19-8760

NO. 4D18-1259

IN THE

SUPREME COURT OF THE UNITED

STATES OF AMERICA

STEFAN STEWART – PETITIONER

ORIGINAL

Vs

STATE OF FLORIDA –RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO

IN THE DISTRICT COURT OF APPEAL OF

THE STATE OF FLORIDA FOURTH DISTRICT

PETITION FOR WRIT OF CERTIORARI

STEFAN STEWART

8501 HAMPTON SPRINGS ROAD

PERRY, FLORIDA 32348

QUESTIONS PRESENTED

A) When the defense attorney previously represented the states key witness who now has conflicting interests with the defendant, does this amount to a conflict of interest? See *State v. Alexis,* 180 So. 3d 929; *Hope v. State,* 654 So. 2d 639, 640 (Fla. 4th DCA 1995)

B) When an attorney represents the states prime witness in a previous case, is a colloquy required to determine if an actual conflict of interest exist? See *Lee v. State,* 690 So. 2d 664 (Fla. 1st DCA 1997), *Rutledge v. State,* 150 So. 3d 830, 838 (Fla. 4th DCA) rev. denied, 171 So. 3d 120 (Fla. 2015)

C) When a conflict of interest that adversely affects counsel's performance, (Counsel could not properly cross examine witness and left that duty to his father and Co-Counsel). Is this a violation of the Sixth Amendment?

D) Is it the trial court's or the defense attorney's duty to ferret out the facts underlying a potential conflict of interest? See *Rutledge v. State,* 150 So. 3d 830, 838 (Fla. 4th DCA 2014) rev. denied, 171 So. 3d 120 (Fla. 2015)

E) Does the trial court have the judicial authority to avoid the necessity of conducting a waiver colloquy by ignoring a potential conflict of interest brought to its attention? See *Rutledge v. State,* 150 So. 3d 830, 838 (Fla. 4th DCA) rev. denied, 171 So. 3d 120 (Fla. 2015) *Larzelere v. State,* 676 So. 2d 394, 403(Fla. 1996) cert. denied, 117 S.Ct. 615 (1996)

E 2) When the defense counsel labor under an actual conflict of interest that is not waived, does the de novo standard of review apply? See *Alexis v. State,* 180 So. 3d at 934

F) Fla. R. Crim. P. 3.575 when a party who has reason to believe that the verdict may be subject to legal challenge may move the Court for an order permitting an interview of a juror or jurors to so determine. Does the abuse of discretion standard apply to trial Court's ruling denying a motion to interview a juror?

G) When the good character of a witness is supported when said witness has not been impeached by evidence, Is this a per se reversible error? See *Whitted v. State,* 362 So. 2d 668, 673 (Fla. 1978), *Mohorn v. State*, 462 So. 2d 81, 82 (Fla. 4th DCA 1985)

H) Is the impropriety of a key witness's testimony that he had not been previously arrested a violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution which guarantees the accused the right to a fair trial?

I) When one witness is allowed to opine on the veracity of another witness and this has been prohibited, has an error occurred? See *Acosta v. State,* 798 So. 2d 809, 810 (Fla. 4thDCA 2001), *Tumblin v. State,* 29 So. 3d 1093, 1101-1102 (Fla. 2010) *Solomon v. State,* 267 So. 3d 25, 32 (Fla. 4th DCA 2019)

J) Due to the great weight afforded to a Police Officer's testimony. Is it a per se reversible error for a Police Officer to testify to the truthfulness of the State's key

witness? See *Tumblin v. State,* 29 So. 3d 1093, 1101-1102 (Fla. 2010) *Solomon v. State,* 267 So. 3d 25, 32 (Fla. 4th DCA 2019)

LIST OF PARTIES

State of Florida v. Stewart, No. 17-003419CF10A, In The Circuit Court Of The Seventeenth Judicial Circuit In And For Broward County, Florida.

Convicted of Murder in The First Degree Jan 30, 2018.

Stewart v. State of Florida No. 18-1259 U.S. District Court Of The State Of Florida Fourth District. Per Curiam. Affirmed Feb. 28, 2020.

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IN THE SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from federal courts:

The opinion of the United States court of appeals appears at appendix N/A to the petition and is

[ ] reported at N/A

[ ] has been designated for publication but is not yet reported; or,

[ ] is published.

The opinion of the United States district court appears at Appendix N/A to the petition and is

[ ] reported at N/A

[ ] has been designated for publication but is not yet reported; or,

[ ] is published.

[ ] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

[ ] reported at N/A; or

[ ] has been designated for publication but is not yet reported; or,

[✔] is unpublished

The opinion of the N/A court appears at appendix N/A to the petition and is

[ ] reported at N/A

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

JURISDICTION

[ ] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____; and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____.

The Jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

[✔] For cases from state courts:

The date on which the highest state court decided my case was February 28, 2020. A copy of that decision appears at Appendix A.

[ ] A timely petition for rehearing was thereafter denied on the following date N/A, and a copy of the order denying rehearing appears at Appendix N/A.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A A N/A. The jurisdiction of this court is invoked under 28 U.S.C. § 1257 (a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Art. 1 § 16, Fla. Const.

Fourteenth Amendment to the United States Constitution

Sixth Amendment to the United States Constitution

§ 90.607 (2)(b), Fla. Stat. (2018)

STATEMENT OF THE CASE

This is in reference to questions A-E

1. Two lawyers represented appellant. George E. Reres and George J. Reres, father and son. ET 242, 245. Between jury selection and the beginning of trial George J. Reres realized that he previously represented a key prosecution witness, Denzell Williams, but asserted the prior representation did not create a conflict of interest. ET 245. Hoping to avoid a possible conflict of interest issue, the Rereses decided that George E. Reres would cross-examine Mr. Williams. ET 245-246. The trial court did not independently determine whether the potential conflict of interest would impair appellant's right to effective assistance of counsel and, although appellant was present in court during the discussion, it did not conduct a colloquy with him to determine that he was aware of the potential conflict of interest, realized it could effect his defense and knew of the right to obtain other counsel. The case proceeded to trial before a jury.

This is in reference to question F

2. The jury found appellant guilty as charged, all jurors agreeing to the verdict when polled. ER 154-155; ET 1045-1047. After the jurors were discharged and court recessed, but while the clerk and bailiff were still in the courtroom, Juror Ghali returned, tearfully telling the bailiff the verdict rendered was not her verdict, that she wanted second degree murder, but all the other juror wanted first degree

murder and she felt pressured. ER 648-652. Juror Ghali also left a voicemail for the trial judge stating she needed to speak to her. ER 649, 657. Appellant filed a motion for juror interview requesting that Juror Ghali appear in court and explain her comments to the bailiff as well as the message left with trial court's judicial assistant. ER 157. A hearing was held upon the motion and after listening to the arguments of counsel, it was denied, the trial court concluding that inquiry into Juror Ghali's concern was prohibited because they inhered in the verdict. ER 616-619, 654-669.

The crux of appellant's request was that the juror given an opportunity, in open-court and before any questioning of her occurred, to explain her concerns. ER 656-658, 667-668. Appellee raised two objections to appellant's request; his motion failed to include sworn allegations that if true would require a new trial and the motion sought to interview the juror about matter that inhered in the verdict.

This is in reference to questions G-J:

3. On direct examination, after Mr. Morrison testified that he initially lied to police when saying he dropped appellant off and proceeded to a mechanic shop, doing so because he was scared, appellee asked him if he had ever been arrested before, Mr. Morrison responding "No". ET 430-431. Appellant's objection was sustained ET 431. At side-bar appellant moved for a mistrial ET 431. Although it did not expressly deny appellant's motion, the trial court instead sua sponte

instructed the jury to "disregard the witness's last statement." ET 432. On redirect examination Detective Medjoub acknowledged that during Mr. Morrison's initial statement he accused Mr. Morrison of lying ET 806. Over appellant's objection that it called for a conclusion on the part of the witness, Detective Medjoub was permitted to testify that based upon his investigation he could tell that Mr. Morrison was being truthful in certain parts of the statement. ET 806. When appellee first broached the topic, appellants initial objection to the detective being asked "does that mean he was lying to you about everything he talked about," was sustained. ET 806. Appellant's objection appellee's rephrased question was overruled. ET 806. Appellee immediately asked the detective, "so he was truthful during statement one on different things; right," ET 806. Detective Mejdoub answered "correct" before appellant's objection was sustained. ET 807. Appellee followed up with the Detective asking, "now based on, again, the evidence and your investigation that you had conducted up to that point, weren't there things that Mr. Morrison was telling you that was truthful?" ET 807. Appellant objected and after the trial court instructed appellee it could not ask the detective to opine regarding the veracity of a witness, moved for a mistrial. ET 807-808. The trial court did not rule upon the motion, but sustained a subsequent objection when appellee asked, "when you made that statement about Mr. Morrison lying did you

for a fact know whether Mr. Morrison had lied or what was a lie and what was truth?" ET 808.

REASON FOR GRANTING WRIT

Two lawyers represented appellant at trial, George E. Reres and George J. Reres, father and son. ET 242, 245. Between jury selection and the beginning of trial George J. Reres realized he previously represented a key prosecution witness, Denzell Williams, but asserted the prior representation did not create a conflict of interest. ET 245. Hoping to avoid a possible conflict of interest issue, the Rereses announced that George E. Reres would cross-examine Mr. Williams. ET 245-246. The trial court did not independently, determine whether the potential conflict of interest would impair appellant's right to the effective assistance of counsel, and although appellant was present in court during the discussion, it did not conduct a colloquy with him to determine that he was aware of the potential conflict of interest, realized it could affect his defense and knew of the right to obtain other counsel.

The Sixth Amendment to the United States Constitution guarantees an accused the right "to have the assistance of counsel for his defense." Accord Art. I, § 16, Fla. Const.; see also *Cheatham v. State*, 364 So.2d 83, 84 (Fla. 3rd DCA 1978)(indigent accused charged with felony entitled to court-appointed counsel) cert. denied, 372 So.2d 471 (Fla. 1979). "An actual conflict of interest that

adversely affects counsel's performance violates the Sixth Amendment..." *Larzelere v. State*, 676 So.2d 394, 403 (Fla. 1996) cert. denied, 117 S.Ct. 615 (1996). A violation of that nature is per se reversible error. *State v. Alexis*, 180 So.3d 929, 937 (Fla. 2015). The accused may, however, waive the right to be represented by conflict-free counsel. *Larzelere*, 676 So.2d at 403. Whether an attorney's prior representation of a prosecution witness gave rise to an actual conflict of interest is a mixed question of law and fact, review of which requires the appellate court to defer to the trial court's factual findings but independently decide the legal question. *Alexis*, 180 So.3d at 934. In this case defense counsel labored under an actual conflict of interest that was not waived and as a result, reversal is required.

"An attorney's active representation of conflicting interests is an 'actual' conflict of interest..." *Id* at 937. Where one lawyer in a law firm has a conflict of interest, the conflict is imputed to the other members of the firm. *Smith v. State*, 156 So.3d 1119, 1123-1124 (Fla. 1st DCA 2015). In *Lee v. State*, 690 So.2d 664 (Fla. 1st DCA 1997), where court-appointed counsel previously represented a key prosecution witness the court said, "when defense counsel makes a pretrial disclosure of a possible conflict of interest will impair the defendant's right to the effective assistance of counsel or appoint separate counsel." *Id.* at 667. Determining whether the prior representation creates an actual conflict of interest

rests not upon counsel's perception that no actual conflict exists but can only be made by the trial court after "taking affirmative action to ferret out the facts underlying the potential conflict." *Rutledge v. State*, 150 So.3d 830, 838 (Fla. 4th DCA 2014) rev. denied, 171 So.3d 120 (Fla. 2015). Upon being informed that George J. Reres previously represented Mr. Williams, the trial court should have made appropriate inquiry to determine whether the prior representation created an actual conflict of interest, rather than rely upon Mr. Reres' assertion that it did not.

Despite the trial court's failure to properly inquire into the potential conflict of interest, the record reflects that an actual conflict of interest existed in this case. Appellant acknowledges this Court's view, previously expressed in *Hunter v. State*, 770 So.2d 232 (Fla. 4th DCA 2000), that there is no blanket continuing duty of loyalty to former client who becomes a witness against the defendant in a subsequent proceeding creating an actual conflict of interest. However, this Court has also recognized that "the fact" that the representation of the adverse client has concluded does not necessarily eliminate the conflict." *Valle v. State*, 763 So.2d 1175, 1178 (Fla. 4th DCA 2000). There will be occasions where not only will the defendant have an interest in discrediting the testimony of the former client witness, but the former client witnesses will have an interest in seeking retribution against the defendant. *Hope v. State*, 654 So.2d 639, 640 (Fla. 4th DCA 1995). Competing interests of that nature are directly adverse. *Id.* at 690, giving rise to an actual

conflict of interest. See *Valle v. State*, 763 So.2d at 1177-1178; see also *Lightbourne v. Dugger*, 829 F.2d 1012, 1023 (11th Cir. 1987)("an attorney who cross-examines a former client inherently encounters divided loyalties.") Cert. denied 109 S.Ct. 329 (Fla. 1988).

While Mr. Williams was not the named victim in this case, neither was he a mere eye-witness. The events in this case began with appellant accusing Mr. Williams of burglarizing his apartment, saw Mr. Williams and Mr. Richburg confront appellant in the Chevron gas station, prompting appellant to pull out a gun, and culminated in appellant shooting Mr. Richburg, a long-time friend of Mr. Williams, while Mr. Williams was close-by. Appellant surely had an interest in discrediting the testimony of Mr. Williams. Mr. Williams had an equally strong interest in seeking retribution against appellant. Those competing interests, directly adverse to one another, dictate a finding that Mr. Reres's prior representation of Mr. Williams created an actual conflict of interest between counsel and appellant.

The right to be represented by conflict-free counsel can be waived.

Larzelere, 676 So.2d at 403.

For a waiver to be valid, the record must show that the defendant was aware of the conflict of interest, that the defendant realized the conflict could affect the defense, and that the defendant knew of the right to obtain other counsel. *United*

States v. Rodriguez, 982 F.2d 474 at 477. It is the trial court's duty to ensure that a defendant fully understands the adverse consequences a conflict may impose. *Winkour v. State*, 605 So.2d 100 (Fla. 4th DCA 1992), review denied, 617 So.2d 322 (Fla. 1993).

Id.

The trial court need not engage in the three-pronged conflict-of-interest waiver colloquy with the defendant unless the record reflects that an actual conflict of interest existed between the defendant and counsel. *Alexis*, 180 So.3d at 938. However, the trial court cannot avoid the necessity of conducting the waiver colloquy by ignoring a potential conflict of interest brought to its attention. See *Rutledge*, 150 So.3d at 838. As demonstrated above, an actual conflict of interest existed in this case. Although waivable, because the trial court did not engage in the required colloquy with appellant, and did not even so much as ask him if he wanted to do so, appellant did not execute a valid waiver of his right to conflict free counsel. Accordingly, reversal is required.

POINT II[1]

After the jurors were discharged and court recessed, but while the clerk and bailiff were still in the courtroom, Juror Ghali Returned tearfully telling the bailiff the verdict rendered was not her verdict, that she wanted second degree murder, but all the other jurors wanted first degree murder and she felt pressured. ER 648-652. Juror Ghali also left a voicemail for the trial judge stating she needed to speak to her. ER 649, 657. Appellant filed a motion for juror interview requesting that Juror Ghali appear in court and explain her comments to the bailiff as well as the message left with the trial court's judicial assistant. ER 657. A hearing was held upon the motion and after listening to the arguments of counsel, it was denied, the trial court concluding that inquiry into Juror Ghali's concerns was prohibited because they inhered in the verdict. ER 616-619, 654-669.

Florida's criminal procedure rules allow for juror interviews. *Fla.R.Crim.P.* 3.575.

A party who has reason to believe that the verdict may be subject to legal challenge may move the court for an order permitting an interview or a juror or juror s to so determine. The motion shall be filed within 10 days after the rendition of the verdict, unless good cause is shown for the failure to make the motion within that time. The motion shall state the name of any juror to be interviewed and the

[1] The abuse of discretion standard applies to a trial court's ruling denying a motion to interview a juror. *Foster v. State, 132 So.3d 40, 65 (Fla. 2013).*

reason that the party has to believe that the verdict may be subject to challenge, shall enter an order permitting the interview and setting therein a time and a place for the interview of the juror or jurors which shall be conducted in the presence of the court and the parties. If no reason is found to believe that the verdict may be subject to challenge, the court shall enter its order denying permission to interview.

Fla.R.Crim.P. 3.575.

"A motion for juror interview must set forth allegations that are not merely speculative or conclusory or concern matters that inhere in the verdict." *Foster*, 132 So.3d at 65. "Moreover, in order to be entitled to juror interviews, a defendant must present "sworn allegations that, if true, would require the court to order a new trial because the alleged error was so fundamental and prejudicial as to vitiate the entire proceedings." *Id.* at 65-66; *Gould v. State*, 745 So.2d 354, 353 (Fla. 4th DCA 1999) rev. denied, 767 So.2d 456 (Fla. 2000). "Upon an inquiry into the validity of a verdict or indictment, a juror is not competent to testify as to any matter which essentially inheres in the verdict or indictment." § 90.607 (2)(b), Fla. Stat. (2018); *Devoney v. State*, 717 So.2d 501 (Fla. 1998). Although Florida law "forbids any judicial inquiry into emotions, mental processes, or mistaken beliefs of juror's,... jurors are allowed to testify about "overt acts which might have prejudicially affected the jury in reaching their own verdict." *State v. Hamilton*, 574 So.2d 124, 128 (Fla. 1991). "To the extent an inquiry will elicit information

about overt prejudicial acts, it is permissible; to the extent an inquiry will elicit information about subjective impressions and opinions of jurors, it may not be allowed." *Baptist Hospital of Miami v. Maler*, 579 So.2d 97, 99 (Fla. 1991); see also *Reaves v. State*, 826 So.2d 932, 943 (Fla. 2002)("inquiry is limited to allegations which involve an overt prejudicial act or external influence..."). A juror cannot recede from her verdict where she had agreed to it when polled and after it has been recorded, unless "the conduct giving rise to her decision to recede did not inhere in the verdicts." *Simpson v. State*, 3 So.3d 1135, 1140-1143 (Fla. 2009) cert. denied 130 S.Ct. 91 (2009); *Mitchell v. State*, 527 So.2d 179, 181-182 (Fla. 1988) cert. denied, 109 S.Ct. 404 (Fla. 1988).

Based upon the constraints placed on interviewing jurors, "the trial court must determine exactly what type of information will be elicited from the jurors..." *Baptist Hospital*, 579 So.2d at 99. The limited information provided by Juror Ghali left appellant hard-pressed to file a motion setting forth non-speculative and non-conclusory allegations not inhering in the verdict that would require the trial court to grant a new trial. It is possible Juror Ghali was simply subject to the often times stressful atmosphere inherent in jury deliberations and was experiencing a change-of-heart over the verdict she returned. On the other hand, maybe she was threatened during deliberations with physical violence if she refused to go along with the other jurors. While the former would inhere in the verdict, preventing an

inquiry, the latter should be considered an overt act not immune from discovery through a juror interview. Unfortunately, the information provided by Juror Ghali was vague. Appellant did not ask for a full-blown interview of Juror Ghali, instead merely requesting the juror be given an opportunity to explain herself. Juror Ghali should have been afforded that opportunity. If Juror Ghali's explanation provided a basis for appellant to seek an interview he could do so; if it was clear that her concerns inhered in the verdict that would at the end of the story. The trial court abused its discretion by prohibiting the limited interview sought by appellant. Accordingly, reversal and remand with directions to allow Juror Ghali an opportunity to explain her concerns is required.

POINT III

The trial court abused its discretion by denying appellant's motion for mistrial, prompted by a key witness for the prosecution testifying he had not previously been arrested. On direct-examination, after Mr. Morrison testified that he initially lied to police when saying he dropped appellant off and proceeded to a mechanic's shop, doing so because he was scared, appellee asked him if he had ever been arrested before, Mr. Morrison responding, "no". ET 430-431. Appellant's objection was sustained. ET 431. At side-bar appellant moved for mistrial. ET 431. Although it did not expressly deny appellant's motion, the trial court instead sua sponte instructed the jury to "disregard the witness's last statement." ET 432.

The trial court, by choosing to instruct the jury to disregard Mr. Morrison's last statement, implicitly denied his motion for a mistrial. See *Holt v. Calchass, LLC*, 155 So.3d 499, 502 (Fla. 4th DCA 2015). "A court's ruling on a motion for mistrial is reviewed for an abuse of discretion and granted only when necessary to ensure a fair trial." *London v. State*, 240 So.3d 746, 750 (Fla. 4th DCA 2018) rev. denied, SC 18-706 (Fla. Dec. 17, 2018). "The good character of a witness may not be supported unless it has been impeached by evidence." *Whitted v. State*, 362 So.2d 668, 673 (Fla. 1978); accord *Mohorn v. State*, 462 So.2d 81, 82 (Fla. 4th DCA 1985)(state witness improperly permitted to testify that he had never been

convicted of a crime). In *Welch v. State*, 940 So.2d 1244 (Fla. 2nd DCA 2006), where the state's confidential informant witness testified "no. I'd never been arrested before" when asked if she had been charged with a felony prior to charge that led to her becoming an informant, the state argued that type of bolstering of its witness should be allowed. *Id.* at 1245-1246. Recognizing that identical testimony had been found inadmissible in regard to criminal defendants and victims, and was nowhere authorized by statute, the court rejected the state's argument. *Id.* at 1246. Appellee elicited Mr. Morrison's testimony on direct-examination, at a time when it had not been impeached with evidence. Appellee's assertion below, that the testimony was elicited to explain why Mr. Morrison lied, not to bolster his credibility is unavailing. Mr. Morrison testified that fear led him to lie, that was all the explanation that was necessary. Accordingly, appellant's objection was correctly sustained.

The Due Process Clause of the Fourteenth Amendment to the United States Constitution guarantees the accused the right to a fair trial. *Cochran v. State*, 925 So.2d 370, 373 (Fla. 5th DCA 2006). Mr. Morrison, was not an insignificant prosecution witness, his testimony proving very damaging to the defense. The significance of Mr. Morrison's testimony made it of paramount importance that the jury, uninfluenced by impropriety evaluate his credibility. The improper bolstering of Mr. Morrison's testimony made it unlikely the jury would have questioned his

credibility, adversely affecting appellant's due process right to a fair trial. His Fourteenth Amendment right to a fair trial infringed upon, appellant's motion for a mistrial should have been granted.

POINT IV

The trial court abused its discretion by permitting a police officer witness to opine on the veracity of a key witness.

On redirect-examination Detective Mejdoub acknowledged that during Mr. Morrison's initial statement he accused Mr. Morrison of lying. ET 806. Over appellant's objection that it called for a conclusion on the part of the witness, Detective Mejdoub was permitted to testify that based upon his investigation he could tell that Mr. Morrison was being truthful in certain parts of the statement. ET 806. Admission of testimony deprived appellant of a fair trial guaranteed by the Fourteenth Amendment to the United States Constitution.

"A trial court's ruling on the admissibility of evidence is subject to an abuse of discretion standard of review, but the court's discretion is limited by the rules of evidence and the applicable case law." *Horwitz v. State*, 189 So.3d 800, 802 (Fla. 4th DCA 2015) approved, 191 So.3d 429 (Fla. 2016). This court has previously recognized that "it is clearly error for one witness to testify to the credibility of another witness." *Acosta v. State*, 798 So.2d 809, 810 (Fla. 4th DCA 2001). Detective Mejdoub's testimony violated that prohibition. *Id.* at 810. Violation of the prohibition "is especially harmful where the vouching witness is a police officer because of the great weight afforded an officer's testimony. *Id*; accord *Tumblin v. State*, 29 So.3d 1093, 1101-1102 (Fla. 2010); *Salomon v. State*, 267

So.3d 25, 32 (Fla. 4th DCA 2019). Accordingly, the trial court abused its discretion by allowing the detective's testimony. Improperly allowing a law enforcement to vouch for the credibility of a civilian witness is subject to harmless error analysis. See *Salomon*, 267 So.3d at 32.

The [harmless error] test is not a sufficiency-of-the-evidence, a correct result, a not clearly wrong, a substantial evidence, a more probable than not, a clear and convincing, or even an overwhelming evidence test. Harmless error is not a device for the appellate court to substitute itself for the trier-of-fact by simply weighing the evidence. The focus is on the effect of the error on the trier-of-fact. The question is whether there is a reasonable possibility that the error affected the verdict. The burden to show the error was harmless must remain on the state. If the appellate court cannot say beyond a reasonable doubt that the error did not affect the verdict, then the error is by definition harmful.

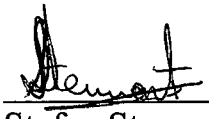
State v. DiGuilio, 491 So.2d 1129, 1139 (Fla. 1986); accord *Cooper v. State*, 43 So.3d 42, 43 (Fla. 2010)(harmless error analysis is not a strong evidence test). Due to the significance of Mr. Morrison's testimony the jury would have taken it into consideration in reaching a verdict. In that situation it was a paramount importance that the jury be afforded the opportunity to evaluate Mr. Morrison's credibility uninfluenced by impropriety. It cannot be said beyond a reasonable doubt that there is no reasonable possibility the error affected the verdict. The Due

Process Clause of the Fourteenth Amendment to the United States Constitution guarantees the accused the right to a fair trial. *Cochran v. State*, 925 So.2d 370, 373 (Fla. 5th DCA 2006). The instant error infringed upon appellant's fair trial right. Accordingly, reversal and remand for a new trial is required.

CONCLUSION

The petition for Writ of Certiorari should be granted.

Respectfully Submitted,



Stefan Stewart

Dated: April 21, 2020.