IN THE SUPREME COURT OF FLORIDA

CASE NO. SC11-1617

RAFAEL MATARRANZ,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

* *

ON PETITION FOR DISCRETIONARY REVIEW
FROM THE THIRD DISTRICT COURT OF APPEAL

* *

ANSWER BRIEF ON THE MERITS

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INTRODUCTION

The Respondent, the State of Florida, was the appellee in the Third District Court of Appeal and the prosecution in the trial court of the Eleventh Judicial Circuit, in and for Miami-Dade County. The Petitioner was the appellant and the defendant, respectively in the lower courts. In this brief, the parties will be referred to as they appear before this Honorable Court.

The symbols "R" and “T” refer to the record on appeal and trial transcripts contained in the record forwarded to this Court by the clerk of the Third District Court of Appeal. The symbol "A" refers to the Appendix attached to the Petitioner’s brief on the merits (referred to as “PB”), which includes a copy of the district court's opinion. Unless otherwise indicated, all emphasis has been supplied by Respondent.

STATEMENT OF THE CASE AND FACTS

Respondent accepts the Petitioner's Statement of the Case and Facts to the extent that it is accurate and nonargumentative, and sets forth the following additional facts:

The trial court denied the defense's challenge of prospective juror Ms. Ceballos for cause, ruling as follows:

> THE COURT: I'm going to deny the cause challenge. Having only had heard testimony from yesterday, I would have been inclined to grant it, but her testimony yesterday includes the fact that there had been this burglary when she was eight years old, that was emotional for her because it included the theft of her Christmas toys and today **based on her demeanor**, I believe from her reflection, I think she was embarrassed and she said that she thought about it last night and she said that she felt that she had more of an opened mind today and that she could be fair and she realized that that burglary that happened to her had nothing to do with this case.

(T. 393-395). Defense counsel at that point accepted Ms. Ceballos, but later used its sixth peremptory challenge to "backstrike" Ceballos. (T. 395, 404; R. 78). After exhausting his peremptory challenges, defense counsel requested an extra peremptory challenge, claiming that the trial court erred in failing to strike five jurors for cause, not however naming Ms.

Ceballos.[1] (T. 547). Defense counsel identified five jurors that he would have stricken if he had an additional peremptory challenge, to-wit: Mr. Devera, Ms. Garcia, Ms. Gonzalez, Mr. Gabriel, and Mr. Ramos.[2] (T. 547). The trial court denied the request for an extra peremptory challenge. (T. 547).

On appeal, the district court affirmed Petitioner's convictions and sentence, holding that the trial court did not commit manifest error in determining that prospective juror Ceballos was competent to serve as a juror. The district court concluded that the "totality of prospective juror Ceballos' responses demonstrated her ability to be fair and impartial and decide the case based solely on the evidence presented at trial." Matarranz v. State, 36 Fla. L. Weekly D1667 (Fla. 3d DCA Aug. 3, 2011); (A. 10). Specifically, the district court noted that juror Ceballos "consistently indicated" that (1) she would not hold it against Matarranz if he did not testify or if the defense did not put on witnesses; (2) she understood that it was the State's burden to prove Matarranz guilty beyond a reasonable doubt; (3) Matarranz did not have any burden of

[1] The five jurors were Ms. Perez, Ms. Morales, Mr. Yanes, Ms. Vallejo, and Ms. Katz. (T. 547; R. 77-78). Of these jurors, Petitioner pursued on appeal his claim of the erroneous denial of a cause challenge only as to Ms. Perez and Ms. Katz.

proof; and (4) she would hold the State to its burden of proof based on the evidence presented. Additionally, Ms. Ceballos stated that "anything that happened to me in the past has nothing to do with this case." (A. 11).

Thereafter, Petitioner filed its notice to invoke the discretionary jurisdiction of this Court based on alleged express and direct conflict between the Third District's decision and this Court's decisions in Singer v. State, 109 So. 2d 7, 18-24 (Fla. 1959), Overton v. State, 801 So. 2d 877 (Fla. 2001), and Hamilton v. State, 547 So. 2d 630 (Fla. 1989), as well as the district court decisions in Huber v. State, 669 So. 2d 1079 (Fla. 4th DCA 1996) and Lowe v. State, 718 So. 2d 920 (Fla. 4th DCA 1998), concerning whether prospective jurors should have been stricken for cause.

Upon this Court's acceptance of jurisdiction of this case by order dated May 2, 2012, and the filing of Petitioner's initial brief on the merits, this answer brief followed.

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[2] Ms. Garcia, Ms. Gonzalez, Mr. Gabriel, and Mr. Ramos were among those who ultimately sat on the jury. (R. 77-78).

SUMMARY OF THE ARGUMENT

The trial court did not manifestly err in denying Petitioner's cause challenge to prospective juror Ms. Ceballos since the totality of her responses during voir dire showed that she possessed a state of mind that enabled her to render an impartial verdict based on the evidence and the law. The trial court's finding that Ms. Ceballos could render an impartial verdict according to the evidence presented at trial is fairly supported by the record. Furthermore, the trial judge was in the best position to determine the juror's demeanor and weigh the credibility of her statements. Hence, in accordance with prior decisions of this Court, the district court of appeal properly affirmed the trial court's ruling.

ARGUMENT

THE TRIAL COURT DID NOT MANIFESTLY ERR IN DENYING PETITIONER'S CAUSE CHALLENGE TO MS. CEBALLOS SINCE THE TOTALITY OF HER RESPONSES DURING VOIR DIRE SHOWED THAT SHE POSSESSED A STATE OF MIND THAT ENABLED HER TO RENDER AN IMPARTIAL VERDICT BASED ON THE EVIDENCE AND THE LAW.

The State initially asserts that the specific argument made by the defense concerning the propriety of the trial court's denial of the cause challenge to Ms. Ceballos was not preserved for appellate review. After exhausting his peremptory challenges, defense counsel requested an extra peremptory challenge, claiming that the trial court erred in failing to strike five jurors for cause, not however naming Ms. Ceballos.[3] (T. 547). Defense counsel identified five jurors that he would have stricken if he had an additional peremptory challenge, to-wit: Mr. Devera, Ms. Garcia, Ms. Gonzalez, Mr. Gabriel, and Mr. Ramos. (T. 547). Hence, as the Third District expressly found, the defense at trial did not base its claim of error and request for an additional peremptory challenge on the denial of the cause challenge to Ms. Ceballos. Rather, defense counsel based its request on other allegedly erroneous denials of cause

[3] The five jurors were Ms. Perez, Ms. Morales, Mr. Yanes, Ms. Vallejo, and Ms. Katz. (T. 547; R. 77-78). Of these jurors,

challenges. (T. 547). As such, the specific claim of error now made on appeal by Petitioner was not preserved in the trial court. See Steinhorst v. State, 412 So. 2d 332, 338 (Fla. 1982) (stating "in order for an argument to be cognizable on appeal, it must be the *specific* contention asserted as legal ground for the objection, exception, or motion below.") (emphasis added).

The above notwithstanding, the district court's holding that the trial court did not commit "manifest error" by denying Petitioner's challenge for cause against prospective juror Ms. Ceballos is consistent with this Court's prior decisions. In delineating the responsibilities of the complaining party and the courts with regard to cause challenges, this Court held in Trotter v. State, 576 So. 2d 691, 694 (Fla. 1990), that

> It is the duty of a party seeking exclusion (of a prospective juror) to demonstrate, through questioning, that a potential juror lacks impartiality. The trial judge must then determine whether the juror's views would prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath. **On appeal the question is not whether a reviewing court might disagree with the trial court's findings, but whether those findings are fairly supported by the record**.

Petitioner pursued on appeal his claim of the erroneous denial of a cause challenge only as to Ms. Perez and Ms. Katz.

(Emphasis supplied.). Furthermore, considering what this Court has described as the trial court's "better vantage point" in determining juror bias, Mendoza v. State, 700 So. 2d 670, 675 (Fla. 1997), this Court has repeatedly instructed that, "**Manifest error** must be shown to overturn the trial court's finding." Mills v. State, 462 So. 2d 1075, 1079 (Fla. 1985).

A thorough review of the record does not reflect an inability to be fair and impartial on the part of juror Ceballos. To be sure, when the *totality* of Ceballos' responses to queries by the trial court and counsel concerning the effect of her past experience as a burglary victim are considered, there exists no reasonable doubt that she would have been able to follow the trial court's instruction on the presumption of innocence. When specifically asked by the prosecutor whether she could put aside her feelings for the State or for the defendant and determine whether the State had proved the charges based on the evidence she heard, Ms. Ceballos answered with an unqualified, "Yes." (T. 160). And, when pressed by defense counsel concerning whether her past experience would affect her decision regarding the charges against Petitioner, Ms. Ceballos replied, "No, cause I would have to hear it (the case). I don't think so." (T. 162-164). Furthermore, Ms. Ceballos also stated

in response to a non-leading question by defense counsel that, after further reflection, she believed that **"anything that happened to me in the past has nothing to do with this case."** (T. 352). This unqualified statement reflecting Ms. Ceballos' impartiality certainly provided the Third District with a basis for concluding that the trial court did not abuse its discretion in denying the cause challenge asserted against Ceballos. See Banks v. State, 46 So. 3d 989, 995 (Fla. 2010) (trial court did not abuse discretion in denying for-cause challenge to prospective juror whose daughter was recently robbed at gunpoint where juror twice assured trial court that his daughter's recent robbery would not affect his ability to be fair). Indeed, unlike the jurors in the cases cited for support by Petitioner, the totality of Ceballos' comments did not raise a reasonable doubt concerning whether she could render a verdict solely on the evidence presented and the court's instructions on the law. Moreover, the trial judge, who expressly assessed and referred to Ceballos' "demeanor" in making her ruling, obviously believed that Ceballos was sincere in her statements to counsel and the court. (T. 393-395). This being so, it cannot be said, as it must for reversal, that the trial court "manifestly erred" in denying the cause challenge of Ms. Ceballos. Mills, 462 So. 2d

at 1079; Trotter, 576 So. 2d at 694; Penn v. State, 574 So. 2d 1079, 1080-81 (Fla. 1991).

Petitioner's argument posits that Ms. Ceballos' initial responses concerning a "grudge" she held against those who violated the law mandated her excusal for cause *regardless* of all the other statements she made during her voir dire examination. Petitioner's argument focuses only on a few responses and seeks to have this Court ignore other statements made by Ceballos which showed her ability to be fair and impartial in Petitioner's case. This approach, however, which fails to consider the ***totality*** of the statements made by the prospective juror during voir dire examination, is entirely inconsistent with the established case law from this Court as well as various district courts of appeal. See Owen v. State, 986 So. 2d 534, 550 (Fla. 2008) (finding that "based upon **the totality of [juror's] responses in her voir dire**," defendant did not show juror to be actually biased even though she was a victim of a crime similar to the crime committed by defendant); Johnson v. State, 969 So. 2d 938, 946 (Fla. 2007) (stating that court considered juror's responses **"in their totality"**), citing Meade v. State, 867 So. 2d 1215, 1216 (Fla. 3d DCA 2004) (reviewing grant of cause challenge "based on the **totality** of

the juror's responses"); Overton v. State, 801 So. 2d 877, 892-93 (Fla. 2001) (same); Parker v. State, 641 So. 2d 369, 373 (Fla. 1994) ("In evaluating a juror's qualifications, the trial judge should evaluate **all** of the questions and answers posed to or received from the juror."), accord Banks v. State, 46 So. 3d 989, 995 (Fla. 2010); Levy v. State, 50 So. 3d 1218, 1220 (Fla. 4th DCA 2010) (prospective juror's responses, **when viewed as a whole**, did not emulate the sort of equivocation typically held to raise doubts about a potential juror's impartiality); Dorsey v. State, 806 So. 2d 559, 561 (Fla. 3d DCA 2002) (no error in trial court's denial of cause challenge where prospective juror's testimony, **when considered in full**, left no reasonable doubt as to the propriety of the court's conclusion that juror possessed the state of mind necessary to render an impartial decision); Skipper v. State, 400 So. 2d 797, 798 (Fla. 1st DCA 1981) (no reversible error in denying challenge for cause of juror who was employed as a reserve police officer and who admitted a "possibility" of some prejudice in favor of law enforcement; when responses of juror were viewed "**in their entirety**," the juror's admission of bias in favor of law enforcement revealed nothing more than an inclination toward law enforcement work and upholding of the law).

Petitioner's argument chooses to simply dismiss, and thereby essentially ignores, testimony given by Ms. Ceballos following her initial reference to the grudge she held against those who violated the law. Petitioner's argument overlooks the fact that, despite her bias against criminals stemming from her past experience as a crime victim, Ms. Ceballos was nevertheless not shown to be incompetent to serve as a juror, since the record demonstrates that Ms. Ceballos was capable of laying aside this bias and rendering a verdict solely on the evidence presented and the instructions on the law given by the trial court. (T. 160-164); see Lusk v. State, 446 So. 2d 1038, 1044 (Fla. 1984) (test for determining juror competency is whether juror "can lay aside any bias or prejudice and render his verdict solely upon the evidence presented and the instructions on the law given to him by the court."). In this regard, this Court has repeatedly held that the decision to deny a challenge for cause will be upheld on appeal if there is support in the record for the decision. See Aguirre-Jarquin v. State, 9 So. 3d 593, 604 (Fla. 2009); Barnhill v. State, 834 So. 2d 836 (Fla. 2002); Gore v. State, 706 So. 2d 1328, 1332 (Fla. 1997); Johnson v. State, 660 So. 2d 637 (Fla. 1995).

Here, it is indisputable that the trial court's decision to deny Petitioner's cause challenge of Ms. Ceballos is fairly supported by the record. As the district court noted in its opinion and as the record reflects, prospective juror Ceballos "consistently indicated" that (1) she would not hold it against Matarranz if he did not testify or if the defense did not put on witnesses; (2) she understood that it was the State's burden to prove Matarranz guilty beyond a reasonable doubt; (3) Matarranz did not have any burden of proof; and (4) she would hold the State to its burden of proof based on the evidence presented. (T. 22-27, 353); Matarranz, 2011 WL 3300367 at *5; (A. 11). Moreover, in speaking of her past experience as the victim of a burglary, she unequivocally stated that "anything that happened to me in the past has nothing to do with this case." (T. 352). Furthermore, it is clear that Ms. Ceballos fully understood the presumption of innocence accorded Petitioner, definitely stating, "As of right now he (Petitioner) is innocent because there is nothing presented to me that proves otherwise." (T. 353). In light of the foregoing record evidence, it is evident that Ms. Ceballos was competent to serve as a juror regardless of the concern she initially expressed during voir dire based on her prior experience. See Griffin v. State, 866 So. 2d 1, 13

(Fla. 2003) (defendant was not entitled to dismissal of prospective juror for cause based on juror's equivocal statement that she would not "consciously" allow the fact that she was familiar with law enforcement personnel to affect her verdict; while the juror may have expressed her ability to be fair in less than unequivocal terms at times during questioning, she was questioned extensively and adequately rehabilitated, and she met the test of juror competency in that she could "lay aside any bias or prejudice and render [her] verdict solely upon the evidence presented and the instructions on the law given to [her] by the court") (quoting Lusk v. State, 446 So. 2d 1038, 1041 (Fla. 1984)); Conde v. State, 860 So. 2d 930, 939 (Fla. 2003) (where a prospective juror initially states that one who murders should be executed but later states that he can follow the law upon court instruction, the trial court does not abuse its discretion in denying a cause challenge); Parker v. State, 456 So. 2d 436 (Fla. 1984) (there was no error in denying challenge for cause to juror who acknowledged that her home had been recently burglarized and that she feared crime in the community but would nevertheless follow the directions of the court and render a verdict based on the evidence).

Petitioner's claim that the district court affirmed the trial court's ruling "without reference or adherence to the reasonable doubt standard of juror qualification" referred to in this Court's decisions in Singer v. State, 109 So. 2d 7, 18-24 (Fla. 1959), and Hamilton v. State, 547 So. 2d 630 (Fla. 1989), is inapposite. (PB 12). First of all, these two decisions did not, in fact, establish a "reasonable doubt standard" as being the sole standard of appellate review for rulings on cause challenges. Even assuming such a standard was adopted in these cases, this standard of review certainly does not require the appellate courts to disregard the totality of the prospective juror's testimony during voir dire, as Petitioner urges here. Nor does this standard alter the well-established principles of appellate review that a trial court's decision to deny a cause challenge will be upheld on appeal if there is support in the record for the decision and that a trial court's determination of juror competency will not be overturned absent manifest error.

As the appellate decisions in Florida amply illustrate, even assuming a reasonable doubt arises concerning a juror's competency to serve due to a response given by the juror, such doubt is nonetheless capable of being removed based on other,

additional testimony subsequently given by that juror. See Conde, 860 So. 2d at 939 (where a prospective juror initially states that one who murders should be executed but later states that he can follow the law upon court instruction, the trial court does not abuse its discretion in denying a cause challenge); Kearse v. State, 770 So. 2d 1119, 1129 (Fla. 2000) (trial court acted within its discretion in refusing to dismiss for cause prospective jurors who expressed certain biases and prejudices where jurors stated that they could set aside their personal views and follow the law in light of the evidence presented); Barnhill, 834 So. 2d at 845 ("[J]urors who have expressed strong feelings about the death penalty nevertheless may serve if they indicate an ability to abide by the trial court's instructions.") (quoting Johnson v. State, 660 So. 2d 637, 644 (Fla. 1995)); Gore, 706 So. 2d at 1332 (trial judge did not abuse its discretion in declining to excuse challenged venire members where the record showed that "[a]lthough they expressed certain biases and prejudices, each of them also stated that they could set aside their personal views and follow the law in light of the evidence presented"); Penn, 574 So. 2d at 1080-81 (Fla. 1991)(prospective juror who stated that, because her father was alcoholic, she did not have much sympathy

for people who had voluntary chemical dependencies did not have to be excused for cause in murder prosecution of defendant who claimed to have been under the influence of drugs at the time of the murder; juror acknowledged that a person could be so intoxicated as to not know what he was doing and stated that she would follow the court's instructions); Mans v. State, 71 So. 3d 167, 168 (Fla. 3d DCA 2011) (a complete review of the voir dire showed that, although prospective jurors initially made statements calling into question their competency to serve as jurors, the trial court and the prosecutor successfully rehabilitated both jurors); James v. State, 736 So. 2d 1260, 1261 (Fla. 4th DCA 1999) (defendant, in drug possession prosecution, was not entitled to dismissal of prospective juror who stated that he thought drug use was immoral, where juror added that he would be able to set his personal convictions aside, listen to the law as the court explained it, and give the defendant a chance); Peri v. State, 412 So. 2d 367 (Fla. 3d DCA 1981) (holding that trial court acted within its discretion in refusing cause challenge against a prospective juror who indicated that he would give police testimony a little more credence and that his acquaintanceship with police officers would have "a little effect," but who ultimately stated that he

would keep an open mind and follow the instructions of law given by the court).

This Court has instructed that it is appropriate for the trial judge or the prosecutor to inquire of a prospective juror "when the record preliminarily establishes that a juror's views could prevent or substantially impair his or her duties" in order to "make sure the prospective juror can be an impartial member of the jury." Bryant v. State, 601 So. 2d 529, 532 (Fla. 1992). Indeed, this is what occurred in the instant case. When Ms. Ceballos initially expressed the concern that she might not be fair to Petitioner due to the "grudge" she held against criminals, the trial judge properly inquired of Ms. Ceballos to clarify her statement and to determine whether she could lay aside this bias and render a verdict solely on the evidence presented at trial. Counsel for the State and Petitioner also had the opportunity to question Ceballos about her stated concern. After hearing the ***totality*** of Ms. Ceballos' testimony, the trial judge, who expressly assessed and referred to Ceballos' "demeanor" in making her ruling, obviously determined that Ceballos was sincere in her statements to counsel and the court. (T. 393-395). Surely, contrary to Petitioner's argument that Ms. Ceballos was "tentative and reluctant to set aside her

bias" (PB 21), the trial judge was in the best position to determine the juror's demeanor and weigh the credibility of her statements. Mendoza v. State, 700 So. 2d 670, 675 (Fla. 1997). It is not for the appellate courts, based on a cold appellate record, to disturb such findings made by a trial judge.

By failing to consider the ***totality*** of the statements made by Ms. Ceballos during her voir dire examination, Petitioner also necessarily fails to recognize the deference that must be afforded to the trial court's ruling. See Conde v. State, 860 So. 2d at 939 ("[T]his Court gives deference to a trial court's determination of a prospective juror's qualifications and will not overturn that determination absent manifest error."). Again, as this Court aptly instructed in Trotter, 576 So. 2d at 694, in reviewing a trial court's ruling on a cause challenge of a potential juror, "the question is not whether a reviewing court might disagree with the trial court's findings, but whether those findings are fairly supported by the record." Here, the record fully demonstrates that Ms. Ceballos was capable of laying aside her "grudge" against criminals and rendering a verdict solely on the evidence presented and the instructions on the law given by the trial court.

Contrary to Petitioner's contention (PB 13, 30-31), the Third District's decision does not expressly and directly conflict with this Court's decisions in Singer and Hamilton, or with decisions of the Fourth District Court of Appeal. All of the cases at issue have distinctive facts. The question involved here is not one of legal principles, but rather a fact-specific question of whether the concern raised by Ms. Ceballos's initial responses during voir dire was sufficiently dispelled by her later testimony. Indeed, none of the cases relied on by Petitioner involved prospective jurors who said the things that Ms. Ceballos said after further reflection. For example, in Singer, the challenged prospective jurors had formed an opinion of the defendant's guilt or innocence based on their reading of newspaper articles about the case. One of the jurors, Mr. Davis, a close friend of the deceased victim's husband, stated that he followed the case closely by reading the newspaper and that he had a "fixed opinion" about the defendant's case that would require evidence to remove. Additionally, in stark contrast to juror Ceballos, who consistently indicated she understood the presumption of innocence and Petitioner's right to remain silent (A. 11), the prospective juror in Hamilton indicated that she had extreme

difficulty with the presumption of innocence and a defendant's right to remain silent. *Id.*, 547 So. 2d at 632. Thus, unlike the jurors in the factually distinct cases relied on by Petitioner for "conflict," the **totality** of Ms. Ceballos' *voir dire* statements did not raise a reasonable doubt whether she could render a verdict solely on the evidence presented and the court's instructions on the law. It is clear from the record that any such reasonable doubt disappeared when Ms. Ceballos stated, in response to questioning by *defense counsel*, that, after further reflection, she believed that **"anything that happened to me in the past has nothing to do with this case."** (A. 11). Accordingly, consistent with prior decisions of this Court, the Third District correctly affirmed the trial court's ruling and its decision should therefore be approved.

Lastly, for the reasons articulately set forth by Justice Bell in his dissenting opinion in Busby v. State, 894 So. 2d 88, 105-114 (Fla. 2004), and again in his concurring opinion in Kopsho v. State, 959 So. 2d 168, 173-76 (Fla. 2007), the State submits that this Court should abandon the Trotter per se prejudice standard and adopt the federal actual prejudice standard applied by the vast majority of other jurisdictions. When the actual prejudice standard is applied in the instant

case, it is clear that no reversible error occurred. For, Petitioner failed to show that any legally objectionable, i.e., biased, juror whom he either challenged for cause or attempted to challenge peremptorily served on his jury. Although his cause challenge to Ms. Ceballos was denied, Petitioner's trial counsel subsequently chose to exercise a peremptory challenge to remove Ms. Ceballos from the jury panel. As such, Petitioner suffered no actual prejudice from the trial court's denial of the cause challenge to Ms. Ceballos and that his constitutional right to an impartial jury was not violated. See United States v. Martinez-Salazar, 528 U.S. 304, 317 (2000) (unlike the right to an impartial jury guaranteed by the Sixth Amendment, peremptory challenges are not of federal constitutional dimension; "a defendant's exercise of peremptory challenges ... is not denied or impaired when the defendant chooses to use a peremptory challenge to remove a juror who should have been excused for cause.").

CONCLUSION

Wherefore, based upon the foregoing argument and authorities cited herein, Petitioner respectfully requests that this Honorable Court to APPROVE the decision of the Third District Court of Appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer Brief on the Merits was furnished by U.S. Mail to Robert Kalter, Asst. Public Defender, Counsel for Petitioner, 1320 NW 14th Street, Miami, FL 33125, on this _____ day of August, 2012.

_____
DOUGLAS J. GLAID
Senior Assistant Attorney General

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the 12 point Courier New font used in this brief complies with the requirements of Fla. R. App. P. 9.210(a)(2).

_____
DOUGLAS J. GLAID
Senior Assistant Attorney General