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IN THE SUPREME COURT OF FLORIDA

STEVEN J. LORENZO,

Appellant,

Vs.

CASE NO. SC23-0539
LT NO. 16-CF-008779

STATE OF FLORIDA,

Appellee.

_____/

ON APPEAL FROM THE CIRCUIT COURT
OF THE THIRTEENTH JUDICIAL CIRCUIT,
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

INITIAL BRIEF OF APPELLANT

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PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

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PRELIMINARY STATEMENT

The record on appeal contains three electronic volumes and twenty paper volumes. Appellant will refer to the volume containing documents with the prefix, "R," to the supplemental volume containing the pre-trial transcripts with the prefix, "S," and to the volumes of transcripts of the guilt and penalty phase with the prefix, "T," followed by the page number.

STATEMENT OF THE CASE

On June 16, 2017, the State Attorney for the Thirteenth Judicial Circuit in and for Hillsborough County filed an indictment charging Appellant, STEVEN J. LORENZO, with two counts of first-degree murder (R103-105). The State Attorney also filed a Notice to Seek the Death Penalty listing the aggravating factors of prior conviction of capital felony or a felony involving the use or threat of violence; heinous atrocious and cruel; cold, calculated and premeditated; and, capital felony committed while defendant was engaged in the commission of or the attempt to commit sexual battery or kidnapping (R106-107).

At arraignment, Appellant told the trial court he would represent himself (S3287-3288). The trial court conducted a *Faretta*[1] inquiry, and found Appellant's waiver of counsel to be intelligently and voluntarily entered. Over Appellant's objection, the trial court appointed stand-by counsel (S3294-3309). Appellant remained pro se throughout the guilt and penalty phases.

[1] *Faretta v. California*, 422 U.S. 806 (1975).

On November 17, 2022, Appellant filed motions to waive juries in both the guilt and penalty phases of his trial, waive mitigation, and withdrawal of plea and penalty phase (R2197-2231, 2235-2256, 2266-2281). At the hearing on December 2, 2022, the trial court ruled the standby counsel for both the guilt phase and the penalty phase should remain (S4457).

On December 6, 2022, Appellant entered a guilty plea to both charges of first degree murder in a hearing presided over by the Honorable Christopher Sabella, Circuit Judge (R2288-2294; T1-63).

Appellant filed Motion of Mitigation and Objection For Court Consideration At Sentencing (R2298-2444). The penalty trial occurred on February 6 and 7, 2023 where Appellant did not present any mitigation evidence and waived closing argument (T64-558). Defense Mitigation Packet prepared by standby counsel dated March 23, 2020 was entered as Court Exhibit # 2 (R2645-2761; T512).

The trial court held a *Spencer*[2] hearing on February 20, 2023 where Appellant did not offer any additional mitigation evidence,

[2] *Spencer v. State*, 615 So. 2d 688 (Fla. 1993).

and additionally stated that he wanted the death penalty (T560-569).

The final sentencing hearing occurred on February 24, 2023. Again, Appellant stated his wish for the death penalty. The trial court sentenced Appellant (T571-581). In its order, the trial court sufficient evidence to support the aggravator of prior convictions involving violence or the threat of violence, and assigned great weight to this aggravator. It found sufficient evidence of the HAC aggravators to both murders of Mr. Galehouse and Mr. Wachholtz, and gave great weight to this aggravator. As for the CCP aggravator, the trial court again found this aggravator had been proven beyond a reasonable doubt, and assigned it great weight to both murders. Lastly, the trial court found the aggravator of the capital felony committed while the defendant was engaged on the commission of or the attempt to commit sexual battery was proven beyond a reasonable doubt, and assigns great weight to this aggravator with respect to both murders (R2522-2544).

The trial court then considered the mitigating factors put forth by Appellant in his motion: (1) No significant history of prior history-the trial court found Appellant was not entitled to

considered to this mitigating circumstance based upon what it deemed credible testimony from seven alleged victims of criminal activity to each; (2) the victim was a willing participant-the trial court found there was no evidence to support this mitigating factor; (3) Appellant was an accomplice to the capital felony and his participation was relatively minor- the trial court found this was not proven by the greater weight of evidence; (4) Appellant acted under extreme duress or substantial domination of another person- the trial court found this was not proven by the greater weight of the evidence (R2544-2551).

The trial court next considered the mitigation packet presented to the State by Appellant's standby counsel. Upon review of the mitigation packet, the trial court concluded there was not "a reasonable quantum of competent, uncontroverted evidence of mitigation has been presented" with respect to the mitigator of the Appellant's inability to appreciate the criminality of his conduct or to conform his conduct to the requirements of law (R2551-2554). Considering the non-statutory mitigation of a traumatic childhood, the trial court gave it no weight finding that although there was evidence Appellant's father physically abused his mother, there was

no evidence that Appellant suffered any abuse; the trial court gave slight weight to the mitigator Appellant had a wonderful relationship with his mother and siblings; slight weight to the mitigator that Appellant's mother was an alcoholic; no sufficient proof of the mitigation that Appellant was sexually abused; insufficient proof Appellant was a victim of domestic violence; moderate weight to mitigating evidence Appellant was a habitual drug user; slight weight to evidence of Appellant's electrical degree and employment as an electrical technician; slight weight to Appellant's being a good neighbor in tight knit neighborhood; and slight weight to Appellant's good behavior and completion of over 70 programs while in prison (R2555-2560). Upon evaluation and weighing of the aggravating and mitigating factors, the trial court found that the sentence of death was the appropriate penalty for the murders of Mr. Galehouse and Mr. Wachholtz (R2560). This appeal follows.

STATEMENT OF THE FACTS

A. Pre-Trial Hearings and Motions:

At Arraignment, Appellant expressed his desire to represent himself, stating:

> Okay. I'm representing myself. Number 1: I'm not the person on that charging instrument. Number 2. Number 3 is that nobody has the authority to appoint somebody for my representation. I am the owner of that name on that charging instrument. I am the attorney for that name. So I am done with this game that's being played right now. I am the attorney for that. I will represent myself, period.

(S3287-3288). The trial court advised Appellant that certain questions had to be asked to determine whether his decision was made intelligently (S3288). As the trial court began to perform the *Faretta* inquiry, Appellant asked to say a few words (S3290). After receiving a warning regarding self-incrimination from the trial court and appointed counsel, Appellant spoke of invoking his right without prejudice under the Uniform Commercial Code and how he has the right to settle "this commercial matter" any way he wants to (S3291-3294). The trial court responded by advising Appellant the

case was a criminal case, not civil, and that he was charged with two counts of first-degree murder (S3294).

The trial court conducted the *Faretta* inquiry which Appellant answered he understood the risks and limitations of self-representation, and wished to proceed pro se (S3294-3304). After the *Faretta* inquiry, Appellant told the trial court it was a commercial court, and that he owned the rights (S3305). The trial court found Appellant was competent to waive his right to counsel (S3309). However, when asked if he was going to enter a plea to the charges, Appellant responded, "I'm here to settle. I will not plea. There is no reason to plea" (S3309). Standby counsel advised the trial court that it could enter a plea of not guilty in the absence of a plea from Appellant. Appellant stated he did not accept the not guilty plea (S3010).

At the next Pre-Trial Conference on October 30, 2017, the trial court inquired if Appellant still desired to represent himself (S3315). Appellant answered that before continuing, he wanted to make sure his rights were reserved without prejudice under the "Uniform Commercial Code 303 – 308." The trial court asked Appellant if he

understood he was being charged with two counts of capital murder which was first-degree murder (S3315). Appellant replied:

> But do you guys understand the fact, too, that the State and the Court are colluding right now to commit Premeditated Murder on a third-person party, which is me, which you won't even check on the public record to make sure that I'm not the person on the charging instrument. Do you understand that? That is a crime.

(S3316). When the trial court asked whether Appellant understood he had the right to an attorney at no cost, Appellant responded,

> Yes, I do understand that. Did you understand that I wouldn't do that because it's conflict of interest?
>
> THE COURT: All right. Well --
>
> THE DEFENDANT: The State is paying for everything. He's a Bar Association attorney like you are. You all belong to the same club and, no, that's a conflict of interests. No, I cannot be represented by that. I represent the Capital letter name myself. I am the attorney in fact. The public record shows that.
>
> THE COURT: All right.

(S3316). The trial court ordered a competency evaluation based upon Appellant's statements (S3319-3320).

The next pre-trial hearing was on December 4, 2017 (S3324-3348). When the trial court asked whether Appellant

received a copy of the report from Dr. Gamache, stand-by counsel informed the court Appellant did not have a copy, but that stand-by counsel had discussed the report with Appellant (S3325). Appellant acknowledged he did not participate in the evaluation. When asked why, Appellant answered:

> THE DEFENDANT: I've already told you numerous times this Court since we last met received documents showing certified and notified documents showing that I'm not the person on the charging instrument. I don't stand under this Court, sir. I've told you that.
>
> I stand as a secure party creditor as a third party. So I'm not compelled to respond to your demands on something that is designed to take my rights away. I will not do it and that's -- I'm not going to do it.

(S3326-3327). When the trial court inquired of the prosecutor, the prosecutor stated, "The State stands ready to stipulate to the findings of Dr. Gamache for the purposes of a competency determination." (S3327). The trial court found Appellant to be competent based upon the trial court's observations and met acceptable levels under Rule 3.211 (S3328).

The trial court then reminded Appellant of his right to counsel, and Appellant declined (S3329). Appellant was advised he needed

to waive speedy trial before the next disposition in January or the trial had to be on March 19th of 2018 (S3340).

In the hearing on January 4, 2018, Appellant stated he was not satisfied with having the stand-by attorneys (S3352). Appellant made the following argument,

> THE DEFENDANT: Okay. Where we stand right now, I've got two standby attorneys. Both of them are Bar Association Attorneys, right? You're a Bar Association Attorney. Bar Association stands for British Accreditation Registry. It falls under British law. It is a private membership. It is private club, and those that join it become officials of the British government. Whether you believe it or not, that's exactly what it is. That's a foreign jurisdiction. I am not a foreign jurisdiction -- I am a sovereign American. I stand on the United States jurisdiction, not on English jurisdiction.
>
> What I did was, when those people do that, they actually avoid their citizenship, if you read the laws of the United States. Under Title 8, 14 USC, Section 1101(a)(3) under federal law, it says by swearing an oath to a foreign power which is what they' re doing because the government – what the Bar Association is from -- is under British realm of the British empire -- now gives these officials, attorneys and judges, a status of aliens, foreigners. It's a conflict of interest. You can't serve two masters. And that's exactly what you're doing here. On Rule 4(j) of the Federal Rules of Civil Procedures, specifically says that all officials,

> including attorneys and judges, from acting under foreign state. They're operating outside the jurisdiction of the United States. I am a sovereign American, sir. I' m on the soil of the United States. I am not in a foreign jurisdiction. I am not in Britain.
>
> So I demand, as long as I have attorneys that are on record for the defense or working for the Bar or have the loyalties to the Bar, I am in a foreign jurisdiction. I am an admiralty jurisdiction. Jurisdiction of the sea is what it is, and I do not consent to that. I am American, and I want United States citizenship. And I want to maintain my United States jurisdiction. I do not consent to being brought into a foreign jurisdiction. So I ask this court to remove both these gentlemen. It's nothing against these gentleman, but they're absolutely representing a foreign jurisdiction, and I do not recognize that foreign jurisdiction. So as long as they show on the record that they are on the defense, now I am staying in a foreign jurisdiction, and I demand being, and I have the right to be in the United States jurisdiction. So I ask you to remove them generally, immediately.

(S3352-3354). The trial court denied Appellant's motion (S3355). Appellant waived speedy trial (S3357).

At the following pre-trial hearing, Appellant repeated his desire to standby counsel withdrawn from his case:

> Right now, first of all, I reserve all my rights without prejudice under Uniform Commercial

Code 1-308. That's No. 1. No. 2, I am the record holder and due cause to Successor Team trust (phonetic.) And that is a public trust. Now, right now you have two standby attorneys standing on record for the defense. Those two standby attorneys are Bar Association attorneys. The State attorney is a Bar Association attorney. You are a Bar Association attorney. All of you are part of a private membership and have taken an oath under foreign jurisdiction. I do not accept you putting a foreign jurisdiction into an independent right to my own jurisdiction in the defense. You infiltrating into the defense and compromising the defense by doing so. You have a conflict of interest which with this conflict of interest should make these guys -- these two standby attorneys, these two gentlemen to recuse themselves because, first of all, all of you belong to a private club, if that's what you want to call it, a private union with the Bar Association. That's a conflict of interest. I do not belong to that union. I do not belong to that club. And I -- and I do not want that private organization to be part of my defense, not even close. I don't want them on the record. Secondly, these gentlemen here along with the State attorney and you are all getting paid by the same source. That's a conflict of interest. I don't accept that and I don't want that. That's collusion in itself. It has no right to be part of my defense. Nobody should be in my defense that are part of a separate organization like you.

You're trying to control the defense by going in the back door by putting me and giving me some sort of benefit and forcing your jurisdiction on me. I stand in a private

jurisdiction. I stand in my own jurisdiction. You're forcing me to stand under your court.And I do not stand under your court. What you are doing is forcing a harm and injury against my successee state, what do you call it, trust. What you're doing is doing commercial slander and commercial fraud against that trust. You're committing atrocious trespass without just cause and excuse. You're using the color of the law to make it look like I'm getting my due process and I'm not getting my due process.

Self means when self-representation means single. Right now you have three people representing the -- the defense. If I was representing myself, these gentlemen would not be standing at that podium and I'm standing here as a side show. I would be standing at that podium.

If I was representing myself, you wouldn't be discussing the defense with them. You wouldn't have any need to. You would only be discussing it with me. If I was defending myself, these gentlemen wouldn't even be required to be in this courtroom.

With those conflicts of interest, it compels

them to recuse themselves from the defense because they are not representing me the way they should. And I don't mean it in that way, what I mean is they should not be interfering with my right to an independent and free jurisdiction to myself for my own defense.

(S3367-3371).

> What I'm asking right now is for you to put on the record because you keep on trying to go around it, put on the record the -- the jurisdiction of this court. I have a right to have that put on the public record and to show cause for it. And I have a right to have my own jurisdiction to myself not with anybody else interfering. I don't want your benefits. I don't want yourself help. I didn't ask for your help. You are forcing that on me. No law compels me to have to accept your benefits or to accept your help. And I don't accept it and I don't want it. So I'd move this Court to put on the record the jurisdiction and show cause. And I ask this Court to cease and desist on interfering with my right to self-representation. I am not self-representing myself with these gentlemen here. That is not right. And I want this corrected. And I move this Court to dismiss these guys immediately and to allow me to represent myself, period.

(S3371-3372). Standby counsel announced to the trial court Appellant did avail himself to discovery and stated, "we filed the proper pleading." Standby counsel announced that he had the discovery, but Appellant did not because Appellant did not want to keep the discovery at the jail. Standby counsel stated he would go over with Appellant at the jail in light of his motion (S3374).

On March 12, 2018, standby counsel for the penalty phase announced he hired a mitigation expert who already put 300 hours

into the case when he requested the court sign the order for costs nunc pro tunc. Appellant did not object, but stated he was not discussing the case with either standby counsel and did not meet with the mitigation specialist (S3386-3387). Standby counsel for the guilt phase stated he still had the discovery, and offered to go through it with Appellant. Appellant denied the offer stating he was appealing the trial court's denial of his motion to discharge standby counsel (S3388-3889). When standby counsel and trial court discussed a way to make the discovery available to Appellant without meeting with standby counsel, Appellant stated, "I won't accept it" (S3394).

Appellant repeated the prior arguments made against the appointment of standby counsel:

> No. No, just as long as the Court knows that I'm looking to exhaust my administrative remedies. I'm looking to continue on my actions to try to get these gentlemen removed. Until my name is the only one that stands as the person on the defense, I will not rest. Right now the record shows that I have two gentlemen bar associated attorneys for the defense. I do not -- I never asked for them. I never asked for the Court to decide for me who was going to defend me and who wasn't. The defense has a choice to do it himself without

> any help from anybody else and you decided that for me. You didn't give me the choice.

(S3397).

The next pre-trial hearing on May 10, 2018, Appellant offered the following argument in support of his motion to dismiss based upon double jeopardy:

> Well, before I go, I want to first reserve all my rights without prejudice under uniform commercial code 1-308 which includes the right to appeal any and all adverse decisions by this Court that is against the defense.

(S3403-3404). After denying that motion, the trial court inquired about a motion filed upon Appellant's behalf but was not signed by Appellant. Appellant explained the signature was of his sister who was his POA (S3414-3417). Appellant filed a response to an order to show because why the case should not be dismissed for lack of jurisdiction, and argued again the trial court had no jurisdiction based upon the UCC (R259-265, S3419-3427). The trial court noted there was never an order to show cause, and denied the motion (S3428).

Appellant filed a motion to rescind funds for a private investigator (R318-322). He also filed a motion for equal privileges

and access to the court as well as another motion to dismiss standby counsel based on conflict of interest (R310-317, 323-338). The trial court denied the motion to rescind funds for an investigator (S3444). The trial court denied the motion for equal access to the courts reminding Appellant the lack of access was one of the disadvantages of self-represent. (S3449-50).

Appellant filed Appointment of Trustees (R351-362). In the pre-trial hearing held on August 9, 2018, the trial court inquired Appellant what relief was he seeking. Appellant began a lengthy explanation that the prosecutor took out U.S. cash bonds to have him arrested. Appellant stated he handled those bonds, and offered to settle with the State in 2015, but the State went silent. Appellant stated it is a commercial claim (S3463-3464). Appellant further explained:

> And I was able to tangibly capture those bonds and discharge those bonds. That is what Mr. Pruner used as evidence of indebtedness against me and how he arrested me on the debt. That's what he did. I settled those bonds. The State Attorney went silent after I offered, under commercial law of acceptance and silent acquiescence, I proceeded to capture those commercial bonds, and I settled those commercial bonds. I setted [sic] them. I went to the United States Secretary of State,

> and I filed all the paperwork with that, and I filed all the paperwork with the Treasury Department, losing my charge of Treasury account, and those charges have been discharged.
>
> Those bonds have been discharged. And as far as I' m concerned, right now you are holding me against my will for a debt I've already paid. And I'm telling you right now that is exactly what it is. Mr. Pruner's Office is nothing more than a for- profit, revenue generating agency. That's what it is under a corporation. And if you look at your statutes, under the most recent affidavit I just filed, using your own statutes, proves that to be a factor. So right now, debt has been cleared. I have settled my business which is the State of Florida. It is all commercial. I settled it, and I have no other business with the State of Florida. I did this already, and I' m demanding right now that you release me from being in prison under these circumstances.
>
> But I' m not looking for you make a ruling on it. This is a status hearing. I' m just putting -- all of you have been served. I' m telling you, you' vet been served. That's all I did. I had to do this. I had to make sure it was put on record, and it's on record. You can do what you please right now. It's up to you, but you're holding me against my will for a debt that I've already paid.

(S3464-3467). The trial court denied the oral request for release, and informed Appellant again he was charged with two counts of first-degree murder (S3468).

Appellant filed an Affidavit Notice and Demand Supporting Discharge Settlement of Case Release of Lien and Property (R383-414). The trial court addressed this notice in the pre-trial hearing held on October 11, 2018. Appellant explained he wanted to find out what the State was doing about the "settlement" of the case:

> Because I have brought this case into solvency that negated the offense charged on case bonds that were issued under this Indictment, which I put numerous attachments. I' m just showing that a Circuit Court Judge issued financial bonding on this case, and I have a right to be able to know what the State is doing with a case that has already been negated.

(S3481-3482). When the trial court asked what bonds Appellant was referring to, he answered "United States debt securities have been issued in this case" (S3483). The prosecutor responded, "To say that Mr. Lorenzo is, at the very least, is incorrect and probably more appropriately deluded to believe that this is a case about money" (S3484). Again, the trial court explained to Appellant this was a criminal case where he was charged with two counts of first-degree murder (R3485). Then, the prosecutor realized Appellant was referring to the part of the Indictment which concerns a pretrial release bond (S3487). Even though the prosecutor and the trial

court explained to Appellant what that meant, Appellant failed to understand (S3490-3491). Appellant made the same argument referring to the bonds regarding his motion to dismiss under Brady Rule Review (R444-48, S3492-3493-96).

Appellant maintained his argument about U.S. bonds being issued in this case in his motions titled Constitutional Challenge to Obtain Financial Nature of Charges Documents, Motion to Provide and Obtain Remedy for the Steven Lorenzo Trust, Constitutional Motion to be Released Under Double Jeopardy, and Constitutional Motion to be Released Under Imprisonment for Debt as well as in his oral argument made in court on December 6, 2018. All four motions were denied (R489-563, S3512-17).

In the pre-trial hearing held on February 19, 2019, the trial court heard arguments on Appellant's Identification Document for Release. Appellant argued the court did not have jurisdiction over him because the documents attached to the motion show he was not the person named in the indictment, and requested the trial court to take judicial notice of documents from the State of New York, Puerto Rico, and Michigan as well as the Department of Treasury, and IRS (S3558-3563). The trial court denied the motion

(S3568-3569). The trial court heard Appellant's argument on Appellant's Instruction to Court to Discharge and Settle Case:

> What I did was I already offered multiple times to the State of Florida to settle this case with them. Already, this Court has already stated that they rejected it.
>
> But I also produced this document here, the Indictment, and I discharged it myself. I settled it, accept it for value, and I' m asking this Court to discharge and settle this case. I have offered. The State never contested my offer to discharge, but I did offer it. I put it with part of my attachments to this that showed that I offered to do so, and that they did not counter me. So on acquiescence means it was okay to do so.
>
> So what I did was I took the case bonds that show up on the signature page of this Indictment, and I discharged them through the United States Government, which is public information. That can be found on the public records and laws.

(R601-633; S3583-3587). The trial court denied the Instruction repeating the case was not a commercial case, and bonds and debts were irrelevant (S3587-3588). Appellant made the same argument in his document titled Identification Documentation for Release of Steven Lorenzo (R634-650; S3588-3590). The trial court denied the motions (S3591).

In the pre-trial hearing held on February 28, 2020, the trial court conducted a complete *Faretta* inquiry where Appellant answered he understood the charges against him. The trial court found Appellant's waiver of counsel to be knowing, intelligent and voluntary (S: 3819-3828). Appellant argued his 25 motions for the penalty phase mostly with the same phrase that he would rely on the motions as written with little or no rebuttal to the State's argument. Standby counsel for the penalty phase would interject to explain or clarify arguments (S3828-3909). Yet, Appellant signed the motions as the "secured party," or "secured party and holder in due course and sole beneficiary to the Steven Lorenzo Trust" citing UCC-308 (R1110-1313). Although the trial was scheduled to begin on April 20, 2020, Appellant announced he had not taken any depositions saying, "I'm not going to be doing any depositions. I'm not worried about that" (S3762, 3911).

In the pre-trial hearing held on July 10, 2020, Appellant identified himself prior to the *Faretta* hearing:

> THE DEFENDANT: Okay. Steven Lorenzo. I'm representing the interested of the fiction called Steven Lorenzo and I'm not the person on the charging instrument but I'm representing his interest, yes.

(S3953). The trial court did not conduct a full Faretta inquiry in the pre-trial hearing held on October 16, 2020 (S3989-3990).

Appellant filed a motion requesting a review of all the rulings made by the prior judge, Judge Mark Kiser. In this motion, Appellant reiterated his argument he was acting as the fiduciary to the Steven Lorenzo Trust and that the court lacked jurisdiction because the commercial bonds had been paid (R1418-1469). The trial court denied the motion to revisit prior rulings made by the previous judge (R1501-1503; S4039-40).

During the pre-trial hearing held on February 26, 2021, the trial court was considering whether to grant Appellant's motion to continue based upon his claim that the State turned over 30,000 pages of discovery regarding the co-defendant, Mr. Schweickert, days before the status hearing on January 29, 2021 which Appellant did not request because he had no knowledge of the documents. The State argued the documents were sent in response to standby counsel's email or letter on behalf of Appellant. Upon further search of his computer, the prosecutor realized the request was made by an email from standby counsel which Appellant was not copied on. Then, standby counsel remembered he asked for the

discovery materials regarding Mr. Schweickert based upon information obtained from the investigators who were not permitted in the jail due to Covid. Standby counsel admitted to forgetting to cc Appellant (R1640-1649; S4097-4103). In response, the trial court ordered standby counsel to only facilitate the copying of the documents for Appellant, but prohibited standby counsel from filing anything on behalf of Appellant or corresponding with the State by email, and extended the Pre-Trial Motion Cut Off Date to March 19, 2021 (R1653-1654; S4108).

On March 8, 2021, Appellant filed a Pro Se Motion to Compel Public Access Reports under Section 119.07(1) of Florida Statute to gain records of "court ordered bonds" referenced in the charging document which he claimed he "satisfied" (R1685-1731). In the pre-trial hearing held on April 16, 2021, Appellant referred to this motion arguing:

> The other thing was, is the bonds that show up on the signature page of the charging instrument. That is public access record, it's public domain record, it can be found on any computer if you know what website to go to, but I don't have a computer and access to have it. That is mitigating evidence in favor of the defense and I'm wanting that evidence for mitigation purposes.

> Now, The Court doesn't have the authority to tell something that's in favor of the defense that they can't put it in as mitigating evidence. So that is what I'm looking for this evidence for, because I discharged the judgment and sentence bonds or the death penalty bonds, I did that through the federal government. The government did it. And you won't acknowledge it, but that's fine and well and dandy, that's okay, but I have a right to use that as mitigating evidence that I stepped up to settle this case, and those bonds will show that they have been settled.
>
> Now, that's -- the court itself put those bonds on the face of the charging instrument. Under *Gardner v. State of Florida*, it specifically says you cannot conceal evidence, otherwise, it's a remand back for a new trial.

(S4187-4188). When the trial court stated he understood the issue regarding the bond was a scrivener's error and thus no bond existed, Appellant further argued:

> Well, it does exist because I physically obtained those. I hired brokers, federal certified brokers, that took these bonds, physically recalled these bonds and discharged them. There's a signature on the charging page of the -- signature page of the charging document that a circuit court judge issued the bonds specifically signed stating that to issue bonds on this case.

(S4189). The prosecutor and the trial court discussed the possibility Appellant was confused by the mistaken checked box on

the second page of the indictment indicating a jail bond was issued (S4190-4193). However, Appellant continued to assert he was not referring to a jail bond, but a bond issued under federal law to settle cases:

> There are two types of bonds. There is a bond that you bond out on, that's what Mr. Pruner [the prosecutor] is talking about, that's not what these are. It wouldn't show up on the charging instrument. Plus, I also already have a 200-year sentence. Nobody is going to give me a bond, that wouldn't be checked off that way. These are different bonds. If you look at my motion that I gave and put in appointment of trustee, it specifically spelled out the federal statutes and what actions I took and what federal law required to discharge a case bond. That's what was done.

(S4194). When the trial court asked how Appellant expected the prosecutor to have access to those bonds, Appellant answered:

> I put them on the public access record because it specifically shows I already put the Florida statute, it shows Mr. Pruner handles all financial aspects of a case. It's the State Attorney, so he would have it. Or since it was issued by the circuit court judge, the clerk of court would probably have it or the administrative side of the court would have it. It was signed by a circuit Court judge. I didn't know who would have it, so I put it to both of them. That's why it's public access record. It shows on the charging instrument, it's there. You can't deny it's not there.

(S4195-4196). The trial court denied Appellant's motion (S4196).

At the pre-trial hearing held on January 21, 2022, the State announced it would continue to seek the death penalty. Appellant announced he was withdrawing his offer (S4354). Appellant further stated:

> Because as far as I'm concerned, this -- the defense is giving up too many comforts and, what do you call it, benefits by the State withdrawing the death penalty. So we don't want to withdraw the death penalty. I already made that clear in the mitigation.

(S4354-4355).

On February 2, 2022, Appellant filed a motion titled "Defense Mitigation Rejection Notice" which referred to the State's rejection of his offer to plea no contest to both charges of capital murder in exchange for a life sentence. In Paragraph D of the part labeled "Detailed Feedback," Appellant stated "the Defendant actually preferred that the death penalty claim remain on the table." He then characterized the offer as the State's "counter offer" to lift the death penalty in exchange for information about other additional victims in Paragraphs I and J. In the "Final Notice" section of the motion, Appellant warns that by rejecting to choose the life

sentence over the death sentence, the prosecutors have put their souls in "spiritual harm" which must be "paid in kind" (R2142-2158).

On November 17, 2022, Appellant filed motions to waive juries in both the guilt and penalty phases of his trial, waive mitigation, and withdrawal of plea and penalty phase (R: 2197-2231, 2235-2256, and 2266-2281).

B. Guilt Phase:

During the plea hearing, the trial court asked standby counsel for both the guilt phase and the penalty phase whether they had concerns about Appellant's competency to represent himself, and counsel answered they did not (T18-19). The State recited the factual basis. In sum, the facts were that Appellant and Mr. Schweickert met online in October of 2003, and shared in messaging chats their mutual desire to drug and forcibly engage in dominant sex of unsuspecting young men. On December 19, 2003, they met at Appellant's house, and later went to Club 2606. It was there, Appellant and Mr. Schweickert met Jason Galehouse and Michael Wachholtz, the victims, and invited them to Appellant's

house. Appellant and Mr. Schweickert met Mr. Galehouse first, and gave him a ride to Appellant's house where he was killed. Afterward, Mr. Schweickert assisted Appellant in dismembering Mr. Galehouse's body and disposing of the body parts in separate dumpsters in the neighborhoods (T31-36).

Then, Appellant and Mr. Schweickert met Mr. Wachholtz at Club 2606. Mr. Wachholtz drove his Jeep to Appellant's house. Appellant gave Mr. Wachholtz a drink that rendered him helpless in defending himself in the sexual assault and killing by both Appellant and Mr. Schweickert. Appellant and Mr. Schweickert wrapped Mr. Wachholtz's body in a sheet, and placed the body in the cargo area of Mr. Wachholtz's Jeep. Mr. Schweickert drove Mr. Wachholtz's Jeep, following Appellant, to a parking lot where the Jeep was found on January 6, 2004 (T36-39).

Appellant agreed with the State's recitation of the factual basis but stated he did not dismember Mr. Galehouse's body (T41, 46). The trial court found there was a sufficient basis for the plea, and accepted Appellant's plea on the two counts of first-degree murder as being free and voluntary (T47).

C. Penalty Phase

At the hearing on December 6, 2022, the trial court announced the mitigation specialist it intended to use was not available, and wanted to appoint another one within 30 days. Standby counsel advised the trial court finding someone to complete the investigation within that timeframe was not possible due to the backlog of cases caused by Covid. The prosecutor also advised the trial court Appellant expressed his desire not to have any further mitigation than what he had already been presented in his motion. Appellant, standby counsel and the State suggested that the complete pre-disposition report would be sufficient. Appellant agreed with the prosecutor (T47-54). However, moments later, Appellant asked the trial court whether the mitigation packet assembled by standby counsel was going to be considered by the trial court, and the trial court answered it had to weigh it:

> THE DEFENDANT: Yes. So the mitigation packet, the mitigation that my mitigator put together, none of that is going to be used? That's all I'm asking.
>
> THE COURT: It will be considered. I have to weigh it.

> THE DEFENDANT: For my mitigator?
>
> THE COURT: I have to weigh it against the aggravating circumstances.
>
> THE DEFENDANT: Oh. So you are going to use what I'm asking not to be used?
>
> THE COURT: Yes, I have to.
>
> THE DEFENDANT: I'm not down with that.
>
> THE COURT: I will listen to -- I will give you an opportunity representing yourself to make argument to me as to what the appropriate sentence is and I will greatly consider that.
>
> THE DEFENDANT: Okay. Because the law specifically says that if I don't want any mitigation -- that was put together for me personally. Now, if the State wants to or the Court wants to do it independently, they need to do their own investigation.

(T61). In the penalty phase trial on February 7, 2023, the trial court ordered standby counsel to put the mitigation packet prepared by standby counsel in to evidence (T434).

SUMMARY OF THE ARGUMENT

Issue I:

The trial court violated Appellant's right to a fair trial under the Sixth and Fourteenth Amendments by allowing Appellant to proceed pro se when it was abundantly clear he did not understand the nature of the proceedings against him as evidenced by his arguments that the case was commercial, he satisfied the "commercial bonds," and that the trial court lacked jurisdiction over him. The trial court had an independent responsibility to ensure Appellant received a fair trial, and was competent to understand the nature of the proceedings. The trial court failed to carry out this responsibility by failing to appoint an attorney to represent Appellant, and thus violated Appellant's right to a fair trial. This Court must reverse Appellant's judgment and sentence, and remand for a new guilt and penalty phase.

Issue II:

The trial court violated Appellant's rights under the Sixth, Eighth Amendments by ordering standby counsel to submit into evidence the mitigation packet he prepared when Appellant fervently objected to the admission of that mitigation evidence. The

U.S. Supreme Court and this Court have repeatedly affirmed the right of a capital defendant to control what, if any, mitigation evidence is admitted on their behalf. Since the trial court considered the evidence contained in that mitigation packet over Appellant's objection, this Court must reverse Appellant's judgment and sentence, and remand for a new penalty phase with a different judge.

ARGUMENT

I. WHETHER THE TRIAL COURT VIOLATED APPELLANT'S RIGHT TO A FAIR TRIAL GUARANTEED BY THE SIXTH AMENDMENT BY ALLOWING HIM TO REPRESENT HIMSELF DESPITE HIS LACK OF UNDERSTANDING OF THE PROCEEDINGS?

The standard of review for this issue is abuse of discretion. *Larkin v. State*, 147 So. 3d 452 (Fla. 2014). The right of self-representation may be exercised only by a defendant who is competent and makes a knowing and voluntary waiver of counsel. *Faretta v. California*, 422 U.S. 806 (1975). "Under the United States Supreme Court's ruling in Faretta, an accused has the right to self-representation at trial. A defendant's choice to invoke this right 'must be honored out of that respect for the individual which is the lifeblood of the law.'" *Tennis v. State*, 997 So. 2d 375, 377-378 (Fla. 2008) (internal quotation marks omitted) (quoting *Faretta*, 422 U.S. at 834). "[T]he Sixth and Fourteenth Amendments include a 'constitutional right to proceed without counsel when' a criminal defendant 'voluntarily and intelligently elects to do so.'" *Indiana v. Edwards*, 554 U.S. 164 (2008) (quoting *Faretta*, 422 U.S. at 807).

However, the trial court can deny an unequivocal request for self-representation when there is a determination that the defendant "suffer[s] from a severe mental illness to the point where the defendant is not competent to conduct trial proceedings by himself or herself." Fla.R.Crim.P. 3.111(d)(3). The test for determining competency is whether the defendant "has the present ability to consult with his lawyer with a reasonable degree of rational understanding- and whether he has a rational as well as factual understanding of the proceedings against him." *Dusky v. United States*, 362 U.S. 402 (1960).

The competency standard for pleading guilty or waiving the right to counsel is the same as the basic *Dusky* competency standard for standing trial. *Godinez v. Moran*, 509 U.S. 389, 396-397 (1993). That competency standard "has a modest aim: It seeks to ensure that [defendants have] the capacity to understand the proceedings and to assist counsel." *Id.* at 402. In *Edwards*, the Court wrote, "….insofar as a defendant's lack of capacity threatens an improper conviction or sentence, self-representation in that exceptional context undercuts the most basic of the Constitution's

criminal law objectives, providing a fair trial." *Edwards*, 564 U.S. at 176-177.

In the case at bar, Appellant showed a clear lack of understanding of the proceedings when he argued that pursuant to the Uniform Commercial Code (UCC), the case should be dismissed because he had satisfied the "commercial bonds." Appellant made this argument at his Arraignment. As the trial court began to perform the *Faretta* inquiry, Appellant asked to say a few words (S3290). Appellant spoke of invoking his right without prejudice under the Uniform Commercial Code and how he has the right to settle "this commercial matter" any way he wants to (S3291-3294). The trial court responded by advising Appellant the case was a criminal case, not civil, and that he was charged with two counts of first-degree murder (S3294).

The trial court conducted the *Faretta* inquiry which Appellant answered he understood the risks and limitations of self-representation and wished to proceed pro se (S3294-3304). After the *Faretta* inquiry, Appellant told the trial court it was a commercial court, and that he owned the rights (S3305). The trial court found Appellant was competent to waive his right to counsel

(S3309). However, when asked if he was going to enter a plea to the charges, Appellant responded, "I'm here to settle. I will not plea. There is no reason to plea" (S3309).

Clearly, Appellant was not capable of understanding the proceedings against him; however, the trial court ignored Appellant's lack of understanding that the proceedings were criminal and not civil. Appellant continued to make this same argument throughout the pretrial period from his arraignment on September 27, 2017 through April 16, 2021. At one point, Appellant even argued the trial court lacked jurisdiction:

> Those two standby attorneys are Bar Association attorneys. The State attorney is a Bar Association attorney. You're a Bar Association Attorney. Bar Association stands for British Accreditation Registry. It falls under British law. It is a private membership. All of you are part of a private membership and have taken an oath under foreign jurisdiction. I do not accept you putting a foreign jurisdiction into an independent right to my own jurisdiction in the defense. You infiltrating into the defense and compromising the defense by doing so. You have a conflict of interest which with this conflict of interest should make these guys -- these two standby attorneys, these two gentlemen to recuse themselves because, first of all, all of you belong to a private club, if that's what you want to call it, a private union with the Bar Association. That's a conflict of

> interest. I do not belong to that union. I do not belong to that club. And I -- and I do not want that private organization to be part of my defense, not even close. I don't want them on the record. Secondly, these gentlemen here along with the State attorney and you are all getting paid by the same source. That's a conflict of interest. I don't accept that and I don't want that. That's collusion in itself. It has no right to be part of my defense. Nobody should be in my defense that are part of a separate organization like you.
>
> You're trying to control the defense by going in the back door by putting me and giving me some sort of benefit and forcing your jurisdiction on me. I stand in a private jurisdiction. I stand in my own jurisdiction. You're forcing me to stand under your court.And I do not stand under your court. What you are doing is forcing a harm and injury against my successee state, what do you call it, trust. What you're doing is doing commercial slander and commercial fraud against that trust. You're committing atrocious trespass without just cause and excuse. You're using the color of the law to make it look like I'm getting my due process and I'm not getting my due process.

(S3367-3371).

Appellant's irrational arguments concerning civil law were sufficient to trigger the trial court's obligation to question Appellant's competency to represent himself. This Court wrote in *State v. Dortch*, 317 So. 3d 1074, 1080 (Fla. 2021):

> We have long recognized that rule 3.210 establishes the procedures through which Florida complies with the mandate of *Drope* and *Pate*[3] and protects a defendant's right not to be proceeded against while incompetent. See *Lane v. State*, 388 So. 2d 1022, 1025 (Fla. 1980). In *Lane* we explained that "[t]he law is now clear that the trial court has the responsibility to conduct a hearing for competency to stand trial whenever it appears reasonably necessary, whether requested or not, to ensure that a defendant meets the standard of competency set forth in Dusky." *Id*.
>
> Consistent with *Drope* and *Pate*, rule 3.210(b) requires a hearing when the trial court "has reasonable ground to believe that the defendant is not mentally competent to proceed."
>
> …Given the text of the rule, and reading the rule in light of *Drope* and *Pate*, the "reasonable ground" test is an objective one that looks at the information available to the trial court at the relevant time in the proceedings.

The information available to the trial court in the case at bar was Appellant who was a pro se defendant in a death penalty case arguing civil commercial law for approximately five years. On all of his pleadings, Appellant signed his name as the "secured party," or

[3] *Pate v. Robinson*, 383 U.S. 375, 378 (1966).

"secured party and holder in due course and sole beneficiary to the Steven Lorenzo Trust" citing UCC-308 (R1110-1313).

With regards to the penalty phase, Appellant continued to show a lack of understanding of the proceedings. At the pre-trial hearing held on January 21, 2022, the State announced it would continue to seek the death penalty. Appellant announced he was withdrawing his offer (S4354). Appellant further stated:

> Because as far as I'm concerned, this -- the defense is giving up too many comforts and, what do you call it, benefits by the State withdrawing the death penalty. *So we don't want to withdraw the death penalty*. I already made that clear in the mitigation.

(S4354-4355) (emphasis added). Appellant's statements clearly do not make sense, and clearly show he did not understand. Even though the State announced it would continue to seek the death penalty, Appellant announced he was withdrawing his offer (to plea) because he did not want the death penalty withdrawn which was exactly what the State had just announced.

Moreover, On February 2, 2022, Appellant filed a motion titled "Defense Mitigation Rejection Notice" in which he stated his desire for the death penalty, but then shows his anguish at the State's

rejection of his offer to plea no contest to both charges of capital murder in exchange for a life sentence. In Paragraph D of the part labeled "Detailed Feedback," Appellant stated "the Defendant actually preferred that the death penalty claim remain on the table." He then characterized the offer as the State's "counter offer" to lift the death penalty in exchange for information about other additional victims in Paragraphs I and J. In the "Final Notice" section of the motion, Appellant warns that by rejecting to choose the life sentence over the death sentence, the prosecutors have put their souls in "spiritual harm" which must be "paid in kind" (R2142-2158). In addition to the conflicting statements regarding his wish for a life sentence or a death sentence, Appellant referenced a counteroffer from the State to agree to a life sentence in exchange for information about other victims where there is no other reference to such an offer in the record.

The trial court failed to protect Appellant's right to a fair trial guaranteed by the Sixth and Fourteenth Amendments of U.S. Constitution by allowing him to represent himself when there was an overabundance of evidence of his lack of understanding of the proceedings against him. Therefore, this Court must reverse

Appellant's judgment and sentence in light of Appellant's incompetence to represent himself.

II. WHETHER THE TRIAL COURT ABUSED ITS DISCRETION TO CONSIDER THE MITIGATION REPORT COMPOSED BY STANDBY COUNSEL AFTER ACCEPTING APPELLANT'S WAIVER OF MITIGATION EVIDENCE OTHER THAN WHAT HE PRESENTED?

The issue of whether the trial court had the legal authority to consider the mitigation packet prepared by standby counsel over Appellant's objection is a pure question of law that is subject to de novo review. *Knight v. State*, 286 So. 3d 147, 151 (Fla. 2019). The trial court consideration of this evidence violated Appellant's constitutional rights under the Sixth, Eighth, and Fourteenth Amendments of the U.S. Constitution and Article 1, sections 2 and 9 of the Florida Constitution. "Violation of a defendant's Sixth Amendment-secured autonomy ranks as error of the kind our decisions have called 'structural'; when present, such an error is not subject to harmless-error review." *McCoy v. Louisiana*, 138 S.Ct 1500, 1511 (2018). The error is preserved by Appellant's contemporaneous objections that were acknowledged by the trial court, but even if it had not been preserved, the violation of

Constitutional rights that occurred here is the type of error that would still require reversal.

The defendant's right to proceed pro se "encompasses certain specific rights to have his voice heard." *McKaskle v. Wiggins*, 465 U.S. 168, 174 (1984). "The pro se defendant must be allowed to control the organization and content of his own defense, to make motions, to argue points of law, to participate in voir dire, to question witnesses, and to address the [C]ourt and the jury at appropriate points in the trial." *Id.* This Court has held that capital defendants, both pro se and those represented by counsel, have the right to control what mitigation evidence is presented:

> Competent defendants who are represented by counsel maintain the right to make choices in respect to their attorneys' handling of their cases. This includes the right to either waive presentation of mitigation evidence or to choose what mitigation evidence is introduced by counsel. See, e.g., *Boyd v. State*, 910 So.2d 167, 189–90 (Fla.2005) ("Whether a defendant is represented by counsel or is proceeding pro se, the defendant has the right to choose what evidence, if any, the defense will present during the penalty phase."). Defendants also have the right to proceed pro se in capital trial proceedings. See, e.g., *Durocher v. Singletary*, 623 So.2d 482, 483 (Fla.1993) ("Competent defendants have the constitutional right to refuse professional counsel and to represent

> themselves, or not, if they so choose.") (citing *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975); *Hamblen v. State*, 527 So.2d 800 (Fla.1988)). We have also held that a capital defendant has the right to withdraw Florida Rule of Criminal Procedure 3.850 motions filed on the defendant's behalf. See *Sanchez–Velasco v. State*, 702 So.2d 224 (Fla.1997) (affirming postconviction court's allowing defendant to withdraw his rule 3.850 motion and affirming postconviction court's dismissal of collateral counsel). "[T]he defendant, not the attorney, is the captain of the ship." *Nixon v. Singletary*, 758 So.2d 618, 625 (Fla.2000) ("Although the attorney can make some tactical decisions, the ultimate choice as to which direction to sail is left up to the defendant.").

Hojan v. State, 3 So. 3d 1204, 1211 (Fla. 2009).

In the case at bar, Appellant wanted the trial court to only consider the mitigation he himself prepared. At the hearing on December 6, 2022, the trial court announced the mitigation specialist it intended to use was not available, and wanted to appoint another one within 30 days. Standby counsel advised the trial court finding someone to complete the investigation within that timeframe was not possible due to the backlog of cases caused by Covid. The prosecutor also advised the trial court Appellant expressed his desire not to have any further mitigation than what

he had already been presented in his motion. Appellant, standby counsel, and the State suggested that the complete pre-disposition report would be sufficient (T47-54). However, moments later, Appellant asked the trial court whether the mitigation packet was going to be considered by the trial court, and the trial court answered it had to weigh it:

> THE DEFENDANT: Yes. So the mitigation packet, the mitigation that my mitigator put together, none of that is going to be used? That's all I'm asking.
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> THE COURT: It will be considered. I have to weigh it.
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> THE DEFENDANT: For my mitigator?
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> THE COURT: I will listen to -- I will give you an opportunity representing yourself to make argument to me as to what the appropriate sentence is and I will greatly consider that.
>
> THE DEFENDANT: Okay. Because the law specifically says that if I don't want any mitigation -- that was put together for me

> personally. Now, if the State wants to or the Court wants to do it independently, they need to do their own investigation.

(T61).

In the penalty phase trial, the trial court ordered standby counsel to put the mitigation packet prepared by standby counsel in to evidence (T434). The trial court referred to the mitigation packet presented to the State by Appellant's standby counsel in its sentencing order (R2551-2560). In so doing, the trial court violated Appellant's rights under the Sixth, Eighth and Fourteenth Amendments to control the presentation of evidence as a pro se litigant.

Appellant did not object to all of the mitigating evidence. He presented his own mitigating evidence in his motion, and he acknowledged the trial court's obligation to order a PSI. Appellant wanted to control the presentation of the mitigation evidence which is why he opposed the mitigation packet assembled by standby counsel. In a recent case, this Court reiterated the autonomy of a capital defendant to control what, if any, mitigation evidence is presented by the defense:

> In line with this principle, our case law "affords competent capital defendants 'great control over the objectives and content of [their] mitigation.' " *Bell v. State*, 336 So. 3d 211, 217 (Fla. 2022) (alteration in original) (quoting *Boyd v. State*, 910 So. 2d 167, 189 (Fla. 2005)). Therefore, "regardless of '[w]hether [the] defendant is represented by counsel or is proceeding pro se, the defendant has the right to choose what evidence, if any, the defense will present during the penalty phase.' " *Id.* (alterations in original) (quoting Boyd, 910 So. 2d at 189-90); see also *Hojan*, 3 So. 3d at 1211; *Farr v. State*, 656 So. 2d 448, 449 (Fla. 1995). Put plainly, "a defendant cannot be forced to present mitigating evidence during the penalty phase of the trial." *Grim v. State*, 841 So. 2d 455, 461 (Fla. 2003).

Figueroa-Sanabria v. State, 366 So. 3d 1035, 1053-54 (Fla. 2023). In light of the trial court's violation of Appellant's right pursuant to the Sixth, Eighth, and Fourteenth Amendments by considering the mitigation evidence objected to by Appellant, this Court must reverse the trial court's judgment and sentence, and remand for a new penalty phase presided over by a different judge.

CONCLUSION

In light of the foregoing authorities and arguments, Appellant respectfully requests this Honorable Court to reverse the trial court's judgment and sentence, and remand for a new guilt and penalty trial due to Appellant's incompetence to represent himself, or in the alternative, a new penalty phase based on the trial court's unconstitutional consideration of standby counsel's mitigation evidence.

CERTIFICATES

I hereby certify, pursuant to Florida Rule of Appellate Procedure 9.045, that this brief complies with the applicable font and word-count-limit requirements. I hereby certify that this brief was served, via the Florida Courts E-Filing Portal, on Stephen Ake, Assistant Attorney General, at crimapptlh@myfloridalegal.com, on November 30, 2023.

Respectfully submitted,

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