

**IN THE DISTRICT COURT OF APPEAL  
FOR THE SECOND DISTRICT  
STATE OF FLORIDA**

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CASE No.: 2D13-4299

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JEFFREY MICHAEL SMITH, JR.,

*Appellant,*

v.

STATE OF FLORIDA,

*Appellee.*

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ON APPEAL FROM THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT  
IN AND FOR CHARLOTTE COUNTY, FLORIDA

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**APPELLANT'S INITIAL BRIEF**

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## **JURISDICTIONAL STATEMENT**

Venue is proper in this Court pursuant to Section 35.03, Florida Statutes. Mr. Smith timely filed his Notice of Appeal within thirty (30) days of issuance of the Judgment and Sentence. (R. at 666-67). Jurisdiction lies in this Court. FLA. R. APP. P. 9.140(b); FLA. R. APP. P. 9.030(b)(1)(A).

## **STATEMENT OF THE ISSUES**

Following a jury trial, Mr. Smith explained to the Trial Court that a seated juror may have failed to disclose that she knew details about his case during jury selection. Mr. Smith requested to interview the juror. The Trial Court denied Mr. Smith's request.

ISSUE I: Did the Trial Court abuse its discretion by denying Mr. Smith's request to interview the juror regarding her failure to disclose that she knew details about his case prior to trial?

Mr. Smith's theory of defense was that a purported victim set him up to avoid criminal charges and a prison sentence for her own illegal activities. The Trial Court granted the State's motion *in limine* that excluded evidence related to this defense. As a result, Mr. Smith could not to present evidence to substantiate his theory of defense and the purported victim's motive to lie and to offer bias testimony at trial.

ISSUE II: Did the Trial Court abuse its discretion by partially granting the State's motion *in limine*.

### **STATEMENT OF THE CASE**

The State charged Mr. Smith with (1) first degree burglary with assault or battery in violation of Section 810.02, Florida Statutes; (2) false imprisonment in violation of Section 787.02, Florida Statutes; (3) falsely impersonating an officer during a felony in violation of Section 843.08, Florida Statutes; and (4) aggravated battery upon a pregnant victim in violation of Section 784.045, Florida Statutes. (R. at 21-22).

A jury trial ensued. The jury returned a guilty verdict as to the charges of burglary, false imprisonment, and falsely impersonating an officer. (R. at 384-85, 387-388). For the charge of aggravated battery upon a pregnant victim, the jury returned a guilty verdict as to the lesser-included offense of battery. (R. at 386). The Trial Court imposed a prison sentence of fifteen (15) years followed by ten (10) years of probation. (R. at 640).

Mr. Smith filed a motion for new trial based on potential juror misconduct. (R. at 389-91). The Trial Court denied the motion, but permitted Mr. Smith to file a motion to interview juror pursuant to Florida Rule of Criminal Procedure 3.575. (R. at 606-08). After Mr. Smith filed a motion to interview juror, the Trial Court

held an evidentiary hearing and then denied his request to interview juror. (R. at 625-28, 632-36, 733-55).

This timely appeal follows.

## **STATEMENT OF THE FACTS**

### **A. The Reported Incident**

Marry Sammons and Andre Mottl reported that they were sleeping in their bed when they heard a loud bang and an announcement that the Charlotte County Sherriff's Department was entering the home. (T. at 231-32). A perpetrator, not law enforcement, then kicked in their bedroom door and asked everyone to get on the floor and to put their hands behind their back. (T. at 232). The perpetrator used zip ties to bind the hands of Sammons and Mottl. (T. at 233). The perpetrator then retrieved a lockbox containing prescription medication from the bedroom's side table drawer. (T. at 248-49, 251). The perpetrator fled the residence on a bicycle before law enforcement arrived. (T. at 251).

Sammons was the only eyewitness to identify Mr. Smith as the perpetrator at trial. (T. at 237). According to Sammons, the perpetrator was wearing black pants, a long sleeve black shirt, a camouflage vest, a camouflage hat, and a bandana around his face. (T. at 235). She also observed that the perpetrator's hair was in a ponytail. (T. at 235). At first, Sammons could not identify the perpetrator. However, after Mottl knocked off the perpetrator's hat, she testified that she

recognized the perpetrator as Mr. Smith because of his eyes and hair and began screaming to Mottl that the perpetrator was Mr. Smith. (T. at 242-44).

Sammons testified that she had met Mr. Smith a handful of times before the incident because he was the friend of Mottl's friend. (T. at 243). She also described an incident where she sold Mr. Smith prescription medication a few days before the break in. (T. at 246). During the sale, Mr. Smith came into Sammons' bedroom to complete the transaction. (T. at 248). Sammons' testified that Mr. Smith observed her retrieving the prescription medication from a portable lockbox contained inside the drawer of her bedroom's side table. (T. at 248-49).

While on direct-examination, Sammons admitted that she did not initially inform law enforcement that she had sold Mr. Smith prescription medication a few days before the break in. (T. at 259). She also admitted that in January 2013 she was arrested in Charlotte County by law enforcement for selling Oxycodone in July of 2011. (T. at 262). Sammons conceded that the State agreed to her entering into a diversion program, which she had completed by the time of her testimony. (T. at 262). Sammons refused to acknowledge that she was allowed to enter into the diversion program in exchange for her testimony against Mr. Smith. (T. at 263). Sammons did acknowledge that she had been employed at the Charlotte County Sherriff's Office from September 2003 to January 2004. (T. at 290).

Prior to cross-examination, Mr. Smith renewed his objection to the State's motion *in limine*, which the Trial Court granted prior to trial. The motion *in limine* prohibited him from questioning certain aspects of Sammons' testimony. (T. at 297; R. at 687-718). At the hearing on the motion *in limine*, Mr. Smith explained to the Trial Court that his defense would be that he was set up by Sammons because she was in trouble for selling drugs in July of 2011 to a confidential informant employed by law enforcement. (R. at 710). To support this defense, Mr. Smith requested that the Trial Court not exclude evidence regarding Sammons' motives and biases for setting him up. (R. at 687-718).

In particular, Mr. Smith wanted to introduce evidence to the jury that Sammons sold prescription drugs on July 14, 2011 to a confidential informant working for law enforcement. Mr. Smith theorized that she realized the transaction was a controlled buy before she was arrested, and realized she was facing a maximum sentence of twenty (20) years. (R. at 698-710). Based on her prior experience in law enforcement, Mr. Smith contended that Sammons would have known she could mitigate her sentence by giving law enforcement an additional criminal conviction. (R. at 698-710). Mr. Smith believed that, if allowed to fully question Sammons, the evidence would show that Sammons set him up and that, in exchange for his conviction, she was allowed to enter a diversion program instead of facing a maximum twenty (20) year sentence. (R. at 698-710).

In addition, Mr. Smith wanted to introduce evidence that law enforcement knew of many other illegal sales made by Sammons, but chose not to criminally prosecute her for them in exchange for her testimony against him. (R. at 698-710). Mr. Smith also wanted the jury to know that law enforcement found cocaine and several glass vials when they responded to the reported robbery incident, but never charged Sammons. (R. at 698-710). Finally, Mr. Smith requested that he be permitted to question Sammons about false statements that led to her termination with Charlotte County Sherriff's Office. (R. at 698-710).

The Trial Court limited Mr. Smith's inquiry into Sammons' motives and bias for testifying. Regarding Sammons' termination of employment, the Court ruled Mr. Smith could inquire whether Sammons worked with the Sherriff's Office, but not as to the reason she left. (R. at 712). The Trial Court permitted Mr. Smith's inquiry into Sammons selling drugs on July 14, 2011, but not as to any other drug sales she might have made. (R. at 713). The Trial Court did not permit Mr. Smith to inquire into Sammons' uncharged possession of cocaine. (R. at 715).

In addition to Sammons' identification of Mr. Smith as the perpetrator, the State introduced circumstantial evidence that purportedly linked Mr. Smith to the crime. In particular, the State introduced evidence that a hat was found at the residence containing a partial DNA profile that could not include or exclude Mr. Smith as a possible contributor. (T. at 558). There was also evidence that gloves,

pants, a shirt, a military vest, duct tape, a knife, a bag, and a bike, with the gloves and shirt containing traces of Mr. Smith's DNA profile, were found abandoned at a different residence, .7 miles away from the scene of the incident. (T. at 392-95, 412-20, 609-15). Finally, the State introduced evidence that Mr. Smith left Florida on the same morning of the incident to go to Georgia. (T. at 425-30). The State contended that this evidence tended to show that Mr. Smith was trying to evade law enforcement after the break in. (T. at 668)

In his case-in-chief, Mr. Smith presented testimony that prior to the reported incident he had left clothing and a few bags at Mottl's house. (T. at 625). Mr. Smith introduced this evidence to refute the circumstantial evidence presented by the State and to demonstrate that Sammons was capable of setting him up by leaving these items that would contain traces of his DNA profile at the scene of the incident and the residence .7 miles away. (T. at 674).

### **B. Jury Selection**

Early on in this case, the Trial Court recognized the potential for juror bias and asked the jury panel whether anybody knew anything about Mr. Smith's case. (R. at 793). A venire member expressed that she was familiar with the details regarding the case:

[Venire Woman Leeann Scales]:	I know the Sammons family.
[State]:	How is that you know the Sammons.
[Venire Woman Scales]:	Been personal friends for several years.

[State]: And you know Marry Sammons, yourself?  
 [Venire Woman Scales]: Oh, yeah. Uh-huh.  
 [State]: Would knowing one of the alleged victims in this case, Mary Sammons, would that affect your ability to sit fairly and impartially in this case?  
 ...  
 [Venire Woman Scales]: Yes, I'm sorry.  
 ...  
 [Defense Counsel]: So I take it you know about this crime; is that correct?  
 [Venire Woman Scales]: Some.  
 [Defense Counsel]: Did you have a conversation with anybody about this crime?  
 [Venire Woman Scales]: Years ago.  
 [Defense Counsel]: Well, it happened in 2011. So who did you talk to? Can I ask that?  
 [Venire Woman Scales]: Probably Mary and her mother and father, the whole family.

(R. at 793, 850-52). Based on Venire Woman Scales potential bias, the Court suggested, and the parties agreed, that Venire Woman Scales would be stricken for cause in the middle of jury selection. (R. at 868). The Trial Court excused Venire Woman Scales from reassembling for the remainder of jury selection. (R. at 869). No other venire members expressed that they were familiar with the details regarding Mr. Smith's case during jury selection or at any other point during trial. (R. at 793).

After trial, Mr. Smith filed a motion to interview juror pursuant to Florida Rule of Criminal Procedure 3.575. (R. at 602-05). The motion was prompted by

Mr. Smith's belief that Juror Ashley Pancic failed to disclose that she knew details regarding the case prior to the commencement of trial. (R. at 602). The motion explained that Mr. Smith's father was the janitor at the school in which Juror Pancic worked. (R. at 602). While Mr. Smith's father denied speaking with Juror Pancic directly about his son's guilt, he believed that Juror Pancic likely heard of comments reflecting his belief that his son was guilty through conversations with other co-workers at the school. (R. at 602).

The Trial Court heard testimony from Mr. Smith's father during the evidentiary hearing on the motion to interview juror. (R. at 737-745). Mr. Smith's father explained that he had worked at East Elementary School in Punta Gorda, the same school that employed Juror Pancic, for five years at the time of the trial. (R. at 741). He testified to the school's close knit "family" type work environment and that word of notable events spread quickly amongst his co-workers. (R. at 741). Regarding his son's case, Mr. Smith's father explained that he had made "derogatory" comments about his son after his son's arrest to the principal and several teachers. (R. at 741). Based on the close knit environment at the school, Mr. Smith's father expressed his reasonable belief that Juror Pancic, a co-worker at East Elementary School, would have been exposed to the "derogatory" comments he made about his son. (R. at 742). Mr. Smith's father testified that Juror Pancic would have known that she was sitting on his son's trial when they made contact at

the courthouse and inside the courtroom the morning after she was seated on his son's trial. (R. at 743-44). Mr. Smith's father testified that he did not tell Mr. Smith, Mr. Smith's counsel, the State or the Trial Court about Juror Pancic until after the verdict because he did not know how the judicial system worked and thought if he had said something it would have taken months longer for his son to get a new trial. (R. at 742).

Despite the testimony of Mr. Smith's father, the Trial Court denied Mr. Smith the opportunity to interview Juror Pancic to determine whether she failed to disclose that she knew details regarding the case prior to commencement of trial. (R. 632-35). In denying Mr. Smith's request, the Trial Court found:

Upon consideration of the allegations, evidence, and arguments presented by the parties, the Court concludes that the Defendant has failed to identify any overt prejudicial act or external influence that may have prevented Juror #40 from rendering a verdict fairly. Taken at face value, the testimony from Smith Sr. is devoid of any specific allegation indicating that the jury's verdict against the Defendant was infected by matters outside the evidence. Though Smith Sr. testified that he spoke about the case to co-workers in a negative light, he stated nothing about what facts or evidence he told others about that would have potentially prejudiced the juror in question. There is no evidence of any error 'so fundamental and prejudicial as to vitiate the entire proceedings.'

The evidence presented at trial was sufficient for the jury to reach a determination of Defendant's guilt, without any potential bias in favor for or against the Defendant. Defendant has failed to establish nondisclosure of information by Juror #40 that was relevant and material to her jury service in this case. Instead, the instant motion calls for the Court to speculate and surmise that, if interrogated, Juror #40 might have something to say that would be material to whether or

not the court should award a new trial. As such, the Court finds that the Defendant has failed to demonstrate any reason to believe that the verdict may be subject to challenge. *See* Florida Rule of Criminal Procedure 3.575.

(R. at 634-35).

### **SUMMARY OF THE ARGUMENT**

The Trial Court should have granted Mr. Smith's request to interview Juror Pancic. Based on Mr. Smith's request and on his father's testimony, it is highly likely that Mr. Smith would have exercised a cause or preemptory strike to remove her from the venire. This Court should reverse the Trial Court's denial of Mr. Smith's motion to interview the juror post-trial and remand this cause to the Trial Court to conduct a limited interview of the juror regarding her pre-trial exposure to the case.

The Trial Court erred when it granted the State's motion *in limine* because doing so prevented Mr. Smith from fully cross-examining the State's key witness regarding her credibility. It also precluded Mr. Smith from fully developing his theory of defense. The Trial Court's error was not harmless beyond a reasonable doubt because the witness Mr. Smith was unable to fully cross-examine was the lynchpin to the State's otherwise circumstantial case. Mr. Smith's judgment and sentence must be reversed and vacated and the cause remanded for a new trial.

## ARGUMENT

### **I. THE TRIAL COURT ABUSED ITS DISCRETION BY DENYING MR. SMITH'S REQUEST TO INTERVIEW JUROR PANCIC REGARDING HER FAILURE TO DISCLOSE THAT SHE KNEW DETAILS ABOUT HIS CASE PRIOR TO TRIAL.**

#### **A. Standard of Review**

Mr. Smith requested the Trial Court permit him to interview a juror. (R. at 602-05). The Trial Court denied this request. This Court reviews the denial of a motion to interview jurors for abuse of discretion. *Foster v. State*, 132 So. 3d 40, 65 (Fla. 2013).

#### **B. Argument on the Merits**

The Trial Court abused its discretion when it refused to allow Mr. Smith to interview Juror Pancic after he discovered that she may have failed to disclose that she knew details regarding his case prior to commencement of trial.

Florida Rule of Criminal Procedure 3.575 codifies a criminal defendant's right to interview jurors. The rule provides that a party who has reason to believe that the verdict may be subject to legal challenge may move the court for an order permitting an interview of a juror or jurors. Upon "a finding that the verdict may be subject to challenge," the trial judge "shall enter an order permitting the interview...." Fla. R. Crim. P. 3.575. While a defendant is not permitted to interview jurors regarding any matter that inheres in the verdict itself and relates to the jury's deliberations, a defendant is permitted to inquire into "allegations which

involve an overt prejudicial act or external influence....” *Gray v. State*, 72 So. 3d 336, 337 (Fla. 4th DCA 2011) (quoting *Reaves v. State*, 826 So. 2d 932, 943 (2002)).

This Court has held that a juror interview is warranted if the moving party demonstrates reasonable grounds to believe that non-disclosure of relevant and material information occurred. *State Farm Mut. Auto. Ins. Co. v. Lawrence*, 65 So. 3d 52, 56 (Fla. 2d DCA 2011). When such reasonable grounds exist, the trial court should order a juror interview so that the Court has the evidentiary predicate needed to decide if a new trial is warranted. *Id.*

As the Florida Supreme Court explained in *Loftin v. Wilson*, 67 So. 2d 185, 192 (Fla. 1953), the purpose of jury selection is “to ascertain whether a cause for challenge exists, and to ascertain whether it is wise and expedient to exercise the right of peremptory challenge.” Thus, lawyers are entitled to ask and receive truthful and complete responses to the questions which they pose to the venire. *Roberts Ex rel. Estate of Roberts v. Tejada*, 814 So. 2d 334, 343 (Fla. 2002). Misconduct occurs if there is concealment of a relevant issue even if it is not intentional because the verdict may be impaired regardless of the juror's motives. *Roberts*, 814 So. 2d at 343-44.

Failure to disclose a prior history of litigation is grounds for a new trial because it may deprive a party of a fair and impartial trial. *De La Rosa v. Zequeira*,

659 So. 2d 239 (Fla. 1995). "... [i]t is the duty of a juror to make full and truthful answers to such questions as are asked him, neither falsely stating any fact, nor concealing any material matter, since full knowledge of all material and relevant matters is essential to the fair and just exercise of the right to challenge either peremptorily or for cause. A juror who falsely misrepresents his interest or situation, or conceals a material fact relevant to the controversy, is guilty of misconduct, and such misconduct, is prejudicial to the party, for it impairs his right to challenge." *Id.* at 241.

In *De La Rosa*, the Florida Supreme Court established a three prong test to determine whether a juror's nondisclosure of information during voir dire would warrant a new trial: (1) the complaining party must establish that the information is relevant and material to jury service in the case; (2) the juror concealed the information during questioning; and (3) the failure to disclose the information was not attributable to the complaining party's lack of diligence. *Id.*

The remedy for an erroneous decision precluding interviews is a remand:

Rather than reverse for a new trial on the juror interview issue, we remand this matter to the trial court to reconvene the jury to ascertain whether any juror had read the newspaper article or had conducted himself or herself improperly in any other respect regarding outside influences. If a juror admits to improper conduct appellant must be awarded a new trial.... If the required inquiry cannot be accomplished, the defendant should be granted a new trial.

*Diaz v. State*, 435 So. 2d 911, 912 (Fla. 4th DCA 1983).

In *Forbes v. State*, 753 So. 2d 709 (Fla. 1st DCA 2000), the appellant presented affidavits that supported his contention that a juror failed to disclose that she knew details about the case. The affidavits averred that (1) the juror lived in the same neighborhood as the appellant's grandmother, aunt and uncle; (2) the juror was aware of charged incident; and (3) the juror had attended a neighborhood meeting at which several break-ins involving the appellant were discussed. *Id.* at 710. The appellant represented that he had not remembered the juror during trial. *Id.* The *Forbes* court found that if the appellant's assertions were true, then the appellant would be entitled to a new trial unless the state could demonstrate that there was no reasonable possibility that the misconduct affected the verdict. *Id.* The proceedings were reversed to permit the appellant to interview the juror about the alleged misconduct.

Similarly, in *Sconyers v. State*, 513 So. 2d 1113 (Fla. 2d DCA 1987), this Court reversed for the trial court to conduct a limited juror interview where the defendant filed an unsworn motion to interview jurors contending that a juror had subsequently approached his counsel and advised him that eleven of the jurors felt he was not guilty. While this Court cautioned lower court's from opening "Pandora's box," it concluded that "[w]hen a motion to interview a juror or jurors sets forth allegations that the movant has reasonable grounds to believe that the verdict may be subject to legal challenge, such as a reasonable belief that a juror

has been guilty of misconduct, then the trial court should conduct such an interview, limiting it as narrowly as possible, to determine if such grounds do exist” *Id.* at 1117.

Here, Mr. Smith satisfied the requirements to be entitled to interview Juror Pancic. The alleged failure of Juror Pancic to disclose her prior knowledge of the details of the case, as recognized in *Forbes* and *Sconyers*, is relevant and material to her jury service as it goes directly to her ability to serve as an impartial juror. The failure to make the disclosure prevented Mr. Smith from having a fair opportunity to make a determination regarding Juror Pancic’s fitness to serve as a juror, and whether to exercise a cause<sup>1</sup> or peremptory challenge. Under Rule 3.575, Mr. Smith was entitled to interview Juror Pancic.

The Trial Court’s explanations for denying Mr. Smith’s reasonable request to interview Juror Pancic regarding her pre-trial exposure were legally flawed. First, the Trial Court denied Mr. Smith request to interview because his father’s testimony did not include what facts or evidence he told others about the case. While his father did not elaborate on the “derogatory” comments he made about his son to co-workers, Mr. Smith’s motion did specifically state that his father commented to co-workers that he believed his son to be guilty. The Trial Court’s

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<sup>1</sup> It is likely that a cause challenge would have been entered. Earlier in the proceeding, the Trial Court suggested, and the parties agreed, that another juror who expressed prior knowledge of the case would be removed for cause. (R. at 793, 850-52)

failure to consider this evidence likely arises from its reliance on *Johnson v. State*, 804 So. 2d 1218, 1225 (Fla. 2001).

In *Johnson*, the Florida Supreme Court stated that a party must present “sworn allegations” to show entitlement to interview a juror. However, this decision was made prior to the effective date of Rule 3.575, January 1, 2005. After Rule 3.575 became effective, case law has confirmed that “sworn allegations” are no longer required to show entitlement to interview a juror. *Ramirez v. State*, 922 So. 2d 386, 389 (Fla. 1st DCA 2006) (“the supreme court necessarily disavowed its dicta (and any possible holding) requiring sworn allegations as a precondition to contact with jurors post trial, when it adopted Rule 3.575, which contains no requirement that any motion filed under the rule be verified.”)). Accordingly, the assertions made in Mr. Smith’s motion should have been considered in conjunction with his father’s “derogatory” comments. When considered together, the Trial Court had sufficient evidence to grant Mr. Smith the right to interview Juror Pancic post-trial.

Second, the Trial Court found:

The evidence presented at trial was sufficient for the jury to reach a determination of Defendant’s guilt, without any potential bias in favor for or against the Defendant. Defendant has failed to establish nondisclosure of information by Juror #40 that was relevant and material to her jury service in this case.

(R. at 635). The Trial Court's finding demonstrates that it improperly shifted the burden to Mr. Smith to demonstrate that the juror misconduct would have affected the verdict. *Forbes*, 753 So. 2d at 709 (it is the state's burden to demonstrate that there was no reasonable possibility that the misconduct affected the verdict.). Accordingly, the Trial Court improperly held Mr. Smith to a burden that was not his to satisfy.

In conclusion, the Trial Court's denial of Mr. Smith's request amounts to an abuse of discretion. Because Mr. Smith satisfactorily demonstrated the reasonable possibility of juror misconduct, this Court should reverse the Trial Court's denial of Mr. Smith's motion to interview and remand the cause to the Trial Court to conduct a limited interview of Juror Pancic regarding her pre-trial exposure to Mr. Smith's case.

**II. THE TRIAL COURT ABUSED ITS DISCRETION BY PARTIALLY GRANTING THE STATE'S MOTION *IN LIMINE* BECAUSE IT PREVENTED MR. SMITH FROM PRESENTING EVIDENCE RELATED TO HIS THEORY OF DEFENSE AND SAMMONS' MOTIVE TO LIE AND BIAS FOR TESTIFYING.**

**A. Standard of Review**

Mr. Smith objected to the Trial Court's partial granting of the State's motion *in limine*. (R. at 717). Mr. Smith also objected at the time the excluded evidence would have been offered and renewed the objection at various points where he believed the door was open for him to offer the excluded evidence. (T. at 297, 310-

11). This Court reviews a preserved challenged of the granting of a motion *in limine* for abuse of discretion. *State v. Aylesworth*, 666 So. 2d 181 (Fla. 2d DCA 1995).

**B. Argument on the Merits**

The Trial Court abused its discretion when it precluded Mr. Smith from presenting testimony that went to the State's key witness' motive to lie and bias for testifying. By excluding the proffered testimony, the Trial Court impermissibly restricted Mr. Smith's ability to cross-examine Sammons and present his theory of defense. The error was harmful. Consequently, Mr. Smith's conviction and sentence must be reversed and vacated and the cause remanded for a new trial.

According to the Florida Supreme Court, "where [relevant] evidence tends in any way, even indirectly, to establish a reasonable doubt of defendant's guilt, it is error to deny its admission." *Rivera v. State*, 561 So. 2d 536, 539 (Fla. 1990). Section 90.608(2), Florida Statutes, provides that "[a]ny party ... may attack the credibility of a witness by ... showing that the witness is biased." A defendant should be afforded wide latitude to cross-examine in matters relevant to credibility, particularly in the demonstration of bias or possible motive on the part of a witness. *Mendez v. State*, 412 So. 2d 965, 966 (Fla. 2d DCA 1982); *Henry v. State*, 688 So. 2d 963, 966 (Fla. 1st DCA 1997). "The right of full cross-examination is absolute, and the denial of that right may easily constitute reversible error."

*Mendez*, 412 So. 2d at 966. “ ‘[B]ecause liberty is at risk in a criminal case, a defendant is afforded wide latitude to develop the motive behind a witness' testimony.’ ” *Barows v. State*, 805 So. 2d 120, 122 (Fla. 4th DCA 2002) (citing *Auchmuty v. State*, 594 So. 2d 859, 860 (Fla. 4th DCA 1992)). The importance of permitting a defendant full cross-examination, is well noted in *Childers v. State*, 936 So.2d 585, 608 (Fla. 1st DCA 2006), where Chief Justice Lawrence E. Kahn in his dissenting opinion listed numerous cases reversing convictions because the trial court abused its discretion by limiting a defendant's right to full cross-examination.

In *Hebel v. State*, 765 So. 2d 143 (Fla. 2d DCA 2000), this Court reversed a conviction for the trial court's denial of the defendant's right to question the state's key witness' motive to lie. This Court stated in *Hebel*:

The fact that the complainant violated a child custody order and removed the child not only from the custodial parent but also from the child's state of residence is plausibly related to a motive to lie in this instance where the custody of the children had not been determined at the time of the alleged offense. On remand, the facts surrounding this assertion may be fully developed so that the trial court may determine whether cross-examination should be permitted.

*Id.* at 147.

Here, Mr. Smith's plausible theory of defense was that Sammons set him up so that she could receive a lesser sentence for her own illegal activities. Indeed, Mr. Smith was allowed to introduce evidence that Sammons received a diversion program instead of facing a maximum sentence of twenty (20) years for her sale of

drugs to a confidential informant in July of 2011. However, the Trial Court significantly limited Mr. Smith's ability to further develop his theory of defense by prohibiting Mr. Smith from introducing evidence that law enforcement knew about other illegal activity committed by Sammons, including several other known sales and her possession of cocaine, for which Sammons was never charged. By limiting Mr. Smith's ability to fully cross-examine Sammons about each uncharged crime, the did not hear all critical evidence that would have explained Sammons' motive to lie and would have supported Mr. Smith's plausible theory of defense.

The State cannot prove beyond a reasonable doubt that the Trial Court's error of not allowing Mr. Smith to fully cross-examine Sammons was harmless. *State v. DiGuilio*, 491 So. 2d 1129, 1135 (Fla. 1986) (“state, as beneficiary of the error, to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict....”). Sammons was the only eyewitness to identify Mr. Smith in the State's otherwise circumstantial case. The excluded testimony would have been critical to the jury's determination on whether Mr. Smith was set up by Sammons. Since she was the lynchpin to the State's case, it was crucial for Mr. Smith to be able fully attack her credibility by presenting her motives to lie and bias for testifying.

“No area is more deserving of ‘wide latitude’ than the defendant's ability in a criminal case to argue the ‘credibility and biases of the witnesses who testified at

trial.” *Williams v. State*, 912 So. 2d 66, 68 (Fla. 4th DCA 2005) (quoting *Goodrich v. State*, 854 So. 2d 663,665(Fla. 3d DCA 2003)). The Trial Court did not afford Mr. Smith this “wide latitude” when cross-examining the State’s key witness. Accordingly, Mr. Smith's conviction and sentence must be reversed and vacated and this cause remanded for a new trial.

### CONCLUSION

Based on the foregoing facts, arguments and authorities, this Court must vacate Mr. Smith’s conviction and sentence, and grant him a new trial.

DATED this 12th day of May 2014.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via electronic mail to the Office of the Attorney General this 12th day of May 2014.

/s/ Matthew R. McLain  
Matthew R. McLain, 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.

/s/ Matthew R. McLain  
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