

**Application for Nomination
to the County Court
- Seventh Judicial Circuit -**

Andrea K. Totten

APPLICATION FOR NOMINATION TO THE COUNTY COURT

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

DATE: August 5, 2019 Florida Bar No.: 0011955

GENERAL: Social Security No.: [REDACTED]

1.

Name Andrea Karyn Totten Email: [REDACTED]

Date Admitted to Practice in Florida: May 9, 2005

Date Admitted to Practice in other States: Ohio: November 8, 2004; Wisconsin: February 28, 2019.

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

Assistant Attorney General, Criminal Appeals, Office of the Attorney General

3. Business address: 444 Seabreeze Blvd., Ste. 500
City Daytona Beach County Volusia State FL ZIP 32118

Telephone (386) 238-4990 FAX (386) 238-4997

4. Residential address: [REDACTED]

City [REDACTED] County [REDACTED] State FL ZIP [REDACTED]

Since May 23, 2019 Telephone [REDACTED]

5. Place of birth: St. John's, Newfoundland, Canada

Date of birth: [REDACTED] Age: 39

6a. Length of residence in State of Florida: 15 years

6b. Are you a registered voter? Yes No

If so, in what county are you registered? Flagler

7. Marital Status: Married

If married: Spouse's name [REDACTED]

Date of marriage March 14, 2008

Spouse's occupation United States Army (veteran): Operation Desert Storm, Operation Iraqi Freedom; Daytona Beach Police Department (retired); Department of Corrections Office of the Inspector General (retired).

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

n/a

8. Children

<i>Name(s)</i>	<i>Age(s)</i>	<i>Occupation(s)</i>	<i>Residential address(es)</i>
██████████	█	Student	██████████
██████████	█	Student	██████████

9. Military Service (including Reserves)

<i>Service</i>	<i>Branch</i>	<i>Highest Rank</i>	<i>Dates</i>
N/A	N/A	N/A	N/A

Rank at time of discharge _____ Type of discharge _____

Awards or citations _____

HEALTH:

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

No

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

Yes No

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

Please describe such treatment or diagnosis.

n/a

11b. In the past ten years have any of the following occurred to you which would interfere with your ability to work in a competent and professional manner?

- Experiencing periods of no sleep for 2 or 3 nights

- Experiencing periods of hyperactivity
- Spending money profusely with extremely poor judgment
- Suffered from extreme loss of appetite
- Issuing checks without sufficient funds
- Defaulting on a loan
- Experiencing frequent mood swings
- Uncontrollable tiredness
- Falling asleep without warning in the middle of an activity

Yes No

If yes, please explain.

n/a

12a. Do you currently have a physical or mental impairment which in any way limits your ability or fitness to properly exercise your duties as a member of the Judiciary in a competent and professional manner?

Yes No

12b. If your answer to the question above is Yes, are the limitations or impairments caused by your physical or mental health impairment reduced or ameliorated because you receive ongoing treatment (with or without medication) or participate in a monitoring or counseling program?

Yes No

Describe such problem and any treatment or program of monitoring or counseling.

n/a

13. During the last ten years, have you ever been declared legally incompetent or have you or your property been placed under any guardianship, conservatorship or committee? If yes, give full details as to court, date and circumstances.

No

14. During the last ten years, have you unlawfully used controlled substances, narcotic drugs or dangerous drugs as defined by Federal or State laws? If your answer is "Yes," explain in detail. (Unlawful use includes the use of one or more drugs and/or the unlawful possession or distribution of drugs. It does not include the use of drugs taken under supervision of a licensed health care professional or other uses authorized by Federal law provisions.)

No

15. In the past ten years, have you ever been reprimanded, demoted, disciplined, placed on probation, suspended, cautioned or terminated by an employer as a result of your alleged consumption of alcohol, prescription drugs or illegal use of drugs? If so, please state the circumstances under which such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action.

No

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

No

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

No

EDUCATION:

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

Schools	Class Standing	Dates of Attendance	Degree
Port Perry High School, Port Perry, Ontario, Canada	unknown	1993 – 1996	n/a
Meadville Area Senior High School, Meadville, Pennsylvania	unknown	1996-1997	High School Diploma
Slippery Rock University of Pennsylvania, Slippery Rock, Pennsylvania	128/458	08/1997 – 05/2001	Bachelor of Arts, Political Science
University of Toledo College of Law, Toledo, Ohio	37/97	08/2001 – 05/2004	Juris Doctor
Notre Dame University Law School	n/a	Study abroad, London, England 07/2002 – 08/2002	n/a

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

- Invited by Chief Judge Sawaya to deliver a speech at the swearing-in ceremony conducted at the Fifth District Court of Appeal in May 2005, having achieved the highest Florida Bar Exam score among all attendees.
- Full-tuition College of Law Merit Scholarship, University of Toledo College of Law, August 2001 – May 2002
- Dean’s List 3 semesters, University of Toledo College of Law
- International Law Moot Team, University of Toledo College of Law; advanced to the semi-finals at the Jessup International Law Moot Court Competition, hosted by the University of Michigan Law School
- Selected as a Junior Fellow to the Legal Institute of the Great Lakes (LIGL), University of Toledo College of Law, with duties including editing the LIGL publication, “Lake Links,” conducting legal research, and assisting in organizing the annual Great Lakes Water Conference
- Graduated *cum laude*, Slippery Rock University of Pennsylvania
- Dean’s List 5 semesters, Slippery Rock University of Pennsylvania
- Golden Key Honor Society, Slippery Rock University of Pennsylvania
- National Honor Society, Meadville Area Senior High School

NON-LEGAL EMPLOYMENT:

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

<i>Date</i>	<i>Position</i>	<i>Employer</i>	<i>Address</i>

PROFESSIONAL ADMISSIONS:

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

<i>Court or Administrative Body</i>	<i>Date of Admission</i>
The Florida Bar	May 9, 2005
The Ohio Bar	November 8, 2004
The Wisconsin Bar	February 28, 2019
Middle District of Florida	November 6, 2014
Eleventh Circuit Court of Appeals	April 17, 2018

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

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

Position	Name of Firm	Address	Dates
Assistant Attorney General, Criminal Appeals	Florida Office of the Attorney General	444 Seabreeze Blvd., Ste. 500, Daytona Beach, FL 32118	12/2013 – present
Judicial Law Clerk	Seventh Judicial Circuit	125 E. Orange Ave., Daytona Beach, FL 32114	09/2011 – 12/2013
Assistant State Attorney	Office of the State Attorney, Seventh Judicial Circuit	251 N. Ridgewood Ave., Daytona Beach, FL 32114	07/2006 – 08/2011
Assistant State Attorney	Office of the State Attorney, Eighteenth Judicial Circuit	190 Eslinger Way, Sanford, FL 32773	05/2005 – 06/2006
Certified Legal Intern	Toledo Public Defender	555 N. Erie St., Toledo, OH 43604	04/2004 – 08/2004

22. Describe the general nature of your current practice including any certifications which you possess; additionally, if your practice is substantially different from your prior practice or if you are not now practicing law, give details of your prior practice. Describe your typical clients or former clients and the problems for which they sought your services.

I currently serve as an Assistant Attorney General, representing the State of Florida in criminal appeals in the state and federal courts. I handle a wide variety of legal issues, including constitutional questions, statutory construction, the admissibility of evidence, jury selection, and sentencing. I have filed numerous pleadings, including appellate briefs, motions, and responses, in the Supreme Court of Florida, the Fifth District Court of Appeal, the Middle District of Florida, and the Eleventh Circuit Court of Appeals. I have participated in oral argument in the Fifth District Court of Appeal approximately 30 times, and have also argued in the Supreme Court of Florida. I also offer advice to prosecutors regarding appellate and evidentiary issues.

Immediately prior to accepting my current position as an Assistant Attorney General, I spent two years as a Judicial Law Clerk in the Seventh Judicial Circuit, working on a variety of civil issues, including appeals from the county court, personal injury, contract disputes, family law, and dependency. I assisted judges by reviewing complaints, petitions, and other pleadings, conducting legal research, drafting memoranda, orders, and opinions, and making recommendations for disposition.

Prior to accepting a position as a Judicial Law Clerk I served as an Assistant State Attorney for approximately six-and-a-half years in the juvenile, misdemeanor, and felony divisions, where I prosecuted criminal cases through all stages of pretrial and trial

proceedings. My duties included evaluating the strengths and weaknesses of each case to decide whether to pursue criminal charges, interviewing witnesses, attending depositions, filing and defending motions, advising law enforcement on rules of law and evidence, participating in jury and non-jury trials, negotiating resolutions, and communicating with victims.

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

Court		Area of Practice	
Federal Appellate	_____ %	Civil	_____ %
Federal Trial	_____ %	Criminal	<u>90</u> %
Federal Other	<u>10</u> %	Family	_____ %
State Appellate	<u>90</u> %	Probate	_____ %
State Trial	_____ %	Other	<u>10</u> %
State Administrative	_____ %		
State Other	_____ %		
	_____ %		_____ %
TOTAL	<u>100</u> %		<u>100</u> %

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

Jury?	<u>20</u>	Non-jury?	<u>20</u>
Arbitration?	<u>0</u>	Administrative Bodies?	<u>0</u>

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

No

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

No

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

- 27a. For your last 6 cases, which were tried to verdict before a jury or arbitration panel or tried to judgment before a judge, list the names and telephone numbers of trial counsel on all sides and court case numbers (include appellate cases).
1. Domingo Garcia v. State, case no. 5D18-2494
 - a. Defense counsel – O.H. Eaton Jr. (407-389-5140)
 - b. State counsel – Applicant
 2. Anthony Montgomery v. State, case no. 5D19-1707
 - a. Defense counsel – William R. Ponall (407-622-1144)
 - b. State counsel – Applicant
 3. Darell Avant v. State, case no. 5D18-2200
 - a. Defense counsel – Sean Kevin Gravel (386-254-3758)
 - b. State counsel – Applicant
 4. Antonio Orr v. State, case no. 5D19-0860
 - a. Defense counsel – Daniel S. Spencer (407-836-4836)
 - b. State counsel – Applicant
 5. Verne Ecedro Gomez v. State, case no. 5D18-2903
 - a. Defense counsel – Thomas J. Lukashow (386-254-3758)
 - b. State counsel – Applicant
 6. Andrew W. Thomas v. State, case no. 5D18-1963
 - a. Defense counsel – Shawna Moyers (386-254-3758)
 - b. State counsel – Applicant
- 27b. For your last 6 cases, which were settled in mediation or settled without mediation or trial, list the names and telephone numbers of trial counsel on all sides and court case numbers (include appellate cases).
- n/a
- 27c. During the last five years, how frequently have you appeared at administrative hearings?
- 0 average times per month
- 27d. During the last five years, how frequently have you appeared in Court?
- 1 average times per month
- 27e. During the last five years, if your practice was substantially personal injury, what percentage of your work was in representation of plaintiffs? 0 % Defendants? 0 %
28. If during any prior period you have appeared in court with greater frequency than during the last five years, indicate the period during which this was so and give for such prior periods a succinct statement of the part you played in the litigation, numbers of cases and whether jury or non-jury.

From May 2005 to September 2011, I appeared in court almost daily as an Assistant State Attorney, handling first appearances, bond hearings, arraignments, pretrial hearings, motions to suppress and dismiss, sentencings, non-jury trials, and jury trials. During that period, my workload was at all times in excess of one-hundred cases, and I participated in approximately 20 jury trials and 20 non-jury trials.

From September 2011 to December 2013, while serving as a Judicial Law Clerk, I assisted Circuit Court judges during court proceedings approximately once per week. The proceedings, which took place in the circuit civil, dependency, and family law divisions, included motions for summary judgment, motions to dismiss, evidentiary hearings, and trials.

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

n/a

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

English v. State, 191 So. 3d 448 (Fla. 2016)	
Sup. Ct. Case No.	SC14-2229
Judge:	Chief Justice J. Labarga, <i>et. al</i>
State Counsel:	Applicant
Defense Counsel:	Nancy Ryan
Dates:	Approved, May 12, 2016
5th DCA Case No.:	5D13-3398
<p>This case was significant because it resolved a conflict between the Fifth District Court of Appeal and the Second District Court of Appeal, affecting the ability of law enforcement officers throughout the state to affectuate traffic stops based on materials obscuring a vehicle's license plate, in reliance on section 316.605(1), Florida Statutes. The Supreme Court accepted my argument that the Second District Court of Appeal erred by unnecessarily resorting to rules of statutory construction, leading to an outcome at odds with the plain language of the statute. In addition to its statewide implications for law enforcement officers, this case was significant to me personally as the first merits brief I filed in the Supreme Court of Florida.</p>	

State v. Carabello-Olivero, 183 So. 3d 1248 (Fla. 5th DCA 2016)	
Fifth District Court of Appeal Case No.	5D14-3391
Judges:	Hon. R. Orfinger, Hon. V. Torpy, Hon. W. Berger
State Counsel:	Applicant
Defense Counsel:	Michael LaFay
Dates:	Reversed, January 22, 2016
Circuit Court Case No.:	2014-CF-3556
<p>After a sweeping cocaine, heroin, and firearms trafficking investigation conducted by the Metropolitan Bureau of Investigations, the Orlando Police Department, the Bureau of Alcohol, Tobacco, Firearms, and Explosives, and the U.S. Postal Service, Carabello-Olivero was charged with participation in an enterprise through racketeering, conspiracy to traffic in cocaine (400 grams or more), delivery of cocaine, and trafficking in 28 grams or more of cocaine. Represented by a top criminal defense firm, Carabello-Olivero was successful in moving to suppress extensive wiretap intercept evidence. Appealing the trial court's grant of the motion to suppress, I successfully argued on behalf of the State that the trial court applied an incorrect standard of review in evaluating whether the order authorizing the wiretap was properly issued, and in determining that there was no probable cause to support the wiretap. This victory was significant to the State Attorney's Office and to the law enforcement agencies involved, who devoted extensive time and resources to this large-scale investigation. On a personal level, I am proud of my work on this case because it took a significant amount of time to carefully review the voluminous record, conduct legal research, and write an effective initial brief. The prosecutor on the case personally thanked me for my efforts, and I feel privileged to have played a role in this important prosecution. See Tab A for articles related to this case.</p>	

Apperson v. State, 252 So. 3d 387 (Fla. 5th DCA 2018)	
Fifth District Court of Appeal Case No.	5D16-3582
Judges:	Hon. W. Palmer, Hon. R. Orfinger, Hon. L. Munyon (Associate Judge)
State Counsel:	Applicant
Defense Counsel:	William R. Ponall
Dates:	Oral argument: July 24, 2018; affirmed August 3, 2018
Circuit Court Case No.:	2015-CF-001381-A
<p>This case was important because of the significant media attention it received in Florida and nationally, and the complexity of the issues presented on appeal. Charged with the attempted murder of George Zimmerman, Apperson was aggressively represented at trial and on appeal by highly skilled criminal and appellate lawyers. Despite trial counsel's efforts at making the 2012 shooting death of Trayvon Martin at the hands of George Zimmerman a key feature of the trial, Apperson was found guilty by a jury. On appeal, counsel for Apperson raised four issues and numerous sub-issues, including arguments concerning the application of Florida's Stand Your Ground law. I handled all aspects of the appeal on behalf of the State, including briefing and oral argument, after which Apperson's conviction was affirmed. In addition to this case's importance as one of great public interest, it was significant to me personally because it signaled my Bureau Chief's confidence in both my legal skills and my ability to perform under the pressure of media attention. See Tab B for an article related to this case.</p>	

Febresalicea v. State, 2019 WL 2559824 (Fla. 5th DCA June 18, 2019)	
Fifth District Court of Appeal Case No.	5D18-1103
Judges:	Hon. F.R. Wallis, Hon. B. Lambert, Hon. J. Edwards
State Counsel:	Applicant
Defense Counsel:	William R. Ponall
Dates:	Oral argument: June 6, 2019; affirmed June 18, 2019
Circuit Court Case No.:	2015-CF-12303
<p>This case was significant because of the tragedy of the circumstances, as well as the difficult legal arguments raised. It involved the death of a bicyclist, who was struck by the defendant while waiting to cross the street with his groceries on a Saturday morning. The defendant was charged with DUI manslaughter and vehicular homicide, but was convicted by the jury only of vehicular homicide. The appeal raised challenging arguments concerning the sufficiency of the evidence to sustain the vehicular homicide</p>	

conviction, the trial court’s denial of a motion to suppress the results of a blood draw, and the current state of Florida’s implied consent law. However, after oral argument, the Fifth District Court of Appeal accepted my argument on behalf of the State, and affirmed the defendant’s conviction. I am proud of my role in ensuring justice for the victim, who lost his life as a result of the defendant’s extremely reckless driving. **See Tab C for an article related to this case.**

Eckert v. State, 184 So. 3d 1241 (Fla. 5th DCA 2016)	
Fifth District Court of Appeal Case No.	5D14-1862
Judge:	Hon. W. Palmer, Hon. W. Berger, Hon B. Jacobus (Senior Judge)
State Counsel:	Applicant
Defense Counsel:	Michael Ufferman
Dates:	Oral argument: February 11, 2016; affirmed, February 16, 2016
Circuit Court Case No.:	2012-CF-2967
<p>This case involved a daytime gun battle between members of rival motorcycle gangs in the parking lot of a Sanford VFW, which left three members of the Florida Warlocks dead. One issue raised on appeal presented a complex argument concerning the interplay between the reclassification of offenses based on the use of a firearm, and the minimum mandatory sentences imposed under Florida’s “10-20-Life” statute. Another issue was the correctness of the standard jury instructions pertaining to Florida’s justifiable use of deadly force law. The issue was in flux at the time, with no ruling having yet been issued by the Supreme Court of Florida, and it was Eckert’s well-respected appellate counsel who had successfully argued in the First District Court of Appeal that the standard instructions were fundamentally erroneous. He sought a similar ruling from the Fifth District Court of Appeal. However, following briefing and oral argument, the Fifth District Court of Appeal accepted my argument that the jury instructions were not erroneous, and that Eckert’s sentence was lawful. The Supreme Court of Florida would later affirm the accuracy of the justifiable use of force instructions in <u>State v. Floyd</u>, 186 So. 3d 1013 (Fla. 2016). See Tab D for an article related to this case.</p>	

Pinkard v. State, 185 So. 3d 1289 (Fla. 5th DCA 2016)	
Fifth District Court of Appeal Case No.	5D14-2532
Judges:	Hon. J. Edwards, Hon. W. Palmer, Hon. V. Torpy
State Counsel:	Applicant
Defense Counsel:	Dawn Ducarpe
Dates:	Affirmed, February 26, 2016
Circuit Court Case No.:	2011-CF-10755
<p>This case was significant because of the multitude of complex legal issues presented, and because my argument resulted in the Fifth District Court of Appeal recognizing that its earlier precedent had been implicitly overruled. Road-rage led to the senseless murder of a young man who was driving his friend to the hospital in order to be present for the birth of the friend's child. On appeal, counsel for Pinkard argued that the trial court erred in instructing the jury that Pinkard could be convicted as a principal to first-degree murder, that "victim death points" were erroneously assessed on Pinkard's Criminal Punishment Code scoresheet, and that the trial court erred in imposing consecutive sentences on two of the counts because Pinkard had been sentenced as a Habitual Felony Offender on one or more counts. Although there was a decision from the Fifth District Court of Appeal directly supporting Pinkard's consecutive-sentence claim, the Court accepted my argument that its decision had been implicitly overruled by a more recent case from the Supreme Court of Florida, and Pinkard's convictions and sentence were affirmed in all respects. See Tab E for an article related to this case.</p>	

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

See **Tabs F and G** for writing samples. The first sample is an opinion on a Circuit Court case that was before the court on appeal from the County Court. I drafted the opinion at the request of then Chief Judge Richard Graham. This writing sample was drafted and edited solely by me, and may not be an exact representation of the opinion that was ultimately signed by the court and filed with the Clerk. The second sample is an appellate brief drafted solely by me, and filed in the Fifth District Court of Appeal.

PRIOR JUDICIAL EXPERIENCE OR PUBLIC OFFICE:

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

No

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

nature of your duties, and whether you intend to resign such position immediately upon your appointment or election to judicial office.

n/a

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

No

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

None

POSSIBLE BIAS OR PREJUDICE:

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

There are no types of cases from which I believe I would have to recuse myself.

MISCELLANEOUS:

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

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

Where convicted? _____ Date of Conviction: _____

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

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

Where convicted? _____ Date of Conviction: _____

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

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

Where convicted? _____ Date of Conviction: _____

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

No

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

No

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

No

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

No

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

No

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

No

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

No

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

No

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

No

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

No

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

Yes No If no, please explain. _____

43b. Have you ever paid a tax penalty?

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

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

No

HONORS AND PUBLICATIONS:

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

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

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

The first, and perhaps greatest, honor I have received as a Florida attorney was being invited to deliver remarks at the swearing-in ceremony for new attorneys, conducted at the Fifth District Court of Appeal in May 2005. I myself was sworn into the Bar that day, and was advised by then Chief Judge Sawaya, that I was invited to speak because I achieved the highest Florida Bar Exam score among all attendees. Judge Sawaya was kind enough to invite me to meet with him in chambers prior to the ceremony, which was an exciting experience for a new attorney. Being honored with the opportunity to address the other attendees and their families made an already memorable day particularly special.

On many occasions, I have presented a lecture summary of the criminal law cases contained in a volume of the Florida Law Weekly publication to other members of the State Attorney's Office and Office of the Attorney General. I have also presented on behalf of the State Attorney's Office at the Citizen's Police Academy in Daytona Beach, assisted in training Daytona Beach Police officers on issues relating to DUI investigations, presented Career Day presentations at Silver Sands Middle School, and accompanied middle school students from Christ the King Lutheran School to observe court at the Kim C. Hammond Justice Center in Bunnell, making myself available to answer questions from the students about the judicial system.

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

PROFESSIONAL AND OTHER ACTIVITIES:

- 48a. List all bar associations and professional societies of which you are a member and give the titles and dates of any office which you may have held in such groups and committees to which you belonged.

Volusia County Bar Association, member

Volusia Flagler Association for Women Lawyers, member

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

Over the past nine years I have served on various committees at [REDACTED] Church in Palm Coast, as well as [REDACTED] Church in Palm Coast. During that time, I have been tasked with planning and implementing youth programs, heading the Member Care Committee, heading the Infant & Toddler Care Committee, and assisting the Fellowship Committee with planning and implementing social events. I am currently the coordinator for both the Member Care Committee and the Infant & Toddler Care Committee at [REDACTED]. As the head of the Member Care Committee, I lead a team of church members tasked with assisting fellow members in need of various types of assistance. Examples include calling and sending cards to the sick and elderly, helping arrange rides to church for members without transportation, and creating “meal trains” to assist families who are struggling with injury, job loss, or illness, or who recently welcomed a new baby. As the head of the Infant & Toddler Care Committee, I am responsible for recruiting and scheduling volunteers to assist with childcare during church services, Bible study, and other church events, as well as providing childcare myself.

From 2012 to 2016 I served as a mentor to a young man through the Take Stock in Children Program, which is coordinated locally by the Flagler County Education Foundation. The program identifies high achieving but at-risk youth as they enter high school and assigns them a mentor. The mentor and mentee meet weekly throughout the mentee’s high school career, with the goal of the mentee going on to pursue post-secondary education. The mentor is responsible for helping the mentee set and achieve goals, for offering advice and guidance, and for acting as an advocate. I am proud to say that despite a sometimes-rocky journey, my mentee graduated from high school, and is enrolled at the University of Tampa.

From 2014 to 2016, I was involved with the Noah’s Light Foundation, which was an Orlando-based organization focused on funding research into a specific type of immunotherapy-based pediatric brain cancer treatment. The research was conducted at the MD Anderson Cancer Center in Texas. During that time, I raised in excess of \$3000 for the Foundation, and I am happy to report that it met its goal of moving the treatment from the research phase to being approved for testing by the FDA.

- 48c. List your hobbies or other vocational interests.

I enjoy spending time with family, going to the beach, camping, exploring state parks, and playing tennis. I am also actively involved in my church.

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

No

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

Due to my current position as an Assistant Attorney General, and my prior positions as a Judicial Law Clerk and Assistant State attorney, I have been limited in my ability to participate in pro bono legal work. However, I have found great reward in participating in other types of volunteer work, as set forth under question 48b.

SUPPLEMENTAL INFORMATION:

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

In the past five years, I have attended CLE programs in criminal law, appellate practice, Florida's Sunshine Law, public records, ethics, and technology.

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

No

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

I believe that my broad legal experience in the trial courts, appellate courts, and as a Judicial Law Clerk would serve me well as a County Court judge. As a prosecutor, I developed excellent time management skills, handling a heavy caseload that required almost daily court appearances, while continuing to juggle meetings, conduct legal research, and keep up with office work. Working as a prosecutor also brought me into constant contact with victims, witnesses, and unrepresented defendants, many of whom had very different backgrounds and life experiences from my own. This taught me how to communicate effectively and compassionately with people of varying backgrounds, and, when necessary, how to deliver unwelcome news.

As a Judicial Law Clerk, I was fortunate to be exposed to a variety of civil issues, including personal injury, contracts, dependency, and family law. I have often reflected on my time as a law clerk as perhaps the most valuable of my career. At a time when I had no background in civil law, the Chief Judge of the Seventh Judicial Circuit entrusted me to provide research and counsel on complex construction litigation cases, multimillion-dollar personal injury cases, contract disputes, and the like. Other Circuit Court judges sought my counsel on issues that profoundly affected children and families. What I took from my experience was: (1) that I was up to task; and (2) that some of the most talented judges I know never questioned whether I was up to task. Thus, the value of my time as a law clerk was not just furthering my knowledge of civil and family law issues, but also gaining

the confidence that there was no topic I could not learn, and no case that could not be made manageable.

Finally, as an Assistant Attorney General, I have had the valuable experience of continuing to develop my legal research and writing skills, my oratory skills, and perhaps most pertinent to a County Court judgeship, my knowledge of the Evidence Code and procedural rules. While I continue to maintain a heavy caseload, I also have the luxury of time to carefully consider and research issues pertaining to the admissibility of evidence, search and seizure, sentencing, the right to a speedy trial, and a number of other issues facing trial courts on a daily basis. I have also continued to develop a great ability to remain calm under pressure, arguing frequently before the Fifth District Court of Appeal, and on one occasion, before the Supreme Court of Florida.

My experiences as an Assistant State Attorney, a Judicial Law Clerk, and an Assistant Attorney General have allowed me to view the issues facing the courts of the Seventh Judicial Circuit at the trial level, the appellate level, and through the lens of a trial court judge. I believe this unique and broad basis of experience enhances my ability to correctly identify and resolve issues in a timely, fair, and consistent fashion.

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

I feel very strongly about the importance of public service, and I believe that is reflected in my career, my family life, and my involvement in the community. My husband and I have both dedicated our careers to public service: I through my service to the judicial system, and he through his careers in military and law enforcement. It is a value we strive to impart on our children. From formal volunteer opportunities with charitable organizations and church, to simply being a good friend and neighbor, this sense of civic duty is a quality that I believe would make me an excellent County Court judge, because it is the same characteristic that leads me to believe that the law must be applied fairly in every situation, as it is written, free from the influence of personal beliefs or emotion. It also includes treating attorneys and litigants alike with the utmost respect and courtesy.

I also believe that having a strong connection to the community is important for a County Court judge. As put by the Florida Courts website, County Courts are sometimes referred to as “the people’s courts,” and our Constitution mandates that County Court judges reside in the communities they serve. This mandate reflects an understanding that, while all judges must strive to apply Florida’s laws consistently, the public may feel a greater sense of confidence in a County Court judge that is also a fellow citizen, invested in the community. As a 15-year resident of Flagler County, my fellow citizens can have that confidence in me. I am frequently found around Flagler County at children’s sporting events, school functions, festivals, and volunteer opportunities, demonstrating my commitment to the community I know and love.

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

n/a

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

I have a calm and affable demeanor, and I make every effort to conduct myself with humility and courtesy. I am hardworking, detail oriented, always prepared, and I love to learn. With my combination of criminal and civil experience, strong legal research skills, and comfort in the courtroom, I know that I could effectively preside over a civil or criminal division assignment as a County Court judge. I would be extremely honored to serve in this capacity, and am grateful for this Committee's consideration.

REFERENCES:

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

Name	Address	Telephone number
Hon. R. Lee Smith, Circuit Judge	4010 Lewis Speedway, Room 305, St. Augustine, FL 32084	(904) 827-5606
Wesley Heidt, Bureau Chief, Office of the Attorney General	444 Seabreeze Blvd., Ste. 500, Daytona Beach, FL 32118	(386) 238-4990
Hon. Terence R. Perkins, Circuit Judge	1769 East Moody Boulevard, Building 1, Bunnell, FL 32110	(386) 313-4510
William R. Ponall, Esq.	SunTrust Building, 253 N. Orlando Ave, Ste. 201, Maitland, FL 32751	(407) 622-1144
Hon. D. Melissa Distler, County Judge	1769 East Moody Boulevard, Building 1, Bunnell, FL 32110	(386) 313-4520
Aaron Delgado, Esq.	227 Seabreeze Blvd., Daytona Beach, FL 32118	(386) 222-6677
Chief Craig Capri, Daytona Beach Police Department	129 Valor Blvd., Room 3001, Daytona Beach, FL 32114	(386) 671-5101
Melissa Clark, Assistant State Attorney	1769 East Moody Boulevard, Building 1, Bunnell, FL 32110	(386) 852-5819
Hon. Richard B. Orfinger, Appellate Judge	Fifth District Court of Appeal, 300 Beach St., Daytona Beach, FL	(386) 947-1510
Hon. Leah R. Case, Circuit Judge	125 E. Orange Ave., Daytona Beach, FL 32114	(386) 257-6071

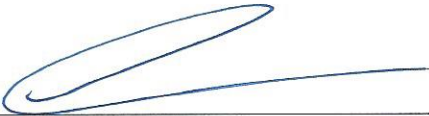
CERTIFICATE

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

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

Dated this 5 day of August, 2019.

Andrea Karyn Totten
Printed Name


Signature

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

FINANCIAL HISTORY

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

Current year to date	\$37,212		
	2018:	2017:	2016:
List Last 3 years	\$63,327.68	\$58,249.54	\$55,050.65

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	\$37,212		
	2018:	2017:	2016:
List Last 3 years	\$63,327.68	\$58,249.54	\$55,050.65

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	n/a		
	n/a	n/a	n/a
List Last 3 years	n/a	n/a	n/a

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

Current year to date	n/a		
	n/a	n/a	n/a
List Last 3 years	n/a	n/a	n/a

**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 July 27, 2019 was \$86,909.

PART B - ASSETS

HOUSEHOLD GOODS AND PERSONAL EFFECTS:

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

The aggregate value of my household goods and personal effects (described above) is \$ 30,000

ASSETS INDIVIDUALLY VALUED AT OVER \$1,000:

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

VALUE OF ASSET

DESCRIPTION OF ASSET (specific description is required – see instructions p. 3)	VALUE OF ASSET
State of Florida Deferred Compensation Plan	\$25,777
Florida Retirement Investment Plan	\$27,754
██	\$230,000
Bank of America Accounts	\$44,766
Capital One 360 Savings Account	\$4554
State of Florida 529 College Savings Plans	\$24,780

PART C - LIABILITIES

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

NAME AND ADDRESS OF CREDITOR

AMOUNT OF LIABILITY

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
Lakeview Loan Servicing, P.O. Box 8068, Virginia Beach, VA 23450 (mortgage)	\$228,000
Navient Student Loans, P.O. Box 9635, Wilkes-Barre, PA 18773	\$73,538

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

NAME AND ADDRESS OF CREDITOR

AMOUNT OF LIABILITY

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY

PART D - INCOME

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

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

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

NAME OF SOURCE OF INCOME EXCEEDING \$1,000	ADDRESS OF SOURCE OF INCOME	AMOUNT
State of Florida	200 E. Gaines St., Tallahassee, FL 32399	\$64,500.80

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

NAME OF BUSINESS ENTITY	NAME OF MAJOR SOURCES OF BUSIENSS' INCOME	ADDRESS OF SOURCE	PRINCIPAL BUSINESS ACTIVITY OF SOURCE

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

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

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

OATH

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



SIGNATURE

STATE OF FLORIDA

COUNTY OF Volusia

Sworn to (or affirmed) and subscribed before me this 5 day of August 2019 by Andrea Totten


 (Signature of Notary Public—State of Florida)

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



Jymme Kern
 NOTARY PUBLIC
 STATE OF FLORIDA
 Comm# GG197899
 Expires 3/19/2022

Personally Known _____ OR Produced Identification X

Type of Identification Produced FL Drivers Lic

INSTRUCTIONS FOR COMPLETING FORM 6:

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

PART A – NET WORTH

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

To total the value of your assets, add:

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

To total the amount of your liabilities, add:

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

PART B – ASSETS WORTH MORE THAN \$1,000

HOUSEHOLD GOODS AND PERSONAL EFFECTS:

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

ASSETS INDIVIDUALLY VALUED AT MORE THAN \$1,000:

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

How to Identify or Describe the Asset:

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

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

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

How to Value Assets:

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

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

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

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

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

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

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

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

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

PART C—LIABILITIES

LIABILITIES IN EXCESS OF \$1,000:

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

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

How to Determine the Amount of a Liability:

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

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

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

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

Examples:

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

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

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

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

PART D – INCOME

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

PRIMARY SOURCES OF INCOME:

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

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

Examples:

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

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

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

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

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

SECONDARY SOURCE OF INCOME:

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

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

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

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

Examples:

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

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

PART E – INTERESTS IN SPECIFIED BUSINESS

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

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

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

JUDICIAL APPLICATION DATA RECORD

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

(Please Type or Print)

Date: August 5, 2019

JNC Submitting To: Seventh Judicial Circuit

Name (please print): Andrea Karyn Totten

Current Occupation: Assistant Attorney General

Telephone Number: (386) 986-9072 Attorney No.: 0011955

Gender (check one): Male Female

Ethnic Origin (check one): White, non Hispanic

Hispanic

Black

American Indian/Alaskan Native

Asian/Pacific Islander

County of Residence: Flagler County

FLORIDA DEPARTMENT OF LAW ENFORCEMENT

DISCLOSURE PURSUANT TO THE
FAIR CREDIT REPORTING ACT (FCRA)

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

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

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

Printed Name of
Applicant:

Andrea Karyn Totten

Signature of Applicant:



Date: August 5, 2019

TAB A

ON AIR NOW

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AT COMMERCIAL

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THE LATEST NEWSCAST

TRAFFIC

INCIDENTS

TRAVEL
TIMES



There are currently no traffic incidents.

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THE LATEST TRAFFIC REPORT

WEATHER »

76°

CURRENT CONDITIONS
Sct Thunderstorms.
H 87° L 75°

86°

AFTERNOON
Sct Thunderstorms.
H 87° L 75°

79°

EVENING
Sct Thunderstorms.
H 87° L 75°

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THE LATEST FORECAST

US DUTY FREE MAGNATE...

LOCAL



24 ARREST WARRANTS ISSUED IN CENTRAL FLORIDA DRUGS, FIREARMS BUST

By: Mark Starling
Published: April 2, 2014 11:07 AM
Updated: April 2, 2014 11:07 AM



ORANGE COUNTY, Fla. - The Metropolitan Bureau of Investigation, along with the Bureau of Alcohol, Tobacco, Firearms, and Explosives and the U.S. Drug Enforcement Administration, announced Wednesday that charges of racketeering, conspiracy to commit racketeering and trafficking in cocaine have been filed and arrest warrants have been issued against 24 people in central Florida.

Three search warrants were executed in Orange County Wednesday during "Operation Island Heat," a two-year investigation into a drug and firearms trafficking organization operating within Orange and Osceola counties.

Investigators said drugs were being imported from Puerto Rico and firearms were exported from the U.S. to Puerto Rico.

At the center of the investigation were Edmundo Caraballo Olivero, 40, and Raul Pardo Soto, 41, who officers said owned and used a local restaurant, La Terraza on East Colonial Drive, as a base of operation.

Other members of the cocaine trafficking organization sold trafficking amounts of cocaine to undercover agents at other locations in central Florida.

The organization smuggled multiple kilos of cocaine from Puerto Rico that were later sold and distributed in East Orange County and Osceola County.

In addition to cocaine, the organization also sold and distributed heroin and marijuana, authorities said.

Investigators said the organization used the U.S. Postal Service to facilitate the transport of the contraband.

Undercover agents said seized firearms from the organization that varied from handguns to assault style rifles.

More than six kilos of cocaine were seized and over 30 firearms were recovered during the investigation, said authorities.

Anyone with additional information related to the drug trafficking organization is asked please contact MBI or ATF at (407) 836-9701 or Crimeline at 407-423-TIPS.

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United Naturals

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Gundry MD Total Restore Supplement

Alligators surround body in Florida lake, police say

2019: Little-Known Rule in Palm Coast, FL

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MBI: Drug and firearms ring operated out of local restaurant

By **Amy Pavuk, Orlando Sentinel**

APRIL 2, 2014

A crime ring that smuggled cocaine into Central Florida, sent stolen weapons to Puerto Rico, and sold drugs and guns out of an Orlando restaurant has been dismantled, the Metropolitan Bureau of Investigation said Wednesday.

At least 24 people are facing charges as a result of "Operation Island Heat," including suspected ringleaders Edmundo Caraballo Olivero and Raul Pardo Soto.

Agents said Caraballo and Pardo based their drug and gun operation out of La Terraza Restaurant, the business they own on East Colonial Drive near Old Cheney Highway.

MBI and the Bureau of Alcohol, Tobacco, Firearms and Explosives launched the investigation 2 1/2 years ago, and it was not an easy case, said MBI Director Larry Zwiig.

Caraballo is an experienced drug dealer who already served prison time for cocaine trafficking. Zwiig said Caraballo and his associates are aware of law-enforcement tactics.

But experienced undercover agents gained their trust and worked their way into the organization.

ATF Supervisor Joe Lenczyk called the case a "success story," and said the group is no longer a threat to Central Florida.

Throughout the investigation, agents bought or seized more than 13 pounds of cocaine and 33 firearms, authorities said. Weapons varied from assault rifles to pistols.

Cocaine sent from Puerto Rico to Orlando was sold on the streets, as well as heroin and marijuana.

Customers at La Terraza Restaurant could order food and large quantities of drugs, Zwiig said. The group sold drugs from other locations, too.

Authorities have charged the group's leaders and associates with racketeering, a crime that carries a punishment of up to 30 years in prison.

Caraballo and Pardo remained in the Orange County Jail on Wednesday.

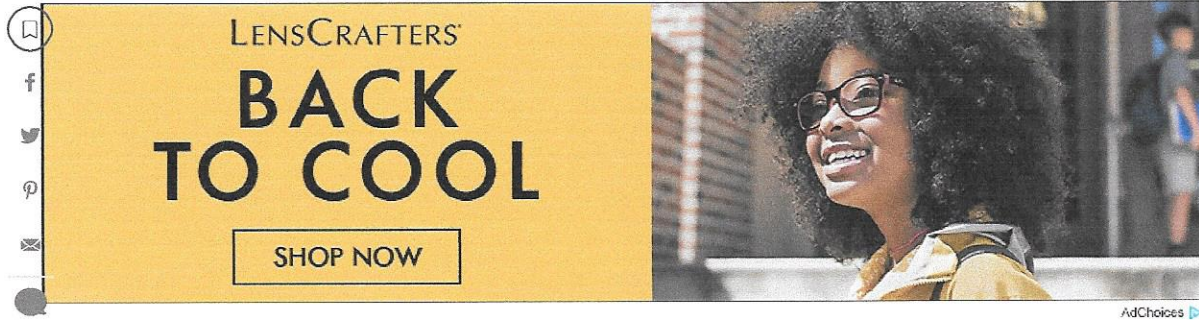
The investigation is ongoing, as well as a parallel federal probe.

apavuk@tribune.com or 407-420-5735

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This 'attr(data-c-typename)' is related to: [Drug Trafficking](#)

TAB B



CRIME 10/17/2016 12:17 pm ET

Man Who Shot At George Zimmerman Is Sentenced To 20 Years In Prison

Matthew Apperson was convicted of second-degree attempted murder for firing at Zimmerman in 2015.

REUTERS



ORLANDO SENTINEL VIA GETTY IMAGES

Matthew Apperson, who defended that he shot at George Zimmerman in self defense, was sentenced Monday to 20 years in prison.

A Florida man was sentenced to 20 years in prison on Monday, media reports said, for shooting at George Zimmerman, who had shot and killed the unarmed black teenager Trayvon Martin in 2012 in a case that garnered national attention.

Matthew Apperson was convicted by a jury last month of second-degree attempted murder for firing at Zimmerman, 33, during a roadside confrontation in Lake Mary, Florida in May 2015.



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Man Who Shot At George Zimmerman Is Sentenced To 20 Years In Prison



A Sanford, Florida jury had acquitted Zimmerman, a former neighborhood watchman, of murder in the fatal shooting of the 17-year-old Martin. The case sparked the Black Lives Matter activist movement that campaigns against violence toward black people.



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ORLANDO SENTINEL VIA GETTY IMAGES

George Zimmerman, the former neighborhood watchman who shot and killed 17-year-old Trayvon Martin in 2012, is seen speaking with his attorney ahead of Apperson's conviction last month.

Circuit Court Judge Debra Nelson in Seminole County called Apperson "a danger to the community" as she handed down the mandatory minimum sentence on Monday, ABC-affiliate WFTV 9 said.

Apperson also was sentenced for convictions of shooting into an occupied vehicle and aggravated assault with a firearm stemming from the altercation with Zimmerman, who sustained minor injuries from shattered glass.

During his trial, Apperson testified that the shooting was in self defense. Zimmerman testified it was unprovoked and that he and Apperson had been involved in another roadside altercation in September 2014, in which Apperson had accused him of being in the wrong over the shooting death of Martin.

Zimmerman had claimed to have acted in self-defense when he shot Martin, a high school student who was walking through the community after stopping at a convenience store.

(Reporting by Laila Kearney; Editing by Colleen Jenkins and Bernadette Baum)

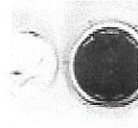


TAB C



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BREAKING NEWS NEWS

FHP: Driver faces DUI manslaughter charge




By **GAL TZIPERMAN LOTAN**
ORLANDO SENTINEL | SEP 14, 2015






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Eric Febres Alicea, 33 of Winter Park, drove onto the median and hit the bicyclist with his 1987 Nissan pickup truck, Montes said.

Perio died at the scene of the crash, which happened at 11:15 a.m.

Troopers arrested Febres Alicea, who they said appeared to be impaired. He agreed to give them a blood sample so they can send it to be tested for substances.

He is facing a charge of driving under the influence manslaughter and being held in the Orange County Jail on \$25,000 bail.

Montes did not know whether Perio was on his bicycle or standing next to it when he was hit.

David Harris

TAB D

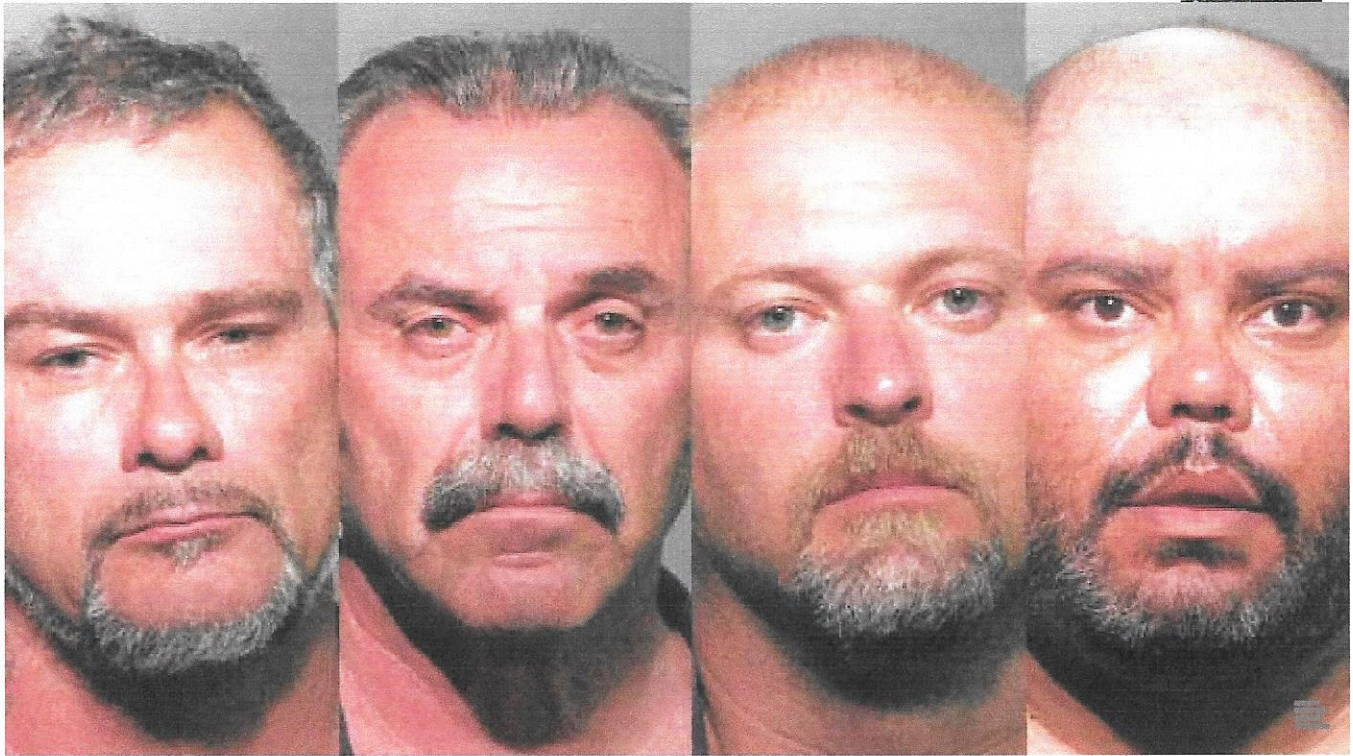


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4 arrested in biker shooting at Winter Springs VFW that left 2 dead

Officers sorting clues in Winter Springs shooting



Updated: 5:18 PM EDT Oct 1, 2012

WINTER SPRINGS, Fla. —

Four people have been arrested after a weekend shooting that left two dead and one hurt in Winter Springs, police and the state attorney's office have confirmed.



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Victor Amaro, 41, Robert Eckert, 38, David Maloney, 52, and Paul Smith, 47, were each charged with two counts of homicide and one count of attempted homicide.

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RELATED CONTENT

Fourth man charged in Warlocks shooting goes to trial

4 arrested in Winter Springs VFW shooting

The shooting happened at the Veterans of Foreign Wars lodge, where a motorcycle ride to raise money for injured bikers was planned Sunday.

Police said an altercation broke out before the ride, but authorities did not know what the altercation was about.

Officials said Harold Liddle and Peter Schlette were killed in the shooting, and David Jakiela was taken to Orlando Regional Medical Center's trauma unit. A WESH 2 News crew observed Jakiela arriving at the ORMC emergency room.

The hospital was on lockdown Sunday, which is common practice when a shooting victim is brought in, police said. Police said Jakiela is still in critical condition.



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Witnesses told WESH 2 News they heard as many as 50 gunshots during the melee.

They said some of the people involved had "Warlocks" insignias on their leather jackets.

"We don't know exactly the party affiliations. We're still doing investigation on that," said Lt. Doug Seely.

Seely stressed that they believe it is an isolated incident.

"We're still trying to figure out exactly what happened to be able to understand why it happened," Seely said.

Sources within the bike club community said there is a Warlocks Motorcycle Club from Pennsylvania, trying to establish a chapter in Florida where a chapter already exists.

Police have heard there's friction between the groups, but won't confirm suspicion of a turf war.

"As we go through this investigation, we're trying to take that information you provided, and try to see the relevancy to this event," said Seely.

Several agencies were called to the scene, and 12 people were detained in front of the building, including the four who were charged.

Officials said they recovered 13 firearms.

Florida mug shots

TAB E



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75°



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WITH JOE...

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TRAFFIC

INCIDENTS TRAVEL TIMES



FL-417, SOUTHBOUND
Road blocked due to acc...

US-17, BOTH WAYS
Road closed due to eme...

LISTEN

THE LATEST TRAFFIC REPORT

WEATHER >>

75° CURRENT CONDITIONS
Partly Cloudy. H 92°
L 76°

89° AFTERNOON
Partly Cloudy. H 92°
L 76°

86° EVENING
Isolated
Thunderstorms. H

LISTEN

THE LATEST FORECAST

LOADED HANDGUN DETE...

SUSPECT ARRESTED IN KIRKMAN/COLONIAL DR. SHOOTING

By: Brandon Hamilton
Published: August 3, 2011 6:50 PM
Updated: August 3, 2011 6:50 PM



Orlando, FL None - The suspect in a fatal shooting of 18-year-old Mcferrel Jones has been arrested and taken into police custody.

Jeremiah Pinkard, 18, was arrested close to 4 p.m. Wednesday at 4613 Wassee Court by Orange County Sheriff's Office Felony Squad.

He is being charged with first degree murder in connection with Jones' death.

Jones was killed August 1 at the intersection of Kirkman Road and West Colonial Drive following a verbal confrontation between Pinkard.

At the time of the incident, police said an exchange of words involving threats were made.

"There were some words exchanged at this intersection. At the end of that exchange, the suspect, the shooter, made a comment telling him that he could end their life," Orange County Sheriff's Detective Chris Williams said.

Initially, police said Jones did not know Pinkard. The investigation is still ongoing and anyone with information is asked to call Crimeline at 1-800-423-TIPS.

Related

TAB F

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

**APPEAL NO.: 2011-10026 APCC
CASE NO.: 2010-11661 CODL**

**FIRE & WATER RESTORATION INC.,
a/a/o Loretta Dukes**

Appellant,

V.

**UNIVERSAL PROPERTY & CASUALTY
INSURANCE CO.**

Appellee.

_____ /

Appeal from the County Court, 7th Judicial
Circuit, In and for Volusia County, Florida,
Honorable Bryan A. Feigenbaum, Judge.

Guy H. Gilbert, Esquire, for Appellant

Jason R. Urbanowicz, Esquire, for Appellee

OPINION OF THE COURT

The Appellant, Fire & Water Restoration Inc., (hereinafter Fire and Water, Plaintiff, or Appellant), appeals the decision of the County Court granting summary judgment in favor of Universal Property & Casualty Insurance

(hereinafter Universal, Defendant, or Appellee). For the following reasons, the decision is affirmed.

JURISDICTION

On July 22, 2011, the County Court of the Seventh Judicial Circuit Court of Volusia County, Florida, entered an Order granting Appellee's Motion for Summary Judgment. On September 21, 2011, the court entered a final judgment in favor of Appellee. The Appellant timely filed an appeal, which was certified on October 18, 2011. This Court properly exercises jurisdiction pursuant to Florida Rules of Appellate Procedure 9.030(c)(1)(A) and Rule 9.110.

STANDARD OF REVIEW

Summary Judgment is proper if there is no genuine issue of material fact and if the moving party is entitled to judgment as a matter of law. Volusia County v. Aberdeen at Ormond Beach, L.P., 760 So. 2d 126, 130 (Fla. 2000). The standard of review for summary judgment is *de novo*. Here, it is not alleged by Appellant that there exists a genuine issue of material fact. Instead, Appellant argues that Appellee was not entitled to judgment as a matter of law.

FACTS

The Record on Appeal (hereinafter "R") indicates that on approximately July 7, 2010, homeowner Loretta Dukes (Dukes) of Lake Helen, Florida, sustained water damage to her home as a result of a leaky air conditioner. Dukes contracted

with Fire & Water Restoration, (doing business as ServiceMaster), to perform water damage mitigation. Dukes also filed a claim with her homeowner's insurance company, Universal Property and Casualty. On July 7, 2010, Fire and Water had Dukes sign a document entitled, "Authorization and Assignment of Insurance Benefits" purporting to transfer and assign Dukes' insurance rights, benefits, and cause of action under her policy with Universal to Fire and Water. (R. 4). The agreement goes on to state that if the insurance company does not pay Fire and Water, then Dukes is responsible for payment. It is not disputed that Universal received a copy of the assignment.

Fire and Water completed their restoration services, and on September 1, 2010, a bill was sent to Universal in the amount of \$2218.80. On October 8, 2010, Universal sent a check to Dukes in the amount of \$2250.62. This amount represents the fee due to Fire and Water, as well as reimbursement to Dukes for property loss. The payees on the check were listed as Dukes and Nationstar Mortgage, Dukes' mortgage holder. Per Universal, the terms of their policy with Dukes and with Nationstar requires that all checks issued for claims made to insurance be in the name of both the homeowner and Nationstar.

Fire and Water asserts that they notified Universal of the "improper payment" and received no response. On October 26, 2010, Fire and Water filed suit against Universal for breach of contract.

On November 20, 2010, Dukes wrote a check to Fire and Water for \$2000. On January 5, 2011, Dukes sent a second check to Fire and Water for \$150. Sometime thereafter, with litigation still pending, Dukes sent a third, undated check to Fire and Water in the amount of \$68.80. Appellant does not dispute that it received these payments and that these amounts do represent the \$2218.80 originally owing to them. On March 29, 2011, Fire and Water filed a Motion for Partial Summary Judgment. (R. 47-53). On May 17, 2011, Universal filed a Motion for Summary Judgment. (R. 59-77). On June 6, 2011, the court heard both motions, ultimately granting Summary Judgment in favor of Universal. (R. 150-152).

ANALYSIS

Appellant raises three arguments on appeal: (1) that the appellant is the sole owner of the insurance claim after an assignment; (2) that payment to the assignor of a claim after notice of the assignment does not discharge the obligation to pay; and (3) that the appellee cannot claim payment or set-off because these affirmative defenses were never raised in Appellee's answer.

Appellant's Claim That it is the Sole Owner of the Insurance Claim

As a preliminary matter, Appellee concedes in its brief, and in fact has never disputed, that Fire & Water "owns" the insurance claim at issue here by virtue of the assignment made by Dukes to Fire & Water, to the extent that it allows Fire &

Water to enforce the insurance policy against Universal. The granting of summary judgment in favor of Appellee was not predicated on Appellant's lack of standing.

Analysis of Amounts Owed

Appellant argues that the trial court erred in finding that Fire and Water had been made whole in that Fire and Water sustained "costs" as a result of Universal's issuance of a check in the name of Dukes and Nationstar rather than Fire and Water. Appellant has never articulated what these costs are, but it also claims that it is entitled to interest and attorney's fees because it was "forced" to sue in order to receive payment for its services. It appears that Appellant would also seek to have Universal pay it \$2218.80, even though it has already received that amount directly from Dukes, but can cite to no authority that would suggest that it is fair and equitable that Fire and Water should be paid twice for the exact same services. Appellant appears to urge this Court to find that Universal should be forced to pay an additional \$2218.80 simply as punishment.

As there is a contract in place between Fire & Water and Dukes delineating the assignment and transfer of rights, as well as other terms surrounding payment, the Court will first look to that in evaluating Appellant's claims.

Appellant seeks to recover interest on the original amount owed to it. In its "Summary of Argument," it claims that it has not been made whole by Dukes "belatedly" paying the underlying contract. However, it does not claim that there

was a “due date” for payment, and no “due date” is listed in the agreement between Fire and Water and Dukes. Thus, it is unclear at what point the payment could have been said to have been late. The agreement simply states that if the insurance company does not pay Fire and Water, then Dukes must pay, which is exactly what occurred. The Court would note that Fire and Water was paid the vast majority of what it was owed within 90 days of its bill to Universal. Further, Appellant seeks interest on the allegedly late payment, even though the blank space on its contract where someone should have written in what the interest rate would be, was never filled in. The Court cannot agree that Fire and Water is entitled to any interest on a payment that does not appear to be late, and it certainly cannot agree that interest continues to accumulate, even though full payment was made in early 2011. As for Appellant being “forced” to sue in order to recover the amounts due to it, the facts do not support this. Appellant claims that it, on one occasion, informed Universal of its “improper” payment to Dukes and Nationstar, but made no further attempt to recover from Universal or to recover payment from Dukes, even though its agreement with Dukes allowed it to do so. As Florida Statute 627.70131(5)(a) gives an insurer 90 days to either pay or deny a claim, it would appear that Fire and Water was very premature in filing its lawsuit a mere 43 days after the date of its bill to Universal. Further, to continue its lawsuit even after receiving full payment for its services, is an expenditure that is attributable only to Appellant.

The Rights of an Assignee to Recover Against a Debtor Who Makes Payment to an Assignor

Appellant points primarily to Building Materials Corp. of America v. Presidential Financial Corp., 972 So. 2d 1090 (Fla. 2d DCA 2008) and Oglesby v. State Farm, 781 So. 2d 469 (Fla. 5th DCA 2001) for the proposition that a debtor errs in making payment to an assignor rather than an assignee. While this is true as a general principle, Presidential and Oglesby do not deal with situations where the plaintiff-assignee has *actually been made whole* by the assignor, as is the situation in the instant case. Furthermore, the holding in Oglesby concerns the assignee's standing to sue, which is not in dispute here. There is nothing in either of these cases to suggest that even though the assignor has already made the assignee whole, the debtor should be forced to pay again, resulting in a windfall to the assignee.

It should also be noted that Presidential, relied upon so heavily by Appellant, cites to 679.4061(1) Florida Statutes and City of North Miami v. American Fidelity Fire Ins. Co., 505 So. 2d 511 (Fla. 3d DCA 1987). City of North Miami stands for the principle that notice of the assignment to the debtor, without specific instructions to the debtor to pay the assignee directly, is insufficient to hold the debtor liable for failure to make direct payment to the assignee. Id. at 512. Section 679.4061(1) Florida Statutes, (numbered as 679.318(3) at the time of the City of North Miami decision), requires a debtor to make direct payment to an assignee

after, “the account debtor receives notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned *and that payment is to be made to the assignee*”. (Emphasis added). Here, Fire and Water did not inform Universal that it should make payment directly to them, and thus, based on the cases and statute cited, their claim must fail. The Court notes that Universal argues that Presidential does not apply to our facts because Presidential does not involve insurance coverage subject to the provisions of an insurance policy and Florida statutes regulating the payment of benefits. The Court need not reach a decision as to that argument as Presidential either applies and is favorable to Appellee’s position based on the foregoing analysis, or, it does not apply and thus offers no support for Appellant’s position. The result is the same. Further, the Court need not reach Universal’s argument that it would have violated its policy agreement with Nationstar had it made payment directly to Fire and Water.

Appellee’s Failure to Raise Payment or Set-Off as an Affirmative Defense

Appellee failed to raise any affirmative defenses in the case below, and as a result, Appellant argues that such defenses were improperly raised for the first time in Appellee’s motion for summary judgment. For its part, Appellee claims that it did not need to plead payment or set-off as an affirmative defense, as, rather than arguing payment, Appellee’s argument in the lower court was that the contract had not been breached at all. The Court rejects this argument because, despite its

contentions to the contrary, Appellee is arguing that the contract was not breached because payment was made. However, there is nothing in the record on appeal, or argued in the briefs submitted to this Court, to suggest that Appellant raised an objection at the trial court level to Appellee raising an affirmative defense for the first time in his motion for summary judgment. While it is true that affirmative defenses should not be raised for the first time in a motion for summary judgment, this is merely a procedural matter which can be waived by the opponent's failure to object. Danford v. City of Rockledge, 387 So. 2d 968, 969-70 (Fla. 5th DCA 1980). It may not be objected to for the first time on appeal. Id.

ACCORDINGLY, and for the reasons set forth above, the order of the lower court is hereby **AFFIRMED**.

Dated this _____ of June, 2012.

RICHARD S. GRAHAM
CIRCUIT COURT JUDGE

DAVID B. BECK
CIRCUIT COURT JUDGE

cc: Guy H. Gilbert, Esq., 4700 Millenia Blvd., Ste. 175, Orlando, FL 32839

Jason Urbanowicz, Esq., P.O. Box 4940, Orlando, FL 32802-4940

TAB G

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JEREMIAH PINKARD,

Appellant,

v.

CASE NO. 5D14-2532

STATE OF FLORIDA,

Appellee.

_____ /

ON APPEAL FROM THE CIRCUIT COURT
OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE

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COUNSEL FOR APPELLEE

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STATEMENT OF CASE AND FACTS

Appellant's statement of the case and facts is substantially accurate for the purpose of this appeal. Appellee would make the following additions and/or corrections.

Appellant was indicted, along with his codefendant, Jacques Broughton, on September 28, 2011. In Count 1, both Appellant and Broughton were charged with the first-degree murder with a firearm of McFerrel Jones. (R. Vol. I, 14)¹. In Count 2, Appellant and Broughton were charged with aggravated assault with a firearm against Rashaud Burns, Jr. (R. Vol. I, 15). Count 3 charged Appellant with possession of a firearm by a delinquent. (R. Vol. I, 15). This charge was not tried before the jury and the State announced a *nolle prosequi* of Count 3 immediately after Appellant was sentenced on his other convictions. (SH 452). Count 4 of the indictment charged Jacques Broughton with possession of a firearm by a delinquent. (R. Vol. I, 16). Count 5 charged both Appellant and Broughton with shooting into an occupied vehicle. (R. Vol. I, 17).

At trial Rashaud Burns testified that he was the passenger in a vehicle driven by McFerrel Jones on August 1, 2011. (T. Vol. II, 54, 55). While stopped at a

¹ The record on appeal is contained in two volumes, referred to by "R," followed by the volume and page number(s). The sentencing hearing is referred to as "SH." The supplemental record, containing Appellant's Rule 3.800(b)(2) motion is referred to as "Supp. I." The transcript of the hearing on the Rule 3.800(b)(2) motion is referred to as "Supp. II." The trial transcript contains five volumes, referred to by "T," followed by the volume and page number.

light, a white Magnum pulled up alongside them. (T. Vol. II, 59). The vehicles were situated such that the driver of the white Magnum was closest to Burns, who was sitting in the front passenger-side of Jones's vehicle. (T. Vol. II, 59). The driver of the Magnum, later identified by Burns through a photo line-up as Appellant, engaged Burns and Jones in conversation while stopped at the light, telling Burns that if his homeboy [Jones], did not stop driving fast, Appellant would end both of their lives that night. (T. Vol. II, 60, 70-71). Burns explained to Appellant something to the effect that he and Jones were rushing to the hospital because Burns' baby was being born. (T. Vol. II, 61; T. Vol. III, 234; T. IV, 273).

After the light turned green, the vehicle occupied by Jones and Burns turned left, and the Magnum proceeded straight through the intersection. (T. Vol. II, 62). At that point, gunshots rang out. (T. Vol. II, 62). Burns remembered hearing two shots, but did not actually see who fired the shots. (T. Vol. II, 64, 69). Burns realized that Jones had been shot. (T. Vol. II, 63).

Rudolph Harris, who was in the vehicle with Appellant at the time of the shooting, testified that "Ques" [Jacques Broughton], and Appellant both fired their guns at the vehicle occupied by Burns and Jones. (T. Vol. III, 235). He stated that Ques fired one shot, and that Appellant fired more shots than Ques. (T. Vol. III, 236). Victor Baten, who was also in the Magnum with Appellant, testified that during Appellant's confrontation with Jones and Burns, Ques was trying to "amp"

Appellant up, making statements to the effect that Jones had purposely cut Appellant off, and that Jones was trying to hurt them. (T. Vol. IV, 273-274). Appellant then asked Jones why Jones cut him off, and said, "I'll kill you," to Jones' passenger, Burns. (T. Vol. IV, 274). Baten testified that when the light turned green, Appellant fired some shots at Jones' car, and then Ques fired a couple of times, and then they drove off. (T. Vol. IV, 275-276).

Kelly Wood, who was a crime scene technician with the Orange County Sheriff's Office at the time of the offense, photographed the bullet holes in Jones' vehicle. (T. Vol. II, 95). She recovered three bullets corresponding to the bullet holes in the vehicle. (T. Vol. II, 95-101). Bullet holes were found in the back of the car, the back-passenger door, and the window frame in the trunk area near the passenger side. (T. Vol. II, 99-100).

Florida Department of Law Enforcement analyst Alyssa McLaughlin testified that the bullet fragments retrieved from the head of McFerrel Jones were from either a .38 caliber or .357 caliber bullet. (T. Vol. III, 163-164). Of the three remaining bullets, she was only able to determine that one of them was a .38 caliber. (T. Vol. III, 166-167). Due to the poor condition of the recovered bullets, she was not able to say whether any or all of the bullets were fired from the same gun. (T. Vol. III, 166).

During the charge conference, Defense Counsel objected to the “principals” instruction being included in the jury instructions, arguing that there was insufficient evidence to support a theory that Appellant had incited, assisted, or encouraged Jacques Broughton to shoot at the victims. (T. Vol. IV, 313, 315). The State responded that Appellant threatening to kill Burns, which was said loud enough for Broughton to hear it, combined with actually opening fire on Burns and Jones, is what encouraged and incited Broughton to begin firing himself. (T. Vol. IV, 317, 318, 321). This was particularly true, argued the prosecutor, in light of the fact that Broughton had been egging Appellant on to take some action. (T. Vol. IV, 317, 318). The trial court agreed that the principal instruction should be given, stating,

I think the testimony of Victor Baten convinces me this instruction should be given. In diagramming this instruction, what I determined is that you have to read it - - you have to read it literally: If the defendant helped another person. So if Mr. Pinkard helped Mr. Broughton commit the crime charged, Mr. Pinkard is a principal and must be treated as if he had done all the things that Mr. Broughton did, if the defendant had a conscious act -- excuse me, conscious intent that the criminal act be done.

.....

And I think [the prosecutor] is right. Two things, one Mr. Pinkard was the driver of the automobile, so he was in control. Then, according to Mr. Baten, Ques, Jacques Broughton is kinda, as he said, amping it up and egging Mr. Pinkard on: You can't let them cut you off like that. You got to do something about that. Come on.

Then Mr. Pinkard, according to Mr. Baten, responds, I've got this. He rolls down the window. I believe he does an act, which he fires the shot. And that was intended to and did incite, encourage, assist, or advise Mr. Broughton, who's in the backseat, to commit the crime; and he fires.

(T. Vol. IV, 321, 322). The jury was instructed,

If the defendant helped another person or persons commit the crimes charged, the defendant is a principal and must be treated as if he had done all the things the other person or persons did if:

1. the defendant had a conscious intent that the criminal act be done and
2. the defendant did some act or said some word which was intended to and which did incite, cause, encourage, assist, or advise the other person or persons to actually commit the crime.

To be a principal, the defendant does not have to be present when the crime is committed.

(T. Vol. IV, 386-386; R. Vol. II, 292).

In closing, the State argued that based on the placement of the bullets in Jones' car, the positioning of the two vehicles in relation to one another, and the fact that it was Appellant who shot first, that it was Appellant who actually shot Jones. (T. Vol. V, 342-344). The State also argued, however, that Appellant was guilty as a principal. (T. Vol. V, 339-340). Defense Counsel argued that no physical evidence established that Appellant fired a gun, and no witness testified that they actually saw him with a gun. (T. Vol. V, 354-355). He argued that the

witnesses could have assumed that Appellant had a gun, but things happened so fast that it might have only been Broughton doing the shooting. (T. Vol. V, 355). Defense Counsel argued that the angle of the bullet holes actually supported the idea that it was Broughton that shot Jones. (T. Vol. V, 356). Finally, Defense Counsel argued that Appellant could not be guilty as a principal because the State failed to prove that he did anything to incite or encourage Broughton to start shooting. (T. Vol. V, 356-360).

Appellant was convicted in Count 1 of manslaughter, as a lesser included offense to first-degree murder with a firearm. (R. Vol. II, 282). He was convicted as charged of aggravated assault with a firearm and shooting into an occupied vehicle. (R. Vol. II, 281, 283).

In connection with Appellant's conviction for manslaughter, the jury made a special finding that Appellant "did actually carry, possess and discharge a firearm during the commission of count one." (R. Vol. II, 284). The jury had the alternative option of finding, but did not find, that Appellant "did actually carry, possess, and discharge a firearm resulting in the death of McFerrel Jones during the commission of count one." (R. Vol. II, 284). The jury was also presented with the alternatives, "Defendant did actually carry or possess a firearm during the commission of count one," or "Defendant did not carry, possess, or discharge a firearm during the commission of count one." (R. Vol. II, 284).

In connection with Appellant's conviction for aggravated assault with a firearm, the jury found that Appellant actually carried, possessed, and discharged a firearm. (R. Vol. II, 285).

Appellant was sentenced on July 11, 2014. (SH 404-452). His scoresheet reflected a lowest permissible sentence of 157.58 months, (approximately 13.13 years). (R. Vol. II, 358-359). At the outset of the sentencing hearing, the trial court stated,

"And for the record, we're here for sentencing in the case after the jury found Mr. Pinkard guilty of manslaughter, a lesser-included offense of Count 1; aggravated assault with a firearm as to Count 2; shooting at, within or into an occupied vehicle, Count 5."

(SH 404). At the conclusion of the hearing, the judge stated,

"With respect to Count 1, I adjudge Mr. Pinkard guilty and sentence him to 30 years of [sic] the Department of Corrections with credit for time served. With respect to Count 2, I adjudge him guilty and sentence him to 20 years in the Department of Corrections as a mandatory-minimum, to run concurrent. And with respect to Count 2 [sic], I adjudge him guilty and sentence him to 15 years in the Department of Corrections to run consecutive to Count 1 and Count 2."

(SH 450). Neither the State nor Appellant brought to the judge's attention the fact that he had misspoken by referring to Count 5 as Count 2.

The order of disposition and the judgment and sentence correctly refer to shooting into an occupied vehicle as Count 5. (R. Vol. II, 346-354).

Appellant filed a motion to correct sentencing under Rule 3.800(b)(2), raising the same arguments he raises on appeal in Issues II, III, and IV. (Supp. I. 1-4). A hearing was conducted on October 22, 2014. (Supp. II. 5-22). The trial court denied Appellant's motion. (Supp. I, 7).

SUMMARY OF ARGUMENTS

Issue I: There was no error in instructing the jury on the theory of principals because the instruction was well-supported by the evidence presented at trial.

Issue II: The trial court properly assessed 120 victim death points on Appellant's scoresheet because, by finding Appellant guilty of manslaughter, the jury necessarily found that Appellant had caused the death of the victim. The fact that the jury did not also find that the death was specifically caused by a firearm, is not relevant.

Issue III: The trial court did not err in ordering Appellant's unenhanced 15 year sentence for shooting into an occupied vehicle to run consecutive to his sentences for manslaughter (reclassified) and aggravated assault with a firearm, because in Cotto v. State, 139 So. 3d 283 (Fla. 2014), the Florida Supreme Court held that Hale v. State, 630 So. 2d 521 (Fla. 1993), does not extend to unenhanced sentences, and therefore there is no error in running an unenhanced sentence consecutive to an enhanced sentence.

Issue IV: Appellant was not sentenced twice on Count 2 and has not been subjected to a violation of his right against double jeopardy.

ARGUMENTS

ISSUE I

THE TRIAL COURT PROPERLY INSTRUCTED THE JURY ON THE THEORY OF PRINCIPALS.

Appellant argues that the trial court erred in instructing the jury on a principals theory. Appellee respectfully disagrees.

The giving or withholding by a trial court of a requested jury instruction is reviewed under an abuse of discretion standard of review. Worley v. State, 848 So. 2d 491, 491 (Fla. 5th DCA 2003). "Trial judges have wide discretion in decisions regarding jury instructions, and the appellate courts will not reverse a decision regarding an instruction in the absence of a prejudicial error that would result in a miscarriage of justice." Sheppard v. State, 659 So. 2d 457, 459 (Fla. 5th DCA 1995).

"The principals instruction may be given if the evidence adduced at trial supports such an instruction." McGriff v. State, 12 So. 3d 894, 895 (Fla. 1st DCA 2009). If there is no evidence to support a principal theory, then the reading of the instruction constitutes error. Id. However, in order to result in reversible error, the instruction must, under the circumstances of the case, be capable of misleading the jury in such a way as to prejudice the defendant's right to a fair trial. Lewis v. State, 693 So. 2d 1055, 1057 (Fla. 4th DCA 1997).

Here, the trial court did not abuse its discretion in giving the principals instruction because the evidence at trial supported the State's theory that Appellant and Broughton incited and encouraged one another to act. Appellant's actions in confronting Jones and Burns and threatening to kill Burns, indicated that he wanted to escalate the situation, and according in Baten's testimony, Broughton was encouraging him to do so. Likewise, Broughton's egging on of Appellant indicated that he too wanted to escalate the situation, and the evidence supports an inference that he was encouraged and emboldened to open fire by Appellant's words and actions. Although Appellant argues that Broughton was already preparing to shoot before Appellant opened fire, the evidence was nonetheless susceptible to the interpretation that Broughton actually made the decision to pull the trigger in response to Appellant opening fire. Because the evidence supported the theory that Appellant was a principal to the shooting committed by Broughton, the trial court did not abuse its discretion in reading the principal instruction. See e.g. Lewis, 693 So. 2d at 1058 (although there was no direct evidence that anyone other than Lewis was involved in the firebombing, the fact that Lewis confessed to the firebombing to a friend prior to the time the victim said the firebombing occurred, supported a suggestion that Lewis aided in the preparation of the firebombing, but did not commit the act himself, thus supporting a principal instruction). Cf. Lovette v. State, 654 So. 2d 604, 605 (Fla. 2d DCA 1995) (trial court erred in giving principal

instruction because there was *no* evidence that defendant acted in concert with anyone in committing the offenses).

In Humphrey v. State, 690 So. 2d 1351, 1351-52 (Fla. 3d DCA 1997), the defendant was charged with principal to first-degree murder along with several other men who spontaneously attacked and beat the victim after the victim accidentally ran over a child who stepped out in front of him. The State's theory was that the defendants had acted in concert in causing the victim's murder. Id. This was despite the fact that there was no question that it was codefendant Hayward who fired the fatal shot. Id. At trial, there was conflicting testimony as to whether Humphrey, codefendant Screens, or no one at all told Hayward to "lick him," meaning kill the victim, and defendant argued on appeal that if the jury accepted that someone other than Humphrey, or no one at all, said "lick him," then Humphrey could not properly be held responsible for the victim's death. Id. at 1353. In rejecting Humphrey's argument, the Second District stated,

In this case clearly the four defendants acted in concert in their violent attack on the victim. During the course of the attack, Bells was murdered. Defendants were all charged as principals. Under the principal statute, the defendant is liable if he “commits any criminal offense against the state, whether felony or misdemeanor, *or aids, abets, counsels, hires, or otherwise procures* such offense to be committed, and such offense is committed or is attempted to be committed...” § 777.011, Fla.Stat. (1993) (emphasis added). It is not necessary that defendant be the shooter so long as he committed one of the other acts enumerated in section 777.011.

Humphrey, 690 So. 2d at 1353 (emphasis in the original). Thus, although the facts as recited in Humphrey reflect no discussion of any prior verbal agreement between the codefendants, and despite the fact that there was conflicting evidence as to whether Humphrey or anyone else verbally encouraged Hayward to shoot the victim; and that there was no question as to who fired the fatal shot; the jury was properly instructed that it could find Humphrey guilty of principle to first-degree murder². Id. Here, as in Humphrey, it is of little significance who struck or fired at the victim first, because "there was a concerted action by multiple defendants against a single unresisting victim." Id. at 1353. The principal instruction was warranted because the defendants were clearly acting in concert with one another to accomplish Jones' murder.

The giving of the principals instruction in Appellant's case is also supported by the Florida Supreme Court's decision in Hall v. State, 403 So. 2d 1319 (Fla. 1981). In Hall, it was known that one of the two codefendants fired a single shot at the victim, but not known which one possessed and fired the gun. Id. at 1320. The testimony at trial revealed that both Hall and his codefendant Ruffin approached the victim, but no one saw the victim get shot. Id. The defendants fled from the scene together, and the victim's gun, with which he was shot, was found in the

² Humphrey was in fact convicted of the lesser included offense of manslaughter. Humphrey, 690 So. 2d at 1352.

vehicle jointly occupied by the defendants. Id. Based on these facts, the Supreme Court found that the evidence supported Hall's conviction as a principal to murder.

Id. at 1320. The Court held,

These facts are sufficient to demonstrate beyond a reasonable doubt that the two men engaged in a common criminal scheme. As such each was a principal to the death, and the fact that the state did not prove which of the two fired on Coburn does not necessitate either's acquittal. By actively operating together each was guilty of the acts of the other. The evidence clearly demonstrates the guilt of each for Coburn's death.

Hall, 403 So. 2d at 1320 (internal citations omitted). Like the defendants in Hall, the evidence presented at Appellant's trial demonstrated beyond a reasonable doubt that Appellant and Broughton engaged in a common criminal scheme to commit murder, and therefore, even if the State could not prove beyond a reasonable doubt which defendant fired the fatal shot, an acquittal should not result. Indeed, as recognized by Hall, it would be absurd if the State could prove that multiple defendants worked together to commit a murder, but because the State could not prove which defendant delivered the fatal blow, all involved should be free from legal responsibility.

Because there was ample evidence to support the State's theory that Appellant and Broughton acted in concert as principals to murder McFerrel Jones, the trial court did not abuse its discretion in instructing the jury on the theory of principals.

ISSUE II

THE TRIAL COURT CORRECTLY ASSESSED 120 VICTIM DEATH POINTS ON APPELLANT'S SCORE SHEET.

Appellant argues that the trial court erred in assessing 120 victim death points on his score sheet because the jury chose not to make a special finding in relation to Appellant's manslaughter conviction that Appellant carried, possessed, and discharged a firearm resulting in the death of McFerrel Jones; instead finding only that Appellant carried, possessed, and discharged a firearm. The State respectfully disagrees.

The standard of review of the legality of the court's assessment of victim injury points is *de novo*. Brown v. State, 24 So. 3d 562, 563 (Fla. 4th DCA 2009).

Appellant argues that pursuant to the Supreme Court's decision in Apprendi v. New Jersey, 530 U.S. 466 (2000), in order for the trial court to assess victim injury or death points, the jury has to make a special finding that the victim died as a result of Appellant's actions. However, Apprendi only applies when the addition of victim injury points causes a sentence to be increased beyond the statutory maximum. Id. at 490. That was not the case here. Appellant's lowest permissible sentence, pursuant to his score sheet, was 157.58 months, (approximately 13.13 years) imprisonment, less than the 15-year statutory maximum sentence for manslaughter. § 775.082(3)(d), Fla. Stat. (2014). Since the victim death points

scored by the trial court did not cause Appellant's minimum mandatory sentence to exceed his statutory maximum sentence, Apprendi is inapplicable and there was no error in the trial court assessing the points despite the lack of a special finding that Appellant died as a result of the manslaughter.

Appellant points out that the jury declined to make a special finding that Appellant discharged a firearm resulting in the death of the victim, finding only Appellant carried, possessed, and discharged a firearm. However, this special finding, seemingly factually inconsistent with Appellant's manslaughter, aggravated assault with a firearm, and shooting into an occupied vehicle convictions, appears to be a proper exercise of the jury's 'inherent authority to acquit' a defendant even if the facts support a conviction." Flores v. State, 974 So. 2d 556, 557 (Fla. 5th DCA 2008) (citing State v. Connelly, 748 So. 2d 248, 252 (Fla. 1999)). In any event, while it *may* represent a belief by the jury that the discharge of Appellant's gun is not what killed the victim, (i.e. that it was Broughton who fired the fatal shot), it *does not* represent a finding that the victim is not dead as a result of Appellant's actions.

Under the Criminal Punishment Code, "victim injury" means the physical injury or death suffered by a person as a direct result of the primary offense, or any additional offense, for which a defendant is convicted and which is pending before the court at the time of the primary offense. § 921.0021(7)(a), Fla. Stat. (2014).

There is no requirement that the State prove that the death was caused specifically by a firearm for the points to be assessed.

Appellant was convicted of manslaughter. To prove the crime of manslaughter, the State must prove beyond a reasonable doubt that the victim is dead, and that the defendant intentionally committed an act or acts that caused the death of the victim. § 782.07(1), Fla. Stat. (2012); Fla. Std. Jury. Inst. (Crim.) 7.7. Thus, in finding Appellant guilty of manslaughter, the jury necessarily found that the victim died as a direct result of a crime for which Appellant was convicted, and the victim death points were properly assessed. See Knarich v. State, 866 So. 2d 165, 172 (Fla. 2d DCA 2004) (where defendant was convicted of handling a child under sixteen years of age in a lewd and lascivious manner, the jury necessarily found that sexual contact had occurred, and therefore the trial court properly assessed sexual contact points); Cameron v. State, 804 So. 2d 338, 344 n. 11 (Fla. 4th DCA 2001) (the fact that the jury convicted defendant of "unlawful blood alcohol level manslaughter" represented a sufficient jury finding to authorize the imposition of victim death points by the trial court).

The trial court properly assessed 120 victim death points because there is no requirement that the facts justifying the assessment of such points be put to a jury when the addition of the points do not raise the lowest permissible sentence beyond the statutory maximum sentence. Further, where, as here, the fact of the victim's

injury or death necessarily inheres in the jury's verdict, a special finding is not required.

ISSUE III

THERE WAS NO ERROR IN THE TRIAL COURT ORDERING APPELLANT'S CONVICTION FOR SHOOTING INTO AN OCCUPIED VEHICLE TO RUN CONSECUTIVELY TO HIS OTHER CONVICTIONS.

Appellant argues that pursuant to Hale v. State, 630 So. 2d 521 (Fla. 1993), and Daniels v. State, 595 So. 2d 952 (Fla. 1992), the trial court erred by requiring Appellant's conviction for shooting into an occupied vehicle to run consecutively to his convictions for manslaughter (reclassified) and aggravated assault with a firearm. The State respectfully disagrees.

The legality of a sentence is subject to *de novo* review. Flowers v. State, 899 So. 2d 1257, 1259 (Fla. 4th DCA 2005).

In Hale, the Florida Supreme Court held that once sentences from multiple crimes committed during a single criminal episode have been enhanced through the habitual offender statutes, the total penalty cannot be further increased by ordering that the sentences run consecutively. Hale, 630 So. 2d 521 at 524. Accordingly, Appellant argues that his shooting into an occupied vehicle sentence could not be imposed consecutively to his manslaughter and aggravated assault with a firearm convictions. However, Hale is distinguishable because Hale was sentenced as a

habitual offender on *both* counts for which he was convicted. Id. at 522-23. In contrast, Appellant was not subjected to enhanced sentencing of any sort in relation to his shooting into an occupied vehicle conviction. Nevertheless, Appellant correctly points out that in Fuller v. State, 867 So. 2d 469 (Fla. 5th DCA 2004), this Court held that if a defendant is sentenced as a habitual offender on one or more counts, his overall sentence cannot be further lengthened by imposing a consecutive sentence on any other count, even if the other sentence is not enhanced, if both crimes arose from a single criminal episode. See also, Canavan v. State, 842 So. 2d 306 (Fla. 5th DCA 2003). In Fuller, this Court recognized that its decision is in conflict with Davis v. State, 710 So. 2d 1051 (Fla. 1st DCA 1998).

Appellee respectfully asserts that Fuller is in conflict with the Florida Supreme Court's recent decision in Cotto v. State, 139 So. 3d 283 (Fla. 2014). Cotto was sentenced as a prison releasee reoffender (PRR) for aggravated assault with a firearm and was sentenced to five-years incarceration. He was also sentenced to ten-years incarceration as a habitual felony offender (HFO) for carrying a concealed firearm, and thirty-years incarceration as an HFO for possession of a firearm by a convicted felon, with a ten-year minimum mandatory sentence pursuant to the 10-20-Life statute.³ The HFO sentences were imposed to run concurrent to one another, but consecutive to the five-year PRR sentence.

³ § 775.087(2), Fla. Stat. (2014).

Cotto v. State, 139 So. 3d at 285. The Third District Court of Appeal concluded that Hale does not prohibit the imposition of consecutive sentences if the statute under which the defendant is sentenced does not extend the maximum permissible sentence delineated in section 775.082. Id. It further held, that "because the PRR statute imposes a mandatory minimum that is in accordance with, and not beyond, the statutory maximum, a PRR sentence is not an enhanced sentence, and a trial court may impose an HFO sentence consecutive to a PRR sentence." Id. at 285. The Third District certified conflict with the Fifth District Court of Appeal's decision in Williams v. State, 10 So. 3d 1116 (Fla. 5th DCA 2009). Williams, citing to Fuller, held that a PRR sentence could not be imposed to run consecutively to an HFO sentence arising out of the same criminal episode.

The Florida Supreme Court approved the Third District's decision, and disapproved Williams. Cotto, 139 So. 3d at 290. Holding, "[w]e are unwilling to extend Hale to unenhanced sentences," the Court explained that while the HFO provision allows the court to sentence a qualifying defendant to an extended term of imprisonment, the PRR statute is a mandatory minimum provision that creates a sentencing floor. Id. at 286-87, 289. Thus, the PRR statute does not extend a defendant's possible sentence; it merely requires that the court impose the maximum sentence already authorized by section 775.082. Id. at 289. Cf. Jackson v. State, 659 So. 2d 1060, 1062-63 (Fla. 1995) ("Jackson's minimum mandatory

sentence for possession of a firearm must run concurrent with the habitual offender minimum mandatory sentences, *since both of these minimum mandatory sentences are enhancements.*") (Emphasis added); §§ 775.082(3)(a)-(e); 775.082(9), Fla. Stat. (2014).

Although Appellant received enhanced sentences for manslaughter (reclassified), and aggravated assault with a firearm, his sentence for shooting into an occupied vehicle was not enhanced. Cotto held that an unenhanced sentence can lawfully be required to run consecutively to an enhanced sentence. Therefore, Appellee respectfully asserts that, to the extent that Fuller takes a contrary position, it has been overruled by Cotto, and the trial court did not err in imposing a consecutive non-enhanced sentence for shooting into an occupied vehicle.⁴

⁴ Appellant also notes that the trial court could have imposed consecutive sentences on counts one and two, even though they were both enhanced sentences, because the evidence at trial showed that Appellant shot at multiple victims, bifurcating the crimes for stacking purposes. State v. Christian, 692 So. 2d 889, 890-92 (Fla. 1997) (citing State v. Thomas, 487 So. 2d 1043 (Fla. 1986)) (approving stacking of two firearm mandatory minimum terms where defendant shot and killed a woman and shot at, but missed, her son).

ISSUE IV

APPELLANT WAS NOT SENTENCED TWICE FOR THE SAME COUNT AND NO DOUBLE JEOPARDY VIOLATION OCCURRED.

Appellant argues that the trial court erred by sentencing Appellant twice in connection to Count 2, thus violating the prohibition against double jeopardy. The State respectfully disagrees.

Questions of law, such as whether double jeopardy principles are violated, are reviewed *de novo*. Capron v. State, 948 So. 2d 954, 957 (Fla. 5th DCA 2007). The burden of proving a claim of double jeopardy is on the defendant. Id.

Appellant argues that because the trial judge inadvertently referred to Count 5 as Count 2 during the course of sentencing, Appellant was sentenced twice in Count 2. However, the order of disposition, and the judgment and sentence, all correctly identify the charges, counts, and sentences. Appellant has offered no authority for the proposition that, because the trial judge accidentally misidentified Count 5 as Count 2, Appellant's sentence should be vacated, even though the court's meaning was obvious in context, it is not alleged that the trial judge's "slip of the tongue" has negatively impacted Appellant's sentence, or that the Department of Corrections has relied on the trial court's misstatement. Appellant does not allege that the written judgment and sentence is incorrect or that he has been prejudiced by or relied on the court's misstatement. It is clear from the

sentencing transcript as a whole, as well as the judgment and sentence, that, contrary to Appellant's assertion, he was not sentenced twice in Count 2. He has therefore failed to meet his burden of proving that double jeopardy principles have been violated.

CONCLUSION

Based on the arguments and authorities presented herein, Appellee respectfully requests this Honorable Court affirm the judgment and sentence in all respects.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Amended Answer Brief of Appellee has been furnished via electronic mail to counsel for Appellant, Dawne Ducarpe, Esq., 1238 East Concord Dr., Orlando, FL 32828, at dawne@nexustrialgroup.com, on August 6, 2015.

DESIGNATION OF E-MAIL ADDRESS

I HEREBY DESIGNATE the following e-mail addresses for purposes of service of all documents, pursuant to Rule 2.516, in this proceeding:

crimappdab@myfloridalegal.com (primary) and
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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 14-point Times New Roman, in compliance with Fla. R. App. P. 9.210(a)(2).

Respectfully submitted,
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