**IN THE SUPREME COURT OF THE STATE OF FLORIDA**

**STATE OF FLORIDA,**

**Petitioner,**

**v.**

**MARKEITH LOYD,**

**Respondent.**
**_____/**

**Case No.:**
**5TH DCA Case No.: 5D20-374**
**Cir. Ct. Case No.: 2017-CF-826**



# PETITION FOR A WRIT OF CERTIORARI

Respectfully submitted,

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## PETITION FOR A WRIT OF CERTIORARI

Petitioner, State of Florida, by and through undersigned Designated Assistant State Attorney Kenneth Nunnelley, and pursuant to *Florida Rule of Appellate Procedure* 9.030(a)(3) and 9.100(a) (2020) respectfully petitions this Honorable Court to exercise its jurisdiction to issue all writs necessary to the exercise of its jurisdiction and issue a constitutional writ of certiorari to review the order of the Fifth District Court of Appeal denying the State's petition for writ of certiorari which sought review of the January 29, 2020, order of the Circuit Court of the Ninth Judicial Circuit, in and for Orange County, Florida, denying the State's *"Williams* Rule" motion. In denying the State's petition, the Fifth District erroneously found that the circuit court had not departed from the essential requirements of the law. The evidence excluded is relevant, not more prejudicial than probative, and, as developed below, involves the facts of two murders committed by Loyd which are inextricably intertwined. Because that order bars the State from introducing certain evidence at trial, the State has no adequate remedy on appeal. In support thereof Petitioner states:

### BASIS FOR INVOKING JURISDICTION

This Honorable Court has original jurisdiction to issue a writ of certiorari under Article V, section 3(b)(7), *Florida*

*Constitution*, and under rule 9.030(a)(3) of the *Florida Rules of Appellate Procedure* to issue writs of prohibition and all writs necessary to the complete exercise of its jurisdiction. Because the Fifth District Court of Appeal issued a written opinion, this Court can, and in this case should, exercise its discretionary jurisdiction and review this case. *See, Stallworth v. Moore*, 827 So. 2d 974 (Fla. 2002); *Grate v. State,* 750 So. 2d 625 (Fla. 1999). In the District Court, certiorari is the proper remedy for review of a trial court's exclusion of evidence. *State v. Baldwin,* 978 So. 2d 807 (Fla. 1st DCA 2008); *see also, State v. Milbry*, 219 So. 3d 160 (Fla. 5th DCA 2017) (discussing when certiorari review is authorized). The District Court issued an opinion denying the State's petition which cited to a decision from that court and included the following quotation from that case, "Because we conclude that the State has not shown that the trial court's order violated a clearly established principle of law resulting in a miscarriage of justice, the petition is denied." *State v. Loyd*, 5D20-0374 (Fla., 5th DCA 2020). This case is not a bare *per curiam* "citation decision," but rather presents a case with a fully developed denial of relief that is properly reviewable by this Court. This Court has jurisdiction to review the denial of relief.

## STATEMENT OF THE CASE AND FACTS

### The Procedural History of the Issue

On January 29, 2020, the Circuit Court of Orange County entered its order that certain evidence that the State sought to introduce as *Williams* Rule/inextricably intertwined evidence was inadmissible at the guilt phase of Loyd's upcoming capital trial for the murder of Orlando Police Department Lieutenant Debra Clayton. (App. 6). Loyd shot Lt. Clayton to death when she attempted to take him into custody on an arrest warrant for the murder of Sade Dixon, who was shot to death by Loyd on December 13, 2016. The State filed a petition for writ of certiorari on February 10, 2020. On March 18, 2020, the Fifth District denied the petition in a single-sentence order that cited *State v. Knowles*, 265 So. 3d 733 (Fla. 5th DCA 2019) and quoted that case as follows: "Because we conclude that the State has not shown that the trial court's order violated a clearly established principle of law resulting in a miscarriage of justice, the petition is denied." *State v. Loyd*, 5D20-0374 (Fla., 5th DCA 2020). (App. 16).

### Preliminary Matters

On December 13, 2016, Sade Dixon was shot to death at her home. An arrest warrant for Markeith Loyd was issued on December 14, 2016, in which he was charged with First Degree Murder with a Firearm, Killing of an Unborn Child by Injury to Mother, Attempted

First-degree Murder with a firearm, and two (2) counts of Aggravated Assault with a Firearm.[1] (App. 1).

On January 9, 2017, Orlando Police Lieutenant Debra Clayton was informed by witness Takeshia Bryant (who saw Loyd in line at a local Wal-Mart) that an individual with an arrest warrant for murder was inside that store. Lt. Clayton called for backup officers and was shot and killed by the defendant when she tried to take him into custody.[2] Loyd was ultimately taken into custody on January 17, 2017. (App. 2).

On February 15, 2017, the Orange County Grand Jury returned a six (6) count[3] indictment in the Dixon Murder, and a five (5) count[4] indictment for the murder of Lt. Debra Clayton. The Dixon Murder was tried to conclusion in 2019, and on October 23, 2019,

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[1] This case will be referred to at times in this petition as the "Dixon Murder."

[2] This case will be referred to at times in this petition as the "Clayton Murder."

[3] The indictment charged Loyd with the First-degree Murder of Sade Dixon, Killing of an Unborn Child by Injury to the Mother, Attempted First-degree Murder with a Firearm, two (2) counts of Attempted Felony Murder, and Possession of a Firearm by a Convicted Felon.

[4] The indictment charged Loyd with First-degree Murder of a Law Enforcement Officer with a Firearm, Attempted First-degree Murder of a Law Enforcement Officer with a Firearm, Aggravated Assault with a Deadly Weapon, Carjacking with a Firearm, and Possession of a Firearm by a Convicted Felon.

Loyd was sentenced to life imprisonment without possibility of parole. **The Clayton Murder is set for trial with jury selection set to begin on May 1, 2020.**

The Facts Underlying the Petition.[5]

On or about December 13, 2016, the defendant drove to the residence of Sade Dixon, a woman with whom Defendant was in a relationship and who was pregnant with his child. According to Ronald Stewart, Sade Dixon's brother, the defendant knocked on the door and Mr. Stewart answered. Ms. Dixon walked outside to speak to the defendant. Shortly thereafter, the defendant left in his vehicle. It is not known if Ms. Dixon went with him. Approximately ten minutes later, Mr. Stewart saw Ms. Dixon re-enter the house, walk upstairs, walk back downstairs and return outside to speak with Defendant again. A few minutes later, Mr. Stewart looked outside and saw his sister and the defendant standing on opposite sides of the two vehicles in the driveway and Ms. Dixon appeared frightened. Mr. Stewart walked outside and suggested to the two that they separate. The defendant indicated that he was upset that Ms. Dixon had been cheating on him and was smoking when she was pregnant. Ms. Dixon stated, "You want to tell them all that, but you don't want to tell them that you had a gun to my head in the

[5] These facts are taken from the Arrest Affidavits attached hereto as Appendix 1 and Appendix 2, and from the testimony of various witnesses at the Dixon Murder trial. *See*, Appendices 7-15.

back yard of mom's house?" Mr. Stewart told Ms. Dixon to go in the house and the defendant stated, "Nah, nah, she ain't going nowhere right now, she ain't going nowhere, we got to talk about this. I can't walk away from this situation, we got to talk about it." As Ms. Dixon was attempting to walk inside, Mr. Stewart saw Defendant remove a firearm from the pocket of the sweatshirt he was wearing, retract the slide and chamber a round. The defendant began to fire and struck Mr. Stewart, who fell in between two pillars outside of the house. The defendant continued to fire. Ms. Dixon appeared to be hiding behind the pillars for protection during the initial gunshots; however, the defendant also shot Ms. Dixon multiple times. Dominique Daniels, Ms. Dixon's younger brother, and Stephanie Dixon-Daniels, Ms. Dixon's mother, ran to and opened the front door when they heard gunshots and saw both Mr. Stewart and Ms. Dixon on the ground suffering from multiple gunshot wounds. Loyd was running toward his vehicle, and when he "raised his hand" Mr. Daniels "snatched [his] mother and closed the door." Mr. Daniels heard more shots fired and opened the door when he saw the defendant's car lights speed away. The defendant fled the scene in his vehicle and police and paramedics responded shortly thereafter. Ms. Dixon suffered multiple gunshots wounds, seven in total, to her chest, abdomen and foot and was later pronounced deceased. Mr. Stewart also suffered multiple gunshot wounds but

survived. (App. 15; App. 8; App. 14).

Investigators located eleven (11) .40 caliber shell casings in the yard near the victims, along the path of travel the defendant took as he fled to his car, and in the roadway where his car was parked. (App. 7).

On January 9, 2017, a witness, aware that a warrant for the arrest of the defendant had been issued as a result of the events described above, saw Loyd at a Wal-Mart. The witness, Takeshia Bryant, conveyed this information to Orlando Police Department Lt. Debra Clayton who was standing outside of the entrance to Wal-Mart. (App. 9). Lt. Clayton was previously inside Wal-Mart and, based on video surveillance, was actually in the same check-out line as Loyd, before she paid for her items and walked out of the store. Lt. Clayton notified dispatch that she needed backup because the defendant, who was wanted for the Dixon Murder, was located inside Wal-Mart. The defendant emerged from Wal-Mart pushing a cart containing the items he just purchased. Lt. Clayton confronted the defendant and stated, “Get on the ground.” Surveillance footage showed that the defendant retreated behind one of the large pillars outside of the Wal-Mart entrance and drew his firearm. (App. 10). Loyd and Lt. Clayton circled around the pillar and Lt. Clayton wound up on the street side of the pillar without any cover. While Lt. Clayton was on the radio informing dispatch of the events,

Loyd fired toward Lt. Clayton as she retreated. Lt. Clayton fell onto the pavement after being struck and discharged her firearm as well. Projectiles from Loyd's firearm struck several cars, which were parked in various locations and other Wal-Mart patrons fled or sought cover. The defendant advanced on Lt. Clayton who was injured and laying on her back on the pavement. Loyd fired several more rounds into Lt. Clayton while standing over her, ultimately striking her in the neck. Loyd ran, then walked, toward his vehicle, which was parked in the parking lot, and fled the area. Lt. Clayton was eventually pronounced deceased -- an autopsy revealed she suffered multiple gunshots wounds. Crime scene investigators collected a variety of .40-caliber shell casings at the scene, as well as projectiles from Lt. Clayton's body and various vehicles that were struck during the shootout. (App. 11). The defendant abandoned his vehicle in a nearby apartment complex, and in the process fired several shots toward Captain Joe Carter, who was in an unmarked Explorer and had pursued Loyd into the apartment complex. Defendant then committed a carjacking of Antwyne Thomas at gunpoint and stole that victim's vehicle to further evade capture. Loyd remained at large until his arrest eight days later.

Law enforcement officers eventually arrested the defendant on January 17, 2017 pursuant to the warrant issued in the Dixon

Murder. As detailed *infra,* Loyd was ultimately indicted for both the Dixon Murder and the Clayton Murder.

At the time of Loyd's arrest on January 17, 2017, two firearms, which Loyd dropped immediately before he was taken into custody, were seized. The firearms were a Smith & Wesson .40-caliber pistol with a fully loaded magazine and a round in the chamber, and a Glock 17 9 mm pistol with a round in the chamber and a 50-round canister-style extended magazine containing 40 rounds. (App. 12). The firearms were sent to the Florida Department of Law Enforcement for analysis and comparison to the casings seized from the Dixon and Clayton homicide scenes. Analyst Richard Ruth confirmed that the Smith & Wesson fired the shell casings collected at both the Dixon and Clayton homicide scenes. Analyst Ruth also determined that the same Smith & Wesson .40 caliber firearm fired the projectile recovered from Ms. Dixon's arm, and also fired the projectiles recovered from Lt. Clayton's body and projectiles removed from several automobiles which were struck during the shootout at Wal-Mart. (App. 13). The 9 mm handgun was found to have fired the shots at Captain Joe Carter.

## STANDARD OF REVIEW AND CONTROLLING LEGAL PRINCIPLES

"The standard of review to be applied by an appellate court in considering common law certiorari is whether the trial court's order departs from the essential requirements of law." *A.P. v.*

*Dep't of Children & Families*, 957 So. 2d 686 (Fla. 5th DCA 2007) (*citing Belair v. Drew*, 770 So. 2d 1164, 1166 (Fla. 2000)).

The standard of review for a certiorari petition challenging a lower court requires an assessment of whether that court afforded procedural due process and observed the essential requirements of the law. *Snyder v. City Council*, 902 So. 2d 910, 912 (Fla. 2d DCA 2005). This review is "simply another way of deciding whether the lower court 'departed from the essential requirements of the law.'" *Miami-Dade Cty v. Omnipoint Holdings, Inc*. 863 So. 2d 195, 199 (Fla. 2003) (quoting *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995)). "A ruling constitutes a departure from the essential requirements of [the] law when it amounts to a 'violation of a clearly established principle of law resulting in the miscarriage of justice.' (quoting *Tedder v. Fla. Parole Comm'n,* 842 So. 2d 1022, 1024 (Fla. 1st DCA 2003)); *see State v. Farino,* 915 So. 2d 685, 686 (Fla. 2d DCA 2005) (explaining that failure to apply the correct law must result in a miscarriage of justice to warrant the issuance of a writ of certiorari)." *Gould v. State*, 974 So. 2d 441, 445 (Fla. 2d DCA 2007). "[I]mportant to the fair administration of criminal justice in this state" is the ability of the state to petition the district courts of appeal for certiorari review of pretrial orders rendered in criminal cases. *State v. Pettis*, 520 So. 2d 250, 253 (Fla.1988).

## ARGUMENT

### The District Court Order

The Fifth District denied the State's petition in a single-sentence order that cited *State v. Knowles*, 265 So. 3d 733 (Fla. 5th DCA 2019) and quoted that case as follows: "Because we conclude that the State has not shown that the trial court's order violated a clearly established principle of law resulting in a miscarriage of justice, the petition is denied." *State v. Loyd*, 5D20-0374 (Fla., 5th DCA 2020). For the reasons set out below, the District Court's decision is incorrect. Clearly established law stands for the proposition that the evidence at issue is relevant and admissible. Likewise, the exclusion of that evidence is an error for which the State has no remedy by appeal - - if Loyd's trial takes place without that evidence, the State will not be able to obtain review of the trial court's exclusion of evidence which was upheld by the District Court.

### The Evidence Excluded by the Trial Court.

In a motion filed on April 4, 2017, the State gave notice that it intended to offer evidence of "other crimes, wrongs, acts, or inextricably intertwined evidence" against the defendant. (App. 3). An Amended Notice was filed on December 12, 2019. (App. 4). Specifically, the State noticed its intent to present evidence that the same firearm was used in both the murder of Ms. Dixon and

the murder of Lt. Clayton; evidence of Ms. Dixon's murder to show motive and absence of mistake or justification for the murder of Lt. Clayton; and evidence of Ms. Dixon's murder which is inextricably intertwined with the evidence proving Lt. Clayton's murder.

Following a hearing on December 18, 2019, (App. 5) the trial court entered its order on January 29, 2020, which held as follows:

> 1. The State may introduce evidence there was a warrant for Mr. Loyd's arrest. They may not introduce evidence of what it was for.
>
> 2. All other evidence pertaining to Sade Dixon's case may not be introduced during the guilt phase. The Court find that [sic] probative value is outweighed by the prejudicial impact.
>
> 3. If Defense "opens the door" during trial this ruling may be revisited by the Court.

*Order*, Jan. 29, 2020. (App. 6).

A Writ of Certiorari is the Proper Vehicle to Review the Exclusion of this Evidence.

Florida law is long-settled that certiorari review is appropriate to review the exclusion of *Williams* Rule evidence. The Third District Court of Appeal has said:

> We find instructive the Florida Supreme Court's opinion in *Richardson v. State,* 706 So. 2d 1349 (Fla. 1998). In that case, Richardson appealed his conviction for first degree murder of Carrie Lee. During the pendency of that case in the trial court, the trial court had entered an order precluding the State from introducing certain *Williams* Rule evidence regarding the murder of another victim, Kevin Floyd, on the previous day. *Id.* at 1357 (*citing Williams v. State,* 110 So. 2d 654, 659-60 (Fla.

1959)). The State sought review in the Fifth District Court of Appeal via a petition for writ of certiorari and a non-final state appeal. The Fifth District reversed in part and granted certiorari in part, ruling that four of the six excluded items should be admitted into evidence. 706 So. 2d at 1357-58 & n. 19.

On appeal from his subsequent conviction, Richardson argued that the Fifth District had been without jurisdiction in the matter. *Id.* at 1357. Rejecting this contention, the Florida Supreme Court said:

> Richardson argues that after the trial court found the State's *Williams* Rule evidence regarding Kevin Floyd's murder "irrelevant to prove any material issue and fact," the State impermissibly sought an appeal to the Fifth District. We disagree since we have held that the State may seek certiorari in the district courts of appeal from pretrial orders in criminal cases, *State v. Pettis,* 520 So. 2d 250, 253 (Fla. 1988).
>
> As has been noted, "interlocutory appeals in death cases rarely involve matters that district courts do not routinely consider." Gerald Kogan & Robert Craig Waters, *The Operation and Jurisdiction of the Florida Supreme Court,* 18 Nova L. Rev. 1151, 1213 (1994). From that proposition, we venture that there can be no serious dispute that district courts of appeal routinely consider evidentiary issues. Furthermore, we have stated that:
>
> **The ability of the district courts of appeal to entertain state petitions for certiorari to review pretrial orders in criminal cases is important to the fair administration of criminal justice** ... [since] **there will be some circumstances in which the state is totally deprived of the right of appellate review of orders which effectively negate its ability to prosecute**.
>
> *Pettis,* 520 So. 2d at 253.

> ....
>
> After reviewing the Fifth District's decision, we find that it fully comports with our reasoning in *Pettis.* In *Pettis,* we expressed concern that:
>
> If a nonfinal order does not involve one of the subjects enumerated in *Florida Rule of Appellate Procedure* 9.140(c)(1), the state would not be able to correct an erroneous and highly prejudicial ruling. Under such circumstances, the state could only proceed to trial with its ability to present the case significantly impaired.
>
> 520 So. 2d at 253. *The excluded items were important circumstantial evidence that, if not presented at trial, might have significantly impaired the State's prosecution of Richardson. Therefore, we conclude that the Fifth District properly heard the State's appeal of the trial court's exclusion of this evidence.*

706 So. 2d at 1357-58 (emphasis added).

Based on *Richardson* and the authorities cited therein, we conclude that the exercise of certiorari jurisdiction is appropriate here. Because the trial court order in this case was at odds with the terms of the *Morton* decision, a controlling decision of the Florida Supreme Court, **it represented a departure from the essential requirements of law**. Further, as recited in *Richardson,* **the excluded matter is important evidence "that, if not presented at trial, might have significantly impaired the State's prosecution of [the defendant]." 706 So. 2d at 1358. Finally, since the State has no appellate remedy if there is an acquittal of the defendant, the State does not have an adequate remedy by way of appeal.** *See also State v. Brea,* 530 So. 2d 924, 926 (Fla. 1988) (if order suppressing statements of acquitted co-conspirator could not be appealed under *Florida Rule of Appellate Procedure* 9.140(c)(1)(B), "the State would not be precluded from seeking common law certiorari review."); *State v. Bradford,* 658 So. 2d 572, 573-74 (Fla. 5th DCA

> 1995) (certiorari appropriate to review order excluding evidence which would rebut defendant's explanation of how his fingerprints came to be in the murder victim's car).

*State v. Richards*, 843 So. 2d 962, 967–68 (Fla. 3d DCA 2003). (italics in original; emphasis added); *State v. Williams*, 992 So. 2d 330, 334 (Fla. 3d DCA 2008). The *Williams* Court said:

> we find that the trial court's order represents a departure from the essential requirements of the law. Moreover, we find that certiorari relief is appropriate in this case as the exclusion of the evidence might significantly impair the State's ability to prosecute the defendant. Lastly, we conclude that the order represents a material injury that may not be remedied on direct appeal if the defendant is acquitted. [internal citations omitted].

*State v. Williams,* 992 So. 2d at 334. This Court should exercise its certiorari jurisdiction to correct the erroneous exclusion of evidence. Unless this court acts, as in *Williams*, the State's ability to prosecute Loyd for the murder of Lt. Debra Clayton will be significantly impaired; and, the order excluding *Williams* Rule evidence represents a material injury that cannot be remedied on appeal if Loyd should be acquitted.

## THE TRIAL COURT'S RULING IS A DEPARTURE FROM THE ESSENTIAL REQUIREMENTS OF LAW FOR WHICH THERE IS NO ADEQUATE REMEDY ON APPEAL.

### The Same Firearm was used in Both Murders.

Evidence that the same firearm was used to murder both Ms. Dixon and Lt. Clayton is relevant and admissible to establish Loyd's identity as the shooter in both cases. Because Loyd was not

captured immediately following either murder, identity could become a valid defense. Loyd was identified as the shooter in the Dixon crimes, and if the gun used by the defendant to commit those crimes **and in his possession at the time of his arrest** was scientifically matched to the fired casings found at the Clayton crime scene, that evidence (which is consistent with other evidenced) is highly relevant to prove that Loyd was the shooter in the Clayton Murder. That evidence establishes that the common link between these crimes, the firearms and the fired casings and projectiles, is the defendant. The evidence is relevant to prove that the defendant possessed the firearm at both times, as well as at the time of his arrest and significantly rebuts any argument that another person committed either of these crimes.

The District Court relied solely on *State v. Knowles* to support denying the State's petition. It is true that the sentence quoted by that Court appears in the *Knowles* decision. However, that reliance on *State v. Knowles*, 265 So. 3d 733 (Fla. 5th DCA 2019) is misplaced. Setting aside the factual differences between *Knowles* and this case, the fact is that there was a detailed, explicit order setting out the basis for the trial court's exclusion of the evidence at issue. *State v. Knowles*, 265 So. 3d at 735. Based upon that detailed order, the District Court found no abuse of discretion in the exclusion of evidence. The same thing

cannot, however, be said in Loyd's case, where the operative part of the trial court's order consists of two paragraphs containing a total of 51 words containing no legal analysis whatsoever. That conclusory order is a far cry from the careful (and thoughtful) analysis found in *Knowles.*

The most relevant (and factually similar) case is *State v. Williams*, 992 So. 2d 330, 331 (Fla. 3d DCA 2008), in which the defendant was charged with three separate armed robberies. A firearms expert determined that the casings recovered from each robbery were fired from the same firearm. *Id.* at 332. The State filed a notice seeking to introduce evidence of the other robberies in each of the respective cases. *Id.* The defendant argued that because the robberies did not share striking similarities or unique characteristics, the evidence was not admissible. *Id.* The State argued that, because the same gun was used in each robbery, the evidence was admissible to establish the defendant's identity. *Id.* The trial court ruled that the evidence was not admissible because all three robberies did not share unique similarities, that the evidence was not **necessary** for the State to prove its case, because other evidence was present to establish the defendant's identity as the robber, and because the evidence would be prejudicial. *Id.*

at 332-34.[6] The State sought review by petition for certiorari and the appellate court agreed, holding that the trial court departed from the essential requirements of the law. *Id.* at 333. The court explained:

> We further find that the trial court also departed from the essential requirements of the law by ruling that the collateral crimes evidence was not necessary for the State to prove its case. The State contends that the test for admissibility of such evidence is relevancy, not necessity. We agree. '**Necessity has never been established by [the Florida Supreme] Court as an essential requisite to admissibility**.' *Bryan v. State*, 533 So. 2d 74, 747 (Fla. 1988). The fact that the State has other evidence at its disposal to prove identity of the perpetrator does not bear upon the relevance of the collateral crimes evidence. **Generally, any evidence relevant to prove a fact at issue is admissible unless precluded by a specific rule of exclusion**. *See Bryan* 533 So. 2d at 747; *Dorsett v. State*, 944 So. 2d 1207, 1212 (Fla. 3d DCA 2006).

*Id.* (emphasis added).

The court further explained:

> Finally, the trial court erred when it applied the similarity requirement, reserved for determining the admissibility of collateral crimes evidence, where the State seeks to prove identity through *modus operandi*, common plan, or scheme. Here the State did not seek to prove identity by *modus operandi* but **instead sought to prove identity based on evidence that the same gun was used in all three robberies.** As noted above, when dealing

[6] *Ruffin v. State*, 397 So. 2d 277, 279 (Fla. 1981) ("Necessity has never been established by this Court as an essential requisite to admissibility."), *receded from on other grounds, Davis v. State*, 2 So. 3d 952 (Fla. 2008) (*citing Scull v. State*, 533 So. 2d 1137 (Fla. 1988).

> with evidence which tends to reveal the commission of a collateral crime, the test of admissibility is relevance. *See Williams*, 110 So. 2d at 660 ('[W]e find relevancy to be the test of admissibility. **If the proffered evidence is relevant to a material fact in issue, it is admissible even though it points also to a separate crime**.'); *Dorsett*, 944 So.2d at 1212; *Evans v. State*, 693 So. 2d 1096, 1100 n. 1 (Fla. 3d DCA 1997) (stating that the '**case law clearly allows for the introduction of dissimilar collateral crimes where identity is sought to be established by means other than *modus operandi* or common plan or scheme**.').

*Id.* (emphasis added).

In explaining why the evidence was relevant, the court said, "Because the gun used in all three robberies was shown to be the same one, the only inquiry for the trial court to make was whether such evidence of collateral crimes, which included both physical evidence and eyewitness testimony, was relevant to the issue of the perpetrator's identity –- not whether the evidence revealed unique similar factual situations." *Id.* The appellate court also reversed the trial court's conclusion that the collateral crimes evidence was highly prejudicial and explained that the proper inquiry is whether, pursuant to § 90.403, the probative value is substantially outweighed by the danger of unfair prejudice. *Id.* at 333-34. The appellate court found that the evidence should have been admitted. *Id.* Finally, the appellate court found the trial court departed from the essential requirements of the law when it excluded the evidence simply because other evidence was available to prove identity. *Id.* at 334.

In *Remeta v. State* 522 So. 2d 825, 826-28 (Fla. 1988), the Florida Supreme Court upheld the trial court's decision to allow evidence of subsequent offenses to prove the defendant's identity as the shooter in the Florida murder and to rebut a defense claim that an accomplice actually shot the victim. The State charged the defendant with the murder of a store clerk in Ocala, Florida. *Id.* at 826. The State filed a *Williams* Rule notice seeking admission of evidence that the defendant, two days after the Ocala murder, abducted and shot a store clerk in Texas multiple times. *Id.* The next day, the manager of a gas station in Kansas was shot and killed using the same firearm that was used to murder the victim in Ocala. *Id.* A law enforcement officer attempted to stop the defendant's vehicle in Kansas shortly after the gas station murder, and one of the defendant's companions shot the law enforcement officer. *Id.* The State also introduced several statements made by the defendant, during which he admitted to the involvement in both convenience store clerk shootings, but implicated his deceased companion as the shooter, as well as admitting that he had sole possession of the firearm during the Ocala robbery and murder. *Id.* The Florida Supreme Court upheld the admission of this evidence holding:

> The testimony was relevant to help establish appellant's identity and the extent of his participation in the Ocala murder in view of his asserted defense that his accomplice was the primary perpetrator and

> triggerman in the killing. We note that Remeta presented similar fact evidence in an effort to demonstrate that his companion possessed the Ocala murder weapon during the shootout in Kansas. We expressly reject Remeta's contention that the testimony of the Texas robbery survivor was cumulative to the evidence presented. Instead, we find it was clearly proper to establish Remeta's possession of the murder weapon and counteract Remeta's statements blaming the crimes on his companion.

*Id.* at 827-28. *See also, Parker v. State*, 456 So. 2d 436, 442 (Fla. 1984) (finding no error in the admission of evidence of the defendant's admission to a prior shooting because the admission was relevant to prove identification as the perpetrator of the charged crime because bullets from both crimes were linked by ballistics evidence.); *Fernandez v. State*, 722 So. 2d 879, 880 (Fla. 3d DCA 1998) (holding that the evidence of a prior shooting was admissible and relevant to prove identity and motive when the same gun was used in the prior shooting and charged crime); *Council v. State*, 691 So. 2d 1192 (Fla. 4th DCA 1997) (finding that the gun found during arrest of the defendant three weeks after robbery was relevant to provide another link in the chain of identification testimony.)

In *Barnett v. State*, 151 So. 3d 61, 62 (Fla. 4th DCA 2014), the court affirmed the trial court's decision to allow evidence of a subsequent shooting in which the defendant used the same gun and where the casings recovered from both crimes were found to have

been fired from the same firearm. Similar to *Williams*, *supra,*[7] the defendant sought to exclude the evidence because the two shootings were not sufficiently similar. *Id.* at 63. The Fourth District affirmed the trial court, saying:

> We agree with the trial court that the *Williams* rule evidence was relevant to the homicide. The evidence consisted of testimony that a witness saw the defendant in possession of two firearms –- a silver semi-automatic firearm and a black firearm –- in a backpack prior to the homicide. Shell casings matching those firearms were not only found at the homicide location but also at the location of a shooting that occurred subsequent to the homicide. The victim of the subsequent shooting testified that the defendant and another individual were involved in his shooting and used a silver semi-automatic firearm and a black firearm. There was also testimony that the shell casings from the homicide and the subsequent shooting matched the live ammunition found at the defendant's home.

*Id.; See also King v. State*, 89 So. 3d 209, 227-28 (Fla. 2012) (finding that shell casings recovered from a firing range which matched casings at the burial site were admissible despite no firearm being introduced).

In the Clayton Murder case, because the same firearm was used to commit both the Dixon and Clayton Murders, evidence of that fact is relevant and admissible to prove that Loyd is the person responsible for committing both crimes. It is not "more prejudicial than probative," but rather is prejudicial only in the sense that it is adverse evidence. *State v. Williams,* 992 So. 2d 330, 334

[7] *Williams v.* State, 992 So. 2d 330 (Fla. 3d DCA 2008).

(Fla. 3d DCA 2008) ("Most evidence that is admitted will be prejudicial or damaging to the party against whom it is offered." [*citing Ehrhardt's Florida Evidence*].). The trial court departed from the essential requirements of law when it held that the State may not admit evidence that the same firearm was used to murder both Ms. Dixon and Lt. Clayton. And, the cases cited demonstrate that other evidence of the defendant's identity as the murderer (by placing the .40-caliber pistol at the scene of both murders and in the defendant's possession at the time of his arrest) is relevant to the inquiry, and that the fact that the defendant was accused of another murder or violent crime does not make that evidence more prejudicial than probative.

The trial court's exclusion of evidence that the same firearm was used in both the Dixon and Clayton Murders significantly impairs the State's ability to prosecute its case. The order excluding evidence represents a material injury that cannot be corrected or remedied on direct appeal if the defendant is acquitted. This Court should exercise its certiorari jurisdiction to correct that error.[8]

Evidence of the Dixon Murder is Relevant to Prove Motive and Absence of Mistake or Justification as to

[8]The trial court's order excludes the *Williams* Rule evidence based on its finding that the "probative value is outweighed by the prejudicial impact." No analysis accompanies that *ipse dixit* conclusion –- the State, and this Court, are left to speculate about the trial court's reasoning.

Lt. Clayton's Murder.

The evidence of the Dixon Murder and accompanying crimes is also relevant to the defendant's motive, absence of mistake or accident, or to rebut a claim of self-defense. It is well-established that when using similar fact evidence to prove motive, intent, or absence of mistake or accident the evidence need not be similar to the crimes charged. *See Zack v. State*, 753 So. 2d 9, 16 (Fla. 2000); *Gould v. State*, 558 So. 2d 481, 485 (Fla. 2d DCA 1990). It is also well established that the State need not wait until the defense is raised in order to rebut such a defense. *Estelle v. Mcguire*, 112 S.Ct. 475, 480-81 (1991); *Pausch v. State*, 596 So. 2d 1216, 1219 (Fla. 2d DCA 1992). The standard for admissibility of *Williams* Rule evidence is relevancy, not necessity. *See Bryan v. State*, 533 So. 2d 744, 746 (Fla. 1988); *Heiney v. State*, 447 So. 2d 210, 213 (Fla. 1984).

In *McVeigh v. State,* 73 So. 2d 694, 696 (Fla. 1954), the defendant was stopped by an officer for speeding, was driving a stolen vehicle, had no driver's license, and had registered at a hotel under an assumed name. The officer went to a phone to check on this information and the defendant fled. *Id.* The defendant was arrested later for speeding and shot and killed another officer just prior to arriving at the police station. *Id.* The State sought to introduce evidence that the defendant was a probation violator

from California and had a warrant out for his arrest in order to explain why the defendant would have resorted to such extreme measures to avoid going to the police station and the police determining that he had the active warrant out of California. *Id.* The Court held that such evidence was relevant to show the defendant's motive. *See also Sexton v. State*, 697 So. 2d 833, 837 (Fla. 1997). In *Wuornos v. State*, 644 So. 2d 1000, 1006-7 (Fla. 1994), the court held that evidence of numerous other murders was relevant to rebut a claim of self-defense. *See also Farrell v. State*, 686 So. 2d 1324, 1329 (Fla. 1996); *Jackson v. State*, 522 So. 2d 802 (Fla. 1988); *Irving v. State*, 627 So. 2d 92 (Fla. 3d DCA 1993).

In this case, the evidence of the murder of Ms. Dixon and the attempted murder of three others is relevant to show Loyd's motivation and reasoning behind his decision to murder a police officer who is trying to arrest him on a homicide and attempted homicide warrant. The evidence of the Dixon Murder and accompanying crimes is relevant to show why Defendant did not want to be apprehended by the police and be forced to face such serious charges. And, more importantly, the evidence of the Dixon Murder explains why Lt. Clayton drew her service weapon and made tactical decisions consistent with taking an individual charged with a series of violent felonies into custody. The evidence is relevant

to disprove any potential defense that the shooting of Lt. Clayton was the result of an accident or mistake or was the result of justifiable use of deadly force.

The Excluded Evidence goes to an Element Of the Crimes Charged.

One of the elements of the charge of first-degree murder of a law enforcement officer (and the lesser included offenses) that the State must prove beyond a reasonable doubt is that the officer was in the lawful execution of a legal duty. In count I of the indictment in the Clayton Murder, Loyd is charged with the First-degree Murder of a law enforcement officer -- *Florida Statute* section 782.065 is cited in the indictment. *Florida Statute* § 782.065 provides that **the defendant shall be sentenced to life in prison** upon conviction of murder in the first, second, or third degree, or attempted murder in the first or second degree if "(2) The victim of any offense described in subsection (1) was a law enforcement officer . . . engaged in the lawful performance of a legal duty." (2016). Admitting the fact of an arrest warrant (as the court ruled it would) while redacting the charges contained in it unnecessarily and improperly truncates the State's case. And, as is discussed above, the charges in the warrant are a part of the *res gestae* of the case, explain Lt. Clayton's tactical decisions in the course of attempting to take Loyd into custody,

and undermine any claim of self-defense.[9] *See* page 24 *et seq., infra.*

This issue was addressed in *Wheeler v. State*, 124 So. 3d 865, 868 (Fla. 2013), where three law enforcement officers responded to a residence regarding a domestic violence call for service. After the officers arrived, Defendant shot all three of the officers, killing one of them. *Id.* The Florida Supreme Court determined that the evidence of the domestic violence episode involving the defendant was admissible in the trial involving the murder of the officer in order to prove that the officers were in engaged in the lawful execution of a legal duty, an element of the crime charged. *Id.* at 874. *See also Monds v. State,* 904 So. 2d 625, 626 (Fla. 4th DCA 2005) (cited and explained below). As in *Wheeler* and *Monds, supra*, the State must prove that Lt. Clayton's act of trying to stop, detain and arrest Defendant constitutes the lawful performance of a legal duty. The primary, and perhaps only, way to prove that element is through evidence that Lt. Clayton was lawfully (and in the course of her duties as a law enforcement officer) trying to stop the defendant because she had probable cause and authority to arrest him for the crimes associated with the Dixon Murder. The arrest warrant for the Dixon Murder is

[9] Loyd's defense in the Dixon Murder trial was self-defense -- he testified as such.

admissible, and should be allowed in evidence, to establish that Lt. Clayton was engaged in the lawful performance of her duties when she attempted to take Loyd into custody.

The trial court departed from the essential requirements of law when it held that the State may not admit evidence about the Dixon Murder. The exclusion of that evidence significantly impairs the State's ability to prosecute its case, and the order excluding evidence represents a material injury that cannot be corrected or remedied on direct appeal if the defendant is acquitted. This Court should exercise its certiorari jurisdiction to correct that error.

Evidence of the Dixon Murder is Inextricably Intertwined with the Evidence Establishing Loyd's Guilt of the Clayton Murder.

Evidence that Loyd committed the murder of Sade Dixon and the surrounding offenses is inextricably intertwined in proving the murder of Lt. Clayton. The crimes Loyd committed in the course of the Dixon Murder are the reason the events leading up to and following the murder of Lt. Clayton occurred in the first place. Unless the jury trying the Clayton Murder case is aware of the fact that Defendant committed the Dixon crimes, the State will be unable to fully explain the reason why a witness in Wal-Mart pointed Defendant out to Lt. Clayton; why Lt. Clayton notified dispatch and requested backup officers; why Lt. Clayton drew her service weapon and tactically engaged Loyd; and why Loyd took such

extreme measures to flee and ultimately murder Lt. Clayton. Moreover, significant redactions to the transcript of the radio traffic between Lt. Clayton and Orlando Police dispatch would be required, as would significant restrictions on Takeshia Bryant's report of Loyd's presence in the Wal-Mart to Lt. Clayton. The limitations imposed by the trial court would render that transcript and testimony, respectively, disjointed and confusing. To foreshadow Professor Ehrhardt's observations, Loyd's jury will not have a coherent, intelligent sequence of the events leading up to Lt. Clayton's murder unless they have the backstory of Ms. Dixon's murder, including why, and for what reason, Lt. Clayton engaged Loyd on the morning of January 9, 2017 –- the Dixon Murder lead, directly, to the Clayton Murder.

According to Professor Charles Ehrhardt, "[o]ccasionally when proving that an act, deed, or crime occurred, the act will be so linked together in time and circumstance with the happening of another crime that one cannot be shown without proving the other." *Florida Evidence*, § 404.17 (2016 ed), pg. 311 (*citing Griffin v. State*, 639 So. 2d 966, 968 (Fla. 1994)). Professor Ehrhardt also explained, "[t]he Florida courts have reasoned that the evidence of an inseparable crime should be admitted when it is 'inextricably intertwined' with the underlying crime and 'where it is impossible to give a complete or intelligent account of the crime charged

without reference to the other crime.'" *Id.* at 312-13. He also noted, "[t]he Florida Supreme Court has admitted evidence of other crimes 'to show the general context in which the criminal action occurred.'" *Id.* at 317.

In *Smith v. State*, 699 So. 2d 629 (Fla. 1997), the defendant and several others abducted a woman, placed her in the trunk and drove away with her. The car eventually stopped, and the defendant sexually battered the woman. *Id.* at 645. **The defendant was not charged with that sexual battery.** *Id.* The defendant drove a bit further and disposed of the woman in a river, where she drowned. *Id.* The Florida Supreme Court found that the evidence of Smith's **prior** sexual battery was relevant and an inseparable part of the criminal episode and held, "[i]n proving its case, **the State is entitled to paint an accurate picture of the events surrounding the crimes charged**." *Id.* at 645. (emphasis added).[10] In *Coolen v. State*, 696 So. 2d 738, 743 (Fla. 1997), evidence that the defendant threatened the victim's son the night before the victim's murder was held to be relevant to show the context out of which the crime arose. *See also Floyd v. State,* 18 So. 3d 432, 448 (Fla. 2009) (evidence of prior threats admissible).

In *Farrell v. State,* 686 So. 2d 1324, 1329 (Fla. 1996), the

[10] In addition, the Florida Supreme Court found that the erroneous admission of insufficiently-redacted co-defendant statements to be harmless error. *Id.* at 644.

Florida Supreme Court upheld the admission of evidence that the defendant robbed the victim two days before the defendant murdered the same victim. The Court said, "[h]ere we find that evidence of the robbery was properly admitted to **complete the story of the crime on trial** and to explain Ferrell's motivation in seeking to prevent retaliation by the victim." (emphasis added). This holding is also present in *Henry v. State,* 649 So. 2d 1361, 1363 (Fla. 1994), in which evidence showed that the defendant murdered his estranged wife. During questioning, the defendant admitted to knowing where the body of his dead wife's son was located. *Id.* The defendant took the police to the location of the body. *Id.* The Court upheld the admission of the evidence of the defendant's murder of his estranged wife in the trial of the murder of the child because, "the facts of [the wife's] murder were so inextricably intertwined with [the son's] murder that to separate them would have resulted **in disjointed testimony that would have led to confusion**." *Id.* at 1365.

In *Griffin v. State*, 639 So. 2d 966, 967 (Fla. 1994), evidence of prior burglaries and thefts, including stealing automobiles, a cell phone and a purse, that occurred before the defendant shot a policeman was admissible as inseparable crime evidence. The Court held, "to prove its case, the State is **entitled to present evidence which paints an accurate picture of the events** surrounding the

crimes charged." *Id.* at 970. (emphasis added). The Court further said that "[the] testimony was relevant and necessary to adequately describe the **events leading up to the burglary of the hotel room and murder of Officer Martin,** crimes for which the defendant was being tried." *Id.* (emphasis added). Finally, the Court stated, "While this testimony is prejudicial to Griffin, we have recognized that **almost all evidence introduced by the State in a criminal prosecution is prejudicial to the defense**." *Id.* (emphasis added). And, in *Kelly v. State*, 552 So. 2d 1140, 1141-42 (Fla. 5th DCA 1989), the court allowed evidence of an aggravated assault that occurred the night before the charged offenses because such evidence was inseparably linked in both time and circumstances to the crimes charged and was properly admitted to explain the *res gestae*. The overarching holding of these decisions is that the State will not be required to present its case in an unintelligible and confusing fashion.

The Second District Court of Appeals reversed the exclusion of evidence of a robbery that occurred thirty minutes before a murder. *State v. Cohens*, 701 So. 2d 362 (Fla. 2d DCA 1997). The State had sought to admit the evidence in order to show the defendant's intent and motive to commit the murder, and to explain the events leading up to the crime (grounds for admission that are not dissimilar to those in this case). In *Cohens*, the defendant

and co-defendant were charged with the first-degree murder of a store clerk that occurred while defendant and co-defendant robbed an Exxon station. *Id.* at 363. The State attempted to introduce evidence that the defendant and co-defendant had attempted to rob a bakery about thirty minutes earlier. *Id.* The court explained,

> Because of the integral connection between the attempted robbery at the Flowers Bakery and the shooting at the Exxon Food Mart, the earlier incident can be used to prove that Cohens had the specific intent to commit the robbery at the second location. It also established Cohens' motive for being present at the Exxon station and may be used to rebut any conclusions that may be drawn from Cohens' statement to [co-defendant] that he did not intend to participate in the robbery and was merely present outside of the store.

*Id.* Most importantly, the court held that

> By refusing to allow evidence of the attempted robbery as inextricably intertwined evidence, the trial court departed from the essential requirements of the law. Its ruling prevented the State from presenting all of the circumstances surrounding the shooting and stripped away substantial evidence of the defendant's intent to commit the robbery. **The trial court's ruling thus resulted in material injustice to the State.**

*Id.* at 364. (emphasis added).

Similarly, in *King v. Rau,* 763 So. 2d 563 (Fla. 5th DCA 2000), a case which arose out of Citrus County, the State filed a petition for certiorari after the trial court excluded inseparable crimes evidence. The defendant in that case went to a drug store to have a fraudulent prescription filled and provided a false name of Robert Wheatley. *Id.* at 564. Ten days later he went back to the

same drug store and the same pharmacist remembered the defendant from the prior transaction. *Id.* The defendant denied to the pharmacist ever knowing anyone by the name Robert Wheatley, which obviously caused the pharmacist to become suspicious. *Id.* The State sought to introduce the evidence of the passing of the first prescription in the trial of the passing of the second prescription in order to provide the jury with a complete understanding of the facts, the context of the crime, and to explain why the pharmacist became suspicious of this defendant. *Id.* The trial court excluded the evidence, the State filed a petition for certiorari and the appellate court reversed the trial court's decision. *Id.* The court explained,

> [f]acts surrounding the first incident need to be conveyed to the finder of fact in order to explain the circumstances surrounding Rau's arrest after the second incident. The evidence of the earlier incident, just 10 days prior to Rau's arrest is relevant to establish the entire context out of which the criminal action occurred.

*Id.*

In *Livingstone v. State*, 678 So. 2d 895 (Fla. 4th DCA 1996), the court allowed evidence of prior instances of stalking as necessary to explain the context of the aggravated battery with which the defendant was charged. The court held, "[e]vidence of defendant's prior encounters with Martin place the incident in the context of his feelings for her and explain the strong emotions

which may have ignited the battery." *Id.* at 897. Other cases which have adopted the same reasoning are *D.M. v. State*, 714 So. 2d 1117 (Fla. 3d DCA 1998); *T.S. v. State,* 682 So. 2d 1202 (Fla. 4th DCA 1996); *Erickson v. State*, 565 So. 2d 328 (Fla. 4th DCA 1990); *Jackson v. State*, 522 So. 2d 802 (Fla. 1988); *Tumulty v. State*, 489 So. 2d 150 (Fla. 4th DCA 1986); *Austin v. State*, 500 So. 2d 262 (Fla. 1st DCA 1986). Significantly, in *Jackson v. State,* 522 So. 2d 802, 806 (Fla. 1988), the Court admitted the inseparable crimes evidence to explain the defendant's state of mind, and in *Irving v. State,* 627 So. 2d 92, 94-95 (Fla. 3d DCA 1993), the court allowed the evidence to show that the charged crime was not the result of mistake, accident, or inadvertence.

In *Monds v. State*, 904 So. 2d 625, 626 (Fla. 4th DCA 2005), evidence of drug dealing was seen by detectives in a certain area. Following this activity, the detectives saw the defendant arrive and conduct what they believed to be a drug deal in their presence. *Id.* The detectives stopped the defendant and the defendant eventually ran and was arrested for battery and resisting an officer. The court held that the evidence of the prior drug dealing was admissible in order to explain the entire context of the crime, to explain why the detectives stopped the defendant and to explain that the law enforcement officers were in the lawful execution of their legal duties. *Id.* at 628. In *Bryan v. State*, 865 So. 2d 677,

679 (Fla. 4th DCA 2004), the court allowed evidence of prior aggressive contact between the defendant and a law enforcement officer to fully explain why defendant attempted to strike the same law enforcement officer with his car, to explain how the officers recognized the defendant's car as the one that tried to strike them and why the officers knew he would assault them.

Finally, in *Consalvo v. State,* 697 So. 2d 805, 810 (Fla. 1996), the court allowed evidence of a prior burglary in which defendant was arrested. The police found the checkbook of a murder victim in the defendant's pocket when he was searched. *Id.* The defendant then made a telephone call from jail and implicated himself in the murder. *Id.* The court explained that the evidence of the burglary, deemed the "Walker burglary," was admissible and explained,

> The Walker burglary was closely connected to the murder of Pezza and was part of the entire context of the crime. When the police caught appellant burglarizing the Walker residence, they found Pezza's checkbook on his person. It was also the result of the Walker burglary that police placed appellant in custody. Furthermore, appellant was in jail for this burglary when he placed the incriminating call to his mother and stated that the police were going to implicate him in a murder.

*Id.* at 813.

In Loyd's case, unless the jury trying the Clayton Murder and associated crimes is aware that Loyd committed the crimes surrounding the Dixon Murder, the State will be unable to explain

and provide the jury with a complete picture of the events. The jury would be left without any context as to why a witness inside of Wal-Mart would have pointed Loyd out to a law enforcement officer, why that law enforcement officer would have requested emergency backup, why Lt. Clayton would have drawn her firearm when she made contact with the defendant and, most importantly, why Defendant shot Lt. Clayton in his desperate attempt to evade capture for the prior murder he committed. Additionally, the evidence is relevant and necessary, as stated above, to prove that Lt. Clayton was engaged in the lawful performance of a legal duty at the time she stopped, engaged and tried to arrest Loyd on the active warrant for the murder of Ms. Dixon and accompanying crimes. Because the State is entitled to present a complete picture to the jury (the *res gestae* of the case), the evidence of the Dixon crimes is admissible in the trial of the Clayton crimes because that evidence is inextricably intertwined.

The trial court departed from the essential requirements of law when it held that the State may not admit evidence about Ms. Dixon's murder. The exclusion of that evidence significantly impairs the State's ability to prosecute its case, and the order excluding evidence represents a material injury that cannot be corrected or remedied on direct appeal if the defendant is acquitted. This Court should exercise its certiorari jurisdiction

to correct that error.

The State identified the specific evidence it wishes to introduce under the *Williams* Rule as well as identifying the specific issues to which that evidence is directed.[11] Loyd has not identified why any of the identified matters are inadmissible. The State has demonstrated why evidence that the same firearm was used in both murders is properly admitted at trial of the Clayton Murder. Likewise, the State established why evidence of the Dixon Murder is relevant and properly admitted at trial of the Clayton Murder to prove motive and absence of mistake or justification. Further, the State must establish that Lt. Clayton was engaged in the execution of a lawful duty when she attempted to take Loyd into custody. Limiting the evidence to the bare fact of an arrest warrant while redacting the charges contained in it unnecessarily and improperly truncates the State's case, improperly excises a part of the *res gestae* of the case, limits (or wholly eliminates) the reasons behind Lt. Clayton's tactical decisions in the course of attempting to take Loyd into custody, and undermines any claim of self-defense.[12] The trial court's order "violated a clearly

[11] To the extent that Loyd may suggest that the State does not need this evidence, that argument is a red herring - - necessity is not the standard, and, in any event, the defendant does not get to dictate how the State presents its case.

[12] While Loyd maligns Lt. Clayton for not "waiting for backup," he fails to recognize that the nature of the charges for which Loyd was wanted are relevant to explain her decisions at the scene. His

established principle of law resulting in a miscarriage of justice" and the District Court, in denying the State's petition, has compounded that error which the State cannot correct on appeal.

## CONCLUSION

The exclusion of the evidence at issue in this petition significantly impairs the State's ability to prosecute its case, and the order excluding evidence represents a material injury that cannot be corrected or remedied on direct appeal if the defendant is acquitted. Based on the foregoing arguments and authorities the State requests this Court grant the writ, quash the order of the circuit court excluding the identified *Williams* Rule evidence, and remand to the circuit court for further proceedings consistent therewith.

Respectfully submitted this 10th day of February 2020.

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criticisms of Lt. Clayton, while baseless, undercut the very argument Loyd makes.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by eportal delivery to the offices of Ted Marrero, Esquire and Terence Lenamon, Esquire, this 19th day of March 2020.

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## CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this response is 12-point Courier New, in compliance with Fla. R. App. P. 9.100(l).

/s/Kenneth S. Nunnelley
Kenneth S. Nunnelley
COUNSEL FOR PETITIONER