

IN THE SUPREME COURT OF THE STATE OF FLORIDA

**THOMAS RIGTERINK,**

Appellant,

v.

CASE NO. SC14-971

**STATE OF FLORIDA,**

Appellee.

\_\_\_\_\_ /

**MOTION FOR REHEARING**

Appellant Thomas Rigterink, pursuant to Rule 9.330 of the Florida Rules of Appellate Procedure, seeks rehearing from this Court’s opinion on April 21, 2016, affirming the circuit court’s denial of relief on all claims. *See Rigterink v. State*, 2016 WL 1592714 (Fla. April 21, 2016). Mr. Rigterink respectfully submits the following for this Court to reconsider its decision:

**I. Facts and Procedural History**

The procedural and factual history in Mr. Rigterink’s case has been set forth thoroughly in this Court’s most recent opinion and Mr. Rigterink’s Initial Brief (“BR”), filed on October 23, 2014, which relies on this Court’s direct appeal opinion for the statement of the facts of the trial. *See Rigterink v. State*, 66 So. 3d 866 (Fla. 2011); *see also Rigterink*, 2016 WL 1592714. Mr. Rigterink respectfully refers this Court to both cases.

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## **II. Under the Sixth Amendment, Counsel was Ineffective at Penalty Phase**

As well-established precedent has repeatedly emphasized, “[t]he primary purpose of the penalty phase is to insure that the sentence is individualized by focusing [on] the particularized characteristics of the defendant. By failing to provide such evidence to the jury, though readily available, trial counsel’s deficient performance prejudiced Cunninghams’ ability to receive an individualized sentence.” *Cunningham v. Zant*, 928 F.2d 1006, 1019 (11th Cir. 1991) (citations omitted); *see also Armstrong v. Dugger*, 833 F.2d 1430 (11th Cir. 1987); *Eddings v. Oklahoma*, 455 U.S. 104, 112 (1982); *Gregg v. Georgia*, 428 U.S. 153 (1976).

This case is a textbook case of ineffective assistance of counsel during penalty phase. Respectfully, Mr. Rigterink submits that the Court failed to acknowledge a case of clear ineffective assistance of counsel resulting in great prejudice to Mr. Rigterink. Mr. Rigterink’s well-documented dependence on drugs provides a powerful mitigating story, *if* properly investigated and presented. Trial counsel, however, failed to take basic steps to investigate that evidence and presented no mitigating evidence related to Mr. Rigterink’s expansive drug history at the penalty phase of his trial. Counsel had ample red flags for an investigation, even apart from the account of counsel’s investigator and mitigation specialist, Rosalie Bolin.

Counsel had been made aware of documented statements by Mr. Rigterink in which Mr. Rigterink acknowledged his lengthy history of drug abuse.

Counsel's failure to investigate mitigation, such as occurred here, has been condemned by the Supreme Court, the Eleventh Circuit, and this Court, and was inconsistent with prevailing professional norms at the time and place of trial. Had trial counsel, David Carmichael and Byron Hileman, done the proper investigation and preparation required by trial counsel in a capital case, it is reasonably likely that Mr. Rigterink, who had two 7-to-5 jury votes for death, would have been sentenced to life, not death. Accordingly, this Court erred in affirming the circuit court's failure to find both deficient performance and prejudice.

**A. This Court Erred in Affirming the Trial Court's Failure to Find Deficient Performance.**

As Mr. Rigterink explained, the Supreme Court has made clear in its decisions from *Strickland v. Washington*, 466 U.S. 668 (1984), through *Sears v. Upton*, 130 S. Ct. 3259 (2010), that the duty to thoroughly investigate and reasonably prepare is fundamental to counsel's role as an advocate. BR. at 20-21. Counsel has "a duty to bring to bear such skill and knowledge as will render the [proceeding] a reliable adversarial testing process." *Strickland*, 466 U.S. at 688. This can only be done if counsel prepares and investigates *thoroughly*. *Williams v. Taylor*, 529 U.S. 362, 397 (2000); *Porter v. McCollum*, 130 S. Ct. at 452; *Cooper*

v. *Sec'y, Dept. of Corrections*, 646 F. 3d 1328, 1351 (11th Cir. 2011); *Johnson v. Sec'y, Dept. of Corrections*, 643 F. 3d 907, 931 (11th Cir. 2011).

Failure to conduct a thorough investigation constitutes deficient performance under *Strickland*. See *Wiggins*, 539 U.S. at 523 (focus is on “whether the investigation supporting counsel’s decisions . . . was *itself reasonable*”) (emphasis original). Counsel may not “ignore[] pertinent avenues for investigation of which he should have been aware.” *Porter*, 130 S. Ct. at 453. Here, this Court and the circuit court erred by not finding trial counsel’s performance at Mr. Rigterink’s penalty phase deficient. This is especially troublesome in light of the Sixth Amendment requirements for trial counsel, and the Supreme Court’s demands of trial counsel in capital cases: investigate thoroughly, provide available information to mental health experts, and make use of the information obtained to prepare and present a case in mitigation.

Here, uncontroverted facts in the record affirmatively establish that trial counsel failed, pursuant to precedents cited above, to reasonably develop and investigate Mr. Rigterink’s significant and expansive *mitigating* history of drug abuse. As stated below, the record establishes that trial counsel was aware of information regarding Mr. Rigterink’s drug abuse that would have led *effective* counsel to conduct further investigation.

### **1. Trial Counsel Failed to Investigate Mr. Rigterink’s Drug Abuse History**

This Court, and the circuit court, erred in discerning that trial counsel had a tactical or strategic reason for failing to investigate Mr. Rigterink's drug abuse history. Though this Court defers to the circuit court's view that trial counsel made a strategic choice not to present Mr. Rigterink's drug abuse history, *Rigterink*, 2016 WL 1592714 at \*16-17, the record indicates otherwise, and it certainly indicates that any such decision was unreasonable, as it was based upon an incomplete investigation. Indeed, the record indicates that Mr. Hileman and Mr. Carmichael failed in their duties as counsel to properly investigate Mr. Rigterink's drug abuse history prior to making the decision to exclude the drug abuse.<sup>1</sup> Though Mr. Carmichael stated that he and Mr. Hileman chose to rely on the *Spencer* hearing to present experts and evidence of Mr. Rigterink's drug abuse, when the time of the *Spencer* hearing approached, trial counsel's motion to appoint an expert was denied as untimely. BR. at 39. Neither attorney attempted to present the testimony of any other experts. *Id.*

Here, the record clearly indicates there was neither an actual strategy nor investigation involved in trial counsel's decision to present Mr. Rigterink's extensive drug abuse history to the jury. As counsel's record testimony indicates:

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<sup>1</sup> As previously noted in Mr. Rigterink's Initial Brief, Mr. Hileman worked as Mr. Rigterink's counsel after the Public Defenders Office was initially appointed. BR. at 1. Mr. Carmichael was later appointed by the circuit court to represent Mr. Rigterink as penalty phase counsel. *Id.*

[W]e did not believe that there was a sufficient basis to say that there was substantial drug use, or some sort of hard or nefarious drug [use] that went beyond what the jury already heard. *They had already heard about the use of marijuana....*I did not get the feel[ing] that the jury in this particular case, after having convicted him...was going to give him some kind of benefit for using drugs when it appeared that drugs were both the cause and the motive for the homicide...and then what actions occurred...afterwards.

*Rigterink*, 2016 WL 1592714 \*16 (emphasis added).

Potentially negative connotations of Mr. Rigterink's drug and alcohol history were not a reasonable basis for failing to investigate and present that evidence, particularly because the jury had *already heard* that Mr. Rigterink abused marijuana. Had trial counsel actually investigated and prepared for Mr. Rigterink's penalty phase, they would have been able to present evidence that would have helped Mr. Rigterink. They would have known the mitigating value of the evidence they ignored or chose to forego. As previously mentioned, and reiterated in this Court's opinion, Mr. Rigterink's sister Mary Dezialo, his ex-wife Catherine Enriquez, his girlfriend Courtney Sheil Betz, *and* his uncle Richard Rigterink could all have testified to Mr. Rigterink's substantial drug abuse. *Id.* at \*9. Though this Court stated that "counsel pursued a reasonable trial strategy that focused on Rigterink's positive attributes, and presented evidence only of his marijuana use," *id.* at \*18, it clear that an in-depth investigation and proper preparation would have likely changed the counsel's presentation at trial. Indeed,

as discussed below, it is likely that trial counsel could have rebutted the heinous, atrocious, and cruel (“HAC”) aggravator found in this case. The Court has stated that the testimony of the above mentioned persons at the evidentiary hearing was “not dissimilar to what counsel already knew with respect to Rigterink’s drug use.” *Id.* at \*18. However, this is erroneous as the evidentiary hearing plainly revealed trial counsel’s lack of investigation into Mr. Rigterink’s expansive drug abuse history.

As mentioned in Mr. Rigterink’s Initial Brief, several doctors and a mental health counselor testified at the evidentiary hearing. Dr. Tracy Hartig, a licensed psychologist initially retained by the Public Defender’s office, noted that Mr. Rigterink suffered from significant substance abuse. BR. at 9. She evaluated Mr. Rigterink *immediately following his arrest*, an evaluation which displayed *increased substance abuse prior to the offense.* *Id.* Dr. Hartig testified that she thought this may have affected Mr. Rigterink’s ability to voluntarily waive his *Miranda* rights. *Id.* Despite this, trial counsel never asked her to assist with preparing mental mitigation for the purpose of the penalty phase. *Id.* at 10. Similarly, Dr. Thomas McClane, a psychiatrist who was consulted before trial, testified that he was aware of Mr. Rigterink’s extensive drug history—including use of marijuana, cocaine, methamphetamine, LSD, and Darvocet—and he wanted to pursue further investigation, including brain studies and examinations on Mr.

Rigterink. *Id.* at 12-13. Trial counsel, however, did not retain Dr. McClane further despite learning of his findings and recommendations. *Id.*

Julie Dantzler, a licensed mental health counselor who met Rigterink prior to the murder, offered similar testimony, including testimony that Mr. Rigterink's fifteen years of drug usage was "rampant and indiscriminate." *Id.* at 12. Additionally, she discovered that Mr. Rigterink *had not been sober for more than a week since he was fifteen years of age.* *Id.* Based on her knowledge of Mr. Rigterink's drug usage, Ms. Dantzler referred Mr. Rigterink to Dr. Jeffrey Hunter prior to the offense in this instant case. *Id.* at 30. Dr. Hunter, who also testified at the evidentiary hearing, testified he had run a drug test on Mr. Rigterink and found amphetamines, opiates, THC, and marijuana in Mr. Rigterink's system. *Id.* Trial counsel never contacted Ms. Dantzler or Dr. Hunter regarding the drug tests or their knowledge of Mr. Rigterink's drug usage. *Id.*

Dr. Harry Krop, a psychologist hired for post-conviction proceedings, and Dr. Daniel Buffington, a clinical pharmacologist also hired for post-conviction proceedings, also testified at the evidentiary hearing. Dr. Buffington reviewed the toxicology results obtained by the State Attorney's Office and the Public Defender's Office immediately following Mr. Rigterink's arrest. *Id.* at 10. Dr. Buffington testified that he believed it would have been helpful for defense counsel to consult a pharmacologist prior to trial, as Dr. Buffington was able to determine

that at the time of Mr. Rigterink's statements to the police, he had hydroxyalazolam, cannabis, *and* Norpropoxyhene in his system. *Id.* Similarly, Dr. Krop administered a "personality assessment inventory" that was consistent with Mr. Rigterink's drug abuse history. *Id.* at 13. He testified that methamphetamine has a "real significant impact on an individual's cognitive and emotional functioning" and that Mr. Rigterink's drug abuse around or at the time of the offense would have been one of "serious emotional disturbance." *Id.* at 13-14.

Furthermore, Rosalie Bolin, an investigator and mitigation specialist hired by Mr. Hileman and Mr. Carmichael, testified that she obtained significant information regarding Mr. Rigterink's extensive drug abuse history and that she provided trial counsel with this information, including her newly discovered knowledge that Mr. Rigterink had suffered from seizures and blackouts previously due to his drug abuse. *Id.* at 33. Though she recommended procuring a pharmacologist and forensic psychologist to assist with mitigation, trial counsel failed to follow this recommendation. *Id.* at 34.

As mentioned before, trial counsel was aware of Mr. Rigterink's drug abuse history. Mr. Hileman admitted he had received the case file from the Public Defender's Office. That office had been initially appointed to represent Mr. Rigterink subsequent to his arrest. The file contained an initial interview of Mr.

Rigterink by an assistant Public Defender written shortly after Mr. Rigterink's arrest. That interview, admitted into evidence at the evidentiary hearing, included a lengthy recounting by Mr. Rigterink of numerous abused substances including marijuana, cocaine, pills and methamphetamine. The Public Defender case file recommended follow-up with a toxicologist and mental health specialist concerning the drug abuse.

Additionally, Mr. Hileman's own retained expert, Dr. McClane, interviewed Mr. Rigterink about his substance abuse and compiled a list of drugs which he documented in his notes, which were also introduced into evidence. That list was very similar to the list already compiled by the Public Defender's Office and by Ms. Bolin and included abuse of marijuana, cocaine, pills and methamphetamine. It also referenced use of methamphetamine by Mr. Rigterink within a two day-two hour period prior to the homicides. The follow-up recommended by Dr. McClane was never pursued.

Mr. Hileman even acknowledged while testifying at the evidentiary hearing that he was aware that Mr. Rigterink had smoked methamphetamine with Ms. Sheil Betz at a time fairly close to the homicides. Yet he admitted he took no steps to pursue that information with her.

Though this Court, along with the circuit court, stated that Rigterink is not entitled to relief regarding trial counsel's failure to investigate his drug abuse history, *Rigterink*, 2016 WL 1592714 at \*17, there is ample testimony and evidence from doctors, mental health experts, and other witnesses who knew Mr. Rigterink that rebuts this finding.

**B. This Court Erred in Finding that Mr. Rigterink was Not Prejudiced by Counsel's Deficient Performance.**

To show that counsel's performance was deficient, Mr. Rigterink must:

Show that but for his counsel's deficiency, there is a reasonable probability he would have received a different sentence. To assess that probability, we consider "the totality of the available mitigation evidence – both that adduce at trial, and the evidence adduced in the habeas proceedings" – and "reweigh[h] it against the evidence in aggravation."

*Porter*, 130 S. Ct. at 453-54 (quoting *Williams*, 529 U.S. at 397-98). The reasonable probability standard is met where counsel's omissions "undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. The penalty phase jury here did not hear mitigating evidence about Mr. Rigterink's expansive drug abuse history, though powerful mitigation was available. Mr. Rigterink was prejudiced because the new evidence would have radically "altered the sentencing profile" presented at trial. *Strickland*, 466 U.S. at 700. When, as here, the jury "hear[] absolutely none of [the available] mitigating evidence," *Porter*, 130 S. Ct. at 454,

there is prejudice if that evidence “might well have influenced the jury’s appraisal of [the petitioner’s] moral culpability,” *Williams v. Taylor*, 529 U.S. at 398.

Indeed, in cases like this, where little or no proper mitigation was presented at trial, the Supreme Court and Eleventh have frequently found prejudice, and even found that state court “no prejudice” findings were an unreasonable application of *Strickland* and its progeny. See *Williams*, 529 U.S. at 369, 397-98 (minimal mitigation presented; state court finding of no prejudice was unreasonable, despite strong prosecution evidence of future dangerousness); *Ferrell v. Hall*, 640 F.3d 1199, 1236 (11th Cir. 2011) (the mitigation testimony was “very sparse” and the jury “heard absolutely nothing about the substantial mitigating evidence” present post-conviction); *Williams v. Allen*, 542 F.3d at 1342 (“The mitigation evidence that Williams’ trial counsel failed to discover paints a vastly difference picture of his background than that created by [his mother’s] abbreviated testimony”); *Brownlee v. Haley*, 306 F.3d 1043, 1070 (11th Cir. 2002) (“Under the facts of this case, we are compelled to conclude that counsel’s failure to investigate, obtain, or present *any* mitigating evidence to the jury, let alone the powerful mitigating evidence of [mental and psychiatric disorders] and history of drug and alcohol abuse undermines our confidence in [the] death sentence.”) (emphasis in the original); *Collier v. Turpin*, 177 F.3d 1184, 1204 (11th Cir. 1999) (finding prejudice where jurors “were not presented with the particularized circumstances

of [petitioner's] past and of his actions on the day of the crime that would have allowed them fairly to balance the seriousness of his transgressions with the conditions of his life."); *Harris v. Dugger*, 874 F.2d 756, 763-64 (11th Cir. 1989) (finding prejudice due to failure to investigate and present mitigating evidence).

But for counsel's deficient failure to investigate, counsel could have presented evidence of both statutory and non-statutory mitigating factors. As Mr. Rigterink previously presented in his Initial Brief, BR. 24-25, in *Hardwick v. Crosby*, 320 F.3d 1127, 1167 (11th Cir. 2003), this Court could have found that the "most significant statutory factor was Hardwick's cognitive ability to conform his conduct to the requirements of law." In that case, the Court found, similar to the circumstances of the current case, that counsel's failure to "present the record evidence at the sentencing phase of Hardwick's drunk and drugged condition resulting from a well-documented, long Christmas weekend binge of drugs and alcohol," together with expert testimony, "kept from the judge and jury knowledge that, at the time of the murder, Hardwick could have lacked the judgment to conform his conduct to the requirement of law." *Id.* As Mr. Rigterink previously summarized from the expert testimony on this topic from the state post-conviction hearing, all of the experts agreed that Mr. Rigterink's chronic drug usage was significant. The only doctor who disagreed with this was Dr. Enrique Suarez, the State's doctor. Dr. Suarez never interviewed Mr. Rigterink nor did he perform and

psychological testing. He ultimately determined he could not diagnose Mr. Rigterink or come to a definite conclusion regarding the effects of methamphetamine. BR. at 17.

The prejudice from Mr. Rigterink's woeful representation is even more troublesome as professionally reasonable counsel could also have used the available evidence to attack and disprove or weaken the aggravating factors found at the penalty phase of Mr. Rigterink's trial. Specifically, counsel could have found that evidence of Mr. Rigterink's drugged state would have undermined or lessened the weight of the HAC aggravator in this case. The evidence about Mr. Rigterink's impairments at the time of the offense was relevant and powerful mitigation because it spoke to the "belief, long held by this society, that defendant who commit criminal acts that are attributable to a disadvantage background, may be less culpable than defendants who have no such excuse." *Penry v. Lynaugh*, 492 U.S. 302, 319 (1989) (quotation marks and citation omitted). And the evidence challenging or undermining the aggravating factors could have been used to lessen the weight on "death's side of the scale." *Stringer v. Black*, 503 U.S. 222, 232 (1992). Further, the post-remand *Hardwick v. Sec'y, Florida Department of Corrections*, 803 F.3d 541 (11th Cir. 2015) decision amply demonstrates counsel's ineffectiveness in failing to develop Mr. Rigterink's substance abuse mitigation. As the Eleventh Circuit held, "evidence of Hardwick's substance abuse would not

have come as a shock to the jurors, further prejudicing them against him. Instead, presenting Hardwick's lengthy history of substance abuse . . . along with the many aspects of his traumatic family background that precipitated it, would have provided the jury with a more complete understand of how Hardwick ended up where he did." *Id.* at 562-63.

In these circumstances, given that without hearing any of the evidence regarding Mr. Rigterink's substantial drug abuse history, the sentencing jury was within a single vote of recommending a life sentence, this Court erred in affirming the circuit court's findings that Mr. Rigterink was not prejudiced by counsel's deficient performance.

**C. This Court Erred in Finding that Trial Counsel Was Not Ineffective in Failing to Object to the State's Inflammatory Remarks During Penalty Phase Closing Argument**

The prosecutor's proper role "is not that it shall win a case, but that justice shall be done." *Berger v. United States*, 295 U.S. 79, 88 (1935). Jurors tend to give great deference to the prosecutor, and improper arguments "are apt to carry much weight against the accused when they should properly carry none." *Berger*, 295 U.S. at 88; *accord Drake v. Kemp*, 762 F.2d 1449, 1459 (11th Cir. 1995) ("Arguments delivered while wrapped in the cloak of state authority have a heightened impact on the jury."). Thus the prosecutor's actions "must be scrutinized carefully." *Drake*, 762 F.2d at 1459 (citing *Berger*). Here, the

prosecutor both introduced inadmissible and highly prejudicial testimony *and* made highly improper arguments at the penalty phase of Mr. Rigterink's trial. The defense counsel failed to object to the State's closing argument, which was more than a loosely-connected series of improper, inflammatory statements. Collectively and individually, these errors deprived Mr. Rigterink of his rights under the United States Constitution and a fair trial.

### **1. Trial Counsel Failed to Object to the State's Remarks**

Despite Section 921.141 of the Florida Statutes specifically delineating the aggravating circumstances that may be considered during penalty phase, the prosecutor improperly made several inflammatory statements in violation of Supreme Court's and this Court's precedent. As previously described in Mr. Rigterink's Initial Brief in this Court, the State argued, *inter alia*:

...there is a second type of evil that emanates from within an individual...It is an evil that is within that person...It's produced by the individual. And its consequences come from the choices that the individual makes without being affected by others. ...That is the type of evil that we're talking about here. When they tell you heinous means extremely wicked or shockingly evil, that's what we're talking about...There were a series of events which gave you an insight, an insight into what's inside Thomas Rigterink, the defendant in this case. There was an insight into the self-centeredness, the lack of appreciation for his conduct on others. There was a—there was manipulation—in fact, lies was part of that manipulation—to his family, to his wife, his parents, his wife, the police, his employer, and he attempted to do it to you. Mr. Rigterink's behavior goes back in terms of

the drug use is—is just an example of doing what he wants without concerned [sic] about the consequences of others. . . Sort of begs the—or doesn't really address the issue of what his wife was doing that time working two jobs. Working two jobs. You know, she is the one that's making the effort here, and there doesn't seem to be any responsible attitude on his part. And the thanks she gets is on September—on May the 3rd she moves out....Infidelity failed—made his marriage fail. And it's this same self-centeredness that caused it, what I want, how I choose to resolve problems that I perceive. That's the self-centeredness that's at the heart of this case...It was an appetite for drugs and the loss of his wife's financial support that caused the theft from The Natives...It's that same self-centered behavior that he doesn't care if somebody else is even giving his a paycheck for his work, he's going to take what he wants.

BR. at 88-89. The prosecutor later characterized Mr. Rigterink as manipulating the jury:

I would suggest to you when he sat in this chair right here, right there, that chair last week and looked at you dead in the eye and said, "God knows what's in my heart, I did not kill these people," I heard him say it and each one of you heard him say it, no drugs were influencing him...That was the product of what evil is within him. It is a product of the same motivation that caused the death of Allison Sousa and Jeremy Jarvis.

*Id.* at 89. This was all so very much over the top, and very improper. Mr. Carmichael admitted that he failed to object to the State's characterization of Mr. Rigterink as "shockingly evil." *Id.* Similarly, Mr. Hileman stated that the State's argument that the murders were a product of the evil within Mr. Rigterink "should be objected to." *Id.* at 90. Ultimately, the State at trial was able to inflame the

passions of the jury by focusing on improper consideration of non-statutory aggravating circumstances, which, as seen at the evidentiary hearing, should have been excluded from the penalty phase. There is no legitimate reason for counsel's failure to object to these errors. Sitting by and letting a capital client be prejudiced by a state actor in this manner does not comply with the Sixth Amendment. See *Cunningham v. Wong*, 704 F.3d 1143 (9th Cir. 2013) (recognizing that ineffective assistance claim may lie where counsel fails to object to prosecutor's egregious statements during closing argument); cf. *Carpenter v. Vaughn*, 296 F.3d 138 (3d Cir. 2002) (counsel ineffective for failing to object to provision of misinformation to the jury); *Starr v. Lockhart*, 23 F.3d 1280 (8th Cir. 1994) (counsel ineffective for failing to object to improper instructions to the jury); *Goodwin v. Balkcom*, 684 F.2d 794 (11th Cir. 1982) (counsel ineffective for failing to file a motion to suppress challenging the government's evidence); *Kimmelman v. Morrison*, 477 U.S. 365 (1986) (same); *Strickland*, 466 U.S. 668 (counsel must bring to bear the skin that will render the jury trial a fair adversarial testing).

### **III. Conclusion**

Mr. Rigterink respectfully seeks rehearing from this Court's opinion on April 21, 2016, which affirmed the circuit court's denial of relief on all claims.

Respectfully submitted,



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### CERTIFICATE OF SERVICE

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been provided to the Office of the State Attorney, Tenth Judicial Circuit, 255 N. Broadway Ave., Bartow Florida 33830 by e-service; and to Scott Browne, Esq., Assistant Attorney General, Office of the Attorney General, Concourse Center 4, 3507 E. Frontage Road., Suite 200, Tampa, FL, 33607-7013 by e-service this 4th day of May, 2016.