

APPLICATION FOR NOMINATION TO THE COUNTY COURT

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

DATE: 07/31/2019 Florida Bar No.: 0024122

GENERAL: Social Security No.: XXX-XX-XXXX

1. Name Joseph Ryan Will E-mail: willr@sao7.org

Date Admitted to Practice in Florida: 07/07/2006

Date Admitted to Practice in other States: 04/27/2007 (Alabama)

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

Assistant State Attorney, Homicide Investigations Unit

3. Business address: 440 South Beach Street

City Daytona Beach County Volusia State FL ZIP 32114

Telephone (386) 238-4894 FAX (386) 238-4969

4. Residential address: XXXXXXXXXXXXXXXXXXXX

City Daytona Beach County Volusia State FL ZIP 32124

Since 05/2010 Telephone (352) 281-0281

5. Place of birth: Halifax Hospital, Daytona Beach

Date of birth: 05/15/1980 Age: 39

6a. Length of residence in State of Florida: Life

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

If so, in what county are you registered? Volusia

7. Marital status: Married

If married: Spouse's name Bryn Colleen Will

Date of marriage 04/14/2017

Spouse's occupation Kindergarten teacher, XXXXXXXX Elementary

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.

8. Children

<i>Name(s)</i>	<i>Age(s)</i>	<i>Occupation(s)</i>	<i>Residential address(es)</i>
L.M.	10	n/a	same as applicant
T.M.	8	n/a	same as applicant
B.W.	2	n/a	same as applicant

9. Military Service (including Reserves)

<i>Service</i>	<i>Branch</i>	<i>Highest Rank</i>	<i>Dates</i>
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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.

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.

- 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.

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

No

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

No

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

No

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

No

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

No

EDUCATION:

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

<i>Schools</i>	<i>Class Standing</i>	<i>Dates of Attendance</i>	<i>Degree</i>
Seabreeze High School	7th	1994-1998	High School diploma
Florida State University	N/A	1998	N/A
			Bachelor of Science in Business Administration, Minor in Economics
University of Florida	Unknown	1999-2002	
Cumberland School of Law	top 50%	2002-2005	Juris Doctorate

- 18b. List and describe academic scholarships earned, honor societies or other awards. Florida Academic Scholars (full scholarship); Florida State University Honors Program; Undergraduate Studies Dean's List 1999 & 2002; Who's Who Among American Universities and Colleges; Dean's List at Cumberland 2003, 2004, 2005; Nominated for Who's Who by Cumberland Faculty & Staff; Cumberland School of Law Trial Advocacy Board (partial scholarship); Certified in Trial Advocacy by Cumberland School of Law; National Member of the Order of Barristers

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>
06/2001 - 08/2001	Retail Sales & Flyfishing Outfitter	Hamilton Stores, Incorporated	Post Office Box 250, West Yellowstone, MT 59758
06/2002 - 08/2002	Food Service	Hamiton Stores, Incorporated	Post Office Box 250, West Yellowstone, MT 59758
09/2005 - 03/2006	Substitute Teacher	St. James Episcopal School &	38 South Halifax Drive, Ormond Beach, FL 32174
09/2005 – 03/2006	Substitute Teacher	Volusia County Public Schools	200 North Clara Avenue, Deland, FL 32720
03/2006 – 12/2006	Title Abstracting & Lease Negotiation for mineral rights	Pitts Landman Services, Inc.	2717 Piedmont Drive, Bessemer, AL 35226

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>
Alabama State Bar	04/27/2007

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

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

<i>Position</i>	<i>Name of Firm</i>	<i>Address</i>	<i>Dates</i>
Internship with Senior Judicial Staff Attorney for the 7th Judicial Circuit	State of Florida	101 N. Alabama Ave., Ste. D-325, Deland, FL 32724	05/2003 - 06/2003
Internship	Cobb & Cole	149 South	06/2003 -

Ridgewood
Avenue, Suite 700,
Daytona Beach, FL
32114

08/2003

Litigation
Externship with
District Attorney's
Office

Jefferson County
District Attorney

120 2nd Avenue
North, Birmingham,
AL 35204

01/2005 -
05/2005

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

Since 2010, I have been responsible for the investigation and prosecution of homicides, occurring in Volusia County. Until that time, I was primarily assigned to the prosecution of violent offenders, sexual predators, career criminals, illegal drug transactions and crimes against the elderly. For approximately 2 years, and in addition to my regular duties, I handled the civil commitment of sexually violent predators under the Jimmy Ryce Act. I also have experience in juvenile and misdemeanor matters.

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>100</u> %
Federal Other	_____ %	Family	_____ %
State Appellate	_____ %	Probate	_____ %
State Trial	<u>100</u> %	Other	_____ %
State Administrative	_____ %		
State Other	_____ %		
	_____ %		
TOTAL	<u>100</u> %	TOTAL	<u>100</u> %

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

Jury?	<u>75</u>	Non-jury?	<u>Approx 10-20</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).

2015-101647 CFDL State of Florida v. Jeremy Zaire Taylor

opposing counsel: F. Wesley Blankner, Jr. (407) 894-0341

2015-101648 CFDL State of Florida v. Sylvester Simmons

opposing counsel: Darryl Smith (407) 930-8912

2018-102572 CFDL State of Florida v. Kelsey McFoley

opposing counsel: Kevin Proulx (407) 774-6100

2013-102943 CFDL State of Florida v. Christian Cruz

opposing counsel: Clyde Taylor, Jr & Clyde Taylor, III (904) 687-1630

2016-303362 CFDB State of Florida v. Sheddric Bentley

opposing counsel: John Selden (386) 254-3758

2015-301425 CFDB State of Florida v. Patrick Campbell

opposing counsel: Matt Phillips (386) 239-7730

- 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).

2014-100311 CFDL State of Florida v. Jeremy Guilford

Garry Wood (386) 326-3993

1992-032105 CFAES State of Florida v. Anthony Farina

Marie-Louise Samuels Parmer (813) 732-3321

Garry Wood (386) 326-3993

2015-301673 CFDB State of Florida v. Brandon Succhoza

Matthew Phillips (386) 239-7730

2017-100768 CFDB State of Florida v. Juan Lopez

Matthew Phillips (386) 239-7730

2017-301420 CFDB State of Florida v. Andrew Kovacs

Matthew Phillips (386) 239-7730

2018-102585 CFDB State of Florida v. Hunter Romaine

Michael Grieco (305) 857-0034

- 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?
25 average times per month
- 27e. During the last five years, if your practice was substantially personal injury, what percentage of your work was in representation of plaintiffs? N/A% Defendants? N/A%
28. If during any prior period you have appeared in court with greater frequency than during the last five years, indicate the period during which this was so and give for such prior periods a succinct statement of the part you played in the litigation, numbers of cases and whether jury or non-jury.

Before I was promoted to the Homicide Unit in 2010, I was assigned to the prosecution of violent felony offenders, weapons and narcotics offenses, crimes against the elderly, and sex crimes. During that period (2006-2009) I appeared in court every day and carried an average caseload of several hundred cases. In 2008 and 2009, I also handled the involuntary commitment of sexual predators and frequently appeared in civil court. Since joining the Office in 2006, I have personally handled more than 10,000 criminal cases.

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.

Please see attached.

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.

Please see attached documents, prepared solely by this applicant.

PRIOR JUDICIAL EXPERIENCE OR PUBLIC OFFICE:

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

Yes. I was a candidate for Circuit Judge, Seventh Judicial Circuit, Group 15 from approximately January 2018 - November 2018.

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

<i>Dates</i>	<i>Name of Agency</i>	<i>Position Held</i>
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Types of issues heard:

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

No

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

- (i) List the names, phone numbers and addresses of six attorneys who appeared before you on matters of substance.
- (ii) Describe the approximate number and nature of the cases you have handled during your judicial or quasi-judicial tenure.

- (iii) List citations of any opinions which have been published.
- (iv) List citations or styles and describe the five most significant cases you have tried or heard. Identify the parties, describe the cases and tell why you believe them to be significant. Give dates tried and names of attorneys involved.
- (v) Has a complaint about you ever been made to the Judicial Qualifications Commission? If so, give date, describe complaint, whether or not there was a finding of probable cause, whether or not you have appeared before the Commission, and its resolution.
- (vi) Have you ever held an attorney in contempt? If so, for each instance state name of attorney, approximate date and circumstances.
- (vii) If you are a quasi-judicial officer (ALJ, Magistrate, General Master), have you ever been disciplined or reprimanded by a sitting judge? If so, describe.

BUSINESS INVOLVEMENT:

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

N/A

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

Yes. When I was admitted to The Florida Bar in 2006, I was living and working in Tuscaloosa, Alabama. During that time, I was employed by Pitts Landman Services, Inc. and was responsible for title searches, lease negotiation, and contracting as it related to coalbed methane rights in central Alabama. After passing The Bar, I continued to work in Alabama until I could find a litigation position in the State of Florida. Upon taking a job at the Office of the State Attorney, I returned home and began working as a prosecutor in the 7th Judicial Circuit.

- 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.

Daytona State College - received \$100 compensation for 2-hour lecture provided during

the Detective's Academy on August 12, 2015.

POSSIBLE BIAS OR PREJUDICE:

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

None

MISCELLANEOUS:

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

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

Where convicted? _____ Date of Conviction: _____

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

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

Where convicted? _____ Date of Conviction: _____

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

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

Where convicted? _____ Date of Conviction: _____

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

No

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

No

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

No

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

No

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

No

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

Yes. I am currently a plaintiff in class action litigation against my homebuilder for defects in the installation of exterior surfaces on my home. The case was originally filed in Volusia County (2017-31905 CJCI) and has been removed to Federal Court.

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.

Please see attached. All documents of significance have been attached for your convenience and review.

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

No

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

No

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

No

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

Yes ☒ No ☐ If no, please explain. _____

- 43b. Have you ever paid a tax penalty?

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

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

No

HONORS AND PUBLICATIONS:

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

No

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

Top Gun Award 2013 & 2014, Office of the State Attorney

Award of Meritorious Recognition from Daytona Beach Police Department (2019)

Top 40 Under 40, Governmental Officer of the Year (2019)

Criminal Justice Professional of the Year (2019), awarded by the Victim Services Coalition of the 7th Circuit

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

Death Investigations

Advanced Education for Criminal Investigations and Crime Scenes, Daytona State College: July 26, 2019

National Junior Honor Society Keynote Speaker

Ormond Beach Middle School: April 25, 2019

Guest Speaker for the National Day of Remembrance

Halifax Health Hospice, Traumatic Loss Program: September 2018

Homicide Investigation & Prosecution, an Overview

Atlantic High School, Academy for Law and Government: April 2018

The 4th Amendment for Crime Scene Investigators

Advanced Education for Criminal Investigations and Crime Scenes, Daytona State College: December, 2017

Fingerprint Evidence and Persuasive Courtroom Presentation

Advanced Education for Forensic Examiners & Print Technicians, Daytona State College: July, 2017

- Crime Scene and the Courtroom
Law Enforcement Training, Daytona State College: March, 2017
- Digital Evidence: The Legalities of Social Media & Modern Communication
Presented to Dunn-Blount Inns of Court for Volusia & Flagler Counties:
March, 2017
- Digital Evidence and Computer Forensics: A Prosecutor's Perspective
Volusia County Sheriff's Office Seminar for Advanced Crime Scene Investigation:
September, 2016
- Crime Scene Investigation and the Courtroom
Law Enforcement Training, Daytona State College: July, 2016
- Crime Scene Investigation and the Courtroom
Law Enforcement Training, Basic Crime Scene Investigations, Daytona State
College: March, 2016
- The 4th Amendment – A Primer for Elementary Students
Four Part Educational Series & Moot Court Presentation at Grace Academy,
Ormond Beach: February, 2016
- Death & Injury Investigations
Detective's College, Daytona State College: August, 2015
- Tips for Testifying and the Psychology of Persuasion: A Prosecutor's Perspective
Detective's College, Daytona State College: July, 2015
- Maintaining the Investigation & Ensuring a Successful Prosecution
Volusia County Sheriff's Office Seminar for Advanced Crime Scene Investigation:
February, 2015

- Major Cases, Tips for Testifying & the Psychology of Persuasion
Criminal Justice Seminar, Daytona State College: October, 2014
- Tips for Testifying and the Psychology of Persuasion: A Prosecutor's Perspective
New Deputy Training and Courtroom Presentation, Presented by the Office of the
State Attorney: September, 2014
- Tips for Testifying and the Psychology of Persuasion: A Prosecutor's Perspective
2014 Death and Crime Scene Investigation Conference, Presented by the Volusia
County Sheriff's Office and the Office of the Medical Examiner: September, 2014
- The Criminal Justice System & Effective Presentation of Evidence
Atlantic High School, Academy of Law and Government: February, 2014
- Introduction to the Criminal Justice System – Investigation & Prosecution of Crime
University of Central Florida, Undergraduate Trial Advocacy Program in Legal
Studies: September, 2013
- Death and Injury Investigations: A Prosecutor's Perspective
Criminal Justice Seminar, Daytona State College: February, 2013
- Fundamentals of Evidence – the Origins of Hearsay & Implementation of the Rule
University of Central Florida, Undergraduate Evidence Course in Legal Studies:
September, 2012
- Introduction to the Criminal Justice System – Investigation & Prosecution of Crime
University of Central Florida, Undergraduate Trial Advocacy Program in Legal
Studies: March, 2011
- The Legislative Response – Florida's Sexually Violent Predators & the JLA
Volusia County Sexual Assault Response Team: September, 2010

- Fundamentals of Evidence Collection and the Importance of Accurate Reporting

Volusia County Sexual Assault Response Team: April, 2010

- Sex Crimes Prosecution

Volusia County Sexual Assault Response Team: October, 2009

- Sex Crimes – Statistics, Investigation, Reporting and Trial Preparation

Volusia County Sexual Assault Response Team: May, 2009

- Trial Preparation 101 – The Importance of Witness Preparation

Orange County Association of Sexual Assault Nurse Examiners: August, 2008

- Trial Preparation 101 – The Importance of Witness Preparation

Volusia County Sexual Assault Response Team: July, 2008

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

PROFESSIONAL AND OTHER ACTIVITIES:

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

The Florida Bar (07/07/06), Alabama State Bar (04/27/07), Volusia County Bar Association (2006 - present; Director, 2017), Dunn-Blount Inns of Court (2009 - present)

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

Stewart-Marchman-Act Foundation Board of Directors, Executive Committee Member (2012-present); Membership and By-laws Committee Chair (2013-2016); Secretary (2017); Annual Gifts Committee (2017-present)

Tiger Bay Club of Volusia County, Secretary & Treasurer (2016-present)

Rotary: Daytona Beach West (2018-present) Director; Membership & Community Service

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

Spending time with my family, fly fishing, travel, running, reading, photography

- 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.

As a condition of my government employment, I am prohibited from representing individual clients. Instead, I have actively participated with local organizations and occasionally assisted my homeowner's association with legal matters.

My largest contribution came in 2013, when I created and established Florida's first Playground to Prevent Neighborhood Sex Predators. By using available zoning laws, I protected a neighborhood of nearly 400 homes and forever gave children a safe place to play. The attached news articles accurately summarize the existing problem and the remedy that was created. Since that time, I have consulted with other communities to ensure the protection of our children. To my knowledge 12 additional playgrounds have been constructed throughout the State.

Since 2013, I have volunteered with the Volusia County Teen Court. During that time, I have served as a Teen Court Judge and Teen Court trial team consultant, providing approximately 10-20 hours of service per year.

Additionally, I volunteer in the local schools. In a typical year, I will spend several hours speaking with students. Whether an impromptu session in my wife's elementary class, students enrolled in the law academy at Atlantic High School, or University scholars seeking to expand their education, I maintain a close contact with academia and enjoy helping the next generation.

Two years ago, Assistant Public Defender George Burden and I conducted a four-part legal seminar for Robin Gentry's fourth grade class at Grace Academy in Ormond Beach. The seminar featured 3 instructional lessons on the 4th amendment. We worked with the students to educate them and helped them prepare a moot court argument. The final lesson allowed the students to present simplified oral arguments in a Volusia County Courtroom. The seminar was loosely based upon Tangerine, a book that we read with the class. I gave approximately 20-25 hours to the project.

A separate list of lectures and public appearances has been provided in response to Question 46 of this application.

SUPPLEMENTAL INFORMATION:

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

Yes. Legal ethics presented by The Florida Bar and Bar Counsel, Criminal Certification Review, State & Federal Trial Practice, Homicide Investigation & Prosecution, Domestic Violence, Death Penalty Issues, Sexually Violent Predators, Ethics Update, Prosecuting a Capital Case, Education and Training Program for Prosecutors, FPAA Winter Meeting 2018

49b. Have you taught any courses on law or lectured at bar association conferences, law school forums, or continuing legal education programs? If so, in what substantive areas?
No.

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

In the event that I am selected by this Committee and the Governor, I am prepared to run for election. The unfortunate reality is that an appointment guarantees no more than two years of judicial service. Last year, I spent 11 months as a candidate for judicial office. I am comfortable defending this appointed position. Though my bid for office was unsuccessful, I ran a clean and energetic campaign throughout the Circuit, gained the support of our community, and received more than 150,000 votes for office during the general election. I won the primary in all 4 counties and received 10,000 more than my two opponents. In 11 months, I created a political fund exceeding \$75,000 and have maintained the wide-spread contacts and infrastructure necessary to run a successful campaign. I earned the endorsement of the AFL-CIO, the teachers' union in Volusia and Flagler Counties, Volusia County Deputies Association, The Black Clergy Alliance, The City Workers of Port Orange, The Ormond Beach Observer and the Palm Coast Observer. Promotional materials, endorsements, and individual support for the campaign can be found at www.ElectRyanWill.com.

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

The Seventh Circuit has earned a reputation for exceptional trial judges. All my life, we have been blessed with dedicated jurists. I have known many of these fine men and women. They have served as role models and mentors. Following in their footsteps, I will dedicate myself to the work, to the Office, and to the people of this community.

Since I was a young boy, it has been my desire to earn a judicial seat in this community. It is my home and I have a vested interest in the future. To that end, every day of my career has focused on learning to serve the needs of our citizens and working to improve our quality of life. As a prosecutor, I have helped thousands of victims while offering a fair and just result for criminal defendants

Over the past ten years I have amassed a nearly flawless trial record. Virtually all of my cases have been appealed; only one conviction has been overturned.

I have conducted seventy-five criminal jury trials. Thirty-five of those trials have related to murder charges. Of seventy-five total trials, six were lost. The last not guilty verdict was rendered in 2010. I have conducted approximately 10-20 non-jury trials. The last non-jury trial occurred in 2006. There have also been hundreds of sentencing hearings, stand your ground / self defense hearings, and hearings for violation of probation that can be every bit as difficult and time consuming as a trial. For instance, Ms. Catwell (discussed in the response to Question 30 supra) entered a plea. Her sentencing hearing lasted 8 hours. Jeffrey Farina was recently before the Court for re-sentencing in

the 1992 murder of Michelle Van Ness at the Taco Bell in Daytona Beach. The proceeding lasted 2 weeks.

As a prosecutor, I have spent the majority of my career in the courtroom. One of my most significant contributions to this position is my litigation experience. In my career, I have presented and cross-examined experts of every discipline. I have wrestled with the evidence code and argued all points of procedure. I have litigated at the highest level of the criminal practice.

As a Judge, I would strive to deliver the same quality workmanship that I have provided in practice. Success and achievement are driven by careful attention to detail and meticulous preparation. No doubt, a judicial position will require the same hard work that has generated success in my current role.

Though the majority of my career has been limited to criminal prosecution, I spent a year drafting and negotiating contracts for the extraction of oil and gas prior to joining the State. In that time, I gained substantial experience in real property, contract, and probate law. Since joining the State Attorney's Office, I have frequently appeared in civil arenas related to pending criminal matters. Nearly all criminal cases have a component of mental health and drug addiction. Juvenile delinquency often involves dependency. Sex crimes expand to the involuntary civil commitment of predators. Homicide routinely brings questions about the estate.

As a senior litigator in the State Attorney's Office, it has been a pleasure to travel the Circuit and appear before many courts. There have also been opportunities to attend hearings in other jurisdictions. In each location, there has been an occasion to observe the many ways that a Judge will conduct business and handle his or her affairs. If given the opportunity by this Committee and the Governor, I would continue to study the work of my colleagues and accept guidance from more practiced jurists.

I have lived my life according to a code that recognizes hard work will be rewarded. That perseverance and dedication will always make a difference. That a strong moral compass will steer you to your destination. These are the characteristics of a life well-lived. But they are also the hallmarks of a qualified candidate.

If selected, I will always give attorneys and litigants an opportunity to be fully and fairly heard. I will treat each individual with respect and dignity. I will never place a premium on form over substance. Our citizens are entitled to consistent, reliable, and predictable outcomes that are generated through an adherence to precedent. And, I will be mindful of the resources expended by others. Whether time or money, someone has sacrificed in order to appear before the Court.

It has always been my belief that a trial attorney is great because he or she is well prepared. If selected by this Committee and the Governor, I would give the same effort from the Bench. The people of this community deserve hard-working public servants. It would be my honor to serve our citizens.

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.

Seventh Judicial Circuit JNC, submitted August, November, and December of 2017, November of 2018.

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

It is apparent that I need to explain and respond to Crew (Response to Question 39). If we live long enough, each of us has a moment that we regret. The closing argument in Crew is mine. If I could take it back, I would. That moment serves as a tremendous embarrassment. It is the only blemish on an otherwise outstanding legal career.

During a difficult trial, I was drawn into an emotional situation and failed to act appropriately. If you speak to lawyers and judges familiar with the way I conduct my practice, you will find this was a substantial departure. I have always treated the Court, its officers, and litigants with the utmost respect. My argument in Crew was both demeaning and unacceptable. For my comments, I have apologized and accepted a written reprimand from The Florida Bar and the Alabama State Bar.

While the occurrence was inexcusable, it resulted in personal and professional growth. The experience of being prosecuted by The Florida Bar was excruciating. In its wake, I am more cautious and circumspect. My arguments have long since returned to the calm, business-like presentation that is characteristic of my work. And, the occurrence yielded a greater appreciation for the harm that accompanies an overturned conviction.

In viewing Crew, it is important to note that the trial occurred seven years ago. The discipline is more recent because the prosecution was protracted. Since the offense, I have personally conducted thirty-five high profile murder trials. All but the most recent have been affirmed by the 5th District Court and/or the Supreme Court of Florida. Several are still pending.

This experience carried significant consequences and had the intended effect. After Crew, I am a better attorney. If selected, it is my belief that this incident will guide my decisions and cause me to be a better judge.

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.

The Honorable Richard B. Orfinger
Fifth District Court of Appeal
300 South Beach Street
Daytona Beach, Florida 32114
(386) 947-1510

The Honorable Leah R. Case
251 North Ridgewood Avenue
Daytona Beach, Florida 32114
(386) 239-7790

The Honorable James R. Clayton
Seventh Judicial Circuit
101 North Alabama Avenue
Deland, Florida, 32724
(386) 740-5270

The Honorable Terence R. Perkins
1769 E. Moody Boulevard, Bldg 1
Bunnell, FL 32110
(386) 313-4510

The Honorable Randell H. Rowe, III
101 North Alabama Avenue
Deland, FL 32724
(386) 736-5946

The Honorable Raul Zambrano
101 North Alabama Avenue
Deland, FL 32724
(386) 943-7060

The Honorable Laura Roth
Clerk of Court
101 North Alabama Avenue
Deland, FL 32724
(386) 736-5915

William F. Hathaway
500 Canal Street
New Smyrna Beach, Florida 32168
(386) 423-5504

Melvin D. Stack
444 Seabreeze Blvd, Suite 1003
Daytona Beach, Florida 32118
(386) 255-1925

Kimberly Beck-Frate, Ph.D.
Halifax Health Hospice, Traumatic Loss Program
655 North Clyde Morris Blvd
Daytona Beach, FL 32114
(386) 852-0692
(386) 425-4738

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 31st day of July, 2019.

JOSEPH RYAN WILL

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 Approx \$70,000

List Last 3 years	<u>\$88,171 (2016)</u>	<u>\$86,784 (2015)</u>	<u>\$84,552 (2014)</u>
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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 Approx \$60,000

List Last 3 years	<u>\$57,602 (2016)</u>	<u>\$53,966 (2015)</u>	<u>\$63,964 (2014)</u>
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3. State the gross amount of income or losses incurred (before deducting expenses or taxes) you have earned in the preceding three years on a year by year basis from all sources other than the practice of law, and generally describe the source of such income or losses.

Current year to date none

List Last 3 years	<u>none</u>	<u>none</u>	<u>none</u>
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4. State the amount of net income you have earned or losses incurred (after deducting expenses) from all sources other than the practice of law for the preceding three-year period on a year by year basis, and generally describe the sources of such income or losses.

Current year to date none

List Last 3 years	<u>none</u>	<u>none</u>	<u>none</u>
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FORM 6

FULL AND PUBLIC DISCLOSURE OF FINANCIAL INTEREST

PART A – NET WORTH

Please enter the value of your net worth as of December 31 or a more current date. [Note: Net worth is not calculated by subtracting your *reported* liabilities from your *reported* assets, so please see the instructions on page 3.]

My net worth as of August, 2019 was \$ ____.

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 \$ 55,000 (approx)

ASSETS INDIVIDUALLY VALUED AT OVER \$1,000:

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

VALUE OF ASSET

Home Equity	\$75,000 (approx)
State Retirement Account	\$135,000 (approx)
Whole Life Policy	\$5,000 (approx)

PART C - LIABILITIES

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

NAME AND ADDRESS OF CREDITOR

AMOUNT OF LIABILITY

Navient (student loans)	\$57,000 (approx)
Quicken Loans (home mortgage)	\$148,000 (approx)

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

NAME AND ADDRESS OF CREDITOR

AMOUNT OF LIABILITY

n/a	

PART D - INCOME

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

☐ I elect to file a copy of my latest federal income tax return and all W2's, schedules, and attachments.

(if you check this box and attach a copy of your latest tax return, you need not complete the remainder of Part D.)

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

NAME OF SOURCE OF INCOME EXCEEDING \$1,000	ADDRESS OF SOURCE OF INCOME	AMOUNT
STATE OF FLORIDA	200 EAST GAINES STREET, TALLAHASSEE, FLORIDA 32399	\$91,000.08

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
n/a			

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

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

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

OATH

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



SIGNATURE

STATE OF FLORIDA**COUNTY OF VOLUSIA**

Sworn to (or affirmed) and subscribed before me this 31st day of July, 2019 by Joseph Ryan Will

(Signature of Notary Public—State of Florida)

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

Personally Known ☒ OR Produced Identification _____

Type of Identification Produced _____

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: 08/07/2019

JNC Submitting To: Seventh Circuit

Name (please print): Joseph Ryan Will

Current Occupation: Assistant State Attorney

Telephone Number: (386) 238-4894 Attorney No.: 0024122

Gender (check one): ☒ Male ☐ Female

Ethnic Origin (check one): ☒ White, non Hispanic

☐ Hispanic

☐ Black

☐ American Indian/Alaskan Native

☐ Asian/Pacific Islander

County of Residence: Volusia

FLORIDA DEPARTMENT OF LAW ENFORCEMENT

DISCLOSURE PURSUANT TO THE
FAIR CREDIT REPORTING ACT (FCRA)

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

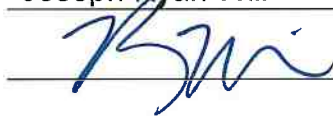
CONSUMER'S AUTHORIZATION FOR FDLE
TO OBTAIN CONSUMER REPORT(S)

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

Printed Name of
Applicant:

Joseph Ryan Will

Signature of Applicant:

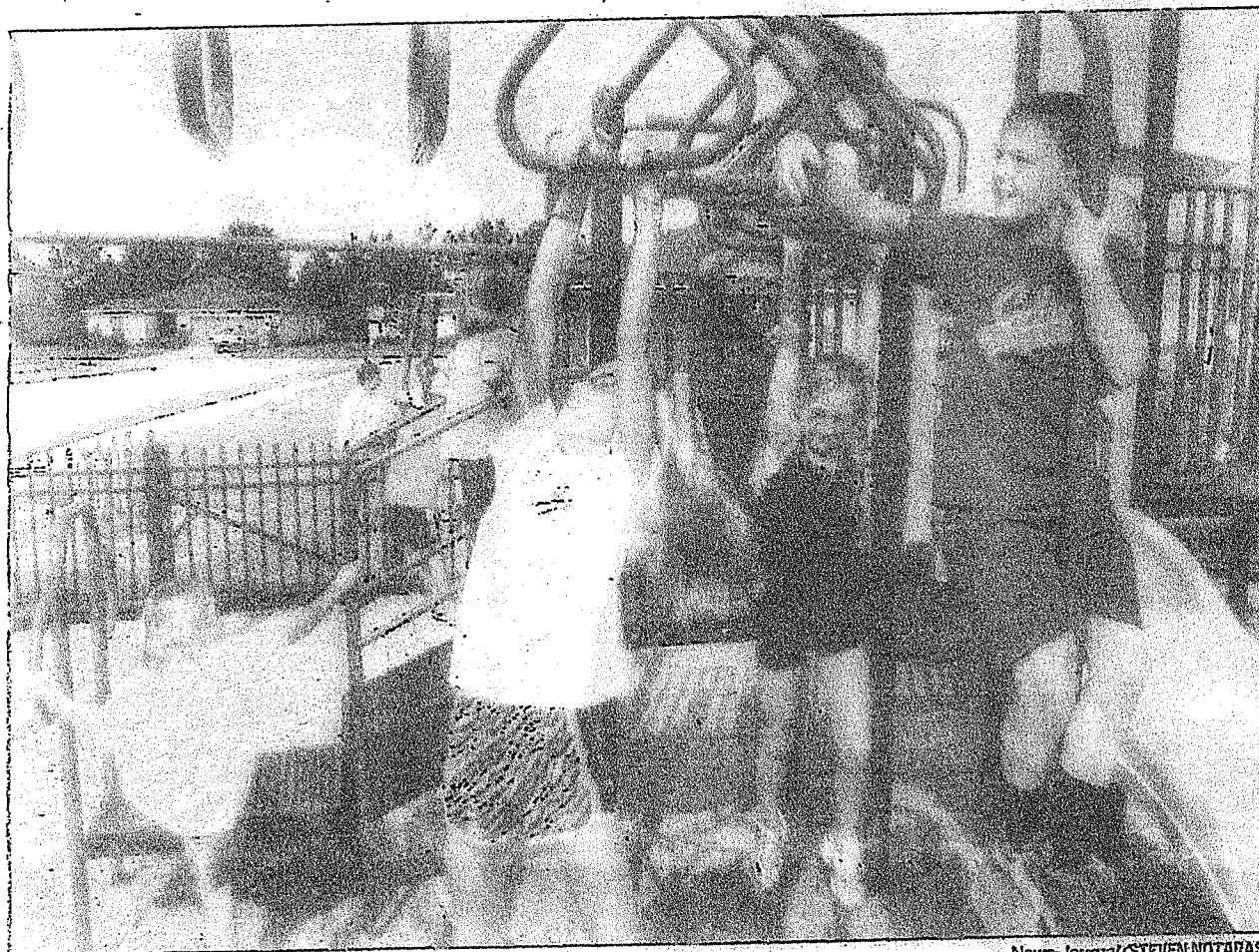


Date:

08/07/19

PROACTIVE PLAYGROUND

A place to play and keep sex offenders away



News-Journal/STEVEN NOTARAS

Children enjoy their new park in Daytona Beach's Bayberry Lakes neighborhood. Homeowners association leaders put in the park so the law that prohibits sex offenders from living near parks can be invoked: Florida Department of Law Enforcement records showed Monday that 52 sex offenders were living in the neighborhood's ZIP code.

Daytona neighborhood on offensive with park meant to deny sex criminals residency

By FRANK FERNANDEZ
frank.fernandez@news-jral.com

DAYTONA BEACH — Bayberry Lakes' new playground, with its slides and monkey bars, is more than a fun place for kids to play. It is also the community's preemptive strike against sex offenders.



J. RYAN
WILL

The playground was strategically placed to cover an open zone where sex offenders could have moved into the community off LPGA Boulevard.

The playground appears to be the first in either Volusia or Flagler counties built to block sex offenders from moving in to a community. Jo Ellyn Rackleff, a spokeswoman with the state Department of Corrections, said the department did not know of any other community in the state that had taken such an initiative. Volusia County Sheriff's Office spokesman Brandon Haught and Flagler County Sheriff's Office spokesman Lt. Bob Weber both said they had not heard of a community doing such a thing.



News-Journal/STEVEN NOTARAS

Haley Corbin, 8, hangs on at the new park that opened up at Bayberry Lakes in Daytona Beach.

It was the idea of J. Ryan Will, a Bayberry Lakes resident who also happens to be a prosecutor for the local State Attorney's Office.

"I just started looking for ways to keep sex offenders out of the neighbor-

SEE PARK, PAGE 7A

Sex offender Residences

State law bars sex offenders or sex predators whose victims are younger than 16 from living within 1,000 feet of a playground, park, child care facility or school. The city of Daytona Beach's ordinance is similar and extends the prohibition to 2,500 feet. A recent search of the Florida Department of Law Enforcement showed two sex offenders living within one mile of the park. The one shown as living closest to the new playground has moved away, according to J. Ryan Will, who proposed building the playground. The other was listed as living in another neighborhood on the east side of LPGA Boulevard, according to the FDLE website.



News-Journal/STEVEN NOTARAS

Children enjoy the new playground that opened up recently in the Bayberry Lakes neighborhood in Daytona Beach. The park was built in a space that keeps sex offenders from moving into the area.

PARK

FROM PAGE 1A

hood and I knew from my job that there were residency requirements with respect to parks and playgrounds," Will said.

The community of 328 homes is nearly built out and already had Champion Elementary School in the north end and a park in its community center at the other end, each one creating zones where sex offenders could not live.

State law bars sex offenders whose victims were younger than 16 from living within 1,000 feet of a school, child care facility, park or playground. A similar Daytona Beach city ordinance is stricter, excluding sex offenders and sex predators from living within 2,500 feet of such facilities.

But an unprotected area existed in the middle of Bayberry Lakes and a sex offender had even lived here for a time before moving out, Will said. That gap was closed this month with the opening of the playground on Cinderberry Lane.

Red and blue balloons fluttered in the breeze as Mayor Derrick Henry cut a red ribbon at the gate to the playground Aug. 15 while one 4 Commissioner Robert Willard stood nearby.

"It's a paradigm or model of what we would like to see all of our communities do, which is to come together in an effort to protect the children and number two to enhance the quality of life for them," Henry said. "I'm a big proponent of health and wellness and this is an extension of that, as well."

Police Chief Mike Chitwood said in a phone interview that he



KIM
WOOD



BILL
KAMER



JIM
POWERS

had never been told about a playground being built to keep sex offenders and sex predators away.

"It's the first time I've heard of it," Chitwood said. "It's pretty proactive on the community's part."

Will proposed the playground to the homeowners association a little more than a year ago. The homeowners approved it, voting to assess each household \$100 to build the \$27,000 playground. Adams Homes, which still controls 29 lots in the community, also voted in favor of the playground and paid the special assessment on each lot.

But not everyone liked the idea. Some residents thought the proposed location was a bad spot because Cinderberry Lane was too busy a street. But Will said the homeowners association already owned that land. Also, the spot was perfect because it would protect the entire open zone from sex offenders and sex predators.

Moving it would mean two or three lots would fall outside of the protected zone, allowing sex offenders and sex predators to move in.

Now, the entire neighborhood is protected, said Bill Kamer, a father who is the president of the homeowners association.

"The middle of the subdivision

was not covered at all," Kamer said. "This will put our whole community under the safe zone, so no sex offenders or predators can live in our community at all."

Another resident, Kim Wood, said she was on board when she heard Will's idea for a playground and liked it, particularly because she has a 4-year-old granddaughter.

"And right now we don't let her out of our sight, but as she gets older and wants to go to the playground and hang out with friends that would be a concern to me," Wood said.

Jim Powers, Wood's fiancé and an association board member, said the area needed a park anyway.

"This end of the community didn't have any amenities. All the amenities were at the other end of the community so we definitely felt it was a good spot here and a good position and something that we needed in the community," Powers said. "You can tell by the number of children here that it's going to be well used."

That was certainly the case on a recent afternoon. Kids dangled from the monkey bars, zipped down slides and clung to a small round platform with bars, which the youngsters spun in fast circles.

Adam Marcotte, 9, gave the playground a thumbs up: "It's pretty cool."

Arianna Corbin, 11, was at the playground with her sisters, 8-year-old twins, Gianna and Haley, and Elizabeth, 12. What was Arianna's favorite?

"The spinner. You can get dizzy," Arianna said.

The choice was simple for 7-year-old Sebastian Juracek who decided, "I like everything."

Survivor visits anti-predator playground

By FRANK FERNANDEZ
frank.fernandez@news-jmi.com

DAYTONA BEACH — Lauren Book brought her "Walk in My Shoes" journey across the state to Daytona Beach on Wednesday to recognize a neighborhood that's not playing around when it comes to keeping sex offenders out.

Bayberry Lakes residents joined forces and wallets to build a \$27,000 community playground, which gives kids a place to play while at the same time creating an exclusion zone. That zone sealed off an area in the neighborhood where sex offenders could have lived.

Book, a survivor of child sexual abuse, praised the efforts of the community and Assistant State Attorney J. Ryan Will, who came up with the playground idea.

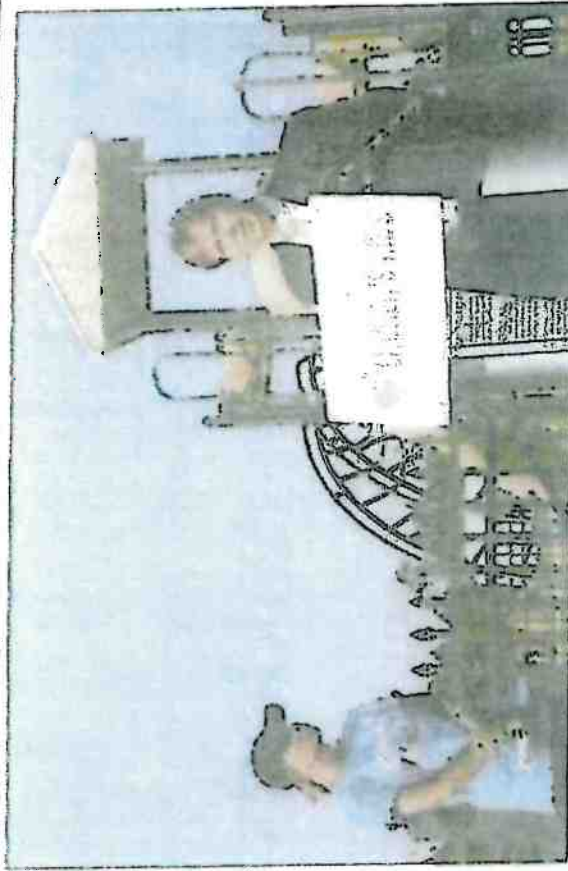
"This is a stop that I could not miss here in Daytona," Book said. "We see a lot of pretty difficult things on our walk. We meet a lot of survivors who really are struggling. We meet a lot of kids who are in really dark places. We meet a lot of adults who are in really dark places. But when we have the opportunity to see a community that was empowered to protect its children, this is a stop that we could not miss, and we were very, very excited that everybody rallied around this project."

LAUREN BOOK
child abuse survivor

Bayberry Lakes, off LPGA Boulevard, SEE PLAYGROUND, PAGE 2C

2C Thursday, April 10, 2014

LOCAL



News-Journal/FRANK FERNANDEZ
Lauren Book, left, is shown with Assistant State Attorney J. Ryan Will at the playground in the Bayberry Lakes subdivision. Book's Lauren's Kids organization was in Daytona Beach on Wednesday. Book is a survivor of child sexual abuse and was on a 1,500-mile journey across Florida to promote laws to protect children.

PLAYGROUND

FROM PAGE 1C

already had exclusion zones created by Champlon Elementary School on the north and a park at its community center to the south. But a zone was open in the middle. The park sealed that gap. Law enforcement and corrections officials contacted last summer when the playground opened in August said they had not heard of a community building a park to keep sex offenders out.

"The construction of this playground is an open and obvious display of our intent to protect our children," Will said. "With the cooperation and support of the city of Daytona Beach, we were able to

pull permits and construct the very first anti-sex predator park here in the state of Florida."

State law bars sex offenders whose victims were younger than 16 from living within 1,000 feet of a school, child care facility, park or playground. A similar Daytona Beach city ordinance is stricter, excluding sex offenders and sex predators from living within 2,500 feet of such facilities.

The press conference also included comments by other officials, including Daytona Beach Police Chief Mike Chitwood.

"I don't mean to be sarcastic but if you think you are going to wait for the government to solve your problem it's not going to happen," Chitwood said. "It's incidents just like

this, it's neighbors getting together and saying we have to protect the most vulnerable members of our society."

Daytona Beach Vice Mayor Patrick Henry spoke, saying that Chitwood had suggested the city enlarge the exclusion zone.

"The people of Bayberry just took a great step in keeping our children safe," Henry said.

And everyone praised Book for her work. The 29-year-old Book is on her way to Tallahassee where she said it has been a good year for toughening laws against sex offenders.

Gov. Rick Scott last week signed bills increasing notification requirements, including requiring higher education institutions to alert

students that a sexual predator is on campus. Another bill increased prison sentences for certain offenses involving an adult victimizing a minor. It also prohibits gain-time for sex offenders convicted of certain crimes.

Book said it's important that people realize that a child can be victimized anywhere, including, like in her case, by her nanny in a gated community.

"I wanted people to know that it can happen to all kids," Book said after the press conference. "But we need to be aware. We need to talk about things. Parents need to have open and honest communication with their children and how important it is that communities like this lock arms to protect their children."

Response to Question 30:

Over the course of my career, I have had the opportunity to seek justice for thousands of innocent victims. The six cases below are personally significant because of their individual complexities. They each required careful attention to detail, precise legal argument, and a tremendous effort. They also gave me the opportunity to grow as an attorney and to gain a greater appreciation of the human condition, the need for court intervention, and clear, predictable rules of law.

State v. Ron Lee Mitchell, 2007-03442 CFAWS

Charge: Capital Sexual Battery (Victim Under 12 years old)
Judge: The Honorable James R. Clayton
Defense: Christopher R. Ditslear
Trial date: June 03, 2009 – June 04, 2009
Sentence: LIFE
Appellate: 5D09-3203

When I met Starla Morrill in June of 2008, she and her mother were upset that I would be their third prosecutor in two years. It was my first prosecution of a sexual predator. Over the next 12 months, I came to know Starla and her mother very well. Her stepfather began sexually molesting her when she was seven years old. He continued the abuse for ten years. When Starla was nineteen, she learned that he was grooming her children. That was the first time that Starla ever told anyone what her step-father had done. During the prosecution, it was learned that he previously married two other women and preyed upon their little girls. The statute of limitations protected him from additional charges, but the court allowed the testimony as similar fact evidence.

In June of 2009, Ron Lee Mitchell was tried for Capital Sexual Battery and convicted. He was sentenced to life in prison.

Over the years, Starla and her mother have visited during the holidays to reflect upon the year that has passed. On the mantel in my office rests a clock, given to me by the three victims of Ron Lee Mitchell. It is a reminder of the pain and suffering inflicted by the brutal. It is a symbol of the difference that hard work and dedication can make in the lives of others.

State v. Jocelyn Catwell,

2006-035943 CFAES, 2007-031061 CFAES, 2007-034111 CFAES

Charges: Organized Scheme to Defraud (Under \$20,000)
Depositing a Check with the Intent to Defraud
Fraudulent Use of Identification (in excess of \$50,000 / 20 persons)
Judge: The Honorable Patrick G. Kennedy
Defense: Steven R. Robinson
Sentencing: July 07, 2010
Sentence: 40 years

Appellate: 5D10-2517, 5D10-2518, 5D10-2520

Jocelyn Catwell was initially arrested for Organized Scheme to Defraud & Depositing a Check with the Intent to Defraud. It was clear that she had scammed 8 or 10 local merchants for less than \$20,000. It was merely the tip of the iceberg.

While that case was pending, she convinced Bernice and John Springer, a couple in their seventies, that she was a licensed physician. She manipulated them into making an investment and providing identification information for the creation of the “John Springer Manor”, specializing in elderly care. Ms. Springer was soon in my office. She didn’t have the heart to tell her husband that Catwell had taken their life savings and the proceeds of the Springer’s home sale. She created credit accounts in their name, purchased luxury cars, air fare, and hotel reservations all over the world. In total she stole \$527,000 from the elderly couple and they had been reduced to sharing their daughter’s spare bedroom with their eight-year-old granddaughter. In sharp contrast, Jocelyn Catwell was living large. She was on the run for two years.

During those years, I decided to research Catwell’s background beyond what was provided in local law enforcement documents. It was discovered that Catwell had been committing acts of fraud for more than 15 years and was responsible for theft and fraud in excess of \$3 million. This discovery caused her to be listed among the FBI’s most wanted criminals.

When she was finally apprehended the cases were consolidated. All of her victims – for 15 years – were personally contacted. During the 8-hour sentencing hearing, there was testimony and correspondence from more than 30 victims, spanning nine States.

Catwell was sentenced to 40-years. For two years following the conviction, I worked with The United States Secret Service, the Federal Bureau of Investigation, and the Florida Department of Law Enforcement to find the money that Ms. Catwell had stolen. Even though the cases had closed, I could not forget the hurt on the faces of her victims. At the end, we were able to locate \$67 in Barbados.

The victims never received restitution. In working this case, I gained a better appreciation for the damage that one person can do. Ms. Catwell ruined dozens of lives. Until she was arrested in this jurisdiction, there had never been a significant court case. As such, it was important for each victim to face her here. They needed an opportunity to be heard. Together, we were able to remove Ms. Catwell from society and make our community a safer place.

State v. Luis Toledo, 2013-102888 CFDL

Charges:	First Degree Murder, First Degree Murder, Second Degree Murder & Tampering with Physical Evidence
Judge:	The Honorable Raul A. Zambrano
Defense:	Jeffrey D. Deen, Michael Nielsen, Michael C. Nappi
Trial date:	October 02, 2017 – November 03, 2017
Sentence:	LIFE RECOMMENDATION – Sentencing Pending
Appellate:	Not yet filed

In the history of the United States, there have been fewer than 500 homicide cases litigated without a body. Ms. Suarez and her two children were murdered on October 23, 2013. In January of 2018, the defendant received three life sentences for his crimes.

This is the most complicated case that I have ever worked. At five weeks, it is also my longest trial. When I received the call from law enforcement, I had no idea the effort that would be involved. The experience and satisfaction that I gained from the intellectual and emotional pursuit is unmatched by my other cases. When innocent children become victims, there is a demand for justice. As an advocate, I cannot think of a more meaningful way to spend four years of my life. It was my pleasure to obtain a verdict and achieve justice for this family in mourning.

State v. Marcus White, 2011-033680 CFAES

Charge: Manslaughter w/ Firearm
Judge: The Honorable Leah R. Case
Defense: Matthew Phillips
Trial date: March 17, 2014 – March 20, 2014
Sentence: 30 years
Appellate: 5D14-2173

Marcus White is a tragic character. The attached news articles and my response to Question 31 (below) should provide some insight into the challenges of this case. Given his mental health condition, Mr. White is ill-equipped to deal with society and unable to survive on his own.

In an effort to resolve this matter, I had the opportunity to survey the mental health services provided by the State of Florida. There is no place in the system to accommodate the needs of people like Mr. White, the intellectually challenged and mentally ill who kill.

My experience in the White case has provided a better understanding of our handling of people with disability and impairment. When we have one of these cases, whether as litigants or judicial officers, we need to take the time to examine the circumstances and search for the least harmful alternative. Community resources are scarce, but there are options. For the benefit of the community and the well-being of those in need, it is our duty to locate an option which will ensure the protection of the community and treatment of these individuals.

**State v. Anthony Farina, 1992-032105 CFAES &
State v. Jeffrey Farina, 1992-032128 CFAES**

Charge: First Degree Murder, Attempted First Degree Murder (x3), Robbery with a Firearm (x3) and Conspiracy to Commit Murder
Judge: The Honorable Margaret W. Hudson
Defense: Marie-Louise Samuels Parmer & Garry Wood for Anthony Farina

Joshua Mott for Jeffrey Farina
Trial date: March 13, 2017 – March 24, 2017
Sentence: LIFE
Appellate: 5D17-1417

Twenty-five years after the crime, the brothers were returned for re-sentencing. As a life-long Volusia County resident, I remember when this crime was committed. It was a crime that forever changed the community.

Working with the victims and families affected by this violent and tragic event was a tremendous honor. Not only was it personally meaningful to assist them through a difficult process, but also professionally satisfying to see justice done and the cases closed.

Both of the defendants were sentenced to life incarceration. Gone are the decades of appeals. The families will finally have peace.

Looking back upon the cases, I will always remember the connection that I felt with the families. Their profound sense of loss and raw emotion remained, after all this time. I am grateful to have known them, hope that I helped them, and know that they will never be forced to litigate this matter again.

State v. Joshua Gibson, 2012-34440 CFAWS

Charge: First Degree Murder, Kidnapping & Robbery
Judge: The Honorable Margaret W. Hudson
Defense: Clyde M. Taylor, Jr.
Trial Date: June 21, 2014 – June 24, 2014
Sentence: LIFE
Appellate: 5D14-2519

There are truly evil people in this world. Joshua Gibson is one of them. In 2012, he and his girlfriend tortured another human being to death and hid the body. These were heinous and senseless crimes; crimes that ended the life of a vibrant young woman. Upon conviction, he received a life sentence for his actions.

This case was significant because it was a test of my strength. As lawyers, we often encounter situations and individuals that are difficult to handle. In order to perform our duties, or properly represent our clients, we are required to suppress our personal feelings and focus on the matter at hand.

It took nearly three years to bring this case to trial. During that time, I had grown close to the family. In presenting the case to the jury, it was essential that I restrain my own emotions. While many of the jurors were openly weeping, I remained focused on the presentation of evidence.

Whether delivering the facts from counsel table or viewing them from an elevated bench, justice requires that we remain dispassionate. Justice cannot be achieved -- and the system is offended -- when emotions are unrestrained.

Officials say a jail instructor
accepted money from families.
PAGE 2C

LOCAL

NEWS-JOURNAL

THURSDAY, MARCH 20, 2014

Man guilty in death of father

Jurors attempt to contain emotion as mentally deficient man's manslaughter verdict read

By FRANK FERNANDEZ
frank.fernandez@news-journal.com

DAYTONA BEACH — Jurors, one crying and others wiping away tears or holding back emotions, returned a guilty verdict on Wednesday against Marcus White for the killing of his father.

White, 23, was charged with manslaughter in the killing of his adoptive father, Douglas White, on June 7, 2011, in the family's camper west of New



MARCUS
WHITE

Smyrna Beach at 960 Alligator Ranch Road. Circuit Judge Leah Case set sentencing for June 13. White faces up to 30 years in prison and sentencing guidelines recommend 9 1/2 years.

But the judge could give him less time, including probation, as long as she rules that there is

a legal reason for the lower sentence, such as White's mental deficit.

As a clerk read the verdict, jurors tried to contain tears, wiping at their eyes. One female juror cried as she sat in the jury box.

Marcus White showed no emotion.

The jury of five women and one man had deliberated for 2 hours and 40 minutes. About 1 hour and 40 minutes into

deliberations the jury sent back a note with a question, asking to see the ammunition. A bailiff took a clear plastic evidence bag containing .40-caliber bullets into the jury room. The bailiff also took out a box containing a Glock handgun secured with a cable lock, so the pistol and the bullets would not be in the same room.

The jurors had spent two days listening to evidence in the case against Marcus White, who

suffers from mental deficits, autism, fetal alcohol exposure and has the mental functioning of a teenager, said Assistant Public Defender Matt Phillips, arguing the shooting was an accident.

Assistant State Attorney J. Ryan Will told jurors during closing arguments that Marcus White was a tragic figure but sympathy should not be part of their decision.

SEE GUILTY, PAGE 2C

GUILTY FROM PAGE 1C

"He killed his father,"

Will said.
"He killed his primary caretaker and probably the person that cared about him most in this world."

Marcus White stood 2 feet away from his sleeping father and shot him once, Will said.

The .40-caliber bullet bore through one of Douglas White's lungs and his heart and shattered upon hitting his spine, according to testimony.

Marcus White knew the rules, he knew he wasn't supposed to handle guns and had seen his father use firearms to kill snakes on their ranch, Will said.

If Marcus White didn't kill his father intentionally then he did it with culpable negligence, which is like putting a blindfold on and driving a car at 80 mph, Will said.

Either way, it would be equal to manslaughter.

Will told the jury that Marcus White had lied to investigators and claimed he got the gun because he thought someone was breaking into the camper but investigators did not find any signs of intruders.

Phillips said during closing that White called 9-1-1 after the shooting and tried to get help for his father, what you'd expect someone to do if it was an accident.

While Marcus White was negligent, the shooting was not intentional and the negligence did not rise to the level of manslaughter.

Phillips told jurors that they were allowed to consider the mental state of Marcus White.

The White family adopted him when Marcus was 10.

"Marcus White accidentally caused the death of his father," Phillips said.

Wednesday, March 19, 2014 3C

LOCAL

The Daytona Beach News-Journal

Trial begins in killing of father

By FRANK FERNANDEZ
frank.fernandez@news-journal.com

DAYTONA BEACH — A man accused of shooting his adoptive father to death has mental issues but knew right from wrong and changed his story about how the killing occurred, a prosecutor said during opening statements at his trial Tuesday.

Marcus White, 23, is charged with manslaughter in the killing of Douglas White on June 7, 2011, in the family's camper west of New Smyrna Beach at 950 Alligator Ranch Road.

Circuit Judge Leah Case

is presiding over the trial before a six-member jury. Douglas White, 50, was sleeping when Marcus



MARCUS WHITE

White took one of his father's guns and shot him, prosecutors say. Competitive shooting was a hobby for the elder White, who was sleeping in quarters accessible by makeshift stairs made out of ammo boxes.

Prosecutor Mike Willard said during opening

statements that Marcus White told a psychiatric nurse on June 8: "I want to change my story. There was no one there. I killed my dad on purpose."

But then minutes later after returning from the bathroom, Marcus White said, "It was an accident," Willard said.

Marcus White sat in a dark suit and tie next to his defense attorney on Tuesday.

He seldom spoke to his attorney and did not appear to take any notes as some defendants do. Assistant Public Defender Matt Phillips said during his opening statement

that the shooting was "a tragic accident."

He said Marcus White called 9-1-1 as soon as it happened and cooperated with law enforcement.

Marcus White also has developmental and intellectual disabilities and autism, Phillips said.

Marcus White told a deputy that on the day of the shooting he thought someone was breaking into the trailer and took the gun for protection, according to testimony.

He said his finger slipped on the trigger and he shot his father, according to testimony.

Volusia County sher-

iff's investigators later decided to take White into custody under the state's Baker Act, which allows a person to be committed for mental evaluation if it's believed that person is a threat to his or herself or others.

A week after the shooting, White told investigators he followed "a bad voice in his head" and began playing with his father's handgun, according to a sheriff's report.

In an interview later, at ACT Corp. — where he was placed after it was determined he had mental issues and was a danger to himself — he changed

his story in the presence of his mother, Mary White, investigators said.

In that interview, Marcus White — adopted when he was 10 — said he heard a voice that kept telling him, "No, don't touch it," while another voice kept telling him "Touch it."

White said he listened to the bad voice.

Circuit Judge J. David Walsh in 2012 ruled White competent to stand trial, meaning he understood the charges and possible penalties, could understand the judge and communicate with his attorney.

SHORES WIRE
Police: Man crash-lands car
between wall and tree.
PAGE 2C

LOCAL

NEWS-JOURNAL

WEDNESDAY, JUNE 25, 2014

Killer testifies to mom's brutal death

By FRANK FERNANDEZ
frank.fernandez@news-jrn.com

DELAND — When Jennifer Rado asked why she had been tied up with electrical wires, one of her captors gave her a straightforward answer.

"I told her that I was going to have to kill her," Frances Gibson testified in a low monotone Tuesday during the first-degree murder trial of her ex-boyfriend and second-cousin Joshua Gibson.

Rado, a 41-year-old New Smyrna Beach woman who had two



JENNIFER
RADO

children, then asked to pray. Frances Gibson said she told her she could.

"She started talking about her kids and how her son was expecting a baby and crying for her children and her family," Frances Gibson said as she broke down on the witness stand. "She asked me not to kill her."

Frances Gibson, 28, has

pleaded no contest to first-degree murder, kidnapping and robbery as part of a deal that will keep her off death row but send her to prison for the rest of her life, Assistant State Attorney J. Ryan Will said during his opening statement. She has yet to be sentenced.

Joshua Gibson, 35, is on trial on charges of first-degree murder, kidnapping and robbery before Circuit Judge Margaret Hudson at the Volusia County Courthouse. If convicted, he faces a mandatory sentence of

life in prison without parole. Gibson is accused of killing Rado to cover up robbing her of her drugs.

"She would be bound and gagged, blindfolded and beaten," Will said. "Her death was not a quick one. It took the defendant and his girlfriend several hours to extinguish her life."

Joshua Gibson's defense attorney, Clyde Taylor Jr., has not given an opening statement. Jennifer Rado went along with her friend Michael Scott

on July 16, 2011, to Joshua Gibson's house on Needle Palm Drive in Edgewater. Scott, a New Smyrna Beach drug dealer who is serving prison time for burglary, was delivering drugs to Gibson at his house that night.

Later, the drugs were running out and Joshua Gibson wanted \$100 worth of crack cocaine so Scott and his girlfriend left. Jennifer Rado had bought 200 Roxycodone pain pills from

SEE DEATH, PAGE 2C

DEATH

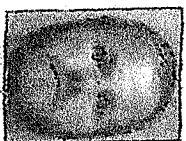
FROM PAGE 1C

someone else that night and had about 80 left in her purse, Scott testified. Scott said when he returned no one would answer the door but he heard what was either someone having sex or being beaten inside the house. The drug dealer left and did not call police.

Frances Gibson testified on Tuesday that it was Joshua Gibson's idea to kill Rado after the two beat her to rob her of the Roxydone pills she had in a tin inside her purse. She said they had asked her for the pills but when she replied she didn't have enough to give them, Joshua Gibson told Frances Gibson they should just take them from her. Frances Gibson then injured her outside and started beating her. She said Joshua Gibson then tied Rado's wrists and ankles with duct tape.



FRANCES GIBSON



JOSHUA GIBSON

Rado's clothes and gave them to Joshua Gibson. Frances Gibson also said she clipped Rado's nails to get rid of any DNA evidence which might have been lodged there from her struggles. Frances Gibson said Joshua Gibson brought her bleach water which she used to wash down Rado's naked body, including her face and the bloody split lip she had suffered.

Rado begged for her life. "She said that she had a friend that had money that would give us money if we let her go," Frances Gibson testified. "I told her I didn't have a choice," Frances Gibson said. Frances Gibson testified

Frances Gibson testified that ... Joshua Gibson's mother helped him get rid of (Jennifer) Rado's body.

son would kill them both.

Frances Gibson said that she hogtied Rado with the electrical wire because she knew Rado would begin to fight. Then she wrapped the wire around Rado's neck.

Rado began struggling and Frances Gibson said she pulled on the wire as hard as she could, but it was hurting her fingers. Frances Gibson said she got on top of Rado to hold her down while Joshua Gibson pulled on the wire. But then the doorbell rang and Joshua Gibson went to check on what turned out to be a man interested in buying a riding lawn mower.

When Joshua Gibson returned, Frances Gibson said she had finished

ters to tighten the wires around Rado's neck until she died.

Frances Gibson testified that Joshua Gibson called his mother and she arrived at the house before Rado was killed. She said that Joshua Gibson's mother helped him get rid of Rado's body.

His mother has not been charged.

Frances Gibson testified that she became worried that Joshua Gibson was considering blaming her for the killing. She said she decided to go to police partly out of fear of Joshua Gibson and partly for the sake of Rado's family, so they would know what had happened.

Frances Gibson testified that Joshua Gibson and she were equally responsible for the slaying.

"Whose idea was it?" Will asked.

"Josh," Frances Gibson said.

"Were it not for Josh, would you have killed Jennifer Rado?" Will

Main Sentenced to life

Jurors take 30 minutes to convict Edgewater resident of murder



Circuit Judge Margaret Hudson reads the guilty verdict in a Deland courtroom Thursday, then gave Joshua Gibson, right, a life sentence in prison.

By FRANK FERNANDEZ
frank.fernandez@times-tribune.com



JENNIFER RADO

DELAND — An Edgewater man was convicted of first-degree murder, kidnapping and robbery Thursday and sentenced to life in prison for helping his girlfriend bind, gag and strangle a woman to steal her drugs and keep her from going to police. It took the jury of eight men and four women about 30 minutes to find Joshua Gibson, 35, guilty as charged of first-degree murder, robbery and kidnapping in the killing on July 17, 2011, of Jennifer Rado, a 41-year-old mother of two from New Smyrna Beach.

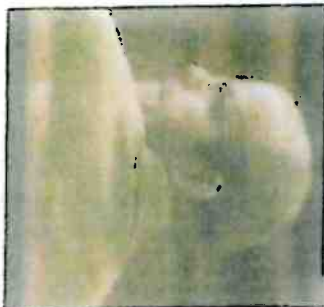
Circuit Judge Margaret Hudson



FRANCES GIBSON

sentenced Gibson to the mandatory life in prison without parole for the murder. She sentenced him to 15 years in state prison for robbery and 30 years on the kidnapping. The sentences will run concurrently. Gibson's ex-girlfriend, 28-year-old Frances Gibson of Edgewater, who is also his second cousin, has pleaded no contest to first-degree murder, kidnapping and robbery as part of a deal that will send her to prison for life but will keep her off death row. Assistant State Attorney J. Ryan Will said the killing was all about

SEE LIFE, PAGE 2C



Joshua Gibson glances around the courtroom. Gibson was found guilty of first-degree murder.

LIFE FROM PAGE 1C

robbing Rado of her pain pills and keeping her from going to police.

"They wanted her drugs and when she wouldn't give them to the two individuals they stole them," Will said.

Will told jurors that Frances Gibson confessed from the start and did not fabricate the story to save herself the death penalty.

But defense attorney Clyde Taylor Jr. told jurors the evidence did not support the tale told by Frances Gibson, who was blaming her boyfriend to save herself from death row.

Joshua Gibson did not have a motive to kill Rado for drugs, Taylor said, since he had already paid twice that night for drugs.

Frances Gibson, drunk and doped up, killed Rado in a jealous rage because she thought Rado was coming on to her boyfriend, Taylor said.

Jennifer Rado's final hours of life began on July 16, 2011, when she joined a drug-dealer and friend named Michael Scott who took her to buy

200 Roxicodone pills, a pain killer. Scott then got a call from Joshua Gibson, who wanted to buy some crack cocaine. Scott took Rado to Joshua Gibson's house in the 1900 block of Needle Palm Drive in Edgewater. Joshua Gibson, Frances Gibson and Rado did drugs but when the cocaine started running out, Joshua Gibson asked Scott for another \$100 worth of crack. Scott went to get it but left Rado at the house, telling her she would be OK, according to testimony.

When Scott returned the lights were out and no one answered his knocks on the door or on the widow.

Scott testified he heard what sounded like someone either having sex or being beaten. But the drug dealer did not call police.

Rado had given the Gibsons each one Roxicodone pill earlier in the night, Frances Gibson testified under questioning by Will. But when Rado declined to give them more, Joshua Gibson told Frances Gibson to take the pills, even if she had to beat Rado to do it, Frances Gibson

testified.

Frances Gibson pretended to be about to share some marijuana with Rado but instead grabbed her by the hair and began punching her in the face, knocking her down. Then Joshua Gibson dragged her back inside where the attack continued leaving Rado with a broken nose.

Frances Gibson testified it was Joshua Gibson's idea to kill Rado, who was beaten and kept naked, bound and gagged for several hours. Frances Gibson said Joshua Gibson brought her some bleach water to wipe evidence off Rado while she was bound and bleeding. She also clipped Rado's fingernails in case there was any evidence beneath them.

Frances Gibson also testified that while she guarded Rado, Joshua Gibson called his mother, Cynthia L. Rehberg, who owns a house in Edgewater.

Rehberg drove over and helped her son dispose of Rado's body, Frances Gibson testified.

Rehberg has not been charged. Will said after the verdict that prosecutors were going to take

another look at case in relation to Rehberg.

Frances Gibson said Joshua Gibson gave her some electrical wire for her to strangle Rado. She testified that she tried to strangle her but her fingers' started to hurt from twisting the wire, so Joshua Gibson then tried to tighten the wire around Rado's neck.

But as Joshua Gibson strangled Rado, he was interrupted by the doorbell, a man there to buy a lawn mower, Frances Gibson testified.

While the lawn mower was sold, Frances Gibson sat on Rado and used wire cutters to tighten the wire around Rado's neck until she died about 8 a.m. on July 17, 2011.

Frances Gibson, who is divorced from a marriage which produced three children, decided to go to Edgewater police on Aug. 22, 2011 and tell them about the murder.

She also led police to Rado's skeletal remains.

Will played a phone call from Frances Gibson to Joshua Gibson as police listened, in which he continually tells her to shut up and be a better liar.

Frances Gibson tells

her then-boyfriend that she is worried now that police have found the body. She tells him to "put yourself in my shoes."

"I'm in your shoes,"

Joshua Gibson responds. Will said after the verdict that prosecutors decided not to seek the death penalty against Joshua Gibson because his DNA was not found in two bloody smudges containing Rado's DNA located in the house. Because Joshua Gibson's DNA was not connected to Rado's in the blood, they decided to offer the deal to Frances Gibson in exchange for her testimony against her ex-boyfriend.

Rado's sister, Jeorgeanne Loyacono, 57, of Houston, said with tear-filled eyes after the verdict that she was happy for her sister's children, grandchildren and the rest of the family. She hugged prosecutor Will.

"I got justice for Jen. We did this," she said. "I think the community should be happy that we got another freak off the streets and I'm really proud of the justice system right now."

Response to Question 31:

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

CASE NO: 2013-102943 CFDL

STATE OF FLORIDA

VS.

**CHRISTIAN CRUZ,
DEFENDANT.**

_____ /

STATE'S SENTENCING MEMORANDUM

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney and files this sentencing memorandum to present the State's legal authority, facts, and argument supporting the imposition of the death penalty. The State offers the following:

CASE HISTORY

AGGRAVATING FACTORS

- 1. Florida Statute § 921.141(6)(b): The defendant was previously convicted of a felony involving the use or threat of violence to another person.**

The existence of this aggravating factor is proved by the admission of a certified copy of the defendant's judgment and sentence for the crime of Robbery with a Firearm. In addition to certified public records, the State presented a video surveillance recording of the event and the testimony of Andre Perez. Mr. Perez was one of the employees working the night of May 06, 2013 when the defendant and Justen Charles robbed the restaurant.

A mere ten days after robbing, kidnapping, and killing Christopher Jemery, the defendant and Mr. Charles committed a violent crime in Seminole County. They robbed a Hungry Howie's restaurant and escaped with a significant amount of money.

This frightening encounter lasted approximately two (2) minutes. Mr. Cruz is observed as the first person entering the store. He is obviously comfortable wielding a gun and sends employees cowering. The video shows that he is willing to hurt people in order to gain compliance. He bypasses a young woman, throwing her to the floor. He confronts Andre Perez and strikes Perez on the head. As a result of the pistol whipping, Perez received a laceration to the head. His injuries required medical attention and were strikingly similar to the injuries of Christopher Jemery.

The Florida Supreme Court has observed that the “prior violent felony” aggravator is one of the “most weighty in Florida’s sentencing calculus.”¹ By this criminal act, the defendant has a demonstrable history of violence and brutality. The State submits that the Court should give this aggravating factor great weight.

- 2. Florida Statute § 921.141(6)(d): The First Degree Murder was committed while the defendant was engaged in, or was an accomplice in the commission of any robbery, burglary, or kidnapping; or was in an attempt to commit any robbery, burglary, or kidnapping; or flight after committing or attempting to commit any robbery, burglary, or kidnapping.**

Competent, substantial evidence demonstrated that Christopher Jemery was killed as a result of the defendant’s desire to avoid prosecution for the burglary, robbery, and kidnapping that occurred on April 26, 2013.

During the guilt phase of this trial, it was established that the defendant and Mr. Charles were searching for narcotics and cash related to an illegal drug business. When they illegally entered the dwelling, the defendants encountered Christopher Jemery. Mr. Jemery was not associated with illegal narcotics. Rather, the victim had recently established residence in an apartment formerly occupied by a low-level marijuana distributor. The defendants ransacked the apartment. When they were unable to locate any drugs or money, they took a television and a small container of ibuprofen. Mr. Cruz forced the victim’s personal identification number (PIN) and accessed his bank account in Seminole County. A total of \$440 was stolen from the account of Christopher Jemery. Bank records demonstrate that the account was accessed shortly after Mr. Jemery’s body was dumped in a Seminole County industrial complex.

¹ *Sireci v. Moore*, 825 So.2d 882, 887 (Fla. 2001).

During the burglary and robbery, Christopher Jemery was injured by the defendants. Crime scene photographs show a substantial amount of blood on the floor of the apartment. Forensic examination confirmed that it was the blood of the victim.

After being attacked in his home, Mr. Jemery was bound with duct tape and wire, then taken from his residence. Additional blood stains were located in the trunk of his vehicle. Mr. Jemery was driven to Seminole County and left for dead near the Airport Road industrial complex. A single bullet was fired into his head. The shooting occurred at close range.

In association with their verdict for First Degree Murder, the jury unanimously found the defendant guilty of the crimes of Burglary While Armed, Robbery with a Firearm, and Kidnapping. There were additional findings that this defendant actually possessed and discharged a firearm, causing the death of Christopher Jemery. In the penalty phase, the jury unanimously determined that the “felony murder” aggravating factor had been proved beyond a reasonable doubt. Accordingly, this Court should give the aggravator great weight.

3. Florida Statute § 921.141(6)(e): The First Degree Murder was committed for the purpose of avoiding or preventing a lawful arrest or preventing an escape from custody.

The evidence conclusively demonstrates that the sole or dominant motive for the murder was the elimination of Christopher Jemery as a witness.² The victim was kidnapped and transported from his home so that he could be killed in a place of seclusion.³ After obtaining the victim’s property from the apartment, the defendants taped and tied Mr. Jemery. He was transported to an abandoned industrial complex, removed from the trunk, and shot once in the head at close range.⁴

The defendant killed Christopher Jemery in an effort to avoid the legal consequences of his criminal acts. Accordingly, the Court should give this aggravator great weight.

² See *Serrano v. State*, 64 So.3d 93 (Fla. 2011); see also *Zack v. State*, 753 So.2d 9, 20 (Fla. 2000); *Urbini v. State*, 714 So.2d 411 (Fla. 1998); *Consalvo v. State*, 697 So.2d 805, 819 (Fla. 1996).

³ See *Preston v. State*, 607 So.2d 404, 409 (Fla. 1992) and cases cited therein; *Hall v. State*, 614 So.2d 473, 477 (Fla. 1993) and cases cited therein supporting the establishment of this aggravator when the victim is transported to another location to be killed.

⁴ See *McClellan v. State*, 29 So.3d 1045 (Fla. 2010) supporting the imposition of the death penalty and the establishment of the avoid arrest / witness elimination aggravator where (1) the victims were compliant and helpless when they were shot; and (2) the robbery had already been completed and the items of value successfully taken at the time of the killing.

4. Florida Statute § 921.141(6)(f): The First Degree Murder was committed for financial gain.

The law finds it particularly abhorrent that an individual may be murdered for potential profit. Christopher Jemery was brutally beaten in conjunction with the search for the illicit narcotics and associated revenues. It is likely that some measure of violence was also employed in an effort to gain the personal identification number (PIN) for Mr. Jemery's bank account. Human life should never be extinguished as an integral step in obtaining money or property.⁵

The State has proved this aggravator beyond a reasonable doubt and submits that the aggravating factor be given great weight. The "pecuniary gain" aggravator has a doubling effect with the "felony murder" aggravator. Both aggravators should be considered as one aggravating factor and given great weight.

5. Florida Statute § 921.141(6)(h): The First Degree Murder was especially heinous, atrocious, or cruel.

The Florida Supreme Court has consistently held:

In order for the HAC aggravating factor to apply, the murder must be conscienceless or pitiless and unnecessarily torturous to the victim. A finding of HAC is appropriate only when a murder evinces extreme and outrageous depravity as exemplified either by the desire to inflict a high degree of pain or utter indifference to or enjoyment of the suffering of another.⁶

The evidence presented during trial demonstrates that Christopher Jemery was killed in a heinous, atrocious, and cruel manner.

The defendant and Mr. Charles entered the dwelling of the victim sometime after one (1:00) a.m. They entered through the rear door of the apartment and found Christopher Jemery eating a late dinner and watching television. Mr. Jemery was undoubtedly surprised by their illegal entry. A fight ensued and the victim was overwhelmed. The evidence demonstrates that

⁵ Unlike the previously listed aggravator, pecuniary gain does not have to be the sole motive for the killing. It is sufficient that the evidence shows the murder was motivated by a desire to obtain money, property, or some other pecuniary interest. *See Hildwin v. State*, 727 So.2d 193, 195 (Fla. 2003).

⁶ *See Rogers v. State*, 783 So.2d 980, 994 (Fla. 2003); *see also Cheshire v. State*, 568 So.2d 908, 912 (Fla. 1990).

Christopher Jemery was injured and bleeding. He was punched, kicked, stomped, and pistol-whipped into submission. His home was ransacked. His personal identification number (PIN) was forced. Christopher Jemery was bound and gagged. His head and mouth were repeatedly wrapped with duct tape; his hands were bound with duct tape and speaker wire.⁷

The heinous, atrocious, or cruel aggravator “focuses on the means and manner in which the death is inflicted and the immediate circumstances surrounding the death, where the victim experiences the torturous anxiety and fear of impending death.”⁸ Under these particular circumstances, Christian Cruz was utterly indifferent to the suffering of Christopher Jemery. In fact, the defendant did things to heighten and prolong the victim’s suffering. Every blow inflicted upon Mr. Jemery can be considered.⁹ Similarly, the victim’s efforts to preserve his own life should be contemplated by the Court.

While a prisoner in his own home, Christopher Jemery had an opportunity to contemplate his demise. There were an additional 18 minutes of drive time, enroute to the scene of his murder. Bound and gagged, injured and bleeding, Christopher Jemery certainly knew that he was not going to survive the experience.

There is a level of terror and torture associated with being kidnapped, concealed, and transported to one’s death. Christopher Jemery suffered both physical pain and mental anguish. The HAC aggravator is among “the most weighty in Florida’s sentencing calculus.”¹⁰ By itself, HAC has been considered strong enough to support a death sentence.¹¹ The State submits that this aggravating factor and the circumstances of this killing should be given great weight.

⁷ The testimony of the Associate Medical Examiner revealed that Christopher Jemery had injuries on his body that were consistent with defensive wounds. The amount and location of blood found within the home demonstrates that Christopher Jemery was alive, both when the struggle occurred and when he was loaded in the vehicle. The Associate Medical Examiner testified that the injuries were sustained before being shot in the head.

⁸ *Allred v. State*, 55 So.3d 1267 (Fla. 2010). *See also Lynch v. State*, 841 So.2d 362, 369 (Fla. 2003) for the proposition that fear, emotional strain, and terror can allow even a quick death to be considered for the HAC aggravator.

⁹ *See Douglas v. State*, 878 So.2d 1246 (Fla. 2004) for the proposition that the Court can consider the number of blows that the victim received and the amount of time that the encounter lasted, when determining whether the HAC aggravator applies. The Court distinguished the circumstances of the beating in *Douglas* from situations where the attack took place in a short period of time, where victim lost consciousness, or where there was no prolonged suffering or anticipation of death. The Court found it particularly persuasive that the victim in *Douglas* received multiple blows and had injuries to both sides of her head, indicating that the victim struggled to defend herself and fought to save her own life.

¹⁰ *See Sireci*, at 887.

¹¹ *See Butler v. State*, 842 So.2d 817 (Fla. 2003)

6. Florida Statute § 921.141(6)(i): The First Degree Murder was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification.

To establish the CCP aggravating factor, Florida law requires the State to prove that: (1) the killing was the product of cool and calm reflection and not an act prompted by emotional frenzy, panic, or a fit of rage (cold); (2) the defendant had a careful plan or prearranged design to commit the murder before the killing (calculated); (3) the defendant exhibited heightened premeditation (premeditation); and (4) the defendant had no pretense of moral or legal justification.¹²

The evidence demonstrates that the victim was secured and silenced (bound and gagged) in his home. He was taken from a place of high traffic (an apartment complex) to one of isolation (a wooded area in an abandoned industrial park). He was transported in the trunk of a vehicle, under cover of darkness. The defendant's efforts to avoid attention demonstrate his careful deliberation.

The location of the murder was geographically distant from the original crime. Christopher Jemery was driven 18 minutes to his final destination. There was substantial opportunity to reflect and allow emotional reactions to yield to more careful consideration.

CCP can be established by evidence of "advance procurement of a weapon, lack of resistance or provocation, and the appearance of a killing carried out as a matter of course."¹³ The Courts have defined "killing as a matter of course" to include execution style killings. Competent, substantial evidence demonstrates that Christopher Jemery was killed by a single bullet to the head. The facts supporting CCP must focus on the manner in which the crime – or the victim – was executed.¹⁴ This defendant had ample opportunity to release the Christopher Jemery. After substantial reflection, Mr. Cruz acted upon the murderous plan that he conceived.

The Florida Supreme Court has characterized CCP as one of the most serious aggravating factors in the statutory sentencing scheme.¹⁵ Therefore, the Court should give this aggravator and the circumstances of the killing great weight.

¹² *Lynch v. State*, 841 So.2d 362 (Fla. 2003).

¹³ *Davis v. State*, 859 So.2d 465, 479 (Fla.2003).

¹⁴ *See Alston v. State*, 723 So.2d 148, 162 (Fla.1998); *see also Owen v. State*, 862 So.2d 687, 701 (Fla. 2003) and *Tai Pham v. State*, 70 So.3d 485 (Fla. 2011) noting that CCP also lies in circumstances where the defendant has the opportunity to leave without committing murder but, instead choses to kill his victim

¹⁵ *See Suggs v. State*, 923 So.2d 419, 436 (Fla. 2005).

MITIGATING CIRCUMSTANCES

In favor of his argument for the imposition of a life sentence, the defendant offered forty-one (41) mitigating circumstances for the jury's consideration.¹⁶ As part of their verdict, the jury was not required to issue specific findings related to the establishment of each mitigator.¹⁷ The jury was merely asked to consider the aggregate weight of all mitigating circumstances, as compared to the aggravating factors proved beyond a reasonable doubt.

The mitigation offered by Mr. Cruz can be categorized, as follows: the defendant's family and development; the defendant's academic performance, drug use, and mental health; the defendant's interpersonal relationships; the defendant's adult life; statutory mitigating circumstances presented on the defendant's behalf; and the defendant's remorse. For the purposes of this memorandum, the mitigating circumstances will be assembled and discussed accordingly.

The Defendant's Family & Development

The defendant offered seventeen (17) mitigating circumstances related to the injurious effect that specific members of his family had on his upbringing.¹⁸ The evidence focused on

¹⁶ The mitigating circumstances addressed herein are phrased, as submitted by the defendant.

¹⁷ It is unknown which mitigating circumstances were actually established by the greater weight of the evidence. The general verdict only revealed that "one or more individual jurors [found] that one or more mitigating circumstances [were] established by the greater weight of the evidence."

- 18.
1. Mr. Cruz's family has a generational history of alcoholism, depression, and suicide.
 2. Mr. Cruz's biological father suffered from depression.
 3. Mr. Cruz was abandoned by his father by the time he was 3 years old.
 4. Mr. Cruz was raised in a home environment that did not express love and affection.
 5. Mr. Cruz witnessed domestic violence committed by Charles Garrett for several years while a young boy.
 6. Mr. Cruz was raised by a mother with poor parenting skills.
 7. Mr. Cruz's mother did not encourage assimilation with American culture when he was young.
 8. Mr. Cruz was raised in a Spanish-only speaking home for several years.
 9. Mr. Cruz was socially isolated as a child.
 10. Mr. Cruz's mother struggled financially throughout his life.
 11. Mr. Cruz grew up ashamed because of his family's poverty.
 12. Mr. Cruz had to move frequently.
 13. Mr. Cruz and his family lost property and memorabilia due to evictions.
 14. Mr. Cruz's mother lacked any local familial support.
 15. Mr. Cruz's mother relied on her religious faith to Mr. Cruz's detriment.
 16. Mr. Cruz was misguided by his mother's religious views.

abandonment issues created by the desertion of his father; poor parenting skills and a lack of financial discipline by his mother; and the abusive relationship that existed between his mother and at least one boyfriend.

While there was sufficient evidence to establish many of these circumstances, several of the mitigators were not proved by the greater weight of the evidence. Despite the defendant's best efforts to demonstrate that his upbringing occurred in the absence of expressed love and affection, the evidence revealed the contrary.

There was competent, substantial evidence adduced at trial demonstrating that the defendant was loved by his mother. Further the evidence conclusively proved that his mother expressed her affection by word and act. According to the testimony of the defendant's sister, Sonita Cruz Santos, their mother always said "I love you" when parting company. Though other witnesses testified that the mother was caught-up in appearances, the sister testified that their mother expressed her affection through various actions. The mother routinely cooked dinner and prepared a meal for her children. The mother kissed and hugged them. The mother introduced the children to religion and attended church with them. She taught them how to live a virtuous life, consistent with morals and values of their church. Though life was not always perfect, the testimony of Sonita Cruz Santos revealed that the mother did her best, when it came to the children.

There is little dispute that the defendant grew up in tough financial conditions. That said, his family received government benefits and the defendant was the recipient of free school breakfast and lunch. The defendant's father paid child support, some years as much as \$900 per month. Additionally, the mother made an effort to offset monetary shortfalls by working several jobs, maintaining an active role in her church, and requesting support from charitable organizations. The defendant's family benefitted from occasional monetary assistance, provided by the church and its members. Several witnesses testified regarding the mother's routine requests for additional funds. The family also received food and shelter as a result of relationships developed through the religious community. Several times during the defendant's youth, the family was able to find transitional housing among the congregation. In exchange for

17. Mr. Cruz was deeply conflicted about religion.

shelter, the defendant's mother described performing menial tasks to earn their keep. It was evident from her testimony that Ms. Cruz was continually working to improve their circumstances and provide a better environment for her children.

The family moved frequently as a result of financial instability and at least one abusive relationship. Despite the loss of various personal items, the family was able to maintain a warm and inviting home. Saul Areizaga, Jr. described being a regular guest in the defendant's home. He remembers that the defendant had his own room. The structure was a furnished one-story house, with several bedrooms, a porch, a large front yard and a backyard big enough for the children to play. Mr. Ariezaga further related that when he visited, they always had fun. The defendant and his sister had toys, sporting equipment, a television in the living room, and an expensive video game system. He described that it was a comfortable home and that he was comfortable visiting the defendant.

Outside the home, the defendant interacted with appropriate friends and attended church functions. Witnesses repeatedly testified that the defendant attended religious gatherings every week with his mother and sister. Further, the children were involved in the youth ministry and often participated in activities that the family could not otherwise afford. Joel Latorre, a youth group leader, described that the defendant was a member of both the children's ministry and the youth ministry. His involvement in these groups lasted from more than 10 years. Mr. Latorre described meeting the defendant when he was between the ages of 2 and 4. He maintained a relationship with the defendant into his mid-teens. Both the children's ministry and the youth ministry met on Monday, Wednesday, and Friday evenings. According to several witnesses, the defendant was part of a group that contained 10-15 male members and at least five (5) positive, male role-models. Saul Areizaga, Jr. testified that in addition to the three weekly meetings, there were gatherings once a month where the defendant had the opportunity be involved in group sports, dances, paintball tournaments, and camping trips. As a child, the defendant participated in Pioneers for Christ, an organization akin to Cub Scouts. As he matured, the defendant earned the ability to join Nuevo Comienzo (New Life). That group allowed him the opportunity to interact with youth from his church and other religious organizations, while taking part in fundraisers, carwashes, camping trips, and other fun activities.

A number of the witnesses appearing on behalf of the defendant were individuals that he first encountered as a result of his involvement in the church. These individuals described a life-long friendship and connection with the defendant. They shared emotions of disbelief, shock, and sorrow for the defendant's predicament. Many of the witnesses expressed love for the defendant and his family. Several witnesses explained that they would have offered the defendant support, if they had known his circumstance. Nearly all of the witnesses expressed an interest in continuing contact with the defendant.

Though the Court is required to consider the negative effect of the defendant's family and development, the State would urge that this category of mitigating circumstances receive little weight. While life was not always perfect, and occasionally punctuated by difficult or tragic experiences, the defendant had overwhelming support from friends and family developed through the church.

It is clear that the defendant did not have the same opportunities as children of privilege. But, his mother loved him enough to take him to a church where he would have cultural connections, strong role models, friends, and adventures that she probably couldn't have afforded otherwise. He had a broad and caring system of support that nurtured him, sustained him, and carried him through life. As evidenced by the people that appeared on his behalf, the defendant had an entire social network – one so strong that the people came here personally to express their despair.

The Defendant's Academic Performance, Drug Use, and Mental Health

The defendant offered ten (10) mitigating circumstances related to individual difficulties and personal choices that inhibited his intellectual ability and emotional range.¹⁹ The State

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- ¹⁹
1. Mr. Cruz suffered a serious head injury when he was 9 years old.
 2. Mr. Cruz struggled academically due to his limited ability to speak English.
 3. Mr. Cruz began using marijuana use when he was a young teenager.
 4. Mr. Cruz suffered from depression and bi-polar disorder.
 5. Mr. Cruz never received mental health treatment or counseling before his arrest.
 6. Mr. Cruz first received mental health medication while incarcerated.
 7. Mr. Cruz is mentally vulnerable while incarcerated in isolation.
 8. Mr. Cruz suffers from permanent brain damage.
 9. Mr. Cruz's intellectual functioning is in the borderline range.
 10. Mr. Cruz attempted suicide while incarcerated.

recognizes that each of these mitigating circumstances was established by the greater weight of the evidence, but argues that the enumerated factors be given little weight. As discussed below, these circumstances did little to impair the defendant and certainly did not cause or contribute to his involvement in this heinous crime.

That the defendant received a serious head injury when he was 9-years-old had no impact on his intellectual functioning and emotional development. As described by his mother, the defendant was accidentally hit in the face with a golf club by another child. Immediately after the impact, the defendant was unconscious and bleeding. He required medical treatment for his injuries. There was a concern that he would be blind in one eye. Several days after the injury, the defendant was released from the hospital. His face was bruised and he was prescribed medication. There was no lasting damage and the event was never connected by any doctor to traumatic brain injury. His mother continued to seek medical treatment for headaches, years after the injury occurred. She reported being constantly concerned that the defendant suffered from a significant medical issue. There is no medical evidence that he suffers from any lingering effects of the injury. The experts testified that they are not aware of any medical or psychological significance for this superficial childhood injury.²⁰

The evidence that Mr. Cruz struggled academically due to his limited ability to speak English is slight. During the course of the trial, four (4) teachers were called to testify on behalf of the defendant. Three of the instructors addressed Mr. Cruz's intellectual ability and performance in the classroom.²¹ Catherine Connell informed the Court that the defendant was tested for intellectual functioning as part of his school assessment²². The defendant's individual educational plan (IEP) was not consistent with a learning disability and he was considered average in intellectual testing. She described the defendant as a nice, polite child, who never got in trouble, but had a problem turning in work. Ms. Connell informed the Court that the defendant seemed to be unmotivated and had significant absences. Sandra McGowan, the defendant's tenth

²⁰ The defendant was evaluated and a forensic study of his medical and psychological records were conducted by Dr. Gomez (for the defense), Dr. Saez (for the defense), and Dr. Riebsame (for the State). The curriculum vitae for all three individuals have been incorporated in the trial record and marked as an exhibit.

²¹ The fourth teacher primarily discussed the defendant's conduct and social issues.

²² Ms. Connell is a teacher in Volusia County Schools with twenty-six (26) years of experience in the classroom. She is currently employed as a support facilitator with ESE students.

grade geometry instructor, had a similar impression of the defendant.²³ She revealed that the defendant was unmotivated and often disinterested, but respectful. Robert Bobiak reported essentially the same characteristics of this defendant.²⁴ Mr. Bobiak relayed that the defendant was a decent student, cooperative and somewhat quiet. He observed that the defendant was slightly limited by language and socially isolated, but never the target of jokes or harassed.

The defendant's mother was aware of his limitations and helped the defendant become a better student. Sonia Cruz testified that the defendant received academic assistance at church and was often the beneficiary of extra reading and writing instruction at school. She further related that the defendant was evaluated and gained entry into a program for students learning English as a second language. Because defendant repeated 3rd and 9th grade, she was involved in his educational planning and was trying to get extra help for language issues that might exist. She continued to meet with teachers until the defendant reached high school.

Perhaps related to his academic performance is the issue of recreational drug use by this defendant. According to several witnesses, the defendant started using illicit drugs in adolescence. His use of illegal drugs continued through his school years and into adulthood. Dr. Gomez discussed several risk factors related to illegal drug use and identified situations where the defendant had been unnecessarily aggressive while using marijuana. His use of narcotics resulted in school suspensions, behavioral issues, and voluntary association with the criminal element. That said, the defendant's use of marijuana as a young teenager did little to cause his involvement in this crime. Notably, it was the defendant's search for illegal drugs that initiated the encounter with our victim in this case. But his desire for marijuana did not drive the decision to kill.

That Mr. Cruz suffered from depression and bi-polar disorder and never received mental health treatment or counseling before his arrest has little bearing in this discussion. Similarly, that Mr. Cruz first received mental health medication while incarcerated (after the crime) should receive little weight. Many people suffer from untreated emotional disorders and undiagnosed mental health conditions. The defendant's condition does not rise to the level of being "under the

²³ Ms. McGowan is a teacher in Volusia County Schools with thirty-two (32) years of experience, twenty-one (21) years in the instruction of mathematics.

²⁴ Mr. Bobiak recently retired from Volusia County Schools, after teaching high school history. The defendant was a student in his 10th grade American History class.

influence of an extreme mental or emotional disturbance”. There is no fact or circumstance whereby the defendant can demonstrate that his condition contributed to his criminal behavior. An untreated mild-to-moderate mood disorder is not as significant as the choices this defendant made on April 26, 2013.

If the Court finds that Mr. Cruz is mentally vulnerable while incarcerated in isolation, the mitigating circumstance should be given no weight. The State disputes that this mitigator was actually established.

The final three (3) mitigating circumstances of this category are related to the defendant’s suicide attempt while incarcerated, awaiting trial in this cause. The defense has established that Mr. Cruz suffers from permanent brain damage, has an intellectual functioning in the borderline range, and that he attempted suicide while incarcerated. Though the mitigators have been proved by the greater weight of the evidence, they should be given no weight.

The Defendant’s Interpersonal Relationships

The defendant presented five (5) mitigating circumstances related to his ability to interact with others.²⁵ The first two (2) mitigators address times when he received negative treatment from individuals. The final three (3) mitigators demonstrate his ability to have and maintain positive relationships. The State recognizes that each of these mitigating circumstances was established by the greater weight of the evidence, but argues that the enumerated factors be given little weight.

The Defendant’s Adult Life

The defendant offered one (1) mitigating circumstance regarding his life as an adult.²⁶ The purpose of this mitigating circumstance is to demonstrate that the defendant is capable of being a law abiding citizen.

²⁵ 1. Mr. Cruz was bullied in Middle School.
 2. Mr. Cruz was ridiculed for his appearance when he was a young teenager.
 3. Mr. Cruz shielded his younger brother from his criminal activities.
 4. Mr. Cruz was a positive influence on his younger brother.
 5. Mr. Cruz was a positive influence on his friend, Brandon.

²⁶ 1. Mr. Cruz became employed after moving to New York.

The State recognizes that the defendant was able to obtain lawful employment while residing in New York. It is undisputed that the defendant has the ability to conform his conduct to the confines of the law. Until the commission of this crime, Mr. Cruz had the potential for success. He had the support of his extended family and promises of assistance. He was very close to realizing his dreams. He could have enrolled in a GED program that would have opened opportunities for the military, college, and a brighter future. Instead, he chose criminal conduct over a life of hard work, earning his way, and trying to fulfill the potential that so many witnesses described. The fact that Christian Cruz elected to commit such a violent and heinous crime is sufficient reason to give this mitigating circumstance no weight.

Statutory Mitigating Circumstances Presented on the Defendant's Behalf

On the defendant's behalf, seven (7) statutory mitigators were offered for the jury's consideration.²⁷ Only one of those factors was proved by the greater weight of the evidence and merits any consideration by the Court. The other six factors are briefly addressed below and should be given no weight.

The defense has submitted the defendant's lack of criminal history as a mitigating circumstance. The State disputes that Mr. Cruz has no significant history of prior criminal activity. There was competent, substantial evidence adduced at trial to demonstrate that the defendant has been previously convicted for the armed robbery of a Seminole County restaurant. During the commission of that crime, the defendant carried a firearm and used his weapon to pistol-whip one of the employees. The State produced a certified conviction, video recordings of the robbery, and the testimony of Andre Perez. Overwhelmingly, the evidence demonstrates that Christian Cruz is a violent person, apt to take things by instilling fear in his victims and

-
- ²⁷
1. Mr. Cruz has no significant history of prior criminal activity.
 2. The First Degree Murder was committed while Mr. Cruz was under the influence of extreme mental or emotional disturbance.
 3. Mr. Cruz was an accomplice in the First Degree Murder committed by another person and his participation was relatively minor.
 4. Mr. Cruz acted under extreme duress or under the substantial domination of another person.
 5. The capacity of Mr. Cruz to appreciate the criminality of his conduct or his ability to conform his conduct to the requirements of law was substantially impaired.
 6. Mr. Cruz was 19 years old at the time of the offense.
 7. The existence of any other factors in Mr. Cruz's character, background, or life or the circumstances of the offense that would mitigate against the imposition of the death penalty.

overwhelming their resistance by physical force. From the video, it is clear that the defendant is comfortable wielding a gun and willing to hurt people. The State would submit that this mitigating circumstance has not been proved by the greater weight of the evidence and that it should be given no weight.

Though the defense attempted to demonstrate that Mr. Cruz suffered from an extreme mental or emotional disturbance, there was no evidence that he was impaired by his condition at the time of the crime. Further, the State disputes that a mild-to-moderate mood disorder actually qualifies as an extreme mental or emotional disturbance. On this particular point, there was no reliable evidence presented by the defense. Therefore, the mitigating circumstance should be given no weight.

Though the defense presented that Mr. Cruz was an accomplice in the First Degree Murder committed by another person and his participation was relatively minor, there is zero evidence to that effect. The jury found this defendant guilty of First Degree Murder, both premeditated and felony. The jury made a specific finding that Christian Cruz was the actual killer, rather than placing blame on the co-defendant Justen Charles. There is no evidence that the defendant was a mere accomplice or minor participant. This mitigator was not proved by the greater weight of the evidence and the circumstance should be given no weight.

Throughout the course of the trial, the defense referred to Mr. Cruz as “Forrest Gump”. The reference was an allusion to the defendant’s domination by Justen Charles – “Lieutenant Dan”. Christian Cruz was not a vulnerable young man, acting under extreme duress or domination by another. There is absolutely zero resemblance to Forrest Gump, a disadvantaged individual who evokes feelings of nostalgia and warmth. Forrest Gump was a man who blindly followed others and was guided through life by the commanding presence of his supervising officer. Christian Cruz was found to be solely responsible for shooting Christopher Jemery. The comparison is misplaced and the duress/domination mitigator has no support in the evidence. The Court should find that the mitigator was not proved by the greater weight of the evidence and that the circumstance should be given no weight.

There is no evidence that Mr. Cruz failed to appreciate the criminality of his conduct or that his ability to conform his conduct to the requirements of law was substantially impaired. On

the contrary, there is competent, substantial evidence that the defendant had the potential to achieve great things. He had the ability to conform his conduct and to live within the confines of the law. It was his choice to commit this horrendous crime. Further, it was his appreciation of the wrongfulness of his actions that necessitated the kidnapping and murder of an innocent young man. Because there is no support for this mitigator, it has not been proved by the greater weight of the evidence and should be given no weight.

The State recognizes that Mr. Cruz was 19-years-old at the time of the offense. Accordingly, the State agrees that some weight should be given to his lack of development and maturity at the time of the offense. There are a litany of studies related to the maturation and sophistication of individuals under the age of 25 years. The State recognizes their merit and argues that scholarly materials be given less significance than the planned kidnapping and execution of a victim. While certain actions of the defendant may have lacked specific foresight, there is no dispute that this crime exemplified consequential thinking and illustrated the defendant's ability to achieve particular outcomes while avoiding negative repercussions.

The defense submits for consideration the existence of any other factors in Mr. Cruz's character, background, or life or the circumstances of the offense that would mitigate against the imposition of the death penalty. There are none. This mitigating circumstance should be given no weight. The defendant committed a heinous crime and created torturous circumstances surrounding the death of Christopher Jemery. There is no fact or circumstance more significant than the choices that this defendant made on April 26, 2013.

The Defendant's Remorse

The defendant has failed to prove that he either demonstrated or expressed remorse for his actions.²⁸ The mitigator has not been proved by the greater weight of the evidence and should be given no weight.

CONCLUSION

The established mitigators are substantially outweighed by each of the aggravating factors proved beyond a reasonable doubt. Whether considering the aggravators individually or

²⁸ Merely expressing sorrow is not the same as remorse and is not mitigating. *See Beasley v. State*, 774 So.2d 649 (Fla. 2000).

collectively, the reasons for death are more significant than all of the mitigating circumstances combined.

The jury returned a unanimous verdict, in favor of the death penalty. The law requires the Court to give the jury's verdict great weight in its determination of a proper penalty for this crime.

The State respectfully submits that the imposition of death is an appropriate and legal penalty. The death penalty is a just and proper sentence for this defendant. The State respectfully requests that Christian Cruz be sentenced to death for the murder of Christopher Jemery.

R.J. LARIZZA
STATE ATTORNEY

By: s/J RYAN WILL
ASSISTANT STATE ATTORNEY
Florida Bar No.: 0024122
ESERVICEVOLUSIA@SAO7.ORG

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy hereof has been furnished by electronic mail to CLYDE M TAYLOR JR & CLYDE TAYLOR, III, 2303 N. PONCE DE LEON BOULEVARD, SUITE L, ST AUGUSTINE, FL 32084, on August 6, 2019.

s/J RYAN WILL
ASSISTANT STATE ATTORNEY
Florida Bar No.: 0024122
101 N ALABAMA AVENUE 4TH FLOOR
DELAND, FL 32724
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Response to Question 31:

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

STATE OF FLORIDA

VS.

CASE NO: 2011-33680 CFAES

MARCUS JOHN ALLEN WHITE,
DEFENDANT.

_____ /

**STATE RESPONSE TO DEFENDANT'S AMENDED MOTION TO CORRECT
ILLEGAL SENTENCE FEDERAL**

COMES NOW the State of Florida, by and through its undersigned counsel, and hereby responds as directed by this Honorable Court to the Defendant's *pro se* Amended Motion to Correct Illegal Sentence Federal, filed pursuant to Rule 3.800 (a), Florida Rules of Criminal Procedure. The State moves that relief be summarily denied and in support would show as follows:

1. The above-named defendant was charged by Information with one count of Manslaughter with a Firearm as a result of an investigation conducted by Volusia County Sheriff's Office.
2. The charging affidavit (Exhibit A), felony warrant (Exhibit B), and Information (Exhibit C) all allege that the defendant shot and killed his father, Douglas White, during an encounter in the family home on June 07, 2011. There were no other individuals present when the shooting occurred.
3. On March 19, 2014, the defendant was found guilty of Manslaughter with a Firearm. Further, the jury made a special finding that the defendant did discharge a firearm, causing great bodily harm or death to Douglas White. *See* Exhibit D.

4. After a lengthy sentencing hearing, the defendant was adjudicated and sentenced to a term of thirty years' incarceration in the Florida Department of Corrections. *See* Exhibit E.
5. On August 08, 2015 the 5th District Court denied the defendant's appeal. A Mandate was issued on September 11, 2015.
6. The defendant now asserts that his sentence was illegally imposed because the State did not specifically mention a "firearm" or the enhancement statute in the body of the Information. The defendant further states that the trial court improperly enhanced his sentence according to Fla. Stat. § 775.087(1) and that the deficiency in the State's pleading requires his sentence be reduced.
7. The defendant's claim that his sentence exceeds the statutory maximum for a second degree felony can be raised in a Fla.R.Crim.P. 3.800(a) motion to correct illegal sentence.

The defendant's argument is without merit. "An illegal sentence subject to correction under Rule 3.800(a) must be one that no judge under the entire body of sentencing laws could possibly impose under any set of factual circumstances." Martinez v. State, 169 So.3d 170, 171 (2015). "The purpose of an [Information] is to fairly appraise [the] defendant of the offense with which he is charged." Leeman v. State, 357 So.2d 703, 705 (Fla. 1978). As a matter of fundamental due process, an Information must include a "plain, concise, and definite written statement of the essential facts constituting the offense charged." Fla.R.Crim.P. 3.140(b). "As sentencing laws have become more complex with the legislative creation of numerous sentencing enhancement and reclassification schemes, the [Information] has taken on added importance by alerting the defendant to the potential sentences that can be imposed in the event of conviction." Bradley v. State, 971 So.2d 957, 959 (5th DCA, 2007). Due process is violated when a defendant is convicted of a crime not charged in the Information. *See* Bradley at 959 *citing* State v. Gray, 435 So.2d 816, 818 (Fla. 1983). Failure to include an essential element in the charging affidavit *can* create such a circumstance. However, failure to include an essential element *does not necessarily* render the charging document *so defective* that it will not support a judgment of conviction. *See* Mesa v. State, 632 So.2d

1094 (3rd DCA, 1994). The test for granting relief based upon a defect in the charging document is actual prejudice. *See Bradley*, 971 So.2d 957.

Here, the defendant was charged by Information with committing the crime of Manslaughter with a Firearm. The charging affidavit created by the Volusia County Sheriff's Office repeatedly references the use of a firearm in the commission of the crime.²⁹ The felony warrant issued for the arrest of the defendant states that the defendant did kill "Douglas White by shooting Douglas White." The body of the Information presents the same accusation.

Manslaughter is the killing of a human being by the act, procurement or culpable negligence of another without lawful justification.³⁰ Accordingly, the State must independently allege the use or possession of a weapon or firearm, in order to invoke the enhancement statute.³¹ Where the defendant complains that he was not provided notice of the enhancement, or that his sentence was illegally enhanced, the Court is constrained to examine the record.³²

The defendant has argued that the term "firearm" is not present within the charging instrument. It is not necessary for the State to allege or prove "firearm" for the charge to be reclassified. According to the statute, the State may allege and prove the possession or use of *any* weapon.³³ Where the Information clearly alleges that the defendant did "kill Douglas White by shooting Douglas White" there can be no argument. The phrase

²⁹ *See* Exhibit A, summarized as follows: this crime is initially reported by the defendant. On June 07, 2011, the defendant calls 911 and reports that an intruder is attempting to enter his dwelling. The defendant further states that he has taken possession of his father's firearm in an attempt to defend the dwelling. According to initial reports, there is accidental discharge and the defendant's father is killed. Later statements by this defendant are inconsistent with the initial report. Eventually, the defendant admits that there is no intruder. At one point, he even claims that he purposely shot his father. No matter the intent, there is never any variation from the fact that the defendant is holding the firearm when it discharges. There is no dispute that the defendant shot his father.

³⁰ Fla. Stat. § 782.07(1)

³¹ Fla. Stat. § 775.087(1) provides in pertinent part that any person charged with a felony who carries, displays, uses, threatens to use, or attempts to use any weapon or firearm during the commission of the felony may have his or her crime reclassified. For a felony of the second degree – like manslaughter – the possession or use of a weapon will result in reclassification to a first degree felony.

³² Fla.R.Crim.P. 3.800(a) entitles a defendant to relief when he or she can demonstrate that the court records – on their face – permit such relief.

³³ *See* Fla. Stat. § 775.087(1)

sufficiently demonstrates that an instrumentality was used in the commission of the crime. Whether Douglas White was killed by machine gun or slingshot has no bearing.³⁴ The statute allows reclassification without mention of any specific weapon used in the death of this man.

The State has sufficiently alleged that Douglas White was killed with a weapon. It is a basic tenet of the law that every word must be given legal effect. Accordingly, every word in the charging document must be given legal significance. To overlook the phrase “by shooting” is to ignore the thrust of the law and to misconstrue the common-sense application of the English language. Due process requires that the elements for a sentencing enhancement be precisely charged in the Information to provide the accused with sufficient notice that he faces an increased sentence. Martinez, 169 So.3d 170. The phrase “by shooting Douglas White” provides such notice. To give credence to the defendant’s argument – thereby reducing his sentence – would place a premium on form over substance. *See* Bradley, 971 So.2d 957. For two centuries, the law has evolved so that all parties are given sufficient notice of their charges and an opportunity to cure fundamental defects. “The rules of criminal procedure are not intended to furnish a procedural device to escape justice.” Bradley, at 960 *citing* Stang v. State, 421 So.2d 147, 149 (Fla. 1982).

Just as the defendant urges the Court to overlook a key phrase in the Information, he also shrugs-off the first degree felony designation as error. The State argues that the designation has significance and should be given meaning. Ordinarily, manslaughter is a second degree felony. When considered in combination with the enhancement statute for the possession or use of a weapon, the crime is reclassified as a first degree felony. Here

³⁴ Manslaughter charges are not eligible for 10/20/life sentencing. Specific allegations of actual possession, discharge, and death related to a firearm have no legal significance in consideration of a manslaughter charge. The defendant’s reliance on Young v. State, 86 So.3d 541 (2nd DCA, 2012), Arnett v. State, 128 So.3d 87 (1st DCA, 2013) and Jackson v. State, 852 So.2d 941 (4th DCA, 2003) is misplaced. Each of those cases relates to the implementation of a minimum mandatory sentence where the appropriate action (i.e., possession / discharge) is not specifically alleged in the charging document. Without such allegation, the Court may not impose 10/20/life sentencing. Though the case at bar involves similar issues, each of the cases cited by the defendant are legally and factually distinguishable. The defendant’s argument is therefore inappropriate as it relates to manslaughter.

the State could have cited the enhancement statute. For whatever reason, the statute was omitted. The question then becomes whether the Information is so fundamentally defective that it wholly fails to state a crime of manslaughter with a weapon. The question cannot be answered in the affirmative. Therefore, the judgment of conviction and sentence must stand.

Other courts have overlooked imprecise charging language where the document cites a specific section of the criminal code or contains a more specific definition of the criminal activity alleged. *See State v. Phillips*, 463 So.2d 1136, 1137-1138 (Fla. 1985) (the title of the charge, coupled with the enhancement citation and the recitation of fact is a sufficiently definite statement of the essential facts constituting the offense); *see also Mesa v. State*, 632 So.2d 1094 (reference to the enhancement statute and a specific jury finding were sufficient notice for imposition of a minimum mandatory sentence); *Nelson v. State*, 191 So.3d 950 (4th DCA, 2016) (the charging language “shooting [the victim] in the legs” was sufficient to advise defendant of the great bodily harm element, as language was more specific than simply alleging “great bodily harm”) *see also Martinez v. State*, 169 So.3d 170 4th DCA, 2015) (charging language that the defendant “carried” a firearm is sufficient notice to provide a mandatory minimum sentence for actual possession) *and contrast Arnett v. State*, 128 So.3d 87 (Fla. 1st DCA, 2013) (“carried a firearm” is not sufficient notice for imposition of a minimum mandatory sentence where the State must allege and prove “actual possession”). The State submits that the first degree designation here has a curative effect and urges the Court to apply the rationale extended in *Phillips*, *Mesa*, *Nelson*, and *Martinez*. Pleading is an inexact science. The essential purpose of a pleading is to inform the defendant of the charges and potential penalties. The charging document is fundamentally defective only where it totally omits an essential element or is so vague, indistinct, or indefinite that the defendant is misled or exposed to double jeopardy. *See State v. Burnette*, 881 So.2d 693 (1st DCA, 2004); *see also Bradley v. State*, 971 So.2d 957. Here, the first degree felony designation combined with the title of the charge and the recitation of fact leave no room for interpretation or prejudice. This defendant cannot credibly argue that he was unaware.

The test for granting relief based upon a defect in a charging document is actual prejudice to the fairness of the trial. *See State v. Gray*, 435 So.2d 816 (Fla. 1983). Given the argument presented by this defendant, there is no indication that he suffered actual prejudice. Further, there is no claim that his preparation or defense would have been materially different if the term “firearm” had been used in the charging document. The defendant was aware of the factual circumstances surrounding this shooting and presented a defense that it occurred by accident. The record is patently clear that the defendant was being charged with the possession and use of a weapon, and that the charge was being reclassified to a first degree felony.

In addition to the factual recitation *supra*, other circumstances support this defendant’s notice of enhanced sentencing pursuant to his use of a weapon:

- The defendant was represented by the same attorney for a period of nearly three years.
- During arraignment on August 31, 2011, the Court announced that the defendant was charged with “Manslaughter with a Firearm”.³⁵
- The parties engaged in extensive discovery³⁶ and pretrial litigation.
- A bond hearing was held May 29, 2013 after the defendant was restored to competence. During the bond hearing, it was openly discussed that the defendant possessed and discharged a firearm, killing his father.³⁷
- A three-day suppression hearing was conducted.³⁸ During the hearing, the Court confirmed that the defendant was facing an enhanced charge.³⁹ The State repeated

³⁵See Exhibit J, recording of arraignment on August 31, 2011. There was no further discussion related to the charges. The defense waived formal reading of the Information.

³⁶ In *Phillips v. State*, 463 So.2d 1136 (Fla. 1985), the Florida Supreme Court noted that increased discovery in criminal proceedings can provide defendants additional protection, such that there is no longer a need for the rigid application of the four-corners requirement in charging documents under certain circumstances. Where both parties are willing and able to proceed to trial on the pending charge, there should be no claim that the Information is vague, indistinct, or indefinite, such that the defendant would be prejudiced or subject to double-jeopardy. *Phillips* at 1137.

³⁷ See Exhibit J, recording of bond hearing on May 29, 2013.

³⁸ On February 28, 2014, March 07, 2014 and March 14, 2014 the Court conducted a hearing to evaluate statements this defendant made, both to law enforcement officers and mental health providers. Though the defendant told law enforcement the firearm discharge was an accident, he told mental health providers that he shot his father “on purpose”.

³⁹ See Exhibit F, excerpt from Continuation of Motion to Suppress Hearing. Held March 14, 2014.

that the defendant was charged with a first degree felony, Manslaughter with a Firearm.⁴⁰

- After the suppression hearing was concluded, the parties attempted to resolve the case short of the 30-year maximum sentence. To aid resolution, the defendant was visited by his attorney over the weekend. As discussed on the record Monday, March 17, 2014, negotiations ultimately failed.⁴¹ The defendant rejected a 15-year cap on incarceration. At that time, there was an open discussion that the defendant was subject to a 30-year penalty.
- During the same proceeding – and immediately before voir dire – the Court confirmed the contents of the Information and announced that the charge was a first degree felony.⁴²
- The State and defense submitted jury instructions that explained the crime of Manslaughter with a Firearm.⁴³ The verdict form contained a special interrogatory, asking whether the defendant discharged a firearm, causing great bodily harm or death to Douglas White.⁴⁴
- The defense presented argument and evidence at trial.⁴⁵ The presentation was meant to demonstrate that the shooting was an accident.
- The defendant never asserted that a weapon was not possessed and used during this deadly encounter. The only contested issue at trial was the mindset of the defendant when the shooting occurred.

At no point, did the defendant challenge the sufficiency of the allegations in the Information as they relate to the enhanced sentence.

All these years later, the defendant asks this Court to reduce his sentence based upon a “fundamental defect” in the charging document. But the circumstances of this case are far less compelling than those cited in his Motion. *See Figueroa v. State*, 84 So.3d 1158, 1162 (2nd DCA, 2012) (where Figueroa is serving a life sentence for robbery with a

⁴⁰ See Exhibit F, pages 96-97.

⁴¹ See Exhibit G, excerpt from Trial Transcript, pages 11-13. Held March, 17, 2014.

⁴² See Exhibit H, excerpt from Trial Transcript, page 18. Held March 17, 2014.

⁴³ See Exhibit H, excerpt from Trial Transcript, pages 17-18. Held March 17, 2014.

⁴⁴ See Exhibit E.

⁴⁵ A similar presentation was made during the sentencing hearing on June 13, 2014. *See* Exhibit I.

firearm and the charging document never even mentions the use of a firearm, “the circumstances of the case present an uncommon and extraordinary [instance of] manifest injustice”). And the defendant’s reliance on Mesa is inapposite. *See Mesa v. State*, 632 So.2d 1094 (3rd DCA, 1994). Mesa was convicted of attempted second degree murder with a firearm and received a minimum mandatory sentence for the possession of that firearm. In Mesa, the Court reasoned that the charging phrase “did shoot” strongly implies the use of a firearm, but it does not expressly state the discharge of a firearm as required by law. *See Id.* at 1097. This defendant urges an extension of the Mesa holding here. To apply the reasoning of Mesa to the matter at hand would produce an absurd result. Unlike Mesa, this defendant is subject to the sentencing enhancement for using *any* weapon.

At its core, it appears that the defendant’s argument for relief confuses two distinct, but related statutory provisions. The majority of cases discussing “essential elements” are related to the imposition of minimum-mandatory sentences for firearms. The fundamental difference between those cases and the pending matter is the mechanism by which the sentence is enhanced. This defendant’s sentence was enhanced pursuant to Florida Statute § 775.087(1). That provision of the Florida Criminal Code allows for additional penalties where it can be demonstrated that the defendant possessed or used *any* weapon during the commission of a felony. Florida Statute § 775.087(2) – which applies only to firearms – requires additional pleading and proof as it relates to the essential elements of “actual possession”, “discharge”, and “great bodily harm or death”. As discussed in note 6 *supra*, the additional pleading and proof requirements of Fla. Stat. § 775.087(2) do not apply to this circumstance. Thus, the argument that the State was required to plead certain “essential elements” is misplaced. Under the terms of Fla. Stat. § 775.087(1) proper notice is given where the State alleges that a weapon – *any weapon* – was carried, displayed, or used during the commission of a felony. Here, the State has met its burden by alleging that the defendant killed his father by shooting him. And the defendant becomes eligible for enhanced sentencing, once the jury has made a special finding by interrogatory verdict. That the “weapon” in this case is a “firearm” perhaps serves as the point of confusion as it relates to these two provisions of law.

It is undisputed that the jury expressly found this defendant guilty of Manslaughter with a Firearm based upon substantial competent evidence adduced at trial. Though the Information failed to allege firearm, a firearm was not needed for the reclassification. The defendant was adequately charged and given proper notice of the potential for an enhanced penalty. Out of fundamental fairness, the defendant's failure to file a pretrial motion to dismiss the Information should constitute a waiver of his argument.⁴⁶ The defendant knew that he killed his father by instrumentality. He was on notice that his possession and discharge of the weapon were factual issues to be submitted to the jury. Had the defendant been concerned about the first degree felony designation, or the potential for a 30-year penalty, the defendant could have objected to the jury instructions and the special interrogatory. He did neither of those things. And, he did not raise the insufficiency of the charging document, the special interrogatory, or the imposition of an enhanced penalty on direct appeal.

The alleged defect in the charging document could have been corrected if a timely objection had been made. See Martinez, 169 So.3d 170. The record in this case clearly reflects that everyone involved in this matter operated under the assumption that the defendant was charged with a first degree felony.⁴⁷ Defense counsel never objected to the State's action or the Court's instruction. And, the defense at trial was premised on the fact that the shooting occurred by accident. *Assuming arguendo* that such a defect did exist and that it was missed by everyone involved in this proceeding, Courts have overlooked an insufficient Information to uphold a conviction where the unopposed element is proved. See State v. Everett, 469 So.2d 247 (3rd DCA, 1986) (where an Information fails to allege two prior petit theft convictions necessary to elevate the third charge to felony petit theft, but the Information is titled with a heading described as a felony, the Information does not result in the complete failure to allege a felony and the

⁴⁶ Courts generally recognize a waiver of such claim when it arises as a result of Fla.R.Crim.P. 3.610. Martinez, 169 So.3d 170 (4th DCA, 2015) extends that rationale to a Rule 3.800(a) motion, where the defendant was given proper notice and appropriately convicted with an interrogatory verdict. The State submits that this Court should apply the logic of Martinez and deny the defendant's motion as untimely. The defendant's pretrial failure to object should constitute a waiver of his claim.

⁴⁷ Burnette v. State, 881 So2d 693 (1st DCA, 2004) discusses a similar situation in footnote 2 of the opinion.

circuit court has proper jurisdiction) *citing* Page v. State, 376 So.2d 901, 904 (2nd DCA, 1979) (the allegation of “Grand Theft Second Degree 812.014 Fel.” sufficiently invokes the jurisdiction of the circuit court despite the failure of the Information to speak to the value of the property stolen); (Sinclair v. State, 46 So.2d 453 (Fla. 1950) (omission of allegation of intent to defraud in forgery case); *and* Tracey v. State, 130 So.2d 605 (Fla. 1961) (omission of allegation of scienter in obscenity charge); *see also* Bradley v. State, 971 So. 2d 957, 961 (5th DCA, 2007) *citing* Insko v. State, 969 So.2d 992 (Fla. 2007) (agreeing that defendant’s age was element of offense of lewd and lascivious conduct, but nonetheless concluding that defendant was not entitled to relief because he failed to object to jury instruction); Pena v. State, 901 So.2d 781, 784 (Fla. 2005) (holding that the failure to instruct the jury that the defendant’s age is an element of first-degree murder by drug distribution was not fundamental, and noting that element was undisputed and no timely objection was raised); Glover v. State, 863 So.2d 236, 238 (Fla. 2003) (holding that defendant’s age is an element of capital sexual battery, but affirming conviction because failure to so instruct the jury was not fundamental where element was undisputed). Courts have also overlooked an imperfect pleading in the context of a plea. *See* Bradley v. State, 3 So.3d 1168 (Fla. 2009) (if a defendant can waive the jury’s failure to find an element of the crime, we have no difficulty in concluding that a defendant can stipulate to the existence of that element or sentencing factor in the context of a voluntary plea).

In this instance, all of the requirements for imposing an enhanced sentence were met. The defendant was given proper notice of the potential for enhanced sentencing and was convicted of Manslaughter with a Firearm by interrogatory verdict. This defendant should not be able to raise this issue in a Rule 3.800(a) motion, years after his conviction. *See* Martinez, at 172. The test for granting relief based upon a defect in the charging document is actual prejudice. *See* Bradley, 971 So.2d 957 (5th DCA, 2007). Justice would be significantly offended if the Court were to grant the relief requested by this defendant, under these circumstances.

WHEREFORE, the State of Florida moves this Honorable Court to summarily deny the Defendant's *pro se* Rule 3.800 (a) amended motion to correct illegal sentence federal, for the reasons set forth above.

RESPECTFULLY SUBMITTED
FOR THE STATE ATTORNEY
/s/ J. Ryan Will

J. Ryan Will
Assistant State Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this document has been electronically filed through the Florida Courts E-Filing Portal and that a true and correct copy hereof has been furnished by mail to: Marcus White, #V45438, Columbia Correctional Institution, 216 SE Corrections Way, Lake City, Florida 32025 this 28th day of November, 2016.

/s/ J. Ryan Will
J. Ryan Will
Assistant State Attorney
Florida Bar No: 0024122
440 South Beach Street
Daytona Beach, Florida 32114
(386) 238-4894

Response to Question 39:

In December of 2012, Jerry Crew was tried for the offenses of Second Degree Felony Murder and Robbery with a Firearm. Substantial, competent evidence demonstrated that Crew assisted three young drug dealers in robbing a competing dealer. For his role in drawing the competitor to the scene, Crew was to receive all stolen narcotics. The robbery attempt failed and several weapons were fired. Of the seven individuals present, four were shot. A teenage boy was killed. During my closing argument, I referred to the defendant as a “crackhead” and said the defendant’s argument of innocence was ridiculous.

On August 29, 2014, the Fifth District Court of Appeal reversed the conviction of Crew and remanded the case for new trial. The comments made during closing argument were a partial basis for that reversal. *See Crew v. State*, 146 So.3d 101 (5th DCA, 2014).

On September 17, 2015, the Ninth Judicial Circuit Grievance Committee “F” issued a Notice of Finding of Probable Cause For Further Disciplinary Proceedings as it relates to Rules 4-1.3, 4-3.3(a), and 4-8.4(c)(d). Upon further investigation, and the presentation of favorable evidence, the Grievance Committee dismissed the charges related to Rule 4-3.3(a).

On December 31, 2015, the Supreme Court of Florida accepted my conditional guilty plea and consent judgment for violations of Rules 4-1.3 and 4-8.4(d). My characterization of the defendant as a “crackhead” was inappropriate. Similarly, my attack of the defendant’s argument of innocence unacceptable. For my actions, I have apologized. By Order of the Court, I have received a written reprimand.

Pursuant to the Alabama Rules of Professional Conduct, attorneys working in a foreign jurisdiction are required to self-report and receive reciprocal discipline. I reported the Florida reprimand in January of 2016. On March 31, 2016, I received a public reprimand in the State of Alabama for violation of Rule 25(a).

In addition to the reprimands issued by Florida and Alabama, I paid fines and fees in excess of \$10,000.

All documents of significance have been attached for your convenience and review.

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

JOSEPH RYAN WILL,

Respondent.

Supreme Court Case
No. SC-

The Florida Bar File
No. 2015-30,225 (9F)

CONDITIONAL GUILTY PLEA FOR CONSENT JUDGMENT

COMES NOW, the undersigned respondent, Joseph Ryan Will, and files this Conditional Guilty Plea pursuant to Rule 3-7.9 of the Rules Regulating The Florida Bar.

1. Respondent is, and at all times mentioned herein was, a member of The Florida Bar, subject to the jurisdiction of the Supreme Court of Florida.
2. Respondent is currently the subject of a Florida Bar disciplinary matter, which has been assigned The Florida Bar File No. 2015-30,225 (9F).
3. As to The Florida Bar File No. 2015-30,225 (9F), there has been a finding of probable cause by the Ninth Judicial Circuit Grievance Committee "F."
4. Respondent is acting freely and voluntarily in this matter and tenders this Plea without fear or threat of coercion. Respondent is represented in this matter.

5. The disciplinary measures to be imposed upon respondent are as follows:

A. Public reprimand to be administered by publication.

B. Payment of the Bar's costs.

6. The following allegations and rules provide the basis for respondent's guilty plea and for the discipline to be imposed in this matter:

A. Respondent is employed as an assistant state attorney and was the prosecutor in the criminal trial of Jerry Crew.

B. The Fifth District Court of Appeal reversed the conviction of Mr. Crew and remanded the case for a new trial. The respondent made an improper argument and statements in the closing argument, which were a partial basis for the reversal.

C. The court found the respondent mischaracterized the testimony of a witness concerning whether Mr. Crew was aware in advance of a plan to rob the victim and intended to share in the robbery proceeds. Respondent was also the prosecutor in the related case against Mr. Crew's co-defendant. The same witness testified in both cases. In the co-defendant's case, the witness testified that Mr. Crew had advance knowledge of the robbery plan and was to share in the robbery proceeds. In

Mr. Crew's trial, however, respondent failed to elicit the same testimony from the witness. Yet respondent incorrectly made references during his closing argument regarding the witness' testimony. This was an oversight by respondent and was not intended to be false or misleading.

D. The court also found the respondent made demeaning and ridiculing personal attacks on Mr. Crew during his closing argument. Specifically, respondent repeatedly referred to Mr. Crew as a "crackhead" and characterized Mr. Crew as lacking in morals.

E. The court further found the respondent disparaged opposing counsel's theory of defense and improperly sought to have the jury show sympathy for the victim.

F. Wherefore, by reason of the foregoing, respondent violated the following Rules Regulating The Florida Bar:

G. 4-1.3 A lawyer shall act with reasonable diligence and promptness in representing a client.

H. 4-8.4(d) A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis,

including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic.

7. The Florida Bar has approved this proposed plea in the manner required by Rule 3-7.9.

8. If this plea is not finally approved by the Board of Governors of The Florida Bar and the Supreme Court of Florida, then it shall be of no effect and may not be used by the parties in any way.

9. If this plea is approved, then respondent agrees to pay all reasonable costs associated with this case pursuant to Rule 3-7.6(g) in the amount of \$2,087.09. These costs are due within 30 days of the court order. Respondent agrees that if the costs are not paid within 30 days of this court's order becoming final, respondent shall pay interest on any unpaid costs at the statutory rate.

Respondent further agrees not to attempt to discharge the obligation for payment of the Bar's costs in any future proceedings, including but not limited to, a petition for bankruptcy. Respondent shall be deemed delinquent and ineligible to practice law pursuant to Rule 1-3.6 if the cost judgment is not satisfied within 30 days of the final court order, unless deferred by the Board of Governors of The Florida Bar.

10. Respondent acknowledges the obligation to pay the costs of this proceeding and that payment is evidence of strict compliance with the conditions of any disciplinary order or agreement, and is also evidence of good faith and fiscal responsibility. Respondent understands that failure to pay the costs of this proceeding or restitution will reflect adversely on any other bar disciplinary matter in which respondent is involved.

11. If this plea is approved, and restitution is owed, if the person to whom restitution is owed cannot be located after a diligent search, respondent shall execute an affidavit of diligent search and provide same to The Florida Bar and shall pay the full amount of the restitution to the Clients' Security Fund of The Florida Bar within 30 days of the date of the affidavit of diligent search.

12. This Conditional Guilty Plea for Consent Judgment fully complies with all requirements of the Rules Regulating The Florida Bar.

13. In mitigation, (a) respondent has no prior disciplinary history (Florida Standard for Imposing Lawyer Sanctions 9.32(a)); (b) respondent tried two (2) cases against the co-defendant and Mr. Crew in fairly short succession and merely overlooked the fact that he failed to elicit the same testimony from the witness in both cases on a specific key point in Mr. Crew's case, which was tried second (9.31); (c) respondent made full and

Supreme Court of Florida

THURSDAY, DECEMBER 31, 2015

CASE NO.: SC15-2255

Lower Tribunal No(s):

2015-30,225 (9F)

THE FLORIDA BAR

vs. JOSEPH RYAN WILL

Complainant(s)

Respondent(s)

The conditional guilty plea and consent judgment for discipline are approved and the Court hereby reprimands respondent.

Respondent is further directed to comply with all other terms and conditions set forth in the consent judgment.

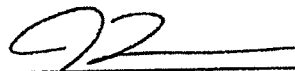
Judgment is entered for The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, for recovery of costs from Joseph Ryan Will in the amount of \$2,087.09, for which sum let execution issue.

Not final until time expires to file motion for rehearing, and if filed, determined.

LABARGA, C.J., and PARIENTE, LEWIS, QUINCE, CANADY, POLSTON,
and PERRY, JJ., concur.

A True Copy

Test:



John A. Tomasino

Clerk, Supreme Court



ld

Served:

KESHARA DAVIS COWANS

DONALD A. SMITH, JR.

ARTHUR IVAN JACOBS

ADRIA E. QUINTELA



ALABAMA STATE BAR
THE DISCIPLINARY COMMISSION
TELEPHONE 334-269-1515
P.O. BOX 671
MONTGOMERY, AL 36101

FAX: 334/261-6311

DELIVERY ADDRESS
415 DEXTER AVENUE
MONTGOMERY, AL 36104

PUBLIC REPRIMAND

of

JOSEPH RYAN WILL

RULE 25(a), PET. NO. 2016-282

Mr. Will, on March 16, 2016, the Disciplinary Board of the Alabama State Bar ordered that you receive reciprocal discipline of a public reprimand with general publication for violating Rules 1.3 [Diligence], and 8.4(d) [Misconduct], Alabama Rules of Professional Conduct. The Disciplinary Board ordered that you receive the identical discipline as that imposed by the Supreme Court of Florida. The facts upon which this decision was based are as follows:

In or about December of 2012, you prosecuted a defendant for felony murder and robbery in the State of Florida. During closing arguments, you made inappropriate comments by repeatedly referring to the defendant as a "crackhead". In addition, you inadvertently mischaracterized a witness's testimony. Finally, you improperly disparaged opposing counsel's theory of defense and sought to have the jury show sympathy for the victim. Your improper argument during closing was a partial basis for the reversal of the defendant's conviction.

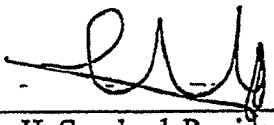
Accordingly, you are hereby publically reprimanded, with general publication, for failing to diligently represent your client and for engaging in conduct prejudicial to the administration of justice.

RULE 30. ALABAMA RULES OF DISCIPLINARY PROCEDURE OF THE ALABAMA STATE BAR, ADOPTED BY THE SUPREME COURT OF ALABAMA, PROVIDES THAT ALL DISCIPLINARY PROCEEDINGS SHALL REMAIN CONFIDENTIAL UNTIL A PLEA OF GUILTY OR THE DISCIPLINARY BOARD OR DISCIPLINARY COMMISSION MAKES A FINDING OF GUILT.

JOSEPH RYAN WILL
Rule 25(a); Pet. No. 2016-282
Public Reprimand With General Publication
Page 2

This reprimand shall be made a part of your permanent Bar record and will be considered in determining appropriate discipline should you be found guilty of any future violations of the Alabama Rules of Professional Conduct.

Given, this 31st day of March, 2016.



Lee H. Copeland, President
Alabama State Bar

JWM/cm