IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA, Petitioner, v. RANDY DEWAYNE GIBSON, Respondent.	Case No. SC07-2158

ON PETITION FOR REVIEW FROM
THE SECOND DISTRICT COURT OF APPEAL
STATE OF FLORIDA

PETITIONER'S INITIAL BRIEF ON THE MERITS

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STATEMENT OF THE CASE

On July 26, 2005, Appellant was charged with carrying a concealed firearm, possession of cocaine, and possession of drug paraphernalia. (R5-7). On April 10, 2006, Appellant entered no contest pleas and the trial court withheld adjudication and sentenced Appellant to time served and 12 months probation. (R48-52; Supp:T1, 20-34).

STATEMENT OF THE FACTS

At the March 28, 2006, suppression hearing, Sergeant John Jernigan, with the Sarasota Sheriff's Office since 1989, testified that on July 14, 2005, he effectuated a stop of Appellant's car at 6:15 p.m. (R75-77). The Sergeant could see, by the silhouette's movement inside the vehicle, suspicious motions by the driver which appeared as if the person was either removing contraband or a weapon from the waist area and relocating it between the seats. (R77-78, 88).

At this point Sergeant Jernigan's suspicion began to rise, and his concern for his safety increased to such a level that he did not want to go up to Appellant's vehicle. (R78). Based on his observations, the deeply tinted windows and safety concerns, the officer motioned for Appellant to make contact with him by exiting his vehicle and walking back to the officer. (R78). Appellant complied. Sgt. Jernigan explained the reason for the traffic stop to him and inquired about his movements inside the vehicle. (R79).

The officer also noticed Appellant's very nervous behavior over a general traffic stop and, after inquiry, Appellant was unable to provide his driver's license but he did have the vehicle's registration. (R79).

When the officer asked if Appellant had any firearms or narcotics in his possession, Appellant became more nervous, his body began shaking, he avoided eye contact, and asked the officer to repeat himself which the officer recognized as a stalling tactic. (R81, 86). The officer made a general inquiry as to what brought Appellant into the area since Appellant lived in Bradenton, and Appellant said he was there looking for a house to rent. (R81). When asked if Appellant needed any directions and if he knew where he was going Appellant replied, "Well, I'm not going anyplace particular. I'm just going to look wherever." (R81).

The sergeant also asked the passenger in Appellant's vehicle about their destination while she was retrieving the registration and she said they were going to Wal-Mart or a Target store down in the southern Sarasota County area to return an item. (R81-82). Sergeant Jernigan noted there was a small child in the back seat and Appellant indicated she was his daughter. (R86).

As soon as the sergeant had the registration and information from Appellant, he went to his vehicle and conducted a manual registration check. Appellant initially consented to a search of his vehicle but then he backpedaled and declined. (R83). After

the computer check, the sergeant checked to see if there was a K-9 in the area. (R83). He determined that his agency did not have a K-9 available, so Sgt. Jernigan telephoned the Venice Police Department who indicated they had a K-9 unit in service which arrived within a few minutes of the request. (R83).

Sergeant Jernigan began writing the warning and written citation before the K-9 officer arrived, but he had not completed the writing of the citation before the K-9 Unit arrived on scene. (R83-84, 90). Appellant was arrested at 6:30 p.m. (R90). Appellant was issued a written warning for the window tint violation and a citation for failure to carry and exhibit a driver's license on demand. (R83).

Officer Freeman testified he has been a K-9 handler since May 2003. (R92). His K-9, Sirus, is a German Shepherd and the two of them completed a 2 ½ month-long 400-hour training school held by the Sarasota County Sheriff's Department. (R93). At the end of the course they were assessed by three evaluators and passed a practical examination in which the paperwork was sent to Florida Department of Law Enforcement. (R93). The team is allowed to work together for one year and is then recertified every year thereafter. (R93).

After being dispatched at 6:31 p.m., Officer Freeman testified that he arrived on scene within five minutes at 6:36 p.m. (R94, 98). After walking Sirus around Appellant's car the first time,

the K-9 immediately alerted to the trunk area. (R95-96). On the second walk around Sirus alerted on the vehicle again. (R96). A search of Appellant's vehicle revealed a handgun and a metal container with cocaine residue in it and a razor blade inside of it. (R103).

On cross-examination of Officer Freeman, defense counsel asserted Sirus was not 100 percent accurate and implied the officer did not really know the dog's alert rate. (R104). The prosecutor made the following objection, "I'm going to object to this line of questioning unless you're planning to introduce records or –-." (R104). Defense counsel responded, "I'm just asking him what his personal knowledge is." (R104). When asked if Sirus was 100 percent accurate, Officer Freeman stated he was unable to answer that question. (R104). Officer Freeman stated that every time Sirus alerted drugs were not always found by the officers. (R105). Officer Freeman explained that Sirus detects the odor of drugs not the presence of drugs themselves. (R106). Sirus has been trained to detect the oder of cannabis, cocaine, heroin and methamphetamine. (R106).

Defense counsel argued the stop was not reasonable as Appellant was improperly detained by the officer while waiting for the K-9 Unit. (R116-122). At the very end of his argument defense counsel asserted there was no evidence regarding the training of the K-9 and its accuracy and reliability, "so that burden has not been met." (R122). Defense counsel did not argue any case law on

the issue of the reliability of the dog or present performance records of the dog to challenge its reliability. (R122).

The trial court made oral findings that the stop was valid and the only issue after all the testimony heard was whether the time of the stop until the alert by the dog was reasonable within the time required to issue the citation. (R130). The court further indicated it would have a written order the following day. (R131). Defense counsel made no response to the trial court's oral findings. (R131-132).

On March 29, 2006, the trial court entered a written order finding the time period between the stop of the vehicle and the canine search was not unreasonably long, and that only 19 minutes had elapsed. (R40). The court found the citation was still being written when the canine officer arrived and there was no evidence that Sgt. Jernigan intentionally delayed issuing the citation to allow time for the canine officer to arrive. (R41).

On March 30, 2006, defense counsel filed a Motion to Clarify the Order Denying Motion to Suppress claiming the State did not present any evidence of the reliability of the K-9, Sirus, that Officer Freeman testified the dog was not 100% accurate and has alerted on vehicles where illegal substances were not found, but he did not know how many times that had occurred. (R38). There is nothing in the record to indicate the trial court ruled on the Motion to Clarify.

SUMMARY OF THE ARGUMENT

The State can make a prima facie showing of probable cause for a warrantless search based on a narcotic dog's alert by establishing that the dog has been properly trained and certified. The dog's reliability can then be challenged by the defendant through performance records of the dog, or other evidence, such as expert testimony.

Because an alert by a trained and certified narcotics detection dog, standing alone, provides an officer with probable cause to search, this Court should reverse the decision in Gibson v. State, 968 So. 2d 631 (Fla. 2d DCA 2007), and approve the holdings in State v. Coleman, 911 So. 2d 259, 261 (Fla. 5th DCA 2005), and State v. Laveroni, 910 So. 2d 333 (Fla. 4th DCA 2005.

ARGUMENT

ISSUE

WHETHER THE STATE CAN MAKE A PRIMA FACIE SHOWING OF PROBABLE CAUSE FOR A SEARCH BASED ON A NARCOTICS DETECTION DOG'S ALERT BY DEMONSTRATING THAT THE DOG HAS BEEN PROPERLY TRAINED AND CERTIFIED.

In Gibson v. State, 968 So. 2d 631 (Fla. 2d DCA 2007), the Second District Court of Appeal (hereinafter "the Second District") relying on its opinion in Matheson v. State, 870 So. 2d 8 (Fla. 2d DCA 2003), has erroneous held that the fact that a dog has been trained and certified to detect narcotics, standing alone, does not justify an officer's reliance on the dog's alert to establish probable cause. The court in Gibson certified conflict with the Fifth District Court of Appeal in State v. Coleman, 911 So. 2d 259, 261 (Fla. 5th DCA 2005), as well as the Fourth District Court of Appeal in State v. Laveroni, 910 So. 2d 333 (Fla. 4th DCA 2005), as these courts rejected the holding in Matheson.

Petitioner submits the State can make a prima facie showing of probable cause for a warrantless search based on a narcotic dog's alert by establishing that the dog has been properly trained and certified. The dog's reliability can then be challenged by the defendant through performance records of the dog, or other evidence, such as expert testimony.

A trial court's ruling on a motion to suppress is clothed with a presumption of correctness regarding the trial court's determination of historical facts. However, appellate courts, independently review mixed questions of law and fact that ultimately determine constitutional issues arising in the context of the Fourth and Fifth Amendments, and, by extension, article I, section 9 of the Florida Constitution. Anderson v. State, 863 So. 2d 169, 182 (Fla. 2003); Connor v. State, 803 So. 2d 598, 608 (Fla. 2001). On questions of historical fact, the trial court can be reversed only where those findings are not supported by the record, and a *de novo* review of the application of the legal standards to the historical facts, as found by the trial court, is permitted. Connor, at 605-608.

The Fourth Amendment of the United States Constitutes reads:

> The right of people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Furthermore, Article I, § 12 of the Florida Constitution provides in pertinent part:

> Searches and seizures. - This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or

> information would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution.

Moreover, one of the core protections of the Fourth Amendment is the warrant requirement. There is, however, a lesser expectation of privacy associated with automobiles and, because they are inherently mobile, a warrantless search of a vehicle is permitted under certaincircumstances. If alaw enforcement officer has probable cause to believe a vehicle contains contraband, the Fourth Amendment permits the officer to search the vehicle without more. This exception was derived from Carroll v. United States, 267 U.S. 132 (1925), and has since been referred to as the "Carroll doctrine."

"The probable-cause standard is incapable of precise definition or quantification into percentages because it deals with probabilities and depends on the totality of the circumstances." Maryland v. Pringle, 540 U.S. 366, 371 (2003). Absolute certainty is not required by the Fourth Amendment. What is required is a reasonable belief that a crime has been or is being committed. United States v. Johnson, 660 F.2d 21, 22-23 (2d Cir. 1981). In Florida v. Royer, 460 U.S. 491 (1983), the Court held that a positive reaction by a properly trained drug dog constitutes probable cause to search.

Furthermore, in addressing the issue of drug detection dog sniffs, the United States Supreme Court, in United States v. Place,

462 U.S. 696 (1983), found that a “canine sniff” by a well-trained narcotics detection dog is “sui generis,” or unique, and is not a search under the Fourth Amendment because it does not unreasonably intrude upon a person’s reasonable expectation of privacy, and because “the manner in which information is obtained through this investigative technique is much less intrusive than a typical search.” 462 U.S. at 706-07. The majority opined that a sniff by a canine disclosed only the presence or absence of narcotics, a contraband item; and, therefore, the limited and discriminating nature of a canine sniff did "not constitute a 'search' within the meaning of the Fourth Amendment." Place, 462 U.S. at 707.

The holding in Place was subsequently reaffirmed in Illinois v. Caballes, 543 U.S. 405 (2005), in which the Court held that a sniff by a canine is not a search under the Fourth Amendment because it does not expose noncontraband items that would otherwise remain hidden from public view, and as such does not implicate legitimate privacy interests.

In conformity with Unites States Supreme Court precedent and the Fourth Amendment, every jurisdiction in this State, thus far, with the exception of the Second District, has held that an alert by a properly trained and certified narcotics detection dog provides an officer with probable cause to search.

In declining to follow Matheson, the Fourth District Court of Appeal in State v. Laveroni, 910 So. 2d 333 (Fla. 4th DCA 2005), noted that evidence of certification as a narcotics detection dog constitutes prima facie evidence of reliability. The court concluded that the dog's reliability can then be challenged by the defendant through performance records of the dog, or other evidence, such as expert testimony. Laveroni, 910 So. 2d at 336.

Similarly, in Coleman v. State, 911 So. 2d 259 (Fla. 5th DCA 2005), the Fifth District Court of Appeal aligned itself with the Laveroni court and declined to follow Matheson by concluding that the state can make a prima facie showing of probable cause based upon a narcotic detection dog's alert by demonstrating the dog has been properly trained and certified. Id. at 261. The defendant can then, if he so chooses, challenge the reliability of the dog by using the performance records of the dog or other evidence such as expert testimony. Id. The issue of whether probable cause was established can then be resolved by the trial court. Id.

Although not directly addressing the issue in the instant case, the First District Court of Appeal in State v. Griffin, 949 So. 2d 309 (Fla. 1st DCA 2007), and State v. Williams, 967 So. 2d 941, 943 (Fla. 1st DCA 2007), recognized a trained dog's alert on a vehicle constitutes probable cause to search a vehicle, although the search may not extend to the individual passengers in the car.

There also is long-standing authority from the federal courts

supporting the premise that an alert by a trained narcotics detection dog provides probable cause. For example, the Eleventh Circuit in United States v. Sentovich, 677 F.2d 834 (11th Cir. 1982), found that a showing that a narcotics detection dog is trained satisfies the requirement that drug dogs need to be reliable. The Sixth Circuit in U.S. v. Robinson, 390 F.3d 853 (6th Cir. 2004), found that a positive indication by a certified drug detection canine establishes probable cause, and all other evidence goes to credibility. See also United States v. Diaz, 25 F.3d 392 (6th Cir. 1994)(court held training and certification was sufficient but evidence of reliability of dog's performance was admissible and went to "credibility" of dog).

In United States v. Daniel, 962 F.2d 146 (5th Cir. 1993), the court rejected the argument that an affidavit must show how reliable a drug-detecting dog has been in the past in order to establish probable cause, and in United States v. Williams, 69 F.3d 27 (5th Cir. 1994), the court found a dog's alert to luggage, without more, gives probable cause for arrest. See also United States v. Outlaw, 319 F.3d 701 (5th Cir. 2003); United States v. Alvarado, 936 F.2d 573 (6th Cir. 1991); (the dog's accuracy rate, and therefore its reliability, was considered by the court in the context of a controlled test setting); United States v. Sundby, 186 F.3d 873 (8th Cir. 1999); United States v. Gonzalez-Acosta, 989 F.2d 384 (10th Cir. 1993); United States v. Banks, 3 F.3d 399 (11th

Cir. 1993).

Additionally, many state jurisdictions have disapproved of the opinion in Matheson. In State v. Nguyen, 811 N.E.2d 1180 (Ohio Ct. App. 2004), the court specifically rejected the Second District's ruling in Matheson that the track record of the dog, with an emphasis on the dog's performance history or amount of "false alerts", must be known in order to conclude that an alert by the dog is sufficiently reliable to furnish probable cause to search. Id. Specifically the court stated:

> Federal courts tend to follow the national trend, which states that a drug dog's training and certification records can be used to uphold a finding of probable cause to search and can be used to show reliability, if required, but that canine reliability does not always need to be shown by real world records.

Nguyen, at 1188.

The Nguyen court determined that a drug dog's training and certification, in the detection of narcotics, were all that were necessary in establishing the dog's reliability for the purposes of determining whether a police officer had probable cause to search a defendant's vehicle based solely on the dog's positive alert to the vehicle. Id. The court further found that the narcotics detection dog's real world or "track records" were not material to the finding of probable cause and were not discoverable by the defense. Id. See also State v. Kazazi, 2004 WL 1765404 (Ohio Ct. App. 2004)(a dog trained and accredited to detect the presence of

drugs who alerts on a vehicle provides probable cause of the presence of drugs).

Furthermore, the Georgia Court of Appeal in Dawson v. State, 518 S.E.2d 477 (1999), held that evidence of a narcotics detection dog's certification constitutes prima facie evidence of reliability, but that this could be challenged by a defendant with proof of the failure rate of the dog, or other evidence, with the ultimate determination to be made by the trial court. See also People v. Clark, 559 N.W.2d 78 (Mich. Ct. App. 1996)(holding canine's alert provided probable cause for warrantless search of vehicle's trunk); Alverez v. Commonwealth, 485 S.E.2d 646 (Va. Ct. App. 1997)(court found probable cause based on positive canine sniff of defendant's package).

Additionally, in Maryland v. Cabral, 859 A.2d 285 (Md. App. 2004), the court considered the question of whether probable cause to search a vehicle is undermined because of the possibility that a narcotics detection dog could alert on residual odor. The court held as follows:

> Numerous cases in Maryland have addressed the issue of whether, and under what circumstances, a positive alert by a drug dog gives rise to probable cause to search. In Wilkes v. State, 364 Md. 554, 774 A.2d 420 (2001), for example, the Court said: "We have noted that once a drug dog has alerted a trooper 'to the presence of illegal drugs in a vehicle, sufficient probable cause exist[s] to support a warrantless search of [a vehicle].'" Id. at 586, 774 A.2d 420 (quoting Gadson v. State, 341 Md. 1, 8, 668 A.2d 22 (1995), cert.

denied, 517 U.S. 1203, 116 S.Ct. 1704, 134 L.Ed.2d 803 (1996)).

Id. at 296-297.

The Cabral court rejected the ruling in Matheson and held that:

> These cases lead us to conclude that Cabral is "barking up the wrong tree." He has confused probable cause with proof beyond a reasonable doubt. If a trained drug dog has the ability to detect the presence of drugs that are no longer physically present in the vehicle or container, but were present perhaps as long as 72 hours prior to the alert, such an ability serves to strengthen the argument that the dog has a superior sense of smell on which to rely to support a finding of probable cause. The possibility that the contraband may no longer be present in the vehicle does not compel the finding that there is no probable cause; for purposes of the probable cause analysis, we are concerned with probability, not certainty. The issue of a possible alert to a residual odor is a factor to be considered by the trial court, but it is not dispositive.
>
> We are reminded of what Judge Moylan wrote in Fitzgerald, recognizing the reliability of a trained drug dog.
>
> "[T]he instant court sees a positive alert from a law enforcement dog trained and certified to detect narcotics as inherently more reliable than an informant's tip. Unlike an informant, the canine is trained and certified to perform what is best described as a physical skill. The personal and financial reasons and interest typically behind an informant's decision to cooperate can hardly be equated with what drives a canine to perform for its trainer. The reliability of an informant is really a matter of forming an opinion on the informant's credibility either from past experience or from independent

> corroboration. With a canine, the reliability should come from the fact that the dog is trained and annually certified to perform a physical skill."
>
> Fitzgerald, 153 Md.App. at 637, 837 A.2d 989 (quoting United States v. Wood, 915 F.Supp. 1126, 1136 n. 2 (D.Kan.1996)(italics omitted).
>
> Accordingly, we hold that the circuit court erred in finding that there was no probable cause because Bruno might have alerted to the presence of an illegal drug that was in the vehicle as much as 72 hours before the alert.

Id. at 300.

In State v. Carlson, 657 N.E.2d 591 (1995), the court concluded that, "once a trained drug dog alerts to the odor of drugs from a lawfully detained vehicle, an officer has probable cause to search the vehicle for contraband." Id. The court also dismissed the trial court's concern as to a possible alert to a "stale odor," characterizing the "stale odor argument" as "fanciful but unpersuasive." Id. The court stated that "the test for staleness is whether the available information justifies a conclusion that contraband is probably on the person or premises to be searched." Id. at 602. The court concluded that "'there is no arbitrary time limit on how old information ... can be.'" Id. (citation omitted).

In addressing residual odors the Cabral court stated:

> United States v. Johnson, 660 F.2d 21 (2d Cir.1981) (per curiam), is also instructive. There, the defendant claimed that the drug

> dog's alert did not create probable cause to support the issuance of a search warrant for his luggage. Id. at 22. He argued that the dog was "incapable of distinguishing between the actual presence of drugs in a container and the residual odorwhen the controlled substances are no longer there...." Id. The Second Circuit rejected that contention as a misapprehension of the concept of probable cause. It said, id. at 22-23:
>
> > [A]ppellant's argument with respect to the problem of a dog detecting only the residual odors as opposed to the drugs themselves misconstrues the probable cause requirement. Absolute certainty is not required bythe Fourth Amendment. What is required is a reasonable belief that a crime has been or is being committed.

Cabral, 859 A.2d at 299.

Relying on Cabral, the First District in State v. Griffin, 949 So. 2d 309 (Fla. 1st DCA 2007), concluded that the power of a well-trained narcotics-detection dog to alert to the residue of contraband only increases the possibility that the car contains contraband. The Griffin court further found that the fact that the dog alert may have been in response to contraband no longer present in the car did not mean that law enforcement failed to rely on a reasonable probability that contraband was present on the defendant's person or in her car. Id.

Recently, in State v. Nguyen, 726 N.W.2d 871 (S.D. 2007), the Supreme Court of South Dakota recognized that when a narcotic detection dog's training is conducted in controlled circumstances, a dog's ability to find and alert to the presence of drugs can be

accurately measured. However, the court concluded that, "[i]n the field, one simply cannot know whether the dog picked up the odor of an old drug scent or whether it mistakenly indicated where there was no drug scent." Id. at 878.

Also, in State v. Yeoumans, 172 P.3d 1146 (Idaho App. 2007), the court agreed with the jurisdictions that have held that an alert by an otherwise reliable, certified drug detection dog is sufficient to demonstrate probable cause to believe contraband is present even if there exists the possibility the dog has alerted to residual odors. In Yeoumans the court expressly declined to follow Matheson and stated, "We have found only one jurisdiction indicating that evidence that a drug dog's alerts to residual odors will preclude the finding of probable cause based on the dog's alert. See Matheson v. State, 870 So. 2d 8 (Fla. 2d DCA 2003." Yeoumans, 172 P.3d at 4 (FN 1). The court further recognized that, "other districts of the Florida District Court of Appeals have rejected the position taken in Matheson. See State v. Coleman, 911 So. 2d 259, 261 (Fla. 5th DCA 2005); State v. Laveroni, 910 So. 2d 333 (Fla. 4th DCA 2005)." Yeoumans, 172 P.3d at 4 n1.

In fact, Respondent could find no other jurisdiction in this country, state or federal, that has aligned itself with the Second District. The court's opinion in Matheson and now Gibson, improperly suggests that an officer who knows that his dog is trained and certified, and who has no other information, has only

a mere suspicion of criminal activity which cannot justify a search. As most courts of this nation have consistently held, an alert to a vehicle by a well-trained narcotics dog does provide an officer with probable cause to search. However, the Second District in Matheson and Gibson has ruled contrary to the established precedent of these courts. Instead, the Second District has improperly created its own probable cause standard by holding that the fact that a dog has been trained, standing alone, is not enough to give an officer probable cause to search based on the dog's alert.

As many federal and state courts have recognized a drug dog is trained to detect "residual odors." Meaning, that a properly trained narcotics detection dog can smell or detect the scent of drugs that were recently present even though the drugs are no longer physically present in the vehicle and cannot be collected by the officers at the time of the alert.

The Second District's finding that a narcotics detection dog's "track record" in the field is necessary to establish a dog's reliability, evidences a misunderstanding of residual odors as they relate to a finding of probable cause. The Second District essentially negates the use of narcotics dogs for law enforcement purposes, in that it creates an impossible standard requiring a record of the dog's performance in the field, including the number of "false positives", in order to establish probable cause.

However, the dog's number of false positives cannot be determined in the field but only in a controlled setting such as training or certification. This is because narcotics detection dogs alert to the **odor** of narcotics establishing a **probability** that narcotics will be found, not a certainty that narcotics will be found. Only a probability, not absolute certainty, is required for probable cause to search.

For example, if a drug buy has just been made and the drugs are no longer in the vehicle, the odor may still be detectible to the canine nose. Similarly, a dog may alert to a vehicle in which the driver has drugs on his person. Once the driver is asked to exit the vehicle to effectuate the search narcotics will not be found inside the vehicle but the dog was still correct in alerting. The odor of the narcotic may remain even after the narcotic has been removed from the vehicle. Therefore, it cannot be known if a dog is falsely alerting in the field. False alerts can only be determined in a controlled setting where the quantity, type and location of the narcotic is known.

Therefore, an alert by a trained and certified narcotics detection dog provides an officer with probable cause to search. Consequently, this Court should reverse the decision in Gibson and approve the holdings in State v. Coleman, 911 So. 2d 259, 261 (Fla. 5th DCA 2005), and State v. Laveroni, 910 So. 2d 333 (Fla. 4th DCA 2005.

CONCLUSION

Petitioner respectfully requests that the opinion of the Second District Court of Appeal be reversed and Respondent's convictions and sentences be reinstated.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Carol J.Y. Wilson, Assistant Public Defender, P.O. Box 9000—Drawer PD, Bartow, Florida 33831-9000, this 28th day of January, 2008.

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

Respectfully submitted,

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