

IN THE SUPREME COURT OF FLORIDA

**FILED**

SID J. WHITE

SEP 17 1997

ROBERT TEFFETELLER,

Appellant,

CLERK, SUPREME COURT

By JC  
Chief Deputy Clerk

v.

CASE NO. 89,120

STATE OF FLORIDA,

Appellee.

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ON APPEAL FROM THE SEVENTH JUDICIAL CIRCUIT  
IN AND FOR VOLUSIA COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES . . . . .	ii
STATEMENT OF THE CASE AND FACTS . . . . .	1
SUMMARY OF THE ARGUMENT . . . . .	5
ARGUMENT . . . . .	6
I.    TEFFETELLER'S GUILT PHASE ATTORNEY DID NOT SUFFER FROM A CONFLICT OF INTEREST . . . . .	2
II.   THE CLAIM CONCERNING THE "REMAINING" CLAIMS SHOULD BE DECIDED BY THIS COURT BASED UPON THE BRIEFS THAT HAVE BEEN PREVIOUSLY FILED . . . . .	20
CONCLUSION . . . . .	22
CERTIFICATE OF SERVICE . . . . .	23

TABLE OF AUTHORITIES

CASES

*Buenoano v. Dugger*,  
559 So.2d 1116 (Fla. 1990) . . . . . 7,16

*Buenoano v. Singletary*,  
85 F.3d 645 (11th Cir. 1996) . . . . . 16

*Burnside v. State*,  
656 So. 2d 241 (Fla. 5th DCA 1995) . . . . . 16

*Cuyler v. Sullivan*,  
446 U.S. 335 (1980) . . . . . 6

*Doyle v. State*,  
526 So. 2d 909 (Fla. 1988) . . . . . 17

*Harich v. State*,  
573 So. 2d 303 (Fla. 1990) . . . . . 7,10,11

*Hoffman v. State*,  
571 So. 2d 449 (Fla. 1990) . . . . . 21

*Orme v. State*,  
677 So. 2d 258 (Fla. 1996) . . . . . 15,16

*State v. Harich*,  
Case No. 81-1894-BB (7th Jud. Cir. June 10, 1989). . . . . 13,14,15

*State v. Spaziano*,  
692 So.2d 174 (Fla. 1997). . . . . 14,15

*Strickland v. Washington*,  
466 U.S. 668 (1984) . . . . . 7

*Teffeteller v. State*,  
676 So.2d 369 (Fla. 1996) . . . . . 21

*Trepal v. State*,  
No. 87,222 (Fla., March 27, 1997) . . . . . 15

MISCELLANEOUS

§454.18, Fla. Stat. . . . .	10
§454.27, Fla. Stat. . . . .	10
§454.51, Fla. Stat. . . . .	10
§454.18, Fla. Stat. . . . .	10
§27.53, Fla. Stat. . . . .	10
Art. II, §5(a), Fla. Const. . . . .	10
Rule 5-101A, Fla. Code of Prof. Resp. . . . .	10

## STATEMENT OF THE CASE AND FACTS

The State adopts and incorporates herein by reference the Statement of the Case and Facts contained in its February 19, 1992, and July 27, 1995, Answer Briefs. Additionally, the State relies on the following facts, which were developed at the September 9-10, 1996, evidentiary hearing.

Edith Purser is the records custodian for the Marion County Sheriff's Office. (R41). She identified various documents which were admitted into evidence without objection. (R43-53).<sup>1</sup>

Don Moreland was the Sheriff of Marion County from 1973 through 1993. (R54). He is currently the United States Marshall for the Middle District of Florida. (R54). Mr. Pearl became a "special deputy" on August 21, 1970, under the administration of Mr. Moreland's predecessor. (R65; 88). Mr. Moreland merely continued that status. (R88). Mr. Pearl was never a employee of the Marion County Sheriff's Office. (R76). Mr. Moreland described Mr. Pearl's status as honorary, for the specific purpose of being allowed to carry a concealed weapon. (R77-8). Mr. Pearl resigned his special deputy status on May 1, 1989. (R80). Mr. Moreland's letter in

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The documentary evidence was essentially admitted by stipulation. (R50-51). This evidence consisted of various documents related to Mr. Pearl's "special deputy" status in Marion County. (R64-69; 73).

response to the letter of resignation indicates that Mr. Pearl's status with the Marion County Sheriff's Office was "a special deputy sheriff only to carry a weapon." (R80). Mr. Moreland had agreed to make Mr. Pearl a special, or honorary, deputy for the purpose of allowing him to carry a firearm. (R80). Mr. Pearl was required to pay his own liability insurance, as were the other persons who were appointed as special deputies. (R80). Regular deputies employed by the Marion County Sheriff's Office are not required to pay the liability insurance premium out of their own pocket. (R81).<sup>2</sup> The personnel roster of special deputies lists Mr. Pearl as a special deputy. (R83).

Mr. Moreland rarely saw Mr. Pearl, and never talked to Mr. Pearl about Teffeteller's case. (R83). Mr. Pearl was not a certified law enforcement officer, and was not eligible to be "grandfathered-in" under the 1967 minimum standards statute. (R84). Mr. Pearl was never asked to perform any law enforcement functions, and had no responsibility to do so. (R88). Mr. Moreland described Mr. Pearl's status in the following way:

. . . it was strictly honorary, it was one of those things, and I can show you a number of those people on

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The documents relevant to the liability insurance indicate that Mr. Pearl was a "special deputy with limited authority". (R82).

that list who had a clear understanding that this was an honorary, weapons-carrying authority, only; for that reason, it could be used, but it was never meant that they could go out and make cases, make investigations and bring in inmates or prisoners.

(R90). Mr. Pearl was never called upon to perform any law enforcement function of any sort. (R99).

Mr. Pearl was informed, at some point during Teffeteller's trial, that "it was suspected that Mr. Teffeteller, while in the courtroom, might be handed a gun and that he might, they [the bailiffs] thought, try to leave the courthouse, and I believe the bailiff also said he was going to take me [Mr. Pearl] with him."

(R123). Mr. Pearl described that information as "the purest speculation", but accepted it as a serious matter. (R123). Mr. Pearl armed himself in response to that information because, in his words, "in an abundance of caution, I just wanted to make sure that I wasn't going to get caught up in an escape/hostage situation."

(R150). The information concerning the possibility of an escape attempt had no impact on Mr. Pearl's representation of the defendant. (R151). Mr. Pearl understood his status to be that of a special deputy. (R141). Mr. Pearl had no authority, was not (and has never been) a certified law enforcement officer, and had no duties, powers or assignments of any sort. (R141-2). Mr. Pearl received no compensation from Marion County, and never held himself

out as a Marion County deputy. (R142). He was "merely a person authorized to carry a weapon." (R143). When the statute authorizing the issuance of a "concealed carry" permit came into effect in 1987, Mr. Pearl obtained such a permit and resigned his special deputy position. (R144).

At the conclusion of the hearing, the trial court directed the parties to submit memoranda regarding any remaining claims within 30 days. (R176). A written order to that effect was entered on September 12, 1996, directing the filing of such memoranda no later than October 10, 1996. (R46). Teffeteller sought an extension of time in which to file a pleading in compliance with the court's order (R53), which was denied (R68). The State duly filed its memorandum on October 7, 1996. (R98). Teffeteller never filed his memorandum, and gave notice of appeal prior to the expiration of the time allowed for filing a pleading addressing the claims that he contends remain after disposition of the Howard Pearl claim. (R303).

On September 15, 1996, the trial court entered a written order denying relief on the "Howard Pearl" claim. (R47-52). The record was certified as complete and transmitted on January 10, 1997. (R379).



## SUMMARY OF THE ARGUMENT

The trial court correctly found that Teffeteller's guilt phase attorney did not suffer from a conflict of interest. Those findings are supported by competent substantial evidence, and should not be disturbed on appeal.

The claims other than the "Howard Pearl" claim are addressed in the briefs previously filed in this cause. There is no need for this Court to "clarify" its 1996 decision in this case. The trial court's earlier denial of relief on those claims should be affirmed in all respects.

## ARGUMENT

### I. TEFFETELLER'S GUILT PHASE ATTORNEY DID NOT SUFFER FROM A CONFLICT OF INTEREST

The principal claim contained in Teffeteller's brief is his argument that his original trial counsel, Howard Pearl, suffered from a "conflict of interest" because he was a "special deputy" in adjacent Marion County.<sup>3</sup> According to Teffeteller, Mr. Pearl was a "law enforcement officer" at the time he defended Teffeteller, and acted (or failed to act) out of "deference to the interests of law enforcement". The facts do not support this argument, and do not establish a basis for relief.

The standard for determining a conflict of interest was set out by the United States Supreme Court in *Cuyler v. Sullivan*, 446 U.S. 335, 350, 100 S.Ct. 1708, 64 L.Ed.2d 333 (1980), where that Court stated:

We hold that the possibility of conflict is insufficient to impugn a criminal conviction. In order to demonstrate a violation of his Sixth Amendment rights, a defendant must establish that an actual conflict of interest adversely affected his lawyer's performance.

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Teffeteller's original death sentence was vacated in 1983. Mr. Pearl did not represent Teffeteller at the second penalty phase. Consequently, only the guilt phase proceeding is at issue in this appeal--the penalty phase in which Mr. Pearl took part is irrelevant.

Subsequently, the Court re-emphasized the heavy burden established by *Cuyler*: "Prejudice is presumed only if the defendant demonstrates that counsel 'actively represented conflicting interests' and that 'an actual conflict of interest adversely affected his lawyer's performance.'" *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). As is the case with an ineffective assistance of counsel claim, the conflict of interest standard is in the conjunctive: in order to carry his burden of proof, the defendant must show active representation of conflicting interests (i.e., an actual conflict), and that, as a result of such actual conflict, there was an adverse effect on counsel's representation of the defendant. Teffeteller cannot establish either prong of the *Cuyler* standard, and all relief should be denied.

The law in this State as to this claim, which is generically known as a "Howard Pearl claim", was stated by this Court in *Harich v. State*, 573 So.2d 303 (Fla. 1990), when this Court approved the following findings of fact made by the Circuit Court of Volusia County:

In June of 1972 Howard Pearl became an assistant public defender for the Seventh Judicial Circuit. In 1978 he assumed responsibility for the defense of capital cases assigned to the public defender's office. In 1982 he represented the defendant Roy Allen Harich at the trial

in this cause. He also represented Harich at the governor's clemency hearing. Pearl did not disclose his role as a special deputy to Harich.

....

Pearl became a special deputy sheriff for Marion County in 1970. This status continued until Pearl resigned in May of 1989. Pearl paid liability insurance each year and he was bonded. He was issued a deputy's card, and the card erroneously identified him as a regular deputy. He also took an oath of office. Pearl also purchased a deputy sheriff's badge from a gun shop.

Pearl's sole reason for becoming a special deputy was to permit him to carry a firearm. He wanted a "gun toter's permit." Pearl never intended to act as a deputy, and the sheriff of Marion County never intended for Pearl to act as a law enforcement officer. Specifically, Pearl:

1. was never certified as a Florida law enforcement officer, contrary to the allegations on Page Nine of the 3.850;
2. never held himself out as a regular deputy;
3. received no training as a deputy, contrary to the allegations on Page Ten of the 3.850;
4. never wore a deputy's uniform;
5. received no compensation as a deputy, contrary to the allegations on Page Ten of the 3.850;
6. was never issued any equipment;
7. never made an arrest or stop;
8. had no required duties as a deputy; was on no duty roster;
9. never acted as a regular deputy;

10. was never asked to act as a regular deputy;

11. was in fact a "special" or "honorary" deputy rather than a regular deputy.

....

In March of 1974 he was issued an honorary deputy's card by former Sheriff Duff. He performed no duties as a Volusia County deputy, and none were expected to be performed by him. The card was issued by the sheriff for good will and/or political purposes. It was issued to dignitaries like television personality Willard Scott, and was even issued by the sheriff to newborn babies. This card was solely honorary.

The Lake County card was issued by the former sheriff to Pearl in June of 1983. Much like the Volusia County card it was purely honorary. Pearl never acted as a Lake county deputy, never held himself out to be a Lake County deputy, and was never expected by the sheriff to act as a regular deputy.

....

The Defense 3.850 alleges that Pearl's role as a deputy sheriff caused him to render ineffective assistance of counsel to Harich. No evidence to support this contention was produced at the evidentiary hearing. In fact, the evidence was to the contrary. Pearl remained loyal to Harich. He betrayed no confidences to law enforcement. He effectively cross-examined [sic] law enforcement officers. He did not ineffectively bolster their credibility. He did not ineffectively concede that a sexual battery took place. Pearl's role as a special deputy sheriff resulted in no prejudice to Harich. The deputy sheriff status did not in any way interfere with Pearl's role as a public defender.

....

The majority opinion in the Supreme Court decision mandating this evidentiary hearing expressed concern that

the issue of Pearl's deputy status may not have been discoverable through due diligence. During the evidentiary hearing it became obvious the issue could have been easily discovered. Judge Blount knew Pearl was an honorary deputy. In fact, Pearl told many judges about his status. He never tried to keep the status secret. It was never anything he perceived to be a conflict. In addition to the judges the original prosecutor knew Pearl was a deputy; Pearl's employer, the Public Defender of the Seventh Judicial Circuit, knew; other members of Pearl's office knew, including the head of the capital appeals division. It was common knowledge in the Volusia County legal system. This issue could have easily been discovered back at the time of the 1982 trial or anytime thereafter.

....

No actual conflict between Pearl's status as a special deputy sheriff and Harich's defense counsel has been demonstrated. Harich suffered no prejudice from Pearl's deputy status. Pearl rendered effective assistance to the defendant, the deputy status notwithstanding.

The remaining question is whether Pearl's deputy status was a per se conflict of interest requiring no showing of prejudice to the defendant. There is no law to support this assumption and this Court is unwilling to make that quantum leap. The better view is that Pearl's honorary position, requiring no actual law enforcement duties, did not conflict with his role as a defense attorney. There is no actual, implied, or per se conflict. The Court finds no violation of *Florida Statute* 454.18, 27, 51, and 27.53; Article II, Section 5(a) of the *Florida Constitution*; or Disciplinary Rule 5-101A of the *Florida Code of Professional Responsibility*.

Finally, this Court respectfully concludes that the defendant should be procedurally defaulted. The deputy status issue could and should have been discovered and raised in the original 3.850.

*Harich v. State* 573 So.2d 303, 304-5 (Fla. 1990). This Court

approved those findings of fact, and specifically stated:

[w]e agree with the trial judge that defense counsel's special deputy status was very different from that of an active or auxiliary deputy sheriff and that his position could best be characterized as "honorary." . . . Further, we find no actual conflict or deficiency in this public defender's representation of Harich.

*Harich v. State*, 573 So.2d at 306 [emphasis added]. Teffeteller has presented no evidence to challenge the settled law of this State, despite his argument to the contrary.

In denying relief on Teffeteller's "Howard Pearl claim", the Circuit Court made the following findings of fact:

Howard Pearl applied to become a special deputy sheriff in Marion County in August 1970. He sought to obtain this status in order to have the authority to carry a firearm in various counties in the State of Florida "for protection of self and family."<sup>4</sup> Then Sheriff Doug Willis of the Marion County Sheriff's Department apparently granted Mr. Pearl the status of special deputy sheriff at that time for the purpose of carrying a firearm. Mr. Pearl's status as a special deputy sheriff continued under the administration of Sheriff Don Moreland of the Marion County Sheriff's Department with Sheriff Moreland's assent.

Although Mr. Pearl was insured by the Florida Sheriff's Self-Insurance Fund, he was considered an unpaid medium hazard employee with no criminal law enforcement duties. Unlike certified law enforcement officers of the Marion County Sheriff's Department, Mr. Pearl paid

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At the time Mr. Pearl sought to carry a concealed firearm in this state there were no provisions for the permitting of laypersons to carry concealed weapons. [footnote in original]

his own annual fee to maintain this insurance. It appears to this Court that this insurance was required not because Mr. Pearl was an employee of the Marion County Sheriff's Department, but instead, because it was the Marion County Sheriff's Department that had given him the authority to carry a concealed weapon and might be liable for improper actions taken by M. Pearl with his concealed firearm.

Despite the fact that Mr. Pearl's identification card issued by the Marion County Sheriff's Department indicated that he was "a regularly constituted deputy sheriff," this Court finds that the testimony of Mr. Moreland and Mr. Pearl at the evidentiary hearing clearly showed that Mr. Pearl's status was severely limited. Specifically, Mr. Pearl (1) was never certified as a law enforcement officer, (2) never received any compensation from or executed any employee tax forms for the Marion County Sheriff's Department, (3) received no law enforcement training from the Marion County Sheriff's Department, (4) never was issued a uniform, vehicle or any other equipment from the Marion County Sheriff's Department, (5) never made any arrests, stops or otherwise performed any duties as a deputy sheriff of the Marion County Sheriff's Department, (6) never reported to any roll calls at the Marion County Sheriff's Department, (7) was never on a duty roster for the Marion County Sheriff's Department, (8) was never copied on any internal memoranda from the Marion County Sheriff's Department, and (9) never held himself out as a regularly constituted deputy sheriff of the Marion County Sheriff's Department. In fact, former Sheriff Moreland testified that Mr. Pearl's status as a special deputy was "honorary" in nature and was solely for the purpose of his being able to carry a concealed weapon. Mr. Pearl resigned from his status as a special deputy sheriff in May of 1989.

This Court finds as a matter of fact that Mr. Pearl never was and never has been a law enforcement officer with the Marion County Sheriff's Department. Mr. Pearl was essentially granted a concealed weapons permit from the Marion County Sheriff's Department in the same manner



that many other individuals at that time were given such privileges. Contrary to defense counsel's assertions, Mr. Pearl had no apparent or actual authority to act as a law enforcement officer for the Marion County Sheriff's Department since at no time did he indicate to anyone that he possessed anything other than a "gun toter's permit" from that agency.

(R49-50). With regard to the speculative escape attempt, the court stated:

Howard Pearl testified at the hearing that he was advised during his representation of the Defendant that law enforcement had heard a rumor that the Defendant might attempt an escape during trial and that the Defendant might take Mr. Pearl hostage during that attempt. Mr. Pearl testified at the hearing that he normally carried his firearm with him into court; however, Mr. Pearl conceded that the following statement regarding him being advised of the Defendant's possible escape plans was more accurate than his testimony at the hearing on September 9, 1996:

There was one guy a long time ago I was armed because of information that had been given to me by deputies who were guarding him, that they very strongly suspected that an attempt would be made to hand him a gun by his wife or girlfriend or whatever the status was. They were worried about it. I armed myself because I had made up my mind that no matter what happened, if he did wind up armed, I was not leaving the courthouse with him as a hostage-- and I wouldn't either--and that particular, single case, he wouldn't have left the courtroom.

See Deposition of Howard Pearl, *State v. Harich*, Case No. 81-1894-BB (7th Jud. Cir. June 10, 1989), at 93-94, admitted as Defendant's Exhibit 10 at the hearing held on September 9, 1996. Mr. Pearl testified at the hearing on September 9, 1996 that his sole concern after being

advised of this possible escape attempt by the Defendant was for his (Pearl's) own safety. Mr. Pearl testified that had he been advised that the Defendant was contemplating only an escape without the hostage element, that he (Pearl) would have thought he had to do nothing. With regard to the information regarding the alleged escape plan, Mr. Pearl's sole concern was for his own safety. Mr. Pearl testified that bailiffs in the courtroom at the time did not request his assistance in either guarding or preventing an escape attempt by the Defendant.

This Court finds that Mr. Pearl neither guarded nor helped to prevent an escape attempt by the Defendant during his trial and that Mr. Pearl's above-quoted statement was in response to a perceived threat to his person. It was not a statement intended to convey any fidelity on Mr. Pearl's part to law enforcement in the courtroom at that time who would have had a duty to prevent the Defendant's escape.

(R50-51). Those findings of fact are supported by the record and should not be disturbed.

In his brief, Teffeteller makes the argument that Mr. Pearl was, in fact, a Marion County Sheriff's Deputy. However, the true facts<sup>5</sup>, which were presented at the hearing and are reflected in the Circuit Court's order denying relief, are that Mr. Pearl obtained special (or honorary) deputy sheriff status for the sole purpose of being able to carry a concealed firearm at a time when there was no other means of obtaining such permission. (R144).

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Unsurprisingly, the facts developed at Teffeteller's hearing are essentially the same as those approved by this Court in *Harich*.

Given the frequency with which this practice was followed (R90), and the unmistakable clarity of Mr. Pearl's reason for obtaining special deputy status, it is disingenuous to suggest that Mr. Pearl was a law enforcement officer--he did not, and was never, intended to occupy such a position. The trial court findings are supported by competent substantial evidence, and, for that reason, this Court will not substitute its judgment for that of the Circuit Court. *Trepal v. State*, No. 87,222 (Fla., March 27, 1997); *Orme v. State*, 677 So.2d. 258, 262 (Fla. 1996) ("Our duty on appeal is to review the record in the light most favorable to the prevailing theory and to sustain that theory if it is supported by competent substantial evidence.").

To the extent that Teffeteller argues that Mr. Pearl "acted on behalf of a conflicted interest", that claim has no factual basis. Teffeteller bases this claim on the following deposition testimony of Mr. Pearl in a deposition given in the *Harich* case:

There was one guy a long time ago I was armed because of information that had been given to me by deputies who were guarding him, that they very strongly suspected that an attempt would be made to hand him a gun by his wife or girlfriend or whatever the status was. They were worried about it. I armed myself because I had made up my mind that no matter what happened, if he did wind up armed, I was not leaving the courthouse with him as a hostage--and I wouldn't either--and that particular, single case, he wouldn't have left the courtroom.

(R50) At the hearing in Teffeteller's case, Mr. Pearl testified that his sole concern was for his own safety, and that had the hostage-taking element not been present, Mr. Pearl would not have done anything. (R50) Mr. Pearl also testified that the courtroom deputies did not ask for his assistance in either guarding Teffeteller or in preventing his escape, should an attempt take place. (R50-51)

Based upon these facts, the trial court found that Teffeteller had not carried his burden of proving an actual conflict of interest. (R51) Specifically, the trial court found that Mr. Pearl did not actively represent conflicting interests, nor was counsel's performance adversely affected. *Id.* Under controlling precedent, Teffeteller is not entitled to relief. *See, e.g., Cuyler, supra; Buenoano v. Dugger*, 559 So.2d 1116, 1120 (Fla. 1990); *Buenoano v. Singletary*, 85 F.3d 645 (11th Cir. 1996); *Burnside v. State*, 656 So.2d 241, 243 (Fla. 5th DCA 1995). As the trial court found, the most that Teffeteller has proven is that there was a rumor that he might try to escape during his trial and that he might try to take Mr. Pearl hostage in the process. (R52) Mr. Pearl took no action based upon that rumor other than preparing to protect himself should the need arise. *Id.* However, because no escape attempt ever took place, Teffeteller has proven nothing more than speculation

based upon what is, essentially, a hypothetical fact pattern. No actual conflict of interest has been established, and there is no basis for relief.

On page 15 of his brief, Teffeteller argues, for the first time, that Mr. Pearl chose not to call "friends to testify" on Teffeteller's behalf because they would "pass by" the defendant.<sup>6</sup> There is no evidence in the record of the hearing to support this claim, and, in fact, this matter was never brought up before the Circuit Court. For that reason alone, this "claim" is not properly before this Court. *See, e.g., Doyle v. State*, 526 So.2d 909, 911 (Fla. 1988). Moreover, the record of the guilt phase proceedings clearly rebuts any claim of "uncalled witnesses". Shortly before Teffeteller's capital trial began, there was a hearing during which the defendant complained that Mr. Pearl had declined to call one witness that Teffeteller wanted to testify.<sup>7</sup> (Supp. Vol. 5, R20; Supp. Vol. 4, R24) All of these matters came to light well before trial began, and pre-date the rumor of an escape attempt by some

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While not stated explicitly, the implication in Teffeteller's brief is that Mr. Pearl feared that one of these witnesses would attempt to pass a weapon to Teffeteller.

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This witness was incarcerated in Texas, and would hardly have been in any position to assist with an escape attempt.

time. There is simply no support for the proposition that Mr. Pearl handled Teffeteller's defense as he did because of the rumored "escape attempt". To the contrary, the uncalled witness claim seems to post-date the guilt phase by several years.

The record does not reveal at what point in the trial Mr. Pearl was informed of the possibility of an escape attempt. However, given Mr. Pearl's settled pre-trial strategic decision to call no witnesses at the guilt phase (Supp. Vol. 4, R24), it is apparent that the rumor had no effect at all on his defense of Mr. Teffeteller.<sup>8</sup> Of course, if the rumor of an attempt to escape did not arise until the penalty phase of Teffeteller's trial, the fact that Mr. Pearl armed himself is wholly irrelevant because the sentence resulting therefrom was vacated.

As the facts found by the trial court make clear, Teffeteller suffered no prejudice as a result of his trial attorney's possession of what was, in actuality, no more than a permit (or license) to carry a concealed weapon. Trial counsel did not suffer from an actual conflict of interest, and certainly took no actions

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Mr. Pearl had determined prior to trial that he wanted to preserve both opening and closing argument at the conclusion of the guilt phase. (Supp. Vol 4., R24) That strategy is wholly inconsistent with, and exclusive of, the claim that witnesses were not called because of the "escape" rumor.

that were contrary to Teffeteller's interests. The pre-trial proceedings leave no doubt that the theory of defense at the guilt phase was to force the State to carry its burden of proof--as part of that theory, it is clear that, well before trial, Mr. Pearl had determined that the defense would call no guilt phase witnesses. In the face of that determination, there is no basis for the argument that Mr. Pearl made any trial decision based upon the rumored escape attempt (which came to light **during** the trial).

To the extent that Teffeteller complains that Mr. Pearl was "prepared to shoot him" if he attempted to escape, that statement mischaracterizes the testimony. The true state of the record is that Mr. Pearl testified that he would **only** have used his weapon to defend his own life had Teffeteller attempted to take him as a hostage. (R167) That is a far cry from the hyperbolic claims contained in Teffeteller's brief that he was "guarded by a Marion County sheriff's deputy". While Mr. Pearl's actions have certainly been the subject of extensive litigation, and have been criticized by numerous defendants, there is no evidence that Mr. Pearl's pistol permit, or the circumstances of its acquisition, ever led him to take any action contrary to the best interests of his clients. Mr. Pearl's willingness to defend his own life, if such became necessary, is not a violation of the Oath of Admission to

the Florida Bar, nor is it a violation of the duty of loyalty owed a client especially when, as here, no decisions concerning the representation were made based upon the perceived threat. No colorable argument can be made that the duty of loyalty extends so far as to require an attorney to become a hostage to his client for the purpose of effecting an escape, and the fact that Mr. Pearl was apparently prepared to avoid that result does not establish a basis for reversal of Teffeteller's conviction.<sup>9</sup> The trial court's denial of relief should be affirmed in all respects.

**II. THE CLAIM CONCERNING THE "REMAINING"  
CLAIMS SHOULD BE DECIDED BY THIS COURT BASED UPON  
THE BRIEFS THAT HAVE BEEN PREVIOUSLY FILED**

On pages 16-20 of his brief, Teffeteller argues that this Court should "clarify its prior holding by specifically instructing the Circuit Court to" hold an evidentiary hearing on the claims contained in the Rule 3.850 motion that do not relate to the Howard Pearl issue. Teffeteller fails to mention that while the trial court solicited his input regarding proper disposition of these claims, he did not avail himself of that opportunity. Moreover,

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Rule 4-1.6(b) of the *Rules Regulating the Florida Bar* **requires** a lawyer to reveal confidential information to prevent a client from committing a crime or to prevent death or substantial bodily injury to another.



unlike the other defendants whose cases were addressed in *Teffeteller v. State*, 676 So.2d 369 (Fla. 1996), Teffeteller's non-Howard Pearl claims had previously been decided by the circuit court and were (and are) pending before this Court for disposition. It makes no sense to argue, as Teffeteller does, that this Court's 1996 decision afforded him the opportunity to litigate those claims a second time in the Circuit Court while, at the same time, maintaining those issues before this Court.

The appeal from denial of relief on the non-Howard Pearl claims should be decided by this Court based upon the briefs previously filed in this cause. Briefly stated, Teffeteller's other claims are either procedurally barred, insufficiently pleaded, or refuted by the record. The Circuit Court summarily denied relief following an extensive hearing during which the parties were afforded the opportunity to argue each claim contained in the 3.850 motion. (R1-94). The order that resulted from that proceeding adequately states the rationale for the denial of relief, and in all respects complies with *Hoffman v. State*, 571 So.2d 449 (Fla. 1990). For the reasons stated in the State's prior Answer Briefs, the summary denial of the Rule 3.850 motion should be affirmed in all respects.

To the extent that Teffeteller complains about the trial

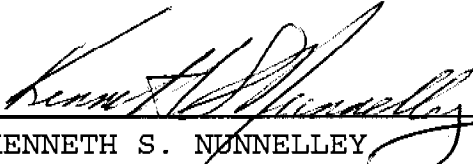
court's handling of the "remaining" claims, the true facts are that he was afforded the opportunity to file a memorandum of law setting forth his position as to those claims, but did not do so. It is axiomatic that a party may not remain silent and allow a claimed error to occur, and subsequently obtain appellate relief based upon that error. The trial court handled the "remaining" claims correctly, and there is no basis for relief.

#### CONCLUSION

Based upon the foregoing arguments and authorities, the denial of Rule 3.850 relief should be affirmed in all respects.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Answer Brief has been furnished by U.S. Mail to Stephen M. Kissinger, Chief Assistant CCR, Post Office Drawer 5498, Tallahassee, Florida 32314-5498, this 16<sup>th</sup> day of September, 1997.

  
Of Counsel