THE SUPREME COURT OF FLORIDA

CASE NO. 77-668

GUILLERMO OCTAVIO ARBELAEZ,

Appellant,

-vs-

STATE OF FLORIDA,

Appellee.

INITIAL BRIEF OF APPELLANT GUILLERMO OCTAVIO ARBELAEZ

CRIMINAL APPEAL FROM THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

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INTRODUCTION

This is an appeal from a judgment of guilt and sentence of death imposed by the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida. In this Brief, references to the record will be made as follows:

[R.]: The Record on Appeal

[SR.]: Supplemental Record on Appeal

STATEMENT OF THE CASE

The Defendant was indicted on one count of first degree murder and one count of kidnapping. [R.1-2]. The jury found the Defendant guilty as charged and recommended that the Defendant be sentenced to death. [R.217-218, 238-239]. Upon further proceedings the Court entered an adjudication of guilt, imposed the death penalty upon the Defendant for the homicide, and sentenced the Defendant to a consecutive life sentence for the kidnapping count. [R.243-255]. A timely Notice of Appeal was filed. [R. 273-274].

STATEMENT OF FACTS

*On **February 14, 1988**, Miami Police Homicide Detective **Eddie Martinez**, was summoned to the area of 1865 Brickell Avenue, Miami, Florida. [S.R. 539-540]. There, in the rear of a luxury condominium building, facing Biscayne Bay, by the dock, lied the lifeless body of young boy that had just been pulled out of the water by a security guard. [S.R. 333].*

*The boy was later identified as five (5) year old **Julio Rivas Alfaro**, the apparent cause of death was drowning. [S.R. 749-750]. At first the identity of the child could not be determined. [S.R. 541]. Later that afternoon, Detective **Martinez** learned the identity of the child by cross-referencing a missing child's report filed earlier that day by a woman named **Graciela Alfaro**. [S.R. 541-542].*

*It was through **Graciela Alfaro** and her nephew **Harlan Alfaro**, that Detective **Martinez** learned that the last person to be seen with the boy was the Appellant **Arbelaez**. The Appellant, however, could not be located anywhere. His vehicle, however, was located the next day in an area near Coral Gables, Florida. [S.R. 542]. The vehicle's interior was severely damaged. [S.R. 543-544].*

***Harlan Alfaro** testified that on the morning of **February 14, 1988**, he got up around 7:00 A.M. [S.R. 348-349]. The victim, Julio*

Rivas, was watching television, and the Appellant was looking out the window. ***Arbelaez*** *told him that he would not be going to work that day with him.* ***Harlam*** *responded that he would drive himself to work. He proceeded to take a shower to get ready for work at the Sheraton Key Biscayne, where he worked with the Appellant. They normally drove together to work. When* ***Harlan Alfaro*** *exited the bathroom, both the Appellant and the victim were gone. [S.R. 349]. He did not attach any significance to this and left to work. Upon his return home that afternoon, he advised* ***Graciela Alfaro*** *that the Appellant had not been to work and he had last seen* ***Julio Rivas*** *that morning in the living room with the Appellant.*

Around 8:00 o'clock that morning, Appellant arrived in his amber volvo at Blanquita's Cafeteria. [S.R. 395]. This is the cafeteria where ***Graciela Alfaro*** *worked as a waitress, and a place the Appellant often frequented. It is also where the two had met a few months prior.[S.R. 772-773].*

Francisca A. Morgan, *an employee of the restaurant, waited on the Appellant that morning while the victim remained in the car. [S.R. 386]. The Appellant ordered a colada of cuban coffee and a pack of marlboro cigarettes. At the restaurant, seated next to the Appellant was his long time friend and former employer,* ***Juan Landrian.***

Juan Landrian *testified that Appellant appeared very disturbed*

that morning, and that he vowed to do something to the woman she would never forget. [S.R. 386]. The Appellant stated that he was upset because the night prior, ***Graciela Alfaro*** *had gone out drinking with another man and had returned in the early morning hours. The woman defied him and refused to answer questions about her behavior and told him to*

leave the house; and that they were not getting married on ***February 14,*** *as previously agreed.* ***Landrian*** *attempted to console his friend and explained that there were other women. He also told him that* ***Graciela*** *was not a good woman and that she did not care for him, that she had often gone out with other men and that she was using him. [S.R. 386-387].*

The Appellant left the restaurant with his espresso coffee, his cigarettes and the child. The two were not seen again. The child's body was found later that day.

Pedro Salazar, *a friend of the Appellant, testified at trial that on* ***February 14, 1988,*** *the Appellant appeared at his home quite agitated. The Appellant said that he needed to go to Colombia because something terrible had occurred and a child had died. [S.R. 407-410]. The Salazar family helped the Appellant raise funds to travel to Puerto Rico. From there, the Appellant flew to Colombia two days later. [S.R. 412].*

As the Appellant was arriving in Colombia, Detective ***Martinez***

obtained a warrant for the arrest of the Appellant on First Degree Murder for the death of ***Julio Rivas*** *on* ***February 18, 1988.***

Sometime in ***March, 1988,*** *Detective* ***Martinez,*** *with the assistance of Detective* ***Cadavid,*** *began communicating with the Appellant over the telephone.* ***[S.R. 553].*** *These calls were initiated by the detectives and reciprocated by the Appellant. The calls were several; during the course of these calls, the Appellant not only admitted his involvement in the death of the child, but also became quite cozy with the detectives. At least on one occasion the Appellant referred to the detectives as his lawyers.* ***[S.R. 675-676].*** *The Appellant inquired of these detectives if they could arrange his return to Miami to face up for what he had done. He also inquired of the detectives if they could help him find a job once he returned to Miami.* ***[S.R. 677].*** *Getting a job was very important to the Appellant. Additionally, the Appellant requested and inquired of the detectives if their conversations would be kept confidential, and the detectives agreed* ***[S.R. 676], [R. 353].***

The detectives contacted an F.B.I. agent in Colombia by the name of ***Reuben J. Munoz.*** ***[S.R. 559].*** *This agent would arrange a meeting with the Appellant, and assist him in obtaining a visa to travel to the United States. Once he obtained a visa for* ***Arbelaez,*** *the detectives would pay for Appellant's flight to Miami* ***[S.R.563, 451-452].***

In Colombia, the Appellant met with Agent **Munoz** *on three different occasions* ***[S.R. 450-458]***. *As with the telephone conversations with the detectives, no Miranda warnings were administered, and the conversations were quite friendly. The Appellant of course made incriminating statements that were later used against him at trial. Ironically, Agent* **Munoz** *testified at trial and in the hearing on the Motion to Suppress, that the Appellant seemed very interested in the American Justice System and his rights as an accused. The agent explained to the Appellant that the system was fair, and that he would surely receive a fair trial. He also went on to explain that Appellant would be appointed a lawyer if he could not afford one.* ***[S.R. 455-459], [R.309-310]***. *Unfortunately, the Agent did not explain to Appellant his privilege against self incrimination, and the right to have a lawyer present during interrogation, such as the interrogation that was conducted during the course of these conversations.* ***[S.R. 468-469]***. *He also never explained to Appellant his rights to require the State of Florida to seek extradition; or that if he returned to Miami he would be facing the death penalty if prosecuted.* ***[S.R. 464], [R. 11]***.

At a hearing on Appellant's Motion to Suppress, the State agreed that no Miranda warnings were ever administered to the

Appellant prior to his arrival in Miami. [R. 294-368], [R. 369-397]. The State's position was that since the Appellant was not under arrest, that no miranda warnings were required. [R. 369-397]. The evidence at this hearing, however, clearly established that a warrant for the arrest of the Appellant was obtained on ***February 18, 1988.*** *[R. 350]. The evidence also established that efforts had been made during the course of these conversations with the Appellant to obtain the extradition of the Appellant to the United States. Agent* ***Munoz'*** *explanation of the fairness of the American system of justice was clearly unfair and misleading to the Appellant.*

Agent ***Munoz*** *also testified that no extradition could be arranged against the Appellant unless the State would first waive the death penalty and also agree not to impose a penalty greater than twenty-five (25) years imprisonment, which is the maximum penalty legally permissible in Colombia for first degree murder. The solution to this problem was to convince the Appellant to return voluntarily and not to scare him in any way. In so doing, the detectives and agent* ***Munoz*** *avoided telling the Appellant the truth and blatantly lied to him about his legal and constitutional rights.*

The Appellant, on his own, obtained his visa to travel to the United States and contacted his friend Detective ***Martinez*** *for his*

free ticket to Miami. The ticket was provided as agreed. In making the final arrangements, the detective even spoke to members of Appellant's family who called him to emphasize that Appellant should have his epilepsy pills with him at all times. [S.R. 698-700].

On April 11, 1988, the Appellant arrived at Miami International Airport [S.R. 563-565]. There, he was greeted by Detective Martinez who was waiting, and assisted him in clearing customs and immigration. Once in Detective Martinez' vehicle, the Detective advised the Appellant he was under arrest for the murder of Julio Rivas. [S.R. 566]. The Detective did not handcuff him, instead he invited him to have lunch at a nearby Weendy's Restaurant. [S.R. 573], [R. 359-361]. From the restaurant, the two men left for a ride around Key Biscayne and Coral Gables. The Appellant identified the bridge in Key Biscayne where the child died, and the area in Coral Gables where he abandoned the amber volvo on his way to the Salazar home. [S.R. 573-579].

On their way to the police station, the detective bought the Appellant a carton of his favorite marlboro cigarettes to take with him to jail. Later at the station, the Appellant gave a complete and detailed confession that reflected his earlier telephone conversations and the discussions that afternoon with the dectectives. That confession was audio taped and later

video recorded, and played during the course of the trial. [S.R. 598-761].

The friendly relationship between the detective and the Appellant continued even after his arrest. Appellant often called the Detective and he would visit the Appellant at the Dade County Jail and take him cigarettes. These visits were stopped at the request of the Public Defender's Office.

The mother of the victim, ***Graciela Alfaro*** *testified at trial and described her relationship with the Appellant and the events surrounding the evening of* ***February 13, 1988.*** *Before she testified, however, she blasted the Appellant calling him an "assassin" and "a son of a bitch who had murdered her little boy". [S.R. 474-490]. The witness was upset and crying hysterically. The accusations were screamed at the Defendant, even before the first question was asked.*

Upon the motion of the Appellant for a mistrial, the Judge excused the jury and inquired of the translator about the witness' statements. [S.R. 477]. Next the Court inquired of the spanish speaking members of the jury, whether they had heard the statements made by the witness. The first juror questioned stated that she had heard the statements and had understood them. [S.R. 483]. She also told the Court that she had not discussed the statements with the other members of the jury. [S.R. 484]. The second juror also

stated that she had heard the statements and understood them. [S.R. 485]. She also stated that the spanish juror that had just been questioned, had in fact translated and discussed the witness's statements with the rest of the jury. [S.R. 485-486]. A third spanish speaking juror also testified that she had heard the witness call Appellant a bastard and a murderer. [S.R. 487-488].

After considering the testimony of the jurors and argument of the parties, the Court decided that these accusations by the witness were understandable outbursts, and said nothing more than what the Indictment stated. [S.R. 480]. The Court then instructed the jury to disregard the outburst by the witness. The Appellant objected suggesting that such an instruction could not possibly cure the prejudicial impact of the witness' behavior and that the only possible way to cure it was to grant a mistrial. The Court did not agree. [S.R. 489].

The Appellant testified on his own behalf, [S.R. 766-834]. He told the jury that he did not intentionally murder the child. That he had stopped at the top of the Key Biscayne bridge when his amber volvo konked out. [S.R. 796]. He exited the vehicle and began working under the hood when he heard a scream and a loud noise. He looked over and could not find the child, he then looked over the bridge and saw the body of the little boy in the

water. [S.R. 796-797].

He then stated that he panicked and left in a hurry. He drove to an area in Coral Gables where he began hitting the vehicle and tearing the dash board. [S.R. 797]. This he did out of anger as he claimed that the vehicle was responsible for this unfortunate accident. From there he left to his friend ***Pedro Salazar's*** *house. These people helped him with funds to travel to Puerto Rico, and eventually with his family assistance he traveled to Colombia. [S.R. 798-799].*

The rest of his testimony was consistent with his confession except that he testified that he had been promised leniency by Detective ***Martinez,*** *if he changed the story and if he openly admitted to intentionally killing the child. [S.R. 810-811].*

The medical examiner testified earlier on behalf of the State that the victim showed evidence of a struggle at sometime prior to his death based on bruises in the child's body. [S.R. 753]. Doctor ***Middleman,*** *however, could not testify as to the age of the bruises, or whether they were contemporaneous with the child's demise.*

After two (2) days of deliberation, the jury found the Appellant guilty as charged. On ***March 4, 1991,*** *the Court held the penalty phase of the trial.*

ISSUES PRESENTED FOR REVIEW

I

Whether the Court erred in denying Appellant's Motion to Suppress Statements elicited from the Appellant both in Colombia, and later in Miami, Florida, prior to and after his arrest.

II

Whether the Court erred in denying Appellants' Motion for A Mistrial when the Mother of the victim, upon taking the stand to testify in the trial, began crying and shouting insults at the Appellant calling him, in the presence of the jury, an assassin and a son of a bitch.

I

THE COURT ERRED IN DENYING APPELLANT'S MOTION TO SUPPRESS STATEMENTS ELICITED FROM HIM WHILE HE WAS IN HIS NATIVE COUNTRY OF COLUMBIA, AND LATER UPON HIS ARRIVAL AT MIAMI, BOTH BEFORE AND AFTER HIS ARREST

Appellant's purported statements and/or confession to Detectives ***Martinez, Cadavid,*** *and* ***Agent Munoz*** *of the Federal Bureau of Investigations, was elicited in violation of Appellant's constitutional rights and therefore should have been excluded during the trial.*

The Court erred in its finding that Miranda Warnings were not required during the conversations between the Defendant and these police officers between ***March 16, 1988,*** *and his arrest on* ***April 11, 1988.*** *Additionally, the statements made by the Appellant after he was read his miranda warnings should have been excluded as being clearly derivative of the illegally obtained confessions, and because they were involuntarily made.*

Failure to clearly inform a Defendant prior to questioning that he is entitled to the advice of counsel before and during interrogation renders the resulting statements inadmissible. ***Atwell v. United States****, 398 F.2d 507 (5th Cir. 1968). In* ***Atwell****, the*

interrogator advised the Defendant that he could consult with counsel at "any time". In reversing the conviction the Fifth Circuit Court of Appeals held that the "at any time" advisement did not "comply with Miranda's directive... that an individual held for interrogation must be clearly informed that he has the right to consult with a lawyer, and to have the lawyer with him during the interrogation..." See 398 F. 2d 510. The Court again assured the Defendant's right to counsel in the case of ***Gilpin v. United States****, 415 F.2d 638 (5th Cir. 1969), there, the Fifth Circuit first found that advising a Defendant that "we have no way of giving you your wish, if you go to Court" did not convey the notion that he was entitled to a lawyer then and there and thus held the confession inadmissible.*

Here, Appellant was never advised of his right to counsel and thus did not knowingly, voluntarily and intelligently waive these rights. The Defendant was not provided with any explanation of his ***Miranda Warnings****. Therefore, the statements alleged to have been made by him were obtained in violation of the directives of* ***Miranda v. Arizona****, 384 U.S. 436 (1966).*

The State's argument that no Miranda warnings were given because none were required; at least during the conversations that

occurred between Appellant and police officers while he was in Columbia, and later in Miami lacks merit. This was not typical pre-arrest statements which are generally not within the ***Miranda Rule****. See* ***James v. State****, 223 So.2d 52 (Fla. 4th D.C.A. 1969);* ***Wingard v. State****, 208 So.2d 644 (Fla. 2d D.C.A. 1986); and* ***Melero v. State****, 306 So.2d 603 (Fla. 3d D.C.A. 1975).*

When police officers focus upon a defendant as their prime and only suspect, Miranda warnings must be given even if the Defendant is not at that time arrested. ***Mosely v. State****, 503 2d 1356 (Fla. 1st D.C.A. 1987);* ***B.L. v. State****, 425 So.2d 1178 (Fla. 3d D.C.A. 1983); and* ***Elkin v. State****, 531 So.2d 219 (Fla. 3d D.C.A. 1988). In* ***Mosely****, the Court held that Miranda warnings should have been given notwithstanding the fact that the defendant voluntarily appeared at the police station and was advised that he was not under arrest at that time.*

> *"The state argues that because Mosely went voluntarily to the stationhouse in response to the deputy's telephone request, Mosely was not in "custody" as defined in* ***Miranda v. Arizona****, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966) and therefore the deputy's failure to read Mosely his Miranda rights was not error. We disagree. The facts of this case reveal that Mosely was an individual who had become a definite suspect in a drug investigation before he was initially contacted. He was then informed by a law enforcement officer that his presence was desired at the*

stationhouse for questioning. Although Mosely arrived voluntarily at the stationhouse for questioning he was without the benefit of counsel during that interview initiated by a law enforcement officer who had focused upon Mosely as his prime, and only, suspect. Given this set of circumstances, we find that the State's reliance on ***Roman v. State****, 475 So.2d 1228 (Fla. 1985),* ***cert. denied****, ---U.S.---, 106 S.Ct.1480, 89 L.Ed.2d 734 (1986) and cases cited within,* ***California v. Beheler****, 563 U. S. 1121, 103 S.Ct. 3517, 77 L.Ed.2d 1275 (1983);* ***Oregon v. Mathiason****, 429 U.S. 492, 97 S.Ct. 2361, 80 L.Ed.2d 832 (1984), is misplaced."*

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The Court goes on at next page and concludes its reasoning as follows:

" An accused from whom a confession is sought should be free from the influence of either hope or fear, and a confession must be excluded if the totality of the surrounding circumstances were calculated to delude the accused or to exert undue influence over him. 349 So.2d at 716. (emphasis supplied).

See also ***Thomas v. State****, 456 So.2d 454 (Fla. 1984);* ***Brewer v. State****,386 So.2d 232 (Fla. 1980).*

We find that appellant was the only suspect in this investigation and was the focus of a precalculated plan designed to get him to the stationhouse, confess and cooperate as an informant for leniency in prosecution. We further find that, although appellant was not in custody arising to the level of a formal arrest

most often viewed as that which requires a Miranda warning, he was the accused from whom a confession and future cooperation were sought as a result of a plan involving promises of leniency and threats of future prosecution which was formulated before the appellant ever got to the station. . ."

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The conversation between the Appellant and the police officers was neither casual nor routine. The investigation had clearly focused on him, and he was their prime and only suspect. See ***Jenkins v. State****, 533 So.2d 297 (Fla. 1988); and* ***United States v. Henry****, 447 U.S. 264, 100 S.Ct. 2183, 65 L.Ed.2d 115 (1980); and* ***Knight v. State****, 512 So.2d 922 (Fla. 1987). A warrant for the Appellant's arrest was obtained on* ***February 14, 1988****.*

The Court's ruling that the statements of the Appellant were voluntarily obtained, and the State's argument that the conversations between the Appellant and the police officers were non-custodial because he was not arrested at that point clearly lacks merit. The only reason the Appellant was not arrested in those occasions is simply because they could not perform the

arrest.

The Third District Court of Appeals in ***B.L., v. State****, 425 So.2d 1178 (Fla. 3rd. D.C.A. 1983) recognized a four factor test previously discussed by the Old Fifth Circuit of Appeals in* ***Alberti v. Estelle****, 524 F.2d 1265, 1267 (5th Cir. 1975),* ***cert. denied****, 426 U.S. 954, 96 S.Ct. 3182, 49 L.Ed.2d 1194 (1976). This test described when a person is considered in custody for Miranda purposes as follows:*

[1] Probable cause to arrest;

[2] Subjective intent of the police;

[3] Subjective belief of the Defendant; and

[4] Focus of the investigation.

Both the Third District and the Circuit Court of Appeals allude to the reasoning in ***United States v. Phelps****, 443 F.2d 246 (5th Cir. 1971), and* ***Agius v. United States****, 413 F.2d 915 (5th Cir. 1969). The reasoning of the* ***Phelps'*** *Court is quoted as follows:*

> *"[I]f the investigation was not focused on the Defendant when the officers entered the building , it certainly focused on him a few seconds later when the investigators discovered the illegal weapons in the showcase. We think that the presence of four officers in a man's place of business holding a weapon which they discovered on the premises and which they have announced is illegal,*

> *presents a situation which is intimidating enough to warrant the application of the Miranda privileges and protections. The investigator had probable cause to arrest Phelps, and he had reason to believe they would do so. Once the Officers found the the illegal weapon the investigationfocused on Phelps, and the panoply of rights enunciated in Miranda became applicable"[emphasis added].*

In the case sub judice, the officers had probable cause to arrest the Appellant. They had a warrant for his arrest and were exploring the possibility of extraditing him. Their subjective intent was to lure the Appellant back to the United States for prosecution without limitations. In order to achieve that goal they had to gain his confidence. The Appellant's will was subdued by the officers' kindness and friendliness. At one point he even referred to them as his attorneys, he discussed the possibility of employment, and most importantly, he thought his conversations with them would be kept in confidence. When he inquired of his legal rights, however, he was deceived.

Miranda warnings at the outset of this series of conversations would have properly informed the Appellant of his rights and would have assisted him in making an intelligent waiver of his rights.

*In **Elkin v. State, supra**, the Third District Court made the following analysis when confronted with a similar situation:*

> *"During the investigation of the defendant concerning the murder of her husband, police took statements from her on four separate occasions. One such statement occurred following the visit to the funeral home to view her husband's body on the evening of December 16, 1983. While the defendant was at the funeral home a detective telephoned her to request that she submit to another interview. At the time she was taken by police from the funeral home to the station house, she was already considered a suspect, yet she was not given her Miranda rights. While the interrogating officer testified that in his mind she was free to leave at any time the record shows that this fact was never communicated to her. . ."*
>
> *531 So.2d 220*

*The First District reached a similar conclusion in **Jenkins v. State, supra**:*

> *"Although Jenkins was not in custody arising to the level of a formal arrest generally viewed as that which requires a Miranda warning, he was admittedly the prime focus of Mooneyham's investigation."*
>
> *533 So.2d 300*

II

THE COURT ERRED IN DENYING APPELLANT'S MOTION FOR MISTRIAL WHEN THE MOTHER OF THE VICTIM, UPON TAKING THE STAND TO TESTIFY IN THE TRIAL, BEGAN CRYING AND SHOUTED INSULTS AT THE APPELLANT, CALLING HIM, IN THE PRESENCE OF THE JURY, AN ASSASSIN AND A SON OF A BITCH

The Trial Court upon being alerted of the accusations the mother of the victim made against the Appellant in spanish was quick to excuse the jury to consider the issue of a mistrial raised by the Appellant [S.R. 477]. The Court inquired of its two interpreters, they agreed that the statements calling the Appellant an assassin and a son of a bitch were in fact made.

The Court then inquired of the spanish speaking jurors, they heard it too. [S.R. 483-486]. The Court inquired of three spanish speaking jurors if they had translated the accusations made by the witness. [S.R. 485]. Reluctantly, one juror informed that another juror had translated the statements to the rest of the venire. [S.R. 485-486]. The entire panel therefore understood what had occurred and were affected by it.

The Court denied Appellant's motion for mistrial upon the State's argument that the allegations were nothing more than the

allegations in the Indictment. This is simply not the case. The Grand Jury charged the Appellant with a crime but did not call him a criminal, that is for the jury to decide. The Grand Jury did not walk into his trial and crying and hystericlay accuse the Appellant of assassinating "her" little boy and that he was a son of a bitch. Such emotional outburst, while understandable, have no place in a courtroom where another human being's life is at stake. See ***Rodriguez v. State****, 433 So.2d 1273 (Fla. 3d D.C.A. 1983).*

In ***Rodriguez****, the Third District Court reasoned as follows in an identical situation:*

> *"Turning to the final challenge we agree that Mrs. Izquierdo's emotional outbursts, while understandable, were extremely prejudicial and created an atmosphere in which appellant could not receive a fair trial. Mrs. Izquierdo shouted epithets and interseded her testimony with impassioned statements evidencing her hostility towards Rodriguez. Her conduct necessarily engendered sympathy for her plight, and antagonism for Rodriguez, depriving him of a fair trial. See* ***Stewart v. State****, 51 So.2d 494 (Fla.1951);* ***Carter v. State****, 332 So. 2d 120 (Fla. 2d D.C.A.1976);* ***Tribue v. State****, 106 So.2d 630 (Fla. 2d D.C.A. 1958)."*

CONCLUSION

Based upon the foregoing cases, authorities and arguments the Defendant requests that the judgment of guilt be vacated and that he be awarded a new trial, and that the sentence of death be vacated and sentencing be remanded for further proceedings.

Respectfully submitted,

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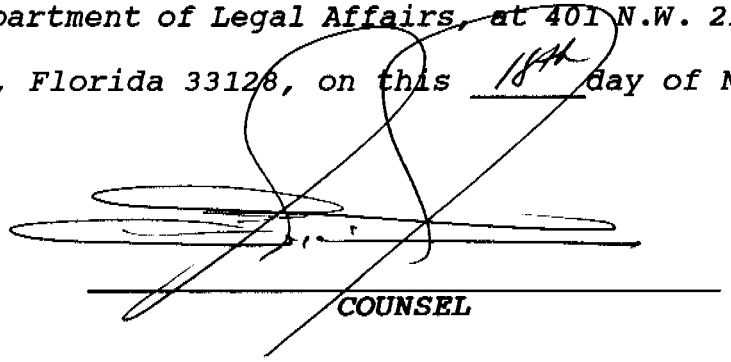
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed/delivered to the Office of the Attorney General, Department of Legal Affairs, at 401 N.W. 2nd Avenue, Suite 921N, Miami, Florida 33128, on this 18th day of November, 1991.



COUNSEL