

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA  
CASE NO. 2023-CF-002935

STATE OF FLORIDA

vs.

TOMASZ ROMAN KOSOWSKI

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**MOTION FOR INSPECTION AND PRODUCTION OF TRANSCRIPTS OF  
THE GRAND JURY TESTIMONY**

Defendant Tomasz Roman Kosowski, by and through his undersigned counsel, hereby moves this Honorable Court to conduct an in camera inspection of the transcripts of the grand jury testimony and to thereafter release the transcripts to the Defense in furtherance of justice and to determine if material inconsistencies exist between grand jury testimony and other sworn testimony given in this case and/or to determine if the grand jury testimony contained any false representations. As grounds therefore, Dr. Kosowski states as follows:

1. On or about March 21, 2023, the alleged victim, S.C., was reported missing.
2. The alleged victim has not been seen or heard from since that time.
3. Dr. Kosowski was developed as a person of interest in S.C.'s disappearance based on pending civil litigation wherein S.C. was defending against a civil lawsuit brought in 2019 by Dr. Kosowski against various doctors and surgical facilities.

4. Numerous factors from S.C.'s past indicate that S.C.'s disappearance may well have been of his own doing and/or not the result of foul play.

5. On or about April 27, 2023, despite S.C. not having been located, a grand jury indicted Dr. Kosowski on one count of Murder in the First Degree. The State has filed a notice of intent to seek the death penalty.

6. The Indictment reads as follows:

in the County of Pinellas and State of Florida, on the 21st day of March, in the year of our Lord, two thousand twenty-three, in the County and State aforesaid unlawfully and from a premeditated design to effect the death of [REDACTED], did by a criminal act or agency, a better description of which is to the Grand Jury unknown, inflict upon the said [REDACTED] mortal wounds of which said mortal wounds and by the means aforesaid, and as a direct result thereof the said [REDACTED] died; contrary to Chapter 782.04(1)(a), Florida Statutes, and against the peace and dignity of the State of Florida. [L2]

7. As discussed in related motions, the Indictment utilizes boilerplate text that fails to include a "definite written statement of the essential facts constituting the offense charged." FLA. R. CRIM. P. 3.140(b).

8. More specifically, the Indictment fails to allege, in any sense whatsoever, what "criminal act or agency" inflicted the alleged "mortal wounds;" what "wound" or "wounds" were sustained;<sup>1</sup> when and where the wound or wounds were sustained; and/or what caused the wound or wounds to be "mortal."

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<sup>1</sup> The use of the plural, "wounds," would seemingly suggest the Grand Jury believed multiple wounds were sustained, yet the Indictment provides no details of the alleged wounds.

9. For those reasons, the Indictment fails to adequately provide Dr. Kosowski with fair notice of the charges against him.

10. Under the unique circumstances of this case, and given the vagueness of the Indictment, the review of the grand jury proceedings is necessary in the furtherance of justice to ensure that Dr. Kosowski's Fifth Amendment rights to a grand jury indictment and to due process of law were not violated.

11. In addition, as discussed in greater detail below, the review of the grand jury transcripts is necessary to determine if material inconsistencies exist between grand jury witnesses' grand jury testimony and their later sworn court and/or deposition testimonies and to determine if the grand jury testimony contained any false representations.

WHEREFORE, the Defendant respectfully requests that this Court grant this Motion, conduct an in camera inspection of the transcripts of the grand jury testimony to determine if they are subject to disclose in the furtherance of justice and, upon making such a finding, order the State to disclose said transcripts to the Defendant.

## **MEMORANDUM OF LAW**

When, as in the instant case, material and defense-favorable information is likely to exist in the sworn grand jury testimony of critical state witnesses, the interests of justice entitle a defendant to examine those witnesses' grand jury testimony transcripts prior to trial. While records of grand jury proceedings generally remain undisclosed prior to and often after trial, when a defendant demonstrates a particularized need to examine a witness's grand jury transcripts, the trial court must conduct an in camera inspection of the witness' testimony to determine if the defendant is entitled to discovery of the transcripts. *Keen v. State*, 639 So. 2d 597 (Fla. 1994); *State v. Drayton*, 226 So. 2d 469 (Fla. 2d DCA 1969).<sup>2</sup> Both the Florida Supreme Court and the Second District Court of Appeal have recognized that when a critical witness has made conflicting material statements prior to trial, such a particularized need exists, and the trial court should thereby conduct the necessary in camera inspection. *Id.* Moreover, where, as here, the basis

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<sup>2</sup> In *Drayton*, the Second District held that the trial court should disclose grand jury transcripts to the defense if it finds that the conflicting testimony at issue is material and favorable to either the defendant's guilt or sentencing. *Drayton*, 226 So. 2d at 475. In *Keen*, however, the Florida Supreme Court, made no mention of the *Brady* material and favorable standard, but instead, drew on a federal case in which the Eleventh Circuit held that the trial court should determine if conflicting grand jury and deposition testimony will merely be useful to the defendant. *Keen*, 639 So. 2d at 600 citing *Miller v. Wainwright*, 798 F.2d 426 (11th Cir. 1986).

of the State's indictment and its theory of the prosecution is woefully vague and based only on a bare bones recitation of the charging statute, the furtherance of justice requires the disclosure of the transcripts to ensure that the defendant's Fifth Amendment rights were not violated by the failure to present evidence or the presentation of false evidence to the grand jury.

Section 905.27, which provides for the release of grand jury transcripts in three scenarios, states:

(1) Persons present or appearing during a grand jury proceeding, including a grand juror, a state attorney, an assistant state attorney, a reporter, a stenographer, or an interpreter, as well as the custodian of a grand jury record, may not disclose the testimony of a witness examined before the grand jury or other evidence received by it except when required by a court to disclose the testimony for the purpose of:

(a) Ascertaining whether it is consistent with the testimony given by the witness before the court;

(b) Determining whether the witness is guilty of perjury; or

(c) Furthering justice, which can encompass furthering a public interest when the disclosure is requested pursuant to paragraph (2)(c).

FLA. STAT. § 905.27(1). The purposes behind the general rule that, notwithstanding certain exceptions, grand jury proceedings are to remain undisclosed prior to trial are:

to protect the jurors themselves; to promote a complete freedom of disclosure; to prevent the escape of a person indicted before he may be arrested; to prevent the subornation of perjury in an effort to disprove

facts there testified to; and to protect the reputations of persons against whom no indictment may be found.

*Drayton*, 226 So. 2d at 475 quoting *Minton v. State*, 113 So. 2d 361, 365 (Fla. 1959).

As the Second District recognized in *Drayton*, however, the concerns behind the secrecy of grand jury proceedings are largely null and void once the defendant is in custody under the indictment and the grand jury has been discharged. *Drayton*, 226 So. 2d at 475. Therefore, when it is reasonable to believe that the disclosure of a grand jury transcript will reveal material and favorable information to a defendant, the State's interests in keeping grand jury proceedings secret must give way to a defendant's right to the production of material and favorable evidence. *See id.*

In *Drayton*, the victim of an alleged rape gave deposition testimony that conflicted with statements the victim previously made to investigating police officers during the preparation of their police reports. *Drayton*, 226 So. 2d at 470. Given those inconsistencies, the trial court ordered production of the victim's grand jury testimony for an in camera inspection to determine if the testimony "exculpated or favored [the defendant] in any way, and further to determine if her grand jury testimony conflicted with other evidence already before the court." *Id.* On a State's petition for writ of certiorari, the Second District affirmed the trial court's order after thoroughly examining the history and policies underlying the general rules regarding inspection and disclosure of grand jury testimony. In so holding, it devised a three

step process to employ in cases in which a defendant seeks discovery of grand jury transcripts: 1) the defendant must make a predicate showing of a reasonable potential need for inspection of the grand jury testimony; 2) if such a predicate is laid, the court should then conduct an in camera inspection of the grand jury testimony at issue to determine if it is material and favorable to the accused, *see supra* n. 1; and 3) if the court finds the testimony at issue to be favorable and material, the transcript of that testimony must be disclosed to the defendant. *Id.* at 475. As to the first step of the *Drayton* procedure, the court stated that it was impossible to craft an “ironclad rule” for determining the proper predicate that a defendant must lay but stated that the “motion for inspection should be above the level of a fishing expedition.” *Id.*

More recently, in *CA Florida Holdings, LLC v. Aronberg*, 360 So. 3d 1149 (Fla. 4th DCA 2023), the Fourth District conducted an in-depth analysis of a trial court’s authority to inspect and release grand jury transcripts. In that case, the publisher of the Palm Beach Post sought access to the records of grand jury proceedings involving Jeffrey Epstein, who had passed by the time of the Post’s request. *Id.* at 1151. The trial court seemingly grappled with the definition of “furthering justice” as used in section 905.27 and ultimately held that it lacked authority to release the transcripts. On appeal, the Fourth District reasoned that the historical tradition of generally keeping grand jury proceedings secret is subject to exceptions. *Id.* at 1153. The court provided “[t]hose exceptions have developed

historically alongside the secrecy tradition and, more recently, in the practice of the federal courts.” The court went on to note that Federal Rule of Criminal Procedure 6(e)(3) provides that federal district courts, “as part of their supervisory authority over the grand juries that they have empaneled, are explicitly given the discretion to determine whether, if one or more of the listed exceptions to grand jury secrecy apply, disclosure of records is appropriate.” *Id.* The Fourth District then cited to various federal circuit court opinions that held that courts had authority to release grand jury materials for reasons that even went beyond those set out in Rule 6. *Id.* citing *In re Petition of Craig*, 131 F.3d 99, 101 (2d Cir. 1997); *In re Hastings*, 735 F.2d 1261, 1268–69 (11th Cir. 1984). It likewise referenced the Supreme Court’s holding in *Butterworth v. Smith*, 494 U.S. 624, 110 S.Ct. 1376, 108 L.Ed.2d 572 (1990), that the First Amendment prohibits any limitation, as under section 905.27, on a grand jury witness disclosing his or her own testimony. The Fourth District reasoned “[w]e extract from these decisions the court’s inherent authority to disclose grand jury materials despite the traditional rule of secrecy. In fact, this is contemplated and supported by section 905.27’s language.” *Id.* The court went on to remand with directions that the trial court “conduct an in-camera inspection of the material sought and using the guidance provided by *Craig*, decide whether the material’s disclosure furthers justice. If so, the court has the inherent authority to



disclose any material that furthers justice.”<sup>3</sup> In reaching its holding, the Fourth District also provided a “non-exhaustive list of factors” taken from the *Craig* holding “that a trial court might want to consider when confronted with these highly discretionary and fact-sensitive ‘special circumstances’ motions:

- (i) the identity of the party seeking disclosure;
- (ii) whether the defendant to the grand jury proceeding or the government opposes the disclosure;
- (iii) why disclosure is being sought in the particular case;
- (iv) what specific information is being sought for disclosure;
- (v) how long ago the grand jury proceedings took place;
- (vi) the current status of the principals of the grand jury proceedings and that of their families;
- (vii) the extent to which the desired material—either permissibly or impermissibly—has been previously made public;
- (viii) whether witnesses to the grand jury proceedings who might be affected by disclosure are still alive; and
- (ix) the additional need for maintaining secrecy in the particular case in question.

*Id.* at 1153 *quoting Craig*, 131 F. 3d at 106.

As *Drayton* and *CA Florida Holdings* recognize, the antiquated rule providing for secrecy of grand jury proceedings is gradually eroding. Furthermore, where, as here, the grand jury issued its indictment and has long since disbanded, concerns over the secrecy of the proceedings are largely null and void. Determining whether the furtherance of justice supports the disclosure of grand jury records essentially

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<sup>3</sup> The Fourth District also certified as a question of great public importance “does a circuit court have inherent authority to disclose grand jury evidence to further justice under section 905.27?” *Id.* at 1155.

calls for a balancing of the need for secrecy against the need of the party requesting the disclosure.

In the instant case, Dr. Kosowski needs to review the transcripts to determine whether the grand jury could have had probable cause to issue an indictment and to ensure that false testimony was not presented to the grand jury. In addition, and as in *Drayton*, the review of the transcripts is necessary to determine whether the grand jury witnesses' sworn grand jury testimony is likely to materially conflict with their later sworn court and/or deposition testimony. If such inconsistencies exist between the grand jury and later testimony of any of those witnesses, that evidence will be material and favorable to Dr. Kosowski and must, therefore, be disclosed to him under section 905.27.

Just the same, if any of those witnesses made false representations to the grand jury, the transcripts of their testimony must be disclosed under section 905.27. Concerns surrounding the testimony of various potential grand jury witnesses, or information relayed by those witnesses to others who testified before the grand jury, are set forth below:

#### A. Debra Henrichs

The already wavering testimony of key State witness Debra Henrichs provides a prime example of the need for the review of the grand jury transcripts in the instant case. Henrichs, who was the cleaning and maintenance technician at a veterinary

clinic located in the office building where Blanchard Law is located, has made multiple materially inconsistent statements concerning her alleged observations. Her alleged observations are, in turn, central to the State's case. Henrichs claimed that on Tuesday March 14, 2023, she went to the office building to check timers to see if they had adjusted to the then-recent time-change. The timers were located in a utility closet. Upon entering the utility closet, Henrichs saw an unknown male dressed in casual clothes and wearing a white paper-type mask typical of those regularly worn during the COVID-19 pandemic. The man apologized for scaring her and stated that someone had reported a power outage.

At the *Arthur* hearing, Henrichs testified that she followed the man out of the building and allegedly saw him get into a Toyota Tundra truck that had a New Jersey license plate. Henrichs testified that she believed she saw the man at the office building one morning approximately one to two weeks prior. She claimed that the man was looking into the windows of the law firm.

Also at the *Arthur* hearing, Henrichs identified Dr. Kosowski as the person she allegedly saw in the utility closet on March 14th. That was allegedly the first time she had identified Dr. Kosowski. Henrichs had, however, provided a written statement to law enforcement on March 28, 2023, two days after Dr. Kosowski was arrested. Henrichs was aware, at that time, that Dr. Kosowski had been arrested for the alleged murder of S.C. She additionally testified that someone at work had

shown her a news article about Dr. Kosowski being arrested. Henrichs acknowledged that the news articles showed Dr. Kosowski's face. In the written statement, Henrichs did not claim that the person she saw in the utility closet was the person who was depicted in the news article.

In her handwritten statement, Henrichs also did not state that the truck she saw on March 14th had New Jersey license plates, though she alleged that she told law enforcement as such. She described the person she saw as 6 feet tall, of medium build, 185 to 200 pounds, with short curly brown hair and no facial hair. She also stated, however, that the man was wearing a white mask both times she saw him.

Detective Colin Bolton, the lead detective and case agent on the case, saw Henrichs as an unreliable witness. He testified in his deposition that a photopack of suspects was never shown to Henrichs because the man she saw in the utility closet on March 14, 2023 wore a surgical mask. Bolton thereby believed that it would be "highly unlikely that she could ID the person." Bolton also expressed surprise that Henrichs was called as a State witness at the *Arthur* hearing.

Given that Henrichs has already provided sworn testimony that materially conflicts with her earlier handwritten statement, there exists reason to believe that the grand jury was presented with evidence of Henrichs' observations that would now be in material conflict with her subsequent testimony. Even if Henrichs herself did not testify, review of the grand jury testimony is critical to determine if Detective

Bolton or any other witnesses relayed any of Henrichs' alleged observations to the grand jury. Review of the transcripts is necessary to determine if the jury was misled to believe that any witness made a positive identification of Dr. Kosowski as the person seen in the closet or as the person pulling the wagon. *See also infra* Subsection E - Colin Bolton.

B. Carole Celeste Bacher

Review of the transcripts is not only necessary to determine if the jury was presented with information that materially conflicts with Henrichs' prior and/or subsequent testimony, but also necessary to determining if the grand jury was deprived of information concerning another eyewitness' failure to identify Dr. Kosowski as a person of interest she observed at the time of S.C.'s disappearance.

In contrast to Henrichs, Carole Celeste Bacher is a reliable witness who, on March 21, 2023, saw an unknown male with a goatee at 1501 S. Belcher at the time of S.C.'s disappearance. Det. Bolton testified in his deposition that the goatee man Mrs. Bacher observed is believed to be the same person of interest seen in surveillance videos who was pulling the wagon that was purported to contain S.C.'s body. On March 22, 2023, Largo Police Detective Amanda Gay showed Bacher a photopack that contained a photograph of Dr. Kosowski. Bacher *did not* identify Dr. Kosowski as the goateed man she saw. Of note, that information was excluded

from the affidavits that sought search warrants for Dr. Kosowski's home, Toyota Corolla, and his person.

For those reasons, review of the grand jury transcripts is necessary to determining if the State misled the grand jury to believe that a positive identification of the "wagon man" had been made and that the man was identified as Dr. Kosowski. It likewise necessary to determining if the grand jury was presented with Celeste Bacher's exculpatory observations.

### C. Chad Summerfield

In closing argument at the *Arthur* hearing, the State claimed that Dr. Kosowski's DNA was found *in* the bathroom at 1501 S. Belcher Road. However, expert witness Chad Summerfield testified in his deposition that *no* DNA of Dr. Kosowski was found in the bathroom. Instead, only a smudge containing his DNA was found on the outside of the bathroom door. That smudge, moreover, was found *not* to be blood. Given the discrepancy between the State's claim at the *Arthur* hearing and the expert witness' deposition testimony, review of the grand jury transcripts is necessary to determining if the grand jury was falsely told or misled to believe that Dr. Kosowski's DNA was located inside the office building bathroom.

In addition, Det. Bolton testified in his deposition that he came to believe that a "bloodletting event" occurred in the 1501 S. Belcher bathroom only after the bathroom was processed with Luminol. Luminol is well known to give a false

positive result for the presence of blood when it is used on surfaces that were recently cleaned with household chemicals, particularly bleach. Several witnesses noted the smell of bleach on March 21, 2023 in the vicinity of the bathroom. Mr. Summerfield understood that fact but did not answer in his deposition as to whether he provided any grand jury testimony that bleach or other such household cleaning chemicals that had been used to clean the bathroom could have caused false positive Luminol results. That potential for false positive Luminol results would throw into question the belief that a bloodletting event occurred in the bathroom.

Given the foregoing, review of the grand jury transcripts is necessary to determining if Summerfield and/or other witnesses testified that little actual blood was found in the bathroom, consistent with the initial law enforcement assessment, or if the grand jury was misled to believe that blood was strewn throughout the bathroom. Review of the transcripts is likewise necessary to determining if Summerfield and/or other witnesses testified that various DNA found in the bathroom need not have been from S.C.'s blood, but rather, could have resulted from other bodily fluids such as urine or sloughed skin cells that would be expected to be found in a bathroom that S.C. used on a daily basis, or whether the jury was misled to believe that any DNA found in the bathroom must have resulted from S.C.'s blood.

D. Bobby Lance Moore

Largo Police Detective Bobby Lance Moore testified in his deposition that Dr. Kosowski's neighbors saw him driving a vehicle that matched the description of the suspect Toyota Tundra. That claim is false. At no point in the investigation was Dr. Kosowski identified driving any truck – neither by an eyewitness nor through surveillance video.

Moore further testified in his deposition that cellular site data for a phone allegedly connected to Dr. Kosowski was available to place him at 1501 S. Belcher and that he used that information to draft a search warrant affidavit on March 25, 2023. That claim cannot be true, however, because the cellular site data was not available until March 29, 2023. Furthermore, even if the cellular site data was not used to seek a search warrant, the cellular site data shows that the phone was never in the vicinity of 1501 S. Belcher on March 14, 2023, when Henrichs made her alleged observations.

Review of the grand jury transcripts is necessary to determining whether the false claims made by Moore, as set forth above, were presented to the grand jury. Review of the grand jury transcripts is similarly necessary to determining if the State presented to the grand jury evidence that the cellular site data showed the phone in question not to have been at 1501 S. Belcher on March 14, 2023.



### E. Colin Bolton

Compounding on the information set forth above, review of the grand jury testimony is necessary to determining if the State presented the grand jury with evidence of Carole Celeste Bacher's testimony and photopack identification results. It is similarly necessary to determining if Det. Bolton relayed to the grand jury his conclusions that Debra Henrich's observations were unreliable and that it is "highly unlikely that she could ID the person" she saw in the utility closet. Indeed, Det. Bolton testified in his deposition that he was "not aware of a positive ID [made by Henrichs]."

Compounding further on Chad Summerfield's potential testimony to the grand jury, review of Det. Bolton's grand jury testimony is necessary to determining what Bolton reported to the grand jury with respect to the volume of blood at the scene of S.C.'s disappearance given that Bolton believed that a "bloodletting event" occurred despite only a few droplets of blood being documented at the scene. Review is likewise necessary to determining if he testified that household cleaning products can cause false positive Luminol results and if he acknowledged, as he did in his deposition, that experts are better judges than him of determining if a bloodletting event occurred.

In addition, Det. Bolton testified in his deposition that he wore the same shoes when he searched 1501 S. Belcher and when he searched Dr. Kosowski's house and

garage. He did not wear shoe covers during either of those searches. Consequently, review of the grand jury testimony is necessary to determining if the State presented those facts to the grand jury to establish that Bolton may have cross-contaminated DNA evidence between those scenes due to his failure to wear shoe covers.

In closing arguments at the *Arthur* hearing, the State said that the “wagon man” is purportedly Dr. Kosowski. However, Det. Bolton testified in his deposition that there was never a positive identification made and that “the goatee man” was the same person as the wagon man. Again, Celeste Bacher did not identify the goatee/wagon man as Dr. Kosowski. Therefore, in addition to the foregoing, review of the grand transcripts is necessary to determine if the grand jury was misled to believe that a positive identification of the wagon man had been made and that the identification would have been of Dr. Kosowski.

#### F. Fingerprint Evidence

Similarly, in closing arguments at the *Arthur* hearing, the State said of the electrical closet that Henrichs referenced, “[t]here is no reason for anybody to be in there. No member of the public should be in there.”<sup>4</sup> It made that argument despite the fact that 14 latent prints were located on the door and 12 latent prints were located on the electrical panel. Of those prints, matches were made to at least three people who had no reason to be in the closet, Edward Jarzembowski, Dennis Carrion,

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<sup>4</sup> Transcript of *Arthur* Hearing at 209, lines 19-21.

Patrick Atkinson. Given those facts, review of the grand jury transcripts is necessary to determining if the jury was presented with the material exculpatory evidence and/or whether it was misled to believe that no other member of the public was or could have been in the closet.

## **Conclusion**

Given the absence of any proof that S.C. is actually deceased, as required of a First Degree Murder charge, the review of the grand jury record is necessary to determining that Dr. Kosowski's right to a grand jury indictment was not infringed. Based on the foregoing, coupled with the unique circumstances of this case, the failure to disclose the grand jury transcripts would violate Dr. Kosowski's rights to due process and to be free from cruel and unusual punishment, as guaranteed under the Florida and United States Constitutions, and would be contrary to the holdings of *Brady v. Maryland*, 373 U.S. 83 (1973) and its progeny.

Respectfully Submitted,

s/ J. Jervis Wise  
J. JERVIS WISE  
BRUNVAND WISE, P.A.  
Florida Bar No. 0019181

s/ Bjorn E. Brunvand  
BJORN E. BRUNVAND  
BRUNVAND WISE, P.A.  
Florida Bar No. 0831077

s/ Debra B. Tuomey  
DEBRA B. TUOMEY  
Debra B. Tuomey, LLC.  
Florida Bar No. 497681

s/ Amanda Powers Sellers  
AMANDA POWERS SELLERS  
Amanda Powers Sellers, PA  
Florida Bar No. 11643

s/ Willengy Wicks Ramos  
WILLENGY W. RAMOS WICKS  
BRUNVAND WISE, P.A.  
Florida Bar No. 113598

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was furnished by email to the Office of the State Attorney, Sixth Judicial Circuit of Florida, at [SA6eservice@co.pinellas.fl.us](mailto:SA6eservice@co.pinellas.fl.us) on this 16th day of January 2025.

*s/Jervis Wise*

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J. JERVIS WISE, ESQ.  
BRUNVAND WISE, P.A.  
615 Turner Street  
Clearwater, Florida 33756  
Telephone No. (727) 446-7505  
Facsimile No. (727) 446-8147  
Email: [jervis@acquitter.com](mailto:jervis@acquitter.com)  
Florida Bar No. 19181  
Counsel for the Defendant