No.: 4D17-2486

IN THE DISTRICT COURT OF APPEAL
FOR THE FOURTH DISTRICT
STATE OF FLORIDA

DALIA DIPPOLITO,

Defendant-Appellant,

v.

STATE OF FLORIDA,

Plaintiff-Appellee.

ON APPEAL FROM THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, CASE NO.: 2009-CF-009771AMB

DEFENDANT-APPELLANT'S INITIAL BRIEF

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JURISDICTIONAL STATEMENT

The Defendant-Appellant, DALIA DIPPOLITO ("Ms. Dippolito"), timely noticed this appeal on August 4, 2017, within thirty days of the final judgment, which was rendered on July 21, 2017. (R. at 4133, 4050). Venue is proper in the Fourth District Court of Appeal. Fla. Stat. § 35.042. This Court has jurisdiction. Fla. R. App. P. 9.110(b); Fla. R. App. P. 9.030(b)(1)(A).

ISSUES PRESENTED

The State charged Ms. Dippolito with hiring a hitman to kill her then-husband. The hitman was actually an undercover officer from the Boynton Beach Police Department ("BBPD"). Prior to trial, the State stipulated that an allegation that Ms. Dippolito unsuccessfully attempted to poison her husband with antifreeze would be inadmissible. This stipulation seemed unavoidable, as this Court found that it was reversible error to expose the jury to this allegation during her first trial. *Dippolito v. State*, 143 So. 3d 1080, 1081 (Fla. 4th DCA 2014).

The lower court accepted the stipulation and independently ruled prior to trial that the allegation was inadmissible under section 90.403, Florida Statutes. However, on the final day of the defense's case, the State reneged on its stipulation, and the lower court allowed it to introduce the allegation for purposes of impeachment. The lower court also permitted the State to introduce a host of other unsubstantiated prior bad acts, including an allegation that she had hired another

hitman named "Larry," whose involvement was only corroborated by hearsay.

Ms. Dippolito maintained that BBPD engaged in outrageous conduct that rose to the level of objective entrapment. She relied on the testimony of the State's own confidential informant, Mohamed Shihadeh, who stated under oath that he approached BBPD to report that Ms. Dippolito was the victim of domestic abuse. Shihadeh, who had an intimate relationship with Ms. Dippolito, also testified that (1) BBPD imposed an artificial deadline of seventy-two hours to set up Ms. Dippolito, a deadline coincided with the timeframe that the COPS television program was filming at the department; (2) BBPD repeatedly threatened him with prosecution if he did not set up Ms. Dippolito, which caused him to pressure her; (3) BBPD placed surveillance cameras in his car without his permission before he ever gave a formal statement; (4) BBPD allowed him to make numerous uncontrolled calls with Ms. Dippolito; and (5) BBPD monitored an encounter between Shihadeh and Ms. Dippolito eating at Chili's just before the alleged solicitation, but either failed to preserve the recording, destroyed it, or never turned it over to the defense.

The trial court denied a motion to dismiss based on objective entrapment and denied a request to present the theory of objective entrapment to the jury.

ISSUE I: Did the trial court err when it permitted the State to introduce the allegation that Ms. Dippolito attempted to poison her husband, where the State stipulated prior to trial that it would not attempt to introduce evidence of the attempt,

and where the trial court independently ruled that the alleged attempt was inadmissible pursuant to section 90.403?

ISSUE II: Did the trial court violate Ms. Dippolito's right to due process when it denied her motion to dismiss the case based on objective entrapment?

ISSUE III: Did the trial court violate Ms. Dippolito's right to due process when it precluded her from presenting her objective entrapment defense to the jury?

ISSUE IV: Did the trial court err when it permitted the State to introduce evidence of prior bad acts that were not supported by clear and convincing evidence and not inextricably intertwined with the theory of prosecution?

STATEMENT OF THE CASE AND FACTS

A. BBPD Coerces Shihadeh to Work as a Confidential Informant

On July 31, 2009, Mohamed Shihadeh contacted BBPD about Ms. Dippolito. T. Tr. III at 2303.[1] Shihadeh and Dippolito had an "intimate" relationship, and he wanted her to get "help" because she was in a relationship with an "abuser" who took steroids and became violent. *Id.* at 3454, 3458; T. Tr. II at 243; R. at 2378. He

[1] One of the issues on appeal is whether the conduct of law enforcement constituted objective entrapment. Appellate review of the defense of objective entrapment requires this Court to review "the totality of the circumstances." *Bist v. State*, 35 So. 3d 936, 939 (Fla. 5th DCA 2010). Ms. Dippolito therefore relies not just on the testimony and evidence adduced during her last trial, but also on sworn testimony adduced during other phases of the proceedings, including her second trial, which ended in a mistrial with a deadlocked jury. The briefing will cite to the transcript of the second trial as "T. Tr. II at __" and the transcript of the third trial as "T. Tr. III at __."

testified that he told BBPD, "I know a woman that's being hurt by her husband and . . . she needs help and she feels like her only solution is for her to be dead or for him to be killed." T. Tr. II at 183; T. Tr. III at 3458.

He was concerned because he thought she had approached people about having her husband killed, but his "main goal" in approaching BBPD was simple: He wanted "them to give her a call and try to help her." T. Tr. at 3458. He also told BBPD she was the victim of domestic abuse. T. Tr. II at 186-87.

When he first contacted BBPD, Shihadeh never believed that Ms. Dippolito was going to be the target of the investigation. *Id.* at 185. He also never believed that she would ever actually kill her husband. *Id.* at 187. Mr. Shihadeh thought that BBPD could have resolved the domestic dispute with a simple phone call: "if they would have just called her and talked to her," there would have been "no need" for further action. *Id.* at 187.

Nevertheless, BBPD forced Shihadeh to come to the station: "They told me I had to . . . . They made me come in within the hour." *Id.* at 185, 186. Shihadeh testified that he never wanted to be involved in the investigation. T. Tr. III at 3450. But BBPD threatened to prosecute him if he did not serve as a confidential informant and set up Ms. Dippolito. T. Tr. II at 189; T. Tr. III at 3471.

When Shihadeh first walked into the station – before being interviewed – BBPD took his car keys, telling him that law enforcement had to move his car. T.

Tr. II at 194, 196. BBPD then placed surveillance cameras inside his car without ever asking for or receiving his permission. *Id.* at 195. When asked whether he felt BBPD misled him by placing cameras in his car without his permission, he responded, "Of course. Anybody would." *Id.*

During his initial interview, BBPD made no effort to verify whether or not Ms. Dippolito was the victim of domestic abuse. *Id.* at 187. Instead of investigating the perpetrator of domestic abuse, Michael Dippolito, BBPD decided that it wanted to investigate the victim, Dalia Dippolito, even though she had no criminal history. *See* R. at 1,288; T. Tr. III at 3452-53.

Shihadeh testified that BBPD officers were laughing when he gave them his statement. T. Tr. III at 3474. Apparently, the officers found it funny that Shihadeh, despite having a sexual relationship with Ms. Dippolito, was unsure of her address. T. Tr. II at 197-98. The officers also found his story bizarre. *Id.* at 198.

In order for Shihadeh to serve as a confidential informant, BBPD needed to get him to sign a Confidential Informant packet ("CI packet"). BBPD tricked him into signing the CI packet by telling him that the purpose of signing the form was so law enforcement could keep his identity confidential. *Id.* at 198-99. Confidentiality was important to Shihadeh because he had children and wanted to protect them. *Id*

at 200-01. Shihadeh called his attorney, Ian Goldstein, before signing the packet, *id*. at 230, but BBPD took very little time to explain the packet to him.[2] *Id.* at 198.

On the second day of the investigation, when Shihadeh returned to the station to give another statement, BBPD officers remained jovial, and had to start the interview over and re-record the beginning portion because they were laughing. R. at 2377. During both of his first two meetings with BBPD, Shihadeh simply wanted BBPD to "help" and "call" Ms. Dippolito, R. at 2377-78, but BBPD did not seem to care about the domestic abuse. T. Tr. III at 3473.

From that point forward, BBPD repeatedly pressured Shihadeh to continue to participate in its investigation of Ms. Dippolito, even though he expressly told law enforcement that he did not want to be involved. T. Tr. III at 3469, 3471, 3488. He testified that BBPD "kept on calling me; Officer Brown, Officer Moreno; telling me, we need you, we need you, we need you. Come in here, come in. I said, I want nothing to do with it. You know. What I said is what I said. And it kept on continuing." R. at 1907-98. Shihadeh testified that Detective Alex Moreno, in particular, made numerous phone calls to him during the course of the investigation, a number of which occurred during the middle of the night: "2, 3, 4, anytime." T. Tr. II at 190. During one such call, Detective Moreno placed an artificial deadline

[2] During the second trial, Shihadeh stated that BBPD only took twenty seconds going over it with him. T. Tr. II at 198. However, during the third trial, Shihadeh testified that he took "[m]aybe a minute or two" looking over the packet. T. Tr. III at 3478.

on the conclusion of the investigation, and he instructed Shihadeh to tell Ms. Dippolito "that it has to be done within the next 72 hours." *Id.* at 191. Detective Moreno imposed this same deadline on Shihadeh. *Id.* at 191.

B. The COPS Crew Comes to Boynton Beach

One explanation for why BBPD exerted pressure on Shihadeh and placed unauthorized cameras in his car is because the crew from the COPS television show was in town, and the producers were set to start filming soon after Shihadeh's initial report. Over a year before the investigation, in September of 2008, BBPD's public information officer, Stephanie Slater, approached COPS producers to inquire into the possibility of BBPD appearing on the show. R. at 4321. Ms. Slater continued to correspond with COPS producers until COPS finally committed to filming at BBPD in early August of 2009. *Id.* at 4325. According to Slater, the purpose of BBPD appearing on COPS was to generate "great publicity." *Id.* at 4322.

The filming was first set to begin on August 11, 2009. *Id.* However, the COPS producers pushed the date up to a week earlier, August 4, 2009. *Id.* at 4325. The "powers" within BBPD told the COPS crew about the Dippolito investigation because it "sounded like a good case for them to go on." *Id.* at 1874. And so the COPS television crew began accompanying BBPD in its investigation. *Id.* The chief of BBPD was so excited about the release of the COPS episode that he wanted to have a "big viewing party." *Id.* at 4342.

C. The Meeting at the Mobil Gas Station

On the second day of the investigation, August 1, 2009, BBPD told Shihadeh that he had to meet Ms. Dippolito at a Mobil gas station, and instructed him "to ask her for a certain dollar amount and to hand it to somebody else." T. Tr. II at 214. Immediately before the meeting with Ms. Dippolito at the Mobil gas station, Shihadeh told Detective Moreno he wanted to extricate himself: "I don't want to do this, I don't want to be involved." T. Tr. III at 3491. Shihadeh also told law enforcement that he did not want to be recorded. *Id.* at 3492.

Detective Moreno responded with a threat, telling him, "you're gonna possibly face prosecution." *Id.* at 3491. Shihadeh confirmed that he was a "hundred percent" sure that Detective Moreno threatened him with prosecution that day. *Id.* at 3493. Shihadeh was "pretty much told what to say." *Id.* During their conversation, he and Ms. Dippolito discussed the possibility of her hiring a hitman to kill her husband, and she gave Shihadeh $1,200. T. Tr. III at 2341. This meeting was recorded using the surveillance cameras in Shihadeh's vehicle. *Id.* at 2554.

D. The Chili's Encounter

On August 3, 2009, someone from BBPD called Shihadeh and told him that he had to come to the police station. T. Tr. II at 215. Shihadeh did not want to go to the police station on that day, and he tried to call his attorney to ask whether he was required to go. *Id.* However, his attorney was unavailable because he was

travelling. *Id*. at 217. Shihadeh relented because he felt pressured by law enforcement. *Id*. During the trial, Shihadeh testified that he remained afraid of police retaliation if he did not complete his task. T. Tr. III at 3506.

When Shihadeh arrived at the police station, BBPD revealed its plan: Shihadeh would take Ms. Dippolito to a Chili's restaurant to eat, and after the meal, Shihadeh and Ms. Dippolito would meet with an undercover law enforcement agent who was posing as a hitman. T. Tr. II at 215.

Shihadeh testified that BBPD "put wires" on him to record the Chili's encounter. *Id.* To do so, BBPD had to lift his T-shirt. *Id.* at 218. Shihadeh had no doubt about his recollection: "I'm a hundred percent sure that they wired me. I'm a hundred percent sure that was before I went into Chili's." *Id.* at 219. Shihadeh knew that BBPD was listening because they later joked about the fact that Ms. Dippolito ordered a take-out meal for her husband. *Id.* at 223. BBPD called it the "last supper." *Id.* Shihadeh also testified that BBPD took the wire off after the meeting. *Id.* at 222. The defense never received a recording of Chili's encounter.

Immediately after leaving Chili's, Ms. Dippolito and Shihadeh went to a CVS pharmacy parking lot to meet with an undercover law enforcement officer who was posing to be a hitman. T. Tr. III at 2987. The ensuing video provided the evidentiary basis for Ms. Dippolito's prosecution. Even though BBPD officers claimed to be concerned about what Ms. Dippolito might do, they allowed her to return home that

evening without conducting any surveillance and never informed Michael Dippolito of the alleged plot until after it staged his death. T. Tr. III at 2636-37.

E. The Fake Crime Scene

BBPD already determined it had probable cause to arrest Ms. Dippolito for solicitation to commit murder by virtue of its video of her and an undercover officer; nevertheless, the department decided to set up a staged crime scene where it would inform Ms. Dippolito that her husband had been killed. T. Tr. III at 3405. Stephanie Slater pitched the idea to COPS producers, who agreed to film the events. *Id.* at 3075, 3081.

Stephanie Slater attended the fake crime scene as it was being filmed by the COPS television show. *Id.* at 3407. She stated it was part of her job to be there, and noted that BBPD already had a press conference scheduled to discuss Ms. Dippolito's arrest. R. at 4329.

F. BBPD Publishes the Video on YouTube Before Ms. Dippolito is Charged

After leaving the fake crime scene, Ms. Slater went back to her office at BBPD and posted on YouTube a recording of the action at the fake crime scene. R. at 4332. It was always part of BBPD's plan to publicize the arrest. *Id.* Ms. Slater testified that the YouTube posting of the fake crime scene went viral nationally and internationally, which meant "it is seen by everyone using social media. Thousands and thousands of people have seen it." R. at 4336.

Ms. Slater did not, however, think that releasing the video before Ms. Dippolito had even been charged with a crime was against BBPD policy, which prohibited the release of "any facts that might hinder the investigation of crime or incident or jeopardize the rights of a person under arrest." R. at 4334.

G. Ms. Dippolito's First Trial and Appeal

In 2009, the State charged Ms. Dippolito with solicitation to commit first degree murder with a firearm. *Dippolito*, 143 So. 3d at 1081. Since BBPD had released the footage of her investigation on YouTube, the case generated considerable pretrial publicity. *Id.* at 1081-82. After a ten-day trial, the jury found her guilty. *Id.* at 1082.

Ms. Dippolito appealed the conviction. *Id.* at 1081. She argued on appeal that the court erred by denying her request to individually question prospective jurors about their exposure to the extensive pretrial publicity about her case, and by denying her request to strike the entire venire panel after all the jurors heard an allegation that she had attempted to poison her husband. *Id*.

This Court agreed with her argument. In doing so, it rejected the State's claim that the poisoning allegation was harmless and opined as follows: "Because it involved an attempt to kill the same victim, it was closely related to the pending charges and could have prejudiced jurors in rendering their verdict." *Id.* at 1085.

This Court also stated that "if this type of evidence had been improperly introduced at trial, it would have been presumed harmful." *Id*. at 1086 (citations omitted).

H. The Motion to Dismiss based on Objective Entrapment

On remand, Ms. Dippolito moved to dismiss the charge of solicitation. R. at 1692. She argued that the totality of BBPD's outrageous misconduct during the investigation of the murder-for-hire investigation constituted objective entrapment. *Id*. at 1693. The trial court conducted an evidentiary hearing on the motion on January 19, 2016 and February 23, 2016. R. at 4245-96; 4297-4531.

The trial court denied the motion. R. at 2079. Ms. Dippolito petitioned this Court for a writ of prohibition to review the denial of the motion. *Dippolito v. State*, Case No. 4D16-1113 (Fla. 4th DCA 2016). This Court dismissed the petition without passing on the merits. *Id.* Ms. Dippolito also petitioned the Florida Supreme Court for writ of prohibition, but the petition was denied as successive. *Dippolito v. State*, Case No. SC16-1605 (Fla. 2016).

I. Ms. Dippolito's Second Trial

Prior to Ms. Dippolito's second trial, the State stipulated that it would not admit evidence related to the poisoning allegation. R. at 2994. Ms. Dippolito also moved in limine to preclude the State from presenting uncharged crimes to the jury, which included (1) an alleged attempt to plant drugs in the car of her husband; (2) an alleged attempt to steal the gun of Mr. Shihadeh; (3) an alleged prior attempt by

Ms. Dippolito to have someone named "Larry" from Riviera Beach kill her husband; and (4) an alleged attempt to divest her husband of title to his home. *See* R. at 3073. Although the trial court denied the motion in limine, the State did not introduce evidence related to these collateral acts, apart from a video recording of Shihadeh talking about "Larry." *See id.*; R. at 3351.

Ms. Dippolito pointed to multiple instances of police misconduct and argued that it gave rise to reasonable doubt. *Dippolito v. State*, 225 So. 3d 233, 235 (Fla. 4th DCA 2017). Ms. Dippolito's second trial ended with the trial court declaring a mistrial due to a hung jury that was split three to three. *Dippolito*, 225 So. 3d at 235.

J. Ms. Dippolito's Third Trial

In advance of the third trial, the State once again stipulated to a motion in limine that would preclude it from introducing evidence related to the poisoning allegation under section 90.403. R. at 2998; Supp. R. at 16. In the abundance of caution, defense counsel also asked the trial court at a pretrial hearing to rule on the motion. Supp. R. at 16. The trial court granted it. *Id*. When defense counsel asked for the basis for the ruling, the State suggested it should barred under section 403: "I would say it's a 403." *Id*. The lower court agreed. Supp. R. at 17.

Ms. Dippolito also moved the trial court in limine for an order precluding the State from introducing a number of other prior bad acts. R. at 3077. According to Ms. Dippolito, the collateral bad acts could not be "inextricably intertwined" with

the charged offense because the State actually chose to present its case during the second trial without relying on the prior bad act evidence. R. at 3075. Ms. Dippolito also maintained that (1) the State lacked an adequate foundation because it could not present clear and convincing evidence that she committed those collateral crimes; and (2) the probative weight of the evidence was substantially outweighed by its prejudicial effect. R. at 3075-80.

In addition, Ms. Dippolito filed a stand-alone motion to preclude any reference Ms. Dippolito attempting to hire "Larry" from Riviera Beach to kill her husband, as the only evidence in support of that allegation was Shihadeh's hearsay statement about what "Larry" told him. R. at 3325-26. She further argued that the statement was neither *Williams* Rule evidence, nor evidence that is inextricably intertwined with the facts giving rise to her prosecution. R. at 3329-33. The lower court denied the motions. Supp. R. at 73.

The State, for its part, moved to exclude the testimony of an expert witness retained by Ms. Dippolito. At a hearing on the motion, defense counsel informed the trial court that the expert, Dr. Lenore Walker, could testify that victims of domestic abuse, such as Ms. Dippolito, were more vulnerable and susceptible to coercion than ordinary individuals. R. at 4659. According to defense counsel, those facts were relevant to Ms. Dippolito's defense of objective entrapment. *Id.* The trial court disagreed. It ruled that objective entrapment is not an affirmative defense that

could be argued to the jury, and in any event, the state of mind of Ms. Dippolito was irrelevant to objective entrapment. R. at 4660-61. The lower court ruled that Dr. Walker could only testify if Ms. Dippolito chose to present a subjective entrapment defense. R. at 4661. The next day the case proceeded to trial.

Prior to opening statements, the prosecutor asked whether he could read text messages during his initial presentation to establish that Ms. Dippolito committed a host of prior bad acts, including what he described as "all the schemes they're pulling to have Mike Dippolito arrested, plant drugs on him, pretend that she's pregnant, siphon money from the bank accounts, call the IRS and have him reported to the U.S. Treasury." T. Tr. III at 1849. Defense counsel objected, arguing that the text messages lacked proper foundation, constituted inadmissible hearsay, and violated Ms. Dippolito's rights under the Confrontation Clause of the United States Constitution. *Id.* at 1851. In addition, defense counsel noted that Mike Stanley was now deceased, but, prior to his death, he had given a prior statement indicating that it was Michael Dippolito, and not the defendant, who actually sent a number of the text messages from her phone. *Id.* at 1859-60. The trial court overruled the objections, reasoning in part that "text messages are not hearsay" if they are prepared in an "extraction report." *Id.* at 1852, 1865, 1879.

Ms. Dippolito also objected to any reference to "Larry" from Riviera Beach. *Id.* 1863. Ms. Dippolito observed that the only foundation for the allegation that she

approached "Larry" was a statement that this individual told Shihadeh, which would constitute "classic hearsay." *Id.* at 1863. The lower court overruled the objection. *Id.* at 1873-75.

The State referred to text messages at the outset of opening statements: "You're going to get text messages from near the beginning of July. There's an individual by the name of Mike Stanley. Mike Stanley is her lover. They are having a torrid affair." *Id.* at 1896. After the lower court overruled an objection, the State continued: "So while she's lying in bed with her husband, he thinks everything's going great. She's having this torrid affair and plotting destruction and the – eventually a murder. It's to destroy him." *Id.* at 1898.

In one series of texts, the State highlighted a purported attempt by Ms. Dippolito and Mike Stanley to have the U.S. Treasury freeze the bank account of Michael Dippolito. *Id.* at 1905. Another series of texts dealt with alleged attempts to set Michael Dippolito up to violate his probation. *Id.* at 1909-10. The State referenced another text to emphasize the sexual relationship between Ms. Dippolito and Mike Stanley: "Soulmates is what we are. We are meant to be together. Do you know I have baby names picked out? I want your child in me." *Id.* at 1915. Defense counsel objected, arguing that this line of argument was unfairly prejudicial. *Id.* at 1916. The trial court overruled the objection. *Id.*

In another text, Mike Stanley says, "Missing a probation appointment and drugs in his car. That's him." *Id*. at 1922. Ms. Dippolito responded: "we need to make this happen with his arrest by the weekend . . . . He has some here at the house, too, but I want to put X pills . . . and coke in the car and Xanax." *Id*. at 1922. The State also highlighted another lurid portion of texts from Ms. Dippolito: "I want you in me. I'm so horny for you. . . . I'm so attracted to you, love fucking you. It blew me away. I love having your hot cum in me." *Id*. at 1924.

Ms. Dippolito then renewed her objection to the use of the text messages, and at sidebar noted that the text messages at issue here were not generated using an "extraction report" but were records from the cell phone carrier. *Id*. at 1929-30. The trial court overruled the objection. *Id*. at 1930.

The prosecutors continued to read from the text messages, some of which concerned a purported attempt to divest Mr. Dippolito of title to his residence. *Id*. at 1948. Many others contained expressions of love and the use of other affectionate language. *Id*. at 1947-49. All in all, the transcript of the prosecutor's recitation of text messages spans more than fifty pages. *Id*. at 1896-1951. Not one of the text messages contained any discussion of the solicitation of murder for which Ms. Dippolito was charged. *Id.*

Next, the prosecutor turned to Shihadeh and emphasized the casual nature of Ms. Dippolito's sexual relationship with him: "Mohamed Shihadeh, they have a

little affair, it was like a - - there was nothing serious. They didn't really know who each other were, but they had sex." *Id*. at 1952. The prosecutor also read incendiary text messages she sent to Shihadeh: "Wow, I love you so much . . . . Yummy. I want you so bad right now." *Id*. at 1956, 1958. The text messages were the dominant feature of opening statements, and the prosecutor stressed the importance of the text and the video evidence: "Because this case is built on one thing and one thing only: Her intent. Her words and what she wanted to do. That's what this case is built on." *Id*. at 1961.

Michael Dippolito, who had a prior federal conviction for wire fraud, testified that he gave Ms. Dippolito money that was earmarked to help him pay off his restitution. *Id.* at 2077-78. The State, over objection, elicited testimony to suggest that Ms. Dippolito stole that money from her husband. *Id*. at 2106-07. Next, the State asked to elicit testimony to suggest that (1) Ms. Dippolito falsely told her husband that she was pregnant to distract him from her theft of the money; and (2) Ms. Dippolito tried to plant drugs in her husband's car to have him arrested for violation of his probation. *Id*. at 2107-10.

Defense counsel objected, arguing that these prior bad acts were not inextricably intertwined with the charged offense, were unfairly prejudicial under section 90.403, and lacked proper evidentiary foundation. *Id*. at 2113-14. The trial

court once again overruled the objections, finding that the text messages provided the foundation. *Id.* at 2114.

The State proceeded to ask Mr. Dippolito a series of questions about Ms. Dippolito's purported attempt to fake a pregnancy to distract him from her theft of his money. *Id*. at 2123-29. The State next inquired about Ms. Dippolito's supposed attempt to plant drugs in his car and have it searched by law enforcement on two different occasions. *Id*. at 2133-34. Mr. Dippolito testified, over objection, that he could have served twenty-eight years in federal prison if law enforcement found drugs during the search of his vehicle. *Id*. at 2137. The State also elicited testimony, over objection, to suggest that Ms. Dippolito duped him into transferring title to his house to her by way of quitclaim deed. *Id*. at 2200-21.

The State asked to introduce the text messages between Ms. Dippolito and Mike Stanley through Detective Moreno. Defense counsel objected to the introduction of the text messages as inadmissible prior bad act evidence, inadmissible hearsay, overly prejudicial under section 90.403, and a violation of due process and the Confrontation Clause insofar as Michael Stanley was dead at the time of trial and could not be called to rebut or explain the context of the text messages. *Id*. at 2469-72.

With regard to hearsay, Ms. Dippolito argued that the text messages were not an extraction report, but instead were records from the cellular service provider. *Id*.

at 2470. The trial court overruled the objection and held that the State satisfied a hearsay exception by supplying a business record certification. *Id*. at 2470. The court also suggested that some statements came from Ms. Dippolito, while others were not offered for the truth of the matter asserted, but instead to "demonstrate her response and her willingness to participate in conversation." *Id*. at 2471.

Detective Moreno admitted that the name associated with the Metro PCS records from which the texts originated was not Ms. Dippolito, but another person altogether: someone named Gia DeAngelo. *Id.* at 2434; *see also* R. at 5904 (Metro PCS subscriber information for "Gia DeAngelo"). When asked to explain the discrepancy, Detective Moreno said, "We received information that that phone belonged to Ms. Dippolito." T. Tr. III at 2429. Defense counsel objected based on the lack of foundation, but the trial court overruled the objection. *Id.* at 2431-32. Detective Moreno then read the jury the texts concerning the prior bad acts, as well as the texts with strong sexual content, presenting those texts as if they were the words of Ms. Dippolito. *Id*. at 2474- 2519.

On cross-examination, Detective Moreno admitted that BBPD failed to record the forty-five minute meeting between Ms. Dippolito and Shihadeh at Chili's. *Id*. at 2613. He also admitted that BBPD failed to record a number of phone calls between Ms. Dippolito and Shihadeh over the course of the investigation. *Id*. at 2612. Detective Moreno conceded that he could have given Shihadeh a recording device

that would have captured all the calls between the informant and Ms. Dippolito, but failed to do so. *Id.* at 2546. Finally, Detective Moreno admitted that failing to make those recordings could compromise the integrity of the investigation. *Id*. at 2658.

Another law enforcement officer involved in the operation, Sergeant Frank Ranzie, was quite critical of the way BBPD handled the investigation. Sergeant Ranzie testified that Detective Moreno made a mistake by failing to record the phone calls between Ms. Dippolito and Shihadeh. *Id.* at 2846. He testified that Detective Moreno lost control of Shihadeh. *Id.* at 2903. In Sergeant Ranzie's opinion, losing control of the informant compromised the integrity of the investigation. *Id.* at 2903. He further testified that, pursuant to BBPD policies, the department "*must*" deactivate a confidential informant once he communicated an unwillingness to cooperate in the investigation. *Id.* at 2827 (emphasis added).

Sergeant Ranzie was also critical of the failure to record the Chili's encounter. In contrast to the testimony of Shihadeh, Sergeant Ranzie testified that BBPD never actually wired Shihadeh because BBPD's wire was malfunctioning. *Id.* at 2857. BBPD could have borrowed a working wire from another law enforcement agency to place on Shihadeh and record the Chili's encounter, but the artificial deadline imposed by Sergeant Sheridan prevented them from doing so. *Id.* at 2860, 2866, 2870. When Sergeant Ranzie confronted Sergeant Sheridan about obtaining a

working wire, Sheridan ordered that the Chili's meeting had to go forward and told Sergeant Ranzie that it was "his fucking investigation." *Id.* at 2860.

Sergeant Ranzie admitted that Shihadeh could have threatened Ms. Dippolito at Chili's. *Id*. at 2867. He viewed the failure to record that meeting as a critical mistake in the investigation that compromised its integrity. *Id*. at 2867. He also testified that he always wondered what happened between Ms. Dippolito and Shihadeh in Chili's on August 3, 2009. *Id*. at 2913.

With regard to the COPS television show, Sergeant Ranzie testified that he voiced concerns regarding the involvement of the COPS crew, but was "directed" to work with COPS. *Id*. at 2891, 2892. Sergeant Ranzie was also ordered to sign a waiver to appear on the show. *Id*. at 2895. He testified that the presence of the COPS television show also compromised the integrity of the investigation. *Id*. at 2894. In his opinion, allowing the COPS crew to film the investigation also violated BBPD's own policies that (1) prohibit the revelation of the identity of confidential informants whenever possible; and (2) jeopardize the rights of a person under arrest. *Id*. at 2896, 2900.

Sergeant Ranzie opined that Stephanie Slater, the BBPD Public Information Officer, violated BBPD's own internal policies by posting the videos of Ms. Dippolito's alleged crime on the internet so quickly. *Id*. at 2891. In Ranzie's view,

this was another action on the part of BBPD that compromised the integrity of the case, which was still an "open" and "ongoing" investigation. *Id*. at 2894, 2902.

Sergeant Ranzie testified that he was instructed by Ms. Slater to answer questions on a podcast related to the case, even though he "had no interest" in doing so. *Id.* at 2909. At the close of his testimony, Sergeant Ranzie unequivocally testified that the negligence and mistakes on the part of law enforcement compromised the subsequent prosecution of Ms. Dippolito. *Id*. at 2913.

Ms. Dippolito called an expert on police practices and procedures, Tim Williams, who served in the Los Angeles Police Department for forty-nine years and retired as a senior detective supervisor. *Id*. at 3129. Mr. Williams testified that as soon as Shihadeh was no longer willing to cooperate with the investigation, "he should have been deactivated." *Id*. at 3145. In addition, Mr. Williams opined that it was "illegal" to pressure or force Shihadeh to continue with the investigation, and that any information gathered thereafter would be "tainted." *Id*. at 3146-48.

Mr. Williams explained that threatening an informant with prosecution "forces the informant . . . to give information that you want to hear. And that may not be factual information. And from there, anything that comes from that is tainted." *Id*. at 3149. Mr. Williams concluded that the investigation did not "meet the standards that were outlined" in BBPD's own policies and procedures. *Id*. at 3225. Specifically, with respect to Shihadeh, Mr. Williams testified that he should

have been deactivated as soon as he said he no longer wanted to participate in the investigation. *Id.* at 3145. Mr. Williams described the violations of policies as "egregious" and once again opined that "it tainted the investigation." *Id*. at 3225.

On the final day of Ms. Dippolito's case, prior to Ms. Dippolito calling her last witness, Mohamed Shihadeh, the State announced that it intended to introduce the poisoning allegation and asked the lower court to allow it to elicit testimony about the allegation from Shihadeh. *Id*. at 3405-06. Although Mr. Shihadeh had not yet testified, the State maintained that the poisoning allegation was admissible to impeach him regarding whether Ms. Dippolito intended to kill her husband. *Id*. at 3406.

Ms. Dippolito objected. She argued that the State had already stipulated that the poisoning allegation would not be introduced, and she complained that the defense was being "sandbagged." *Id*. at 3406, 3407. In addition, Ms. Dippolito pointed out that (1) the trial court had already ruled that the allegation was unfairly prejudicial under section 90.403; (2) the State was merely attempting to "demonize" Ms. Dippolito through this inflammatory allegation; (3) Ms. Dippolito would have "structured [her] case" differently had she known it was admissible; and (4) the prejudicial effect would be "beyond comprehensible." *Id*. at 3407, 3421, 3416. Finally, Ms. Dippolito maintained that the allegation had no foundation because

Shihadeh had no personal knowledge of the alleged attempt to poison Mr. Dippolito. *Id*. at 3407.

The trial court initially took the issue under advisement. *Id*. at 3422-23. After taking a recess, the trial court opined that the evidence would be "unfairly prejudicial to the defense" if it were admitted as substantive evidence. *Id*. at 3423. However, it ruled the testimony could "come in for impeachment purposes." *Id*. at 3424. Counsel for the State asked, "What if he testifies like he did last time, that he didn't believe the defendant intended to kill her husband?" *Id.* at 3424.

Ms. Dippolito protested that this question showed that the State knew all along what Shihadeh's testimony would be from the second trial, and so it would not be proper impeachment. *Id*. at 3424. Ms. Dippolito also took the position that the State waived the right to introduce that allegation through its stipulation, arguing that "stipulations freely and voluntarily entered into in criminal trials are as binding those entered into in civil trials." *Id*. at 3429 (quoting *United States v. Campbell*, 453 F.2d 447, 451 (10th Cir. 1972)).

Ms. Dippolito further maintained that, since the State was well aware of what the substance of Shihadeh's testimony would be from the second trial, it would be a due process violation not to hold the State to its stipulation. T. Tr. III at 3431. Defense counsel alternatively moved for a continuance to allow Ms. Dippolito to investigate the allegation. *Id*. at 3438. The trial court denied that motion and ruled

that the State "had the right to impeach a defense witness with a prior inconsistent statement." *Id*. at 3437, 3439.

Prior to Shihadeh taking the stand, defense counsel proffered his testimony outside the presence of the jury regarding "Larry" to establish that Shihadeh's knowledge of the allegation was based solely on hearsay. *Id*. at 3448. Shihadeh confirmed that he personally did not witness Ms. Dippolito ever make any statements to "Larry" about wanting him to kill her husband:

> Q. Did you ever at any point hear Ms. Dippolito make any statements to Larry about wanting to have Larry kill her husband?
>
> A. They sat in the car and talked. I didn't personally hear it.
>
> Q. Okay. So you heard nothing, you heard no statements from Ms. Dippolito to Larry?
>
> A. No. Just Larry to me.
>
> Q. Okay. Everything you heard was from Larry?
>
> A. Correct.

Id. at 3448.

Shihadeh testified on direct examination in a manner consistent with his testimony during the second trial. *Compare* T. Tr. III at 3448-3521 *with* T. Tr. II at 183-277. He testified that he had a sexual relationship with Ms. Dippolito and wanted to get her help because her husband used steroids and was physically abusive. T. Tr. III at 3455, 3458. He testified that he was scared that Ms. Dippolito

was going to get killed or her husband was going to get killed. *Id*. at 3458. He testified that he never wanted to be part of the investigation. *Id*. at 3452.

Shihadeh testified that he gave BBPD Ms. Dippolito's number so that the department could help her, but that BBPD did not seem to care about her abuse and instead laughed at his story. *Id*. at 3453, 3462, 3471, 3473, 3477. Instead of helping her, BBPD threatened him with prosecution if he did not cooperate with their investigation. *Id*. at 3471.

Shihadeh testified that BBPD told him what to say on the recorded calls with Ms. Dippolito, even though Shihadeh told BBPD officers that he did not want to be involved in the investigation. *Id*. at 3488. BBPD again threatened him with prosecution if he did not make those phone calls and told him that the sting had to be done within seventy-two hours, which made him feel a sense of urgency. *Id*. at 3489, 3490. In fact, he remained concerned about the State's threats of prosecution throughout the entirety of the investigation. *Id*. at 3493. Detective Moreno called him at all hours of the night and on some days called him ten times a day. *Id*. at 3493-94.

Shihadeh testified that because of the intense pressure BBPD exerted on him, he, in turn, exerted pressure on Ms. Dippolito:

> I would call her and tell her what money to bring, because they would tell me to do it. And at times, she couldn't, and I would say, you have to do it now, you have to do it now. Because they told me they needed it done at this time.

Id. at 3496. Shihadeh felt like he had to make sure that Ms. Dippolito went along with BBPD's plan or he would get into trouble. *Id*. at 3497.

Shihadeh once again confirmed that he was a "hundred percent" sure he was wired for the Chili's meeting. *Id*. at 3503. He knew BBPD was recording: "Because they, when I came out, they knew what I talked about, they listened to it." *Id*. at 3503-04. BBPD took off his wire after the conclusion of the meeting. *Id*. at 3504.

During cross-examination, the State attempted to elicit testimony from Shihadeh regarding Ms. Dippolito's interaction with "Larry." *Id*. at 3530. Defense counsel objected and asked the trial court to conduct another proffer outside the presence of the jury. *Id*. at 3539. After the proffer, the trial court warned the State that it could not elicit the hearsay regarding what "Larry" told Shihadeh, but ruled that the State could ask him whether Ms. Dippolito ever inquired as to whether Shihadeh knew someone who could kill her husband. *Id*. at 3549.

After the jury returned, the State asked Shihadeh whether Ms. Dippolito had inquired as to whether he knew someone that she could hire to kill her husband. *Id*. at 3543. Mr. Shihadeh later stated that he thought Ms. Dippolito was serious, "Because when Larry gets involved, things get done." *Id*. at 3552. Defense counsel objected, arguing that the testimony was based on hearsay, but the trial court overruled the objection. *Id*. at 3553.

The State also asked Shihadeh about Ms. Dippolito's other alleged prior bad acts, such as planting drugs in Michael Dippolito's car to get him arrested, *id*. at 3547, and lying to her husband about being pregnant, *id*. at 3554. In addition, the State asked Shihadeh about Ms. Dippolito seeking to purchase a gun from him and trying to steal a gun from his glove compartment. *Id*. at 3551.

Later during the cross-examination, the State asked Mr. Shihadeh about the poisoning allegation:

> Q. Did you speak, did Ms. Dippolito speak to you about poisoning her husband?
>
> A. Yes.
>
> * * *
>
> Q. And she told you, she said that she's tried, she said she even tried poisoning him and you said to her, what do you mean, poisoning him? And she told you she researched something on the internet about some kind of antifreeze that's odorless, doesn't have a smell, doesn't have a color, and she put in his tea and he spit it out? Remember that?
>
> A. Yes.

Id. at 3568. Defense counsel objected based on the prejudicial nature of the testimony. *Id.* However, the trial court ruled that the door had been opened to this line of impeachment because Shihadeh testified that he believed that she was the victim of domestic violence and did not intend to kill her husband. *Id*. at 3884.

After the close of evidence, Ms. Dippolito moved for judgment of acquittal based on objective entrapment. *Id*. at 3696-97. The trial court denied the motion. *Id*. at 3699. It reasoned that objective entrapment is not an affirmative defense and instead was an issue of law for the judge to decide. *Id*. at 3701. Ms. Dippolito also renewed her motion to dismiss based on objective entrapment, but the lower court denied that motion as well. *Id.* at 3705.

Prior to the charge conference, Ms. Dippolito filed a written Motion to Permit the Defendant to Argue Objective Entrapment as an Affirmative Defense and Request for Special Jury Instruction. R. at 3755. Ms. Dippolito argued that the validity of her affirmative defense, which turned on disputed facts, presented a question for the jury as the ultimate finder-of-fact. R. at 3756. In support, Ms. Dippolito relied on this Court's decision in *Delice v. State*, 878 So. 2d 465, 467 (Fla. 4th DCA 2004), and a decision from the First District Court of Appeal, *Clayton v. State*, 191 So. 3d 990, 991 (Fla. lst DCA 2016). *Id.* She also argued that preventing her from presenting her theory of defense, which presents a mixed question of law and fact, to the jury would violate her state and federal constitutional right to due process. R. at 3763, 3766.

Ms. Dippolito requested the following jury instruction on her defense of objective entrapment:

> An issue in this case is whether the Boynton Beach Police Department's conduct constituted objective entrapment. It is a defense

> to the offense with which Dalia Dippolito is charged if, under the totality of the circumstances, Boynton Beach Police Department's conduct was so egregious that it offended those canons of decency and fairness which express the notions of justice of English-speaking peoples even toward those charged with the most heinous offenses.
>
> In deciding whether the police's actions constituted egregious police misconduct, you must judge the 'totality of the circumstances,' and not each individual act in isolation.
>
> When determining whether conduct constituted egregious police misconduct, you must limit your consideration to the conduct of law enforcement, and you may not consider the effect of the officer's conduct on the defendant, the defendant's subjective perception on the situation, and the defendant's apparent lack of predisposition to commit the offense.
>
> The defendant does not have to prove that the police's actions constituted egregious police misconduct. The State has the burden of proving beyond a reasonable doubt that the police's behavior was not egregious police misconduct.
>
> If, in your consideration of the issue of objective entrapment, you have a reasonable doubt on the question of whether the police's actions constituted egregious police misconduct, you should find the defendant not guilty.

R. at 3767-68; 3771-72, 3800. In the alternative, Ms. Dippolito requested special interrogatories that would permit the jury to determine whether she carried her burden of proof with regard to the facts underlying her objective entrapment defense. R. at 3774-77.

The trial court denied Ms. Dippolito's motion to present her objective entrapment defense to the jury, denied her request for a jury instruction on objective

entrapment, and declined to provide the jury with special interrogatories on objective entrapment. T. Tr. III at 3705.

The State began its closing arguments by vilifying Ms. Dippolito: "Greed and manipulation is a lethal combination. It leads to lies, deceit, and betrayal for one person's personal satisfaction." *Id*. at 3738. Ms. Dippolito, the State continued, "used sex to manipulate men to give her what she wanted." *Id*. at 3738. The State then relied extensively on the texts, the prior bad acts, Ms. Dippolito's supposed involvement with "Larry," as well the poisoning allegation to argue that Ms. Dippolito committed the charged offense. *Id*. at 3738-3891.

During rebuttal, the State referred to the poisoning allegation for the truth of the matter asserted in contravention of the lower court's admonition: "This is the reply from Mike Stanley, who's assisting her in committing all these terroristic acts towards her husband, trying to have him arrested, *trying to poison him* – there's all kinds of stuff that's going on that this guy's involved in." *Id*. at 3891 (emphasis added). Defense counsel immediately objected and then requested a mistrial, which the lower court denied. *Id*. at 3892.

The jury returned a verdict of guilty, and the trial court sentenced Ms. Dippolito to sixteen years of incarceration. R. at 4055. This appeal follows.

SUMMARY OF THE ARGUMENT

The trial court committed at least four reversible errors. *First*, the trial court committed reversible error when it allowed the State to introduce the poisoning allegation. Ms. Dippolito had every right to rely on the exclusion of that allegation. This Court had ruled that its revelation to the jury constituted reversible error. The State had stipulated to its exclusion. The lower court had honored that stipulation and independently ruled it inadmissible under section 90.403.

Yet, on the final day of trial, just before Ms. Dippolito was set to call her last witness, the State announced that it intended to renege on its own stipulation and introduce the allegation. By that point in the trial, Ms. Dippolito had no way to counteract the devastating effect of this unsubstantiated allegation, which the prosecution plainly used in rebuttal to argue she had a propensity to commit the offense. Prosecutors may strike hard blows, but they are not at liberty to strike foul ones. That foul blow so vitiated the fairness of proceedings below that this Court has no choice but to reverse.

Second, the conduct of law enforcement amounts to objective entrapment as a matter of law. BBPD manufactured a murder-for-hire plot out of a domestic violence complaint. Before Shihadeh had even given a statement to law enforcement, BBPD, knowing that COPS would be filming, placed cameras in his car without his consent. BBPD also repeatedly threatened Shihadeh with

prosecution in order to compel his cooperation with the investigation. Shihadeh admitted that he pressured Ms. Dippolito, who was vulnerable and had no criminal history, into such incriminating acts as bringing money to the Mobil gas station.

BBPD, by Sergeant Ranzie's own admission, lost control of its own informant and either failed to gather or destroyed key evidence, such as the recording of the Chili's meeting or the many phone calls between Shihadeh and the accused. Multiple witnesses, including Sergeant Ranzie, testified that these acts compromised the integrity of the investigation. What is more, BBPD imposed an artificial seventy-two-hour deadline on the conclusion of the investigation. The reason it took all these actions: because BBPD wanted its murder-for-hire investigation featured on COPS. BBPD's conduct was so outrageous that due process principles should have barred the State from invoking judicial processes to obtain Ms. Dippolito's conviction.

Third, the lower court committed reversible error when it declined to allow Ms. Dippolito to present her objective entrapment theory of defense to the jury. A defendant's ability to present her theory of defense to a jury lies at the heart of due process. In this case, however, Ms. Dippolito was deprived of due process because the trial court did not allow her to present her theory of defense to the jury.

Fourth, the lower court erroneously permitted the State to rely on unsubstantiated and inadmissible prior bad acts, the foundation of which rested largely on inadmissible hearsay. Those bad acts included an allegation that Ms.

Dippolito attempted to hire another shadowy figure, "Larry" from Riviera Beach, to kill her husband. Even though the State could have called this "Larry" to testify at trial, it instead relied on rank hearsay from Shihadeh, who had no independent knowledge of the allegation. To introduce the other allegations, the State relied on text messages it attributed to Ms. Dippolito. However, the cell phone was not registered in her name, a fact that rendered the text messages inherently unreliable.

These prior bad acts, which were a dominant feature in the State's case, could not be considered inextricably intertwined with the charged offense—the State chose to present its case in the second trial without them. Furthermore, the State failed to provide clear and convincing evidence that Ms. Dippolito actually committed the acts, as required to admit these allegations as *Williams* rule evidence. Finally, the prejudicial effect of those prior bad acts, coupled with the inflammatory language in the text messages, so overwhelmed their slight probative value that the allegations should have been barred under section 90.403. The cumulative effects of these errors deprived Ms. Dippolito of a fair trial. Therefore, this Court should reverse Ms. Dippolito's conviction.

ARGUMENT

I. THE TRIAL COURT ERRED WHEN IT ALLOWED THE STATE TO INTRODUCE THE ALLEGATION THAT MS. DIPPOLITO ATTEMPTED TO POISON HER HUSBAND, WHERE IT RULED THE ALLEGATION INADMISSIBLE, AND WHERE THE STATE STIPULATED PRIOR TO TRIAL THAT IT WOULD NOT PRESENT EVIDENCE OF THAT UNCHARGED CRIME.

A. Standard of Review

The standard of review for admissibility of evidence is abuse of discretion. *Nardone v. State*, 798 So. 2d 870, 874 (Fla. 4th DCA 2001) (citation omitted). However, a trial court's discretion is limited by the rules of evidence. *Id.*

B. Argument on the Merits

This Court already held after Ms. Dippolito's first trial that the presentation of the poisoning allegation to the jury was reversible error. *Dippolito*, 143 So. 3d at 1085. This Court reasoned that the revelation was too prejudicial to constitute harmless error: "Because it involved an attempt to kill the same victim, it was closely related to the pending charges and could have prejudiced jurors in rendering their verdict." *Id.*

This Court should reach the same result here. It is true that the presentation of this allegation during her first trial occurred during jury selection, while the allegation was introduced in this case during the course of trial. However, the delay in introducing the allegation only magnified its significance because the State elicited the testimony on the last day of trial.

Furthermore, the way the prosecutor elicited the evidence—essentially testifying from the podium—was manifestly improper:

> Q. And she told you, she said that she's tried, she said she even tried poisoning him and you said to her, what do you mean, poisoning him? And she told you she researched something on the internet about some kind of antifreeze that's odorless, doesn't have a smell, doesn't have a color, and she put in his tea and he spit it out? Remember that?
>
> A. Yes.

Id. at 3568.

Equally troubling, the prosecutor used the allegation during the State's rebuttal in a blatant attempt to establish that the accused's bad character and propensity to commit the crime in question: "This is the reply from Mike Stanley, *who's assisting her in committing all these terroristic acts* towards her husband, trying to have him arrested, *trying to poison him – there's all kinds of stuff that's going on that this guy's involved in.*" *Id*. at 3891 (emphasis added). This argument, which prompted a motion for mistrial, occurred just before the jury began to deliberate, when the prejudicial effect was at its zenith.

The most problematic aspect of the poisoning allegation, however, was the State's inexcusable lulling of Ms. Dippolito into believing that the poisoning allegation would not be admissible at trial. The prosecutors, in fact, stipulated to its exclusion.

Courts "have long been cognizant of the responsibility of . . . prosecutors

meticulously to fulfill their promises." *United States v. Hudson*, 609 F.2d 1326, 1328 (9th Cir. 1979). "When the prosecution makes a 'deal' within its authority and the defendant relies on it in good faith, the court will not allow the defendant to be prejudiced as a result of that reliance." *United State v. Shapiro*, 879 F.2d 468, 471 (9th Cir. 1989) (citing *United States v. Goodrich*, 493 F.2d 390, 393 (9th Cir. 1974)). Thus, "stipulations freely and voluntarily entered into in criminal trials are as binding those entered into in civil trials." *United States v. Campbell*, 453 F.2d 447, 451 (10th Cir. 1972).

In *Shapiro*, the Government stipulated with the defendant that it would not put on evidence of his prior arrests and did not file a written opposition to his motion in limine on the topic. *Shapiro*, 879 F.2d at 469. However, at trial, the Government reversed course and questioned the defendant about his prior conviction. *Id.* at 470. On appeal, the Government argued that the defendant's criminal record was admissible to rebut his trial testimony and to show "motive and intent." *Id.*

The Ninth Circuit had little trouble concluding that the breach of the pretrial agreement constituted reversible error: "This court has never wavered in its obligation to enforce agreements made by prosecutors upon which defendants have justifiably relied to their detriment." *Id.* at 471. Citing its prior precedent, it opined that reneging on a promise at the last minute was "beneath the standards we expect of our public prosecutors." *Id.* at 471 (quoting *United States v. Bowen*, 857 F.2d

1337 (9th Cir. 1988)).

This Court should follow *Shapiro* and hold that where the Government violates a pre-trial promise not to introduce certain evidence, the defendant's conviction should be reversed unless the violation was harmless. *Id.* In this case, Ms. Dippolito never had any reason to suspect that the poisoning allegation would ever reach the jury. As in *Shapiro*, the State stipulated that this allegation would be inadmissible and did not respond to Ms. Dippolito's motion in limine. Ms. Dippolito relied on that stipulation, and she structured her case as if the poisoning allegation were inadmissible.

As Ms. Dippolito noted during trial, if she had known this allegation was admissible, she could have taken steps, such as hiring an expert, to mitigate the prejudicial effect. Furthermore, it appears from the record that two forensic examiners from law enforcement searched Ms. Dippolito's computer, and, contrary to the insinuation of the prosecutor, they ***never*** found any evidence that she searched the internet for ways of poisoning her husband. R. at 521, 606, 906. Had Ms. Dippolito known that the allegation was admissible, she could have called the forensic examiners to rebut the allegation, or at the very least asked the BBPD officers who testified about their failure to adduce any proof that Ms. Dippolito actually attempted to poison her husband.

However, Ms. Dippolito had no notice that this collateral crime would be

admitted into evidence, as the State did not reveal its intention until after Ms. Dippolito was set to call her last witness. Simply put, she was sandbagged.

Although the State suggested at trial that the poisoning allegation was admissible as "impeachment," it could not have possibly known whether the allegation would impeach Shihadeh because he had not yet testified. Furthermore, the State knew exactly what Shihadeh would testify to because the prosecution team was the same team that prosecuted Ms. Dippolito during her second trial. In fact, the prosecutor actually asked the lower court whether it could elicit the allegation if Shihadeh testified "like he did last time, that he didn't believe the defendant intended to kill her husband." *Id*. at 3424.

Shihadeh also testified in a manner consistent with his testimony during the second trial, so his testimony could not possibly have opened the door to impeachment. If the State had wanted to "impeach" him with his prior statement regarding the poisoning allegation, then it should not have stipulated to its exclusion. Finally, Shihadeh testified that he was scared that Ms. Dippolito was going to get killed or her husband was going to get killed. *Id*. at 3458. This testimony was completely consistent with the State's theory that she attempted to poison him, so it was not proper impeachment in any event. To make matters worse, Ms. Dippolito had already secured a ruling granting her motion in limine to preclude the allegation under section 90.403. Given her good faith reliance on the inadmissibility of this

allegation, the trial court should have abided by its pretrial order.

Finally, the allegation should have been barred by sections 90.403 and 90.404 in any event. This collateral crime evidence was only marginally relevant to the charged offense. And even "[r]elevant evidence 'is inadmissible if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, or needless presentation of cumulative evidence,'" or if the evidence is "submitted to show a defendant's propensity toward commission of the offense or to show a defendant's bad character, with nothing more." *Billie v. State*, 863 So. 2d 323, 327 (Fla. 3d DCA 2003) (citing Fla. Stat. § 90.403 (1997)).

In this case, "[b]ecause it involved an attempt to kill the same victim, it was closely related to the pending charges and could have prejudiced jurors in rendering their verdict." *Dippolito*, 143 So. 3d at 1085. This Court should reverse Ms. Dippolito's conviction.

II. THE EGREGIOUS CONDUCT OF BBPD CONSTITUTED OBJECTIVE ENTRAPMENT.

A. Standard of Review

Review of the denial of a motion to dismiss founded on objective entrapment is de novo. *Bist*, 35 So. 3d at 939.

B. Argument on the Merits

The totality of the outrageous acts committed by BBPD easily rises to the level objective entrapment. Due process therefore requires the dismissal of the

charges brought against Ms. Dippolito. In considering objective entrapment, courts look to the totality of the circumstances, focusing on "whether the government conduct 'so offends decency or a sense of justice that judicial power may not be exercised to obtain a conviction.'" *Hernandez v. State*, 17 So. 3d 748, 751 (Fla. 5th DCA 2009); *Jimenez v. State*, 993 So. 2d 553, 555 (Fla. 2d DCA 2008).

"It is a balancing test; the court must weigh the rights of the defendant against the government's need to combat crime." *Bist*, 35 So. 3d at 939. The justification of dismissing criminal charges lies in foreclosing prosecutions premised upon "methods offending one's sense of justice." *Munoz v. State*, 629 So. 2d 90, 98 (Fla. 1993).

Florida courts have barred prosecutions when the conduct of law enforcement effectively manufactures the crime. For instance, in *State v. Williams*, 623 So. 2d 462 (Fla. 1993), the defendant was arrested during a reverse sting operation by law enforcement for purchasing crack cocaine within 1,000 feet of a school. The Florida Supreme Court reversed the defendant's conviction, finding a due process violation where law enforcement illegally manufactured the crack cocaine. *Id.* at 467. It emphasized that certain conduct would not be tolerated: "While we must not tie law enforcement's hands in combatting crime, there are instances where law enforcement's conduct cannot be countenanced and the courts will not permit the government to invoke the judicial process to obtain a conviction." *Id*. at 465.

Similarly, in *State v. Glosson*, 462 So. 2d 1082, 1084 (Fla. 1985), the Florida Supreme Court found that law enforcement's adoption of a contingent fee arrangement for the testimony of an informant constituted a violation of due process, because it "seemed to manufacture, rather than detect, crime." *Id*. (citing *Williamson v. United States*, 311 F.2d 441, 445 (5th Cir. 1962)).

The failure to properly supervise a confidential informant is also grounds for dismissal as objective entrapment. In *State v. Anders*, 596 So. 2d 463, 466 (Fla. 4th DCA 1992), this Court found charges were properly dismissed when: 1) law enforcement did not monitor the informant's activities, 2) did not instruct informant on how to avoid entrapment, 3) gave the informant a time limit to set-up individuals, and 4) allowed the informant to set up reverse-sting operations unsupervised.

The *Anders* Court held that the conduct of law enforcement offended due process:

> [D]ue process of law will not tolerate the law enforcement techniques employed in this case. Sending an untrained informant out into the community, with no control, no supervision and not one word of guidance or limitation about whom he may approach or what he should do was an invitation to trouble . . . . Here, [the informant] was allowed to create a trafficking offense and offender where none previously existed, to engage in negotiations the contents of which no independent witness can verify, and, finally, to determine the potential mandatory prison term and fine the Defendant will face by selecting the amount of drugs to be sold. Due process is offended on these facts.

Id. at 466 (citations omitted).

Likewise, in *Dial v. State*, 799 So. 2d 407, 409-10 (Fla. 4th DCA 2001), this Court affirmed the dismissal of criminal charges where: 1) the informant was given leniency on her sentence, 2) the informant was the defendant's acquaintance, 3) the informant played on defendant's known vulnerabilities, 4) the informant was not given guidance or limitations by law enforcement about how to negotiate drug deals, 5) the informant was not properly trained on how to avoid entrapment, 6) the informant's conversations with the defendant were not monitored, 7) the informant repeatedly urged defendant to follow through with the drug sale leading to her arrest, and 8) the defendant was not suspected of criminal activity beforehand.

Finally, in *Nadeau v. State*, 683 So. 2d 504, 506 (Fla. 4th DCA 1995), this Court found that the dismissal of charges was warranted because the agents and officers did not actively monitor the confidential informant's repeated contacts with the defendant or prepare any notes of their contact with the confidential informant. Of critical importance in *Nadeau* was the fact that the defendant had no criminal history, the officers knew of no drug activity prior to the defendant's involvement in the case, and the confidential informant threatened the suspect during unrecorded phone calls. *Id.* at 506.

The misconduct at issue in this case exceeds level of misconduct at issue in the foregoing cases of objective entrapment. As to the manufacturing of a crime, Shihadeh testified that he contacted BBPD to "help" Ms. Dippolito, who had no prior

criminal history, but was in an abusive relationship that threatened to turn violent. Yet, instead of prosecuting the perpetrator of domestic violence, BBPD chose to prosecute the victim.

More troubling still, the State threatened Shihadeh with prosecution to compel his cooperation with the investigation. Shihadeh testified that the threats of prosecution were ongoing throughout the investigation, and he claimed that he felt pressured on the very day that the solicitation occurred. BBPD also applied other forms of pressure, calling Shihadeh as many as ten times a day, haling him into the police station, and asking him to call Ms. Dippolito and set up meetings with her, even after he told them in no uncertain terms that he did not want to be a part of the investigation.

This, in turn, led Shihadeh to pressure Ms. Dippolito. His testimony on this point could hardly be more explicit:

> I would call her and tell her what money to bring, because they would tell me to do it. **And at times, she couldn't, and I would say, you have to do it now, you have to do it now**. **Because they told me they needed it done at this time.**

Id. at 3496. This is the testimony of BBPD's *own informant*, who admitted that he manufactured crime at the behest of law enforcement agents who had threatened him with prosecution.

BBPD also failed to exercise meaningful supervision over Shihadeh and made no efforts to record all of his conversations with the accused. Sergeant Ranzie

averred that Detective Moreno lost control over the informant by failing to record or supervise the communications between Ms. Dippolito and Shihadeh. It would have been quite helpful to the defense to have had access to the recording of the conversation described, in which Shihadeh exerted pressure on Ms. Dippolito to make her perform the acts displayed in the videos presented at trial. No recording of that conversation was ever provided to the defense. Furthermore, BBPD inexplicably destroyed or failed to record the Chili's encounter, an investigative defect that led several witnesses, including BBPD's own Sergeant Ranzie, to conclude that the integrity of the investigation had been compromised.

Where lost or unpreserved evidence is "material exculpatory evidence," the loss of such evidence is a violation of the defendant's due process rights, and the good or bad faith of the State is irrelevant. *State v. Muro*, 909 So. 2d 448, 452 (Fla. 4th DCA 2005). The "distinction between collecting and not preserving and not even collecting potentially exculpatory evidence is one without a difference." *Id.* at 455. The loss, destruction, or failure to collect the material and exculpatory evidence in this case is yet another factor that weighs in favor of objective entrapment.

The most outrageous aspect of the investigation, though, was the involvement of the COPS television program. BBPD knew that COPS would be filming, and so BBPD decided that it was going to set up Ms. Dippolito *before Shihadeh even gave a statement*, a fact that was evidenced by his testimony that law enforcement took

his keys and installed cameras in his car without his permission as soon as he got to the department. BBPD also knew that Ms. Dippolito was particularly vulnerable to coercion, given that she had a sexual relationship with Shihadeh and was struggling in a physically abusive relationship with her husband. *See Dial*, 799 So. 2d at 409-10 (noting that the informant played on the vulnerabilities of the suspect).

The record also reflects that, as in *Anders*, BBPD imposed an artificial seventy-two-hour deadline to complete its investigation. BBPD did so not because it wanted to prevent a crime from occurring—the department had so little concern for the safety of Michael Dippolito that it never bothered to conduct any surveillance to ensure his safety after the solicitation—but instead because it knew that COPS was going to be filming the department during the seventy-two hour timeframe.

The COPS deadline influenced Sergeant Sheridan's decision not to delay the Chili's encounter so that BBPD could locate a working wire. Sergeant Ranzie testified that they could have delayed the Chili's meeting, but Sergeant Sheridan rejected Sergeant Ranzie's entreaties to wait to get a working wire, even though the failure to record the Chili's episode violated BBPD policy and compromised the integrity of the investigation.

The bad acts of BBPD do not end there. The circumstances related to the COPS episode and the pretrial release of the videos on YouTube are equally troubling. Stephanie Slater admitted that she solicited the COPS producers because

she wanted "great publicity." She also admitted that she immediately released the videos of Ms. Dippolito on YouTube as soon as she got back to the office, so the videos were uploaded before Ms. Dippolito was even charged with a crime.

"The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law." *Coffin v. United States*, 156 U.S. 432, 453 (1895). It is clear from BBPD's own policies that it knew the release of the video posed a grave threat to Ms. Dippolito's presumption of innocence. But BBPD released the videos all the same. That is outrageous. Viewed in its totality, the base misconduct on the part of BBPD requires the dismissal of all charges against Ms. Dippolito.

III. THE TRIAL COURT VIOLATED MS. DIPPOLITO'S DUE PROCESS RIGHT TO PRESENT HER OBJECTIVE ENTRAPMENT THEORY OF DEFENSE TO THE JURY.

A. Standards of Review

"Where there are 'mixed questions of law and fact that ultimately determine constitutional rights' appellate courts should use a 'two-step approach, deferring to the trial court on questions of historical fact but conducting a de novo review of the constitutional issue.'" *Hendrix v. State*, 82 So. 3d 1040, 1042 (Fla. 4th DCA 2011) (quoting *Connor v. State*, 803 So. 2d 598, 605 (Fla. 2001)). "When a trial court denies a defendant's request for a special instruction, the defendant has the burden

of showing on appeal that the trial court abused its discretion in giving the standard instruction." *Brickley v. State*, 12 So. 3d 311, 313 (Fla. 4th DCA 2009).

B. Argument on the Merits

A defendant's due process right to present a defense is a "fundamental element" of due process. *Washington v. Texas*, 388 U.S. 14, 19 (1967). Preventing a defendant from presenting a theory of defense violates the defendant's federal constitutional right to due process. *See Chambers v. Mississippi*, 410 U.S. 284, 294 (1973); *Morgan v. State*, 453 So. 2d 394, 396-97 (Fla. 1984) (preventing defendant from presenting insanity defense violated due process).

Ordinarily, objective entrapment is raised prior to trial in a motion to dismiss. *See, e.g.*, *Clayton v. State*, 191 So. 3d 990, 991 (Fla. 1st DCA 2016). However, as the First District concluded in *Clayton*, it is "premature" to decide an "objective entrapment defense on a motion to dismiss before unsettled questions about how law enforcement conducted the operation" are "settled by a factfinder." *Id*. at 991 (citing *Delice v. State*, 878 So. 2d 465, 468 (Fla. 4th DCA 2004)). That is because, in pretrial proceedings on a motion to dismiss, trial courts are "obliged to view the facts in the light most favorable to the State." *Id*. (citing *Sexton v. State*, 898 So. 2d 1187, 1188 (Fla. 1st DCA 2005)).

By contrast, when a case proceeds to trial, the disputed issues of fact must be resolved by the jury. *Delice*, 878 So. 2d at 468. In *Delice*, the defendant proceeded

to trial on the theories of both subjective and objective entrapment. The objective entrapment defense arose out the defendant's claim that law enforcement's confidential informant raped her in a hotel room, which subsequently caused her to fear the confidential informant and rendered her particularly susceptible to inducement to commit the drug trafficking offense. *Id*. at 467. The defendant moved for judgment of acquittal at trial based on objective and subjective entrapment. *Id*. at 468. The trial court denied the motion.

On appeal, this Court rejected the argument that the trial court erred when it denied the motion for judgment of acquittal. *Id*. It specifically ruled that, "[w]ith respect to objective entrapment, we find Delice's allegation of rape to be unsubstantiated and believe this to be a jury question." *Id*. Having found that the dispute of fact rendered the objective entrapment defense to be a jury question, the *Delice* Court affirmed the ruling of the lower court in this respect, though it reversed on other grounds. *Id*. Critically, this Court remanded the case for retrial, where it held that the defendant was "free to again assert these arguments," which included the objective entrapment defense. *Id*.

In light of *Clayton* and *Delice*, the prevailing rule under Florida law is clear: Where an objective entrapment claim rests on undisputed facts, the question is appropriate for the trial court to decide as a matter of law. Where, however, the objective entrapment claim rests on disputed facts, that claim must be decided by the

jury in its role as finder-of-fact.

This rule is in accordance with the rule in other jurisdictions that likewise have concluded that objective entrapment is an affirmative defense that may be presented to the jury where it rests on disputed issues of fact. *See, e.g.*, *State v. Mullen*, 216 N.W. 2d 375, 382 (Iowa 1974); *State v. Pfister*, 264 N.W. 2d 694, 700 (N.D. 1978); *see also State v. Barraza*, 23 Cal. 3d 675, 692-93 (1979); *State v. Bacon*, 319 A.2d 636, 638-39 (N.H. 1974).

It is also consistent with precedent from the United States Supreme Court, which has held that a defendant has a due process right to have a jury decide mixed questions of law and fact. *United States v. Gaudin*, 515 U.S. 506, 511 (1995) (finding that question of "materiality" is a mixed question of law and fact, which must be submitted for resolution by the jury). In *Gaudin*, the Government claimed that the issue of the "materiality" was an issue of law that was inappropriate for resolution by a finder of fact. *Id*. at 511-12.

The Supreme Court roundly rejected that logic, concluding instead that the question of materiality was a "mixed question of law and fact" that has typically been resolved by juries. *Id*. at 512. The *Gaudin* Court concluded that removing the question from the province of the jury would deprive a criminal defendant of due process and violate the right to trial by jury, a right "designed 'to guard against a spirit of oppression and tyranny on the part of rulers,' [that] was 'from very early

times insisted on by our ancestors in the parent country, as the great bulwark of their civil and political liberties.'" *Id*. at 510-11 (quoting 2 J. Story, Commentaries on the Constitution of the United States 541, n.2 (4th ed. 1873)).

Like materiality, objective entrapment is a mixed question of law and fact that requires the jury to evaluate whether the misconduct, if proven, was so egregious that it offends "those canons of decency and fairness which express the notions of justice of English-speaking peoples even toward those charged with the most heinous offenses." *Bist*, 35 So. 3d at 939.

Ms. Dippolito presented the trial court with a jury instruction that comported with the law governing objective entrapment. The failure to give a requested jury instruction was error because "(1) the special instruction was supported by the evidence; (2) the standard instruction did not adequately cover the theory of defense; and (3) the special instruction was a correct statement of the law and not misleading or confusing." *Brickley*, 12 So. 3d at 313. Ms. Dippolito also proposed special interrogatories that would allow the jury to determine whether BBPD committed the acts that gave rise to her objective entrapment defense, but those were not given.

The lower court denied Ms. Dippolito the opportunity to argue her objective entrapment defense to the jury, to allow the jury to find whether the facts underlying her defense were proven at trial, and to present her expert witness, Dr. Lenore Walker, who could have established, as in *Dial*, that the prosecution played on her

known vulnerabilities insofar as BBPD knew that she was the victim of domestic abuse. Thus, the lower court violated Ms. Dippolito's state and federal due process right to present her theory of defense to the jury. This violation of due process is reversible error.

IV. THE TRIAL COURT ERRED WHEN IT ALLOWED THE JURY TO CONSIDER UNSUBSTANTIATED AND INADMISSIBLE PRIOR BAD ACTS.

The trial court also committed reversible error when it allowed the jury to consider a host of unsubstantiated and inadmissible prior bad acts. Those prior bad acts included the incredibly damaging allegation that Ms. Dippolito had previously attempted to hire another hitman to kill her husband, an allegation that rested entirely on inadmissible hearsay.

Evidence of uncharged crimes may be admissible as *Williams* rule evidence or as evidence that is "inextricably intertwined" with the crime charged. *See generally Griffin v. State*, 639 So. 2d 966, 968 (Fla. 1994). *Williams* rule evidence is limited to "[s]imilar fact evidence,'" and it is reversible error to admit such evidence without first requiring the State to prove the collateral crimes by clear and convincing evidence. *Id.* (quoting Fla. Stat. § 90.404(2)(a)); *Henrion v. State*, 895 So. 2d 1213, 1217 (Fla. 2d DCA 2005) (reversing convictions and remanding "for further proceedings which may include a new trial" where trial court admitted *Williams* rule evidence without first requiring State to prove collateral crime by clear

and convincing evidence).

By contrast, evidence of uncharged crimes which is "inseparable from the crime charged, or evidence which is inextricably intertwined with the crime charged, is not *Williams* rule evidence. It is admissible under section 90.402 because 'it is a relevant and inseparable part of the act which is in issue . . . . [I]t is necessary to admit the evidence to adequately describe the deed.'" *Griffin*, 639 So. 2d at 968 (quoting Charles W. Ehrhardt, Florida Evidence § 404.17 (1993 ed.)).

When determining whether an act is inextricably intertwined, the "question is not whether evidence of the [prior bad act] is helpful to understand the entire story and relationship between the defendant and the victim. Rather the question is whether such evidence is *necessary*" to "(1) adequately describe the deed; (2) provide an intelligent account of the crime(s) charged; (3) establish the entire context out of which the charged crime(s) arose; or (4) adequately describe the events leading up to the charged crime(s)." *Ritz v. State*, 101 So. 3d 939, 943-44 (Fla. 4th DCA 2012) (emphasis in original).

The collateral crimes here included Ms. Dippolito's alleged: (1) theft of money from Michael Dippolito that was earmarked for restitution payments; (2) soliciting "Larry" from Riviera Beach to discuss killing Michael Dippolito; (3) illegally planting drugs in Michael Dippolito's car to violate his probation; (4) the theft of a gun from Shihadeh; and (5) attempting to defraud Michael Dippolito out

of title to his real property. These collateral crimes were a dominant feature of the trial, and the emphasis on these crimes raised the grave risk that jury would convict Ms. Dippolito because of a perceived propensity toward criminality.

The State took the position below that these collateral crimes were "inextricably intertwined," but that cannot be the case: the State voluntarily decided to present its case during the second trial *without referring to these collateral crimes*. If the collateral crimes were truly inextricably intertwined, the State would not have chosen to extricate them during the second trial.

The lone exception was the reference to "Larry" from Riviera Beach, which arose in both the second and the third trial. However, that collateral crime was inadmissible for a separate reason: The only evidence that could substantiate Ms. Dippolito's alleged commission of the act was the hearsay statement from "Larry" to Shihadeh. The State made no attempt to seek out "Larry" to present his testimony, which is probably because his statements could not withstand the crucible of cross-examination. Therefore, this incredibly damaging collateral crime should never have been presented to the jury.

The foundation for the other collateral crimes was also deficient. The State relied heavily on the text message exchanges between Ms. Dippolito and Mike Stanley to lay the foundation for the collateral crimes. Yet, the text messages constituted inadmissible hearsay.

The State clearly relied on the text messages for the truth of the matter asserted—it claimed the text messages laid the foundation for the admissibility of the collateral crimes that it sought to introduce. During trial, however, Ms. Dippolito raised the possibility that she did not send even the text messages to Mike Stanley.

The State did not call Mike Stanley or otherwise establish that the text messages were, in fact, sent by Ms. Dippolito. On the contrary, the text messages were derived from a phone registered to another subscriber: *Gia DeAngelo*, an individual whose link to Ms. Dippolito was never explained. *See* T. Tr. III at 2434; *see also* R. at 5904 (Metro PCS subscriber information for "Gia DeAngelo"). Thus, the text messages were not established to be an admission of a party opponent under section 90.803(18)(a). Given their dubious provenance, they were also inherently untrustworthy.

The collateral crimes evidence was therefore unsubstantiated and predicated largely on inadmissible hearsay, which, in turn, would render it inadmissible even if it were *Williams* Rule evidence. Finally, the prejudicial effect of the incredibly incendiary language in the text messages—*e.g.* "I love having your hot cum in me"—served no legitimate purpose aside from inflaming the passion of the jury. It follows that the introduction of these collateral crimes and text messages constitute reversible error. Therefore, this Court should reverse Ms. Dippolito's conviction.

CONCLUSION

Based on the cumulative effect of all of the errors described above, this Court should reverse the judgment of conviction and remand for dismissal, or in the alternative, for a new trial.

DATED this 7th day of March, 2018.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of March, 2018, I electronically filed the foregoing and served a true and correct copy via Electronic Mail to opposing counsel.

/s/ Andrew B. Greenlee
Andrew B. Greenlee, Esquire

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Initial Brief complies with the font requirements of Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure. Further, this Court granted the Defendant-Appellant leave to file an enlarged brief that exceeds the ordinary page limitations governing initial briefs.

/s/ Andrew B. Greenlee
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