

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

STATE OF FLORIDA

VS.

AARON SMITH-LEVIN

[REDACTED] | | |

_____ /

**DEFENDANT'S MOTION FOR NEW TRIAL
BASED ON IMPROPER CURATIVE INSTRUCTION
AND JUDICIAL COMMENT ON FACTS NOT IN EVIDENCE**

COMES NOW the Defendant, 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)**, moves this Honorable Court for a new trial based on the Court's improper curative instruction, which advised the jury of a factual proposition not supported by any testimony or evidence admitted at trial and throughout the trial showed clear bias against the Defendant. In support, the Defendant states as follows:

1. On April 14, 2026, the Defendant was tried by jury before Judge K [REDACTED] H [REDACTED] on a single count of battery pursuant to Fla. Stat. § 784.03.
2. This was a second battery trial for the Defendant as approximately one month earlier, and before the same Judge, the Defendant was found not guilty of battering a different Scientologist member.
3. The Defendant was a former Scientologist that had been abused by the organization for years and Scientologists have attempted to destroy him for many years due to him leaving the organization and being an outspoken critic.

4. The Defendant has a Youtube.com channel known as “growing up in scientology” as well as a foundation dedicated to assisting Scientologists from escaping the organization as well as locating Scientologists that have not had communication with loved ones or parents for many, many years, some decades.
5. The Defendant also organizes protests in downtown Clearwater, FL regarding Scientology’s policies and treatment of individuals.
6. On April 10, 2026, the trial Court held Motions in Limine and also entertained the Defendant’s Request for Judicial Notice of the Property Appraiser’s website photo depicting the boundaries of the property line of the building in question where the battery is alleged to have occurred.
7. The area of the alleged battery was disputed throughout the Motion hearing and at trial as the Defense stated it was the belief of the Defendant, and the Public in general, that the location of the alleged battery occurred on public property due to the Property Appraiser’s website boundary depiction, while the State was of the opinion that it was private property.
8. Neither the Defense nor the State introduced any tangible evidence at trial that the battery occurred on public or private property.
9. At the Motions hearing, the issue regarding the Pinellas County Property Appraiser’s website photograph of the boundaries of the property in question were discussed as the Defense claimed the boundary depiction gave credibility to the Defendant’s position that he was on public property. ¹

¹ At a minimum, what the Judge failed to understand was that the Defendant’s state of mind was completely relevant based on his understanding that it was public property based on a public document. Throughout the trial the Judge’s bias and animosity towards the Defendant clouded her decision causing her to exclude this testimony even though it qualified as an exception to hearsay by simply finding that it was not relevant. The Judge made the Defense redact the state of mind statements from the Defendant’s video from his phone of how the Defendant was simply asking

10. At one point during the Motions hearing, the State conceded that they were not going to argue the Defendant was trespassing (note: the Defendant was never charged with trespassing) and the Defense stated that since they are not going to allege he was trespassing the photographic document from the Property Appraiser's website was not an issue.
11. The Defense even stated that it was their position that the document is relevant if an allegation of trespassing were made.
12. At trial and early in the testimony of the State's first witness, Norman Shape, the State clearly violated the Court's Motion in Limine ruling regarding their stipulation that they would not be arguing the Defendant was trespassing when Norman Shape stated "I said, he was on private property" when he was referencing what he told the Defendant just prior to the alleged battery.
13. The trial Judge had no problem whatsoever with this statement and violation of the Motion in Limine ruling and stipulation, and the trial Judge did nothing to acknowledge the State's witness violation, unlike her extreme behavior towards the Defense when the Defendant testified it was public property that he was actually on. The trial Judge abruptly stopped the Defendant's testimony, without any objection whatsoever, to only interject her own objection at the bench and chastise the Defendant.
14. Due to the trial Court's threatening statements and angry demeanor towards the Defendant at the Motion in Limine hearing four days earlier, the Defense

Scientologist employee, Pat Harney, if she could help him by talking to Scientologist Flavio Lugli and getting a message to him to call his parents in Italy as they have not spoken to him in years and were concerned with his well-being. The jury was left with the impression that the Defendant was "protesting" and even the Judge referred to him as a protester in front of the jury.

counsel was cautious and asked to approach prior to the cross examination of Norman Shape and informed the trial Judge that Mr. Shape opened the door to the use of the Pinellas County Property Appraiser's website boundary photograph, a photograph that this witness himself had given to law enforcement the day he reported the battery, however, the trial Judge just simply stated "overruled."

15. The trial Judge's discussion of the situation is as follows:

I need, I need everyone to approach please (at the bench: how many times is he actually going to say that that is public property when I said that sheet wasn't going to be coming in. Do you have any proof that this is public property? Can you pull the jury out please. I have heard at least 10 times he said he was on public property. I made it clear at the Motion in Limine regarding that sheet, the map is not coming in it was not reliable it was not an official map and I discussed the fact that if he was going to be saying he was on public property there better be proof that he was on public property. There is no proof that you were on public property. Do you have any evidence Mr. Theophilopoulos that it is public property? (Defense Counsel then stated that neither party should have testified as to this, the State's witness, Norman Shape testified it is private property, and the Defendant testified it is public.) The trial Judge then stated am I going to have to go into contempt proceedings because he has violated over and over again this court's ruling and it is ridiculous how many times, he said he is on public property. Over and over and over, its become a joke here, how many times is he going to say it is public property, it is obvious he is standing over the threshold of the church of Scientology.²

² The trial Judge has repeatedly held the threat of contempt over the head of the Defendant on numerous occasions.

16. At no time did the trial Judge **ever** state at the Motion in Limine hearing that if the Defendant was going to state he was on public property there better be proof that he was on public property. In fact, the trial Judge only said that the Property Appraiser's website photograph depicting the boundary was inadmissible. Once again, the trial Judge's predisposition to find fault with the Defendant overly consumed the entire trial to the Defendant's detriment.
17. The trial Judge repeatedly threatening the Defendant with contempt was inappropriate especially in light of the fact that her actual pretrial rulings did not comport with what she stated at the trial. The trial Judge had it out for this Defendant.
18. During her ruling, the trial Judge even went further by placing a burden of proof on the Defense by stating "If there was a question whether this was public property you should have had a person testify to that", yet on the flip side she chastised and punished the Defendant for doing just that, testifying that it indeed was public property thus rebutting what the State's key witness had stated.
19. The trial Judge further invaded the province of the Jury by providing a one-sided "Curative Instruction" that all but called the Defendant a liar in front of the Jury.
20. The curative instruction advised the jury of the following: ***"I'm going to instruct you that there has been no evidence that the church of Scientology is on public property the fact that the defendant has stated it several times is not fact, that statement that it is public property is stricken from the record and you are not to consider it as fact in this case."***

21. When Defense Counsel had requested that the curative instruction should also include Norman Shape's statement that it was "private property" the Court merely stated once again "overruled." The trial Judge further stated in her ruling "I'm reiterating the fact that this Defendant was told several times he was not to discuss that" a statement that is completely contradicted by the actual arguments, stipulation and ruling at the Motion in Limine. The Judge in essence tipped the scales of justice in favor of the State of Florida.
22. The trial Judge's animosity and bias towards the Defendant clearly impaired her reasoning and memory as she firmly believed she made a prior ruling that the Defendant was not permitted to state that where he was at the time of the alleged battery was public property, when in fact there **never** was such a ruling.
23. It is clear that the Defendant was only told he could not discuss the Property Appraiser's website boundary photograph depiction and was never ordered that he could not state he was on public property.
24. Further troubling is the fact that at trial there was no evidence introduced to support the trial Judge's factual assertion. Rather than curing prejudice, the instruction supplied the jury with a factual conclusion that was not in evidence and only impacted the Defendant and in a lopsided and hostile manner. A conviction was inevitable after the "curative" instruction was read to the jury.
25. A trial court should scrupulously avoid commenting on the evidence in a case. *Lee v. State*, 324 So. 2d 694 (Fla. 1st DCA 1976).
26. Especially in a criminal prosecution, the trial court should take great care not to intimate to the jury the court's opinion as to the weight, character, or credibility of any evidence adduced. *Seward v. State*, 59 So. 2d 529 (Fla. 1952).

27. In Florida, “every litigant is entitled to nothing less than the cold neutrality of an impartial judge.” *State v. Parks*, 141 Fla. 516, 194 So. 613, 615 (Fla. 1939). The Defendant, Mr. Aaron Smith-Levin was deprived of just that. The actual audio tape from the Motion in Limine and the from the trial confirms the trial Court’s aggressive tenor of her voice in opposition to the Defendant at all stages.

CONCLUSION

The problem here is not simply that the Court addressed the jury. The problem is that the Court's instruction effectively told the jury that a particular fact was true when the record contained no competent evidence to support that proposition. A curative instruction is meant to remove improper matter from the jury's consideration; it cannot properly add new facts, bolster one side's theory, or fill an evidentiary gap in the record. The State’s witness, Norman Shape, had his testimony that the alleged battery occurred on private property bolstered by the one-sided curative instruction. It was for the jury to decide who to believe, either Norman Sharpe or the Defendant, not the Court.

This error was especially harmful because the unsupported factual assertion related to the Defendant’s rebuttal and counterargument of the State’s key witness’ testimony which was a central issue in the case. When the trial court gives the jury a statement that appears to resolve or reinforce a material fact, jurors are uniquely likely to credit it because it comes from the bench. That risk of prejudice is magnified where, as here, the jury may understand the court's words as an authoritative statement of what the evidence proved or didn’t prove.

This issue alone warrants relief because the instruction was both legally improper and harmful. It is fundamental error what occurred because it went to the foundation of the case and denied the Defendant a fair trial by introducing a judicially endorsed factual premise unsupported by the record.

Rather than curing any prior confusion, the instruction misled the jury and bolstered a factual premise of the State that was unsupported by evidence. In doing so, it undermined the fairness of the proceedings and materially prejudiced the Defendant's right to have guilt or innocence determined solely on the evidence admitted in court and the law properly charged to the jury. The Defendant therefore deserves and requests a New Trial.

WHEREFORE, the Defendant, Mr. Aaron Smith-Levin respectfully requests that this Court grant a new trial and such other relief as the Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy hereof has been furnished by ELECTRONIC EMAIL at sa6eservice@co.pinellas.fl.us, the State Attorney's Office, Pinellas, FL, on this April 24, 2026.

[REDACTED]
THEOPHILOPOULOS LAW, P.A.
[REDACTED]