents. Lastly, I help clients with family law matters including injunctions for protection against domestic violence and divorces.**

**In my previous practice as a prosecutor in the Career Criminal Unit with the State Attorneys Office I was afforded the opportunity to handle a diverse array of cases. I would meet with victims and witnesses involved in high level cases, review evidence, and ultimately make decisions in arrest and non-arrest cases. I would attend hearings, depositions, and prepare cases up through and including trial.**

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	_____1%
Federal Trial	_____	%	Criminal	_____98%
Federal Other	_____	%	Family	_____1%
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:

N/A

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

Jury?	<u>38</u>	Non-jury?	<u>3</u>
Arbitration?	<u>                    </u>	Administrative Bodies?	<u>                    </u>
Appellate?	<u>                    </u>		

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.*

**a. CF22-1432- State v. Andrew James Shepherd- Lewd and Lascivious Molestation Victim Less Under 12 years of Age**

A. Judge: R. Lee Smith

B. Opposing Counsel: David Salisbury, [REDACTED]

[David@salisburycriminallaw.org](mailto:David@salisburycriminallaw.org)

- b. **MH10-10- State v. Neil Andrew Nichols- Jimmy Ryce Civil Commitment Trial**
  - A. Judge: Howard M. Maltz
  - B. Opposing Counsel: Ryan M. Belanger, [REDACTED]  
[belanger.ryan@pd7.org](mailto:belanger.ryan@pd7.org)
  
- c. **CF22-1154- State v. Jonathan Manchester- Traveling to Meet a Minor, Soliciting a Child for Unlawful Sexual Conduct Using Computer Services or Devices, Attempted Lewd & Lascivious Conduct, Unlawful Use of a Two-Way Communication Device**
  - A. Judge: R. Lee Smith
  - B. Opposing Counsel: Derrick H. Smith, [REDACTED]  
[Smith.derrick@pd7.org](mailto:Smith.derrick@pd7.org)
  
- d. **CF23-349- State v. Matthew Barrington- Soliciting a Child for Unlawful Sexual Conduct Using Computer Services or Devices and Unlawful Use of a Two-Way Communication Device**
  - A. Judge: R. Lee Smith
  - B. Opposing Counsel: Tyler Jeffrey Williams, [REDACTED]  
[Williams.tyler@pd7.org](mailto:Williams.tyler@pd7.org)
  
- e. **CF22-1504- State v. George Edward Moody, III- Lewd and Lascivious Molestation Defendant over 18 Victim Under 12, Sexual Battery on a Person Less than 12 Years of Age (two counts)**
  - A. Judge: R. Lee Smith
  - B. Opposing Counsel: David Salisbury, [REDACTED]  
[david@salisburycriminallaw.org](mailto:david@salisburycriminallaw.org)
  
- f. **CF23-590- State v. James Thomas Ford- Human Trafficking, Traveling to Meet a Minor, Soliciting a Child for Unlawful Sexual Conduct Using Computer Services or Devices, Attempted Lewd & Lascivious Conduct, Unlawful Use of a Two-Way Communication Device**
  - A. Judge: R. Lee Smith
  - B. Opposing Counsel: Kevin A. Raudt, [REDACTED]  
[raudtlaw@aol.com](mailto:raudtlaw@aol.com)

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.*

A. **CT24-2245-State v. Timothy Faison**

- i. Assistant State Attorney Bailie McLaughlin (904) 209-1620
- B. MM25-481-State v. Nicholas Lee Bendinelli**
  - i. Assistant State Attorney Susan Bexley (386) 313-4300
- C. 2025MM275- State v. Joeseeph Shields**
  - i. Assistant State Attorney Phillip Bavington (904) 269-6319
- D. CF24-963/MM25-1773- State v. Julian Chavez**
  - i. Assistant State Attorney Valeriy Avanesov (904) 209-1620
- E. CT25-0662 - State v. Matthew Phillips**
  - i. Assistant State Attorney Rachel Pederson (904) 209-1620
- F. MM25-1860- State v. Matthew Wilcox**
  - i. Assistant State Attorney Bailie McLaughlin (904) 209-1620

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.

**During the last year of my career, I have appeared in court roughly four (4) to six (6) times a month. In the four years preceding that, prior to changing my employment, I appeared in court ten (10) to fifteen (15) times a month depending on if I needed to cover for other attorneys or if I was in trial. During these four years I would attend court frequently to handle my own Career Criminal Attorney calendar, cover specialty courts, assist in hearings/trials for other attorneys, and every eight (8) weeks I was on call for first appearances on the weekend.**

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.

- i. **Shannon Labuda 2012 045192 MM- Domestic Violence Battery & Violence of Pre-Trial Release- Trial March 27, 2013**

Judge: The Honorable Bryan Feigenbaum  
Phone: (386) 257-6074  
E-Mail: [BFeigenbaum@circuit7.org](mailto:BFeigenbaum@circuit7.org)

Prosecution: Kaitlyn Mairs Payne (at the time, I was not yet married and went by my maiden name, Mairs)

Defense Counsel: Brian Hyer  
Telephone: [REDACTED]  
E-Mail: [brain.hyer@pd7.org](mailto:brain.hyer@pd7.org)

While this case may seem insignificant because it is a misdemeanor from 2012, it has remained deeply influential throughout my career. I had been a prosecutor for just over a month and a half when I picked this jury in March 2013. It was the first case I ever tried as the lead attorney. Although I had participated in a few trials as second chair or helped with trials as a CLI, this was my first time at the helm.

I still remember how nervous I was walking into that courtroom, not just because it was my first trial, but because of the emotional weight of the case. It involved a Violation of Pre-Trial Release, where a mother had taken her teenage daughter to a drug house, left her outside in the car, and went inside to ingest narcotics. The second charge was for Battery by the same mother against her daughter. The case was complex and emotionally charged, highlighting deep family dysfunction and the intersection with the criminal justice system. I felt the true weight of responsibility, it was clear this young girl was counting on me to be a voice for her, to seek the justice she deserved. I filed pretrial motions, argued against defense pretrial motions, and prepped the witnesses involved in the case. I prepared and presented both the opening and the closing statements and questioned the witnesses who were called to the stand. At the conclusion of the trial, the jury found the defendant Guilty of the Violation of Pre-Trial Release and Not Guilty of the Battery. Afterward, the young girl victim pulled me into the hallway, wrapped her arms around me, and thanked me for fighting for her when no one else in her life ever had. When I told her it was my first trial, she was astounded. She told me how well I had done and that she knew I would go on to change other people's lives just as I had changed hers.

While I did not remain in contact with her, her voice still echoes in my mind. I dedicated much of my career as a prosecutor to helping young victims find their voice and their justice and I credit a lot of that to this specific case.

- ii. **James Ford- CF23-590- Human Trafficking, Traveling to Meet a Minor, Soliciting a Child or Person Believed to be a Child for Unlawful Sexual Conduct Using Computer Services or Devices, Attempted Lewd and Lascivious Battery, and Unlawful Use of a Two Way Communication Device- Trial Dates: May 16, 2024**

Judge: The Honorable R. Lee Smith

Prosecution: Kaitlyn Mairs Payne  
Valeriy Avanesov: Telephone: (904) 209-1644 E-Mail: [AvanesovV@sao7.org](mailto:AvanesovV@sao7.org)

Defense Counsel: Kevin Raudt, Esq.  
Telephone: [REDACTED]  
E-Mail: [RaudtLaw@aol.com](mailto:RaudtLaw@aol.com)

This case stemmed from an Internet Crimes Against Children (ICAC) sting operation conducted by various agencies within the Northeast Florida ICAC Task Force during an undercover operation in Saint Johns County, Florida. The reason this case was particularly significant to me is because I was involved almost from the very beginning and ultimately had the opportunity to try the case and secure a life sentence conviction.

When I began working on ICAC cases in 2015, I regularly attended undercover operations hosted throughout Northeast Florida. This specific operation took place in April 2023, during a time when there was a notable increase in these types of crimes. Law enforcement and the State Attorney's Office were working closely to develop effective ways to deter individuals from traveling into Saint Johns County to prey on children.

Following thorough statutory analysis and discussion, it was determined that when an individual discussed exchanging money for commercial sexual activity with a minor, the appropriate charge should be Human Trafficking. As the law is written, it fit this fact pattern precisely and this case became one of the first Human Trafficking prosecutions I had the opportunity to try with this manner of charging.

I believe that by charging and prosecuting cases with these specific facts under the Human Trafficking statute, we have helped protect numerous children. When I reflect on this case, I feel proud to have contributed to safeguarding future generations of Saint Johns County children from those who would exploit their vulnerability.

As lead prosecutor, I handled all pre-trial litigation, plea negotiations, jury selection, jury instructions, and post-trial motions. After the trial concluded, I also argued the Motion for New Trial, which resulted in a hearing but was ultimately denied.

**iii. Michael McVey- MH17-0309- Involuntary Commitment of Sexually Violent Predator:  
Trial Dates: February 13-17, 2023**

Judge: The Honorable Howard M. Maltz

Prosecution: Kaitlyn Mairs Payne  
Olivia Bergert- Telephone: [REDACTED]

Defense Counsel: Ryan M. Belanger  
Telephone: [REDACTED]  
E-Mail: [belanger.ryan@pd7.org](mailto:belanger.ryan@pd7.org)

The case involving Mr. Michael McVey was my first exposure to the civil arena, and I was fortunate to gain that experience while still employed as a prosecutor. Mr. McVey was tried under the Florida Rules of Civil Commitment, or more commonly known as the Jimmy Ryce procedures. He was a 19-year-old male who, by his early teens, had already accumulated over a dozen sexual assault victims and had engaged in repeated sexual acts with the family canine.

Jimmy Ryce proceedings are reserved for the worst of the worst sexual offenders and are designed to ensure that individuals who are not ready to re-enter society without posing a threat remain in custody. When I reviewed Mr. McVey's case and expert reports, I was convinced that he was not ready to safely reintegrate into society. Therefore, the most appropriate and secure placement for him, his victims, and the public was the Florida Civil Commitment Center.

The trial was based almost entirely on expert testimony from multiple competing doctors. One doctor, initially retained by the State, had changed his opinion and ultimately ended up testifying for the defense, which created a unique set of facts. During the trial, Mr. McVey himself testified in front of one of his original victims, his biological sister. Following all of the testimony, the jury returned a recommendation for commitment.

After the trial, I spoke with the young woman victim. She expressed a sense of relief that she had not felt when he was originally incarcerated. She believed he would finally receive the treatment he needed and, perhaps one day, be able to live a life where he could contribute positively to society. In that moment, I felt that my efforts had truly protected the citizens of Saint Johns County from exposure to someone not yet ready to return to the community without a high risk of reoffending.

This case was significant to me because it gave me valuable insight into how the civil legal system operates. It was the first of several Jimmy Ryce civil commitment cases I had the opportunity to handle for the State Attorney's Office. Through this experience, I learned how to conduct interrogatories and take depositions of opposing parties, these were skills not typically used in my criminal law practice. It also marked my introduction to a completely different body of law, governed by civil, not criminal statutes and procedures.

I believe this experience helped sharpen my ability to quickly and effectively learn new areas of law, which will serve me well on the bench when I am presented with a wide variety of cases and legal areas

**iv. Andrew Shepherd- CF22-1432- Lewd or Lascivious Molestation by a Person 18 years of age or older Victim Less than 12 Years of Age- Trial Date: August 23, 2023**

Judge:	The Honorable R. Lee Smith
Prosecution:	Kaitlyn Mairs Payne The Honorable James Nealis: Telephone: (904) 255-1327
Defense Counsel:	David Arthur Salisbury II Telephone: [REDACTED] E-Mail: <a href="mailto:david@salisburycriminallaw.org">david@salisburycriminallaw.org</a>

My involvement in this case was as the lead prosecutor seeking to obtain a life conviction for Mr. Shepherd after he was placed on probation for committing sexual acts in front of his four (4) year old daughter, and then, within one year of being placed on probation, was accused of molesting her in a similar fashion. The reason this case is so significant to me is because it involved the youngest child I have ever had to put on the stand to testify against an abuser, let alone a biological parent.

The victim in this case was only five (5) years old at the time of the trial. She had not seen her father since the day of the incident, and she was very soft-spoken to begin with. On the eve of trial, we met at her hotel and spent hours building a relationship. We had Starbucks, ate ice cream, and finally discussed her testimony. The preparation for this trial was more than I had ever done before. Between all the pre-trial litigation and the preparation of her testimony, both in deposition and during trial, her words have been etched into my soul.

Unfortunately, the change in law dictating that children under the age of twelve (12) in sexual abuse trials could no longer be deposed took effect the day *after* the victim in this case was subjected to a deposition.

This case is significant because it taught me the importance of witness credibility in prosecuting cases. The case further taught me that no matter who the witness is, credibility must be weighed and judged individually. Even the word of a five-year-old should be taken with the same weight as an adult's if it is deemed credible.

The lessons I learned in this case, I believe, will help me on the bench because they will aid in my ability to ascertain credible evidence and use a reasonable, yet common-sense, approach to weighing the credibility of witnesses before ever making a ruling.

**v. Spencer Pearson- Attempted First Degree Murder with a Weapon (2 counts), Aggravated Battery Causing Serious Bodily Injury with a Weapon (3 counts)- Pled July 10, 2024**

Judge: The Honorable R. Lee Smith

Prosecution: Kaitlyn Mairs Payne

Sentencing Only: Jennifer Dunton- Telephone: [REDACTED]  
Sarah Thomas- Telephone: (904) 209-1620

Defense Counsel: Matthew R. Kachergus

Telephone: [REDACTED]

E-Mail: MKachergus@sheppardwhite.com

The reason why this case is so significant in shaping who I am as an attorney is for a multitude of reasons. First and foremost, it involved a young female on the brink of her senior year in high school becoming paralyzed after a horrific stabbing by an ex-boyfriend. The case was defended by an extremely skilled attorney in Northeast Florida known for his vigorous defense techniques. This was also the first case in which I went to a hospital to meet with a victim shortly after an incident occurred. I worked with the family throughout the criminal justice process and helped them deal with the high media presence on the case. With the media involved, every single step of the investigation and prosecution was highly scrutinized.

Over a year after the incident and after months of depositions, the defendant finally pled. My role the entire time had been as lead prosecutor, and I was the head of the case. When Mr. Pearson entered a plea on July 10, 2024, I had just 21 days left with the State Attorney's Office. At that point, I introduced the family and victims to another amazing prosecutor who would be

handling the case for the sentencing only. Ultimately, the two other prosecutors who stepped in for me after my departure were able to successfully argue for life in prison for Mr. Pearson.

Again, this case is significant because it first taught me that emotional involvement in a case, while necessary to give everyone the feeling that what happened to them matters, must also have appropriate boundaries to ensure that the process is done fairly. The case of Spencer Pearson showed me how a judge can practice judicial restraint and maintain the decorum of a courtroom even when, between media, highly emotional observers, and other extreme conditions, the environment is dictating otherwise.

Lastly, it taught me how small actions have lasting and eternal consequences. I learned that every action of a judge must be weighed out and considered in order to provide justice within the bounds of the law, so that no matter the side of an issue, closure can be found within the confines of the written law.

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.

**I have attached two writing samples that I myself have prepared, filed, and argued if necessary, in open cases which have now been closed.**

1. **An intent to admit child hearsay in a Sexual Battery and Lewd and Lascivious Battery case. (*Exhibit A*)**
2. **The State's response to a defendant's 3.850 post-conviction motion. (Due to a promotion that I received between filing this response and the hearing being scheduled I helped to prepare argument and legal analysis but a different prosecutor argued my response) (*Exhibit B*)**

#### **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.

**Judicial Nominating Commission for the Seventh Judicial Circuit of Florida, date submitted June 23, 2025, yes my name was certified for the Governor's Office for consideration.**

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.

**Not applicable**

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.

**Not applicable**

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.

**Not applicable**

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.

**Not applicable**

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.

**Not applicable**

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.

**Not applicable**

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.

**Not applicable**

## 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.

**Not applicable**

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.

**1. Rover.com**

- a. Pet sitter through an online application where people would contract with you to watch their pets while they were away at work or on vacation
- b. Years worked: 2016-2019
- c. Compensation received- Less than \$5,000.00 over the years worked

**2. Flagler College**

- a. Adjunct Professor teaching criminal law
- b. Years worked: Fall semester 2024
- c. Compensation received- \$1,500.00

## POSSIBLE BIAS OR PREJUDICE

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

**There are no classifications of litigants or cases that I believe would cause a conflict for me to sit on as a presiding judge. If I were to be appointed, I would follow the rules as cited in Rule 2.330, Fla. R. Gen. Prac. & Jud. Admin. and recuse myself from any case that calls for such action to be taken, including any cause wherein a family member is a witness. My husband is currently employed with the Florida Highway Patrol as a State Trooper working in their Troop G Criminal Interdiction Unit, while rare that he is involved in misdemeanor cases, any case involving him I would recuse myself from.**

## 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.

**Not applicable**

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.

**Not applicable**

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.

**2007-2009-** While the Student Government President at Flagler College I would commonly be called upon to deliver speeches to incoming students, give addresses about schoolwide development at on campus forums, and present to the Deans on student needs for the betterment of campus.

**2009-** Student Commencement Speaker- Flagler College

**2015-2024-** Over the course of my prosecutorial career I was given numerous opportunities to present trainings at the State Attorney's Office and to various Law Enforcement agencies on internet crimes against children, sex crimes, crimes of violence, domestic violence, proper report writing, and legislative and case law updates.

**2023-** I presented on prosecuting sex crimes to the newly inducted Sane Nurses at Ascension St. Vincents on County Road 210 in Saint Johns County, Florida.

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.

**Yes, in the Fall of 2024 I was asked to teach a Criminal Law class at my alma mater, Flagler College, in Saint Augustine, Florida. I co-taught the class with a colleague. The course title was Criminal Law 372, it solely pertained to an introduction to Criminal Law. The class took place from August 2024 through December 2024. I have attached the syllabus. (Exhibit C)**

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.

**None.**

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.

**Student Bar Association- Florida Coastal School of Law- 2011-2012**

**Volusia County Association for Women Lawyers, Member- 2013-2014**

**Saint Johns County Bar Association- Member- 2014-Present  
Lunch and Learn CLE co-chair 2018-2020 & 2021-2023**

**Florida Prosecuting Attorneys Association- 2013-2024**

**Saint Augustine Inn of Court, 2023-Present  
Incoming Co-Director of Membership (2025-2026)**

**7B Bar Grievance Committee Member- 2023- present**

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.

**Diocese of Saint Augustine, Cathedral Basilica of St. Augustine 2005-present**

**Tunnels to Towers, 2023-present**

**Cathedral Parish School, 2022-present**

**Federalist Society, Member 2025**

**The Rotary Club of Saint Augustine, Member 2025**

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.

**For much of the past ten years I was an Assistant State Attorney making my options for providing pro bono legal work extremely limited. For these reasons I always attempted to give back to my community in other ways through my church, my children's schools, or volunteering at my Alma Mater.**

**In the past year since joining private practice I have been able to work with my firm in providing consultations to individuals who do not have the means to retain representation. I have assisted in preparing documents, contacting law enforcement, and I have given general legal advice without charging a fee to the client.**

45. Please describe any hobbies or other vocational interests.

**As a proud mother of four, much of my personal time is joyfully centered around supporting my children's activities, ranging from gymnastics and football to dance and band. Our family calendar is filled with moments that keep us closely connected to our local schools and youth programs, where I remain actively involved.**

**When time does allow, my husband and I find fulfillment in exploring both our community and beyond. Whether it's hunting, fishing, or discovering new culinary experiences, we enjoy staying connected to our surroundings in meaningful ways. Some of our most cherished weekends are spent downtown in historic Saint Augustine dining and walking the cobblestone streets.**

**We also find peace and perspective on the water, often renting a boat to unwind or taking short trips to places like Orlando or Savannah, GA. I am particularly drawn to destinations that reflect the cultural richness and heritage of the places I value most, places rooted in history, community, and civic pride. My destinations often intersect with my passion for law enforcement, local government, and public service, reminding me of Saint Augustine.**

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.

**Not applicable.**

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

**Facebook: <https://www.facebook.com/INPEFESS/>**

**Instagram: <https://www.instagram.com/katypic3/>**

**Pinterest: <https://pin.it/3x1kC88n0>**

**Linked In:** [www.linkedin.com/in/kaitlyn-payne-b362bb248](http://www.linkedin.com/in/kaitlyn-payne-b362bb248)

## **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.

**Spouse: Phillip George Payne**

**Occupation: State of Florida, State Trooper, Florida Highway Patrol**

**Date of Marriage: July 21, 2019**

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.

**Name:** [REDACTED]

**Age:** 17

**Name:** [REDACTED]

**Age:** 7

**Name:** [REDACTED]

**Age:** 5

**Name:** [REDACTED]

**Age:** 4

## **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.

**No.**

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.

**Yes, I was a plaintiff in a personal injury lawsuit in 2005/2006. I was involved in a traffic crash with a semi-truck where two young females were killed and myself along with 3 others were substantially injured. The case occurred in Flagler County, Florida and was concluded via settlement.**

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?

**No.**

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 filed my taxes annually as required without issue.**

## 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.

**I can remember that even from an early age, my life has been shaped by a commitment to service, leadership, and justice. My journey toward hopefully one day being a member of the judiciary did not begin in the courtroom; it began in my community. I am from a tiny town in New Jersey, and I credit this small environment for molding me into the woman I am today. My journey began in that town, in the essential elements of that town, especially at our local church, and on the mat, helping to mentor young athletes through my cheerleading organization. These early experiences taught me the value of discipline, empathy, and serving as a role model; qualities I would keep with me throughout my life and that would later define my path in public service and law.**

**In high school, my dedication to civic engagement earned me the honor of being nominated to attend *Girls State*, a prestigious program run by the American Legion Auxiliary. This program selects high school juniors to immerse themselves in a hands-on experience with government and citizenship. While participants are selected at random, being chosen and participating in this program sparked in me a deep and lasting passion**

for governance, civic responsibility, and the legal system. I returned from that experience not just more informed, but more driven to be part of shaping justice and advocating for others.

That drive was tested when I moved to Florida, and within three months, experienced a life-altering tragedy. I was involved in a devastating car accident that claimed the lives of two close friends and injured three other individuals including myself. I not only had to endure the emotional trauma of that loss but was also thrust into the heart of the legal system through both a criminal prosecution/trial and a civil case. It was during this painful chapter that I saw the power the law has to impact lives. I was able to firsthand witness the importance of fairness, compassion, and of having individuals in the justice system who understand both the human and legal dimensions of their decisions.

I watched as the prosecutors, defense attorneys, and the Judges respectfully dealt with myself and my friends who survived and treated us fairly and just. I will never forget the actions of the Judges in that case and how those actions still have an impact on me to this day. That experience made me more than passionate about the law, it made me resilient and gave me a purpose as a young adult.

In the wake of that tragedy, I sought out leadership roles that allowed me to speak up, educate others, and create meaningful change. I ran for Student Government President of Flagler College. I was fortunate enough to be elevated from Vice President when the elected President was impeached my junior year and earned the trust of my peers to be elected for a second term in my Senior year. Within this role I developed initiatives, presented in classrooms, and facilitated debates. This period sharpened my communication skills, strengthened my ability to listen and represent others, and confirmed my calling to public service.

Driven by that calling, I joined the State Attorney's Office, determined to make a difference through the law. It wasn't an easy path. I applied for the position of Career Criminal Unit Prosecutor over six times before finally being selected. Each rejection could have discouraged me but instead, they taught me the value of perseverance, professionalism, and humility. All values I feel are essential to exude from the bench. That persistence paid off not only with the position but also with a deeper understanding of the justice system and my place within it.

All of these learning experiences, let them be mentoring youth, engaging in government, surviving personal tragedy, leading my peers, and persevering through professional challenges have shaped the person I am today. They have given me the compassion to understand people, the strength to stand firm in difficult decisions, and the wisdom to know the law is not just about rules that need to be followed, but about people's lives. I was shown that a judge's role is to call the balls and the strikes, but not to determine the strike zone. These are the qualities that make a good judge, and I believe I embody them.

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 am seeking the opportunity to serve as a Circuit Court Judge within the Seventh Judicial Circuit not out of ambition alone, but out of deep-rooted gratitude and unwavering commitment to the community that has given me so much. I moved to Saint Augustine, Florida, at the age of eighteen (18). Now, at thirty-eight (38) years of age, I have spent more years here than I did in my home state of New Jersey. The Seventh Circuit is not just where I live, it is not even just my home, it is truly a place I feel has captured my identity. Saint Augustine specifically is where I laid down roots, established my career, met my husband, started a family, and am now raising my children within the local Catholic school system. This community has shaped me, supported me, and made me who I am, and I am ready, willing, and able to give back by serving in the judicial capacity.**

**What separates me from other individuals is my understanding of the court system. While I possess professional experience within the system, I also possess personal experience. As an attorney, I have practiced across the legal spectrum, including prosecution, criminal defense, criminal civil, and family law. This broad experience has made me a well-rounded legal professional, prepared to consider cases from every angle and with an appreciation for the unique pressures each party faces. Additionally, I have been listed as a witness and victim in a legal case, giving me a rare and valuable perspective from the other side of the courtroom. I know what it feels like to put your trust in the justice system not as a practitioner, but as a person. This dual insight enables me to be especially empathetic, understanding, and fair.**

**If entrusted with the honor of being appointed as a Circuit Court Judge, I will approach the bench with humility, empathy, and a steadfast commitment to justice as it aligns with the law I am given. I firmly believe in judicial fairness and impartiality. Every individual deserves their day in court, and it is my duty to ensure they are heard with dignity and respect. I will not forget that each case involves real lives, real stories, and real consequences. I will take the time to listen, to weigh the facts, and to render decisions grounded in law, not in bias, assumption, or expediency. I believe I can do all of this while holding myself to strong case and time management guidelines enabling me to maintain a clean and efficient docket.**

**I do not view the role of a judge as one of unchecked power. I understand and deeply respect the doctrine of judicial restraint. My role is not to legislate from the bench or impose personal views but to apply the law faithfully, as written and intended by our legislators. I do not seek to be a ruler, but a fair and just referee who ensures the law is applied consistently and equitably. I am grounded enough to know that I do not have all the answers, and I will humbly seek guidance from mentors, colleagues, and those judges who have come before me with wisdom and experience.**

**My love for this community runs deep. This is an area of Florida that welcomed me as a teenager and raised me into adulthood. I have built a life here, formed lasting bonds, and dedicated my legal career to serving this community. I now feel called to give back in a way that matches the depth of my gratitude.**

**In all aspects of my personal and professional life, I have strived to be thoughtful, principled, and service-oriented. I now ask for the opportunity to serve The Seventh**

**Judicial Circuit from the bench, where I can ensure that justice is not only a principle but a practice that every member of our community can rely on.**

## 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.

1. The Honorable R.J. Larizza  
Title: State Attorney of the 7<sup>th</sup> Judicial Circuit  
Address: 251 N. Ridgewood Avenue, Daytona Beach, Florida 32114  
E-Mail: [LarizzaR@sao7.org](mailto:LarizzaR@sao7.org)  
Phone: (386) 239-7710
2. The Honorable Howard M. Maltz  
Title: Circuit Court Judge for the 7<sup>th</sup> Judicial Circuit  
Address: 4010 Lewis Speedway, Room 365 Saint Augustine, Florida 32084  
E-Mail: [HMaltz@circuit7.org](mailto:HMaltz@circuit7.org)  
Telephone: (904) 827-5600
3. The Honorable Christopher Ferebee  
Title: Circuit Court Judge for the 7<sup>th</sup> Judicial Circuit  
Address: 4010 Lewis Speedway, Room 344 Saint Augustine, Florida 32084  
E-Mail: [CFerebee@circuit7.org](mailto:CFerebee@circuit7.org)  
Telephone: (904) 827-5647
4. The Honorable R. Lee Smith  
Title: Circuit Court Judge for the 7<sup>th</sup> Judicial Circuit  
Address: 4010 Lewis Speedway, Room 344 Saint Augustine, Florida 32084  
E-Mail: [RLSmith@circuit7.org](mailto:RLSmith@circuit7.org)  
Telephone: (904) 827-5606
5. Commander George Harrigan  
Title: Commander/ Chief of Staff for The Saint Johns County Sheriffs Office  
Address: 911 Law Enforcement Way Saint Augustine, Florida 32092  
Telephone: (904) 209- 2443
6. Daniel Stewart  
Title: Retired Vice President of Student Services at Flagler College  
E-Mail: [REDACTED]  
Telephone: [REDACTED]

7. Ashanti Austin  
Title: Chief Administrative Officer for the St. Johns County Clerk of the Circuit Court and County Comptroller  
Address: 4010 Lewis Speedway Saint Augustine, Florida 32084  
E-Mail: [AAustine@stjohnsclerk.com](mailto:AAustine@stjohnsclerk.com)  
Telephone: (904) 819- 3623
  
8. Sung Lee  
Title: Partner at The Law Office of Shorstein and Lee  
Address: 305 Kingsley Lake Dr Suite 701, St. Augustine, FL 32092  
E-Mail: [gatorslee03@yahoo.com](mailto:gatorslee03@yahoo.com)  
Telephone: (904) 829-3035
  
9. Agent Travis Smith  
Title: Jacksonville Regional Operations Center Resident Agent in Charge  
Address: 921 North Davis Street Jacksonville, Florida 32209  
E-Mail: [TravisSmith@fdle.state.fl.us](mailto:TravisSmith@fdle.state.fl.us)  
Telephone: (904) 669-6979
  
10. Hank M. Coxe III. Esq.  
Title: Director at The Bedell Firm  
Address: 101 East Adams Street Jacksonville, Florida 32202  
E-Mail: [HMC@bedellfirm.com](mailto:HMC@bedellfirm.com)  
Telephone: (904) 353- 0211 extension 137

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(1), 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 15 day of September, 2025.

Kathryn Posos

Printed Name

[Signature]

Signature

State of Florida

County of St. Johns

Sworn to (or affirmed) and subscribed before me by means of

physical presence OR  online notarization

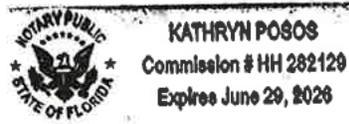
this \_\_\_ day of September 15, 2025.

By Kathryn Posos

Personally known \_\_\_

Produced ID \_\_\_

Type of Identification \_\_\_\_\_



Kathryn Posos

Signature Notary Public

Printed name of Notary Public

(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: 09/15/2025- \$137,320.18**

**Last Three Years: 2022: \$80,439.96    2023: \$116,223.59    2024: \$157,727.00**

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

**Current Year-To-Date: 09/15/2025- \$137,320.18**

**Last Three Years: 2022: \$80,439.96    2023: \$116,223.59    2024:        \$157,727.00**

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

**Current Year-To-Date: 09/15/2025: \$0**

**Last Three Years: 2022: \$0    2023: \$0    2024: \$1,500.00 (Flagler College Professor of Criminal Law)**

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: 09/15/2025: \$0**

**Last Three Years: 2022: \$0    2023: \$0    2024: \$1,500 (Flagler College Professor of Criminal Law)**

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: 09/15/2025: \$0**

**Last Three Years: 2022: \$0    2023: \$0    2024: \$1,386.00 (Flagler College Professor of Criminal Law)**

**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 June 11th, 2025 was \$ 126,697.32

**PART B - ASSETS**

**HOUSEHOLD GOODS AND PERSONAL EFFECTS:**

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

The aggregate value of my household goods and personal effects (described above) is \$ 25,000.00

**ASSETS INDIVIDUALLY VALUED AT OVER \$1,000:**

DESCRIPTION OF ASSET (specific description is required – see instructions p. 3)	VALUE OF ASSET
Cash: Bank of America Checking and Savings Accounts	\$55,727.52
Vehicle- 2005 GMC Yukon	\$2,944.00
Intangible Property: State of Florida Pension	\$22,058.40
Intangible Property: Florida 529 Plan	\$30,285.95
Vehicle- 2012 Z71 Chevrolet Tahoe	\$6,700.00
2019 Z71 Chevrolet Silverado	\$15,883.00
Intangible Property: Charles Schwab Roth IRA	\$7,465.45
Real Estate: Primary Residence- 74 Estero Court Saint Augustine, Florida 32084	\$673,700.00

**PART C - LIABILITIES**

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

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
Rocket Mortgage (Mortgage)	\$382,929.37
Vystar- HELOC	\$28,165.58

**JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:**

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
N/A	

**PART D - INCOME**

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

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

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

NAME OF SOURCE OF INCOME EXCEEDING \$1,000	ADDRESS OF SOURCE OF INCOME	AMOUNT
The Law Office of Shorstein and Lee, LLC	305 Kingsley Lake Drive Suite 701 Saint Augustine, Florida 32092	\$137,320.18

**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
N/A			

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

	BUSINESS ENTITY #1	BUSINESS ENTITY #2	BUSINESS ENTITY #3
NAME OF BUSINESS ENTITY	N/A		
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.

**STATE OF FLORIDA**

**COUNTY OF** ST. JOHNS

Sworn to (or affirmed) and subscribed before me this 15th day of September 2025 by Kathryn Posos

Kathryn Posos

(Signature of Notary Public—State of Florida)

Kathryn Posos

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

Personally Known  OR Produced Identification

Type of Identification Produced \_\_\_\_\_



**KATHRYN POSOS**  
 Commission # HH 202129  
 Expires June 29, 2026

[Handwritten Signature]  
 SIGNATURE

# 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: 09/15/2025

JNC Submitting To: 7<sup>th</sup> Circuit

Name (please print): Kaitlyn Payne

Current Occupation: Associate Attorney

Telephone Number: [REDACTED]

Attorney No.: 99539

Gender (check one):  Male  Female  X

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

County of Residence: Saint Johns

FLORIDA DEPARTMENT OF LAW ENFORCEMENT

DISCLOSURE PURSUANT TO THE  
FAIR CREDIT REPORTING ACT (FCRA)

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

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

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

Haitlyn Mairis Payne  
Printed Name of Applicant

[Handwritten Signature]  
Signature of Applicant

Date: 9/15/25

# **Exhibit A**

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

CASE NO: CF22-1504

STATE OF FLORIDA

VS.

GEORGE EDWARD MOODY III,  
DEFENDANT.

---

**NOTICE OF STATE'S INTENTION TO INTRODUCE CHILD HEARSAY EVIDENCE**

COMES NOW, the State of Florida, by and through the undersigned Assistant State Attorney, pursuant to Florida Statute § 90.803(23), and hereby gives notice of its intent to offer as evidence in the trial of the above-styled cause the following statements made by the victim A.G.C., who at the time of the making of the statements concerning the alleged incidents of sexual abuse, had the physical, mental, emotional or developmental age of six (6). In support of this motion, the State would show the following:

1. A.G.C. was born on September 07, 2015 and was under the age of 16 at the time of the offense charged in instant case.
2. Defendant is charged with two counts of Sexual Battery on Person less than 12 years of age, and one count of Lewd or Lascivious Molestation on a Person less than 12 years of age.

**I. STATEMENTS**

- a. All statements made to Hannah Cardenas, mother of A.G.C., on December 21, 2021. After Hannah Cardenas picked A.G.C. up, A.G.C. disclosed to her mother that the defendant had been brushing her teeth and washing her legs with his private parts. A.G.C. disclosed to Hannah Cardenas that the sexual acts happened in the master bedroom. A.G.C. disclosed to Hannah Cardenas that the defendant told her if she told anyone he would spank her.
- b. All statements made to Shayla Rodriguez, aunt of A.G.C., on December 21, 2021. A.G.C. disclosed to her aunt Shayla Rodriguez that on December 21, 2021 the defendant blindfolded her with his bonnet and then washed her legs with his private part. A.G.C. disclosed to Shayla that she knew it was his private part because the defendant had done this before and A.G.C. had seen his private part. A.G.C. also disclosed that in the past the defendant has made her brush her teeth with his penis and she has thrown up.
- c. On or about December 21, 2021, A.G.C. was interviewed by Child Protection Team Case Coordinator Eric Johnson at the First Coast Child Protection Team office. The interview was audio/video recorded and has been provided to counsel for Defendant. The State intends to admit all statements made by A.G.C. to Eric Johnson during the above-mentioned forensic interview. In sum, A.G.C. disclosed the following:
  - i. Defendant touches A.G.C. inappropriately with his penis.
  - ii. Defendant had A.G.C. blindfolded and touched her with his penis by putting his penis into her mouth.

- iii. Defendant touched A.G.C. on her vagina with his penis.
- iv. Defendant would "brush her (A.G.C) teeth" with his penis.
- v. Defendant would make her go faster while he was "brushing her teeth" and it would make her throw up, she would "feel the wet part and stuff, that would make her want to throw up".
- vi. Defendant has put honey on his penis to help A.G.C. brush her teeth with his privates.
- vii. Defendant would wash A.G.C's legs with his private part.
- viii. Defendant told A.G.C. to keep the teeth brushing and washing of her legs with his private parts a secret or he would give her a butt whipping.
- ix. These events happened both in her old house and in the master bedroom of the house she was living at in December 2021.

(For the full statement refer to the DVD of the forensic interview previously provided in discovery).

## **II. RELIABILITY OF THE HEARSAY STATEMENTS OF A.G.C.**

- d. The above-described statements made by the child victim, A.G.C., are reliable for the following reasons:
  - i. A.G.C. was, at the time of making the statements, six (6) years of age, and displayed the mental, physical and emotional capacity of a typical six-year-old.
  - ii. A.G.C.'s maturity level is that of a typical six-year-old.
  - iii. A.G.C. is able to distinguish between reality and fantasy.
  - iv. The language and terminology used by A.G.C. is consistent with her age and experience.
  - v. A.G.C. disclosed the sexual abuse in a child friendly environment, away from the Defendant.
  - vi. The defendant is a father figure to A.G.C. and she referred to him as dad.
  - vii. The statements made by A.G.C. were both spontaneous and made in response to open ended questions.
  - viii. The statements made by A.G.C. were stated with specificity.
  - ix. The statements do not contradict one another.
  - x. There is no evidence of any improper influence on A.G.C.
  - xi. Eric Johnson is trained in conducting forensic interviews of children and asked non-leading questions.
  - xii. The time, content and circumstances surrounding the statements made to the witnesses indicate reliability.

WHEREFORE, the State requests that this Honorable Court admit into evidence at trial the testimony of Hannah Cardenas, Shayla Rodriguez and Eric Johnson, as well as the video-taped encounter regarding the same.

R.J. LARIZZA

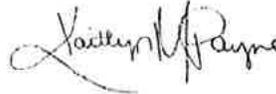
STATE ATTORNEY



\_\_\_\_\_  
Kaitlyn Mairs Payne  
ASSISTANT STATE ATTORNEY  
Florida Bar No.: 99539  
4010 LEWIS SPEEDWAY SUITE 2022  
ST AUGUSTINE, FL 32084  
(904) 209-1620  
ESERVICESTJOHNS@SAO7.ORG

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy hereof has been furnished by mail/delivery to DAVID SALISBURY, 144 Orchard Lane, Saint Augustine, Florida 32095 on January 24<sup>th</sup>, 2023.



\_\_\_\_\_  
Kaitlyn Mairs Payne  
ASSISTANT STATE ATTORNEY  
Florida Bar No.: 99539

# **Exhibit B**

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

STATE OF FLORIDA,

CASE NO: 2016-CF-317

vs.

MARIBELLE ILARRAZA,

Defendant.

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

COMES NOW, the STATE OF FLORIDA (hereinafter "the State"), by and through the undersigned Assistant State Attorney, and hereby responds as directed by this Honorable Court to Defendant's Motion to Vacate or Set Aside Conviction and Sentence, filed pursuant to Rule 3.850, Florida Rules of Criminal Procedure. The State moves that all relief be summarily denied as legally insufficient, or, alternatively, that any claims not summarily denied be set for an evidentiary hearing. In support thereof the State would show:

**PROCEDURAL HISTORY**

Defendant, MARIBELLE ILARRAZA (hereinafter "Defendant"), was charged with two counts of driving under the influence (DUI) causing seriously bodily injury with impairment from alcohol and/or marijuana or operating a motor vehicle with an unlawful blood alcohol greater than 0.08, alternatively. Defendant opted for a jury trial on May 23-24, 2017 and was convicted on both counts. At the sentencing hearing, the trial court imposed two consecutive five year prison sentences and Defendant's license was revoked for life. On March 25, 2020, Defendant filed a motion to vacate or set aside conviction and sentence, in which she asserts five Grounds for ineffective assistance of her trial counsel Matthew Leibert (hereinafter "Mr. Leibert").

**STANDARD OF REVIEW**

Ineffective assistance of trial counsel claims must be analyzed using the two prong test announced in *Strickland v. Washington*, 466 U.S. 668 (1984). The first prong of *Strickland* requires Defendant to identify particular acts or omissions by counsel that are shown to be outside of the broad range of reasonable assistance

under prevailing professional standards. *Id.* at 690. The second prong of the *Strickland* test requires a defendant to show prejudice as a result of counsel's deficient performance.

The applicable standard as to the deficient performance prong is reasonably effective counsel, not perfect or error-free counsel. In evaluating this first prong, courts are required to: (a) make every effort to eliminate the distorting effects of hindsight by evaluating the performance from counsel's perspective at the time, and (b) indulge in a strong presumption that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment with the burden on the claimant to show otherwise. *Coleman v. State*, 718 So.2d 827 (Fla. 4th DCA 1998).

A claim of ineffective assistance of counsel is sufficient to warrant an evidentiary hearing only where the defendant alleges specific facts, not conclusively rebutted by the record, that demonstrate deficient performance by defense counsel and resulting prejudice. *Mendyk v. State*, 592 So.2d, 1076, 1079 (Fla. 1992); see also *Turner v. State*, 570 So.2d, 1114, 1114-15 Fla. 5th DCA 1990). Where the Court's files and records conclusively refute the movant's ineffective assistance claim or the claim as pled is facially insufficient, it may be summarily denied without an evidentiary hearing. *Parker v. State*, 904 So.2d 370 (Fla. 2005). Furthermore, a court considering a claim of ineffectiveness of counsel need not make a specific ruling on the performance component of the test if it is clear that the prejudice component is not satisfied. *Maxwell v. Wainwright*, 490 So. 2d 927, 932 (Fla. 1986).

The State does not concede that Defendant's statement of facts is accurate or controlling and submits that the actual record itself is the most reliable source of information concerning the facts of this case. Furthermore, a court considering a claim of ineffectiveness of counsel need not make a specific ruling on the performance component of the test if it is clear that the prejudice component is not satisfied. *Maxwell*, 490 So.2d at 932 (citations omitted).

## ARGUMENT

### I. Defendant's Request for Relief as set forth in Ground One

Defendant's assertions in Ground One are without merit. Defendant claims that defense counsel was ineffective for failing to investigate and present witnesses. Defendant asserts that testimony from Immanuel Odonkana, a truck driver who witnessed the collision, Pablo Gonzalez, the passenger in the car that Defendant

was driving at the time of the collision, and Sarah Shigley, a co-worker who was with Defendant the evening of the collision, would have been relevant to a reasonable jury as possible exculpatory evidence and lack of such testimony constituted counsel error and prejudiced the outcome. The State disagrees. Defense counsel's representation was not only effective but also legally prudent.

Defendant claims that testimony from each of the above-named witnesses would have gone to the issue of impairment and whether Defendant was indeed impaired beyond the legal limit at the time of the collision. Defendant first argues that Immanuel Odonkana would have testified that he did not notice any visual signs of impairment at the scene, such as a staggered gait, slurred speech, or odor of alcohol. Odonkana indicated that he was in close proximity to Ilarraza and she was pacing back and forth, and he unquestionably would have noticed if she had been stumbling, or otherwise appeared to be intoxicated. Pablo Gonzalez would have testified to something of similar nature; that he did not notice any signs of impairment although admitting to the fact that he and Defendant did consume alcohol and smoke marijuana the night of the incident. Sarah Shigley would have testified to same, and that while with Defendant at her house, they did not consume any alcohol or marijuana.

The State contends, failure to present this evidence to a jury was of no consequence because it is simply lay witness testimony, and the State proved impairment beyond a reasonable doubt by heavily relying on the blood samples Defendant provided the night of the crash. Defendant consented to the blood sample being taken. The blood samples were returned containing a blood alcohol content (BAC) of .116, exceeding the legal limit, and traces of marijuana use which could also have contributed to impairment. A reasonable jury would have, and did in this case, relied on this evidence heavily while adjudicating the issue of impairment beyond the legal limit. Defendant fails to address in her motion that a reasonable jury could have given more weight to the blood samples and scientific evidence over live testimony when deciding impairment. For this reason, Defendant cannot show that there is a reasonable probability a jury would have decided differently had they been presented the testimony.

Defendant relies on *Light v. State*, 796 So. 2d 610, 612 (Fla. 2d DCA 2001) to support her claim that additional testimony from the abovementioned witnesses might have changed the outcome. The instant case though is distinguishable from *Light v. State*. The issue in *Light* was whether the defendant pointed a gun at an officer. The defendant in *Light* took the stand to testify that he did not point a gun, and defense counsel presented

no other corroborating witnesses to support defendant's testimony, nor did any independent investigation as to if there were any other witness besides the adversely testifying police officer. The trial court ruled that representation of counsel was effective but was overturned as ineffective on appeal. The ruling in this case turned on the fact that defense counsel had done nearly no investigation into additional corroborating witnesses, and to not present any witness when some were easily discoverable was ineffective counsel.

In the instant case, defense counsel presented David Graziano to testify that he did not observe any signs of impairment by Defendant at the scene of the accident. Defense counsel performed prudent investigation into the case and calling Mr. Graziano above other possible witnesses was a strategic decision likely based upon credibility, relevance, and other factors. Strategic decisions by defense counsel normally do not rise to the level of ineffectiveness needed to satisfy the test. Mr. Gonzalez's testimony could have been attacked for lack of credibility, which is likely why defense counsel decided against offering it. Gonzalez was a passenger in Defendant's car and had admitted to consuming alcohol and marijuana the night of the crash so her lay witness testimony on whether Defendant was impaired would likely have carried little to no weight. Testimony from Mr. Odonkana and Ms. Shigley would have been cumulative to the testimony already given by Mr. Graziano. The Jury in the case at bar decided that the State's evidence of the toxicology results and arresting officer's testimony outweighed the defenses opposing testimony, thus coming to the reasonable outcome that Defendant was impaired.

The Supreme Court held in *Occhicone v. State*, "[w]e find no error in the trial court's conclusion that counsel's conduct and decision not to present any independent evidence of Occhicone's intoxication constituted a strategic decision of counsel. If we were to accept Occhicone's challenge to this conduct, we would find ourselves engaging in the hindsight analysis so many courts have warned should not occur when evaluating ineffective assistance of counsel claims. The issue is not what present counsel or this Court might now view as the best strategy, but rather whether the strategy was within the broad range of discretion afforded to counsel actually responsible for the defense." 768 So.2d 1048-49 (Fla. 2000). Under the ruling in *Occhicone*, defense counsel's decision in offering certain witness testimony over other is strategic and is no basis for an ineffective assistance of counsel claim.

The court in *Light* opined, “We emphasize that this case does not stand for the proposition that competent counsel must always investigate for witnesses at the scene of a crime or that they must always investigate the background of police officers who will testify against the defendant. In this case, however, the minimal preparation that counsel performed should have caused counsel to realize that additional investigation was likely to be fruitful and was essential to a defense that pitted the testimony of a police officer against a nine-time felon. It may be the exceptional circumstance in which counsel is ineffective for failing to conduct this type of investigation, but counsel in this case did virtually no investigation when the severity of the charges and the nature of the known evidence simply compelled more investigation before a trial.” *Light*, 796 So. 2d at 616. The *Light* court illustrated that cases where counsel should be found ineffective, remanding for new trial, should be reserved for those of exceptional circumstances where the nature of the known evidence compelled more investigation before trial. The instant case is not one of those exceptional circumstances.

Here, counsel’s representation was more than adequate and did not come close to mirroring the ineffective representation displayed in *Light*. Moreover, defense counsel’s decision on who should testify was strategic under *Occhicone*. Not only was defense counsel effective, but there is also no reasonable probability that lack of testimony from the above-named witnesses prejudiced the outcome of the trial. In fact, it is the exact opposite, based on the entirety of the evidence produced at trial it is reasonably probable that lack of said testimony *did not* prejudice the outcome. (emphasis added).

The State moves that Defendant’s claims in Ground One be summarily denied because they fail to meet the standards for ineffective assistance of counsel. If Ground One is not summarily denied, the State disputes Defendant’s entitlement to relief and requests an evidentiary hearing.

## **II. Defendant’s Request for Relief as set forth in Ground Two**

Defendant’s assertions in Ground Two also lack merit. Defendant claims that defense counsel was deficient in failing to investigate her medical history and provide toxicology expert, Dr. Masten, with the necessary material to render an informed opinion, and this in turn prejudiced the outcome. At trial, the toxicologist opined that Defendant had a slow emptying stomach having consumed alcohol and did not appear to have as high of a BAC as what was registered. Specifically, in her motion Defendant argues that had defense

counsel investigated and provided Defendant's toxicologist with her medical records establishing that she had medical conditions of hypothyroidism, Hashimoto's disease, and elevated insulin levels, the toxicologist would have had the evidence he needed to support his theory about Defendant's slow-emptying stomach. The State disagrees. Defense counsel was effective in investigating Defendant's medical history, counsel did indeed investigate the medical records and determined they would have been of no aid to the toxicologist or jury.

Defendant's medical records which highlighted her hypothyroidism and elevated insulin levels were documented when Defendant was 12 years old. Due to the severely outdated nature of the records and the fact that they in no way could be found reliable at the current stage of Defendant's life, it was a strategic decision not to rely on them at trial to push the slow-emptying stomach defense any further. *See Occhicone*, 768 So.2d at 1048 (Fla.2000) ("[S]trategic decisions do not constitute ineffective assistance of counsel if alternative courses have been considered and rejected and counsel's decision was reasonable under the norms of professional conduct.").

Defendant in her motion cites *Sochor v. State*, 883 So. 2d 766, 796 (Fla. 2004). In *Sochor*, defense counsel introduced the reports of three mental health experts who testified during the guilt phase. However, counsel did not provide those experts with any information about defendant's background, nor did he specifically instruct them to examine and evaluate defendant for the purpose of establishing mitigating evidence. *Id.* at 772. The Supreme Court held that counsel was ineffective but defendant still was not prejudiced. *Id.* at 766. In the instant case, the toxicology expert was provided with complete information necessary to testify. Defendant also cites *Hodges v. State*, 885 So. 2d 338, 364 (Fla. 2003). The facts in *Hodges* are similar to that of *Sochor* but again, nothing like the case at bar. It should be noted that in *Hodges*, the court found no deficient performance by defense counsel. *Id.* at 338. In Defendant's motion at bar, the dissent in *Hodges* is in fact cited, as opposed to the controlling opinion.

Defendant further relies on *State v. Bright*, 200 So. 3d 710, 730-31 (Fla. 2016), where counsel was ineffective in the capital penalty phase, in part, for failing to find and present the mental health expert Bright's school records, DOC psychological screenings, and Baker Act records, which were necessary for the expert to render an informed opinion. This case is not representative of the instant case. In *Bright*, defense counsel completely ignored the records, did not investigate them at all, did not follow up with the mental health expert,

and did not present the expert to testify at the penalty phase. The Supreme Court ruled that due to the nature of the case and the fact that the death penalty was a possible sentence, counsel was deficient by failing to argue mental health as a mitigating factor which in turn prejudiced the defendant:

As to counsel's duty of securing evidence of mental health mitigation, this Court has recognized that "[w]here available information indicates that the defendant could have mental health problems, 'such an evaluation is fundamental in defending against the death penalty.'" *Jones v. State*, 998 So.2d 573, 583 (Fla.2008) (quoting *Arbelaez v. State*, 898 So.2d 25, 34 (Fla.2005)). In light of its significance, "a reasonable investigation into mental mitigation is part of defense counsel's obligation where there is any indication that the defendant may have mental deficits." *Hurst v. State*, 18 So.3d 975, 1010 (Fla.2009) (emphasis added). In fulfilling this critical obligation, counsel must not ignore pertinent avenues for investigation of which he should have been aware. See *Porter v. McCollum*, 558 U.S. 30, 39, 130 S.Ct. 447, 175 L.Ed.2d 398 (2009).

*Id.* at 730.

In our case, defense counsel did investigate Defendant's medical records to support the slow-emptying stomach argument and adequately prepared the toxicology expert to testify at trial. Additionally, the toxicologist did testify, so the jury was made aware of Defendant's medical condition. Counsel strategically decided that the records themselves would not validate the toxicologist's opinion in any way since they were from such a long time ago and would not be found reliable. The jury chose to reject the argument that Defendant's BAC was not accurate due to her hypothyroidism and elevated insulin levels. It cannot be said it is probable that the jury would have reached a different outcome had they been presented the actual records from Defendant's childhood in addition to the toxicologist's testimony, thus Defendant suffered no prejudice.

The State moves that Defendant's claims in Ground Two be summarily denied because they fail to meet the standards for ineffective assistance of counsel. If Ground Two is not summarily denied, the State disputes Defendant's entitlement to relief and requests an evidentiary hearing.

### **III. Defendant's Request for Relief as set forth in Ground Three**

Defendant's assertions in Ground Three that the State engaged in prosecutorial misconduct and application of Florida law thereto are clearly erroneous and not grounded in fact or law. Defendant claims that defense counsel was ineffective for failure to object to improper statements in the State's closing argument. Specifically, Defendant asserts that the State engaged in prosecutorial misconduct in closing and rebuttal by denigrating the

defense with unnecessary sarcasm, expressing personal opinions about the ultimate issue of Defendant's guilt, and submitting facts not in evidence. The State disagrees.

First, the State conducted a proper closing argument. Second, because the State did not engage in prosecutorial misconduct in closing argument, defense trial counsel had no basis for objection, and, therefore, defense trial counsel was not ineffective. Even if this Honorable Court finds any of the prosecutor's statements objectionable, defense trial counsel performed well within the range of reasonable counsel by not objecting as a matter of strategy, and the statements were not prejudicial in light of the body of evidence against Defendant.

The State's closing argument was proper. A proper closing argument reviews the evidence to give the jury assistance in analyzing, evaluating, and making reasonable inferences from such. *Cardona v. State*, 185 So.3d 514, 520-21 (Fla. 2016) (finding "clearly improper argument" where the prosecutor repeated the theme of justice for the victim, repeated denigration of the defense case, and personally attacked the defendant); *Dessaure v. State*, 891 So.2d 455, 468 (Fla. 2004) (finding argument proper where the prosecutor developed the inference that ashes and the defendant's footprint at the scene implicated guilt).

***The closing argument did not denigrate Defendant or defense and did not include unnecessary sarcasm.***

The defense relies on *Cardona v. State*, 185 So.3d 514 (Fla. 2016) to support the rule that a prosecutor may not denigrate the defense, its witnesses, or the defendant. Analysis of the fundamental differences between *Cardona* and the instant case is instructive. *Cardona* was reversed because the State's closing argument was so detrimental. *Id.* at 520. In *Cardona*, the prosecutor repeatedly referenced justice for the three-year-old victim who was murdered after suffering extensive injuries prior to death and appealed to the jury that the only justice was a guilty verdict. *Id.* In addition, the prosecutor repeatedly denigrated the defense (commenting over and over that the defense was using "diversionary tactics") and personally attacked the defendant (the victim's mother). To make matters worse, the prosecutor even repeated an improper comment after the court sustained the defense's objection. *Id.* at 521.

The defense also relies on *Ryan v. State*, 457 So. 2d 1084 (4th DCA 1984), for the rule that prosecutorial denigration of the defense is improper and may be so prejudicial as to warrant reversal. In *Ryan*, the court found dozens of improper statements in the State's closing argument including those that appealed to bias (using a theme

of rich versus poor and pitting a Martin County jury against the wealth of Palm Beach county); personally attacked the defense counsel (calling him the “attorney from Tampa” and accusing him of dishonesty), commented on facts not in the record, made statements that law enforcement believed the defendant was guilty, and made remarks about the defendant’s failure to testify. *Id.* at 1087-1090. In addition, the trial court allowed over objection improper impeachment of a prosecution witness by the prosecutor. *Id.* at 1092. The *Ryan* court held that in this close case built upon circumstantial evidence that the prosecutorial comments were of “such a prejudicial magnitude as to amount to fundamental error.” *Id.* at 1091.

The defense cites *Gore v. State*, 719 So.2d 1197 (Fla. 1998) as an example of a prosecutor engaging in “vituperative or pejorative characterizations of a defendant” or “needless sarcasm.” In *Gore*, the court reversed based on the cumulative effects of improper cross-examination and improper closing arguments. *Id.* at 1202-3. Improper statements in closing arguments included entreaty to convict if jury believed the defendant was lying, personal attacks on the defendant (“I don’t like people who kill women. . . I didn’t kill three women, you did. . . somebody who does what you do deserves to die), needless sarcasm (“Oh, Gore is a Jewish name? What did you have for Passover, a bunch of Matzo this year?”), and badgering the defendant about his several jobs. *Id.* at 1201. The court noted that the prosecution lost sight of his professionalism with a difficult defendant and committed “textbook” examples of “overzealous advocacy.” *Id.* at 1202. Similar to the holding in *Ryan*, the court found that, in this case with no physical evidence linking the defendant to the murder, the combination of presumptively prejudicial improper admission of collateral evidence and improper prosecutorial comments violated fundamental fairness.

The nature of the evidence, combination or errors, and severity of the prosecutor’s statements in *Ryan* and *Gore* distinguish those case from the instant case. However, The Florida Supreme Court’s decision in *Gorby v. State* is instructive here. In *Gorby*, the court affirmed the trial court’s denial of postconviction relief and denied the defendant’s writ of habeas corpus. The defendant argued ineffective assistance of appellate counsel, and the Court addressed the defendant’s allegations of improper prosecutorial statements about the defense trial counsel and defense theory in claim three. The Court found distinguishable the authority upon which the defendant relied because the prosecutors in those cases either expressed a personal belief in the defendant’s guilt or made

disparaging comments “nearly incessantly.” Further the Court noted the “overwhelming evidence of guilt” and determined any error harmless and appellate counsel not ineffective for not raising the issue.

Here, Defendant complains that the prosecutor attacked toxicologist Dr. Masten and the defense theory with inappropriate sarcasm, citing five statements from the rebuttal close. Rather than sarcasm, the statements about the “mysterious” vodka properly analyzed the evidence and defense theory that the one drink Defendant claimed to have ingested several hours before increased her blood alcohol content to the point of presumptive impairment at .116 eight hours after the one drink extrapolated to between .15 and .20 at the time of the accident. “Mysterious” is an appropriate adjective to describe a difficult to understand phenomenon and does not rise to the level of denigrating or inflammatory. Also distinguished from *Cardona*, the prosecutor’s statements did not constitute personal attacks on Defendant or any witness. Even if trial counsel found this language objectionable, trial counsel was not ineffective in failing to object because failing to object is a reasonable strategy. *Ferguson v. State*, 593 So.2d 508, 511 (Fla. 2002) (finding “[t]he decision not to object is a tactical one” where some unobjected-to remarks were objectionable but not “so severely inflammatory or damaging as to render counsel’s silence deficient performance.”)

***The prosecutor’s statements were not improper personal opinions about Defendant’s guilt.***

While it is improper for a prosecutor to express a personal belief in the guilt of the accused, courts examine the record as a whole, including in other errors, in making a determination as to whether an error was harmless or effected the verdict. Defendant argues that the prosecutor made two statements that improperly expressed her personal opinion on the ultimate issue of Defendant’s guilt. The State disagrees. Both statements were proper argument based directly on the evidence and the elements.

First, Defendant complains about the prosecutor’s statement in rebuttal closing, “The law says that Maribelle Ilarraza caused or contributed to the injuries of Lisa and Patrick Foley.” This statement rebuts the argument that circumstances show others could have been responsible for the accident and prefaces the prosecutor’s review of the facts of the accident (Defendant’s car made the first impact with the victims’ vehicle and therefore caused or contributed to the victim’s serious injuries) and evidence proving that Defendant was under the influence. Second, Defendant argues that the prosecutor’s statement, “And I submit you to find her

guilty, because she is guilty” is improper personal opinion. This statement properly frames the State’s position that guilt was established beyond a reasonable doubt and the State’s argument for a guilty verdict (“I submit to you. . .”).

***The closing argument was properly based upon facts presented in evidence.***

Defense relies on three cases to support the proposition that counsel may be ineffective under the *Strickland* framework for failing to object to prosecutorial misconduct. First, in *Duncan v. State*, the summary denial of the defendant’s motion for postconviction relief was remanded with instructions for the trial court to determine if record evidence could refute the claims of improper argument, and, if not, for the trial court to hold an evidentiary hearing. 776 So.2d 287, 289-90 (Fla. 2nd DCA 2000). The defense argued that trial counsel did not object to two instances of the prosecutor introducing during closing arguments facts not introduced into evidence. Specifically, the defense alleged: (1) improper impeachment of an alibi witness by statements of another witness not introduced at trial, and; (2) improper statement regarding alibi witnesses’ reasons for not testifying without record evidence to support that assertion. *Id.* at 289. The *Duncan* court remanded because summary denial of the postconviction motion was not indicated based on the limited record, and the two alleged statements were prejudicial. *Id.* at 290.

Unlike *Duncan*, summary denial is appropriate here because the defense’s argument on its face shows that the prosecutor’s statements in closing argument were based on facts in the record. Paragraph’s one through four of page twenty-one of Defendant’s Motion are dispositive. The closing argument reviewed the evidence and explicated reasonable inferences.

The defense quotes Witness Graziano’s testimony that he did not brake until “[m]aybe after the accident” and “happened to see” the Foley car before he hit it and so was able to brace his body. The defense takes issue with the prosecutor’s statement that Witness Graziano saw the Foley vehicle and “then he tried to avoid that vehicle. He saw it for long enough that he was actually able to tell that there was already damage to that vehicle. And then he tried to avoid that vehicle.” The prosecutor’s statement reviewed Witness Graziano’s testimony that he saw the Foley vehicle before the accident and contrasted that statement with Defendant’s testimony that she did not see the Foley vehicle before she hit it. The prosecutor’s statement that Witness Graziano tried to avoid

the same vehicle by bracing himself is a reasonable inference, as is the prosecutor's statement that impairment caused Defendant not to see the Foley vehicle.

The defense also argues that the State improperly postulated that Defendant's blood draw results were more than two times the legal limit because Defendant's BAC was .116. Again, Defendant's own motion is dispositive that the State's closing argument properly reviewed facts in the evidence. On page eight of Defendant's motion, the defense reviewed FDLE analyst Carol Scagle's testimony that Defendant's BAC of .116 extrapolated to a level between .15 and .20 at the time of accident. As the prosecutor summed up in closing, Defendant's BAC was more than two times the legal limit of .08.

Not only is the instant case appropriate for summary denial and distinguishable from *Duncan*, but also defense trial counsel was not deficient for failing to object. The State did not introduce facts not in evidence. However, even if this Court determines the State's closing argument extended beyond permissible inferences allowable by facts presented in evidence, the State's statements did not rise to a prejudicial level requiring a new trial.

The defense relies on *Charriez v. State*, 96 So.3d 1127 (Fla. 5<sup>th</sup> DCA 2012) and *Brown v. State*, 787 So.2d 229 (Fla. 2d DCA 2001) to support the proposition that failure to object to improper arguments warrant mistrial. Both of these cases were direct appeals and are highly distinguishable from the instant case. In *Charriez*, the court reversed because of numerous improper statements in closing arguments including misstatement of law as to the meaning of reasonable doubt (suggesting the jury should convict if it believed the victim) and appeal to the jurors' community conscience to convict on the type of crime (lewd and lascivious battery and sexual activity with a minor). *Id.* at 1128. In *Brown*, the Court found that the prosecutor made so many improper statements (including improper vouching of the credibility of police officers, improper attacks on individual witnesses, commenting on and arguing facts not in evidence, blatant appeals to the juror's emotions, and improper attacks on defense counsel, and more) as to make a mockery of the "neutral arena" in which a trial should be held. *Id.* at 231. Here, the State did not misstate law, appeal to juror's community conscience or emotions, or attack defense counsel or witnesses. The State reviewed the facts in evidence and offered reasonable inferences to how those facts applied to a guilty verdict.

***The decision on whether or not to object to statement is a strategic one.***

The defense relies on *Eure v. State*, to support the proposition that counsel may be ineffective for failing to object to improper statements made in closing arguments. 764 So.3d 798 (Fla. 2nd DCA 2000). On direct appeal, the *Eure* court reversed the conviction, finding counsel ineffective for failing to object to several statements that were improper on the face of the record. The prosecutor's statements included those that made the prosecutor a witness for the State ("you can tell your families you were in court with a drug dealer. That's the drug dealer. . ."), introduced evidence not in the record (truthfulness of officer's police report and oath used for arrest warrant), misinstructed the jury as to the law (telling the jury that guilt or innocence hinged only on whether or not the officer was lying), and gave an improper "message to the community argument (appealing to the base fears of the jurors with the statement, "This is the man; this is the cocaine. This is the bane of our existence in this almost 21st century, and there's the man who caused it.")). *Id.* at 799-801.

The defense relies on *Gordon v. State*, 469 So.2d 795 (Fla. 4th DCA 1985). On direct appeal, the *Gordon* court found trial counsel ineffective for permitting a juror who indicated she was prejudiced against the defendant to sit as a juror even when the court offered removal and for not objecting to 104 instances of improper questions or comments made by the prosecution. *Id.* at 797. Defendant's reliance on *Gordon* is misplaced because in the instant case Defendant complains of but ten statements, a fraction of the amount in *Gordon*. Furthermore, Defendant's Grounds I, II, and IV for requesting postconviction relief are based on strategic decisions by Defendant's trial counsel and do not rise to the level of ineffectiveness. In sum, not only were the comments not improper but the Defendant did not meet her burden to prove that failing to object was not a strategic decision.

The State moves that Defendant's claims in Ground Three be summarily denied because they fail to meet the standards for ineffective assistance of counsel. If Ground Three is not summarily denied, the State disputes Defendant's entitlement to relief and requests an evidentiary hearing.

**IV. Defendant's Request for Relief as set forth in Ground Four**

Defendant's argument in Ground Four lacks merit and is factually inaccurate. Defendant claims that defense counsel was ineffective for failing to investigate and present testimony of an accident reconstructionist expert which in turn prejudiced the outcome of the trial. Specifically, Defendant argues that the expert would

have testified that Defendant did not cause or contribute to the accident because the victims' taillights were not on. Defendant further asserts that the victims' were the sole proximate cause of the accident and that their severe injuries were not caused by Defendant's vehicle but instead caused by the collision from the vehicle driven by Mr. Graziano. The State disagrees and contends that Defendants claims are baseless in fact and in law.

Firstly, defense counsel was not ineffective in the representation of Defendant by failing to investigate this defense theory. Counsel did indeed investigate the possibility that the victims' taillights were not on at the time of the accident. Mrs. Foley testified at trial as well as at her deposition taken by defense counsel that her headlights and taillights were on when entered her vehicle and started it; they turn on automatically when it is dark outside. See Direct Examination of Lisa Foley by Mr. Leibert, Page 8, Lines 23-25, Page 9, Lines 1-3. Defense counsel deposed Trooper Christopher Conrad, who also testified at trial that when he examined the vehicle at the scene the victims' lights were on and the switch was in the automatic position. See Deposition of Trooper Christopher Conrad, Page 18, Lines 14-25, Page 15, Lines 1-23. It was a strategic decision by defense counsel to not present this theory at trial given his investigation mentioned above. See *Occhicone*, 768 So.2d at 1048 (Fla.2000) (holding that "strategic decisions do not constitute ineffective assistance of counsel if alternative courses have been considered and rejected and counsel's decision was reasonable under the norms of professional conduct"); see *Wilson v. Wainwright*, 474 So.2d 1162 (Fla. 1985) (finding that strategic decisions of counsel will not be second-guessed on collateral attack). Defense counsel was effective in his representation of Defendant as it was determined that the victims' taillights were on at the time of the collision. The defense theory of non-illuminated taillights was presented at trial and the jury chose to reject it. Additional testimony from an expert would have had no bearing on such a baseless claim. Moreover, counsel adequately investigated his options and made a reasonable choice between them, thus Defendant's reliance on *Rose v. State*, 675 So. 2d 567, 573 (Fla. 1996) (citing *Horton v. Zant*, 941 F.2d 1449, 1462 (11th Cir. 1991)) fails.

Secondly, defense counsel did not present testimony of an accident reconstructionist expert at trial since the theory was not supported by the facts of the case and a reasonable jury would have likely believed Mrs. Foley and Trooper Conrad's testimony regarding the taillights. Therefore, it only follows that Defendant's argument that she was not the sole proximate cause of the accident and resulting injuries to the victims must also fail.

Defendant was the sole proximate cause of the accident and had she not been operating her vehicle in an impaired state, it is probable the collision would not have occurred.

Furthermore, the outcome of Defendant's trial was not prejudiced in any way by the lack of testimony from an accident reconstructionist expert. Had expert testimony of a non-illuminated taillight been presented at trial, this completely ignores the fact that there was already overwhelming evidence showing Defendant committed the offense. *See Strickland*, 466 U.S. at 695, 104 S.Ct. 2052 (the trial court must consider the claim in light of all evidence and determine which evidence was affected by the errors and the degree thereof). Defendant cannot show that testimony from an accident reconstructionist expert would have swayed the verdict.

The State moves that Defendant's claims in Ground Four be summarily denied because they fail to meet the standards for ineffective assistance of counsel. If Ground Four is not summarily denied, the State disputes Defendant's entitlement to relief and requests an evidentiary hearing.

**V. Defendant's Request for Relief as set forth in Ground Five**

Defendant's assertions in Ground Five are also without merit. Defendant argues that the alleged errors by her defense counsel in the aggregate amounted to a prejudicial outcome requiring reversal. The State disagrees. As illustrated at length in this Response, each Ground asserted by Defendant is absent of any actual error, is legally insufficient, and does not constitute ineffective representation. Because each Ground lacks merit, any cumulative-error argument fails. *See Bryan v. State*, 748 So.2d 1003, 1008 (Fla.1999) ("[W]here allegations of individual error are found without merit, a cumulative-error argument based thereon must also fail.").

The State moves that Defendant's claims in Ground Five be summarily denied because they fail to meet the standards for ineffective assistance of counsel. If Ground Five is not summarily denied, the State disputes Defendant's entitlement to relief and requests an evidentiary hearing.

**WHEREFORE**, the State of Florida moves this Honorable Court to summarily deny Defendant's Motion to Vacate or Set Aside Conviction and Sentence for the reasons set forth above. Alternatively, the State requests that any claim that is not summarily denied be set for an evidentiary hearing.

R.J. LARIZZA  
STATE ATTORNEY

By:   
\_\_\_\_\_

**Kaitlyn Mairs Payne**  
**ASSISTANT STATE ATTORNEY**  
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**904-209-1620**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy hereof has been furnished by mail/delivery Attorney for the Defendant, Rick Sichta and Susanne Sichta, 01 W. Bay Street Suite 14124, Jacksonville, Florida 32202.

**s/KAITLYN MAIRS PAYNE**

**ASSISTANT STATE ATTORNEY**  
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**904-209-1620**

# **Exhibit C**

**Flagler College**  
**Law 372 – Criminal Law**  
**Alyssa Shorstein, J.D & Kaitlyn M. Payne, J.D**  
**Fall Semester, 2024**

***Instructor's Name and Title:*** Alyssa Shorstein, J.D & Kaitlyn M. Payne, J.D  
Adjunct Professors  
***Credit Hours:*** 3  
***Location:*** Kenan 313  
***Meeting Times:*** T/TH from 11:00 AM- 12:15 PM

***Office Location / Office Hours:*** Poland Law Center, by Appointment Only.

***Email:*** Professor Shorstein- ACS@shorsteinandlee.com  
Professor Payne- Kpayne@shorsteinandlee.com

***Phone or Text Message:*** (904) 826-9516 (Provide name with first text message)

**Course Description:** Students will learn the substantive issues of criminal law. Consideration is given to general principles of Criminal Law, the tension between social and legal definitions of crime, specific elements of individuals crimes such as theft and murder, and the basic legal defenses to crimes such as insanity and self-defense.

**Court Pre-requisites:** Students are expected to master the course material by reading the text, participating in class discussions, writing and presenting their case brief, completing chapter quizzes, and passing the exams given.

**Required Text(s) and Supplemental Readings:**  
Criminal Law- 12<sup>th</sup> Edition by Joel Samaha ISBN #: 978-1-305-57738-1

**Expected Student Learning Outcomes:**

- A. Students will gain factual knowledge of the legal system as it impacts the criminal justice system with particular emphasis on the structure and organization of the legal system.
- B. Students will learn fundamental principles, generalizations, and theories about the legal system as it impacts criminal law.
- C. Students will learn to “think/analyzc like a lawyer” and apply course material to improve thinking, problem solving and decisions based upon facts drawn from court cases and “real life.”

**Course Requirements, Methods of Assessment, and Grading Standards / Scale:**

Each course requirement has been assigned the following point value. The maximum number of points is 500.

<b>Item</b>	<b>Grade</b>
Participation	100
Case Brief w/ Presentation	100
Quizzes (5)	100
Mid Term Exam (1)	100
Final Exam (1)	100
<b>Total</b>	<b>500</b>

**Grading Scale for All Assignments:**

<b>Letter Grade</b>	<b>Points Earned</b>
<b>A</b>	461 – 500
<b>A-</b>	450 – 460
<b>B+</b>	430 – 449
<b>B</b>	411 – 429
<b>B-</b>	400 – 410
<b>C+</b>	380 – 399
<b>C</b>	361 – 379
<b>C-</b>	350 – 360
<b>D+</b>	330 – 349
<b>D</b>	311 – 329
<b>D-</b>	300 – 310
<b>F</b>	299 and Below

**Late Assignments:** All assignments are due at the beginning of the class. Failure to turn in the assignment on time will result in no points for that assignment. However, an exception will be made at the end of the year if it is apparent that without the assignment grade the Student will fail the class. In that limited circumstance, the Student may turn in the assignment for up to 50% of the total grade.

**Rounding:** The Professors do not round grades up or down.

**Grade Discussions:** The Professors are willing to discuss your grade in person by appointment.

**End of the year “bail out” bonus assignment:** The Professors will **not** offer an assignment at the end of the year to give you “bonus” points so that you may “save” your grade. There are plenty of opportunities throughout the semester to earn bonus points by showing up to class and participating. Providing a student with a bonus assignment at the end of the semester to “bail them out” of a missed assignment or poor grade is unfair to the other students who showed up and worked hard to earn their grade.

**Methods of Instruction:** The Professors will use a combination of instruction methods including lecture, discussion, and “question and answer.” One of our goals is to have an interactive class as it helps to gauge how the class is processing the material.

We expect students to come to class on time, having read the assigned material, and prepared to participate. The best way to learn in our class is to read the material, participate in the lecture, and study the PowerPoint slides. Class participation is also your best way to earn bonus points.

Non-course related activities, including, but not limited to, cell phones ringing, text messaging, online social networking, web surfing, and games, are not appropriate during class. Do not use your cell phones in class. Cell phones must be off or on silent during the class period. Not vibrate, silent. If you test turning class, your phone rings during class, or you are caught looking at your phone screen during class, your overall grade will be negatively affected. *If the student engages in these activities, the instructor reserves the right to lower the student’s in-class participation grade accordingly.*

Each time this conduct is observed your overall grade will be docked by 1 point

After the third time, you will be sent to the Dean of Academic Affairs for being disruptive.

There is an exception of laptop computers. These are permitted in class for note taking purposes only. If you are caught doing anything other than taking notes, the above rules apply.

**Content Warning:** Higher education goes hand in hand with open and unfiltered debates. One goal of this course is to help students to think critically about their belief systems and their places in this world. The Professors encourage a respectful “free speech” zone within the classroom. With that being said, this is us letting you know in advance that there is a healthy amount of subject matter in this course that the ordinary person may find disturbing.

In this class we may read criminal court cases and will often review videos that are graphically violent. We will also read excerpts from real police reports and other court

documents that contain offense language including but not limited to racial or homophobic slurs, or descriptions of violent acts in detail. Rape, torture, and planned killings are also addressed among other trauma surrounding victims and defendants including various childhood trauma, abuse, addiction, and other unpleasant realities that courts in America address each day.

If anyone wishes to speak with either professor in private about the course content, please feel free to do so via the communications above to set up office hours.

**Class Attendance Policy:** We will not have a traditional attendance policy. However, we want and do expect you to attend class. We will assume if you are not in class you have a good reason not to be. We do, however, have a few important points to make regarding your success and how you are evaluated. Tardiness is not professional, and will not be tolerated. Arriving more than 5 minutes late or leaving class early without permission may be treated as an unexcused absence, at the instructor's discretion. **You MUST be present for the Midterm and Final Exam** unless you are severely ill and or an immediate family member has died, and you must provide proof of said event. **No exceptions will be made, if you fail to appear at these exams for any reason, you will earn a zero.**

If you miss a class, please do not e-mail either professor asking what you missed, please try and engage with the rest of the class and ask for their notes. Remember we want you to physically be present in class.

***Perfect class attendance*** will be rewarded at the end of the semester with five (5) bonus points.

**Academic Honesty:** Cheating, plagiarism, violation of test conditions, complicity in dishonest behavior, or other falsification of academic work is a serious breach of College expectations and is subject to immediate disciplinary action. We take this very seriously because it strikes at the core of our community, both academically and socially.

For a first offense of academic dishonesty, whether it occurs in this class or occurred in another class, you will receive a "double penalty" to your grade. A double penalty means that you will receive a zero for the assignment and a second reduction to your overall class grade in the same point value as the original assignment. For example, if you cheat on your mid-term exam that is valued at 100 points, you will receive zero for that assignment and a further reduction of 100 points to your overall class grade resulting in a 200 point deduction to your overall class grade.

If this is a second offense, you will be removed from the class and assigned an F. This could result in dropping you to part time status (with all the related economic consequences of being a part time student) and otherwise delay your graduation.

Our obligation is to explain to you the parameters of each assignment, including what outside resources you may use, if any. If you are the least bit unclear about the structure of any assignment, your obligation is to ask me for clarification.

**Statement on Disabilities:** Flagler College offers special academic accommodations to students with documented disabilities. Services include alternative test administration and/or service of interpreters, note-takers, and readers. In order to receive special academic accommodations, students must register with the Office of Services for Students with Disabilities (OSSD) located on the second floor of Proctor Library, and provide required documentation of disability.

### **Projected Schedule**

**Week 1& 2- Introductions; Expectations; Court System in the U.S.; Classifications and Source of Criminal Laws- Chapter 1**

**Week 3- Constitutional Limits on Criminal Law- Chapter 2**

**Week 4- Elements of Criminal Liability- Chapters 3 and 4**

**Week 5- Crimes Against Persons- Murder and Manslaughter- Chapter 9**

**Week 6- Crimes Against Persons II- Chapter 10**

**Week 7- Crimes Against Property- Chapter 11  
Mid-term Review**

**Week 8- Mid-term Examination**

**Week 9- Parties to Crime and Inchoate Crimes- Chapters 7 and 8**

**Week 10- Crimes Against Public Morals and Drug Offenses- Chapter 12**

**Week 11- Defenses to Crimes- Chapter 6**

**Week 12- Sentencing and Punishment-**

**Week 13- Death Penalty in America**

**Week 14- Juvenile Offenses and Sentencing  
Final Exam Review**

**Week 15- Final Examination**

**Schedule subject to change at the discretion of the Instructions**