IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR SEMINOLE COUNTY, FLORIDA

STATE OF FLORIDA, CASE NUMBER: 592004CF002491AXXXXX
Plaintiff,

vs.

CLEMENTE JAVIER AGUIRRE-JARQUIN,
Defendant.
_____/

STATE'S RESPONSE TO THE PETITION FOR DETERMINATION OF STATUS AS A WRONGFULLY INCARCERATED PERSON

Pursuant to Section 961.03(2)(b), Florida Statutes, the State responds to Clemente Aguirre's Petition for Determination of Status as a Wrongfully Incarcerated Person by contesting the nature, significance, or effect of the alleged evidence of actual innocence, and in support of this Response sets forth the following:

I - *NOLLE PROSEQUI* IS NOT *PER SE* EVIDENCE OF AGUIRRE'S INNOCENCE AND IS NOT A CONCESSION ON THE PART OF THE STATE THAT AGUIRRE IS INNOCENT

Aguirre claims in his petition that the filing of a *nolle prosequi* by the State is per se evidence of his innocence, and cites *Alamo Rent-A-Car v. Mancusi*, 632 So.2d 1352 (Fla. 1994), in support of this proposition. Specifically, Aguirre asserts in his petition that "[u]nder Florida law, a *nolle prosequi* as a matter of law '"indicates the innocence of the accused'" as long as it was not '"the result of a negotiated plea or bargain.'" (Page 11, Petition). This reliance upon *Mancusi* is misplaced, completely taken out of context, and misleading for at least three reasons. First, this was not a statement nor a legal pronouncement of the Florida Supreme Court. The Court was simply noting a statement that the District Court made in the opinion under a review. The District Court opinion under review, *Alamo Rent-A-Car v. Mancusi*, 599 So.2d 1010 (Fla. 4th

DCA 1992), quoted *Union Oil v. Watson*, 468 So.2d 349 (Fla. 3d DCA 1985). The full quotation in the *Union Oil* opinion is as follows:

> Generally, whether a withdrawal or abandonment of the proceedings constitutes a favorable termination depends upon the circumstances under which the withdrawal occurs. *Restatement (Second) of Torts* § 674 comment on clause (b) (1977). Where dismissal is on technical grounds, for procedural reasons, or any other reason not inconsistent with the guilt of the accused, it does not constitute a favorable termination. *Jaffe v. Stone*, 18 Cal.2d 146, 114 P.2d 335 (1941); *Jackson v. Beckham*, 217 Cal.App.2d 264, 31 Cal.Rptr. 739 (1963); *Oppenheimer v. Tamblyn*, 167 Cal.App.2d 158, 334 P.2d 152 (1959). The converse of that rule is that a favorable termination exists **where a dismissal is of such a nature as to indicate the innocence of the accused.** *Hickland v. Endee*, 574 F.Supp. 770, 779 (N.D.N.Y.1983), *aff'd*, 732 F.2d 142 (2d Cir.1984); *354 *Lackner v. LaCroix*, 25 Cal.3d 747, 602 P.2d 393, 395, 159 Cal.Rptr. 693, 695 (1979); *Restatement (Second) of Torts* § 660 comment a (1977). For example, where a dismissal is taken because of insufficiency of the evidence, the requirement of a favorable termination is met. *Jackson*, 31 Cal.Rptr. at 743; *Oppenheimer*, 334 P.2d at 154-155. In order to determine whether the termination of an action prior to a determination on the merits tends to indicate innocence on the part of the defendant **one must look to whether the manner of termination reflects on the merits of the case.** *Lackner*, 602 P.2d at 394-395, 159 Cal.Rptr. at 694-695; *Minasian v. Sapse*, 80 Cal.App.3d 823, 145 Cal.Rptr. 829 (1978).

468 So.2d at 353-354. (Emphasis added; footnotes omitted).

Aguirre portrays the Supreme Court's *Mancusi* opinion as establishing a legal principle regarding the meaning of a *nolle prosequi*, but when considered in the above context it did nothing of the sort. The nature and manner of the termination or dismissal, *Union Oil*, of Aguirre's prosecution, i.e., the *nolle prosequi*, **did not** indicate the innocence of Aguirre or reflect on the merits (Aguirre's innocence) of the case. It was a decision based upon the credibility of an important prosecution witness and ***not*** the innocence of Clemente Aguirre. The evidence is sufficient to show that Clemente Aguirre committed these murders, and the filing of the *nolle prosequi* certainly was not an expression of Aguirre's innocence in any manner whatsoever. As noted above, the decision to file a *nolle prosequi* was based upon practical considerations involving the credibility of an important prosecution witness.

Secondly, the Supreme Court *Mancusi* opinion discussed the concept of a *nolle prosequi* in the context of a civil malicious prosecution suit. More specifically, the Court was addressing the various elements of a malicious prosecution suit and the burdens of persuasion and production placed upon the parties to make their respective cases. This is far from stating a legal principle regarding the meaning of a *nolle prosequi*.

Finally, Aguirre's reliance upon the *dicta* and absence of legal pronouncement in *Mancusi* ignores the wealth and long line of legal precedent in Florida case law that discuss the meaning of a *nolle prosequi*. This case law establishes that a *nolle prosequi* is merely a discretionary function exercised by the prosecuting authority to discontinue a criminal prosecution and is in no way an expression regarding the merits of the case. For instance, in *State v. Jenkins*, 762 So.2d 535 (Fla. 4th DCA 2000), the Fourth District made this observation about a *nolle prosequi*:

> A nolle prosequi **only means** that the state is not prepared to go forward with the prosecution of the criminal charge. **At most**, it conveys that the state did not have sufficient evidence to meet its burden of proving guilt beyond a reasonable doubt. "Nolle prosequi, if entered before jeopardy attaches, neither operates as an acquittal nor prevents further prosecution of the offense." *Bucolo v. Adkins*, 424 U.S. 641, 642, 96 S.Ct. 1086, 47 L.Ed.2d 301 (1976) (citation omitted).

762 So.2d at 536. (Emphasis added).

The Fourth District once again addressed the significance and meaning of a *nolle prosequi* in *Peters v. State*, 128 So.3d 832 (Fla. 4th DCA 2013):

> In the instant case, however, Peters was never "acquitted" of the second-degree murder charge; instead, the State voluntarily abandoned its prosecution through a *nolle prosse.* **Unlike a judgment on the merits**, "a nolle prosse **is merely** a discretionary decision by the State Attorney to be unwilling to prosecute; it does not operate as an acquittal nor does it bar further prosecution." *Al–Hakim v. Roberts*, No. 8:08–CV–01370–T–17–EAJ, 2009 WL 2147062, at *4 (M.D.Fla. July 13, 2009).

128 So.3d at 844. (Emphasis added).

The Third District Court of Appeal in *Gatto v. Publix Supermarket*, 387 So.2d 377 (Fla. 3rd DCA 1980), made the following statement regarding the meaning of a *nolle prosequi*:

> A "nolle prosequi" is **merely** an acknowledgment that the particular matter will not be further prosecuted, Hewitt v. International Shoe Company, 110 Fla. 37, 148 So. 533 (1933), or an expression of unwillingness to prosecute, Wilson v. Renfroe, 91 So.2d 857 (Fla. 1956). **The underlying reason for a "nolle prosequi,"** even as the underlying reason for a "declination to prosecute" or a "no information," **may or may not be related to the merits** of the cause being abandoned.

387 So.2d at 381. (Emphasis added; footnote omitted).

Out of state case law confirms that a *nolle prosequi* does not reflect on the merits of the cause nor is a concession by the prosecuting authority that the defendant is innocent. In *Drake v. State*, 318 S.E.2d 721 (Ga. App. 1984), the Court of Appeals of Georgia stated the following:

> The mere entry of nolle prosequi **does not indicate an absence of the commission of a criminal act** or forever clear one of the charges brought against him. "A nolle prosequi is a cessation of prosecution for the nonce, but it may spring into life again and be continued again with all of the fervor and energy at the command of the prosecuting officers. A new indictment may be returned or a new accusation may be filed, and the earlier nolle prosequi can in no sense be pleaded as autrefois acquit or former jeopardy, or res judicata. [Cit.]" *McGahee v. State*, 133 Ga.App. 964, 966, 213 S.E.2d 91 (1975). See also *Price v. Cobb*, 60 Ga.App. 59, 3 S.E.2d 131 (1939). "**A *nolle prosequi* does not adjudicate either the innocence or guilt of the accused** unless the accused has been placed in jeopardy." (Emphasis original.) *Hunter v. State*, 104 Ga.App. 576, 122 S.E.2d 172 (1961).

318 S.E.2d at 722. (Emphasis added).

In *State v. Patrick*, 457 S.E.2d 632 (Ct. App. 1995), the Court of Appeals of South Carolina explained:

> [I]f the *nolle prosequi* is entered prior to the jury being empaneled and sworn, there is no bar to future prosecution for the same offense **because the innocence or the guilt of the defendant would not have been adjudicated.** *Id.* Here the prosecutor entered the *nolle prosequi* before the impaneling or swearing of the jury. Therefore, the denial of the motion to quash the indictment was not error.

457 S.E.2d at 636. (Emphasis added; alteration not in the original).

The Supreme Court of Virginia addressed the significance and effect of a *nolle prosequi* in *Parker v. McCoy*, 188 S.E.2d 222 (1972). In that case Parker and two police officers engaged in a physical altercation which resulted in Parker being criminally charged with disorderly conduct. Ultimately the Commonwealth filed a *nolle prosequi* on the disorderly conduct charge. *Id.* 224. An issue in the civil case that resulted from the physical confrontation was whether the *nolle prosequi* should be admitted in Parker's favor at the civil trial. The trial court excluded evidence of the *nolle prosequi* and the Virginia Supreme Court affirmed on this issue:

> We agree with Parker's counsel that whether Officer McCoy had probable cause to arrest Parker for disorderly conduct was an issue in this case. But the Nolle prosequi of the charge against Parker did not constitute an acquittal of the charge, See Lindsay v. Commonwealth, 4 Va. (2 Va.Cas.) 264, 265 (1823), **much less an adjudication of lack of probable cause for an arrest**. Borrowing from the majority rule in malicious prosecution cases, see cases collected in Annot., 59 A.L.R.2d 1413, 1429 (1958), we hold that the abandonment of the criminal charge against Parker **constituted no evidence of want of probable cause** for Officer McCoy to arrest Parker. The court therefore properly excluded evidence of the Nolle prosequi.

188 S.E.2d at 224. (Emphasis added).

Aguirre also cites repealed Section 961.055, Florida Statutes, in an effort to find support for his argument that the filing of a *nolle prosequi* is an expression of a defendant's innocence. (Page 11, Petition). This effort is no more fruitful than his reliance on case law. Repealed Section 961.055 involves the appointment of a special prosecutor by the Governor pursuant to executive order in cases in which the defendant was sentenced to death on or before December 31, 1979. It provides that if the special prosecutor enters a *nolle prosequi* in such cases, the *nolle prosequi* constitutes conclusive proof of the defendant's innocence. Once again Aguirre's argument is misleading and out of context. The obvious purpose of this repealed statute is to investigate cases where there are legitimate concerns regarding the defendant's innocence;

concerns that rise to such a level that the Governor feels duty bound and obligated to appoint a special prosecutor to investigate. In this case there are no concerns by the State Attorney's Office, the only executive authority to handle this case, of Aguirre's innocence; as noted above, there is sufficient evidence that Aguirre committed these murders. Repealed Section 961.055 has absolutely no application to Aguirre's criminal case and offers no support to the claim that the filing of a *nolle prosequi* is a concession of his innocence.

II – CONTESTING THE NATURE, SIGNIFICANCE, OR EFFECT OF THE EVIDENCE OF ACTUAL EVIDENCE

Knowing that binding authority requires this Court to dismiss the petition, the State contests the nature, significance, or effect of the evidence of actual innocence by simply setting forth Clemente Aguirre's inconsistent statements and lies regarding the murders of Cheryl Williams and Carol Bareis, and evidence that demonstrates these lies and inconsistencies.

Aguirre agreed to speak with the police on June 17, 2004. In his interview with the police, Aguirre said that he would always go to 121 Vagabond Way and claimed that he went to 121 Vagabond Way at about six in the morning on June 17, 2004, and admitted he was drunk. He claimed that he discovered Cheryl Williams's body, he saw blood, she was full of blood, he picked her up or raised her to see if she was alive, she was dead, and he laid her down and left running or walking fast. He was specifically asked if he walked around the house and he said: "no, I looked at her and left" – he denied walking around the house. That morning Aguirre repeatedly denied walking around the house and claimed that after he discovered Cheryl Williams's body, he left through the same door he entered and went back to his house. And importantly, Aguirre denied seeing a knife; when specifically asked if he saw a knife or a gun, he said: "I would be a liar if I said I saw this or that" and "I didn't see anything, I didn't see anything" (referring to a knife or gun).

In 2006, Aguirre testified at his trial. In direct contradiction to the statement he gave the police on June 17, 2004, he said he saw a knife that looked similar to a knife they had where he was living, that he picked up the knife, took it with him when he left 121 Vagabond Way, and threw it. He said: "... I want you all to realize the truth. I saw a knife." Yet, in the statement he gave the police on June 17, 2004, he repeatedly told the police he was telling the truth. Additionally, at his trial in 2006, Aguirre testified, in direct contradiction to the statement he gave the police on June 17, 2004, that he walked further into the house and into the room where the second victim, Carol Bareis, was found dead, walked up to her and touched her. In his 2006 trial testimony, Aguirre repeatedly admitted that what he told the police in 2004 was a lie, yet in 2004 he insisted to the police he was telling the truth. Finally, in direct contradiction to his June 17, 2004, statement to the police that he did not go further into the house, a propane canister with Aguirre's palm prints was found next to the bed in Samantha Williams's bedroom.

The medical evidence and Aguirre's own trial demonstration of how he handled Cheryl Williams's body when he claims he discovered her, show that Aguirre has consistently lied about the facts of this case. Aguirre claimed at his 2006 trial that he briefly lifted Cheryl Williams's body upon, as he claims, discovering her, and actually demonstrated this at the trial (see below). Yet Thomas Beaver, M.D., the forensic pathologist who conducted the autopsies in this case, opined that Cheryl Williams's body was never moved until she was lifted by the authorities at the crime scene.

Additionally, Aguirre's clothing was essentially saturated with Cheryl Williams's blood. His shorts, socks, shirt, underwear, and shoes all contained her blood. His claim that this blood was deposited on these articles of clothing when he discovered Cheryl Williams's body and briefly touched her to check on her defies belief and common sense when one watches the video

of Aguirre demonstrating at his 2006 trial his discovery of the body. Any lay juror would reject as incredible this brief placing of Cheryl Williams body on his thighs (as demonstrated by Aguirre at the 2006 trial) as explaining how so much blood was deposited on his shorts, socks, shirt, underwear, and shoes.

Clemente Aguirre claims that Samantha Williams is the true killer, and that he innocently arrived at the murder scene hours later and discovered the bodies. However, only one set of bloody footwear prints were found throughout the murder scene, and those belonged to Clemente Aguirre. If in fact Aguirre innocently arrived at the murder scene to discover the bodies of Cheryl Williams and Carol Bareis hours after Samantha Williams murdered them, then there would certainly be two sets of bloody footprints – Aguirre's and Samantha Williams's. This was an extremely bloody scene. There certainly would have been two sets of bloody footprints if Samantha Williams was the true killer; but there wasn't – only Aguirre's bloody footprints were located at the scene.

The murder weapon is a large Sysco brand chef's knife. It had both victims' blood on it and was discovered on Clemente Aguirre's property. There is significant evidence that this knife is connected to Aguirre and that he possessed it before the murders. First, Aguirre himself testified during the 2006 trial that he saw the knife or a similar looking knife at his house. Secondly, Aguirre's roommate, Feliciano Sequeida, stated that the Sysco murder knife looks like a knife they had in the house they lived in. Finally, John Andrich, the executive chef of the restaurant at which Aguirre worked in June 2004, identified the Sysco knife as a knife missing from a set of knives at his restaurant.

Aguirre makes much of the fact that Samantha Williams's blood was found at the scene of these murders. His argument is that she cut herself while committing these murders and

consequently deposited her blood at the scene. This argument is extremely misleading. Eight tiny drops of Samantha Williams's blood were found at 121 Vagabond Way. Samantha Williams lived at that house for years before these murders. She had a documented history of inflicting injuries to herself at that location that shed blood. None of the eight drops of blood was found near either victim nor in the same room as either victim. See the attached diagram (Exhibit "A") provided to the State by Aguirre's own criminal defense attorneys while the criminal prosecution was pending. Aguirre's own diagram demonstrates that Samantha Williams's blood was not only not near either victim's body; her blood was not even in the same room. Surely, if Samantha Williams committed these murders and cut her hand doing so (Cheryl Williams had over 100 stab wounds), she would have bled profusely and her blood would have been near the victims' bodies. Additionally, two law enforcement officers who interviewed Samantha Williams on the day of the murders, Robert Hemmert and John Negri, asked her to display her hands to them. Both observed no injuries, cuts or blood on her hands. Another witness, Jack Van Sandt, saw Samantha Williams the same day the victims' bodies were discovered and observed her hands; he observed no injuries, cuts or blood on her hands.

Finally, Aguirre relies upon multiple confessions made by Samantha Williams. Many of these statements were made when Samantha Williams was severely under the influence of alcohol or drugs and at times when she was in heated disputes or confrontations with another person. Additionally, Samantha Williams has a long history of psychiatric illness. A prominent forensic psychiatrist opined that any statements that Samantha Williams made in the past could have been influenced by active mood symptoms, active psychotic symptoms, a suicidal state, impairment due to alcohol intoxication, the effect of medications and street drugs, or a combination of these things. Consequently, this mental health expert expressed the opinion that

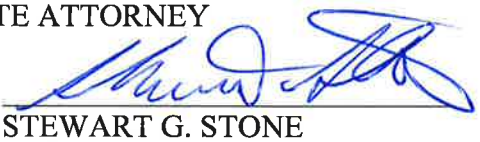
the context in which these past statements of Samantha Williams were made is worthy of consideration when evaluating those statements. In sum, it is the position of the State that the context in which those confessions were made indicate they were unreliable and false confessions. This conclusion is buttressed by the additional matters set forth in the entirety of this Response supporting the sufficiency of the evidence of Aguirre's guilt.

Once again, it cannot be over emphasized that the decision to file a *nolle prosequi* in this case was based upon the practicalities regarding the credibility of an important prosecution witness; not the sufficiency of the evidence of guilt.

Based upon the above, the State contests the nature, significance, or effect of the evidence of "actual innocence." Section 961.03(2)(b), Florida Statutes. Additionally, the State cannot make the certification pursuant to section 961.03(2)(a), Florida Statutes.

Respectfully submitted this 8th day of February, 2019.

PHIL ARCHER
STATE ATTORNEY

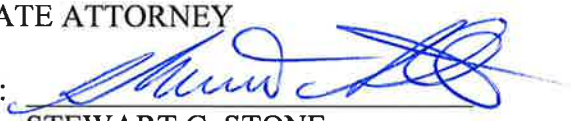
BY: 

STEWART G. STONE
ASSISTANT STATE ATTORNEY
FLORIDA BAR NO. 0656781
POST OFFICE BOX 8006
101 ESLINGER WAY
SANFORD, FL 32773
(407) 665-6000
Eservice: SemFelony@sa18.org

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by **E-MAIL** to MARIE-LOUISE SAMUELS PARMER, ESQUIRE, Attorney for Defendant, at MARIE@SAMUELSPARMERLAW.COM this 8th day of February, 2019.

PHIL ARCHER
STATE ATTORNEY

BY: 

STEWART G. STONE
ASSISTANT STATE ATTORNEY
FLORIDA BAR NO. 0656781
POST OFFICE BOX 8006
101 ESLINGER WAY
SANFORD, FL 32773
(407) 665-6000
Eservice: SemFelony@sa18.org

Trailer: Samantha Williams' Blood

EXHIBIT "A"