



**BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE**

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RELEASE OF INFORMATION
RE: CARRIE LEIGH GASAWAY, BPR #18746
CONTACT: A. RUSSELL WILLIS
BOARD OF PROFESSIONAL RESPONSIBILITY
615-361-7500

September 21, 2016

MONTGOMERY COUNTY LAWYER SUSPENDED

Effective September 16, 2016, the Tennessee Supreme Court suspended Carrie Leigh Gasaway from the practice of law until further orders of the Court pursuant to Tennessee Supreme Court Rule 9, Section 22.3. Ms. Gasaway was suspended based upon her guilty plea and conviction for felony theft over \$10,000.00 in violation of T. C. A. Section 39-14-103.

Pursuant to the Order of the Supreme Court, the matter has been referred to the Board to institute formal proceedings to determine the extent of the final discipline to be imposed upon Ms. Gasaway as a result of her conviction of a serious crime.

Ms. Gasaway must comply with Tennessee Supreme Court Rule 9, Section 28 regarding the obligations and responsibilities of suspended attorneys.

Gasaway 2629-6 rel.doc

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: CARRIE LEIGH GASAWAY, BPR #18746
An Attorney Licensed to Practice Law in Tennessee
(Montgomery County)

No. M2016-01884-SC-BAR-BP
BOPR No. 2016-2629-6-AW(22.3)

FILED

SEP 16 2016

Clerk of the Courts

ORDER OF ENFORCEMENT

This matter is before the Court pursuant to Tenn. Sup. Ct. R. 9, § 22.3, upon a Notice of Submission filed by Disciplinary Counsel for the Board of Professional Responsibility ("Board") consisting of a certified copy of the Plea Agreement entered July 27, 2016, in the Circuit Court for the 19th Judicial District of Tennessee, in the matter of *State of Tennessee vs. Carrie Leigh Gasaway* (attached as Exhibit A) demonstrating Carrie Leigh Gasaway, a Tennessee attorney, pled guilty to a serious crime, Tenn. Code Ann. §39-14-103, Theft over \$10,000.

IT IS THEREFORE, CONSIDERED, ORDERED, ADJUDGED AND DECREED BY THE COURT THAT:

1. Carrie Leigh Gasaway is suspended from the practice of law on this date pending further orders of this Court, pursuant to Tenn. Sup. Ct. R. 9, § 22.3;
2. This matter is referred to the Board of Professional Responsibility for the institution of a formal proceeding in which the sole issue to be determined shall be the extent of the final discipline;
3. Carrie Leigh Gasaway shall fully comply with the provisions of Tenn. Sup. Ct. R. 9, § 28, concerning disbarred or suspended attorneys; and
4. The Board of Professional Responsibility shall cause notice of this suspension to be published as required by Tenn. Sup. Ct. R. 9, § 28.11.

PER CURIAM

IN THE CIRCUIT COURT
FOR THE 19TH JUDICIAL DISTRICT
MONTGOMERY COUNTY, TENNESSEE
AT CLARKSVILLE

FILED
7/28 2016 9:41 A.M. P.M.
CHERYL J. CASTLE, CLERK
CIRCUIT COURT CLERK
BY: *[Signature]* D.C.

STATE OF TENNESSEE

vs.

CARRIE LEIGH GASAWAY

Docket No. CC15-CR-1152
Senior Judge Paul G. Summers

PLEA AGREEMENT

PERSONAL INFORMATION

My name is Carrie Leigh Gasaway. I make the following statements understanding that I will be placed under oath and will be questioned by the Court to ensure I fully understand the meaning and effect of this document and the matters contained herein and to determine whether I am, in fact, guilty of the offense to which I am pleading guilty. I understand that if I say anything that is untrue, my statements may be used against me later for charges of perjury. I further understand that anything I say may be used by the Court to determine whether to accept my plea and whether to accept the plea agreement.

I am 44 years old. I have graduated from high school, from college, and from law school. I am in fair physical and mental health. There are no physical or mental conditions that affect my ability to understand this document or the meaning and effect of any of its terms. I am not under the influence of alcohol, medication, or drugs at the time I read and signed this document. I am a natural born citizen of the United States.

On my plea alone, and without receiving any evidence, this court can find me guilty of the offense to which I am pleading guilty. My plea will not be accepted unless I realize that by my plea I admit every act or omission, and element of the offense to which I am pleading guilty, and that I am pleading guilty because I actually am, in fact, guilty. If I do not believe that I am guilty, then I should not for any reason plead guilty.

EXHIBIT
HL
07/27/16

Exhibit A

CHARGED OFFENSE and PLEA

The Count: Theft over \$10,000, Tenn. Code Ann. § 39-14-103, class C felony.

Ms. Gasaway offers to plead GUILTY to the charged offense of Theft over \$10,000, Tenn. Code Ann. § 39-14-103, a class C felony, as a range I standard offender.

Statute and Statutory Definitions

"A person commits theft of property if, with intent to deprive the owner of property, the person knowingly obtains or exercises control over the property without the owner's effective consent." Tenn. Code Ann. § 39-14-103 (West) (defined terms underlined).

"Property' means anything of value, including, but not limited to, money" Tenn. Code Ann. § 39-11-106(28) (West).

"Intentional' means that a person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result." Tenn. Code Ann. § 39-11-106(18) (West).

"Deprive' means to: Withhold property from the owner permanently or for such a period of time as to substantially diminish the value or enjoyment of the property to the owner . . . or Dispose of property or use it or transfer any interest in it under circumstances that make its restoration unlikely." Tenn. Code Ann. § 39-11-106(8) (West).

"Owner' means a person, other than the defendant, who has . . . any interest . . . in property . . . without whose consent the defendant has no authority to exert control over the property." Tenn. Code Ann. § 39-11-106(26) (West).

"Knowing' means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result." Tenn. Code Ann. § 39-11-106(20) (West).

"Obtain' means to: Bring about a transfer or purported transfer of property or of a legally recognized interest in the property, whether to the defendant or another: . . . "Obtain" includes, but is not limited to, the taking, carrying away or the sale, conveyance or transfer of title to or interest in or possession of property, and includes, but is not limited to, conduct known as larceny, larceny by trick, larceny by conversion, embezzlement, extortion or obtaining property by false pretenses." Tenn. Code Ann. § 39-11-106(24) (West).

"Effective consent" means assent in fact, whether express or apparent . . ." Tenn. Code Ann. § 39-11-106(9) (West).

Jury Instruction Elements and Definitions

(1) That the defendant knowingly obtained or exercised control over property owned by another; AND

(2) That the defendant did not have the owner's effective consent; AND

(3) That the defendant intended to deprive the owner of the property.

"Knowingly" means that the defendant acted knowingly with respect to the conduct or to circumstances surrounding the conduct when she was aware of the nature of the conduct or that the circumstances exist. She acted knowingly with respect to a result of her conduct when she was aware that the conduct was reasonably certain to cause the result.² The requirement of "knowingly" is also established if it is shown that she acted intentionally.

"Intentionally" means that the defendant acted intentionally with respect to the nature of the conduct or to a result of the conduct when it was her conscious objective or desire to engage in the conduct or cause the result.

"Obtain" means to bring about a transfer or purported transfer of property or of a legally recognized interest therein, whether to the defendant or another. "Obtain" includes, but is not limited to, the taking, carrying away or the sale, conveyance or transfer of title to or interest in or possession of property.

"Exercise control over property" is defined as the right to direct how property, real or personal, shall be used or disposed. Generally, one must possess the right of possession in property in order to exercise control over it. Such possession may be actual or constructive, sole or joint. Also, one may have the right to control property without having a possessory interest. In such instances, if the defendant took some action with the intent to deprive the owner of the property, and she did so knowingly and without his effective consent, the jury would be justified in returning a verdict of guilty. Anyone who is in a position to take some action that deprives the owner of property is in a position to exercise control.

"Property" means anything of value, including but not limited to money.

"Owner" means a person, other than the defendant, who has possession of or any interest . . . in property . . . and without whose consent the defendant had no authority to exert control over the property.

"Effective consent" means assent in fact, whether express or apparent

"Deprive" means: to withhold property from the owner permanently or for such a period of time as to substantially diminish the value or enjoyment of the property to the owner or . . . to dispose of property or use or transfer any interest in it under circumstances that make its restoration unlikely.

7 Tenn. Prac. Pattern Jury Instr. T.P.I.-Crim. 11.01

Lesser Included Offenses

The State and the defense concur that no lesser included offenses would be raised by the evidence under the facts of this case.

Acknowledgment

I understand the elements of the offense and the definitions that apply to the offense. I do not have any questions about any of them. I understand that my plea of guilty admits that these elements accurately describe what I did. I believe and admit that the elements and definitions taken together correctly describe what I did.

AUTHORIZED SENTENCE

I understand that the possible sentence for the charged offense, a class C felony, to which I am pleading guilty as a range I standard offender, is three (3) to six (6) years confinement in the Department of Correction and a fine of up to \$10,000.

I understand that because this is a felony and because I have a prior felony conviction, I am not eligible for pretrial or judicial diversion.

I understand that because this is a charge of theft of property \$1,000 or more, the provisions of Tenn. Code Ann. § 40-35-122 relative to sentencing alternatives for defendants who commit non-violent property offenses does not apply in this case.

I understand that I am eligible for all other sentencing alternatives stated in Tenn. Code Ann. § 40-35-104.

I understand that restitution may be a part of the sentence imposed pursuant to Tenn. Code Ann. § 39-11-118.

PROPOSED SENTENCE

The State agrees to a sentence of three (3) years in length to be served by split confinement. Ms. Gasaway is to serve forty (40) days¹ in the Henry County, Alabama² jail commencing on August 10, 2016. Upon release from confinement and expiring ninety (90) days thereafter, Ms. Gasaway is to remain at her household except that she may attend to family needs (medical appointments, school transportation), work, and church. The balance of the sentence is suspended for a period of three (3) years on probation consecutive³ to the unexpired sentence in 41400267. Assuming continued success, that sentence will be satisfied on June 23, 2019. The three-year probation in this case would then commence on June 24, 2019 and expire on June 23, 2022 assuming successful completion. The standard terms of probation apply. ~~Probation is to be transferred to the State of Alabama.~~⁴ Probation is to be unsupervised.⁵

There are no pretrial confinement credits to be applied to this sentence.

Ms. Gasaway is to make restitution to Mr. Brendan McGettigan (or to the Tennessee Lawyers' Fund for Client Protection if it has paid Mr. McGettigan's claim prior to announcement of this settlement) in the amount of \$45,283.45. Ms. Gasaway is to make restitution to Mary Cruickshank in the amount of \$2,616.10. Ms. Gasaway is also to make restitution to Michael White in the amount of \$1,305.00. Ms. Gasaway ought to receive releases from each individual for said amounts as evidence of payment and satisfaction of said debts. Restitution is to be made directly to the individual and is not to be part of court costs.

No fine is to be assessed.

¹ The intent of the State and Ms. Gasaway is to accomplish a 30-day period of confinement. Given that "day-for-day" sentences, except for those statutorily mandated, have been deemed illegal as they attempt to defeat statutorily granted credits, a sentence of 40 days is announced. See, *Morriweather v. State*, 2010 WL 27947, *2 (Tenn. Crim. App. No. M2008-02329-CCA-R3-PC, Jan. 7, 2010). With the applicable credits, the actual effective sentence will be 30 days.

² This is by agreement of the State and the authorities in Henry County, Alabama.

³ Consecutive structure is mandated by Tenn. R. Crim. P. 32(c)(3)(c).

⁴ The intent of this provision is so that the authorities in Alabama are aware of Ms. Gasaway's presence in their jurisdiction and that she is under terms of probation, albeit unsupervised. The State and Ms. Gasaway acknowledge that Alabama may not accept transfer under the Interstate Compact. Given that such event is beyond the control of the parties, Alabama's acceptance of transfer is not a condition precedent to this agreement or any of its terms.

⁵ In essence, unsupervised means that Ms. Gasaway is not obligated to report routinely to a probation officer nor is a probation officer obligated to conduct home visits. Ms. Gasaway otherwise remains subject to all conditions of probation, any violation of which would subject her to revocation proceedings.

Ms. Gasaway is to pay court costs in this matter, except that jail fees⁶ are to be waived.

As further consideration of this agreement, the State is to enter *nolle prosequi* in cases CC15-CR-1153 and CC15-CR-1154. Court costs are not to be assessed to Ms. Gasaway in those cases.

ADVICE and WAIVER OF RIGHTS

My attorney has explained and I understand that I have the following rights:

I have the right to have a lawyer represent and assist me throughout the proceedings. I have the right to hire a lawyer of my own choosing, but if I cannot afford to hire an attorney, one will be appointed to me as has been done.

I have the right to plead not guilty to the charge and to make the State carry its burden of proving that I committed the offense beyond reasonable doubt.

I have the right to remain silent and to not be forced to testify at trial. I also have the right, however, to testify at trial if I desire. Whether I testify or not is solely my decision. I will discuss this decision with my lawyer, but only I can decide whether or not to testify.

I have the right to a trial by jury. My lawyer will have the opportunity to question the potential jurors to ensure that they are impartial and otherwise suitable for service in my case. I may wish to have a trial by the judge alone without a jury. I should discuss this option with my attorney. I understand, however, that the State has a right to trial by jury, too, so that even if I want a bench trial, the State could request a jury trial.

At trial, I have the right to confront and cross-examine the State's witnesses. That is, my lawyer will have the opportunity to question the State's witnesses to point out favorable information to the jury or to discredit their testimony.

I also have the right to appeal any conviction and the sentence imposed after a trial and sentencing hearing.

I have the right to plead guilty.

⁶ Montgomery County imposes a per day charge as a jail fee in the bill of costs. The State agrees to waive that particular fee.

If I enter a plea of guilty, I waive the rights, except the right to have an attorney, stated above. In such event, there would be no trial, there would be no witnesses, and the State would not have to prove that I am guilty beyond reasonable doubt. The Court will find me guilty on my plea alone.

Because I enter a plea of guilty, I waive my right against self-incrimination, I will be placed under oath, and I will be asked about the offense to which I so plead.

Evidence of any prior convictions I may have may be considered by the judge in determining whether to accept this plea agreement.

Also, the conviction based on this plea may be used in the future to enhance the punishment for any offense I am convicted of in the future.

I can enter a plea of guilty only if I want to. No one can force me to, threaten me, or make me any promise other than what is in this written plea agreement with the State to make me enter such a plea.

By entering a plea of guilty, I also give up the right to appeal the conviction. I also give up the right to appeal the sentence because my plea is based on a specific sentencing agreement.

I understand that the Court may accept or reject this plea agreement or may defer its decision until it has had an opportunity to consider a presentence report.

I understand that if the Court accepts this plea agreement, the Court will embody in the judgment and sentence the disposition provided for in this plea agreement.

I understand that the Court is not bound by this plea agreement. If the Court rejects this plea agreement, I understand that the Court will so inform the parties and I will be permitted to withdraw this plea and that the plea, plea discussion, and any related statement will be governed by Tenn. R. Evid. 410. I understand that I may persist in my guilty plea, however, and that Court may dispose of the case less favorably than provided in this agreement.

STIPULATED FACTUAL BASIS

The State and I agree that the following facts would be sufficient for a jury to find me guilty of the offense to which I am pleading guilty. I understand that this stipulation of fact is an agreement among the district attorney, my counsel, and me that the contents of this stipulation are true and are the uncontradicted facts in this case. I cannot be forced to enter into a stipulation. I enter into it voluntarily because it is in my best interest and because I truly want to do so.

I understand that this stipulation will be used in two ways. First, the Court will use it to determine if I am, in fact, guilty of the offense to which I am pleading guilty. Second, the Court will use it to determine whether to accept this plea agreement.

I understand that a stipulation of fact ordinarily cannot be contradicted. If it should be contradicted after the Court has accepted my guilty plea, the Court will reopen this inquiry.

Everything in this stipulation is true. There is nothing in the stipulation that I do not wish to admit is true. I agree under oath that the matters contained in the stipulation are true and correct to the best of my knowledge and belief.

On or about August 8, 2014, Mr. McGettigan retained Ms. Gasaway to represent him in a personal injury matter arising from a motor vehicle accident in which he and his family were injured. Mr. McGettigan agreed to a standard contingency fee of 33% of settlement. The children were represented separately, but by Ms. Gasaway's firm. Nothing related to the children's representation, settlement, or proceeds is a part of this case. The proceeds from that settlement are not in issue.

On or about December 9, 2014, Ms. Gasaway successfully settled Mr. McGettigan's civil suit for \$100,000.00. The insurance company issued one check in the amount of \$20,835.00 directly to the healthcare provider for medical expenses. The proceeds from that check are not in issue. The insurance company issued a second check for the balance of the settlement in the amount of \$79,165.00 to the Gasaway Law Firm.

The firm received that check on or about January 28, 2015. Ms. Gasaway deposited that check on or about February 2, 2015 into the firm's trust account.

In accordance with Mr. McGettigan's retainer agreement, the firm was entitled to 33% of the settlement as its fee for representing him. The firm's fee, then, was \$33,333.33. That amount of the proceeds is not in issue. The balance of the settlement, \$45,283.45, was Mr. McGettigan's share of the settlement proceeds. This is the amount of the settlement that is in issue.

Trust account bank documents demonstrate that the \$79,165.00 settlement check was deposited on February 2, 2015. Trust account bank documents demonstrate that \$548.21 was disbursed to cover additional medical bills on Mr. McGettigan's behalf.⁷ Trust account bank documents demonstrate that no disbursements were made to Mr. McGettigan, despite Mr. McGettigan repeatedly pleading through telephone and electronic mail communication with Ms. Gasaway and her office staff for disbursement of funds. Instead, between February 2, 2015 and the closure of the trust account in

⁷ Check 3249 payable to Nashville Adjustment Bureau for \$441.21; Check 3250 payable to Vanderbilt Medical Group for \$107.00.

August of 2015, over \$50,000.00 was transferred from the law firm's trust account to the law firm's operating accounts.⁸ The remainder of the funds appear to have been spent from the law firm's trust account to satisfy obligations to other clients. In that same time frame, Ms. Gasaway received draws from the law firm's operating account in excess of \$85,000.00,⁹ despite this account often having a negative balance.¹⁰ The payments to Ms. Gasaway were deposited into a personal account in the name of Ms. Gasaway's husband along with income from other sources. This money was then spent on personal expenditures such as utilities, monthly bills, shopping trips, travel, meals, and household expenses.

While Ms. Gasaway initially obtained Mr. McGettigan's funds in the normal course of business and with his effective consent, at some point she exercised control over those funds outside of the normal course of business and without his effective consent. Mr. McGettigan was and is the owner of \$45,283.45 of the \$100,000.00 settlement. Ms. Gasaway obtained and thereafter exercised control over Mr. McGettigan's portion of the settlement. Mr. McGettigan did not consent to Ms. Gasaway using his funds. Nonetheless, Ms. Gasaway intentionally used Mr. McGettigan's funds. In so doing, Ms. Gasaway withheld the funds from Mr. McGettigan for such a period of time as to substantially diminish the value or enjoyment of the property. Also, given that Ms. Gasaway was in bankruptcy, her use of the funds was a circumstance that made the funds' restoration to Mr. McGettigan unlikely.

CONCLUSION

I have read this document thoroughly before signing it. I understand the contents of this plea agreement. I fully understand all the terms of this plea agreement and how they affect my case. I fully understand the meaning and effect of my plea of guilty. This plea agreement contains all the understandings or agreements that I have in this case. I am pleading guilty not only because I hope to receive a lighter sentence,

⁸ In addition to the \$79,165.00 McGettigan settlement, about \$52,667.74 related to other cases was also deposited into the firm's trust account during the relevant period. However, each and every month during the relevant time period the expenses for each particular month exceeded the deposits made into the account for that month. As a result, it is clear from the records that a portion of the McGettigan money was spent every month until then McGettigan money was completely consumed as to both Ms. Gasaway's earned fee of \$33,333.33 and to the \$45,283.45 owed to Mr. McGettigan. What is certain and of relevance to this case and charge, irrespective of the disposition of any other funds, is that Mr. McGettigan received no disbursement of any portion of the \$45,283.45 to which he was entitled.

⁹ These draws occurred February through May, 2015, a four month period, a monthly net income of \$8750.

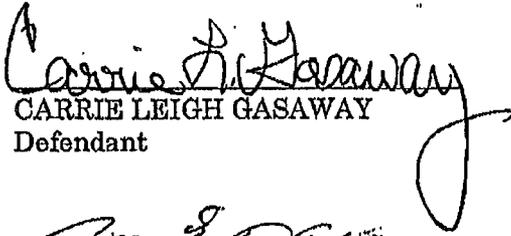
¹⁰ It should be noted, however, that the firm's operating account was covered by overdraft protection to ensure that overdraft items would be paid. With the exception of two items in May 2015 that were returned to the presenter, all drafts written on the account were honored by the bank when presented.

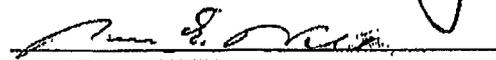
but also because I am convinced that I am, in fact, guilty. I understand that even though I believe I am guilty, I have the legal right to plead not guilty and to place upon the government the burden of proving my guilt beyond a reasonable doubt.

I am pleading guilty and entering into this plea agreement voluntarily and of my own free will. No one has made any threat or tried in any way to force me to plead guilty or to enter into this agreement. No one has made any promises to me that is not written into this agreement in an attempt to get me to plead guilty.

I have had enough time to discuss this case and this plea agreement with my lawyer. I have, in fact, consulted fully with my lawyer and have received the full benefit of his advice. I am satisfied with his advice concerning this case and this plea agreement and am satisfied that his advice is in my best interest. I am generally satisfied with my lawyer.

I, therefore, voluntarily and of my own free will and choice and without any threats made upon me and without any promises being made to me other than what is stated above, and being fully aware of the action I am taking, I do hereby request the Court to accept my plea of guilty to the charges set forth above. Furthermore, I waive my right to a trial by jury and submit my case to the Trial Judge for full and final determination. These actions are concurred in by the District Attorney General.

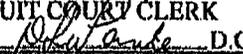

CARRIE LEIGH GASAWAY
Defendant

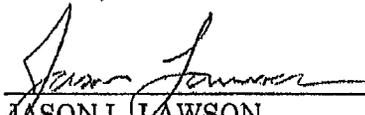

ROGER E. NELL
Attorney for Ms. Gasaway

STATE'S CONCURRENCE

The State of Tennessee concurs in this plea agreement. The State concurs in and agrees to the stipulation of fact. The State has fully consulted with and informed the victims. They are aware of the terms of this plea agreement, are aware of the date, time, and location of court proceedings. They have been afforded the opportunity to attend, to submit an impact statement, and to testify if they so desire.


TOM P. THOMPSON
Attorney for the State

FILED
7/28, 2016 9:41 A.M./P.M.
CHERYL J. CASTLE, CLERK
CIRCUIT COURT CLERK
BY:  D.C.


JASON L. LAWSON
Attorney for the State

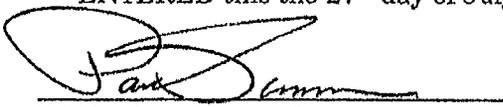
COURT'S ACCEPTANCE

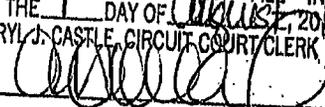
The Court finds that the defendant's plea of guilty is made voluntarily and with full knowledge of its meaning and effect. The Court further finds that the defendant has knowingly, intelligently, and consciously waived her rights against self-incrimination, to a trial of the facts by a jury, and to be confronted by the witnesses against her. Accordingly, the defendant's plea of guilty is accepted.

Further, the Court finds that the plea agreement serves the interests of justice and is, therefore, accepted.

The terms of this plea agreement shall be incorporated in the judgment of the Court.

ENTERED this the 27th day of July, 2016.


PAUL G. SUMMERS
Senior Judge
Sitting by designation

STATE OF TENNESSEE, MONTGOMERY COUNTY
I, CHERYL J. CASTLE, CLERK, DO HEREBY CERTIFY THAT
THE FOREGOING IS A TRUE AND CORRECT COPY OF THE
ORIGINAL INSTRUMENT ON FILE IN THIS CASE.
THIS THE 27th DAY OF JULY, 2016
CHERYL J. CASTLE, CIRCUIT COURT CLERK
BY:  D.C.