IN THE SUPREME COURT OF FLORIDA

KHALID A. PASHA, :

Appellant, :

vs. : Case No. SC13-1551

STATE OF FLORIDA, :

Appellee. :

:

APPEAL FROM THE CIRCUIT COURT
IN AND FOR HILLSBOROUGH COUNTY
STATE OF FLORIDA

REPLY BRIEF OF APPELLANT

HOWARD L. "REX" DIMMIG, II
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

KAREN M. KINNEY
Assistant Public Defender
FLORIDA BAR NUMBER 0856932

Public Defender's Office
Polk County Courthouse
P. O. Box 9000--Drawer PD
Bartow, FL 33831
(863) 534-4200

ATTORNEYS FOR APPELLANT

TOPICAL INDEX TO BRIEF

TABLE OF CITATIONS

ARGUMENT

ISSUE I

The State repeatedly denies the existence of any deal, saying "the record does not support that the trial court ever offered Defendant any deal or coerced him into withdrawing his demand [for speedy trial]." (AB at 61). The record is clear as to what occurred in the trial court on November 19, 2012. The trial judge even acknowledged offering a deal to Pasha in her order of December 21, 2012, wherein she denied Pasha's motion for disqualification. In that order, Judge Fernandez defended her actions at the November 19, 2012, hearing:

> Next, the Defendant argues the undersigned "hoodwinked" him into accepting counsel by allowing counsel to reargue all motions the Court had already denied. He argues this offer forced him to choose between being heard and proceeding pro se, and it showed her partiality towards Mr. Hernandez and her aversion toward the Defendant.
>
> The undersigned [Judge Fernandez] responds by stating she has not deceived the Defendant. The Court renewed its offer of counsel at the final hearing before jury selection, stating the Court would permit counsel to reargue any motions previously decided. After taking several minutes to consider the Court's offer, the Defendant accepted the offer of counsel. . . . The undersigned explained to the Defendant that she was making that offer to ensure the Defendant was well prepared for trial. The undersigned denies that she has tricked the Defendant into accepting counsel.

(8/1456). This order reveals that Judge Fernandez viewed her offer as legitimate, i.e., not a trick, because "she was making that offer to ensure the Defendant was well prepared for trial." There is no question that the trial judge offered a deal, and, as noted in the Initial Brief, the legal legitimacy of the deal is not dependent on whether the judge acted with good intentions.

The State proposes that this Court should ratify the deal and charge the continuance to Mr. Pasha. This Court should recognize that Judge Fernandez violated Pasha's rights to counsel and right to due process by offering him the opportunity to re-litigate his pretrial motions if he agreed to be represented by Attorney Hernandez. To follow the State's suggestion would be to sanction those violations of Pasha's rights.

Wilson v. State, 12 So. 3d 292 (Fla. 4th DCA 2009), presents an analogous situation. In that case, the defendant and his attorney were at odds over whether the defendant should testify. The defendant insisted on taking the stand, but the defense attorney cut off the defendant's testimony prematurely and refused to question him on matters relating to the charges that the defendant wished to address. The judge gave the defendant the option of representing himself to testify further or keeping his attorney. The Fourth District reversed, saying that "[in] making Wilson choose between testifying further and giving up his attorney, the trial court erred by forcing him to choose between two constitutionally protected rights, the right to testify and the right to counsel." 12 So. 3d at 296. In the same way, Judge Fernandez erred by forcing Mr. Pasha to make a choice between the procedural benefit of having his motions reheard by her (as the successor to a recused judge) or exercising his right to self-representation.

It was error for the trial judge to pressure Pasha to accept counsel in exchange for a procedural benefit. Similar error occurs when a trial judge pressures or coerces a waiver of the right to appeal or induces a guilty plea in exchange for the promise of

a reduced sentence. For instance, in United States v. Gonzalez-Melchor, 648 F.3d 959 (9th Cir. 2011), the Ninth Circuit invalidated an appellate waiver that was directly negotiated by the trial judge. As in the instant case, the trial judge initiated the negotiations with the defendant, telling his counsel

> that an appeal to the Ninth Circuit would be 'a long-shot' and he wanted to hear Gonzalez–Melchor say, 'I'll accept the judgments of this court. I'm not going to waste anybody else's time and money.' If Gonzalez–Melchor said those things, the court continued, he would receive a sentence 'somewhere in the range of 60, 65 months,' below the Sentencing Guidelines' recommended range. Gonzalez–Melchor responded by waiving his right to appeal, and the district court imposed a below-Guidelines sentence within the promised range.

648 F.3d at 965. The Ninth Circuit noted the unequal positions of the judge and the accused, particularly where the accused had to decide immediately whether to waive his appellate rights. It that situation, the defendant's responses to the judge's questioning during the colloquy did not allay the appellate court's concerns regarding voluntariness. Id. at 963, 965. See also United States v. Davila, 133 S. Ct. 2139, 2148 (2013) (noting that a magistrate judge's "repeated exhortations to Davila to 'tell it all' in order to obtain a more favorable sentence . . . were indeed beyond the pale."); Simplice v. State, 134 So. 3d 555, 557 (Fla. 5th DCA 2014) (reversing for a new sentencing hearing before a different judge where a trial judge twice initiated plea negotiations during trial and offered a sentence substantially lower than the one later imposed).

In its brief at pages 60-61, the State writes:

> [T]he trial court's statements at the November 19, 2012 hearing were not an attempt to offer Defendant any deal. They were simply an attempt to ensure that a defendant who was taking inconsistent positions under-

> stood that the danger of doing so was that he would proceed to trial unprepared and the advantage of having counsel appointed was that he would not.

The State is attempting to cast Pasha as an incompetent litigator here in order to justify the judge's offer, but the opposite is true. The judge and prosecutor were the incompetent participants in the proceedings; the judge, because she attempted an end-run around the speedy trial rule by offering Pasha a deal that compromised the integrity of the court, and the prosecutor, because he acquiesced to the arrangement, even though under the terms of the deal, the State would have to relitigate motions that had been decided in its favor after protracted evidentiary hearings (see 6/1017-22).

The prosecution made other strategic errors that were fatal to its case, namely disregarding Pasha's "Motion to be Heard" and ignoring his Notice of Expiration of Speedy Trial Time. The State had the responsibility and the right to insist that Pasha be brought to trial within the recapture period after he filed his notice of expiration of speedy trial time, but the State did nothing. No hearing was held after the notice was filed.

Next, the State engages in more sophistry when it asserts that "[p]lacing Defendant back into the position he would have been in when he announced his desire to rescind his prior request for a continuance on November 28, 2012, would entail put him back under a demand with 25 days remaining and would cause the speedy trial period not to expire until December 24, 2012." (AB at 62). Nothing in the speedy trial rule will support this creative argument, which overlooks the fact that the deal was void ab initio

because it violated public policy and Pasha's constitutional rights by forcing him to choose between coequal rights. The State's argument suggests that the deal with the judge was voidable, rather than void ab initio.

Contracts that violate public policy are void ab initio. Chandris, S.A. v. Yanakakis, 668 So. 2d 180, 185 (Fla. 1995) (holding that a contingent fee contract entered into by a person who is not a member of The Florida Bar is void). And trial court orders that violate due process are void. See U.S. Bank Nat. Ass'n v. Proenza, 157 So. 3d 1075, 1076 (Fla. 3d DCA 2015) (holding that bank's due process rights were violated and final order is void because trial court sua sponte entered final order closing foreclosure action without notice to parties).

If this Court considers the deal in this case to be only voidable, this Court would be affording viability to the deal. Because the coercive deal violated due process, the State must not be permitted to benefit from it in the way of a tolled speedy trial period. Actually, the argument the State makes concerning tolling may have been grounds to ask for an exceptional circumstance extension of time before the window of recapture closed, see Brown v. State, 715 So. 2d 241 (Fla. 1998), but the State never asked for that in the trial court.

The prosecution's silence in the face of Pasha's Notice of Expiration of Speedy Time is ultimately the reason why this court must order discharge. The State had the opportunity to utilize the 5/10 day window of recapture and chose to forego it. The recapture period gives the system a chance to remedy a mistake.

State v. Nelson, 26 So. 3d 570 (Fla. 2010). It is well-established that the State bears the burden of setting a hearing within the five days provided by the speedy trial rule.

> The State should have monitored the judicial logistics of the accused's prosecution more attentively so as to ensure that it complied with the requirements of rule 3.191. It was the State's duty to bring petitioner to trial within the prescribed time period; consequently, petitioner's motion for discharge should have been granted. See Stuart v. State, 360 So. 2d 406 (Fla. 1978) (it is the State, and not the defendant, that has the obligation to see that the time periods within the rule are followed); Massey v. Graziano, 564 So. 2d 287 (Fla. 5th DCA 1990) ("Under the current speedy trial rule, the duty rests on the State to afford a defendant a hearing, and, if necessary, a trial within the window period provided by rule 3.191. The State's failure to perform this duty results in the trial court's loss of jurisdiction to conduct a trial on the charges.").

Williams v. State, 862 So. 2d 863, 865 (Fla. 4th DCA 2003). Any excuse offered now for ignoring the notice of expiration and not setting a hearing on it within five days from its filing on December 17, 2012 is being offered too late. See, e.g., Mumani v. State, 63 So. 3d 923 (Fla. 5th DCA 2011); Lopez-Mahones v. State, 164 So. 3d 149 (Fla. 5th DCA 2015). The State's assertion that the notice was premature is not a valid argument; nevertheless, it is an argument that should have been presented to the trial court at a hearing where Pasha could have responded. See Lasker v. Parker, 513 So. 2d 1374, 1377 (Fla. 2d DCA 1987) (where no hearing was scheduled, "[i]t is now simply too late to determine whether . . . motions for discharge were well-taken."). This Court must enforce the speedy trial rule and order discharge.

Furthermore, Appellant maintains that under the unique circumstances presented here, where the trial judge improperly induced a waiver of the pro se defendant's demand for speedy trial

by offering a procedural benefit, official bad faith is demonstrated on the record; therefore, the amount of delay in bringing Pasha to trial does not disqualify Pasha's claim that his constitutional right to speedy trial was violated. See Niles v. State, 120 So. 3d 658, 664 (Fla. 1st DCA 2013) (noting that "if the government deliberately tries to impede the defense, this factor will weigh heavily against the government" in the analysis of a Sixth Amendment claim).

Although it is not dispositive of the issue here, the State is wrong to suggest that Pasha "had numerous discovery requests and pretrial motions outstanding" when he filed his demand for speedy trial. On page 8 of its brief, the State writes that when Pasha filed his demand for speedy trial on October 24, 2012, "a large number" of his "numerous motions seeking discovery" were pending. In reality, when Pasha demanded speedy trial, there were a few depositions set, a motion to terminate standby counsel, a motion for change of venue, and a motion to incur additional costs. (29/583). When told he had to choose between getting a ruling on his motions or keeping the demand, Pasha chose to keep the demand. (29/608) The trial judge told Pasha that three depositions would be cancelled as a result of his demand for speedy trial (29/606),[1] but the court backed down from that ruling at the

[1] The trial judge told Pasha that a demand for speedy trial meant that "you're ready to pick a jury tomorrow." (29/594) Pasha disagreed with the court's reading of the speedy trial rule, but he agreed to be bound by the court's ruling. In fact, the court's interpretation of the rule did not account for the 1980 amendment to the rule that "[t]rial cannot be scheduled within 5 days of the filing of the demand." Fla. R. Crim. P. 3.191; Holmes v. State, 731 So. 2d 92 (Fla. 1st DCA 1999).

request of the State at the hearing of November 7, 2012, and agreed to allow the depositions to go forward. (30/645-46) The following conversation occurred between the judge and prosecutor at the November 7, 2012 hearing:

> MR. GALE [The Prosecutor]: Your Honor, one issue did come up at the last hearing. I know the Court explained to Mr. Pasha because he's filed a demand for speedy trial that cuts off discovery depositions, evidence views, things of that nature. There are still some items of discovery and an evidence view and some depositions that we had discussed prior to him filing the demand.
>
> THE COURT: I tried to explain to Mr. Pasha --
>
> MR. GALE: I understand. My inclination, Judge, is just based on the level of scrutiny we have had in these cases --
>
> THE COURT: Can you go ahead and schedule them?
>
> MR. GALE: Yes.
>
> THE COURT: That would probably be the best thing to do because then Mr. Pasha will have nothing to complain about.
>
> MR. GALE: Yes, ma'am.
>
> THE COURT: We're still going to go forward on his demand for speedy trial and we're still going to allow you to depose those three witnesses. Mr. Gale will set that up within the next two weeks. You have the photos to give him.

(30/645-46) This discussion belies any suggestion that numerous motions seeking discovery were pending on November 19, 2012. It shows that all outstanding discovery issues were resolved prior to the November 19th hearing.

ISSUE II

The trial court's order denying the motion to suppress concludes that the deputies who stopped Pasha had more than reasonable suspicion that Defendant had committed or was committing a crime. (6/1020). The State contends that the trial court's factual findings are supported by the 911 tape, the

testimony of the 911 caller, and the testimony of the officers initiating the stop. But the deputies who stopped the van had not listened to the 911 tape, nor spoken to the caller, Gigi Sanchez, before they stopped Pasha's vehicle. The State asserts that "the police knew" that Pasha had been seen walking around the business area. Actually, the police officers who conducted the stop did not "know" anything other than what a civilian employee dispatched and coded as a noncriminal suspicious person report, so the trial court's findings in its order are not supported by competent substantial evidence.

The State fails to adequately address the testimony by its witness, Deputy Stahlschmidt, that the civilian dispatcher was "not a fellow law enforcement officer or trained professional." (S23/295) And the State seems to be asserting, without legal support, that the employment relationship between the dispatcher and the police agency is irrelevant. United States v. Hensley, 469 U.S. 221 (1985), cited by the State, supports Appellant's contrary position. In Hensley, an officer issued a wanted flyer to other police departments. The Court held that "the evidence uncovered in the course of the stop is admissible if the police who issued the flyer or bulletin possessed a reasonable suspicion justifying a stop . . . and if the stop that in fact occurred was not significantly more intrusive than would have been permitted by the issuing department." 469 U.S. at 233 (emphasis added, internal citation omitted). The officers in the present case who stopped Pasha knew that their dispatcher was a civilian employee and not a fellow law enforcement officer and that their dispatch-

er had coded the call as a noncriminal report of a suspicious person. (S23/295) The stop violated the Fourth Amendment because the officers observed nothing to corroborate that suspicious activity had occurred and they possessed no independent basis to initiate a traffic stop. See, e.g., Wright v. State, 126 So. 3d 420 (Fla. 4th DCA 2013)(reversing order denying motion to supress where officer's observations did not provide probable cause for arrest of motorist for loitering and prowling), review denied, 148 So. 3d 773 (Fla. 2014); Black v. State, 141 So. 3d 769 (Fla. 2d DCA 2014)(holding that defendant's vaguely suspcious actions did not rise to the level of probable cause necessary for warrantless arrest).

Conspicuously absent from the State's argument is any assertion of a particular crime that the officers may have suspected when the stop was made. The State downplays the testimony of the officers who candidly admitted that they did not know what offense may have been committed when they made the stop.

> Q. [by Mr. Pasha] Yes, sir. When you got this digital, Mr. Stahlschmidt, what crime did the digital state had been committed?
>
> A. It didn't state a crime had been committed.
>
> Q. Nobody stated a crime had been committed?
>
> A. No, it stated that -- It wasn't dispatched as a criminal code; it was dispatched as a suspicious person.
>
> Q. What crime was you aware of that had been committed when you reached the complex, Mr. Stahlschmidt?
>
> A. What crime did I believe was -- Can you rephrase it?

> Q. No. What crime did you see that you know had been committed?
>
> A. At that point I didn't know of a crime that was committed.
>
> Q. You didn't know of a crime had been committed?
>
> A. No.

(S23/283-84). The State's discussion of reasonable suspicion in the Answer Brief is necessarily vague, referencing only "some violent criminal activity." This assertion simply ignores the fact that the police had no report of any criminal offense when the stop was made. (S23/284).

After the stop, the officers looked into the side window of the van, but did not open the cargo door on the passenger side. All items with blood on them were taken from the van after Pasha's arrest. (S23/245-46,254-55; S70/1379). Pasha had no injuries at all (S67/962), and the blood on his shirt was described as "small red dots splattered on the left side" (S23/275). (See also 4/654,656,632;S70/1392-93). And Pasha was not "acting erratically" at the vehicle stop, as the State says in its brief, AB at 71. (See 23/249-50, 273-77).

Furthermore, the State's citation to a New York state court decision will not justify the stop of Pasha's van. The cited case, People v. Doll, 98 A.D.3d 356, 948 N.Y.S.2d 471 (2012) aff'd, 21 N.Y.3d 665, 998 N.E.2d 384 (2013), did not involve a vehicle stop like the instant case. In Doll, the initial police encounter was voluntary.

> The evidence at the suppression hearing establishes that [the deputy] stopped his vehicle and defendant walked to the vehicle of his own accord, at which time the deputy nodded toward the cylindrical object protruding from defendant's

> pocket and asked defendant what he was doing. These were merely non-threatening questions not indicative of criminality, and thus were justified as a level one inquiry (see [People v.] Hollman, 79 N.Y.2d at 185, 581 N.Y.S.2d 619, 590 N.E.2d 204).

Doll, 98 A.D.3d at 367. In contrast, in the instant case, without themselves having witnessed anything unusual, the depties activated their blue lights and stopped Pasha's van, and then Deputy Stahlschmidt stepped back and unstrapped and unholstered his weapon and let Pasha see that he did it before directing Pasha to step out of the vehicle. (S23/276-77, 308-311). Pasha was seized during his initial encounter with the police; therfore, the legal analysis that governs the instant case is necessarily different from that discussed by the Doll court.

The State also cites a loitering and prowling case, State v. Cremer, 563 So. 2d 817 (Fla. 5th DCA 1990), that, again, does not involve a traffic stop; rather, it involves a voluntary citizen encounter. The legal issue addressed in that case does not shed light on any issue presented in the instant case.

Contrary to the State's assertion, the illegality of the detention was raised by Pasha below. See 4/624 ("Still without any cause to detain Petitioner, the two deputies who stopped him left him in the custody of other two deputies, while they went out and searched for a crime . . . Petitioner detention should only last as long as it take to deal with the infraction for the stop, or to write a ticket . . . ."; see also 3/478 ("Therefore their detention of Petitioner at the scene of the stop while they 'investigated' and found the bodies of Petitioner's wife and step-daughter was illegal . . . ."); see also 3/470-71.

Since the filing of the Initial Brief, the U.S. Supreme Court decided Rodriguez v. State, 135 S.Ct. 1609 (2015), which further supports Pasha's position on the illegality of the prolonged detention. "We hold that a police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures." 135 S. Ct. at 1612. Discussing the mission of the stop assumes a legitimate basis for it, and considering that the instant case was based on a noncriminal suspicious person report, the police had no right to stop the vehicle. But assuming that the stop was valid, for the sake of argument, the police completed their mission after they ascertained that Pasha was alone and was not injured. At that point, the police had no objective basis for suspecting that a specific crime had been committed, just a vague, general suspicion that Pasha was up to no good. Rodriguez instructs that by not allowing Pasha to depart at that point, the police violated the Fourth Amendment. Consequently, all evidence flowing from the initial stop of the van should have been suppressed.

ISSUE III

On page 5 of its brief, the State contends that "the trial court discharged [Hernandez] without making any finding of a conflict of interest. (S60/678-80)." The State is mistaken because there was an implicit finding in the trial court's order granting Pasha's motion. Pasha filed a Motion to Terminate Standby Counsel on August 8, 2005, alleging that he could not trust Mr. Hernandez to advise him and stating that there was clearly a

conflict between them. (S42/845). A hearing was held on this motion, at which Pasha added that he gave Hernandez a motion in limine that he wanted to file pro se, but the motion was discarded by Hernandez and never filed. The prosecutor asked the court to deny the motion. (S60/677-78). At the time of this hearing, Hernandez was one of two attorneys representing Pasha as standby counsel. Attorney Gonzalez was standby counsel for the penalty phase. The court told Pasha that he did not have to use the services of Hernandez; he could instead direct all of his questions "to Mr. Gonzalez, who is still on your case as standby counsel." (S60/679). Pasha responded that Hernandez was "not serving [him] any purpose." He added: "I mean, the only purpose he serve me, probably help get me found guilty of something. I'm not look-ing forward to that." (S60/679). Hernandez was given the opportunity to respond and he declined, saying only, "I'm more than happy to abide by whatever the Court's wishes are." The court immediately stated, "I'm going to grant the motion. I'm going to allow Mr. Hernandez to be terminated from representation." (S60/679-80).

The order granting Pasha's motion and discharging Hernandez is an implicit finding in favor of the facts alleged by Pasha. See In re Certification of Conflict in Motions to Withdraw Filed by Pub. Defender of Tenth Judicial Circuit, 636 So. 2d 18, 22 (Fla. 1994)("[I]n receiving the report and granting the motions to withdraw, the district court implicitly approved the findings."); Cohen v. Drucker, 677 So. 2d 953, 954 (Fla. 4th DCA 1996) ("[W]e deem the trial court's grant of the motion to vacate as constituting an implicit finding that defendants moved with

due diligence to vacate the defaults.").

The State is also wrong to suggest that the trial court needed to appoint a substitute attorney to replace Hernandez. Attorney Gonzalez remained on the case as Pasha's standby counsel, so there was no need for the trial court to appoint a substitute attorney.

On page 5 of its brief, the State contends, "On September 20, 2010, the trial court appointed Hernandez as standby counsel without objection . . . . (V1/128-29)." The State's suggestion that this issue is unpreserved assumes that Pasha carried a burden to object to Hernandez's reappointment in 2010. The record reflects that Pasha was not consulted before Hernandez was appointted by the court to serve as his standby counsel in 2010. The trial court did not reappoint Hernandez in open court where Pasha would have had an opportunity to be heard. At the hearing of September 16, 2010, standby counsel, Christopher Boldt, asked to be removed from the case. Judge Fuente took the matter under advisement. (S18/92-115). Between that date and the next hearing that was held on October 1, 2010, Judge Fuente appointed Mr. Hernandez. Mr. Hernandez appeared for the October 1, 2010, hearing, but nothing was said in court by the judge or Hernandez to indicate that this was a reappointment of Hernandez to the case. And Pasha was never asked if he was willing to waive the conflict.

It was Attorney Hernandez's ethical responsibility to inform the court of his prior involvement in the case and to decline the representation because he had previously been removed from the

case at the request of his client. See Rules Regulating Fla. Bar 4-1.16 ("[A] lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: . . . (3) the lawyer is discharged"); 4-1.7(a)(2) (Comment) ("An impermissible conflict of interest may exist before representation is undertaken, in which event the representation should be declined."); see also 4-3.3 ("Candor Toward the Tribunal").

The prosecution also could have brought this up with the court. Assistant State Attorney Jalal Harb was present at the hearing of September 8, 2005, and opposed Pasha's motion before Judge Tharpe granted it and discharged Hernandez as standby counsel. (S60/672-78) And it was the trial judge's responsibility in 2010 to have knowledge of the contents of the court file. If Judge Fuente (or later Judge Fernandez) had read the case docket, it would have been clear that Hernandez had been removed from the case previously based on a conflict and could not be reappointed. The attorneys and the judges should be held responsible for creat-ing this situation.

Pasha never knowingly and voluntarily waived the conflict that has existed between him and Hernandez since at least 2005, and he consistently complained that Attorney Hernandez was not trustworthy. Pasha protested in vain to the trial judge that Hernandez had a conflict of interest after he was reappointed in 2010. A new trial is necessary because Attorney Hernandez failed to inform the trial court of his prior discharge from the case and violated his ethical responsibility to decline the represen-

tation. Thereafter, the trial court failed to recognize the conflict. U.S. Const. amends. VI, XIV; Fla. Const. art. I, §§ 9, 16.

One incorrect factual assertion made by the State in its Answer Brief requires a response. The State contends that at the hearing of September 21, 2012, which was conducted in Pasha's absence, "the trial court did nothing more than reschedule a hearing for a later date." (AB at 77). The record reflects that the hearing was short, but an important piece of information was discussed. The attorneys revealed to the judge that Mr. Jalal Harb, who was at that time working for the Polk County State Attorney's Office, had received permission to handle this Hillsborough County case for the prosecution. (S33/578-82). The scheduling discussion concerned allowing Mr. Harb "a little more time to hopefully clear his calendar." (S33/580). It is therefore incorrect to characterize this ex parte hearing as being an irrelevant scheduling conference. Nothing could be more relevant to a defendant than the fact that an assistant state attorney who no longer worked in the county had been given special permission to return to prosecute this one case. Pasha was proceeding pro se but was not brought into the courtroom when this discussion occurred between Judge Fernandez, Mr. Gale, and Mr. Hernandez. This was a clear a violation of Pasha's due process rights, and it shows that the trial court was treating Mr. Hernandez as counsel of record. Furthermore, the trial judge asserted in her order of December 12, 2012, denying the motion for disqualification, that she "never held a hearing in this case without the

Defendant being present." (8/1456) That assertion is disproved by the record of the September 21, 2012, hearing.

ISSUE IV

On page 6 of its brief, the State mentions that Pasha did not object when the State moved to substitute its copy of the 911 tape, which had been put into evidence at the prior hearing, saying "Defendant affirmatively stated he had no objection to the substitution. (S23/263)." This was a matter of the State rectifying a defective copy of the 911 recording that it had admitted into evidence by substituting its previously admitted exhibit 16 with the new exhibit 18. (See 6/1019). If the State is now suggesting that Pasha waived his objection to the exhibit by agreeing to the substitution, then that is a false characterization of what occurred below.

With regard to preservation, Pasha repeatedly complained both in his motion to suppress the 911 call and in court about the origin of the 911 recording and the tampering that occurred, which was evidenced by the misleading introduction that was added to the tape by law enforcement. See e.g., Motion to Suppress 911 Call at 3/463 (alleging that recording and typed transcript have been "manipulated and altered"). This Court has recognized that no magic words are necessary to preserve a Confrontation Clause violation. See Corona v. State, 64 So. 3d 1232 (Fla. 2011). In Pasha's pretrial motion to suppress the 911 recording, he specifically objected to the transcript of the call. (3/463-64) Pasha then orally objected to the transcript at the pretrial hearing, and he was rebuffed by the trial court. He preserved objections

to both the recording and the transcript.

The State claims that the introduction added to the recording was not error because "the fact that the tape included a statement showing it was the 911 call did not detract from a showing that the tape was what the State claimed it was as the heading was fully consistent with Ms. Sanchez's testimony regarding what was on the tape." (AB at 84). The heading was used as substantive evidence for the time of the call, which neither Mr. or Ms. Sanchez could recall and which was a disputed issue (see, e.g., S68/1081,1094-95,1109;S71/1535) and that the 911 call involved a homicide, which was an after-the-fact label applied by law enforcement.

This court must reject the State's attempt to characterize as harmless error admitting the introduction to the recording and providing the jury with the transcript. The State should not prevail in its attempt to shift the burden to Pasha to show that the transcript's foreign language translation was inaccurate. This Court is not the proper forum for undertaking that factual determination. The accuracy of a foreign language translation presented to the jury in a transcript is a preliminary question for the trial court in the first instance.

And the State's assertion that the error was harmless because the evidence was overwhelming does not account for the discrepancies in the State's evidence, the lack of any investigation into possible alternative suspects, the lack of any discernable motive, and the exculpatory testimony of Mr. Pasha. A weighing of the evidence by this Court would necessarily involve a credibility

determination, which is not the proper inquiry in a harmless error analysis. See State v. DiGuilio, 491 So. 2d 1129, 1136 (Fla. 1986); Ross v. State, 45 So. 3d 403, 434 (Fla. 2010). The tape and the transcript served to unfairly undermine Mr. Pasha's credibility, which is primarily why the State cannot show that use of the transcript did not affect the verdict. This Court should reverse for a new trial.

ISSUE V

The State's analysis of this issue twists the facts to avoid proper application of the law. The State contends that "Defendant never claimed to have been elsewhere when the murders occurred," and contends that there was no nexus between the evidence and the alibi instruction. (AB at 86-87) The facts supported the giving of the standard instruction because Pasha testified that he was in another location when the killings occurred. The refusal to give that instruction when timely requested requires reversal for a new trial. See Truett v. State, 105 So. 3d 656, 660 (Fla. 1st DCA 2013) ("[T]he instruction was necessary to allow the jury to properly evaluate the issues in the case because Truett had introduced evidence that he was not present where and when the crime occurred."). The State capitalized on the trial court's refusal to give the alibi instruction in its closing argument when it insinuated that the burden was on Pasha to prove his innocence: "Now, Mr. Pasha has come up with something that may raise some kind of doubt if you force yourself, if you imagine, if you speculate." (S76/2314) This argument confirms that the trial court's error in refusing the alibi instruction requires a new

trial.

ISSUE VI

The State contends that Pasha did not preserve an objection regarding the propriety of the trial court's comments. The record refutes this assertion. Pasha told the judge that he had "a complaint to lodge" and he moved for a mistrial. After explaining the complaint, the trial judge responded "your objection is noted for the record." (S77/2323-24, emphasis added). The record reflects both an objection and a motion for mistrial, which were both denied. The trial judge denied that any error occurred. The comments made to the jury near (but before) the close of the evidence were egregious; the jury was left with the distinct impression that it should plan on returning for a penalty phase. After hearing that instruction, the jury would logically conclude that the judge felt that a guilty verdict would be forthcoming. This error requires reversal for a new trial.

ISSUE VII

The State's assertion that this issue is not preserved is especially puzzling because the record is clear that Pasha made a contemporaneous objection to the photographs when the State introduced them. S69/1179-1180. The photographs were not introduced individually by the State, but en masse. Because of the way the State was allowed to introduce the photographs, Mr. Pasha was not given the opportunity to object to each of the photographs individually.

The State has failed to identify in its Answer Brief any disputed issue that was adddressed by the introduction of the

numerous photographs of the deceased victims. The State's mention of HAC and CCP here as justification for the photographs is improper because the aggravating factors were not at issue when the photographs were introduced in the guilt phase. The fact that the State mentions HAC and CCP as justification here proves the point that the contemporaneous objection was valid and should have been sustained. The photographs were gruesome and more prejudicial than probative as to guilt. See, e.g., State v. Smith, 573 So. 2d 306, 313 (Fla. 1990). Their admission over objection was harmful reversible error.

ISSUE VIII

(a) Refusal to Instruct Hostile Witness to Avoid Nonresponsive Answers.

The trial judge made clear that she had no intention of admonishing a hostile witness, Jose Sanchez, during Pasha's cross-examination. The State now attempts to justify the trial judge's rulings that empowered witness Sanchez to argue with Pasha and even ask him a question. Pasha was made to look like he was badgering the witness in front of the jury when it was the trial judge's refusal to admonish Mr. Sanchez that caused the conflict. A defendant's right to confront the witnesses against him can be undermined by the trial judge's exercise of judicial discretion in controlling the mode and scope of cross-examination. See Smith v. State, 404 So. 2d 167 (Fla. 1st DCA 1981). The right of a full cross-examination is absolute under the Sixth Amendment and is essential to due process. Bearden v. State, 161 So. 3d 1257, 1267 (Fla. 2015). Pasha's right of cross-examination was thwarted by the trial judge's refusal to instruct the essential State witness,

Jose Sanchez, to answer the questions when requested by Pasha. See Victorino v. State, 127 So. 3d 478, 488 (Fla. 2013) ("This right to cross-examination may be violated where a witness answers questions from the prosecution but refuses to answer the defense's questions.").

(b) Refusing to Curtail Improper Opinion Testimony

Gigi Sanchez's statement on the 911 call that Pasha was dangerous was a gratuitous statement by a person who had no knowledge of whether Pasha actually was dangerous. The objection lodged at trial was sufficient to apprise the trial court of the error and preserve it for intelligent review on appeal. See Jackson v. State, 451 So. 2d 458, 461 (Fla. 1984). And Pasha's objection was timely. See id. at 461 (objection was "sufficiently timely to have allowed the court, had it sustained the objection, to instruct the jury to disregard the testimony or to consider a motion for mistrial").

The State compares Sanchez's statement that Pasha was dangerous to a lay opinion that a person is angry, threatening, or pretty mad, but that is quite different. A lay person can give an opinion as to another's emotional expression, but not reliably as to some unknown person's potential dangerousness. Gigi offered an opinion as to Pasha's character, which was inadmissible, particularly since she did not know him and did not have a basis to offer the opinion. See § 90.404(1) ("Evidence of a person's character or a trait of character is inadmissible to prove action in conformity with it on a particular occasion"). The State overlooks the fact that the Initial Brief also raised an argument here about the

trial judge refusing to admonish Jose Sanchez when he offered his opinion as to Pasha's guilt. The repeated expressions of opinion of both witnesses as to Pasha's guilt served to undermine Pasha's right to due process and a fair trial.

(c) Overruling Objections to Leading Questions

The trial court's rulings on Pasha's objections to leading questions violated section 90.612, Florida Statutes. The first instance of an improper ruling cited in the Initial Brief occurred during the direct examination of Jose Sanchez:

> BY MR. HARB:
>
> Q. Now, on August 23rd, 2002, you did not know his name, but that's the person that you later became aware of his name being Khalid Ali Pasha, correct?
>
> THE DEFENDANT: Objection, Your Honor, leading.
>
> THE COURT: Overruled.

(S71/1567)

During Gigi Sanchez testimony, Pasha unsuccessfully objected to leading, and the State was able to lead her throughout.

> Q. And did you agree to take the police and to point out to the police --
>
> THE DEFENDANT: I object, Your Honor. This is leading.
>
> THE COURT: Overruled.
>
> BY MR. HARB:
> Q. Did you take the police and point out certain areas within the Woodland Corporate Center that you describe on the tape?
>
> A. Yes, I did.

(S68/1057)

The most damage resulted from the leading question designed to direct the witness to say that Pasha carried a knife, although

Ms. Sanchez clearly never saw that.

BY MR. HARB:

Q. Were you able to see or identify the object this person was carrying in his hand?

A. No, I was not.

Q. How would you best describe it? Color, did it have a color?

A. It looked shiny.

Q. You said it was a knife or something?

A. It looked like a knife to me, but I couldn't be a hundred percent sure.

THE DEFENDANT: Objection, leading.

THE COURT: Overruled.

(S68/1068) The prosecution was able to take advantage of the trial court's propensity to allow it to lead witnesses and get in an inadmissible suggestion. Because Pasha denied that he carried a knife that night, the trial court's rulings bolstered the State's case and damaged Pasha's credibility.

(d) Refusing to Allow Targeted Impeachment Evidence

At trial, the State thought it beneficial to admit Mr. Sanchez's entire prior trial testimony when Pasha sought to admit targeted impeachment. If the entire transcript were admissible for impeachment, as the State was willing to stipulate, then an excerpt should have been admissible as well. Neither the State nor the trial judge explained why Pasha's right to impeach the witness should be limited to admitting an entire transcript of the witness's prior testimony. Ultimately, the ruling defeated Pasha's Sixth Amendment right to cross-examine and impeach the adverse witness with targeted statements going to the witness's

ability to perceive the events.

(e) Admission of Inaccurate Crime Scene Diagram

The crime scene diagram admitted over objection purports to be something it is not, the "total station," meaning a scientifically accurate depiction of the crime scene. These words bolster the relevancy of the diagram, lending it undue importance. "Diagrams and photographs, in fact physical evidence, generally may speak so loud that one will not hear the witnesses." Goff v. Miami Transit Co., 77 So. 2d 636, 637 (Fla. 1955). For this reason, the judge erred in admitting the "total station" diagram over objection without a proper foundation having been laid. It was the trial judge's responsibility to ensure that the exhibit was an accurate depiction of what it purported to represent, and the judge failed in that duty.

(f) Refusing Proffers

The trial court repeatedly refused Pasha's requests to proffer or make an offer of proof. Despite repeated requests by Pasha, the trial court refused all proffers during this trial. "The traditional purpose of a proffer, or offer of proof, is to demonstrate to an appellate court a real error, not an imaginary or speculative one." Holmes v. Bridgestone/Firestone, Inc., 891 So. 2d 1188, 1191 n.1 (Fla. 4th DCA 2005) (citing Ehrhardt, Florida Evidence, § 104.3 (2002 ed.); Jacobs v. Wainwright, 450 So. 2d 200 (Fla. 1984); Nava v. State, 450 So. 2d 606 (Fla. 4th DCA 1984)). In order to allow a proffer, the judge would have to remove the jury and allow the witness to give an answer. See Jacobs, 450 So. 2d at 201 ("The purpose of a proffer is to put

into the record testimony which is excluded from the jury so that an appellate court can consider the admissibility of the excluded testimony.") The State's suggestion that many of Pasha's requests were not preserved is incorrect. It is abundantly clear from the record that the judge had no intention of allowing any of Pasha's offers of proof.

ISSUE IX

a. Comments on Post-Miranda Silence.

Pasha preserved this issue for appellate review when, prior to trial, he filed a motion in limine seeking to preclude the State from infringing on his right to remain silent. The court's order granting that motion (3/494) was a definitive ruling on the record. The pretrial ruling is adequate to preserve for review this claim. See § 90.104(1), Fla. Stat. (2009) ("If the court has made a definitive ruling on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal."); McWatters v. State, 36 So. 3d 613, 627 (Fla. 2010) ("Moreover, McWatters preserved his objection for review by obtaining a pretrial ruling on the admissibility of the evidence."). The prosecutor violated the court's ruling by continuously questioning Pasha as to why he did not tell the police, and in particular, tell the African-American officer, what Pasha had just done to the women.

The State incorrectly contends that Pasha "cannot claim that the State improperly commented on his right to remain silent when the defendant did not remain silent." (AB at 107). First, the

record does not reflect specific statements made to the police after Pasha was read Miranda. The record citation given by the State points to the testimony of Officer Mason at the April 20, 2012, hearing on the sufficiency of the Miranda warnings. Mason does not recount any actual statement made after Pasha was read Miranda. In fact, the State specifically told the judge that it did not intend to discuss the substance of any statements made.

> MR. HARB: Your Honor, for the purpose of this hearing the State would not be eliciting the information that was gathered as a result of the Miranda.
>
> THE COURT: You mean the contents of the statement?
>
> MR. HARB: Correct, the contents. That's all the questions the State has, Your Honor.

(23/392). Mason testified at that hearing that "there was a dialogue prior and dialogue after the warnings were given" (23/401), but he never said specifically what that dialogue consisted of and he also said that after reading Miranda he concluded the conversation and left Pasha in the custody of the other two deputies. (23/205). The State's assertion that Pasha continued to talk after Miranda warnings were given is not substantiated.

In any event, the State violates a defendant's right to silence when it comments on his failure to volunteer a particular statement, even if he has made other statements to police. See State v. Smith, 573 So. 2d 306 (Fla. 1990). The Fourteenth Amendment right to due process bars the use of post-Miranda silence for impeachment. See Doyle v. Ohio, 426 U.S. 610 (1976); Jenkins v. Anderson, 447 U.S. 231 (1980). Article I, Section 9 of the Florida Constitution goes further and prohibits the use of all post-arrest silence, before and after the reading of Miranda warn-

ings. State v. Hoggins, 718 So. 2d 761, 769-70 (Fla. 1998). This prohibition extends to "all evidence and argument" fairly susceptible of being interpreted as a comment on post-arrest silence. Id. at 767.

Pasha made some statements in response to police questioning after he was removed from his vehicle. He was in custody at that time, but had not been given Miranda warnings. In response to questioning, he told police that he had encountered a dead rabbit; then he was immediately read Miranda warnings. When Pasha testified at trial, the prosecutor questioned him specifically about the post-Miranda period when the African-American deputy arrived on the scene of the traffic stop. Pasha's post-Miranda silence—the fact that he did not tell the African-American deputy--was used against him at trial as substantive evidence that he had killed the victims and was keeping quiet due to his guilt. This violated the Fifth and Fourteenth Amendments of the U.S. Constitution and Article I, section 9 of the Florida Constitution.

The State contends that Pasha "placed his failing to inform the police of the murders at issue and opened the door to the State's questions." AB at 109, citing Harris v. New York, 401 U.S. 222, 226 (1971). Harris has no relevance here. The State does not address a case that is relevant, Doyle v. Ohio, 426 U.S. 610 (1976), where the court held

> it would be fundamentally unfair and a deprivation of due process to allow the arrested person's silence to be used to impeach an explanation subsequently offered at trial.

Id. at 618.

In State v. Smith, 573 So. 2d 306, 316 (Fla. 1990), this

Court addressed whether "the trial court violated [the defendant's] constitutional right to silence by allowing the prosecutor to introduce evidence about what Smith did not say when he made a spontaneous statement at the scene of the killing, and then allowing the state to argue those points in its summation." Quoting Hosper v. State, 513 So. 2d 234, 235 (Fla. 3d DCA 1987), this court stated: "The prosecution is not permitted to comment upon a defendant's failure to offer an exculpatory statement prior to trial, since this would amount to a comment upon the defendant's right to remain silent."

In Hosper, the prosecution was surprised by the defendant's trial testimony, admitting that he possessed marijuana but maintaining that he was unaware of the wrapped cocaine in his bag. "[T]he prosecutor sought to impeach Hosper's exculpatory statement by asking Hosper why he had never before offered it, even though he had been given many opportunities prior to trial." Hosper, 513 So. 2d at 235. In a specially concurring opinion, Chief Judge Schwartz added, "To the extent that the 'opportunities' to admit guilt are those which were presented at the time of arrest, the fact that the defendant did not then do so is an obviously forbidden comment upon his Fifth Amendment right to silence." 513 So. 2d at 236 (citing David v. State, 369 So. 2d 943 (Fla. 1979); Lee v. State, 422 So. 2d 928 (Fla. 3d DCA 1982)).

b. Assertions of Personal Knowledge of Pasha's Guilt

The State rationalizes the prosecutor's remarks and claims that they were not improper, but cites no specific authority for its claim that "accusing Defendant of committing the crimes and

asking why he did so was not improper." (AB at 111). The record speaks for itself and supports this claim.

c. Minimizing Jurors Sense of Responsibility for Sentencing

The State contends that it was proper and "fair response" for the prosecutor to tell the jury: "You're not being asked to kill anyone." And, "You won't be killing anyone. You're not qualified and that's not your job title." (51/3334-35). If these comments are, in fact, proper, then the jury's role here was diminished to the extent that the Eighth Amendment's need for reliability has been compromised. See Caldwell v. Mississippi, 472 U.S. 320, 330 (1985) ("Belief in the truth of the assumption that sentencers treat their power to determine the appropriateness of death as an 'awesome responsibility' has allowed this Court to view sentencer discretion as consistent with—and indeed as indispensable to—the Eighth Amendment's 'need for reliability in the determination that death is the appropriate punishment in a specific case.'") (quoting Woodson v. N. Carolina, 428 U.S. 280, 305 (1976) (plurality opinion)).

ISSUE X

The State mischaracterizes the Appellant's argument when it restates it to be "the finding of CCP was improper." (AB at 114) The State questions whether this argument is "truly being based on a theory that Defendant was acquitted of anything." (AB 115).

Aggravating factors function like elements of an offense because they are necessary to increase the possible punishment from life imprisonment to death. Pasha was acquitted of the CCP aggravator in the first proceeding because a factual finding was

made by the ultimate fact-finder and sentencing authority, Judge Fuente, that the evidence was insufficient to establish the CCP aggravator. While the State could still seek a death sentence based on other aggravators after Judge Fuente made his factual finding that CCP was not proven, the State could no longer rely on CCP to seek a death sentence for Pasha. Therefore, it was a double jeopardy violation and fundamental error (1) for the State to argue to the jury that CCP applied, (2) for the trial judge to instruct the jury on CCP, and (3) for the trial judge to rely on that aggravator in the sentencing order.

Appellant acknowledges that the double jeopardy violation was not raised below, but it is well-established that a violation of double jeopardy is fundamental error that can be raised for the first time on appeal. State v. Johnson, 483 So. 2d 420 (Fla. 1986) (citing Benton v. Maryland, 395 U.S. 784, 795 (1969) ("The fundamental nature of the guarantee against double jeopardy can hardly be doubted.")).

The State appears to misstate the argument as one involving "an acquittal of the death penalty." (AB at 114) Its reliance on Poland v. Arizona, 476 U.S. 147 (1986), overlooks the import of the Supreme Court's opinion in Sattazahn v. Pennsylvania, 537 U.S. 101, 110-12 (2003), in which the Supreme Court discussed the evolution of the Double Jeopardy Clause after the Poland decision in light of Apprendi v. New Jersey, 530 U.S. 466 (2000), and Ring v. Arizona, 536 U.S. 584 (2002).

The State's discussion of issue preclusion and Bobby v. Bies, 556 U.S. 825 (2009), serves no purpose here because that case in-

volved a discussion of mental retardation as a mitigator (found by state courts) versus mental retardation after Atkins v. Virginia, 536 U.S. 304 (2002). The prior finding of mental retardation as a mitigator did not bar an Atkins hearing for Mr. Bies. That case is not relevant to the issue here.

The inclusion of CCP in the jury instructions and the setencing order cannot be excused as harmless error because CCP has been termed one of "the most serious aggravators set out in the statutory sentencing scheme." Larkins v. State, 739 So. 2d 90 (Fla. 1999). Considering that two juries have deliberated over this case and neither has returned a unanimous death recommendation, it is likely that the result would have been different if the instant jury had not been given one of the most serious aggravators to weigh in deciding whether a death sentence was appropriate for Mr. Pasha. This court has said that unanimity of a death recommendation was relevant to a harmless error analysis. See Hall v. State, 107 So. 3d 262 (Fla. 2012) (holding that where CCP was unsupported by the evidence, the error was harmless because there was a unanimous recommendation of death). The converse is also true, and the non-unanimous recommendation supports a conclusion that the error requires reversal.

ISSUE XI

There is no invited error here, contrary to the State's position. The discussion at the charge conference (51/3300-01) referenced by the State concerned a "doubling instruction" and the fact that the State was relying on two separate convictions for bank robbery under the prior violent felony aggravator. The prosecu-

tor, Mr. Harb, proposed that two bank robberies be listed under the prior violent felony aggravator, which the defense attorney argued against. A careful reading of the charge conference shows no invited error by the defense attorney.

Mr. Pasha argued vigorously for a life sentence. The two aggravators at issue here were given significant weight by the trial judge and presumably also weighed heavily in the jury's calculation of the death recommendation. This Court has held that unpreserved instructional error is fundamental error when it is "pertinent or material to what the jury must consider in order to convict." Griffin v. State, 160 So. 3d 63, 67 (Fla. 2015) (quoting State v. Montgomery, 39 So. 3d 252, 258 (Fla. 2010)). The instruction given constitutes a violation of section 90.106, Florida Statutes (prohibiting judicial comment on the evidence) and was fundamental error because it removed factual issues from the jury. See, e.g., Universal Ins. Co. of N. Am. v. Warfel, 82 So. 3d 47, 64 (Fla. 2012) ("the trial court's ordering the jury to presume the report correct was tantamount to a directed verdict").

ISSUE XII

Appellant acknowledges that this Court excused the trial court's erroneous use of the Tedder standard in Delgado v. State, 162 So. 3d 971, 982 (Fla. 2015)("citation to Tedder does not render the trial court's analysis invalid"). Delgado was a Hillsborough County case like this one, and similar reference to the Tedder standard both here and in that case suggests that the Hillsborough County judge used a template to draft the sentencing order in this case without regard for the actual meaning conveyed.

Alternatively, the trial judge actually believed that this was the law and applied it. In the case of the former, since the template does not correctly state the law, the judge should be apprised of that error by this court. However, the latter case can be presumed because one can presume that the court meant what it said in its written order.

The order clearly states that the jury recommendation should not be overturned by the trial judge unless no reasonable basis exists for it. The entire purpose of the judge's independent review of the facts (e.g. § 921.141, Fla. Stat., "Notwithstanding the recommendation of a majority of the jury . . .") was defeated because, under the standard set forth in the sentencing order, a death sentence was inevitable based on the jury's recommendation. Because this is a serious error in the application of the law, this Court should not follow Delgado here. Instead, this Court should take the sentencing order on its face and reverse the death sentence for reconsideration under the proper standard.

ISSUE XIII

Appellant anticipates that the U.S. Supreme Court's decision in Hurst v. Florida, No. 14-7505, will provide guidance for this claim. If the Supreme Court holds that the Florida death penalty sentencing scheme violates the Sixth and Eighth Amendments, this court should reverse the death sentence in this case. The jury recommendation was not unanimous, and it is impossible to know what facts were found by the jurors to support their votes as to the sentencing recommendation.

CERTIFICATE OF SERVICE

I certify that a copy has been furnished by email to Blair M. Dickert at the Office of the Attorney General at capapp@myfloridalegal.com and Blair.Dickert@myfloridalegal.com, on this 23rd day of July, 2015.

CERTIFICATION OF FONT SIZE

I hereby certify that this document was generated by computer using Microsoft Word with Courier New 12-point font in compliance with Fla. R. App. P. 9.210 (a)(2).

Respectfully submitted,

HOWARD L. "REX" DIMMIG,II
Public Defender
Tenth Judicial Circuit
(863) 534-4200

Karen M. Kinney
/S/KAREN M. KINNEY
Assistant Public Defender
Florida Bar Number 0856932
P. O. Box 9000 - Drawer PD
Bartow, FL 33831
appealfilings@pd10.org
kkinney@pd10.org
mjudino@pd10.org

Kmk