IN THE SUPREME COURT OF FLORIDA

ROBIN LEE ARCHER,

Appellant,

vs.

FSC Case No. SC04-451
LT Case No. 1991 CF 000606A

STATE OF FLORIDA,

Appellee.
_____/

ON APPEAL FROM THE CIRCUIT COURT
OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR ESCAMBIA COUNTY, FLORIDA

REPLY BRIEF OF APPELLANT

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PRELIMINARY STATEMENT

Appellant, ROBIN LEE ARCHER, was the defendant in the trial court below and will be referred to herein as AAppellant@ or by his proper name. Appellee, the State of Florida, was the petitioner in the trial court below and will be referred to herein as Athe State." **At Archer=s evidentiary hearing, the trial court agreed to take judicial notice of the trial, resentencing, and post-conviction records of Patrick Bonifay.** (PC-A VII 990-93). Thus, the following conventions will be used to reference the various records in these cases:

Archer=s trial record -- (TR-A [vol. #] [page #]).

Bonifay=s trial record -- (TR-B [vol. #] [page #]).

Archer=s resentencing record -- (RS-A [vol. #] [page #]).

Bonifay=s resentencing record -- (RS-B [vol. #] [page #]).

Archer=s post-conviction record -- (PC-A [vol. #] [page #]).

Bonifay's post-conviction record -- (PC-B [vol. #] [page #]).

STATEMENT OF THE CASE AND FACTS

Appellant will rely on the statement of the case and facts provided in his initial brief.

ARGUMENT

ISSUE I

NEWLY DISCOVERED EVIDENCE BASED ON THE MATERIAL RECANTATION OF THE STATE=S KEY WITNESS ESTABLISHES ROBIN ARCHER=S FACTUAL INNOCENCE IN THE ROBBERY AND MURDER OF BILLY COKER.

In its order denying relief, the trial court initially found that Patrick Bonifay=s recanted testimony did not constitute newly discovered evidence because Archer knew personally at the time of trial that Bonifay=s testimony was false. (PC-A X 1524-25). The State conceded, and rightly so, that the trial court erred in its conclusion. **Answer brief** at 54 & n.7.

In addition, the State made no effort in its answer brief to address the relevance and materiality of Bonifay=s recanted testimony, thereby conceding that, if accepted, Bonifay=s testimony would likely produce an acquittal on retrial. Rather, the State=s argument rested entirely on its own assessment of the credibility vel non of Bonifay=s recantation, ignoring the trial court=s failure to consider, as required, the context in which Bonifay recanted (at his own post-conviction hearing), the inconsistency of Bonifay=s prior statements and testimony, and

the independent corroborating evidence that established Bonifay=s credibility. Instead, the State initially focused on the length of time it took Bonifay to recant, disregarding the fact that Bonifay had been actively litigating his resentencing, appeal therefrom, and post-conviction motion. Then, in the very next breath, it alleged that Bonifay=s recanted testimony was self-serving because it Aarguably would remove the CCP statutory aggravating [sic] from Bonifay=s own death sentence.@ **Answer brief** at 56 & n.8.

If his testimony were self-serving, however, Bonifay would have recanted long ago. He waited because the testimony was detrimental to his case. By recanting his trial testimony against Archer, Bonifay was admitting that he was the so-called Amastermind@ of the robbery/murder, and he alone would be put to death for the murder of Billy Coker. Thus, his testimony could hardly be considered self-serving.[1]

[1] Even assuming arguendo that Bonifay=s recanted testimony would negate the CCP factor, the evidence would arguably support the Aavoid arrest@ aggravator based on Bonifay=s elimination of Coker as a witness. After all, Bonifay testified at trial that he killed Coker, in part, because Coker saw his face when he walked up to the late-night window and because Cliff Barth used

Bonifay's name during the robbery. (TR-A I 132-33).

The State next contended, without any citation to the record, that Bonifay=s recantation was not credible because it failed to explain why Bonifay told Aothers@ prior to the murder about Archer=s Adesire to see the clerk get killed.@ **Answer brief** at 56-57. Presumably, the State was referring to George Wynn, who testified that Bonifay called him on Friday night and asked him to drive them to Trout, so they could rob the store. Bonifay told him that Ait might involve killing somebody.@ Bonifay also said that Archer Aasked him to do that and he wanted one person killed@ because Ahe had problems with him at work.@ Bonifay claimed that Archer had told him that there would be one person in the store, the doors would be locked, and they would have to go in through the window. Wynn declined to be the getaway driver and tried to talk Bonifay out of it. (TR-A I 192-93).

As discussed in Issue III of the initial brief, Wynn was facing charges for his involvement in the All Pro Sound burglary when he testified against Archer, and his prosecution had been deferred by agreement of the State Attorney=s Office, which were facts completely unknown to Archer=s trial counsel at the time of trial. (PC-A VII 1030; VIII 1141, 1164). Thus, Wynn had an incentive to embellish or fabricate his testimony regarding Archer=s involvement in order to curry favor with the State.

Be that as it may, Wynn=s testimony does not render Bonifay=s recantation unreliable. Besides Wynn=s incentive to testify falsely, Clifford Barth was present during Bonifay=s conversation with Wynn and never related this aspect of their discussion. (TR-A II 203-04). In fact, Barth testified at Archer=s trial that Bonifay never mentioned shooting the clerk as part of his plan to rob the store. (TR-A II 211). Barth also testified at Bonifay=s trial that Bonifay called him on the Thursday prior to the crime and said he wanted to rob the Trout store, and that they could get as much as $20,000. The plan was to get the clerk to go into the back room, then they would go inside and Bonifay would hold the gun on the clerk while Barth got the money. According to Barth, they were not going to shoot the clerk unless they had to. (TR-B 266-67, 270). Moreover, Barth testified that Bonifay never attributed the plan to Archer. Rather, Bonifay said that Archer told him where everything was in the store, but Bonifay Adidn=t say that [Archer] set it up or nothing.@ (TR-B II 285).

Next, the State has alleged, also without citation to the record, that Bonifay=s recantation was unreliable because it failed to explain how, absent Archer=s involvement, Bonifay knew that he had killed the Awrong man.@ **Answer brief** at 57. Presumably, the State is referring to a statement Bonifay made

to the police, wherein Bonifay claimed that Archer came by his house several days after the robbery/murder and was laughing at Bonifay because he had killed the wrong clerk. As a result, Archer refused to pay him for the Ahit.@ (TR-B II 238). This was all part of the testimony, however, that Bonifay was recanting:

> Q. [BY THE STATE] How=d you find out the wrong man got killed?
>
> A. [BY BONIFAY] That=s the point, that no one was to be killed. There wasn=t a right or a wrong man to be killed because there was no contract. There was no murder for hire. It was just supposed to be a robbery so there was no right or wrong man.

(PC-A VIII 1201). Nevertheless, Bonifay explained the source of the information upon which he based his false testimony:

> Q. [BY THE STATE] Early on, in fact, on September 11th, you told the police that the wrong man was killed, didn=t you?
>
> A. Right.
>
> Q. How did you know that the wrong man was killed if Mr. Archer hadn=t told you who needed to be killed?
>
> A. Because I was informed that on a certain day, a certain person would work there.

(PC-A VIII 1202-03).

Finally, the State has alleged that Bonifay=s recantation was unreliable because Athere was strong evidence of Archer=s

guilt aside from Bonifay.@ **Answer brief** at 57. Initially, the State opined that Athe robbery at Trout is just too plainly an ›inside job,: . . . . And Archer clearly was that inside man.@ Id. To support its personal assessment of the evidence, the State cited to (1) Archer:s statements to Daniel Webber on Sunday that he thought he knew who committed the robbery/murder, because he told them Ahow to do it@; (2) Wynn:s testimony that Bonifay told him that Archer wanted the clerk killed; and (3) Barth:s testimony that Archer had planned the crime. Id. at 58. First, Webber also testified that Archer did not say he told the perpetrators to do it, only how to do it. (TR-A 215-16). Second, Wynn:s testimony was suspect, as discussed previously herein. Third, as discussed previously, as well, Barth specifically testified that their plan was to rob the store, not kill the clerk. Thus, these witnesses: testimony hardly proves beyond a reasonable doubt, absent Bonifay:s testimony, that Archer was guilty as a principal of first-degree premeditated or felony murder, i.e., that Archer (1) A[k]new what was going to happen,@ (2)A[i]ntended to participate actively or by sharing in an expected benefit,@ and (3) A[a]ctually did something by which he intended to help commit the crime[s].@ Fla. Jury Instr. in Crim. Cases 3.01 (1981).

To further support its position that Astrong evidence@ existed to establish Archer=s guilt, the State cited to Archer=s presence at Trout just before the robbery/murder when he accompanied Ed Bird to make his nightly cash drop at the W Street store; Archer=s presence near the scene just following the robbery/murder when he drove his girlfriend home from work; Archer=s Alack of concern@ when he drove by the store and saw all the police cars; Archer=s denial that he knew cash from the other Trout stores was deposited nightly at the W Street store, despite contradictory testimony by other witnesses; Archer=s Anon-credible@ testimony that Bonifay was implicating him perhaps because he had refused to drive Bonifay to purchase drugs; and the existence of motive by Archer to see Wells killed. **Answer brief** at 58-59.

None of this highly circumstantial evidence proves, however, that Bonifay=s recanted testimony is unreliable. Nor can such evidence overcome the significant, independent corroborating evidence that establishes the reliability of Bonifay=s recanted testimony, namely, (1) that Bonifay did not completely exonerate Archer, (2) that the prosecutor believed Bonifay was lying when Bonifay testified at Archer=s trial, (3) that the prosecutor took inconsistent positions between Bonifay=s trial, Archer=s trial, and Bonifay=s penalty phase proceeding regarding the briefcase

full of money and the threat, (4) that Investigator O=Neal, who questioned Bonifay prior to his arrest, testified in Archer=s trial that Bonifay never mentioned Archer showing him a Abriefcase full of money@; and (5) that Cliff Barth testified at Bonifay=s trial that Bonifay never mentioned any threat by Archer when Bonifay called him on Saturday to make a second attempt. Absent Bonifay=s testimony regarding the briefcase full of money, the murder-for-hire scenario, and the threat against Bonifay=s mother and girlfriend, the State simply cannot establish the elements necessary to prove Archer guilty as a principal to first-degree murder. Therefore, this Court should grant Appellant a new trial.

ISSUE II

ARCHER WAS DENIED A FUNDAMENTALLY FAIR TRIAL WHEN THE STATE KNOWINGLY PRESENTED FALSE TESTIMONY THAT AFFECTED THE JURY=S VERDICTS.

The State has consistently relied upon U.S. v. Griley, 814 F.2d 967, 971 (4th Cir. 1987), to support its position that Bonifay=s testimony regarding the money, the Ahit,@ and the threat constituted Amere inconsistencies in testimony@ that did not establish the knowing use of perjured testimony. **Answer brief** at 61. Its reliance on Griley, however, is misplaced. In Griley, the defendant was challenging his conviction by claiming, among other things, that the government=s principal witness testified falsely when he denied on cross-examination that he had committed certain crimes. To establish the falsity of his testimony, the defendant cited to the testimony of another witness, who alleged that the government=s witness committed the specified crimes with him. Without more, the court found that the impeaching witness Acreate[d], at most, inconsistent testimony for the jury to weigh; it [did] not establish [the witness=] perjury.@ Id.

In Appellant=s case, on the other hand, Patrick Bonifay has testified under oath that his testimony was false. Moreover, Archer=s prosecutor testified under oath that he believed

Bonifay=s testimony regarding the money, the Ahit,@ and the threat was false. Thus, unlike the court in Griley, the trial court herein had much more than the inconsistent testimony of another witness upon which to assess Appellant=s claim of perjury.

Alternatively, the State has alleged that witnesses Aoften do not give completely reliable testimony,@ **answer brief** at 62, as if that should somehow relieve the State of its burden under Giglio v. United States, 405 U.S. 150 (1972). Relying upon Maharaj v. State, 778 So.2d 944, 957 (Fla. 2000), the State has further contended that A[n]o case holds that the state can only present testimony that is completely credible.@ **Answer brief** at 62. Maharaj, however, does not support this proposition. Rather, in that case, the defendant=s accomplice, who was the State=s primary witness, changed the nature of his testimony between the time he was deposed by the defense and the time the police administered a polygraph. The State notified the defense of the change in testimony, and the defense re-deposed the witness. At Maharaj=s trial, the witness testified that he changed the nature of his testimony Abecause of an act of conscience.@ The defendant later alleged that the State suborned perjury because the witness had changed his testimony only after being confronted with contradictory evidence. 778 So.2d at 956-57.

In denying Maharaj=s Giglio claim, this Court found that the defendant had failed to demonstrate that the statement was false or that the statement was material:

> While the statement concerning an act of conscience may not be entirely true, there has been no showing that it was entirely false. The prosecutors testified at the evidentiary hearing that Butler voluntarily appeared at their office after being told that the State wanted to question him about some of his testimony. He was not given immunity and changes were made to the testimony prior to the polygraph. Neither prosecutor indicated that Butler changed any testimony as a result of the polygraph examination. The State opined Butler may have considered his change of testimony voluntary because he voluntarily appeared for further questioning. Based on this record, the State did not suborn perjury. See Routly, 590 So. 2d at 400. Furthermore, after viewing the entirety of Butler's testimony, we find there is no reasonable probability that the failure to clarify the statement made by Butler affected the jury's verdict.

Id. at 957 (emphasis added).

In the present case, Appellant did not raise a Giglio violation based on testimony as inherently subjective as why Bonifay implicated Archer falsely in the robbery/murder. While Bonifay offered such information, the basis for the Giglio violation rested firmly on Bonifay=s testimony regarding objective facts. He has since testified under oath that his testimony was false, and independent corroborating evidence

exists to establish the reliability of his recantation. Moreover, as mentioned previously, Archer=s prosecutor testified under oath that he believed Bonifay=s testimony regarding the money, the Ahit,@ and the threat were all false. The record is clear that he did nothing to correct that false testimony.

In its second alternative argument, the State has contended that even if Bonifay=s testimony was false, and the State knew it was false and failed to correct it, Bonifay=s false testimony regarding the money, the Ahit,@ and the threat was not material. **Answer brief** at 63. Incredibly, its rationale for this assertion was based on the fact that neither the prosecutor nor trial counsel Athought the jury believed Bonifay=s testimony.@ Id. While this may be so, the jury nevertheless convicted Archer of first-degree murder, and no one knows the bases upon which it relied to reach this conclusion. As related in Appellant=s initial brief, it is readily apparent that the trial court, and this Court, relied heavily on these particular aspects of Bonifay=s testimony in sentencing Appellant to death, and in upholding his convictions and sentence. See (TR-A IV 544-45) (AThis is the classic case of murder for hire, a contract murder, an execution. . . . Whether payment was to be the money taken in the robbery or a satchel of money as claimed by

Bonifay, the deal was struck. . . . Even after the first attempt failed, Archer directed and insisted that Bonifay try again and go through with the murder.@); Archer v. State, 613 So. 2d 446, 447 (Fla. 1993) (A[Archer] convinced his cousin, seventeen-year-old Pat Bonifay, to kill the clerk he apparently blamed for his having been fired. . . . Bonifay could not go through with the murder, however, and they left the store. The next day Archer got after Bonifay for not killing the clerk, and the trio went back to the store that night. . . . Archer later refused to pay Bonifay because he killed the wrong clerk.@); (RS I 141) (AThe merciless killing of Billy Wayne Coker is the classic case of >murder for hire= - a contract murder, an execution. . . . Whether payment was to be the money taken in the robbery or a satchel of money as claimed by Bonifay, Archer procured his cousin to kill the store clerk. . . . When the first attempt failed, Archer directed and insisted that Bonifay try again and go through with the murder.@); Archer v. State, 673 So. 2d 17, 19-20 (Fla. 1996) (AThis was a contract murder, which is by its very nature calm. . . . Archer not only hired Patrick Bonifay, his cousin, to commit the murder but also wanted Bonifay to disguise the murder as a robbery. . . . [O]nce Bonifay returned after killing the wrong clerk, Archer refused to pay him on the agreement.@). Thus, it can hardly be said, as

the State has asserted, **answer brief** at 63-64, that Bonifay's false testimony has not undermined confidence in the guilty verdict. As a result, this Court should grant Archer a new trial.

ISSUE III

ARCHER WAS DENIED A FUNDAMENTALLY FAIR TRIAL WHEN THE STATE WITHHELD MATERIAL, EXCULPATORY EVIDENCE THAT NOW PUTS THE WHOLE CASE IN SUCH A DIFFERENT LIGHT THAT IT UNDERMINES CONFIDENCE IN THE VERDICT.

Regarding evidence of Bonifay=s prior arrest in Mississippi for a burglary and aggravated battery, the State has initially misstated Appellant=s argument. Archer did not contend that the State withheld Apolice reports@ relating to the Mississippi case. See **Answer brief** at 65. Rather, Appellant argued that the State withheld material, exculpatory information relating to the Mississippi case. Despite this distinction, the State has alleged that A[a]bsent a showing that the State knew more about the burglary than did the defense, and more particularly, that the State had in its possession any Mississippi police reports relating to this burglary, Archer cannot demonstrate in Brady violation.@ Id.

Surely, the State did not mean to contend that Brady v. Maryland, 373 U.S. 83 (1973), and its progeny, limited discoverable material to tangible hard copy. Were that the case, the State could lawfully escape the dictates of Brady by purposefully failing to document a myriad of otherwise discoverable information. It is inconceivable that Brady et al.

would be construed to countenance such behavior. Thus, the State=s argument must fail.

Moreover, contrary to the State=s assertion, Archer did, in fact, establish that the State knew more than the defense about the Mississippi case. Although Appellant mentioned during his cross-examination that Bonifay had been arrested in Mississippi, Appellant=s trial counsel, Brian Lang, testified at the evidentiary hearing that could not recall whether he was aware of Bonifay=s prior arrest and pending prosecution. (PCR-A VII 1037). The prosecutor also could not recall whether he investigated the Mississippi case and obtained records in relation thereto, but conceded that he may have done so while investigating Bonifay=s prior criminal history. (PCR-A VII 1092). On cross-examination, however, he admitted that he knew about Bonifay=s Mississippi arrest, but was having difficulty obtaining any paperwork relating to it:

> Q. [BY THE STATE] You don=t recall ever seeing any reports or anything from South Haven?
>
> A. [BY MR. PATTERSON] No, sir. I want to -- you know, I believe -- it is my recollection that we were unable to get any paperwork from Mississippi. We knew that there was an offense there and maybe something that it was a burglary or that it involved violence or something, we knew something, but we were unable to get paperwork from there. I=m not certain about that, but I believe -- I don=t think I have

ever seen what you have that I think is Exhibit 5.

(PC-A VII 1092, 1113) (emphasis added). Bonifay's trial record reveals, however, that within hours of arguing to Archer's jury that Archer was the mastermind in this murder-for-hire (TR-A 365-78), the prosecutor impeached Bonifay with his involvement in the Mississippi case in order to show that Bonifay was capable of committing crimes without Archer's involvement:

Q. [BY THE STATE] And the only reason you did this was because Mr. Archer made you do it, right?

A. [BY BONIFAY] Yes, sir.

Q. Well, have you ever been involved in any things that Mr. Archer didn't make you do?

A. Yes, sir.

* * * *

Q. Mr. Bonifay, weren't you involved in a robbery in Mississippi?

A. No, sir.

Q. No? In which a man got stabbed?

A. Involved in a burglary.

Q. A burglary. Well, did someone get stabbed in this burglary?

A. Yes, sir.

* * * *

Q. When did that occur?

A. Awhile back last year.

Q. Last year. Two months before this happened?

A. No, sir, six or seven months.

Q. Six or seven months before this happened. Robin Archer make you do that?
A. No, sir.

Q. So you're fully capable of doing this on your own, aren't you?

A. No, sir.

(TR-B III 432-34). Thus, the State certainly knew enough about the case to mandate disclosure to the defense.

Alternatively, the State has contended that Appellant failed to demonstrate Ahow the nondisclosure of these records was prejudicial at either the guilt or penalty phases.@ **Answer brief** at 66. Critically, however, in determining materiality, the suppressed evidence must be Aconsidered collectively, not item by item.@ Kyles v. Whitley, 514 U.S. 419, 436 (1995). See also Strickler v. Greene, 527 U.S. 263 (1999) (confirming its analysis in Kyles). Not only did the State withhold information relating to Bonifay's Mississippi case, but it also withheld information relating to Bonifay's, Barth's, Wynn's, and Bland's involvement in a burglary at All Pro Sound several weeks prior to the Trout robbery/murder. The State has alleged, however, that Appellant failed to prove Athat this information was unknown

to Archer or to his trial counsel.@ **Answer brief** at 67. Appellant disagrees.

Although the prosecutor, the chief investigator in the Trout case, and the chief investigator in the All Pro Sound case could not recall whether they had disclosed any information about the case, Archer=s trial counsel, Brian Lang, testified at Archer=s evidentiary hearing that he was not aware of the All Pro Sound case. (PC-A VII 1030). Had he been aware of it, however, he probably would have used it. (PC-A VII 1031, 1038, 1055). Since nothing suggests that Archer personally knew about this burglary, Appellant met his burden of proving that the State possessed impeachment evidence and failed to disclose it.

Regarding the collective materiality of the Mississippi and All Pro Sound cases, the State has alleged that the Apolice reports and secondhand testimony from police officers about statements they took from participants@ in the two cases are Aall hearsay@ and Anot substantively admissible.@ **Answer brief** at 69. Moreover, the State has alleged that, even if admissible, this evidence Astill is immaterial, as Archer has not demonstrated how either trial or sentencing counsel could effectively have used it.@ Id. The standard for materiality, however, is whether Athe favorable evidence could reasonably be taken to put the whole

case in such a different light as to undermine confidence in the verdict.@ Kyles, 514 U.S. at 435.

Regarding this evidence of other crimes, trial counsel could have used such evidence the same way the State used the Mississippi case against Bonifay at his own trial: to show that Bonifay was capable of committing crimes, even violent crimes, without Archer. This would have been particularly relevant given Bonifay=s testimony that he was merely following Archer=s orders, and that he killed the clerk because Archer threatened to harm his mother and girlfriend. Similarly, evidence that charges in the All Pro Sound case were pending against Wynn at the time of his testimony, and that his case had been deferred by agreement of the State Attorney=s Office, would have been relevant and admissible to show that Wynn had a reason to curry favor with the State by helping to establish Archer=s guilt in the Trout case. Finally, Barth=s involvement in the All Pro Sound case would have been relevant and material to show that Bonifay, Barth, Wynn, and Bland (who did not testify at Archer=s trial, but who was alleged to have given a gun to Archer to give to Bonifay) had previously formed a quadrumvirate for the commission of crimes--without Robin Archer.

Unquestionably, the State possessed favorable impeachment evidence in the present case relating to the Mississippi case

and the All Pro Sound case. Equally without doubt, the State failed to inform Archer=s defense counsel about the existence of these cases and the status of the perpetrators= pending prosecutions. When considered cumulatively, Athe favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.@ Kyles, 514 U.S. at 435. See also Banks v. Dretke, 540 U.S. 668 (2004) (AOn the record before us, one could not plausibly deny the existence of the requisite >reasonable probability of a different result= had the [status of the key witness as a paid informant] been disclosed to the defense.@); Giglio v. United States, 405 U.S. 150, 154-55 (1972) (AHere the Government=s case depended almost entirely on Taliento=s testimony; without it there could have been no indictment and no evidence to carry the case to the jury. Taliento=s credibility as a witness was therefore an important issue in the case, and evidence of any understanding or agreement as to a future prosecution would be relevant to his credibility and the jury was entitled to know of it.@); Floyd v. State, 30 Fla. L. Weekly S192 (Fla. Mar. 24, 2005) (granting new trial based on Brady violations); Mordenti, 894 So. 2d 161 (Fla. 2004) (same); Cardona v. State, 826 So. 2d 968, 973 (Fla. 2002) (same); Hoffman v. State, 800 So. 2d 174, 179-81 (Fla. 2001) (same); State v. Huggins, 788 So. 2d 238, 243

(Fla. 2001) (same); Rogers v. State, 782 So. 2d 373 (Fla. 2001) (same). Therefore, Archer is entitled to a new trial.

CONCLUSION

WHEREFORE, based on the foregoing arguments and authorities, Appellant, ROBIN LEE ARCHER, respectfully requests that this Honorable Court reverse the trial court=s denial of relief and remand this cause for a new trial.

Respectfully submitted,

_____
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document was hand delivered to Curtis French, Assistant Attorney General, The Capitol PL-01, Tallahassee, FL 32301; and was sent by United States mail, postage prepaid, to Robin Lee Archer, DC# 216728, Union Correctional Institution, 7819 N.W. 228th Street, Raiford, Florida 32026, this 19th day of September, 2005.

SARA K. DYEHOUSE, ESQ.

CERTIFICATE OF FONT

I HEREBY CERTIFY that the size and style of type used in this brief is Courier New, 12 point, a font that is not proportionately spaced.

SARA K. DYEHOUSE, ESQ.