

No. \_\_\_\_\_

---

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

---

LUKE EDWARD FLEMING,  
*Petitioner,*

v.

STATE OF FLORIDA,  
*Respondent.*

---

**On Petition for Writ of Certiorari  
to the Florida Second District Court of Appeal**

---

**APPENDIX TO PETITION FOR WRIT OF CERTIORARI**

---

MICHAEL UFFERMAN  
Michael Ufferman Law Firm, P.A.  
2022-1 Raymond Diehl Road  
Tallahassee, Florida 32308  
(850) 386-2345/fax (850) 224-2340  
FL Bar No. 114227  
Email: ufferman@uffermanlaw.com

COUNSEL FOR THE PETITIONER

## TABLE OF CONTENTS

Document	Page
1. March 10, 2021, opinion of the Florida Second District Court of Appeal . .	A-3
2. February 27, 2020, Judgment and Sentence of the Florida Twelfth Judicial Circuit. . . . .	A-4

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING  
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

LUKE EDWARD FLEMING,	)	
	)	
Appellant,	)	
	)	
v.	)	Case No. 2D20-768
	)	
STATE OF FLORIDA,	)	
	)	
Appellee.	)	
_____	)	

Opinion filed March 10, 2021.

Appeal from the Circuit Court for  
Sarasota County; Charles E. Roberts,  
Judge.

Howard L. Dimmig, II, Public Defender,  
and Clayton R. Kaeiser, Special  
Assistant Public Defender, Bartow, for  
Appellant.

Ashley Moody, Attorney General,  
Tallahassee, and Jonathan P. Hurley,  
Assistant Attorney General, Tampa, for  
Appellee.

PER CURIAM.

Affirmed.

LaROSE, ROTHSTEIN-YOUAKIM, and STARGEL, JJ., Concur.

- ☒ IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT IN AND FOR SARASOTA COUNTY, FLORIDA  
☐ IN THE COUNTY COURT IN AND FOR SARASOTA COUNTY, FLORIDA

STATE OF FLORIDA  
 PLAINTIFF  
 - VS -

LUKE EDWARD FLEMING  
 DEFENDANT

CASE NUMBER: 2018 CF 014305 NC

CERTIFICATE OF SERVICE  
 I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail/hand delivery to the  
☒ State Attorney ☐ County Probation ☐ Defendant  
☒ Defense Attorney A. Borghetti  
 Witness my hand and official seal this 27 day  
 of February, 20 20  
 KAREN E. RUSHING, CLERK OF THE CIRCUIT COURT  
K. Rushing, Deputy Clerk



### JUDGMENT

- ☐ Probation Violator ☐ Community Control Violator ☐ Retrial ☐ Resentence

The Defendant, being personally before this Court represented by ANNE BORGHETTI, the attorney of record and the State represented by KAREN FRAIVILLIG/ART JACKMAN and having:

- ☒ Been tried and found GUILTY by jury/by court of the following crime(s)  
☐ Entered a plea of GUILTY to the following crime(s)  
☐ Entered as plea of NOLO CONTENDERE to the following crime(s)  
☐ Been found NOT GUILTY

RECORDED IN OFFICIAL RECORDS  
 INSTRUMENT # 2020028962 2 PG(S)

2/28/2020 4:40 PM

KAREN E. RUSHING  
 CLERK OF THE CIRCUIT COURT  
 SARASOTA COUNTY, FLORIDA

CRIMINAL  
 COURTS

Receipt # 2488557

COUNT	CRIME	OFFENSE STATUTE NUMBERS	DEGREE OF CRIMES	OBTS NUMBER
1	MURDER IN THE FIRST DEGREE	782.04(1)(A)	FIRST DEGREE FELONY - PUNISHABLE BY LIFE	5801258329
2	SEX ASSLT-WITH WEAPON SEXUAL BATTERY VICTIM OVER 12 YOA	794.011(3)	LIFE FELONY	5801258329

(Check If Applicable)

- ☒ 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 having been convicted or found guilty of, or having entered a plea of NOLO CONTENDERE or GUILTY, regardless of adjudication, to attempts, or offenses relating to sexual battery (ch. 794), lewd and lascivious conduct (ch. 800), or murder (\$782.04), aggravated battery (\$784.045), carjacking (\$812.133), or home invasion robbery (\$812.135), or any other offense specified in section 943.325, the Defendant shall be required to submit blood specimens.  
☐ And good cause being shown; IT IS ORDERED THAT ADJUDICATION OF GUILTY BE WITHHELD.

Pursuant to the provisions of §960.29-960.293, Florida Statutes, a lien is hereby imposed in favor of the State of Florida and/or Sarasota County as follows:

- ☐ Defendant was convicted for an offense other than a capital or life felony. This lien is for liquidated damages in the amount of fifty dollars (\$50/00) per day of the defendant's sentence.  
☐ Defendant was convicted for a capital or life felony. This lien is for liquidated damages in the amount of two hundred and fifty thousand dollars (\$ 250,000.00).

ALL LIQUIDATED DAMAGE SUMS BEAR INTEREST AT THE RATE SET FORTH IN §55.03, FLORIDA STATUTES

DONE AND ORDERED in open court at Sarasota, Florida on the 27<sup>TH</sup> day of February, 2020.

CIRCUIT JUDGE CHARLES E. ROBERTS

☒ IN THE CIRCUIT COURT OF THE TWELTH JUDICIAL CIRCUIT IN AND FOR SARASOTA COUNTY FLORIDA

☐ IN THE COUNTY COURT IN AND FOR SARASOTA COUNTY, FLORIDA

CASE NUMBER: 2018 CF 014305 NC

STATE OF FLORIDA











PLAINTIFF

- VS -

LUKE EDWARD FLEMING ✓

DEFENDANT

**FINGERPRINTS OF DEFENDANT**

1. RIGHT THUMB	2. RIGHT INDEX	3. RIGHT MIDDLE	4. RIGHT RING	5. RIGHT LITTLE
				
6. LEFT THUMB	7. LEFT INDEX	8. LEFT MIDDLE	9. LEFT RING	10. LEFT LITTLE
				

Fingerprints taken by: T. Tracy #1220 Deputy  
NAME TITLE

I HEREBY CERTIFY that the above and foregoing are the finger prints of the defendant, **LUKE EDWARD FLEMING**, and that they were placed thereon by the defendant in my presence in open court this date.

DONE AND ORDERED in open court in Sarasota County, FL, this 27 day of Feb., 2020



JUDGE CHARLES E ROBERTS

✓

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT IN  
AND FOR SARASOTA COUNTY, FLORIDA

CASE NUMBER: 2018 CF 014305 NC

OBTS NUMBER: 5801258329

STATE OF FLORIDA

VS

LUKE EDWARD FLEMING

**SENTENCE AND SPECIAL PROVISIONS**

**SENTENCE**

As To Count 1 - 2

The Defendant, being personally before this Court, accompanied by the Defendant's attorney of record, ANNE FRANCES BORGHETTI, 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  
of applicable)

- ☐ and the Court having on deferred imposition sentence until this date
- ☐ and the Court having previously entered a judgment in this case on now resentsences the Defendant.
- ☐ And the Court having placed the Defendant on ☐ probation ☐ community control and having subsequently revoked and terminated 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 Sarasota 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 **LIFE**
- ☐ Said SENTENCE SUSPENDED for a period of subject to conditions set forth in the Order

If "split" sentence, complete the appropriate paragraph.

- ☐ Followed by a period of \_\_\_\_\_ on ☐ probation ☐ community control 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 ☐ community control for a period of \_\_\_\_\_ under the 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 - 2

Include all findings, sentencing enhancements, and mandatory minimum provisions, as authorized by law and pronounced at sentencing.

- Retention of Jurisdiction** ☐ The Court retains jurisdiction over the Defendant pursuant to section 947.16(4)(a), Florida Statutes (1983).
- Jail Credit** ☒ It is further ordered that the Defendant shall be allowed a total of **529 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 \_\_\_\_\_ days time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail credit and shall compute and apply credit for time served and unforfeited gain time previously awarded on case/count \_\_\_\_\_. (Offenses committed before October 1, 1989.)
- ☐ It is further ordered that the Defendant be allowed \_\_\_\_\_ days time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail credit and shall compute and apply credit for time served 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 above on the case/count forfeited under section 948.06(7), Florida Statutes.
- ☐ The Court allows unforfeited gain time previously awarded above case/count. (Gain time may be subject to forfeiture by the Department of Corrections under section 944.28(1), Florida Statutes.)
- ☐ It is further ordered that the Defendant be allowed \_\_\_\_\_ days time served between date of arrest as a violator following release from prison to the date of

resentencing. The Department of Corrections shall apply original jail credit and shall compute and apply credit for time served only pursuant to section 921.0017, Florida Statutes, on case/count . (Offenses committed on or after January 1, 1994)

**Consecutive/Concurrent  
as to other Counts**



It is further ordered that the sentence imposed for this count shall run  
☐ consecutive to ☒ concurrent with the sentence set forth in **EACH 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 the Order shall run ☐ consecutive to ☐ 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 Sarasota 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 the 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 thirty (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 indigence.

In imposing the above sentence, the Court further <sup>orders</sup> recommends: **PRE-SENTENCE INVESTIGATION WAIVED – COUNT 2.**

DONE AND ORDERED in open Court at Sarasota County, Florida this 27th day of February, 2020

  
CIRCUIT JUDGE CHARLES E ROBERTS

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail/hand delivery to the  
☒ State Attorney ☐ County Probation ☐ Defendant  
☒ Defense Attorney A. Borghetti

Witness my hand and official seal this 27 day  
of February, 20 20

of AREN E RUSHING, CLERK OF THE CIRCUIT COURT  
KGARZA Deputy Clerk

