IN THE SUPREME COURT OF FLORIDA

PAUL WILLIAM SCOTT,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

CASE NO. 69,341

ANSWER BRIEF OF APPELLEE

ROBERT A. BUTTERWORTH
Attorney General
Tallahassee, Florida 32301

LEE ROSENTHAL
Assistant Attorney General
111 Georgia Avenue - Suite 204
West Palm Beach, Florida 33401
Telephone (305) 837-5062

Counsel for Appellee

TABLE OF CONTENTS

LIST OF CITATIONS

PRELIMINARY STATEMENT

Appellant was the defendant and Appellee was the prosecution in the Criminal Division of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida. Appellant was the movant and Appellee the respondent in the motion to vacate proceedings.

In the brief, the parties will be referred to as they appear before this Honorable Court of Appeal except that Appellee may be referred to as the "State" or the "prosecution", and Appellant may be referred to by name when appropriate.

The following symbols will be used:

R*	Record on Appeal of the 3.850 hearing
TR*	Trial Transcript.

* Please note: All page numbers referred to in Appellee's brief are those numbers located at the bottom of the pages.

STATEMENT OF THE CASE AND FACTS

Appellee accepts Appellant's Statement of the Case and his Statement of the Facts to the extent that they present an accurate, non-argumentative recitation of proceedings in the lower court, with the following additions, clarifications, and corrections:

Richard Kondian remembered being asked by Appellant's defense counsel if he would be a witness for Appellant. Kondian did not remember agreeing back then (R 47). Mr. Kondian further stated that both he and Appellant left Jim Alessi's house at the same time and went back to Fort Lauderdale in Mr. Alessi's car (R 64-66). Kondian denied ever stopping at Alessi's floral shop and he denied stealing any gold jewelry there (R 66). George Barrs, Appellant's defense counsel, testified that Kondian's pretrial statement was familiar to him, but he did not remember what he thought regarding the "defense of another" strategy (R 84, 85). Mr. Barrs also recalled the fact that he contacted the San Diego jail that Charles Vincent Soutullo was being held in. Mr. Barrs initially did not believe that Mr. Soutullo was coming for Appellant's trial. Then, however, Mr. Barrs was told just before trial that Soutullo would in fact be brought in so Mr. Barrs took Mr. Soutullo's deposition the morning of the day he testified (R 87). Mr. Barrs further testified that he could have deposed Soutullo while he was in the California jail, but Soutullo got an early release (R 90).

Mr. Barrs stated that at the time of Appellant's trial, he was overloaded with work because he was the only attorney assigned to capital cases (R 93). Mr. Barrs further stated that the statement of Cathy Ober, he believed, was actually incriminating regarding the felony murder rule

as it applied to the guilt of Appellant (R 94).

Mr. Barrs also mistakenly testified that he attempted to introduce information that Appellant had saved a prison guard's life in California but that the prosecution's objection kept that information out (R 100). Actually, the trial transcript revealed the fact that Mr. Barrs elicited the following testimony from Dr. Brad Fisher:

> Q Dr. Fisher, in these records you have about when Paul was under the California Youth Authority, was there reference in that file to the escape?
>
> A There was a letter from the warden, and then the rest of it was, I think, from a discussion with Paul.
>
> Q In the warden's report -- you can refresh your memory if you don't remember -- what was his opinion as to the escape charge?
>
> MR. SELVIG: Excuse me, Your Honor. I'll object on this only on best evidence grounds because I believe we have the letter here and I have no objection to the letter itself going into evidence.
>
> THE COURT: The objection is overruled.
>
> BY MR. BARRS:
>
> Q What was the outcome of the warden's investigation of this escape -- the allegation?
>
> A Essentially, what he wrote was that there was the expectation on the part of two of the other people at the Preston Industrial School that he would bring back a weapon. He was not going to bring back a weapon; therefore, he was in a bad position because if he didn't bring it back, then he was not willing to bring it back. But if he did not, then he was in trouble with those who had that expectation of him to bring it back. This was a legitimate furlough he had been granted on the basis of his behavior. So that he did not bring it back and came back later and at that point, his story reflecting what I just said was

scrutinized by the warden; he was subjected I forgot at what point, a week or so later -- to a lie detector test which --

Q They submitted Paul to a lie detector test?

A Exactly. And he passed. In other words, he was saying that, "These two people expected me to bring this gun back and I wasn't ready to bring it back, and I was scared to go back," a totally understandable sort of situation if you work with adolescents and delinquents. And he was subjected to the lie detector test to see whether it was true or not, and he passed the lie detector test.

Q And was any disciplinary action taken against him because of that escape?

A No, not at -- no.

(TR 1592-1594).

Richard Kondian's trial counsel, David Roth, stated that after Mr. Kondian pled guilty, he would have helped Appellant by testifying. However, Mr. Roth did not know what point in time that was (R 129-130). Mr. Roth also stated that he would not have allowed Kondian to cooperate before Mr. Kondian himself was convicted. Roth further stated that even if a Byrd affidavit could be used at trial, Roth would not have permitted his client to supply such an affidavit unless he would have been assured that such an affidavit could not have been used to impeach his client, or for any detrimental purpose (R 130). David Roth additionally testified that he would not have allowed Richard Kondian to testify at Appellant's trial (R 138).

At trial, the prosecution opened its argument characterizing Mr. Soutullo as a "unusual character" --- a "street person", who was wanted in California for grand larceny. The prosecution further stated that Mr. Soutullo had stolen jewelry from a friend and then sold it on

the streets of Fort Lauderdale for $8,000 (TR 693). The prosecution further stated that Mr. Soutullo had taken "speed" earlier the day of the murder but later, when approached by Kondian and Appellant, he was in control of his faculties (TR 695).

During the cross-examination of Mr. Soutullo, Mr. Barrs got him to admit that he initially told police that he did not know Appellant's name and, as an excuse, Soutullo claimed that he was "trying to protect the guy" (TR 742). Mr. Soutullo was also forced to admit that he gave Sergeant Collins the alias "Edward McCarthy", rather than his real name (TR 743). Mr. Soutullo also was forced to admit that he was later arrested on additional charges in the State of Florida and that three of five Florida felony charges were subsequently dropped (TR 745-749). Mr. Soutullo also admitted that the Mobile, Alabama, police told him that it would be to his benefit to assist police in the prosecution of Appellant (TR 773).

Dr. Cuevas, on cross-examination, testified that he did not know if sperm found on the victim's body was the result of sexual activity or not (TR 1210). Dr. Cuevas further testified that the victim, Jim Alessi, was a muscular 5 feet 8 inches and weighed approximately 200 pounds (TR 1211). In his closing argument, defense counsel argued that under the felony murder rule a defendant must actually be present when the victim is killed and in the instant case, there was no evidence that Appellant actually killed Mr. Alessi or that he was actually at Mr. Alessi's house at the time he died (TR 1354, 1355).

Defense counsel further argued that Mr. Soutullo should not be believed because he was a fugitive from California who had stolen

jewelry, he was not immediately arrested by anyone, Mr. Soutullo told the police what they wanted to hear, and that Soutullo's probation officer told him he had to testify (TR 1360-1362). Mr. Barrs stated that Soutullo's motive to lie was to get out of seven (7) felonies "cheap" (TR 1363). Defense counsel further argued that since Richard Kondian was the one who was bleeding that, at worst, Appellant helped tie up the victim and then left before the murder was committed (TR 1369-1370).

Altogether, defense counsel argued that when the fight started, Appellant ran away, that Richard Kondian was big enough to kill Jim Alessi, that all the evidence in this case was circumstantial and that since there was a reasonable conclusion the jury could draw that Appellant was innocent, it was their duty to reach that conclusion (TR 1430-1432).

During the sentencing phase, Mr. Barrs' elicited testimony from Dr. Brad Fisher that Appellant's "violence potential" was very low towards other inmates or correctional officers (TR 1560). Dr. Fisher also testified of Appellant's poor home environment, the fact that Appellant had no structure, that there was chaos in his family, no discipline and that he lived in squalid conditions (TR 1555-1556). Dr. Fisher further testified that at the Preston Industrial School Appellant, while on furlough, refused to bring a gun back for the other inmates and that he was not disciplined for his apparent escape because he passed a lie detector test regarding his story (TR 1593).

In February, 1983, at his clemency hearing before the Florida Probation and Parole Commission, Appellant expanded upon his reform

school incident with the following statement:

> While I was serving time in California, I was placed on a 10-day furlough to re-establish relations at home with my mother for my parole release and some of the inmates told me to smuggle back in a gun so they could kill a counselor that was snitching on them. I knew that, if I didn't do this, that I would be killed or severely beaten. So, I ran away. I didn't return on my furlough. I was caught and taken back to prison 10 days later where I was beaten and almost killed by other inmates for refusing to smuggle back in a gun for them to kill this prison counselor. Out there I was almost killed and beaten.
>
> The Superintendent questioned me about certain facts that he had already obtained from his independent investigation of this matter and then I was given a polygraph examination, which resulted in my favor and I was paroled 30 days later.
>
> (Appendix - Exhibit A).

In Scott v. State, 411 So.2d 866, 868 (Fla. 1982), this Court found that:

> The manner in which the victim was murdered in itself evidences premeditation. There was a long bloody chase throughout the house, the victim was badly beaten, his hands and feet were tied while he was still alive, and he was struck on the head six times with a blunt instrument. The evidence was clearly sufficient to establish premeditation. (Citation omitted).

POINT ON APPEAL

WHETHER THE TRIAL COURT CORRECTLY DENIED APPELLANT'S MOTION TO VACATE?

SUMMARY OF THE ARGUMENT

The trial court correctly denied Appellant's motion to vacate because Appellant failed to show either that trial counsel's performance was deficient and that trial counsel's errors were so serious as to deprive Appellant of a trial whose result was reliable.

The fact that defense counsel chose the strategy of implying that Richard Kondian actually committed the murder, rather than the strategy that Appellant had come to the aid of Richard Kondian, was a sound tactical decision.

Mr. Soutullo's credibility was amply impeached by defense counsel and additional impeachment testimony was not necessary, as it would merely have been cumulative.

Defense counsel also brought out the fact that the medical examiner, Dr. Cuevas, did not know whether or not sperm found on the body of the victim, Jim Alessi, was the result of his sexual activity or the result of the beating he took. Altogether, Appellant has not, and cannot, show how any additional witnesses could have presented testimony that would have been reasonably likely to have changed the outcome of the guilt phase or the sentencing phase of his trial.

ARGUMENT

THE TRIAL COURT CORRECTLY DENIED APPELLANT'S MOTION TO VACATE.

Appellant argues that he did not have effective assistance of trial counsel because Mr. Barrs failed to depose potential defense and state witnesses, and these failures prevented the jury from being apprised that Appellant had acted in defense of another (AB 11).

Appellee submits that the instant trial record conclusively showed Appellant was entitled to no relief and, the evidentiary hearing of March 20, 1986 ("R") simply confirmed this fact. Actually, the trial court could properly have denied relief in a summary fashion. See, Troedel v. State, 479 So.2d 736-738 (Fla. 1985); Middleton v. State, 465 So.2d 1218 (Fla. 1985). However, since an evidentiary hearing was held, Appellee will proceed to analyze the testimony in light of Strickland, infra, standards, and in light of the trial record.

In Strickland v. Washington, 104 S.Ct 2052, 80 L.Ed.2d 674 (1984), the United States Supreme Court held that there are two parts in determining a defendant's claim of ineffective assistance of counsel:

> First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

80 L.Ed.2d at 693. In explaining the appropriate test for proving prejudice the Court held that "[t]he defendant must show that here is a

reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." 80 L.Ed.2d at 698. As the Court explained in United States v. Cronic, 104 S.Ct 2039, 80 L.Ed.2d 657 (1984), the basis for the Sixth Amendment guarantee of the right to counsel is to ensure the adversarial system functions. When trial counsel's representation is reviewed in light of these standards, it is evident that Appellant received effective assistance.

A court in deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct. Strickland v. Washington, supra, 80 L.Ed.2d at 695. "A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct from counsel's perspective at the time." Id. at 694. A review of Appellant's allegations, demonstrates a classic example of the use of hindsight to prove his claim.

Appellant first contends that state witness Charles Vincent Soutullo claimed that he overheard Richard Kondian and Appellant plan to rob and kill James Alessi (AB 11). Actually, Soutullo testified that he was approached by Kondian and Appellant and asked to participate in the commission of these crimes (TR 721-722, 725-726, 728).

Appellant further alleges that his trial attorney's failure to depose Soutullo before trial, and his failure to do a background check on Soutullo deprived him the opportunity to impeach Soutullo's character

(AB 12). The trial record, however, shows that additional evidence of Soutullo's dishonesty and drug use would merely have been cumulative.

At trial, in the State's opening argument, the prosecutor told the jury that Mr. Soutullo was an "unusual character", a "street person" who was wanted in California for grand larceny, after stealing jewelry from a friend and selling it for $8,000 on the streets of Fort Lauderdale (TR 693). The prosecutor also told the jury that Soutullo had taken "speed" earlier that day (TR 695).

Soutullo himself testified that he had been convicted of grand larceny, and was then on probation (TR 713-714). He further stated that he refused to participate in the robbery/murder, and was upset, not for the sake of morality, but because he feared any trouble Rick Kondian got into would lead the police to question him, and he then was a fugitive (TR 730-731).

On cross-examination, Mr. Barrs forced Soutullo to admit that he did not specifically remember who (Kondian or Appellant) said what about the plan (TR 737), that he and Kondian had injected speed earlier that day (TR 738), and that Kondian had appeared to be under the influence of drugs when the plan was discussed (TR 738).

Mr. Barrs also forced Soutullo to admit that he initially lied to police, telling them that he did not know Appellant's name (TR 742), and that he also lied by telling police his name was Edward McCarthy (TR 743). Mr. Barrs further impeached Soutullo by bringing out evidence that there were five (5) felony charges against Soutullo in Florida, three (3) of which were subsequently dropped (TR 749). Mr. Barrs also manipulated Soutullo into stating that he considered the federal felony

charge of escape to be "not [a] serious" charge (TR 746). Soutullo also admitted that he had told Sergeant Collins that he had "ripped off" a drug dealer, and Collins had taken no action regarding that matter (TR 764).

Altogether, defense counsel adduced and argued evidence that Soutullo was motivated to lie, and did lie, to help himself out of his legal difficulties (TR 1361-1363). As to Mr. Barr's failure to call witnesses to further impeach Mr. Soutullo, Appellee submits:

> That counsel for a criminal defendant has not pursued every conceivable line of inquiry in a case does not constitute ineffective assistance of counsel. Lovett v. Florida, 627 F.2d 706, 708 (5th Cir. 1980).

Ford v. Strickland, 696 F.2d 804, 820 (11th Cir. 1983). An attorney's decision to put a particular witness on the stand, or not, should be given great deference, as it is a tactical decision. See, Messer v. Kemp, 760 F.2d 1080, 1091 (11th Cir. 1985); see also, Magill v. State, 457 So.2d 1367, 1370 (Fla. 1984).

The standard of review in ineffective assistance of counsel claims is whether the counsel was reasonably likely to render, and did render, reasonably effective counsel based on the totality of the circumstances. Meeks v. State, 382 So.2d 673 (Fla. 1980). Moreover, failure of counsel to present witnesses, no matter how important, does not prove ineffectiveness of counsel since it is also a matter of trial tactics. Armstrong v. State, 429 So.2d 287 (Fla. 1983).

Defense counsel's strategy, in this case, was to argue that there was insufficient evidence to place Appellant inside the victim's home at the time he was killed (TR 1354-1357), and that Richard Kondian

was the one who murdered Jim Alessi (TR 1369-1370, 1427-1432). It is settled law that when deciding an ineffective assistance claim:

> Reasonable strategy will not be second guessed by the use of hindsight. See Songer v. State, 419 So.2d 1044 (Fla. 1982).

Middleton v. State, 465 So.2d 1218, 1224 (Fla. 1985).

Appellant now wishes this Court to accept the ludicrous proposition that defense counsel could have convinced the jury that Jim Alessi was so high on drugs, and had such overpowering libidinous desires that he attempted the homosexual rape of Richard Kondian, while his friend, Paul Scott, was wandering about his house. Even if the jury had been presented with Mr. Kondian's testimony, it is absurd to conclude that the result of the proceedings would have been different.

Moreover, the instant record refutes the claim that defense counsel was deficient in failure to use the "exculpatory testimony" (AB 18) of Richard Kondian. To begin with, Mr. Kondian would not have testified at Appellant's trial (R 47), because he would have been in jeopardy. Kondian's attorney, David Roth, testified that he would not have allowed Kondian to cooperate with Mr. Barrs before Kondian was convicted (R 130); Roth would not even have permitted his client to sign an affidavit, unless he was assured that the affidavit could not be used against his client for any purpose (R 130). Even if Kondian's testimony would have been helpful to Scott, he could not have been compelled to testify prior to final disposition of his charges. Only the State could grant immunity, and neither the defense nor the Court could compel the State to do so. State v. Schell, 222 So.2d 757 (Fla. 2nd DCA 1969). Especially when the only immunity available in Florida in

1979 was transactional immunity, it is obvious that the State would not have granted any form of immunity prior to his trial or plea. Furthermore, since Scott was tried first by order of the Court no opportunity for Kondian to testify was available. Scott was tried first because he was the most culpable, and the State would not have agreed to any further delays (R 342).

Appellant also contends that Mr. Barrs' cross-examination of Dr. Cuevas was ineffective because he did not "establish that the presence of semen [on the victim's body] was consistent with sexual activity (AB 28). The trial transcript reveals that defense counsel brought out the fact that Dr. Cuevas did not know whether or not the sperm found was the result of the victim's sexual activity (TR 1210). Appellee submits that the proposed testimony, i.e., that the sperm more likely resulted from sexual activity than from the beating Jim Alessi took, would not have changed the trial outcome. Thus, Appellant has not demonstrated to this Court that but for counsel's unprofessional errors, the result of the proceeding would have been different. State v. Bucherie, 468 So.2d 229, 231 (Fla. 1985).

Considering the ludicrous nature of Appellant's "defense of another"scenario, one cannot conclude that defense counsel's failure to depose Dr. Cuevas, or to further pursue evidence that the victim attempted to rape Kondian, was anything more than a reasoned tactical decision. See, Solomon v. Kemp, 735 F.2d 375, 402 (11th Cir. 1984).

Altogether, Mr. Barrs' "failures" to depose witnesses Kathy Ober, Alabama Police, and additional doctors were not ill-chosen tactical decisions.

> [C]ounsel for a criminal defendant is not required to pursue every path until it bears fruit or until all available hope withers. -

Lovett v. Florida, 627 F.2d 706 (5th Cir. 1980). Appellant has not, and cannot show how any of these witnesses could have presented testimony that would be reasonably likely to have changed the outcome. This Court has previously held that:

> The manner in which the victim was murdered in itself evidences premeditation.

Scott v. State, 411 So.2d 866, 868 (Fla. 1982). Surely this same evidence refutes the theory that Appellant acted in defense of another.

Sentencing Phase

Appellant speciously contends that defense counsel failed to reveal evidence that while he was "incarcerated in California, he saved a prison guard's life" (AB 19). The record at bar clearly refutes this contention. During the sentencing phase, defense counsel elicited the testimony from Dr. Brad Fisher, as follows:

> Q Dr. Fisher, in these records you have about when Paul was under the California Youth Authority, was there reference in that file to the escape?
>
> A There was a letter from the warden, and then the rest of it was, I think, from a discussion with Paul.
>
> Q In the warden's report -- you can refresh your memory if you don't remember -- what was his opinion as to the escape charge?
>
> MR. SELVIG: Excuse me, Your Honor. I'll object on this only on best evidence grounds because I believe we have the let-

ter here and I have no objection to the letter itself going into evidence.

THE COURT: The objection is overruled.

BY MR. BARRS:

Q What was the outcome of the warden's investigation of this escape -- the allegation?

A Essentially, what he wrote was that there was the expectation on the part of two of the other people at the Preston Industrial School that he would bring back a weapon. He was not going to bring back a weapon; therefore, he was in a bad position because if he didn't bring it back, then he was not willing to bring it back. But if he did not, then he was in trouble with those two who had that expectation of him to bring it back. This was a legitimate furlough he had been granted on the basis of his behavior. So that he did not bring it back and came back later and at that point, his story reflecting what I just said was scrutinized by the warden; he was subjected I forgot at what point, a week or so later -- to a lie detector test which --

Q They submitted Paul to a lie detector test?

A Exactly. And he passed. In other words, he was saying that, "These two people expected me to bring this gun back and I wasn't ready to bring it back, and I was scared to go back," a totally understandable sort of situation if you work with adolescents and delinquents. And he was subjected to the lie detector test to see whether it was true or not, and he passed the lie detector test.

Q And was any disciplinary action taken against him because of that escape?

A No, not at -- no.

(TR 1592-1594).

It is difficult to believe that the fact situation outlined

above could be construed to imply that Appellant's escape and the subsequent lack of disciplinary action meant that he had, in fact, "saved a prison guard's life". However, in February, 1983, Appellant made that very claim before the Florida Probation and Parole Commission during clemency proceedings:

> While I was serving time in California, I was placed on a 10-day furlough to re-establish relations at home with my mother for my parole release and some of the inmates told me to smuggle back in a gun so they could kill a counselor that was snitching on them. I knew that, if I didn't do this, that I would be killed or severely beaten. So, I ran away. I didn't return on my furlough. I was caught and taken back to prison 10 days later where I was beaten and almost killed by other inmates for refusing to smuggle back in a gun for them to kill this prison counselor. Out there I was almost killed and beaten.
>
> The Superintendent questioned me about certain facts that he had already obtained from his independent investigation of this matter and then I was given a polygraph examination, which resulted in my favor and I was paroled 30 days later.
> (Appendix - Exhibit A).[1]

Obviously, Mr. Barrs' strategy differed from that of Appellant's, some four years later. At trial, counsel brought out testimony that Appellant's "violence potential" was very low towards other inmates and correctional officers (TR 1560), and expert opinion that Appellant would best function in the "structured sort of setting that prison pro-

---

[1] The transcript of this hearing was made a part of this Court's files in Scott v. Wainwright, Case No. 63,737. Appellant included this transcript, labeling it "Exhibit 4", and attaching it to his "Application For Leave To File Petition For Writ Of Error Coram Nobis; And/Or Habeas Corpus Or Other Extraordinary Relief With Regard To Penalty Phase Of Capital Case."

vides" (TR 1559). Appellee submits that this strategy was reasonable as it was highly unlikely that the judge or jury would have perceived Appellant to be a hero based on this incident. Judgment matters on trial strategy and tactics cannot form the basis for post-conviction relief. Robinson v. State, 378 So.2d 1346 (Fla. 3rd DCA 1980).

Finally, Appellant claims that trial councel's "failure to have introduced the 'inculpatory evidence' at the sentencing hearing", prejudiced his case (AB 19). This contention is nothing more than second guessing by the use of hindsight. The use of Richard Kondian's pre-trial statement would have forced trial counsel to present evidence totally inconsistent with his defense theory during the guilt phase. What Mr. Barrs did instead do, was argue that it was sheer conjecture as to who struck the fatal blows and strongly imply that Kondian was the actual murderer (TR 1692). As Appellee has previously noted, this was a reasonable strategy decision and because Appellant has not shown either deficient performance or a probability that the results of the proceedings could have been different, the lower court's order should be affirmed.

CONCLUSION

Based on the argument and authorities cited herein, Appellee respectfully requests that this Honorable Court AFFIRM the judgment of the lower court.

Respectfully submitted,

ROBERT A. BUTTERWORTH
Attorney General
Tallahassee, Florida 32301

Lee Rosenthal

LEE ROSENTHAL
Assistant Attorney General
111 Georgia Avenue - Suite 204
West Palm Beach, Florida 33401
Telephone (305) 837-5062

Counsel for Appellee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer Brief of Appellee has been mailed to the LAW OFFICES OF PAUL MORRIS, P.A., 2600 Douglas Road, Penthouse II, Coral Gables, Florida 33134; and the LAW OFFICES OF STEPHEN H. ROSEN, P.A., 2600 Douglas Road, Penthouse II, Coral Gables, Florida 33134, this 13th day of February, 1987.

Lee Rosenthal
Of Counsel