

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JAMES DESMOND BOOTH,
Petitioner,

v.

STATE OF FLORIDA
Respondent.

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

**APPENDIX TO
PETITION FOR WRIT OF CERTIORARI**

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COUNSEL FOR THE PETITIONER

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

James Desmond Booth,

Case No.: 5D2024-2807

L.T. No.: 2012-30612-CFAES

Appellant(s),

v.

State of Florida,

Appellee(s).

Date: March 27, 2026

BY ORDER OF THE COURT:

ORDERED that Appellant's "Motion for Rehearing/Issuance of a Written Opinion," filed March 6, 2026, is denied. Further, it is

ORDERED, sua sponte, that oral argument, previously scheduled for April 14, 2026, in the above styled appeal is dispensed with pursuant to Florida Rule of Appellate Procedure 9.320.

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

5D2024-2807 3/27/2026
Sandra B. Williams
SANDRA B. WILLIAMS, CLERK



Panel: Judges Jay, Makar and Kilbane

cc:

Criminal Appeals DAB Attorney General
Michael Robert Ufferman
Alyssa Williams

FIFTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

Case No. 5D2024-2807
LT Case No. 2012-30612-CFAES

JAMES DESMOND BOOTH,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

3.850 Appeal from the Circuit Court for Volusia County.
Randell H. Rowe, III, Judge.

Michael Ufferman, of Michael Ufferman Law Firm, P.A.,
Tallahassee, for Appellant.

James Uthmeier, Attorney General, Tallahassee, and Alyssa M.
Williams, Assistant Attorney General, Daytona Beach, for
Appellee.

February 19, 2026

PER CURIAM.

AFFIRMED.

JAY, C.J., and MAKAR and KILBANE, JJ., concur.

*Not final until disposition of any timely and
authorized motion under Fla. R. App. P. 9.330 or
9.331.*

IN THE
SEVENTH JUDICIAL CIRCUIT COURT
VOLUSIA COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v.

JAMES DESMOND BOOTH,

Defendant.

Case No. 2012-CF-30612

AMENDED MOTION FOR POSTCONVICTION RELIEF¹

The Defendant, by and through undersigned counsel, and pursuant to Florida Rule of Criminal Procedure 3.850, moves this Honorable Court to vacate his judgment, and in support of said motion alleges:

1. Name and location of the court that entered the judgment of conviction under attack:
Seventh Judicial Circuit Court, Volusia County, Florida.
2. Date of judgment: April 21, 2014
3. Length of sentence: life imprisonment for count 1; thirty years' imprisonment for count 2
4. Nature of offenses involved: first-degree murder (count 1); tampering with a witness (count 2)
5. What was your plea? (check only one)
(a) Not Guilty X
(b) Guilty

If you entered one plea to one count, and a different plea to another count, give details: N/A

¹ This motion is amended to include the Defendant's oath, *see Morais v. State*, 640 So. 2d 1227 (Fla. 2d DCA 1994), and footnote 2. *See Graham v. State*, 846 So. 2d 617, 618 (Fla. 2d DCA 2003) ("A timely-filed rule 3.850 motion, prior to the trial court's disposition of the motion, may be amended with sworn allegations relevant to the issue or issues raised in the motion, even after the two-year time period for filing a timely rule 3.850 motion has expired.") (citations omitted).

6. Kind of trial: (check only one) Jury
7. Did you testify at the trial or at any pre-trial hearing? Yes
8. Did you appeal from the judgment of conviction?
Yes X No
9. If you did appeal, answer the following:
- (a) Name of court: Fifth District Court of Appeal
- (b) Result: Convictions and sentences affirmed
- (c) Date of result: June 9, 2015 (mandate issued on July 6, 2015)
- (d) Citation (if known): Booth v. State, 166 So. 3d 803 (Fla. 5th DCA 2015)
10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, motions, etc. with respect to this judgment in this court?
Yes No X
11. If your answer to number 10 was "yes," give the following information (applies only to proceedings in this court):
- (a) (1) Nature of the proceeding: N/A
- (2) Grounds raised: N/A
- (3) Did you receive an evidentiary hearing on your petition or motion, etc? N/A
- (4) Result: N/A
- (5) Date of result: N/A
- If you did appeal, answer the following:
- (1) Name of court: N/A
- (2) Result: N/A
- (3) Date of result: N/A
- (4) Citation (if known): N/A

claim is two-pronged: The defendant must show both that trial counsel's performance was deficient and that the defendant was prejudiced by the deficiency." *Bruno v. State*, 807 So. 2d 55, 61 (Fla. 2002) (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)).

Accordingly, defense counsel was ineffective for failing to obtain the Defendant's jail housing records. Counsel's failure fell below the applicable standard of performance. Absent counsel's ineffectiveness in the instant case, the result of the proceeding would have been different and/or counsel's ineffectiveness affected the fairness and reliability of the proceeding, thereby undermining any confidence in the outcome. See *Johnson v. State*, 921 So. 2d 490, 511-12 (Fla. 2005) (Pariente, C.J., specially concurring). The Defendant requests an evidentiary hearing on this claim.

B. Ground 2: Defense counsel rendered ineffective assistance of counsel by objecting the State's effort to remove a juror who was sleeping during the trial.

Defense counsel rendered ineffective assistance of counsel by objecting the State's effort to remove a juror who was sleeping during the trial. As a result, the Defendant was denied his right to effective assistance of counsel in violation of the Sixth Amendment to the United States Constitution and in violation of article I, section 16 of the Florida Constitution.

During the trial, the State brought to the Court's attention that a particular juror (Juror Number 40 from the original panel) had fallen asleep during the trial. Specifically, the State put on the record that the juror was sleeping *during the Defendant's testimony*:

[Y]esterday was an exciting day. There was yelling the courtroom. There were things going on. The defendant's on the stand.
And she's sleeping.

(T-969). Despite the clear record of the juror sleeping – which was also observed by the Court – when the prosecutor moved to remove the juror, defense counsel objected. As a result of defense

counsel's objection, the juror remained on the jury and participated in the deliberations leading to the guilty verdict. Obviously from the standpoint of the defense, the most important testimony during this trial was the Defendant's – wherein the Defendant adamantly denied committing the crimes in this case. Yet a juror was sleeping during this critical testimony.

Defense counsel were ineffective for objecting the removal of the sleeping juror. Had the sleeping juror been properly removed, there is a reasonable probability that the result of the proceeding would have been different (i.e., there would have been deliberations by jurors who all heard all of the testimony – including the Defendant's testimony).

Accordingly, defense counsel rendered ineffective assistance of counsel by objecting the State's effort to remove the sleeping juror.³ Counsel's failure fell below the applicable standard of performance. Absent counsel's ineffectiveness in the instant case, the result of the proceeding would have been different and/or counsel's ineffectiveness affected the fairness and reliability of the proceeding, thereby undermining any confidence in the outcome. *See Johnson*, 921 So. 2d at 511-12 (Pariente, C.J., specially concurring). The Defendant requests an evidentiary hearing on this claim.

C. Ground 3: Defense counsel rendered ineffective assistance of counsel by failing to object to the State's improper "do your duty" closing argument.

Defense counsel rendered ineffective assistance of counsel by failing to object to the State's improper "do your duty" closing argument. As a result, the Defendant was denied his right to effective assistance of counsel in violation of the Sixth Amendment to the United States Constitution and in violation of article I, section 16 of the Florida Constitution.

³ The Defendant continues to rely upon the *Strickland* analysis set forth in Ground 1 above and that analysis is incorporated by reference.

different – even if the outcome would not have changed but for any one particular error. Relief is therefore warranted under these circumstances. *See State v. Gunsby*, 670 So. 2d 920, 924 (Fla. 1996).

15. If the grounds listed in 14 were not previously presented on your direct appeal, give your reason they were not so presented: A claim of ineffective assistance of counsel is generally not cognizable on direct appeal and is properly raised for the first time in a motion for postconviction relief, pursuant to Florida Rule of Criminal Procedure 3.850. *See Kelly v. State*, 486 So. 2d 578, 585 (Fla. 1986).

16. Do you have any petition, application, appeal, motion, etc., now pending in any court, either state or federal, as to the judgment under attack?

Yes ____ No X

17. If your answer to number 16 was “yes,” give the following information:

- (a) Name of Court: N/A
- (b) Nature of the proceeding: N/A
- (c) Grounds raised: N/A
- (d) Status of the proceedings: N/A

18. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein.

- (a) At preliminary hearing: N/A
- (b) At plea hearing: N/A
- (c) At trial: J. Peyton Quarles, 125 Basin Street, Suite 210, Daytona Beach, Florida 32114; William F. Hathaway, 500 Canal Street, New Smyrna Beach, Florida 32168
- (d) At sentencing: Mr. Quarles and Mr. Hathaway
- (e) On appeal: Valarie Linnen, PO Box 330339, Atlantic Beach, Florida 32233-0339
- (f) In any postconviction proceeding: undersigned counsel
- (g) On appeal from any adverse ruling in a post-conviction proceeding: N/A

OATH

Under penalties of perjury and administrative sanctions from the Department of Corrections, including forfeiture of gain time if this motion is found to be frivolous or made in bad faith, I certify that I understand the contents of the foregoing motion, that the facts contained in the motion are true and correct, and that I have a reasonable belief that the motion is timely filed. I certify that this motion does not duplicate previous motions that have been disposed of by the Court. I further certify that I understand English and have read the foregoing motion.



JAMES DESMOND BOOTH

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing instrument has been furnished

to:

Office of the State Attorney
251 North Ridgewood Avenue
Daytona Beach, Florida 32114
Email: ereceipts@sao7.org

by email delivery this 26th day of July, 2017.

Respectfully submitted,

/s/ Michael Ufferman

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Counsel for Defendant **BOOTH**

1 IN THE CIRCUIT OF THE
2 SEVENTH JUDICIAL CIRCUIT
3 IN AND FOR VOLUSIA COUNTY, FLORIDA

4 CASE NO: 2012-CF-30612

5 STATE OF FLORIDA,

6 Plaintiff,

7 vs.

8 JAMES DESMOND BOOTH,

9 Defendant.

10 -----/

11
12
13 TRANSCRIPT OF EVIDENTIARY HEARING
14 BEFORE THE HONORABLE RANDELL H. ROWE, III

15
16
17 DATE: Monday, July 24, 2023

18 TIME: Commencing at 1:30 p.m.

19 LOCATION: Volusia County Courthouse
20 101 Alabama Avenue
 DeLand, Florida 32734

21 TRANSCRIBED BY: Denise y. Meek
22 Court Reporter

23
24 **APEX REPORTING, INC.**
 850-597-5185
25 www.tallycourtreporting.com

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23 ALSO PRESENT:

24 JAMES DESMOND BOOTH
25

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1 name? Is this the right person with the date
2 of birth? She's found her, but she's
3 avoiding her. And I believe there's nothing
4 to the contrary that's been presented to
5 refute that, and in light of that, I believe
6 we meet the statutory exception under the
7 evidence code of Ms. Ward being unavailable,
8 and, therefore, we would ask that you allow
9 us to introduce Exhibit B as a statement
10 against interest.

11 THE COURT: All right. I'll allow you to
12 do that.

13 MR. UFFERMAN: Thank you, Your Honor. At
14 this point, the defense rests.

15 THE COURT: All right. Does the State
16 want to call any witnesses?

17 MR. URBANAK: Yes, Judge. Briefly, I
18 would call Peyton Quarles in regard to
19 Ground 2 in the motion for post-conviction
20 relief.

21 (Witness approaches.)

22 MR. URBANAK: May I inquire, Judge?

23 THE COURT: Yes.

24 JAMES PEYTON QUARLES,
25 having been previously sworn,

1 was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. URBANAK:

4 Q. Good afternoon, sir.

5 A. Good afternoon.

6 Q. Could you please state your entire name
7 and spell your last name.

8 A. James Peyton Quarles, Q-u-a-r-l-e-s.

9 Q. Mr. Quarles, what do you do for a living,
10 sir?

11 A. I'm a lawyer.

12 Q. How long have you been a lawyer?

13 A. Forty-seven, 48 years.

14 Q. And have you practiced criminal law
15 throughout your career as a lawyer?

16 A. I have.

17 Q. Does that include representing
18 individuals on capital homicide cases?

19 A. Yes.

20 Q. Were you actually the attorney for
21 Mr. Booth who is seated in the courtroom here
22 today?

23 A. Yes.

24 Q. Did you represent him at trial with
25 anyone else or was it just you?

1 A. I represented him at trial with William
2 F. Hathaway.

3 Q. And this trial happened all the way back
4 in 2014. Does that sound right?

5 A. It sounds right.

6 Q. It sounds right. A long time ago?

7 A. Yes.

8 Q. Before the hearing today, you and I have
9 had a couple discussions about the grounds that
10 he's alleging in his post-conviction motion,
11 right?

12 A. We have.

13 Q. And did I actually send you -- strike
14 that question.

15 One of the things we talked about was
16 Ground 2, which is in regard to a juror sleeping
17 or appearing to be sleeping during the trial. Do
18 you remember that?

19 A. Yes.

20 Q. Did I actually send you a portion of the
21 trial transcript, I think, last Friday to look
22 at, where there is a -- I want to say an almost
23 15-page discussion about that sleeping juror?

24 A. Yes.

25 Q. Did that help further refresh your memory

1 in regard to that portion of the trial?

2 A. Not really.

3 Q. Not really?

4 A. No.

5 Q. Well, let me ask you this: Do you recall
6 the State moving to strike one of the jurors, who
7 was sleeping on the jury, in the middle of the
8 trial or during the trial?

9 A. I recall that now that I read the
10 transcript.

11 Q. Okay. And do you recall the race of the
12 juror that the State was seeking to strike for
13 sleeping in the courtroom?

14 A. Yes.

15 Q. And what was the race of that juror?

16 A. I don't know what the correct terminology
17 is these days. I guess African American, Black,
18 person of color.

19 Q. And was that the only person of color on
20 the jury?

21 A. Yes.

22 Q. Was it an elderly person as well?

23 A. I think she was.

24 Q. And, of course, your client, Mr. Booth,
25 he is also African American?

1 A. Yes.

2 Q. And you objected -- I think you objected
3 to the State's request to remove that juror.

4 A. Yes.

5 Q. Why did you make that objection, sir?

6 A. Because Mr. Booth and the juror were of
7 the same race. And, typically, I think that it
8 benefits a defendant, especially one of that
9 ethnicity, to have a person of the same race to
10 be on the jury.

11 Q. Is that something -- something you
12 believed as your career moved on, that it was in
13 your client's best interest to have somebody, if
14 they could, of the same race on the jury?

15 A. Yes.

16 Q. And when you made that objection -- or
17 before you made the objection, did you consider
18 the alternatives of whether or not it might be
19 beneficial to remove that juror?

20 A. Only briefly.

21 Q. So your instinct, as a trial attorney,
22 was that: It's in my client's best interest for
23 this juror not to be removed?

24 A. Yes.

25 Q. And do you recall whether or not your

1 co-counsel voiced any disagreement with your
2 decision, or was that a decision that you and him
3 made together?

4 A. I always discuss decisions with
5 Mr. Hathaway when we're trying cases together,
6 which we've done numerous times, and I'm sure we
7 did.

8 MR. URBANAK: Thank you, Mr. Quarles.

9 I have no further questions, Your Honor.

10 THE COURT: All right.

11 MR. PUMPHREY: Can we have one moment,
12 Your Honor?

13 THE COURT: Yeah.

14 (Brief pause.)

15 CROSS-EXAMINATION

16 BY MR. PUMPHREY:

17 Q. Mr. Quarles, good afternoon.

18 A. Good afternoon.

19 MR. PUMPHREY: May it please the Court.

20 BY MR. PUMPHREY:

21 Q. Mr. Quarles, the issue that the State
22 raised about the sleeping juror, that was during
23 Mr. Booth's testimony; is that right?

24 A. I do not recall.

25 Q. Okay. And no trickery here, and I don't

1 think the State will object, this was -- this
2 occurred during Mr. Booth's testimony as opposed
3 to a transcript?

4 MR. PUMPHREY: Does the State stipulate?

5 MR. URBANAK: Judge, I'll stipulate the
6 records, the transcripts are a piece of
7 evidence the Court is taking notice of.

8 THE COURT: Okay.

9 MR. URBANAK: And that's one of the times
10 it was referenced that the juror may have
11 been nodding off, yes.

12 THE COURT: All right.

13 BY MR. PUMPHREY:

14 Q. And, Mr. Quarles, I know this was some
15 time ago. So my apology. I'm just trying to
16 move things along.

17 A. That's okay.

18 Q. Okay. And so you would agree with me
19 that Mr. Booth -- in this particular case, if I
20 understand correctly, the weapon that was found
21 was not tied back to the murder scene; is that
22 right?

23 A. All I remember about the weapon is that
24 they changed the name of the street off of US 1
25 to where we were told it was searched in a

1 waterway area. The street was supposed to be
2 Conner, but they put the street sign upside down
3 in cement and it's now known as Lawn Acres
4 (phonetic).

5 Q. Do you agree?

6 A. That's the most memorable thing about
7 this case.

8 Q. Okay. You would agree Mr. Booth's
9 testimony, though, was critical in the defense
10 case?

11 A. Absolutely.

12 Q. Okay. And you would agree with me that a
13 juror sleeping cannot process or speak up when
14 they go back to deliberations, because they're
15 not aware of the testimony if they're sleeping?

16 A. I agree.

17 Q. And the alternates in this case, were
18 there any African Americans or other alternates,
19 that you discussed with Mr. Booth, as a potential
20 person to take the place of this African American
21 juror?

22 A. I do not remember.

23 Q. Okay. But you would agree with me that
24 regardless of the race of a juror, the most
25 important thing is that the juror is paying

1 attention the entire time?

2 A. I agree.

3 MR. PUMPHREY: No further questions.

4 Thank you, Mr. Quarles.

5 THE COURT: Anything else?

6 MR. URBANAK: No, Your Honor.

7 THE COURT: All right. Mr. Quarles, good
8 to see you.

9 THE WITNESS: Am I excused?

10 THE COURT: Can he be released?

11 MR. URBANAK: Yes, Judge.

12 THE WITNESS: Good seeing you, Judge.

13 Thank you.

14 THE COURT: Does the defense have any
15 objection to him being released?

16 MR. PUMPHREY: No, Your Honor.

17 THE COURT: All right. You're free to
18 go.

19 (Witness excused.)

20 MR. URBANAK: The State would call Ryan
21 Will, Your Honor.

22 (Witness approaches.)

23 MR. URBANAK: May I inquire, Judge?

24 THE COURT: Yes.

25 JOSEPH RYAN WILL,

1 IN THE CIRCUIT COURT, SEVENTH
2 JUDICIAL CIRCUIT, IN AND FOR
VOLUSIA COUNTY, FLORIDA

3 CASE NO.: 2012 30612 CFAES

4 STATE OF FLORIDA

APPEAL TRANSCRIPT

5 vs.

6 JAMES DESMOND BOOTH,

7 Defendant.

8 * * * * *

9 TRANSCRIPT OF PROCEEDINGS
10 JURY TRIAL BEFORE
THE HONORABLE RANDELL H. ROWE, III
11 CIRCUIT COURT JUDGE

12 VOLUME IX of XI
(Pages 964 through 1122)

13 * * * * *

14 DATE TAKEN: THURSDAY, APRIL 17, 2014

15 TIME: COMMENCED AT 9:09 A.M.
CONCLUDED AT 3:32 P.M.

16 PLACE: VOLUSIA COUNTY COURTHOUSE
17 101 NORTH ALABAMA AVENUE
DELAND, FLORIDA 32724

18 REPORTED BY: MARY GRAYBOSCH, RPR, CRR
19 COURT REPORTER AND NOTARY PUBLIC

20 * * * * *

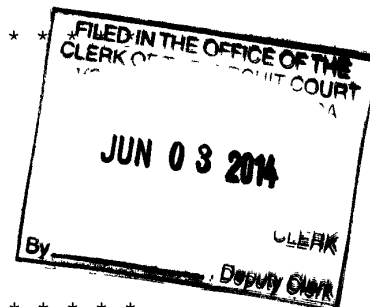
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36

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1 (Continued from Volume VIII.)

2 THE COURT: Morning. Ready to proceed?

3 MR. WILL: Yes, sir. Before the jury comes
4 out, I have a matter I would like to put on the
5 record and a motion to make.

6 It's been bothering me for a couple days, and
7 after -- after yesterday I really think I should
8 say something.

9 With respect to juror number four, juror
10 number 40 from the original panel, Ms. Griffith,
11 I'm not sure how much she's getting of this.

12 You know, to begin with, she looks like she's
13 about 103. She retired in 1959, actually retired
14 in 1959.

15 She had a full career up in New York, nursing
16 prior to that. I'm concerned about her age.

17 Additionally, there have been two occasions
18 this week since we've started the proof where
19 she's been ten to 20 minutes late for court in the
20 morning, and we've had to wait for her to get
21 here.

22 You know, and I recognize that other jurors
23 have been late. Mr. Prosser -- or Juror Prosser
24 just came in ten minutes late.

25 But in combination with all the other things

1 with respect to Ms. Griffith, it's worth noting
2 that she's been late for court.

3 She was seen in the parking lot one day this
4 week talking to one of the witnesses in this case.

5 She had previously been instructed by the
6 Court, as had all jurors, not to talk to
7 witnesses, not to talk to the attorneys.

8 But she's out in the parking lot talking to a
9 witness after that witness had just gotten off the
10 stand.

11 And it's not like it's just any witness.
12 It's a witness who actually committed perjury for
13 the defendant.

14 She was flipped by the State and testified
15 for the State here in trial under threat of
16 prosecution and incarceration for up to 30 years.

17 So it's not like it's just any witness on a
18 routine matter. This is a significant witness
19 that she's out there talking to, who expressed in
20 court that she was displeased with my actions as a
21 prosecutor and that I had threatened her.

22 She continued to talk to that witness after
23 she was told to stop.

24 The next morning she came in to the
25 courthouse, and she addressed the -- that very

1 same issue with one of the attorneys.

2 She -- she approached Ed Davis in the hallway
3 and started to talk to him about why she had been
4 talking to a witness, something that she had been
5 told since day one that it's improper for a lawyer
6 to speak to a juror.

7 She was told several times to stop talking to
8 Mr. Davis. And, eventually, Mr. Davis just walked
9 away from her while she was still talking.

10 Yesterday she's had issues of falling -- she
11 had some serious issues of falling asleep in
12 trial.

13 She's been nodding -- nodding off throughout
14 the proceeding, but yesterday, there were several
15 times where she just flat-out fell asleep.

16 It got so bad at one point that the
17 presentation of evidence needed to be altered to
18 accommodate her sleep schedule here in court.

19 This was the pinnacle of the trial. The
20 defendant was on the stand.

21 We've had several days of testimony. There
22 were -- yesterday was an exciting day. There was
23 yelling in the courtroom. There were things going
24 on. The defendant's on the stand.

25 And she's sleeping.

1 And I have serious questions about her
2 fitness as a juror, generally.

3 Whether or not she's -- she's excused from --
4 from our juror -- from our jury, I would ask that
5 she permanently be excused from jury service.

6 Somebody that isn't able to -- to dedicate
7 themselves to the task should not be on the jury.

8 But, more importantly, I have questions about
9 her qualifications and abilities to do her job in
10 this case specifically.

11 And I would be remiss not to mention it.

12 I provided Defense Counsel and the Court with
13 Ortiz versus State, 835 Southern Second 1250.

14 That essentially says that when a juror is
15 sleeping during the proceedings, that it's within
16 the sound discretion of the trial Court as to
17 whether or not that juror should be removed and an
18 alternate should be substituted.

19 That -- the substitution of a alternate is
20 perfectly permissible because that individual has
21 been duly selected and -- and that a quick
22 substitution would not prejudice the -- the
23 situation.

24 Again, I -- I would just make the motion that
25 she needs to be removed, that we can do it in a

1 tactful manner, that she can continue to sit
2 through the proceedings as alternate number three,
3 a person who we now know probably will not serve
4 given that everyone is here this morning.

5 We can just tell her at the end of the
6 proceedings that she's an alternate, excuse her
7 with the alternates, and allow the first alternate
8 to -- to sit in her place in the jury room.

9 THE COURT: All right. Mr. Will, I'll
10 just -- I feel that I should just remind you about
11 our conversation at the bench yesterday about your
12 reluctance to bring it up because of special
13 concerns.

14 And I just want to throw that out there, that
15 should I grant your motion, those special concerns
16 are not going to go away.

17 MR. WILL: I -- I recognize that, Judge. And
18 I'm sensitive to that issue, but this would be a
19 problem independent of her race.

20 We wouldn't even be talking about it at all
21 if she were not the only black African-American
22 juror on the panel.

23 Had she been any other race, she'd be gone by
24 now. And I need to bring it up to the Court that
25 these are issues, each one of them discrete to

1 their own and worthy of dismissal.

2 And I'm done.

3 THE COURT: Okay. Mr. Quarles, do you wish
4 to respond to the motion?

5 MR. QUARLES: Judge, we oppose her removal.
6 I -- I've -- actually, I guess I have been
7 engrossed in other activities and have not paid
8 any attention and don't know what her demeanor has
9 been.

10 I'm not saying that anybody's misrepresenting
11 what has been going on, including Mr. Will.

12 I know the Court commented yesterday that
13 several times you looked over there, or at least
14 one time the Court looked over there.

15 And it appeared that she was sleeping, but
16 you realized that she was taking notes.

17 So we don't think that there's been any --
18 enough presented to indicate that she is not
19 competent to continue to sit as a juror, and we
20 oppose her removal.

21 THE COURT: Mr. Hathaway, do you have any
22 follow-up comments?

23 MR. HATHAWAY: No, your Honor.

24 THE COURT: All right. I was just looking
25 over the case, which, of course, says that, as you

1 said, whether to remove a sleeping juror and
2 substitute that person with an alternate is within
3 the discretion of the Court.

4 Does Defense Counsel have any other cases
5 they want to cite to in that regard?

6 MR. QUARLES: No, sir.

7 THE COURT: And I don't think there are a lot
8 of cases out there on that. I've had the occasion
9 to research that years before.

10 This is -- I'll say, this is only the second
11 time that I've had to look into this, but it's
12 actually the first time that it's ever been raised
13 as an issue.

14 I believe in my first year on the bench in
15 the civil division, had a slip-and-fall trial.
16 And I noticed a juror sleeping through an expert
17 witness' testimony.

18 And it was one of those that dragged on for
19 hour -- most of the day, actually. And this guy
20 was obviously sleeping.

21 And I kept waiting for the attorneys to say
22 something. I -- I took -- like we did yesterday,
23 I took breaks.

24 I, just as yesterday, said go get some coffee
25 or whatever. We'd come back and the guy would

1 just nod off again.

2 And it surprised me that the attorneys didn't
3 seem to care or notice or whatever.

4 And it bothered me so much that I went and
5 researched it, and I found an old case. And it
6 may have been this Fifth DCA case that's cited
7 here.

8 I don't know, but it was an older case that
9 pretty much said the same thing. It's within the
10 discretion of the Court.

11 It also suggested that if the attorneys
12 didn't raise it, then just go with the flow.
13 Don't worry about it.

14 It was never mentioned by the attorneys.
15 That guy ended up being the foreman of the jury.

16 (Laughter.)

17 THE COURT: Never -- was never raised by any
18 attorneys. And -- but that was the occasion that
19 I had to research it.

20 This is the first time I've had that raised.
21 And, Mr. Will, I think you did exactly the right
22 thing to raise that on the record.

23 So, you know, I would say that if we had a
24 juror who was clearly sleeping through a lot of
25 testimony and who had violated the Court's

1 instructions as we found out yesterday, I would
2 exercise my discretion to remove that person and
3 substitute that person with an alternate.

4 Let's look at Ms. Griffith's situation. I
5 think we all recognized during jury selection that
6 Ms. Griffith is an elderly juror.

7 To me, she appeared tired all through jury
8 selection, which dragged on quite some time.

9 I recall that she was one of only four, I
10 think, who said she'd actually like to do this and
11 volunteered, raised her hand, yeah, I'd like --
12 I'd like to be on the jury.

13 Said it would be interesting and, you know,
14 that was an attraction, I think.

15 I also note that, of the four who
16 volunteered, she was the only one who made it on
17 the jury. The other three were stricken.

18 Nobody challenged her. Nobody did strike
19 her, even though we recognized that she was
20 elderly and appeared tired, so she's on the jury.

21 And I've been concerned every day about
22 whether she was up to the task because this has
23 been dragging on.

24 And it's a tiring, exhausting process for
25 everybody, not just the jurors, but everybody when

1 you have a trial that goes on for days and days,
2 long jury selection.

3 I've been keeping an eye on her. I know
4 she's been coming in late. I think probably she's
5 old, and she's doing the best she can to get here
6 and help us out.

7 I think she's been hanging tough and hanging
8 with it, but I know she's been drowsy. I've seen
9 it.

10 Yesterday, Mr. Davis brought it to my
11 attention that she appeared to be sleeping, which
12 I did not notice at the time, but I -- although I
13 have noticed that she's been tired almost every
14 day, I had not noticed her asleep yet.

15 But Mr. Davis brought it to my attention at
16 the bench yesterday that it appeared to him that
17 she was nodding off and actually had her chin on
18 her chest.

19 So I decided that I was going to keep a close
20 eye on her, which I did. I saw that also, but I
21 also saw her arm moving.

22 And I came to the conclusion that she was
23 taking notes in her lap. She had her chin on her
24 chest, eyes down, looked like she was sleeping,
25 but I saw the arm moving and it looked like she

1 was taking notes in her lap.

2 And the other jurors were not looking at her
3 strange or anything like they were a little bit
4 later, but all those times they weren't looking at
5 her funny like maybe she was, you know, asleep and
6 something was wrong.

7 But as the day dragged on, four o'clock, five
8 o'clock, she started nodding off.

9 The lady next to her -- and I think Mr. Davis
10 had also mentioned that he had noticed this.

11 The lady next to her, I saw that she would
12 kind of discreetly reach over and shake her arm,
13 and Ms. Griffith would come back to life.

14 I -- I didn't want to single her out,
15 embarrass her, but I was watching.

16 I think she nodded off, just momentarily,
17 would wake back up, nodded off again, wake back
18 up.

19 I never saw her sleeping for, like, more than
20 30 seconds or a minute. Maybe I missed it. Maybe
21 you guys did see that, but I didn't see her just
22 outright dozing.

23 But, yes, she was very tired and was nodding
24 off and having a very hard time staying awake.

25 But I -- I did see two or three times the

1 lady next to her kind of shaking her arm, and
2 she'd wake back up and smile.

3 I think she's doing the best she can, but I
4 don't feel like she was significantly sleeping.

5 And I -- I brought up that first incident
6 years ago because, in comparison to the guy that
7 was a sleeping juror, that guy was just taking a
8 nap.

9 But Ms. Griffith is not -- I don't think
10 she's been doing that. I think she's been
11 struggling.

12 I understand how hard it is. I've been tired
13 and I know you guys have been tired.

14 I've been worried about her. I think she's
15 really trying, struggling, but I really can't say
16 I observed her outright dozing or napping.

17 As you recall, late in the day or close to
18 five o'clock, I did finally ask them would you
19 like to take a break, stretch, get some coffee,
20 although there wasn't any coffee available at five
21 o'clock.

22 And then I called you guys up, and I told
23 you, look, she's not going to make it another
24 hour.

25 And so we ended up with Mr. Booth's testimony

1 and then decided to do the rebuttal witnesses this
2 morning, although Mike indicated he heard the
3 jurors saying I wish we could have just gone on
4 and gotten it done last night.

5 But because of her, I didn't want to do that
6 because it seemed to me that she wasn't going to
7 last another 30 minutes or an hour.

8 I recognize the concern, Mr. Will. I think
9 you did right bringing it up, but I don't feel
10 like that she's really been sleeping through
11 significant portions of testimony.

12 Although she has been nodding off, I think
13 she's been awakened a few seconds after she nods
14 off, so I don't feel like she's really been
15 sleeping.

16 As to the violation of the Court's order,
17 Mr. Davis, you -- we discussed that yesterday.

18 And it sounded like you were maybe buying off
19 on what they told you, that they were just waiting
20 for a ride and the witness was talking about her
21 daughter.

22 You said they both kind of said it at the
23 same time, that they weren't talking about the
24 case.

25 And then later Ms. Griffith, again violating

1 the Court's order, tried to tell you I wasn't
2 talking about the case 'cause she was worried
3 about it.

4 So I'm willing to accept that she wasn't
5 talking about the case, but clearly, she forgot,
6 at least forgot, about the Court's order.

7 And, unfortunately, you reminded her and she
8 continued to do it. That's a bad thing. It's
9 very unfortunate.

10 But I have no information that leads me to
11 believe that she was being influenced by that
12 witness regarding any testimony in the trial or
13 anything like that.

14 So at this point I'm going to exercise my
15 discretion under case law and allow her to remain
16 as the sole minority juror on this jury.

17 But I'm going to be watching her throughout
18 the day. And if she just flat-out falls asleep
19 and takes a nap, then I may have to remove her
20 from the jury.

21 So if you guys see that, if you want to call
22 it to my attention, we'll take breaks. I'll maybe
23 get somebody to get her some coffee, do whatever
24 it takes, but for now I'm going to leave her on
25 the jury and deny the motion.

1 MR. WILL: Yes, sir.

2 THE COURT: How many rebuttal witnesses do
3 you have?

4 MR. WILL: One.

5 THE COURT: Mike, bring in the jury.

6 MR. DAVIS: Judge, one separate matter real
7 quick --

8 THE COURT: Yeah.

9 MR. DAVIS: I'm sorry. Just on the record,
10 with regard to Quantah Richardson's testimony, the
11 defense made a motion for mistrial, Quantah making
12 a comment about the fact that that jail recording
13 that was mentioned was not introduced into
14 evidence.

15 Just in light of that, even though
16 Ms. Charles, the prosecutor in that case, told me
17 that it was, I went ahead and called her yesterday
18 after we were through with court.

19 And she made very clear that in the trial
20 last week in front of Judge Case in Daytona Beach,
21 Mr. Richardson's sale-of-cocaine charge, that tape
22 was introduced into evidence over Defense's
23 objection.

24 It was published to the jury during the case
25 in chief and played again to the jury in closing

1 argument. So I just wanted to put that on the
2 record.

3 THE COURT: I had checked into that myself.
4 And that's -- the information that I found out is
5 that it was introduced into evidence by Judge Case
6 in his trial last week.

7 I felt that I should look into that since the
8 attorneys were questioning whether -- well, I
9 think Defense had questioned whether, Mr. Davis,
10 you intentionally tried to impeach that witness
11 with something that you knew was not allowed into
12 evidence in his trial.

13 And so I felt that I had an obligation to
14 check into that. I called Judge Case and asked
15 her.

16 She had a clear memory of it and said yes, it
17 was introduced into evidence.

18 I wasn't going to bring it up unless this
19 came up again, but I didn't want it out there that
20 maybe an attorney had -- or I didn't want it
21 suggested that an attorney had misrepresented
22 something, and so I thought I should verify that.

23 Is there anything Defense wants to raise on
24 that?

25 MR. QUARLES: No, sir.

1 MR. HATHAWAY: No.

2 THE COURT: I mean, since, you know, it was
3 leading to a request for a mistrial and things
4 like that, I -- I thought that we should get to
5 the bottom of it.

6 So, all right then, if there's nothing else,
7 let's bring in the jury and get this done.

8 (The jury entered the courtroom.)

9 THE BAILIFF: Jury is seated, your Honor.

10 THE COURT: All right. Thank you.

11 Good morning, ladies and gentlemen.

12 MEMBERS OF THE JURY: Morning.

13 THE COURT: Good to see you again. As you
14 know, both sides have rested their case.

15 The State is entitled, if they wish, to put
16 on rebuttal testimony. Mr. Will says they have
17 one brief rebuttal witness they'd like to call.

18 So at this time, Mr. Will, if you'll call
19 your witness.

20 MR. WILL: State calls Jerry Betz.

21 (The witness entered the courtroom.)

22 THE COURT: All right. Investigator Betz is
23 still under oath. You can take the witness stand.

24 Mr. Will, you can go ahead and inquire.

25 MR. WILL: Thank you, Judge.

IN THE CIRCUIT COURT,
SEVENTH JUDICIAL CIRCUIT, IN
AND FOR VOLUSIA COUNTY,
FLORIDA

CASE NOS: 2012 030612 CFAES

STATE OF FLORIDA

v.

JAMES DESMOND BOOTH,

Defendant.

/

FILED
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CLERK OF THE CIRCUIT
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**FINAL ORDER DENYING DEFENDANT'S MOTION FOR POST-
CONVICTION RELIEF AFTER EVIDENTIARY HEARING**

THIS MATTER came before this Court upon Defendant's "Amended Motion for Post-Conviction Relief (hereinafter "Amended Motion") and "Amendment to the Defendant's Pending Florida Rule of Criminal Procedure 3.850 Motion" (hereinafter "Amendment") filed by and through counsel on July 26, 2017, and March 18, 2019, pursuant to Florida Rule of Criminal Procedure 3.850, and remand by the Fifth District Court of Appeal's November 5, 2021, decision in *Booth v. State*, 327 So. 3d 968 (Fla. 5th DCA 2021) (Mem). This Court, having reviewed the motions, memoranda, exhibit attachments, State's responses, Defendant's replies, and court file; heard witness testimony and reviewed the written closings for both parties; and being otherwise apprised of the premises, finds as follows:

PROCEDURAL HISTORY

On April 17, 2014, a jury found Defendant, James Desmond Booth, guilty of First Degree Murder (Count I) and Tampering with a Witness (Count II). On April 21, 2014, at the conclusion of the penalty phase, and upon recommendation by the jury, Defendant was sentenced to life imprisonment without the possibility of parole on Count I and 30 years' imprisonment on Count II. James Peyton Quarles, Esq. (hereinafter "Counsel") and William F. Hathaway, Esq. (hereinafter "Mr. Hathaway") represented Defendant at trial and sentencing. The undersigned, Honorable Randell H. Rowe, III, presided over the trial and sentencing.

Defendant timely appealed his conviction and sentence, which was per curiam affirmed. Mandate issued on July 6, 2015. Exactly two years later, on July 6, 2017, Defendant filed his initial motion for post-conviction relief. Defendant subsequently filed the subject Amended Motion and Amendment. Defendant's Amended Motion alleged six grounds of ineffective assistance of counsel and his Amendment added a seventh ground, claiming "newly discovered evidence," contained documents not previously filed in the record.

On April 22, 2020, this Court issued an interim order summarily denying grounds one through six and staying Ground Seven.¹ On January 22, 2021, this Court summarily denied Ground Seven and Defendant's Motion for Post-Conviction Relief in its Final Order Denying Defendant's Motion for Post-Conviction Relief ("Final Order").² Defendant appealed the Final Order, which was affirmed in part and reversed in part, and remanded by the Fifth District Court of Appeal with instructions that an evidentiary hearing be held on grounds Two, Three, Five (in part), Six, and Seven. See *Booth*, 327 So. at 968. An evidentiary hearing was held on these grounds on July 24, 2023. The following parties were present at the evidentiary hearing: Defendant, appearing with counsel Michael Ufferman, Esq. and Donald A. Pumphrey, Jr., Esq.; Andrew J. Urbanak, Esq. Assistant State Attorney. The following individuals testified at the evidentiary hearing: Defendant, James Peyton Quarles, (hereinafter "Counsel"); Joseph Ryan Will, Esq. (hereinafter "Mr. Will"); Monica Jordon (hereinafter "Ms. Jordon"); Michael H. Lambert, Esq. (hereinafter "Mr. Lambert").

¹ Signed by the Honorable James R. Clayton.

² Signed by the Honorable James R. Clayton.

CONCLUSIONS OF LAW

To prevail on an ineffective assistance of counsel claim, Defendant must prove both deficient performance and prejudice. See *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Counsel's "strategic decisions do not constitute ineffective assistance of counsel if alternative courses have been considered and rejected and counsel's decision was reasonable under the norms of professional conduct." *Occhicone v. State*, 768 So. 2d 1037, 1048 (Fla. 2000). Additionally, under the second prong of prejudice, Defendant must show "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694.

ANALYSIS

GROUND TWO

In Ground Two, Defendant alleges Counsel was ineffective during the guilt phase of the trial because Counsel objected to the State's efforts to remove Juror Number 40 ("Juror 40") because she had allegedly fallen asleep during Defendant's testimony.

Counsel, an experienced criminal attorney with approximately forty-seven to forty-eight years' experience, which included representation of accused individuals in capital homicide cases, testified at evidentiary

hearing. See Appendix A-1 (Evidentiary Hearing Tr.) at p. 61. Counsel testified that Juror 40, an elderly person, was the only African American juror. See *id.* at p. 63. Counsel explained that after discussing the issue with Mr. Hathaway and briefly considering other options, Counsel objected to the State's request to remove Juror 40 because Defendant and Juror 40 were both African American, and it was Counsel's opinion that it typically benefited defendants to have individuals of the same ethnicity or race seated on the jury, especially if a defendant was African American. See *id.* at pp. 64-65. Counsel maintained this general opinion throughout his career and testified that he believed it was in Defendant's best interest if Juror 40 remained on the jury. See *id.*

On cross-examination, Counsel testified that he could not recall if the alternate jurors in the case were African Americans but agreed that the most important thing is that a juror is paying attention the entire time. See *id.* at p. 67.

The State stipulated that the trial transcripts are part of the record and that it was referenced that the juror may have been nodding off at one point.

This Court finds Counsel's testimony credible and finds that Defendant fails to establish deficient performance or prejudice. Counsel made a strategic decision when he objected to the State's efforts to remove Juror 40,

the only African American juror, for allegedly sleeping during Defendant's testimony. Counsel did not testify at evidentiary hearing as to whether Juror 40 was actually sleeping and agreed in general terms only that a defendant would be prejudiced if a juror was sleeping through his or her testimony.

This Court further finds that Counsel's objection to the removal of Juror 40 was reasonable in light of Counsel's testimony at the evidentiary hearing and the entirety of the record. The following interchange also took place between this Court, Counsel, and co-counsel Hathaway during the guilt phase of trial:

THE COURT: Okay, Mr. Quarles, do you wish to respond to the motion?

MR. QUARLES: Judge, we oppose her removal. I - - I've - - actually, I guess I have been engrossed in other activities and have not paid any attention and don't know what her demeanor has been.

I'm not saying that anybody's misrepresenting what has been going on, including Mr. Will.

I know the Court commented yesterday that several times you looked over there, or at least one time the Court looked over there.

And it appeared that she was sleeping, but you realized that she was taking notes.

So we don't think that there's been any - - enough presented to indicate that she is not competent to continue to sit as a juror, and we oppose her removal.

THE COURT: Mr. Hathaway, do you have any follow-up comments?

Mr. Hathaway: No, your Honor.

See Appendix B-1 (Trial Tr., "Juror 40" Excerpts) at p. 972, ll. 3-23.

This Court also made a detailed record regarding its observations of whether Juror 40 was actually sleeping:

[THE COURT:] I've been keeping an eye on her. I know she's been coming in late. I think probably she's old, and she's doing the best she can to get here and help us out.

I think she's been hanging tough and hanging with it, but I know she's been drowsy. I've seen it.

Yesterday, Mr. Davis brought it to my attention that she appeared to be sleeping, which I did not notice at the time, but I -- although I have noticed that she's been tired almost every day, I had not noticed her asleep yet.

But Mr. Davis brought it to my attention at the bench yesterday that it appeared to him that she was nodding off and actually had her chin on her chest. So I decided I was going to keep a close eye on her, which I did. I saw that also, *but I also saw her arm moving.*

And I came to the conclusion that she was taking notes in her lap. She had her chin on her chest, eyes down, looked like she was sleeping, but I saw the arm moving and it looked like she was taking notes in her lap.

And the other jurors were not looking at her strange or anything like they were a little bit later, but all those times they weren't looking at her funny like maybe she was, you know asleep and something was wrong.

But as the day dragged on, four o'clock, five o'clock, she started nodding off.

The lady next to her - - and I think Mr. Davis had also mentioned that he had noticed this.

The lady next to her, I saw that she would kind of discreetly reach over and shake her arm and [Juror 40] would come back to life.

. . . I was watching.

I think she nodded off, just momentarily would wake back up, nodded off again, wake back up.

I never saw her sleeping for, like, more than 30 seconds or a minute. Maybe I missed it. Maybe you guys did see that, but *I didn't see her just outright dozing . . .*

I've been worried about her. I think she's really trying, struggling, but *I really can't say I observed her outright dozing or napping.*

As you recall, late in the day or close to five o'clock, I did finally ask them would you like to take a break, stretch, get some coffee, although there wasn't any coffee available at five o'clock.

And then I called you guys up, and I told you, look, she's not going to make it another hour.

And so we ended up with Mr. Booth's testimony and then decided to do the rebuttal witnesses this morning, although Mike indicated he heard the jurors saying I wish we could have just gone on and gotten it done last night.

But because of her, I didn't want to do that because it seemed to me that she wasn't going to last another 30 minutes or an hour.

I recognize the concern, Mr. Will. I think you did right bringing it up, but *I don't feel like she's really been sleeping through significant portions of the testimony.*

Although she has been nodding off, I think she's been awakened a few seconds after she nods off, so I don't feel like she's really been sleeping.

See *id.* at pp. 976-979 (emphasis added).

The record also shows that Defendant made no statements to this Court during the discussion about Juror 40 regarding Defendant's opinion on whether Juror 40 should be removed from the panel. See *Reynolds v. State*, 99 So. 3d 459, 482 (Fla. 2012) (where in the context of a sleeping juror the Florida Supreme Court commented that "If [the defendant] did not agree with the response of his attorney, which indicated that they wanted to keep this juror on the panel, [the defendant] did not make his position known when the opportunity arose. It must be assumed that [the defendant] would have indicated his disapproval at that time, in some fashion, during the specific discussion in his presence regarding this issue.").

Defendant relies in part on *People v. Evans*, 710 P.2d 1167 (Colo. App. 1985), *Commonwealth v. McGhee*, 25 N.E.3d 251 (Mass. 2015) to support his claim that Counsel was deficient; however, these cases are not binding and involved jurors who were actually sleeping or sleeping soundly. See *Evans*, 710 P.2d at 1168; *McGhee*, 25 N.E.3d at 255. In the instant case, this Court made findings at the guilt phase of trial that Juror 40 was not actually sleeping during Defendant's testimony. As such Counsel's strategic decision

to object to the State's request for Juror 40's removal, made after considering alternatives and consulting with co-counsel, was reasonable. See *Reynolds*, 99 So. 3d at 481; see also *Nelson v. United States*, 2021 WL 1610095, *6-7 (M.D. Fla., April 26, 2021).

Furthermore, Defendant's speculative assertion of prejudice does not satisfy the actual prejudice prong of *Strickland*. Even if Counsel's strategic decision was considered unreasonable, Defendant must still establish that the presence of Juror 40 affected the outcome of the guilt phase. See *Strickland*, 466 U.S. at 694; *Nelson*, 2021 WL 1610095, *7 (citations omitted) (Counsel is not ineffective for failing to object to a "dozing" juror, where the defendant fails to prove that the outcome would have been different had counsel objected). Defendant's speculative claim of prejudice is insufficient to prove the actual prejudice prong, especially when considering that this Court determined during trial that Juror 40 was not actually sleeping. For the reasons stated above, Ground Two is denied.

GROUND THREE

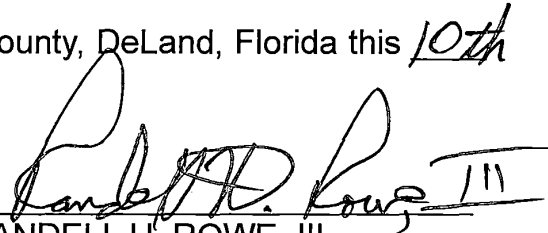
In Ground Three, Defendant alleges Counsel was ineffective for failing to object to an improper statement in the State's closing argument. Specifically, Defendant alleges Counsel should have objected to the following statement by Mr. Will: "I ask you to follow the law. I ask you to do

RULING

Accordingly, it is hereby **ORDERED AND ADJUDGED** that **Grounds Two, Three, Five (in Part), Six, and Seven** of Defendant's Amended Motion are **DENIED WITH PREJUDICE**.

Defendant has **thirty (30) days** from the rendition of this order to file a notice of appeal.

DONE AND ORDERED in Volusia County, DeLand, Florida this 10th day of September 2024.



RANDELL H. ROWE, III
CIRCUIT JUDGE

Copies to:

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