

## STATE'S SUPPORTING MEMORANDUM AND ARGUMENT

We disagree with the Court's findings and reasoning in its order that a skilled nursing facility administrator's decision to remove elderly and disabled residents away from potentially harmful or deadly heated conditions "needed to be informed by medical principles." Neither the law nor the facts in evidence support this finding and reasoning. Moreover, the Defendant's decision not to evacuate residents from the facility is not singularly the State's legal or factual basis or theory in filing this case against the Defendant, in its decision to go forward with this case against the Defendant alone, or in offering the record evidence presented in its case-in-chief. Instead, the Court's finding, as a matter of law, is erroneous and a disputed factual proposition provided by the defense. Clearly, it is a genuine factual question for the jury's consideration if viewed by this Court according to the evidence and its reasonable inferences "in the light most favorable to the state."

On the contrary, we have established that moving such residents away from potential heat injury or likely death is a "management decision," not a "medical decision." This case concerns the Defendant's deadly management "course of conduct" following Hurricane Irma's massive damage to the internal utilities at the Rehabilitation Center at Hollywood Hills (from now on, the "Center"). Hurricane Irma caused substantial internal disasters to thousands of structures and millions of FPL customers across our State, which is not an uncommon nor unexpected phenomenon of hurricanes. This case is not about Defendant's medical knowledge or making medical decisions. Instead, it is about Defendant's multiple culpably negligent management acts and omissions following the storm. We have maintained this position throughout the testimony and exhibits presented during our case-in-chief. Moreover, we vigorously argued that point in response to the Defendant's Motion for Judgement of Acquittal (after this, "JOA").

First, the Court’s reliance on the “foreseeability” case(s) cited in its order is misplaced or misinterpreted. The first case cited in the Court’s ruling, *Todd v. State*, 594 So. 2d 802 (Fla. 5<sup>th</sup> DCA 1992), deals with the legal causation of death (i.e., the *foreseeability element of causation*) from “human actions or inactions,” not the definition of culpable negligence. The State established in its case-in-chief that heat exposure was the cause of or significantly contributed to the deaths of the deceased residents charged in the Information. Sustained exposure to high heat temperatures for elderly or disabled persons is substantially more likely to cause serious bodily injury or death than for the average adult population. Every reasonable person, with or without medical knowledge or training, knows or should know the likelihood this could happen – especially a skilled nursing facility administrator charged with its residents’ health, care, and safety of elderly residents. Whether someone without medical and healthcare training or with such training could knowingly perceive or medically foresee the ultimate result (i.e., when or would was about to happen) is not the test for culpable negligence in this case. The correct criteria for culpable negligence are that one must have known or reasonably should have known the continued exposure and the failure to remove any particular resident from such conditions is likely to cause death (potentially of a single resident, not nine (9)) or great bodily injury (even to one resident, not nine (9)). The other “foreseeability” case cited in the Court’s order, *J.C. v. State*, 233 So. 3d 519 (Fla. 2d DCA 2018), squarely supports this proposition, which the State’s maintains and argues in opposing the Defendant’s JOA.

Furthermore, the Court incorrectly noted in its order the State’s reliance on *Pethel v. State*, 177 So. 3d 631 (Fla. 2d DCA 2015) and *Maynard v. State*, 660 So. 2d 293 (Fla. 2d DCA 1995). The Defendant, not the State, cited *Pethel* and *Maynard* as case authority in his written JOA motion to support the erroneous claim that “foreseeability” is embedded within the definition of culpable

negligence. Yet, the State presented those cases to the Court and argued at the JOA that they did not support the Defendant's claim.

Second, a "shelter in place" decision before the storm and the Defendant's pre-storm preparations is irrelevant evidence to the Defendant's post-storm conduct and is not the focal point of the State's allegations in the charging document. Third, the fact that Defendant tried his "best" or did his "best" following the Center's loss of AC is not a legal defense or excuse if Defendant's "best" included and amounted to culpable negligence. Finally, after losing AC power for nearly four (4) days, the Defendant's failure, with or without medical knowledge or training, to consider all available reasonable alternatives, including partial or total evacuation or transfers to other skilled nursing facilities or hospitals, or simply moving patients from the second to first floor of the facility, is not the only matter relevant to the Defendant's reckless emergency management following Hurricane Irma's effects. Instead, the disputed facts now before the jury regarding the Defendant's "culpable negligence" are as follows:

- 1) The Defendant grossly and flagrantly neglected to train the personnel that he left in charge of caring for the residents in the proper execution of the Center's longstanding internal disaster emergencies Standards of Operation (i.e., the nursing home's Comprehensive Emergency Management Plan known as the "CEMP," which is in evidence); or
- 2) Defendant was grossly unprepared and flagrantly incompetent in executing the Center's emergency plan for losing AC power; or
- 3) The Defendant was fully aware of the residents worsening conditions through a corporate WhatsApp group chat hours before the residents began "dropping like flies" and was motivated by RUGS money and corporate profit to keep weak, vulnerable, and helpless residents in the Center's

deadly worsening heated environment; thus, the Defendant recklessly showed an utter disregard for the life or the safety of the residents under his care by continuing to expose them to the well-known dangerous consequences of an increasingly heated environment; or

4) The Defendant committed grossly negligent acts and omissions in his attempt to provide optional cooling sources for the Center, i.e., grossly inadequate spot coolers and fans, showing an utter disregard for the safety of others in managing a commonly occurring consequence of hurricanes – loss of AC. This overtly active decision only worsened the second floor’s heated environment, where all nine (9) deceased residents charged in this case resided or died. Together or alone, these facts create factual issues for the jury’s determination on the culpable negligence issue. It is not a legal conclusion this Court should make as a matter of law.

At this stage in the trial, the law obligates the Court to view the evidence presented in the light most favorable to the State. Based on the law, testimony, and exhibits, a reasonable jury could find the Defendant’s comprehensive post-storm course of conduct, actions, or omissions amounted to the Defendant’s culpable neglect causing the deaths charged in the Information. Defendant’s lack of medical knowledge does not give him a lawful license to engage in gross and flagrant criminally negligent conduct. Based on the record evidence, the law requires this Court to deny the Defendant’s JOA motion.