

IN THE CIRCUIT COURT OF THE NINTH
JUDICIAL CIRCUIT, IN AND FOR
ORANGE COUNTY, FLORIDA

STATE OF FLORIDA
Plaintiff,

CASE NO: 48-2009-CF-013977-O

DIVISION: 14

vs.

JAMES ROBERT WARD
Defendant.

**STATE'S MEMORANDUM OF LAW REGARDING DEFENDANT'S
AFFIDAVIT OF ARTHUR T. ANTHONY**

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, and states as follows:

1. On April 18, 2018, the State received a copy of the Affidavit of Arthur T. Anthony.
2. The affidavit contains a curriculum vitae of Arthur T. Anthony, and several writings attributed to Diane Ward. Ultimately, he concludes that Exhibit 1 was written by the same person as Exhibits 2-7.
3. If the Defendant moves that this is newly discovered evidence and that it warrants a new trial, the Court must determine: 1. "the evidence was unknown to the movant or his counsel and could not have been uncovered by due diligence at the time of the trial; and 2. the evidence is such that it would probably produce an acquittal on retrial." *Nordelo v. State*, 93 So. 3d 178 (Fla. 2012); see *Jones v. State*, 591 So. 2d 911, 915 (Fla. 1991) (*Jones I*).
4. Regarding the first prong of the analysis, there is an argument to be made by the State that in the more than eight years since Diane Ward's death, someone should have gone through her belongings before the trial in February 2018. Sarah Ward first discloses the discovery of this note to the Defendant on April 11, 2018 during a phone call with the Defendant at 9:35am (approximately 5:45 into the phone call). Sarah says it was in a

closet in the Atlanta home. On April 14, 2018, in a phone call made to the Defendant at 8:27pm, Sarah states that the note was found in an item typically kept in Diane Ward's purse. Sarah had seen it sitting there for years.

5. Turning to the second prong of the analysis, this note would not be admissible during trial for a variety of reasons.
6. First, there is real question to the authenticity of this note as having been written by Diane Ward. Florida Statute 90.901. Without questioning the credentials of the Defendant's expert, or having had the ability to see a high quality copy of these documents, or retain an expert to examine the documents, the State would point out that the person who apparently located the note and the other exhibits is Sarah Ward. This is how it sounded from the jail call recordings, although the Defendant's sentencing memorandum states someone else found the materials.
7. Sarah Ward, Mallory Ward, and Paula Saare each testified at the Defendant's bond hearing on July 27, 2017. Paula Saare's testimony was that the Defendant had no money. [Bond hearing pages 14 and 15]. Ms. Saare went on to say "I don't think there are [other assets out there.] I know they would be in the trust." Both Sarah Ward and Mallory Ward pled complete ignorance to the financial situation, including their own trusts.
8. However, in recorded phone calls between Sarah Ward, Mallory Ward, and Paula Saare and the Defendant, a completely different picture has developed. [State's Digital Evidence Items 29-40].
9. Although Mallory Ward testified at the bond hearing that she owned the Atlanta home outright, and did not know what it was assessed at, the home was actually being held in title by one of the Defendant's many LLCs. [Bond Hearing, page 27]. In fact, the home has recently been sold in order to pay legal fees from the Defendant's second trial.
10. There have been several discussions between Sarah Ward, Mallory Ward, and Paula

Saare regarding the Defendant's assets and the Defendant's "asset protection" scheme. At least one of these "asset protections" is the Southern Horizons of Windemere, LLC. Sarah and Mallory Ward are the registered managers of this corporation according to Florida's Secretary of State. This corporation is said to own two plots of land.

11. Another one of the Defendant's corporation, which Sarah Ward, Mallory Ward, and Paula Saare are aware of, owns two plots of land in Georgia (Cumberland Harbor). There have been several discussions regarding paying the corporation fees and property taxes for these properties.
12. Additionally, the Defendant owns several pieces of jewelry, with individual items valued at \$100,000.00. Paula Saare, Sarah Ward, and Mallory Ward are also aware of these assets, as well as several guns, including an Uzi, currently in the possession of Elizabeth Green, Esq.
13. As Sarah Ward, Mallory Ward, and Paula Saare are preparing the Atlanta home for sale, despite the Defendant's and their best efforts to find loopholes to get out of the contract, there are certainly questions raised regarding the credibility of the witness said to have found or produced these documents to defense counsel.
14. Next, even if the document can be authenticated, it would not be relevant. Diane Ward's medical and mental health history were fully explored and developed by Dr. Sally West during the 2018 trial. Although this testimony spanned Diane Ward's records over many years, the relevance was solely regarding her mental state on the night she was shot and killed.
15. When the Defendant opined to Sarah Ward that Diane Ward may have written that note in Orlando, somewhat contemporaneously, with her being shot and killed, Sarah Ward definitively told the Defendant that the note had not been moved to Atlanta from Orlando that it was Diane Ward who had to have put the note where it was found. [Digital

Evidence Item #40, phone call on April 14, 2018, 8:27pm at 2:30]

16. Without being able to tie the note to the relevant timeframe, it is irrelevant. Especially given that there are many spans of time where Diane Ward was being given new medications, or new doses of medication, which can cause suicidal ideations during the first couple of weeks of new dosages.
17. Additionally, even if there were a nexus to the relevant timeframe, Diane Ward did not commit suicide on the night she was shot and killed. This was also the testimony of Defendant's own medical examiner. The Defendant's statement to Channel 13 was not that he walked in on Diane Ward attempting to kill herself—the Defendant's statement to Channel 13 was that Diane Ward snuck up behind him and pointed the gun at him. This would be a homicidal ideation being acted out—not a suicidal ideation.
18. If the Court believes that there is probative value to the note, the probative value is substantially outweighed by the danger of unfair prejudice, confusion, or misleading the jury. Florida Statute 90.403. Without any nexus to the relevant time frame, especially given the times over a several year timespan when Diane Ward was changing dosages and medications, it would be dangerous to allow a jury to consider it for more than what it is—a note written at an unknown point in time.
19. The Defendant has made statements regarding killing himself in the past. During Glenn Saare's deposition, Glenn Saare stated that the Defendant said the answer to protecting the Defendant's family from the lawsuits "was just to put a bullet in his head." [Page 16]. Mr. Saare's trial testimony was that the Defendant had said "I should just put a bullet through my head and be over it, they won't have to endure this anymore." [Trial I (2011) Transcript page 1271].
20. Even if the evidence is deemed admissible by the Court, the ultimate question would be whether "it would probably produce an acquittal on retrial." *Id.* The answer to this

question is no.

21. Both the victim and the Defendant were under tremendous financial pressure. Both the victim and the Defendant used alcohol and prescription medications (that have additive effects when taken together) used for treating anxiety and depression. If Diane Ward wrote that note at some point in time, then both she and the Defendant had made statements regarding committing suicide in the past before the event.
22. The Defendant has offered three separate explanations: 1. He shot his wife on accident; 2. Diane Ward committed suicide; and 3. Diane Ward snuck up behind him and in the process of disarming her she was shot in the face. The second theory, which is what the note would support, was refuted by the expert testimony on both sides. Therefore, if the note were to have been admitted during trial, it would not have probably produced an acquittal.

I CERTIFY that a copy hereof has been furnished to Sean Ellsworth, kathaleen@ellslaw.com; sean@ellslaw.com, 420 Lincoln Road, Suite 601, Miami Beach, FL 33139 by e-mail on this 2nd day of May, 2018.



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