IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
THIRD DISTRICT

CASE NO: 3D20-_____
L.T. CASE NO: F90-354C

JERMAINE CLARINGTON
Appellant / Petitioner

and

STATE OF FLORIDA
Appellee /Respondent
_____/

APPENDIX TO PETITION FOR WRIT OF PROHIBITION

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v.

JERMAINE CLARINGTON,

Defendant.
_____/

CASE NO: F90-354C
SECTION 5
JUDGE: MIGUEL M. DE LA O

ORDER OVERRULING OBJECTION TO ZOOM PROBATION VIOLATION HEARING

THIS CAUSE came before the Court on Defendant, Jermaine Clarington's ("Clarington"), Motion/Objection to Holding Pending Probation Violation Hearing Via Zoom ("Objection"). The Court has reviewed the Objection, heard argument of Defense Counsel,[1] held an evidentiary hearing on September 8, 2020 (at which time no evidence or testimony was introduced), and is fully advised in the premises. The Objection is **OVERRULED**. However, in light of the fact that both the State and Clarington are unprepared for the probation violation hearing currently scheduled for September 21, 2020, the Court will stay its ruling for 30 days, as Clarington requested. Clarington's probation violation hearing is rescheduled to October 16, 2020, at 10:30 am in POD 2.

I. FLORIDA SUPREME COURT ADMINISTRATIVE ORDER 20-23.

There is no need to recount the details and impact of the COVID-19 ("CV-19") pandemic currently afflicting the United States. We all experience them daily. The Courts in Miami-Dade County have been closed for all in-person hearings since mid-March 2020. *See* AOSC 20-17

[1] The State of Florida advised the Court it was taking no position on the Objection.

(March 13, 2020). The Florida Supreme Court ("FSC") issued Administrative Order 20-23 ("AOSC 20-23"), regarding Comprehensive Covid-19 Emergency Measures for the Florida State Courts, on April 6, 2020. AOSC 20-23 has been amended six times since then.[2]

II. TRIAL COURTS ARE REQUIRED TO PROCEED VIA ZOOM WITH PROBATION HEARINGS.

AOSC 20-23 initially left it to the discretion of each Chief Judge to determine the appropriateness of conducting hearings using electronic or telephonic means. *See* § III.C, AOSC 20-23. This approach changed with the first amendment to AOSC 20-23, issued May 4, 2020, which provided a list of hearings that "*shall* be conducted using telephonic or other electronic means available in the subject jurisdiction," including "[n]on-evidentiary and evidentiary motion hearings in all case types." § III.C, AOSC 20-23, amend. 1 (emphasis added).

AOSC 20-23's approach to evidentiary hearings remained the same until June 16, 2020, when the FSC issued Amendment 4, which eliminated the exhaustive list and ordered trial courts to conduct *all* hearings remotely, except for non-jury criminal trials[3] (unless both sides agreed) and termination of parental right final hearings.

> (4) All other trial court proceedings *shall* be conducted remotely unless a judge determines that one of the following exceptions applies, in which case the proceeding shall be conducted in person:
>
> a. Remote conduct of the proceeding is inconsistent with the United States or Florida Constitution, a statute, or a rule of court *that has not been suspended by*

[2] AO 23-20 and its amendments can be found at https://www.floridasupremecourt.org/Practice-Procedures/Administrative-Orders (last visited September 8, 2020).

[3] A probation violation hearing is not a trial. *See Green v. State*, 463 So. 2d 1139, 1140 (Fla. 1985) ("The purpose of the revocation hearing was to determine whether the terms of petitioner's probation for a prior offense had been violated. As we have stated previously, this process constitutes a deferred sentencing proceeding."); *State v. Jones*, 425 So. 2d 178, 179 n.2 (Fla. 1st DCA 1983) ("A probation revocation hearing is a sentencing function, not a trial").

> *administrative order*; or
>
> b. Remote conduct of the proceeding would be infeasible because the court, the clerk, or other participant in a proceeding lacks the technological resources necessary to conduct the proceeding or, for reasons directly related to the state of emergency or the public health emergency, lacks the staff resources necessary to conduct the proceeding.

§ III.E, AOSC 20-23, amend. 4 (emphasis added). AOSC 20-23 has not changed in this regard since June 16, 2020. Therefore, as matters stand today, the Florida Supreme Court has ordered this Court to conduct the hearing in this matter remotely unless one of the two exceptions set forth in section III.E(4) apply.

III. CLARINGTON HAS NOT SHOWN ANY TECHNOLOGICAL INFEASIBILITY.

Clarington has presented no testimony, evidence, or argument that there is a technological impediment to conducting his probation violation hearing via Zoom. Should any insurmountable technological barrier arise, this Court would either postpone the hearing until it could be resolved, or cancel the hearing, as appropriate. *See Harrell v. State*, 709 So. 2d 1364, 1372 (Fla. 1998) ("We also acknowledge that possible audio and visual problems can develop with satellite transmission. It is incumbent upon the trial judge to monitor such problems and to halt the procedure if these problems threaten the reliability of the cross-examination or the observation of the witness's demeanor."). The Court notes that it has successfully conducted sentencings, *Arthur* hearings, Stand Your Ground hearings, and hearings on motions to suppress via Zoom already. It finds there is no reason the same cannot be accomplished in this case.

IV. CLARINGTON HAS SHOWN NO CONSTITUTIONAL, STATUTORY, OR RULE BARRIER.

As early as 1998, in rejecting a Confrontation Clause challenge to a trial witness testifying by satellite, the Florida Supreme Court recognized the coming revolution in courtroom technology.

> . . . [W]e are also mindful that our society, and indeed the world, is in the midst of the Information Age. Computers are the norm in American households and businesses; an infinite amount of information is available at our fingertips through the Internet; and satellite technology allows us to travel the world without ever leaving our living rooms.

Harrell, at 1372. Twenty-two years later, we find ourselves in an unprecedented crises which has shut down in-person hearings in Miami-Dade County courts. The question facing this Court, and its sister courts, is how it can accommodate this new reality while keeping faith with our constitutional principles.

A. NO RULE BARRIER.

One of the guiding principles of the FSC's AOs is to eliminate barriers to conducting remote proceedings. To this end, AOSC 20-17 suspended "[a]ll rules of procedure, court orders, and opinions applicable to court proceedings that limit or prohibit the use of communication equipment for the conducting of proceedings by remote electronic means." § 5, AOSC 20-17. AOSC 20-23 continued the suspension. *See* § II.A, AOSC 20-23, amend. 6 ("All rules of procedure, court orders, and opinions applicable to court proceedings that limit or prohibit the use of communication equipment for conducting proceedings by remote electronic means shall remain suspended.").[4]

[4] AOSC 20-23 also removes barriers to administering oaths over video, to accepting pleas for cases arising in foreign circuits, to conducting first appearance for defendant's arrested on out-of-county warrants, etc.

The Objection makes no mention of AOSC 20-23. Because the Objection relies heavily on Florida Rule of Criminal Procedure 3.180, the Court inquired of Counsel during the September 8, 2020 hearing about the impact of AOSC 20-23 on Rule 3.180. In response, Clarington asserted that the FSC did not intend to suspend Florida Rule of Criminal Procedure 3.180 when it issued AOSC 20-23. This assertion is unsupported by any fair reading of AOSC 20-23.

1. A PLAIN READING OF AOSC 20-23 SHOWS THAT THE FSC HAS SUSPENDED RULE 3.180.

Clarington's own Objection betrays him. When relying on Rule 3.180's requirement that defendants be physically present in the courtroom, Clarington – *correctly* – argues that because the rule is "*mandatory* ("*the defendant shall be present*") [it] accords no judicial discretion to order a defendant to submit to a probation revocation hearing and the possible imposition of sentence by video." Objection at 7 (emphasis in original). He further points out – correctly, again – that because the language in the Rule is plain and unambiguous, "courts must enforce the rule according to its plain and ordinary meaning." *Id.* at 8. But perhaps most importantly, Clarington explains – once again, correctly – that "the intent of the Florida Supreme Court in promulgating a rule of procedure is expressed in the language of the rule itself." *Id.* Applying the basic rules of construction upon which Clarington himself rests his argument, leads to the inescapable conclusion that the FSC has suspended Rule 3.180 because it has suspended all rules of procedure that would impede remote proceedings.

This plain reading of section II.A is also supported by the overall intent expressed in AOSC 20-23. For example, section I.B provides: "To maintain judicial workflow to the maximum extent feasible, chief judges are directed to take all necessary steps to facilitate the remote conduct of proceedings with the use of technology." AOSC 20-23, amend. 6. Section

II.D provides: "Participants who have the capability of participating by electronic means in remote court proceedings shall do so." *Id.* Finally, the FSC's intent, if it was not already crystal clear, was further manifested by its *order* that judges conduct all hearings by electronic means unless one of two exceptions were met.

The analysis of AOSC 20-23 is really that simple. Nevertheless, in an abundance of caution, the Court will assume AOSC is ambiguous and analyze it using traditional canons of statutory construction.

2. THE BASIC RULES OF STATUTORY CONSTRUCTION SHOW THAT AOSC 20-23 SUSPENDS RULE 3.180.

Even if the Court concluded AOSC 20-23 is ambiguous with regards to whether it acts to suspend Rule 3.180, applying the basic rules of statutory construction would also lead this Court to conclude that the FSC intended to suspend the Rule.[5]

First, if Clarington is correct and the FSC did not suspend Rule 3.180, given the number of hearings to which Rule 3.180 applies, the exception in section III.E(4)b. would swallow the rule almost whole. This interpretation would violate the basic rule of statutory construction that courts should not interpret statutes in a manner which leads to a nonsensical result. *See Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984) ("a literal interpretation of the language of a statute need not be given when to do so would lead to an unreasonable … conclusion."). If Rule 3.180 is not suspended by section II.A, then almost no hearing can proceed without the defendant's waiver of his right under the Rule to be present. Such a result is contrary to every expression of intent spelled out by the FSC in AOSC 20-23. *See* § IV.A.1, *supra*. *See also Forsythe v. Longboat*

[5] "Our courts have long recognized that the rules of construction applicable to statutes also apply to the construction of rules." *Brown v. State*, 715 So. 2d 241, 243 (Fla. 1998) (interpreting Florida Rule of Criminal Procedure 3.191) (citations omitted).

Key Beach Erosion Control Dist., 604 So. 2d 452, 455 (Fla. 1992) ("It is axiomatic that all parts of a statute must be read together in order to achieve a consistent whole.").

Second, section III.E.(2)a of AOSC 20-23 requires the defendant's consent for a non-jury trial to proceed by Zoom. Unless Rule 3.180 has been suspended, this provision is wholly superfluous because Rule 3.180 already requires the defendant's consent to not be physically present in the courtroom during trial. AOSC 20-23 would not require the defendant's consent if Rule 3.180 were not suspended. It is a fundamental principle of statutory construction that all words and sections of a statute must be given meaning. *See Sch. Bd. of Palm Beach County v. Survivors Charter Sch., Inc.*, 3 So. 3d 1220, 1233 (Fla. 2009) ("Basic to our examination of statutes, . . . is the 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.").

When faced with two possible interpretations, one which renders parts of a statute superfluous, and the other which gives meaning to all parts of the statute, courts should apply the latter interpretation.

> It is the general rule, in construing statutes, that construction is favored which gives effect to every clause and every part of the statute, thus producing a consistent and harmonious whole. A construction which would leave without effect any part of the language used should be rejected, if an interpretation can be found which will give it effect.

Goode v. State, 39 So. 461, 463 (Fla. 1905) (citations omitted). *See Kasischke v. State*, 991 So. 2d 803, 808 (Fla. 2008) (courts cannot construe the plain language of a statute in manner that renders sections superfluous.).

This Court must presume that the FSC had a good reason for requiring that a defendant consent to a non-jury trial via Zoom. *See Martinez v. State,* 981 So. 2d 449, 452 (Fla. 2008) ("It

is a basic rule of statutory construction that the Legislature does not intend to enact useless provisions, and courts should avoid readings that would render part of a statute meaningless."). The good reason here is that the FSC has suspended Rule 3.180 in II.A.

B. NO CONSTITUTIONAL BARRIER.

After analyzing the cases upon which Clarington's Objection relies, it does not prove difficult to find that a probation violation hearing can be held by Zoom while protecting Clarington's constitutional rights. Clarington cannot point to a single case[6] that stands for the proposition that conducting a probation violation hearing with the defendant present by video violates the U.S. or Florida Constitutions. Clarington's Florida cases either (1) rely on Florida Rule of Criminal Procedure 3.180 in finding the defendant has a "right" to be physically present, (2) refer to the defendant not being "present" in situations where the defendant was not present in any manner whatsoever, including by any electronic means, or (3) a combination of both.

This Court agrees that absent AOSC 20-23 Clarington would have a "right" to be present during his probation hearing. But this is not a constitutional right, it is a right bestowed by the rules of criminal procedure. Absent a constitutional grounding, therefore, this "right" is subject to modification, and outright suspension, by the FSC.[7] Because the FSC has, in fact, suspend

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[6] As this Order was going to press, Clarington submitted as supplemental authority *Doe v. State*, 217 So. 3d 1020 (Fla. 2017), where the FSC rejected a plan for judges to preside over involuntary commitment hearings remotely. *Doe's* holding, much like the report regarding juvenile detention hearings also cited in Clarington's supplemental authority filing, is heavily grounded in the fact that persons suffering from mental illness are a "vulnerable population." Indeed, the opinion uses the term vulnerable no less than eight times. Counterbalancing this vulnerable population was the Court's observation that the reason for proposing that judges not have to travel to hospitals to conduct the hearings in person was solely "a suggestion for judicial efficiency and cost savings." *Id.* at 1031. While Clarington may disagree with AOSC 20-23, we can all agree that it does not stem from an effort at efficiency and cost-savings. *Doe* has little to no applicability here.

[7] Indeed, the FSC has even suspended the speedy trial rule until a Circuit has been in Phase 3 for 90 days. *See* § IV.A, AOSC 20-23. Miami-Dade County is still in Phase 1.

this "right," as discussed previously, the cases relying on Rule 3.180 are wholly inapplicable here.

Likewise, the slew of cases finding defendants were denied due process because they were not present in the courtroom have no applicability. This Court has no intention of conducting a probation hearing without Clarington's presence on Zoom.

Many of Clarington's remaining arguments boil down to the fact that a Zoom hearing is not optimal. In some respects, this Court could not agree more.[8] As Voltaire recognized in his *Dictionnaire Philosophique,* however, "perfect is the enemy of good." Justice Rehnquist, channeling Voltaire, observed in *Michigan v. Tucker* that "the law does not require that a defendant receive a perfect trial, only a fair one." 417 U.S. 433, 446 (1974). In a perfect world, there would be no CV-19 and Clarington would be transported to court for his probation hearing. But this is not a perfect world, and it is more than good enough for Clarington to appear on Zoom from the jail, where he can see and hear the witnesses, and communicate with his Counsel.[9]

V. CONCLUSION.

One last issue bears discussing in conclusion. Clarington reasonably asks, "what is the rush? Why not wait until the courts are open for in-person hearings again?" As he correctly points out, he is being held no bond in the custody of the Miami-Dade Department of Corrections. The Court can point to a few practical considerations, and one irrefutable reason.

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[8] In some respects, though, Zoom hearings can be better. For example, sitting on the bench, the Court has a very limited view of a witness testifying in the box – consisting mostly of the top of their head. By contrast, on Zoom the Court is able to get a far better, up close, view of the witnesses and defendants.

[9] As the trial court discussed during the hearing on the Objection, it will ensure that Clarington has an opportunity to communicate with his counsel by utilizing a breakout room whenever it is requested.

Practically speaking, Miami-Dade County is bearing the costs of housing Clarington at this time. If the Court concludes he did not violate probation, he will be released and no further resources will be expended on his incarceration. If he the Court finds he did violate probation, and sentences him to State prison, the State would then be responsible for his incarceration, not Miami-Dade County. Regardless of the outcome, the probation hearing will likely result in one less inmate in the custody of the Miami-Dade Department of Corrections.

Furthermore, there are many defendants in custody now awaiting trial when jury trials are again permitted. This pent up demand will mean either less time available for probation hearings, or holding a probation hearing at the expense of a trial for an in-custody defendant. Normally, these are the docket management issues which a trial court must address every day and are manageable. But nothing will be normal when jury trials resume, and these tradeoffs are less acceptable where there is no legal reason not to proceed with the probation hearing while jury trials are suspended and trial courts have the time to address them.

Fundamentally, however, these practical considerations are all besides the point because the Florida Supreme Court has *ordered* trial judges to hold all hearings (other than trials) by Zoom. Thus, when Clarington asks "why not wait?", the answer is simple: Because the Florida Supreme Court has told judges not to wait if there is no technological or constitutional barrier. Finding none, the Objection is **OVERRULED**.

DONE and ORDERED in Miami-Dade County, Florida this 9th day of September 2020.

Miguel M. de la O
Circuit Judge

STATE OF FLORIDA, COUNTY OF DADE
I HEREBY CERTIFY that the foregoing is a true and correct copy of the original on file in this office SEP 10 2020 AD 20
HARVEY RUVIN, Clerk of Circuit and County Courts
Deputy Clerk Ana M. 23211

Filing # 112765071 E-Filed 09/02/2020 11:00:48 AM

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

CASE NO.: **F90-354C**

v.

JERMAINE CLARINGTON,
Defendant.
_____/

DEFENDANT'S MOTION/OBJECTION TO HOLDING PENDING PROBATION VIOLATION HEARING VIA ZOOM, INCORPORATING ATTACHED RESOLUTION AND MEMORANDUM OF LAW OF FLORIDA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS[1]

COMES NOW the Defendant, by and through the undersigned counsel, and respectfully objects to this Honorable Court's plan to use the Zoom videoconferencing platform to conduct a Probation Violation Hearing (PVH) and argues that he is entitled, per the United States and Florida constitutions and per the Florida Rules of Criminal Procedure, to an in-court, in-person probation violation hearing where he, his lawyer, the prosecutor, the judge, and the witnesses are all present in the same physical space.

The defense also directs the Court to the attached resolution and memorandum of law by the Florida Association of Criminal Defense Lawyers, arguing that holding

[1] The defense alerts the Court that a substantially identical motion is pending before Judge Miranda in the case of State v. Curtis Johnson, cases F13-28127, F13-4213, and F14-13568, where a probation violation hearing over Zoom was also discussed. That case is currently set for September 9th. Assistant State Attorney Christine Zahralban, Chief of Legal Division, who is being served with this motion, sent an email to the parties and Court in the Curtis Johnson case that the State has no objection to the defense motion in that case.

remote probation violation hearing and sentencings would violate the Constitution.

A Zoom probation violation hearing will not permit counsel to effectively communicate with and effectively represent the interests of the defendant, and will ultimately violate Mr. Clarington's right to counsel, right to due process, and right to confrontation under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article I, Sections 9 and 16 to the Florida Constitution.

ARGUMENT AND MEMORANDUM OF LAW

Denying Defendant the Ability to Be Physically Present With His Attorney and for Both He and His Attorney To Be Physically Present Before the Witnesses at the Probation Violation Hearing Would Create a Constitutional Due Process and Right to Counsel Violation.

Right of Defendant to Counsel Who Is Physically Present.

All criminal defendants are entitled, as a baseline constitutional guarantee, to effective assistance of counsel at court proceedings wherein the State seeks to deprive them of their liberty. At any proceeding where a defendant is facing imprisonment, he has a Sixth Amendment right to counsel. *See Scott v. Illinois*, 440 U.S. 367 (1979). There is no dispute that Mr. Clarington faces the possibility of a significant prison sentence if he is found in violation of his probation, and thus he has a right to counsel at the probation violation hearing where that finding will be made. *See Tyler v. State*, 710 So.2d 645 (Fla. 4th DCA 1998); *Smith v. State*, 427 So.2d 773 (Fla. 2d DCA 1983);

Sparaga v. State, 111 So.3d 260 (Fla. 1st DCA 2013) (all holding that defendant at Florida probation violation hearing has a right to counsel and that if it is violated the result of the probation violation hearing must be vacated). The minimum essential elements of due process for a criminal defendant include "a right to examine the witnesses against him, to offer testimony, and to be represented by counsel". *In re Oliver*, 333 U.S. 257, 273 (1948).

A probation violation hearing where counsel and client are forbidden, due to basic public health-related restrictions with which all Americans are now very familiar, from being physically present in the same space will violate the Sixth Amendment's guarantees of a right to counsel and due process. Counsel is not just a body on a computer screen, he or she is an active advocate for the rights and interests of the client in situations where the State is attempting to take his liberty from him. When counsel is not physically present at a critical stage of the proceedings, courts have regularly presumed prejudice because such a proceeding does not comply with basic due process. In *United States v. Cronic*, 466 U.S. 648, 653-54 (1984), the Supreme Court noted the importance of the right to counsel, stating that lawyers "are necessities, not luxuries", and "[t]heir **presence** is essential because they are the means through which the other rights of the person on trial are secured" (emphasis added). One critical function of counsel, the *Cronic* court notes, is to "subject the prosecution's case to meaningful adversarial testing", and denying the ability to do that is denial of the "right

of effective cross-examination", which "would be constitutional error of the first magnitude and no amount of showing of want of prejudice would cure it." *Id.* at 659. The federal Seventh Circuit Court of Appeals, interpreting the same Sixth Amendment right to counsel this Court must, has repeatedly said that "the Court's decisions establish a presumption of prejudice only when counsel was **physically absent at a critical stage**." *Schmidt v. Foster*, 911 F.3d 469, 481 (7th Cir. 2018); *Morgan v. Hardy*, 663 F.3d 790, 804 (7th Cir. 2011); *McDowell v. Kingston*, 497 F.3d 757, 762 (7th Cir. 2007).

Here, the contemplated probation violation hearing over the Zoom platform would leave counsel "physically absent at a critical stage". There is no reasonable dispute that both counsel and the defendant will not be able to be physically present in court, and will never cross physical paths with the witnesses who will testify, the prosecutor who will argue that the defendant be found in violation of his probation, or the judge who will make the ultimate decision. This is a *per se* violation of the right to counsel under *Cronic* and other applicable caselaw.

Right of Defendant to Be Physically Present.

Just as the defendant has a right to have his counsel physically present in court, he also has a right to, himself, be physically present in court. "One of the most basic tenets of Florida law is the requirement that all proceedings affecting life, liberty, or property must be conducted according to due process, which includes a 'reasonable

opportunity to be heard.'" *Jackson v. State*, 767 So. 2d 1156, 1159-60 (Fla. 2000).[2]

Among the "most basic constitutional rights" is

> **the right to be present in the courtroom** at every critical stage in the proceedings. This right extends to "any stage of the criminal proceeding that is critical to its outcome if [the defendant's] presence would contribute to the fairness of the procedure." Because the defendant's presence will "contribute to the fairness of the procedure," the right to be present extends to the hearing where her sentence will be reconsidered. *See Proffitt v. Wainwright*, 685 F.2d 1227, 1257(11th Cir.1982) (holding that the right to be present extends to the sentencing as well as the guilt portion of a capital trial); *see also* **Fla. R. Crim. P. 3.180(a)(9)** (providing that the defendant must be present "at the pronouncement of judgment and the imposition of sentence"); **Fla. R. Crim. P. 3.180(b)** (defining "presence" as being "physically in attendance for the courtroom proceeding, and [having] a meaningful opportunity to be heard through counsel on the issues being discussed").

Id. (emphasis added) (partially cleaned up). *Accord Thompson v. State*, 208 So.3d 1183, 1187 (Fla. 3d DCA 2017) ("[O]ne of a criminal defendant's most basic constitutional rights is the right to be **present in the courtroom** at every critical stage in the proceedings") (emphasis added); *Gonzalez v. State*, 221 So.3d 1225, 1227 (Fla. 3d DCA 2017) ("a defendant has the right **to be present in the courtroom** at every critical stage of the proceeding," including "the pronouncement of judgment and the imposition of sentence") (emphasis added).

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[2] This memo uses the parenthetical "(cleaned up)" in its citations to indicate that for ease of reading, internal quotation marks, alterations, and citations found in the original have been omitted. https://www.lawprose.org/lawprose-lesson-303-cleaned-up-quotations-and-citations/

The right to be *physically* present in the courtroom at every critical stage of a criminal proceeding is codified in the protections of Florida Rule of Criminal Procedure 3.180, which states that a defendant facing "the pronouncement of judgment or the imposition of sentence "enjoys the right to be "physically in attendance for the courtroom proceedings." Fla. R. Crim. P. 3.180(a)(9), 3.180(b). The Rule provides:

Rule 3.180 - Presence of Defendant

(a) Presence of Defendant.

In all prosecutions for crime the defendant *shall be present*:

(1) at first appearance;

(2) when a plea is made, unless a written plea of not guilty shall be made in writing under the provisions of rule 3.170(a);

(3) at any pretrial conference, unless waived by the defendant in writing;

(4) at the beginning of the trial during the examination, challenging, impaneling, and swearing of the jury;

(5) at all proceedings before the court when the jury is present;

(6) when evidence is addressed to the court out of the presence of the jury for the purpose of laying the foundation for the introduction of evidence before the jury;

(7) at any view by the jury;

(8) at the rendition of the verdict; and

(9) at the pronouncement of judgment and the imposition of sentence.

Fla. R. Crim. P. 3.180(a) (emphasis added).

Except for first appearances, which can be held by video at the court's discretion under Rule 3.130, the Rule provides that the right to be "present" means the right to be *physically* present in the courtroom:

(b) Presence; Definition.

Except as permitted by rule 3.130 relating to first appearance hearings, a defendant is present for purposes of this rule if the defendant is **physically in attendance for the courtroom proceeding**, and has a meaningful opportunity to be heard through counsel on the issues being discussed.

Fla. R. Crim. P. 3.180(b) (emphasis added).[3]

The language of the Rule is plain and unambiguous: The defendant has the right to be physically present in the courtroom for proceedings involving the imposition of judgment and sentence. The language of the Rule is also *mandatory* ("*the defendant shall be present*") and accords no judicial discretion to order a defendant to submit to a probation revocation hearing and the possible imposition of sentence by video. For all proceedings enumerated in Rule 3.180(a) other than first

[3] Separately, Rule 3.160(a) authorizes the trial court to order the defendant's appearance at arraignment by video. Fla. R. Crim. P 3.160(a) ("the arraignment shall be conducted in open court or by audiovisual device in the discretion of the court").

appearances, the defendant *shall* participate in the proceedings in person.

The general principles of statutory construction apply when construing the Florida Rules of Criminal Procedure. *Mitchell v. State*, 911 So.2d 1211, 1214 (Fla. 2005) ("The same principles of construction apply to court rules as apply to statutes").

First, the rules should be construed to further justice, not frustrate it. *Singletary v. State*, 322 So.2d 551, 555 (Fla. 1975) ("Procedural rules should be given a construction calculated to further justice, not to frustrate it").

Second, the intent of the Florida Supreme Court in promulgating a rule of procedure is expressed in the language of the rule itself. *DKD v. State*, 470 So.2d 1387, 1389 (Fla. 1985) ("it is the intent of this Court in promulgating a rule of procedure, as expressed in the rule itself, that governs its interpretation").

Third, when the language of a rule is plain and unambiguous, courts must enforce the rule according to its plain and ordinary meaning. *Mitchell*, 911 So.2d at 1214; *Brown v. State*, 715 So.2d 241, 243 (Fla. 1998) ("the rules of construction applicable to statutes also apply to the construction of rules . . . Thus, when the language to be construed is unambiguous, it must be accorded its plain and ordinary meaning").

Finally, when the Florida Supreme Court "has used particular words to define a term, the courts do not have the authority to redefine it." *DM v. Dobuler*, 947 So.

2d 504, 509 (Fla. 3d DCA 2006).

With clear language defining the term "*presence,*" Rule 3.180 grants defendants the right to appear in person at sentencing and narrowly limits the discretion of the trial courts to mandate video appearance, allowing it for first appearances only. The Florida Supreme Court drafted Rule 3.180 with intent. Subsection (b) enumerates the only proceeding that may be held by video (first appearance) and omits sentencing proceedings. This omission is interpreted as purposeful. *Schoeff v. RJ Reynolds Tobacco Co.*, 232 So.3d 294, 304 (Fla. 2017) (under the canon of construction *expressio unius est exclusion alterius*, "we conclude that the Legislature purposefully excluded items not included in a list").

Because a probation violation hearing may result in the imposition of judgment and sentence, the court's discretion does not extend to ordering the defendant to appear by video.

Caselaw.

Multiple cases have reversed the trial court's failure to honor the defendant's right to be physically present for a hearing involving revocation of probation and imposition of sentence.

In *Thompson v. State*, 208 So.3d 1183, 1185, 1188 (Fla. 3d DCA 2017), the Third DCA reversed a sentence imposed following revocation of probation and remanded for re-sentencing before a different judge because the trial court

committed "error in several significant ways," including by imposing sentence without affording the defendant the right to be present. ("we reverse and remand with directions that Thompson be resentenced before another judge, at which Thompson must be present and represented by counsel . . . [D]ue process considerations attached, and Thompson had a right to be physically present at his resentencing"). Quoting the Florida Supreme Court's decision in *Jackson v. State,* 767 So.2d 1156, 1159 (Fla. 2000), Judge Lagoa held:

> [O]ne of a criminal defendant's most basic constitutional rights is the right to be present in the courtroom at every critical stage in the proceedings. This right extends to 'any stage of the criminal proceeding that is critical to its outcome if [the defendant's] presence would contribute to the fairness of the procedure.' Indeed, a defendant's right to be present at sentencing is explicitly set forth in Florida Rule of Criminal Procedure 3.180(a)(9), which requires the defendant's presence 'at the pronouncement of judgment and the imposition of sentence.'

Id. at 1187 (cleaned up). *Accord Wilson v. State*, 276 So.3d 454, 455-56 (Fla. 5th DCA 2019) ("As confirmed by the Florida Supreme Court and codified in the Florida Rules of Criminal Procedure, a criminal defendant has the right to be present in the courtroom at 'every critical stage in the proceedings,' including sentencing").

In *Summerall v. State*, 588 So.2d 31, 32 (Fla. 3d DCA 1991), the court held that "the defendant was denied his constitutional right to be present in court during a critical stage of the proceedings below, namely, the January 13, 1989 hearing at which the trial court (a) heard argument of counsel on whether the subject probation

should be revoked, (b) found the defendant in violation of probation, and (c) signed sentencing orders imposing a total of nine years imprisonment." *Id.* The Court concluded, *"without question*, "that "the pronouncement of a verdict and sentence in a criminal trial *or probation revocation hearing* is a critical stage of the proceedings at which the defendant is entitled to be present, absent a voluntary waiver of same by the defendant." *Id.* (cleaned up).

In *Jacobs v. State,* 567 So. 2d 16 (Fla. 4th DCA 1990), the court found the defendant's sentence fatally flawed where the defendant appeared by video from the jail, while "[h]is attorney and the sentencing judge were in the courtroom" and "communication was accomplished through closed-circuit television." *Id*. at 16. The Court held that "such an arrangement is not authorized by the rule or statute and is consequently fatally and fundamentally flawed." *Id.* at 17. Citing Rule 3.180(a)(9), the Court found that the defendant had the right to be physically present in the courtroom at the pronouncement of judgment and the imposition of sentence. *Id.* Because Rule 3.180(a) "specifically permit[s] communication by way of audiovisual video camera at first appearances and at the arraignment" only, and not at sentencing, the Court also held that "[f]ailure to include sentencing as an exception to the 'personally present' requirement [in the Rule] cannot be deemed a mere oversight." *Id.* at 17. "Accordingly, we reverse the sentence and remand for resentencing." *Id.*

Subsequently, in *Baxter v. State*, 584 So.2d 1034 (Fla. 4th DCA 1991), the

Fourth DCA again reversed after "[t]he state further concede[d] that the trial court improperly sentenced appellant by causing him to be 'present' in court via closed circuit television.'"

Similarly, in *Seymour v. State*, 582 So.2d 127 (Fla. 4th DCA 1991), the Fourth DCA "agreed that it was improper to conduct the sentencing hearing without Seymour's actual presence" in the courtroom and reversed. *Id*. at 128. Reiterating once again that "rules 3.130 and 3.160, Florida Rules of Criminal Procedure, permit communication by way of audiovisual equipment *only* at first appearances and at arraignments," the court again "expressly noted that the failure to include sentencing in these rules was not a mere oversight" by the Supreme Court when it drafted the Rule. *Id.* (emphasis added).

The Court also expressed concern about the defendant being forced to communicate with his lawyer over a television screen. Doing so

> deprived [the defendant] of the opportunity to look directly into the eyes of his counsel, to see facial movements, to perceive subtle changes in tone and inflection,-in short, to use all of the intangible methods by which human beings discern meaning and intent in oral communication. Not every technological advance fits within constitutional constraints or the realities of criminal proceedings. We are *most unwilling*, even if the Fifth and Sixth Amendments permitted us to do so, to burden this stage of pre-trial proceedings with such an impediment to effective communication and understanding between the accused and counsel.

Id. at 128-29 (emphasis added).

In *Schiffer v. State*, 617 So. 2d 357, 358 (Fla. 4th DCA 1993) (disapproved on other grounds, *Franquiz v. State*, 682 So. 2d 536 (Fla. 1996)), the court held that a probation revocation hearing and a subsequent sentencing hearing, both of which the defendant attended by video, violated the defendant's rights: "We also find error with the video/audio procedure employed in this case. Defendant has the right to be physically present at a probation revocation hearing," unless the right is waived. *Id.*

A few years later, in a contempt case, the Fourth DCA again reversed because the defendant was not physically present in court during the criminal contempt hearing and sentencing, although the defendant participated in the proceedings via a speaker phone. *Haynes v. State*, 695 So.2d 371, 372 (Fla. 4th DCA 1997).

That Sentencing on a Probation Violation is a "Deferred Sentencing" Does Not Eliminate or Modify the Defendant's Right to Physical Presence.

The Court, in previous communications with counsel on this issue, has noted caselaw deeming probation revocation proceedings a "deferred sentencing proceeding", specifically identifying *Green v. State*, 463 So.2d 1139, 1140 (Fla. 1985) and *State v. Jones*, 425 So.2d 178, 179 n.2 (Fla. 1st DCA 1983). First, this language does not justify holding the hearing over videoconference, since, as has been noted, a defendant has a right, including at sentencing proceedings, to in-person physical appearance. *See, e.g., Thompson v. State*, 208 So.3d 1183, 1185, 1188 (Fla. 3d DCA 2017); *Baxter v. State*, 584 So.2d 1034 (Fla. 4th DCA 1991); *Seymour v. State*, 582

So.2d 127 (Fla. 4th DCA 1991). Second, the caselaw the Court noted deeming probation violation proceedings deferred sentencings is doing so in the context of double jeopardy. *Green* and *Jones* hold that probation hearing based on new criminal charges does not subject the defendant to jeopardy on the new charges, because if found in violation he is being sentenced (in a deferred fashion) for the old, probationary, charges. The reality is that like trials, probation revocation proceedings have two parts, the adjudicatory phase (the probation violation hearing) and, if the State meets its burden as to the adjudicatory phase, the sentencing phase. The sentencing phase is indeed a deferred sentencing on the original charges. *See Tur v. State*, 797 So.2d 4, 6 (Fla. 3rd DCA 2001) ("sentencing after a probation revocation is merely a 'deferred sentencing proceeding'") (quoting *Green*). No court has called the adjudicatory phase a "deferred sentencing", and it would not make sense to do so as what is at issue at that phase is not the sentence but whether or not the defendant actually violated his probation. *Shields v. State*, 296 So.3d 967 (Fla. 2d DCA 2020) ("Probation revocation and sentencing are distinct events.").

There is no dispute that a defendant is entitled to due process at a probation violation proceeding. *See Del Valle*, 80 So.3d 999, 1013 (Fla. 2011) ("Although protection guaranteed to probationers in revocation hearings are less than those in criminal proceedings, probation revocation proceedings that result in a deprivation of liberty must comport with the due process clauses of both the Florida and United

States Constitutions."); *Bradford v. State*, 435 So.2d 962 (Fla. 1st DCA 1983) (reversing probation violation on due process grounds).

As has already been argued, per both the federal and state constitutions and Florida Rule of Criminal Procedure 3.180, due process at any proceeding where a defendant's liberty is at stake requires the physical presence of both defendant and his counsel, unless waived.

The Inherent Prejudice and Disadvantages of Video Appearances.

Counsel is unable due to jail rules to meet in person with his client, and is restricted to video and phone communication, which necessarily hinders preparation. Counsel will be unable to exchange the mid-hearing words or non-verbal signals that so often happen between defendant and counsel during any trial or evidentiary hearing. A probation violation hearing is an adversarial proceeding where the State must prove that the defendant did in fact violate his probation. This Honorable Court will hear and consider witness testimony. This testimony must be guaranteed free from coercion or any outside help prohibited by the rules of procedure. There is simply no way to guarantee that a hearing of such gravity can be held without interference.

A trial court cannot guarantee the same level of attention to detail, fidgeting, eye movements, and other cues that a finder of fact would observe when determining a witness' veracity or memory. Likewise, if found guilty of the VOP, the sentencing

court will be unable to properly view the Defendant's demeanor and spirit. Factors such as contrition, remorse, sorrow, and other mitigating factors will necessarily be obscured over a video connection.

Instructive on this point is *People v. Heller*, 891 N.W. 2d 541, 544 (Mich. Ct. App. 2016), where the court held that it was improper to hold a sentencing hearing by video conferencing because "[s]entencing is more than a rote or mechanical application of numbers to a page. It involves a careful and thoughtful assessment of the 'true moral fiber of another.'" *Id., quoting Del Piano v. United States*, 575 F.2d 1066, 1069 (3rd Cir. 1978).

The *Heller* Court cited Canadian philosopher Marshall McLuhan's famous quote, "the medium is the message". In McLuhan's words, studies suggest that "individuals who appear in court via video conferencing are at risk of receiving harsher treatment from judges or other adjudicators." Osgoode Hall L J 429, 447 (2012). "Courts, too, have recognized that 'virtual reality is rarely a substitute for actual presence and . . . even in an age of advancing technology, watching an event on the screen remains less than the complete equivalent of actually attending it.'" *Heller*, 891 N.W. 2d at 544, *quoting United States v Lawrence*, 248 F.3d 300, 304 (4th Cir. 2001).

The *Heller* court noted "[t]he medium itself—here, videoconferencing ...—delivers content of its own. That content, in turn, influences the perceptions of the participants. Abundant social science research demonstrates that video conferencing

'as a mediating technology' may color a viewer's assessment of a person's credibility, sincerity, and emotional depth." *Id.* at 544, *citing* Salyzyn, *A New Lens: Reframing the Conversation about the Use of Video Conferencing in Civil Trials in Ontario*, 50.

Finally, the *Heller* court noted that in assessing "the true moral fiber of another" at a sentencing hearing, the "task [is] made far more complex when the defendant speaks through a microphone from a remote location. The trial judge who sentenced Heller never met or sat in the same room with him. In our view, Heller's absence from the sentencing nullified the dignity of the proceeding and its participants, rendering it fundamentally unfair." *Heller,* 891 N.W. 2d at 544. All of the concerns that led the *Heller* court to reverse in a remote resentencing case are at least as strong here, where the fact-finding portion of the proceedings (the probation violation hearing) would occur via Zoom.

The inherent prejudice existing when a defendant is forced to appear for his court hearing by video is aggravated when the defendant and his counsel (as well as the witnesses, the prosecutor, and the judge) all also appear by video conference. Courtrooms in this country are, and have been for two-hundred-and-fifty years, solemn places reserved for the dispensing of justice. Zoom teleconferences, quite simply, are not.

CONCLUSION

What the Court is contemplating doing in requiring defendant to proceed to a

probation violation hearing held entirely over videoconference, over his objection, appears to be a first in American law. Although we are undeniably experiencing a public health crisis in this country, this country has experienced and recovered from many crises, including other public health crises, and we have continually upheld the Constitutional right to in-person attendance, with a lawyer, at all proceedings where the government seeks to imprison an American. Especially when the only countervailing interest is judicial expediency and closing cases, this Court should not be the first to hold differently.

The Covid-19 pandemic has forced everyone to make sacrifices and adjust their way of life, but it has not abrogated the Sixth Amendment. If, for valid public health reasons, it is not possible to hold an in-court probation violation hearing, then the solution is simple: Wait until it is possible to do so. The defendant here is being held no bond based on the allegation that he violated his probation. He is not going anywhere. He has not filed a speedy trial demand or anything similar and is willing to wait, in jail, until he can have what the Constitution guarantees him, an in-court probation violation hearing. The bottom line is that due process requires that, at a proceeding where the defendant's liberty is on the line, both he and his lawyer are physically present, together, in court. A probation violation hearing held over Zoom would violate Mr. Clarington's constitutional rights to counsel, due process, and confrontation.

WHEREFORE, and for the above herein stated reasons, Defendant prays this Honorable Court will delay Jermaine Clarington's probation violation hearing until it is safe to hold an in-person hearing.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email service to the Miami-Dade County State Attorney's Office at felonyservice@miamisao.com, and ASA Sonali Desai at SonaliDesai@miamisao.com, and ASA Christine Zahralban at ChristineZahralban@miamisao.com, on this 2nd day of September, 2020.

Respectfully submitted,

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IN THE CIRCUIT COURT,
ELEVENTH JUDICIAL CIRCUIT,
IN AND FOR MIAMI DADE
COUNTY, FLORIDA

CASE NO.: F90-354C
JUDGE MIGUEL DE LA O
SEPTEMBER 8, 2020

STATE OF FLORIDA,

Plaintiff,

v.

JERMAINE CLARINGTON,

Defendant.

_____/

The above-entitled and foregoing cause having come on to be heard before HONORABLE MIGUEL DE LA O, at the Richard E. Gerstein Justice Building, 1351 Northwest th Street, Courtroom 4-7, Miami, State of Florida 125, on September 8, 2020.

APPEARANCES:

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P R O C E E D I N G S

BE IT REMEMBERED that the following proceedings were had in the above-entitled cause before the HONORABLE MIGUEL DE LA O, Judge in the Circuit Court, in Miami-Dade, Florida, with appearances as hereinabove noted, to-wit:

(Thereupon, the following proceedings were had at 10:08 a.m.)

THE COURT: Page 22M, Jermaine Clarington, that is set for this afternoon at 1:34, it'll be in POD-4.

(Thereupon, other matters were heard at 10:08 a.m.; after which the following proceedings were heard at 1:32 p.m.)

THE COURT: Good afternoon, Mr. Clarington. I know, now you're muted, that's why I wanted you unmuted for a moment, but I'm -- I'm sure -- I just wanted to make sure you could hear me. That's all right. If State will please make their appearance on the matter of State of Florida versus Jermaine Clarington.

MS. DESAI: Sonali Desai on behalf of the State.

THE COURT: And the Defense?

MR. WEBB: Aubrey Webb on behalf of Mr.

Clarington.

MR. TIBBITT: And Daniel Tibbitt appearing as Co-Counsel, limited to the issue of the ability of the Court to hold this ZOOM Probation Violation Hearing, on behalf of Mr. Clarington.

THE COURT: All right and I see that there are a few representatives here of FACDL. I know that there was a resolution that attached to your motion, but as far as I could see, FACDL has not actually filed any Amici or any Request to Intervene. Am I correct, gentlemen?

MR. FACCIDOMO: Yes, Your Honor, good morning -- or good afternoon. Jude Faccidomo, President Elect of the Florida Association of Criminal Defense Lawyers for the State of Florida. The resolution has been attached, but we have not filed a notice. We are here to observe today, Your Honor.

THE COURT: Okay, great, and you're of course welcome.

MR. FACCIDOMO: Thank you.

THE COURT: Ms. Desai, let me as you the very first question, which is what is the State's position? I have not received anything in this case in terms of a pleading, although

the legal department did forward some memorandums which I shared with the defense lawyers.

MS. DESAI: Judge, I've specifically spoken to legal -- to our legal department about the facts at issue here, and I have a very brief response, which is that we do have concerns about being able to adequately protect against claims of ineffective assistance of counsel, so at this time we are taking no position on this particular motion in this particular case.

THE COURT: Okay, great, thank you. All right, Mr. Tibbitt or Mr. Webb, it's your motion. Who wants to go first?

MR. WEBB: Judge, if I can just lay a little background since I represent him on the PVH in this -- you know, there's over 2000 discovery documents that Ms. Desai asked me to send a thumb-drive, I did, and she's placing the documents on there for discovery, so she had listed two witnesses which I'd like to depose, but primarily Judge, is I can't meet with my client when I get these documents, and I need to meet with him. He's a Miller, Graham resentencing case, Judge, and so he potentially,

although there is some argument, he potentially faces life on this -- this violation, so I can't meet with him, I can't show him the documents. There's also -- I'd want a live Probation Hearing, Judge, because one of the key allegations is that he met with the corrections officer who was also charged up in Columbia County and provided the phone, and I need to be able to cross-ex -- call that person as a witness, see if they can ID. I also need to cross-examine this investigator from the prison, who wrote up the Arrest Warrant, and which is the basis for the violation, and I need to do that live in court according to the -- you know -- the Confrontation Clause for Your Honor to view their credibility, and these things are lost in -- you know, and ID is lost on ZOOM, cross-examination is lost on ZOOM, and there's huge stakes here, so I just want to lay that as a foundation of --

THE COURT: Can you explain to me what you mean by "ID is lost on ZOOM"?

MR. WEBB: Well yes, if I say, "can you -- can you -- you know, did you -- did you meet with somebody?" and they say, "yes", and I say,

"well, can you identify him here in court", and -- you know -- that whole -- that -- I -- that cannot be done by ZOOM as it can be done in live court.

THE COURT: Why?

MR. WEBB: Well, I think the person -- I think that my client has a right to the person to be there live in courtroom.

THE COURT: Yeah, yeah --

MR. WEBB: I mean, it's the whole part of the --

THE COURT: -- you're -- well, wait -- you're -- I -- we're -- you're complaining too many issues.

MR. WEBB: Okay.

THE COURT: Whether he has a right to be present in court, obviously we're going to have a discussion about, but you --

MR. WEBB: Right.

THE COURT: -- made a specific assertion that ID is lost on ZOOM, I'm trying to figure out - first of all, I'm assuming you're talking about whether they can ID your client. Is that correct?

MR. WEBB: Right.

THE COURT: Okay.

MR. WEBB: Correct, Judge.

THE COURT: So, why can't a witness on ZOOM -- I have eight boxes in front of my right now -- why couldn't I look on these boxes and say who I -- who is the person that, allegedly, I met with at that correctional institution?

MR. WEBB: That -- they -- I mean they could, Judge, but I -- it's a little bit different than live and in court. I mean, I think it's a little bit easier --

THE COURT: Okay.

MR. WEBB: -- for a witness to say, "sure, oh yeah that's the person" on a screen. I mean, I'm not saying it can't be done but it's just kind of removing when su -- when ID is such a huge issue, I think the -- it should be done live and in person, and not --

THE COURT: Okay.

MR. WEBB: -- through a detached form like ZOOM.

THE COURT: Okay. All right, Mr. Tibbitt --

MR. TIBBITT: Yes --

THE COURT: -- can I ask you a question --

MR. TIBBITT: -- thank you, Your Honor.

THE COURT: -- before you start, Mr. Tibbitt? What --

MR. TIBBITT: Sure, Judge.

THE COURT: -- I see a lot of references to Rule 3.180 in your memorandum, but I don't see any references to a -- to the Administrative Order by the Florida Supreme Court. The FACDL made reference to it in their resolution, but isn't there an interplay here between the Administrative Order and the Rules?

MR. TIBBITT: Well, our position, Judge, as to -- let -- could I just lend a little bit of background, then --

THE COURT: Sure.

MR. TIBBITT: -- get into that? Okay, so first, I think it's important to keep in mind what we're here on. This is a Probation Violation Hearing where this defendant is facing, as Mr. Webb said, possibly up to life. We're talking about doing a ZOOM Hearing for the actual hearing where the Court will determine his guilt or innocence of violating his probation, and for the actual sentencing where, you know, his liberty will be at stake, so this

is not a Pre-trial Motion, this is not a Motion to Suppress, this is not, you know, any number of other things that, you know -- thing that may have been relapsed based on the pandemic. We have a core of a hearing where someone can go to prison for a very long time, there's no dispute about that. The position of the Defense is that at such a hearing, where someone faces the immediate consequence of the loss of their liberty, they have a right to two things; they have a right to have physical contact with their attorney so that they can consult with their lawyer, they can get advice, they can pass on the information that they have about the case to their attorney so the attorney can, you know, adjust in the flow of cross-examinations, etcetera. So they have the right to counsel, meaning physical presence of counsel, and they have the right to be physically present themselves, to be physically present in front of a judge who is -- like this -- Your Honor, who is going to determine, you know, A, whether Mr.. Clarington actually violated his probation, and if he did, is going to deter -- going to determine what is an appropriate sentence for

him. He has the right to be present in front of the witnesses who are going to testify. He has the right to be present in front of the prosecutor who is going to be seeking to imprison him. So, you know -- and both of those rights come not just from Rule 3.180 as the Court mentioned, but primarily that rule is a codification of what is required by the Constitution, by the United States --

THE COURT: One case --

MR. TIBBITT: -- and Florida Constitution.

THE COURT: -- give me one case that says, "a defendant cannot appear by ZOOM", and I've read every case you sent me, and when they talk about physically present with -- every one of those cases has talked about a defendant who was literally excluded from the courtroom in every way, shape, or form; right? They weren't present at all, they weren't present on phone, video, and certainly not in person. Is there a single case that says there's a constitutional right to be physically present as opposed to be present virtually, the way we're proposing it?

MR. TIBBITT: Well, I think the Court -- I think some of those cases do talk about video

appearance, there was Seymour case that is cited in the motion which is fourth DCA case where the defendant appeared over video at a sentencing, and the Court discussed the specific concerns about video communication --

THE COURT: That's because --

MR. TIBBITT: -- and said --

THE COURT: -- it was a vio --

MR. TIBBITT: -- that --

THE COURT: -- but that's because -- see we're going in circles which is what happens in the in the memo as I'm reading it and in FACDL's, that is you all are saying there's a right because it's under rule 3.180, but rule 3.180 is not right, it's a rule of criminal procedure which certainly this Court has to comply with, but along comes AO 2023 and it says all of those are suspended. So, I'm asking for a constitutional right, not a rule of criminal procedure which has been suspended, a single case that says there's a constitutional right.

MR. TIBBITT: Well, Judge, all of these cases still -- I mean, I would start with the United States Supreme Court, Illinois versus Allen case, says that -- and then the Florida

Supreme Court in Jackson versus State, both cited in the motion say that the -- one of the criminal defendant's both most basic constitutional rights is the right to be present in the courtroom at every critical stage of the proceedings.

THE COURT: But -- I mean -- obviously, that's true --

MR. TIBBITT: Which --

THE COURT: -- but that doesn't mean that they have to be physically in the courtroom as opposed to a situation like this, where they are virtually present, where there is interaction. Don't talk to me about right to counsel --

MR. TIBBITT: Well --

THE COURT: -- yet we're going to talk about that, I promise you, because I think that that is a concern so I don't want you to think of minimizing that, but I'm trying to parse these things out. I couldn't find a single case that said a defendant could not appear by video, that that is a violation of his right to be present.

MR. TIBBITT: Well, you know, as we -- I have not found a single case where any Court in

this country has, over defendant's objection, held a Probation Violation Hearing, or trial -- a proceeding where someone is, you know, based on the result, going to go to prison over this type of technology.

THE COURT: Okay.

MR. TIBBITT: So, you know, if -- if --

THE COURT: And that's a fair point --

MR. TIBBITT: -- if --

THE COURT: -- and that's because obviously --

MR. TIBBITT: -- in a situa --

THE COURT: -- it's a new era -- it's a new time, so I agree with you. I don't have any case law either that I found that says the opposite.

MR. TIBBITT: So, you know, in a situation where the Court is contemplating doing something that, you know, we think is unprecedented then, you know, there's unlikely to be -- you know, the Court, in some sense, is making law, but I think in --

THE COURT: But --

MR. TIBBITT: -- in making law --

THE COURT: -- but let me ask you a

question; the administrative order uses the word "shall", it says, "I shall hold these hearings remotely", it says, "all hearings except trials and TPR Hearings". So, you know, you may be right, I'm making law here --

MR. TIBBITT: Well --

THE COURT: -- or this is unprecedented, but the Florida Supreme Court, unless you can explain to me how I'm misreading it, is saying I shall do it.

MR. TIBBITT: The Flo -- the language that Your Honor is citing is that all of the trial court proceeding shall be conducted remotely unless a judge determines that one of the following exceptions applies --

THE COURT: Correct.

MR. TIBBITT: -- remote conduct to the proceedings inconsistent with the Constitution of either the State or the Country , or a statute, or rule of Court that has not been suspended by Administrative Order.

THE COURT: Right.

MR. TIBBITT: Okay, so it's our position, A that this is in conflict with the constitution, but let's talk about the rules since obviously,

you know, the Court has identified that, you know -- it's -- there's no dispute if this -- you know -- if we were here in February -- rule 3.180 clearly prohibits a ZOOM Probation Violation Hearing, it clearly says that these -- the defendant has a right to be physically present, that's been the -- that's the law in Florida, at least as of February. So, the question is -- you know -- did that change via this Administrative Order? I think what the jud -- what the Court would be referring to is the language that would have -- you know -- there's nothing in the Administrative Order that of - that specifically discusses rule 3.180, or specifically says that that language is modified. I think what the Court is referring to is in to - I'm just scrolling up to find it -- 2A --

THE COURT: Well, there's --

MR. TIBBITT: -- where it says --

THE COURT: -- there's two different --

MR. TIBBITT: -- all --

THE COURT: -- there's two different Administrative Orders, there's 2017 that came out and it suspended all Rules of Procedure that

would limit or prohibit the use of communication equipment for the conducting of proceedings by remote electronic means, and then 2023 came out and every amendment since, there have been six amendments to it, all say all Rules of Procedure, Court Orders, and opinions applicable to court proceedings that limit or prohibit the use of communication equipment for conducting proceedings by remote electronic means shall remain suspended. You -- you think that may not apply to rule 3.180?

MR. TIBBITT: Correct --

THE COURT: Why?

MR. TIBBITT: Because if -- if the Court can say -- if the Court looks at the full context of what the Administrative Order is doing -- what we think that it is doing is saying that if there's a rule that otherwise would have prohibited the Court from doing a video hearing, or you know, doing something to accommodate, you know, the reality that we are all facing with Covid, if there's a rule that would have prohibited that, you know, the Court is the -- the Florida Supreme Court, and the rules are going to be flexible on that, and not

stand in the way in situations where, you know, the parties agree, and the parties want to go forward, like if -- you know, like this hearing that we're having right now for example, you know, we can do it over ZOOM, but there's nothing that if you look at the entire, you know, contents of the rule there's not -- there's nothing that's talking about over the defendant's objection, or that the Court can force something, you know, to take away what would otherwise clearly be rights that the defendant has -- that you know, we are objecting in this case to appearing remotely.

THE COURT: Yeah, Mr. Tibbitt, when --

MR. TIBBITT: -- there is --

THE COURT: -- when they talked about Non-jury Trials, The Supreme Court did say unless one of the parties objects, or both parties have to be in agreement, they did not put that language on the section we've discussed earlier which says all remote -- all hearings shall proceed remotely.

MR. TIBBITT: Well, they put the language unless it conflicts with a rule, which it does, so then the Co -- then you have to get to, you

know, is that rule suspended, which is what I'm trying to --

THE COURT: Okay.

MR. TIBBITT: -- talk about, the language about, you know, all Rules of Procedure that limit or prohibit the use of communication equipment, I don't think overrules 3.180. Now, what I -- what I think, Judge, is if you look at Florida Rule of Judicial Administration 2.530, okay, that's the rule that specifically talks about the use of remote communications equipment in court proceedings, not just in criminal, but in civil, and that rule had a provision -- has a provision that is specifically talking about, you know, remote communication technology, and it basically says that -- that you could you could use it in court proceedings if the Court finds it's -- if the Court makes some kind of finding, except with testimony. If it's with testimony then you could only do it if it's with the consent of the parties, if a party objects you can't do it, okay, so that's the status quo for the use of remote communications technology in Florida, and what I think that is AM 20-23 is modifying is that status quo, and saying, "look,

if you -- if there's a situation where you could take testimony remotely, you know, in a -- in a not -- you know, not in a trial or a probation hearing, but in a -- some kind of Pre-trial Hearing, Motion to Suppress, Motion of Limine, Arthur Hearing, whatever it might be, then you know, the rule will not stand in the way of that, but that language that talks about prohibit the use of communication equipment, I don't think specifically modifies the explicit language of 3.180, which says, "a defendant has a right to be physically present". It doesn't talk about, you know, any substitute for communication equipment or anything like that, it just says he has the right -- you know -- he has the right to be present, and present means physical presence. So, you know, I think if the Florida Supreme Court wanted to modify that, which clearly, you know, affects these types of proceedings, critical stages, you know, trial, sentencing, Probation Violation Hearing -- if the Florida Supreme Court wanted to modify that and wanted to modify, you know, many years of long -- of case law that explicitly says that, you know, they have the right to be present then

they would have done that in the Administrative Order instead of -- you know, they would have done it explicitly, and they would have made it clear, and I think the fact that they didn't, you know, indicates that that was not their intent. There was no intent from the Florida Supreme Court to start doing Probation Violation Hearings and sentencings over ZOOM. You know, I think another way that we know that is just looking at the whole context of what's going on with remote -- you know -- we know that they banned trial, they said that you cannot do trials, even non-jury trials which -- you know -- if it's a non-jury trial, at least in the criminal context, generally that's a case where the defendant is not even facing the loss of his liberty, you know, otherwise he has a right to a jury trial. So, the fact that you can't even do a non-jury trial, I think, would indicate that, you know, the Florida Supreme Court was not intending to allow the Court to go forward with Probation Violation Hearings, you know, especially in cer -- I mean, any circumstance, but especially in this case where the defendant is potentially facing life in prison over, you

know, a video screen where the Court will never even lye eyes -- lay eyes on him in person, nor will his attorney. I think that they would've been more explicit about that, and you know - so, I guess that that's our primary argu - well, I don't know if -- that's one of our arguments is that 3.180 is not even superseded, but if the Court disagrees and thinks that it is, you know, as the Administrative Order says, it goes back to, is this prohibited by the constitution, and it is our position that this is prohibited by the constitution. The constitution requires a defendant to be present, you know, if the -- I would also note there's no there's been no countervailing interests articulated in this case for what the necessity is to, you know, go forward on probation hear -- violation hearing on Mr. Clarington's case, I mean, Mr. Clarington's in custody, he is going to remain in cu -- he has no bond because it's a probation violation case. He's going to remain in custody. Obviously, no -- none of us knows, you know, how long this status quo is going to go on, although I've heard rumblings that, you know -- I think I heard on the radio this morning

that at least some parts of Florida were moving to a new phase, so you know, who knows, but regardless he's going to remain in custody. He will be here for whenever the courts can reopen, and the Court can hold a Probation Violation Hearing. So -- you know -- where is the need other than just closed cases, judicial efficiency, and you know, when you're talking about on the other side of defendant's constitutional rights, we don't think that that's sufficient.

THE COURT: Okay. I know your other argument is the right to counsel, and most of the case law that you cite has to do with someone being denied counsel altogether, but there is also a right to be able to interact with your counsel during a hearing. What I'm curious is why I -- I could not guarantee that right through breakout rooms, and through taking as many breaks as we need to allow Mr. Webb to speak to Mr. Clarington? Why -- why doesn't that suffice?

MR. TIBBITT: Well, I think that the reality of a communication with another human being, especially in such a dynamic as an

attorney client relationship, where the defendant is, you know, facing imprisonment -- the reality of that dynamic does not -- is not fully captured over video, you know, we're all -- we're all using video now because we have to, because we're forced to, but I don't think anybody thinks that, you know, even for the mundane things of a -- of our daily life of talking with our friends, of you know, having, you know, board meetings for a professional association, it's not the same experience as actually being in a room together with other human beings and interacting, so you know, that's number one. As to specifically the issues that come up in a criminal proceeding, you know, when you're sitting there next to your client -- you as the attorney are sitting next to your client, you know, your client is often communicating with you in a verbal and nonverbal manner as to what's going on, so he may be writing down things that he's not able to communicate, you know, out loud. He's got a piece of -- he's got a paper and pen, all my clients always do it next me, and they're writing down , you know, what -- what they are

hearing, and what they're wanting me to focus on. So, you have that going on, you have nonverbal communication in terms of looking, you know, you can look at somebody and you can have an idea of what they're thinking, and, you know, what their mindset is about something, and that can guide you as an attorney, you know, both in talk --

THE COURT: Yeah.

MR. TIBBITT: -- both in -- with witnesses in terms of the demeanor of the witnesses, but also the demeanor of your client. The -- you know breakout rooms -- I'm sure the Court would make every effort -- I don't doubt that the Court would make every effort to accommodate conversations, but they're not going to be real time conversations. It's not going to be while something is going on -- you know, if Mr. Webb is cross-examining a witness, and Mr. Clarington, you know, notices something about what the witness says, he's not going to be able to tell him in real time, about how to --

THE COURT: Why not --

MR. TIBBITT: -- follow up --

THE COURT: -- why not, Mr. Tibbitt? Why

couldn't Mr. Clarington just go like this, I would stop, and I'd put him in a breakout room? Why is that not sufficient under the constitution?

MR. TIBBITT: Well, it's -- you know -- I think what the constitution requires, first of all, is physical presence regardless, but in terms of the practicalities of doing that, you know, it's not -- I mean, yes I'm sure the Court will utilize the breakout room. I have no doubt that Your Honor would -- would make every effort within the realities of the technology to, you know, attempt to allow them to communicate. What I'm saying is that there re -- is that in actuality it's just not going to be sufficient because all of that give and take, a lot of which is nonverbal, is not going to be present. The other, you know, thing is that if Mr. Clarington is found in violation, the Court will have to sentence him. My understanding is that he was 16-years-old at the time that the underlying offense occurred, so there's going to be a lot of considerations based on that because ultimately the Court would be sentencing him based on the underlying offense, and you know,

he has a right to -- to allocate. He has a right to present mitigation, and you know, ultimately the Court has to make -- in sentencing -- you know, I think one of -- very difficult things that -- you know -- I mean, luckily I've never had to do it, but I'm sure one of the most difficult things the judge has to do is make it determination, you know, of what -- what should -- how long should I send another human being to prison for it, and you know, where -- where is the aggravation, where is the mitigation, all those things that are going on in the Court's head, and I do not think that the Court is going to be able to make those kind of judgments about another human being the same way over a computer screen that they would in real life. I do not think that he is going to be able to convey his humanity, you know, his remorse, if he has it, his, you know, redemption, whatever mitigating factors that he may have to present. I do not think he's going to be able to present them from, you know, a jail room in the Pre-trial Detention Center over, you know, a video camera, so I think that's an issue. Speaking of ability, you know,

to communicate, I mean, he also will have to make a decision on whether to testify at the Probation Violation Hearing which, I mean, I'm sure the Court will say you'll give your - you'll give him time to speak with his attorney about that, but he -- you know, these are decisions that are made on the fly, made on an evaluation of, you know, how everything is going and, you know, I -- we do not believe that a ZOOM hearing is going to be able to allow for the degree of attorney client interaction that is -- that is constitutionally required in -- when a defendant's liberty is at stake.

THE COURT: Okay. Do you wish to add anything else, Mr. Webb?

MR. WEBB: No, Your Honor.

THE COURT: Okay. And Ms. Desai, is there anything you wish to add to the record?

MS. DESAI: No, Your Honor.

THE COURT: Okay. All right, so I'll take it under advisement. I will get you all an order in the next day or two. Anything else for --

MR. TIBBITT: Okay. Judge, if --

THE COURT: Yeah.

MR. TIBBITT: -- I was asked if the Court is planning to deny our motion, or in other words to, you know, to order that this should go forward to assume PVH, obviously we have to make decisions about if there's other remedies that we want to seek, I was asked if the Court would -- if the Court does issue such an order, if the Court would stay it for 30-days before entering it, you know, let us know but stay the order to give us time to consult, and prepare on what we're going to do because there's obviously time limits that then apply for the -- for a writ or whatever the next steps might be.

THE COURT: Well, if I did that, why couldn't you reply for the writ -- the hearing is set for the 21st, why is that --

MR. TIBBITT: Well --

THE COURT: -- not enough time?

MR. TIBBITT: -- well, first of all, I think Mr. Webb -- maybe Mr. Webb wants to address that, but I believe there was other things that even regardless of whether this was going to go over ZOOM, or in real life, that he would need a -- he would be moving for continuance of that date, but you know, the

reason it's not enough time for us, is that we need to consult -- there's other deadlines that I have, that other attorneys that would be potentially working on the writ would have, there's possible advantages and disadvantages too seeking a writ versus, you know, raising the issue on a direct appeal if necessary that Mr. Clarington would need to be advised of, which is not, you know, easy to do, so those would be the reasons why we'd ask for more time.

THE COURT: Okay. Mr. Webb?

MR. WEBB: Yes, Judge, and independent of this -- this issue about the ZOOM hearing or not. I would be moving for a continuance at the -- I think we had sounding on a -- this week. I'm about to get discovery from the State on a thumb drive, and I've been told it's over 2000 documents, so I would -- I would need --

THE COURT: Yeah, I didn't realize you hadn't received it yet.

MR. WEBB: No, we did our best -- it was -- to get it as fast as we could.

THE COURT: Okay.

MS. DESAI: Counsel sent in a USB so that I could transfer all the documents over, so I went

into the office last week, we didn't find it, but this morning they found the USB, I went in, I got it, I'm going to transfer all the documents over, and hopefully get it to him tomorrow -- so that he'll have --

THE COURT: What kind of documents are these?

MS. DESAI: One is a PDF file of the entire cell phone dump that's almost 2000 pages and then the rest are just other documents associated, police reports, there are some Bing documents, there's, you know, lot -- lots of transfers within all of the various defendants that were charged in case, because it wasn't just Mr. Clarington, there are other Co-defendants as well.

THE COURT: And how many pages from that cell phone dump are you actually going to use at the PVH?

MS. DESAI: Judge, I -- I don't know at this point, I mean, we also have to have enough time to sort of go through it, and I got the PDF, I did the amended discovery exhibits, I have some other Arthur Hearings that I've been concentrating on first, because they were set

first. I'll go through the PDF file and make those nations as we go. Not all of it has to do with Clarington, there was only specific conversations that had to do with him, but I do believe that some of the other conversations are going to be relevant to sort of show the overlying aspect, so I mean, yeah I'm going to have to go through it page by page, I think Counsel's going to have to as well.

THE COURT: Okay. All right, I'll get back to you on all issues. Anything else today?

MR. TIBBITT: No, Your Honor, thank you.

THE COURT: All right, you all have a good day, thank you.

(Thereupon, the proceedings were concluded at 2:01 p.m.)

CERTIFICATE OF TRANSCRIPTION

The above and foregoing transcript is a true and correct typed copy of the contents of the file, which was digitally recorded in the proceeding identified at the beginning of the transcript, to the best of my ability, knowledge and belief.

Ruby Berrios, Transcriber

September 21, 2020

11-3

WARRANT TYPE: PROBATION WARRANT
AWPS#:
COURT CASE NUMBER: F90000354C

CASE TYPE: FELONY
REFILE INDICATOR:
DIVISION: DE LA O, MIGUEL M

TO ALL AND SINGULAR SHERIFFS OF THE STATE OF FLORIDA, GREETINGS:
YOU ARE HEREBY COMMANDED TO IMMEDIATELY ARREST THE DEFENDANT AND BRING HIM OR HER BEFORE ME, A JUDGE IN THE 11TH JUDICIAL CIRCUIT OF FLORIDA, TO BE DEALT WITH ACCORDING TO LAW:

DEFENDANT'S NAME: CLARINGTON (LAST) JERMAINE (FIRST) EDWARD (MIDDLE) TTL

AKA(S): CLARINGTON, JERMAINE
STR/APT/CITY/ST/ZIP: 2920 NW 132ND TER / 4 / OPA LOCKA / FL/ 330544929
DOB: 10/21/1974 RACE: B SEX: M HEIGHT: 507 WEIGHT: 145 HAIR: BLK EYES: BRO
SOC SEC #: CIN #: 448375 SID #: 3037701 FBI #:
SCARS, MARKS, TATTOOS: IDS #: 9155241
DRIVERS LICENSE #: STATE:
VEH TAG #: STATE: MAKE: MODEL: YEAR: COLOR:
COMMENTS: AT LARGE L/K/A 17630 SW 104TH AVE, MIAMI,FL 33157
DC# 192304
PROBATION: FERNANDEZ, WELLINGTON SOUTH, 12295 SW 133 COURT

****

BEFORE ME PERSONALLY CAME , (AFFIANT) WHO, BEING DULY SWORN, STATES THAT THE DEFENDANT ** CLARINGTON, JERMAINE EDWA **, DID COMMIT THE ACTS STATED IN THE ATTACHED STATEMENT OF FACTS. BASED UPON THIS SWORN STATEMENT OF FACTS, I FIND PROBABLE CAUSE THAT ** CLARINGTON, JERMAINE EDWA ** DID COMMIT THE CRIME(S) OF:

F	C	782.04(1)	MURDER 1ST DEGREE
F	1	782.04(1)	MURDER 1ST DEGREE/ATTEMPT
F	1	812.13(2)(A)	ROBBERY/ARMED/FIREARM OR DEADLY WEAPON - PBL
F	1	777.04(4)(A)	ATTEMPT TO SOLICIT A CAPITAL FELONY

SEE NEXT PAGE FOR ADDITIONAL CHARGES

IN MIAMI-DADE COUNTY, FLORIDA, CONTRARY TO FLORIDA STATUTES AND AGAINST THE PEACE AND CONTRARY OF THE STATE OF FLORIDA.
POLICE CASE #: AGENCY: DEPT NOT FOUND
ASSISTANT STATE ATTORNEY: DESAI, SONALI UNIT: 205

EXTRADITE INFORMATION

EXTRADITION CODE: -
EXTRADITION MAY BE CONFIRMED WITH MIAMI-DADE POLICE DEPARTMENT, MIAMI-DADE COUNTY
** IN ANY EVENT, DEFENDANT WILL BE ARRESTED IF FOUND IN THE STATE OF FLORIDA **

SWORN TO BY AFFIANT , COURT ID -
SO ORDERED THIS 15th DAY OF June 2020.

DE LA O, MIGUEL M
JUDGE IN THE 11TH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY FLA

$ 000
BOND AMOUNT

( ) FIRST APPEARANCE JUDGE MAY NOT MODIFY CONDITION OF RELEASE
(RULE 3.131(D)(1) (D))

****

( ) TO ANSWER UNTO THE STATE OF FLORIDA ON AN INFORMATION OR INDICTMENT FILED AGAINST HIM OR HER BY THE STATE ATTORNEY FOR THE CHARGE(S) OF:
( ) UPON ORDER OF A JUDGE IN THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA FOR FAILURE TO APPEAR IN COURT TO ANSWER THE PENDING CHARGE(S) FOR THE CHARGE(S) OF:

HARVEY RUVIN, CLERK OF THE COURT

BY _____ _____

DEPUTY CLERK DATE

11-3

STATE OF FLORIDA
DEPARTMENT OF CORRECTIONS
AFFIDAVIT
VIOLATION OF PROBATION

Docket #: **F90-354C**
DC# **192304**

Before me this day personally appeared **Wellington Fernandez, CPSO** who, being first duly sworn says that **Jermaine Clarington,** hereinafter referred to as the offender, was **19th** day of **January**, A.D. **2018** the offender was sentenced to **Five (5) years probation** for the offense of **Ct-I: Murder 1st Degree/Premeditated/Attempt** in the Circuit Court of **Miami-Dade** County, in accordance with the provisions of chapter 948, Florida Statutes.

Affiant states that the offender was reinstructed on Florida Standard Conditions of Supervision on **12/12/2018** by Officer **D. Lewis** and again on **2/20/2020** by **Officer W. Fernandez**

Affiant further states that the offender has not properly conducted himself, but has violated the conditions of his Probation in a material respect by:

LEAVING THE COUNTY WITHOUT PERMISSION
Violation of Condition (3) of the Order of Probation, by leaving his county of residence without first procuring the consent of the probation officer, and as grounds for belief that the offender violated his probation, Officer Fernandez states that on November 3, 2018, the offender did leave Miami-Dade County, Florida, his county of residence, without the consent of the probation officer and did enter Broward County, as evidenced by Affidavit for Arrest/Columbia County, Florida/Case #: **20-402CF.**

NEW CHARGES FILED (NO ARREST)
Violation of Condition (5) of the Order of Probation, by failing to live without violating any law by committing the criminal offense of **UNLAWFUL USE OF A TWO-WAY COMMUNICATIONS DEVICE** on January 2019, in Columbia County, Florida and as grounds for belief that the offender violated his probation, Officer Fernandez states that the offender did commit the said offense for Columbia, County, Florida, in **Arrest Affidavit # 20-402CF** filed on June 5, 2020, as told to Officer Fernandez by Senior Inspector Tammy Cox of the Office of Inspector General.

NEW CHARGES FILED (NO ARREST)
Violation of Condition (5) of the Order of Probation, by failing to live without violating any law by committing the criminal offense of **CONSPIRACY TO COMMIT INTRODUCTION OF CONTRABAND INTO A STATE CORRECTIONAL INSTITUTION-CELLULAR PHONE** on December 2018, in Columbia County, Florida and as grounds for belief that the offender violated his probation, Officer Fernandez states that the offender did commit the said offense for Columbia, County, Florida, in **Arrest Affidavit # 20-402CF** filed on June 5, 2020, as told to Officer Fernandez by Senior Inspector Tammy Cox of the Office of Inspector General.

NEW CHARGES FILED (NO ARREST)
Violation of Condition (5) of the Order of Probation, by failing to live without violating any law by committing the criminal offense of **INTRODUCTION OF CONTRABAND-WRITTEN OR RECORDED COMMUNICATION** on January 2019, in Columbia County, Florida and as grounds for belief that the offender violated his probation, Officer Fernandez states that the offender did commit the said offense for Columbia, County, Florida, in **Arrest Affidavit # 20-402CF** filed on June 5, 2020, as told to Officer Fernandez by Senior Inspector Tammy Cox of the Office of Inspector General.

STATE OF FLORIDA, COUNTY OF DADE
I HEREBY CERTIFY that the foregoing is a true and correct copy of the original on file in this office. JUN 15 2020
HARVEY RUVIN, Clerk of Circuit and County Courts
Deputy Clerk

DC3-216 (Revised 11/21/17)

Distribution: Original: Court
Copy: Left Side-Offender File

FAILURE TO COMPLY WITH INSTRUCTIONS

Violation of Condition (9) of the Order of Probation, by failing to comply with all instructions given to him by the probation officer, and as grounds for belief that the offender violated his probation, Officer Fernandez states that via telephone on 2/28/2020, the offender was instructed to report on the probation office for March 2 ,2020 at 1300 hours and the offender did fail to carry out this instruction by failing to report, as evidenced by the offender not reporting to the office as directed on March 2, 2020 at 1300 hours.

Under penalties of perjury, I declare that I have read the foregoing document and that the facts stated in it are true.

W. Fernandez

Wellington Fernandez
Officer

THIS AFFIDAVIT MUST BE NOTARIZED OR ATTESTED TO UNDER section 117.10 OR 92.50, F.S.

Sworn to and subscribed before me this 9th (day) of June (month), A.D. 2020 (year) by Wellington Fernandez, who is personally known to me.

Notary Public Faith Y. Brown

Faith Y. Brown

State of Florida at Large for **Miami-Dade** County

Notary Public State of Florida
Faith Y Brown
My Commission GG 298069
Expires 04/05/2023

Approved by Senior Supervisor: Faith Y. Brown Date: 6/9/2020

Faith Y. Brown

305-332-9836 / Wellington.Fernandez@FDC.myflorida.com
Officer Telephone / Officer Email

STATE OF FLORIDA
DEPARTMENT OF CORRECTIONS
VIOLATION REPORT

☐ REPORT CONTAINS CONFIDENTIAL INFORMATION

Date: June 9, 2020 ☐ MANDATORY RETAKING FROM: _____

To: Honorable Miguel De La O From: Wellington Fernandez
Name: Jermaine Clarington DC No: 192304 Circuit: 11-3
Case No: F90-000354C UC No: _____
Scheduled Termination Date: 02/21/2023

REQUESTING

☐ Violation of Probation Hearing-Warrantless Arrest Conducted ☒ Warrant for Arrest (Violation of Probation) ☐ Violation of Probation Hearing without Warrant- (Notice to Appear) ☐ No further action

TYPE OF REPORT

☐ Non-Compliance with Conditions ☒ Arrest/New Charge ☐ Warrantless Arrest
☐ Delinquent Monetary Obligations Only

LOCATION

☒ At Large
☐ In Custody
☐ On Bond
☐ ROR
☐ Absconder

Current Address: 17630 SW 104TH AVE
Miami, Florida 33157

(1) **HOW VIOLATION OCCURRED:**

LEAVING THE COUNTY WITHOUT PERMISSION

Violation of Condition (3) of the Order of Probation, by leaving his county of residence without first procuring the consent of the probation officer, and as grounds for belief that the offender violated his probation, Officer Fernandez states that on November 3, 2018, the offender did leave Miami-Dade County, Florida, his county of residence, without the consent of the probation officer and did enter Broward County, as evidenced by Affidavit for Arrest/Columbia County, Florida/Case #: **20-402CF. Circumstances: Per the Affidavit for Arrest/Columbia County, Florida/Case #: 20-402CF**, on November 3, 2018, the offender was in Broward County, Florida making a transaction of unknown contraband with a former correctional officer. Per review from previous case notes documented by previous Probation officers, the offender did not request nor was given consent to travel outside the county of his residence. Per previous residence history, the offender did not reside outside Miami-Dade County in the duration of his community supervision.

NEW CHARGES FILED (NO ARREST)

Violation of Condition (5) of the Order of Probation, by failing to live without violating any law by committing the criminal offense of **UNLAWFUL USE OF A TWO-WAY COMMUNICATIONS DEVICE** on January 2019, in Columbia County, Florida and as grounds for belief that the offender violated his probation, Officer Fernandez states that the offender did commit the said offense for Columbia, County, Florida, in **Arrest Affidavit # 20-402CF** filed on June 5, 2020, as told to Officer Fernandez by Senior Inspector Tammy Cox of the Office of Inspector General. **Circumstances: Offender's case was gained on 2/22/2018. Per Arrest Affidavit/Warrant, by Senior Inspector Tammy Cox of the Office of Inspector General, Case #: 20-402CF:** Jermaine Clarington, a former inmate and current felony offender on probation with the Florida Department of Corrections, did on numerous occasions, on or about December 2017 through January 2019, in Columbia County, Florida, then and there, did knowingly and unlawfully use a two-way communications device, to wit: Introduction of Contraband-written/recorded Communication; contrary to Florida State Statute 934.215.

NEW CHARGES FILED (NO ARREST)
Violation of Condition (5) of the Order of Probation, by failing to live without violating any law by committing the criminal offense of **CONSPIRACY TO COMMIT INTRODUCTION OF CONTRABAND INTO A STATE CORRECTIONAL INSTITUTION-CELLULAR PHONE** on December 2018, in Columbia County, Florida and as grounds for belief that the offender violated his probation, Officer Fernandez states that the offender did commit the said offense for Columbia, County, Florida, in **Arrest Affidavit # 20-402CF** filed on June 5, 2020, as told to Officer Fernandez by Senior Inspector Tammy Cox of the Office of inspector General. **Circumstances: Offender's case was gained on 2/22/2018. Per Arrest Affidavit/Warrant, by Senior Inspector Tammy Cox of the Office of Inspector General, Case #: 20-402CF:** Jermaine Clarington, a former inmate and current felony offender on probation with the Florida Department of Corrections, on or about December 2018 in Columbia County, Florida, did knowingly and unlawfully agree, conspire, combine or confederate with another person or persons, to wit: to introduce into or upon the grounds of a state correctional institution, to-wit: cellular phone, without authorization of the officer in charge of said institution, in violation of Florida State Statutes 777.04(03) and 944.47(1)(a)6.

NEW CHARGES FILED (NO ARREST)
Violation of Condition (5) of the Order of Probation, by failing to live without violating any law by committing the criminal offense of **INTRODUCTION OF CONTRABAND-WRITTEN OR RECORDED COMMUNICATION** on January 2019, in Columbia County, Florida and as grounds for belief that the offender violated his probation, Officer Fernandez states that the offender did commit the said offense for Columbia, County, Florida, in **Arrest Affidavit # 20-402CF** filed on June 5, 2020, as told to Officer Fernandez by Senior Inspector Tammy Cox of the Office of the Inspector General. **Circumstances: Offender's case was gained on 2/22/2018. Per Arrest Affidavit/Warrant, by Senior Inspector Tammy Cox of the Office of Inspector General, Case #: 20-402CF:** Jermaine Clarington, a former inmate and current felony offender on probation with the Florida Department of Corrections, on numerous occasions, on or about December 2017 through January 2019, in Colombia County, Florida ,then and there introduced into or upon the grounds of any state correctional institution any written or recorded communication without authorization of the officer in charge of the correctional institution; contrary to Florida State Statute 944.47(1)(a)(1).

FAILURE TO COMPLY WITH INSTRUCTIONS
Violation of Condition (9) of the Order of Probation, by failing to comply with all instructions given to him by the probation officer , and as grounds for belief that the offender violated his probation, Officer Fernandez states that via telephone on 2/28/2020, the offender was instructed to report on the probation office for March 2 ,2020 at 1300 hours and the offender did fail to carry out this instruction by failing to report, as evidenced by the offender not reporting to the office as directed on March 2, 2020 at 1300 hours. **Circumstances:** On February 24, 2020 at approximately 1151 hours, this officer received an email and a call by Senior Inspector Cox of the Office of Inspector General that the offender was under a criminal investigation and would like to interview the offender at the probation office for March 2, 2020, at 1300 hours. This officer made telephone contact with the offender and instructed the offender to report to the probation office on March 2, 2020, at 1300 hours, located at 12295 SW 133rd Ct, Miami, Florida 33186. The offender acknowledged and had no objections. On March 2, 2020, at 1200 hours, Senior Inspector Cox arrived with a colleague at the probation office, to set up equipment for the interview room and wait for the offender's arrival. At 1300 hours, the offender did not report to the office. This officer made several calls to the offender and the offender did not make himself available for contact. At 1335 hours, the offender returned this officer's call to advise that he was called into work and could not report to the office. This officer proceeded to call the offender's employer at BG Group Demolition and has confirmed that the offender did not show up to work on this date.

(2) **OFFENDER'S STATEMENT:** Offender in custody not available for comment.

(3) **HISTORY OF SUPERVISION:** ☐ ADJUDICATION WITHHELD ☒ ADJUDICATED
Original sentence: on the **19th day** of **January**, A.D. **2018** the offender was sentenced to **Five (5) years probation** for the offenses of **Ct-I: Murder 1st Degree/Premeditated/Attempt** in the Circuit Court of **Miami-Dade** County, in accordance with the provisions of chapter 948, Florida Statutes.

Prior History of Supervision
There is no prior history of Supervision.

***Prior violation(s) of supervision for all periods of supervision and disposition(s) of violation(s) include the following:**
*There is no prior history of violations. *

Florida Crime Information Center (FCIC) and National Crime Information Center (NCIC) criminal history record attached. NOTE: FCIC/NCIC criminal history record information is not public record, pursuant to Chapter 119, Florida Statutes.

RESIDENCE: ☒ STABLE ☐ UNSTABLE ☐ ABSCONDED
Resides with: **Jaqueline Chilton (Aunt)**

EMPLOYMENT: ☒ EMPLOYED ☐ RETIRED/DISABLED ☐ STUDENT ☒ UNEMPLOYED

Current Employer/school name and address: **BG Group Demolition: 1140 Holland Dr Ste 19 Boca Raton, FL 33487**
Full-time employment or school attendance: ☒ Part-time employment or school attendance: ☐
Monthly salary or other source of income: $1,000.00

RESTITUTION: ☒ N/A ☐ PAID IN FULL ☐ COMPLYING ☐ DELINQUENT
Original Obligation: _____ Current Balance: _____

COURT COSTS/FINES: ☒ N/A ☐ PAID IN FULL ☐ COMPLYING ☐ DELINQUENT
Original Obligation: _____ Current Balance: _____

ELECTRONIC MONITORING: ☒ N/A ☐ PAID IN FULL ☐ COMPLYING ☐ DELINQUENT
Original Obligation: _____ Current Balance: _____

COST OF SUPERVISION: ☐ N/A ☐ PAID IN FULL ☒ COMPLYING ☐ DELINQUENT
Original Obligation: $3,000.00 Current Balance: $467.72

PUBLIC SERVICE WORK: ☒ N/A ☐ COMPLETED ☐ COMPLYING ☐ DELINQUENT
Total Hours Imposed: _____ Current Balance: _____

TREATMENT STATUS: ☒ N/A ☐ COMPLETED ☐ COMPLYING ☐ NON-COMPLIANT

Summary of offender's current and prior participation in treatment, educational, and vocational programs:
*There is no treatment ordered by the court at this time. *

(4) RECOMMENDATION: This officer is requesting a warrant to be issued for the offender's arrest to bring the offender before the court to address the above violations. The offender currently has an active warrant out of Columbia County, Florida due to offenses that were committed in the duration of his community supervision. The offender was placed on probation on January 19, 2018 and his case was gained on February 22, 2018. The offender violated probation for **Leaving the County without Permission; Unlawful Use of a Two-Way Communications Device; Conspiracy to Commit Introduction of Contraband into a State Correctional Institution-Cellular Phone; Introduction of Contraband-Written or Recorded Communication and Failure to Comply with Instructions.** Therefore, this officer respectfully recommends that if the offender pleads or found guilty of the above violations, the offender's supervision is to be revoked and the offender is sentenced to **Seven (7) years State Prison; followed by Two (2) years Community Control with GPS; and No Direct or Indirect contact with Co-defendants of new charges.**

The foregoing is true and correct to the best of my knowledge and belief.

Wellington Fernandez, Officer

Approved: Faith Y. Brown, Supervisor

IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT, IN AND FOR COLUMBIA COUNTY, FLORIDA

STATE OF FLORIDA

CASE NO: 20-402 CF
CLERK NO:

-vs-

JERMAINE CLARINGTON
Defendant,

AGENCY CASE NO: 19-03062

RACE: B/M
DOB: 10/21/1974
SSN: XXX-XX-5406
FL DL #C465-425-74-381-0
Address: 17630 SW 104th Ave.
Miami, FL 33157

2020 JUN -5 PM 2:07
CLERK OF CIRCUIT COURT
COLUMBIA COUNTY, FL

AFFIDAVIT FOR ARREST

BEFORE ME, Melissa Gates Olson, a Judge of the above captioned court, personally appeared before me, Senior Inspector Tammy Cox, who being first duly sworn, deposes and says:

On or about April 2019, your Affiant began a criminal investigation of Introduction of Contraband into Columbia Correctional Institution Annex (CCI-A) in Columbia County, Florida.

On February 2, 2019, CCI-A Sergeant Brandon Clemens (Sgt. Clemens) submitted Incident Report #AX-19-0243 reporting the seizure of a cellular phone located on CCI-A Inmate Tyrone Conaway's (Inmate Conaway) DC #B04087 person. Said cellular phone was forwarded to Guarded Exchange Forensic Laboratory for data analysis.

As a result of the forensic analysis, Guarded Exchange Technician Cyle Brown discovered that CCI-A Correctional Officer Jessica Boldin (CO Boldin), an employee of the Florida Department of Corrections (FDC) from March 3, 2018, to February 25, 2019, had been communicating with CCI-A Inmate Jimmy Gilles (Inmate Gilles) DC #W33260 in reference to meeting Jermaine Clarington (The Defendant) DC #192304, an offender on felony probation with the FDC and former inmate at Charlotte Correctional Institution (Charlotte CI), at an unknown location in Broward County, FL to pick up unknown items (contraband) to introduce into CCI-A. (Investigative note: Inmate Gilles and the Defendant were housed together at Charlotte CI all of 2016.)

Your Affiant conducted an extensive investigative review of the intelligence retrieved from the contraband cellular phone. Per the cellular phone extraction report, Inmate Gilles was in possession of said cellular phone between December 2017 and January 2019. Inmate Conaway was in possession of said cellular phone from January 2019 until February 2019. The cellular phone extraction report provided evidence that Inmate Gilles used said cellular phone to orchestrate the sale of contraband (narcotics and cellular phones) within CCI-A. A majority of the conversations conducted via text messaging were related to business between Inmate Gilles, his family members, other inmates and civilians.

Between December 20, 2017, and April 9, 2018, Inmate Gilles communicated frequently with two (2) subjects identified by the cellular phone's contact log as "Gb" (phone number - 504-442-4289) and "Wfy" (phone number - 754-366-1391). As of May 21, 2020, your Affiant has not been able to positively identify "Gb". Your Affiant positively identified "Wfy" as Tanisha White (Mrs. White), Inmate Gilles' former girlfriend. Mrs. White, "Gb" and Inmate Gilles conspired to introduce contraband (narcotics) into CCI-A. Inmate Gilles arranged with "Gb" to obtain narcotics ("M" and "Loud" which is also known as Molly (MDMA) and Marijuana) and overnight ship said narcotics to Mrs. White's residence. Inmate Gilles and Mrs. White then discussed visitation and what day Mrs. White would be attending (Mrs. White was an approved visitor on Inmate Gilles' FDC visitation list). Mrs. White was set to receive the shipment of said narcotics from "Gb" on February 2, 2018, and attend visitation with Inmate Gilles on March 11, 2018. Mrs. White advised these were the dates she was off and available. Your Affiant verified that Mrs. White did in fact attend visitation with Inmate Gilles on March 11, 2018, as discussed.

Per the cellular phone extraction report, on October 17, 2018, Inmate Gilles began communicating via text messages with a subject listed in the cellular phone's contact log as "Big Ach" (phone number - 305-879-4643). Your Affiant positively identified "Big Ach" as the Defendant. Per FDC Probation records, the Defendant's phone number was 305-879-4643 (verified date - 06/23/2018 - 07/23/2018). Per the cellular phone extraction report, on December 10, 2018, the Defendant advised Inmate Gilles his phone number had changed, providing 786-523-6286 as his new number. Your Affiant verified that the Defendant also reported the updated contact number to his probation officer. Per FDC Probation records, the Defendant provided 786-523-6286 as his phone number (verified dates - 04/28/2019 - 06/26/2019; 07/28/2019 - current).

On September 20, 2018, Inmate Gilles received a text message from a subject listed in the cellular phone's contact log as "GA" (phone number - 912-276-2575). Your Affiant positively identified "GA" as CO Boldin at CCI-A. CO Boldin was identified by the phone number and various text messages obtained from the contraband cellular phone extraction report. The phone number listed under "GA" was the same number CO Boldin provided on her application with the FDC and listed in the FDC Roster Management System (RMS). Per the cellular phone extraction report, Inmate Gilles and CO Boldin communicated frequently via voice, text messaging, and a mobile phone application "imo free video calls and chat" (imo) between September 2018 and January 2019.

On September 27, 2018, at 1342 (UTC-4) hours, Inmate Gilles sent CO Boldin a link to set up an IMO video chat account. On September 27, 2018, at 1449 hours (UTC-4), 1451 hours (UTC-4), and 1452 hours (UTC-4) photographs were captured and recorded from the live video chat (IMO). Said photographs were pornographic images of CO Boldin containing a small frame in the top left-hand corner of the Inmate Gilles' face.

On October 22, 2018, Inmate Gilles and CO Boldin discussed picking up unknown contraband and introducing it into CCI-A. Inmate Gilles instructed CO Boldin to meet an unknown person (the Defendant) in Broward County, FL to pick up unknown contraband on Saturday, October 27, 2018, and then introduce the unknown contraband into CCI-A on October 28, 2018, as he (Inmate Giles) is "pressing for cash". CO Boldin advised she could not travel that date due to having an "academy make-up day". CO Boldin agreed to travel to Broward County, FL on November 3, 2018.

On October 25, 2018, Inmate Gilles instructs the Defendant to "dress" the contraband "separately like last time but in two's doe". The Defendant acknowledged by stating, "it is" (indicating the contraband was packaged as instructed).

On November 3, 2018, Inmate Gilles provided CO Boldin with the Defendant's phone number to make contact upon her arrival in Broward County, FL. Inmate Gilles then advised the Defendant via text message that CO Boldin would arrive in Broward County, FL in approximately 40 minutes. CO Boldin advised Inmate Gilles she was in contact with the Defendant. Approximately (19) minutes later, CO Boldin advised Inmate Gilles via text message, "I got it" (indicating she had picked up the contraband). Inmate Gilles responded, "no speeding baby". Inmate Gilles further instructed CO Boldin to introduce the unknown contraband into CCI-A the following day when she returned to duty, as previously discussed, and CO Boldin agreed. During their conversations, no direct reference was made to identify the unknown contraband.

On November 4, 2018, CO Boldin advised Inmate Gilles via text message that an unknown inmate housed at CCI-A told a Sergeant about their "business". Inmate Gilles responded via text messages that no one had any knowledge of the contraband and indicated the unknown contraband had not been sold, as it was not any good.

On November 19, 2018, Inmate Gilles advised CO Boldin via text messages that the unknown contraband needed to be mailed back to the Defendant and instructed CO Boldin to place it inside a teddy bear for concealed packaging. Inmate Gilles further advised CO Boldin that mailing it was completely safe as long as the unknown contraband was placed inside something.

Your Affiant subpoenaed CO Boldin's Vystar Credit Union bank account details and transactions. During a review of the records, your Affiant discovered that on December 5, 2018, CO Boldin completed a transaction at Westside Postal Express in Gainesville, FL. The transaction was for $14.08. This information was compared to the extraction report for December 5, 2018; when CO Boldin advised Inmate Gilles that the unknown contraband had been shipped back to the Defendant per his (Inmate Gilles') instructions.

On November 20, 2018, Inmate Gilles requested an unknown subject identified via the cellular phone's contact log as "Big Homie" to send $250 via Square Cash (Cash App - a mobile payment service developed by Square, Inc.) to CO Boldin. On November 23, 2018, "Big Homie" advised the Defendant that $300.00 was sent to CO Boldin and "black" was written in the message line. (Investigative Note: Per FDC records, "black" is Inmate Gilles' alias.)

On December 10, 2018, Inmate Gilles inquired if the Defendant had any Verizon or AT&T touchscreen cellular phones. Inmate Gilles advised the Defendant that he [Inmate Gilles] would need four (4) cellular phones in exchange for $1500.00, and the Defendant agreed. On December 11, 2018, Inmate Gilles advised the Defendant to disregard the four (4) cellular phones as he (Inmate Gilles) was able to obtain them elsewhere.

Your Affiant subpoenaed CO Boldin's Square Cash (Cash app) records. Per Square Inc., on November 23, 2019, CO Boldin received $300.00 from a subject identified as "Pizzle" with "black" on the message line. CO Boldin's Square Cash account records also revealed a transaction was received on November 8, 2018, for $100.00 from Inmate Gilles' sister, Ms. Merland Gilles.

On June 28, 2019, your Affiant made contact with Inmate Gilles at Walton Correctional Institution (WCI). Your Affiant advised Inmate Gilles of the reason for contact (his relationship with CO Boldin) and he immediately denied having any involvement with or knowledge of CO Boldin. Your Affiant explained that there is evidence to prove a business/personal relationship between him (Inmate Gilles) and CO Boldin, at which point he declined to provide a statement stating, "At this point all I can do is get her (CO Boldin) an attorney".

On March 2, 2020, your Affiant arranged to meet the Defendant at his assigned FDC Probation and Parole Office; however, he failed to show for the meeting.

WHEREFORE, your Affiant prays that an arrest warrant be issued according to law commanding all and singular the Sheriffs of the State of Florida to forthwith arrest the Defendant, Jermaine Clarington, and bring him before the court to answer to the charges of: Introduction of Contraband-Unlawful written or recorded communication in violation of FSS 944.47(1)(a)(1), Unlawful Use of a Two-way communication Device in violation of FSS 934.215, and Conspiracy to Introduce Contraband-Cellular phones in violation on FSS 777.04(3) and 944.47(1)(a)6.

SJ Tammy Cox

AFFIANT Senior Inspector Tammy Cox

SWORN TO AND SUBSCRIBED BEFORE ME this 5th day of ~~May~~ June, 2020, by Senior Inspector Tammy Cox who is personally known to me or who produced appropriate identification.

JUDGE OF THE ABOVE COURT

STATE OF FLORIDA, COUNTY OF COLUMBIA
I HEREBY CERTIFY, that the above and foregoing is a true copy of the original filed in this office.
P. DeWITT CASON, CLERK OF COURTS
By _____ Deputy Clerk
Date June 5, 2020

CLERK CIRCUIT COURT
COLUMBIA COUNTY, FLORIDA

IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT, IN AND FOR COLUMIBA COUNTY, FLORIDA

STATE OF FLORIDA

CASE NO: 20-402 CF
CLERK NO:

-vs-

JERMAINE CLARINGTON
Defendant,

AGENCY CASE NO: 19-03062

RACE: B/M
DOB: 10/21/1974
SSN: XXX-XX-5406
FL DL #C465-425-74-381-0
Address: 17630 SW 104th Ave.
Miami, FL 33157

CLERK OF CIRCUIT COURT
COLUMBIA COUNTY, FL

2020 JUN -5 PM 2:07

ARREST WARRANT

IN THE NAME OF THE STATE OF FLORIDA, TO ALL AND SINGULAR SHERIFFS OF THE STATE OF FLORIDA:

HAVING RECEIVED AND CONSIDERED THE SWORN AFFIDAVIT OF SENIOR INSPECTOR TAMMY COX OF THE FLORIDA DEPARTMENT OF CORRECTIONS OFFICE OF INSPECTOR GENERAL DATED June 5 2020, SAID AFFIDAVIT ALLEGING:

COUNT 1
UNLAWFUL USE OF A TWO-WAY COMMUNICATIONS DEVICE

JERMAINE CLARINGTON, a former inmate and current felony offender on probation with the Florida Department of Corrections, did on numerous occasions, on or about December 2017 through January 2019, in Columbia County, Florida, then and there, did knowingly and unlawfully use a two-way communications device, to wit: a cellular telephone, to facilitate or further the commission of a felony offense, to wit: Introduction of Contraband-written/recorded Communication; contrary to Florida State Statute 934.215.

COUNT 2
CONSPIRACY TO COMMIT INTRODUCTION OF CONTRABAND INTO A STATE CORRECTIONAL INSTITUTION-CELLULAR PHONE

JERMAINE CLARINGTON, a former inmate and current felony offender on probation with the Florida Department of Corrections, on or about December 2018 in Columbia County, Florida, did knowingly and unlawfully agree, conspire, combine, or confederate with another person or persons, to wit: to introduce into or upon the grounds of a state correctional institution, to-wit: cellular phone, without authorization of the officer in charge of said institution, in violation of Florida State Statutes 777.04(3) and 944.47(1)(a)6.

COUNT 3

INTRODUCTION OF CONTRABAND-WRITTEN OR RECORDED COMMUNICATION

JERMAINE CLARINGTON, a former inmate and current felony offender on probation with the Florida Department of Corrections, on numerous occasions, on or about December 2017 through January 2019, in Columbia County, Florida, then and there, introduced into or upon the grounds of any state correctional institution any written or recorded communication without authorization of the officer in charge of the correctional institution; contrary to Florida State Statute 944.47(1)(a)(1).

THESE ARE THEREFORE TO COMMAND YOU TO FORTHWITH ARREST AND BRING THE ABOVE-NAMED DEFENDANT BEFORE ME TO BE DEALT WITH ACCORDING TO LAW.

GIVEN UNDER MY HAND AND SEAL this 5th day of ~~MAY~~ June 2020, at COLUMBIA COUNTY, FLORIDA.

JUDGE OF THE ABOVE COURT

[X] BAIL BOND IS FIXED AT:

$10,000.00 Unlawful Use of a Two-way Communications Device
$10,000.00 Conspiracy to Commit Introduction of Contraband-Cellular phone
$10,000.00 Introduction of Contraband-Written or Recorded Communication

[ ] BAIL BOND IS TO BE SET AT FIRST APPEARANCE

STATE OF FLORIDA, COUNTY OF COLUMBIA
I HEREBY CERTIFY, that the above and foregoing is a true copy of the original filed in this office.
P. DeWITT CASON, CLERK OF COURTS
By _____ Deputy Clerk
Date June 5, 2020

CLERK CIRCUIT COURT
COLUMBIA COUNTY, FLORIDA

Supreme Court of Florida

No. AOSC20-23
Amendment 7[1]

IN RE: COMPREHENSIVE COVID-19 EMERGENCY MEASURES FOR THE FLORIDA STATE COURTS

ADMINISTRATIVE ORDER

As a result of the Coronavirus Disease 2019 (COVID-19) pandemic, the State Surgeon General and State Health Officer on March 1, 2020, declared that a public health emergency exists in Florida, and the Governor on March 9, 2020, declared a state of emergency for the entire state. The Florida state courts have taken measures to mitigate the effects of this public health emergency upon the judicial branch and its participants. To that end, I have issued several administrative orders implementing temporary measures essential to the administration of justice during the COVID-19 pandemic.[2] The overarching intent

1. This administrative order is issued to reflect a historical date reference in Section III.A.(1), relating to statewide grand jury proceedings; to continue the authority for the conduct of remote civil jury trials by certain judicial circuits in Section III.B., relating to the Remote Civil Jury Trial Pilot Program; and to revise the process for excusals and postponements in Section III.C., relating to juror excusals and postponements.

2. *In re: COVID-19 Emergency Procedures in the Florida State Courts*, Fla. Admin. Order No. AOSC20-13 (March 13, 2020); *In re: COVID-19 Essential and Critical Trial Court Proceedings,* Fla. Admin. Order No. AOSC20-15 (March 17, 2020); *In re: COVID-19 Emergency Procedures for the Administering of Oaths via*

of those orders has been to mitigate the impact of COVID-19, while keeping the courts operating to the fullest extent consistent with public safety.

It is the intent of the judicial branch to transition to optimal operations in a manner that protects the public's health and safety during each of the following anticipated phases of the pandemic:

a) Phase 1 – in-person contact is inadvisable, court facilities are effectively closed to the public, and in-person proceedings are rare;

b) Phase 2 – limited in-person contact is authorized for certain purposes and/or requires use of protective measures;

c) Phase 3 – in-person contact is more broadly authorized and protective measures are relaxed; and

d) Phase 4 – COVID-19 no longer presents a significant risk to public health and safety.

This order extends, refines, and strengthens previously enacted temporary remedial measures. The measures shall remain in effect until *In re: COVID-19 Remote Audio-Video Communication Equipment,* Fla. Admin. Order No. AOSC20-16 (March 18, 2020); *In re: COVID-19 Emergency Measures in the Florida State Courts*, Fla. Admin. Order No. AOSC20-17 (March 24, 2020); *In re: COVID-19 Emergency Procedures in Relation to Visitation for Children Under the Protective Supervision of the Department of Children and Families*, Fla. Admin. Order No. AOSC20-18 (March 27, 2020); and *In re: COVID-19 Emergency Procedures for Speedy Trial in Noncriminal Traffic Infraction Court Proceedings*, Fla. Admin Order No. AOSC20-19 (March 30, 2020).

Public Health and Safety Precautions for Operational Phase Transitions, Fla. Admin. Order No. AOSC20-32, as amended, is terminated or as may be provided by subsequent order.

Under the administrative authority conferred upon me by article V, section 2(b) of the Florida Constitution, by Florida Rules of Judicial Administration 2.205(a)(2)(B)(iv) and 2.205(a)(2)(B)(v), and by Rule Regulating the Florida Bar 1-12.1(j),

IT IS ORDERED that:

I. GUIDING PRINCIPLES

A. The presiding judge in all cases must consider the constitutional rights of crime victims and criminal defendants and the public's constitutional right of access to the courts.

B. To maintain judicial workflow to the maximum extent feasible, chief judges are directed to take all necessary steps to facilitate the remote conduct of proceedings with the use of technology. For purposes of this administrative order, "remote conduct" or "conducted remotely" means the conduct, in part or in whole, of a court proceeding using telephonic or other electronic means.

C. Nothing in this order is intended to limit a chief judge's authority to conduct court business or to approve additional court proceedings or events that

are required in the interest of justice, if doing so is consistent with this administrative order and protecting the health of the participants and the public.

D. Judges and court personnel who can effectively conduct court and judicial branch business from a remote location shall do so. Participants who have the capability of participating by electronic means in remote court proceedings shall do so.

II. USE OF TECHNOLOGY

A. All rules of procedure, court orders, and opinions applicable to court proceedings that limit or prohibit the use of communication equipment for the remote conduct of proceedings shall remain suspended.[3]

B. The chief judge of each district court of appeal and each judicial circuit remains authorized to establish procedures for the use, to the maximum extent feasible, of communication equipment for the remote conduct of proceedings, as are necessary in their respective district or circuit due to the public health emergency.[4]

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3. This measure initially went into effect at the close of business on March 13, 2020. (AOSC20-13).

4. This measure initially went into effect on Friday, March 13, 2020. (AOSC20-13).

C. Administering of Oaths

(1) Notaries and other persons qualified to administer an oath in the State of Florida may swear a witness remotely by audio-video communication technology from a location within the State of Florida, provided they can positively identify the witness.[5]

(2) If a witness is not located within the State of Florida, a witness may consent to being put on oath via audio-video communication technology by a person qualified to administer an oath in the State of Florida.[6]

(3) All rules of procedure, court orders, and opinions applicable to remote testimony, depositions, and other legal testimony, including the attestation of family law forms, that can be read to limit or prohibit the use of audio-video communications equipment to administer oaths remotely or to witness the attestation of family law forms shall remain suspended.[7]

(4) Notaries and other persons qualified to administer an oath in the State of Florida may swear in new attorneys to The Florida Bar remotely by audio-video communication technology from a location within the State of Florida, provided they can positively identify the new attorney.

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5. This measure initially went into effect on March 18, 2020. (AOSC20-16).
6. This measure initially went into effect on March 18, 2020. (AOSC20-16).
7. This measure initially went into effect on March 18, 2020. (AOSC20-16).

(5) For purposes of the provisions regarding the administering of oaths, the term "positively identify" means that the notary or other qualified person can both see and hear the witness or new attorney via audio-video communications equipment for purposes of readily identifying the witness or new attorney.

D. Law School Practice Programs.

(1) A supervising attorney in a law school practice program, under Rule 11-1.2(b) of the Rules Regulating the Florida Bar, may utilize audio-video communication technology to remotely supervise the law student in satisfaction of the requirement that the supervising attorney be physically present. The supervising attorney and law student must maintain a separate, confidential communication channel during the proceedings.

(2) In a law school practice program, the requirement in Rule 11-1.2(b) of the Rules Regulating the Florida Bar that an indigent person and the supervising attorney must consent in writing to representation by a supervised law student may be satisfied by the judge receiving the consent verbally under oath.

III. COURT PROCEEDINGS

The following provisions govern the conduct of court proceedings, except as modified by Section X., addressing reversions to a previous phase by a circuit or a county within the circuit.

A. Jury Proceedings and Jury Trials.

(1) Statewide grand jury proceedings were suspended through July 26, 2020.

a. After the suspension, the proceedings shall be conducted remotely or, if one of the following criteria is satisfied, may be conducted in person:

- The presiding judge for the statewide grand jury, under consultation with the county health department or local health expert, determines that the in-person proceeding can be conducted in a manner that protects the health and safety of all participants if the circuit is in or has reverted to Phase 1; or
- The circuit has transitioned to Phase 2 or Phase 3 pursuant to Fla. Admin. Order No. AOSC20-32, as amended, and the proceeding is conducted in a manner that is consistent with the circuit's operational plan.

b. If the presiding judge for the statewide grand jury determines that the proceedings of the statewide grand jury cannot proceed remotely or in person in Phase 1, the presiding judge may issue a local administrative order suspending the proceedings for a specified period of time not to exceed 30 days after the circuit returns to Phase 2.