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IN THE SUPREME COURT OF FLORIDA

CASE NO. SC12-1442

CHARLES C. PETERSON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE SIXTH JUDICIAL CIRCUIT, IN AND FOR PINELLAS COUNTY, STATE OF FLORIDA

REPLY BRIEF OF THE APPELLANT

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REQUEST FOR ORAL ARGUMENT

The resolution of the issues involved in this action will determine whether Mr. Peterson lives or dies. This Court has not hesitated to allow argument in other capital cases in a similar procedural posture. A full opportunity to air the issues through oral argument is appropriate in this case because of the seriousness of the claims at issue and the penalty that the State seeks to impose on Mr. Peterson.

PRELIMINARY STATEMENT REGARDING REFERENCES

References to the record of the direct appeal of the trial, judgment and sentence in this case are of the form, e.g. (Dir. ROA Vol I, 123). References to the postconviction record on appeal are in the form, e.g. (PC ROA Vol. I, 123). Generally, Charles C. Peterson is referred to as "the defendant" or "the Appellant" throughout this motion. The Office of the Capital Collateral Regional Counsel–Middle Region, representing the Appellant, is shortened to "CCRC."

REPLY TO STATEMENT OF CASE AND FACTS

At pages 6-13 of their Answer Brief, the State simply block quotes this Court's opinion from direct appeal. This Court is obviously well-aware of its opinion in *Peterson v. State*, 2 So. 3d 146 (Fla. 2009). On page 14, the State begins to appear to "summarize" the testimony from the postconviction evidentiary hearing. While it is important for this Court to have a complete understanding of the evidence presented at the evidentiary hearing, the problem here is that in this Statement of the Case and Facts, the State presents an unfair "summary" of the evidence presented at the evidentiary hearing. In this section, excluded is any and all mention of evidence presented which warrants postconviction relief.

At pages 14-28, the State continues with a selective "summary" of the testimony from the postconviction evidentiary hearing. This summary should not be relied upon because it is incomplete. First example in point, the first witness discussed by the State is Dr. Jack Brigham. The first cite to his testimony is listed as "V9/1345." The State highlights in the first sentence here saying that Dr. Brigham's "opinions were based at least in part on meta-analysis. (V9/1345, 1353-54; 1424)." Dr. Brigham actually begins his testimony at PC ROA Vol. IX, 1319, twenty-six (26) pages earlier, wherein he begins describing his some 50 years of education, training, and experience in eyewitness identification issues. Furthermore, there is nothing wrong with meta-analysis. The State continues to

attempt to show flaws in Dr. Brigham's testimony, and this selective "summary" should be disregarded as it is unreliable and incomplete.

On page 16 of their brief the State spends about a half page "summarizing" Dr. Glenn Caddy's testimony. This "summary" is unreliable. Dr. Caddy's testimony spans approximately 50 pages of transcript. *See* PC ROA Vol. 10, 1468-1516. The State here cites to only 13 pages of nearly 50 pages of evidentiary hearing testimony, failing to acknowledge or mention any of the favorable mitigation that Dr. Caddy offered in this case.

Also at page 16, while describing the testimony Lily Johnson and Sallie Dennis, the State again fails to acknowledge or mention any of the mitigating evidence they described for Mr. Peterson. The "summary" of Melinda Clayton's testimony starting at page 17 is just as unreliable as her erroneous trial testimony. It is here that the State asserts that Melinda Clayton believed that the Brandon Mayfield case "was an example of an erroneous identification rather than an example of two different people having the same fingerprints." The effect of this error is the same. There is no distinction to be made here. The jury at Mr. Peterson's trial was misled to believe that fingerprint identification is infallible evidence. The Brandon Mayfield case clearly revealed that it is quite fallible. The revelation that Melinda Clayton's trial testimony was erroneous is very relevant to this postconviction proceeding.

At pages 18-19, the State says that "Ms. Clayton explained that the

testimony she gave at the time of trial was fully correct and consistent with the regulations existing at that time." The point here is, today, such testimony by today's standards is completely improper and would be deemed conduct unbecoming a member of the IAI. Has trial counsel retained an expert such as Simon Cole, the jury could have learned about the problems with fingerprint identifications. The jury that convicted the Appellant at trial did so based on bad science. There are evolving standards of decency in capital cases and there are evolving standards of decency in forensic fingerprint identification. Had trial counsel consulted with Simon Cole or someone in his field, he could have outlined the problems in fingerprint identification which have now led to reforms in this area and restrictions and limitations in their testimony.

Starting at page 19, the State begins to "summarize" Richard Watts' testimony. Although his testimony begins at PC ROA Vol. XI, 1600, the State's first cite to his testimony here starts at PC ROA Vol. XIII, 1779: "Trial counsel, Richard Watts, has practiced law since 1980." By skipping over 179 pages of testimony and first making mention of Mr. Watts' experience, neglecting relevant and substantive evidence, the State has drafted an unreliable and incomplete summary of the facts. Just because Mr. Watts has been practicing law since 1980 does not mean that he is immune from making mistakes or omissions.

As a matter of fact, public records reflect that Mr. Watts has at least 7 people on death row: 1) Harry Lee Butler; 2) Kenneth Dessaure; 3) Franklin

Floyd; 4) John Lee Hampton; 5) Troy Merck; 6) Richard Robards; and of course 7) Charles C. Peterson, the Appellant in the instant case.

On April 25, 2013 this Court released its direct appeal opinion in the Richard Robards case: see *Robards v. State*, -- So. 3d --, 2013 Fla. LEXIS 822 (Fla. April 25, 2013). In *Robards*, there was extensive discussion of possible ineffective assistance of counsel provided by Mr. Watts. This is quite atypical of a direct appeal case because claims of ineffective assistance of counsel are generally reserved for postconviction. Though the death sentence was recently affirmed in *Robards*, two different specially concurring opinions commented about the failure to present mitigating evidence until the *Spencer* hearing, and, commented on statements made by the trial judge suggesting the availability of an additional aggravator. It was remarkable that the defense never objected to or challenged the trial court's statements about the availability of an additional aggravator for the State. In the unanimous majority opinion, this Court noted a failure to "object to the addition of the fourth aggravating circumstance," and noted that the defense "did not seek to have the trial judge disqualified," and as such, the appellate issue was deemed "unpreserved." *Robards, Id.* at 30.

In *Butler v. State*, 100 So. 3d 638 (Fla. 2012), in a very narrow affirmance of a death sentence following the denial of a 3.851 Motion, three dissenting Justices of this Court rejected trial counsel Watts' alleged penalty phase strategy, finding that "Watts did not explain what portion of the mental mitigation would

have portrayed Butler as a 'perpetrator.'" *Butler, Id.* at 673-74. Three members of this Court dissented, finding that the "explanations given by trial counsel do not reflect reasonable strategic choices by counsel under the circumstances in this case." *Butler, Id.* at 674. As shown by the *Robards* and *Butler* cases, Watts is obviously not immune from providing ineffective assistance of counsel.

At page 19, the State claims "Mr. Watts worked ten death penalty cases with Mr. McDermott and they worked well together." Although the State mentions work on ten capital cases, one does not know if the work resulted in ten convictions and death sentences. At page 20 the State writes that "Mr. Watts is familiar with Elizabeth Loftus, whose books on eyewitness identification are substantially similar to the beliefs of Dr. Brigham." Mr. Watts' familiarity with the Loftus books is not evidence, and could do nothing to cast doubt on the eyewitness identifications in this case. The State also argues at page 20: "At the time of trial, it was his understanding that there are no two fingerprints the same." Just because Mr. Watts held a misconception about fingerprints at the time of trial, this should not exclude his omissions and failures at trial on this issue. The State also argues that the "report in the Mayfield case was not released until 2006, or the year after the instant trial." Although the Mayfield report may not have been released, the worldwide news of the case certainly pre-dated the Peterson trial. Simon Cole or another expert in his field could have explained the situation with the Brandon Mayfield case to the Peterson jury, and cast doubt on

the State's fingerprint evidence.

At page 20 the State claims that the failure to challenge the State's evidence was "strategy." Regarding the *Williams* Rule evidence, failing to challenge the evidence in these cases is certainly not "strategy." Failing to challenge the State's evidence against Mr. Peterson is unreasonable in this capital case. The *Williams* Rule cases were significant building blocks utilized by the State to convict Mr. Peterson of this Big Lots robbery and homicide. Trial counsel had a duty, and failed in their duty, to challenge the *Williams* rule evidence at trial, as the evidence obviously was harmful to the defense. See *Berube v. State*, 5 So. 3d 734, 745 (Fla. 2d DCA 2009)("the trial court erred in admitting the *Williams* rule evidence at Mr. Berube's trial and that error was not harmless. We reverse Mr. Berube's judgment and sentence and remand this case to the trial court for a new trial on the charge of murder in the first degree." Opinion by Judge Wallace, LaRose, J. and Canady, Charles T., Associate Judge, Concur.)

Also at page 20, the State summarizes the testimony wherein Mr. Peterson was allegedly "not cooperative with either Mr. McDermott or Mr. Watts." This should not act to defeat the claims of ineffective assistance of counsel. See *Rompilla v. Beard*, 545 U.S. 374 (2005), a case wherein penalty phase relief was granted even in the face of obstruction from the defendant.

Romplilla's own contributions to any mitigation case were minimal.

> Counsel found him to uninterested in helping, as on their visit to his prison to go over a proposed mitigation strategy, when Rompilla told them he was "bored being here listening" and returned to his cell. App. 668. To questions about childhood and schooling, his answers indicated they had been normal, *ibid.,* at 677. There were times when Rompilla was even actively obstructive by sending counsel off on false leads. Id., at 663-664.

Rompilla, Id. at 381.

At pages 21-23 the State "summarizes" attorney Watts' testimony wherein he basically describes all of his failures and omissions as "strategy." The State and Mr. Watts here engage in extensive *post-hoc* rationalization for trial counsels' failures. At page 23 the State asserts that "Mr. Watts generally believed that [the jurors] would follow the law given by this Court." Watts was wrong. He clearly failed to acknowledge and comprehend jurors' responses exhibiting bias and inability to follow the law, and failed to make appropriate motions to strike several jurors. They also assert: "Mr. Watts saw no legal objection when the State commented that the Legislature defines the aggravating circumstances that support a death recommendation." This was ineffective. There ***was*** a legal objection. The failure to object here was quite ill-advised, as was the failure to make an opening statement. The closing argument "sandwich" mentioned at page 24 lacked any substantive meat.

At page 24 the State again mentions some books sitting on Watts' bookshelf: "the treatises of Elizabeth Loftus." Just because trial counsel has dusty old books sitting on his bookshelf does not mean he provided effective

assistance of counsel at trial. Rather than rely on his memory of the material in the Loftus treatises, Mr. Watts should have consulted Dr. Jack Brigham in this case. The jury was obviously unfamiliar with the learned treatises sitting on Watts' bookshelf.

Regarding the money under the sink and the State's creation of a misimpression as to the source of the cash, again at page 25 the State offers: "Mr. Watts saw no legal basis to object to the State preventing her from doing so. Just because Watts fails to see valid possible legal objections does not mean he protected his client's interest at trial. Also at page 25, the State asserts: "As to witness M.P., Mr. Watts indicated that she was properly referred to as a victim or at least a victim of the robbery." Again, just because Watts fails to see the danger and prejudice in improper characterizations of witnesses and evidence presented at trial, this does not absolve him of an ineffective assistance of counsel claim. The State claims that "The defense attacked the witness identifications as tainted throughout the trial." An effective attack would have included calling an expert such as Dr. Brigham to trial. At page 26 the State concludes the "summary" of Watts' testimony with the following transparent *post-hoc* rationalization: "In choosing which objections to make, Mr. Watts testified that counsel should be concerned about alienating the jury with frivolous objections." Throughout trial, counsel failed to make appropriate legal objections, and failed to preserve the record for appeal of improper evidence that reached the jury.

At pages 26-28, the State discusses the testimony of their postconviction mental health expert Dr. Michael Gamache. It is apparent that the State hired and paid Dr. Gamache to refute the defense postconviction mental health expert Dr. Glenn Caddy, and cast doubt on any mitigation that he uncovered. Dr. Gamache was "money well spent" by the State, and was clearly biased against the defense.

REPLY TO SUMMARY OF THE ARGUMENT

Contrary to the State's assertion at page 29, the trial court incorrectly denied Mr. Peterson's 3.851 Motion.

REPLY TO "THE *STRICKLAND* STANDARDS"

Mr. Peterson agrees that these are the relevant standards of review discussed by the State at pages 29-30. But he submits that he has met those standards through the evidence presented at the evidentiary hearing.

REPLY TO ARGUMENT ISSUE I

THE IAC/JURY SELECTION CLAIM

The majority of the State's answer here includes a 9 page block quote from the lower court's Order (see pages 32-41). The Appellant does not dispute that the lower court denied relief in this case. But he does contest the findings made by the trial court.

At page 41 the State mischaracterizes trial counsel's omissions during jury selection as "strategy," claiming that trial counsel was leaving questionable jurors on the panel, attempting "to focus on the penalty phase." In reality, it is more

likely that jurors who expressed hesitation in respecting the presumption of innocence and are otherwise exhibiting signs of bias against a defendant would not be suitable for either the guilt or penalty phase. At page 42 the State erroneously claims that "Peterson does not seriously dispute that trial counsel made a strategic decision regarding jurors that he believed would be better in the penalty phase, even when those jurors may not be as helpful in the guilt phase." Several jurors were certainly excusable for cause because they expressed bias against the Appellant. The alleged "strategy" cited by the State is nothing more than *post- hoc* rationalization for the ineffective assistance of counsel provided in this case. These jurors carried much more than simple "baggage," a subtle and understated concession by the State found at the bottom of page 42.

At pages 43-44 the State basically argues that attorney Watts did not see a legal basis to challenge the jurors, that he thought the jurors could follow the law, and that keeping the biased jurors was strategy. This is all incorrect. The failure to challenge the jurors constituted ineffective assistance of counsel. At page 45 the State cites to the *Carratelli* case to defeat the juror claim. This case does not defeat the claim here because the record in fact shows that the questionable jurors seated in the instant case were in fact biased and could not follow the law. Contrary to the State's conclusion at page 46, the trial court did not correctly decide the issues in the Appellant's 3.851 Motion.

REPLY TO ISSUE II

THE IAC/GUILT PHASE CLAIMS

Contrary to the State's arguments at pages 47-49, the instant case is more like *Ferrell v. State*, 29 So. 3d 959 (Fla. 2010) and less like *Krawczuck v. State*, 92 So. 3d 195 (Fla. 2012). At page 50 the State argues: "In *Ferrell*, counsel failed to make any objection to repeated improper comments in closing argument. Unlike this case, the comments in *Ferrell* were made in closing argument and made about the defendant and the facts of his case, rather than being general comments about adhering to the legislative scheme." Like in *Ferrell*, trial counsel in the instant case failed to make objections to repeated comments made by the State improperly suggesting to the jury that the legislature had decided that this was a death case.

Contrary to the State's arguments at pages 50-51, *Brooks v. State*, 762 So. 2d 897 (Fla. 2000) supports relief in this case. At page 51, the State says that in *Brooks*, relief was granted because the comments "tended to cloak the State's case with legitimacy as a *bona-fide* death penalty prosecution, much like the improper 'vouching' argument." That is exactly what the State's comments did in the instant case. The many improper comments made by the State in the instant case were not made simply in isolation or passing reference. The invidious comments permeated and infected the entire *voir dire* and trial, and caused members of the jury to recommend death where absent the comments they

might have otherwise recommended life. Concluding at page 52, the State claims as follows: "since any possible misinterpretation was cured by the defense and by the Court's repeated instructions and the final written instructions, the trial court correctly denied relief." This is incorrect. Since the jury recommended death by a vote of 8-4 in a single-bullet robbery case, obviously the "misinterpretation" was not cured. Instead of being instructed that under Florida law "the death penalty is reserved for the most aggravated and least mitigated murders" (see *Zommer v. State*, 31 So. 3d 733, 750 (Fla. 2010)), the jury rather was repeatedly informed that the legislature had determined that this case was appropriate for the death penalty.

Regarding the money found under the sink and the defense failure to object to the witness being instructed by the State to not answer the question completely, again at page 52 the State continues with their tired refrain that Watts "saw no legal basis to object." Watts' failure to see the proper legal objection here under the rule of completeness is precisely what makes him ineffective. Mr. Watts is apparently unfamiliar with the following:

> This rule is known as the "rule of completeness," and its purpose is to avoid the potential for creating misleading impressions by taking statements out of context. Ehrhardt, supra, § 108.1. Under this provision, once a party "opens the door" by introducing part of a statement, the opposing party is entitled to contemporaneously bring out the remainder of the statement in the interest of fairness.

Larzelere v. State, 676 So. 2d 394, 401-402 (Fla. 1996). Trial counsel should

have objected and the jury should have heard Ms. Gosha's complete answer.

At page 54 the State engages in pure speculation when they claim that the money under the sink was "perhaps $2500 to $12,500." Moving under the rule of completeness on the State's direct examination of Ms. Gosha to allow the jury to be informed about the source of the money under the sink would not have opened the door to impeachment by felony convictions. The failure to move under the rule of completeness was not contemplated by counsel; it was *not* strategic.

At page 55 regarding failure to object to the improper comments during opening statement and closing argument, the State raises a procedural bar argument. Absent objection, the direct appeal attorney was unable to raise these issues because they were not preserved for appeal on record. The State cannot avail itself of the procedural bar to defeat this claim.

At page 57 the State claims that the postconviction issues surrounding the *Williams* rule are procedurally barred. They are not procedurally barred. On direct appeal, the Appellant could not have argued that trial counsel was ineffective for failing to argue that the State had not proven the collateral crimes beyond a reasonable doubt. These claims are properly raised in postconviction.

At page 60 in addressing the ineffective assistance of counsel claim for failing to make an opening statement, the State says: "Mr. Watts testified that the defense had nothing to offer the jury to exonerate Peterson and the defense was left with attacking the State's evidence." There was nothing preventing trial

counsel from making some opening comments informing the jury that the State's evidence against Mr. Peterson was weak and circumstantial. By failing to make an opening statement, this was the functional equivalent of concession of guilt. The State continues: "As the trial court noted, at the time of trial, the defense did not know how many of the six *Williams* rule cases the State would be presenting. Thus, if counsel had commented on all six cases in opening statements and the State had only presented three *Williams* rule cases, it would have been unfavorable to the defense." All trial counsel had to do was listen carefully to the State's opening statement and make a statement tailored to specifically rebut the claims made by the State in their opening statement. If anything, the defense could have simply told the jury that the State would not be proving their case beyond a reasonable doubt. Such opening comments would not have "revealed the defense strategy to the State," whatever strategy that might have been.

At page 61, the State concludes: "Furthermore, although Peterson criticizes trial counsel for not presenting evidence, Peterson does not identify any such evidence." The Appellant did identify evidence that should have been presented, specifically: testimony from an eyewitness identification expert and clarification of the actual source of the money discovered under the sink. The clarification of the source of the money should have come during the State's direct examination on a request for complete answer, or, on cross-examination of Ms. Gosha.

Regarding references to M.P as a victim, the State asserts that "Mr. Watts

testified that M.P. was properly referred to as a victim in the Family Dollar case." But, as seen in the recent opinion from this Court, Mr. Watts also apparently thought that the trial judge in *Robards, Id.* properly referred an additional aggravator to the State for their consideration and use in a death penalty case. In addition to M.P. being referred to as a "victim" in the case, the jury heard forensic evidence that "a questioned sample from [M.P.] matched the DNA profile of Charles Peterson." Dir. ROA Vol. XXIII, 1068. A reasonable, logical, and likely inference to be drawn here by the jury based on the testimony as stated is that Mr. Peterson sexually assaulted M.P. and DNA from his semen was recovered from the victim. Such characterization of the evidence is overly-prejudicial. Trial counsel should not have permitted the State to describe the evidence in this fashion.

At page 62 regarding the fingerprint claim, the State asserts that "No fingerprints identified Peterson as the perpetrator of the Big Lots murder. Instead, the fingerprints concern the McCrory's robbery." The State should not be able to shield itself from evidence liability on the collateral cases after they used those collateral cases as a sword in the feature criminal case. The State argues: "Peterson's prints were located on the stolen check and McCrory's receipt." But, they fail to acknowledge that Simon Cole's affidavit disputed that alleged incriminating evidence, and they fail to acknowledge that such trial testimony by today's IAI standards would subject Ms. Clayton to charges of

conduct unbecoming a member of the profession. Contrary to the footnote at page 63, this claim is not procedurally barred. Simon Cole and others in his field were available for consultation, and trial counsel was ineffective for failing to so consult. This claim could not have been raised on direct appeal.

Regarding the claim of ineffective assistance of counsel for failure to call an expert in eyewitness identification, at page 67 the State claims: "any substantive challenge to the in-court identification testimony presented at trial is procedurally barred in post-conviction." It is quite doubtful that this Court would have entertained this claim on direct appeal.

At page 68 the State again repeats the following tired refrain: "At the post-conviction evidentiary hearing, Mr. Watts confirmed that he was familiar with Elizabeth Loftus, whose books on eyewitness identification are substantially similar to the beliefs of Dr. Brigham." The State also asserts: "Mr. Watts confirmed that the defense trial strategy was to focus on the weaknesses of the main case, rather than the relatively strong *Williams* Rule cases." Trial counsel's apparent willful neglect in failing to challenge the State's evidence against the Appellant should not be credited by this Court. Here the State appears to argue that this Court has enacted a *per se* bar to expert testimony in the area of eyewitness identification. This is exactly the fallacy that was discussed at length in the concurring opinions in *Simmons v. State*, 934 So. 2d 1100 (Fla. 2006). There is no *per se* bar to this type of testimony, and its utilization is not a

"universal failure" as mischaracterized by the lower court. There should be no confidence in the outcome of this verdict and death sentence where in addition to the numerous problems with eyewitness identification described by Dr. Brigham, the perpetrator in this case was masked, making the identifications even more suspect and unreliable. *See also* the Florida Innocence Commission's "Final Report to the Supreme Court," June 25, 2012 ("eyewitness misidentification is the leading cause of wrongful convictions." *Id.* at 18.)

At page 71, the State asserts: "In conclusion, the trial court reiterated that Mr. Watts testified that he was familiar with Elizabeth Loftus, whose theories on eyewitness identification are similar to the theories of Dr. Brigham." No amount of Watts' familiarity with Elizabeth Loftus can substitute for Dr. Brigham's powerful record testimony at the evidentiary hearing. The State continues: "At trial, defense counsel cross-examined the Big Lots store eyewitnesses based on...the treatises of Elizabeth Loftus." These treatises are not in evidence, and were not in front of the jury who deliberated Mr. Peterson's alleged guilt and innocence.

Regarding Darrel Sermons' grand jury testimony, the State at page 72 asserts a procedural bar defense. Counsel on direct appeal could not have raised the issue of trial counsel's ineffectiveness for failing to utilize Darrel Sermons' grand jury testimony to impeach and bar the admissibility of the *Williams* Rule evidence. At page 74 the State asserts: "Peterson cannot demonstrate deficient

performance and resulting prejudice at trial where Sermons did not even testify at trial." What they fail to acknowledge is that Sermons was the foundation for the credibility and admissibility of the *Williams* Rule evidence. The failure to utilize his grand jury testimony, impeach him, point out his lack of credibility, and move to bar the *Williams* Rule evidence base on this was prejudicial. Trial counsel failed to challenge the *Williams* Rule evidence in any substantial, meaningful, or effective way.

REPLY TO ISSUE III

IAC/PENALTY PHASE

Regarding the State's improper use of the *Williams* Rule evidence at the penalty phase, at page 78 the State cites the following portion of the lower court's order: "Because the State had a legitimate reason for using *Williams* rule evidence during the penalty phase, there was no legal basis for the defense counsel to make an objection and succeed." The "legitimate reason" was actually illegitimate and unlawful.

Contrary to the State's argument at page 79, the State should not have been permitted at trial to make the purely speculative and improper argument that there was some type of execution-style killing. This homicide was simply a robbery-gone-bad. The perpetrator of this crime, whoever that masked man was, had no actual intent to kill, he had intent only to rob.

At page 87 the State mentions the alleged "mitigation strategy with Dr.

Maher was to focus on Peterson's emotional immaturity." This was actually simple neglect of investigation into Mr. Peterson's available mental health mitigation, and constitutes ineffective assistance of counsel. This Court should reverse the lower court's order.

REPLY TO ISSUE IV

CUMULATIVE ERROR CLAIM

Contrary to the State's argument here at page 89, the many cumulative errors at the Peterson trial do warrant relief. This Court should not have confidence in the conviction and death sentence in this case.

REPLY TO CONCLUSION

Based on the facts, arguments, and citations of authority, the decision of the lower court denying relief should be reversed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Initial Brief has been furnished by e-mail to Katherine Blanco [Katherine.Blanco@myfloridalegal.com and CapApp@MyFloridaLegal.com] on this 20th day of May, 2013.

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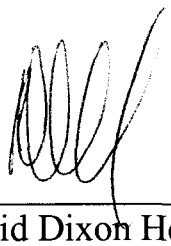
I hereby certify that a true copy of the foregoing Initial Brief of the Appellant, was generated in a Times New Roman, 14 point font, pursuant to Fla. R. App. P. 9.210.



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