





APPENDIX


The application should address all issues related to the December 12, 2018 District Court order as well as the January 8, 2019 order. If Appellant does not file an application for a certificate of appealability, his notice of appeal will be deemed to be such an application and will be submitted by the Clerk of this Court to a panel of the Court for consideration, filed. (SLC) [Entered: 02/13/2019 02:42 PM]


02/19/2019  MOTION filed by Appellant Todd Darrell Ballard to File Fewer Copies and to Proceed on the Original Record. Response due on 02/22/2019. Certificate of Service dated 02/08/2019. Service made by US mail. (SLC) [Entered: 02/20/2019 10:04 AM]

02/19/2019  Document by Appellant titled Appeal and Memorandum of Law) Contesting Denial of Petition for Relief from Judgment Rule 60(b). Certificate of Service dated 02/08/2019. Service made by US mail. (SLC) [Entered: 02/20/2019 10:06 AM]

02/25/2019  MOTION filed by Appellant Todd Darrell Ballard to Extend Time to File Response to Legal Division letter advising submitted for certificate of appealability. Response due on 03/11/2019. Clerk's Office made service on dated 02/27/2019. (SLC) [Entered: 02/27/2019 09:38 AM]

03/01/2019  ORDER (Clerk) granting Motion by Appellant to File Fewer Copies and Proceed on the Original Record provided that a briefing schedule is issued and the following documents are attached to Appellant's brief at the time the brief is filed: (1) copy of the District Court docket entries; (2) the notice of appeal; and (3) the order being appealed and any accompanying memorandum. Appellant may file the original and three (3) copies of the brief filed by Appellant Todd Darrell Ballard, filed., (LMR) [Entered: 03/01/2019 10:35 AM]

03/01/2019  ORDER (Clerk) granting motion to extend time to file response filed by Appellant Todd Darrell Ballard. Appellant's application for a certificate of appealability must be filed within thirty (30) days of the date of this order. If Appellant does not file an application for a certificate of appealability by the deadline established, Appellant's notice of appeal will be deemed to be such an application and will be submitted by the Clerk of this Court to a panel of the Court for consideration., filed. (LMR) [Entered: 03/01/2019 10:43 AM]

03/05/2019  RECORD received. One box. (SJB) [Entered: 03/05/2019 03:47 PM]

EXH. B. (a)

AFFIDAVIT OF FACTS

I, Todd D. Ballard, (Affiant) being of legal age and sound mind, hereby avers that the statements and supporting exhibits of evidence made herein this document(s) [and any other subsequent filings], are true and correct to the best of my first-hand knowledge, not meant to mislead in any way; the Affiant states:

1. On or about January 15, 2006, the Affiant was forcefully taken into custody (at gunpoint) by unknown authorities (without being in receipt of a properly served warrant), and transported to the City of Pittsburgh homicide Headquarters. While handcuffed, Affiant was interrogated for over five hours in custody. Affiant was not read any Miranda warnings during such. The authorities took pictures of the Affiant, however, there were no tests performed on the him (no DNA, GSR, Forensic/firearm, etc.). Affiant was later transported to the Allegheny County Jail.

2. The Affiant was taken before a magistrate and arraigned on various charges (including criminal homicide). On or about January 27, 2006, Affiant was taken before Magistrate Leonard Hromyak in a preliminary hearing for such. Affiant was represented by counsel-Patrick Thomassey (whom did not officially enter appearance until March) at said proceeding. Said charges were held over for trial, even though the Commonwealth never produced the medical examiner to establish a prima facie case that the decedent's death was the result of homicide.

3. While incarcerated, the authorities retrieved a blood sample from the Affiant (August 2006). Also, the Affiant (and his family) notified Mr. Thomassey of Affiant's physical disabilities and medications (he was taking) prescribed by his medical physicians (for pain, swelling, and night-time sleep). These medications included: **Amitriptyline 150mgs, Celebrex 200mgs, and Acetaminophen 500mgs**, etc. The staff at the Allegheny County Jail were also notified, and a medical chart was maintained for the Affiant. However, the Affiant's medications were changed and raised [**Elavil to 200mgs** -substitute for Amitriptyline] during time-frame of his trial.

5. Due to irreconcilable differences (regarding monetary issues), Mr. Thomassey filed a Motion to Withdraw Appearance. A hearing was held (without the Affiant being permitted to be present), and Affiant received a letter from Mr. Thomassey informing him that he was now appointed by counsel. Subsequently, Mr. Thomassey petitioned the court [Judge John Zottola] for a psychological evaluation of the Affiant. The petition was granted and Affiant was evaluated by a psychiatrist (Mr. Stewart). During evaluation, Affiant notified Mr. Stewart) that he was on his medications for medical reasons, not psychological.

6. Affiant filed pre-trial motions requesting his discovery. On or about July 27, 2007, (approximately 17 after being incarcerated), Mr. Thomassey visited the Affiant, and gave him a copy of the discovery.

7. On or about October 2, 2007 (approximately 2 months after receiving his discovery), Affiant appeared before Judge Zottola in a non-jury trial proceeding. After two days, Affiant was convicted on October 10, 2007, During said trial proceedings, a Mr. Abdulrezzak Shakir (medical examiner's dept.) had testified that he did not perform the autopsy of the decedent (Jamie Coles); and that he usually supervises such examinations. He also read an alleged report (from Bennett Omalu) into record stating that the decedent had a single (gunshot wound) to the front breast (chest), no exit wound; and that there was no powder burns nor soot marks, so the shot had to had been at least 18 inches away. He also alleged (from papers he read while on the stand) that it was believed to be a homicide.

8. In addition, a Mr. Robert Levine (ballistic expert) brought in the decedent's t-shirt, and testified and exhibited that no powder burns or gunshot residue was on it; thus, estimating that the muzzle of the .25 caliber weapon fired would have been at least 18 inches away, and the decedent was struck from the front left. Mr. He also testified that he did not examine the physical evidence removed from the scene (he received from the crime lab unit) for DNA, forensic, or firearm results. This evidence included: two (.25 caliber) casings; fragment, magazine clip [with 3 live rounds inside], t-shirt, decedent's hair standards and nail clippings, etc.

9. During the trial proceedings (2 days- from October 2-3, 2007), there were multiple stipulations entered into evidence (agreed upon by both Patrick Thomassey [trial counsel] and Krista Hartnett [prosecutor]) on record. The Affiant did not have prior knowledge nor consent to these stipulations; including: DNA procession of blood trace test found at scene (was a match to Carl Beck); chain of custody; expert witness' reports (read by other witnesses; witness qualifications; receipt of decedent's handgun found at scene; out of court statements, etc. The Affiant later discovered (through correspondence from direct review counsel- Suzanne Swan, on or about 6/29/09), that there were pretrial stipulations an any pretrial conference in Affiant's case No. [CP-02-CR-0001382-2006- CmwltH. Vs. Ballard]. Furthermore, the Affiant is still not in receipt of any of the test results for the stipulated and physical evidence removed from the scene at location 207 Edmond Street, Pittsburgh, PA. 15224.

10. On or about October 2, 2007; Common Pleas Judge [John Anthony Zottola] confessed to "daydreaming" (on record) during this non-jury proceeding. He stated this while the prosecutor was examining a Christine Williams [detective] and projections of the scene (at 207 Edmond Street) was being presented. During trial proceedings, there were multiple (off-record) sidebars and in-chambers private discussions between Judge Zottola and either Mrs. Hartnett and/or Mr. Thomassey (7 in total during two-day proceeding). There is no transcription or record of whatever was discussed during these private discussions at the trial proceedings.

11. On or about October 2, 2007, the Affiant was given a colloquy (from Judge Zottola) asking if he was on any drugs or alcohol (uncontrolled substances). The Affiant was never asked whether he was on any prescribed medications (controlled substances). The Affiant's counsel never informed the court of his knowledge that the Affiant had a disability and has been prescribed sedative and pain medications since his injuries (December 1995). Judge Zottola granted the psychological evaluation of the Affiant (2006); but, did not mention (on record) anything about the Affiant's medications. The Affiant was under the influence of administered sedative medications [Amitriptyline 150-200mgs, Acetaminophen 500mgs, etc.] during both the time and date of the shooting in question (January 13, 2006- approximated 2:30-3:00am); and during trial proceedings of October 2-3, 2007. Also, the expert (Mr. Stuart/Stewart] whom examined the Affiant was not present at trial to testify to what his report/findings are.

12. On or about January 7, 2008, Judge Zottola pronounced a penalty of [life imprisonment] upon the Affiant. During sentencing proceeding, the Affiant was not given any colloquy (by the judge) informing him of any waiver of his right to be sentenced by a penalty-phase jury. Furthermore, Judge Zottola did not state what statutory provision he used to sentence the Affiant. The Affiant is in possession of a copy of the "Order of Sentence"; which does not contain a sentencing statute on it's face. Also, the sentence order states that the Affiant is penalized for "criminal homicide". The Affiant was informed (through the Right-To-Know Law Office) that there is no record of a 300B- Commitment Form in this case.

13. On or about January 7, 2008, the Affiant gave an 'allocation' stating that the truth had not been made known. Subsequently, during the sentencing hearing; Mr. Thomassey was granted his oral request to withdraw as counsel (by Judge Zottola) on record.

14. On or about January 10, 2008; the Affiant filed a pro se 'Post-Sentence Motion' [Acquittal of Judgment] through the ACJ notary/mailling system. The Affiant received a receipt of charges for service. The post-sentence motion presented violations and errors caused by the trial court judge, prosecutor, and trial counsel; before, during, and after trial and sentencing proceedings in this case. On or about January 14, 2008; a Suzanne Swan was appointed as counsel during the Affiant's post-sentence and direct review proceedings.

15. On or about April 1, 2008, Mrs. Swan [# 46183] filed a 'SUPPLEMENTAL POST SENTENCE MOTION' before Judge Zottola for direct review. She presented the sole claim that the 'verdict was against the weight of the evidence' in her motion. Prior to her submission, the Affiant requested a copy of the transcripts for his proceedings. Through correspondence, the Affiant requested that she include in her submission; claims relating to trial court error, prosecutorial misconduct, and trial counsel ineffectiveness. However, she refused to submit the requested claims in her filings.

16. On or about May 9, 2008, Mrs. Swan informed the Affiant that 'Judge Zottola denied his post-sentence motions' (referring to Affiant's pro se filing, and her supplemental filing). On or about May 14, 2008, Mrs. Swan filed her 'Notice of Appeal' to the Superior Court of Pennsylvania (during appellate direct review). However, she did not include the Affiant's requested [and pro se filed] claims (within his post-sentence motion) relating to the trial court and prosecutor violations.

17. On or about July 29, 2008, Judge Zottola filed his Opinion in Support of Order [pursuant to Pa.R.A.P. 1925(a)], of the reasons for his finding the Affiant guilty of criminal homicide. In said Opinion, Judge Zottola gave a specific detail, inferring that "...the cause of death to the victim was a gunshot wound...which means [decedent] was not even facing him but had [decedent's] back to the defendant when shot..." Also, "The defendant had specific intent to kill when he shot the victim from behind..." [emphasis added].

18. On or about November 28, 2008, Mrs. Swan informed the Affiant to "...be assured that she raised the only argument that was cognizable on [direct] appeal...if unsuccessful, you [Affiant] can raise any and all other issues that were not raised on direct appeal in a PCRA petition." Furthermore, Judge Zottola did not address any of the claims raised [by Affiant] in the original pro se filed post-sentence motion. The Affiant then filed a complaint against Mrs. Swan [to the judicial Conduct Board of Pennsylvania]; to no avail.

19. In addition, the Affiant, Geneva Ballard, Ramon Ballard, and Terrance Ballard (amongst others), filed 'Sworn Complaints' against Judge John A. Zottola (approximately October –November of 2010); to then President Judge Donna Jo McDaniel [Judicial Board]. The complaints included Judge Zottola's confession of 'daydreaming' during this non-jury trial; opinion for verdict based on evidence that was never presented at trial; ex parte discussions, etc. As a result, Judge McDaniel petitioned the Supreme Court for removal of Judge Zottola [from the criminal division]; and reassigned to the Orphan's Court Division. The Supreme Court granted said petition and reassigned to Orphan's court.

20. On or about April 12, 2011, the Affiant filed a PCRA petition, memorandum of law in support, motion for recusal of judge Zottola from review, and exhibits of evidence. The Affiant filed claims (as instructed by Mrs. Swan) including: trial court error, prosecutorial violations, and ineffectiveness of both trial and post-sentence/direct review counsels (amongst other claims). Affiant also attached affidavits by the above-mentioned individuals, and Jevon Everette [who attested that he knew of the Commonwealth's key witness

Carl Beck's psychological disorders and being admitted into psychiatric institutions, etc.]; as known of this information was made known at trial proceedings. The Affiant also added supplemental attachments [to his PCRA Petition/Memorandum] Affidavits of the aforementioned individuals (Ramon Ballard- 1/15/11; Geneva Ballard-2/4/11; and Terrance Ballard- 3/15/11). The subject matter of the affidavits included their attestations [concerning but not limited to]: (1) observations of Affiant's sedative condition during trial proceedings and after taken his prescribed medications; (2) Their relating the Affiant's disability and medications to Mr. Thomassey; (3) Affiant's refilled prescription on 1/9/06 for Amitriptyline, etc.; (4) Mr. Thomassey's refusing of their requests to testify in Affiant's favor at trial; (5) knowledge of decedent's registered handgun; (6) Judge Zottola's private discussions and confession to daydreaming during trial proceedings; (7) stipulations, etc.

EXH. B (a)
21. The Affiant's trial counsel [Patrick Thomassey] was under federal investigation (May –October 2007), during the time he represented the Affiant at trial. Part of the investigation involved Mr. Thomassey being appointed over 38 court appointed cases (indigent defendants) from one judge (Jeffrey Manning) alone in the year of 2007. Mr. Thomassey was being represented himself (by Tom Ceraso); while he was appointed counsel over the Affiant's trial. Mr. Thomassey only called one witness for the defense at Affiant's trial.

22. The Affiant (amongst other clients of Mr. Thomassey) filed complaints against Mr. Thomassey and various judges (including John Anthony Zottola). In October 2011, the Supreme Court of Pennsylvania granted President Judge McDaniel's petition and Judge Zottola was transferred from the criminal division to the orphan's court division. The court administrator informed the Affiant that Judge Zottola will still preside over his appeal. Subsequently, Affiant's PCRA petition, Affidavit(s), and request for an evidentiary hearing (to admit newly presented/discovered evidence on record not presented at trial), was dismissed by Judge Zottola.

23. On or about March 6, 2013, the Superior Court Ordered Judge Zottola to address each of the Affiant's claims for review. Judge Zottola filed an untimely opinion. On or about August 27, 2013; the Superior Court of Pennsylvania denied the Affiant's appeal. The Memorandum (in support of denial) issued and deemed various claims waived (involving trial court errors, prosecutor violations, and ineffective assistance of counsel).

24. On or about August 28, 2014; Affiant's Petition for Writ of Habeas Corpus Relief was filed before the Eastern District Court of Pennsylvania [concerning state Case No. CP-02-CR-0001382-2006]. Said action introduced the claims presented before the court involving trial court, prosecutor, and trial counsel violations of the constitutional amendments. Subsequently, the Case [No. 2:14-cv-4815] was transferred to the Western District [No. 2:14-cv-01453]. The Affiant supplemented his original filing, and requested disclosure of discovery and an evidentiary hearing.

25. While confined at SCI- Camp Hill on March 31, 2008; the Affiant was assaulted by various correctional officers (in which he sustained a fractured hand and second-degree burn to his scalp, etc.). The incident was grieved and legal action was litigated by the Affiant. Legal proceedings were scheduled and the Affiant was transferred to SCI-Dallas during litigation of that matter. Affiant's legal materials were constrained (from the Affiant) and eventually transferred with another prisoner (due to the actions of prison officials). Affiant has lost certain pertinent evidence (pertaining to this criminal case), due to the actions of prison officials (shipping his legal box of documents with another prisoner); that was missing from his property when he received it. Affiant grieved the matter, and filed a 'DECLARATION' before the district court attesting these facts; and requested an attorney. However, the magistrate denied and ordered his response.

26. After various pro se filings, (in compliance to court order) the Affiant also filed his Response and Memorandum of Law in Reply with attached appendixes of evidence and affidavit in support (on or about December 4, 2015). On or about September 12, 2018, Magistrate Cynthia Reed Eddy filed her 'Report and Recommendation'; proposing that various claims the Affiant (for trial court errors, prosecutorial misconduct, etc.) were either waived or procedurally defaulted. On or about November 14, 2018; Affiant filed his Objections to the Report and Recommendation of the magistrate; explaining how he exhausted his claims before the state courts, etc. On or about December 12, 2018, District Court Judge Nora Barry Fischer adopted the magistrate's recommendation and denied the Affiant's Petition for Writ of Habeas Corpus Relief.

27. On or about December 22, 2018; Affiant filed "Petition for Relief from Judgment [Rule 60(b)]" contending the procedural rulings in his case. Subsequently, on or about January 8, 2019; Affiant's petition was denied reconsideration. On or about 1/18/19- Affiant's (IFP motion) and 1/31/19 (Petition for Stay) was filed (placed inside mailbox) for Case No. 19-1143 before the Court of Appeals for the Third Circuit.

SWORN AND SUBSCRIBED BEFORE ME ON 5 DAY OF February, 2019.

Public Notary:

Robin L. Nyberg

NOTARIAL SEAL
Robin L. Nyberg, Notary Public
Commonwealth of Pennsylvania

Affiant

Todd Ballard

SWORN AFFIDAVIT

I, the undersigned, hereby affirm that the averments made herein this document are true, complete, and certain to the best of my firsthand knowledge. I am of legal age and of sound mind, also willing to offer testimony concerning the facts set forth herein are true.

The Affiant States:

William A. Jones #29076 was the Affiant's counsel at trial. On 08/29/2011 the Affiant (Thomas A. Scott) was sentenced to a term of 40 to 80 years in Prison, by Judge Jill E. Rangos. At sentencing trial counsel (William A. Jones) requested to withdraw, due to irreconcilable differences dealing with monetary issues. Judge Rangos then promised the Affiant that she will appoint counsel, unless she heard otherwise. Also, Judge Rangos granted trial counsel's motion to withdraw. On 09/07/2011 Jessica L. Herndon was appointed to represent the Affiant during Post-Sentence-Motions/Direct Review. However, counsel filed a Petition for Post-Conviction Collateral Relief on 09/29/2011. On 10/04/2011 Judge Rangos granted the P.C.R.A.. On 10/04/2011 Post-Sentencing counsel (Jessica L. Herndon #) filed a notice of appeal to the Superior Court. The Affiant requested certain issues be preserved, which she ignored. ID. # 80422 John Ciruli was then appointed as counsel, and informed the Affiant that he could bring up any issue on P.C.R.A., that was not brought up on direct appeal. The P.C.R.A. Act [42 PA. C.S. § 9544 (B)] states otherwise issues not presented at trial or on direct appeal are waived. Thus, these claims are now not reviewable in future proceeding. This seems to be the normal practice in PA by both trial Court Judges and Counsel.

SWORN AND SUBSCRIBED BEFORE ME ON THIS 31 DAY OF January, 2019.

1st Robin L. Nyberg
Notary Public

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Robin L. Nyberg, Notary Public
Conneaut Twp., Erie County
My Commission Expires Aug. 11, 2019

1st [Signature]
Affiant

DECLARATION OF FACTS

Timothy Anderson, the Declarant hereby makes this declaration, being of legal age and sound mind, and willing to testify to the facts set forth herein, that are true and correct, to the best of my personal knowledge and belief; and not meant to mislead anyone in any way. I acknowledge that this declaration is made subject to the penalties held in 28 U.S.C. sec. 1746; regarding unsworn falsified statements to authorities.

On or about 9/12/11, the Declarant was found guilty in a jury-trial proceeding.
On or about 3/1/12, the Declarant was sentenced to 30-60 years before Trial Court Judge James Cullen. Douglas Conrad represented the Declarant as counsel during these proceedings. On or about 3/6/12, Mr. Conrad filed his Motion to Modify Declarant's sentence during the post-sentencing stage of the case. However, Mr. Conrad did not file any of the other issues that the Declarant requested. On or about 3/20/12, Mr. Conrad's motion was denied by Trial Court Judge James Cullen. Subsequently, the Declarant was appointed counsel (Mary Jean Glick) from the public defender's office of Lancaster County, for post-sentence and direct review proceedings in Case Nos. 5069-2009; 378-2010; 419A-2010 [Commonwealth v. Anderson]. The Declarant was informed by counsel (via letter correspondence) to inform her of his issues within 7 days of receipt of her letter, or that he will waive his right to do so. She also instructed the Declarant that any issues he believed should have been raised on [direct] appeal [but weren't], may be raised in a PCRA. The Declarant corresponded with Mrs. Glick and requested that she file his four issues [for separate trials] be submitted. Unfortunately, Mrs. Glick refused to file any of the amended claims concerning (False Arrest, Illegal Search and Seizure, Malicious Prosecution). To the contrary, Mrs. Glick filed her Notice of Appeal to the Superior Court and Concise Statement of Matters Complained of on Appeal on 4/18/12, which was dismissed. Subsequently, the Declarant filed a pro se PCRA petition on 4/29/14 with the issues that both counsels failed to present. Now these issues are waived for review because of the Statute 42 P.S. section 9544(b), which states they have to be presented during direct appeal.

SUBORN AND SUBSCRIBE BEFORE ME ON THIS 31 DAY OF January 2019.

Date:

1/31/19

Robin L. Nyberg
Witness

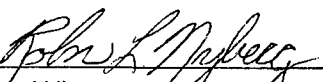
Timothy Anderson
Declarant
COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Robin L. Nyberg, Notary Public
Conneaut Twp., Erie County
My Commission Expires Aug. 11, 2019

AFFIDAVIT

I, the undersigned, hereby affirm that the averments made herein this document are true, complete, and certain to the best of my firsthand knowledge. I am of legal age and of sound mind, also willing to offer testimony concerning the facts set forth herein are true. I also understand that this Affidavit is subject to the penalties of 28 U.S.C. § 1746 as unsworn falsifications made to authorities and courts.

The Affiant States:

On 7-2-15 The Affiant was resentedenced for second degree murder by Judge George Pagano, The Affiant was represented by William Wismer #39220 during his resentencing hearing. Prior to the hearing, the Affiant discussed issues he wanted raised in a Post-Sentence motion. However, Mr Wismer instructed the Affiant that he could not file one on his behalf. Subsequently, the Affiant filed a pro se Post-Conviction Relief Act Petitioner on 4-28-16. However, the claims that the Affiant wanted raised during Post-Sentencing Proceeding Mr. Wismer rebutted and did not preserve. The PCRA Act [42 Pa. S. C. § 9544 (b)] States otherwise: issues not presented at trial or on direct appeal are waived. Thus, these claims are now not reviewable in the future Proceedings. This seems to be the normal Practice in Pennsylvania by appointed attorneys whom are negligentⁱⁿ appeals. The Affiant is Shataan Adams

1/s/ 
 COMMONWEALTH OF PENNSYLVANIA
 NOTARIAL SEAL
 Robin L. Nyberg, Notary Public
 Conneaut Twp., Erie County
 My Commission Expires Aug. 11, 2019

Date: 1-24-19

1/s/ 
 Affiant

SWORN DECLARATION

Jamie Cruz Jr., the Declarant hereby makes this declaration, being of legal age and sound mind, and willing to testify to the facts set forth herein, that are true and correct, to the best of my personal knowledge and belief; and not meant to mislead anyone in any way. I acknowledge that this declaration is made subject to the penalties held in 28 U.S.C. sec. 1746 as well.

on or about January 4th, the Affiant (Jamie Cruz Sr.) was appointed a
Emily Merski # 310909 as Counsel for my post-sentencing/direct appeal
in case no. 1801 WDA 2018. During said proceedings,

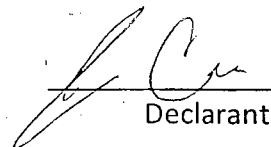
the Affiant requested that she present and preserve various issues
(including pre-trial discovery motions, illegal search and seizure, coercion
regarding plea agreements).

However, Ms. Merski has refused to present and preserve them on my
behalf. before the Judge issues his opinion in said case should she
do so, and request newly-presented evidence that the Affiant seeks, the
Affiant's plea agreement may be deemed illegal, furthermore these claims
are now waived (42 Pa.C.S. section 9549(b)). because counsel will
file a Anders/McClendon brief," and the Affiant is on direct Appeal
this appears to be a routine practice in PA, by post-sentencing (
direct Appeal counsel in Erie County

SWORN AND SUBSCRIBED BEFORE ME ON THIS ____ DAY OF _____, 2019.

Date: 2/8/19

TODD BALLARD
WITNESS


Declarant