

Neil Gillespie

From: "Amy Hasselbring" <ahasselbring@bowenschroth.com>
To: <neilgillespie@mfi.net>
Cc: "Derek Schroth" <dschroth@bowenschroth.com>
Sent: Monday, April 25, 2016 10:49 AM
Attach: Application Danny R. Mosley.pdf
Subject: JNC Application -
Mr. Gillespie,

Attached is the application of Danny R. Mosley. Thanks.

Amy McCain Hasselbring
Florida Registered Paralegal and
Legal Assistant to Derek A. Schroth
Bowen & Schroth, P.A.
600 Jennings Avenue
Eustis, FL 32726
Telephone: 352-589-1414 Ext. 316
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APPLICATION FOR NOMINATION TO THE 5th COURT

(Please attach additional pages as needed to respond fully to questions.)

DATE: 010/01/2015 Florida Bar No.: 856843

GENERAL: Social Security No.: [REDACTED]

1. Name Danny R. Mosley E-mail: DMosley@sao5.org

Date Admitted to Practice in Florida: 02/1990

Date Admitted to Practice in other States: 05/1987 (TEXAS)

2. State current employer and title, including professional position and any public or judicial office.

Assistant State Attorney, 5th Judicial Circuit

3. Business address: 550 West Main Street

City Tavares County Lake State FL ZIP 32778

Telephone (352) 742-4236 FAX (352) 742-4269

4. Residential address: 20285 Hwy 27N

City Clermont County Lake State FL ZIP 34715

Since 07/01/2015 Telephone (352) 223-2244

5. Place of birth: Summerville, Georgia

Date of birth: 12/06/1958 Age: 56

6a. Length of residence in State of Florida: 17 years

6b. Are you a registered voter? Yes No

If so, in what county are you registered? Lake

7. Marital status: Married

If married: Spouse's name Sandra Mosley

Date of marriage 12/29/1999

Spouse's occupation Legal Secretary

If ever divorced give for each marriage name(s) of spouse(s), current address for each former spouse, date and place of divorce, court and case number for each divorce.

Amy Draughon, May 1, 1998, 19th District Court McLennan County, No. 97-20791

Lucie Luu, April 2, 1993, 19th District Court McLennan County, No. 92-3803-1

Denise Boswell, 1984, Abilene, Texas

8. Children

<i>Name(s)</i>	<i>Age(s)</i>	<i>Occupation(s)</i>	<i>Residential address(es)</i>
Matthew Alexander	27	Optometry	Denver

9. Military Service (including Reserves)

<i>Service</i>	<i>Branch</i>	<i>Highest Rank</i>	<i>Dates</i>
Police Officer	USAF	E-5	1978-1984
Rank at time of discharge	<u>E-5</u>	Type of discharge	<u>Honorable</u>
Awards or citations	<u>Associate Degree - Criminal Justice - Community College of the Air Force</u>		

HEALTH:

10. Are you currently addicted to or dependent upon the use of narcotics, drugs, or intoxicating beverages? If yes, state the details, including the date(s).

No

11a. During the last ten years have you been hospitalized or have you consulted a professional or have you received treatment or a diagnosis from a professional for any of the following: Kleptomania, Pathological or Compulsive Gambling, Pedophilia, Exhibitionism or Voyeurism?

Yes No

If your answer is yes, please direct each such professional, hospital and other facility to furnish the Chairperson of the Commission any information the Commission may request with respect to any such hospitalization, consultation, treatment or diagnosis. ["Professional" includes a Physician, Psychiatrist, Psychologist, Psychotherapist or Mental Health Counselor.]

Please describe such treatment or diagnosis.

None

11b. In the past ten years have any of the following occurred to you which would interfere with your ability to work in a competent and professional manner?

- Experiencing periods of no sleep for 2 or 3 nights
- Experiencing periods of hyperactivity
- Spending money profusely with extremely poor judgment

- Suffered from extreme loss of appetite
- Issuing checks without sufficient funds
- Defaulting on a loan
- Experiencing frequent mood swings
- Uncontrollable tiredness
- Falling asleep without warning in the middle of an activity

Yes No

If yes, please explain.

None

12a. Do you currently have a physical or mental impairment which in any way limits your ability or fitness to properly exercise your duties as a member of the Judiciary in a competent and professional manner?

Yes No

12b. If your answer to the question above is Yes, are the limitations or impairments caused by your physical or mental health impairment reduced or ameliorated because you receive ongoing treatment (with or without medication) or participate in a monitoring or counseling program?

Yes No

Describe such problem and any treatment or program of monitoring or counseling.

None

13. During the last ten years, have you ever been declared legally incompetent or have you or your property been placed under any guardianship, conservatorship or committee? If yes, give full details as to court, date and circumstances.

No

14. During the last ten years, have you unlawfully used controlled substances, narcotic drugs or dangerous drugs as defined by Federal or State laws? If your answer is "Yes," explain in detail. (Unlawful use includes the use of one or more drugs and/or the unlawful possession or distribution of drugs. It does not include the use of drugs taken under supervision of a licensed health care professional or other uses authorized by Federal law provisions.)

No

15. In the past ten years, have you ever been reprimanded, demoted, disciplined, placed on probation, suspended, cautioned or terminated by an employer as result of your alleged consumption of alcohol, prescription drugs or illegal use of drugs? If so, please state the circumstances under which such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action.

No

16. Have you ever refused to submit to a test to determine whether you had consumed and/or were under the influence of alcohol or drugs? If so, please state the date you were requested to submit to such a test, the type of test required, the name of the entity requesting that you submit to the test, the outcome of your refusal and the reason why you refused to submit to such a test.

No

17. In the past ten years, have you suffered memory loss or impaired judgment for any reason? If so, please explain in full.

No

EDUCATION:

18a. Secondary schools, colleges and law schools attended.

<i>Schools</i>	<i>Class Standing</i>	<i>Dates of Attendance</i>	<i>Degree</i>
McMurry College- Abilene, Texas	High Honors	1982-1984	B.A. Political Science
University of Houston, Houston, Texas	Top 50%	1984-1986	J.D.

18b. List and describe academic scholarships earned, honor societies or other awards.

Dean's List - undergraduate

NON-LEGAL EMPLOYMENT:

19. List all previous full-time non-legal jobs or positions held since 21 in chronological order and briefly describe them.

<i>Date</i>	<i>Position</i>	<i>Employer</i>	<i>Address</i>
1978-1984	Police Officer	USAF	Louisiana & Texas

PROFESSIONAL ADMISSIONS:

20. List all courts (including state bar admissions) and administrative bodies having special admission requirements to which you have ever been admitted to practice, giving the dates of admission, and if applicable, state whether you have been suspended or resigned.

<i>Court or Administrative Body</i>	<i>Date of Admission</i>
Texas & Florida State Bar Associations	1987&1990

LAW PRACTICE: (If you are a sitting judge, answer questions 21 through 26 with reference to the years before you became a judge.)

21. State the names, dates and addresses for all firms with which you have been associated in practice, governmental agencies or private business organizations by which you have been employed, periods you have practiced as a sole practitioner, law clerkships and other prior employment:

<i>Position</i>	<i>Name of Firm</i>	<i>Address</i>	<i>Dates</i>
Assistant District Attorney	Jefferson County District Attorney Office	1149 Pearl Street, Beaumont, TX	1987-1989
Assistant District Attorney	McLennan County District Attorney Office	216 N. 6 th Street, Waco, TX	1990-1993
Private Practice	Andrews & Associates	Waco, TX	1993-1995
Private Practice	Mosley & Obenoskey	Waco, TX	1996-1998

22. Describe the general nature of your current practice including any certifications which you possess; additionally, if your practice is substantially different from your prior practice or if you are not now practicing law, give details of prior practice. Describe your typical clients or former clients and the problems for which they sought your services.

Currently I am an Assistant State Attorney in Lake County, Florida. I am the docket manager on Judge Donald Brigg's docket and handle all 10-20-Life gun cases. I am Board Certified in Criminal Trial Law and Civil Trial Law by the National Board of Trial Advocacy.

23. What percentage of your appearance in courts in the last five years or last five years of practice (include the dates) was in:

	<i>Court</i>	<i>Area of Practice</i>
Federal Appellate	_____ %	Civil _____ 10 %
Federal Trial	_____ %	Criminal _____ 90 %
Federal Other	_____ %	Family _____ %

State Appellate	<u> </u>	%	Probate	<u> </u>	%
State Trial	<u> 100 </u>	%	Other	<u> </u>	%
State Administrative	<u> </u>	%			
State Other	<u> </u>	%			
	<u> </u>	%			
TOTAL	<u> 100 </u>	%	TOTAL	<u> 100 </u>	%

24. In your lifetime, how many (number) of the cases you have tried to verdict or judgment were:

Jury? approx 120 Non-jury? approx 25
Arbitration? approx 50 Administrative Bodies? none

25. Within the last ten years, have you ever been formally reprimanded, sanctioned, demoted, disciplined, placed on probation, suspended or terminated by an employer or tribunal before which you have appeared? If so, please state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action.

No

26. In the last ten years, have you failed to meet any deadline imposed by court order or received notice that you have not complied with substantive requirements of any business or contractual arrangement? If so, please explain in full.

No

(Questions 27 through 30 are optional for sitting judges who have served 5 years or more.)

27a. For your last 6 cases, which were tried to verdict before a jury or arbitration panel or tried to judgment before a judge, list the names and telephone numbers of trial counsel on all sides and court case numbers (include appellate cases).

see attached

27b. For your last 6 cases, which were settled in mediation or settled without mediation or trial, list the names and telephone numbers of trial counsel on all sides and court case numbers (include appellate cases).

see attached

27c. During the last five years, how frequently have you appeared at administrative hearings?
0 average times per month

27d. During the last five years, how frequently have you appeared in Court?
10 average times per month

- 27e. During the last five years, if your practice was substantially personal injury, what percentage of your work was in representation of plaintiffs? 0% Defendants? 0%
28. If during any prior period you have appeared in court with greater frequency than during the last five years, indicate the period during which this was so and give for such prior periods a succinct statement of the part you played in the litigation, numbers of cases and whether jury or non-jury.
N/A
29. For the cases you have tried to award in arbitration, during each of the past five years, indicate whether you were sole, associate or chief counsel. Give citations of any reported cases.
None
30. List and describe the six most significant cases which you personally litigated giving case style, number and citation to reported decisions, if any. Identify your client and describe the nature of your participation in the case and the reason you believe it to be significant. Give the name of the court and judge, the date tried and names of other attorneys involved.
see attached
31. Attach at least one example of legal writing which you personally wrote. If you have not personally written any legal documents recently, you may attach writing for which you had substantial responsibility. Please describe your degree of involvement in preparing the writing you attached.
see attached

PRIOR JUDICIAL EXPERIENCE OR PUBLIC OFFICE:

- 32a. Have you ever held judicial office or been a candidate for judicial office? If so, state the court(s) involved and the dates of service or dates of candidacy.

No

- 32b. List any prior quasi-judicial service:

<i>Dates</i>	<i>Name of Agency</i>	<i>Position Held</i>
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Types of issues heard:

- 32c. Have you ever held or been a candidate for any other public office? If so, state the office, location and dates of service or candidacy.

No

- 32d. If you have had prior judicial or quasi-judicial experience,
- (i) List the names, phone numbers and addresses of six attorneys who appeared before you on matters of substance.

None

- (ii) Describe the approximate number and nature of the cases you have handled during your judicial or quasi-judicial tenure.
- (iii) List citations of any opinions which have been published.
- (iv) List citations or styles and describe the five most significant cases you have tried or heard. Identify the parties, describe the cases and tell why you believe them to be significant. Give dates tried and names of attorneys involved.
- (v) Has a complaint about you ever been made to the Judicial Qualifications Commission? If so, give date, describe complaint, whether or not there was a finding of probable cause, whether or not you have appeared before the Commission, and its resolution.
- (vi) Have you ever held an attorney in contempt? If so, for each instance state name of attorney, approximate date and circumstances.
- (vii) If you are a quasi-judicial officer (ALJ, Magistrate, General Master), have you ever been disciplined or reprimanded by a sitting judge? If so, describe.

BUSINESS INVOLVEMENT:

- 33a. If you are now an officer, director or otherwise engaged in the management of any business enterprise, state the name of such enterprise, the nature of the business, the nature of your duties, and whether you intend to resign such position immediately upon your appointment or election to judicial office.

N/A

- 33b. Since being admitted to the Bar, have you ever been engaged in any occupation, business or profession other than the practice of law? If so, give details, including dates.

My wife and I operated a martial arts school from 2001-2011.

- 33c. State whether during the past five years you have received any fees or compensation of any kind, other than for legal services rendered, from any business enterprise, institution, organization, or association of any kind. If so, identify the source of such compensation, the nature of the business enterprise, institution, organization or

association involved and the dates such compensation was paid and the amounts.
non-profit martial arts school)

POSSIBLE BIAS OR PREJUDICE:

34. The Commission is interested in knowing if there are certain types of cases, groups of entities, or extended relationships or associations which would limit the cases for which you could sit as the presiding judge. Please list all types or classifications of cases or litigants for which you as a general proposition believe it would be difficult for you to sit as the presiding judge. Indicate the reason for each situation as to why you believe you might be in conflict. If you have prior judicial experience, describe the types of cases from which you have recused yourself.

None

MISCELLANEOUS:

35a. Have you ever been convicted of a felony or a first degree misdemeanor?

Yes _____ No X If "Yes" what charges? _____

Where convicted? _____ Date of Conviction: _____

35b. Have you pled nolo contendere or pled guilty to a crime which is a felony or a first degree misdemeanor?

Yes _____ No X If "Yes" what charges? _____

Where convicted? _____ Date of Conviction: _____

35c. Have you ever had the adjudication of guilt withheld for a crime which is a felony or a first degree misdemeanor?

Yes _____ No X If "Yes" what charges? _____

Where convicted? _____ Date of Conviction: _____

36a. Have you ever been sued by a client? If so, give particulars including name of client, date suit filed, court, case number and disposition.

No

36b. Has any lawsuit to your knowledge been filed alleging malpractice as a result of action or inaction on your part?

No

36c. Have you or your professional liability insurance carrier ever settled a claim against you for professional malpractice? If so, give particulars, including the amounts involved.

No

37a. Have you ever filed a personal petition in bankruptcy or has a petition in bankruptcy been filed against you?

No

37b. Have you ever owned more than 25% of the issued and outstanding shares or acted as an officer or director of any corporation by which or against which a petition in bankruptcy has been filed? If so, give name of corporation, your relationship to it and date and caption of petition.

No

38. Have you ever been a party to a lawsuit either as a plaintiff or as a defendant? If so, please supply the jurisdiction/county in which the lawsuit was filed, style, case number, nature of the lawsuit, whether you were Plaintiff or Defendant and its disposition.

None other than divorce

39. Has there ever been a finding of probable cause or other citation issued against you or are you presently under investigation for a breach of ethics or unprofessional conduct by any court, administrative agency, bar association, or other professional group. If so, give the particulars.

No

40. To your knowledge within the last ten years, have any of your current or former co-workers, subordinates, supervisors, customers or clients ever filed a formal complaint or formal accusation of misconduct against you with any regulatory or investigatory agency, or with your employer? If so, please state the date(s) of such formal complaint or formal accusation(s), the specific formal complaint or formal accusation(s) made, and the background and resolution of such action(s). (Any complaint filed with JQC, refer to 32d(v).

No

41. Are you currently the subject of an investigation which could result in civil, administrative or criminal action against you? If yes, please state the nature of the investigation, the agency conducting the investigation and the expected completion date of the investigation.

No

42. In the past ten years, have you been subject to or threatened with eviction proceedings? If yes, please explain.

No

43a. Have you filed all past tax returns as required by federal, state, local and other government authorities?

Yes No If no, please explain. _____

43b. Have you ever paid a tax penalty?

Yes No If yes, please explain what and why. _____

43c. Has a tax lien ever been filed against you? If so, by whom, when, where and why?

No

HONORS AND PUBLICATIONS:

44. If you have published any books or articles, list them, giving citations and dates.

No

45. List any honors, prizes or awards you have received. Give dates.

Distinguished Service Award from the Attorney General's Office in 2008 & 2009

46. List and describe any speeches or lectures you have given.

I have given various lectures on legal topics as a prosecutor and in private practice.

Justice Teaching Volunteer to local high schools

Teen Court

47. Do you have a Martindale-Hubbell rating? Yes If so, what is it? ___ No

PROFESSIONAL AND OTHER ACTIVITIES:

48a. List all bar associations and professional societies of which you are a member and give the titles and dates of any office which you may have held in such groups and committees to which you belonged.

Florida Bar Association 1990-Present

Texas Bar Association 1987-Present

Florida Bar Association Code & Rules of Evidence Committee (member) 2011-Present

48b. List, in a fully identifiable fashion, all organizations, other than those identified in response to question No. 48(a), of which you have been a member since graduating from law school, including the titles and dates of any offices which you have held in each such organization.

Lake County Bar Association - Treasurer (2014 to present)

48c. List your hobbies or other vocational interests.

Martial Arts, boating and motorcycles.

48d. Do you now or have you ever belonged to any club or organization that in practice or policy restricts (or restricted during the time of your membership) its membership on the basis of race, religion, national origin or sex? If so, detail the name and nature of the club(s) or organization(s), relevant policies and practices and whether you intend to continue as a member if you are selected to serve on the bench.

No

48e. Describe any pro bono legal work you have done. Give dates.

I have provided legal work for my homeowners' association in the past. (2010)

SUPPLEMENTAL INFORMATION:

49a. Have you attended any continuing legal education programs during the past five years? If so, in what substantive areas?

Criminal Trial Law, Civil Trial Law

- 49b. Have you taught any courses on law or lectured at bar association conferences, law school forums, or continuing legal education programs? If so, in what substantive areas?

While employed with the Florida Prosecuting Attorneys Association I was responsible for coordinating seminars throughout Florida for assistant state attorneys. I have also prepared evidence test questions on behalf of the National Board of Trial Advocacy.

50. Describe any additional education or other experience you have which could assist you in holding judicial office.

Board Certified in Civil Trial Law (2003 to present) and Criminal Trial Law (2011 to present) by the National Board of Trial Advocacy.

51. Explain the particular potential contribution you believe your selection would bring to this position.

My career as an attorney has been spent almost entirely in the courtroom. In private practice I have handled cases from contract, wills, products liability to wrongful death. As a prosecutor I have handled cases ranging from simple battery to bank robbery and murder. As a statewide prosecutor I also handled cases involving organized crime to include RICO, mortgage fraud and drug trafficking.

52. If you have previously submitted a questionnaire or application to this or any other judicial nominating commission, please give the name of the commission and the approximate date of submission.

April 2010, August 2011, July 2014 Fifth Judicial Circuit Commission

53. Give any other information you feel would be helpful to the Commission in evaluating your application.

REFERENCES:

54. List the names, addresses and telephone numbers of ten persons who are in a position to comment on your qualifications for judicial position and of whom inquiry may be made by the Commission.

Honorable G. Richard Singeltary, Circuit Court Lake County, P.O. Box 7800, Tavares, FL, 352-742-4209

Honorable Mark J. Hill, Circuit Court Lake County, P.O. Box 7800, Tavares, FL, 352-742-4218

Honorable T. Michael Johnson, Circuit Court Lake County, P.O. Box 7800, Tavares, FL, 352-742-4215

Honorable Mark Nacke, Circuit Court Lake County, P.O. Box 7800, Tavares, FL, 352-742-4139

Honorable Brad King, State Attorney 5th Judicial Circuit, 110 N.W. 1st Avenue, Suite 5000, Ocala, FL, 352-671-5000

Honorable Michele Morley, Circuit Court Sumter County, 215 E. McCollum Avenue,

Bushnell, FL, 352-569-6960

Honorable William Hallman III, Circuit Court Sumter County, 215 E. McCollum Avenue,
Bushnell, FL, 352-793-0280

Honorable Michael Graves, Public Defender 5th Judicial Circuit, P.O. Box 989, Tavares,
FL, 352-742-4270

Honorable Don Briggs, Circuit Court Lake County, P.O. Box 7800, Tavares, FL 32778,
352-742-4224

CERTIFICATE

I have read the foregoing questions carefully and have answered them truthfully, fully and completely. I hereby waive notice by and authorize The Florida Bar or any of its committees, educational and other institutions, the Judicial Qualifications Commission, the Florida Board of Bar Examiners or any judicial or professional disciplinary or supervisory body or commission, any references furnished by me, employers, business and professional associates, all governmental agencies and instrumentalities and all consumer and credit reporting agencies to release to the respective Judicial Nominating Commission and Office of the Governor any information, files, records or credit reports requested by the commission in connection with any consideration of me as possible nominee for appointment to judicial office. Information relating to any Florida Bar disciplinary proceedings is to be made available in accordance with Rule 3-7.1(I), Rules Regulating The Florida Bar. I recognize and agree that, pursuant to the Florida Constitution and the Uniform Rules of this commission, the contents of this questionnaire and other information received from or concerning me, and all interviews and proceedings of the commission, except for deliberations by the commission, shall be open to the public.

Further, I stipulate I have read, and understand the requirements of the Florida Code of Judicial Conduct.

Dated this 1st day of October, 2015.

Dan R. Mosley
Printed Name


Signature

(Pursuant to Section 119.071(4)(d)(1), F.S.), . . . The home addresses and telephone numbers of justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the home addresses, telephone numbers, and places of employment of the spouses and children of justices and judges; and the names and locations of schools and day care facilities attended by the children of justices and judges are exempt from the provisions of subsection (1), dealing with public records.

FINANCIAL HISTORY

In lieu of answering the questions on this page, you may attach copies of your completed Federal Income Tax Returns for the preceding three (3) years. Those income tax returns should include returns from a professional association. If you answer the questions on this page, you do not have to file copies of your tax returns.

1. State the amount of gross income you have earned, or losses you have incurred (before deducting expenses and taxes) from the practice of law for the preceding three-year period. This income figure should be stated on a year to year basis and include year to date information, and salary, if the nature of your employment is in a legal field.

\$79,000 (2011)

\$81,000 (2012)

\$83,800 (2013)

\$85,800 (2014)

\$91,000 (2015)

2. State the amount of net income you have earned, or losses you have incurred (after deducting expenses but not taxes) from the practice of law for the preceding three-year period. This income figure should be stated on a year to year basis and include year to date information, and salary, if the nature of your employment is in a legal field.

Same as 1 above.

3. State the gross amount of income or losses incurred (before deducting expenses or taxes) you have earned in the preceding three years on a year by year basis from all sources other than the practice of law, and generally describe the source of such income or losses.

None

4. State the amount of net income you have earned or losses incurred (after deducting expenses) from sources other than the practice of law for the preceding three-year period on a year by year basis, and generally describe the sources of such income or losses.

None.

JUDICIAL APPLICATION DATA RECORD

The judicial application shall include a separate page asking applicants to identify their race, ethnicity and gender. Completion of this page shall be optional, and the page shall include an explanation that the information is requested for data collection purposes in order to assess and promote diversity in the judiciary. The chair of the Commission shall forward all such completed pages, along with the names of the nominees to the JNC Coordinator in the Governor's Office (pursuant to JNC Uniform Rule of Procedure).

(Please Type or Print)

Date: 10/01/2015

JNC Submitting To: 5th Judicial Circuit

Name (please print): Danny R. Mosley

Current Occupation: Assistant State Attorney

Telephone Number: 352-742-4236 Attorney No.: 856843

Gender (check one): Male Female

Ethnic Origin (check one): White, non Hispanic

Hispanic

Black

American Indian/Alaskan Native

Asian/Pacific Islander

County of Residence: Lake

FLORIDA DEPARTMENT OF LAW ENFORCEMENT

DISCLOSURE PURSUANT TO THE
FAIR CREDIT REPORTING ACT (FCRA)

The Florida Department of Law Enforcement (FDLE) may obtain one or more consumer reports, including but not limited to credit reports, about you, for employment purposes as defined by the Fair Credit Reporting Act, including for determinations related to initial employment, reassignment, promotion, or other employment-related actions.

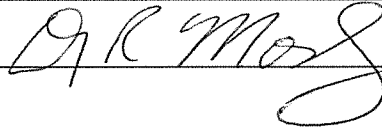
CONSUMER'S AUTHORIZATION FOR FDLE
TO OBTAIN CONSUMER REPORT(S)

I have read and understand the above Disclosure. I authorize the Florida Department of Law Enforcement (FDLE) to obtain one or more consumer reports on me, for employment purposes, as described in the above Disclosure.

Printed Name of
Applicant:

Dan R. Mosley

Signature of Applicant:



Date: 10/01/2015

21. Continued:

1998-1999 Florida Prosecuting Attorney's Association, Tallahassee, FL
1999-2000 State Attorney's Office, 5th Judicial Circuit, Tavares, FL
2000-2003 Bogin, Munns & Munns, P.O. Box 2807, Orlando, FL
2003-2005 Mosley Law Firm, Clermont, FL
2005-2010 Office of Statewide Prosecution, 135 W. Central Blvd., Ste. 1000, Orlando FL
2010-Present State Attorney's Office, 5th Judicial Circuit, Bushnell/Tavares, FL

- 27(a) (1) State v. Hatcher, 2013CF2725, Trafficking Cocaine, 8/13/14. Mr. Zack McCormick, 352-742-7474; Judge William Law.
- (2) State v. Edmondson, 2013CF2071, Vehicular Homicide, 11/19/14. Mr. Jeffrey Wiggs, 352-253-0100; Judge Don Briggs.
- (3) State v. McCloud, 2013CF1702, Aggravated Battery with Firearm, 10/28/14. Ms. Sara Smith, 352-530-6220; Judge Don Briggs.
- (4) State. v. Greene, 2013CF2220, Attempted Murder with Firearm, 02/09/15. Mr. Charles Greene, 813-774-1800; Judge Don Briggs.
- (5) State v. Reed, 2012CF126, Home Invasion Robbery with Firearm, 11/20/13. Mr. Frank Bankowitz, 407-428-1514; Judge Don Briggs.
- (6) State v. Donnelly, 2014CF160, Sexual Battery by Law Enforcement Officer, 05/13/15. Mr. J. Edward Mills, 407-246-7090; Judge Mark Nacke.

30. **State v. Linn**, 1999CF402, 5th Circuit Lake County, FL, Attempted Murder and Arson. The victim in the case was paralyzed from the waist down. She was a Canadian citizen and was airlifted back to Canada for treatment. The doctors would not allow her to travel to testify and her testimony was presented via satellite for trial. This was the first trial in Lake County to use this type of testimony. Defendant was convicted and sentenced by Judge Singeltary to more than 70 years in prison. (lead counsel)

State v. Campbell, 1992, 54th District Court, McLennan County, TX. Murder, Aggravated Child Abuse. This was my first murder trial and involved the mother of a two-year old child. The child died as a result of the mother slamming the child against the wall repeatedly. Judge George Allen was the presiding judge and the jury assessed the maximum sentence allowed by law. (lead counsel)

State v. Hall, 2008CF1656, 5th Circuit Lake County, FL; Conspiracy to Traffic Cocaine. The defendant was one of approximately 30 defendants arrested involving drug distribution in the Stuckey area of Lake County. Court authorized wiretaps were used in the trial to establish the conspiracy and each defendant's involvement. Judge Richard Singeltary sentenced the defendant to 25 years prison. After the initial roundup of the defendants by law enforcement the citizens of Stuckey came out of their homes to personally thank law enforcement for their efforts to get the drug dealers out of their community. (lead counsel)

State v. Coffie, 2005CF4711, 18th Circuit Seminole County, FL; Conspiracy to Traffic Cocaine. This investigation involved law enforcement agencies from Seminole and Orange County. More than 60 defendants were arrested and charged in the two jurisdictions. Coffie was the main target defendant in Seminole County and was convicted and sentenced to 15 years by Judge Marlene Alva. Court approved wiretaps were used and presented to the jury. (lead counsel)

State v. Grant, 2005CF3454, 9th Circuit Orange County, FL; RICO, Conspiracy to Commit RICO, Mortgage Fraud. Defendants had relocated from South Florida and began using straw buyers to fraudulently obtain mortgage loans from lenders. Grant was the main target and was personally involved in obtaining loans and properties valued in excess of several million dollars. Upon her arrest FDLE seized her briefcase which contained numerous documents used in the trial to explain the fraud. On appeal the appellate court ruled the items seized from her vehicle at the time of her arrest were properly admitted by trial judge, Jenifer Davis. Judge Davis sentenced Grant to 18 years prison. (lead counsel)

State v. Traylor, 2008CF3601, 7th Circuit Volusia County, FL; RICO, Aggravated White Collar, Mortgage Fraud. Defendant and son had a website advertising their "church" and also indicating they could help people get home loans. Over a period of several years hundreds of loans in excess of \$50 million dollars were secured through their efforts. When the housing market crashed these fraudulent loans were discovered. The trial occurred in 2009 and resulted in a hung jury (mistrial). The State appealed the Court's

pre-trial ruling preventing them from amending the information on the re-trial. The case was recently ruled on by the 5th Circuit Court of Appeal in the State's favor. (lead counsel)

In addition to the above, I also had the opportunity to testify before the Texas Senate concerning child hearsay testimony. While working as an assistant district attorney in Waco, Texas I realized we did not have a similar statute to Florida's Child Hearsay Statute. I had worked with a current senator, Mr. David Sibley in the McLennan County District Attorney's Office. I contacted him and he invited me to come to Austin to present testimony in support of a similar statute. Ultimately, Texas passed a similar law which is currently being used to prosecute these cases.

**IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR SUMTER COUNTY, FLORIDA**

STATE OF FLORIDA,

V.

CASE NO: 2011CF189-A

GERALD M. TIMMERS
Defendant.

_____ /

**STATE'S RESPONSE TO DEFENDANT'S
MOTION TO SUPPRESS CONFESSION, STATEMENTS AND ADMISSIONS**

COMES NOW, the State of Florida, by and through the undersigned Assistant State Attorney, and hereby files this Response to Defendant's Motion to Suppress Confession dated July 20, 2012, and respectfully requests this Honorable Court enter an Order denying Defendant's Motion to Suppress. As grounds for such, the State would offer the following:

FACTS

On March 19, 2011, Defendant drove from the Jacksonville area to Sumter County, Florida after communicating with an undercover detective over the internet and telephone. The email communications are attached to this response as well as the recorded telephone call. The communications discussed the Defendant traveling to the home located in Wildwood to have sex with a 14 year-old child. Upon arrival at the home in Wildwood the Defendant was arrested.

Attached to the State's response are the email communications between the Defendant and the undercover officer posing as the "uncle" of a 14 year old child. Included in the email communications are three photographs sent by Defendant. (picture of the Defendant, picture of a male penis and picture of the Defendant having sexual intercourse with a female). Also attached is a transcript of the telephone conversation between the Defendant and the "uncle"

wherein directions are provided for the Defendant's trip from the Jacksonville area to the undercover home located in Sumter County, Florida.

Upon arrest Defendant was handcuffed and escorted to an interview room by Detective Wasson. The interview room was equipped with audio and video recording devices and the entire conversation within this room was recorded.

The State intends to introduce the video into evidence and publish the video for the Court during the evidentiary hearing. Detective Smith and Ross initially gather personal information from Defendant. The Detectives also questioned Defendant as to whether he was under the influence of any drug and whether he understood the English language. Defendant responded he was not under the influence and understood the English language. The video reflects Detective Smith read Defendant his *Miranda* warnings. Defendant agreed to speak with Detective Smith and Detective Ross and completed a *Miranda* Waiver form.

In the beginning of the interview Defendant admitted he used Craigslist to communicate with the undercover detective posing as the "uncle". He confirmed his email address, telephone number and identified three photographs he sent via email. He also identified a photograph depicted a female sent to him by the "uncle". The Defendant initially denied being aware that the scheduled meeting involved a 14 year-old child, however, later in the interview he admits that Detective Smith, posing as the "uncle", stated she was 14 years old. Defendant also admitted in the interview he brought condoms with him and they were located in his vehicle. Lastly, Defendant claimed that he thought the couple he was agreeing to meet were "role playing" and that this meeting did not involve a child. However, as the emails reflect, Defendant was concerned that this might be a law enforcement sting operation. His email at

10:08pm states "Oh yeh I have to ask r u guys cops or affiliated with law enforcement Just trying to b safe." Again at 10:14 Defendant states "No I'm not. That's y I asked too. Cause u would have to tell me. I just don't want any problems with cops u know."

LEGAL ANALYSIS

Defendant's motion alleges Defendant's confession should be suppressed as the statement was not voluntary and/or was obtained by threats or promises that exert an improper influence.

In Florida, "[i]t is well established that a confession cannot be obtained through direct or implied promises. In order for a confession to be voluntary, the totality of the circumstances must indicate that such confession is the result of free and rational choice. . . . [T]o establish that a statement is involuntary, there must be a finding of coercive police conduct. [T]he salient consideration in an analysis of the voluntariness of a confession is whether a defendant's free will has been overcome.

Blake v. State, 972 So. 2d 839, 843-844 (Fla. 2007).

Confessions due to "promises not to prosecute or promises of leniency may render a confession involuntary." *Blake v. State*, 972 So. 2d 839, 844 (Fla. 2007). *See also State v. Walter*, 970 So. 2d 848 (Fla. 2d DCA 2008). "However, not all police statements that arguably could be considered 'promises' render a confession involuntary. *Blake v. State*, 972 So. 2d 839, 844 (Fla. 2007). It is permissible for a law enforcement officer to advise a suspect that he will make the suspect's cooperation know to prosecuting authorities. *Id.* "Similarly, 'a confession is not rendered inadmissible because the police tell the accused that it would be easier on him if he told the truth.'" *Id.* Statements are not rendered involuntary where officers inform suspects of "realistic penalties, encourage the suspect to tell the truth, or tell the suspect that things would be easier if the suspect told the truth." *State v. Walter*, 970 So. 2d 848, 851 (Fla. 2d DCA 2008).

The Florida Supreme Court has stated, "a promise alone is not sufficient to render a confession involuntary. There must also be a *causal connection* between the police conduct and the confession. Before finding the confession inadmissible, Florida courts have repeatedly required that the alleged promise 'induce,' be 'in return for,' or be a 'quid pro quo' for the confession." *Blake v. State*, 972 So. 2d 839, 844 (Fla. 2007). The threat or promise "must constitute 'outrageous behavior' that induces the confession and must also have a 'causal nexus between the improper police conduct and the confession.'" *State v. Walter*, 970 So. 2d 848, 851 (Fla. 2d DCA 2008).

"When a defendant challenges the voluntariness of [their] confession, the State has the burden to establish by a preponderance of the evidence that the confession was freely and voluntarily given." *State v. Walter*, 970 So. 2d 848, 851 (Fla. 2d DCA 2008). The video reveals nothing in the demeanor of either Defendant or Detective Smith or Ross to reflect or even suggest coercive conduct. *See Blake v. State*, 972 So. 2d 839, 845 (Fla. 2007).

Lastly, Defendant alleges that the written and oral statements from the Defendant are not supported by an independent prima facie proof of the corpus delicti of the crime. As the emails clearly show, Defendant responded to an advertisement on Craigslist at approximately 7:09pm. Numerous emails were exchanged by Defendant and the undercover detective posing as an "uncle" of a 14 year old child. Defendant was made aware of her age and continued to engage in sexual conversations with the "uncle" as to what he would do with the "child." Defendant agreed to bring condoms and inquired on two different occasions as to whether the "uncle" was law enforcement. The email communications continued until approximately 2:22am the following day. Upon arrival at the undercover home Defendant was arrested. The Amended

Information charges the Defendant with Attempted Lewd/Lascivious Battery and Unlawful Use of a Two-Way Communications Device to Facilitate a Felony. *See Bist v. State, 35 So.3d 936, (5th DCA 2010).*

Based upon a preponderance of the evidence the confession was freely and voluntarily given, the State has established prima facie proof of the corpus delicti of the crime and therefore Defendant Statements should not be suppressed.

Defendant further asserts there was no probable cause for his arrest upon arrival at the undercover location. As the emails, pictures and telephone conversation clearly show Defendant traveled to Sumter County with the intent to have sex with a 14 year old child. Defendant was told specifically the age of the child and he arrived at the location with condoms in his vehicle. As previously stated, Defendant also inquired as to whether the "uncle" was law enforcement which shows Defendant was aware his conduct, if completed, could result in him being arrested. Additionally, the facts previously set forth justify the warrantless search of the Defendant's vehicle. As set forth in *Arizona V. Gant, 556 U.S. 332, 129 S.Ct. 1710 (2009)*, a search incident to a lawful arrest is an exception to the warrant requirement and is derived from interests in officer safety and evidence preservation. In this case law enforcement would be reasonable to believe that the vehicle may contain evidence of the offense of arrest.

WHEREFORE, the State of Florida respectfully requests this Honorable Court enter an Order denying Defendant's motion and specifically finding Defendant's statements to Detectives Smith and Ross were freely and voluntarily given without any coercion and are admissible in evidence during the State's case-in-chief in the trial of the above styled cause.

Respectfully submitted this ____ day of August, 2012.

**BRAD KING
STATE ATTORNEY
FIFTH JUDICIAL CIRCUIT**

By: _____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing Response has been provided by Interoffice Mail to the *Honorable William Hallman*; and *A. R. Mander*, Attorney for Defendant, 14217 Third Street, Dade City, Florida, 33523 , on this ____ day of August, 2012.

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