IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY, FLORIDA
CRIMINAL DIVISION

STATE OF FLORIDA,
Plaintiff,
vs. **CASE NO.: 2020-CF-003014**

ASHLEY C. BENEFIELD,
Defendant.
_____/

MOTION FOR NEW TRIAL, REQUEST FOR INTERVIEW OF TRIAL JURORS, AND INCORPORATED MEMORANDUM OF LAW

Ashley C. Benefield, by and through undersigned counsel and pursuant to the *Sixth Amendment*, and the *Due Process Clause* of the *Fourteenth Amendment*, of the *United States Constitution*, and *Article 1, Sections 9 and 16*, of the *Florida Constitution*, as well as *Rule 3.600(a)(2),(b)(2),(4),(5),(8)* of the *Florida Rules of Criminal Procedure*, hereby moves this Court for a new trial. As grounds in support of the instant Motion, Ms. Benefield alleges as follows:

I
PROSECUTORIAL MISCONDUCT

The prosecutors' improper and inflammatory remarks during closing arguments prejudiced Ms. Benefield's substantive rights and warrant a new trial.

A. Legal Standard

Under *Rule 3.600(b)*, of the *Florida Rules of Criminal Procedure*, the court shall grant a new trial if "...(5) the prosecutor was guilty of misconduct; or (8) for any other cause not due to the defendant's own fault, the defendant did not receive a fair and impartial trial."

Rule 3.600(b)(5) requires the court grant a new trial where the prosecutor is guilty of misconduct that prejudiced the defendant's substantial rights. *State v. Connell*, 478 So.

2d 1176, 1178 (Fla. 2d DCA 1985). Improper prosecutorial comments warrant a new trial where they deprive the defendant of a fair and impartial trial, materially contribute to the conviction, are so harmful or fundamentally tainted as to require a new trial or are so inflammatory that they might have influenced the jury to reach a more severe verdict than it would have otherwise. *Spencer v. State*, 645 So. 2d 377, 383 (Fla. 1994). The defendant's substantive rights are prejudiced if there is a reasonable probability that "but for" the remarks, the outcome would have been different. *United States v. Wilson*, 149 F.3d 1298 (11th Cir. 1998).

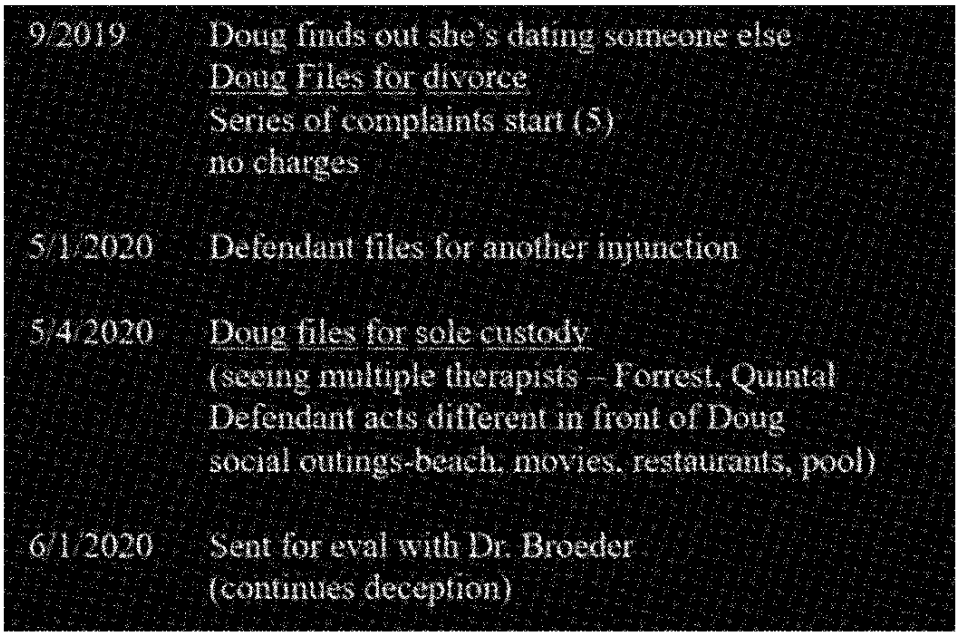
B. False Statements About Douglas Benefield Filing for Sole Custody

During closing argument, chief homicide prosecutor Suzanne O'Donnell falsely stated:

> "May 4th, only a few days later, after she files for another injunction, Doug files for sole custody of the child. This is Ashley Benefield's biggest fear that this man is going to get sole custody, but she's making all of these grand allegations against him that he knows are not true, there's got to be something wrong, and it it's probably not safe for this child to even be with her so he files for full custody."[1]

This statement was entirely false and unsupported by any evidence presented at trial. In fact, the court docket shows that it was Ashley Benefield who filed a motion on May 4th, not Douglas Benefield (**Exhibit B**). The prosecutor further emphasized this false claim in her PowerPoint presentation (**Exhibit C**) displayed to the jury:

[1] 4:46:28 to 4:46:56 at https://www.youtube.com/watch?v=BrWuKWovFd4&t=39154s



This improper argument implied the State had information not presented at trial, suggesting Ms. Benefield was going to lose custody of her child – the final motive put forward by the State. Such comments referring to matters outside the record are clearly improper. See *Wheeler v. State*, 425 So.2d 109, 110-111 (Fla. 1st DCA 1982). As held in *Williamson v. State*, 459 So. 2d 1125 (Fla. 3d DCA 1984), a prosecutor may not refer to facts not in evidence, as it constitutes a form of unsworn testimony not subject to cross-examination. Similarly, in *Vaczek v. State*, 477 So. 2d 1034 (Fla. 5th DCA 1985) and *Lane v. State*, 459 So. 2d 1145 (Fla. 3d DCA 1984), the appellate courts' held that it was improper for a prosecutor to refer to testimony or items not in evidence.

Given the highly prejudicial nature of this false claim about Mr. Benefield seeking sole custody, there is a reasonable probability it affected the outcome of the trial. Moreover, the improper comments deprived Ms. Benefield of a fair and impartial trial, materially contributing to the conviction, and were so harmful and fundamentally tainted as to require a new trial.

Ms. O'Donnell's statement exceeded all acceptable bounds of advocacy, and deprived Ms. Benefield of a fair and impartial trial. A new trial is warranted on this ground alone.

C. Improper Attacks on, and belittling of, Ms. Benefield's Character and identity

The prosecutors repeatedly and improperly attacked Ms. Benefield's character, calling her a "manipulator" at least **14** times during closing arguments, and claimed she was manipulating everyone, including the jury. They ridiculed her emotional testimony and accused her of lying without evidence. Such vituperative characterizations of a defendant are improper and prejudicial. *Gore v. State*, 719 So.2d 1197, 1201 (Fla. 1998).

For example, prosecutor Suzanne O'Donnell told the jury:

> The defendant trying to say he was in a fighting stance, he lunged at me, ***that is just her once again trying to manipulate the system. She's trying to manipulate you*** to believe that this was necessary. He was coming at me, but the physical evidence does not bear that out it does not show that he was coming at her and that she had to shoot him[2]

During the State's rebuttal closing argument, Assistant State Attorney Rebecca Freel told the jury:

> The house, buying the house, I read that very differently. First of all, he wasn't trying to buy he was trying to rent ***and if you don't believe that they were talking while they had this mutual injunction, they were, I'm sure. Miss Benefield was lying to him,*** telling him they're going to move to Maryland, live in separate houses, but you know, co-parent (emphasis added). And she was all the while planning with her attorney to have an injunction hearing in a matter of days. It's reasonable to believe that that mutual injunction was, ***I'm sure Ms. Benefield was speaking to him when it was convenient for her, when she could get something out of***

[2] 5:21:53 – 5:22:18 https://www.youtube.com/watch?v=BrWuKWovFd4&t=39154s

it, it only goes with the rest of it (emphasis added). This letter we've heard about that Miss Benfield testified to about all these things, ***it's another effort at manipulation*** (emphasis added). We don't know when she wrote that letter. We don't know what she put in it. We don't know if any of it was true. I can write a letter and tell you that I'm the Queen of England, it doesn't make it true, and just because I say I wrote it three years ago doesn't mean I did. ***I keep saying manipulation, and the reason is because this defendant attempted to manipulate the system, it didn't work. she attempted to manipulate the experts, she kind of did, right***, because what did we hear about Dr. Lew and Mr. Haag, they talked to the defendant she told him what she says happened, right (emphasis added)*? **I don't even think she told them the same story she told you based on what they said*** (emphasis added).[3]

I would submit to you that those two experts Mr. Haag was the one you should be depending on even though ***he also spoke to Ms. Benfield so clearly got one side of the story, or a made-up story*** *(emphasis added).*[4]

As to Dr. Broeder, I think you should take some of what Dr. Broeder said to heart, his concern, her concern was not that Doug was gonna fly off at the handle. She said she was concerned she would make him look bad in front of Dr. Broeder. I pretended that I'm moving to Maryland and going to co-parent because I don't want to make him look bad ***this man that I would have you believe was a abusive horrible man*** they have ***they have defamed him up and down*** (emphasis added). No, she didn't say that. She didn't say I was afraid the Doug would freak out on me I was afraid he'd do this so she said I didn't want to make him look bad ***she's manipulating Dr. Broeder***, right, ***she's manipulating Doug for sure*** (emphasis added).[5]

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[3] 6:42:33 - 6:44:20 https://www.youtube.com/watch?v=BrWuKWovFd4&t=39154s
[4] 6:49:28 – 6:49-37 https://www.youtube.com/watch?v=BrWuKWovFd4&t=39154s
[5] 6:51:49 - 6:52:43 https://www.youtube.com/watch?v=BrWuKWovFd4&t=39154s

> ***It's manipulation*** and that's ***that's what she does*** that's what she's done the evidence has shown it to you (emphasis added).[6]
>
> I would submit to you that Ashley Benfield is very smart she's been work in the system or trying for years and if I say oh I'm trying to co-parent with an abuser that looks good for me he's an abuser he shouldn't have my baby he shouldn't have medical control he certainly shouldn't have custody partial custody or anything else ***just because she said it doesn't mean it's true and that's because as I said she tried to manipulate the system*** in South Carolina ended up being Mutual ***she tried to manipulate the system in Florida*** she got turned down she tried to terminate his parental rights the judge gave him custody (emphasis added). She tried to ***manipulate*** the experts as I already told talked and I think in some cases she did and ***she's trying to manipulate you*** (emphasis added).[7]

These inflammatory attacks on Ms. Benefield's character served no purpose but to inflame the minds of the jurors against her. Such arguments are clearly prohibited. See *Garron v. State*, 528 So. 2d 353, 359 (Fla. 1988); *Bertolotti v. State*, 476 So. 2d 130, 134 (Fla. 1985). As the court stated in *Chambers v. State*, "[p]ermitting this general attack on the defendant's character was error." 924 So. 2d 975, 978 (Fla. 2d DCA 2006).

The prosecutors also ridiculed Ms. Benefield's testimony, with Ms. Freel stating:

> You can decide what you think about her testimony, she's a witness like any other. But I would submit to you that that ***was all manipulation*** (emphasis added). ***There were no tears*** (emphasis added). You use your common sense. If you cry and have to take breaks and you're racking then you're going to have a swollen face you're going to your eyes are going to be Puffy you're going to have snot I don't know what other word to use she didn't even get a tissue until I can't remember who either the judge or or the defense off attorney told her hey there's tissues oh yeah I should have a tissue ***she'd been crying for 15 minutes didn't need a tissue that's***

[6] 6:53:12 – 6:53:17 https://www.youtube.com/watch?v=BrWuKWovFd4&t=39154s
[7] 6:54:44 – 6:56:33 https://www.youtube.com/watch?v=BrWuKWovFd4&t=39154s

> ***manipulation that's her efforts to manipulate you and make you believe that she was a victim*** she is not the victim Douglas Benefield was the victim in this case (emphasis added).[8]

Such vituperative characterizations of a defendant are improper and prejudicial. As stated in *Gore v. State*, 719 So.2d 1197, 1201 (Fla. 1998), a prosecutor cannot "engage in vituperative or pejorative characterizations of a defendant" or "needless sarcasm," revealing that the prosecutor has "abandoned any semblance of professionalism." In the words of one viewer: "These prosecutors sound like a couple of high school bullies."[9]

Still not enough, the prosecutors went even further and claimed Ms. Benefield was lying, with no evidentiary support. They said she told defense experts a "made-up story," again without any basis in the evidence. Such attacks on the defendant's credibility are improper. As the court cautioned in *Pacifico v. State*, "Where the case against a defendant is weak or tenuous, a prosecutor's contentions that the defendant is a liar could rarely, if ever, be construed as harmless error." 642 So. 2d 1178, 1184 (Fla. 1st DCA 1994).

In *Rosso v. State*, 505 So. 2d 611, 614-15 (Fla. 3d DCA 1987), the court held that improper prosecutorial comments will warrant a new trial where the evidence is very close, where a prosecutor refers to testimony or items not in evidence, or where a prosecutor indulges in personal attacks upon an accused, her defense, or her counsel.

D. Improper Speculation about Out-of-Court Conversations

Prosecutor Freel engaged in improper speculation about conversations between Ms. Benefield and Douglas Benefield, stating:

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[8] 6:54:44 – 6:56:33 https://www.youtube.com/watch?v=BrWuKWovFd4&t=39154s
[9] An X (formerly Twitter) user that watched the closing arguments of the prosecution, and can be viewed at: https://x.com/Eaden_EE/status/1818366541114884580

> First of all, he wasn't trying to buy he was trying to rent and if you don't believe that they were talking while they had this mutual injunction, they were, I'm sure. Miss Benefield was lying to him, telling him they're going to move to Maryland, live in separate houses, but you know, co-parent.

There was no evidence presented at trial that Ms. Benefield and Mr. Benefield were communicating while the mutual injunction was in effect. The prosecutor's claim that "they were, I'm sure" talking implies the state had information not presented at trial. Such arguments referencing matters outside the record are improper. See *Wheeler v. State*, 425 So.2d 109, 110-111 (Fla. 1st DCA 1982).

E. False Claims About Defense Expert Testimony

The prosecutors made false claims about the testimony of defense expert Dr. Emma Lew. Prosecutor Freel stated:

> Dr. Lew is a medical examiner, she seems like a well-qualified medical examiner who did testify mostly for the state cuz she worked for the state and is now testifying for the defense; and the defense asked you why would she do that. She did that cuz she's getting paid, getting paid to be here, that's why she's here, that's why she's saying those things, and most of them were probably very accurate."[10]

There was no evidence presented that Dr. Lew was being paid to testify or that she testified the way she did because she was paid. Ironically, at the time of her testimony and as this is being written, Dr. Lew had received no fee whatsoever. The prosecutors never even asked Dr. Lew if she was being paid. This improper argument suggested, without any foundation in the record, that the defense had suborned perjury from their

[10] 6:44:49 – 6:45:12 https://www.youtube.com/watch?v=BrWuKWovFd4&t=39154s

expert witness. Such comments are "highly irregular, impermissible, and prejudicial." *Henry v. State*, 651 So. 2d 1267, 1268-69 (Fla. 4th DCA 1995).

Moreover, the prosecutors improperly denigrated the defense theory and expert witnesses. A prosecutor may not ridicule a defendant's theory of defense. *Riley v. State*, 560 So. 2d 279, 280 (Fla. 3d DCA 1990). In *Rosso v. State*, 505 So. 2d 611, 614-15 (Fla. 3d DCA 1987), the court held that improper prosecutorial comments will warrant a new trial where the evidence is very close, where a prosecutor refers to testimony or items not in evidence, or where a prosecutor indulges in personal attacks upon an accused, his defense, or his counsel.

F. Improper appeals to emotion and sympathy

The prosecutors made inflammatory arguments clearly designed to arouse the emotions and prejudices of the jury against Ms. Benefield. For instance, Ms. O'Donnell emphasized:

> Afterwards she runs over to the neighbor's house not once do you hear her say get an ambulance, I don't know if he's still alive, you know I I I I had I had to do it but somebody help him. Not once did you ever hear any concern that I just shot another human being regardless of what the facts are. No.[11]
>
> And she was the only person armed in that room. Doug Benefield was not armed. He had no weapons. He was laying on the floor dying, and she goes to the neighbor and not once asks for an ambulance and he dies either on the way to the hospital or in the hospital. She was the only one armed and it was not necessary. She did not have to shoot him. It was not reasonable she did not have to shoot him. She had an agenda and it worked for what she wanted and she got what she wanted. because after she killed him what did she get? Sole custody of the child."[12]

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[11] 5:22:19 – 5:22:43 https://www.youtube.com/watch?v=BrWuKWovFd4&t=39154s
[12] 5:23:39 – 5:24:27 https://www.youtube.com/watch?v=BrWuKWovFd4&t=39154s

Such arguments that serve only to inflame the minds of jurors are improper. As held in *Bertolotti v. State*, 476 So. 2d 130, 134 (Fla. 1985), closing arguments "must not be used to inflame the minds and passions of the jurors so that their verdict reflects an emotional response to the crime or the defendant rather than the logical analysis of the evidence in light of the applicable law." In *Garron v. State*, 528 So. 2d 353, 359 (Fla. 1988) and *Gonzalez v. State*, 588 So. 2d 314 (Fla. 3d DCA 1991), the courts held that arguments that have no purpose but to inflame the minds of the jurors against the defendant are clearly prohibited. *See also, Rosso v. State*, 505 So. 2d 611 (Fla. 3d DCA 1987), discrediting a proper legal defense instead of commenting on the evidence and the reasonable inferences therefrom; *Taylor v. State*, 640 So. 2d 1127 (Fla. 1st DCA 1994).

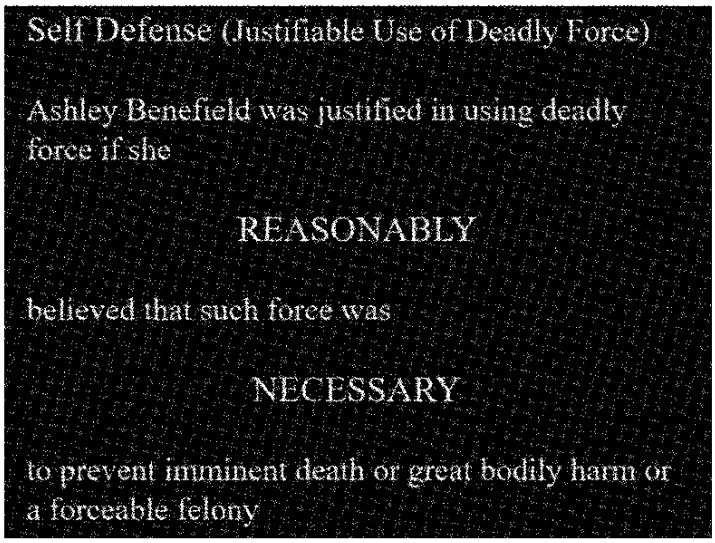
G. Improper Burden Shifting

The prosecutors repeatedly misstated the law on self-defense, telling jurors they needed to evaluate whether Ms. Benefield's use of force was "reasonable and necessary." For example, Ms. O'Donnell stated:

> So, the real question in this case is was there self-defense was there justifiable self-defense and the self-defense instruction is long and you'll have it to review in the back however what you will notice are two words that come up all the time in that instruction. Self-defense justifiable use of deadly force would be: Ashley Benfield was justified in using deadly force if she reasonably believed such force was necessary to prevent eminent death or great bodily harm or a forceable felony. you're going to see those two words and like I told you a little bit earlier that's what you need to think of each time that you're trying to evaluate whether she used force appropriately.[13]

[13] 5:05:24 – 5:06:20 https://www.youtube.com/watch?v=iwEvmnYScoM&t=23997s

Ms. O'Donnell further shifted the burden of proof, impermissibly, in closing argument when she highlighted and emphasized the incorrect instruction in her PowerPoint presentation (**Exhibit D**) displayed to the jury:



During rebuttal closing argument, Assistant State Attorney Rebecca Freel again argued:

> A Reasonable Doubt does not mean proof beyond all doubt you don't have to get back there and have no doubt you have to get back there and decide did she shoot and kill him with a depraved heart and I would submit to you she did and **then you have to decide was she justified and using self-defense was it reasonable and necessary based on what happened in that house that she shoot and kill him on September 27th 2020** (emphasis added). it's not a mere possible doubt a speculative imaginary or force doubt that's not what we're talking about we're talking about a reasonable doubt and the state would submit to you that we have proven beyond a reasonable doubt that Doug Benfield is dead, the death was caused by a criminal act of this defendant, Ashley Benefield, and there was an unlawful killing by an act imminently dangerous to another and demonstrating a depraved mind without regard for human life, and it was not justified it was not based on self-defense it was not reasonable and necessary to stand six to seven feet away from that man and shoot him four shoot at him four times and

> I would ask that you come back and find this defendant guilty of murder in the second degree with a firearm."[14]

This argument improperly shifted the burden to Ms. Benefield to prove her actions were justified. The self-defense jury instruction clearly states: "[Ashley Benefield] does not have the burden of proving that [she] was justified in [using] deadly force. Instead, for you to find the defendant guilty, ***the State must prove beyond a reasonable doubt the defendant was not justified in [using] deadly force***." Fla. Std. Jury Instr. (Crim.) 3.6(f) (emphasis supplied). As held in *Brown v. State*, 454 So.2d 596, 598 (Fla. 5th DCA 1984), and *Hernandez Ramos v. State*, 496 So. 2d 837 (Fla. 2d DCA 1986), the State has the burden of proving guilt beyond a reasonable doubt, which includes proving beyond a reasonable doubt that the defendant did **not** act in self-defense.

A defendant has a fundamental right to present a defense, *see Story v. State*, 589 So. 2d 939 (Fla. 2d DCA 1991), and to have the jury properly instructed on any legal defense supported by the evidence, *Gardner v. State*, 480 So. 2d 91 (Fla. 1985). These rights stand for naught if the prosecutor can ridicule a defense so presented, denigrate the accused for her determination in raising the issue, and misstate the law in contradiction of the judge's instructions, as the prosecutor in this case did. The error committed by the prosecutor in closing argument, therefore, deprived Ms. Benefield of her fundamental right to a fair trial. With ample evidence to support the defense of justifiable use of force, it cannot be said that this error was harmless beyond a reasonable doubt. *State v. DiGuilio*, 491 So. 2d 1129 (Fla. 1986). *Miller v. State*, 712 So. 2d 451, 453 (Fla. 2d DCA 1998).

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[14] 6:56:42 – 6:57:51 https://www.youtube.com/watch?v=iwEvmnYScoM&t=23997s

H. False Representation of Wound Path

The uncontroverted testimony was that the wound path of the fatal shot to the decedent's chest was from "Front to back, left to right." Such was the testimony of Dr. Vega, the State's Medical Examiner. That wound path description was confirmed by Michael Haag, the Defense's ballistics expert, as well as Dr. Emma Lew, the Defense's physician and just retired Miami-Dade County Medical Examiner.

Despite that – and using a graphic illustration ***never, at any prior time***, shown to the Defense – the State, through Assistant State Attorney Suzanne O'Donnell, represented to the jury that the wound path was side to side

> "About this trajectory, just because there's sort of some misconception that this shot was front to back that is just the planes with which the medical examiner uses so it can be a little confusing, but if you look at the way this arrow is it the bullet goes in right by the right nipple and then lands right here. So it is side to side, now once it went in where the nipple is did it curve a little bit to the back? Yes, that's why it's like in the back. That's why they say front to back, so it went side to side and a little bit to the back. There is no way he was facing her when she shot him. No way. Here's another angle. This is from the back, so if it went in on the side, the right hand side and that red dot is where it landed in the back.[15]"

In an even more blatant misrepresentation, Ms. O'Donnell used a graphic depiction (**Exhibit E**) to demonstrate that the wound path entered the deceased's right side, behind his right arm, traversed his chest in a straight path and lodged in his back.

This was a flat-out misrepresentation of uncontroverted testimony which clearly misled the jury.

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[15] 5:18:14.7 – 5:19:18 https://youtube.com/clip/UgkxyYVCPOVwO7WkXqxr6ZYOXZjJ4wXcOe8d?si=IhVESnEzkfjlrByN

I. Cumulative Effect

While no single improper comment may require a new trial on its own, the cumulative effect of the prosecutors' numerous improper and inflammatory remarks deprived Ms. Benefield of her fundamental right to a fair trial. As the court stated in *Johns v. State*:

> While no one of the comments standing in isolation would have required a new trial, this court must look at the entire trial record when considering whether the comments at issue are of such a nature as to destroy the fairness of the proceeding...When considering the relative lack of evidence against Johns, the character of the evidence that did exist, and the number of improper arguments made by the prosecutor, it is apparent that the prosecutor's closing argument was improper with respect to the 'neutral arena' in which a trial should be held.

832 So. 2d 959, 963 (Fla. 2d DCA 2002).

As stated in *Chambers v. State*, 924 So. 2d 975, 978-79 (Fla. 2d DCA 2006), "In order to require a new trial based on improper prosecutorial comments, the prosecutor's comments must either deprive the defendant of a fair and impartial trial, materially contribute to the conviction, be so harmful or fundamentally tainted as to require a new trial, or be so inflammatory that they might have influenced the jury to reach a more severe verdict than that it would have otherwise reached." The prosecutors in this case repeatedly made inflammatory and improper comments attacking Ms. Benefield's character, referencing matters outside the record, making false claims about the evidence, appealing to sympathy, and shifting the burden of proof. Given the nature of the evidence in this case, these inflammatory and improper comments affected the

outcome, deprived Ms. Benefield of a fair and impartial trial, materially contributed to the conviction, and were so harmful or fundamentally tainted as to require a new trial.

As held in *DiGuilio*, 491 So.2d at 1135, to establish harmless error, the State must show "beyond a reasonable doubt that the error complained of did not contribute to the verdict or, alternatively stated, that there is no reasonable possibility that the error contributed to the conviction." The State cannot meet that burden here.

A prosecutor's concern "in a criminal prosecution is not that it shall win a case, but that justice shall be done." *Modica*, 663 F.2d at 1180 (quoting *Berger v. United States*, 295 U.S. 78, 88, 55 S. Ct. 629, 633, 79 L. Ed. 1314, 1321 (1935)). While a prosecutor "may strike hard blows, [s]he is not at liberty to strike foul ones." *Id.* The prosecutors in this case clearly failed to honor these precepts. Their conduct also violated the obligations imposed by the Florida Bar. In short, the prosecutors exceeded all acceptable bounds of advocacy. *Rosso v. State*, 505 So. 2d 611, 614-15 (Fla. 3d DCA 1987).

It is appropriate, here, to reiterate the jurisprudential principle expressed in *Pacifico* that "[t]he cornerstone of our system of justice is the right of an accused to be judged fairly by a jury of his or her peers." *Supra.* at 1184–85. On the record in this case, "the repetitious and egregious nature of the prosecutorial improprieties ... became such a feature of the trial as to deprive [Ms. Benefield] of that fundamental right." *Id.* at 1185. In this regard, the state cannot demonstrate "beyond a reasonable doubt" that the prosecutor's comments impugning Ms. Benefield and her defense "did not contribute to the verdict." *State v. DiGuilio,*491 So.2d 1129, 1135 (Fla.1986).

Finally, in this case, the prosecutor's references to Ms. Benefield as being a liar, a manipulator, and to matters for which there was absolutely no support in the record, in a

manner both pejoratively and sarcastically — all of which form the basis for Ms. Benefield's motion — were so invasive and inflammatory, "it is questionable whether the jury could put aside the prosecutor's character attacks, and decide the case based strictly upon the evidence." *Id.* Thus, in situations "where witness credibility is the pivotal issue, inappropriate prosecutorial comment which might be considered harmless in another context, can become prejudicially harmful." *Id.* (citing *Hill v. State*, 477 So.2d 553 (Fla.1985)). As emphasized in *Bass v. State*, 547 So.2d 680 (Fla. 1st DCA 1989), when the case presents "a two witness 'swearing match' where there is little or nothing to corroborate the testimony of the witnesses, witness credibility is pivotal and inappropriate prosecutorial comment which might be found to be harmless in another setting may become prejudicially harmful." *Id.* at 682. Because the present case chiefly involved the testimony of Ms. Benefield, the undeniably crucial issue "was the jurors' perception of [Ms. Benefield's] credibility." *Pacifico*, *supra.*, 642 So.2d at 1184.

II
INDENTIFIABLE JUROR MISCONDUCT

Juror 15, Sarah Yvonne Walcott, failed to disclose on her questionnaire material information and further, concealed material information during *voir dire* that would have resulted, at a minimum, in a peremptory challenge by the Defense.

A. Legal Standard

The Florida Supreme Court has laid out a three-part test for determining whether a juror's nondisclosure of information during voir dire will warrant a new trial: "First, the complaining party must establish that the information is relevant and material to jury service in the case. Second, that the juror concealed the information during questioning. Lastly, that the failure to disclose the information was not attributable to the

complaining party's lack of diligence." *De La Rosa v. Zequeira*, 659 So. 2d 239, 241 (Fla. 1995) (citing *Skiles v. Ryder Truck Lines, Inc.*, 267 So. 2d 379, 380 (Fla. 2d DCA 1972)). While *De La Rosa* is a civil case, the Florida Supreme Court routinely applies its three-part test in criminal cases. *See, e.g., Murray v. State*, 3 So. 3d 1108, 1121-22 (Fla. 2009); *Lugo v. State*, 2 So. 3d 1, 13-16 (Fla. 2008); *Bigham v. State*, 995 So. 2d 207, 215 (Fla. 2008).

Any "juror who conceals a material fact that is relevant to the controversy is guilty of misconduct, and this misconduct is prejudicial to at least one of the parties, because it impairs his or her right to challenge the juror." *Young v. State*, 720 So. 2d 1101, 1103 (Fla. 1st DCA 1998).[16] (In criminal cases, of course, the state is also a party.) The presumption of prejudice has been said to apply "unless the opposing party can demonstrate there is no reasonable possibility that the misconduct affected the verdict." *Williams v. State*, 933 So. 2d 671, 672 (Fla. 1st DCA 2006) (citing *State v. Hamilton*, 574 So. 2d 124, 129 (Fla. 1991)).

Under the rule, a criminal defendant is entitled to a new trial if a juror's misconduct has prejudiced the defendant's substantial rights. The substantial right implicated in this case is Ms. Benefield's right to be tried by six impartial jurors, and her right to challenge the juror for cause or make a peremptory challenge. Thus, "[i]t is the duty of a trial court

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[16] It is well established that "the right to jury trial guarantees to the criminally accused a fair trial by a panel of impartial, 'indifferent' jurors. The failure to accord an accused a fair hearing violates even the minimal standards of due process." *Irvin v. Dowd*, 366 U.S. 717, 722, 81 S. Ct. 1639, 6 L. Ed. 2d 751 (1961) (citing *In re Oliver*, 333 U.S. 257, 68 S. Ct. 499, 92 L. Ed. 682 (1948); *Tumey v. Ohio*, 273 U.S. 510, 47 S. Ct. 437, 71 L. Ed. 749, 5 Ohio Law Abs. 159, 5 Ohio Law Abs. 185, 25 Ohio L. Rep. 236 (1927)). The right to an impartial jury trial is secured by the Sixth Amendment and by the Due Process Clause of the Fourteenth Amendment. *Morgan v. Illinois*, 504 U.S. 719, 726-27, 112 S. Ct. 2222, 119 L. Ed. 2d 492 (1992); *Turner v. Louisiana*, 379 U.S. 466, 471-72, 85 S. Ct. 546, 13 L. Ed. 2d 424 (1965). This Court has recognized that whenever a potential juror is affected by bias or prejudice against the defendant, "it cannot be said that he is fair-minded and impartial, and, if accepted as a juror, that he would be of that standard of impartiality which is necessary to prevent an impairment of the right to jury trial." *Johnson v. Reynolds*, 97 Fla. 591, 121 So. 793, 796 (Fla. 1929); *see also Dyer v. Calderon*, 151 F.3d 970, 973 (9th Cir. 1998) ("The bias or prejudice of even a single juror would violate [defendant]'s right to a fair trial.").

to see that defendants in criminal cases are tried by a jury such that *not even the suspicion of bias (leaning) or prejudice (prejudgment) can attach to any member thereof*." *Nicholas v. State*, 47 So. 3d 297, 305 (Fla. 2d DCA 2010) (quoting *Elliott v. State*, 77 Fla. 611, 82 So. 139, 142 (Fla. 1919)). "[I]f there is any reasonable doubt as to whether a particular juror can render an impartial verdict based solely on the evidence presented and the law announced at trial, that juror should be removed, even if the juror affirmatively states that he can be impartial." *Id.* (citing *Graham v. State*, 470 So. 2d 97, 97-98 (Fla. 1st DCA 1985)).

"'While challenges for cause permit rejection of jurors on a narrowly specified, provable and legally cognizable basis of partiality, the peremptory permits rejection for a real or imagined partiality that is less easily designated or demonstrable.'" *Busby v. State*, 894 So. 2d 88, 99 (Fla. 2004) (quoting *Swain v. Alabama*, 380 U.S. 202, 220 (overruled on other grounds by *Batson v. Kentucky*, 476 U.S. 79, 106, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (1986))).

Once Ms. Benefield has established juror misconduct, "[s]he is entitled to a rebuttable presumption of prejudice and, thus, a new trial." *Gould v. State*, 745 So. 2d 354, 358 (Fla. 4th DCA 1999); *see also James*, *supra.*, 843 So. 2d at 937. Unless the State can "demonstrate . . . that any prejudice was harmless." *Gould*, 745 So. 2d at 358. The harmless error analysis "places the burden on the [S]tate, as the beneficiary of the error, to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict or, alternatively stated, that there is no reasonable possibility that the error contributed to the conviction." *State v. DiGuilio*, 491 So. 2d 1129, 1135 (Fla. 1986) (citing *Chapman v. California*, 386 U.S. 18, 24, 87 S. Ct. 824, 17 L. Ed. 2d 705 (1967)).

B. The Concealed Information Was Relevant and Material.

The information concealed by Juror 15 is highly relevant and material to this case. As the Florida Supreme Court has noted, "Relevance and materiality necessarily turn on the facts and circumstances of each case." *Roberts ex rel. Estate of Roberts v. Tejada*, 814 So. 2d 334, 341 (Fla. 2002) (quoting *Garnett v. McClellan*, 767 So. 2d 1229, 1230-31 (Fla. 5th DCA 2000)). The Fifth District Court of Appeal has explained that "A juror's nondisclosure of information during *voir dire* is considered material if it is so substantial that, if the facts were known, the defense likely would peremptorily exclude the juror from the jury." *McCauslin v. O'Conner*, 985 So. 2d 558, 561 (Fla. 5th DCA 2008) (citing *James v. State*, 751 So. 2d 682 (Fla. 5th DCA 2000)).

Juror 15 failed to disclose, and/or otherwise concealed, the fact that (1) she was a victim of domestic battery on February 20, 2016, when her live-in boyfriend, Albert Ballinger, intentionally slapped her in the face with an open hand five times (**Exhibit F**); (2) Her son, Hayden J. Walcott, was charged with Felony Battery against his pregnant girlfriend on August 31, 2014 and Juror 15 was the bond depositor in this case (**Exhibit G**); and (3) She was the respondent in multiple Petitions for Injunction for Protection Against Domestic Violence filed by her ex-husband, Charles D. Walcott, seeking protection for himself and their minor child, H.J.W., on grounds *similar to those put forth by Ms. Benefield against the deceased, Douglas Benefield*, specifically:

1. Juror 15 was a Respondent in a Petition for Injunction for Protection Against Domestic Violence, filed on September 2, 2003, by her Ex-Husband, Charles D. Walcott, seeking protection for himself and their minor child, H.J.W., in the Twelfth Judicial Circuit

Court in and for Manatee County, Florida, Case Number: 2003-DR-4890. A copy of Mr. Walcott's Petition is attached hereto as **Exhibit H**, and alleged, in part:

i. Threatening and violent behavior by Juror 15, including cussing, slamming doors, and throwing objects.

ii. A suicide attempt by Juror 15 on July 18, 2003, resulting in hospitalization.

iii. Constant harassment and threats to Mr. Walcott and his wife.

iv. Fear that Juror 15 might harm their son in a future suicide attempt.

v. Request for supervised visitation until Juror 15 demonstrated mental and financial stability.

2. Juror 15 was also a Respondent in another Petition for Injunction for Protection Against Domestic Violence, filed on April 23, 2004, by her Ex-Husband, Charles D. Walcott, seeking protection on behalf of their minor child, H.J.W., in the Twelfth Judicial Circuit Court in and for Manatee County, Florida, Case Number: 2004-DR-2205. A copy of Mr. Walcott's second Petition is attached hereto as **Exhibit I**, and alleging, in part:

i. Physical abuse of the minor child by Juror 15, including picking up the child by the arms and slamming him against a wall.

ii. The child expressing fear of returning to Juror 15's home.

iii. A child abuse report filed with the Bradenton Police Department.

iv. Threats by Juror 15's boyfriend to kill Mr. Walcott.

v. An ongoing Child Protection Services investigation.

vi. The child showing signs of becoming violent.

These undisclosed facts are strikingly similar to the prosecution's theory against Ms. Benefield and would have raised serious concerns about Juror 15's ability to be impartial. The domestic violence allegations against Juror 15, including claims of threatening behavior, violence against a child, and concerns about mental stability, mirror key elements of the State's case in this instance.

As noted in *Fine v. Shands Teaching Hosp. & Clinics, Inc.*, 994 So. 2d 426, 427-28 (Fla. 1st DCA 2008), the focus should be "on what Appellant's counsel would have done during voir dire had the litigation history [of the jurors] been disclosed" rather than on whether the court believes the jurors were actually biased.

Given the parallels between Juror 15's concealed history and the facts of this case, this information "implies a bias or sympathy for the other side which in all likelihood would have resulted in the use of a peremptory challenge." *McCauslin,* 985 So. 2d at 561. The Defense would have undoubtedly exercised a peremptory challenge to remove Juror 15 had this information been disclosed.

C. The Juror Concealed the Information During Questioning

Juror 15 concealed this information both on her jury questionnaire and during *voir dire*. On the questionnaire, completed under penalty of perjury, she falsely indicated that neither she nor a family member had been a victim of a crime. During *voir dire*, when asked about child custody issues, domestic violence, and involvement with injunctions, Juror 15 remained silent.

The Florida Supreme Court has held that "a juror's nondisclosure need not be intentional to constitute concealment." *Roberts*, 814 So. 2d at 343. Whether intentional or not, Juror 15's omissions "prevented counsel from making an informed judgment-which would in all likelihood have resulted in a peremptory challenge." *De La Rosa*, 659 So. 2d at 242 (adopting the dissenting opinion in *Zequeira v. De La Rosa*, 627 So. 2d 531, 533-34 (Fla. 3d DCA 1993)).

D. The Failure to Disclose Was Not Due to Lack of Diligence

The defense exercised due diligence in questioning potential jurors. Both the State and Defense asked sufficiently specific questions about child custody, domestic violence, and injunctions. These topics are within an average juror's understanding, and Juror 15's failure to disclose cannot be attributable to any lack of diligence by the Defense.

As stated in *Bolling v. State*, 61 So. 3d 419, 421 (Fla. 1st DCA 2011), "The test for juror competency is 'whether the juror can lay aside any bias or prejudice and render a verdict solely on the evidence presented and the instructions given. If there is any reasonable doubt about a juror's impartiality, the juror must be excused for cause." (quoting *Diaz v. State*, 45 So. 3d 32, 35 (Fla. 4th DCA 2010)).

Here, the concealed information is highly relevant and material to this case, was clearly concealed during questioning, and the failure to discover it was not due to any lack of diligence on the part of the Defense. The similarities between Juror 15's undisclosed experiences and the facts of this case create a substantial likelihood of bias or sympathy, or a real or imagined partiality that would have resulted, at worst, in a peremptory challenge (if not for cause) had the information been disclosed.

III
UNIDENTIFIABLE JUROR MISCONDUCT

Lastly, although not yet traceable to an identifiable juror, upon information and belief, an as yet unknown juror brought a cellphone into the jury room and used it during deliberations, constituting an objective act that compromised the integrity of the fact-finding process and prejudiced Ms. Benefield's substantive rights, requiring a new trial.

A. Facts

During deliberations, a juror brought a cellphone into the jury room and used it while discussing the case with other jurors. This act was in direct violation of the Court's instructions and Florida law prohibiting unauthorized materials in the jury room.

During jury deliberations, a YouTube user "That-Hoodie Guy[17]" posted comments on the Law and Crime Network's YouTube livestream of the "verdict watch." These comments contained real-time information that could only have originated from within the jury room, suggesting a breach of the Court's instructions, the sanctity of jury deliberations, jury sequestration, and Ms. Benefield right to a fair trial. The comments, posted on July 30, 2024, reveal:

1. At 10:20 p.m., ten minutes before the parties were notified that a verdict had been reached, That-Hoodie Guy posted a comment stating "VERDICT INCOMING." (**Exhibit A-1**)
2. At 10:25, p.m., That-Hoodie Guy posted a comment stating "PER SOURCES 5-1 GUILTY WITH THE MAN STUCK ON NOT GUILTY OR MANSLAUGHTER." (**Exhibit A-2**)
3. At 10:27 p.m., That-Hoodie Guy posted a comment stating "MY SISTER SNUCK A FLIP PHONE IN." (**Exhibit A-3**)
4. At 10:28, p.m., That-Hoodie Guy posted a comment stating "I am the brother of one of the jurors. She just text me this: PER SOURCES 5-1 GUILTY WITH THE MAN STUCK ON NOT GUILTY OR MANSLAUGHTER." (**Exhibit A-4**)
5. At 10:28, p.m., That-Hoodie Guy posted a comment stating "MY SISTER SNUCK A FLIP PHONE IN, SHE TEXT [sic] ME 5-1 GUILTY MAY COMPROMISE ON MANSLAUGHTER." (**Exhibit A-5**)

At 10:30 p.m., a mere two minutes after That-Hoodie Guy posted that the jury may compromise on Manslaughter, the jury returned a compromised verdict of Manslaughter. The timing and specificity of these comments, followed by corresponding jury actions, strongly suggest that That-Hoodie Guy's information originated from within the jury room

[17] https://www.youtube.com/@that-hoodieguy9428

during active deliberations. Accordingly, Ms. Benefield has formally requested the Court interview the jurors, in the presence of the parties.

B. Legal Standard.

Under Florida law, "A new trial could be warranted if the jurors considered unauthorized materials affecting their verdict." *Bush v. State*, 809 So. 2d 107, 115-16 (Fla. 4th DCA 2002). Furthermore, juror misconduct gives rise to a rebuttable presumption of prejudice. *James v. State*, 843 So. 2d 933, 937 (Fla. 4th DCA 2003).

Once Ms. Benefield has established juror misconduct, "[s]he is entitled to a rebuttable presumption of prejudice and, thus, a new trial." *Gould v. State*, 745 So. 2d 354, 358 (Fla. 4th DCA 1999); *see also James*, 843 So. 2d at 937. Unless the State can "demonstrate . . . that any prejudice was harmless." *Gould*, 745 So. 2d at 358. The harmless error analysis "places the burden on the [S]tate, as the beneficiary of the error, to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict or, alternatively stated, that there is no reasonable possibility that the error contributed to the conviction." *State v. DiGuilio*, 491 So. 2d 1129, 1135 (Fla. 1986) (citing *Chapman v. California*, 386 U.S. 18, 24, 87 S. Ct. 824, 17 L. Ed. 2d 705 (1967)).

Although certain acts, for example, private communications, contact, indirect or direct tampering with a jury, raise a presumption of prejudice, *Remmer v. United States*, 347 U.S. 227, 229 (1954), not all misconduct raises the presumption. If the misconduct is such that it would probably influence the jury, and the evidence in the cause is conflicting, the onus is not on the accused to show she was prejudiced, for the law presumes she was. Not all misconduct, however, will vitiate a verdict even though that conduct is improper. It is necessary to show that prejudice resulted or that the misconduct was of

such character as to raise a presumption of prejudice. *Amazon v. State*, 487 So. 2d 8 (Fla. 1986); *see also Russ v. State*, 95 So. 2d 594 (Fla. 1957). In other words, potentially harmful misconduct is presumptively prejudicial, but the defendant has the initial burden of establishing a prima facie case that the conduct is potentially prejudicial. *Amazon*, 487 So. 2d at 11-12.

C. Cellphone During Deliberations Constitutes Juror Misconduct.

The presence and use of a cellphone in the jury room during deliberations is a clear instance of juror misconduct. In *Tapanes v. State*, the court held that using a smartphone to access information not presented at trial was equivalent to bringing unauthorized materials into the jury room. 43 So. 3d 159, 162 (Fla. 4th DCA 2010). The court stated, "A dictionary is not one of the materials permitted to be taken into the jury room." *Id.* By extension, a cellphone, which provides access to vast amounts of information beyond that presented at trial, is equally impermissible.

D. Integrity of the Fact-Finding Process Compromised

The use of a cellphone during deliberations constitutes an objective act that compromised the integrity of the fact-finding process. As noted in *Tapanes*, *supra.*, "some objective act must have been committed by or in the presence of the jury or a juror which compromised the integrity of the fact-finding process." *Id.* at 163. The presence and use of a cellphone undoubtedly meets this criterion, as it provided the jury with potential access to extraneous information not presented at trial.

E. Presumption of Prejudice

Under Florida law, once juror misconduct is established, there is a rebuttable presumption of prejudice. *Norman v. Gloria Farms, Inc.*, 668 So. 2d 1016, 1020 (Fla. 4th

DCA 1996). The burden then shifts to the opposing party to demonstrate "that there is no reasonable possibility that the juror misconduct affected the verdict." Id.

In this case, the presence and use of a cellphone during deliberations creates a probability that the jury's decision-making process was influenced by unauthorized information. Unlike the automobile magazines in *Hamilton v. State*, which were deemed irrelevant to the legal and factual issues of the case, a cellphone provides potential access to a wide range of information directly relevant to the case at hand. 574 So. 2d 124, 126 (Fla. 1991).

Wherefore, Ms. Benefield prays that following an evidentiary hearing, wherein the Court recalls the jury and allows them to be questioned by the parties, the Court grant her Motion for New Trial.

Respectfully submitted,

/s/ Neil G. Taylor
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion has been furnished to ASA Suzanne M. O'Donnell, Manatee County State Attorney's Office, through the e-portal, on this 9th day of August, 2024.

/s/ Neil G. Taylor
Neil G. Taylor, Esquire