No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

In re STEVEN BEEBE, *Petitioner.*

On Petition for a Writ of Habeas Corpus to the Sixth Judicial Circuit Court in and for Pinellas County, Florida.

APPENDIX TO PETITION FOR A WRIT OF HABEAS CORPUS

Steven Beebe - pro se
Fla. Dept. Corr. I.D. #: R79546
Bay Correctional Facility
5400 Bay Line Drive
Panama City, Florida 32404

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EXHIBIT A

JUDGMENT AND SENTENCE FROM CASE NUMBER 14-14289-CF

Consecutive sentences on double jeopardy Counts Two through Five.

R

1

IN THE CIRCUIT COURT, SIXTH JUDICAL CIRCUIT,
IN AND FOR PINELLAS COUNTY FLORIDA
DIVISION: FELONY

UCN : **522014CF014289XXXXPC**

REF No. : **14-14289-CF - D**

OBTS NUMBER _____

STATE OF FLORIDA
VS.

STEVEN BEEBE
Defendant

PERSON ID: [redacted]
SS# [redacted]

FILED
FEB 27 2017
KEN BURKE
CLERK CIRCUIT COURT

JUDGMENT

The Defendant, **STEVEN BEEBE**, being personally before this court represented by **PAUL S HORNING** and **MARC F PLOTNICK** the attorneys of record, and the state represented by **KRISTIN JOHNSON, Assistant State Attorney**, and having:

been tried and found guilty by jury of the following crime(s):

COUNT	CRIME	OFFENSE STATUTE NUMBER (S)	DEGREE OF CRIME
01	AGGRAVATED STALKING	784.048	3F
02	VIOLATION OF COURT ORDER RELATING TO VICTIM CONTACT	921.244	3F
03	VIOLATION OF COURT ORDER RELATING TO VICTIM CONTACT	921.244	3F
04	VIOLATION OF COURT ORDER RELATING TO VICTIM CONTACT	921.244	3F
05	VIOLATION OF COURT ORDER RELATING TO VICTIM CONTACT	921.244	3F

X and no cause being shown why the defendant should not be adjudicated guilty, IT IS ORDERED THAT the Defendant is ADJUDICATED GUILTY of the above crime(s).

(ICD-JDMT-III 15332973)

RETURN TO:
CRIMINAL COURT RECORDS

CIG

Defendant : **STEVEN BEEBE**

UCN : **522014CF014289XXXXPC**
REF No. : **14-14289-CF - D**

___ and good cause being shown; IT IS ORDERED THAT ADJUDICATION OF GUILT BE WITHHELD as to Count(s) _____.

Sentence Deferred Until Later Date (*Check if Applicable*)

___ The Court hereby defers imposition of sentence until _____. (Date)

The Defendant in Open Court was advised of the right to appeal from this Judgment by filing notice of appeal with the Clerk of the Court within thirty days following the date sentence is imposed or probation is ordered pursuant to this adjudication. The Defendant was also advised of the right to the assistance of counsel in taking said appeal at the expense of the State upon showing of indigency.

DONE AND ORDERED in open court in Pinellas County, Florida on **February 27, 2017.**

_____
JUDGE

FINGERPRINTS OF THE DEFENDANT

1. R. Thumb	2. R. Index	3. R. Middle	4. R. Ring	5. R. Little
				
6. L. Thumb	7. L. Index	8. L. Middle	9. L. Ring	10. L. Little
				

Fingerprints taken by:

59088
_____
(Name and Title)

I HEREBY CERTIFY that the above and foregoing fingerprints on this judgment are the fingerprints of the defendant, **STEVEN BEEBE,** and that they were placed thereon by the defendant in my presence in open court this day.

_____
JUDGE

SENTENCE

(as to Count **01**)

The defendant, being personally before the court, accompanied by the defendant's attorneys of record, **PAUL S HORNING**, and **MARC F PLOTNICK**, and having been adjudicated guilty, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown,

It Is the Sentence Of the Court That:

The Defendant pay total statutory costs in the amount of **$1052.00** , inclusive of, a **$50.00** Indigent Criminal Defense Fee as required by s. 27.52 F.S., **$100.00** as a Costs of Prosecution assessment. These assessments are hereby imposed as liens.

The Defendant **pay attorney fees and costs of defense as determined by the Court.**

The Defendant is **committed to the custody of the Department of Corrections**.

Unless otherwise prohibited by law, the Sheriff is authorized to release the Defendant on electronic monitoring or other sentencing programs subject to the Sheriff's discretion.

To Be Imprisoned:

The Defendant is to be imprisoned for a term of **5 Years**.

SPECIAL PROVISIONS

By appropriate notation, the following provisions apply to the sentence imposed:

Mandatory/Minimum Provisions:

No Mandatory/Minimum provisions are imposed on this count.

Other Provisions:

Please see the last page of this document for other provisions.

SENTENCE

(as to Count **02**)

The defendant, being personally before the court, accompanied by the defendant's attorneys of record, **PAUL S HORNING**, and **MARC F PLOTNICK**, and having been adjudicated guilty, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown,

It Is the Sentence Of the Court That:

The Defendant pay total statutory costs in the amount of **$1052.00** , inclusive of, a **$50.00** Indigent Criminal Defense Fee as required by s. 27.52 F.S., **$100.00** as a Costs of Prosecution assessment. These assessments are concurrent with Count 1.

The Defendant **pay attorney fees and costs of defense as determined by the Court. This assessment is concurrent with Count 1.**

The Defendant is **committed to the custody of the Department of Corrections**.

Unless otherwise prohibited by law, the Sheriff is authorized to release the Defendant on electronic monitoring or other sentencing programs subject to the Sheriff's discretion.

To Be Imprisoned:

The Defendant is to be imprisoned for a term of **5 Years**.

SPECIAL PROVISIONS

By appropriate notation, the following provisions apply to the sentence imposed:

Mandatory/Minimum Provisions:

No Mandatory/Minimum provisions are imposed on this count.

Other Provisions:

Consecutive/Concurrent As To Other Counts	**It is further ordered that the sentence imposed for this count shall run concurrent with the sentence set forth in count 1 of this case.**

SENTENCE

(as to Count **03**)

The defendant, being personally before the court, accompanied by the defendant's attorneys of record, **PAUL S HORNING,** and **MARC F PLOTNICK,** and having been adjudicated guilty, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown,

It Is the Sentence Of the Court That:

The Defendant pay total statutory costs in the amount of **$1052.00** , inclusive of, a **$50.00** Indigent Criminal Defense Fee as required by s. 27.52 F.S., **$100.00** as a Costs of Prosecution assessment. These assessments are concurrent with Count 1.

The Defendant **pay attorney fees and costs of defense as determined by the Court. This assessment is concurrent with Count 1.**

The Defendant is **committed to the custody of the Department of Corrections**.

Unless otherwise prohibited by law, the Sheriff is authorized to release the Defendant on electronic monitoring or other sentencing programs subject to the Sheriff's discretion.

To Be Imprisoned:

The Defendant is to be imprisoned for a term of **5 Years**.

SPECIAL PROVISIONS

By appropriate notation, the following provisions apply to the sentence imposed:

Mandatory/Minimum Provisions:

No Mandatory/Minimum provisions are imposed on this count.

Other Provisions:

Consecutive/Concurrent As To Other Counts	**It is further ordered that the sentence imposed for this count shall run consecutive with the sentence set forth in count 1**

SENTENCE

(as to Count **04**)

The defendant, being personally before the court, accompanied by the defendant's attorneys of record, **PAUL S HORNING**, and **MARC F PLOTNICK**, and having been adjudicated guilty, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown,

It Is the Sentence Of the Court That:

The Defendant pay total statutory costs in the amount of **$1052.00** , inclusive of, a **$50.00** Indigent Criminal Defense Fee as required by s. 27.52 F.S., **$100.00** as a Costs of Prosecution assessment. These assessments are concurrent with Count 1.

The Defendant **pay attorney fees and costs of defense as determined by the Court. This assessment is concurrent with Count 1.**

The Defendant is **committed to the custody of the Department of Corrections.**

Unless otherwise prohibited by law, the Sheriff is authorized to release the Defendant on electronic monitoring or other sentencing programs subject to the Sheriff's discretion.

To Be Imprisoned:

The Defendant is to be imprisoned for a term of **5 Years**.

SPECIAL PROVISIONS

By appropriate notation, the following provisions apply to the sentence imposed:

Mandatory/Minimum Provisions:

No Mandatory/Minimum provisions are imposed on this count.

Other Provisions:

Consecutive/Concurrent As To Other Counts	**It is further ordered that the sentence imposed for this count shall run concurrent with the sentence set forth in count 3 of this case.**

SENTENCE

(as to Count **05**)

The defendant, being personally before the court, accompanied by the defendant's attorneys of record, **PAUL S HORNING**, and **MARC F PLOTNICK**, and having been adjudicated guilty, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown,

It Is the Sentence Of the Court That:

The Defendant pay total statutory costs in the amount of **$1052.00** , inclusive of, a **$50.00** Indigent Criminal Defense Fee as required by s. 27.52 F.S., **$100.00** as a Costs of Prosecution assessment. These assessments are concurrent with Count 1.

The Defendant **pay attorney fees and costs of defense as determined by the Court. This assessment is concurrent with Count 1.**

The Defendant is **committed to the custody of the Department of Corrections**.

Unless otherwise prohibited by law, the Sheriff is authorized to release the Defendant on electronic monitoring or other sentencing programs subject to the Sheriff's discretion.

To Be Imprisoned:

The Defendant is to be imprisoned for a term of **5 Years**.

SPECIAL PROVISIONS

By appropriate notation, the following provisions apply to the sentence imposed:

Mandatory/Minimum Provisions:

No Mandatory/Minimum provisions are imposed on this count.

Other Provisions:

Consecutive/Concurrent As To Other Counts	**It is further ordered that the sentence imposed for this count shall run consecutive with the sentence set forth in count 3**

Other Provisions: (continued)

Jail Credit	**It is further ordered that the defendant shall be allowed a total of 910 Days as credit for time incarcerated before imposition of this sentence.**
Consecutive/Concurrent As to Other Convictions	**It is further ordered that the composite term of all sentences imposed for the counts specified in this order shall run concurrent with the following:** **Specific sentences : 14-14289-CF** **It is further ordered that the composite term of all sentences imposed for the counts specified in this order shall run consecutive with the following:** **Specific sentences : 14-14289-CF**

It is further ordered that:

Restitution is not applicable in this case.

Restitution to State:

If applicable, you must make payment of any debt due and owing to the state under section 960.17 and 948.03(1)(h) Florida Statutes. The amount of such debt shall be determined by the Court at a later date upon final payment of the Crimes Compensation Trust Fund on behalf of the victim.

In the event the above sentence is to the Department of Corrections, the Sheriff of Pinellas County, Florida, is hereby ordered and directed to deliver the defendant to the Department of Corrections at the facility designated by the department together with a copy of this judgment and sentence and any other documents specified by Florida Statute.

The defendant in open court was advised of the right to appeal from this sentence by filing a notice of appeal within 30 days from this date with the clerk of the court and the defendant's right to the assistance of counsel in taking the appeal at the expense of the state on showing of indigency.

DONE AND ORDERED in open court at Clearwater, Pinellas County, Florida on **February 27, 2017.**

_____
Judge

EXHIBIT B

FELONY INFORMATION FROM CASE NUMBER 14-14289-CF

Identical elements to order of probation for Counts Two through Five.

IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT OF FLORIDA IN AND FOR PINELLAS COUNTY

STATE OF FLORIDA

VS.

STEVEN BEEBE
SPN 03127434
W/M DOB: 02/28/83

14-14289-CF-D
Amended
FELONY INFORMATION

1. AGGRAVATED STALKING, 3°F
2. VIOLATION OF COURT ORDER RELATING TO VICTIM CONTACT, 3°F
3. VIOLATION OF COURT ORDER RELATING TO VICTIM CONTACT, 3°F
4. VIOLATION OF COURT ORDER RELATING TO VICTIM CONTACT, 3°F
5. VIOLATION OF COURT ORDER RELATING TO VICTIM CONTACT, 3°F

IN THE NAME AND BY THE AUTHORITY FOR THE STATE OF FLORIDA:

BERNIE McCABE, State Attorney for the Sixth Judicial Circuit of Florida, in and for Pinellas County, prosecuting for the State of Florida, in the said County, under oath, Information makes that

STEVEN BEEBE

in the County of Pinellas and State of Florida, on or between the 17th day of February and the 15th day of April, in the year of our Lord, two thousand fourteen, did knowingly, willfully, maliciously, and repeatedly follow, harass or cyberstalk another person, to-wit: Michelle Hodge-Wray, after an injunction for protection against repeat violence had been issued pursuant to 784.06, or after any other court imposed prohibition of conduct toward Michelle Hodge-Wray or the property of Michelle Hodge-Wray; contrary to Chapter 784.048(4), Florida Statutes, and against the peace and dignity of the State of Florida. [B8]/7

COUNT TWO

And the State Attorney aforesaid, under oath as aforesaid, further information makes that STEVEN BEEBE, in the County of Pinellas, State of Florida, on the 17th day of February, in the year of our Lord, two thousand fourteen, did knowingly and willfully have contact, directly or indirectly, with Michelle Hodge-Wray, after having been ordered by Judge Keith Meyer on August 23, 2013 that he not have any contact with Michelle Hodge-Wray at his sentencing for a violation of Florida Statute any offense in 775.084(1)(b)1.A.-O.; contrary to Chapter 921.244, Florida Statutes, and against the peace and dignity of the State of Florida. [B8B]/1

Jail

COUNT THREE

And the State Attorney aforesaid, under oath as aforesaid, further information makes that STEVEN BEEBE, in the County of Pinellas, State of Florida, on the 17th day of February, in the year of our Lord, two thousand fourteen, did knowingly and willfully have contact, directly or indirectly, with Kiameshia Wray, after having been ordered by Judge Keith Meyer on August 23, 2013 that he not have any contact with Kiameshia Wray at his sentencing for a violation of Florida Statute any offense in 775.084(1)(b)1.A.-O.; contrary to Chapter 921.244, Florida Statutes, and against the peace and dignity of the State of Florida. [B8B]/1

COUNT FOUR

And the State Attorney aforesaid, under oath as aforesaid, further information makes that STEVEN BEEBE, in the County of Pinellas, State of Florida, on the 21st day of March, in the year of our Lord, two thousand fourteen, did knowingly and willfully have contact, directly or indirectly, with Michelle Hodge-Wray, after having been ordered by Judge Keith Meyer on August 23, 2013 that he not have any contact with Michelle Hodge-Wray at his sentencing for a violation of Florida Statute any offense in 775.084(1)(b)1.A.-O.; contrary to Chapter 921.244, Florida Statutes, and against the peace and dignity of the State of Florida. [B8B]/1

COUNT FIVE

And the State Attorney aforesaid, under oath as aforesaid, further information makes that STEVEN BEEBE, in the County of Pinellas, State of Florida, on the 3rd day of April, in the year of our Lord, two thousand fourteen, did knowingly and willfully have contact, directly or indirectly, with Michelle Hodge-Wray, after having been ordered by Judge Keith Meyer on August 23, 2013 that he not have any contact with Michelle Hodge-Wray at his sentencing for a violation of Florida Statute any offense in 775.084(1)(b)1.A.-O.; contrary to Chapter 921.244, Florida Statutes, and against the peace and dignity of the State of Florida. [B8B]/1

STATE OF FLORIDA
PINELLAS COUNTY

Personally appeared before me, BERNIE McCABE, State Attorney for the Sixth Judicial Circuit of Florida, in and for Pinellas County, or his duly designated Assistant State Attorney, who being first duly sworn, says that the allegations as set forth in the foregoing information are based upon facts that have been sworn to as true, and which if true, would constitute the offense therein charged; hence this information is filed in good faith in instituting this prosecution, and that he has received testimony under oath from the material witness or witnesses for the offense.

The foregoing instrument was acknowledged before me this 26th day of April 2016 by M.R. McGarry, III, who is personally known to me and who did take an oath.

NOTARY PUBLIC

TRACY L. FUTCH
Commission # FF 190912
Expires January 20, 2019
Bonded Thru Troy Fain Insurance 800-385-7019

Assistant State Attorney for the Sixth Judicial Circuit of the State of Florida, Prosecuting for said State

SO14-067599

D-WM/0411jn15

EXHIBIT C

ORDER OF PROBATION FROM CASE NUMBER 12-07076-CF

Special condition number seventeen (identical element).

JUDGE: **KEITH MEYER**

STATE OF FLORIDA
-VS-
STEVEN BEEBE
SPN :**03127434**

IN THE SIXTH JUDICIAL CIRCUIT COURT, IN AND FOR PINELLAS COUNTY
UCN: **522012CF007076XXXXNO - D**
REF No.: **CRC 12-07076CFANO - D**
DC NUMBER: _____

ORDER OF PROBATION

This cause coming before the Court to be heard, and you, the defendant, **STEVEN BEEBE** being now present before me with counsel **KELLY MCCABE** and you having:

ENTERED A PLEA OF GUILTY TO

Count 01 **AGGRAVATED STALKING**

SECTION 2: ORDER WITHHOLDING ADJUDICATION

Now, therefore, it is ordered and adjudged that the adjudication of guilt is hereby withheld and that you be placed on PROBATION for a period of **5 Years** under the supervision of the Department of Corrections, subject to Florida law.

IT IS FURTHER ORDERED that you shall comply with the following standard conditions of supervision as provided by Florida law:

1. You will report to the probation office as directed.
2. You will pay the State of Florida the amount of $50.00 (fifty dollars) per month, as well as 4% surcharge, toward the cost of your supervision in accordance with s. 948.09, F.S., unless otherwise exempted in compliance with Florida Statutes.
3. You will remain in a specified place. You will not change your residence or employment or leave the county of your residence without first procuring the consent of your officer.
4. You will not possess, carry or own any firearm. You will not possess, carry, or own any weapons without first procuring the consent of your officer.
5. You will live without violating the law. A conviction in a court of law shall not be necessary for such a violation to constitute a violation of your probation/community control.
6. You will not associate with any person engaged in any criminal activity.
7. You will not use intoxicants to excess or possess any drugs or narcotics unless prescribed by a physician. Nor will you visit places where intoxicants, drugs or other dangerous substances are unlawfully sold, dispensed or used.
8. You will work diligently at a lawful occupation, advise your employer of your probation status, and support any dependents to the best of your ability, as directed by your officer.
9. You will promptly and truthfully answer all inquiries directed to you by the court or the officer, and allow your officer to visit in your home, at your employment site or elsewhere, and you will comply with all instructions your officer may give you.
10. You will pay restitution, court costs, and/or fees in accordance with special conditions imposed or in accordance with the attached orders.
11. You will submit to random testing as directed by your officer or the professional staff of the treatment center where you are receiving treatment to determine the presence or use of alcohol or controlled substances.
12. You will submit a DNA sample, as directed by your officer, for DNA analysis as prescribed in ss. 943.325 and 948.014, F.S.
13. You will submit to taking of a digitized photograph by the department. The photograph may be displayed on the department's website while you are on supervision, unless exempt from disclosure due to requirements of s. 119.07, F.S.
14. You will report in person within 72 hours of your release from incarceration to the probation office in Pinellas County, Florida, unless otherwise instructed by the court or department. (This condition applies only if section 3 is indicated above.) Otherwise, you must report immediately to the probation office located at the Pinellas County Justice Center, 14250 49th Street North, Room 1930 (FIRST FLOOR), Clearwater, Florida.

SPECIAL CONDITIONS:

15. You must undergo a Mental Health evaluation and, if treatment is receiving said evaluation and treatment, unless waived by the court.
    Additional instructions ordered: None
16. You will make restitution to the following victim(s), as directed by the court, until the obligation is paid in full:
    Name: PINELLAS CNTY SHRFFS OFFICE **Total Amount: $949.39** Additional instructions ordered, including specific monthly amount, begin date, due date or joint & several: These monetary obligation is imposed as a Lien. (See Separate Order)
    Extradition Costs Payment of this restitution amount is not a condition of Probation.
17. You will have no contact **(directly or indirectly)** with **Victim** during the period of supervision.

Return to:
Criminal Court Records Department

18. You will have no contact with the victim's family during the period of supervision.
19. Other: Exemptions for cost of supervision are hereby ordered for those months while participating in treatment programs or incarcerated without benefit of income. If exemptions do not apply, failure to make monthly payments for cost of supervision will result in a violation of probation. Cost of supervision is to be suspended until such time that the offender has satisfied all restitution and costs as stated on the supervision order.
20. Other: You will not reside in another state without authorization of the Court and contingent upon the approval of the receiving state.
21. Other: If you are ordered to receive an Alcohol, Drug, Substance Abuse, or Mental Health evaluation and counseling/treatment is deemed necessary, you must complete counseling/treatment and assume all reasonable costs for such counseling/treatment. If treatment is recommended, you only have one (1) opportunity to complete this treatment. You must call to arrange for the treatment within five (5) days of receipt of the recommendation for treatment. You also must schedule your treatment to begin at the first available opening.
22. Other: If electronic monitoring is imposed, you will pay the costs of electronic monitoring.
23. Other: If you are placed on probation or community control for the offense of aggravated battery, aggravated abuse of an elderly person or disabled adult, aggravated assault with a deadly weapon, aggravated child abuse, aggravated manslaughter of a child, aggravated manslaughter of an elderly person or disabled adult, aggravated stalking, armed burglary, arson, kidnapping, manslaughter, murder, robbery, sexual battery, unlawful throwing, placing or discharging of a destructive device or bomb, or any attempt or conspiracy to commit any of these offenses, you will have no contact with the victim, directly or indirectly, including through a third person, for the duration of your sentence.
24. Other: Probation/community control may not be transferred out of state without express Court approval until all Court ordered and assessed monetary obligations are satisfied.
25. Other: You will serve in the Department of Corrections for a term of **5 Years**, suspended.
26. Other: **Court permits defendant to travel to Lakeland, FL, today, to stay with friend Michael Kelly, after being released from PCJ. Defendant must report to probation on Monday morning, 8/26/13 by 8:30am. Defendant to travel back to Lakeland on Monday and then to travel to New York to reside by Tuesday, 8/27/13.**
27. Other: Your probation may transfer to New York.

Effective for offenders whose crime was committed on or after September 1, 2005, there is hereby imposed, in additional to any other provision in this section, mandatory electronic monitoring as a condition of supervision for those who:

- Are placed on supervision for a violation of chapter 794, s. 800.04(4), (5), or (6), s. 827.071, or s. 847.0145 and the unlawful sexual activity involved a victim 15 years of age or younger and the offender is 18 years of age or older; or
- Are designated as a sexual predator pursuant to s. 775.21; or
- Has previously been convicted of a violation of chapter 794, s. 800.04(4), (5), or (6), s. 827.071, or s. 847.0145 and the unlawful sexual activity involved a victim 15 years of age or younger and the offender is 18 years of age or older.

You are hereby placed on notice that should you violate your probation or community control, and the conditions set forth in s. 948.063(1) or (2) are satisfied, whether your probation or community control is revoked or not revoked, you shall be placed on electronic monitoring in accordance with F.S. 948.063.

Effective for offenders who are subject to supervision for a crime that was committed on or after May 26, 2010, and who has been convicted at any time of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses listed in s.943.0435(1)(a)1.a.(I), or similar offense in another jurisdiction, against a victim who was under the age of 18 at the time of the offense: the following conditions are imposed in addition to all other conditions:

(a) A prohibition on visiting schools, child care facilities, parks, and playgrounds, without prior approval from the offender's supervising officer. The prohibition ordered under this paragraph does not prohibit the offender from visiting a school, child care facility, park, or playground for the sole purpose of attending a religious service as defined in s. 775.0861 or picking up or dropping off the offender's children or grandchildren at a child care facility or school.

(b) A prohibition on distributing candy or other items to children on Halloween; wearing a Santa Claus costume, or other costume to appeal to children, on or preceding Christmas; wearing an Easter Bunny costume, or other costume to appeal to children, on or preceding Easter; entertaining at children's parties; or wearing a clown costume; without prior approval from the court.

YOU ARE HEREBY PLACED ON NOTICE that the court may at any time rescind or modify any of the conditions of your probation, or may extend the period of probation as authorized by law, or may discharge you from further supervision. If you violate any of the conditions of your probation, you may be arrested and the court may revoke your probation, adjudicate you guilty if adjudication of guilt was withheld, and impose any sentence that it might have imposed before placing you on probation or require you to serve the balance of the sentence.

IT IS FURTHER ORDERED that when you have been instructed as to the conditions of probation, you shall be released from custody if you are in custody, and if you are at liberty on bond, the sureties thereon shall stand discharged from liability. (This paragraph applies only if section 1 or section 2 is checked.)

IT IS FURTHER ORDERED that you pay the following charges/costs/fees indicated on the last page of this order entitled Court Ordered Payments.

IT IS FURTHER ORDERED that the clerk of this court file this order in the clerk's office and provide certified copies of same to the officer for use in compliance with the requirements of law.

DONE AND ORDERED on **August 23, 2013** in Clearwater, Florida.

KEITH MEYER, JUDGE

I acknowledge receipt of a certified copy of this Order. The conditions have been explained to me and I agree to abide by them.

Date: _____ _____
Probationer

Instructed by: _____

KLS

EXHIBIT D

MOTION TO DISMISS FROM CASE NUMBER 14-14289-CF

Motion denied pre-trial arguing double jeopardy violation with transcripts.

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA

STATE OF FLORIDA

Case No.: 14-14289-CF

vs.

STEVEN BEEBE
SPN: 03127434
_____/

DEFENDANT'S MOTION TO DISMISS

COMES NOW the Defendant, by and through the undersigned attorney, pursuant to Rule 3.190 of the Fla. R. Crim. P., and the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution, and Article 1, Section 9, of the Florida Constitution, and requests that this Honorable Court dismiss the offenses charged in Counts 2-5 of the State's Information in this case. As grounds for this motion, the Defendant states as follows:

1. The Defendant is charged with four counts of Violation of Court Order for violating this Court's Order of Probation dated August 23, 2013.
2. On August 23, 2013, Defendant pled guilty to two counts of Aggravated Stalking (12-18058-CFANO and 12-07076-CFANO) and one count of Failure to Appear (12-17270-CFANO).
3. This Court withheld adjudication and sentenced Defendant to five years of probation with a five year suspended sentence.
4. As a special condition of probation, this Court ordered Defendant to have no contact with the victims, Michelle Wray and Kiameshia Wray.
5. On January 23, 2014, the State filed an affidavit of violation of probation alleging that Defendant violated his probation by having contact with the victims.

6. From February 2014 through September 2014, the State filed several amended affidavits of violation of probation alleging that Defendant violated his probation by having direct and indirect contact with the victim.
7. On September 2, 2014, Defendant was arrested in Sonoma County, California, and extradited to Pinellas County, Florida.
8. On September 17, 2014, the State filed its final Fifth Amended Affidavit for Violation of Probation.
9. On December 18, 2015, an evidentiary hearing was held on the violation of probation. After that hearing, this Court found Defendant guilty of violating his probation by having contact with the victims. This Court adjudicated Defendant guilty and sentenced him to five years of incarceration in prison.
10. On April 26, 2016, the State filed an Amended Information in this case charging Defendant with four counts of Violation of Court Order Relating to Victim. The Information alleges that Defendant violated this Court's Order dated August 23, 2013, by making contact with the victims on February 17, 2014, March 21, 2014, and April 3, 2014.
11. Because the Defendant has already been prosecuted, tried, and sentenced for violating the August 23, 2013, Order of Probation for contacting the victims during 2014, the Defendant is charged with an offense of which he has previously been placed in jeopardy.
12. In *Woodland v. State*, 602 So.2d 554, 555 (Fla. 4th DCA 1992), Woodland was sentenced to five years of probation with a special condition that she serve a specified residency of one year in the county jail. Woodland never surrendered herself to the

county jail and the State immediately filed an affidavit of violation of probation. *Id.* Woodland was extradited from Mexico approximately three years later and the State filed a petition for rule of show cause why Woodland should not be held in contempt for violating a court order. *Id.* Woodland moved to dismiss the charge of contempt alleging that prosecution of both the contempt charge and violation of probation would violate double jeopardy. *Id.* The trial court dismissed the contempt charge and the Fourth District Court of Appeal upheld the lower court's dismissal. *Id.* The Court held:

> [I]t is beyond dispute that each offense does not require proof of a fact that the other does not. Contempt of court merely requires proof that the defendant disobeyed any legal order or decree; therefore, it clearly is subsumed by violation of probation which requires only that the defendant violate the terms of court ordered probation. Accordingly, "the offenses are presumed to be the same, and multiple punishments are improper in the absence of express legislative authorization." *Id.* (quoting *Carawan v. State*, 515 So.2d 161, 165 (Fla. 1987)

13. Similarly, in the instant case, neither the Violation of Probation charge nor the Violation of Court Order charge requires proof of a fact that the other does not. Each charge merely requires proof that the Defendant violated the August 23, 2013, Order of Probation.

14. The offenses are the same and multiple punishments would be improper.

WHEREFORE, the Defendant respectfully moves this Honorable Court to dismiss Counts Two, Three, Four, and Five of the Information in this cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by U.S. mail to the Office of the State Attorney, Sixth Judicial Circuit, P.O. Box 5028, Clearwater, FL 33758, this 4th day of November, 2016.

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EXHIBIT E

CONSTITUTIONAL CHALLENGE TO FLORIDA STATUTE § 921.244

Precise detail to arguments raised in the petition before this Court.

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA

STEVEN BEEBE,
Petitioner;

v.

STATE OF FLORIDA,
Respondent.

* To be filed with the Chief Judge *
Anthony Rondolino
Division J

Case No. 14-14289-CF

CONSTITUTIONAL CHALLENGE TO SECTION 921.244, FLORIDA STATUTES;

SECTION 948.039, FLORIDA STATUTES

COMES NOW, the Petitioner, STEVEN BEEBE, acting pro se, pursuant to Fla. R. Civ. P. 1.071, hereby files this constitutional challenge to Section 921.244, Florida Statutes; Section 948.039, Florida Statutes.

The Petitioner is the Defendant in Case No. 14-14289-CF and Case No. 12-07076-CF prosecuted in the Circuit Court of the Sixth Judicial Circuit in and for Pinellas County, Florida. The Honorable Joseph A. Bulone presiding

The above mentioned cases are currently active, as the Petitioner has multiple motions pending in the Sixth Judicial Circuit Court and the Second District Court of Appeal.

This Court has jurisdiction to entertain this motion, as the potential for manifest injustice is present when the Court fails to hear and consider such arguments. The grounds for this challenge are as follows:

SPECIFIC CHALLENGES OF STATUTE

The Petitioner raises three separate challenges to the constitutionality of F.S. § 921.244. In brief, these challenges are as follows:

CHALLENGE ONE: The first challenge is the legislative intent of Sections 921.244 and 948.039, Florida Statutes, to charge a defendant with a violation of F.S. § 921.244 (order of no contact) when the order of no contact allegedly violated was imposed pursuant to F.S. § 948.039 (special conditions of probation by court order).

CHALLENGE TWO: The second challenge is the legislative intent of Sections 921.244 and 948.039, Florida Statutes, to charge a defendant with the substantive offense of "Violation of a Court Order" filed pursuant to F.S. § 921.244 for merely violating a condition of an order of probation imposed pursuant to F.S. § 948.039 after that condition violation was previously prosecuted through revocation of that order of probation.

CHALLENGE THREE: The third challenge is the vagueness of F.S. § 921.244 as to the necessary elements required to constitute a violation of that section of law.

MAIN CONSTITUTIONAL CONCERN

A statute is "void-for-vagueness" when persons of common intelligence must guess as to it's meaning and differ in opinion as to it's application. A statute is also "void-for-vagueness" if it lends itself to arbitrary enforcement at an officers discretion. A statute that is "void-for-vagueness" violates due process and denies equal protection of law. See F.O.P. v. City of Miami, 243 So. 3d 894, 897 (Fla. 2018). The Petitioner is raising both types of "void-for-vagueness" stated above.

The record in this case proves on it's face that the challenged statutes are so vague that they allowed arbitrary enforcement at the discretion of the prosecutors and presiding judge in this case. The record shows that the vagueness allowed these persons of common intelligence to guess at the statute's meaning, differ in opinion, and apply differing applications that what the United States Constitution and the Florida Constitution permits.

This vagueness allowed the erroneous prosecution on four counts of "Violation of a Court Order Relating to Victim Contact" from two completely separate aspects. First, prosecutors charged the Petitioner with multiple violations of Section 921.244, Florida Statutes, when the court order alleged to have been violated was imposed pursuant to Section 948.039, Florida Statutes. Second, even if charges under F.S. § 921.244 were appropriate, the prosecutions were barred by double jeopardy.

At the same time, F.S. § 921.244 is devoid of what constitutes a violation of the statute. No definition constituting "contact" is specified anywhere within the text of the statute. This absence resulted in erroneous convictions on Counts Three and Four. The lack of clarity also reasonably resulted in erroneous convictions on Counts Two and Five as well.

F.S. § 921.244 should be clear in the fact that a charge under this section of law is inappropriate when the "no victim contact" provision alleged to have been violated was imposed pursuant to F.S. § 948.039. This statute should also be clear in what constitutes contact, and thus, a violation of the statute. These deficiencies are highly prejudicial to an accused. The record in this instant case is the perfect exemplar.

The Petitioner understands that the standard is to consider the text of the statute and not the specific application to a particular set of circumstances. However, by showing the misapplication in this case, the Petitioner not only establishes overwhelming prejudice here, but also shows that the prejudice is likely to befall future litigants if the matter is not addressed.

As far as the text standard is concerned, the vagueness is readily apparent in the text of the statute, or lack thereof. Again, not a single element defining what constitutes a violation of the statute or what constitutes contact exists anywhere within the text. Although a statute is not

expected to dictate every conceivable application of law down to the most minute detail, a statute must still define what constitutes a violation, and here, what constitutes contact.

Since F.S. § 921.244 is devoid of both requirements, the statute is unconstitutionally vague, and therefore, "void-for-vagueness". Every other criminal statute within the Florida Rules of Criminal Procedure specifies what constitutes a violation of that law and provides the definition to the critical components to such a violation. Section 921.244 cannot be the lone exception, at least not constitutionally.

A finding needs to be made as to what transpired in this case. Either the statute(s) are unconstitutionally vague or the illegal prosecutions were the result of poor practice. There are no other possibilities. This Court cannot refute that erroneous prosecutions and resulting illegal convictions took place. The only question for debate is the reason for such injustice.

DOCUMENT RAISING CHALLENGE

The document(s) raising this challenge are as follows:

(1) The Florida Constitution.

(2) Section 921.244, Florida Statutes.

(3) Section 948.039, Florida Statutes.

(4) Order of Probation issued August 23, 2013, in Case No. 12-07076-CF.

(5) Amended Felony Information filed April 26, 2016, in Case No. 14-14289-CF.

STATEMENT OF FACTS TO THE CASE

(1) On August 23, 2013, the Petitioner was placed on probation in Case No. 12-07076-CF with a "special condition" specified in the order of probation that he have "no contact" with the victims of the case for the duration of his probation sentence.

(2) The Petitioner was subsequently charged and prosecuted in Case No. 12-07076-CF for violation of said probation based on the allegation that he had contact with the victims of the case.

(3) One year after the prosecution for violation of said probation in Case No. 12-07076-CF, the Petitioner was then subsequently prosecuted in Case No. 14-14289-CF on four counts of Violation of a Court Order Relating to Victim Contact, contrary to F.S. § 921.244, for violating special condition number seventeen of said order of probation from Case No. 12-07076-CF.

MEMORANDUM OF LAW

There is extensive case law which holds that a defendant may not be charged with a substantive offense for merely violating a special condition of probation. When the prosecution for the substantive offense requires no violative elements beyond what was proven in the violation of probation prosecution, the double jeopardy clause prohibits a prosecution on the substantive offense. The Blockburger Test applies to probation revocation hearings just the same as it applies to any other prosecution in a court of law.

- State v. Woodland, 602 So. 2d 554 (Fla. 4th DCA 1992):

In Woodland, a woman was sentenced to probation with the special condition that she serve one year in county jail. When she failed to surrender to jail as ordered by the court, her probation was revoked. After revocation, a charge of criminal contempt was filed based on her disobeying the order of probation.

The trial court, upon motion from defense, dismissed the criminal contempt charge on the ground of double jeopardy. The state appealed. In affirming the trial court's decision, the district court applied the Blockburger Test and determined that the elements of the action for criminal contempt were identical to the violation of probation action.

Specifically, the court reasoned that the state was required to prove that the defendant disobeyed the same court order in establishing both the violation of probation and the offense of criminal contempt, and thus, the criminal contempt charge was subsumed within the violation of probation action.

Hence, if Woodland's charges were barred by double jeopardy, then the Petitioner's charges here are barred the same. This instant case and Woodland are identical situations that require identical outcomes. The two cases are as closely related as any two cases can possibly be. Both charges are equally premised out of violations of special conditions of probation.

Regardless of the fact that Woodland's contempt charge was under a different statute, and regardless if the special conditions vary, the analogy is the violation of a special condition of probation imposed by court order through F.S. § 948.039. Again, the standard is the same elements test of Blockburger.

For argument sake: A violation under F.S. § 38.23 is defined as "refusal to obey any legal order". A violation under F.S. § 921.244 is defined as "violates a court order". Therefore, even though different statutes, they proscribe the same evils. Thus, same offenses under the Blockburger Test.

- Carawan v. State, 515 So. 2d 161, 165-68 (Fla. 1987):

Woodland cited this case and Woodland sets the bar for the issue at hand. Carawan holds that "in applying the Blockburger Test, a court must determine whether each offense as defined in the statute requires proof of a fact that the other does not, without regard to the accusatory pleadings of proof adduced at trial. The test to be applied is under what circumstances a defendant may be convicted of multiple offenses for the same 'act'".

As established in the final paragraph of Woodland, the Violation of a Court Order charges in this instant case merely require proof of the "act" that the Petitioner violated the no contact condition of the order of probation, therefore, multiple punishments are improper in the absence of express legislative authorization.

As defined in the statutes, neither Section 921.244 defining victim contact, nor Section 948.06 setting forth the permissible punishment for violation of probation, give any indication as to whether multiple punishments are intended when the two charges are premised out of the same lone act of contacting the victim.

Although the punishment of conduct through revocation of probation will not bar a prosecution of the accused on a substantive offense, the Blockburger Test still applies above all. Therefore, the prosecution of a substantive offense for violating a condition of probation must contain a violative element beyond the mere violation of that condition of probation.

The substantive offense of Aggravated Stalking in Count One was permissible due to the additional elements of repeated, malicious, and harass. However, the substantive offenses of Violation of a Court Order Relating to Victim Contact in Counts Two through Five are precluded since these offenses contain the same lone element or act of victim contact in violation of the order of probation.

- Cote v. State, 793 So. 2d 907 (Fla. 2d DCA 2001):

In Cote, and in applying the Blockburger Test, it was held that a defendant cannot be punished for both a substantive offense and violation of community control (which is equal to probation) based upon the identical underlying conduct.

Again, although the contempt charge in Cote is a different statute, it is the Blockburger Test that controls. Thus, identical outcomes required.

- United States v. Dixon, 509 U.S. 688 (1993):

In Dixon, when addressing a criminal law incorporated into a court order, and in applying the Blockburger Test, it was held that "the 'crime' of violating a condition of a court order cannot be abstracted from the 'element' of the violated condition".

Thus, the crime of violating the no contact condition in this instant case cannot be abstracted from the element of the violated condition.

- N.T. v. State, 682 So. 2d 688 (Fla. 5th DCA 1996) and Hernandez v. State, 624 So. 2d 782 (Fla. 2d DCA 1993):

Citing Woodland and Dixon, and reaffirming that if the same act constitutes a violation of two distinct statutory provisions, the test to be applied is the Blockburger Test.

** The Blockburger Test is a rule of statutory construction that is governed by F.S. § 775.021(4)(a) regulating strictly the "act". **

RESOLVING THE "DISTINGUISHED" ISSUE

As stated above, when the motion to dismiss was presented to the Court, the presiding judge stated that the criminal contempt in Woodland is distinguished from the charges here under Section 921.244. And as stated above, the holding of Woodland ultimately surrounds the Blockburger Test, not the particular offense charged. However, the following argument must be included in order to resolve the dispute in it's entirety.

Bloom v. Illinois, 391 U.S. 194, 201 (1968), holds that criminal contempt, as charged in Woodland cited above, is a crime in the ordinary sense and indistinguishable from ordinary convictions.

"Convictions for criminal contempt are INDISTINGUISHABLE from ordinary criminal convictions, for their impact on the individual is the same."

The rules and legal definitions surrounding contempt state that it is a violation of law, a public wrong publishable by imprisonment, and that all protections of criminal law and procedure apply. This means that all principles are the same, and most importantly, a defendant's protections against double jeopardy.

Regardless of what offense is used as the primary example when arguing this matter, the result is the same. A criminal contempt proceeding is a punitive proceeding held to punish the failure to comply with a court order just the same as Section 921.244. Equally, Section 921.244 is essentially a contempt statute, a prosecution to a contempt of the court order in question.

LEGISLATIVE INTENT ON SUBSTANTIVE VIOLATIONS

State v. Meeks, 789 So. 2d 982 (Fla. 2001), holds that a "substantive violation" must contain more than just a mere breach of a condition of probation.

"When the Legislature uses the term substantive violation, the intent is to require more than a mere breach of a condition of probation, which is a by-product of the original offense. A substantive violation refers exclusively to a violation premised on the commission of a separate act."

Here, the prosecutions to the sentences under attack consisted of absolutely nothing more than a mere breach of a condition of probation and were not premised on the commission of a separate act. The premised act was strictly the violation of condition number seventeen of the order of probation, nothing more.

As held in Meeks, the Black's Law definition of substantive is "being a totally independent entity" and "one that is complete of itself and not dependent upon another". The charges under F.S. § 921.244 are not an independent entity, as they are completely or totally dependent upon the "no contact" condition violation.

Although Meeks surrounds youthful offender violations, the case is of authority here because it precisely defines a "substantive violation", and thus, the rules regarding substantive offenses surrounding condition violations. Meeks is the reference or key to what is considered a substantive violation under Chapter 948.

EXCLUSIVE METHOD FOR PROSECUTING

NO CONTACT CONDITION VIOLATION

Carson v. State, 604 So. 2d 928 (Fla. 3d DCA 1992), holds that the method for charging and trying a "no victim contact" condition violation is exclusively provided in Section 948.06, Florida Statutes.

"When a defendant violates a condition of probation, the exclusive method for charging and trying is provided in Section 948.06, Florida Statutes. If otherwise was intended, Chapter 948 would specifically provide so. Only when the no contact order is not a condition of probation can it be punished through contempt." (Just to avoid confusion, contempt is not distinguishable from Section 921.244).

ARGUMENT

CHALLENGE ONE: DOES THE CONSTITUTION INTEND FOR THE STATE OF FLORIDA TO PROSECUTE A DEFENDANT UNDER SECTION 921.244, FLORIDA STATUTES, WHEN THAT DEFENDANT VIOLATES SECTION 948.039, FLORIDA STATUTES?

This question is of great importance to not only the Petitioner, but also to any potential future defendant who violates probation by having "victim contact".

As stated above, the Petitioner had a special condition of probation prohibiting contact with the victims. This order was imposed pursuant to F.S. § 948.039 - Special Terms and Conditions of Probation Imposed by Court Order. This is Chapter 948, Florida Statutes.

As stated above, once found in violation of probation, the Petitioner was charged cumulatively with four counts of "Violation of a Court Order Relating to Victim Contact" contrary to F.S. § 921.244. This is Chapter 921, Florida Statutes.

However, the Legislature could never possibly intend for convictions to be sustained under Chapter 921 when the order prohibiting contact was imposed under Chapter 948. These are two completely different chapters of law.

The Petitioner's "no contact" order was not issued under Section 921.244. It was imposed under Section 948.039. Therefore, the charges filed under F.S. § 921.244 were irrefutably prosecuted without jurisdiction.

There is no dispute that the order presented at trial was strictly the order of probation issued under Chapter 948. Nothing regarding Chapter 921 was ever presented to the jury.

The violation of a no contact provision specified in an order of probation is a technical violation. See Jackson v. State, 970 So. 2d 346 (Fla. 2d DCA 2007). A technical violation is a

violation of a rule of probation, not a substantive offense. See Swilley v. State, 781 So. 2d 458 (Fla. 2d DCA 2001). Therefore, the sentence for such a violation is limited to that of which is outlined under Section 948.06, Florida Statutes. See Meeks v. State, 754 So. 2d 101 (Fla. 1st DCA 2000).

This establishes that although a substantive offense was charged under Section 921.244, Florida Statutes, the substantive offense was indisputably improper. Section 921.244 simply does not pertain to violations of probation. Again, the true substantive offense was Aggravated Stalking contrary to Section 784.048(4), Florida Statutes. A charge of "Violation of a Court Order" under Chapter 921 for violation of probation under Chapter 948 is unauthorized per Chapter 948.

CHALLENGE TWO: DOES THE CONSTITUTION INTEND FOR THE STATE OF FLORIDA TO PROSECUTE A DEFENDANT WITH SUBSEQUENT OFFENSES OF "VIOLATION OF A COURT ORDER" FOR MERELY VIOLATING A CONDITION OF PROBATION AFTER THAT VIOLATED CONDITION HAS ALREADY BEEN PREVIOUSLY PROSECUTED THROUGH REVOCATION OF PROBATION?

The prohibition against double jeopardy applies to probation violation prosecutions just the same as it applies to any other prosecution in a criminal court of law.

The prosecutions under F.S. § 921.244 contained the identical elements as the prosecution for violation of probation. Therefore, the prosecutions under F.S. § 921.244 were barred by double jeopardy. See Memorandum of Law.

CHALLENGE THREE: IS SECTION 921.244, FLORIDA STATUTES, CONSTITUTIONALLY VAGUE AS TO THE ELEMENTS REQUIRED TO ESTABLISH A VIOLATION OF THE STATUTE?

Vague laws impermissibly delegate basic policy matters to law enforcement, judges, and juries on an ad hoc and subjective basis with, as here, the attendant dangers of arbitrary and discriminatory enforcement. Challenge Three brings this statute's vagueness into full perspective. Never before has so much arbitrary enforcement taken place in a single prosecution under a single statute.

It is a basic principle of Due Process that an enactment is void-for-vagueness if it's prohibitions are not clearly defined. See Sult v. State, 906 So. 2d 1013, 1031 (Fla. 2005). Here, the word "contact" is devoid of the statute when referencing a violation, therefore, a violation can never be said to be clearly defined.

A fine point that will be addressed in detail in the summary of this challenge is the fact that the plain and ordinary meaning of "contact" is deemed by scholars to be "vague" when used as a verb. First to be addressed will be the fact that this statute confused the judiciary.

The record reflects that the presiding judge, at one of the most critical stages of the trial, was confused regarding the fact that the statute is vague and undefined as to exactly what constitutes "contact". (See Trail Transcripts: T275-280).

If the presiding judge, as the individual who must interpret the statute before granting a judgment of acquittal or allowing the jury to deliberate, is confused by the statute's vagueness, then the statute is indisputably too vague for use in a criminal prosecution.

Similarly, since the statute confused the presiding judge, it is entirely too vague and confusing for a jury empaneled with laymen in the field of law to sufficiently understand and interpret. The same is to be said for the prosecuting attorneys putting together the charging document.

A close look at F.S. § 921.244 will show that no specific elements or definitions constituting a violation exist anywhere within the text of the statute. Subcategory (2) reads as follows: "Any offender who violates a court order issued under this section commits a felony of the third degree. "

This is entirely too vague to establish a violation of this section of law. An injunction violation statute, which as prosecuted in this instant case, is necessarily the same protective order, states in specific detail what constitutes a violation of the statute. See F.S. § 784.047(1)(a)-(h).

Let's focus on subcategory (e) of the injunction statute, as indirect contact by telephone is the conduct alleged in Count Four of this instant case. F.S. § 784.047(1)(e) reads: "telephoning, contacting, or otherwise communicating with the petitioner directly or indirectly".

F.S. § 784.047(1)(e) is quite specific. There is no room for debate on what exactly constitutes an violation of this subsection. Telephoning or otherwise communicating is clearly specified to be prohibited.

F.S. § 921.244 not only fails to specify whether communicating by telephone is considered contact, but entirely fails to specify what contact means altogether. Obviously outright touching is contact, but is telephoning or communicating without touch prohibited? Section 921.244 does not indicate so.

These omissions leave reasonable men to believe that contact for purposes of Section 921.244 could strictly be intended by the Legislature to be physical, not telephonic or communicative. To say otherwise is not of a definite fact, but a subjective opinion.

Was the conduct complained of in Count Four even considered to be indirect? The victim and police both testified that the police officer, not the victim, answered the phone and absolutely no message was passed between the two parties. (See Trail Transcripts: T194-197, T242-247).

This is not considered indirect contact under Section 784.047 or any other criminal law in existence, so why would Section 921.244 allow a conviction for such an allegation? The answer is indisputably due to the statute's vagueness.

Now, if the statute read: "conversing with a person other than the petitioner on the petitioner's telephone line without passing a message to the petitioner whatsoever" then a conviction would be justified. However, no such provision exists in any criminal law.

The prejudice shown in this example proves beyond any reasonable doubt that Section 921.244 is too vague for use in a prosecution. No contact was made, not even third party, yet this statute allowed a conviction. No explanation other than vagueness can possibly exist.

A second example is the conviction on Count Three. Here, the victim testified that absolutely no contact was ever made, the phone was never answered, no voice mails or text messages were ever received, and the unanswered calls came from a restricted or unknown number. (See Trail Transcripts: T223-227).

However, the Petitioner was found guilty of a violation of F.S. § 921.244. Is causing another's phone to ring repeatedly considered contact under Section 921.244? Section 921.244 does not indicate so. To say otherwise is not of a definite fact, but a subjective opinion.

If the Legislature intended for a conviction under Section 921.244 for such conduct, the statute is required to list such elements as defined in F.S. 365.16(1)(c). Subsection (1)(c) reads: "makes or causes the telephone of another to repeatedly or continuously ring".

Again, the prejudice shown in this example proves beyond any reasonable doubt that Section 921.244 is too vague for use in a prosecution. Contact was not even sufficiently alleged, yet this statute allowed a conviction. No explanation other than vagueness can possibly exist.

The allegations in Counts Three and Four consist of extremely circumstantial behavior that requires specific outlines within a statute prohibiting such behavior in order to legally sustain a conviction. F.S. § 921.244 does not contain violative elements remotely comparable to what is alleged in these counts, therefore, the prosecutions were clearly arbitrary.

The law definition of communicate is "the expression or exchange of information by speech, writing, or gesture". Therefore, speech would have been required in order to sustain a conviction on Counts Three and Four. Nothing was exchanged or expressed, not by speech, writing, or gesture. A gesture requires "a movement of the body or limbs", therefore, causing the victim's phone to ring repeatedly or speaking to the police on the victim's phone cannot be considered a "gesture" of contact.

A look at Count Two and Count Five, the two remaining counts not yet addressed, produce the same irregularities. The victim here testified that although the phone was answered, the caller never identified himself and no conversation ensued. (See Trail Transcripts: T190-194, T198-199).

Is the lack of a conversation still considered contact? Section 921.244 does not indicate so. Again, to say otherwise is not of a definite fact, but a subjective opinion. We must reference back to F.S. § 365.16 to address this point.

F.S. § 365.16(1)(b) specifies with clarity that a violation occurs when the caller fails to identify himself, regardless if conversation ensues. Section 921.244 does not state such a specificity, therefore, the statute is too vague to allow a conviction for such allegations.

In summary, a conviction under F.S. § 921.244 is unconstitutional even beyond this instant case since what constitutes "contact" is devoid of the statute. Elements defining a violation are required regardless of what a reasonably prudent person may typically believe or assume.

Again, the key specific requirements such as set forth in Section 784.047(1)(a)-(h), "a person willfully violates an injunction by ... ", are not present in Section 921.244. In order to ethically prosecute a statute, the statute must state exactly "by" and "how" a person violates that section of law.

The simple statement that "the court shall order" does not suffice for establishing the elements to a violation of what the court ordered. These are strictly instructions to what the court shall order, not elements to a violation thereof.

Many words in a court of law have multiple meanings. The word "contact" stated alone is too faint for prosecution, especially when pertaining to all of the alleged events in this case. Contact can be so much, but at the same time, mean so little.

A perfect example of definitions being the furthest from what the word appears to be is that of a "clerical mistake" under Fla. R. Civ. P. 1.540(a). Under Rule 1.540(a), a "substantive error" even when based on a clerical mistake, falls outside of the definition of "clerical mistake" due to the error being "substantive".

The definition of a "clerical mistake" is tentative to the type of error even when the error is the mistake of the clerk. Therefore, the definition of "contact" is certain to be tentative when dependent upon the phone only ringing and never being answered or a message never being passed through a third party even though the victim's phone was being used.

The void-for-vagueness doctrine specifically states that under substantive due process, a statute must not be arbitrary or capricious. F.S. § 921.244 clearly is both. This statute cannot be left open for continued arbitrary enforcement similar to what has occurred here.

I, the Petitioner, know this much: In no conceivable way does the Legislature, under any set of factual circumstances, intend for the Petitioner to be convicted on Counts Three and Four based on what was testified to at trail. This fact alone establishes "void-for-vagueness".

The Petitioner has been convicted of "victim contact" on two counts where the record indisputably proves beyond any reasonable doubt that absolutely no contact of any type was ever committed. There is no explanation for the convictions beyond vagueness.

This Court must understand that this is a felony statute, therefore, an erroneous conviction is devastating. Here, the Petitioner was sentenced to five-years CONSECUTIVELY on each erroneous count. This is absolutely ridiculous. Somebody needs to speak up on his behalf.

The vagueness of this statute is nearly incomprehensible. When any type of allegation short of physical touching is present, the statute is open to predisposed arbitrary enforcement. This is a catastrophic error that cannot continue to take place. An amendment must be made.

Prosecutors in this instant case have taken unprecedented advantage of this statute's vagueness. Please take a look at the constitutional challenge surrounding F.S. § 784.048(4) and F.S. § 921.244 that was filed at the same time as this challenge.

This related filing brings a full perspective to the exact level of manifest injustice this statute brings to the consequence of a defendant at the opportunity of a prosecutor. Unprecedented double jeopardy and excessive punishment violations through the flagrant undermining of the legislative branch.

SUMMARIZING THE VAGUENESS

The Petitioner feels that his articulation runs astray and can become indecisive at critical points important to him. Therefore, Challenge Three will be summarized in separate distinguishable points below. These are not repeated arguments in their entirety. The argument of

Challenge Three can be looked at as establishing the basics. The following can be looked at as finishing with specifics.

The necessary inquiry when determining a constitutionally void statute is: (1) whether the proscribed provision forbids the doing of an act in terms so vague that persons of common intelligence must guess at the meaning, differ in opinion as to the application, and subject the accused to the wrong prosecution when the guessing is wrong; or (2) whether the vagueness lends the statute to arbitrary enforcement at an officer's discretion.

This is not a two-prong test, but two completely separate basis for making a determination. Here, the Petitioner has met the burden of both standards. Most important is the arbitrary enforcement. This point will be addressed last. Foundation as to exactly what caused such discrimination must first be laid, along with several fine points in between.

I - DEVOID OF STATUTE

Nothing that is not clearly and intelligently described in a penal statute's very words is to be considered as included within it's terms. Here, the terms that constitute a violation of this statute are not present at all, let alone clearly and intelligently described. Although it is a "no contact" statute, it does not interdict contact. As addressed in the argument, there is no phrase stating "A person violates by ... ", therefore, proscribed conduct is considered devoid of the statute.

As stated, it is no doubt a "no contact order" statute. However, the standard is the text of the statute, not what the statute pertains to. Regardless of what the statute is as a whole, it must specify with clarity what constitutes a violation. The only reference to "contact" within the statute's text is strictly directions to a court for imposing the order. When addressing a violation, it only states "whoever violates ... is guilty of a third degree felony". At the very least, it needs to state "whoever has 'CONTACT' is guilty ... ".

With these facts established, there cannot be considered any terms within the statute defining a violation. By rule, when a statute lacks terms to a violation, that statute is void-for-vagueness. No person to whom the statute applies can appraise the statute for an understanding of what constitutes a violation if terms to a violation do not exist.

This fact eliminates the plain and ordinary meaning by default because "contact" is not even listed as a potential violation. It is completely devoid of the statute's text. There is by this reason, no vehicle for a court to move on to the plain and ordinary meaning since the word does not exist and something that does not exist cannot be brought into existence by arbitrary enforcement. The judiciary simply lacks discretion to employ standards or guidelines that are not explicitly stated by legislative language.

II - PLAIN AND ORDINARY MEANING

Although it has been established that the plain and ordinary meaning cannot be applied since no word for such application exists, the Petitioner fears that this Court will respond that "since it is a 'no contact' statute, persons to whom it applies should reasonably believe that 'contact' constitutes a violation".

With this said, the matter will be addressed. However, in addressing this point, this Court must understand that the anticipated response fails as well. This because reasonably believing anything not explicitly stated, again, leads to impermissible guessing, differing opinions and applications, and thus, constitutional vagueness.

As prosecuted in this case, contact was used as a verb. Therefore, this argument will proceed in reference to the verb definition and usage note.

Two extremely critical faults surround the general definition of contact. First, no definition for contact, direct contact, or indirect contact exist in Black's Law Dictionary. This fact is absurd

when considering that the word needs a definite meaning in order to be usable in a prosecution. Second, the definition of contact in non-law dictionaries when used as a verb is literally held to be vague. This fact is beyond absurd when considering the arguments surrounding this challenge.

The American Heritage College Dictionary, Fourth Edition 2007, states directly within the usage note that the word contact when used as a verb "has been decried by critics who object to it's vague meaning". In the American Heritage Dictionary, Fifth Edition 2019, the usage note states that "as a verb" it is "vague" and "the vagueness of contact seems a virtue in an age in which forms of communication have proliferated". The context in which the term "virtue" is used means that the vagueness is "based on" an age in which forms of communication have proliferated. It is the communication aspect, as challenged here, that has caused the vagueness.

As historically documented in the usage notes described above, contact when used as a verb has forever been considered vague. Debate immediately began upon the word first spawning into a verb in the early nineteenth century. The debate continued for the next century and especially took hold in the early twentieth century when the word began to be used in defining forms of communication. The debate has never ceased and is nearing 200 years of age. This is perhaps the longest lasting debate that has ever existed in regard to a definition and it's application to a set of circumstances.

With these facts established, this argumentative point is settled. However, the Petitioner will litigate further to close the door on any potential arbitrary response.

This Court cannot respond that the definition in terms of communication has conclusively narrowed after growth. As of present day, it is considered vague by the very authority defining it. Regardless of whether or not the definition was definite when the statute was enacted, the focus is today and tomorrow, not yesterday. Again, it is considered vague as of this very moment in time.

As established, the definition has only become exceedingly vague with each new terminology that our society has adopted since transformation. From here, the term will only continue to progress to new unintelligible heights as additional alternative terms are conceived. The word is likely to never summit.

It is like the old song: "I love you more today than yesterday, but not as much as tomorrow". In terms applicable here: "contact is more vague today than yesterday, but not as vague as tomorrow". This reference is a song recorded by The Spiral Staircase in 1969.

Since any progress in development from vague to definite is incomplete, the definition by rule, is considered indefinite. This results in a finding of void-for-vagueness. The rule specifically states that a proscribed term cannot be given an indefinite definition broadly prohibiting conduct.

Furthermore, any potential doubt must be resolved in favor of the accused. Such an inquiry would be based on current facts. Current facts on the face of the record indisputably establish guessing, differing opinions, and incorrect application. Again, Counts Three and Four.

In summary, there is no law definition. Black's Law and F.S. § 921.244 are equally devoid. When turning to the general definition, the dictionary warns that the word is "vague" when used as a verb. It is indisputable by these facts that the word is unconstitutionally vague when used in a prosecution absent specific legislative language outlining exactly what actions the term does and does not intend to prohibit.

The word stated alone cannot hold a conviction by it's plain meaning because it's plain meaning is said to be vague. Beyond this, the general definition leans far more heavily towards physical touching rather than communicating. Without specific legislative intent, reasonable men of common intelligence are left to assume that the statute prohibits strictly physical contact. No indication otherwise exists.

Even if the word was present in the statute in regard to a violation, and even if it were not deemed vague in it's ordinary meaning, it would still be constitutionally vague in a court of law without legislative guidelines on how the word is to be used in the specific statute in which it is stated when considering all of the varieties of contact that exist. It is a fail - fail situation.

There is no circumventing these facts. Esteemed authors of a well renowned dictionary feel it necessary to bring the issue to great attention. The issue is at a point where a dictionary must provide a warning to all men reviewing the definition. No other word calls for such caution. This leaves zero doubt as to vagueness. Again, this has been a centuries long and still ongoing debate that took hold the second the word progressed to a verb.

Again, a term cannot be vague and broad as to subject itself to speculation, and therefore, subject an accused, as happened here, to the wrong arrest and punishment if the guessing is wrong. A term requires a definite meaning. No definite meaning exists in the statute and there are so many general meanings that the term is considered vague by social standards.

The void-for-vagueness standard is clearly met here once again. However, the point that no vehicle exists to even lead a court this far needs to be reiterated. Again, as stated in the previous category, the word in it's entirety is devoid of the statute when referencing a violation. Therefore, even if it were not vague, the plain and ordinary meaning would still be inapplicable since the word is devoid of the statute in respect to a violation.

III - PROSCRIBED BY OTHER STATUTES

When determining the validity of a statute, it makes no difference that the particular acts could properly be proscribed by a statute which defines the prohibited conduct with requisite specificity. This is raised in regard to F.S. § 365.16 and F.S. § 784.047 referenced in the argument.

IV - GREATER PENALTY THAN OTHER STATUTES

F.S. § 921.244 provides a penalty of five-years, as compared to sixty-days for far more aggravating conduct proscribed under F.S. § 365.16. The harassing phone calls statute not only provides a punishment for the exact conduct of causing another's phone to ring repeatedly (Count Three), but it also prohibits additional more severe conduct such as harassment.

Section 365.16 is more complete as to exact conduct, prohibits greater evils, yet is still only punishable as a second degree misdemeanor, as compared to a felony for Section 921.244. Section 921.244 in actuality, although a felony as compared to a misdemeanor, is subsumed under Section 365.16.

At first, the Petitioner was charged with Aggravated Stalking, F.S. § 784.048(4), and Harassing Phone Calls, F.S. § 365.16. The State of Florida thereafter amended the police infractions originally charged in order to arbitrarily punish simple misdemeanors as felonies and then run the resulting sentences after conviction consecutive to one another for fifteen-years prison. This is as discriminatory as any situation can be.

V - NOT ATTEMPTS

This Court cannot respond that the conduct prosecuted in Counts Three and Four were attempts at contact. This fact will be addressed in detail below.

This Court similarly cannot respond that prosecutors did not know what the victim's testimony would be until they were finished testifying. Prosecutors knew very well what the victims had testified to at depositions and were in steady contact with them throughout the entire proceeding. Furthermore, whether ethical or not, the testimony of state witnesses is always rehearsed prior to taking the stand.

With the above said, this portion of the argument will proceed to the Petitioner's stance after appraising laws definite in proscribed conduct.

As held in Wyche v. State, 619 So. 2d 231, 236-237 (Fla. 1993), because man is free to steer between lawful and unlawful conduct, laws must give a reasonable opportunity for man to know what is permitted and what is prohibited so that he may act accordingly when navigating through.

Here, the Petitioner knew that talking to the police officer on Count Four was not prohibited under any existent "no contact" provision. He also knew that causing the victim's phone to ring repeatedly on both Counts Three and Four was not contact either.

He knew very well that the conduct was nothing more than second degree misdemeanors. He was content knowing that he could face 60 days jail for each incident. The Petitioner is extremely intelligent and as thorough as any man could wish to be. As concerning as it may sound, he knew exactly what he was doing after diligent research.

Count Three was no attempt at contact. It was a known violation of F.S. § 365.16(1)(c) by causing the victim's phone to ring repeatedly after appraising the consequence of a maximum 60 days jail.

As for Count Four, the Petitioner knew very well not to pass a message and testimony proves that no message was ever passed or even attempted to be passed. It was again, a knowing violation of F.S. § 365.16(1)(c). It just so happens that an officer eventually answered the phone. However, this was unanticipated, and again, no message was passed or even attempted to be passed.

Transcripts from the violation of probation prosecution in Case No. 12-07076-CF show beyond dispute that a slanderous malingerer by the name of Wesley Savoy attempted with much

effort to trick the Petitioner, to no avail, into passing a message to the victim during the same time period.

If the Petitioner refused to pass a message when convincingly sought from a third party, he certainly would not pass one when lacking persuasion. The intent on Count Four clearly was not contact. If it were, a message would have been passed.

An unwinnable civil tort action was the only valid legal remedy. Prosecutors overstepped their boundaries due to vagueness. It was clear once the State rested their case that no contact was made. It was arbitrary to attempt, and ultimately succeed, at getting convictions on the greater offenses thereafter. The State had a duty to not contest the motion for judgment of acquittal. This extends to the judge denying the motion as well.

Prosecutors overstepped their authority in spite. The truth is, prosecutors knew that the Petitioner understood that he was acting legally inside of significant laws and illegally outside of very insignificant laws. Prosecutors were frustrated and decided that if the Petitioner was going to detour major violations in an effort to commit minor violations, they would circumvent the law themselves considering that they enforce the law and any circumvention on their part was certain to be extremely beneficial to them.

The State searched and obviously found a vague statute that provided them the bad-faith prosecutions they desired. It cannot be said otherwise. Too much arbitrary enforcement was committed in this case. Such enormous extent is not coincidence. Coincidences are not overwhelming. When something is of such great number, it has purpose. Again, the three challenges here and the accompanying separate challenge of F.S. § 784.048(4).

In summary, even the culpable mental state must coexist with identifiable prohibited conduct. F.S. § 921.244 does not coexist with the Petitioner's subjectively reprehensible actions in

Counts Three and Four. F.S. § 365.16(1)(c) however, does coexist. Blame cannot be put on the shoulders of the Petitioner regardless if thought to be morally wrong. As stated above, citizens of this Nation have the right to steer between laws.

VI - LACKING ELEMENTS OF WILFUL AND KNOWING VIOLATION

A statute that may be used to punish entirely innocent conduct violates substantive due process. Absent a negligence provision, a prosecution requires that an act must be done with improper motive and knowledge that the act is wrong. F.S. § 921.244 does not specify "wilful" or "intentional" in regard to a violation. Therefore, an accident is punishable with five-years prison. This regardless if both the victim and defendant testify that it was a complete accident.

In no possible way could the Legislature intend for a person to be convicted of an accident unless it includes negligence. The rule states that the proof of negligence required to sustain imprisonment must be at least as high as that required for the imposition of punitive damages in a civil action. This statute, in it's current state, allows a conviction below this standard of proof.

Examples would be pocket dialing, an accidental call never answered, or accidentally bumping into each other, perhaps due to the lack of awareness in a busy shopping square that both traverse. Accidents are innocence and convictions for these examples are possible with this statute lacking a "willful and knowing violation". Again, this constitutes void-for-vagueness. A statute must be invalidated if there is potential for punishing innocent conduct.

This Court is not to reference the jury instructions in this case. They have no bearing on future applications left open to arbitrary enforcement. With this statute in it's current state, prosecutors are able to elect not to include a "willful and knowing violation" in future prosecutions.

VII - CATCH ALL PROSECUTION

As held in State v. Wershow, 343 So. 2d 605, 608 (Fla. 1977), a statute cannot be so vague as to necessarily have a "catch all net" that allows for the sifting of what prosecutors wish to arbitrarily enforce after pulling the all encompassing net up from the sea.

The Petitioner's input to such a holding is that in this case at hand, the word "contact" is a catch all netting for any potential awareness that a victim may have as to a defendant's presence which allows arbitrary enforcement depending upon how serious a prosecutor subjectively believes the intent of the defendant may or may not have been even when no contact is made.

This is an extremely fine point that needs full attention in the next two subcategories.

VIII - VISUAL OBSERVATION

The general definition of contact lists "visual observation". This opens the door for arbitrary enforcement of mere sightings.

Say in an instance where each, the victim and defendant, by sheer coincidence, see each other at a distance and the defendant unconsciously hesitates and stares for a moment or shakes his or her head in disappointment or disbelief. A spiteful prosecutor can use the "catch all" definition, or in actuality, lack of definition, to "catch all" under the devoid and undefined "contact" provision and then arbitrarily enforce a bad-faith prosecution.

A prosecutor can say to themselves "well, no contact was actually made, but this is serious because they were so close in proximity to one another and it could get dangerous if we don't step in and end this now" ... "Section 921.244 is indefinite, so we can tell the jury that staring for a moment is a form of 'implied' contact and get this person off the street now". This is an example outside of this instant case and it is reality. Such outside perspective is needed beyond the case at hand.

In consideration of what took place on Counts Three and Four in this instant case, this Court cannot say that this example is highly unlikely. First, look at this instant case. Second, whether unlikely or not, it is possible with the statute in it's current state. Third, prosecutors in this instant case are certain to pursue such allegations against the Petitioner if given the opportunity. This is certain, not speculation.

A jury would not, as happened here, have the slightest idea that the trial was a catch all, let fate be fate, bad-faith prosecution. Jurors more often than not, fail to understand that prosecutors are dishonest and trials are rigged performances.

IX – FACEBOOK

A fine point to Facebook is that when a user views another users page, the viewing user then becomes listed in a section called "people that you may know". This factor is important because once a potential defendant views a potential victims page, that victim will know that their page was viewed by the defendant.

At that time, the victim can cry that indirect contact was being made. The victim can say that by viewing their page, the defendant is purposely causing the victim to see them listed under "people you may know" and ultimately making their presence known through a form of contact that can be interpreted as "indirect" under this vague statute.

This is a reality in an age where Facebook has all but consumed the physical world. It is inevitable that this error will eventually arise if not struck in advance when considering the overwhelming number of crimes that now revolve around Facebook. On October 24, 2019, Congress had to address the founder of Facebook as to the alarming number of crimes committed on his server.

In actuality, this likely has taken place in stalking prosecutions short of actual contact. Stalking prosecutions are legal when the conduct falls short of contact. However, this Court needs to make sure that it does not happen under F.S. § 921.244.

X - ARBITRARY ENFORCEMENT

The most important aspect of the vagueness doctrine "is not actual notice, but the other principle element of the doctrine ... the requirement that a legislature establish minimal guidelines to govern law enforcement". See Kolender v. Lawson, 461 U.S. 352, 358 (1983).

We have gained the perspective of the statute from an accused point of view. We must now look at it from an officers perspective. The standard is the same. A violation is required to be determined by the text, not by how an officer perceives to enforce the statute in differing situations. A statute is void-for-vagueness when a violation is determined based on officer discretion.

Here, a violation can only be determined based on officer discretion because absolutely nothing within the text of the statute states what a violation is. Again, not even vaguely. This is not a situation where a one worded proscribed term exists. This is a matter where absolutely no term exists at all.

Many statutes have been struck for proscribing one worded terms. Therefore, in a matter such as this where no term exists at all, a finding of void-for-vagueness is absolute. There is not the slightest guideline governing law enforcement.

The statute not only leaves too much at an officers discretion, but literally leaves everything to their discretion. The fact that this statute encourages arbitrary enforcement cannot be disputed. The record in this case is the testament.

Again, the bad-faith prosecutions on Counts Three and Four of Challenge Three, the lack of subject-matter jurisdiction for Challenge One, the double jeopardy violations of Challenge Two,

and the separate simultaneous filing challenging F.S. § 784.048(4) and F.S. § 921.244 together in regard to the undermining of the legislative branch in violation of a completely separate aspect of double jeopardy.

Even if the statute was deemed to proscribe "contact", the word is proven by definition to be vague which invites arbitrary and discriminatory enforcement. Again, this case is the testament.

XI - ARBITRARY LEVERAGE

It is well established that prosecutors arbitrarily enforced this statute. What has not yet been discussed is the leverage that prosecutors attempted to arbitrarily gain. Once prosecutors seen that the Petitioner was not interested in a plea agreement, they amended the charging information with three additional counts of a violation of F.S. § 921.244.

This was a knowing violation of the double jeopardy clause and also while knowing very well that two of the three newly added charges did not meet the definition of contact under any set of definite circumstances.

Prosecutors are certain to have acted in bad faith in an attempt to induce a plea. Why else would two of three charges be brought when knowing that the alleged conduct fell well short of a violation of the statute. As previously established, prosecutors knew what the victims testimony was going to be, had already conducted depositions, and had the victims at their disposal.

Additionally, since a showing of a prior conviction is required in the prosecution of this statute, the enforcement of the statute when arbitrary is far greater a prejudice than a statute with no showing of a prior qualifying offense. The ballooning of charges were an intent to make the Petitioner look guilty of a far more severe episode than what was true.

XII - CREATED CONFLICT

A statute cannot create conflict. When it does, it is considered void-for-vagueness. The construction of F.S. § 921.244 indisputably created conflict. The Petitioner is not going to reiterate. All argued above is to be considered in this point. This challenge here is conflict that is shown to be wrong on the part of the judiciary.

XIII - POLITICALLY DRIVEN

A statute is void-for-vagueness if it lends itself to arbitrary enforcement through politically driven motive.

The Petitioner can subpoena testimony from several defense attorneys stating that this ordeal was politically driven. This is privileged information for potential future criminal trials, therefore, cannot be disclosed here. The Department of Justice is welcomed and hereby petitioned to interview the Petitioner regarding this corruption and malicious intent. Physical evidence exists beyond the record and asserted testimony.

XIV - RECAP OF PREJUDICE

Regardless of how this matter is looked at, the two convictions on Counts Three and Four are the result of constitutional vagueness. F.S. § 921.244 does not proscribe the conduct which sustained these convictions, therefore, either sufficient warning was lacking and/or the statute was arbitrarily enforced. Regardless of what position is taken, the statute is void-for-vagueness.

When applying a penal statute, Article I, Section IX, of the Florida Constitution, and Amendment V and XIV of the United States Constitution, are not fulfilled unless the Legislature sufficiently uses language definite to apprise those to whom it applies. Here, the word "contact" does not sufficiently satisfy the Due Process Clause of both the United States Constitution and the Florida Constitution.

A statute applies to both the accused and law enforcement in equal respect. Without definite language, a statute fails in parallel. Neither individual can sufficiently evaluate their own pertinent guideline. A citizen cannot gain an adequate understanding of what is prohibited. An officer cannot gain an adequate understanding of how to enforce potential violations.

The uncertainty creates a conglomeration of injustices. Police make the wrong arrest. Prosecutors feel they must finish through. Defense attorneys lack a backbone. Judges want re-election. The victim and defendant become lost in an impossible cause. It is a chain reaction. The tension is strong.

No words can explain what this vagueness has done to the Petitioner and his family, and the victims and their family. It is absolutely ridiculous. The State of Florida had their show. Credits are given. The show now needs to end.

Just to be clear, the Petitioner, due entirely to vagueness and arbitrary enforcement, is serving nine-years and eight-months in prison beyond what is constitutionally legal. Not a single man can argue differently. This statute left the judiciary discretion to employ any standard they wished.

Remember this, the presiding judge at the most critical point of the trial, questioned a matter not determinable by his own words, the matter of what constitutes "contact" under F.S. § 921.244, and then deferred discretion to a jury of laymen which resulted in at minimum, two completely unconstitutional verdicts of guilt.

XV - PROPOSED AMENDMENT

As stated, this statute is open for the prosecution of absolutely anything and everything short of actual physical contact. This cannot remain. The Petitioner believes the statute to be vital to a victim if properly built. For this reason, reconstruction is proposed.

First, the statute must state "A person who willfully and knowingly has contact, whether direct or indirect, or through a third party, ... ".

Second, it must define "contact" in it's general term for both physical and communicative.

Third, it must list any prohibited specifics beyond physical contact similar to that of F.S. § 784.047 and F.S. § 365.16. This means be specific in what the statute intends prohibited communication to be. This being perhaps telephoning, e-mailing, causing another's phone to ring repeatedly, and so forth.

Last, it must state that "a prosecution under this section is not applicable when the order of no contact violated was imposed within an order of probation or community control pursuant to Section 948.039, Florida Statutes". (Challenge One and Two).

If incorporating the separate challenge of F.S. § 784.048(4) brought at the same time as this challenge, as is hereby requested, this Court must add the additional provision that "if a violation of this section is omitted from a prosecution of s. 784.048(4) in preference of a violation of s. 784.046, the omitted violation of this section is not to be used in a subsequent prosecution if the omitted violation is based on the same act(s) used to establish the violation of s. 784.046 used in the prosecution of s. 784.048(4)".

Although reconstruction has been proposed, the proposal is not to be deemed the abandonment of moving this Court to strike the statute as void. If reconstruction cannot be

achieved while also vacating the convictions on Counts Two through Five, then the striking as void takes precedence.

XVI - LAST NOTE

The vagueness of this statute in terms of "contact" is of great importance and in the need of undivided attention independent from Challenge One and Two. However, the issue never should have emerged in this case. The Petitioner is proud to bring the predicament to attention, although wished to have been discovered absent his own predicament.

What the Petitioner is trying to say is that this Court must obviously make a finding that arbitrary enforcement took place on the first two challenges and grant the accompanying Motion to Correct Illegal Sentence. This in most instances would render Challenge Three moot. However, Challenge Three is of such great importance that this Court must still mend the statute to conform to constitutional standards even with it no longer being applicable in this case.

In a case where incorrect responses have become the norm, the Petitioner wants to be clear that if this Court decides to avoid the first two challenges and elects to save the statute by narrowing construction for the third challenge, it must still vacate the convictions in this case since they were obtained at a time that the statute was unconstitutional. As proven, the statute's regulation of contact, as currently applied, is constitutionally vague.

Just because a statute protects a victim does not by any means make it acceptable to sympathetically enforce all conduct subjectively thought to be directed towards the victim. For example, there is First Amendment protected speech, the right to assemble at commonly shared places, and there is always the likelihood of victim perjury as transpired here.

TRANSCRIPTION OF PRESIDING JUDGE'S CONFUSION

COUNT FOUR CONFUSION

As established, the judge completely misapplied the laws surrounding indirect or third party contact and stated as follows:

"That's the day when the police answered the phone. He was on speaker phone and -victim- heard all of that. So there was contact there, right?" (Page 276, Lines 14-19).

In this statement, the judge is questioning what constitutes contact under Section 921.244. However, this is not contact by any definition, therefore, it can never be considered contact under Section 921.244.

Just to be clear, the allegation is that an officer unexpectedly answered the phone and very briefly spoke to the Petitioner without a single word being spoken to the victim or attempted to be spoken to the victim and without a single message being passed to the victim or attempted to be passed to the victim.

Hearing the Petitioner speaking to the police is not contact by any means. In actually, it is eavesdropping. The definition of eavesdropping is to "listen to or overhear". Here, the victim overheard and listened to a conversation that was not directed towards her whatsoever. The fact that the conversation took place on her phone matters none since she did not answer the phone.

Again, the officer answered the phone. This is not a case where the victim answered the phone and then passed the phone to the officer. It would only be contact if she answered the phone, the Petitioner then proceeded to speak to her, and she then handed the phone to the police.

COUNT THREE CONFUSION

As stated above, the presiding judge was quite confused as how to apply the statute to Count Three and stated as follows:

"if you make contact with someone's phone by calling it and calling it and the other person believes that it's the defendant and doesn't answer it, is that contact or not? Does anyone have case law on that? I'm sure there's probably no case law on that, but does anyone have it." (Page 277, Lines 1-8).

"You're being contacted by the phone ringing, and then you look at your phone and it says 51 calls from a restricted number, so that's contact." (Page 277, Lines 19-22).

"Well, I don't think there has to be actual conversation. I mean, there's contact being made non-verbally by calling and calling. And maybe defense would have a better argument if the alleged victim was away from the phone and never heard it." (Page 279, Lines 9-14).

"So, that's making non-verbal contact ... " (Page 280, Lines 3-4).

In these statements, the judge acknowledged the lack of actual contact, asked for case law that he knew did not exist, and then decided to allow the jury to deliberate. However, case law does exist. This case law provides, as has been established above, that the conduct is a second degree misdemeanor punishable by a maximum of 60 days jail under Section 365.16(1)(c), Florida Statutes.

The judge then proceeded to make a finding that the alleged conduct was "non-verbal contact". However, and as established above, when contact is not physical, it can only be communicative. And as established above, communication must either be spoken or done with gesture. Here, there was no speech since the phone went unanswered and a gesture requires the movement of the body or limbs viewable by another which obviously did not take place.

NO SET OF CIRCUMSTANCES EXIST WHERE STATUTE WOULD BE VALID

No set of circumstances exist where the statute would be valid:

(a) no violation listed or proscribed

(b) vague by definition if a violation was listed

(c) open to overwhelming arbitrary enforcement

(d) open to punishment of innocent activity

CONCLUSION

WHEREFORE, the Petitioner, STEVEN BEEBE, based on the facts raised above, respectfully requests that this Honorable Court answer accordingly to the challenges raised above. - Respectfully submitted.

OATH

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

CERTIFICATE OF SERVICE / COMPLIANCE

I hereby certify service compliance with F.S. § 86.091 and Fla. R. Civ. P. 1.071(b). The Petitioner complied by serving the State Attorney for the Sixth Judicial Circuit Court, P.O. BOX 5028, Clearwater, Florida, 33758, with a copy of the foregoing motion by certified mail on this 14th day of November, 2019.

Steven Beebe; Petitioner
Fla. Dept. Corr. #: R79546

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Panama City, Florida 32404

Additional material from this filing is available in the Clerk's Office.