Filing # 18750833 Electronically Filed 09/29/2014 10:26:23 AM

RECEIVED, 9/29/2014 10:29:59, John A. Tomasino, Clerk, Supreme Court

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC14-887

NEIL KURT SALAZAR,

Appellant,

VS.

STATE OF FLORIDA,

Appellee.

On Appeal from the Circuit Court, Nineteenth Judicial Circuit, in and for Okeechobee County, Florida

Honorable Judge Sherwood Bauer, Jr.
Judge of the Circuit Court, Felony Division

REPLY TO STATE'S RESPONSE TO PETITION FOR HABEAS CORPUS

RICK A. SICHTA, ESQ.
Fla. Bar No. 0669903
301 W. Bay St., Suite 14124
Jacksonville, FL 32202
Phone: 904-329-7246
rick@sichtalaw.com
Attorney for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

ARGUMENTS IN REPLY

CLAIM ONE IN REPLY

APPELLATE COUNSEL FOR MR. SALAZAR WAS INEFFECTIVE IN FAILING TO PRESENT ON DIRECT APPEAL THE CLAIM THAT THE TRIAL COURT ERRED IN DENYING DEFENSE COUNSEL'S CAUSE CHALLENGE ON MS. W, A PROSPECTIVE JUROR WHO HAD A RELATIONSHIP WITH THE VICTIM'S CHILD AND CONCEDED BIAS AND SYMPATHY FOR THIS CHILD, AND WHO BELIEVED THE DEATH PENALTY WAS WARRANTED IF THE EVIDENCE OF GUILT AGAINST A DEFENDANT WAS STRONG, IN VIOLATION OF MR. SALAZAR'S FIFTH, SIXTH, EIGHTH AND FOURTEENTH AMENDMENT RIGHTS UNDER THE U.S. CONSTITUTION AND CORRESPONDING PROVISIONS OF THE FLA. CONSTITUTION

I. ***Preservation of this claim by sufficient objection at the trial***: Appellee argues that the direct appeal attorney was not ineffective because the issue not preserved for review with a sufficient objection by the defense attorney at trial. The Appellee's argument is not supported by the record.

During jury selection, after Juror W's response to multiple different topics revealed a strong and undeniable bias on her part, Salazar's attorney moved that she should be stricken for cause, but the motion was denied. (8 R 666.) At the conclusion of jury selection, the defense attorney exercised all of his remaining peremptory strikes, and then renewed his objection for the denial of the for-cause challenge to Juror W. (11 R 1101-1102.) When his renewed objection was denied, counsel then asked for one additional peremptory strike to cure the trial court's

errant denial of the motion for cause against Juror "W." Id. When the trial court denied the motion for an additional peremptory strike, the defense attorney properly articulated which specific juror (Juror "G") that he would have stricken had the court granted the requested additional peremptory strike. Id. Shortly thereafter, the trial court swore in the jury to which neither side voiced *additional* objection. (11 R 1106, 1111-14.)

The requirements for preserving an objection to a court's denial of a for-cause challenge was thoroughly articulated by this Court in Kearse v. State, 770 So. 2d 1119 (Fla. 2000):

> In order to preserve such an issue for appeal, Florida law requires a defendant to object to the jurors, show that he or she has exhausted all peremptory challenges and requested more that were denied, and identify a specific juror that he or she would have excused if possible. In the instant case, Kearse has properly preserved this issue. Although neither Foxwell nor Barker served on the jury because Kearse struck them peremptorily, Kearse sought additional peremptory challenges after exhausting his allotted number and named two jurors that he would strike with the extra challenges.

Id. at 1128 (internal citations omitted). Thus, Florida law under Kearse requires the following steps:

1. Object to the specific juror(s) for cause
2. Exhaust all peremptory strikes
3. Request additional peremptory strikes
4. Specifically name which juror(s) would have been stricken had the additional peremptory strikes been given

Salazar's attorney completed each of those four steps in objecting and protesting the trial court's denial of his for-cause challenge towards Juror "W."

In response, the Appellee cites to a line of cases that suggests that an additional objection need be made immediately before the jury is sworn,[1] a principle that originated in the case of Joiner v. State, 618 So. 2d 174 (Fla. 1993)(dealing with a Neil challenge that the prosecution gave an inadequate explanation for its peremptory strike of an African-American juror). That court stated:

> We do not agree with [the defendant], however, that he preserved the Neil issue for review. He affirmatively accepted the jury immediately prior to its being sworn without reservation of his earlier-made objection. We agree with the district court that counsel's action in accepting the jury led to a reasonable assumption that he had abandoned, for whatever reason, his earlier objection. It is reasonable to conclude that events occurring subsequent to his objection caused him to be satisfied with the jury about to be sworn.

Id. at 176. The rationale behind this procedure is that the absence of an objection at the time of the swearing in *can* create the presumption to the trial judge that the prior objection has been abandoned. However, as noted in Gootee v. Clevinger, 778 So. 2d 1005 (Fla. 5th DCA 2001), which distinguished its facts from the

[1] In support of its assertion that this Court should use a procedural bar to ignore the fact that the tried court erred in not dismissing Juror "W" for cause, the Appellee cites to Singer v. State, 109 So. 2d 7, 19 (Fla. 1959); however, the Appellee fails to point out that part of the rationale given in that case for not considering the substance of the juror bias issue was that it was reversing the case on other grounds anyway. Id.

general rule articulated by Joiner:

> In this case, because of the specific objection communicated to the judge and the proximity of this objection to the swearing of the jury, there is no question that the judge understood and rejected Gootee's consistently maintained position that the judge had erred. It would have been futile for the lawyer to repeat what he had just told the judge.

Id. at 1009. Numerous courts have followed this reasoning that the factual circumstances of individual cases can create exceptions to Joiner's general rule, such as the small amount of time that passed been the objection being made and the swearing in. The individual circumstances can alleviate any presumption that the defendant has abandoned the objection, rendering any additional repetition of the objection futile and unnecessary. See Smith v. State, 143 So. 3d 1194 (Fla. 1st DCA 2014)("Generally, a party must renew an objection to a peremptory strike before affirmatively accepting the jury…. However, if the jury is sworn only minutes after the initial objection, an explicit renewal of the objection is not necessary…. Here, the jury was sworn only a matter of minutes after the objection. As such, the objection did not need to be renewed, and it is not reasonable to believe defense counsel abandoned the objection."); Johnson v. State, 27 So. 3d 761, 763-64 (Fla. 2d DCA 2010)(no additional objection was needed immediately prior to the swearing in of the jury, because "the record does not support the conclusion that Johnson abandoned his earlier objection based on subsequent events, and the court itself did not view Johnson as having abandoned his

objection."); McLeod v. Sec'y, Dep't of Corr., 2008 U.S. Dist. LEXIS 105495, 2008 WL 5381865 (M.D. Fla., Dec. 22, 2008)("Generally, 'a failure to renew an objection made during jury selection prior to accepting the jury, and the jury being sworn will be considered a waiver pursuant to Joiner v. State, 618 So. 2d 174 (Fla. 1993)'; however, ...the trial transcript in the instant case 'reveals that defense counsel's objection to the State's strike was near the end of the jury selection, and the jury was accepted by both sides after a total of three additional strikes.'"); Sparks v. Allstate Constr., Inc., 16 So. 3d 161 (Fla. 3d DCA 2009)(finding that any additional objection before jury was sworn "would have been an obviously futile gesture" because there was "no question that the judge understood and rejected [plaintiff's] maintained position that the judge had erred. It would have been futile for the lawyer to repeat what he had just told the judge.").

Salazar's case fits perfectly into the doctrine crafted by those cases that there is no reasonable cause to suggest that Salazar ever abandoned his objection to the court refusing to dismiss Juror "W" for cause. Salazar made an extensive objection, during the middle of jury selection (8 R 666-67) and then again at the end of jury selection (11 R 1101-02). Further, he named the precise juror that he wanted to strike if the court had granted the extra peremptory (or had granted the for-cause challenge in the first place). (11 R 1101-02.) Salazar's renewed argument that this juror should be stricken for cause was ruled on for the final time

by the trial court on page 1102 of volume 11 of the transcript, and the absence of an objection from Salazar, that the Appellee refers to, occurred on page 1106 of that same volume. Thus, only four pages of transcript separate these two events. This is quite similar to Gootee, where the court noted that three pages of transcript separated the objection from the absence of an objection before the jury was sworn, finding that it would have been a "futile gesture." 778 So. 2d at 1009. The rationale behind the Joiner doctrine was that those circumstances created the presumption that "[i]t is reasonable to conclude that events occurring subsequent to his objection caused him to be satisfied with the jury about to be sworn." 778 So. 2d at 176. However, in Salazar as in Gootee, there were no "events occurring subsequent to his objection" and before the jury was sworn in order to justify the application of that presumption. The Joiner presumption would not be well-served by making it a rigid technicality, in a case when there is no ambiguity that the trial attorney never abandoned his objection, and preventing the substance of Mr. Salazar's claim to be addressed on appeal. This court should reject the Appellee's procedural bar argument and proceed to the merits of this claim.

II. ***Substantive Claim of Bias***: Moving on to the substantive claim, the standard that a trial court must apply is that a juror must be removed for cause if any reasonable doubt exists as to whether the juror possesses an impartial state of

mind. Bryant v. State, 656 So. 2d 426, 428 (Fla. 1995); Hill v. State, 477 So. 2d 553, 556 (Fla. 1985)(If "any reasonable doubt exists as to whether a juror possesses the state of mind necessary to render an impartial recommendation as to punishment, the juror must be excused for cause.").

As to Juror "W," there is no question that this woman could not and should not have been allowed to serve on the jury of this particular crime, for reasons dealing both with her intimate personal connection to the victims' child and to her improper biases related to the death penalty and defendants in the criminal system in general.

Juror "W" had a special relationship with the victims' six-year-old child—she was one of his grade school teachers at the time when his mother was murdered and his father was nearly murdered. (8 R 661.) This juror explicitly admitted that she would have a special bias or sympathy for the child (8 R 661), and that she and other teachers at the school had sat around by the water cooler discussing this crime around the time it occurred. (6 R 665.) She acknowledged that she was aware the child was having counselors appear at school to meet with him. (6 R 665.)

As to her preconceived biases and opinions regarding the criminal justice system, Juror "W" stated that she could not think of a reason why an innocent defendant wouldn't testify. Further, she stated she believed in the death penalty

and that she would impose it absent few exceptions, which for her appeared to mean that she might not vote for death in an instance where she still had lingering doubt about whether the person was innocent or guilty (and the alternative seems implied, that if the evidence of guilt was strong, then her vote would be for death). (8 R 657-59, 663-64.)

This was not a close call. Without implying anything negative towards this juror as a person, it should have been an easy decision for the trial court to conclude that there was a reasonable doubt as to whether she could sit impartially in either the guilt or innocent phase of Mr. Salazar's trial. The trial court plainly erred in denying the defendant's motion to have Juror "W" removed for cause.

The Appellee's arguments in protest of this juror's obvious bias are unconvincing. First, in attempting to argue around the fact that the juror acknowledged that she would have "special bias and sympathy" for the victims' child, the Appellee's attempt to find ambiguity in Juror "W"'s clear, affirmative response to the defense attorney's question is not a plausible reading of the transcript. (AB 31, fn. 5, 6.) It is not disputable that the juror herself acknowledged that her relationship with the child would emotionally affect her if she were to sit on this trial.

In attempting to minimize the significance of this admission by the juror, the Appellee then reaches to language from an 1886 court case in Illinois. Chicago &

W.I.R. Co. v. Bingenheimer, 116 Ill. 226 (1886). (AB 32.) However, the actual language quoted by the Appellee in that opinion directly sets its facts apart from this case. Whereas that juror expressed that he would have sympathy for any person that lost a limb (to an act of the railroad), the court highlighted that this was "simply an expression of kindly feeling common to all good people." Id. What was true about Juror "W" was not a generic feeling of empathy for any child that had lost a parent in such a gruesome manner, but her personal and unique bond to the individual child in this case, formed through past experiences together. Juror "W" had this child in her personal class in a reading group three times each week.

The Appellee also challenges whether Juror "W"'s statements indicate that she would have been prejudiced had Mr. Salazar not taken the stand. (AB 30.) The Appellee presents the discussion that the defense attorney was having with the juror as if the attorney were asking questions to students in a classroom environment, and that nothing should be read into the fact that this juror was unable to present a good example to the attorney's abstract question in that moment. On the contrary, this line of questioning was clearly asking Juror "W" if she would hold it against the defendant if he did not testify, and her response that she couldn't think of a reason why "any person wouldn't take the stand in their own defense" (11 R 1050), should be understand to mean that she couldn't think of any reason—other than the obvious one—that they are guilty. At the very least,

this statement, without any rehabilitation by the prosecution, left a lingering doubt as to this juror's impartiality sufficient to justify the defense's for-cause challenge.

Finally, the Appellee asserts that there is nothing about Juror "W"'s stated views regarding the death penalty that should have merited her dismissal for cause, suggesting that this juror indicated that she could consider the evidence and render a nuanced recommendation. (AB 22-29.) Such an interpretation of her statements is not plausible. Juror "W" essentially said that she could consider the evidence and if the evidence was not strong, she might be able to recommend life – basically a lingering doubt argument. This is not the same as being able to fairly consider mitigation, to which Salazar was constitutionally entitled from his jurors.

While the Appellee references Salazar's citation to Overton v. State, 801 So. 2d 877 (Fla. 2001), and counters that Overton actually supports the Appellee's position (AB 25, 27-28), what the Appellee fails to appreciate is that Overton was cited in the Initial Brief simply for its articulation of the narrow but well-founded legal doctrine that "a juror's assurances of impartiality…are neither determinative nor definitive" to whether a juror should be dismissed for cause. Id. at 892. See also Murphy v. Florida, 421 U.S. 794, 800 (1975).

Although Juror "W" later suggested that she could try to be impartial, her prior answers make it abundantly clear if there were *weak* evidence that Salazar committed the crime but was convicted, she would have a hard time

recommending death. Conversely, if there were *strong* evidence of guilt, she would not have a hard time recommending death. (8 R 657- 559, 662-664.) The fact that Juror "W" verbally answered in the affirmative, at points, to her willingness to consider the specific facts in this case, this does not relieve the trial court of considering whether all her statements in context still create the type of concern with her impartiality and lack of prejudice that would have justified her dismissal for cause.

Matarranz v. State, 133 So. 3d 473 (Fla. 2013) discusses at length with the problem of trying to "rehabilitate" a juror after they have made clear statements of bias, into changing deeply held personally beliefs over the course of a few minutes:

> This Court is keenly aware of the unique biases, prejudices, predilections, predispositions, and viewpoints that each of us possesses and that cannot be altered or undone by the court or counsel over the course of voir dire. These proclivities may be neither wrong nor perverse. Rather, they are realities of human nature, and their existence underscores the logic upon which our judicial system provides courts with the power to remove prospective jurors for cause.

Id. at 485. The Court continued, "Moreover, if an individual takes the additional step of admitting concern that he or she may be biased, an expression of such sentiment must necessarily inform a court's analysis of juror partiality." Id. at 489. Finally, "[a]ssurances of impartiality after a proposed juror has announced prejudice is questionable at best," "[n]otwithstanding tortured attempts at rehabilitation." Id. at 484-85, 488. See also Hughes v. United States, 258 F.3d 453,

459 (6th Cir. 2001)("A court must excuse a prospective juror if actual bias is discovered during voir dire. Bias can be revealed by a juror's express admission of that fact, but more frequently, jurors are reluctant to admit actual bias, and the reality of their biased attitudes must be revealed by circumstantial evidence.").

In this case, Juror "W" expressed a clear leaning towards the death penalty in any instance where evidence of guilt was strong. None of her late statements or quasi-assurances alleviate the valid concern that her "unique biases, prejudices, predilections, predispositions, and viewpoints" would taint her ability to fairly consider recommending a sentence of life—if she were thoroughly convinced of guilt—regardless of what mitigating factors the defense might present to offset the State's aggravators.

Given these three grounds of cause for serious concern as to this juror's impartiality—prejudice regarding the defendant not testifying, a personal teacher/student relationship with the victims' own child, and her partiality for the death penalty—more than a reasonable doubt as to her appropriateness as a juror in this case should have resulted in her dismissal under the standard of Singer v. State, 109 So. 2d 7 (Fla. 1959). As this Court in Matarranz reasoned:

> We have also held that if error is to be committed, let it be in favor of the absolute impartiality and purity of the jurors' which is interpreted to mean that the mind of the proposed juror should not contain any element of prejudice for or against either party in a cause to be tried before him.

133 So. 3d at 484. Applying that standard, there is no question that the trial court erred in refusing to dismiss Juror "W" for cause.

III. ***If appellate counsel had raised this issue on direct appeal, prejudice would have been found***: As articulated by this Court:

> [W]e have consistently determined that reversible error occurs to the extent a party is forced to expend a peremptory challenge to cure a wrongly denied cause challenge can show that he or she has exhausted the remaining peremptory challenges, and that an objectionable juror was seated on the ultimate jury panel. See Trotter [v. State], 576 So. 2d [691,] 692 [(Fla. 1990)]. The harm suffered by the defendant under such a scenario is having been forced to accept a juror he or she would have peremptorily excused but for the need to remedy the trial court's error. See Farias v. State, 540 So. 2d 201, 203 (Fla. 3d DCA 1989) ("It is error for a court to force a party to exhaust his peremptory challenges on persons who should be excused for cause since it has the effect of abridging the right to exercise peremptory challenges.")….

Busby v. State, 894 So. 2d 88, 102 (Fla. 2004).

The Appellee misinterprets Busby entirely in arguing that Salazar must prove that some juror that sat on the trial was actually biased. (AB 33-34.) Salazar has never argued that Juror "G," the juror that he stated that he would strike if he were given an additional peremptory, was actually biased, and the legal standard does not require him to do so. The issue is that, due to the trial court's error, Salazar was denied a peremptory challenge to use against Juror "G" that he was lawfully entitled to. This Court explained this rational at length in Matarranz:

> Given that the requirements of preservation were satisfied, Matarranz would suffer a violation of his due process rights if the Juror should

> have been, but was not, removed for cause. "Florida . . . adhere[s] to the general rule that it is reversible error for a court to force a party to use peremptory challenges on persons who should have been excused for cause, provided the party subsequently exhausts all of his or her peremptory challenges and an additional challenge is sought and denied." Hill, 477 So. 2d at 556. "The value of peremptory challenges is that they are intended and can be used when defense counsel cannot surmount the standard for a cause challenge." Busby v. State, 894 So. 2d 88, 100 (Fla. 2004). This value is destroyed if counsel is forced to use a peremptory challenge on a juror who should have been removed for cause. See Hill, 477 So. 2d at 556 (noting that "such error cannot be harmless because it abridged appellant's right to peremptory challenges by reducing the number of those challenges available [to] him").

Id. at 483. Because Salazar "was prejudiced because he had one less peremptory challenge to use against other objectionable jurors," he was therefore "denied his right to a fair and impartial tribunal as guaranteed by the constitutions of this State and the United States." Id. at 490.

IV. ***Deficiency and prejudice by appellate counsel***: As it has been seen that this was a legally valid claim that should have been raised on direct appeal, Salazar's appellate counsel was deficient in not raising this claim, and Salazar was prejudiced thereby and is entitled to be granted a new trial on this basis. See Hill v. State, 477 So. 2d 553, 556 (Fla. 1985); Smith v. Wainwright, 484 So. 2d 31 (Fla. 4th DCA 1986)(appellate counsel is deficient where counsel fails to raise a meritorious issues).

CLAIM TWO IN REPLY

APPELLATE COUNSEL FOR MR. SALAZAR WAS INEFFECTIVE IN FAILING TO PRESENT ON DIRECT APPEAL CLAIMS OF FUNDAMENTAL ERROR BASED ON NUMEROUS INSTANCES OF PROSECUTORIAL MISCONDUCT, IN VIOLATION OF MR. SALAZAR'S FIFTH, SIXTH, EIGHTH AND FOURTEENTH AMENDMENT RIGHTS UNDER THE UNITED STATES CONSTITUTION AND CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION

Salazar presented a valid claim of ineffective assistance of appellate counsel for appellate counsel's failure to challenge prosecutorial misconduct that was fundamental in nature, See Smith v. Wainwright, 484 So. 2d 31, 31(Fla. 4th DCA 1986)(citing Strickland v. Washington, 466 U.S. 668 (1984)), and as such, could have been raised for the first time on direct appeal. Blanco v. Wainwright, 507 So. 2d 1377, 1384 (Fla. 1987).

Appellee's assertion that this claim is procedurally barred based on this issue being litigated on direct appeal is incorrect. (AB 38-39.) During Salazar's trial, he objected during the State's closing argument on the basis "that the State's comments referred to facts not in evidence and appealed to the sympathy of the jury. The trial judge sustained the defense's objection but denied the motion for mistrial." Salazar v. State, 991 So. 2d 364, 371 (Fla. 2008). Salazar's appellate counsel raised this issue in his direct appeal, and this Court concluded "that while the prosecutor's comments were improper, they were not so prejudicial as to deny Salazar a fair trial." Id. at 327. This was a specific ruling on the prejudicial effect

of the specific comment by the prosecutor appealing to the jury's sympathy and misstating the facts, which is wholly unrelated to Salazar's claim in this petition for habeas corpus that the prosecutor improperly attempted to shift the burden of proof. There is no basis in logic for the Appellee to maintain the argument that this issue has already been litigated, and this Court should disregard the Appellee's procedural bar argument.

As to the merits of Salazar's claim, the prosecutor's repeated statements implying that the jury would have to disbelieve the state's two main witnesses to find Salazar not guilty shifted the burden to Salazar to prove that the witnesses were lying. This is precisely the conclusion drawn from the court in Mitchell v. State, 118 So. 3d 295 (Fla. 3d DCA 2013), where the prosecutor stated: "What the defense is asking you do is to believe that every single witness in this case is a liar, because that's what would have to happen for this man over here to be not guilty. Even single person has to be a liar except him." Id. at 296-97. Appellee's attempt to distinguish Mitchell is unconvincing (AB 44-45), where the words spoken by the prosecutor in Mitchell and in Salazar, are nearly identical i.e., "You can't convict unless you believe the State's witnesses are lying." The law in Florida does not permit that reasoning, as it constitutes an impermissible and unconstitutional shift of the burden of proof.

As to the Appellee's arguments related to other cases cited in Salazar's

Initial Brief, the point the Appellee raises as to Atkins v. State, 878 So. 2d 460 (Fla. 3d DCA 460) is a distinction without a difference. (AB 45.) The Appellee keys on to the fact that in Atkins the prosecutor alleged that the jury had to believe that the witness was *lying* rather *mistaken* (as the defense was arguing), but the more central analogy to Salazar's case is that the prosecutor was declaring that the jury had to believe *something* about the veracity of a witness, other than the elements of the crime, before it could acquit the defendant. The same is true of the court's reasoning in Paul v. State, 980 So. 2d 1282 (Fla. 4th DCA 2008), in which the prosecutor's comments regarding the defendant needing to "prove" something were admittedly stronger on their face than the comments in Salazar's case, as the Appellee points out (AB 45) and which was also fully quoted by Salazar in his Initial Brief. (IB 38.)

Because Appellee cites extensively to the case of Gore v. State, 719 So. 2d 1197 (Fla. 1998) (AB 40-41), it is important to note that the basis for objecting to the prosecutor's comments was different in that case. Whereas Salazar's argument relies on the prosecutor having improperly attempted to lower the burden of proof by passing part of it over to the defendant, the court in Gore was concerned with the prosecutor inviting the jury to convict the defendant on basis other than guilt at all, specifically in order to punish the defendant for having lied to the jury. Id. at 1200-1201.

The Appellee also relies heaving on the case of Rivera v. State, 840 So. 2d 284 (Fla. 5th DCA 2003), where the court found that the following statement did not constitute an "invit[ation] to the jury to convict the defendant for some reason" than proof of guilt, such as in Gore: "In order for you to find him not guilty, which you have the prerogative to do, but you're going to have to essentially be saying that [the victim's] identification sucks." Id. at 287, 290. While this statement borders on suggesting that the *defense* needed to logically explain the defects in that piece of the State's evidence, it is not as strong as the prosecutor's claim in Salazar's case that both of the State's material witnesses had to be lying in order for Mr. Salazar to be acquitted.

Finally, the Appellee argues at length that the prosecutor was merely restating Salazar's own argument in a benign way. (AB 46.) This is like arguing that because Salazar did not take the position that the State's two accusatory witnesses were telling the *truth*, then Salazar must have been on board with the State suggesting to the jury that Salazar had to prove that they were *lying* in order that he be acquitted. The standard of beyond a reasonable doubt does not tolerate that sort of questionable logic. The supposition that any defense attack of a state witness's veracity is an invitation to shift the burden of proof to the defense to prove that the witness is lying is unreasonable. The jury in this case was impliedly left with the impression that if it was not disproven that the State's two main

witnesses were lying, then Salazar had to be found guilty, and this impression is constitutionally intolerable.

This impression "reaches down into the validity of the trial itself to the extent that a verdict of guilty could not have been obtained without the assistance of the alleged error." See State v. Delva, 575 So. 2d 643, 644-45 (Fla. 1991). Therefore, appellant counsel was ineffective in failing to raise this legally-valid claim of fundamental error, and Salazar should therefore be granted a new trial.

CONCLUSION

Based on the reasons specified above, Mr. Salazar requests that this court grant his petition for writ of habeas corpus and reverse that Mr. Salazar's convictions and sentences for new trial.

Respectfully submitted,
THE SICHTA FIRM, LLC.,
/s/ Rick Sichta_____

RICK SICHTA, ESQUIRE
Fla. Bar No.: 0669903301 W. Bay St. Suite 14124
Jacksonville, FL 32202
904-329-7246
Email: rick@sichtalaw.com
Attorney for Appellant

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a copy of the foregoing has been delivered via email to the Office of the Attorney General at capapp@myfloridalegal.com and Leslie.Campbell@myfloridalegal.com on this 29th day of September, 2014.

/s/ Rick Sichta_____
A T T O R N E Y

CERTIFICATE OF COMPLIANCE AND AS TO FONT

I **HEREBY CERTIFY** that this brief is submitted by Appellant, using Times New Roman, 14-point font, pursuant to Florida Rules of Appellate Procedure, Rule 9.210. Further, Appellant, pursuant to Florida Rules of Appellate Procedure Rule 9.210(a)(2), gives Notice and files this Certificate of Compliance as to the font in this immediate brief.

/s/ Rick Sichta_____
A T T O R N E Y