IN THE COUNTY COURT OF THE SIXTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR PINELLAS COUNTY

STATE OF FLORIDA

VS. [redacted]

AARON SMITH-LEVIN
_____/

DEFENDANT'S SECOND ADDITIONAL MOTION FOR NEW TRIAL

COMES NOW, the Defendant, AARON SMITH-LEVIN, by and through his undersigned counsel, and pursuant to **Fla. R. Crim. P. 3.580, 3.590, 3.600(b) & Fla. Stat. 90.104(1)**, hereby respectfully moves this Honorable Court for a New Trial as the Court not only erroneously instructed the jury (The basis is stated in Defendant's Moton For New Trial Based on Improper Curative Instruction and Judicial Comment on Facts Not in Evidence, that has been filed contemporaneously with this Motion) but it also erred in a decision of a matter of law during the trial, and finally there is cause, not due to the Defendant's own fault, the Defendant did not receive a fair and impartial trial. In support the Defendant hereby states as follows:

I. INTRODUCTION

This Court should grant a new trial based on the fact that the Defendant was denied a fair trial as guaranteed by the **Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article I, Section 9 of the Florida Constitution**.

Specifically, the Court improperly excluded material and relevant evidence central to the defense; and the Court denied defense counsel the right to make a proffer of excluded testimony. These errors, individually and cumulatively, substantially prejudiced the Defendant, deprived him of the right to present a complete defense, prevented preservation of error, and undermine confidence in the outcome of the trial.

II. FACTUAL BACKGROUND

At a Motion in Limine hearing four days prior to the trial, one of the State's positions was to exclude the reason why Defendant was at the exterior of the doorway to the Bank Building in downtown Clearwater which is owned by the Scientology organization. The State was successful in getting the trial Judge to exclude the fact that the Defendant was at the building to speak to Pat Harney, a Scientologist, to get a message to a Scientologist by the name of Flavio Lugli, as his parents had not heard from him in years and were concerned for his well-being. The Defendant was working on behalf of Flavio Lugli's parents through his foundation that he founded. On the audio portion of the video that the Defense wanted to admit into evidence, the Defendant is speaking very calm, not yelling or raising his voice, and was not causing a disturbance. The Defense was forced to redact the very short but critical portion of the Defendant's voice at the beginning of the video tape and was only permitted to play the audio portion where the Defendant states he is in pain and why would they close the door on his foot. The audio portion of the beginning of the video that showed the eventual confrontation that led to the allegation of a battery was critical as it provided

context and insight into the Defendant's state of mind exception as to why he was at the building and what exactly he was doing. The audio and video were a contemporaneous recording of what truly happened. The audio portion the trial Judge ruled was inadmissible is as follows: "Pat, I knew I could come here and ask you but I knew I could come here and ask you for help. Claudio and Renata Lugli have been trying to reach their son for the last 10 years. Is there any way you could allow Flavio Lugli to contact his parents? They're trying to reach him." The Defendant's voice was completely calm and at no point was he antagonistic on the tape.

At trial, R[redacted] T[redacted], a Scientologist, testified that the Defendant was raising his voice in an antagonistic type of manner. Just prior to cross-examination, the Defense requested to approach and requested that they be permitted to impeach R[redacted] T[redacted] with this vital video which depicted the audio described above. The trial Judge denied the request in violation of the Defendant's right under the Confrontation clause. Had the Defense been permitted to introduce the portion of the audio on the video the trial Judge excluded, not only would it have refuted the State's witness, but it would have provided powerful impeachment evidence against him for the jury to consider.

At this Motion in Limine hearing the trial Judge stated:

> I'm not trying the beliefs of Scientology or beliefs of the Defendant, it will not come in his personal past history, not come in he is out seeking some person, not relevant, distracts from the issue here. Mr. Smith-Levin sit there do not talk and listen to my ruling. We will have a further conversation about this later. I want to make sure that you and Mr. Theophilopoulos are LISTENING VERY CLOSELY to my ruling (trial Judge said this with emphasis). A simple battery case turns into a big spectacle that I am not going to have (clearly referencing the prior battery trial where Mr. Smith-

> Levin was found not guilty). The trial Judge further stated that all the Defendant could be referred to at trial was a protestor of Scientology and that he has a YouTube channel (when in fact there was no protest going on in the case at hand). The trial Judge went on to state that My trial was completely disrespected last time, and it will not happen again, you got it, and I am particularly looking at the Defense (this was stated in an angry tone to the Defense).

After the trial Judge made her Motion in Limine rulings, she then went on to once again discuss the first trial where Mr. Smith-Levin was found not guilty. The hearing makes it clear the trial Court had issues with the not guilty verdict and the trial Judge should have recused herself at that point. The trial Judge stated that at the last trial she specifically ruled any personal past history Defendant has with the Church of Scientology is not relevant. She went on to state that her ruling was violated 3 times by the Defense. She went on to state that on the day of trial the State advised her that he would get into the trial his personal past history despite the Judge's ruling. The trial Judge stated that the first witness, Cheryl Fullerton testified in the beginning that she and Defendant had been protesting many years. Then the trial Judge stated that Defense Counsel, Mr. Theophilopoulos barely got up in his direct asking the Defendant where he grew up in Philly and how the Defendant was in the Church of Scientology at the age of 12. She then stated that when she called all attorneys to the bench she saw Defense Co-Counsel, Mr. Pearlman, with the look like "OMG" because he knew what had been done (The undersigned Defense Counsel has since spoken to Mr. Pearlman and Mr. Pearlman has confirmed that the look on his face was not due to anything the undersigned Counsel said or did, but rather what was happening at the bench). The undersigned Counsel attempted to explain the Judge's misconception and the trial Judge wanted nothing to do with it and stopped Defense Counsel from talking. Then

the trial Judge went further and said Let's put the cherry on top Mr. Smith-Levin, the very last thing you said, the very last thing you said in your examination was that they were masked thugs working in an organization that I grew up in. There were 3 violations of this Motion in Limine. Mr. Smith-Levin you said you were going to violate it. The Defendant then stated that is a false statement only to be followed up with a statement from the Judge saying You are not talking. Stop Stop Stop with the I didn't know, I was clear and I was clear about my prior ruling and now I have made myself clear on my ruling today 3 times. I will not tolerate another violation of my motion in limine, there will be no forewarnings. If you or your attorney violate it you will be held accountable, I will stop this trial, pull the jury out and immediately go into contempt proceedings…. I spent more energy in that last trial trying to control everybody's behavior than I did in the issues with the chalk issues. I want this case concluded and off my desk (the entire time the trial Judge had a very negative attitude and looked at the Defense with disdain). The trial Judge made it very clear she was still not over the last trial and verdict and told the Defense that The only thing they could say is that you are protesting the Church of Scientology and that you have a Youtube channel regarding your protesting the Church of Scientology. The Defense was completely handcuffed the entire trial. Just before the trial started the trial Judge once again displayed her displeasure with the last trial by stating I'm not going through this trial like last time, ok, that trial wiped me out, I'm not doing it, ok. Then strikingly the trial Judge stated I do intend to look at what happened in the last trial, the State has chosen not to prosecute but if there is concern that there was contempt in this court then I may be looking into whether there was a juror that was in contempt of this court that will be done after this case is over (The trial Judge was reacting to a frivolous and false accusation that

attempted to link the foreperson of the first jury to the Defendant, an investigation that went nowhere with the State Attorney's Office). On April 20, 2026, the trial Judge's Judicial Assistant sent an email to the Defense and State that stated: "Good Morning: Judge Hessinger advised she will not be looking into the concern regarding the juror on the above case. She spoke with Chief Judge Crane and he advised that it is outside the court's review" (**Exhibit A** attached). The trial Judge is responsible in carrying out the judiciary duties while the State of Florida and law enforcement are responsible for dealing with the executive duties such as investigations that the Judge wanted to carry out. The trial Judge felt as though she had such a vested interest in the Defendant that she wanted to investigate him personally to truly see if he had some sort of connection with the forewoman of the first trial. Undoubtedly, the trial Judge had a bias against the Defendant that she could not let go, there is no other explanation for this behavior due to the separation of powers between the executive and judiciary branches.

Defense Counsel was handcuffed by the trial Judge's pre-trial rulings regarding Scientology and its practices against those who are outspoken critics like the Defendant. Defense counsel attempted to proffer testimony from the State's key witness, another Scientologist, Norman Shape. This testimony would have revealed not only his bias and motive, but more importantly the brutal practices of Scientology against those who have left the organization or who were expelled, individuals like the Defendant, which was directly relevant to the defense theory of the case. During the attempted proffer outside the purview of the jury, the State objected, and the Court sustained the objection, thereby preventing the Defense from proffering the testimony and showing how these

members of Scientology attempted to harm the Defendant causing him to exercise self-defense with a minor shove.

The Court abruptly shut down the proffer and scolded Defense Counsel in the courtroom. As a result of this, the jury was deprived of material evidence central to the defense; the defense was prevented from presenting its theory of the case; and the record does not reflect the substance of the excluded testimony, impairing appellate review. The following testimony would have been established during the proffer through Robert Toftness as well as the Defendant, Aaron Smith-Levin:

a) SP individuals, otherwise known as a Suppresive Person, is an evil person who is bent on destroying Scientology;
b) A PTS is a Potential Trouble Source, this is someone who is connected to an SP;
c) The Scientology belief is that 20% of the population exhibits suppressive behavior, but only 2.5% of the population are "Truly Dangerous SPs," and Scientologists consider the Defendant a 2.5%er;
d) The OSA (Office of Special Affairs), views the Defendant as an enemy of Scientology, and that he must be destroyed at all costs, including lying and having him arrested;
e) The Scientology PTS/SP course pack (manual) is the main course Scientologists teach their people about SPs;
f) Scientology has removed the policies that talk about destroying Scientology's enemies from the PTS/SP course pack, however that does not mean the policies have been cancelled. Instead, they just removed the language from the course

pack due to a major backlash years ago in Australia. The policies still exist, and they are enforced to the fullest and all Scientologists are aware of this;

g) The Scientology policy that states "the practice of labelling people fair game is cancelled, but not the policies on how to deal with an SP" including having to destroy them;

h) The Defendant has a channel and a Foundation, the Youtube.com channel is GROWING UP IN SCIENTOLOGY, also known as SPTV (Suppresive Person Television) while the Foundation is THE SPTV FOUNDATION;

i) The Defendant uses his channel to expose issues concerning Scientology and to promote the SPTV Foundation;

j) The SPTV Foundation helps people who are attempting to leave Scientology and it also helps people reach out to friends and loved ones that have disappeared within the Scientology organization;

k) When Robert Toftness was interviewed by law enforcement, he told them he did not know the Defendant, which was not true. Robert Toftness knew the Defendant from Los Angeles California from 2002-2006 at the American Saint Hill Organization (ASHO);

l) The Defendant was the Technical Secretary at ASHO from 2002 to 2006 and he oversaw the delivery of All Scientology courses and auditing for all paying public Scientologists, one of whom just happened to be Robert Toftness.

The trial Judge then went on and stated that I am going to make the record clear as to why I am not allowing this proffer into beliefs of Scientology and what they do to people that are no longer a member. At the last trial, at the conclusion, I found out that

someone ordered the audio or transcript as an anonymous person what was advised of me. This issue is not relevant to bring out or what your client wants to bring out, Court is concerned he is trying to gather this information for his Youtube channel, I will not permit this to happen it is not relevant, Bring the Jury in. Once again, the trial Judge's statement showed her deeply embedded bias, prejudice and preconceived notions of the Defendant.

Other prior quotes from the trial Judge that exposed her bias and prejudice against the Defendant include the following:

- "Your hatred for the Scientology is going to land yourself into jail for a very long time." — November 21, 2025
- "He's making money off of his YouTube channel. Attacking the Church of Scientology." — November 21, 2025
- "If you're doing it just for social (media) content, then your whole free speech, protest, yada yada, just kind of going out the door." — October 17, 2025
- "Maybe because you're not getting enough attention, I don't know." — October 17, 2025
- "I'm not going to have somebody killed on my watch." — November 21, 2025
- "I better not show up on that YouTube channel…" — November 21, 2025
- "You're basically just stirring up trouble, stirring the pot." — November 21, 2025
- "**You can see he's deliberately walking down that sidewalk looking for an issue. Just the way he's walking. He starts walking by the door. He sees that it opens. He's like, oh, okay, great. And he sticks his head in there and he's clearly holding the door open with his foot when they're trying to close the door. And he's trespassing. I'm surprised he doesn't have a trespass charge against him. And then he clearly shoves this second person. He may be making all kinds of noise on his video, how he got battered, but I just saw the (other) video), and I didn't have to watch that one three times"** — November 13, 2025 (Prejudging the facts of this case and the Defendant by making inappropriate

comments before any trial and then putting on a prosecutorial hat by commenting that the Defendant should have had an additional charge on him)

- "It shouldn't take me lecturing you…" — November 13, 2025

All of this information was critical to the Defense, and it goes directly to expose the bias and motive of Robert Toftness and Norman Shape to hurt the Defendant which then caused the Defendant to defend himself. The information the Defense was not permitted to proffer was in fact relevant and inexplicably intertwined with this case.

III. ARGUMENT

A. The Court Erred in Excluding Relevant and Admissible Defense Evidence

A criminal defendant has a fundamental constitutional right to present witnesses and evidence in his defense. This right arises under the **Fifth, Sixth, and Fourteenth Amendments** and is independently protected under **Article I, Section 9 of the Florida Constitution**. Florida law strongly favors the admission of relevant evidence offered by a criminal defendant, particularly where such evidence bears on the defense theory or creates reasonable doubt. Where evidence tends in any way, even indirectly, to establish reasonable doubt as to a defendant's guilt, its exclusion is improper and constitutes reversible error. The Confrontation Clause permits defendants to cross-examine on bias and motive of State's witnesses, the Defendant's rights to cross-examine were compromised throughout this trial.

In the present case, the excluded testimony was undoubtably, directly relevant to credibility, bias, and the Defense's theory of the case. Severely limiting the cross-examination of the State's two witnesses as well as prohibiting the Defendant from testifying as to the bias and motive of those witnesses, combined with the trial Court excluding the audio portion on the video that was contemporaneously made by the Defendant, was material to the issues before the jury and was necessary for the Defendant to present a complete defense. The exclusion of this evidence substantially impaired Defendant's ability to challenge the State's case and deprived the jury of information necessary to fairly evaluate the evidence.

B. The Court's Refusal to Permit a Proffer Constitutes Reversible Error Under Florida Law

Florida law is explicit that when evidence is excluded, the proponent must be permitted to make a proffer. Under § 90.104(1)(b), Florida Statutes**,** error may not be predicated upon a ruling excluding evidence unless "the substance of the evidence was made known to the court by offer of proof or was apparent from the context." The purpose of a proffer is to preserve for the record the substance of excluded evidence so that an appellate court can determine whether the exclusion was erroneous. As the Second District explained: "A proffer is preservation for record purposes of excluded evidence." *Taylor v. State Dep't of Transportation*, 701 So. 2d 60 (Fla. 2d DCA 1997).

Florida courts have consistently held that refusal to allow a proffer is itself reversible error because it prevents meaningful appellate review. The primary purpose

of a proffer is to include the proposed evidence in the record so that the appellate court can determine whether the trial court's ruling was correct. *Phillips v. State*, 351 So.2d 738, 740 (Fla. 3d DCA 1977). Accordingly, refusing to allow a proffer of evidence is error because it precludes full and effective appellate review. *Piccirrillo v. State*, 329 So.2d 46, 47 (Fla. 1st DCA 1976).

In *Rozier v. State*, 636 So. 2d 1386 (Fla. 4th DCA 1994), the court reversed where the trial court refused to allow defense counsel to proffer excluded testimony, holding that such refusal "precludes full and effective appellate review." This principle applies with full force here. Additionally, the Second District has recognized that a party cannot be penalized for failing to make a proffer where the trial court renders the proffer impossible or futile. In *Wright v. Schulte*, 441 So. 2d 660 (Fla. 2d DCA 1983), the court held that a proffer is not required where it would amount to a "useless ceremony." Thus, where a trial court affirmatively refuses to allow a proffer, as occurred here, the law does not bar relief due to the absence of one. Here, the Court did not merely exclude evidence; it went further and **prevented defense counsel from placing the substance of that evidence on the record**. At one point the Court stated that if the Defense didn't like it, they could appeal. This ruling denied Defendant the statutory mechanism required to preserve error, prevented the creation of an adequate appellate record, effectively insulated the Court's ruling from meaningful review, and finally violated basic principles of due process and fundamental fairness.

C. The Errors Were Not Harmless Under Florida Law

Under Florida law, an error requires reversal unless the State proves beyond a reasonable doubt that the error did not contribute to the verdict. The Florida Supreme Court in *State v. DiGuilio*, 491 So. 2d 1129 (Fla. 1986), held that the burden is on the State, as the beneficiary of the error, to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict. That burden cannot be met here as the excluded evidence went directly to the defense theory and could have exposed bias and motive on behalf of the Scientology witnesses, effected the jury's assessment of credibility, undermined the State's case, created reasonable doubt, and changed the outcome of the trial. Further, because the Court prevented a proffer, the record does not fully reflect the substance of the excluded testimony—making it impossible to conclude beyond a reasonable doubt that the error was harmless. The evidence presented by the State in this case was furthest from being compelling, it was a situation where the Defendant was battered and then he used equal force by mildly shoving one of the perpetrators. The self-defense component of this trial could have easily swung in the favor of the Defendant with a not guilty verdict had the Defense been permitted to present a complete defense.

D. The Combined Errors Require a New Trial

Even if each error is considered individually harmless (which they are not), their cumulative effect deprived Defendant of a fair trial. The Court's rulings prevented the jury from hearing critical defense evidence and prevented Defense counsel from

preserving the issue for appellate review. This dual deprivation silenced the defense, compromised the integrity of the adversarial process, and finally undermines confidence in the verdict. When a defendant is both **denied the right to present evidence** and **denied the right to preserve the issue**, the resulting prejudice is profound and cannot be ignored.

IV. CONCLUSION

The integrity of the trial process requires that a criminal Defendant be permitted to have a fair and impartial Judge to present relevant evidence in his defense and to permit him to preserve objections and evidentiary rulings for appellate review. The Court's bias against Defendant, exclusion of critical defense evidence and refusal to permit a proffer violated Florida law, the Florida Evidence Code, and Defendant's Constitutional rights.

Accordingly, Defendant respectfully requests that this Court:

1. **Vacate the verdict;**
2. **Grant a new trial pursuant to Fla. R. Crim. P. 3.600; and**
3. **Grant such further relief as this Court deems just and proper.**

[Certificate of Service to Follow]

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy hereof has been furnished by ELECTRONIC EMAIL at [redacted] the State Attorney's Office, Pinellas, FL, on this April 24, 2026.

[redacted]

OS LAW, P.A.

[redacted]