

IN THE

SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

KELLY MATHIS,

Respondent.

Case No. SC16-2186

Lower Tribunal No(s): 5D14-492

2013-CF-695AA

**APPENDIX TO MOTION FOR
DISQUALIFICATION OF THE HONORABLE RICKY POLSTON**

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AFFIDAVIT OF KELLY B. MATHIS

COUNTY OF DUVAL
STATE OF FLORIDA

BEFORE ME, the undersigned authority appeared Kelly B. Mathis, who, after having been duly sworn deposes and states as follows:

1. I am the Respondent in Case No. SC16-2186.
2. The State of Florida seeks discretionary review of the reversal of my conviction for allegedly participating in a gambling enterprise.
3. The investigation in the case was lead by Captain James "Sammy" Gibson of the Seminole County Sheriff's Department. To obtain a search warrant for my law firm (Mathis & Murphy, PA), which provided legal representation to the targets of the investigation, Captain Gibson prepared an extremely lengthy Search Warrant Affidavit purportedly identifying a massive gambling enterprise known as Allied Veterans.
4. On March 5, 2013, then Chief Justice Polston signed a Search Warrant for the law firm of Mathis & Murphy, P.A.
5. Unfortunately, the Search Warrant affidavit was filled with false statements, false assumptions, false conclusions, and mistakes. During Captain Gibson's deposition and during the course of trial, many of these falsehoods came to light. For instance, Captain Gibson concluded that Kelly B. Mathis was a corporate officer, and thus a member of the RICO enterprise, by serving as registered agent for Allied Veterans and many of its affiliated entities. In closing argument, the State finally conceded this error. Additionally, it became clear that Captain Gibson had a gross misunderstanding of the role of a lawyer that practiced business litigation and corporate law yet failed to obtain review of his conclusions by an actual lawyer

with such experience. Captain Gibson based his primary conclusion that I was wrong on the law by primarily relying on an inapplicable case from the State of Alabama, again without obtaining appropriate legal review.

6. Additional "facts" contained in Captain Gibson's search warrant affidavit were clearly recognized by the Fifth District Court of Appeal to be inconsistent with all of the evidence at trial. Captain Gibson took great effort in the affidavit to paint an extremely negative picture of Kelly B. Mathis, as a result of gross misperception or deliberate intent, by characterizing me as the leader of a multi-million dollar gambling ring. The Fifth District, however, clearly recognized that I served only as the attorney and provided only legal representation to my clients.

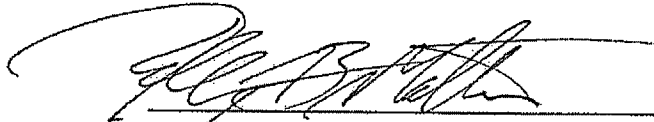
7. Captain Gibson's motives, flimsy investigation, and grossly misleading characterization of the facts and the conclusions based on those facts are well known to myself, my, my defense team, and any person objectively reviewing the deposition of Captain Gibson and the evidence at trial. However, Justice Polston is not in the position to spend untold hours reviewing information not directly relevant to the issues before this Court to dispel the falsehoods and mischaracterizations replete throughout Captain Gibson's Search Warrant affidavit.

8. In essence, the picture painted of Kelly B. Mathis in the Search Warrant affidavit would have been intended to give then Chief Justice Polston probable cause to sign the Search Warrant for Mr. Mathis' law firm. In the same vein, it would have led then Chief Justice Polston to form an adverse opinion about Mr. Mathis. In good faith I do not believe that the extremely negative first impression created by the Search Warrant Affidavit can be overcome by a

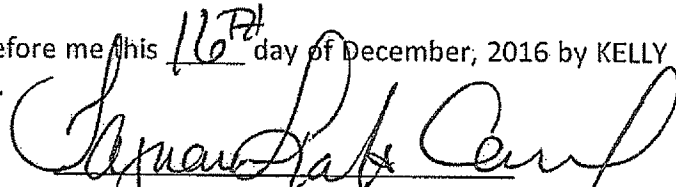
reasonable person. To do so would be akin to asking Justice Polston to "unring the bell" in order to consider the issues in this case in a wholly neutral manner.

9. The judiciary presumes that the facts contained in affidavits presented to them has been diligently investigated and carefully vetted prior to a law enforcement officer presenting them with a sworn search warrant affidavit. Indeed, the judiciary presumes that such facts are either wholly correct or essentially correct. Accordingly, the judiciary would be expected to form an initial impression of strong negativity about the alleged perpetrator. I do not believe that such a strong negative initial impression can be easily or reasonably overcome.

DATED this 16th day of December, 2016.


Kelly B. Mathis

SWORN TO AND SUBSCRIBED before me this 16th day of December, 2016 by KELLY B. MATHIS who is personally known to me.


NOTARY PUBLIC

My commission expires: 11/20/17
Tajuana Latrice Carmichael
(Print, type or stamp Commission Name
Of Notary Public)

