IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA,		**JUDGE:**	**SIEGEL**
Plaintiff,		**DIV.:**	**FX**
vs.		**OSP NO:**	**2014-0352-WPB**
CLAUDE EDWARD WHITE,	**(A)**	**CASE NO.:**	**16-006682CF10A**
LANCELOT JAMES,	**(B)**	**CASE NO.:**	**16-006685CF10A**
SHARRIE ANN THELWELL-JAMES,	**(C)**	**CASE NO.:**	**16-006683CF10A**
ADESUMBO "SANDRA" ADESIOYE,	**(D)**	**CASE NO.:**	**16-006714CF10A**
DORETHA THOMPSON-ROBINSON,	**(E)**	**CASE NO.:**	**16-006684CF10A**
JEAN MARIO PIERRE,	**(F)**	**CASE NO.:**	**16-006716CF10A**
Defendants.			

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MOTION TO DISQUALIFY

The State of Florida, by and through the undersigned counsel, files this Motion to Disqualify pursuant to Fla. R. Jud. Adm. 2.330(e) ("the party reasonably fears that he or she will not receive a fair trial or hearing because of specifically described prejudice or bias of the judge"). The State asks this Court to enter an order disqualifying itself from these proceedings and in support states:

> Our legal system is based on the principle that an independent, fair, and competent judiciary will interpret and apply the laws, that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually, and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

The preamble to the Florida Code of Judicial Conduct.

Background

1. Proceedings against the five named Co-Defendants commenced in June 2016. They were charged, by 46-page amended information, with various Racketeering, Conspiracy, and Money Laundering offenses.

2. To prove the Racketeering offenses (**Count 1**), the State must prove that:

    a. the Defendants, LANCELOT JAMES, CLAUDE WHITE, SHARRIE ANN THELWELL- JAMES, ADESUMBO "SANDRA" ADESIOYE, DORETHA THOMPSON-ROBINSON, and JEAN MARIO PIERRE and others known and unknown, while employed by or associated with an "enterprise" as defined in Section 895.02(3), Florida Statutes to wit: a group of individuals associated in fact although not a legal entity who were employed or associated for licit, as well as illicit purposes, consisting of the above defendants and a group of corporations chartered under the laws of this state, to wit: Medical Arts Pharmacy Services Inc. E-Telmed Inc., Tropical Pharmacy Inc., acting in concert with others, both known and unknown, did conduct or participate directly or indirectly in such enterprise through a continuous "pattern of racketeering activity," as defined in Section 895.02(4), Florida Statutes[.]

Second Amended Information at page 2.

    b. Within the Racketeering charge, there are 49 predicate incidents committed by the various Co-Defendants in furtherance of the illegal drug enterprise. These predicate incidents include: delivery and distribution of controlled substances, unlawful prescriptions, and multiple incidents of money laundering.

3. To prove Conspiracy to Commit Racketeering (**Count 2**), the State must prove that the Co-Defendants, and additional persons known and unknown:

   a. did then and there unlawfully conspire or endeavor to violate the provisions of Section 895.03(3), Florida Statutes, prohibiting any person employed by or associated with an enterprise from conducting or participating, either directly or indirectly, in the affairs of said enterprise, through a pattern of racketeering activity, to wit: a group of individuals associated in fact, although not a legal entity, who were employed or associated for licit, as well as illicit purposes, consisting of the above defendants, co-conspirators. and a group of corporations chartered under the laws of this state, to wit: Medical Arts Pharmacy Services Inc., E-Telmed Inc., and Tropical Pharmacy Inc., from conducting or participating, either directly or indirectly, in the affairs of said enterprise, through a pattern of racketeering activity as defined by Section 895.02, Florida Statutes. to wit: violations of Chapter 893 relating to drug abuse and prevention, violations of Chapter 896 relating to financial transactions. and/or violations of Chapter 465 relating to pharmaceutical distribution of medicinal drugs without a permit, Florida Statutes and Defendants did in furtherance of the conspiracy, either (1) personally committed, conspired to commit, or solicited another person or persons to commit at least two incidents of racketeering activity, or (2) knew of the overall objectives of the Enterprise and intended to participate in its affairs with the knowledge and intent that other members of the conspiracy would commit at least two incidents of racketeering activity, in violation of Section 895.03(4).

   Second Amended Information at page 43-44.

4. To prove Money Laundering (**Count 3**), the State must prove that Co-Defendants White and Thompson-Robinson "while knowing that the property involved in a financial transaction," presented the proceeds of unlawful activity, conducted or attempted to conduct financial transactions "relating to drug abuse and prevention, and/or Chapter 895, relating to racketeering, or,

any conduct defined as racketeering activity," intending to "promote the carrying on of said specified unlawful activity; or, knowing that the transaction is designed in whole or part: to conceal or disguise the nature. the location, the source, the ownership, or the control of the proceeds of said specified unlawful activity; or, to avoid a transaction reporting requirement[.]" Second *Amended Information* at 44.

5. To prove Money Laundering (**Count 4**), the State must prove the same illicit acts outlined in Count 3, but during a different period and committed by Co-Defendants Thelwell James, James, and Adesioye. Second *Amended Information* at 44-45.
6. To prove the Conspiracy to Deliver a Controlled Substance (**Count 5**) offense, the State had to prove that Co-Defendant Pierre conspired with Co-Defendant James and others unknown "to unlawfully and knowingly sell deliver, or possess with the intent to sell or deliver a controlled substance, to wit: Phentermine[.]" Second *Amended Information* at 45.
7. The Probable Cause Affidavit alleged a criminal enterprise beginning in 2006 wherein the charged parties worked together to illegally distribute phentermine, a Schedule IV controlled substance. According to the Probable Cause Affidavit, the co-defendants created several legitimate businesses to conceal their illegal behavior. The businesses included: "pharmacies, walk-in

clinics, storage facilities, a central office, as well as the use of doctors, pharmacists and technicians."

8. "A financial analysis reflects that over $4 million in drug proceeds has passed through over 35 bank accounts, tainting over $11 million in just a two year timeframe." Two of the Co-Defendants also spent millions of dollars on real estate and luxury items.

9. In its Seventh Amended Discovery Exhibit filed pre-trial, the State identified over 130 witnesses and 181 pieces of evidence. The notice included in relevant part: prescription records, Department of Health records from multiple states, sales records and reports, pharmacy logs, pharmacy dispensing records, certified licensing records, shipping and mailing records, money orders, payrolls, tax statements, death certificates, Department of Revenue records, multiple mortgage loan documents, and financial records from Regions Bank, Wells Fargo, PNC Bank, Bank of America, TD Bank, JP Morgan Chase Bank, SunTrust Bank, Bright Star Credit Union, and Fidelity Investments. Some financial institutions held multiple accounts.

10. On March 13, 2019, the State filed its 5-page Notice of Intent to Rely Upon Certification of Business Records for many of the financial and shipping-related records listed in discovery.

11. Trial was initially set to begin on January 9, 2023. Jury Selection began on January 17, 2023 and testimony began on February 13, 2023.

Facts in Support of the Motion

12. On multiple occasions, the Court has departed from his role as a neutral arbiter and interjected himself into the proceedings by *sua sponte* making his own objections and arguments:

a. On one such occasion, the State attempted to introduce bank records which are critical to proving its case. The Court interjected its own business records exception issue, irrespective of the defense's relevancy objection, and ruled on its own arguments rather than those advanced by defense counsel. In fact, one of the defense counsels commented on the judge's *sua sponte* objection:

i. "It's the whole relevancy issue and I didn't even make; the Court is the one who brought up the whole business records exception. My issue is more than that, I need to hear more before I can raise an objection and I haven't heard anything yet."

ii. Following the exchange between the State and the Court, the Court *sua sponte* interjected a second ground for precluding

admission of the back records. The following exchange occurred:

1. The Court continued to study the affidavit and its attachments. He then stated, "here's my concern, although I guess it is subject to cross, there is a footnote in the affidavit[.]" The footnote was read into the record which essentially states that the bank reserves the right to supplement their response.
2. Regarding the footnote, the Court indicated that he "believes this is problematic" and says he needs to hear argument as to why the records should be kept out.
3. When the State asked if the Court was reversing itself, it denied doing so, but indicated that he needed to hear arguments as to why the certified business records should be kept out because it did not "believe that the certificate is enough."

iii. Then defense counsel presented a new argument for inadmissibility of the bank records arguing that the "Court can exclude them for good cause shown." However, at no time does the defense indicate what that good cause could be. The State

responded by pointing out that the defense failed to explain how or why good cause was shown to warrant exclusion of the business records.

iv. The defense did not respond. However, the Court again *sua sponte,* gratuitously "filled in the blank" for defense counsel stating:

1. "It's a criminal case not a civil case. If you're able to put it in this way, it will be shifting the burden to the defense as to yes or no with regard to it. You're choosing to admit it at this time. They don't know you're going to admit it and we've been back and forth as to what witness is coming in so I'm going to find good cause."

v. On February 21, 2023, the State once again attempted to admit the certified business records of the members of the enterprise during the testimony of one of the recipients of Phentermine. The Court made a partial ruling, so later that day, the State once again asked for clarification of the ruling on the bank records. The Court explained that he was basing his ruling on the affidavit and suggested multiple times that the State review the certified affidavit of the bank records.

1. The State responded: "your honor I, I, I honestly don't know what you're asking me, if there is an issue with the affidavit that again, defense has not brought up, that the court is bringing up, then rather than engage in a guessing game can your honor just state the issue."
2. It is at this time that defense counsel puts on the record that she had asked to go sidebar to argue all of the issues prior. "The affidavit, the corpus delicti issue or however you want to say it, with Mr. Weinstein the fact that it wasn't coming in through the proper witnesses, and then the book coming in, so I want it clear on record, when I asked for the side bar, I was raising the issue."
3. The record was clear, however, that the only person who argued the defect in the affidavit for the bank business records was the Court.

vi. Discussion between the Court and State continued:

1. THE COURT: OK, read it, cause you're not reading it into the record, let's look at it closely, who signed the affidavit, who signed the affidavit?
2. MS. HONICK: Michelle Glendenning?
3. THE COURT: And what day did she sign the affidavit?

4. MS. HONICK: June 1, 2015

5. THE COURT: And what day was sign the affidavit and what day was the affidavit notarized?

6. MS. HONICK: It says May 1, 2015, which is clearly a Scrivener's error.

7. THE COURT: Well, It can't be a scriveners error on a motion, on you admitting it into evidence, so the answer to your question is the affidavit is improper.

8. MS. HONICK: and Your Honor I just want to again clarify on the record that not one single Defense Attorney raised this issue regarding the notary versus the signatory, not one single Defense Attorney raised the issue and nor was this issue filed prior to trial. Which it could have been done prior to trial, should have been done prior to trial and therefore any objection to it has been waived pursuant to the rule.

b. On another occasion, the Court changed the defense's objection and ruled on the different argument it crafted:

i. During the testimony of the third witness – its lead investigator - the State asked the law enforcement witness about a co-defendant's statement during an interview.

ii. Defense counsel made a *Bruton* objection.

iii. The Court at sidebar – without defense counsel speaking – asked: "Do you have a transcript of the interview? Do you have transcript of what she just said? Do you have a recording?"

iv. The Court then inquired: "did she write strawman in her report?" The Court stated: "The DEA or whatever she is, used strawman in her report?"

v. Defense counsel reminded the Court that her objection had been to an alleged *Bruton* violation.

vi. There was no discussion of *Bruton*. Defense counsel clarified that the term "strawman" was used in the report but there was no transcript or recording. The Court returned to its own argument, by asking, "it's just her notes and what she says correct? No transcript… no anything whatsoever Period. It's just her conclusions, yes?"

vii. State attempted to respond, but the Court interrupted saying: "this is what she got from an interview that she had? Yes or no"?

viii. The State responded that the witness was testifying to her recollection of the events at or near the time they occurred.

ix. The Court ruled that the witness "is not testifying if there is no recording and it's just her reflection of what she wrote. That's it, I just ruled, that's it, you can bring caselaw, but you cannot

bring in any statements not recorded in any fashion whatsoever."

x. At no time did the defense argue that the statement should not come in because it is not recorded. This was strictly a legal issue raised by the Court and argued solely between the Court and the State.

xi. The *Bruton* issue was never addressed in this sidebar.

c. When the lead investigator was testifying on cross-examination, the defense attempted to show the witness evidence that the State had sought to admit but had been excluded. After an exchange that will be provided *infra*, the Court, ignoring the fact that the relevant document was part of a large composite, on its own, ruled that because the evidence was a report, he could take judicial notice.

i. The Court, on his own, determined that the report was an administrative ruling and admissible.

ii. After the Court made the arguments, defense counsel adopted them and indicated that he would bring the document in via judicial notice. The State addressed this argument by the Court by stating:

1. MS. HONICK: But for judicial notice specifically, which is what the defense just said how they would try to move

it in, under 90.202 an order from an administrative body is not included and under 90.203, it says that court shall take judicial of any matter in 90.202 when requested, and gives each adverse party timely written notice of their request, proof of which is filed with the court to enable either party to prepare the need for request and furnish the Court with sufficient information to enable it to take judicial notice of the matter. Here the defense has done neither.

iii. Nevertheless, the defense was permitted by the Court to show the document to the witness and the document was not introduced into evidence.

13. The above trial excerpts show that the trial court improperly injected itself into the proceedings when it *sua sponte* provided its own objections to the admissibility of the state's bank record evidence on six separate occasions, regarding crucial evidence including certified bank records and, inculpatory statements of a defendant.

14. On multiple occasions the Court has expressed open hostility toward the State, particularly toward the lead Assistant Statewide Prosecutor Cynthia Honick, and demonstrated its prejudgment of the State's case and the evidence:

a. On February 22, 2023, the trial expressed that hostility while sidebar:

i. During the direct examination of State's witness, the defense objected without stating a legal objection.

ii. The Court instructed counsel to come sidebar.

iii. The State declined to go sidebar. This was the second time the State indicated that it did not wish to appear at sidebar. The Court did no inquiry of the State at that time, but simply sustained the objection.

iv. Once at sidebar, without the State, the Court indicated that "She", referring to Ms. Honick, "keeps doing this."

v. Defense counsel, Mr. Lewis states: "can we send the jury out and deal with this issue about her not coming up here? I think it's something that has to be dealt with."

vi. The Court indicated it was "her" problem and they could proceed.

vii. Defense counsel fully articulated his objection onto the record which amounted to an objection for leading.

viii. The Court went on to say: "I don't care if she doesn't show up. You can argue whatever you want to argue when she doesn't show up. That's her problem and she's been doing this the whole trial; so, this is the way it is."

ix. Immediately following this statement there was further discussion between the Court and Defense counsel wherein the

Court corrected counsel and clarified "this is the first time she didn't show up."

x. The Court, at the urging of defense counsel, then excused the jury to "deal with it."

xi. The following discussion took place in the Jury's presence:

1. THE COURT: Are you withdrawing the question? Is that why you didn't walk up here, ma'am? Did you withdraw the question?

2. MS. HONICK: No, Judge. I just want the record to reflect that there was a five-minute *ex parte* discussion in the clerk's cubicle because the State declined your invitation to go into that kind of space.

xii. The Court then excused the Jury and proceeded to question the prosecutor by stating:

1. THE COURT: Ms. Honick, I don't know what to do with your reactions, your actions, your issues, your problems, your being late to trial -- all those other kind of things that you choose to do just to delay the trial or create issues with regard to these particular defendants in this particular case. However, if I ask you to come sidebar, your obligation, because I'm in control of this trial, is to walk sidebar. So What's your problem now.

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2. MS. HONICK: Your Honor, Number 1, I'm going to object to the Court saying that I have any problem. To be clear, thus far, the Court has listed my issues as being with the Court as all having to do with my current disability, which is a very visible pregnancy.

Number 2, I am respectfully declining to enter what the Court says is a sidebar but, for the record, is actually the court's -- the clerk's cubicle in which there are nine of us put into a space, maybe 3 by 3, 4 by 4. And for the past few days, Your Honor every time has come down, has directed me to stand next to him, even though I purposely attempted not to. Your Honor has stood next to me and berated me with your finger in my face, mere inches from my face, and very visible to the jury.

I think, Number 1, that's all negatively impacting the appearance of this trial to the jury.

Number 2, it's not giving the State a fair opportunity to try this case. And Number 3, the majority of the these motions by the defense should have been and could have been filed pretrial, which was part of the Court's pretrial ruling.

Your Honor reserved as to the order as to the State's request to not have speaking objections and never issued that order.

3. THE COURT: Okay. So what's your reason for not coming over there?

4. MS. HONICK: I feel physically uncomfortable to be in that tiny space.

xiii. Based on the Court's interactions with Ms. Honick during sidebar discussions, Co-counsel, Moses Aluicio, felt the need to position himself between the Court and his co-counsel. *See attached affidavit of Moses Aluicio.*

xiv. At the conclusion of the above exchange Ms. Honick felt compelled to relay to the judge the basis for her unwillingness to be placed in what she considered an abusive and untenable

situation. The Court neither addressed nor acknowledged the accuracy of her factual rendition.

b. The Court has also maligned the State by accusing it of doing things "for show" and telling the jury that the State is bringing documents into the courtroom that it will not be using:

   i. On February 21, 2023, there was discussion about refreshing the witness' recollection on redirect using Department of Health ("DOH") records. The same records that had been discussed on cross.

   ii. The State then asked the witness if looking at the DOH reports would refresh her recollection to which she responded, "yes, I think I asked to look at those several times."

   iii. The State then asked co-counsel to get the file so that they may refresh the witness's recollection.

   iv. The defense moved for a sidebar as they are concerned about the voluminous documents that may come in front of the jury. On cross, defense counsel had referenced the multiple reports referred to by other defense counsel, which was also contained in these files and which the State planned to question the witness about in her redirect examination.

v. During the sidebar, the State wheeled in a cart containing multiple binders which encompassed the entire DOH file for purposes of refreshing her recollection as to each document and all information which defense addressed in cross examination.

vi. There were 17 binders, only one of which said Department of Health on it. It was facing upward, not in view of the jury.

vii. The Court stated: "This is just for show."

viii. It further commented multiple times that "this is ridiculous."

ix. The Court advised the State, without comment from the defense, that "the defense can use this in their defense," that they could argue "that nothing was done with all of this."

x. It further stated: "this is just ridiculous, you ask for one report and bring in the whole file, where was it sitting? Where was it?"

xi. The state replied that "it was in our office."

xii. The Court continues to verbally state "this is ridiculous."

xiii. The defense requested a curative instruction and without input from the State or Defense the Court instructed the jury with the following:

1. Ladies and gentlemen, whether the cart full of information is coming in doesn't mean it has anything to do with

anything, in that case, with regard to that case... one particular question related to one specific document that may or may not be in that cart.

xiv. For context, the State had moved to admit the DOH records, which contained voluminous copies of fraudulently created prescriptions by a co-conspirator at the direction of the defendants. The Court excluded the entire DOH file (17) binders of records as it determined that they did not come in as a business record of the DOH. Based upon this ruling, the State did not attempt to introduce this evidence in any capacity during their direct examination. On the lead investigator's cross, the Co-defendants referred to the DOH documents numerous times and referred to the contents.

c. The Court accused the State of conducting "trial by ambush" because it could not provide exactly what witnesses were going to appear to testify the following day.

d. On another occasion, the Court demonstrated it had prejudged the State's case by determining that receiving Phentermine prescriptions without seeing a doctor was not a crime:

i. When arguing the relevance of the bank records, the State argued that a patient received prescriptions "without ever having seen a doctor. We've already established that a crime has been committed."

ii. At that point the Court interrupted and stated, "I don't see the crime."

iii. The State responded that the witness "received phentermine without ever seeing a doctor, that's a crime."

iv. The Court responded: "I don't know that that's a crime that's been shown."

15. On multiple occasions, the Court has made disparate rulings on the same items depending on whether the item was being utilized by the State or Defense, despite the absence of any legal principle allowing the same. The Court also called trial "a living thing" to allow the defense to change aspects of its case, while baring the State from doing the same. While the substance of the rulings is not at issue, the disparate rulings reflect the Court's bias:

a. The Court gave disparate rulings regarding the parties' use of the DOH records:

i. As noted *supra*, the State filed a motion in limine pretrial to admit the 17 DOH binders containing copies of fraudulent prescriptions created at the direction of a Co-defendant.

ii. Because the Court excluded the records, the State did not attempt to introduce this evidence in any capacity during their direct examination of the witness.

iii. During cross examination, defense counsel pulled four (4) pages from the report which were helpful to the defense. The attorney proceeded to ask the witness if she was familiar with the report to which she advised that she was not.

iv. The State requested to go sidebar and objected to the document being shown to this witness as it was part of the evidence that had been excluded pretrial. The following conversation was had at sidebar:

1. MR. LEWIS: if we could first address the first alleged discovery violation. This document was provided by the statewide prosecutor. Early in this case as part of their discovery exhibits to us.

2. THE COURT: Okay.

3. MR. LEWIS: So I get to remark their things and put them back under me. I don't think that's required.

4. THE COURT: No, you don't have to. Where does the rule say it?

5. MS. HONICK: Judge, the rule says that the defense is obligated to provide the State with discovery, reciprocal discovery.

6. THE COURT: Right, But if you gave it to them they can use it. It's fair game; right.

7. MS. HONICK: 3.220 (B)(3), within 15 days after receipt of the prosecutor's discovery or exhibit, defendant shall serve a written discovery exhibit which shall disclose to and permit the prosecutor to inspect, copy and test the photograph the following information and material that's in the defendant's possession or control. 3, any tangible papers or objects that the defendants intend to use at hearing or trial.

v. Although the State was not permitted to use the documents at trial, the Court found that there was no prejudice to the State because the State had provided the documents to the defense in discovery. The State addressed the issue of the 3 or 4 pages from the document being pulled from the entire DOH, arguing:

1. THE COURT: Hold on. Hold on. Hold on. We're talking about prescriptions related in a box somewhere related to something else. What are we talking about –

2. MS. HONICK: We were talking about the entire Florida Department of Health file, which included prescriptions, yes, but it was the entire file. That is four pages out of the entire file.

So Mr. Lewis wants to handpick four pages out of the entire file, which you previously excluded. So if he introduces those four pages and under the rule of

completeness, the State would be seeking to introduce the whole file.

Again, I don't know how he's planning on introducing it without a certificate of authenticity with this witness never having seen it.

And finally, Judge, again the motion in limine -- the State's motion in limine number six regarding prior presentation of other prosecuting criminal and relevant and regulatory authorities, this has no bearing or relevance whatsoever on the case as a whole, and this witness has never even -- has nothing to do with the Florida Department of Health investigation.

vi. In response to the State's argument, the Court provided the "judicial notice" argument identified *supra* and admitted the cherry-picked page on that basis.

vii. On re-direct, the State's request under the rule of completeness to let the witness explain and rely on other documents in the exhibits was overruled.

b. The Court has also been inconsistent with its position that trial is a "living thing" and subject to change to the State's detriment:

i. On February 15th, the defense attempted to subpoena the State's witness after she testified.

1. The State objected and argued that the defense did not list the witness on a defense witness list. Rather, the defense

had tried to adopt the State's list and the Court agreed that it was impermissible.

2. However, with regard to adding a new witness to its list, the Court ruled: "I don't want to hear she is not listed as a defense witness, she is a fair game, trial is a living breathing thing, maybe something came up and now they want to call her." The Court said the "witness is outside, she testified, she is fair game to be subpoenaed." Judge also said, "it is what it is," and instructed the witness to accept the subpoena.

ii. On March 1st, the State amended its discovery because the original custodian of records was no longer employed at the bank and the State needed to list the name of the new custodian. The Stated needed the custodian because the Court had sua sponte blocked the State's ability to admit the bank records as certified business records. Despite allowing the defense to subpoena an unlisted State witness in the middle of trial because "trial is a living breathing thing, and maybe something came up and they now want to call her," the Court ruled that

the State could not amend their witness list because it is a late filing.

c. The State has been limited in its ability to re-direct its witnesses on the same documents used by defense on cross:

i. During the cross-examination of the State's third witness, defense counsel presented a document titled a Loss Inventory Report. This document had not been provided in reciprocal discovery and the State had never seen it. Defense counsel asked the witness if she had ever seen the document to which she replied that she had not. Over objections, the court permitted the defense to inquire about the report. In doing so, the defense showed the document to the witness and was then permitted to ask questions pertaining to the specifics of this document that she had never seen. The document was not introduced into evidence.

ii. During redirect examination the state began to inquire as to the authenticity of the document, the fact that it is unknown when and how this document was created. The defense objected and the Court ruled that the State would not be permitted to get into any specifics of the document, giving no legal explanation or

legal basis. The Court limited the State to the question of whether the witness had ever seen the document. Thus, preventing the State from effectively redirecting the witness.

d. On multiple occasions the Court has sustained rulings on defense counsel's hearsay motions, but allowed the answer to come in on cross-examination, over State's objections.

   i. Specifically, during the testimony of a recipient of the prescription from the subject pharmacy, the witness indicated that he had received a call from the pharmacy (the enterprise).

   ii. The State, on direct examination, inquired as to what was told to the witness during this call. This would be a statement by a member of the enterprise.

   iii. The defense objected to hearsay. (co-conspirator statement).

   iv. The Court agreed and did not allow it.

   v. However, on cross-examination, only several minutes later, when asked by the defense, the Court did allow the answer to come in.

Argument

When reviewing a motion to disqualify a trial court must apply the following well-grounded principles.

> "A motion to recuse or disqualify a trial judge is legally sufficient when the alleged facts would create in a reasonably prudent person a well-founded fear of not receiving a fair and impartial trial." *Valdes–Fauli v. Valdes–Fauli,* 903 So.2d 214, 216 (Fla. 3d DCA 2005). The allegations contained in the motion must be taken as true. *Masten v. State,* 159 So.3d 996, 997 (Fla. 3d DCA 2015). Actual bias or prejudice need not be shown, rather it is the appearance of bias or prejudice which requires disqualification. *Marcotte v. Gloeckner,* 679 So.2d 1225, 1226 (Fla. 5th DCA 1996).

State v. Oliu, 183 So.3d 1161, 1162-1163 (Fla. 3d DCA 2016).

Additionally, the judge's feelings are irrelevant, and courts have explained as follows:

> It is not a question of what the judge feels, but the feeling in the mind of the party seeking to disqualify and the basis for that feeling. *See Goines v. State,* 708 So.2d 656, 659 (Fla. 4th DCA 1998) ("[T]he facts underlying the well-grounded fear must be judged from the perspective of the moving party."), *disagreed with on other grounds by Thompson v. State,* 949 So.2d 1169 (Fla. 1st DCA 2007), *quashed,* 990 So.2d 482 (Fla.2008); *Wargo v. Wargo,* 669 So.2d 1123, 1124 (Fla. 4th DCA 1996).

See Aberdeen Prop. Owners Ass'n. Inc. v. Bristol Lakes Homeowners Ass'n. Inc. 8 So. 3d 469, 471-472 ((Fla. 4th DCA 2009).

Moreover, the factual support for the motion to recuse simply requires grounds that are "predicated on grounds with a modicum of reason," *Id,* at 472. *See also Valdes-Fauli,* 903 So. 2d 214, 216 (Fla. 3d DCA 2005)(explaining, "[a] motion to recuse or disqualify a trial judge is legally sufficient when the alleged facts would create in a reasonably prudent person a well-founded fear of not receiving a fair and impartial trial."); *Barnett v. Barnett,* 727 So. 2d 311, 312 (Fla. 2d DCA 1999)(same).

The importance of ensuring public confidence and integrity in the judicial system is at the core of determining judicial fitness for a proceeding. The Florida Supreme Court has explained:

> This Court has recognized the sensitivity and seriousness involved whenever the issue of judicial prejudice is raised. We have stated that:
>
> Prejudice of a judge is a delicate question to raise but when raised as a bar to the trial of a cause, if predicated on grounds with a modicum of reason, the judge against whom raised, should be prompt to recuse himself. No judge under any circumstances is warranted in sitting in the trial of a cause whose neutrality is shadowed or even questioned.
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> ....
>
> ... It is a matter of no concern what judge presides in a particular cause, but it is a matter of grave concern that justice be administered with dispatch, without fear or favor or the suspicion of such attributes. The outstanding big factor in every lawsuit is the truth of the controversy. Judges, counsel, and rules of procedure are secondary factors designed by the law as instrumentalities to work out and arrive at the truth of the controversy.
>
> The judiciary cannot be too circumspect, neither, should it be reluctant to retire from a cause under circumstances that would shake the confidence of litigants in a fair and impartial adjudication of the issues raised.
>
> *Dickenson v. State,* 104 Fla. 577, 582-84 (1932). This Court has also expressed the view that:
>
> "Every litigant, including the State in criminal cases, is entitled to nothing less than the cold neutrality of an impartial judge." It is the duty of courts to scrupulously guard this right of the litigant and to refrain from attempting to exercise jurisdiction in any matter where his qualification to do so is seriously brought in question. The exercise of any other policy tends to discredit and place the judiciary in a compromising attitude which is bad for the administration of justice.

State ex rel. Mickle v. Rowe, 100 Fla. 1382, 1385, 131 So. 331, 332 (1930).

Livingston v. State, 441 So. 2d 1083, 1085-1086 (Fla. 1983). With these principles in mind, the state respectfully asserts that this motion is legally sufficient and must be granted.

As recounted above, the court improperly injected itself into the proceedings on six separate instances by *sua sponte* making its own objections and making inquiries of counsel on issues not raised by the defense. One such instance alone would warrant disqualification. Here, the court abdicated its role of neutral arbiter six times which more than justifies a finding that the state had a reasoned objective fear of bias. *See Johnson v. State,* 114 So. 3d 1012 (Fla. 5th DCA 2012)(explaining that trial court's offering of objections when none presented by the defense is grounds for recusal); *See Evans v. State,* 831 So. 808, 811 (Fla. 4th DCA 2002) (disapproving of trial court's suggestions to the prosecution inquire into the immigration status of the defendant); *Lee v. State,* 789 So. 2d 1105, 1106 (Fla. 4th DCA 2001) (trial court suggested a line of questioning to the prosecution with regard to identifying marks on the defendant's body); *Asbury v. State,* 765 So. 2d 965, 965 (Fla. 4th DCA 2000)(trial court prompted the prosecution to present certain evidence and *sua sponte* recalled witnesses to ask them questions); *Lyles v. State,* 742 So. 2d 842, 843 (Fla. 2d DCA 1999)(trial court *sua sponte* ordered that the defendant be fingerprinted and bifurcated the hearing to permit additional testimony); *Sparks v.*

State, 740 So. 2d 33, 36 (Fla. 1st DCA 1999) (trial court suggested impeachment evidence to the prosecution).

Further evidence of the trial court's bias is demonstrated by its participation in an *ex parte* communication with the defense counsel. The impropriety of that action was further compounded by the court's refusal to end the *ex parte* conversation and instead simply to have the jury leave the courtroom and deal with the matter with both parties present. When that option was suggested by one of the defense counsels, the court made a sarcastic and petty remark about the prosecutor and continued the improper communication. Finally, the court then blatantly mischaracterized the nature of the conversation before the jury. These actions were a clear violation of Canon 3 Code of Jud. Conduct (7) which forbids a court from initiating or permitting such communications, absent three exceptions, none of which apply here. Such open disdain for an attorney during the trial is grounds for recusal. *See Gates v. State*, 784 So.2d 1235, 1237 (Fla. 2d DCA 2001) ("A trial court's prejudice against an attorney may be grounds for disqualification when such prejudice is of such a degree that it adversely [a]ffects the litigant.") (quoting *Franco v. State*, 777 So.2d 1138, 1140 (Fla. 4th DCA 2001))).

The trial court openly made comments about the quality of the evidence, the "weakness" of the state's theory of the case and criticized the prosecutors trying the case. The judge's gratuitous remarks were improper, and clearly displayed the

court's disdain for the state and its case. *Simmons v. State,* 803 So. 2d 787, 788 (Fla. 1st DCA 2001)(explaining recusal is warranted where judge makes remark in jury's presence that conveys the court's opinion of the case, the character, weight, and credibility of the evidence); *Great American Ins. Co. v. 20000 Island Blvd.* 153 So. 3d 384 (3d DCA 2014)(finding a single comment by the court to one of the parties "to fork over the money" before the case was tried was sufficient to demonstrate that the party at which it was directed, would not receive a fair trial.) ; *State v. Dixon*, 217 So. 3d 1115, 1127 (Fla. 3d DCA 2017)((trial judge accused the State of having a "lackadaisical bureaucratic attitude" and of "negligence, or dereliction, or plain out bureaucratic laziness"); *Barnett v. Barnett*, 727 So. 2d 311, 312 (Fla. 2d DCA 1999)(finding it improper for a judge to prejudge the issue of custody before conclusion of the case); *State v. Steele*, 348 So. 2d 398, 400-403 (Fla. 3d DCA 1977)(recognizing that prejudgment of the case by commenting on the evidence along with an incorrect statement of law was more than sufficient to warrant recusal of the court for bias).

The court also impermissibly treated the parties differently when it came to its rulings. As presented above, the trial court ruled inadmissible the state's exhibits. Yet it permitted the defense to pick out certain documents or pages of documents from the inadmissible exhibits during the cross-examination of certain witnesses. The witness was instructed to read portions of documents answer "yes" or "no"

questions about documents when these items were never introduced into evidence. This improper disparate treatment was further compounded by the court's refusal to permit the state on re-direct to allow the witness' to explain some of their answers from the cross-examination pursuant to rule of completeness. To be clear, this is not about an objection to an adverse ruling; it is about the ruling only applying to one side and the lack of fairness and due process in the application of the ruling. *See Chillingworth v. State,* 846 So. 2d 674 (Fla. 4th DCA 2003) (determining in part that refusal to permit allocution statements at sentencing in violation of rules of procedure and due process demonstrate a lack of respect for equity and due process).) *See also, Partin v. Magalhaes,* 164 So. 3d 88, 89 (Fla. 4th DCA 2015) (determining that judge's "acerbic comments and hostility" toward a party coupled with the judge's inability to understand the legal arguments and unwillingness to listen to counsel explain the legal position warranted disqualification). *Simmons v. State,* 803 So. 2d 787, 788 (Fla. 1st DCA 2002) (finding disqualification warranted where the judge makes a single comment that **might** (*emphasis added*) convey his view of the case, or his opinion about the evidence).

WHEREFORE, the State respectfully requests that this Court GRANT the Motion for Disqualification for the reasons stated above.

CERTIFICATE OF GOOD FAITH

I HEREBY CERTIFY that the motion and the Assistant Statewide Prosecutors' statements contained in the attached affidavit are made in good faith.

CYNTHIA HONICK
Assistant Statewide Prosecutor

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-service to the Court.

CYNTHIA HONICK
Assistant Statewide Prosecutor

AFFIDAVIT OF CYNTHIA HONICK IN SUPPORT OF STATE'S MOTION TO DISQUALIFY

The undersigned affidavit, Cynthia Honick, under penalty of perjury, deposes and states on February 28, 2023, as follows:

1. I was present for all trial testimony which began on February 13, 2023, and have been present throughout the entire trial.
2. The Court has been an unneutral arbiter and has injected itself into the trial. The Court has precluded the prosecution from entering evidence that the Court has then allowed the Defense to question the witness on. The Court further precluded the State from questioning the witness during re-direct examination on the documents used by the Defense.
3. I have also witnessed several occasions throughout the trial the Court sua sponte objecting during the State's direct examination and making legal arguments on behalf of the Defense.
4. The Court allowing the Defense to question a witness on documents that the prosecution was precluded from questioning on either in direct examination or re-direct examination demonstrates the Court's prejudice towards the prosecution and favoritism towards the Defense.
5. There have been continuous disparaging rulings and actions from the Court including but not limited to: the Court allowing the Defense to use documents that were never provided in reciprocal discovery and then severely limiting the prosecution's redirect examination on those documents; and the Court sustaining hearsay objections from the Defense (disregarding the legal hearsay exception) and then allowing the Defense to ask the same question eliciting the previously excluded testimony only minutes later.

6. The Court has not conducted several of the *Richardson* hearings requested by the prosecution after defense has pulled out random papers never before seen by the State and not disclosed in Defense Discovery and has allowed the Defense to make objections with no legal basis. The Court has also made legal arguments for the Defense.
7. I have also experienced the Court's negative and disparaging physical actions during the proceedings. Including the Court raising his voice in the confined sidebar area and pointing his finger in the face of the undersigned Assistant Statewide Prosecutor making the undersigned Assistant Statewide Prosecutor concerned for her physical wellbeing and ultimate safety. When the undersigned Assistant Statewide Prosecutor attempted to no longer be physically near the Judge in a sidebar, the undersigned Assistant Statewide Prosecutor was ordered to stand near the Judge.
8. The Court's statements and actions cause me to reasonably fear that the Court is biased against the prosecution and the prosecution will not receive a fair and impartial trial.
9. I witnessed the Court prejudging the prosecution's case when a witness needed her memory refreshed. This case is document heavy and contains voluminous files. For the witness to refresh her memory the file (made up of several binders) was brought to the courtroom. The Court during sidebar commented that the binders were ridiculous (several times). The Court then gave a limiting instruction to the jury which was essentially that they should ignore the State's evidence and that the State might only use one sheet of paper from the file.
10. The undersigned prosecutor is currently visibly pregnant, and the Court is aware of the pregnancy. On the second day of testimony the undersigned requested an additional twenty-five minutes for lunch since the Office of Statewide Prosecution is further away

from the courthouse. The Defense objected saying that request was "gratuitous," in the presence of the jury, the Court agreed with the Defense saying, "that would be gratuitous" and denied the request.

11. On day five of testimony the Court essentially punished the undersigned prosecutor for not providing a list of witnesses to the Defense for the next day. All parties had previously agreed to end court at 4:30pm due to the undersigned's childcare needs, on this day, the Court vindictively stated they would be going until 5:00pm. However, prior to the new stop time of 5:00pm Defense counsel requested to adjourn early, and the Court happily obliged the Defense request with no comment or issue.

12. On February 22, 2023, the undersigned prosecutor declined to go sidebar. A sidebar was then held by the Judge with all the Defense attorney's and without anyone from the prosecution team. At the conclusion of the sidebar the Court began to berate the undersigned prosecutor at one point stating, "If you don't feel like you want to walk sidebar because of whatever issues you have, then one of your individuals who are assisting you should come sidebar." It should be noted that the undersigned is the lead prosecutor on the case and was handling the witness the sidebar related to. Prior to his berating the Court never inquired why the sidebar was declined. Later, on the record the undersigned explained the decline to attend sidebar stemmed from the abuse suffered at the hands of the Court such as: being told where to stand, being spoken to aggressively in a small space, and having the Court point his finger in my face.

13. Because of the animosity the Court has and has shown towards the prosecution throughout the entire proceedings, I believe the prosecution will not receive a fair and impartial trial.

And the Court has made and is making rulings based on its negative feelings towards the prosecution, especially the undersigned.

14. Judge Andrew Siegel's words and actions have shown a prejudice towards the prosecution.

15. The Court has lost its neutrality and has shown bias against the prosecution.

16. I do not believe the Judge will perform his duties impartially and diligently.

Based on this information, I have a well-grounded fear that this Court is prejudiced against the prosecution and that the prosecution will not receive a fair trial.

Pursuant to Florida Statute § 92.525(2), under penalties of perjury, I declare that I have read the foregoing affidavit and that the facts stated in are true.

Cynthia Honick
Assistant Statewide Prosecutor

AFFIDAVIT OF MOSES ALUICIO IN SUPPORT OF STATE'S MOTION TO DISQUALIFY

The undersigned affidavit, Moses Aluicio, under penalty of perjury, deposes and states on February 28, 2023, as follows:

1. I have been present throughout the trial of Claude Edward White, Lancelot James, Sharrie Ann Thelwell-James, Adesumbo "Sandra" Adesioye, and Jean Mario Pierre, which began on February 13, 2023.
2. The Court has injected itself into the trial thereby losing its neutrality.
3. I have witnessed several occasions throughout the trial where the Court, sua sponte, has objected to the State's direct examination and has made legal arguments on behalf of the Defense.
4. There have been several disparate rulings from the Court, including but not limited to:
    a. The Court has allowed the Defense to question witnesses on documents that the prosecution was precluded from questioning on either in direct examination or re-direct examination.
    b. The Court has allowed the Defense to use documents that were never provided in reciprocal discovery in violation of Rule 3.220 of the Florida Rules of Criminal Procedure, and has severely limited the prosecution's redirect examination on those documents; Further, the Court has required the State on multiple occasions to provide case law in support of our legal objections and arguments, while allowing the Defense to make objections with no legal basis and ruling on those objections.
    c. The Court has made legal arguments on behalf of the Defense; specifically, the Court objected to the introduction of bank records on behalf of all defendants

despite the State filing a Notice of Intent to Rely on Certified business records filed several years prior to trial and in compliance with F.S. 90.803(6).

d. The Court, in disregarding hearsay exceptions provided for by law, has sustained hearsay objections from the Defense and precluded the State from admitting evidence, and has then allowed the Defense to elicit the previously excluded testimony only minutes later.

e. The Court has precluded the prosecution from entering evidence that the Court has then allowed the Defense to question the witness on. Despite the Defense being allowed to question the witness on the excluded evidence, the Court has further precluded the State from questioning the witness during re-direct examination on the same issues.

5. On day five of testimony, the Court made his frustration at Assistant Statewide Prosecutor ("ASP") Cynthia Honick apparent for her failure to provide a list of witnesses the State intends to call the following day. While all parties had previously agreed to end court at 4:30pm due to ASP Cynthia Honick's childcare needs, on this day, the Court stated they would be going until 5:00pm. However, prior to the new stop time of 5:00pm Defense counsel requested to adjourn early, and the Court happily obliged the Defense request with no comment or issue. It should be noted that at various times the Court has attempted to have trial extend beyond the 4:30 mark despite its own ruling in the State's Motion In Limine prior to commencing trial.

6. I have also witnessed the Court's demeanor during the proceedings. Specifically at sidebar, where the Court has raised his voice in the confined sidebar area and pointed his finger in the face of ASP Cynthia Honick. While I do not believe it was the Court's intent to

physically intimidate the Prosecution, the finger wagging of a single prosecutor in a group of 5-7 attorneys was inappropriate in view of the Jury. This conduct has led me to position myself next to Mrs. Honick whenever practicable considering the space and number of attorneys involved.

7. On February 22, 2023, ASP Cynthia Honick declined to go sidebar. A sidebar was then held by the Judge with all the Defense attorney's and without anyone from the prosecution team. At the conclusion of the sidebar the Court began to berate ASP Cynthia Honick at one point stating, "If you don't feel like you want to walk sidebar because of whatever issues you have, then one of your individuals who are assisting you should come sidebar." It should be noted that ASP Cynthia Honick is the lead prosecutor on this case and was questioning the witness the sidebar related to. Prior to his berating the Court never inquired why the sidebar was declined. Later, on the record, ASP Cynthia Honick explained the decline to attend sidebar stemmed from the Court's conduct at previous sidebars such as: being told where to stand, being spoken to aggressively in a small space, and having the Court point his finger in her face.
8. At this point the Court began conducting sidebars outside the presence of the jury and in open court. This continued for all objections until, outside the presence of the Jury, the undersigned objected to the Defense's inappropriate mischaracterizations of the State's case presentation. Following said objection, the undersigned was ordered to attend all sidebars regardless of who was questioning the witness, and the jury would no longer be sent out. .
9. The Court's words and actions have shown a prejudice towards the prosecution by failing to maintain neutrality and injecting itself into the trial.

Based on this information, I have a well-grounded fear that this Court is prejudiced against the prosecution and that the prosecution will not receive a fair trial.

Pursuant to Florida Statute § 92.525(2), under penalties of perjury, I declare that I have read the foregoing affidavit and that the facts stated in are true.

Moses Aluicio
Assistant Statewide Prosecutor

AFFIDAVIT OF MONIQUE WILSON IN SUPPORT OF STATE'S MOTION TO DISQUALIFY

The undersigned affidavit, Monique Wilson, under penalty of perjury, deposes and states on February 28, 2023, as follows:

1. I was present for all trial testimony which began on February 13, 2023, and have been present throughout the entire trial.
2. The Court has been an unneutral arbiter and has injected itself into the trial. The Court has precluded the prosecution from entering evidence that the Court has then allowed the Defense to question the witness on. The Court further precluded the State from questioning the witness during re-direct examination on the documents used by the Defense.
3. I have also witnessed several occasions throughout the trial the Court sua sponte objecting during the State's direct examination and making legal arguments on behalf of the Defense.
4. The Court allowing the Defense to question a witness on documents that the prosecution was precluded from questioning on either in direct examination or re-direct examination demonstrates the Court's prejudice towards the prosecution and favoritism towards the Defense.
5. There have been continuous disparaging rulings and actions from the Court including but not limited to: the Court allowing the Defense to use documents that were never provided in reciprocal discovery and then severely limiting the prosecution's redirect examination on those documents; and the Court sustaining hearsay objections from the Defense (disregarding the legal hearsay exception) and then allowing the Defense to ask the same question eliciting the previously excluded testimony only minutes later.

agreed to end court at 4:30pm due to ASP Cynthia Honick's childcare needs, on this day, the Court vindictively stated they would be going until 5:00pm. However, prior to the new stop time of 5:00pm Defense counsel requested to adjourn early, and the Court happily obliged the Defense request with no comment or issue.

12. On February 22, 2023, ASP Cynthia Honick declined to go sidebar. A sidebar was then held by the Judge with all the Defense attorney's and without anyone from the prosecution team. At the conclusion of the sidebar the Court began to berate ASP Cynthia Honick at one point stating, "If you don't feel like you want to walk sidebar because of whatever issues you have, then one of your individuals who are assisting you should come sidebar." It should be noted that ASP Cynthia Honick is the lead prosecutor on the case and was handling the witness the sidebar related to. Prior to his berating the Court never inquired why the sidebar was declined. Later, on the record ASP Cynthia Honick explained the decline to attend sidebar stemmed from the abuse suffered at the hands of the Court such as: being told where to stand, being spoken to aggressively in a small space, and having the Court point his finger in her face.
13. Because of the animosity the Court has and has shown towards the prosecution throughout the entire proceedings, I believe the prosecution will not receive a fair and impartial trial. And the Court has made and is making rulings based on its negative feelings towards the prosecution, especially ASP Cynthia Honick.
14. Judge Andrew Siegel's words and actions have shown a prejudice towards the prosecution.
15. The Court has lost its neutrality and has shown bias against the prosecution.
16. I do not believe the Judge will perform his duties impartially and diligently.

Based on this information, I have a well-grounded fear that this Court is prejudiced against the prosecution and that the prosecution will not receive a fair trial.

Pursuant to Florida Statute § 92.525(2), under penalties of perjury, I declare that I have read the foregoing affidavit and that the facts stated in are true.

Monique Wilson
Assistant Statewide Prosecutor