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IN THE SUPREME COURT OF FLORIDA

VIRGINIA GAIL LARZELERE,

Appellant,

vs.

STATE OF FLORIDA,

Appellee.

CASE NUMBER 81,793

APPEAL FROM THE CIRCUIT COURT
IN AND FOR VOLUSIA COUNTY, FLORIDA

# REPLY BRIEF OF APPELLANT

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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IN THE SUPREME COURT OF FLORIDA

| | | |
|---|---|---|
| VIRGINIA GAIL LARZELERE,<br><br>Appellant,<br><br>vs.<br><br>STATE OF FLORIDA,<br><br>Appellee. | ) | CASE NUMBER 81,793 |

**REPLY BRIEF OF APPELLANT**

**POINT I**

IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY IMPROPERLY RESTRICTING APPELLANT'S ATTEMPTS TO IMPEACH STEPHEN HEIDLE, THE KEY STATE WITNESS, THEREBY VIOLATING APPELLANT'S CONSTITUTIONAL RIGHTS UNDER THE SIXTH AND FOURTEENTH AMENDMENTS.

Stephen Heidle, the State's key witness, is a liar. Even his own friends did not trust him. The jury never heard the critical evidence about Heidle's horrible reputation among his closest associates. In arguing that the error was harmless, the State exposes Heidle's reputation for what it is. (Answer Brief at 10-11) Heidle had committed perjury (T3332-34,3356-57); he had lied to the police (T3385-87,3389,3392-93,3429-30,3436-37, 3443,3450,3847-48); he had received immunity for his testimony (T3287-88); he had a pending DUI charge (T3280); and he had an illegal identification card for drinking alcohol (T3280).

However, the jury never heard that Heidle's closest friends did not even trust him.

The State points out that, although the trial court never said that bar friends could not a "community" make, but instead focused on the small number of people in this "community" and the short period of time within which they knew and socialized with Heidle. (Answer Brief at 7-8) Bars are generally loud places where people congregate in cliques. The State did not offer or even mention any witnesses who would have contradicted the proffered reputation witnesses.

Appellant understands that a person's general reputation in a community is one established over a period of time and through contacts with many people. However, where a person necessarily limits his own community, that is the reputation that he is stuck with. Heidle was originally from Massachusetts and had moved to Florida as a teenager. He was a young man, not yet of drinking age. (T3280) He did not work during this time period, nor did he go to school. Stephen Heidle spent all of his time with a small crowd that haunted the gay bars of central Florida. These were the people with whom Stephen Heidle spent all of his time. These are the people that knew Stephen Heidle's reputation. These were the **only** people. The trial court abused its discretion in excluding this pertinent evidence that impacted on the credibility of the State's **critical** witness. The trial court should have allowed the jury to weigh this important evidence. A person's reputation must, out of necessity, be based on the

spectrum, however small, of his own associations. Stephen Heidle chose to limit his associates. The defense presented the only community that Stephen Heidle knew. The exclusion of the evidence deprived Virginia Larzelere of a fair trial.

## POINT II

IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT THE TRIAL COURT ERRED IN DENYING THE MOTION FOR MISTRIAL AFTER KRISTEN PALMERI TESTIFIED IN VIOLATION OF THE ORDER IN LIMINE THAT JASON LARZELERE SNORTED COCAINE PRIOR TO HIS STEPFATHER'S FUNERAL.

The State's theory was that Virginia Larzelere and her son, Jason, staged a robbery of the dental office. During the staged robbery, Jason shot Norman Larzelere so that Virginia could collect the life insurance proceeds which she would share with Jason.

On appeal, the State contends that the evidence of Jason's cocaine use prior to Norman Larzelere's funeral had nothing to do with Virginia, but involved only her son Jason. (Answer Brief at 13-14) The State points out that Jason is not the defendant, the victim, or a witness in this case. (Answer Brief at 14)

The State cannot have it both ways. The State put both Jason and Virginia on trial. At Virginia's trial, the jury heard evidence that Jason Larzelere murdered his stepfather for money. A witness described how, in the days following the murder, Virginia and Jason reenacted the shooting and callously laughed. (T4282) Given the State's theory, Appellee cannot now claim that the objectionable evidence impeached **only** Jason and not Virginia. (Answer Brief at 13-14)[1]

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[1] Appellant does not understand the State's distinguishment of Fulton. "Second, the crimes with which Larzelere was charged in Jason's alleged cocaine use were not entirely unrelated." (Answer Brief at 15) Appellant sees no connection between the

Appellant's reliance on Fulton v. State, 335 So.2d 280 (Fla. 1976) is to point out that this Court has recognized "guilt through association" as a working concept in juries. In light of the evidence presented at Virginia's trial, the concept was working overtime. Virginia's son and co-conspirator was snorting cocaine prior to the funeral of the murder victim, his stepfather. The motion for mistrial should have been granted.

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murder of Norman Larzelere and Jason's cocaine use.

## POINT IV

IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT THE TRIAL COURT ERRED IN ALLOWING THE STATE TO INTRODUCE SELECTED PORTIONS OF TAPED STATEMENTS AND REFUSING APPELLANT'S REQUEST TO INTRODUCE THE COMPLETE STATEMENT IN COMPLIANCE WITH SECTION 90.108, FLORIDA STATUTES (1993).

The State claims that Larzelere did not state below, and does not delineate in her Initial Brief, what the excluded portions of the statements would have revealed. (Answer Brief at 28) In so claiming, the State misrepresents the record. When the State attempted to introduce a small portion of a taped, April 4th, telephone conversation between Sergeant Bennett and Virginia Larzelere, the court asked defense counsel what the prejudice would be if he did not require the State to present the entire tape. Defense counsel replied that the State's portion highlights a very small part of a sixty-six page statement. The "inconsistency" that the State was attempting to demonstrate "is greatly outweighed by the overall tone, attitude, and demeanor of Virginia Larzelere with respect to this particular matter." (T5083-87) In essence, defense counsel contends that the content of the excluded portion was not as important as Virginia's tone and demeanor demonstrated by the excluded portion.

The State attempts to make much of the fact that counsel failed to proffer below or demonstrate on appeal what the excluded portions reveal. As stated in the Initial Brief, counsel attempted to obtain a complete transcript of at least one

taped interview by supplementing the record. Unfortunately, the transcript of the tape clearly indicates that only twenty-five pages were transcribed. (SR571) If this Court believes that it is necessary, the Court certainly has more power than undersigned counsel to secure the complete transcripts.

Appellant concedes that the defense did not even attempt to offer the excluded portions during her case-in-chief. She should not have to under Section 90.108, Florida Statutes (1993). Defense counsel obviously wanted the complete statements and recordings introduced contemporaneously in order for the jury to consider the evidence fairly and adequately.[2] We must assume that defense counsel's decision not to introduce the evidence during Appellant's case-in-chief was the correct one. Counsel obviously believed that the damage was done and that introducing the evidence at that point would further compound the disjunction and result in confusion.

A recent case is applicable to this issue. In Johnson v. State, 20 Fla. L. Weekly D910 (Fla. 3d DCA April 12, 1995), the defendant gave an informal statement to the police at the time of his arrest and a second formal statement at the police station. The State introduced the first statement and the trial court refused to allow defense counsel to cross-examine the detective concerning the second, exculpatory, formal statement. Citing

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[2] The State maintains on appeal that the excluded portions were not necessarily admissible under the rules of evidence. (Answer Brief at 27-28) The State did not argue this ground below and cannot now rely on this contention for the first time on appeal.

Section 90.108, Florida Statutes (1993), the appellate court held that the trial court abused its discretion in limiting defendant's cross-examination.

> Although a defendant's out-of-court, self-serving exculpatory statements are usually considered inadmissible hearsay, 'where the State has opened the door by eliciting testimony as to part of the conversation, defendant is entitled to cross-examine the witness about other relevant statements made during the conversation.' Guerrero v. State, 532 So.2d 75, 76 (Fla. 3d DCA 1988).

Johnson, 20 Fla. L. Weekly D910. The appellate court pointed out that, standing alone, the earlier statement left the jury without a complete picture of the defendant's **behavior.** Id. A similar error occurred at Appellant's trial.

## POINT V

IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT THE TRIAL COURT ABUSED ITS DISCRETION BY DENYING APPELLANT'S PRO SE MOTION TO DISCHARGE COUNSEL, THE PRO SE MOTION TO CONTINUE, THE PRO SE MOTION FOR NEW TRIAL, COUNSEL'S MOTION TO WITHDRAW AND ALLOWING SENTENCING TO PROCEED WITH APPELLANT'S ORIGINAL LAWYER.

The State contends that Larzelere does not claim that the trial court did not conduct a sufficient inquiry on this point. Undersigned counsel probably failed to make it clear, but that is at least part of Appellant's claim. Specifically, the trial court should have allowed Appellant to secure the presence of various witnesses to prove the conflict of interest and the allegations in her motion. (T6575-76) In that respect, the trial court's inquiry into Appellant's claims was insufficient.[3]

Appellant concedes that she originally waived one potential conflict and allowed John Howes, Jason's lawyer, to act as co-counsel at her trial. Appellant also concedes that shortly before trial commenced, she ultimately abandoned her attempt to retain substitute counsel for Jack Wilkins. However, it is abundantly clear that she **later** changed her mind.

Virginia's lawyers also attempted to terminate their

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[3] One of Appellant's claims was that Mr. Wilkins had inappropriately taken control of Virginia Larzelere's finances. Since Appellant's trial, Mr. Wilkins, Virginia Larzelere's lead trial counsel, has been indicted in federal court of fourteen counts of perjury, tax evasion, and money laundering. See attached Appendix. Appellant requests that this Court take judicial notice of the attached court record. §§ 90.202, 90.203, and 90.204, Fla. Stat. (1993).

professional relationship with the Appellant. (T6573) Appellant asked for a continuance to secure the presence of various witnesses to prove the conflict of interest and the allegations in her motion. (T6575-76) The trial court would not even allow Virginia time to think about the decision to represent herself rather than proceed with Wilkins and Howes.

It would seem that the trial court was concerned with "delay." The trial court's concern was clearly unwarranted. The hearing on Appellant's motion to discharge counsel was held almost three months prior to a hearing to present mitigating evidence to the trial court alone. (T6567-6619,6614-19,6663-74) At that hearing, Wilkins presented additional grounds to support his renewal of a motion to withdraw. The trial court denied this motion as legally insufficient. On May 11, 1993, **almost a full year** after Virginia filed her original *pro se* motion to discharge counsel, the trial court sentenced Virginia Larzelere to death.[4]

In denying defense counsel's motion to withdraw, the trial court found "no reasonable basis for finding that there is any deterioration of the attorney-client relationship or loss of confidence or trust..." (R598-99,639-45) Appellant insists that there is simply no basis for the court's conclusion in this regard. Both Virginia Larzelere and Jack Wilkins believed otherwise. Similarly, there is no basis for the trial court's

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[4] During this year, Wilkins and Howes were extremely active in their continued representation of the Appellant. Most of the year was consumed by numerous hearings exploring the juror misconduct issue. See Point VI, Initial Brief.

conclusion that Appellant's request to discharge her counsel is untimely. As previously pointed out, Appellant made her request almost **one full year** before her death sentence was pronounced. There was plenty of representation yet to come. The mitigation hearing, the sentencing itself, and the numerous hearings on the jury misconduct were to consume the next year. These were critical stages of the proceedings.

There was absolutely no evidence that Appellant's action was invoked in bad faith. Appellant established a *prima facie* conflict of interest on the record. The very facts of the case reveal the inherent conflict of interest with Jason's defense. If the trial court had allowed it, Appellant was ready, willing, and able to prove the allegations in her motion to discharge counsel. At the very least, the trial court should have allowed the Appellant a brief recess to ponder whether or not she wished to represent herself during the remainder of the proceedings.

## POINT VI

IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT THE TRIAL COURT SHOULD HAVE GRANTED THE MOTION FOR NEW TRIAL WHERE THERE WAS EVIDENCE THAT THE JURY HAD BEEN CONTAMINATED BY EXTRAJUDICIAL INFORMATION.

Appellant feels compelled to reply to the State's allegation that counsel misrepresented the record. (Answer Brief at 47, n.4) One specific question that the State proposed to ask Juror Kelley was whether or not the jury considered the extrajudicial information in deciding the verdict. (T6927) In response, defense counsel cited United States v. Gaffney, 676 F.Supp. 1544 (M.D. Fla. 1987). Gaffney specifically holds that a court may not inquire of a juror how outside information or evidence affected the verdict the jury reached. When the State later argued that Florida law differed from federal law, defense counsel stuck to his guns and maintained that inquiry into the jurors' thought process, i.e., whether extrajudicial information affected their verdict, was improper. (T6952-57) In short, Appellant believes that the record supports her contention that the trial court should not inquire of the other jurors as to how the extrajudicial matters may have played a part in their deliberations.

The State contends in its argument that the trial court understood that matters inhering in the verdict are inviolate and unassailable. The State claims that the trial court limited itself to an inquiry of whether the jurors were aware and, if so,

"whether the extraneous matters entered into their decision making." (Answer Brief at 53) The State then claims that, "At no point in time did the trial court inquire into the jurors' though processes." Id. These two statements appear to be contradictory. How can the trial court inquire whether the extraneous matters entered into their decision making without inquiring into the jurors' thought processes? It is impossible.

## POINT IX

IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT IN VIOLATION OF APPELLANT'S STATE AND FEDERAL CONSTITUTIONAL RIGHT TO DUE PROCESS, THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION TO DISMISS THE INDICTMENT WHERE THE STATE ATTEMPTED TO BUG APPELLANT'S CONVERSATION WITH HER CODEFENDANT.

The State contends that suppression of any illegally obtained evidence is the only proper remedy. The State claims that Larzelere failed to cite one case supportive of her contention that dismissal of the indictment is the correct remedy. (Answer Brief at 66) This statement is simply not true. Appellant cited State v. Kelly, 640 So.2d 231 (Fla. 4th DCA 1994) [trial court did not abuse discretion in finding that dismissal was the only remedy where prosecutor, during evening trial recess, went to defendant's house and "looked around" without notifying defense counsel]; State v. Williams, 623 So.2d 462 (Fla. 1993) [law enforcement's illegal manufacture of crack cocaine for use in reverse-sting operation was such outrageous conduct that the only appropriate remedy was to bar defendant's prosecution]; see also Metcalf v. State, 635 So.2d 11 (Fla. 1994) [same holding as Williams]; and Locke v. State, 588 So.2d 1082 (Fla. 4th DCA 1991) [police officer's conduct in choking suspect to prevent her from swallowing drugs may justify dismissal of indictment].

## POINT XII

IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT THE EVIDENCE, WHICH INCLUDED ADMITTEDLY PERJURED TESTIMONY, IS LEGALLY INSUFFICIENT TO SUPPORT THE GUILTY VERDICTS THUS VIOLATING THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS, AND ARTICLE I, SECTIONS 9 AND 16 OF THE FLORIDA CONSTITUTION.

Appellant **does** contend that the State's evidence of Virginia's involvement in her husband's murder is **completely** circumstantial.[5] Therefore, State v. Law, 559 So.2d 187 (Fla. 1989), does apply.

Appellant strongly disputes the State's contention that insurance policies on the victim's life had accumulated over the years, largely through Larzelere's efforts. (Answer Brief at 75) The evidence clearly shows that **both** Virginia and Norman Larzelere sought out insurance agents to buy numerous policies. The first two policies were purchased almost six years before the shooting, prior even to the Larzeleres' marriage. (T2750-61) These policies were purchased at **Norman's** request. (T2759-60) In 1986, more than four years before the shooting, **Norman Larzelere** bought another life insurance policy. (T2761-67) A few months later, still more than four years before the shooting, Dr. Larzelere bought another life insurance policy, this one for $250,000.00. (T2768-77)

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[5] Appellant regrets the use of the word "almost" in the Initial Brief and is sorry that the State interpreted that word literally as a concession. Appellant did not mean to be taken so literally.

The State's contention that Virginia was responsible for the life insurance policies is not supported by the record. Although Virginia sometimes made the initial contacts with the insurance agents, Norman was a willing buyer. Norman took any required physical examinations. Norman paid the premiums. The Larzeleres bought life insurance policies on Virginia's life as well as the children's lives. (T2828-43) Norman Larzelere was present almost half the time that one insurance agent dealt with the Larzeleres during the application and purchase of life insurance policies. (T2827-43) Another agent testified that Norman was present ten percent of the time that she dealt with the Larzeleres. (T2799-2801)

One must remember that Dr. Norman Larzelere was a busy, practicing dentist and that Virginia Larzelere was his office manager. Virginia took care of the business details while Norman practiced dentistry. This by no means indicates that Dr. Norman Larzelere was unaware of his own life insurance policies. He was an active and willing participant in the purchase of **all** of the insurance policies on his life. Norman bought the $750,000.00 life insurance policy almost six months before the murder. (T2805-11) Norman was especially excited about this policy which was designed to accumulate cash value for his retirement. (T2829-31)

Good estate planning and adequate life insurance are not necessarily evidence that a defendant sought financial gain through murder. See Chaky v. State, 651 So.2d 1169 (Fla. 1995).

Chaky maintained two life insurance policies on his wife, the murder victim. Over the years, he had increased the coverage on a regular basis. That evidence was insufficient to support the aggravating circumstance relating to pecuniary gain.

Additionally, Appellant must correct a glaring mistake that undersigned counsel made in the Initial Brief. Three of Dr. Norman Larzelere's dental patients testified that they did not **knowingly** witness a will. In the Initial Brief, undersigned counsel mistakenly stated that these three witnesses were witness to Dr. Larzelere's will (State's Exhibit #22). (Initial Brief at 11) This was an error. The three witnesses signed **Virginia's** will, **not** Norman's. (T3950-75)

Additionally, Appellant notes that the State failed to address Appellant's Giglio[6] claim. Namely, the prosecutor admitted during closing argument that, despite his testimony to the contrary, Stephen Heidle knew before the fact that Norman Larzelere would be murdered. (T5796) (Initial Brief at 78) Since Appellant's conviction and resulting death sentence rest, in part, on suborned perjury, this Court must reverse.[7]

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[6] Giglio v. United States, 405 U.S. 150 (1972).

[7] Stephen Heidle's testimony was rife with inconsistencies which the prosecutor obviously realized could not be reconciled with the truth. For example, Heidle claimed that he and Palmeri disposed of the murder weapon and a handgun by encasing them in cement and dumping them into the river. However, Heidle's friends testified that they saw him on several occasions in April (one month after he supposedly disposed of the guns) with the aforementioned handgun in his possession. (T5361,5595-96,5657-58) Likewise, Heidle denied meeting Kristen Palmeri prior to the murder. This was clearly a lie as revealed by the testimony of Heidle's good friend, Jennifer Blankenship. (T5532-34)

## POINT XIII

IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT THE TRIAL COURT ERRED IN ALLOWING HEARSAY EVIDENCE OVER OBJECTION THUS VIOLATING APPELLANT'S CONSTITUTIONAL RIGHT TO CONFRONT WITNESSES.

The State recites a litany of evidence that it contends proved a conspiracy independent of Jason's statements. (Answer Brief at 83) All of the evidence cited is circumstantial in nature. At most, the evidence proves a cover-up and does nothing to prove that Virginia Larzelere participated in the murder of Norman Larzelere. This evidence is found especially wanting if one removes Jason's statements and actions. See Nelson v. State, 602 So.2d 550 (Fla. 2d DCA 1992) and Wilder v. State, 587 So.2d 543 (Fla. 1st DCA 1991). See also Chiapponi v. State, 595 So.2d 1042 (Fla. 4th DCA 1992); L.S. v. State, 591 So.2d 1105 (Fla. 4th DCA 1992); Gueits v. State, 566 So.2d 829 (Fla. 4th DCA 1990); and Moore v. State, 503 So.2d 923 (Fla. 5th DCA 1987).

In response to the State's claim that counsel misrepresented the record (Answer Brief at 83, n.14), counsel maintains that the trial court **denied** Appellant's request to modify the limiting instruction. Defense counsel obviously had a change of heart regarding the previously agreed-upon instruction. (T2983-85) Appellant's request was timely, in that counsel spoke up prior to the actual reading of the instruction to the jury. Counsel does not believe that he misrepresented the record.

## CONCLUSION

Based upon the foregoing cases, authorities, policies, and arguments, as well as those set forth in the Initial Brief, Appellant requests this Honorable Court to grant the following relief:

As to Points I through VII, X, XI and XIII, a new trial;

As to Points VIII and XIV, a reduction of Appellant's sentence to life imprisonment; and

As to Points IX and XII, reverse for discharge.

Respectfully submitted,

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

CHRISTOPHER S. QUARLES
ASSISTANT PUBLIC DEFENDER
CHIEF, CAPITAL APPEALS
FLORIDA BAR NO. 0294632
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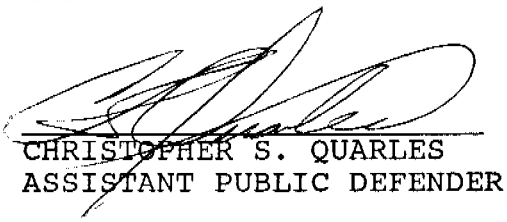
Daytona Beach, FL 32114
(904) 252-3367

ATTORNEY FOR APPELLANT

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed to: Gypsy Bailey, Assistant Attorney General, The Capitol Building, Tallahassee, FL 32399-1050; and to Ms. Virginia Gail Larzelere, #842556 (DR #2), Broward Correctional Institution, P.O. Box 8540, Pembroke Pines, FL 33024, this 10th day of July, 1995.



CHRISTOPHER S. QUARLES
ASSISTANT PUBLIC DEFENDER

IN THE SUPREME COURT OF FLORIDA

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|---|---|---|
| VIRGINIA GAIL LARZELERE,<br><br>Appellant,<br><br>vs.<br><br>STATE OF FLORIDA,<br><br>Appellee. | ) | CASE NUMBER 81,793 |

**A P P E N D I X**

JAMES B. GIBSON
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SEVENTH JUDICIAL CIRCUIT

CHRISTOPHER S. QUARLES
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COUNSEL FOR APPELLANT

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

| | | |
|---|---|---|
| UNITED STATES OF AMERICA | : | |
| | : | |
| v. | : | Case No. 95-26-Cr-T-21(C) |
| | : | |
| JOHN CARLETON WILKINS, III, a/k/a Jack Wilkins | : | |

**INDICTMENT**

The Grand Jury charges that:

**COUNT ONE**

From on or about October 5, 1993, through on or about September 9, 1994, and continuing thereafter, in the Middle District of Florida, the defendant,

JOHN CARLETON WILKINS, III,
a/k/a Jack Wilkins,

did knowingly and willfully corruptly influence, obstruct and impede and endeavor to influence, obstruct and impede the due administration of justice, by withholding, concealing and destroying documents he was commanded to produce by subpoena issued by a Grand Jury of the United States District Court for the Middle District of Florida that was investigating allegations that the defendant, while engaged in the practice of law, engaged in or attempted to engage in tax evasion, structured financial transactions to cause or attempt to cause financial institutions

not to file Currency Transaction Reports, structured monetary transactions to avoid filing and failed to file Internal Revenue Service Forms 8300, and engaged in money laundering.

In violation of Title 18, United States Code, Section 1503.

**COUNT TWO**

1. On or about July 13, 1994, at Tampa, in the Middle District of Florida, the defendant,

JOHN CARLETON WILKINS, III,
a/k/a Jack Wilkins,

while a witness and under oath in a Federal Grand Jury of the United States, did knowingly and willfully make a false material declaration, that is to say:

2. At the aforesaid time and place, the Federal Grand Jury was engaged in an investigation of allegations that the defendant while engaged in the practice of law engaged in or attempted to engage in tax evasion, structured financial transactions to cause or attempt to cause financial institutions not to file Currency Transaction Reports, structured monetary transactions to avoid filing and failed to file Internal Revenue Service Forms 8300 and engaged in money laundering.

3. It was material to the proceeding before the Federal Grand Jury that the defendant produce, pursuant to a subpoena issued by the Grand Jury, certain documents specified therein, including fee invoices and fee receipt books, relating

to fees received for legal services rendered for those individuals specified therein during the time period covered by the subpoena.

4. At the aforesaid time and place, the defendant, JOHN CARLETON WILKINS, III, a/k/a Jack Wilkins, while under oath, did knowingly declare before the Federal Grand Jury with respect to the aforesaid material matter as follows (false testimony underlined):

Q: Are you prepared to produce the original documents that are called for in the subpoena today?

A: Yes.

* * *

Q: Are you certain that all of the documents that are required to be produced have been produced?

A: <u>To the best of my knowledge</u>.

Q: And to your knowledge, are there any documents that were prepared or that are called for by the subpoena that are not among the documents produced today?

A: <u>Not that I know of</u>.

5. The aforesaid testimony of the defendant, JOHN CARLETON WILKINS, III, a/k/a Jack Wilkins, as he then and there well knew, was false, in that (1) he knew that all of the documents required to be produced before the grand jury had not been produced and (2) he knew that certain documents called for

by the subpoena, specifically certain cash fee receipts, were not among the documents produced to the Grand Jury.

In violation of Title 18, United States Code, Section 1623.

**COUNT THREE**

1. On or about July 13, 1994, at Tampa, in the Middle District of Florida, the defendant,

JOHN CARLETON WILKINS, III,
a/k/a Jack Wilkins,

while a witness and under oath in a Federal Grand Jury of the United States, did knowingly and willfully make a false material declaration, that is to say:

2. At the aforesaid time and place, the Federal Grand Jury was engaged in an investigation of allegations that the defendant while engaged in the practice of law engaged in or attempted to engage in tax evasion, structured financial transactions to cause or attempt to cause financial institutions not to file Currency Transaction Reports, structured monetary transactions to avoid filing and failed to file Internal Revenue Service Forms 8300 and engaged in money laundering.

3. It was material to the proceeding before the Federal Grand Jury that the defendant identify the individual or individuals to which certain documents pertained, specifically account cards, produced before the Grand Jury, in order to determine whether the income reportedly received for legal services was actually reported.

4. At the aforesaid time and place, the defendant, JOHN CARLETON WILKINS, III, a/k/a Jack Wilkins, while under oath, did knowingly declare before the Federal Grand Jury with respect to the aforesaid material matter as follows (false testimony underlined):

Q: And that top one is William Schanck, 91-40?

A: That's right.

Q: You say you don't think that pertains to William Schanck?

A: No, I don't.

Q: Do you know who it pertains to?

A: I don't know why that name would be at the top of that card. So the answer to your question is, no, I don't.

Q: Do you know to who this card pertains?

A: Mr. Schanck is not a client. So the answer to your question is no, I don't.

Q: My question is the subpoena requires you to produce documents relating to fees received for legal services rendered for the following individuals, and it names individuals. For which of those following individuals does this card pertain to, to which client?

A: To the best of my knowledge, it would be David Cochran.

Q: David Cochran?

A: But I'm not positive of that. And I don't do those.

5. The aforesaid testimony of the defendant, JOHN CARLETON WILKINS, III, a/k/a Jack Wilkins, as he then and there

well knew, was false, in that (1) he knew that the account card 91-40 did pertain to William Schanck and (2) he knew that the account card 91-40 also pertained to Marnie Conlin, one of the individuals with respect to whom he was required to produce documents relating to fees received for legal services rendered, pursuant to the Grand Jury subpoena.

In violation of Title 18, United States Code, Section 1623.

**COUNT FOUR**

On or about April 16, 1993, at Polk County, in the Middle District of Florida, the defendant,

JOHN CARLETON WILKINS, III,
a/k/a Jack Wilkins,

did knowingly conduct and attempt to conduct a financial transaction affecting interstate and foreign commerce, to wit, the transfer and delivery to and from him of monetary instruments, that is, U.S. currency, which involved the proceeds of a specified unlawful activity, that is, the sale, distribution and otherwise dealing in narcotic or other dangerous drugs, knowing that the transaction was designed in whole or in part to avoid a transaction reporting requirement under federal law, that is, the filing of an Internal Revenue Service Form 8300 required to be filed by a trade or business in connection with a

transaction involving the receipt of U.S. currency in excess of $10,000.00 and that while conducting and attempting to conduct such financial transaction, knew that the property involved in the financial transaction, represented the proceeds of some form of unlawful activity.

In violation of Title 18, United States Code, Section 1956(a)(1)(B)(ii) and 2.

**COUNT FIVE**

In or about April, 1993, at Polk County, in the Middle District of Florida, the defendant,

JOHN CARLETON WILKINS, III,
a/k/a Jack Wilkins,

did knowingly conduct a financial transaction affecting interstate and foreign commerce, to wit, the transfer and delivery to him of monetary instruments, that is, U.S. currency, which involved the proceeds of a specified unlawful activity, that is, the sale, distribution and otherwise dealing in narcotic or other dangerous drugs, knowing that the transaction was designed in whole or in part, to conceal and disguise the nature, location, source, ownership and control of the proceeds of said specified unlawful activity, and that while conducting such financial transaction, knew that the property involved in the financial transaction, that is, monetary instruments in the amount of approximately $90,000.00 represented the proceeds of some form of unlawful activity.

In violation of Title 18, United States Code, Sections 1956(a)(1)(B)(i) and 2.

**COUNT SIX**

On or about June 28, 1993, at Polk County, in the Middle District of Florida and elsewhere, the defendant,

JOHN CARLETON WILKINS, III,
a/k/a Jack Wilkins,

did knowingly conduct and attempt to conduct a financial transaction affecting interstate and foreign commerce, to wit, the deposit of monetary instruments, that is, U.S. currency into a financial institution, knowing that the transaction was designed in whole or in part to conceal and disguise the nature, source, ownership and control of the proceeds of said specified unlawful activity and knowing that the transaction was designed in whole or in part to avoid a transaction reporting requirement under federal law, that is, the filing of a Currency Transaction Report required to be filed by a financial institution in connection with a transaction involving in excess of $10,000.00 and that while conducting and attempting to conduct such financial transaction, knew that the property involved in the financial transaction, that is, monetary instruments in the amount of $7,500.00, represented the proceeds of some form of unlawful activity.

In violation of Title 18, United States Code, Section 1956(a)(1)(B)(i), 1956(a)(1)(B)(ii) and 2.

**COUNT SEVEN**

On or about July 1, 1993, at Polk County, in the Middle District of Florida and elsewhere, the defendant,

JOHN CARLETON WILKINS, III,
a/k/a Jack Wilkins,

did knowingly conduct and attempt to conduct a financial transaction affecting interstate and foreign commerce, to wit, the deposit of monetary instruments, that is, U.S. currency into a financial institution, knowing that the transaction was designed in whole or in part to conceal and disguise the nature, source, ownership and control of the proceeds of said specified unlawful activity and knowing that the transaction was designed in whole or in part to avoid a transaction reporting requirement under federal law, that is, the filing of a Currency Transaction Report required to be filed by a financial institution in connection with a transaction involving in excess of $10,000.00 and that while conducting and attempting to conduct such financial transaction, knew that the property involved in the financial transaction, that is, monetary instruments in the amount of $7,000.00, represented the proceeds of some form of unlawful activity.

In violation of Title 18, United States Code, Section 1956(a)(1)(B)(i), 1956(a)(1)(B)(ii) and 2.

**COUNT EIGHT**

On or about July 7, 1993, at Polk County, in the Middle District of Florida and elsewhere, the defendant,

JOHN CARLETON WILKINS, III,
a/k/a Jack Wilkins,

did knowingly conduct and attempt to conduct a financial transaction affecting interstate and foreign commerce, to wit, the deposit of monetary instruments, that is, U.S. currency into a financial institution, knowing that the transaction was designed in whole or in part to conceal and disguise the nature, source, ownership and control of the proceeds of said specified unlawful activity and knowing that the transaction was designed in whole or in part to avoid a transaction reporting requirement under federal law, that is, the filing of a Currency Transaction Report required to be filed by a financial institution in connection with a transaction involving in excess of $10,000.00 and that while conducting and attempting to conduct such financial transaction, knew that the property involved in the financial transaction, that is, monetary instruments in the amount of $7,000.00, represented the proceeds of some form of unlawful activity.

In violation of Title 18, United States Code, Section 1956(a)(1)(B)(i), 1956(a)(1)(B)(ii) and 2.

**COUNT NINE**

On or about July 14, 1993, at Polk County, in the Middle District of Florida and elsewhere, the defendant,

JOHN CARLETON WILKINS, III,
a/k/a Jack Wilkins,

did knowingly conduct and attempt to conduct a financial transaction affecting interstate and foreign commerce, to wit, the deposit of monetary instruments, that is, U.S. currency into a financial institution, knowing that the transaction was designed in whole or in part to conceal and disguise the nature, source, ownership and control of the proceeds of said specified unlawful activity and knowing that the transaction was designed in whole or in part to avoid a transaction reporting requirement under federal law, that is, the filing of a Currency Transaction Report required to be filed by a financial institution in connection with a transaction involving in excess of $10,000.00 and that while conducting and attempting to conduct such financial transaction, knew that the property involved in the financial transaction, that is, monetary instruments in the amount of $4,500.00, represented the proceeds of some form of unlawful activity.

In violation of Title 18, United States Code, Section 1956(a)(1)(B)(i), 1956(a)(1)(B)(ii) and 2.

**COUNT TEN**

On or about August 11, 1993, at Polk County, in the Middle District of Florida and elsewhere, the defendant,

JOHN CARLETON WILKINS, III,
a/k/a Jack Wilkins,

did knowingly conduct and attempt to conduct a financial transaction affecting interstate and foreign commerce, to wit, the deposit of monetary instruments, that is, U.S. currency into a financial institution, knowing that the transaction was designed in whole or in part to conceal and disguise the nature, source, ownership and control of the proceeds of said specified unlawful activity and knowing that the transaction was designed in whole or in part to avoid a transaction reporting requirement under federal law, that is, the filing of a Currency Transaction Report required to be filed by a financial institution in connection with a transaction involving in excess of $10,000.00 and that while conducting and attempting to conduct such financial transaction, knew that the property involved in the financial transaction, that is, monetary instruments in the amount of $7,500.00, represented the proceeds of some form of unlawful activity.

In violation of Title 18, United States Code, Section 1956(a)(1)(B)(i), 1956(a)(1)(B)(ii) and 2.

**COUNT ELEVEN**

On or about September 2, 1993, at Polk County, in the Middle District of Florida and elsewhere, the defendant,

JOHN CARLETON WILKINS, III,
a/k/a Jack Wilkins,

did knowingly conduct and attempt to conduct a financial transaction affecting interstate and foreign commerce, to wit, the deposit of monetary instruments, that is, U.S. currency into a financial institution, knowing that the transaction was designed in whole or in part to conceal and disguise the nature, source, ownership and control of the proceeds of said specified unlawful activity and knowing that the transaction was designed in whole or in part to avoid a transaction reporting requirement under federal law, that is, the filing of a Currency Transaction Report required to be filed by a financial institution in connection with a transaction involving in excess of $10,000.00 and that while conducting and attempting to conduct such financial transaction, knew that the property involved in the financial transaction, that is, monetary instruments in the amount of $5,000.00, represented the proceeds of some form of unlawful activity.

In violation of Title 18, United States Code, Section 1956(a)(1)(B)(i), 1956(a)(1)(B)(ii) and 2.

**COUNT TWELVE**

On or about September 14, 1993, at Polk County, in the Middle District of Florida and elsewhere, the defendant,

JOHN CARLETON WILKINS, III,
a/k/a Jack Wilkins,

did knowingly conduct and attempt to conduct a financial transaction affecting interstate and foreign commerce, to wit, the deposit of monetary instruments, that is, U.S. currency into a financial institution, knowing that the transaction was designed in whole or in part to conceal and disguise the nature, source, ownership and control of the proceeds of said specified unlawful activity and knowing that the transaction was designed in whole or in part to avoid a transaction reporting requirement under federal law, that is, the filing of a Currency Transaction Report required to be filed by a financial institution in connection with a transaction involving in excess of $10,000.00 and that while conducting and attempting to conduct such financial transaction, knew that the property involved in the financial transaction, that is, monetary instruments in the amount of $3,500.00, represented the proceeds of some form of unlawful activity.

In violation of Title 18, United States Code, Section 1956(a)(1)(B)(i), 1956(a)(1)(B)(ii) and 2.

**COUNT THIRTEEN**

On or about October 5, 1993, at Polk County, in the Middle District of Florida and elsewhere, the defendant,

JOHN CARLETON WILKINS, III,
a/k/a Jack Wilkins,

did knowingly conduct and attempt to conduct a financial transaction affecting interstate and foreign commerce, to wit, the deposit of monetary instruments, that is, U.S. currency into a financial institution, knowing that the transaction was designed in whole or in part to conceal and disguise the nature, source, ownership and control of the proceeds of said specified unlawful activity and knowing that the transaction was designed in whole or in part to avoid a transaction reporting requirement under federal law, that is, the filing of a Currency Transaction Report required to be filed by a financial institution in connection with a transaction involving in excess of $10,000.00 and that while conducting and attempting to conduct such financial transaction, knew that the property involved in the financial transaction, that is, monetary instruments in the amount of $7,500.00, represented the proceeds of some form of unlawful activity.

In violation of Title 18, United States Code, Section 1956(a)(1)(B)(i), 1956(a)(1)(B)(ii) and 2.

**COUNT FOURTEEN**

On or about November 9, 1993, at Polk County, in the Middle District of Florida and elsewhere, the defendant,

JOHN CARLETON WILKINS, III,
a/k/a Jack Wilkins,

did knowingly conduct and attempt to conduct a financial transaction affecting interstate and foreign commerce, to wit, the deposit of monetary instruments, that is, U.S. currency into a financial institution, knowing that the transaction was designed in whole or in part to conceal and disguise the nature, source, ownership and control of the proceeds of said specified unlawful activity and knowing that the transaction was designed in whole or in part to avoid a transaction reporting requirement under federal law, that is, the filing of a Currency Transaction Report required to be filed by a financial institution in connection with a transaction involving in excess of $10,000.00 and that while conducting and attempting to conduct such financial transaction, knew that the property involved in the financial transaction, that is, monetary instruments in the amount of $5,000.00, represented the proceeds of some form of unlawful activity.

In violation of Title 18, United States Code, Section 1956(a)(1)(B)(i), 1956(a)(1)(B)(ii) and 2.

**FORFEITURES**

1. The allegations of Counts Four through Fourteen of this Indictment are realleged and by reference incorporated herein for the purpose of alleging forfeitures, pursuant to the provisions of Title 18, United States Code, Section 982.

2. As a result of the offenses alleged in Counts Four through Fourteen, John Carleton Wilkins shall forfeit to the

United States all property, real and personal, involved in the aforestated offenses and all property traceable to such property.

3. If any of the property described above as being subject to forfeiture, as a result of any act or omission of the defendant --

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to, or deposited with, a third person;

(c) has been placed beyond the jurisdiction of the Court;

(d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 18, United States Code, Section 982(b)(2), to seek forfeiture of any other property of said defendant up to the value of the above forfeitable property, that is, $100,000.00, including but not limited to the following property, more particularly described as:

(a) Real property located at 520 North Crooked Lake Drive, Babson Park, Florida, which legal description is as follows:

Lot 3, Less the East 85 feet thereof, and Lot 4, in Block 7 of CALOOSA TERRACE, according to plat thereof recorded in Plat Book 22, Page 16, public records of Polk County, Florida.

(b) Real property located at 770 E. Main Street, Bartow, Florida, which legal description is as follows:

Begin at the Southeast corner of the NE 1/4 of the SW 1/4 of Section 5, Township 30 South, Range 25 East, run thence South 108 feet, more or less, to the North line of Main Street, thence West along the North line of Main Street 570.4 feet, more or less, to the Southeast corner of Lot 22 in Block 6 of Lytle's Second Addition to Bartow, for point of beginning, run thence North 210 feet more or less, to the South line of Davidson Street, thence East 70 feet, thence South 210 feet more or less to the North line of Main Street, thence West 70 feet to point of beginning, being in the City of Bartow, Polk County, Florida.

All in violation of Title 18, United States Code, Section 982.

A TRUE BILL,

FOREMAN

CHARLES R. WILSON
United States Attorney

By: _____
JEFFREY S. DOWNING
Assistant United States Attorney

By: _____
STEPHEN M. KUNZ
Assistant United States Attorney
Deputy Chief, Criminal Division