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IN THE SUPREME COURT OF THE STATE OF FLORIDA

SC CASE NO. 13-962
4D12-125

STATE OF FLORIDA,

Petitioner,

vs.

CALVIN LEWIS OVERHOLT,

Respondent.

PETITIONER'S REPLY BRIEF

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**THE FOURTH DISTRICT COURT OF APPEAL ERRED
WHEN IT FOUND THAT THE TRIAL COURT PROPERLY
PLACED A SCREEN BETWEEN THE VICTIMS AND THE
DEFENDANT AND ALLOWED THE TESTIMONY TO BE
SEEN VIA CLOSED CIRCUIT TV, MOREOVER, ANY
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PRELIMINARY STATEMENT

In this brief, the parties shall be referred to as they appear before this Honorable Court of Appeal except that Petitioner may also be referred to as the State.

STATEMENT OF THE CASE AND FACTS

Undersigned relies upon the statement of the case and facts as set out in the Merits Brief.

SUMMARY OF THE ARGUMENT

In this case, the defendant was able to view the witness via a television placed next to the screen, thus his right to confrontation was not violated. Moreover, in light of the defendant's admissions, any error was harmless beyond a reasonable doubt.

ARGUMENT

THE FOURTH DISTRICT COURT OF APPEALS ERRED WHEN IT FOUND THAT THE TRIAL COURT PROPERLY PLACED A SCREEN BETWEEN THE VICTIMS AND THE DEFENDANT AND ALLOWED THE TESTIMONY TO BE SEEN VIA CLOSED CIRCUIT TV, MOREOVER, ANY ERROR WAS HARMLESS BEYOND A REASONABLE DOUBT

In this case, the Fourth District Court of appeal has erroneously found that the use of the screen to shield the victim is not authorized by statute and is inherently prejudicial. Moreover, contrary to the holding of the Fourth District Court of Appeal, any error is harmless beyond a reasonable doubt. Undersigned relies upon the arguments raised in the merits brief with respect to the claims raised.

However, undersigned would clarify that, contrary to the defendant's assertions, in this case, the defendant failed to object to the procedure employed by the trial court, thus, this claim was wholly unpreserved for appellate review (R. 2, pp 3-5). See Barnes v. State, 29 So. 3d 1010, 1026 (Fla. 2010) (finding alleged confrontation clause violation procedurally barred because no specific objection was made to preserve the claim for review); Dawson v. State 951 So. 2d 931 (Fla. 4th DCA 2007) citing Mencos v. State, 909 So.2d 349, 351 (Fla. 4th DCA 2005) (finding that although Dawson also complains of a Confrontation Clause violation, he did not make that objection below, therefore, it is not preserved). Undersigned

recognizes that the defendant made a general objection regarding the findings of harm to the child, however the defendant never stated that the use of the screen was any more prejudicial nor that it was unauthorized.

CONCLUSION

Based on the foregoing argument, Petitioner requests that this Honorable Court reverse the decision of the Fourth District Court of Appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE/EFILING

I HEREBY CERTIFY that a true and correct copy of the foregoing "Petitioners Reply Brief on the Merits" has been furnished electronically to this Court and by Electronic Mail to: Tatjana Ostapoff, Assistant Public Defender, appeals@pd15.org, located at the Criminal Justice Building, 421 Third Street, 6th Floor, West Palm Beach, Fl. 33401. This 23rd day of December 2013.

//s Melanie Dale Surber
MELANIE DALE SURBER

CERTIFICATE OF TYPE SIZE AND STYLE

The undersigned hereby certifies that the instant brief has been prepared with 12 point Courier New type, a font that is not proportionately spaced, on December 23, 2013.

//s Melanie Dale Surber
MELANIE DALE SURBER