

No.

---

IN THE  
**SUPREME COURT OF THE UNITED STATES**

---

DALE CHESTER HOLCOMBE,  
*Petitioner,*

v.

STATE OF FLORIDA  
Respondent.

---

On the Petition for Writ of Certiorari  
To the Florida Fifth District Court of Appeal

---

**APPENDIX TO PETITION FOR WRIT OF CERTIORARI**

CRYSTAL MCBEE FRUSCIANTE  
Frusciante Law Firm, P.A.  
11110 West Oakland Park Blvd.  
Suite 388  
Sunrise, Florida 33351  
(954) 551-2350  
FL Bar No. 802158  
Email: [crystal@frusciantelaw.com](mailto:crystal@frusciantelaw.com)

COUNSEL FOR THE PETITIONER

## TABLE OF CONTENTS

<b>Document</b>	<b>Page</b>
1. March 24, 2020, opinion of the Florida Fifth District Court of Appeal.....	A-3
2. April 24, 2020, order denying rehearing.....	A-4
3. October 22, 2018, Judgment and Sentence of the Florida Seventh Judicial Circuit Court.....	A-5

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

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

DALE CHESTER HOLCOMBE,

Appellant,

v.

Case No. 5D18-3339

STATE OF FLORIDA,

Appellee.

/

Decision filed March 24, 2020

Appeal from the Circuit Court  
for Volusia County,  
James R. Clayton, Judge.

Aaron D. Delgado, of Delgado & Romanik,  
PLLC, Daytona Beach, for Appellant.

Ashley Moody, Attorney General,  
Tallahassee, and L. Charlene Matthews,  
Assistant Attorney General, Daytona  
Beach, for Appellee.

PER CURIAM.

AFFIRMED.

EVANDER, C.J., SASSO and TRAVER, JJ., concur.

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

DALE CHESTER  
HOLCOMBE,

Appellant,

v.

CASE NO. 5D18-3339

STATE OF FLORIDA,

Appellee.

/

DATE: April 24, 2020

**BY ORDER OF THE COURT:**

ORDERED that Appellant's Motion for Rehearing and Motion for Issuance of a Written Opinion, filed April 8, 2020, is denied.

*I hereby certify that the foregoing is  
(a true copy of) the original Court order.*



*Sandra B. Williams*

SANDRA B. WILLIAMS, CLERK

Panel: Judges Evander, Sasso, and Traver

cc:

Aaron David Delgado

L. Charlene Matthews

Office of the Attorney  
General

- Probation Violator
- Community Control Violator
- Retrial
- Resentence

STATE OF FLORIDA

v.

DALE C HOLCOMBE

In the Circuit Court, 7th Judicial Circuit  
in and for Volusia County, Florida  
Division CRIMINAL 07  
Case Number 2015 103534 CFDL

## JUDGMENT

The defendant, DALE C HOLCOMBE, being personally before this court represented by AARON D DELGADO, the attorney of record, and the state represented by {SAO}, and having

- been tried and found guilty by jury of the following crime(s)
- entered a plea of guilty to the following crime(s)
- entered a plea of nolo contendere to the following crime(s)

Count	Crime	Offense Statute Number(s)	Degree of Crime	Case Number	OBTS Number
1	RACKETEERING VIOLATION	895.03	F/F	2015 103534 CFDL	6405025848
2	CONSPIRACY TO COMMIT RACKETEERING	895.03(4)	F/F	2015 103534 CFDL	6405025848

- and no cause being shown why the defendant should not be adjudicated guilty, **IT IS ORDERED THAT** the defendant is hereby **ADJUDICATED GUILTY** of the above crime(s)
- and good cause being shown; **IT IS ORDERED THAT ADJUDICATION OF GUILT BE WITHHELD.**
- and having been convicted or found guilty of, or having entered a plea of nolo contendere or guilty, regardless of adjudication, to an offense specified in section 943.325, Florida Statutes, the defendant shall be required to submit blood or other biological specimens.

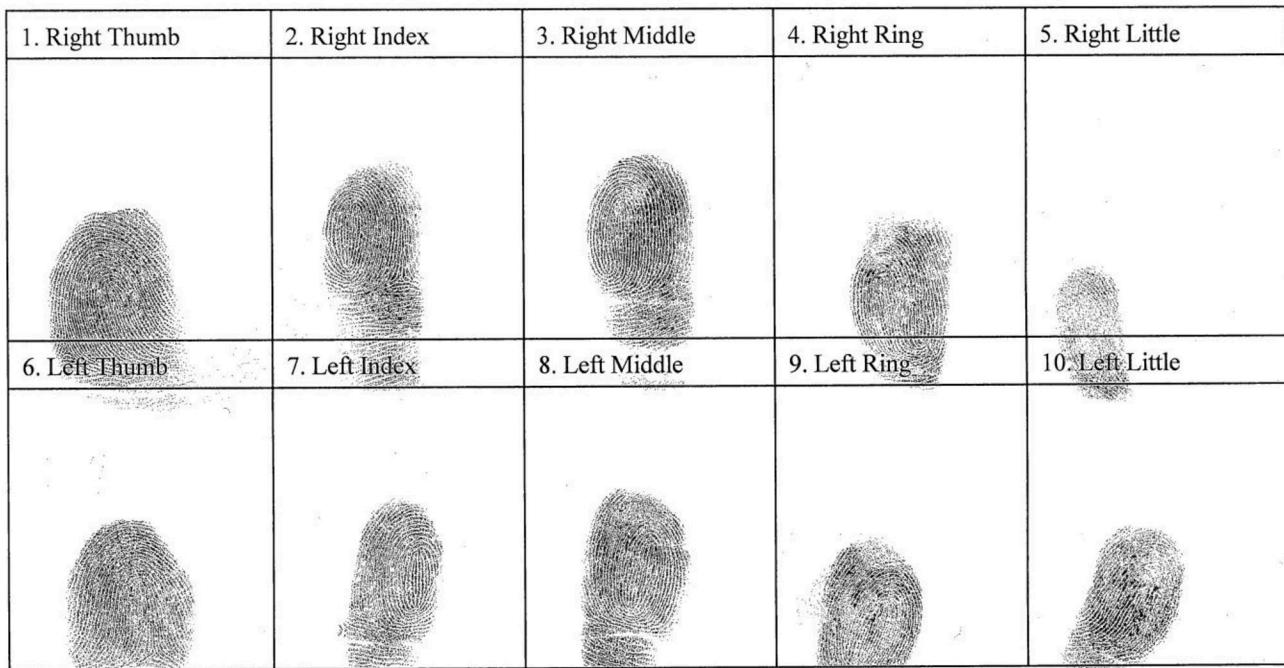
STATE OF FLORIDA

v.

DALE C HOLCOMBE

Case Number 2015 103534 CFDL

**FINGERPRINTS OF DEFENDANT**



Fingerprints taken by:



Name

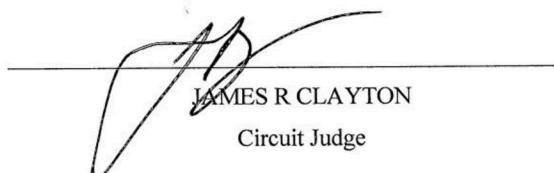
Deputy Sheriff

Title

I HEREBY CERTIFY that the above and foregoing are the fingerprints of the defendant DALE C HOLCOMBE and that they were placed thereon by the defendant in my presence in open court this date.

Defendant's Social Security No./Reason for absence: \_\_\_\_\_

DONE AND ORDERED in open court in Volusia County, Florida this 22 day of October, 2018.

  
JAMES R CLAYTON  
Circuit Judge

**SENTENCE**( As to Count 1 )

The defendant, being personally before this court, accompanied by the defendant's attorney of record, AARON D DELGADO, and having been adjudicated guilty herein, 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

**(Check one if applicable.)**

- and the Court having on \_\_\_\_\_ deferred imposition of sentence until this date
- and the Court having previously entered a judgment in this case on \_\_\_\_\_ now resentences the defendant
- and the Court having placed the defendant on probation/community control and having subsequently revoked the defendant's probation/community control.

**It is The Sentence Of The Court that:**

- The defendant pay a fine of \$ \_\_\_\_\_, pursuant to section 775.083, Florida Statutes, plus \$ \_\_\_\_\_ as the 5% surcharge required by section 938.04, Florida Statutes.
- The defendant is hereby committed to the custody of the Department of Corrections.
- The defendant is hereby committed to the custody of the Sheriff of Volusia County, Florida.
- The defendant is sentenced as a youthful offender in accordance with section 958.04, Florida statutes.

**To Be Imprisoned (Check One; unmarked sections are inapplicable.):**

- For a term of natural life.
- For a term of 55.5 MONTHS.
- Said SENTENCE SUSPENDED for a period of \_\_\_\_\_ subject to conditions set forth in this order.

**If "split" sentence, complete the appropriate paragraph.**

- Followed by a period of \_\_\_\_\_ on probation under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a separate order entered herein.
- However, after serving a period of \_\_\_\_\_ imprisonment in \_\_\_\_\_, the balance of the sentence shall be suspended and the defendant shall be placed on probation for a period of \_\_\_\_\_ under supervision of the Department of Corrections according to the terms and conditions of probation/community control set forth in a separate order entered herein.

In the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the defendant begins service of the supervision terms.

**SPECIAL PROVISIONS ( As to Count 1 )**

<b>Mandatory/Minimum Provisions:</b>		By appropriate notation, the following provisions apply to the sentence imposed:
Firearm	<input type="checkbox"/>	It is further ordered that the 3-year minimum imprisonment provisions of §775.087(2), Florida Statutes, is hereby imposed for the sentence specified in this count.
Drug Trafficking	<input type="checkbox"/>	It is further ordered that the _____ mandatory minimum imprisonment provisions of §893.135(1), Florida Statutes, is hereby imposed for the sentence specified in this count.
Controlled Substance Within 1,000 Feet of School	<input type="checkbox"/>	It is further ordered that the 3-year minimum imprisonment provisions of §893.13(1)(c)1, Florida Statutes, is hereby imposed for the sentence specified in this count.
Habitual Felony Offender	<input type="checkbox"/>	The defendant is adjudicated a habitual felony offender and has been sentenced to an extended term in accordance with the provisions of §775.084(4)(a), Florida Statutes. The requisite findings by the court are set forth in a separate order or stated on the record in open court.
Habitual Violent Felony Offender	<input type="checkbox"/>	The defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in accordance with the provisions of §775.084(4)(b), Florida Statutes. A minimum term of _____ year(s) must be served prior to release. The requisite findings of the court are set forth in a separate order or stated on the record in open court.
Three-time Violent Felony Offender	<input type="checkbox"/>	The defendant is adjudicated a three-time violent felony offender and has been sentenced to an extended term in accordance with the provisions of §775.084(4)(c), Florida Statutes. It is further ordered that the _____ year mandatory minimum imprisonment provisions of s. 775.084(4)(c) is hereby imposed for the sentence specified in this count. The requisite findings of the court are set forth in a separate order or stated on the record in open court. The defendant shall be released only by expiration of sentence and shall not be eligible for parole, control release, or any form of early release.
Violent Career Criminal	<input type="checkbox"/>	The defendant is adjudicated a violent career criminal and has been sentenced to an extended term in accordance with the provisions of §775.084(4)(d), Florida Statutes. A minimum term of _____ years must be served prior to release. The requisite findings of the court are set forth in a separate order or stated on the record in open court. The defendant is not eligible for any form of discretionary early release, other than pardon or executive clemency, or conditional medical release pursuant to s. 947.149, Florida Statutes.
Law Enforcement Protection Act	<input type="checkbox"/>	It is further ordered that the defendant shall serve a minimum of _____ years before release in accordance with §775.0823, Florida Statutes.
Capital Offense	<input type="checkbox"/>	First Degree Murder <u>Prior to</u> 05/25/94 and Other Capital Felonies <u>Prior to</u> 10/01/95. It is further ordered that the defendant shall serve no less than 25 years in accordance with the provisions of §775.082(1), Florida Statutes.
	<input type="checkbox"/>	First Degree Murder <u>After</u> 05/25/94 and Other Capital Felonies <u>After</u> 10/01/95. It is further ordered that the defendant shall be ineligible for parole in accordance with the provisions of §775.082(1), Florida Statutes.
Short-Barreled Rifle Shotgun, Machine Gun	<input type="checkbox"/>	It is further ordered that the 5-year minimum provisions of §790.221(2), Florida Statutes, are hereby imposed for the sentence specified in this count.
Continuing Criminal Enterprise	<input type="checkbox"/>	It is further ordered that the 25-year minimum sentence provisions of §893.20, Florida Statutes, are hereby imposed for the sentence specified in the count.
Dangerous Sexual Felony Offender	<input type="checkbox"/>	The defendant is adjudicated a dangerous sexual felony offender. This finding of the court was stated in open court or set forth in a separate order. A minimum term of _____ years must be served prior to release in accordance with §794.015(2)(e), Florida Statutes. The defendant is not eligible for gain-time or any form of discretionary early release, other than pardon, executive clemency or conditional medical release, before serving the minimum sentence.
Sexual Offender	<input type="checkbox"/>	It is further ordered that the defendant shall register as a sexual offender pursuant to §943.0435, Florida Statutes.

**SENTENCE**( As to Count 2 )

The defendant, being personally before this court, accompanied by the defendant's attorney of record, AARON D DELGADO, and having been adjudicated guilty herein, 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

**(Check one if applicable.)**

- and the Court having on \_\_\_\_\_ deferred imposition of sentence until this date
- and the Court having previously entered a judgment in this case on \_\_\_\_\_ now resentences the defendant
- and the Court having placed the defendant on probation/community control and having subsequently revoked the defendant's probation/community control.

**It is The Sentence Of The Court that:**

- The defendant pay a fine of \$ \_\_\_\_\_, pursuant to section 775.083, Florida Statutes, plus \$ \_\_\_\_\_ as the 5% surcharge required by section 938.04, Florida Statutes.
- The defendant is hereby committed to the custody of the Department of Corrections.
- The defendant is hereby committed to the custody of the Sheriff of Volusia County, Florida.
- The defendant is sentenced as a youthful offender in accordance with section 958.04, Florida statutes.

**To Be Imprisoned (Check One; unmarked sections are inapplicable.):**

- For a term of natural life.
- For a term of 55.5 MONTHS.
- Said SENTENCE SUSPENDED for a period of \_\_\_\_\_ subject to conditions set forth in this order.

**If "split" sentence, complete the appropriate paragraph.**

- Followed by a period of \_\_\_\_\_ on probation under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a separate order entered herein.
- However, after serving a period of \_\_\_\_\_ imprisonment in \_\_\_\_\_, the balance of the sentence shall be suspended and the defendant shall be placed on probation for a period of \_\_\_\_\_ under supervision of the Department of Corrections according to the terms and conditions of probation/community control set forth in a separate order entered herein.

In the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the defendant begins service of the supervision terms.

**SPECIAL PROVISIONS ( As to Count 2 )**

<b>Mandatory/Minimum Provisions:</b>		By appropriate notation, the following provisions apply to the sentence imposed:
Firearm	<input type="checkbox"/>	It is further ordered that the 3-year minimum imprisonment provisions of §775.087(2), Florida Statutes, is hereby imposed for the sentence specified in this count.
Drug Trafficking	<input type="checkbox"/>	It is further ordered that the _____ mandatory minimum imprisonment provisions of §893.135(1), Florida Statutes, is hereby imposed for the sentence specified in this count.
Controlled Substance Within 1,000 Feet of School	<input type="checkbox"/>	It is further ordered that the 3-year minimum imprisonment provisions of §893.13(1)(c)1, Florida Statutes, is hereby imposed for the sentence specified in this count.
Habitual Felony Offender	<input type="checkbox"/>	The defendant is adjudicated a habitual felony offender and has been sentenced to an extended term in accordance with the provisions of §775.084(4)(a), Florida Statutes. The requisite findings by the court are set forth in a separate order or stated on the record in open court.
Habitual Violent Felony Offender	<input type="checkbox"/>	The defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in accordance with the provisions of §775.084(4)(b), Florida Statutes. A minimum term of _____ year(s) must be served prior to release. The requisite findings of the court are set forth in a separate order or stated on the record in open court.
Three-time Violent Felony Offender	<input type="checkbox"/>	The defendant is adjudicated a three-time violent felony offender and has been sentenced to an extended term in accordance with the provisions of §775.084(4)(c), Florida Statutes. It is further ordered that the _____ year mandatory minimum imprisonment provisions of s. 775.084(4)(c) is hereby imposed for the sentence specified in this count. The requisite findings of the court are set forth in a separate order or stated on the record in open court. The defendant shall be released only by expiration of sentence and shall not be eligible for parole, control release, or any form of early release.
Violent Career Criminal	<input type="checkbox"/>	The defendant is adjudicated a violent career criminal and has been sentenced to an extended term in accordance with the provisions of §775.084(4)(d), Florida Statutes. A minimum term of _____ years must be served prior to release. The requisite findings of the court are set forth in a separate order or stated on the record in open court. The defendant is not eligible for any form of discretionary early release, other than pardon or executive clemency, or conditional medical release pursuant to s. 947.149, Florida Statutes.
Law Enforcement Protection Act	<input type="checkbox"/>	It is further ordered that the defendant shall serve a minimum of _____ years before release in accordance with §775.0823, Florida Statutes.
Capital Offense	<input type="checkbox"/>	First Degree Murder <b>Prior to</b> 05/25/94 and Other Capital Felonies <b>Prior to</b> 10/01/95. It is further ordered that the defendant shall serve no less than 25 years in accordance with the provisions of §775.082(1), Florida Statutes.
	<input type="checkbox"/>	First Degree Murder <b>After</b> 05/25/94 and Other Capital Felonies <b>After</b> 10/01/95. It is further ordered that the defendant shall be ineligible for parole in accordance with the provisions of §775.082(1), Florida Statutes.
Short-Barreled Rifle Shotgun, Machine Gun	<input type="checkbox"/>	It is further ordered that the 5-year minimum provisions of §790.221(2), Florida Statutes, are hereby imposed for the sentence specified in this count.
Continuing Criminal Enterprise	<input type="checkbox"/>	It is further ordered that the 25-year minimum sentence provisions of §893.20, Florida Statutes, are hereby imposed for the sentence specified in the count.
Dangerous Sexual Felony Offender	<input type="checkbox"/>	The defendant is adjudicated a dangerous sexual felony offender. This finding of the court was stated in open court or set forth in a separate order. A minimum term of _____ years must be served prior to release in accordance with §794.015(2)(e), Florida Statutes. The defendant is not eligible for gain-time or any form of discretionary early release, other than pardon, executive clemency or conditional medical release, before serving the minimum sentence.
Sexual Offender	<input type="checkbox"/>	It is further ordered that the defendant shall register as a sexual offender pursuant to §943.0435, Florida Statutes.

**Mandatory/Minimum Provisions Continued:**

Sexual Predator  It is further ordered that the defendant is found to be a sexual predator pursuant to §775.21, Florida Statutes. This finding by the court is set forth in a separate order.

Prison Releasee Reoffender:  The defendant is adjudicated a prison releasee reoffender and has been sentenced to an extended term in accordance with §775.082(9)b, Florida Statutes. The defendant must serve 100 percent of this sentence and shall not be eligible for parole, control release, or any form of early release.

Firearm 10-20-Life:  It is further ordered that the defendant shall serve a minimum of 10 years before release in accordance with §775.087(2)(a1), Florida Statutes. The defendant is not eligible for statutory gain-time under §944.275, Florida Statutes, or any form of discretionary early release prior to serving the minimum sentence.

Possess  It is further ordered that the defendant shall serve a minimum of 10 years before release in accordance with §775.087(2)(a1), Florida Statutes. The defendant is not eligible for statutory gain-time under §944.275, Florida Statutes, or any form of discretionary early release prior to serving the minimum sentence.

Discharge  It is further ordered that the defendant shall serve a minimum of 20 years before release in accordance with §775.087(2)(a2), Florida Statutes. The defendant is not eligible for statutory gain-time under §944.275, Florida Statutes, or any form of discretionary early release prior to serving the minimum sentence.

Death or Great Bodily Harm  It is further ordered that the defendant shall serve a minimum of 25 years before release in accordance with §775.087(2)(a3), Florida Statutes. The defendant is not eligible for statutory gain-time under §944.275, Florida Statutes, or any form of discretionary early release prior to serving the minimum sentence.

**Other Provisions**

Retention of Jurisdiction  The court retains jurisdiction over the defendant pursuant to section 947.16(4), Florida Statutes (1983).

Jail Credit  It is further ordered that the defendant shall be allowed a total of 2 days as credit for time incarcerated before imposition of this sentence.

**CREDIT FOR TIME SERVED IN RESENTENCING AFTER  
VIOLATION OF PROBATION OR COMMUNITY CONTROL**

It is further ordered that the defendant be allowed \_\_\_\_\_ total days time served (Jail Credit) between the original date of arrest and this sentencing. This includes Jail time served from original arrest to release to probation or community control as well as, VOP arrest to resentencing. No duplicate credit shall be given. The Department of Corrections shall compute and apply credit for time served in state prison and unforfeited gain time previously awarded on case/count \_\_\_\_\_.

**(Offenses committed before October 1, 1989)**

It is further ordered that the defendant be allowed \_\_\_\_\_ total days time served (Jail Credit) between the original date of arrest and this sentencing. This includes Jail time served from original arrest to release to probation or community control as well as, VOP arrest to resentencing. No duplicate credit shall be given. The Department of Corrections shall compute and apply credit for time served in state prison and unforfeited gain time previously awarded on case/count \_\_\_\_\_.

**(Offenses committed between October 1, 1989 and December 31, 1993)**

The Court deems the unforfeited gain time previously awarded on the above case/count forfeited under Section 948.06(7).

The Court allows unforfeited gain time previously awarded on the above case/count. (Gain time may be subject to forfeiture by the Department of Corrections under Section 944.28(1)).

It is further ordered that the defendant be allowed \_\_\_\_\_ total days time served (Jail Credit) between the original date of arrest and this sentencing. This includes Jail time served from original arrest to release to probation or community control as well as, VOP arrest to resentencing. No duplicate credit shall be given. The Department of Corrections shall compute and apply credit for time served in state prison only pursuant to section 921.0017, Florida Statutes, on case/count \_\_\_\_\_.

**(Offenses committed on or after January 1, 1994)**

**Other Provisions, continued:**

Consecutive/Concurrent  
As to Other Counts



It is further ordered that the sentence imposed for this count \_\_\_\_\_ shall run  
(check one) \_\_\_\_\_ consecutive to \_\_\_\_\_ concurrent  
with the sentence set forth in count \_\_\_\_\_ of this case.

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

(Check one) \_\_\_\_\_ consecutive to X concurrent with the following:  
(check one)

any active sentence being served.

specific sentences:

In the event the above sentence is to the Department of Corrections, the Sheriff of Volusia 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 notice of appeal within 30 days from this date with the clerk of this 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.

In imposing the above sentence, the court further recommends:

DONE AND ORDERED in open court at Volusia County, Florida, this 22 day of October, 2018.

10/24/2018 11:34 AM  
  
e-Signed 10/24/2018 11:34 AM

---

JAMES R CLAYTON

Circuit Judge

**COPIES TO:**

Counsel for the state: **eService**

Counsel for the defendant: **US Mail**

I do certify that a copy hereof has been furnished to counsel for the state and the defendant by the method indicated above, done this 24 day of October, 2018.



Laura E. Roth

CLERK OF CIRCUIT COURT

10/24/2018 12:32 PM 2015 103534 CFDL

10/24/2018 12:32 PM 2015 103534 CFDL

10/24/2018 12:32 PM 2015 103534 CFDL

BY: Casey L. Beason

eSigned: 10/24/2018 12:32 PM 2015 103534 CFDL

*Casey L. Beason*