O/a 11-5-85

IN THE

SUPREME COURT OF FLORIDA

CASE NO. 66,436

JAMES REAVES,

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.
_____/

INITIAL BRIEF OF PETITIONER

ON DISCRETIONARY REVIEW FROM THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT, CASE NO. 82-1493

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INTRODUCTION

The appellant JAMES REAVES was the defendant in the trial court below; the appellee THE STATE OF FLORIDA was the prosecution. References to the parties will be as they stood in the trial court. References to the Record on Appeal will be denoted by the symbol "R." References to the trial transcript will be denoted by the symbol "T." All emphasis is supplied unless otherwise indicated.

QUESTION PRESENTED

WHETHER THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN ADMITTING OVER OBJECTION REBUTTAL EVIDENCE OF THE DEFENDANT'S POST-ARREST STATEMENTS TO POLICE WHICH HAD BEEN SUPPRESSED PRIOR TO TRIAL AS INVOLUNTARY AND WHERE NO PREDICATE FOR IMPEACHMENT WAS LAID?

On November 10, 1981, the defendant was indicted for the first-degree murder of Michael Smith. (R. 1).

On November 13, 1981, the defendant was arraigned and pleaded not guilty. (R. 2).

On December 7, 1981, the defendant was adjudged insolvent for costs. (R. 3).

On March 17, 1982, the Court granted the defendant's oral motion for dismissal of his attorney, and the trial court adjudged the defendant insolvent and appointed the Public Defender. (R. 4).

On May 7, 1982, the defendant filed a motion to suppress his post-arrest statements to police, which motion was heard immediately prior to trial and granted in part and denied in part. (R. 47-48).

On May 24, 1982, the defendant stood trial by jury in the criminal division of the Circuit Court of the Eleventh Judicial Circuit of Florida in and for Dade County, the Honorable Murray Goldman, presiding. (R. 5 et seq.).

On May 28, 1982, the jury returned a verdict of guilty of the lesser-included offense of second-degree murder, and the trial court adjudicated the defendant guilty thereon. (R. 16, 17, 55-56).

On June 4, 1982, the Court denied the defendant's motion for new trial and sentenced the defendant to a life term of imprisonment. (R. 18, 60-61).

On July 2, 1982, the defendant filed a notice of appeal to the District Court of Appeal, Third District. (R. 62).

On October 23, 1984, the District Court filed an opinion affirming the defendant's conviction, Hendry, J., dissenting.

On May 28, 1985, this Court entered its Order Accepting Jurisdic-

tion and Setting Oral Argument.

On October 30, 1981, defendant James Reaves became involved in an argument with Michael Smith at approximately 7:00 A.M. at an apartment in which both men resided located at 3526 N.W. 199th Street, Miami. The latter angrily confronted the defendant and accused him of stealing his marijuana. Present were Bonnie Graham and her two minor children, with whom Michael Smith lived. The defendant shared a bedroom with Lillian Wimberly, Bonnie Graham's mother. (T. 398, 401, 403, 440, 443, 447).

Michael Smith argued with the defendant for approximately ten minutes in the defendant's bedroom loudly enough to awaken neighbor Faith Williams. (T. 502). Argument was not unusual between the two, and they had been in a fist-fight approximately six months earlier. (T. 511, 533).

Michael Smith pushed and shoved the defendant in the latter's bedroom, and Smith then went into his own bedroom to put on his shoes and get his car keys to take Bonnie Graham's children to school. (T. 471, 700). Smith filled a container of water necessary for the car's radiator and then went outdoors. (T. 406, 446, 449).

Smith confronted the defendant at the doorway of the residence as Smith's brother Charles arrived. Charles pushed Smith away, and Smith went to the sidewalk, pulled off his shoes, and called for the defendant to fist-fight. (T. 454, 456, 476). The defendant pulled a pocket knife and opened it, whereupon Smith started running in the direction of the home of Clarissa Mackey, a friend of the defendant. (T. 457-58). According to the defendant, Smith threatened to harm Clarissa Mackey. (T. 704-07).

The defendant chased Michael Smith as he ran toward Mackey's

home to prevent him from harming her, according to the defendant. (T. 705). En route the defendant caught Michael Smith, and the latter was stabbed as the two men struggled. (T. 461, 586-87, 721-22).

The defendant was soon thereafter arrested at the home of Clarissa Mackey, approximately one-half block from the scene. (T. 624).

Michael Smith expired as a result of multiple stab wounds. (T. 670).

The defendant was taken into custody by Detective Donald Skoglund, who advised him per Miranda. (T. 166). The defendant told the detective he did not wish to speak to him, and the detective then so advised other officers at the scene. (T. 166, 169).

Detective Lucious Wilcox spoke with the defendant's sister Pearly Stovall, who was present in the Mackey home at the time of the defendant's arrest. He allowed her to speak with the defendant after telling her that it would "behoove" the defendant to be cooperative. (T. 179, 183). The defendant's sister spoke with him privately for about five minutes. (T. 179). Detective Wilcox then entered the patrol car in which the defendant was detained and started to advise the defendant per Miranda, whereupon the defendant told Detective Wilcox that he had just been advised of his rights by another officer. (T. 183-84). Detective Wilcox then asked the defendant if he wanted to tell him about the stabbing, and the defendant responded that he did it in a fit of anger. (T. 185). The detective asked the defendant where the knife was, and the defendant responded that he had thrown it under a car. (T. 185). Detective Wilcox admitted having been told by Detective Skoglund that the defendant did not want to make a statement. (T. 192).

Detective William Merritt transported the defendant to the homicide office and, while en route, advised the defendant of his rights per Miranda.

After the defendant told the detective he understood his rights, the detective asked the defendant if he stabbed Michael Smith, to which the defendant responded, "Yes." (T. 207, 209, 224). At the office, the defendant executed a waiver of rights form, and Detective Merritt then questioned the defendant. No transcription was made of the interview. (T. 215). The defendant told the detective that Michael Smith had accused him of stealing his marijuana, the two argued, the defendant pulled a knife, Smith ran, and the defendant caught up with Smith and stabbed him. The defendant then expressed his wish to get an attorney. (T. 215-16). Detective Merritt knew that the defendant had told Detective Skoglund that he did not wish to make a statement. (T. 220).

All the foregoing post-arrest statements of the defendant were the subject of a pre-trial motion to suppress, which was granted upon a finding that the statements were involuntary. (T. 249).

An additional post-arrest statement of the defendant which was also part of the motion to suppress was the defendant's comment, "Well, that is the way it goes," when informed of the death of Michael Smith. (T. 232). That comment was not suppressed by the trial court. (T. 247).

The defendant's post-arrest statements to police, suppressed prior to trial upon an express finding of involuntariness, were introduced at trial after the defendant testified via the rebuttal testimony of the detective who had taken the statements.

This Court stated the rule of the vast majority of jurisdictions in the United States in Nowlin v. State, 346 So.2d 1020, 1024 (Fla. 1977):

> [W]henever the state, in order to impeach a defendant's credibility, chooses to present evidence of a defendant's incriminating statements which are inconsistent with trial testimony of the defendant and which are inadmissible in the case-in-chief becase of the failure of custodial officers to give Miranda warnings, the statements must be shown to be voluntary before they may be admitted.

A finding of voluntariness is prerequisite to the state's use for impeachment purposes of statements suppressed for failure to adhere to Miranda requirements. In the case below, the trial court expressly stated the statements were involuntary in his pre-trial ruling on the motion to suppress.

Moreover, as an additional prerequisite to the admission of such voluntary statements for impeachment purposes, the defendant must be confronted with the statement on cross-examination and given the opportunity to deny having made it or to explain it. Nowlin v. State, 346 So.2d at 1025 (Overton, C.J., concurring); Wright v. State, 427 So.2d 326 (Fla. 3d DCA 1983). Neither prerequisite for admission of the statements was laid by the state.

The admissibility vel non of the statements was squarely before the trial court, therefore the state's waiver argument, i.e., that the objection was not specifically to a lack of "predicate," is unavailing.

The error in admitting the statements into evidence was of constitutional magnitude and, as such, cannot be deemed harmless error given the reason-

able possibility it may have contributed to the defendant's conviction. In light of the obvious inference to be drawn from the admission of the statements following the defendant's own testimony, i.e., that his defenses of self-defense and defense of another were recently fabricated, the error may not be deemed harmless beyond a reasonable doubt.

ARGUMENT

THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN ADMITTING OVER OBJECTION REBUTTAL EVIDENCE OF THE DEFENDANT'S POST-ARREST STATEMENTS TO POLICE, WHICH HAD BEEN SUPPRESSED PRIOR TO TRIAL AS INVOLUNTARY AND WHERE NO PREDICATE FOR IMPEACHMENT WAS LAID.

The defendant's Motion to Suppress post-arrest statements to police filed prior to trial expressly alleges in Paragraph Two thereof:

> 2. The written and oral statements obtained from the Defendant were not freely and voluntarily given, in violation of the Defendant's rights guaranteed by the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Article I, Section 9 of the Florida Constitution (1968). (R. 47).

The first paragraph of the Motion asserted a Miranda violation, while the third asserted the statements were obtained as a result of an illegal arrest, and the fourth and final paragraph asserted a want of the corpus delicti. (R. 47-48).

At the pre-trial hearing on the Motion to Suppress, the defendant adduced evidence in support of his foregoing allegation that his post-arrest statements had been drawn from him involuntarily through subtle and coercive means. Defense counsel cross-examined the arresting officers at length to determine their purpose in inducing the defendant's sister Pearly Stoval to speak privately with the defendant in the back seat of the patrol car where the defendant was detained immediately after his arrest, after the defendant had told the officers he did not wish to talk to them. The following testimony was elicited:

> A. [by Detective Wilcox] I let Pearley Stoval talk to James Reaves in a private situation, but I was not out of sight, or Mrs. Stovall, Ms. Stovall was not out of sight of me. I mean, she could not have passed him a firearm or some-

thing to that effect, if that is what you are getting at.

Q. [by defense counsel] Did you do that as a favor to Ms. Stovall?

A. Yes, I did.

Q. And it didn't further your case any bit?

A. I think it did, yes.

Q. In fact, you specifically established a rapport with Pearley Stovall, and you asked Pearley Stovall if she would go talk to her brother; right?

A. Yes.

Q. Now, the reason you established the rapport with her is so that you would be able to get some information from James Reaves, right?

A. Well, initially the reason I established rapport with her is because it makes an easier investigative effort all around, to establish rapport with any of the witnesses or people involved in the case. At the point that I initially talked to Ms. Stovall, I had no idea that at some future date I was going to be interviewing Mr. Reaves.

Q. Detective Skoglund placed Mr. Reaves in the car, and he advised him of his rights; is that correct?

A. I believe that is correct.

Q. But Detective Skoglund told you that Mr. Reaves did not wish to make a statement?

A. That is right.

Q. And you figured in your mind, that having established this rapport with Pearley Stovall, you could get Pearley Stovall to perhaps change the mind of James Reaves and consider talking with you?

A. No, I don't think that is what I figured at all.

Q. Well, let me ask you, when you write in your report, "having established some rapport with Ms. Stovall, the subject's sister, asked her to speak with her brother about the matter--"

A. Sure.

Q. Pearley Stovall is not a police officer, correct?

A. No, but Mr. Reaves, I hadn't even talked to Mr. Reaves prior to talking to Pearley.

Q. That is because Detective Skoglund told you that he didn't want to make a statement, right?

A. Well, that is probably part of it, but secondly, the uncooperative attitude of any Defendant, you know, adds to his detriment. So when I was talking to Ms. Reaves [sic], she was asking what she could do for her brother, et cetera, et cetera, and we had this conversation, I'm sure, something to the effect that, you know, it behooves him to talk to police, which is my standard statement in any situation. So with that idea in mind, Pearley Stovall was probably asked to go talk to her brother. If in fact she could convince him to be cooperative, that would be in his best interest all the way around.

* * *

Q. Okay. So we are at the point now where you have asked Pearley to try to convince an uncooperative Defendant to talk with the police?

A. Yes. (T. 187-92).

Defense counsel sought to establish not only that the defendant's will had been overborne by the repeated attempts at interrogation by a succession of officers, but that Detective Wilcox had employed the defendant's sister to convey to the defendant the implied benefit that it would be

in his "best interest" to be "cooperative" and give a statement.

At the close of the evidence at the hearing on the Motion to Suppress, the trial court in his ruling from the bench expressly found paragraphs three and four of the Motion inapposite. The trial court then cited the case of Breedlove v. State, 364 So.2d 495 (Fla. 4th DCA 1978), wherein the District Court recognized that "continued readings of Miranda rights to the accused may constitute undue harassment," a practice which has been repeatedly "condemned" by the appellate courts of Florida:

> . . . [T]he vice sought to be removed is the evil of continued, incessant harassment by interrogation which results in breaking the will of the suspect, thereby making his statement involuntary. [364 So.2d at 496-97; citing State v. Bishop, 272 N.C. 283, 158 S.E.2d 511 (1968)].

In Breedlove the accused had been read Miranda rights four times in approximately one hour; the District Court expressly rejected the state's contention that statements obtained thereafter were not "a result of coercion." 364 So.2d at 496. The trial court stated:

> . . . I specifically find in this case that the police were first told that Mr. Reaves did not desire to make a statement. They were then, on a second occasion--and I am not even going to address the fact of Ms. Stovall coming to soften up the Defendant--they were told a second time he did not wish to make a statement. They were told a third time, he did not wish to make a statement. He at no time indicated any desire on his behalf to resume. It was only after the fourth time, when they kept after him to make a statement, he signed a waiver of rights at that time. I specifically find under the cases cited to me, and my understanding of the general law, that this was not a voluntary statement, and I will suppress those statements. (T. 247).

The interrogating officers' employment of Ms. Stovall to convey to the accused "that it would be in his best interest all the way around" to be cooperative, or to "soften up the defendant" to use the trial court's words, makes an even stronger case for involuntariness than mere repetitious readings of Miranda rights condemned in Breedlove.

At trial the defendant took the stand and testified that he had had arguments with Michael Smith in the past, one of which occured approximately six months prior to the homicide wherein Smith had armed himself with a shovel. (T. 690-91). According to the defendant, on the day of the homicide, Smith accosted the defendant in his bedroom and angrily accused him of stealing his marijuana. (T. 694). Smith shoved the defendant. (T. 696,700). The defendant attempted to leave the apartment as Smith became increasingly verbally abusive. (T. 700). The defendant thought Smith was armed with a gun the latter customarily kept in his bedroom in the apartment. (T. 702). Smith confronted the defendant in the apartment doorway and threatened harm to the defendant's friend Clarissa Mackey, who lived nearby. The defendant produced and opened a pocket knife as Smith began to run in the direction of Mackey's home. (T. 703). The defendant gave chase to prevent Smith from carrying out his threat, overtook him, and Smith was stabbed as the two grappled. (T. 705-06). The defendant further testified that he dropped the knife as Smith's brother Charles appeared, armed with a shovel, whereupon the defendant proceeded to Clarissa Mackey's home, where he was arrested. (T. 707).

On cross-examination, over objection, the state asked the defendant if he had told anyone that he had pulled a knife on Michael Smith because he was angry and Smith had harassed him. (T. 726). The state asked the defendant if he had told anyone that he had chased Smith and stabbed

him. (T. 735). The state further asked the defendant if he had told anyone that Smith fled when he first saw the knife and was then chased by the defendant. (T. 735). The defendant denied or stated he did not remember having made such statements; however, the defendant was not apprised of the time, place, wording, or to whom the statement was made in the course of cross-examination. (T. 735-36).

The defendant's objection to the state's line of inquiry, an obvious though inadequate attempt to lay a predicate for the introduction of the suppressed statements through rebuttal testimony, was predicated on the trial court's express ruling on the Motion to Suppress that the statements were "not voluntary" and as such, inadmissible for impeachment or any other purpose:

> MR. RABEN [defense counsel]: I understand that the prosecutor is devising rebuttal. I am only concerned as to what she considers rebuttal. She is asking my client if he ever said to anyone certain things which have been suppressed by your Honor. I am relying on Your Honor's ruling involuntariness, that they are inadmissible for impeachment.
>
> THE COURT: No. No. My understanding, and you can bring me cases, if I am wrong--my understanding is I have suppressed them, and the state cannot bring them out, but that if he gets on the stand and denies, tells something totally contrary to what he previously said, and denies ever making it, that they do have a right in using it for impeachment. Maybe I am incorrect about that.
>
> * * *
>
> MR. RABEN: . . . Your Honor, the record reflects that your Honor ruled them inadmissible and involuntary.
>
> THE COURT: That's right.(T. 729-30).

The trial court allowed the state's line of inquiry and the rebuttal testimony as to the content of the suppressed statements thereafter upon

the state's erroneous representation that its use of the suppressed statements for impeachment purposes would be permissible under Harris v. New York, 401 U.S. 222, 91 S.Ct. 643, 28 L.Ed.2d 1 (1971). (T. 729).

After the defendant testified, the state introduced on rebuttal, over the defendant's renewed objection, the testimony of Detective Merritt, who testified that the defendant had told him that Michael Smith had been unarmed, that he had assaulted Michael Smith with a knife because he was "fed up," and that he had chased Smith and stabbed him. (T. 739-40). Detective Merritt further testified on rebuttal that the defendant never mentioned anything about Michael Smith going to Clarissa Mackey's house to harm her. (T. 740). On cross-examination, Detective Merritt testified that the defendant had told him that he was unsure as to whether Michael Smith was armed at the time of the homicide. (T. 743).

The trial court's admission of the statements, suppressed prior to trial as involuntary, was reversible error. It is well-established post-arrest statements suppressed for non-compliance with Miranda requirements may be admitted for the purpose of impeaching a defendant's trial testimony only upon a showing by the state, by a preponderance of the evidence, that the statements were voluntary. As stated in Nowlin v. State, 346 So.2d 1020, 1024 (Fla. 1977):

> [W]henever the state, in order to impeach a defendant's credibility, chooses to present evidence of a defendant's incriminating statements which are inconsistent with trial testimony of the defendant and which are inadmissible in the case-in-chief because of the failure of custodial officers to give Miranda warnings, the statements must be shown to be voluntary before they may be admitted.

See White v. State, 446 So.2d 1031 (Fla. 1984); Brewer v. State, 386 So.2d 232 (Fla. 1980); Wiley v. State, 427 So.2d 283 (Fla. 1st DCA 1983).

Nowlin states the law of the vast majority of jurisdictions in the United States. See e.g. Walker v. State, 369 So.2d 825 (Ala. 1979); People v. Farris, 174 Cal.Rptr. 424, 120 Cal.3d 51 (Cal. App. 1981); People v. Lowe, 616 P.2d 118, 200 Colo. 470 (1980); People v. Peterson, 23 Ill. Dec. 554, 384 N.E.2d 348, 74 Ill.2d 478 (1978); State v. Donelson, 302 N.W.2d 125 (Iowa 1981); State v. Roberts, 223 Kan. 49, 574 P.2d 164 (1977); Jones v. State, 243 Ga. 820, 256 S.E.2d 907 (1979) cert. denied 444 U.S. 957; State v. Manning, 376 So.2d 95 (La. 1979); State v. Melvin, 390 A.2d 1024 (Me. 1978); Kidd v. State, 366 A.2d 761, 33 Md.App. 445, affirmed 375 A.2d 1105, 281 Md. 32, cert. denied 434 U.S. 1002 (1976); Commonwealth v. Nazzaro, 385 N.E.2d 1009, 7 Mass.App. 859 (1979); People v. Harris, 246 N.W.2d 406, 71 Mich.App. 82 (1976); State v. Clark, 296 N.W.2d 359 (Minn. 1980); Murphy v. State, 336 So.2d 213 (Miss. 1976) cert. denied ___ U.S. ___, 97 S.Ct. 819 (1976); State v. Mitchell, 611 S.W.2d 211, appeal after remand 620 S.W.2d 347 (Mo. 1981); State v. Trujillo, 605 P.2d 236, 93 N.Mex. 728, affirmed 605 P.2d 232, 93 N.Mex. 724 (N.Mex.App. 1979); People v. Washington, 433 N.Y.S.2d 745, 51 N.Y.2d 214, 413 N.E.2d 1159 (N.Y. 1980); State v. Byrd, 240 S.E.2d 494, 35 N.C. App. 42, appeal after remand 251 S.E.2d 712, 39 N.C.App. 659 (N.C.App. 1978); Commonwealth v. Bennett, 430 A.2d 994, 287 Pa.Super 485, affirmed 450 A.2d 970, 498 Pa. 656 (Pa.Super 1981); State v. Mathes, 587 P.2d 609, 22 Wash.App. 33 (Wash.App. 1978); State v. Mendoza, 291 N.W.2d 478, 96 Wis.2d 106 (Wis. 1980).

In the case below, the state not only failed to show by a preponderance of the evidence that the statements in issue were voluntary, the trial court expressly found them to have been involuntary, coercively obtained from the defendant through successive attempts at questioning notwithstanding the accused's express wish not to talk, as in the cited

case of Breedlove v. State, supra, and by means of the implied benefit or threat conveyed via the defendant's sister. See United States v. Hernandez, 574 F.2d 1362 (5th Cir. 1978)(number of times person in custody advised of rightrs prior to making statements not immaterial to question of voluntariness). Therefore, the defendant's post-arrest statements were inadmissible on this ground alone.

The rebuttal evidence as to the defendant's post-arrest statements was erroneously admitted for the additional reason that no proper predicate was laid by the state for such impeachment. Section 90.614(2), Florida Statutes (1981), required the defendant to have been confronted with the statements and afforded an opportunity to explain or deny as a mandatory predicate for the admission of those statements into evidence. See Wright v. State, 427 So.2d 326 (Fla. 3d DCA 1983)(statute's mandatory predicate especially applicable in criminal cases where state seeks to use "Miranda-plagued" incriminating admission of defendant for limited purpose of impeaching his veracity). As stated by this Court in Nowlin v. State, 346 So.2d 1020, 1024-25 (Fla. 1977)(Overton, C.J., concurring):

> . . . [P]reliminary to any extrinsic proof by the state of the defendant's statement, the prosecution must directly confront the defendant with this prior statement during cross-examination, and thereby afford him that opportunity, assured him by statute, to fully examine and explain the statement, qualify it, or deny its existence.

Moreover, Detective Merritt's testimony on rebuttal that the defendant had not told him of his fear that Michael Smith was running to Clarissa Mackey's home to harm her was not a prior inconsistent statement and therefore was not admissible as impeachment.

The defendant objected at length to the admission of the previously suppressed statements on constitutional grounds, and the manner of use

of those statements for impeachment purposes was expressly discussed. (T. 729-31). It cannot be seriously contended therefore that the objection was insufficently explicit to preserve the issue of sufficiency of the predicate for appellate review. The defendant's objection was specific enough to apprise the trial court of the putative error. Williams v. State, 414 So.2d 509 (Fla. 1982).

If the admission of the rebuttal testimony as to the defendant's post-arrest statements was error, and error of constitutional magnitude, it may not be considered harmless error under the standards enunciated in Nowlin v. State, supra, 346 So.2d at 1024 (constitutional error may not be regarded as harmless "if there is a reasonable possibility that the error may have contributed to the accused's conviction or if the error may not be found harmless beyond a reasonable doubt"). Accord Palmes v. State, 397 So.2d 648 (Fla.), review denied 454 U.S. 882 (1981); Drake v. State, 441 So.2d 1079, 1082 (Fla. 1984). The defendant testified at trial that Michael Smith threatened to harm his woman friend Clarissa Mackey, that he thought Smith was armed with the gun usually kept in the latter's bedroom, that Smith ran toward Mackey's nearby home, that the defendant gave chase, caught him, and that Smith was stabbed in the struggle that ensued. (T. 694 et seq.). In rebuttal, the state introduced the defendant's suppressed statements to police, to wit: that the defendant said he assaulted Smith with a knife because he was "fed up," but made no reference to any threat against Clarissa Mackey, and he was unsure whether Smith was armed. (T. 743). Making the defendant's assertions of self-defense and defense of another appear recently fabricated, the rebuttal testimony could not have been more prejudicial. Moreover, as in Nowlin, the impeaching statements, so destructive as they were to the defendant's credibility, must have been considered by

the jury on the issue of guilt, a probability all the more likely in the absence of a limiting jury instruction. 346 So.2d at 1024.

CONCLUSION

Based upon the foregoing argument and citations of authority, the defendant prays his conviction and sentence be reversed and the cause remanded for a new trial.

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CERTIFICATE OF SERVICE

I hereby certify a true copy of this Initial Brief of Appellant was served on Richard E. Doran, Esquire, Assistant Attorney General, 401 N.W. Second Avenue, Suite 820, Miami, Florida, 33128, by United States Mail this 1st day of July, 1985.

JAMES H. GREASON, ESQUIRE