IN THE SUPREME COURT OF FLORIDA

MICHAEL KING,	:	
Appellant,	:	
vs.	:	Case No. SC09-2421
STATE OF FLORIDA,	:	
Appellee.	:	
	:	

APPEAL FROM THE CIRCUIT COURT
IN AND FOR SARASOTA COUNTY
STATE OF FLORIDA

REPLY BRIEF OF APPELLANT

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PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

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PRELIMINARY STATEMENT

This reply brief is directed to Issues 1, 2, and 3. Appellant will rely on his initial brief as to Issues 4 and 5. The state's answer brief will be referred to herein by use of the symbol "SB".

ARGUMENT

ISSUE I. KING'S STATE AND FEDERAL CONSTITUTIONAL RIGHTS TO PRESENT HIS DEFENSE AND TO FULLY CROSS-EXAMINE A KEY PROSECUTION WITNESS WERE VIOLATED BY A SERIES OF TRIAL COURT RULINGS REGARDING ROBERT SALVADOR (AND COMPOUNDED BY THE PROSECUTION TAKING UNFAIR TACTICAL ADVANTAGE OF ITS OWN FAILURE TO CONTEMPORANEOUSLY OBJECT TO THE DEFENSE'S CROSS-EXAMINATON OF SALVADOR, AND BY THE PROSECUTOR'S BURDEN-SHIFTING COMMENTS IN CLOSING ARGUMENT).

The prosecutor deliberately chose not to contemporaneously object to the line of cross-examination which gave rise to this issue because it believed it could secure a huge tactical advantage by standing silent while the cross-examination occurred. The prosecution thought, wrongly, that this would "open the door" for it to introduce King's post-arrest exculpatory statements (which had been suppressed because his invocation of his right to an attorney had been ignored by law enforcement). For this reason, the state withheld its objection while defense counsel asked Robert Salvador a series of questions regarding his own possible involvement in the murder (the defense theory being that Salvador was the triggerman)(24/2587-88). The state even addressed the subject matter in its own redirect of Salvador (24/2595-96). Only after Salvador was excused from the witness stand did the prosecutor express his "great concerns...over what just took place in this courtroom" (24/2599), and even then he did not initially request that the questions and answers be stricken, because he was seeking to use them as a conduit for the introduction of the

suppressed statements (24/2599-25/2618). Only after that strategy failed did the prosecutor change his course and successfully persuade the trial judge to give a "curative" instruction which amounted to an impermissible judicial comment on the evidence; one which effectively obliterated King's only defense in this trial.

On appeal, the state very generously excuses its own sandbagging tactics [SB48-49]. The state would not take the same position if it were a defendant who withheld a contemporaneous objection to obtain a tactical advantage. In its brief the state relies on a First DCA civil case, White v. Consolidated Freightways Corp. of Delaware, 766 So.2d 1228, 1233 (Fla. 1st DCA 2000), for the proposition that a motion for mistrial made at the conclusion of opening statements, directed to comments made during the opening statements, was sufficiently preserved. When, however, it is a defendant in a criminal case whose attorney fails to make a contemporaneous objection during a witness' testimony at the time the claimed error occurs, but instead waits until the close of the witness' testimony to make his objection, the state on appeal typically relies on this Court's opinion in Norton v. State, 709 So.2d 87,93-94 (Fla. 1997) to contend that the objection was untimely and therefore waived. Not only did the state successfully assert this position in Norton itself (see 709 So.2d at 94), the state is presently asserting the same position in the pending capital appeals of Gary Bernard McCray v. State, SC08-2434 (Issue 8, p.76-79) and Kevin Jerome Scott v. State, SC09-1578 (Issue 1,

Preservation, p. 16-17, and Issue 2, Preservation, p. 10-11).[1] See also Snipes v. State, 733 So.2d 1000, 1007 (Fla. 1999) (citing Norton); Evans v. State, 800 So. 2d 182, 188 (Fla. 2001); Jackson v. State, 451 So. 2d 458, 461 (Fla. 1984) (objection made during impermissible line of questioning is sufficiently timely to allow the court, had it sustained the objection, to instruct the jury to disregard the testimony or consider a motion for mistrial).

The lateness of the state's objection to the cross examination in the instant case was not inadvertent; it was tactical. One of the core purposes of the contemporaneous objection rule (which applies to the state as well as the defense) is "to prevent a litigant from allowing an error to go unchallenged so it may be used as a tactical advantage later." State v. Calvert, 15 So.3d 946,948-49 (Fla. 4th DCA 2009); quoting Crumbley v. State, 876 So.2d 599,601 (Fla. 4th DCA 2004); see F.B. v. State, 852 So.2d 226,229 (Fla. 2003).

The state complains that defense counsel never identified the source of the specific facts asserted in his questions to Robert Salvador (SB 49-50). The state says, "Even when pressed by the trial court below, defense counsel did not cite any source for those facts, not even King" (SB50).

The prosecutor below asserted that the jurors would believe that defense counsel had obtained the information from his client,

[1] The pages appear to be misnumbered on the Florida Supreme Court website's electronic version of the state's answer brief in Scott.

King (24/2600;25/2605). “[O]ne of the things that I think...is the specificity of the questions. Things like bringing a lawn mower and a gas can to come over to King’s house to cut the grass, and...the only person on the planet that would have that information” would be King (25/2617-18). The judge said to defense counsel, “Obviously, I’m not going to delve into communications between you and your client. That’s not something I’m even going to come close to” (25/2606).

Therefore, if the source of the details mentioned in defense counsel’s cross-examination of Salvador was King, then defense counsel cannot be faulted for not expressly identifying King as the source when the trial judge said he didn’t want to go there. [And if defense counsel received information from King which guided him in formulating his cross-examination questions to Salvador, that tends to establish - - rather than negate - - a good faith basis for the inquiry. See Scull v. United States, 564 A.2d 1161,1164 (D.C. App. 1989)].

In view of all the circumstances - - including (1) Salvador’s initial status as a suspect in this murder; (2) Salvador’s evasiveness about his whereabouts or the day and night of the shooting; (3) the fact that Salvador’s alibi, even if believed, does not come close to covering the time frame in which the shooting likely occurred; (4) the fatal bullet appears to have come from Salvador’s supply of ammunition; (5) Salvador owns a 9mm handgun which was fired at the shooting range, and was obtained by law enforcement and then returned to Salvador without being test-fired

to determine if it was the same weapon that fired the bullet found at the crime scene; (6) Salvador was the only witness who put King in possession of a different 9mm firearm; and (7) despite massive search efforts no 9mm firearm tied to King was ever found - - defense counsel's cross-examination of Salvador was proper, was done in good faith, and was relevant to Salvador's motivation to testify against King. A defendant has the constitutional right to present his defense; including a third party perpetrator defense, so long as there is some quantum of evidence connecting the third party to the crime. See, e.g., Holmes v. South Carolina, 547 U.S. 319 (2006), discussed in Summers v. State, 231 P.3d 125,145-49 (Okla. Crim. App. 2010). A defendant also has the constitutional right to confront a key state witness concerning his motivations and self-interest, including his own possible involvement in the crime. See Washington v. State, 737 So.2d 1208,1218-19 (Fla. 1st DCA 1999); Harris v. State, 726 So.2d 804,806 (Fla. 4th DCA 1999); Lavette v. State, 442 So.2d 265,267-68 (Fla. 1st DCA 1983). An accused's right of full and fair cross-examination is a crucial means of testing the truthfulness of the witness' testimony; it "permits the jury that is to decide the defendant's fate to observe the demeanor of the witness in making his statement, thus aiding the jury in assessing his credibility." California v. Green, 399 U.S. 149,158 (1970); Conner v. State, 748 So.2d 950,955 (Fla. 1999).

Here, the jurors' assessment of Robert Salvador's demeanor when confronted by defense counsel's unobjected-to (at the time)

questions concerning his activities on January 17, culminating in his possible commission of the murder, was critical to their determination of his credibility. The prosecutor's subsequent tactics sabotaged King's only defense and deprived him of a fair trial.

The state says that the trial court "adopted the remedy of an instruction, a middle ground approach that was initially suggested by defense counsel..." (SB48, see 47). If the state is suggesting that defense counsel acquiesced in the sequence of events at issue here, or waived King's right to challenge it on appeal, the state is wrong.

First of all, defense counsel "suggested" an instruction only after the judge ruled adversely to his primary position that his cross-examination of Salvador was proper and was done in good faith. In light of that adverse ruling, the judge asked defense counsel what the remedy might be. Defense counsel reasserted, "I think I've established my position" but "[i]f you think otherwise, one possible remedy is simply striking it from the record and instructing the jury on that" (25/2618)(emphasis supplied). That is not a waiver; it is simply acknowledging the judge's ruling, and answering his question by proposing the least onerous alternative.

But that "middle ground" wasn't good enough for the state. The prosecutor wanted (and ultimately got) a more strongly worded and specific admonishment which would convey to the jury that the

questions which defense counsel had asked Robert Salvador were improper and not based on any evidence (25/2620-21). Defense counsel objected strenuously to the prosecutor's proposal (25/2621-22,2627,see also 25/2676-93;7/1237-42). Nevertheless, the trial court - - at the prosecutor's request (25/2629) - - not only instructed the jurors to completely disregard the cross-examination questions regarding Salvador's going to King's home and later meeting him on Plantation Blvd. and Panacea Blvd. (the scene of the shooting) on January 17, but also told them "I'm asking you to disregard such because there is no basis in fact from the evidence or the inference from the evidence for the asking of said questions" (25/2629) (emphasis supplied).

As Florida appellate courts have repeatedly cautioned, "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." Whitfield v. State, 452 So.2d 548,549 (Fla. 1984). Because of the dominant position occupied by the judge - - which overshadows those of the attorneys, litigants, court officers, and witnesses - - any comment by the judge which is capable "directly or indirectly, expressly, inferentially, or by innuen-do" of conveying to the jury the view he takes of the case destroys the impartiality of the trial. Brown v. State, 11 So.3d 428,433-34 (Fla. 2d DCA 2009); Brown v. State, 678 So.2d 910,911 (Fla. 4th DCA 1996); Fogelman v. State, 648 So.2d 214,219 (Fla. 4th DCA 1994); Hamilton v. State, 109 So.2d 422 (Fla. 3d DCA

1959). If the trial judge here had instead taken the "middle ground approach" which the state refers to in its brief (SB48), it would still have been error (since defense counsel had a good faith basis to cross-examine Salvador about his possible participation in the charged murder) but it would not have been the devastating error which the prosecutor's overreaching - - compounded in his closing argument[2] - - turned it into.

Virtually all of the evidence cited by the state in support of its "harmless error" argument goes to the kidnapping and sexual battery convictions (SB60-67). Undersigned counsel has already acknowledged in his initial brief that "the errors or series of errors discussed in Issues One, Two, and Three, concerning Salvador, the cartridge cases gathered at the firing range, and the FDLE firearms examiner's testimony, are harmless as to the kidnapping and sexual battery convictions." [Initial Brief, p.35]. However, these errors are all harmful as to the murder conviction and the death penalty. [As explained in the initial brief, p.5-6,34-35, under the instructions given in the instant case (without objection by the state and without any request for a principals instruction) the jury could not convict appellant on the murder charge unless it found beyond a reasonable doubt that he - - and not Salvador - - was the person who actually shot and killed the victim. Moreover, "the errors which hamstrung defense counsel's ability to argue Salvador's involve-

[2] See appellant's initial brief, p. 54-62.

ment in the murder were especially harmful as to penalty, since if the jurors believed Salvador was the actual shooter and was getting off scott free - - without even any testing or comparison of his nine-millimeter handgun - - they might well have been less inclined to recommend the death penalty for King" [Initial Brief, p.35-36].

The other problem with the harmless error argument is that the state's bland assurances on appeal that none of what occurred could have had any effect on the jury's deliberations or verdict is inconsistent with the prosecutor's behavior at trial. This case provides an extreme example of a recurring tactic, in which the state first - - through its representative at trial, the assistant state attorney - - litigates vigorously to persuade the trial judge to make a ruling (or, here, series of rulings) beneficial to the prosecution and adverse to the defendant, and then after securing a conviction - - through its representative on appeal, the assistant attorney general - - cavalierly proclaims (in effect) "Oh, that? We didn't need that anyway."

In the instant case, the prosecutor used every sledgehammer tactic he could think of to undermine King's only defense. He deliberately withheld a contemporaneous objection to counsel's cross-examination of Salvador, in the mistaken belief that it would open the door for him to introduce unconstitutionally obtained statements. When that failed, the prosecutor complained mightily at the prospect of a simple jury instruction to disregard the line of cross-examination; instead, he insisted upon and

got an instruction which amounted to a disparaging judicial comment that there was “no basis in fact from the evidence or the inference from the evidence for the asking of said questions.” Then, after the judge reminded defense counsel that his ruling applied to closing argument and (while he could argue that Salvador fired the fatal shot) he could not say anything about how he got there or suggest that there was any prior arrangement between Salvador and King, the prosecutor proceeded - - before defense counsel had a chance to say a word - - to ridicule before the jury the very theory which the defense was barred from mentioning. [See Initial Brief, p. 54-59]. Then the prosecutor made a blatant burden-shifting comment (preserved by an overruled objection and a motion for mistrial) exhorting the jury to “ask for the evidence that they said would show that someone other than Michael King committed this offense” (26/2990).

Now, on appeal, the state says it didn’t need to employ any of these tactics. “This can hardly be considered an important or significant matter...” (SB60). However, the prosecutor below seemed to think it was important; otherwise he would not have conducted himself as he did. The trial prosecutor obviously believed that the jury might have concerns about Salvador’s participation in the murder and his motives to testify against King (especially in light of Salvador’s evasiveness about his own whereabouts and the fact that law enforcement never bothered to test Salvador’s 9 millimeter handgun). Therefore, the prosecutor did what he could to undermine this defense.

The state is now trying, in effect, to justify stacking the deck by saying, “Look how easily we won the card game”. At the very least, an appellate court should look askance when the state attempts this sleight-of-hand maneuver, as this Court did in Gunn v. State, 78 Fla. 599,83 So. 511 (1919):

> It is contended that * * * no harm could have been done by the admission of the sheriff’s testimony. Then why was it offered by the state and admitted by the court? Surely not merely to consume time and swell the record? * * *Having gotten it before the jury over the objection of the defendant, and a conviction obtained, the state cannot be heard to say it was harmless error. Who can say that the testimony * * * did not and could not have the effect that the state’s attorney intended?

See also Farnell v. State, 214 So.2d 753, 764 (Fla. 2d DCA 1968)(quoting Gunn); State v. Clarke, 808 P.2d 92,94 n.1 (Or.App. 1991); State v. Newman, 568 S.W.2d 276,282 (Mo.App. 1978).

ISSUE II. THE TRIAL COURT ERRED IN ALLOWING THE STATE TO INTRODUCE INTO EVIDENCE 47 FIRED CARTRIDGE CASES FROM THE GUN RANGE, NONE OF WHICH WERE SHOWN TO BE CONNECTED TO MICHAEL KING; AND FURTHER ERRED IN ALLOWING THE INTRODUCTION OF THE FDLE FIREARMS EXAMINER'S OPINION THAT THREE OF THOSE SHELL CASINGS WERE FIRED FROM THE SAME UNKNOWN FIREARM AS THE SINGLE FIRED CARTRIDGE CASE (ALSO NOT SHOWN TO BE CONNECTED TO KING) FOUND IN THE GRASS NEAR THE CRIME SCENE.

Putting aside for the moment the scientific unreliability and Frye[3] issues discussed in Point 3, the cartridge cases gathered at the gun range were simply not relevant because they were not shown to have been fired by King. In the usual case - - illustrated by Evans v. State, 800 So.2d 182, 190-91 (Fla. 2001) and Dornau v. State, 306 So.2d 167,171 (Fla. 2d DCA 1974), cited by the state (SB 70-72) - - a projectile or casing located at the crime scene is compared with a projectile or casing which is specifically linked to the defendant, and, if they match, that is relevant evidence tending to show that the defendant fired the bullet at the crime scene. [Note that in neither Evans nor Dornau was there a challenge to the scientific reliability of the ballistics match, so those cases are not pertinent to Issue 3. Moreover, while Evans involves a relevancy objection, Dornau does not].

In Evans, shell casings were found at the murder scene and in a car which Evans possessed on the night of the murder. The state not only presented evidence that the casings matched each other, but also that "[t]he shell casing discovered in the car

[3] Frye v. United States, 54 App.D.C. 46,293 F. 1013 (D.C. Cir. 1923).

came from the gun used to kill Lewis". 800 So.2d at 190. [In the instant case, in contrast, no 9-mm firearm linked to King was ever discovered, and law enforcement neglected to test Salvador's 9-mm firearm].

In Dornau, a .25 caliber casing was found at the murder scene and other .25 caliber casings were found in the rear of Dornau's business where Dornau (who owned a .25 caliber pistol) practiced shooting. Since Dornau's gun was not produced at trial, that case would appear somewhat more on point than Evans, but closer examination shows otherwise. First of all, there is no indication in Dornau that there was any objection below - - on grounds of either relevancy or scientific unreliability - - to the testimony that the crime scene casings and the casing found behind Dornau's building were fired from the same gun. Nor was any issue regarding the casings raised on appeal. Moreover, there is no indication that anyone other than Dornau took target practice behind Dornau's place of business.

In the instant case, in stark contrast, 47 nine-millimeter shells (from among thousands of shells in the area) were gathered off the ground at a commercial gun range. During the course of a day, fired shells get swept into the dirt so the customers won't trip over them. At least sixteen people besides King used the shooting range on January 17, and an undetermined number of others may have used it on the 18th (before investigators arrived) or before the 17th. [Since there was no testimony as to how often or how thoroughly gun range employees gather up and

dispose of the accumulation of shells, many of them could have been there for days or even weeks before the 17th] .

Therefore, neither the 47 cartridge cases gathered by law enforcement, nor the three which purportedly matched the cartridge case found in the grass near the murder scene, were shown to have been fired or possessed by Michael King, nor were they linked to King in any other way. They could just as easily have been fired by Robert Salvador (whose 9 millimeter firearm, obtained by the police and then returned to Salvador, was never test-fired) or by anyone else who used the gun range.

The purpose of ballistics comparison evidence, if done properly, would be to prove a defendant's guilt by showing that he fired the crime scene bullet or casing, because it scientifically matches other bullets or casings known to have been fired by the defendant. Here, the state did just the opposite, using circular logic. It assumed King's guilt - - assumed that he was the one who fired the casing found near the crime scene - - and then took 47 gun range casings not linked to King, found three of them which purportedly matched the crime scene casing, and then concluded from this that those three shells must also have been fired by King. In other words, there was no relevance, and no basis for admissibility, unless one assumes the very fact which the ballistics evidence is offered to prove.

For the reasons discussed in Issue 1, the error - - while harmless as to the kidnapping and sexual battery convictions - - was harmful as to the murder conviction and death sentence.

ISSUE III. THE TRIAL COURT ERRED IN ALLOWING THE STATE TO INTRODUCE FDLE FIREARMS EXAMINER ROMEO'S OPINION THAT HE WAS 100 PER CENT CERTAIN THAT THREE OF THE 47 CARTRIDGE CASES FROM THE GUN RANGE WERE FIRED FROM THE SAME UNKNOWN NINE-MILLIMETER FIREARM AS THE CARTRIDGE CASE FOUND NEAR THE CRIME SCENE; WHERE (1) ROMEO DID NOT EXAMINE OR TEST-FIRE ANY SPECIFIC FIREARM; (2) ROMEO'S METHODS WERE TOO SUBJECTIVE AND INSUFFICIENTLY RELIABLE TO ENABLE HIM TO CLAIM 100 PER CENT CERTAINTY BEFORE THE JURY; AND (3) THE JUDGE REFUSED TO HOLD A FRYE HEARING BEFORE ALLOWING THE STATE TO INTRODUCE ROMEO'S OPINION.

The state still has not cited a single Florida case in which ballistics comparison testimony - - much less ballistics comparison of shell casings in the absence of a known firearm - - has been determined to be scientifically reliable or generally accepted after a Frye[4] hearing. United States v. Foster, 300 F.Supp. 2d 375 (D. Md. 2004)(SB79-80) was decided under the Daubert[5] test, which "embodies a more liberal standard of admissibility for expert opinions" than Frye. United States v. Williams, 506 F.3d 151,161-62 (2nd Cir. 2007). See also Ramirez v. State, 810 So.2d 836,843-44 n.8 (Fla. 2001); Brim v. State, 695 So.2d 268,271-72 (Fla. 1997)(Frye test requires a higher level of reliability than the more lenient Daubert standard).

The other three opinions relied on by the state in which shell casings were compared in the absence of a known firearm are Dornau v. State, 306 So.2d 167,171 (Fla. 2d DCA 1974), State v. Williams, 992 So.2d 330,332 (Fla. 3d DCA 2008), and United States

[4] Frye v. United States, 293 F.2d 1013 (D.C. Cir. 1923).
[5] Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993).

v. McKissick, 204 F.3d 1282,1291 (10th Cir. 2000)(SB79-81). In McKissick, there is no indication of any objection at trial to the admissibility or scientific reliability of the ballistics comparison, and neither of the two co-defendants raised any such issue on appeal. 204 F.3d at 1289 (McKissick), 1295 (Zeigler). The same is true in Dornau. The Williams opinion is a state petition for certiorari successfully challenging the exclusion of Williams Rule evidence; the case had not even gone to trial yet, and any challenge the defense might have to the scientific unreliability of the yet-to-be-introduced ballistics comparison is clearly not something that could be raised by the defense during the state's interlocutory cert petition on an unrelated issue.

In United States v. Hicks, 389 F.3d 514,526 (5th Cir. 2004), prominently relied on by the state (SB78-79), an expert witness concluded that bullet casings found in the field where the officer was shot were fired from a gun seized in Hicks' son's bedroom. As the state quotes Hicks, "the matching of spent shell casings to the weapon that fired them has been a recognized method of ballistics testing in this circuit for decades." Hicks cites United State v. Lopez-Escobar, 920 F.2d 1241,1243 (5th Cir. 1991) (prosecutor was directed to arrange a comparison of a casing found near the scene of the arrest and casings to be test-fired from a specific gun) (SB78). One point emphasized in Hicks which sharply distinguishes it from the instant case is that the "30-30 rifle suspected of having produced the spent shell casings was available and was used for purposes of comparison testing." 389 F.3d at 526

(emphasis in opinion).

Since ballistics testimony was introduced in the past - - typically without objection and always without Frye-testing - - the state seems to be contending that this should go on forever, without regard to more recent scientific developments casting serious doubt on the reliability (and the inflated claims of infallibility) of the techniques used.

Contrary to the state's argument, courts should not "grandfather" admissibility of ballistics testimony or exempt it from Frye-testing (or Daubert-testing) merely because it has been routinely introduced in the past. See United States v. Williams, 506 F.3d 151,162 (2d Cir. 2007); United States v. Willock, 696 F. Supp.2d 536,564 (D.Md. 2010); United States v. Green,, 405 F.Supp. 2d 104,118 (D. Mass. 2005). As stated in Willock:

> In Green, 405 F. Supp.2d 104, the court also acknowleged that district courts are "obliged to critically evaluate toolmark and ballistics evidence, even though it has been accepted for years pre-Kumho," because failure "to do so would be equivalent to 'grandfathering old irrationality.'" Id. at 118 (footnote and citation omitted). The Green court warned: "The more courts admit this type of toolmark evidence without requiring documentation, proficiency testing, or evidence of reliability, the more sloppy practices will endure; we should require more." Id. at 109. Further, it observed that "recent reexamination of relatively established forensic testimony have produced striking results," such as that "forensic testing errors were responsible for wrongful convictions in 63% of the cases in one study. Id. at 109 n.6.

696 F.Supp.2d at 564.

Just as much as in Ramirez v. State, 810 So.2d 836 (Fla. 2001), agent Romeo's testimony in the instant case reveals "it's a match because I say so" junk science; unreliable and inadmissible under the Frye standard (and made all the more unreliable and harmful by Romeo's insistence of his 100% certainty). His testimony is replete with statements revealing the subjectivity and lack of scientific standards for determining a "match". [Trial transcript 25/2957-63; see appellant's initial brief, p. 83-84]. The trial court should have sustained the defense's objection and ruled Romeo's testimony inadmissible on grounds of scientific unreliability, or, at the very least, should have subjected it to Frye-testing before allowing the jury to hear it. For the reasons discussed in Issues 1 and 2, the error is patently harmful as to the murder conviction and death sentence.

CONCLUSION

Based on the foregoing argument, reasoning, and citation of authority, and that contained in his initial brief, appellant respectfully requests that this Court reverse his three convictions [Issue 4], or his first degree murder conviction only [Issues 1,2, and 3], and his death sentence, and remand for a new trial. Appellant also requests that this Court reduce his death sentence to life imprisonment without possibility of parole [Issue 5].

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Assistant Attorney General Scott A. Browne, Concourse Center #4, 3507 E. Frontage Rd. - Suite 200, Tampa, FL 33607, (813) 287-7900, on this _____ day of April, 2011.

CERTIFICATION OF FONT SIZE

I hereby certify that this document was generated by computer using Microsoft Word with Courier New 12-point font in compliance with Fla. R. App. P. 9.210 (a)(2).

Respectfully submitted,

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