IN THE SUPREME COURT OF FLORIDA

**DARRYL WALKER,**

Appellant,

v. **CASE NO. SC03-1555**

**STATE OF FLORIDA,**

Appellee.
_____/

# INITIAL BRIEF ON THE MERITS

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## INITIAL BRIEF ON THE MERITS

### I. PRELIMINARY STATEMENT

Petitioner was the Defendant in the circuit court for Duval County, where he was convicted of one count of burglary of a dwelling, a second degree felony. Petitioner was the appellant in the First District Court of Appeal, which affirmed the judgment and sentence but certified a question of great public importance. He will be referred to in this brief as Petitioner or the Defendant or Mr. Walker.

The record consists of two volumes. Reference to the record on appeal will be by use of the volume number (in Roman numerals) followed by the appropriate page number, in parentheses.

The opinion of the District Court of Appeal is attached as an appendix, as is the Motion for Rehearing denied by that court, and will be referred to as “App.”

## II. **STATEMENT OF THE CASE AND THE FACTS**

Darryl Walker was charged with one count of burglary of a dwelling, a second degree felony. (I-12) Following a jury trial, he was found guilty and sentenced to five years as an habitual felony offender, with credit for 129 days. (I-69)

Before trial, the defense filed a motion to suppress the statement that "I drove the guys around for a while, then we got the stuff." (I-25) The trial court denied the motion following proffers made before and during trial. (I-27, II-10) In essence, the defense theory was that the Defendant made his statement in the presence of officers and his girlfriend, who was crying and upset about the possibility that she might go to jail, and that the Defendant said he would rather go to jail than see his baby's mother go to jail, and the situation had been coercive. (II-9)

Before trial, Officer Emmett Matthews testified he advised the Defendant of his rights, and that the Defendant did not appear to be under the influence of alcohol or drugs; he did not threaten the Defendant or make any promises; and the Defendant agreed to speak to him. (II-14) He asked if the Defendant knew anything about the burglary the night before. "[H]e explained that he knew what was going on but he did not go inside the house. He stated, 'I drove the guys around for a

while then we got the stuff.’” The conversation was not tape recorded in any way. While the Defendant was talking to the officer, Belinda Rawls was outside the police car crying. The officer denied that she was threatened with going to jail, but she asked several times if she was going to jail. At the time, he did not answer her. (II-17) The officer did not recall the Defendant saying he would rather go to jail than have his baby’s mama go to jail. He said Miss Rawls was closer to the police car on the south sidewalk, whereas he and the Defendant were at his car on the north sidewalk. (II-18) Further testimony and argument on the motion to suppress was presented during trial. (II-57)

The first witness at trial was David Thompson, the burglary victim. He testified that on December 11, 2001, he spent the night at his girlfriend’s house, but came home early because he forgot his boots, and when he arrived home, found all the lights on and front door open. He had left home at 11 PM the night before and returned around 6 AM. (II-36) A window near the kitchen was broken. (II-35) He asked his neighbor to call police, and when he went inside, found the apartment had been ransacked. His 52" Hitachi TV was missing, as were some tire rims. He later identified those items at the home of a young woman. (II-39, 41) He required help to move the TV. (II-

42) None of his neighbors saw anything that night. (II-43)

Belinda Rawls testified that Mr. Walker is the father of her youngest child. On December 10, 2001, Mr. Walker was at her home celebrating his birthday. He and his friends left at 3 or 3:30 AM on December 11th. Early that morning, Vernon Rogers, a/k/a Jit, knocked on her door, and he said Walker said to ask if they could put their stuff in her house until morning. (II-47) She allowed them to do so, and they brought in a big screen TV, four tire rims, and a speaker box. Around 9 o'clock that morning, when police came to her door, she allowed them to come in, and they mentioned the TV and tires they were looking for. (II-49) She was a little frightened because she didn't want to go to jail for something she didn't have anything to do with. They told her the property was stolen, and she knew she could go to jail for dealing in stolen property. She testified the officers did not threaten her. She took them to Mr. Walker and Vernon Rogers, nicknamed Jit. (II-50) Jit is the one who asked about putting stuff in her apartment.

Miss Rawls said it was common for Mr. Walker to loan his car to his friends. She did not know for a fact that he was with them for the entire evening. (II-53) His car was not there when she took officers to his home; his friends still

had it. She was crying the whole time she was with police; she was afraid she would go to jail. She told police it was his stuff. (II-54) She kept asking police if she was going to jail, and they said they didn't know, they would have to see. They called her over to the car where they were talking to him and asked her whose stuff it was. (II-55)

The defense argued that the Defendant's statements should be suppressed because the mother of his child was crying and afraid of going to jail, and he was going to take the rap to keep her out of jail, thus there had been coercion. (II-57) The court denied the motion to suppress. (II-104)

Officer Matthews testified he went to the burglary scene, found out what was missing, and observed the broken back window. He got information that some property would be at Belinda Rawls's residence, and went to her address. She agreed to talk to him. He did not threaten to arrest her. (II-62) He saw the TV, and she said Mr. Walker had asked to leave some of his property there at about 2:30 AM. (II-63) She was very cooperative, appeared very nervous, but she was not threatened. He identified Petitioner. (II-64) He said Petitioner agreed to talk to him, and said, regarding the burglary, that he knew what was going on, but he didn't go inside, and he said he drove the guys around for a while,

“then we got the stuff.” (II-67) Miss Rawls was with him at the time, standing near Officer Holley’s car. Mr. Walker agreed to take them to “Jit.”

Officer Matthews’s conversation with Petitioner was not recorded. He did not recall Miss Rawls coming to his car at the scene. He smelled marijuana smoke at Miss Rawls’s apartment, and she admitted smoking earlier that morning. (II-71) She was crying off and on during the entire incident. (II-72) The officer did not take notes during the interview, and it was not taped. (II-70, 74)

Officer Holley testified he did not threaten to arrest Miss Rawls. (II-77) He assisted Officer Matthews in locating the suspects, including Mr. Walker. When Officer Matthews brought Mr. Walker to his car, Miss Rawls was standing in the street near Matthews’s car. (II-80) He did not hear everything that was said between Matthews and Rawls or between Matthews and Walker. (II-81)

Jennifer Kayter, an evidence technician with the JSO, obtained some fingerprint evidence from the burglary scene. (II-89) Richard Kocik, fingerprint examiner, was able to identify the victim’s thumb print, but no other prints. (II-96)

Officer Stephen Strickland testified he interviewed Mr.

Walker and took notes. Mr. Walker did not make a written statement. (II-103) The court denied the motion to suppress after hearing his testimony. (II-104) Officer Strickland continued with his testimony, and said Mr. Walker told him two individuals, Run and Jit, came to his house after midnight; they drove around the Kings Road area for awhile; they asked him to stop and wait for ten minutes; they left the vehicle, disappeared, came back with a gray box; they drove to another location, removed speakers from the truck of the car, again left the car and returned with a large TV and tire rims. (II-111) He did not say the TV or tires were his. He said he moved a big speaker from the trunk to make room for the next run. (II-112) Mr. Walker did not say he knew Vernon and Ronnie were burglarizing houses, and did not say he encouraged them to commit a burglary. (II-116) The officer did not know how the two got the TV and rims to the car.

The defense moved for a judgement of acquittal, arguing there was no physical evidence that Mr. Walker entered the dwelling and no evidence that would support his being found guilty as a principal. (II-118)

Mr. Walker testified he loaned his car to Ronnie and Vernon and he went to a friend’s house. He sometimes loaned his car to them, although he was not with them that night; he

was at another friend’s house. (II-127) Ron called him to meet him, and when he met them, they had a TV in the trunk and tires on the seat. He did not know the stuff was stolen. (II-128) He did not ask where it came from. They did not tell him they were going to break into houses, and he had no idea what they were up to that night. He had loaned them his car before with no problem. He denied telling Officer Matthews that he knew what was going on but did not go inside the house. He told the officer he was with them earlier and dropped them off earlier in the day. (II-129) He told the officer he would rather take the blame and go to jail than have Ms. Rawls go to jail. The officer wasn’t threatening her, but was saying things to her that made her cry, and he was talking to both of them. (II-130)

Mr. Walker said Officer Strickland did not read him his rights until the interview was over, and he was scared when he was talking to him. (II-131) He was not with Ronnie and Vernon the entire night and did not know if they broke into a house. He never saw them carrying a big TV and tire rims down the street. He wanted the rims out of his car because they were dirty. (II-132) He did not know what they were planning that night, did not encourage them to commit a burglary, did not commit a burglary, and did not go into Mr. Thompson’s house.

(II-133) He met Jit and Run back at Belinda's house, but did not go with them. (II-134) He said he would rather go to jail before he let his baby's mother go to jail; he thought they were going to take her to jail because the items were found in her house. (II-137) Mr. Walker said he only moved the tires to get them off the seats; he did not help move anything else into Rawls's house. (II-134) The officers misunderstood what he said to them.

The defense renewed the motion for judgment of acquittal, (II-140), and also objected to the instruction on proof of unexplained possession of stolen property as a comment on the evidence, arguing that the First District Court of Appeal had issued an opinion to the effect that the instruction constituted a comment on the evidence. The court gave the instruction over objection. (II-145)

The District Court of Appeal affirmed the judgment and sentence, but certified a question of great public importance. (App.) The court expressed concern about the continued viability of the instruction in light of recent case law regarding commentary on evidence, citing as examples Whitfield v. State, In re Instruction in Criminal Cases, Fenelon v. State, and then Judge Pariente's dissenting opinion in Washburn v. State. The District Court stated again that "we

can think of no valid policy reason why a judge should be allowed to comment on evidence of unexplained possession of recently stolen items any more than the judge is allowed to comment on other evidence adduced at trial." Further, the District Court said, "Because this issue is continually recurring, and because the case law that has emerged since State v. Young evidences a significant divergence from the reasoning supporting the holding therein," the court again certified the following question:

> IS THE FLORIDA STANDARD JURY INSTRUCTION ON "POSSESSION OR PROPERTY RECENTLY STOLEN" AN IMPERMISSIBLE COMMENT ON THE EVIDENCE?

In its opinion, the District Court stated that in Weddell v. State, 780 So. 2d 324 (Fla. 1st DCA), review granted, 796 So. 2d 539 (Fla. 2001), review dismissed, 813 So. 2d 67 (Fla. 2002), it could not have held that the instruction was impermissible because of this Court's ruling in State v. Young, 217 So. 2d 567 (Fla. 1968), cert. denied 396 U.S. 853 (1969). Petitioner filed a motion for rehearing, pointing out that in Young, while this Court held that the instruction did not violate the right to remain silent or impermissibly shift the burden of proof, this Court did not rule on the question whether the instruction constitutes an impermissible comment on the evidence, which is the issue raised in the instant

case, suggesting that the District Court could rule on the issue. (App.) The court denied that motion for rehearing, however.

Notice of intent to seek discretionary review was filed by Petitioner, and this Court issued an order postponing a decision on jurisdiction and announcing a briefing schedule.

## III. SUMMARY OF ARGUMENT

The question certified by the District Court as one of great public importance pertains to the permissibility of a jury instruction on the inference to be drawn from the possession of property recently stolen. Petitioner contends that, as a matter of law, the instruction given on possession of property recently stolen, like the flight instruction outlawed in Fenelon, and several other similar instructions deemed to violate the general rule against judicial commentary on the evidence, constitutes an impermissible judicial comment on the evidence, as such deprives a defendant of due process and a fair trial, and should not be given. As such, the question should be answered in the affirmative. Petitioner further contends the instruction was prejudicial in his case, and that he is entitled to a new trial.

## IV. ARGUMENT

> ISSUE: IS THE FLORIDA STANDARD JURY INSTRUCTION ON "POSSESSION OF PROPERTY RECENTLY STOLEN" AN IMPERMISSIBLE COMMENT ON THE EVIDENCE?

Standard of review

The certified question presents an issue of law. The standard of review with regard to a question of law is de novo. See State v. Eldridge, 814 So. 2d 1138 (Fla. 1st DCA 2002).

Argument

Petitioner contends the answer to the question certified by the District Court is "yes," the instruction on the inference to be drawn from the possession of property recently stolen is an impermissible comment on the evidence.

Over defense objection, the jury was instructed that it could infer guilt from the unexplained possession of recently stolen property. (I-35) The instruction reads as follows:

> Proof of unexplained possession by an accused of property recently stolen by means of a burglary may justify a conviction of burglary with intent to steal that property if the circumstances of the burglary and of the possession of the stolen property, when considered in the light of all evidence in the case, convince you beyond a reasonable doubt that the defendant committed the burglary.

The trial court reversibly erred in giving the instruction,

which constitutes an impermissible comment on the evidence.

The proscription against judicial comment on the evidence is designed to ensure a Defendant's due process right to a fair and impartial trial. See, e.g., Hamilton v. State, 109 So. 2d 422 (Fla. 3d DCA 1959).

Section 90.106, Florida Statutes, provides that "A judge may not sum up the evidence or comment to the jury upon the weight of the evidence, the credibility of the witnesses, or the guilt of the accused."

> During a jury trial, the judge occupies a dominant position. Any remarks that the judge makes are listened to closely by the jury and are given great weight. Because of the credibility that the comments are given and because they would likely overshadow that testimony of the witnesses themselves and of counsel, section 90.106 recognizes that a judge is prohibited from commenting on the weight of the evidence, or the credibility of the witnesses, and from summing up the evidence to the jury. If such comment and summing up were permitted, impartiality of the trial would be destroyed.

Ehrhardt, Florida Evidence, Section 106.1 (2001 ed.)

In Whitfield v. State, 452 So. 2d 548 (Fla. 1984), this Court held that a jury instruction on the refusal to submit to fingerprinting as a circumstance from which consciousness of guilt could be inferred was an impermissible comment on the evidence. Citing the flight instruction as illustrative, the

Court indicated its concern about extending any further exceptions to the general rule that a trial court may not comment on the evidence, otherwise the exceptions would "swallow" the rule.

Eight years later, in Fenelon v. State, 594 So. 2d 292 (Fla. 1992), this Court reconsidered the so-called flight exception to the general rule:

> Evidence that a defendant was seen at the scene of the crime, leaving the scene, or fleeing from the scene, in most instances, would be relevant to the question of the defendant's guilt. Such evidence, like any other evidence offered at trial, is weighed and measured by its degree of relevance to the issues in the case. The flight instruction, however, treats that evidence differently from any other evidence. It provides an exception to the rule that the judge should not invade the province of the jury by commenting on the evidence or indicating what inferences may be drawn from it. "Especially in criminal cases, the trial court should take great care not to intimate to the jury the court's opinion as to the weight, character, or credibility of any evidence adduced."

The Court stated, "we can think of no valid policy reason why a trial judge should be permitted to comment on evidence of flight as opposed to any other evidence adduced at trial. The problem with the instruction, this Court said, was "[t]he difficulty inherent . . . in deciding when 'leaving' or 'fleeing' actually indicates consciousness of guilt." It noted that "'flight alone is no more consistent with guilt than innocence,'" and that there was disagreement on "what kind and what quantum of evidence will support an instruction on flight." The Court was troubled by the inconsistencies of

application and lack of meaningful standard for assessing what type of evidence justified giving the instruction, concluded the better policy was "to reserve comment to counsel, rather than to the court," and directed that the instruction should no longer be given.

A few years after Fenelon was decided, in In re Instructions in Criminal Cases, 652 So. 2d 814 (Fla. 1995), this Court held on its own motion that an instruction that "inconsistent exculpatory statements can be used to affirmatively show consciousness of guilt and unlawful intent," constituted a comment on the evidence and could no longer be given. In so holding, this Court overruled its own previous decision in Johnson v. State, 465 So. 2d 499 (Fla. 1985).

Also pertinent to the issue under review is Barfield v. State, 613 So. 2d 507 (Fla. 1st DCA 1993), in which the First District reversed a conviction for petit theft on the ground that a jury instruction regarding the inference arising from the sale of recently stolen property at a price substantially below fair market value was, like the flight instruction in Fenelon, an impermissible comment on the evidence. And in Fecske v. State, 757 So. 2d 548 (Fla. 4th DCA 2000), review denied 776 So. 2d 276 (Fla. 2000), the Fourth District

reversed and remanded for a new trial after the trial court gave a special instruction which constituted a comment on the evidence:

> While the court's special instruction [that as a general rule, lack of affirmative medical treatment of the victim, whose initial injury was proximately caused by the defendant's actions, does not constitute an intervening cause relieving the defendant of criminal responsibility for the victim's death] accurately restated this law, Fecske argues that the instruction constituted an improper comment on the evidence by the court. We agree. As the state conceded at oral argument, causation is an element of UBAL manslaughter under section 316.193. Thus, Fecske should have been allowed to defend that the pneumonia, and not his negligence, caused the victim's death. By giving the special instruction, however, the court essentially directed a verdict on this defense in favor of the state.

This Court denied review of Fecske. Clearly the trend in the case law has been to do away with instructions such as the one presently under review that in effect constitute a comment on the evidence by the trial court.

Petitioner contends that in the present case, the District Court was incorrect in its perception that it was constrained from ruling outright that the instruction constitutes a comment on the evidence by State v. Young, 217 So. 2d 567 (Fla. 1968). In Young, this Court passed only on the questions whether the jury instruction at issue violated a

Defendant's right to remain silent or impermissibly shifted the burden of proof, but did not pass on the precise issue raised in this case, i.e., whether the instruction constitutes an impermissible comment on the evidence. As noted in then Judge Pariente's dissenting opinion in Washburn v. State, 683 So. 2d 533 (Fla. 4th DCA 1996), in Young, "our supreme court did not deal with the situation when possession is explained and also did not address whether the instruction was an impermissible comment on the evidence." Judge Pariente advocated certifying the question in light of Fenelon.

Further, a reading of Young demonstrates that the Court focused its opinion entirely on the Fifth Amendment argument and the effect on the instruction of the then recent Miranda decision. Nowhere did it address an argument pertaining to a trial court's comment on the evidence. The rationale for disallowing commentary on the evidence differs from the rationale for disallowing comment by the prosecution on the right to remain silent and for disallowing shifting the burden of proof in criminal cases. Rather than addressing the constitutional right to remain silent or the state's burden to prove its case beyond a reasonable doubt, the rationale for not permitting comment on the evidence is that the jury might be swayed by the trial court's apparent view of the merits of

the case. “A trial court should scrupulously avoid commenting on the evidence in a case. . . . Especially in a criminal prosecution, the trial court should take great care not to intimate to the jury the court’s opinion as to the weight, character, or credibility of any evidence adduced.” See Whitfield v. State, 452 So. 2d 548, 549 (Fla. 1984); Fenelon v. State, 594 So. 2d 292 (Fla. 1992).

> The dominant position occupied by a judge in the trial of a cause before a jury is such that his remarks or comments, especially as they relate to the proceedings before him, overshadow those of the litigants, witnesses and other court officers. Where such comment expresses or tends to express the judge's view as to the weight of the evidence, the credibility of a witness, or the guilt of an accused, it thereby destroys the impartiality of the trial to which the litigant or accused is entitled.

See Tanner v. State, 197 So. 2d 842 (Fla. 1st DCA 1967), citing Hamilton v. State, 109 So. 2d 422 (Fla. 3d DCA 1959).

Clearly the trial court’s commentary on the evidence presents a different concern and a different issue that those concerns addressed in Young. See also, Edwards v. State, 603 So. 2d 89 (Fla. 5th DCA 1992)(distinguishing between “constitutional stricture” and impermissible commentary on the evidence). The fact that a statute or rule or jury instruction has been upheld in the face of a specific challenge does not

make it immune to challenge on other grounds and does not preclude a court from considering such other grounds. “It is axiomatic that no decision is authority on any question not raised and considered." See Goldman v. State Farm General Ins. Co., 660 So. 2d 300 (Fla. 4th DCA 1995), quoting State ex rel. Helseth v. Du Bose, 99 Fla. 812, 128 So. 4, 6 (Fla. 1930), and citing State ex rel. Christian v. Austin, 302 So.2d 811, 818 (Fla. 1st DCA 1974), quashed in part, cause remanded, 310 So.2d 289 (Fla. 1975). In short, Young is no obstacle to ruling that the instruction under review constitutes an impermissible comment on the evidence.

This court recently had an opportunity to rule on the question raised here in Weddell v. State, 780 So. 2d 324, 324 (Fla. 1st DCA), rev. granted, 796 So. 2d 539 (Fla. 2001), rev. dismissed, 813 So. 2d 67 (Fla. 2002). However, ultimately, the Court determined that jurisdiction had been improvidently granted. It is unclear why the court reached that conclusion. What can be said is that the District Court opinion under review at that time was very brief.

In the present case, the District Court went out of its way to write a more detailed and illuminating opinion, and to express its concern regarding the continuing viability of the instruction, given the fate of analogous instructions, and also its concern that the issue continues to recur and needs to be resolved. The District Court indicated it saw no significant difference between the instruction presented in this case and the instructions in Whitfield, Fenelon, and In re Instructions in Criminal Cases, i.e., it saw no reason why the trial court should be permitted to comment on the evidence via the instruction under review when it is not permitted to comment on the evidence via the instructions in those cases. Again, permitting such instructions is an exception to the general rule prohibiting commentary on the evidence by the trial court.

It is particularly significant that the District Court also noted that "the Supreme Court specifically compared evidence of flight to evidence of unexplained possession of recently stolen items in State v. Young. . . .," and as we know, in Fenelon, this Court outlawed the flight instruction as a comment on the evidence. Given the fate of the flight instruction, there is no valid policy reason for continuing to permit the instruction on the inference to be drawn from possession of recently stolen property; no significant distinction can be drawn between the instructions. The glaring inconsistency in the case law should be addressed, and Petitioner should be afforded a fair trial.

Courts in other jurisdictions have concluded that a jury instruction on the possession of recently stolen property constitutes an impermissible comment on the evidence. See, e.g., State v. Hershberger, 534 N.W.2d 464 (Ct. App. Iowa 1995); and Roberts v. State, 672 S.W.2d 570 (Tex. Ct. App. 1984). In Hershberger, in ruling that the instruction on recent possession of stolen property should not have been given, as it improperly emphasized or commented on the evidence, the court relied in part on State v. Bone, 429 N.W.2d 123 (Iowa 1988), in which the Iowa Supreme Court ruled that the flight instruction should not have been given, and

stated that “flight instructions are ‘rarely advisable’ because they amount to an unnecessary comment by the trial court on the evidence.” As noted above, in Fenelon, this Court ruled that the flight instruction should no longer be given in Florida. In Roberts, the Texas court noted that:

> When the court endeavors to instruct the jury upon permissible inferences that they may draw from the evidence before them, it has interjected an imbalance into our adversarial system. When the finder of fact is instructed that it may presume or infer guilt . . . from certain facts alone, if found, that instruction is inescapably a comment on the weight of the evidence.”

Jury instructions are meant to provide the jury with the applicable rules of law, not to give undue emphasis to certain facts in the case.

In the present case, the evidence presented was sufficiently conflicting and ambiguous that it is certainly conceivable that the objectionable instruction had a substantial impact on the jury’s decision and was unduly prejudicial to the defense. Ms. Rawls was upset when she spoke with police, and when asked whose “stuff” it was said it was the Defendant’s; but she was concerned about going to jail when the items were located in her home, and she also said Jit was the one who asked about putting the stuff in her apartment. She said it was not uncommon for the Defendant to

loan his car to friends, and she did not in fact know whether the Defendant had been with his friends for the entire evening. Although an officer said the Defendant told him he knew what was going on but didn’t go inside, and that he drove the guys around “then we got the stuff,” the conversation was not recorded, nor did the Defendant give a written statement. Mr. Walker denied involvement with the burglary, and said when he went to meet his friends they had a TV in the trunk and tires on the seats. He wanted the tire rims out of his car because they were dirty. He only moved the tires to get them off his seats, and he did not help move anything else into Rawls’s home. He said the officers misunderstood what he told them, and that he did not know what his friends were planning to do that night. Mr. Walker denied telling the officer he knew what was going on, but said he told the officer he would rather take the blame than have Ms. Rawls, the mother of his child, go to jail.

## V. CONCLUSION

Based on the argument and authority presented above, Petitioner requests that the Court answer the certified question in the affirmative, hold that the instruction under review constitutes an impermissible comment on the evidence and should not have been given by the trial court, and reverse and remand for a new trial.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Karen Holland, Assistant Attorney General, by U.S. mail The Capitol, Plaza Level, Tallahassee, FL 32301, and to Mr. Darryl Walker, DOC# 124629, Gainesville Corr. Inst., 2846 East 39th Avenue, Gainesville, FL 32609, on this ____ day of September, 2003.

## CERTIFICATE OF FONT SIZE

I hereby certify that this brief has been prepared using Courier New 12 point font in compliance with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

Respectfully submitted,

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