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IN THE SECOND DISTRICT COURT OF APPEAL
STATE OF FLORIDA

STATE OF FLORIDA,

Petitioner, **CASE NO.:**
Hillsborough County Lower Tribunal No.:
v. **23-CF-001904**

BILLY BENNETT ADAMS, III,

Respondent.
_____/

PETITION FOR WRIT OF MANDAMUS/ OR WRIT OF CERTIORARI/ OR WRIT OF PROHIBITION

COMES NOW, the State of Florida, by and through undersigned counsel, pursuant to Florida Rules of Appellate Procedure 9.030(b)(2) and (3) and 9.100(e), and Article V, Section 4(b)(3) of the Florida Constitution, and hereby respectfully petitions this Court for Writ of Mandamus/ or Writ of Certiorari/ or Writ of Prohibition directing the Honorable Mark D. Kiser of the Thirteenth Judicial Circuit to implement the current statutory death penalty sentencing procedures of Section 921.141 of the Florida Statutes (2024), which were signed into law on April 20, 2023. The trial court's order granting Respondent's "Motion to Preclude Application of the Most Recent Amendments to F.S. 921.141, As Such Application Would

Violate F.S. 775.022," departs from the essential requirements of the law.

Nature of Relief Sought

The nature of the relief sought is an Order of the Court preventing the trial court from proceeding on the outdated version of Section 921.141, Florida Statutes and directing the lower court to utilize the current statutory death penalty sentencing procedures of Section 921.141 of the Florida Statutes (2024).

Basis For Invoking Jurisdiction

The Florida Constitution grants district courts of appeal broad constitutional power to issue extraordinary writs. Art. V, § 4(b)(3), Fla. Const. Specifically, this Court's certiorari jurisdiction may be invoked pursuant to Florida Rule of Appellate Procedure 9.030(b)(2), Article 5, § 3(b)(8), as well as section 4(b)(3) of the Florida Constitution.

For a district court to grant a writ of certiorari, the petitioner must "demonstrate that the contested order constitutes '(1) a departure from the essential requirements of the law, (2) resulting in material injury for the remainder of the case, (3) that cannot be corrected on post judgment appeal.'" Bd. of Trs. of Internal

Improvement Tr. Fund v. Am. Educ. Enters., 99 So. 3d 450, 454 (Fla. 2012) (quoting Reeves v. Fleetwood Homes of Fla., Inc., 889 So. 2d 812, 822 (Fla. 2004)).

Courts consider in tandem whether the contested order would cause the petitioner material injury and whether the petitioner has an adequate remedy on appeal, referring to the combined question as whether the petitioner would suffer "irreparable harm." See Citizens Prop. Ins. Corp. v. San Perdido Ass'n, 104 So. 3d 344, 351 (Fla. 2012) (explaining that the threshold inquiry is whether there exists "a material injury that cannot be corrected on appeal, otherwise termed as irreparable harm").

The Florida Supreme Court has explained that although certiorari jurisdiction cannot be used to create new law, "clearly established law" "can derive from a **variety of legal sources**, including recent controlling case law, rules of court, statutes, and constitutional law." Allstate Ins. Co. v. Kaklamanos, 843 So. 2d 885, 890 (Fla. 2003) (emphasis added). Accordingly, a district court may grant a writ of certiorari after determining that the decision conflicts with the relevant statute, so long as the legal error is also "'sufficiently egregious or fundamental to fall within the limited scope'

of certiorari jurisdiction.'" Nader v. Florida Dept. of Highway Safety & Motor Vehicles, 87 So. 3d 712, 723 (Fla. 2012) (quoting AllState Ins. Co. v Kaklamanos, 843 So. 2d 885, 890 (Fla. 2003)); State v. Caamano, 105 So. 3d 18 (Fla. 2d DCA 2012) (quoting Nader and granting certiorari relief as the trial court's order departed from the essential requirements of the law as the lower court applied the incorrect statute when it dismissed the charge)).

It is well settled that mandamus will lie where the Petitioner has a clear legal right to the performance of the particular duty sought and that he has no other legal method for obtaining relief. Caldwell v. Estate of McDowel, 507 So. 2d 607, 608 (Fla. 1987). The judiciary is obligated to uphold the constitutionality of legislative enactments and fashion instructions consistent with the law.

The State of Florida will be irreparably harmed because the State has no basis to challenge this ruling on appeal. Sattazahn v. Pennsylvania, 537 U.S. 101, 112–13 (2003) (observing the double jeopardy bar may preclude a penalty phase retrial under certain circumstances). Because the court is applying an outdated law and stricter standard that requires a unanimous jury recommendation

for a sentence of death, the State may have no recourse if a life sentence is imposed. State v. Garcia, 350 So. 3d 322, 326 (Fla. 2022).

In the alternative, the court is acting outside of its authority by not applying the law in effect at the time of trial. A writ of prohibition is the appropriate remedy to prevent a lower tribunal from the improper use of judicial power. See English v. McCrary, 348 So. 2d 293 (Fla. 1977) (explaining that prohibition is an extraordinary writ by which a superior court prevents an inferior court from exceeding or usurping jurisdiction over matters not within its jurisdiction). The State is irreparably harmed and a writ of mandamus and writ of prohibition or certiorari is necessary.

Facts and Procedural History[1]

On January 30, 2023 at approximately 10:25 p.m., the Tampa Police Department responded to the Easton Park subdivision. There, they found 22-year-old victim Alana Devon Sims lying in a pool of blood in the roadway and bleeding from her head. Her baby was

[1] See generally, Hillsborough County Clerk's docket report found through CCIS (Exh. A): https://www.flccis.com/ccis/app/caseinformation.xhtml?query=KY93fwHfB0BZORpn3G77N3X7NhYBRelqlgJCuo0d8vc&from=caseSearchTab.

sleeping in a vehicle parked directly beside her in which the police located her identification. Ms. Sims was pronounced dead at the scene. The Medical Examiner determined that she was five months pregnant. She died of a gunshot wound to the head. The death was ruled a homicide.

According to the victim's sister, the victim was pregnant with the Defendant's child and on the night in question was going to meet him. On February 1, 2023, the Defendant told the police in a recorded statement that on January 30, 2023, he had been home the entire evening. Further, he did not believe the unborn baby was his, because he and the victim had not seen one another or communicated in several months.

Surveillance video captured the car belonging to the Defendant's father enter the Easton Park subdivision on January 30, 2023 at 7:22 p.m. It also showed what appeared to be the same car exit at 8:21 p.m. Surveillance video from the subdivision where the Defendant lived captured the same car leave at 7:10 p.m. and return at 8:32 p.m. Police found two live 9 mm rounds in the car on February 1, 2023.

On February 2, 2023, the Defendant recanted his earlier statement that he had been home the entire evening of January 30, 2023. He now claimed that he had left his residence between 6:50 p.m. and 7:00 p.m. and returned between 8:25 p.m. and 8:30 p.m. The Defendant had gone to his friend's house. He gave the names of two alibi witnesses and showed a video as corroboration. It had a time of 8:00 p.m. and a location of the Villas neighborhood. Analysis of the video revealed that it was recorded on February 1, 2023 and modified to reflect the date of January 30, 2023. The Defendant's two proffered alibi witnesses denied seeing him on the night of the murder.

A forensic download of the Defendant's phone revealed a text message conversation between him and a woman. They refer to a pregnant woman as interfering with their relationship. The phone also contained an iMaps search for Easton Park on January 30, 2023 at 6:43 p.m. On February 1, 2023 at 1:24 p.m., Appellant sent text messages including: "dat heat definite crazy; "Don't forget;" "7-8:20;" and "Tell em I pulled up on you." (Exh. B, pp. 261-266).

On February 23, 2023, the Defendant was indicted for two counts of first-degree premeditated murder. (Exh. C). On March 24,

2023, the State filed its Notice of Intent to Seek Death Penalty for both counts. As to Count One, the State alleged the following Aggravating Factors: (1) the Defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person; (2) the capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification; and (3) the capital felony was committed by a criminal gang member. As to Count Two, the State alleged an Additional Aggravating factor: (4) the victim of the capital felony was a person less than 12 years of age. (Exh. D).

On the date of the alleged murders, January 30, 2023, Section 921.141, Florida Statutes, provided that in the absence of a waiver of the right to a sentencing proceeding by a jury, "[i]f a unanimous jury determines that the defendant should be sentenced to death, the jury's recommendation to the court shall be a sentence of death."

On April 20, 2023, the Governor signed Senate Bill 450 to amend Florida's death penalty statutes to allow for a jury recommendation of a death sentence by a vote of eight to four jurors rather than requiring a unanimous jury vote for a death recommendation, as the prior version of the statute required. §

921.141, Fla. Stat. (2022) (capital felonies), and § 921.142, Fla. Stat. (2022) (drug trafficking). The amendments became effective immediately.

Section 921.141(2)(c) of Florida's death penalty statute now provides:

> (c) If at least eight jurors determine that the defendant should be sentenced to death, the jury's recommendation to the court must be a sentence of death. If fewer than eight jurors determine that the defendant should be sentenced to death, the jury's recommendation to the court must be a sentence of life imprisonment without the possibility of parole.

§ 921.141(2)(c), Fla. Stat. (2024). And Section 921.141(3)(a) of the amended statute now provides:

> (a) If the jury has recommended a sentence of:
>
> …
>
> 2. Death, and at least eight jurors recommend a sentence of death, the court, after considering each aggravating factor found by the jury and all mitigating circumstances, may impose a sentence of life imprisonment without the possibility of parole or a sentence of death. The court may consider only an aggravating factor that was unanimously found to exist by the jury. The court may impose a sentence of death only if the jury unanimously finds at least one aggravating factor beyond a reasonable doubt.

§ 921.141(3)(a), Fla. Stat. (2024).

The death penalty statute was also amended to require a written order from the sentencing judge for either a death sentence or a life sentence which must include "the reasons for not accepting the jury's recommended sentence, if applicable." § 921.141(4), Fla. Stat. (2024).

On September 1, 2023, the defense filed a Motion to Declare Florida's New Capital Sentencing Scheme, Dispensing with the Jury Unanimity Requirement and Replacing It with an 8-4 Vote, Violative of the Ex Post Facto Clause. (Exh. E). On December 12, 2023, the trial court rendered an Order denying the motion, holding:

> As explained by the Fifth District Court of Appeal in [State v.]Victorino, 372 So. 3d 772 (Fla. 5th DCA 2023)], it is well settled that the "U.S. and Florida Constitutions forbid the use of ex post facto laws. In short, ex post facto laws criminalize or enhance the criminal penalty for conduct that has already occurred. Thus, a law does not violate the ex post facto clause unless it is retrospective in its effect and alters the definition of a crime or increases the sentence by which the crime is punishable." [Id. at 777] (internal citations omitted). Further, a law is deemed "procedural when it alters how a criminal case is adjudicated instead of addressing the substantive criminal law" and, therefore, generally is "not an ex post facto law since it does not alter substantive personal rights. Id. [at 778] [(emphasis in original)]. The Fifth District ultimately held that the "amendment to section 921.141 is a quintessentially procedural change that has no substantive effect" and because it "neither alters the definition of criminal conduct nor increases the penalty by which the crime of first-degree murder is punishable[.] … it does not constitute an ex post facto law." Id. (citing

> Victorino v. State, 241 So. 3d 48, 50 (Fla. 2018)). Because this Court is bound by the Fifth District's Victorino opinion, Defendant's motion is denied and the State may proceed under the amended version of Section 921.141 with respect to Defendant's case. See Pardo v. State, 596 So. 2d 665 (Fla. 1992).

(Exh. F).

Following the rendition of the trial court's order, the defense filed a Motion to Preclude Application of the Most Recent Amendments to F.S. 921.141, As Such Application Would Violate F.S. 775.022. (Exh. G). It argued that Section 775.022(3), Florida Statutes, prohibits the retrospective operation of a criminal statute, whether substantive or procedural, in the absence of express Legislative intent. As such, amendments to Section 921.141, which became effective on April 20, 2023, would be inapplicable to the prosecution of the January 30, 2023 murders. (Exh. G, pp. 1-3).

The State filed its Response on January 29, 2024. (Exh. H). It argued that the amendments to Section 921.141 fall outside the scope of Section 775.022, because they did not change the definition or elements of first-degree premeditated murder, any defenses nor its maximum sentence. (Exh. H, pp. 3-5). The trial court held a hearing on January 30, 2024. (Exh. I).

The State then filed a Supplemental Response on February 6, 2024. (Exh. J). Citing Pappas v. State, 346 So. 3d 1200 (Fla. 1st DCA 2022) and Robinson v. State, 315 So. 3d 1266 (Fla. 5th DCA 2021), it argued that the application of the amendments would not violate Section 775.022, because the trial had not begun. [Exh. J, p. 2].

On February 13, 2024, the defense filed a reply asserting that absent clear legislative intent that a new law applies retroactively, the governing statute is the one in effect at the time of the commission of the offense. (Exh. K). It argued that the State's reliance on Pappas and Robinson was misplaced as they respectively address the reduction of punishment and the disqualification of certain defenses rather than the issue before the trial court. (Exh. K, pp. 2-4).

On April 12, 2024, the trial court rendered its Order Granting Defendant's Motion to Preclude Application of the Most Recent Amendments to F.S. 921.141, As Such Application Would Violate F.S. 775.022. (Exh. L). The trial court began its analysis, "[T]he Court finds the entitlement to Defendant's requested relief is based purely on the application and effect of Section 775.022." (Exh. L, p. 3).

It held that the amendments to Section 921.141 were "criminal statutes" dealing with punishment for purposes of Section 775.022.

(Exh. L, p. 4). The prosecution of the instant case began before the amendments to Section 921.141 became effective, thus invoking Section 775.022(3)(a)'s limitations. (Exh. L, p. 5). It continued, "[Although] Defendant has not yet been sentenced and a jury has not been empaneled[, t]he Court finds the plain language of Section 775.022(3), which forbids amendments impacting '[t]he … prosecution or enforcement thereunder,' requires a broader interpretation … preclud[ing] application of the Section 921.141 amendments to any case with a date of offense predating [April 20, 2023]." (Exh. L, p. 5).

ARGUMENT

THE TRIAL COURT'S DECISION TO PROCEED ON THE OUTDATED VERSION OF SECTION 921.141 DEPARTS FROM THE ESSENTIAL REQUIREMENTS OF LAW RESULTING IN MATERIAL INJURY TO THE PETITIONER THAT CANNOT BE REMEDIED BY APPEAL.

The trial court departed from the essential requirements of the law by granting Respondent's "Motion to Preclude Application of the Most Recent Amendments to F.S. 921.141, As Such Application Would Violate F.S. 775.022." The court's analysis fails to give significance and effect to every word, phrase, sentence, and part of

Section 775.022(3). In addition, it mistakenly treats the amendments to Section 921.141 as substantive law for purposes of retroactivity in contravention of United States Supreme Court and Florida Supreme Court precedent. Finally, should the ruling stand, the trial court will fail to fulfill its responsibility to properly instruct the jury on the prevailing law and would act outside its authority by not applying the law in effect at the time of trial.

The Prospective Application of the Most Recent Amendments to Section 921.141 to Pending Cases Does Not Violate Section 775.022 and Is Consistent with Florida Supreme Court Precedent.

Section 775.022 addresses the effect of a reenactment or an amendment to a criminal statute upon a prior event. It provides in pertinent part:

> (3) Except as expressly provided in an act of the Legislature or as provided in subsections (4) and (5),[2] the reenactment

[2] Neither Section (4) nor (5) applies to this case, because the penalty for first-degree murder has not been reduced and the most recent amendments to Section 921.141 do not involve a defense to the crime. They provide:

> (4) If a penalty, forfeiture, or punishment for a violation of a criminal statute is reduced by a reenactment or an amendment of a criminal statute, the penalty, forfeiture, or punishment, if not already imposed, must be imposed according to the statute as amended.

> or amendment of a criminal statute operates prospectively and does not affect or abate any of the following:
> (a) The prior operation of the statute or a prosecution or enforcement thereunder.

§ 775.022(3)(a), Fla. Stat. (2024) (emphasis added).

Interpreting the statute, the trial court held that the language of Section 775.022(3) prohibits Section 921.141's amendments from affecting an on-going prosecution. (Exh. L). This analysis fails to give significance and effect to every "word, phrase, sentence, and part" of Section 775.022(3). See Hechtman v. Nations Title Ins. of New York, 840 So. 2d 993, 996 (Fla. 2003) ("It is an elementary principle of statutory construction that significance and effect must be given to every word, phrase, sentence, and part of the statute if possible, and words in a statute should not be construed as mere surplusage."); United States v. Butler, 297 U.S. 1, 65 (1936) ("These words cannot be meaningless, else they would not have been used.").

> (5) This section may not be construed to limit the retroactive effect of any defense to a criminal statute enacted or amended by the Legislature in a criminal case that has not yet resulted in the imposition of a judgment or sentence by the trial court or an appellate decision affirming a judgment or sentence of the trial court.

§ 775.022(4) & (5), Fla. Stat. (2024).

The Defendant is being prosecuted for two counts of first-degree murder in violation of Section 782.041. Because there has been no Indictment alleging he violated Section 921.022(3)(a)—there has been no "prosecution or enforcement thereunder." Similarly, because the penalty phase has not occurred—there has been no "prior operation" of Section 921.141. As such, when significance and effect is given to every word, phrase, sentence, and part of Section 775.022(3)(a), the prospective application of the amendments to the Respondent's potential penalty phase is required.

Further, pursuant to Florida Supreme Court precedent, the amendments to Section 921.141, which are procedural, apply prospectively to this case. In Love v. State, 286 So. 3d 177, 186-89 (Fla. 2019), decided six months after Section 775.022 became effective, the Florida Supreme Court provided guidance on the application of statutory amendments to pending litigation. A court first asks whether the new law is substantive or procedural. See id. at 186–87. If substantive, the law presumptively does not apply to a pending case. Id. But if procedural, whether the law applies "will generally turn on the posture of the case, not the date of the events giving rise to the case." Id. at 187.

A procedural law receives an "essentially … prospective application," the Court clarified, as applied "to those [] hearings, including in pending cases, that take place on or after the statute's effective date." Id. at 188. In that circumstance, the law is not retroactive because it does not "attach[] new legal consequences to events completed before its enactment." Id. at 187 (quoting Landgraf v. USI Film Products, 511 U.S. 244, 269–70 (1994)).

In Love, for example, the Court held that a law altering the burden of proof at a Stand Your Ground immunity hearing was procedural and properly applied to immunity hearings conducted after the law's effective date. Because the change to the burden of proof affected only the "means and methods" used "to apply and enforce" the substantive right to self-defense immunity, it applied at the upcoming hearing in a "commonsense" and "ordinar[y]" way. Id. at 183, 188. That application was "prospective." Id. at 188.

In the criminal context, a law is substantive if it "declares what acts are crimes and prescribes the punishment therefor." Id. at 185 (quoting State v. Garcia, 229 So. 2d 236, 238 (Fla. 1969)). Thus, a law is substantive if it authorizes the death penalty for an offense. A

procedural law, by contrast, "provides or regulates the steps by which one who violates a criminal statute is punished." Id. (same)

"[T]he amendment to section 921.141 is a quintessentially procedural change that has no substantive effect. 'The new statute simply alter[s] the methods employed in determining whether the death penalty [is] to be imposed; there [is] no change in the quantum of punishment attached to the crime.'" State v. Victorino, 372 So. 3d 772, 778 (Fla. 5th DCA 2023) (quoting Dobbert v. Florida, 432 U.S. 282, 293 (1977) (holding that a Florida statute altering the role of judge and jury in capital cases was "clearly procedural")).

The Supreme Court has reiterated that a rule adjusting the requisite number of jurors is procedural. See Edwards v. Vannoy, 593 U.S. 255 (2021). In Edwards, the Court addressed whether its earlier decision holding that the Sixth Amendment requires unanimous verdicts as to the "elements" of an offense was substantive or procedural for retroactivity purposes. Id. at 258. Juror unanimity, the Court held in Edwards, affected "only the manner of determining the defendant's culpability," a prototypical question of procedure. Id. at 276. Other Supreme Court cases are in accord. See, e.g., Schriro v. Summerlin, 542 U.S. 348, 353 (2004) (holding that

the requirement that a jury, not a judge, find the aggravating factor required for death was procedural); McKinney v. Arizona, 140 U.S. 702, 708 (2020) (same).

The Florida Supreme Court has taken the same approach. In Asay, the Court had to decide whether Hurst v. Florida, 577 U.S. 92 (2016) (Hurst I), which held that the jury must find the fact of an aggravator beyond a reasonable doubt, applied to cases that were final before Hurst I was decided. Asay v. State, 210 So. 3d 1, 15–17 (Fla. 2016). The Court reasoned that Hurst I's new rule did not "place beyond the authority of the state the power to regulate certain conduct or impose certain penalties," and thus was not substantive. Id. at 17. It therefore applied its test for determining whether new rules of criminal procedure are retroactive under state law. Id. at 17–22 (deeming Hurst I retroactive); accord State v. Perry, 192 So. 3d 70, 75 (Fla. 5th DCA 2016) ("Chapter 2016–13, Laws of Florida, alters the process used to determine whether the death penalty will be imposed, but makes no change to the punishment attached to first-degree murder."), quashed on other grounds, 210 So. 3d 630 (Fla. 2016).

Pursuant to this precedent, a mere change to the role of the jury or to a juror-unanimity requirement is procedural, and under Love, the amendments to Section 921.141 would be applied prospectively to the Defendant's potential future penalty phase. As such, the lower court departed from the essential requirements of the law when it held "the language of Section 775.022(3) prohibits Section 921.141's amendments from 'affect[ing] … the … prosecution' that had already begun in the instant case … because Section 775.022(3)(a) prohibits the amendment of a criminal statute from affecting an ongoing prosecution…" (Exh. L, p. 6).

Finally, trial courts have the "responsibility to determine and properly instruct the jury on the prevailing law." Standard Jury Instructions in Crim. Cases (95-1), 657 So. 2d 1152, 1153 (Fla. 1995); Allen v. State, 324 So. 3d 920, 928 (Fla. 2021). To fulfill this responsibility, "[t]he standard jury instructions appearing on The Florida Bar's website may be used by trial judges in instructing the jury in every trial to the extent that the instructions are applicable," but if the court "determines that an applicable standard jury instruction is erroneous or inadequate … the judge shall modify the standard instruction or give such other instruction as the trial judge

determines to be necessary to instruct the jury accurately and sufficiently on the circumstances of the case." Fla. R. Gen. Prac. & Jud. Admin. 2.580.8; Allen v. State, 324 So. 3d 920, 928 (Fla. 2021).

The responsibility to ensure that the jury is properly instructed ultimately rests with the trial court, not counsel. The court has a duty to assure that the jury is instructed on the correct law to be applied to the case. While the standard jury instructions may be presumed to be correct, final responsibility for correctly instructing the jury remains with the trial court. Silva v. State, 259 So. 3d 278, 282 (Fla. 3rd DCA 2018). "In that regard, a trial judge in a criminal case is not constrained to give only those instructions that are contained in the Florida Standard Jury Instructions." The "[j]ury instructions must relate to issues concerning evidence received at trial," and "the court should not give instructions which are confusing, contradictory, or misleading." Hegele v. State, 276 So. 3d 807, 810 (Fla. 4th DCA 2019).

Florida Standard Jury Instruction 7.11 was amended in 2023. It now provides in part:

> If fewer than 8 jurors vote for the death penalty, the Court must sentence the defendant to life in prison without the possibility of parole.

> If 8 or more jurors vote for the death penalty, your recommendation must be for the death penalty. This recommendation is not binding on the Court. However, I am required to assign and give great weight and deference to your recommendation.

Fla. Std. Jury Instr. (Crim.) 7.1.

Should the lower court's order stand, the State would be irreparably harmed, and the trial court would fail to fulfill its responsibility to properly instruct the jury on the prevailing law and would act outside its authority by not applying the law in effect at the time of trial.

Accordingly, the State requests that this Court issue a constitutional writ barring the lower court from proceeding on the outdated version of Section 921.141, and directing the lower court to utilize the new statutory death penalty sentencing procedures of Section 921.141 of the Florida Statutes (2024).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of May 2024, I electronically filed the foregoing with the Clerk of the Court by using the e-filing portal system which will send a notice of electronic filing to the following: Lindsey Hodges, Assistant State Attorney, Office of the Hillsborough County State Attorney, 419 N. Pierce Street, Tampa, Florida 33602-4022, **!MailProcessingStaff@SAO13th.com**; Jamie Kane, Assistant Public Defender, Office of the Public Defender, P.O. Box 620971, Tampa, Florida 33672-0910, **kanej@pd13.state.fl.us**; and the Honorable Mark D. Kiser, Circuit Judge, 401 N. Jefferson

Street, Room #616 Annex Courthouse, Tampa, Florida 33602, **felonydive@fljud13.org**.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this Petition is 14-point Bookman Old Style, and word count is less than 13,000 in compliance with Florida Rule of Appellate Procedure 9.045(e) and 9.100(g).

/s/ Michael W. Mervine
MICHAEL W. MERVINE
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