IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA, SIXTH DISTRICT

SARAH BOONE,

Appellant,

v.

STATE OF FLORIDA,

District Court Case No. 6D25-206

Lower Court Case No. 2020CF-2603

Appellee.

APPELLANT'S INITIAL BRIEF

On Appeal from the Circuit Court in and for Polk County, Florida.

By: **David Maldonado, J.D.**
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PRELIMINARY STATEMENT

The Record on appeal consists of one volume and the Record will be cited as R. Transcripts of the trial held on the matter will be cited as T. All other forms of citation shall be in accordance with the citation standards established in The Bluebook: A Uniform System of Citation (Columbia Law Review Ass'n et al. eds., 18th ed. 2005).

QUESTIONS PRESENTED

Whether the Appellant's opening statements were improperly limited resulting in an ability to present a viable defense, whether the trial court erred in failing to adequately correct a substantial discovery violation by the Appellee, whether the learned Circuit Court Judge committed reversible errors with respect to the jury instructions and whether the trial court improperly allowed the Appellee's expert witness to draw a legal conclusion that was arguably to be determined by the jury.

STATEMENT OF JURISDICTION

This Honorable Court has jurisdiction to review the issues presented herein, inasmuch as a final judgment and sentence has

been issued from the Circuit Court in and for Orange County, Florida. District Courts of Appeal have jurisdiction over final orders from trial courts not directly reviewable by the Supreme Court or a circuit court. Fla. R. App. P. 9.030(b)(1)(A).

STATEMENT OF THE CASE

This case commenced with an Information being filed against the Appellant on March 23, 2020 charging her with Second Degree Murder (which allegedly occurred on February 23, 2020 in Orange County). R. at 69-70. The incident giving rise to the Information occurred on February 24, 2020 when the Appellant and the victim (her boyfriend) were sharing a bottle of wine and decided to play "hide and seek" wherein the Appellant had gone upstairs in their apartment to hide. R. at 50. After the victim did not come to look for her, the Appellant reportedly went back downstairs to discover the victim zipped up in a suitcase and both parties were "laughing" as she finished zipping up the suitcase (and the victim purportedly was able to stick a few of his fingers outside of the suitcase as it was not zipped all the way). *Id.* The Appellant then went back upstairs in their

apartment and fell asleep under the assumption that the victim could get himself out of the suitcase. *Id.*

The next morning, she woke up and did not see the victim until she went back downstairs to discover the victim had died in the suitcase, at which point she called her ex husband who in turn directed her to call 911. R. at 50. A search of the Appellant's cell phone revealed two video recordings wherein the victim had exclaimed that he could not breathe and the Appellant replied "Yeah, that's what you do when you choke me" and "[t]hat's what I feel like when you cheat on me." *Id.* According to the arrest affidavit for the Appellant, the victim's autopsy revealed he had various injuries and after investigating detectives showed the video recordings to the Appellant (with her denying any recollection of the videos), she was placed under arrest. R. at 51.

After the Information was filed and during the first few years of the instant case, the trial judge entered an Order on June 28, 2024 highlighting the Appellant's extreme difficulties with retaining defense counsels. R. at 483-498. The Order revealed that the Appellant had gone through eight different counsels and all counsels had moved to withdraw due to general "irreconcilable differences" with the

Appellant. R. at 483-493. Finding that the Appellant was no longer entitled to counsel, the trial court found that she had "forfeited" the right to counsel and "her conduct" forced her to proceed with the case *pro se*. R. at 496. Despite the significant setback, the Appellant was able to obtain new counsel (James Owens, Esq.) who entered his appearance on her behalf on August 30, 2024. R. at 646.

Subsequently after the Appellant's new trial counsel entered his appearance, a flurry of motions and responses were filed between the parties during the later part of 2024 with the trial court ruling on the various pretrial issues presented. R. at 642-877.

Trial on the matter began on October 14, 2024 with jury selection and the trial court dealt with a large number of pretrial Motions. T. at 3:3; 460:8-760:23. The Appellee's trial counsel had asked for a Motion In Limine to prevent the defense from positing a "Battered Spouse Syndrome" defense theory, however the trial judge issued a mixed ruling on that Motion. While the court would not completely exclude the defense, the trial court did rule that the defense would need to lay a proper predicate before the defense expert would be allowed to address the Battered Spouse Syndrome theory. T. at 481:11-483:20.

Specifically as it relates to the Appellee's Motion In Limine on the defense's Battered Spouse Syndrome theory, the Appellee's trial counsel referenced statements the Appellant ostensibly made to the expert witnesses (that would testify at trial) that led to the Appellee arguing there was no "overt act" that would allow the defense theory to come in. T. at 463:3-464:24. Recognizing "the risk of error" with its request, the Appellee's trial counsel asserted that the impaneled jury should not hear "about any prior instances of violence . . . unless and until there is testimony that is self-defense that's recognized under the State of Florida's laws." T. at 467:5-14. A discussion between the defense counsel and Court then ensued about the defense's expert's (Dr. Harper) deposition previously taken and what her opinion on the Appellant's Battered Spouse Syndrome was based on. T. at 470:12-472:3. The trial judge inquired as to what the overt act would be that would give rise to the Appellant's self-defense theory and the defense counsel responded that he was being put "in the position now to disclose what our view of the overt act is." T. at 472:23-480:11. After disclosing the defense theory of the overt act, the trial court ruled on the matter as outlined in the preceding paragraph. T. at 481:11-483:20.

The trial court also denied the Appellant's renewed Motion For Statement Of Particulars. T. at 753:2-760:23. After dealing with a number of motions, the trial court then conducted a *Richardson* hearing on a number of late disclosures that the defense objected to and the trial judge found that any discovery violations by the Appellee were inadvertent. T. at 769:9-778:18.

After the jury was impaneled and before trial on the matter began, the Appellee's trial counsel indicated to the court that there was an issue with the Appellant attempting to use demonstrative aids during opening statements. T. at 921:9-11. The trial counsel referenced the court's initial ruling on the "overt act" issue to argue that certain photos of prior injuries to the Appellant (ostensibly from the victim) and boards outlining laws on jury instructions should not be shown during the Appellant's opening statements. T. at 921:21-925:23. After the court reviewed the proposed photos, the court agreed with the Appellee and prohibited the Appellant's counsel from using the demonstrative aids. T. at 928:7-941:6.

The evidentiary portion of the trial on the matter began on October 18, 2023 with several witnesses called by the Appellee. T. at 948:15-1127:8. Trial thereafter continued for several days with

numerous witnesses and publication of various video evidence (including portions of video taken from the Appellant's phone as well as detective interviews with the Appellant) before the Appellee rested. *See generally* T. at 948:15-1478:16.

After the trial judge denied the Appellant's Motion For Judgment Of Acquittal, the Appellant was called as a witness for her case. T. at 1522:7-9. She testified generally about the incident in question, what led up to the victim's death, her fear of the victim as he was attempting to get out of the suitcase that he was zipped up in (based on his prior acts of violence against her), and the aftermath after she discovered he had been deceased. T. at 1548:22-1698:8. Several additional witnesses testified for the Appellant and after the Appellant rested her case, the Appellee presented rebuttal testimony from Dr. Tonia Werner. T. at 1960:19-21.

While testifying as to her 2.5-hour evaluation of the Appellant, Dr. Werner opined that the Appellant was not suffering from any post-traumatic stress disorder that could lead to Battered Spouse Syndrome, and the Appellant's counsel objected. T. at 1975:6-18. A very lengthy discussion ensued between the counsels and the Court as the Appellant's counsel claimed a discovery violation, pointing out

that Dr. Werner had previously claimed during a deposition that she had a different opinion and diagnosis of the Appellant than what was now being offered at trial. The trial judge acknowledged the different opinion rendered at trial. T. at 1975:22-2004:24.

In response to the alleged discovery violation, the Court decided to conduct a *Richardson* hearing and after considering argument, the judge decided to allow the Appellant to conduct an in-camera deposition (acknowledging that the discovery violation was "substantial" and "had some impact on the ability of the [Appellant] to properly prepare for trial."). T. at 2005:3-2008:21. During questioning from the Appellant's counsel, Dr. Werner claimed that she had not previously disclosed her opinion on the Appellant during the initial deposition because "[the Appellant's counsel] didn't specifically ask [her] about that." T. at 2010:3-24. After the Appellant's questioning concluded, the trial judge observed "[t]his is your opportunity and your only opportunity to cure any prejudice . . . ." T. at 2013:1-6. In response, the Appellant's counsel protested that he was forced to take the deposition "on the fly" and he was put "in a very difficult situation," but the judge again reiterated that he was giving the Appellant an "opportunity to cure that *Richardson* issue." T. at

2013:17-25. Again and later in the courtroom deposition, the Appellee's expert revealed that her opinion had changed from the time of the initial deposition to the day of the trial (namely, her opinion that the Appellant did not suffer from any type of anxiety or adjustment disorder). T. at 2018:1-10.

After the Appellee's rebuttal and publication of numerous videos, audio, and other evidence, the parties and court began discussing the jury instructions. T. at 2293:11-13. An extended argument from both parties took place with respect to the 3.6(f) instruction as it related to an "initial aggressor/duty to retreat" issue, but the Court ultimately sided with the Appellee and included a special instruction. T. at 2306:14-2323:8.

After the parties went over the jury instructions, the Court provided those instructions to the jury and both parties presented closing arguments prior to jury deliberations. T. at 2362:10-2503:12. The jury ultimately found the Appellant guilty of second degree murder and the trial judge thereafter issued sentenced her to life in prison. T. at 2512:17-25; R. at 1032. The Notice Of Appeal was thereafter timely filed on December 8, 2024. R. at 1047.

SUMMARY OF THE ARGUMENT

The Appellant respectfully submits that the learned trial judge committed a number of errors throughout the trial proceedings which ultimately prejudiced the Appellant's ability to present a viable defense and prejudiced her trial counsel's ability to adequately prepare for trial. Improper limitations were placed on the Appellant's counsel's opening statements which prevented the Appellant from properly framing an adequate defense to present to the jury. Florida courts have held that opening statements can be a critical opportunity to frame a case and that unduly limiting these statements can prejudice a jury's understanding of a theory of defense. Additionally, substantial discovery violations occurred that were revealed during trial and the trial court judge essentially allowed a "trial by ambush" against the Appellant. Consequently the judgment and sentence should be reversed.

STATEMENT OF PRESERVATION

In accordance with this Honorable Court's Administrative Order 24-01, the Appellant respectfully asserts that the various issues raised in this Initial Brief were brought before the trial court with

contemporaneous objections and argument between the parties during trial as outlined below:

1. Limitations on opening statements: T. at 931:16-935:7

2. Appellee's discovery violations: T. at 1975:6-18; T. at 1975:22-2004:24; T. at 2013:17-25.

3. Erroneous jury instructions: T. at 2306:4-7; T. at 2306:22-2307:1; T. at 2308:1-2309:22.

4. Admission of expert opinion on factual issue: T. at 2025:11-18; T. at 2026:4-2032:6.

The applicable standards of review are outlined in the Argument section below.

ARGUMENT

I. THE TRIAL COURT ERRED IN IMPROPERLY LIMITING THE APPELLANT'S OPENING STATEMENTS REGARDING THE "OVERT ACT" REQUIREMENT.

One dispositive issue before this Honorable Court is whether the trial court erred in placing limitations on the Appellant's opening

statements at the outset of the jury trial. The trial court ruled that the Appellant could not introduce evidence of the victim's prior violence to frame a Battered Spouse Syndrome context and thus forced the Appellant to provide a limited opening statement that did not properly frame the Appellant's theory of defense for the jury. This arguably violated the Appellant's right to present a complete defense and this error (in conjunction with the other errors discussed herein) warrant reversal of the Judgment And Sentence with remand for a new trial.

Generally, the purpose of opening statements is to outline what a party "in good faith" expects to establish during trial. *See* Perez v. State, 919 So. 2d 347, 363 (Fla. 2005). "Wide latitude" is usually allowed with opening statements and a trial court's limitations on such statements will be upheld if there is no "abuse of discretion." Thomas v. State, 326 So. 2d 413, 415 (Fla. 1975). Concerning a self-defense claim (as the Appellant asserted in this case), a defendant must show evidence of an "overt act" by the victim that showed a need for the defendant to exercise self defense. Holland v. State, 916 So. 2d 750, 760 (Fla. 2005).

In the case at bar, the Appellant asserts that the trial court unreasonably restricted her counsel's ability to frame her defense

for the jury during opening statements. The trial court ruled that the Defense could not introduce evidence of the victim's prior violence (Battered Spouse Syndrome context) until an "overt act" of aggression by the victim on the day of the incident was established. This ruling forced the Defense to present a "naked" opening statement, preventing them from showing photographs of the Appellant's injuries or fully explaining why she acted in self-defense until late in the trial. This arguably violated the Appellant's right to present a complete defense and properly frame the case for the jury. The trial court ruled "[y]ou can talk about it, that [the Appellant] was a victim. You can talk about some incidences [sic] may have happened, but I'm not going to allow the photographs at this point in time . . . for your utilization of them in opening statements." T. at 941:1-9. The trial court strictly applied the "overt act" requirement to opening statements, ruling "assuming that overt act hurdle is not met" the evidence was excluded.

The Appellant avers that while the aforecited *Holland v. State* case and related progeny require an "overt act" for deadly force justification, the trial court extended this evidentiary rule to opening statements, preventing the Appellant's defense counsel from laying

foundational context in opening statements for the jury (prior violence from the victim creating reasonable fear in the Appellant). This limitation imposed by the trial court was improper and an abuse of discretion as the trial court tried to place an evidentiary limitation on the opening statements. As the Florida Supreme Court observed, "[o]pening remarks *are not evidence*, and the purpose of opening argument is to outline what an attorney expects to be established by the evidence." Occhicone v. State, 570 So. 2d 902, 904 (Fla. 1990) (emphasis added). Thus prohibiting photographs of the Appellant's injuries and full explanation of abuse history left the jury without context for the Appellant's actions, forcing a delayed presentation of the defense theory. In a case hinging on self-defense and battered spouse syndrome, this likely affected jury perception and was not harmless.

II. THE TRIAL COURT DID NOT PROVIDE AN ADEQUATE REMEDY TO THE APPELLANT FOR THE APPELLEE'S SUBSTANTIAL DISCOVERY VIOLATION.

Another substantial erroneous ruling occurred during the trial when the Appellee's expert witness crucially changed her opinion

against the Appellant in the middle of the trial, thus resulting in a "trial by ambush" against the Appellant. During a pretrial deposition of the Appellee's expert witness, that witness indicated she did not have any opinion on any diagnosis of the Appellant. T. at 1976:1-3. However at trial, the witness then claimed that the Appellant "did not give me enough information to diagnose her with post-traumatic stress disorder . . . ." T. at 1975:14-16. Although the trial court recognized the substantial change in the witness's testimony from what she had initially stated in the deposition, the learned judge only allowed an "on-the-fly" deposition in the middle of the trial to ostensibly correct the prejudice suffered by the Appellant. The Appellant respectfully submits that this prejudice was not substantially remedied by the deposition and at a minimum, the trial should have been continued to allow the prejudice to be adequately addressed.

Rule 3.220 of the Florida Rules Of Criminal Procedure generally governs discovery processes and requirements in any criminal proceeding. Under this Rule, depositions of witnesses are allowed and parties are under a "continuing duty to disclose . . . additional witnesses or material . . that materially alter a written or

recorded statement previously provided under these rules." Fla. R. Crim. P. 3.220(j). If a party is alleged to have violated this Rule, then a court will conduct a *Richardson* hearing under the case of *Richardson v. State*, 246 So. 2d 771 (Fla. 1971). In cases dealing with a State violation of the discovery rule, a court will consider questions such as "whether the state's violation was inadvertent or willful, whether the violation was trivial or substantial, and most importantly, what effect, if any, did it have upon the ability of the defendant to properly prepare for trial." Richardson v. State, 246 So. 2d 771, 775 (Fla. 1971). If the record shows that such a violation "resulted in prejudice or harm" to a defendant, then reversal may be justified. *See id.* at 774.

Here, The Defense argued the Appellee's expert witness offered new opinions at trial regarding the Appellant's diagnosis (Adjustment Disorder vs. Anxiety) and the lack of PTSD criteria that were not disclosed in her deposition. This constituted a "trial by ambush." The trial court found the violation was "substantial," but denied the motion to strike or dismiss, instead allowing a mid-trial deposition. T. at 2005:3-2008:21, 2069:1-2070:20. The mid-trial deposition remedy was inadequate because the new opinions

(e.g., shifting from Adjustment Disorder to no PTSD criteria, impacting self-defense/battered spouse syndrome) came on a central issue after the Appellant's counsel had prepared/cross-examined based on the deposition. Under *Richardson*, the court must assess prejudice and whether the remedy cures the ability to prepare; surprise on expert opinions central to the defense often requires exclusion or mistrial, not just a belated deposition.

In this present case, the Appellant submits that the discovery violation was quite prejudicial and a mid-trial deposition was inadequate to correct the damage to the Appellant's defense theory. As the Fourth District Court Of Appeals has pointed out, "[i]f the reviewing court finds that there is a reasonable possibility that the discovery violation prejudiced the defense or if the record is insufficient to determine that the defense was not materially affected, *the error must be considered harmful.*" McDonald v. State, 366 So. 3d 18, 21 (Fla. 4th DCA 2023) (emphasis added). As the jury was already exposed to the witness's change in testimony, the mid-trial deposition did not cure the surprise elicited by the change and thus the deposition did not cure the harm to the Appellant.

While the trial court relied on the Third District Court Of Appeals case of *State v. Denninghoff*, 388 So. 3d 1055 (3d DCA 2024) in refusing to strike the witness or dismiss the case, the Appellant submits the *Denninghoff* case is distinguishable. In *Denninghoff*, the State appealed a dismissal of the defendant's charges based on a State discovery violation in not turning over a report to the defense. State v. Denninghoff, 388 So. 3d 1055, 1056 (Fla. 3d DCA 2024). During trial, a deputy testified on behalf of the State and referenced a report he had written that the defense was not provided a copy of. *Id.* at 1057. After the trial judge conducted a *Richardson* hearing, the judge dismissed the charges based on the State's failure to disclose that report (even though the State had offered to strike that officer's entire testimony). *Id.* In reversing the decision, the appellate court noted that the excluded report did not contain any contradictory information not contained in the other report that had been disclosed and thus the prejudice to the defense was minimal. *Id.*

Here, the Appellant respectfully submits that the prejudice was much more substantial inasmuch as the Appellee's expert witness essentially rendered a completely different opinion during

testimony than what she had stated during pretrial deposition. As opposed to the *Denninghoff* case that merely involved a misdemeanor DUI charge, the Appellant here faced a substantial life felony (second degree murder) and premised her defense on the self-defense theory of Battered Spouse Syndrome. Where an expert wholly crushes that theory unexpectedly mid-trial and without disclosure from the Appellee, the prejudice here is *much* more harmful and thus a mere deposition did not cure the harm.

III. ERRONEOUS JURY INSTRUCTIONS WERE PROVIDED ON THE "INITIAL AGGRESSOR" EXCEPTION TO THE SELF-DEFENSE RULE.

Another dispositive issue is whether the learned trial judge erred in allowing a special instruction pertaining to the Appellant's self-defense theory. The trial court ultimately agreed to the Appellee's request to include the "initial aggressor" jury instruction, which negates the right to self-defense if the Appellant was committing a forcible felony. In allowing the special instruction, the trial court essentially directed a verdict against the Appellant's self-defense claim and thus committed reversible error.

During jury instruction review, a disagreement arose between the parties with respect to the 3.6(f) instruction involving the Appellant's right to self-defense or duty to retreat. T. at 2306:4-7. In essence, the proposed instruction read "if at the time Sarah Boone used deadly force, she was committing an aggravated assault, or if at the time Sarah Boone used the deadly force she was not in a place where she had a right to be, then the defendant had a duty to retreat." T. at 2306:22-2307:1. While the Appellant's counsel objected to the "aggravated assault" language because she had not been charged with that in the Information, the Appellee argued that her actions constituted aggravated assault with zipping up the suitcase, exerting force "through distance," and putting the victim in fear of death." T. at 2308:1-2309:22. The Appellee's counsel also notably indicated that he would have charged the Appellant with aggravated assault and battery if he could were it not for "the statute of limitations had passed." T. at 2313:20-24.

In response, the Appellant's counsel maintained that *Martinez v. State*, 981 So. 2d 449 (Fla. 2008) allowed an "initial aggressor" exception in for jury instructions only under two scenarios (either where an independent forcible felony was charged or felony

murder was charged) and that had not been done in the instant case. T. at 2317:1-6. The Appellant's counsel rightly pointed out that she had not been charged with an independent forcible felony and thus the special instruction was improper. T. at 2318:9-16; 2321:3-8.

Both parties disagreed as to the applicability of the *Martinez v. State* holding in the instant case. In *Martinez v. State*, 981 So. 2d 449 (Fla. 2008), the Appellant was charged with both attempted premeditated murder and aggravated battery after stabbing his girlfriend. Martinez v. State, 981 So. 2d 449, 450 (Fla. 2008). Notably, the Appellant did not object to a jury instruction that included an exception to the Appellant's self-defense claim "if [he] was attempting to commit, committing, or escaping after the commission of an *Attempted Murder* and/or *Aggravated Battery . . .*" *Id.* After conviction and on appeal, the Appellee argued that the Florida Statute allowing the special instruction (i.e. Section 776.041 of the Florida Statutes) did not require an independent forcible felony charge before allowing the forcible-felony instruction to apply, however the Florida Supreme Court disagreed, holding that "[t]his circular logic would most probably confuse jurors because

the apparent result is that the instruction precludes a finding of self-defense and amounts to a directed verdict on the affirmative defense." *Id.* at 451-453.

In the case at bar, the Appellee argued that the "aggravated assault" (zipping the suitcase) was a separate forcible felony from the murder, justifying the instruction. The Appellant's counsel objected, citing *Martinez*. The trial court allowed the instruction, modifying it to read: "However, the use of deadly force is not justified if you find that Sarah Boone used force to initially provoke . . ." T. at 2306:15-2307:13. This instruction permitted the jury to reject self-defense solely because they believed she assaulted the victim by trapping him, which is the exact circularity *Martinez* prohibits. The charged conduct (trapping the victim in the suitcase leading to death) makes the aggravated assault integral to the homicide act, not independent, rendering the initial aggressor/forcible felony exception inapplicable and the instruction erroneous under *Martinez v. State*, 981 So. 2d 449, 453–54 (Fla. 2008). Thus the Appellant asserts this harmful error constitutes reversal of the judgment and sentence and remand for a new trial.

IV. THE TRIAL COURT IMPROPERLY ALLOWED THE ADMISSON OF THE APPELLEE'S EXPERT'S OPINION ON AN ULTIMATE ISSUE OF FACT.

Another error occurred during the trial when the trial judge improperly allowed the Appellee's expert witness to opine that the Appellant was not in "imminent fear" at the time of the incident in question. Such an opinion infringed upon the jury's role to be the ultimate trier of fact as to whether the Appellant was in fact in "imminent fear" and the opinion ultimately was an improper legal conclusion which negated the Appellant's self-defense theory. By allowing the expert to state "it's not imminent fear," the witness usurped the jury's role as the sole trier of fact regarding the reasonableness of the Appellant's fear.

As a general rule, "[t]he admission and scope of expert testimony rests within the broad discretion of the trial court." Schneer v. Allstate Indem. Co., 767 So. 2d 485, 488 (Fla. 3d DCA 2000). Indeed, an expert opinion does not become objectionable merely because "it includes an ultimate issue to be decided by the trier of fact." FLA. STAT. §90.703 (2025). At the same time, "[w]itnesses will be prevented from expressing their conclusions

when the opinion only tells the jury how to decide the case and does not help the jury to determine what occurred. Id. (emphasis added).

During testimony from the Appellee's expert Dr. Werner, she opined that the circumstances surrounding the incident just prior to the victim's death suggested that the Appellant was not in fear of imminent risk or harm. T. at 2025:11-18. The Appellant's counsel properly objected to the testimony, pointing out that the expert was drawing a legal conclusion that had to be left to the jury (and an extended argument thereafter ensued between the parties on whether the testimony was an improper legal opinion under Section 90.703 of the Florida Statutes). T. at 2026:4-2032:6. The trial court ultimately ruled for the Appellee and found that the provided testimony was not an ultimate issue of fact under the relevant evidentiary statute and also relied on a case citation to overrule the Appellant's objection. T. at 2032:8-2033:2.

In essence with this ruling, the trial court allowed the expert to sway the jury precisely as the Third District Court ruled was improper in the aforecited *Schneer* case. The expert's opinion was improper because it directly applied the legal standard for self-

defense (reasonable belief in imminent danger of death/great bodily harm) to the facts, effectively telling the jury to reject the defense posited by the Appellant's defense team. The testimony went to the core of the Appellant's self-defense theory (i.e. the "imminent fear" that the victim was about to harm her) and it is clear the opinion influenced the jury by way of the guilty verdict. Thus it cannot be said that the admission of this opinion was harmless.

CONCLUSION

For the foregoing reasons, the Appellant respectfully requests that the subject judgment and sentence be reversed. It is evident that a number of errors were committed from the outset of the trial (and throughout the trial) that prejudiced the Appellant's ability to viably present her defense theory. As the trial judge improperly limited the Appellant's opening statements, she was unable to properly frame her defense to the jury from the outset. While the trial judge properly conducted a *Richardson* hearing to address the Appellee's discovery violation with respect to their expert changing her testimony from a pretrial deposition, the trial court's remedy was inadequate as the

defense team was unable to adequately prepare for the change in opinion. Erroneous jury instructions further prejudiced the Appellant in violation of germane Florida case law and the trial judge further allowed the Appellee's expert's legal conclusion testimony to taint the jury against the Appellant's valid defense. In light of the foregoing, the subject judgment and sentence should be reversed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Appellant's Initial Brief was furnished by electronic mail to Kristen Davenport, Esq. (Counsel for the Appellee) at kristen.davenport@myfloridalegal.com, this 22nd day of April, 2026.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Initial Brief complies with the font requirements of Rule 9.120(a)(2) of the Florida Rules of Appellate Procedure.

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