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

BRENDAN DEPA,
Appellant,

v. CASE NO. 5D24-2364

STATE OF FLORIDA,
Appellee.
_____/

INITIAL BRIEF OF APPELLANT

On appeal from a final judgment and sentence in a criminal case entered by the Circuit Court of the Seventh Judicial Circuit, in and for Flagler County, Florida.

The Law Office of
ROBERT DAVID MALOVE, P.A.
The Malove Law Building
200 SE 9th Street
Ft. Lauderdale, Florida 33316
appeals@robertmalovelaw.com
Telephone: (954) 861-0384

By: /s/ *Hani Demetrious*
Hani Demetrious, Esq.
FL. Bar No.: 0011848

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Florida Statutes

Rules

PRELIMINARY STATEMENT

In the court below, Brendan Depa, was the Defendant and will be referred to in this appeal as "Appellant." The State of Florida was the plaintiff below and will be referred to herein as "State." References to the record on appeal will be as follows:

Record on Appeal – "R." followed by page number located in the bottom center.

STATEMENT OF CASE AND FACTS

Stemming from an incident that occurred on February 21, 2023, Appellant was charged by amended information in Flagler County, Florida, with one count of aggravated battery on a school employee, in violation of §§ 784.045(1)(a)1, and 784.081(2)(a), Fla. Stat. (R. 26)

On March 2, 2023, Appellant's trial attorney filed a "Suggestion of Mental Incompetency to Stand Trial" on behalf of Appellant. (R. 36) The trial court ordered a mental health examination to be conducted for "intellectual disability and autism." (R. 37-38) A competency hearing was held on June 16, 2023. (R. 252-428) Appellant was found competent to proceed. (R. 60-62; 418-425)

On October 20, 2023, Appellant entered an open plea of no contest as charged in the information to aggravated battery on a school employee. The trial court conducted a colloquy with Appellant whereby Appellant indicated that that he read and signed the plea form, that he was waiving his right to a jury trial, that there was no agreement as to a sentence, and that a sentencing hearing would be held to determine the sentence. The trial court accepted the no contest plea and found Appellant's plea to be knowing and voluntarily given. (R. 63-64; 235-251)

On May 1, 2024, a sentencing hearing was held in which the following evidence was presented.

Dr. Suzonne Kline testified that she serves as the Chief of Mental Health for the Florida Department of Corrections. She has extensive experience working within the department's mental health facilities and holds a clinical doctorate in psychology. Since 1993, Dr. Kline has worked in psychiatric hospitals and held various other psychology-related positions. (R. 440-442)

Dr. Kline explained that the Florida Department of Corrections provides mental health programs beginning at an inmate's initial intake at a reception center. Upon arrival, inmates undergo a

comprehensive psychological assessment, which includes a clinical interview, a review of background information, the collection of collateral records, and individualized testing. (R. 444) Inmates are classified according to mental health grades ranging from S1 to S6, with S6 denoting the most severe impairment. (R. 445)

If an inmate is identified as having a mental health issue, the department provides treatment plans known as Individual Service Plans (ISP). Of the approximately 86,000 inmates within the Florida Department of Corrections, 33% have been diagnosed with a major mental illness or disorder and are currently on the psychiatric caseload, receiving regular treatment from psychologists, psychiatrists, or licensed mental health clinicians. (R. 446) Inmates may receive mental health services at any institution in accordance with their ISP, which includes a multidisciplinary treatment approach involving psychiatric, medical, and nursing professionals. The ISP assesses an inmate's strengths and weaknesses, their medication regimen, group therapy participation, and the frequency of counseling services. Based on the severity of their condition, inmates are classified as either outpatient or inpatient. (R. 447)

Dr. Kline further testified that the Department of Corrections houses inmates with autism, which is one of the diagnosed disabilities of the appellant. The department also treats intellectual disabilities and manages neurodevelopmental disorders. (R. 451) The department's mental health units provide treatment for autism, oppositional defiant disorder, ADHD, intermittent explosive disorder, disruptive mood regulation disorder, anxiety, and depression. Presently, approximately 4,000 inmates have been diagnosed with an intellectual or developmental disability and are under routine care and monitoring. (R. 452)

If an inmate is sentenced with a prior diagnosis, they are placed on the mental health caseload for the entirety of their incarceration. At each classification level, the intensity and frequency of mental health services increase accordingly. (R. 453-454)

During cross-examination, Dr. Kline acknowledged that while inmates have the right to refuse treatment, they are still required to undergo periodic evaluations and must formally renew their refusal. The department maintains processes to ensure that staff properly obtain and review medical records and appropriately place inmates in institutions based on their mental health needs. (R. 454-466)

Dr. Kline stated that the mission of the department's mental health services is to promote recovery and resiliency among inmates by providing comprehensive mental health care. The department also collaborates with external agencies to coordinate follow-up care and aftercare services upon an inmate's release. (R. 454-466)

Deputy John Landi, a member of the Flagler County Sheriff's Office, testified that he was assigned to the Investigative Services Division as a school resource officer at Matanzas High School. Having served in this capacity for 14 years, Deputy Landi was on duty at the school on the day the incident occurred. (R. 467-468)

During his testimony, a video recording depicting the incident was played. Deputy Landi identified individuals in the footage and provided commentary regarding the events that transpired. The video showed Ms. Joan Naydich, a teacher, walking on the second floor of the school building toward the appellant's classroom when the appellant suddenly ran past her. Shortly thereafter, Ms. Naydich was seen on the floor in an unconscious state; however, she eventually regained consciousness. By that time, the Appellant had been restrained and was subsequently placed under arrest. (R. 469-474)

Further, Deputy Landi testified that officers had body-worn cameras that recorded both audio and video footage as they escorted the Appellant from the classroom to an office located downstairs. While being escorted, the Appellant was required to walk past the victim. The body camera footage captured the Appellant making threatening remarks toward the victim. Deputy Landi also confirmed that at no point did the Appellant express concern for the victim in his presence. (R. 474-476)

Joan Naydich, the victim in this case, testified that she was employed as a paraprofessional at Flagler Schools in February 2023. In her capacity as a paraprofessional, her responsibilities included performing tasks as directed by the teacher. Ms. Naydich was assigned to Appellant, who was placed in a self-contained Emotional and Behavioral Disabilities (EBD) classroom due to behavioral challenges. While the students in this classroom primarily remained within its confines, exceptions were made for physical education outside the classroom and, in the Appellant's case, attendance in a cybersecurity class. Ms. Naydich accompanied the Appellant to this class and returned with him to the EBD classroom thereafter. (R. 477, 483)

On February 21, 2023, the day of the incident, Ms. Naydich met the Appellant at the school entrance upon his arrival. Together with other students, they proceeded to the cafeteria to collect breakfast before heading to the classroom. (R. 483) During the second period, Ms. Naydich accompanied the Appellant to his general education class. During this class, the Appellant removed a gaming console, which became a distraction to other students. At the teacher's request, Ms. Naydich instructed the Appellant to put the console away, and he complied. However, towards the end of the class, the Appellant retrieved the console again. Instead of reiterating the instruction, Ms. Naydich informed Appellant that it was time to leave, and they returned to the EBD classroom.

Upon their return, Ms. Naydich reported the gaming console issue to the Appellant's regular teacher, who subsequently informed the Appellant that he was prohibited from using the console. This directive caused the Appellant to become visibly angry and upset. Ms. Naydich neither addressed the Appellant nor interacted with the gaming console. The Appellant began verbally abusing Ms. Naydich with derogatory remarks. As Ms. Naydich attempted to leave the classroom, the Appellant pursued her and spat on her, which she

declared the act as an assault. Ms. Naydich turned to exit the room, recalling only placing her hand on the doorknob before the remainder of the incident, which was captured on video. (R. 485-490)

As a result of the attack, Ms. Naydich suffered multiple injuries, including five broken ribs, a concussion, hearing loss, vision impairment, vestibular dysfunction, rotator cuff damage, and a herniated disc. Additionally, she was diagnosed with Post-Traumatic Stress Disorder (PTSD), anxiety, and panic attacks, for which she is undergoing therapy. (R. 492, 496)

During cross-examination, Ms. Naydich testified that she was unaware of the Appellant's specific conditions and did not know who bore the responsibility of informing her about a student's particular needs. She stated that no orientation process was provided upon receiving a new student. (R. 507-509) Ms. Naydich acknowledged that her role included ensuring the student's appropriate behavior in class and that information regarding the student's disability or preventative strategies would have been beneficial. (R. 509-511) She further confirmed that while the Appellant had an Individualized Education Plan (IEP) outlining educational goals and behavioral strategies, including avoiding correction, reprimand, or redirection in

the presence of peers, she was not aware of the IEP's contents at the time. (R. 512-513)

Ms. Naydich also testified that she was unaware of specific triggers for the Appellant's aggressive behavior, such as transitions between classes, disruptions in routine, hunger, or disciplinary actions related to electronics. She confirmed that on the day of the incident, the Appellant arrived at school hungry, having reportedly not eaten the previous night at his group home. Additionally, there was a disruption in routine due to a substitute teacher in the cybersecurity class, and she had reprimanded the Appellant for using his Nintendo Switch. These factors coincided with their return to the EBD classroom. (R. 516)

Dr. Gregory Prichard, a licensed psychologist testified regarding his credentials and experience, which includes over 1,500 forensic evaluations. (R. 524-525) The evaluation of Appellant included a thorough review of his criminal records, school reports, group home information, medical records, and a video recording of the incident in question. (R. 525-568) Additionally, the psychologist conducted a direct mental status examination of Appellant while he was incarcerated, finding that he exhibited effective communication, good

memory, and a consistent IQ of 110, corresponding to a high average range. The psychologist did not observe any significant mental health symptoms such as depression, pathological anxiety, attention problems, or hyperactivity. On the contrary, Appellant was very calm. Appellant had fair judgment and recognized the medications he was taking and that they helped him. While Appellant claimed to experience auditory hallucinations, there was no observed behavioral evidence supporting these assertions. Prior records suggested instances of fabricated symptoms. (R. 526-532)

Appellant's behavioral patterns were analyzed and discussed in the context of the altercation involving Appellant and Ms. Naydich. Appellant expressed anger over the incident and demonstrated externalization of blame, attributing fault to others, including Ms. Naydich and school staff, rather than accepting personal responsibility. Although towards the end of that particular discussion Appellant accepted some responsibility and stated that there were things that both of them could have done differently. (R. 532-536) Appellant's Autism Spectrum Disorder was categorized as level one, indicating a need for support, alongside additional diagnoses of Intermittent Explosive Disorder and Disruptive Mood

Dysregulation Disorder. The psychologist debated other suggested diagnoses, such as ADHD and oppositional defiant disorder, attributing overlapping symptoms to autism. (R. 538-541

Moreover, the psychologist determined that Appellant was very intelligent and had good communication skills. (R. 542) The evaluation underscored significant difficulties faced by Appellant in social settings, such as forming and maintaining friendships, navigating social nuances, and regulating his emotions. Behavioral issues, including theft, were determined to be unrelated to his autism. (R. 543-546)

Dr. Prichard highlighted Appellant's long-standing pattern of aggression, spanning multiple settings, including his home, school, and residential facilities. From his early schooling years, Appellant struggled with violent behaviors that eventually led to homeschooling and later residential placement. (R. 550) At the Springbrook facility, despite tailored interventions for individuals with autism spectrum disorders, Appellant exhibited persistent aggression, including physical altercations with peers and staff. His move to the ECHO group home similarly saw initial difficulties, though there was noted improvement toward the latter part of his stay. (R. 549–555)

Dr. Prichard believed that Appellant knew right from wrong and had the ability to manage emotions and controlling his anger in structured environments. Dr. Prichard referenced records from Matanzas High School indicating periods of improved behavior, during which Appellant successfully refrained from aggression and employed alternative coping strategies, such as walking away from stressful situations. Nevertheless, Appellant's history of intermittent explosive responses and emotional dysregulation underscores his struggle to consistently manage anger, particularly in unstructured or triggering environments. These triggers, as noted in his Individualized Education Plan (IEP), include hunger, overstimulation, and authority denial, which can precipitate maladaptive behaviors. (R. 555-556, 578)

Dr. Prichard characterized Appellant as potentially dangerous, citing his chronic history of aggression and his physical size (6'6", 250 pounds) as factors that amplify the risks associated with his violent outbursts. (R. 558-559) Despite a reduction in the frequency of aggressive episodes over time, the intensity of these incidents has escalated, as demonstrated by a violent encounter on a school bus and the assault at the core of this case. (R. 559-560)

Dr. Prichard stated that Appellant's aggression at the time of the incident was very likely a manifestation of his emotional behavioral disability, his tendency to overreact aggressively to perceived slights. (R. 575) He advocated for a structured environment with enforced rules and therapeutic support to manage Appellant's behavior and mitigate future risks. Such an environment, incorporating behavioral modification, counseling, and medication management, would address both his immediate needs and long-term rehabilitation prospects. (R. 576-581)

The defense also presented several witnesses. (R. 584-961)

Leanne Depa, Appellant's mother, testified that Appellant was birthed into an unstable environment and that she adopted Appellant when he was about five months old. (R. 590-591) Leanne testified of Appellant's lifelong challenges associated with his significant mental health diagnoses, including ADHD, autism, anxiety, oppositional defiant disorder, and mood dysregulation. She testified of her efforts to provide educational and therapeutic interventions. (R. 588-606), challenges with medication regimens. (R. 609-612), and behavioral struggles, including aggression, that persisted despite various residential placements, including at Springbrook and ECHO group

homes. (R. 614-632) Appellant's emotions were always big in that when something was funny it was hysterical, when something was upsetting, he would sob and sob and could easily get overwhelmed and have a meltdown. When he was hungry or had to use the restroom, Appellant would act out until someone got a hold of him and he communicated that he was hungry or had to use the restroom. (R. 594) Appellant had many fears and anxieties. (R. 604) Very specific knowledge of Appellant was necessary to modulate his behaviors. (R. 605)

Appellant's behavior and his triggers—such as noise, hunger, and public corrections—were outlined, along with strategies incorporated into his Individualized Education Plan (IEP) and behavioral management plans while attending public school. (R. 633-642 Leanne also testified regarding the manifestation review following this incident, affirming that his actions were manifestations of his disabilities. (R. 648-650) Leanne had concerns of potential risks to Appellant's mental health and safety if confined in adult correctional facilities without appropriate support systems and believed continued treatment in a community-based group home or home setting would best serve Appellant's needs. Appellant was

accepted to a residential facility in Florida and circumstances had changed within the home so that if community-based sanctions were granted Appellant would have a stable place of abode and several resources available to help care for Appellant. (R. 654-666)

Eugene Lopes, a retired special education teacher with nearly 30 years of experience detailed his extensive background in special education, including his role as an adjunct professor at Kean University for 20 years, where he trained future special education teachers. (R. 689-691) Lopes also had a history of working with autistic children. (R. 693-694) After Appellant's arrest, Lopes voluntarily worked with Appellant, which involved approximately 200 hours of direct interaction over seven months. (R. 695–696; 718) He highlighted the challenges in dealing with special need students and the need for adherence to established behavioral plans to avoid escalation. (R. 700-702, 713) Lopes emphasized the importance of individualized education plans (IEPs) tailored to optimize both educational and behavioral outcomes for students with disabilities, noting his involvement in over 1,500 IEPs during his career. (R. 702-706)

Lopes also recounted his initial visceral reaction to the viral video of Brendan's actions but explained how reading an article by Brendan's mother shifted his perspective, leading him to advocate for Brendan and his family. (R. 714–717) During his involvement with Appellant at the county jail, Appellant exhibited signs of improvement in education and personal growth. (R. 724-727) Appellant is a gifted writer and has a fascination with computers and how they work. (R. 729) Lopes stated that routine matters in Bredan's life. (R. 730) Lopes testified that if Appellant was given community-based sanctions he would be committed to continuing to work with Appellant. (R. 734)

Jerome Powell, a school community officer with experience as a unique needs specialist, testified about his interest in Brendan Depa's case, sparked by his professional background and personal experience raising a son with autism. He described his familiarity with autism and other conditions such as ODD, ADHD, and IED, and emphasized the importance of an individualized, trust-building approach for children with special needs. (R. 741–744) Mr. Powell disclosed his ongoing communication with Mr. Depa since November 2023, forming a mentorship and friendship role, and expressed his

willingness to adopt Mr. Depa if necessary. He articulated his belief in Mr. Depa's potential and expressed readiness to continue supporting him under any community-based supervision conditions, including face-to-face interactions. (R. 745–747) During cross-examination, it was confirmed that Mr. Powell had not met Mr. Depa in person, relying solely on letters and phone calls to establish their connection. (R. 748)

Dr. Kimberly Spence testified to having extensive experience in autism-specific assessments. (R. 750–762) She provided a detailed review of Appellant's history, diagnoses, and behaviors and noted that Brendan has autism spectrum disorder (ASD) level two, alongside co-occurring conditions such as ADHD, Intermittent Explosive Disorder, and disruptive mood dysregulation disorder which affected Appellant's behavior. These conditions have been manifested through significant challenges with emotional regulation, rigid thinking, difficulty transitioning between activities, and anxiety related to changes in routine. (R. 763-785) Additionally, Brendan's history of aggression was acknowledged, a behavior that Dr. Spence attributed to a combination of his neurological and mental health conditions, environmental factors, and inadequate interventions.

Spence disagreed that Appellant is a level one on the autism spectrum disorder. (R. 777)

Spence stated that Appellant has had a history of being fixated on electronics or gaming which has caused a lot of problems over the years. (R. 780) There was documented history of aggression by Appellant with the removal of electronic devices. On one occasion, when Appellant was in a level 6 group home, and they had to call a crisis team to remove his electronics. (R. 781-782) Dr. Spence opined that when Appellant was "blaming" the victim for the incident, he was not necessarily assigning blame to the victim but due to his rigid thinking, he was just giving the facts of why he believes the incident happened. She also stated that people with autism express aggression for various reasons. (R. 786) Dr. Spence agreed with Dr. Prichard's opinion that the events were a manifestation of disability and stated that Appellant is "a person that is neurologically compromised." (R. 787) She stated that at the time of the incident Appellant was a 17-year old young man who had been in an institutional setting for nearly a year, a group home for nearly two years, and was going through a constellation of changes which created a perfect storm. She also opined that Appellant could not

simply control his anger, rather his anger is not fully under his control all the time. (R. 788-789)

Dr. Spence highlighted various interventions Appellant underwent, including residential treatment at Springbrook, placement in the ECHO group home, and specialized educational settings. (R. 792-794) However, she asserted that many of these environments lacked consistency in implementing his behavioral plans and providing adequately trained staff, which likely contributed to persistent behavioral challenges. (R. 811) She emphasized the need for a structured, team-based approach to manage Appellant's behaviors effectively, which should include professionals proficient in autism and co-occurring disorders, applied behavioral analysis, and mental health interventions. (R. 766–767)

Regarding the State's recommendation for incarceration, Dr. Spence opined that such an environment would fail to address Appellant's underlying needs and would not provide the therapeutic and behavioral interventions necessary for his rehabilitation. Instead, she advocated for a comprehensive treatment program involving cognitive-behavioral therapy, psychodynamic therapy,

medication management, and autism-specific interventions to address both behavioral and emotional needs. (R. 797-800)

Dr. Julie Harper testified as a licensed psychologist with extensive experience in forensic evaluations, juvenile competency assessments, and mental health diagnoses. (R. 825-833) Ms. Harper performed an evaluation of Appellant in June 2023. She spoke with Appellant in person, reviewed the competency evaluations, along with a variety of other documents related to Appellant's case and history. (R. 833-836)

Dr. Harper concluded that Appellant was 17 at the time of the offense, meaning he was biologically and developmentally in middle adolescence, a period characterized by incomplete brain maturation. She explained that scientific research confirms that full brain development occurs around age 25, particularly in regions responsible for executive functioning, impulse control, emotional regulation, and decision-making. Adolescents are neurologically predisposed to react emotionally rather than rationally, often failing to fully appreciate the consequences of their actions. (R. 836-841) Furthermore, immaturity manifests in heightened risk-taking

behaviors, reduced capacity for empathy, and difficulty in evaluating long-term consequences. (R. 842-843)

As a component of Dr. Harper's evaluation of Appellant was her assessment of Appellant's social and adaptive functioning. She highlighted that records indicated that Appellant was not operating at the level of a typical 17-year-old person. (R. 844) His perspective-taking ability was measured below the second percentile, meaning his ability to empathize and interpret social cues was severely impaired. Additionally, his independent living skills and impulse control were noted as below average, requiring behavioral modification strategies for improvement. (R. 845) Appellant also had difficulty sustaining attention during competency evaluations, often requesting for the interviews to end—a behavior typically observed in much younger individuals. (Id.) His peer selection habits further reflected delayed social maturity, as he gravitated toward younger-aged peers rather than those of his own age group. (R. 846)

Dr. Harper formally diagnosed Appellant with autism spectrum disorder (Level 2), major depressive disorder, and an unspecified anxiety disorder. (R. 850-853) The autism diagnosis was confirmed through behavioral observations, social communication difficulties,

and restrictive patterns of interest, even in the midst of support. (R. 851) She found that his depression often manifested as irritability, a common symptom among juveniles, and noted a family history of bipolar disorder. (R. 850-853) Additionally, Appellant's anxiety symptoms were exacerbated by unpredictable environments and transitions. (R. 853-854) Dr. Harper stated that the totality of the symptoms involved occurring at the same time in Appellant's brain, contributed to the situation unfolding. (R. 855-856) She also found that there was no evidence of malingering mental health problems with Appellant. (R. 848)

Dr. Harper opined that the DJJ model was well-suited for Appellant, where Appellant will receive the staff-to-defendant ratio that will be needed for him, as compared to adult corrections model, where Appellant would be warehoused, and just waiting for a sentence to be over, without the specific therapies needed to reduce symptoms and prevent recidivism. (R. 863)

During cross-examination, the State challenged Dr. Harper's conclusions, focusing on Appellant's history of violent outbursts at Springbrook and ECHO residential facilities. Records indicated multiple incidents of aggression, including punching staff members,

throwing chairs, and physically attacking peers. (R. 868-870) Dr. Harper opined that although behavioral assessments conducted by Dr. Amy Kutlik in her DJJ evaluation revealed that Appellant endorsed behaviors consistent with conduct disorder and oppositional defiant disorder (ODD), including intentionally harming people, bullying others, and destroying property, Kutlik ultimately did not diagnose Appellant with conduct disorder. Ms. Kutnik reported a poor prognosis, stating that his extensive history of treatment had failed to resolve ongoing behavioral challenges. (R. 871-873) Dr. Harper confirmed her opinion that a juvenile sentence ending at age 21, with proper after care treatment was sufficient to ensure public safety. (R. 874-875)

Although Dr. Harper agree that the Department of Corrections provided mental health services, she stated that the adult corrections model prioritizes crisis stabilization rather than long-term rehabilitation, reducing its efficacy in addressing Appellant's neurological and psychological needs. (R. 877-881)

Woody Douge, a senior probation officer with DJJ, testified regarding the agency's role in assessing Appellant's case and determining an appropriate course of action. Douge, who has served

in his position for 20 years, explained that DJJ supervises juveniles on probation, oversees intake for new juvenile offenders, and provides recommendations to the court for sentencing dispositions. (R. 882-883)

Douge prepared a sentencing report in Appellant's case. (R. 884) As part of DJJ's standard procedure, a multidisciplinary staffing was conducted, wherein the key parties—including the State attorney, defense counsel, Appellant's parents, and school officials—were invited to participate in the evaluation of Appellant's background. (R. 885) DJJ's assessment included an analysis of Appellant's criminal history, school records, mental health evaluations, and behavioral assessments, supplemented by a competency evaluation conducted by Amy Kutlik. (R. 885-887)

Based on its review, DJJ determined that Appellant had not yet exhausted all available juvenile rehabilitative services. It was recommended that he be placed in a maximum risk residential facility, the highest level of juvenile correctional treatment available in Florida, based on the nature of his offenses and prior behavioral history (R. 888) Notably, Appellant had never been under juvenile probation nor committed to DJJ custody, having previously

completed the Juvenile Diversion Alternative Program (JDAP) following two misdemeanor charges in 2019. (R. 889-890)

The maximum risk program consists of an 18 to 36-month commitment in a hardware-secured facility, akin to a prison setting, where youth offenders are monitored and supervised continuously. These facilities are designed for rehabilitation, providing mental health treatment, medication management, behavior intervention, education, and vocational training, with the goal of reintegrating offenders as productive members of society. Available vocational programs include home builder certification, forklift operation, and simulated truck driving instruction. Douge confirmed that placement could be expedited within a month, with available facilities including Kissimmee Youth Academy, St. Johns Youth Academy, and Cypress Creek, and that if there were issues with behavior the case would return to the court system. (R. 891-897)

Following closing arguments, where the defense argued for juvenile or youthful offender sanctions, the trial court adjudicated Appellant guilty and imposed adult sanctions upon Appellant consisting of a split sentence of 60 months in state prison to be followed by 15 years of probation, with a specific recommendation to

the Florida Department of Corrections to oversee Appellant's care for mental health. Upon release from prison, the trial court ordered that Appellant be placed in a group home for continued mental health treatment for all diagnoses of Appellant. Once Appellant is stabilized, the trial court stated that he would consider home health care options. (R. 160-164; 915-958) Appellant's Criminal Punishment Code ("CPC") sentencing scoresheet listed Appellant's lower permissible prison sentence ("LPS") as 34.5 months. Victim injury was also scored as moderate injury to the victim. (R. 136-138).

In imposing the sentence, the court relied on expert testimony to find that the Appellant did not have an intellectual disability and had a history of aggressive battery including previous juvenile dispositions. The trial court recognized Appellant's diagnoses of Autism Spectrum Disorder and had problems with anger and aggression but stated that per expert testimony, Appellant understood the difference between right and wrong and is capable of controlling his temper and his anger. The court found that "violence, bullying, and aggression is not associated with Autism Spectrum Disorder." The trial court noted that Appellant also stated that he was aware of what he was doing and agreed he was wrong.

The trial court stated that Appellant committed a senseless act of violence against the victim, including screaming obscenities, spitting on her, chasing her down and pushing her so forcefully that she was knocked unconscious before she hit the floor, after which Appellant continued to hit her. The trial court further stated that even after Appellant's arrest he continued to express that he was going to kill her and did not express any concern for Ms. Naydich. Appellant also did not express any remorse before the court. The trial court, on the other hand, reviewed Ms. Naydich's background as a teacher and the injuries she sustained as a result of the attack. (R. 947-956)

The trial court found that Appellant was not a candidate of solely community-based sanctioning. (R. 954) The trial court also determined that juvenile sanctions would not provide sufficient treatment for Appellant. (R. 956)

Ultimately, the trial court imposed adult sanctions and determined that Appellant qualified for youthful offender sanction but found that a youthful offender sanction would not be appropriate. (R. 957-958)

Appellant was represented by Kurt F. Teifke, Esquire, Florida Bar ID No. 148008, 1 Hargrove Grade, Building A, Suite 2E, Palm Coast, Florida 32137.

The Honorable Terrance R. Perkins presided over the proceedings.

Appellant timely appealed. (R. 169-170) This Initial Brief follows.

SUMMARY OF THE ARGUMENT

Appellant contends that the trial court abused its discretion in not imposing juvenile sanctions. The findings of the trial court with regard to not imposing juvenile sanctions are not supported by the record. Further, when considering the factors a trial court must consider when determining whether juvenile sanction are appropriate, the record supports several findings in favor of juvenile sanctions.

ARGUMENT

ISSUE ONE

WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN NOT IMPOSING JUVENILE SANCTIONS UPON APPELLANT WHERE THE TRIAL COURT'S FINDINGS ARE NOT SUPPORTED BY COMPETENT SUBSTANTIAL EVIDENCE

A. Standard of Review

When reviewing a trial court's sentencing decision, the appellate court reviews a trial court's findings of fact for competent, substantial evidence and the trial court's sentencing decision for abuse of discretion. Jackson v. State, 276 So. 3d 73, 75 (Fla. 1st DCA 2019).

B. Argument

This case surrounds the highly publicized attack upon a teacher/paraprofessional, Ms. Joan Naydich, by Appellant, her assigned student, who suffers from Autism Spectrum Disorder and other diagnoses.

The State direct-filed the case to adult court. As a result of Appellant's guilty plea, the trial court in this case was required to determine the appropriate sentence for Appellant, who was 17 years of age at the time of the offense, and 19 years of age at the time of sentencing.

Pursuant to § 985.565, Fla. Stat., the trial court may consider juvenile, youthful offender, or adult sanctions. § 985.565(4), Fla. Stat.; see also Evans v. State, 300 So. 3d 671, 674 (Fla. 4th DCA 2020) ("Section 985.565, Florida Statutes, provides the sentencing

powers of the circuit court when a juvenile has been prosecuted in adult court and found guilty of a crime."). In determining whether to impose juvenile sanctions, the trial court must consider the following criteria:

> **1.** The seriousness of the offense to the community and whether the community would best be protected by juvenile or adult sanctions.
>
> **2.** Whether the offense was committed in an aggressive, violent, premeditated, or willful manner.
>
> **3.** Whether the offense was against persons or against property, with greater weight being given to offenses against persons, especially if personal injury resulted.
>
> **4.** The sophistication and maturity of the offender.
>
> **5.** The record and previous history of the offender, including:
>
> **a.** Previous contacts with the Department of Corrections, the Department of Juvenile Justice, the former Department of Health and Rehabilitative Services, the Department of Children and Families, law enforcement agencies, and the courts.
>
> **b.** Prior periods of probation.
>
> **c.** Prior adjudications that the offender committed a delinquent act or violation of law as a child.
>
> **d.** Prior commitments to the Department of Juvenile Justice, the former Department of Health and Rehabilitative Services, the Department of Children and Families, or other facilities or institutions.
>
> **6.** The prospects for adequate protection of the public and the likelihood of deterrence and reasonable rehabilitation of the offender if assigned to services and facilities of the Department of Juvenile Justice.

> **7.** Whether the Department of Juvenile Justice has appropriate programs, facilities, and services immediately available.
>
> **8.** Whether adult sanctions would provide more appropriate punishment and deterrence to further violations of law than the imposition of juvenile sanctions.

§ 985.565(1)(b), Fla. Stat. If the trial court determines to impose juvenile sanctions, the trial court can commit the child to the department for treatment in an appropriate program for children for an indeterminate period of time until the child is 21 or sooner of discharged by the department. § 985.565(4)(b)2., Fla. Stat.

Under the youthful offender sentencing laws, § 958.04(1), Fla. Stat., provides that

> The court may sentence as a youthful offender any person:
>
> (a) Who is at least 18 years of age or who has been transferred for prosecution to the criminal division of the circuit court pursuant to chapter 985;
>
> (b) Who is found guilty of or who has tendered, and the court has accepted, a plea of nolo contendere or guilty to a crime that is, under the laws of this state, a felony if such crime was committed before the defendant turned 21 years of age; and
>
> (c) Who has not previously been classified as a youthful offender under this act; however, a person who has been found guilty of a capital or life felony may not be sentenced as a youthful offender under this act.

Id. Subsection (2) gives the trial court various options in which the trial court shall sentence a defendant as a youthful offender. Id.

In determining the appropriate sentence, the trial court noted Appellant's diagnoses of autism spectrum disorder. The trial court also found that Appellant was 17 years of age at the time of the offense but noted Appellant's prior record of juvenile dispositions involving battery offenses and other instances of aggression and violence. (R. 948) In relying on expert witness testimony the trial court further found that Appellant understands the difference between right and wrong and is capable of controlling his temper and his anger, that violent behavior is not related specifically to an autism spectrum disorder, and that Appellant's response from this incident was not proportional to the triggering event. (R. 950-951)

The trial court found that Appellant does not perform well with transition or change, and as such he would benefit from intensive intervention, stable living environment, routine, repetitive activities, therapeutic intervention, prescription medication, management, and cognitive behavior treatment. (R. 952) The court found that Appellant's violence related to factors outside of the autism spectrum and that Appellant has a lot of triggers such that the frequency and

intensity of violence is likely to increase. Additionally, the court found that based on the testimony of the experts that Appellant will need lifelong treatment. (R. 953)

The trial court determined that Appellant qualified as a youthful offender in this case. However, it has been held that a trial court's decision to impose youthful offender sanctions is discretionary, and it is not an abuse of discretion for a trial court, after reviewing the criteria, to decline to sentence a statutorily qualified person as a youthful offender. See Nolte v. State, 726 So. 2d 307, 309 (Fla. 2d DCA 1998); Bell v. State, 429 So. 2d 403, 404 (Fla. 1st DCA 1983).

In not imposing juvenile sanctions, the trial court expressed the lack of confidence that the DJJ would handle Appellant's case appropriately and that based on expert witness testimony, two years would not provide sufficient treatment. (R. 956)

Appellant contends that the trial court's determination that the DJJ would not handle Appellant's case appropriately is against the weight of the evidence presented. DJJ probation officer Woody Douge, testified of a prepared sentencing report which involved multidisciplinary staffing and included an analysis of Appellant's criminal history, school records, mental health evaluations, and

behavioral assessments, supplemented by a competency evaluation conducted by Amy Kutlik. (R. 885-887)

Based on its review, DJJ determined that Appellant had not yet exhausted all available juvenile rehabilitative services. It was recommended that he be placed in a maximum risk residential facility, the highest level of juvenile correctional treatment available in Florida, based on the nature of his offenses and prior behavioral history (R. 888) Douge testified that Appellant had never been under juvenile probation nor committed to DJJ custody, having previously completed the Juvenile Diversion Alternative Program (JDAP) following two misdemeanor charges in 2019. (R. 889-890)

Douge explained that the maximum risk program consists of an 18 to 36-month commitment in a hardware-secured facility, akin to a prison setting, where youth offenders are monitored and supervised continuously. These facilities are designed for rehabilitation, providing mental health treatment, medication management, behavior intervention, education, and vocational training, with the goal of reintegrating offenders as productive members of society. Available vocational programs include home builder certification, forklift operation, and simulated truck driving instruction. Douge

confirmed that placement could be expedited within a month, with available facilities including Kissimmee Youth Academy, St. Johns Youth Academy, and Cypress Creek, and that if there were issues with behavior the case would return to the court system. (R. 891-897)

There was no contrary evidence that the DJJ program would not have been sufficient to provide for appropriate punishment and deterrence for further violations of law.

Secondly, the trial court's determination that short term DJJ sanctions and treatment (until the age of 21) would not be sufficient treatment for Appellant is not supported by the evidence. While the consensus of the experts was that Appellant's mental disability is a life-long disability, there was no expert testimony that opined that the DJJ high-risk placement until Appellant reached the age of 21 would be insufficient treatment for Appellant. Rather, several, if not all of the experts opined that a structured environment with enforced rules and therapeutic support will mitigate future risks. "whatever environment that may be." (R. 576; 766-767; 863; 874-875)

When examining the factors of juvenile sanctions which the court must consider, the trial court abused its discretion in not

imposing juvenile sanctions. While some factors weigh against Appellant, in that the crime committed was a violent crime against a person, other factors weigh heavily in favor of a juvenile sanction. For instance, it is uncontested that Appellant suffers from autism and other mental health disorders that affect his ability to control his emotions and causes Appellant to react to triggers, such as change.

There was also expert testimony regarding well-established scientific evidence that a juvenile offender biologically and developmentally immature and results in poor executive functioning, impulse control, emotional regulation, and decision-making. Adolescents are neurologically predisposed to react emotionally rather than rationally, often failing to fully appreciate the consequences of their actions. (R. 836-841) When considered together with Appellant's diagnoses, there is sufficient support that there was a lack of sophistication and maturity of Appellant.

Furthermore, there was testimony that the DJJ high-risk placement could be expedited to accommodate Appellant.

Thus, considering the evidence presented, the trial court abused its discretion in not imposing juvenile sanctions.

CONCLUSION

WHEREFORE, based upon the foregoing Appellant contends this Court should vacate the sentence imposed, and remand for resentencing.

Respectfully Submitted,

The Law Office of
ROBERT DAVID MALOVE, P.A.
The Malove Law Building
200 SE 9th Street
Ft. Lauderdale, Florida 33316
appeals@robertmalovelaw.com
Telephone: (954) 861-0384

By: /s/ *Hani Demetrious*
Hani Demetrious, Esq.
FL. Bar No.: 0011848

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this brief was filed with the Florida Court's *e*-filing portal and a copy was thereby served upon the Office of the Attorney General at CrimAppDAB@myfloridalegal.com on this April 23, 2025.

By: /s/ *Hani Demetrious*
Hani Demetrious, Esq.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this computer-generated brief contains 6,551 words typed in Bookman Old Style 14-point font and otherwise complies with the requirements of Rule 9.210(2), Fla. R. App. P.

By: /s/ *Hani Demetrious*
Hani Demetrious, Esq.