

IN THE CIRCUIT COURT,  
FOURTH JUDICIAL CIRCUIT,  
IN AND FOR DUVAL COUNTY, FLORIDA

CASE NO.: 16-2011-CF-07425-AXXX-MA

DIVISION: CR-E

STATE OF FLORIDA,

v.

FREDERICK L. WADE,  
Defendant.

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**ORDER DENYING IN PART AND GRANTING IN PART DEFENDANT'S MOTION  
TO CORRECT SENTENCING ERROR PURSUANT TO RULE 3.800(b)(2),  
FLORIDA RULES OF CRIMINAL PROCEDURE**

This matter came before this Court on Defendant's Motion to Correct Sentencing Error, filed pursuant to Florida Rule of Criminal Procedure 3.800(b)(2) on June 20, 2013. On April 27, 2012, following a jury trial, Defendant was convicted of one count of Murder in the Second-Degree. (Ex. "A.") The jury also found that Defendant actually possessed and discharged a firearm causing great bodily harm or death during the commission of the offense. (Ex. "B.") On August 8, 2012, the court imposed a sentence of life with a life minimum mandatory pursuant to section 775.087, Florida Statutes, (2011). (Ex. "A.") Defendant has taken an appeal to the First District Court of Appeal and the initial brief has yet to be filed. (Ex. "C.") This Court has jurisdiction. See Fla. R. Crim. P. 3.800(b)(2).

In the instant Motion, Defendant raises two grounds for relief stating that his sentence is illegal. First, Defendant alleges that the court erred in sentencing Defendant without considering a Youthful Offender sentence. Defendant alleges he was eligible for a Youthful Offender sentence because he was twenty years old at the time of sentencing and convicted of Murder in

the Second-Degree, which is a first-degree felony punishable by life, but is not a “life felony.” Second, Defendant asserts that the court erred in sentencing Defendant to a life minimum mandatory. Defendant avers the State misadvised the court that imposing a life sentence mandated a mandatory life sentence. Defendant also argues the Youthful Offender statute trumps the 10-20-Life statute, so even the 25 year minimum mandatory is not required if the court chooses to sentence Defendant as a Youthful Offender.

**Ground One:**

In Defendant’s first ground for relief, Defendant asserts the court erred in failing to consider the Youthful Offender sentence. Specifically, Defendant argues that reclassification to a life felony does not preclude sentencing as a Youthful Offender without reclassification, Defendant’s Murder in the Second-Degree is a first-degree felony punishable by life, but is not a “life felony.” Therefore, Defendant argues he was eligible for Youthful Offender.

Florida Statute Section 958.04 governs the Youthful Offender sentencing scheme. The statute specifically states:

[T]he court may sentence as a youthful offender any person who is at least 18 years of age . . . found guilty of . . . a felony if the offender is younger than 21 years of age at the time sentence is imposed . . . who has not previously been classified as a youthful offender under the provisions of this act . . . however, a person who has been found guilty of a capital or life felony may not be sentenced as a youthful offender under this act.

§ 958.04(1), Fla. Stat. (2011).

In the instant case, Defendant was charged with and convicted of Murder in the Second-Degree with a firearm, which after reclassification is a life felony. See §§ 775.087(1), 782.04(2), Fla. Stat. (2011). However, Defendant argues that reclassification to a life felony does not preclude consideration of Youthful Offender sentencing. In this regard, Defendant relies on Ruth v. State, 949 So. 2d 288, 290 (Fla. 1st. DCA 2007). In Ruth, the lower court determined

that the defendant was not eligible for youthful offender because his conviction for armed robbery was reclassified to a life felony. Ruth, 949 So. 2d at 289. However, the appellate court held that the trial court erred when it reclassified the defendant's first-degree felony to a life felony pursuant to section 775.087(1), Florida Statutes (2003), because the use of a firearm or weapon was an essential element of armed robbery. Ruth, 949 So. 2d at 289; see also §775.087(1), Fla. Stat. (2011) (providing that whenever a person is charged with a felony, *except a felony in which the use of a weapon or firearm is an essential element*, and during the commission of such felony the defendant . . . uses . . . any weapon or firearm . . . the felony for which the person is charged shall be reclassified . . . in the case of a felony of the first degree, to a life felony). Therefore, the appellate court concluded Defendant was eligible for Youthful Offender. Ruth, 949 So. 2d at 290.

Defendant also relies on Betancourt v. State, 804 So. 2d 313 (Fla. 2001), to show that a first-degree felony punishable by life should be treated as a first-degree felony, not a life felony. Defendant's reliance on Betancourt, however, is misplaced because Defendant's conviction for Murder in the Second-Degree was converted from a first-degree felony punishable by life to a *life felony* according to section 775.087(1), Florida Statutes (2011).

Moreover, unlike in Ruth, the reclassification of Defendant's offense was proper. Defendant was charged and convicted of Murder in the Second-Degree murder with the use of a firearm. First, the use of a weapon or firearm is *not* an essential element of Murder in the Second-Degree. See §782.04(2), Fla. Stat. (2011). Second, the jury found that Defendant actually possessed and discharged a firearm causing great bodily harm or death during the commission of the offense. (Ex. "A.") Therefore, Defendant's conviction was properly reclassified from a first-degree felony punishable by life, to a life felony. See §775.087(1), Fla.

Stat. (2011). Therefore, according to section 958.04, Florida Statutes (2011), Defendant *may not* be sentenced as a Youthful Offender. Thus, Defendant's first ground for relief is denied.

**Ground Two:**

In Defendant's second ground, Defendant alleges that the court erred in sentencing Defendant to mandatory life imprisonment when advised by the State that life was the minimum mandatory. Specifically, Defendant points to the following exchange that occurred at the sentencing hearing:

THE COURT: How much credit does he have?

THE CLERK: 404 days.

THE COURT: And, Mr. Wade, I sentence you to life in prison, with the minimum mandatory of 25 years and credit for 404 days.

MR. THOMPSON: Your, Honor, based on your sentence, the life sentence is the minimum mandatory.

THE COURT: Okay. Then mandatory life.

(Ex. "D" at 39.)

The State's above assertion was incorrect because the trial court had discretion to enter a minimum mandatory sentence in the range of twenty-five years to life. Case law is clear that section 775.087(2)(a)(3), Florida Statutes (2011), gives the trial court discretion to impose a mandatory minimum in the *range* of "a minimum term of imprisonment of not less than 25 years and not more than a term of imprisonment of life in prison." Mendenhall v. State, 48 So. 3d 740 (Fla. 2010); see also Flowers v. State, 69 So. 3d 1042 (Fla. 1st DCA 2011); Dean v. State, 58 So. 3d 322 (Fla. 1st DCA 2011). Because it appears the judge may have been misled as to the

applicable minimum mandatory sentence, Defendant is entitled to be resentenced. Therefore, Defendant's second ground for relief is granted.

In view of the above, it is:

**ORDERED AND ADJUDGED** that Defendant's Motion to Correct Sentencing Error is hereby **DENIED** in part as to ground one and **GRANTED** in part as to ground two. Defendant shall be resentenced in accordance with this Order at a hearing, the time and date of which shall be set forth in a separate order.

**DONE AND ORDERED** in Chambers, in Jacksonville, Duval County, Florida, on this 16<sup>th</sup> day of August, 2013.

  
Tatiana Salvador, Circuit Court Judge

**CERTIFICATE OF SERVICE**

I do hereby certify that a copy hereof has been furnished to Defendant by United States mail this 19<sup>th</sup> day of August, 2013.

  
Deputy Clerk

Copies to:

Office of the State Attorney  
Division CR-E

William Mallory Kent  
Florida Bar No. 0260738  
California Bar No. 92776  
1932 Perry Place  
Jacksonville, Florida 32207-3443

Case No.: 16-2011-CF-07425-AXXX-MA  
Attachments: Exhibits: A-D.  
/swb

IN THE CIRCUIT COURT, FOURTH  
 JUDICIAL CIRCUIT, IN AND FOR  
 DUVAL COUNTY, FLORIDA

CASE: 16-2011-CF-007425-AXXX-MA

DIVISION: CR-E

- Probation Violator
- Community Control Violator
- Retrial
- Resentence

**FILED**  
 AUG 08 2012  
*Jim Fuller*  
 CLERK CIRCUIT COURT

STATE OF FLORIDA  
 vs.

FREDERICK LEE WADE, DEFENDANT

**JUDGMENT**

The defendant, **FREDERICK LEE WADE**, being personally before this court, represented  
 by R. Bethea, the attorney of record, and the state being represented  
 by D. Thompson, and having:

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

Count	Crime	Offenses Statute Number(s)	Degree Of Crime	Case Number	OBTS Number
1	Murder in the second degree	782.04(2)	Life		

and no cause being shown why the defendant should not be adjudicated guilty, IT IS ORDERED that the defendant is hereby ADJUDICATED GUILTY of the above crime(s).

and having been convicted or found guilty of, or having entered a plea of nolo contendere or guilty, regardless of adjudication, to any felony offense, as provided in Florida Statute section 943.325, the defendant shall be required to submit two blood specimens or other biological specimens approved by the Department of Law Enforcement.

and good cause being shown; IT IS ORDERED THAT ADJUDICATION OF GUILT BE WITHHELD.

**EXHIBIT A.**

STATE OF FLORIDA

vs











FREDERICK LEE WADE, DEFENDANT

CASE: 16-2011-CF-007425-AXXX-MA

Imposition of Sentence Stayed and Withheld (Check if Applicable)

The Court hereby stays and withholds the imposition of sentence as to count(s) \_\_\_\_\_ and places the Defendant on probation/community control for a period of \_\_\_\_\_ under the supervision of the Department of Corrections (conditions of probation/community control set forth in a separate order).

**FINGERPRINTS OF DEFENDANT**

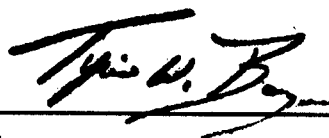
1. Right Thumb	2. Right Index	3. Right Middle	4. Right Ring	5. Right Little
				
6. Left Thumb	7. Left Index	8. Left Middle	9. Left Ring	10. Left Little
				

Fingerprints taken by:

Name: M. McGraw 66072 Title: J.O.

I HEREBY CERTIFY that the above and foregoing are the fingerprints of the defendant, **FREDERICK LEE WADE**, and that they were placed thereon by the defendant in my presence in open court on this date.

DONE AND ORDERED in open court at Jacksonville, Duval County, Florida, this 8th day of August, 2012.

  
\_\_\_\_\_  
Judge

FREDERICK LEE WADE, Case Number: 16-2011-CF-007425-AXXX-MA  
OBTS Number: 1602243343

**SENTENCE**

(Asto Count 1)

The defendant, being personally before this court, accompanied by the defendant's attorney of record R. Belva and having been adjudicated guilty herein, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown:

and the court having on 4-27-12 deferred imposition of sentence until this date.

and the court having previously entered a judgment in this case on \_\_\_\_\_ now resentsences the defendant.

and the court having placed the defendant on probation/community control and having subsequently revoked the defendant's probation/community control.

**It Is The Sentence Of The Court That:**

The defendant pay a fine of \$ \_\_\_\_\_, pursuant to section 775.083, Florida Statutes plus \$ \_\_\_\_\_ at the 5% surcharge required by 938.04, Florida Statutes.

The defendant is hereby committed to the custody of the Department of Corrections.

The defendant is hereby committed to the custody of the Sheriff of Duval County, Florida.

The defendant is sentenced as a youthful offender in accordance with section 958.04, Florida Statutes.

**To be Imprisoned (Check one; unmarked sections are inapplicable):**

For a term of natural life.

For a term of Life / Life min man

Said SENTENCE SUSPENDED for a period of \_\_\_\_\_ subject to conditions set forth in this order.

If "split" sentence, complete the appropriate paragraph.

Followed by a period of \_\_\_\_\_ on probation/community control under the supervision of the Department of Corrections according to the terms and conditions of Supervision set forth in a separate order entered herein.

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

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

**OTHER PROVISIONS**

**Retention of Jurisdiction**

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

**Jail Credit**

It is further ordered that the defendant shall be allowed a total of 404 days as credit for time incarcerated before imposition of this sentence.

**Prison Credit**

It is further ordered that the defendant be allowed credit for all time previously served on this count in the Department of Corrections prior to resentencing.

**Consecutive/ Concurrent As To Other Counts**

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



FREDERICK LEE WADE, Case Number: 16-2011-07-007425-AXXX-MA  
OBTS Number: 1602243343

**SPECIAL PROVISIONS**

By appropriate notation, the following provisions apply to the sentence imposed:

- Firearm  It is further ordered that the Life minimum imprisonment provisions of section 775.087, Florida Statutes, is hereby imposed for the sentence specified in this court.
- Drug Trafficking  It is further ordered that the \_\_\_\_\_ mandatory minimum imprisonment provisions of section 893.135(1), Florida Statutes, is hereby imposed for the sentence specified in this court.
- Controlled Substance within 1,000 feet of School  It is further ordered that the 3-year minimum imprisonment provisions of section 893.13(1)(c)1, Florida Statutes, is hereby imposed for the sentence specified in this court.
- Habitual Felony Offender  The Defendant is adjudicated a habitual felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(a), Florida Statutes. The requisite findings by the court are set forth in a separate order or stated on the record in open court.
- Habitual Violent Felony Offender  The Defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(b), Florida Statutes. A minimum term of \_\_\_\_\_ year(s) must be served prior to release. The requisite findings of the court are set forth in a separate order or stated on the record in open court.
- Violent Career Criminal  The Defendant is adjudicated a violent career criminal and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(d), Florida Statutes. A minimum term of \_\_\_\_\_ year(s) must be served prior to release. The requisite findings of the court are set forth in a separate order or stated on the record in open court.
- Prison Release Re-Offender  The Defendant is adjudicated a prison released re-offender in accordance with the provisions of section 775.082(9), and must serve 100 percent of the court imposed sentence.
- Law Enforcement Protection Act  It is further ordered that the defendant shall serve a minimum of \_\_\_\_\_ year(s) before release in accordance with section 775.0823, Florida Statutes.
- Capital Offense  It is further ordered that the defendant shall serve no less than 25 years in accordance with the provisions of section 775.082(1), Florida Statutes.
- Short-Barreled Rifle, Shotgun, Machine Gun  It is further ordered that the 5 year minimum provisions of section 790.221(2), Florida Statutes, are hereby imposed for the sentence specified in this court.
- Continuing Criminal Enterprise  It is further ordered that the 25 year minimum sentence provisions of section 893.20, Florida Statutes, are hereby imposed for the sentence specified in this court.
- DUI Provisions  It is further ordered that the 4 year minimum mandatory sentence pursuant to the provisions of section 316.193(3)(c)3, Florida Statutes, are hereby imposed for the sentence specified in this court.
- Dangerous Sexual Felony Offender  The Defendant is adjudicated a dangerous sexual felony offender and has been sentenced to an extended term in accordance with the provisions of section 794.0115, Florida Statutes. A mandatory/minimum term of \_\_\_\_\_ year(s) must be served. The requisite findings of the court are set forth in a separate order or stated on the record in open court.

FREDERICK LEE WADE, Case Number: 16-2011-CF-007425-AXXX-MA  
OBTS Number: 1602243343

**OTHER PROVISIONS**

Consecutive/  
Concurrent As To  
Other Convictions

It is further ordered that the composite term of all sentences imposed for the counts specified in this order shall run (check one)  consecutive to  concurrent with the following: (check one)

any active sentence being served.

specific sentences: \_\_\_\_\_

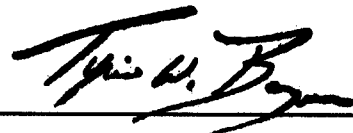
In the event the above sentence is to the Department of Corrections, the Sheriff of Duval County, Florida is hereby ordered and directed to deliver the defendant to the Department of Corrections at the facility designated by the department together with a copy of this judgment and sentence and any other documents specified by Florida Statute.

The defendant in open court was advised of the right to appeal from this sentence by filing a notice of **appeal within** 30 days from this date with the clerk of this court and the defendant's right to the assistance of counsel in taking the appeal at the expense of the State on showing of indigency.

In imposing the above sentence, the court further recommends:

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DONE AND ORDERED in open court at Jacksonville, Duval County, Florida, this 8<sup>th</sup> day of August, 20 12.

  
\_\_\_\_\_  
Judge

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL  
CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA

CASE NO.: 162011CF007425AXXXMA

DIVISION: CRE

STATE OF FLORIDA

vs.

FREDERICK LEE WADE

**FILED**

APR 27 2012

*Jiri Fuller*  
CLERK CIRCUIT COURT

VERDICT

X

We, the jury, find the Defendant guilty of Murder in the Second Degree, as charged in the information.

If you find the defendant guilty of this offense, you must also choose one of the following findings:

X

We find that the Defendant actually possessed and discharged a firearm causing great bodily harm or death during the commission of the offense.

—

We find that the Defendant actually possessed and discharged a firearm without causing great bodily harm or death during the commission of the offense.

—

We find that the Defendant actually possessed a firearm during the commission of the offense.

—

We find that the Defendant did not actually possess or discharge a firearm during the commission of the offense.

—

We, the jury, find the Defendant guilty of Manslaughter, a lesser-included offense.

If you find the defendant guilty of this offense, you must also choose one of the following findings:

—

We find that the Defendant actually carried, displayed, used, threatened to use or attempted to use a firearm during the commission of the offense.

—

We find that the Defendant did not actually carry, display, use, threaten to use or attempt to use a firearm during the commission of the offense.

—

We, the jury, find the Defendant not guilty.

SO SAY WE ALL.

DONE at Jacksonville, Duval County, Florida.

*[Signature]*  
FOREPERSON

*Richard M. Fogoley*

4/27/12  
DATE

EXHIBIT B.

Florida State Courts Courts Opinions New Query Help

Florida First District Court of Appeal Docket

Case Docket

Case Number: 1D12-4310

Final Criminal Judgment and Sentence Notice from Duval County

Fredrick Lee Wade vs. State of Florida

Lower Tribunal Case(s): 2011-CF-4725-AXXX

List of Abbreviations Printer Friendly View

Date Docketed	Description	Date Due	Filed By	Notes
09/07/2012	ORD-L.T. INSOLVENCY OR INDIGE.			
09/07/2012	Notice of Appeal Filed		Robert F. Bethea 310344	
09/10/2012	Notice of Appeal / Acknowledgement letter			
09/13/2012	Notice of Appearance		Richard B. Gordon, A. P. D. 0107050	
09/18/2012	Docketing Statement			AA Richard B. Gordon, A. P. D. 0107050
10/05/2012	Received Records			1 volume *SEALE*
10/05/2012	Received Records			6 volumes scanned ftp
10/08/2012	Designation of 2nd Public Defender			
10/09/2012	Received Exhibits			1 brn env (physical evidence) scanned ftp-see corr file
10/17/2012	Notice of Appearance		William Mallory Kent 0260738	
10/17/2012	Motion For Substitution of Counsel		William Mallory Kent 0260738	
11/02/2012	Grant Substitution of Counsel-31A			The motion filed October 17, 2012, seeking leave to substitute William Mallory Kent as counsel for appellant in this cause, is granted. The Office of the Public Defender, Fourth Judicial Circuit, is hereby discharged from any further responsibility in this proceeding.
11/06/2012	Mot. for Extension of time to file Initial Brief		William Mallory Kent 0260738	
11/08/2012	Grant Initial Brief Extension-1A	12/07/2012		Appellant's motion filed November 6, 2012, for extension of time for service of the initial brief is granted in part. Appellant's brief shall be served on or before December 7, 2012.
12/07/2012	Motion To File Supplemental Record		William Mallory Kent 0260738	
12/10/2012	Grant Motion to Supplement the Record-30	01/09/2013		Appellant's motion filed December 7, 2012, seeking to supplement the record on appeal with transcripts of the proceedings held April 3, 2012, is granted. Counsel for movant shall ensure preparation and transmittal of the supplemental record on or before January 9, 2012, and the time for service of the initial brief is extended to 30 days following transmittal of the supplemental record.

EXHIBIT C.

01/09/2013	Supplemental Records			1 volumes scanned ftp
02/01/2013	Motion To File Supplemental Record		William Mallory Kent 0260738	
02/04/2013	Grant Suppl Recd-30 dys Transmit/30 dys brf-30A	03/06/2013		Appellant's motion filed February 1, 2013, seeking to supplement the record on appeal with transcripts of the proceedings held January 18, 2012, January 19, 2012, January 31, 2012, February 22, 2012, March 31, 2012, April 2, 2012, April 16, 2012, April 23, 2012, June 18, 2012, June 22, 2012 and August 6, 2012, is granted. Counsel for movant shall ensure preparation and transmittal of the supplemental record on or before March 6, 2013, and the time for service of the initial brief is extended to 30 days following transmittal of the supplemental record.
03/06/2013	Motion for Extension of Time		William Mallory Kent 0260738	to file supp record and initial brief
03/08/2013	Grant EOT Record and Brief-28C	04/01/2013		Appellant's motion filed March 6, 2013, is granted. Counsel shall ensure completion of the record on or before April 1, 2013. Appellant's initial brief shall be filed within 45 days of completion of the record.
04/04/2013	Notice		Hon. Ronnie Fussell, Clerk duval	of inability to complete rec
04/04/2013	Supplemental Records			1 volume scanned ftp
05/14/2013	Mot. for Extension of time to file Initial Brief		William Mallory Kent 0260738	
05/16/2013	Grant Initial Brief Extension-1A	06/19/2013		Appellant's motion for extension of time filed on May 14, 2013, is granted in part. The initial brief shall be filed on or before June 19, 2013.
06/19/2013	Notice of Filing		William Mallory Kent 0260738	3.800 (b) (2) motion noted

List of Abbreviations

Printer Friendly View

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IN THE CIRCUIT COURT, FOURTH  
JUDICIAL CIRCUIT, IN AND FOR  
DUVAL COUNTY, FLORIDA.

CASE NO.: 2011-CF-7425  
DIVISION: CR-E

STATE OF FLORIDA  
vs.  
FREDERICK LEE WADE,  
Defendant.

**FILED**  
SEP 11 2012  
*Jiri Fuller*  
CLERK OF COURT

TESTIMONY AND PROCEEDINGS before the  
Honorable TYRIE BOYER, Circuit Judge, Courtroom.No.  
308, at the Duval County Courthouse, 501 West Adams  
Street, Jacksonville, Duval County, Florida, on  
Wednesday, August 8th, 2012, commencing at 11:00 a.m.,  
reported by Sharron A. McLendon, Court Reporter.

- - -

1 mitigation after you have that act following the  
2 violence, following a violent life that this  
3 particular person has lived.

4 Accordingly, I'm going to waive the fines and  
5 cost.

6 How much credit does he have?

7 THE CLERK: 404 days.

8 THE COURT: And, Mr. Wade, I sentence you to  
9 life in prison, with a minimum mandatory of 25  
10 years and credit for 404 days.

11 The court is in recess.

12 MR. THOMPSON: Your Honor, based on your  
13 sentence, the life sentence is the minimum  
14 mandatory.

15 THE COURT: Okay. Then mandatory life.

16 (Whereupon, the proceedings were concluded.)  
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C E R T I F I C A T E

1 STATE OF FLORIDA)

2 COUNTY OF DUVAL )

3

4  
5 I, Sharron Ann McLendon, certify that I was  
6 authorized to and did stenographically report the  
7 foregoing proceedings and that the transcript is a true  
8 and complete record of my stenographic notes.

9 DATED this 10th day of September, 2012.

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13 *Sharron A. McLendon*  
14 Sharron A. McLendon  
15 Court Reporter

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