IN THE SUPREME COURT OF FLORIDA

JACK RILEA SLINEY,

Appellant,

vs.

FSC Case No. SC05-13
LT Case No. 92-451-CF

STATE OF FLORIDA,

Appellee.
_____/

ON APPEAL FROM THE CIRCUIT COURT
OF THE TWENTIETH JUDICIAL CIRCUIT,
IN AND FOR CHARLOTTE COUNTY, FLORIDA

REPLY BRIEF OF APPELLANT

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PRELIMINARY STATEMENT

Appellant, JACK RILEA SLINEY, was the defendant in the trial court below and will be referred to herein as "Appellant" 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 "the State." Reference to the direct appeal will be by the symbols "ROA," followed by the appropriate volume and page numbers. Reference to the post-conviction proceedings will be by the symbols "PCR," followed by the appropriate volume and page numbers.

STATEMENT OF THE CASE AND FACTS

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

SUMMARY OF THE ARGUMENT

Trial counsel, Kevin Shirley, rendered ineffective assistance in the guilt phase of Appellant's trial, due to an actual conflict of interest that adversely affected his performance. Shirley had twice represented one of the detectives who was instrumental in Appellant's investigation, arrest, and interrogation. Moreover, counsel was representing the detective's son while he was representing Appellant. The voluntariness and admissibility of Appellant's confessions were a critical issue in the case. The detective was a key witness for the State at both the suppression hearing and at trial. As a result, Shirley was actively representing conflicting interests and should have moved to withdraw or, at the very least, informed Appellant of his conflicts, so that Appellant could make an informed decision about his continued representation by Shirley. But Shirley failed to bring the matter to anyone's attention to the detriment of Appellant.

In addition, Appellant was initially appointed a public defender who certified to the court that he could not present an effective defense due to his excessive case load. The

trial court nevertheless refused to allow the Public Defender's Office to withdraw. Fearful that the assistant public defender assigned to his case was, in fact, overburdened and unable to adequately represent him, Appellant's family hired a private attorney who misled them into believing that he was qualified to represent Appellant in a death penalty case. Convinced that the jury would convict Appellant of no more than second-degree murder, this attorney did nothing to prepare for a penalty phase. When the jury returned verdicts of guilty to first-degree murder, Appellant fired him precisely because he had done nothing to prepare for the penalty phase.

Since Appellant was indigent and not competent to represent himself, the trial court re-appointed the original assistant public defender, over the attorney's objection, to prepare Appellant's penalty phase from scratch within 30 days. But this attorney, who had previously certified that he could not effectively represent Appellant, failed to investigate and present compelling evidence in mitigation that would have helped to explain why a "good, clean-cut kid" with no prior history of criminal activity suddenly attacked Mr. Blumberg over the price of a gold necklace. With the jury split 7 to 5, and this Court split 4 to 3 on proportionality, there is a

reasonable probability that had counsel investigated and presented this evidence, Appellant would be serving a life sentence, rather than facing execution.

ARGUMENT

ISSUE I

TRIAL COUNSEL, KEVIN SHIRLEY, RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL DUE TO AN ACTUAL CONFLICT OF INTEREST THAT ADVERSELY AFFECTED HIS PERFORMANCE .

In Mickens v. Taylor, 535 U.S. 162 (2002), the Supreme Court made clear that in conflict of interest cases the prophylactic principles announced in Cuyler v. Sullivan, 446 U.S. 335, 344 (1980), were limited to claims arising from multiple, concurrent representation. The Mickens Court left open the question of whether Sullivan should be applied in other contexts, such as in successive representation cases like the case at bar. However, this Court has applied the Sullivan standard to conflict of interest cases other than multiple, concurrent representation. See, e.g., Brown v. State, 894 So. 2d 137, 157 (Fla. 2004) (involving alleged conflict of interest based on affair between trial counsel's legal assistant and lead detective and trial counsel's attempt to secure intellectual property rights to Brown's life story, recordings, songs, and poetry); Gamble v. State, 877 So.2d 706 (Fla. 2004) (involving trial counsel's alleged confession of guilt); State v. Coney, 845 So. 2d 120 (Fla. 2003) (involving alleged conflict of interest based on trial judge's appointment of defense counsel in return for 25% kickback of

counsel's special public defender fee). Therefore, Sullivan's rationale should apply in the present case.

As stated in Sullivan and reaffirmed in Mickens, to establish a claim of ineffective assistance of counsel based on an alleged conflict of interest, a defendant must "establish that an actual conflict of interest adversely affected his lawyer's performance." Sullivan, 446 U.S. at 350; Mickens, 535 U.S. at 173-74. The Mickens Court clarified, however, that an actual conflict is not "something separate and apart from adverse effect." 535 U.S. at 172 n.5. Rather, "an 'actual conflict,' for Sixth Amendment purposes, is a conflict of interest that adversely affects counsel's performance." Id. As this Court articulated in Hunter v. State, "[t]o demonstrate an actual conflict, the defendant must identify specific evidence in the record that suggests that his or her interests were compromised." 817 So.2d 786, 791 (Fla. 2002) (emphasis added) (citing Herring v. State, 730 So.2d 1264, 1267 (Fla. 1998)).

In the present case, Appellant's trial counsel, Kevin Shirley, had previously represented one of the State's witnesses, Detective Lloyd Sisk, who was a critical witness at the suppression hearing, and again at trial, regarding the voluntariness of Appellant's confession. Shirley had

previously represented Detective Sisk in a civil suit against the sheriff's office following Sisk's termination of employment resulting from allegations of criminal conduct against a minor. Shirley represented Sisk again, prior to Appellant's trial, in his dissolution of marriage proceedings. In addition, at the time of Appellant's trial, Shirley was representing Sisk's son in his divorce case. Because Shirley was actively representing a paying client (Appellant) when he was called upon to cross-examine, both at the suppression hearing and at trial, a former paying client (Sisk), who was the father of a current paying client (Sisk's son), Shirley was "actively represent[ing] conflicting interests." Sullivan, 446 U.S. at 350.

The State contends that Appellant failed to meet his burden of proof because he "failed to call either Shirley or Corporal Sisk to establish the nature and extent of the alleged prior attorney client relationship which is the foundation of the claimed conflict." **AB** at 24-25. Shirley admitted at the first supplemental evidentiary hearing, however, that he had represented Detective Sisk prior to Appellant's trial. (PCR IV 615). Based on this admission, collateral counsel obtained court documents that were filed on Sisk's behalf, and signed by Shirley as Sisk's counsel of

record. A dissolution of marriage petition, signed by Shirley on behalf of Sisk's son, documented the existence of that professional relationship during Appellant's trial. (PCR IV 625-30). These documents were appended to Appellant's second motion to amend his motion to vacate and formed the basis for a second supplemental evidentiary hearing. (PCR V 832-35). At the hearing, collateral counsel moved the court to take judicial notice of the documents. (PCR VI 984-85). At no time did the State object to such a request. Although the trial court did not specifically rule on the motion, it considered Appellant's claim of conflict of interest and rejected it because its review of Shirley's cross-examination of Sisk at trial revealed "no evidence to support a claim that Mr. Shirley's prior representation of Detective Sisk adversely affected his performance." (PCR VI 97-58).

Kevin Shirley's admission that he represented Detective Sisk prior to Appellant's trial, as well as the court pleadings that document the nature and extent of Shirley's representation of both Sisk and Sisk's son, adequately established a conflict of interest. The State alleges, however, that because Shirley's representation of Sisk had ended prior to Appellant's trial, Shirley had not "actively represented conflicting interests," Sullivan, 446 U.S. at 350,

at trial. **AB** at 25-26, 27, 28, 31. To support this contention, the State initially cites Snelgrove v. State, 30 Fla. L. Weekly S785 (Fla. Nov. 10, 2005), but Snelgrove is inapposite. In that case, the public defender's office had withdrawn immediately from representing the state's witness when the conflict became apparent, the representation of the state's witness had been brief, and the state's witness had agreed to waive any conflict of interest. As a result, this Court affirmed the trial court's denial of the public defender's motion to withdraw from Snelgrove's case.[1]

To suggest that this Court will consider only claims involving the simultaneous representation of adverse clients totally misrepresents the holding of Snelgrove, Bouie, and Mills, as well as case law in general on this issue. As this Court made clear in Guzman v. State, 644 So.2d 996 (Fla. 1994), a conflict of interest can adversely affect counsel's performance even when defense counsel had previously represented the state's main witness:

[1] The additional cases upon which the State relies are equally inapposite, since they did not turn on the fact that the defense attorneys no longer represented the state's witnesses, who were their former clients. Rather, unlike in the present case, they turned on the fact that the defense attorneys extensively cross-examined the state's witnesses at the expense of their prior clients. See Bouie v. State, 559 So.2d 1113 (Fla. 1990), and Mills v. Singletary, 161 F.3d 1273, 1287-88 (11th Cir. 1998).

> [A] trial court is not permitted to reweigh the facts considered by the public defender in determining that a conflict exists. This is true even if the representation of one of the adverse clients has been concluded. Consequently, in this case, once the public defender determined that a conflict existed regarding Guzman, the principles set forth in those cases required the trial judge to grant the motions to withdraw.

(Emphasis added). Other Florida courts have found so, as well. See, e.g., Nixon v. Siegel, 626 So.2d 1024, 1025 (Fla. 3d DCA 1993) (quashing order denying public defender's motion for appointment of other counsel where public defender had previously represented state's main witness: "it cannot be said as a matter of law that the conflict vanishes when the case of one of the adverse defendants is concluded."); Lee v. State, 690 So. 2d 664, 667 (Fla. 1st DCA 1997) ("In this case, there can be no doubt that attorney Loveless and the defendant had an actual conflict of interest. Attorney Loveless had personally represented a primary witness against the defendant in the past and his office had also represented that witness about the time he was assisting law enforcement officers in their effort to obtain a confession from the defendant."). The Eleventh Circuit Court of Appeals has also considered conflict of interest claims in successive representation cases. See, e.g., Lightbourne v. Dugger, 829 F.2d 1012, 1023 (11th Cir. 1987) ("An attorney who cross-examines a former

client inherently encounters divided loyalties."); Porter v. Wainwright, 805 F.2d 930, 939 (11th Cir. 1986) (finding that assertions that defense counsel was forced to choose between discrediting his former client through information learned in confidence, or foregoing vigorous cross-examination in an attempt to preserve the former client's attorney/client privilege "would suffice to demonstrate an actual conflict of interest.").

The State also criticizes Appellant, as did the trial court, for failing to call as witnesses either Kevin Shirley or Detective Sisk to establish the "adverse effect" component of his conflict claim. (PCR VI 958; **AB** at 24-25). Both the State and the court assume, however, that Shirley and/or Sisk would have revealed the confidential nature of their attorney/client relationship, as well as any information that Shirley gained from that relationship that he could have used to impeach Sisk on the witness stand, but chose not to. As Justice Marshall noted in Sullivan, "[i]n the usual case . . . we might expect the attorney to be unwilling to give such supportive testimony, thereby impugning his professional efforts." 446 U.S. at 358 (Marshall, J., concurring in part and dissenting in part).

Even if collateral counsel had called one or both of

these state witnesses at the evidentiary hearing, and even if they had formally asserted the attorney/client privilege, Appellant's claim of conflict would bear no less significance. Just as the former client's waiver of his attorney/client relationship in Guzman was not sufficient to overcome the conflict of interest, 644 So.2d at 999, so too a former client's assertion of the attorney/client privilege should not obviate a defendant's conflict of interest claim. After all, "the evil -- it bears repeating -- is in what the advocate finds himself compelled to *refrain* from doing . . . ." Holloway v. Arkansas, 435 U.S. 475, 490-91 (1978). Given the nature and extent of Shirley's prior representation of Detective Sisk, and the significant likelihood that Sisk would have asserted the attorney/client privilege, Appellant met his burden of showing an actual conflict of interest that adversely affected his attorney's performance. As a result, he should have been granted a new trial with conflict-free counsel.

In the end, however, the State contends that "Detective Sisk was simply not a critical witness for the State. He provided brief, cumulative testimony to that offered by Detective Twardzick. Consequently, it cannot be said that Sliney established a 'conflict of interest' which adversely

affected counsel's performance." **AB** at 30-31 (footnote omitted). This argument smacks, at best, of a claim that Appellant failed to prove prejudice under Strickland and, at worst, of a claim that any conflict on interest was harmless error. When an ineffectiveness claim is founded on a conflict of interest, however, prejudice is presumed. Sullivan, 446 U.S. at 350-51; Brown v. State, 894 So.2d 137, 157 (Fla. 2004) ("[A] conflict of interest is so egregious that it clearly establishes the first prong of Strickland and gives rise to a presumption of prejudice satisfying the second prong, even in the absence of other proof of actual prejudice."); Barclay v. Wainwright, 444 So.2d 956, 958 (Fla. 1984) ("An actual conflict of interest that adversely affects a lawyer's performance violates the sixth amendment and cannot be harmless error."). Thus, where a defendant establishes that a conflict of interest actually affected the adequacy of counsel's representation, he "need not demonstrate prejudice in order to obtain relief." Sullivan, 446 U.S. at 349-50. Since Appellant made that showing, he is entitled to a new trial with conflict-free counsel.

ISSUE II

TRIAL AND PENALTY PHASE COUNSEL WERE INEFFECTIVE FOR FAILING TO INVESTIGATE AND PRESENT EVIDENCE IN MITIGATION .

Despite the nature of the crime in this case, the jury's vote was a close 7 to 5 for death. (ROA I 194). As aggravation, the jury was instructed on the "felony murder" and "avoid arrest" aggravators. (ROA III 439). In mitigation, it was instructed that it could consider the fact that Appellant had no significant history of prior criminal activity, that he committed the murder under extreme duress or under the substantial domination of Keith Witteman, that he was only 19 years old at the time of the offense, and any other factors in his background. (ROA III 439-40).

In following the jury's 7 to 5 recommendation, the trial court found that Appellant's mitigation did not outweigh the two aggravating factors. Yet, it had given "substantial weight" to Appellant's lack of criminal history, "little weight" to his age (19), and "little weight" to his nonstatutory mitigation, except for his good behavior in jail, which it gave "some weight." It rejected as mitigation the fact that Keith Witteman, who was with Appellant in Ross Pawn Shop at the time of the offense, had received a life sentence, a fact Appellant's jury did not know. (ROA II 221-27).

On appeal, this Court split 4 to 3 on whether Appellant's death sentence was proportionately warranted. Sliney v. State, 699 So.2d 662 (Fla. 1997). In affirming the sentence,

the majority agreed that the "felony murder" and "avoid arrest" aggravators applied. Then it considered another aggravator not argued before the jury or found by the trial court:

> Although the trial court did not find the aggravating circumstance that the murder was especially heinous, atrocious, or cruel, this was a particularly brutal murder. The victim was beaten with a hammer to the face and was found with a pair of scissors stuck in his neck, with fractured ribs, and with a fractured backbone. The trial court did find two aggravating circumstances. Moreover, the trial court did not find any statutory mental mitigation. Comparing this to other cases in which the death penalty was imposed, we do not find that the mitigating circumstances which were found to exist in this case make the death sentence disproportionate.

699 So.2d at 672. The three dissenters disagreed with the addition of the HAC aggravator and the majority's choice of

comparison cases:

> The Court must consider the circumstances as set forth in the record in relation to other decisions. Livingston v. State, 565 So. 2d 1288, 1292 (Fla. 1988). However, the Court cannot consider an aggravator that the trial court did not find. That is essentially what the majority has done here by relying on its own factual finding that the murder was particularly brutal. The trial court did not find the murder in this case was especially heinous, atrocious, or cruel, but the majority finds the "brutality" of the murder distinguishes it from robbery-murder cases such as Terry, Sinclair, Thompson v. State, 647 So. 2d 824 (Fla. 1994), Livingston, and Caruthers v. State, 465 So. 2d 496 (Fla. 1985), in which this Court found the death sentence was disproportionate.

699 So.2d at 673.

Appellant relates this background only to show how close he was to receiving a life sentence, and that counsel's

investigation and presentation of mitigation was of critical importance. See, e.g., Orme v. State, 896 So.2d 725 (Fla. 2005) (“Additional testimony in support of the intoxication and its causes and effects may have warranted greater weight, and the resulting weighing of mitigation and aggravation would have been different. Thus, the fact that the jury did not hear the evidence of Orme's bipolar disorder combined with the jury's penalty phase vote of seven to five undermines our confidence in the result of the penalty phase. Therefore we remand this case for a new penalty phase proceeding.”); Rose v. State, 675 So.2d 567, 574 (Fla. 1996) (“Our confidence in the outcome of this proceeding is further undermined by the fact that at Rose's original sentencing trial, even without the presentation of substantial mitigation, the jury was deadlocked at a six-to-six vote on the recommendation of life or death. The jury recommended death only after the trial court gave the jury an Allen charge.”); Phillips v. State, 608 So.2d 778, 783 (Fla. 1992) (“The jury vote in this case was seven to five in favor of a death recommendation. The swaying of the vote of only one juror would have made a critical difference here. Accordingly, we find that there is a reasonable probability that but for counsel's deficient performance in failing to present mitigating evidence the vote

of one juror might have been different, thereby changing the jury's vote to six to six and resulting in a recommendation of life reasonably supported by mitigating evidence."). In the present case, counsel's failure to present significant evidence in mitigation "deprived [Appellant] of a reliable penalty phase proceeding." Asay v. State, 769 So.2d 974, 985 (Fla. 2000).

Assistant Public Defender Mark Cooper, who was appointed to represent Appellant after the jury's verdict, obtained the appointment of Dr. Robert Silver, Ph.D., who was a clinical, but not a forensic, psychologist.[2] Critically, although Dr. Silver was appointed to assess Appellant's case for mitigation, he admitted at the evidentiary hearing that he was familiar with Florida's death penalty statute only in "a very general way." (PCR III 477, 482-83). Nevertheless, A.P.D. Cooper could have, and should have, presented Dr. Silver as a penalty phase witness to testify that Appellant would continue to be a model prisoner if sentenced to life imprisonment: "He is not the type to make waves in jail, or fight the system. .

[2] American Heritage Dictionary defines "forensic" as "relating to the use of science or technology in the investigation and establishment of facts or evidence in a court of law." American Heritage Dictionary of the English Language online edition, retrieved at http://education.yahoo.com/reference/dictionary/entry/forensic.

. . [H]e is the kind of individual who possibly could be deterred from future lawbreaking." (PCR II 218). This is specifically the type of evidence found relevant and meaningful in Skipper v. South Carolina:

> [E]vidence that the defendant would not pose a danger if spared (but incarcerated) must be considered potentially mitigating. Under *Eddings*[*v. Oklahoma*, 455 U.S. 104 (1982)], such evidence may not be excluded from the sentencer's consideration. . . . [A] defendant's disposition to make a well-behaved and peaceful adjustment to life in prison is itself an aspect of his character that is by its nature relevant to the sentencing determination.

476 U.S. 1, 5-7 (1986).

Because A.P.D. Cooper presented the testimony of a correctional officer from the county jail, who testified that Appellant had received no disciplinary reports during his 16 months in jail awaiting trial, despite being housed in a "tough wing" (ROA III 411-14), the State contends that Dr. Silver's testimony would have been cumulative. **AB** at 38-39. But, as this Court decided previously in Valle v. State, there is a significant difference in terms of mitigation between a defendant's good behavior while awaiting trial and his ability to conform to prison rules and adjust well to prison life if spared the death penalty:

> The expert testimony was proffered in proof of the probability that Valle would be a

> model prisoner in the future. It cannot be said that this evidence was cumulative in light of the rehabilitation officer's testimony that he could only vouch for Valle's behavior while previously imprisoned and that he had no opinion as to Valle's ability to adjust, in the future, to prison life. . . . Since we cannot say beyond a reasonable doubt that the exclusion [of the expert testimony] did not affect [the jury's] recommendation, we remand for a new sentencing hearing with a new jury panel.

502 So. 2d 1225, 1226 (Fla. 1987).

Although it is impossible to tell what weight the jury gave to the correctional officer's testimony at Appellant's sentencing hearing, the trial court gave it "some weight." (ROA II 226). As in Orme, 896 So.2d 736, Dr. Silver's additional testimony in support of Appellant's ability to conform well to prison and to lead a non-violent existence if given a life sentence would have warranted greater weight, and the resulting weighing of mitigation and aggravation would have been different. After all, Appellant had no history of violence before this incident. Thus, there is a reasonable probability that the jury would have recommended a life sentence had counsel presented evidence that Appellant was not only a model prisoner while awaiting trial, but that, according to Dr. Silver, he would likely remain a model prisoner if given a life sentence.

Another mitigating factor proposed by the defense at trial was Appellant's age at the time of the crime. The jury was informed that Appellant was a teenager (19), that he had just graduated from high school, and that he still lived at home with his parents. (ROA XI 1106-08). The trial court, however, gave "little weight" to Appellant's age because "[a]t the time this murder was committed, the Defendant was 19 years old. He was an adult, not a juvenile. No evidence was presented that his emotional age was different than his actual age. He had graduated from high school, and was gainfully employed." (ROA II 224). Yet, Dr. Silver wrote in his report to A.P.D. Cooper that "one element of mitigation is his relative youth." (PCR II 218). At the evidentiary hearing, Dr. Silver also testified that Appellant was immature for a 19-year-old. (PCR III 482). A.P.D. Cooper unreasonably failed to present Dr. Silver's testimony to support a mitigating factor counsel chose to present to the jury and to the trial court.

The State takes great pains to recount the negative information that Dr. Spellman, Dr. Silver, and Dr. Kling reported to A.P.D. Cooper. **AB** at 35-37. But none of this information would have been presented to the jury unless Cooper had called the experts as witnesses on Appellant's

behalf.[3] Of the three experts, Dr. Silver was the only one Cooper should have considered because of the important mitigation testimony the doctor could have related to the jury. If Cooper had not listed Dr. Spellman and Dr. Kling as witnesses, the State would not have been able to depose them or otherwise ascertain the nature and results of their evaluations. Although the State could have, and no doubt would have, tried to elicit some unfavorable testimony from Dr. Silver, Cooper still had a constitutional responsibility to present Dr. Silver's favorable testimony. See State v. Lewis, 838 So. 2d 1102, 1113 (Fla. 2002) ("[T]he obligation to investigate and prepare for the penalty portion of a capital case cannot be overstated."). "[T]the fact that [Appellant's mitigation evidence] may be rebutted by State evidence or argument does not change the fact that it should have been considered by the jury." Phillips, 608 So.2d 778, 783 (Fla. 1992).

Finally, A.P.D. Cooper unreasonably failed to introduce evidence of Appellant's alcohol and steroid use, his parents' chronic and excessive alcohol use, and his brother's alcoholism. Such evidence would have helped to explain why

[3] Nor would the State have been able to elicit opinions regarding Appellant's alleged character faults, i.e., his amorality, hedonism, and sociopathy, unless the defense placed Appellant's character at issue.

Appellant, this seemingly "good, clean-cut kid," with no prior history of violence, could commit this type of murder. As Dr. Silver noted in his report, "the act for which he was found guilty seems rather out of character for him." (PCR II 218). Moreover, Dr. Silver noted that Appellant "did not have the kind of background or record that would readily identify him as someone who is antisocial or headed for major trouble." (PCR II 218). Given the aberrant nature of this crime, Cooper should have presented as much evidence as possible to help the jury understand how and why a 19-year-old kid would attack and kill an elderly business owner in broad daylight, during normal business hours. Cooper's failure to present the mitigation that was readily available constituted constitutionally deficient representation that deprived Appellant of a reliable penalty phase proceeding. Therefore, this Court should reverse the trial court's order and remand for a new sentencing hearing.

CONCLUSION

WHEREFORE, based on the foregoing arguments and authorities, Appellant, JACK RILEA SLINEY, respectfully requests that this Honorable Court reverse the trial court's denial of relief and remand this cause for a new trial and/or for a new sentencing proceeding, or for such other relief as

this Court deems appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document was sent by United States mail, postage prepaid to Scott Browne, Assistant Attorney General, Concourse Center 4, 3507 E. Frontage Road, Suite 200, Tampa, FL 33607-7013; Thomas H. Ostrander, Esquire, 2701 Manatee Avenue West, Suite A, Bradenton, FL 34205; and Jack Sliney, DC# 905288, Union Correctional Institution, 7819 N.W. 228th Street, Raiford, Florida 32026, this 26th day of January, 2006.

_____
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.