Dated 9 days late
OK
EJW

IN THE SUPREME COURT

of

THE STATE OF FLORIDA

ALEXANDER DRAGOVICH,
APPELLANT,

vs

STATE OF FLORIDA,
APPELLEE.

CIRCUIT CRIMINAL
NOS. 82-8951 &
83-1636

APPEAL NUMBER
65,382

ON APPEAL FROM THE CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT OF FLORIDA,
IN AND FOR PINELLAS COUNTY.

APPELLANT'S INITIAL BRIEF

JOHN THOR WHITE
Attorney for Appellant
P.O. Box 10096
St. Petersburg, FL 33733
(813) 327-2682
SPN00000168

TABLE OF CONTENTS

TABLE OF CITATIONS

STATEMENT OF THE CASE AND FACTS

Appellant, Alexander Dragovich, was convicted in the Circuit Court, Pinellas County, William L. Walker, Judge, on one count of first-degree murder (R. 266) and one count each of armed robbery (R.267) and armed burglary (R.268). The Appellant was sentenced to death for the first-degree murder (R.297) and to a forty year sentence for the armed robbery with the Court retaining jurisdiction for one-third of the sentence (R.274) and to a consecutive forty year sentence for the armed burglary, also with a one-third retention of jurisdiction (R.275-276).

Appellant appeals his adjudication of guilt in each case and his sentence of death. The Supreme Court of the State of Florida has jurisdiction pursuant to article V, section (3)(b)(1), Florida Constitution.

Testimony and evidence at trial was adduced to the following effect:

On April 20, 1982, two men wielding guns surreptitiously entered the Clearwater, Florida residence of the decedent Wally Baskovich and his wife. The decedant and his wife were separated with the wife being forced into a bathroom while the husband was required to lie down on the floor. One of the intruders searched portions of the home and stole various items of jewelry and money while the other fatally shot the decedant with two shots into the back of his head at close range. The wife was struck on the head, but was otherwise unharmed (R. 2101-2118). Either shot would have caused death (R.2145). One of

the intruders told the decedant's wife:

> "You are a lucky lady."
> (R.2111)

The decedant was a restaurateur with substantial business holdings in Clearwater and New Port Richey, Florida. He had previously lived in Gary, Indiana, and had moved to Clearwater in the fifties. His wife's sister was married to Appellant who had also moved to Clearwater from Gary and who had for a period of time resided with his wife in the home of the decedant and his wife, but at the time of the murder the two families lived in separate residences. The Appellant was unemployed and was living on social security. (R.2217-2229; 2234-2246; 2246-2270).

Various witnesses testified to finding discarded items used during the commission of the crimes or stolen from the victims' residence; such as surgical gloves (R.2162), a blue vinyl bag (R.2167), a small jewelry box (R.2174), a pistol (R.2177), and the victim's wallet (R.2186).

The victim's son testifed that Appellant had bragged some years ago that he could have someone killed (R.2300). Another witness testified that the Appellant was upset upon learning that the decedant did not have insurance on various loans encumbering his businesses (R.2352).

One print on a jewelry box was identified as being that

of one Melvin Nelson (R.2375; 2383). A witness from Gary was able to identify the discarded pistol as having been stolen from him in Gary in 1977. A firearms expert testified that he examined rounds test fired from that pistol and compared them to the spent rounds found in the victim. He opined that the discarded firearm could have been the murder weapon (R.2398).

As the Appellant developed as a suspect, phone tolls from his residence prior to and immediately after the homicide were subpoenaed and reviewed by law enforcement. These records were placed into evidence (R.2415). These phone tolls revealed numerous calls to one Robert Echols in Gary, Indiana prior to the murder and at least one call on the morning following.

Relevant phone records of Robert Echols were likewise obtained and were placed into evidence at trial (R.2435). These confirmed a great number of conversations betwen the Echols' residence and that of Appellant's.

The discarded items aforementioned suggested a possible escape route from the victims' residence to the Tampa International Airport. Accordingly, a check of airport rental records was undertaken. One car rental contract was discovered dated April 20, 1982 in the name of Echols. The mileage thereon was noted at 58 miles (R.2445-2446). A test run by police determined that the actual mileage from the Tampa Airport to the motel where the murderers were suspected of having stayed to the victims' home and back to the airport was just over 57 miles (R.2649).

Local law enforcement contacted police in Gary in an effort to obtain a photo of Echols for possible identification by the decedant's surviving wife (R.2472). A Leonard Adams was contacted because it was believed that he was Echol's son-in-law and that he could therefore obtain the desired photograph.

Although he was unable to secure a photo, Adams (a sometime private investigator) made two surreptitious tape recordings of conversations between himself and Echols concerning the Florida homicide. These tapes were placed into evidence at trial (R.2516 and 2556).

In relating the circumstances surrounding his making of the tapes, Adams noted that Echols also produced newspaper articles concerning the Florida murder (R.2499). The tapes revealed to the jury that Echols was privy to the fact that the victim had a wooden leg (R.2507) and that Echols was to be paid by Appellant for killing the victim by being hired as manager of condominiums which Appellant planned to build in Gary in the future (R.2508). Echols noted that the victim's wife was left alive so that Appellant, through her, could get involved in the estate of the victim (R.2508).

On tape Echols also indicated that Appellant had to feign mourning like others of the victim's family (R.2537). Echols also stated that two prior attempts to kill the victim had been aborted at the last minute (R.2540-2542). Additional payment for the killers was to come from the "scrappings" or money and jewelry found at the crime scene (R.2544). It was originally

believed by the murderers that $30-$50,000 was hidden in the home (R.2544).

The second tape of Echols-Adams conversations identifed Melvin "Mad Dog" Nelson as the actual trigger man (R.2553). It was revealed in this tape that Nelson was displeased with the minimal "scrappings" actually recovered during the crime (R.2554). Echols noted that the killers only got $1,000 from the victim's wife (R.2562) and four or five hundred dollars more from the victim's pocket (R.2561).

It is to be noted that when Echols was arrested for this homicide his wallet contained the phone number of Appellant (R.2645). Also, a newspaper article concerning the Florida murder was located in his residence (R.2667) as well as a rental car bumper sticker from Clearwater (R.2673) and a Clearwater rental car contract (R. 2674; 2676; 2685).

Echols was called as a potential witness at trial, but he refused to testify on advice of counsel (R.2704-2712). The Court made a finding that he was therefore unavailable to either side as a witness (R.2850).

A handwriting expert identifed the signature on three car rental contracts as being that of Echols (R.2720).

Local law enforcement having focused upon Appellant as being the person who hired Echols and Nelson to murder the victim now created a ruse to get Appellant to talk about the crime. This plan called for Leonard Adams to call Appellant for the purpose of arranging a meeting with an emissary of Mad Dog Nelson's

(actually an undercover officer). The meeting was arranged to take place in a YMCA parking lot for the purpose of discussing Nelson's money problem arising from the dearth of "scrappings."

Three meetings took place; each was video taped. The tapes were shown to the jury (R.2734) and were placed into evidence (R.2727-2728). Appellant was arrested at the conclusion of the third meeting (R.2792).

During the first meeting Appellant made incriminating statements concerning payments to Echols for his role in the killing (R.2744; 2747; also see tapes) and he made reference to the fact that the job was done (R.2750) and he admitted owing Echols money (R.2771). Appellant is also heard commenting upon the contemplated condo project (see above)(R.2771) and in regard to Nelson's problem he claimed that that was Echols' responsibility (R.2780).

After his arrest Appellant was read Miranda Rights (R.2798-2799) which he acknowledged.

Appellant's post-arrest interrogation was also video taped and a portion of that tape was played for the jury (R.2808; 2810; 2839). The tape so played was abbreviated so as not to reveal Appellant's taped request for an attorney with the jury simply being instructed that the missing portion had no evidentiary value (R.2814). This interview was terminated, but during transport Appellant volunteered to the transporting officer that he would not likely see trees again (R.2816). Appellant was also quoted as volunteering during booking a

comment to the effect that the police had done a good job (R.2817).

During this taped interview the Appellant also gave an exculpatory account of the parking lot meetings (R.2820) and he offered that payments to Echols were simply for a bad check (R.2822). He further opined that oil people or others could have killed the victim (R.2824).

The state profferred testimony concerning why the aforementioned volunteered statements were not taped, i.e. questioning had stopped and the officer had no reason to have a recorder during transportation or booking (R.2840). In support of the proffer Appellee argued that Appellant's counsel had "opened the door" (R.2841).

Appellant objected to the proffer (R.2840) which said objection was overruled and the proffer went before the jury. Appellant objected to this testimony and moved for a mistrial which was denied (R.2846;1301;1333). The witness, inter alia, testified that questioning was stopped because Appellant had requested an attorney (R.2845).

The Appellee having rested, the Appellant moved for a directed verdict of acquittal which was denied (R.2856).

Appellant then called various friends and family members to vouch for Appellant's good character (R.1348-1469).

In rebuttal the Appellee called a Gary, Indiana attorney who advised that he had discussed a Gary condo project with Appellant in 1982 (R.3246-3247). The Appellee then rested

(R.3259).

In closing argument Appellee again made reference to the fact that interrogation ceased when Appellant requested an attorney. The comment was objected to and the objection overruled (R.3351).

Jury instructions were read (R.3457-3483) and jury verdicts of guilty as to all charges were returned (R.3514-3415).

During the penalty phase Appellant called a variety of family and friends to comment on his good character as a family man and as a provider (R.3544-3626). Appellant and Appellee stipulated into evidence the Appellant's clean "Rap Sheet" (R.3593).

In aggravation Appellee called the son of the victim who testified that of his own personal knowledge Appellant had had an affair and over objection (R.3633) he testified that in his opinion Appellant was known in Indiana as an arsonist (R.3634).

Appellee called the victim's daughter who testified over objection that she heard a Mr. Moon say that he heard Appellant say he was going to burn down one of his businesses (R.3641) and also over objection that Appellant was known as "The Torch" (R.3642). Also over objection the witness was permitted to opine that Appellant should be electrocuted (R.3643).

The Appellee also called a son of the victim who testified over objection that Appellant had a reputation as an arsonist (R.3646) and likewise over objection that he deserved

the chair (R.3649-3650).

Detective Kaminskas, Chief Fire Inspector in Gary testified that he had personal possession of records of arson investigations relating to several fires in Gary (R.3665) in which Appellant was a suspect (R.3663). Appellant objected to introduction of those reports (R.3666) and they were merely marked for identification (R.3672); however, Appellant felt compelled to object to Appellee's waving of the reports in front of the jury (R.3680). Appellant moved to strike this witness' testimony as improper rebuttal (R.3682), but was overruled (R.3683). This witness gave testimony regarding the explosive effect of 55 gallon drums of gasoline over objection (R.3685-3686). On cross-examination it was revealed that Appellant was never convicted for any of these arsons (R.3689). Appellant moved to strike this testimony (R.3703); motion denied (R.3705). This testimony was highlighted in Appellee's closing argument when it was argued that Appellant was involved in six arsons (R.3726).

The jury recommended death 8:4 (R.295).

The Court found multiple aggravating circumstances (R.370-374) and no mitigating circumstances (R.375-376); including no establishment of Appellant's lack of prior criminal history.

Prior to trial Appellant had moved for recusal of the trial judge (R.111-122); the motion being denied (R.126).

After trial Appellant moved for a new trial which was DENIED (R.227).

SUMMARY OF ARGUMENTS

Appellant contends that he is entitled to a new trial by reason of the assigned trial judge's failure to recuse himself upon Apellant's timely and legally sufficient motion for disqualification.

Appellant is entitled to a new trial based upon a Miranda violation occasioned by Appellee's presentation of testimony before the jury to the effect that interrogation ceased upon Appellant's request for counsel.

Appellant is entitled to a new trial because jurors excused under the Witherspoon doctrine denied him a jury representing a fair cross-section of the community during the guilt phase of his trial and furthermore, the jury thus impaneled was conviction-prone and therefore not impartial.

Appellant is entitled to a new sentencing hearing because during the sentencing phase testimony and arguments, repeated references were made to hearsay statements and investigative reports depicting Appellant as an arsonist with the nickname of "The Torch," notwithstanding the fact that Appellant had no prior convictions for arsons or for any other crimes.

FIRST ISSUE ON APPEAL:

WHETHER THE TRIAL COURT ERRED IN DENYING APPELLANT'S "MOTION FOR DISQUALIFICATION OF JUDGE."

On September 16, 1983, Appellant filed a "Motion For Disqualification of Judge;" the said Motion being accompanied by Affidavits of three (3) residents of the State of Florida who were unrelated to Appellant together with Appellant's trial counsel's certificate of good faith (R.111-122). Trial commenced more than ten (10) days later on March 15, 1984 (R.2030) at which time the jury was sworn (R.2050). The said Motion was denied for being without legal sufficiency (R.126).

In Livingston v. State, 441 So. 2d 1083, (Fla. 1983) the case was remanded for a new trial because the judge erred in failing to recuse himself. In so holding the Court stated (at page 1086):

> "...case law of this Court, which holds that a party seeking to disqualify a judge need only show a well grounded fear that he will not receive a fair trial at the hands of the judge. It is not a question of how the judge feels; it is a question of what feeling resides in the affiant's mind and the basis for such feeling.

The Court further stated that technical requirements for affidavits need not be strictly complied with, provided that as a whole they are sufficient to warrant a justified fear that the movant will not receive a fair trial by the assigned judge.

The test suggested by Livingston (id) is a reasonably prudent man test. The Court noted that such motions are

particularly important in first-degree murder cases because the trial judge is involved in the sentencing decision wherein life is at stake.

The Court further noted that sect. 38.10, Fla. Stat. (1983) provides the right to disqualification, whereas Fla. R. Crim. P. 3.230 controls the actual process of disqualification.

In Jones v. State, 446 So. 2d 1059 (Fla. 1984) the Court addressed a similar motion and reaffirmed the test for legal sufficiency of affidavits set forth in Livingston (supra).

In Bundy v. Rudd, 366 So. 2d 440 (Fla. 1978) the Court granted a writ of prohibition based upon a motion for disqualification. That opinion states that the judge shall not rule on the truth of the allegations nor adjudicate the question of disqualification. The trial judge is limited to the bare determination of legal sufficiency and when he goes beyond that point he exceeds the proper scope of his limited inquiry and on that basis alone establishes grounds for disqualification.

Appellant contends that his Motion was in substantial compliance with the statute and rule above-cited and further that the Motion and affidavits of Appellant are legally sufficient under the test enunciated in Livingston (supra). Appellant is therefore entitled to a new trial by reason of the improper denial of the said Motion.

SECOND ISSUE ON APPEAL:

WHETHER THE TRIAL COURT ERRED IN PERMITTING REFERENCES TO BE MADE IN THE PRESENCE OF THE JURY TO APPELLANT'S EXERCISE OF HIS RIGHT TO COUNSEL.

After his arrest the Appellant was read standard Miranda rights (R.2798-2799) in accordance with Miranda v. Arizona, 384 US 436, 86 S.Ct. 1602, 16 L.Ed. 2nd 694 (1966). The Court found that his subsequent statements were freely and voluntarily given (R.2802). A video tape of the Appellant's custodial interview was played for the jury (R.2808), although the portion thereof during which Appellant requested an attorney was deleted (R. 2810-2820 and R.2839). Det. Fire, one of the interrogating officers, testified concerning post-Miranda statements (R.2799-2830). Appellee announced to the Court that counsel for Appellant had "opened the door" during cross-examination of this witness so as to allow Appellee to examine the witness about why he didn't reinitiate questioning after Appellant had requested an attorney (R.2830). This announcement was apparently based upon a question on cross-examination, to wit:

> Q. "Did you have a tape recording in the automobile that was running at the time these statements were made by Mr. Dragovich?"
>
> A. "I did not."

> Q "Do you have a tape recording available to you as a detective?"
>
> A. "Yes, I do."
>
> Q. "Was it with you in the automobile at the time these statements were made?"
>
> A. "No, it wasn't." (R.2818)

The Court agreed that the door to the proposed inquiry had been opened (R.2837). A proffer of the inquiry was had (R.2838). Appellant objected to the proffer of testimony to the effect that no tape recorder was used in the car because Appellant had asked for an attorney and questioning had ceased (R.2840). Further objection was made by Appellant (R.2843). The testimony was ultimately allowed (R.2844-2850). Appellant moved for a mistrial which was denied (R.2846). During Appellee's closing argument he alluded to the same testimony:

> "...and after the interview with Det. Fire, the part they say that Det. Fire should have taped, even though he told you legally that he wasn't supposed to, because after he visited with his attorneys, Det. Fire's not allowed to ask any more questions, but if he talks, then that can be used against him."

Appellant again moved for a mistrial which was denied (R.3351).

Appellant contends that the foregoing testimony and final argument comments were not invited by Appellant and further that they constituted unlawful comments upon his termination of the interview by requesting an attorney. Miranda (supra) (384 US at p.445) states:

> "...the mere fact that the (defendant) may have answered some questions ...does not deprive him of the right to refrain from answering any further inquiries..."

Simpson v. State, 418 So. 2d 984 (Fla. 1982) which reaffirmed Willinsky v. State, 360 So. 2d 760 (Fla. 1978) and clarified Clark v. State, 363 So. 2d 331 (Fla. 1978), held that the harmless error doctrine does not apply where the silence of the accused is disclosed.

Accordingly, Appellant is entltled to a new trial based upon this violation of Miranda (supra).

THIRD ISSUE ON APPEAL:

WHETHER THE COURT ERRED IN ALLOWING APPELLEE TO CHALLENGE JURORS B. PAULEY AND T. MOSHER FOR CAUSE.

Juror B. Pauley stated that she was against the death penalty (R.1701) and that her beliefs would prevent her from recommending the death penalty (R.1704), but also that she could follow the law in the guilt phase of the trial (R.1704). Under further questioning she opined that she would probably be influenced in the guilt phase (R.1707 and R.1711). Then the juror stated she thought she could return a guilty verdict if the Appellant was guilty (R.1716). The Appellee challenged the juror for cause (R.1717) and Appellant announced that he disagreed with Appellee's contention (R.1717). The Court granted the challenge for cause (R.1718).

Juror Mosher stated he couldn't vote for death under any circumstance (R.1733-1734); but he had no problem with the guilt phase (R.1734). Appellee challenged Mosher for cause (R.1739). Appellant objected (R.1747). The Court granted the challenge for cause (R.1749).

Witherspoon v. Illinois, 391 US 510, 88 S. Ct. 1770, 20 L.Ed. 2d 776 (1968) was interpreted by Herring v. State, 446 So.2d 1049 (Fla. 1984) as setting forth a two-pronged test. A juror, therefore, may be properly challenged for cause if the juror will (1) automatically vote against the death penalty

or (2) if she/he would be biased during the guilt phase by reason of his/her attitude toward the death penalty. The Herring (supra) Court noted that Witherspoon (supra) violations void sentences and not convictions.

Appellant acknowledges that both jurors, Pauley and Mosher, appear to fail the Witherspoon (supra) test and under that doctrine may be properly challenged for cause.

Appellant, however, contends that exclusion of jurors who are against the death penalty creates a jury which is not a fair cross-section of the community contrary to the 6th and 14th Amendments of the U. S. Constitution.

Appellant urges this Court to adopt the rationale of Grigsby v. Mabry _____ F.2d _____ No. 83-2113 (8th Cir., January 30, 1985) referred to in Ruiz v. Lockhart, 754 F.2d 254 (8th Cir., 1985). The Grigsby (supra) Court reversed the defendant's conviction and sentence of death as did the Ruiz (supra) decision because the Court held that the exclusion of jurors with absolute scruples against the death penalty creates a conviction-prone jury that is not a representative cross-section of the community and which is not impartial on the issue of guilt or innocence.

In Woodard v. Sargent, 753 F.2d 694 (8th Cir., 1985) the Court held that the Grigsby (supra) rule was retroactive because it directly affects the truth-finding function of the jury.

The Ruiz (supra) decision citing Grigsby (supra) and

Tumey v. Ohio, 273 US 510 (1927), 47 S.Ct. 437, 71 L.Ed. 749 (1927), further held that no actual prejudice need be shown because the integrity of the entire jury system is affected.

If this theory proposed by Appellant is adopted, Appellant must be accorded a new trial.

FOURTH ISSUE ON APPEAL:

WHETHER THE COURT ERRED IN ADMITTING EVIDENCE IN THE PENALTY PHASE CONCERNING APPELLANT'S BEING A SUSPECTED ARSONIST.

During the penalty phase Appellant called a variety of friends and family members to vouch for his being a good family man and provider (R.3544-3626). Appellant and Appellee stipulated into evidence a "rap sheet" showing that Appellant had no prior arrests or convictions (R.3593).

In aggravation Appellee called the victim's son who over objection was permitted to testify that Appellant was known in Indiana as an arsonist (R.3634). Appellee also called a daughter of the victim who over objection was permitted to testify that she heard a Mr. Moon state that he heard Appellant say that he was going to burn down one of his businesses (R.3641).

Appellee also called Det. Kaminskas, Chief Fire Inspector of the Gary Fire Department. He testified that he had personal possession of records relating to six arsons in Gary in which the Appellant was a suspect (R.3665-3666). Appellee declined to introduce the arson reports into evidence when Appellant objected (R.3666) and the reports were marked for identification only (R.3672). Nevertheless, attention was called to the existence of the reports by the Appellee who waved the reports about during trial (R.3680) and by the witness' reference

to the Appellant's taped statement in the file (R.3684). Appellant objected to this testimony and moved to strike (R.3682), but was overruled (R.3683).

Appellant also objected to the detectives testimony regarding the explosive potential of 55 gallon drums of gasoline (R.3685-3686). Cross-examination revealed Appellant was never arrested for those arsons (R.3689). Appellant again moved to strike this testimony (R.3703), but the motion was denied (R.3705). This prejudicial testimony was highlighted by Appellee in closing penalty-phase arguments (R.3726). It is noteworthy that the detective referred to the contents of the reports not in evidence when he stated that accelerants were used to start the fires (R.3665) and that fixtures were removed just before the arson (R.3666 and 3678).

Appellant contends that this testimony was highly prejudicial. Sect. 921.141(1), Fla. Stat. (1983) allows evidence regarding the character of the Appellant regardless of its admissibility under exclusionary rules provided the Appellant has the opportunity to fairly (emphasis added) rebut the hearsay statements.

In Provence v. State, 337 So. 2d 783 (Fla. 1976) it was held that sect. 921.141(5) Fla. Stat. clearly intends the exclusion of mere arrests and accusations as factors in aggravation.

In Perry v. State, 395 So.2d 170 (Fla. 1981) the Court held that it was error to show pending charges for which the

Appellant had not been convicted.

The Court in Elledge v. State, 346 So.2d 998 (Fla. 1971) noted that since one doesn't know if impermissible aggravating factors affected the jury's recommendation of death the cause had to be remanded for resentencing.

Porter v. State, 400 So.2d 5 (Fla. 1981) resulted in a remand for resentencing because depositions not in evidence were considered by the Court.

In Odom v. State, 403 So.2d 936 (Fla. 1981) written findings showing the Court considered a prior record not culminating in convictions was likewise remanded because mere arrests were held to be inadmissible as not being one of the enumerated aggravating circumstances.

The Court in Gardner v. Florida, 430 US 349, 51 L.Ed. 2d 393, 97 S. Ct. 1197 (1977) held that the use of information in confidential pre-sentence investigation reports was violative of due process because the Appellant had no oportunity to deny or explain the basis for the information.

Likewise, in Cole v. Arkansas, 333 US 196, 92 L.Ed. 645, 68 S.Ct. 514 (1948) the Court held that the use of information which was never incorporated into the adversarial process was violative of due process.

Clearly the aforementioned testimony concerning reputation for arson and arson investigation reports could not be effectively confronted or explained by Appellant contrary to the cited case law. Appellant's cause must therefore be remanded for resentencing.

CONCLUSION

Appellant's "Motion for Disqualification of Judge" was improperly denied for want of legal sufficiency. The motion was legally sufficient in form and in substance and the allegations therein would have caused a reasonably prudent man to be fearful of not receiving a fair trial by the assigned judge. Appellant's conviction must therefore be reversed.

Highly inflamatory and prejudicial comments concerning Appellant's reputation as an arsonist were made during the penalty phase. Despite the fact that Appellant had no prior criminal record, the trial court found no mitigating circumstances, in part because of the improperly admitted hearsay evidence concerning suspected arsons by Appellant. This cause must be remanded for resentencing without this prejudicial testimony.

The exclusion for cause of jurors pursuant to the Witherspoon test caused Appellant to be judged by a conviction-prone jury which was not a representative cross-section of the community. Appellant should be accorded a new trial where anti-death penalty jurors cannot be challenged for cause.

The Miranda violation asserted by Appellant requires a new trial without evidence of Appellant's request for an attorney.

CERTIFICATE

of

SERVICE

I HEREBY CERTIFY that an original and seven (7) copies hereof have been served upon the Supreme Court of the State of Florida by U.S. Mail and one (1) copy hereof has been furnished to the Hon. Jim Smith, Attorney General (Tampa Office) by hand delivery on this 17th day of April, 1985.

JOHN THOR WHITE
Attorney for Appellant
P.O. Box 10096
St. Petersburg, FL 33733
(813) 327-2682
SPN00000168