

IN THE SUPREME COURT OF FLORIDA

KENNETH ALLEN STEWART

Lower Court No. 85-CF-4825

Case No. SC13-1234

Appellant,

vs.

STATE OF FLORIDA

Appellee.

APPELLANT'S INITIAL BRIEF

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INITIAL BRIEF OF APPELLANT

STATEMENT OF THE CASE

1. Kenneth Allen Stewart (hereinafter Appellant) was charged by information in the 13th Judicial Circuit, Hillsborough County Florida, on May 13, 1985, with two counts of attempted first degree murder, armed robbery and arson as to Michelle Acosta and Mark Harris. The victim, Mark Harris, developed pneumonia and subsequently died on May 12, 1985. Appellant was indicted by the grand jury on May 22, 1985, for first degree murder. The charges regarding both victims were consolidate for trial.
2. In August 1986, following a jury trial in the circuit Court of Hillsborough County, Appellant was found guilty of first-degree felony murder, attempted second-degree murder with a firearm, armed robbery and arson.
The trial court, in accord with the jury's 10-2 recommendation, sentenced Appellant to death on the murder charge, imposed two consecutive fifteen-year sentences for the attempted second-degree murder and arson convictions, and departed from the guidelines to impose a life sentence for the armed robbery.

I.. ISSUES PREVIOUSLY RAISED ON DIRECT APPEAL, POST-CONVICTION,
AND HABEAS PETITIONS.

Direct Appeal to the Florida Supreme Court and Certiorari to
the United States Supreme Court.

3. On direct appeal to the Florida Supreme Court, Appellant raised nine issues: (1) suppression of a telephone conversation between Appellant and his grandmother; (2) shackling of Appellant's legs during guilt and penalty phases; (3) bailiff's testimony on behalf of the State; (4) improper jury instructions; (5) Appellant's father's mitigation testimony was improperly excluded; (6) error in allowing victim's father to address judge during sentencing; (7) improper jury instruction; (8) court's failure to provide written findings in support of imposition of death penalty; and (9) court's failure to give written reasons for departing from the guidelines in imposing life on attempted murder.
4. The Florida Supreme Court agreed with Appellant as to issues eight and nine, affirmed the convictions and the two fifteen-year sentences, reversed the life sentence, remanded for re-sentencing, and temporarily remanded the death sentence for trial court to provide written reasons. Stewart v. Stewart, 549 So. 2d 171 (Fla. 1989).

5. On remand, the trial court entered a written sentence consistent with its prior oral findings. The court accorded the mitigating factors only slight weight and found that the aggravating circumstances far outweighed the mitigators.

The court re-imposed the life sentence for robbery and provided written reasons.

6. Appellant raised six issues on appeal from his re-sentencing: (1) the court improperly double-dipped when it used robbery as an aggravator since that same robbery served the basis for the felony murder conviction; (2) life must be imposed where the court fails to give written reasons supporting the death penalty; (3) the court failed to grant a continuance on remand so he could present character witnesses:

(4) the trial court's findings do not support the aggravating circumstance of commission during the course of a robbery; (5) sentencing order failed to mention all mitigating evidence of Appellant's abused childhood; and (6) the life sentence for robbery was invalid because the court failed to give written reasons for departure, thus departure was not permitted on remand. On this last issue, the Florida Supreme Court agreed with Appellant, reversed the life sentence, and remanded for imposition of a guidelines sentence.

Stewart v. State, 588 So. 2d 972, 974 (Fla. 1991). The case otherwise affirmed.

7. The United States Supreme Court denied Appellant's petition for a writ of certiorari. Stewart v. Florida, 112 S. Ct. 1599 (1992).

Post conviction proceedings

8. On August 17, 1996, Appellant filed a motion to vacate his conviction and sentence pursuant to Florida Rule of Criminal Procedure 3.851. His third amended motion, filed September 2, 1996, raised 24 claims. Appellant's post-conviction counsel, the Office of Capital Collateral Regional Counsel (CCRC), did not raise the issue sought to be raised here, the ineffectiveness of trial counsel for failure to fully investigate and obtain brain scans to graphically demonstrate Appellant's organic brain damage.
9. The post-conviction court denied twenty of those claims on August 18, 1997, and granted an evidentiary hearing on the remaining four. Following the hearing, the post-conviction court rejected these four claims, and Appellant appealed, raising ten issues: (1) ineffective assistance of counsel during guilt and penalty phases; (2) State's failure to produce jail records in violation of Brady; (3) penalty phase jury instructions diminished jury's sense of responsibility in violation of Caldwell;

(4) penalty phase jury instructions shifted the burden to the Appellant to prove that the death sentence was inappropriate in violation of Caldwell; (5) death sentence rested on unconstitutional automatic aggravator; (6) statute on aggravators was broad and vague; (7) vague, overbroad prosecutorial argument on aggravators and ineffectiveness of counsel for failing to object; (8) shackling during trial and penalty phases; and (10) cumulative error.

10. The Florida Supreme Court dismissed claims 3,4,5,6,7,8,9, and 10 as procedurally barred or without merit. Stewart v. State, 801 so. 2d 59 (Fla. 2001). Under the umbrella of claim 1, Appellant argued that the trial counsel had been ineffective by: (1) failing to argue voluntary intoxication as a defense and as mitigation; (2) failing to investigate and present evidence of childhood abuse; (3) failing to obtain jail records; and (4) failing to adequately prepare the mental health expert, Dr. Afield. A divided Florida Supreme Court rejected Appellant's claims and affirmed. Stewart v. State, 801 So. 2d 59 (Fla. 2001). State habeas corpus proceedings
11. On January 9, 2003, Appellant filed a petition for a writ of habeas corpus in the Florida Supreme Court, raising three claims:

(1) Florida's death penalty statute is unconstitutional under Ring v. Arizona, 536 U.S. 584, 122 S. Ct. 2428 (2002); (2) Appellate counsel was ineffective for failing to raise four issues on direct appeal regarding trial counsel's ineffectiveness with regard to possible mitigation and a voluntary intoxication defense; (3) appellate counsel was also ineffective in failing to challenge trial counsel's concession of guilt. The Florida Supreme Court rejected all claims and denied the petition. Stewart v. Crosby, 880 so. 2d 529 (Fla. 2004).

12. Appellant also filed a successive petition for a writ of habeas corpus in the Florida Supreme Court, claiming that his conviction violated the confrontation clause under Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354 (2004), which the Florida Supreme Court summarily denied. Stewart v. Crosby, 905 so. 2d 126 (Fla. 2005) (Table)
13. On May 31, 2005, Appellant filed a federal habeas corpus petition in the United States District Court for the Middle District of Florida pursuant to 28 U.S.C. §2254. The issue of the ineffectiveness of post-conviction counsel for failing to raise the ineffectiveness of trial counsel for failure to investigate and obtain brain scans to show Appellant's organic brain damage was not among the grounds raised.

On February 6, 2006, the federal court rejected all 27 grounds and denied the petition. Appellant appealed, and the United States Court of Appeals, Eleventh Circuit, granted Appellant a certificate of appealability as to whether trial counsel was ineffective in failing to provide Dr. Afield with all available information to identify mitigating circumstances and in failing to adequately investigate and prepare mitigating evidence during the penalty phase, including evidence regarding Appellant's childhood. The Eleventh Circuit affirmed. Stewart v. State, 476 F. 3d 1193 (11th Cir. 2007)

14. Appellant filed a Motion for Post-conviction Relief Newly Discovered Evidence on April 17, 2009. The motion was denied as untimely by the trial court on July 10, 2009. Appellant had argued that the evidence outlined below constituted newly discovered evidence.
15. Appellant filed a Successor Motion to Vacate Judgment Conviction and Sentence more than one year after Appellant's original judgment and sentence became final. Said motion was timely filed pursuant to the provisions of rule 3.851(d) (2) (B), because the fundamental constitutional right asserted herein was not established within the one-year time period provided in subdivision (d) (1) of the Rule, and those rights have been held to apply retroactively.

II. NATURE OF RELIEF SOUGHT AT THE TRIAL COURT

16. In an attempt to preserve his rights pursuant to Martinez v. Ryan, 132 S. Ct. 1309, 182 L. Ed. 2d 272 (2012), to raise this issue, to ensure that he exhausted this issue in state court, and to avoid a procedural bar in federal court, Appellant requested that the lower court consider, in post-conviction proceedings, the issue of post-conviction counsel's ineffectiveness for failure to raise the ineffectiveness of trial counsel, who failed to fully investigate, pursue, and obtain brain scans to graphically demonstrate Appellant's organic brain damage, which damage was the cause of Appellant's actions. Appellant also requested an evidentiary hearing on this issue and leave to amend if additional claims, facts, or legal precedent became available. In any event, the motion was denied.

STATEMENT OF THE FACTS

In August, 1986, a twelve-member jury determined the following facts alleged by the State of Florida, the Appellee, to be true:

On October 3, 1986, Kenneth Allen Stewart, (hereinafter Appellant), was sentenced to death for the first degree murder of Mark Harris, 15 years for the attempted first-degree murder of Michele Acosta, 27 years for armed robbery, and 15 years for arson.

On the evening of April 14, 1985, Appellant was hitchhiking and was picked up by Michele Acosta, who was driving with Mark Harris. Appellant climbed into the back seat and requested a location to be dropped off. When Acosta stopped at the desired location, Appellant struck Acosta on the head with the end of his gun and fired three gunshots. Acosta suffered a gunshot wound to the shoulder and Harris suffered a gunshot wound to the spine.

Appellant forced Acosta and Harris out of the car and drove to pick up his friend, Terry Smith. The two men removed items found in the trunk of the car and Appellant set the car on fire after telling Smith that the car belonged to a woman and man whom he shot.

Sometime later, Appellant was arrested and immediately charged.

Appellant allowed officers to search his apartment, which later yielded items he and Smith had taken from Acosta's car. Investigators presented photographs of potential suspects to Acosta and Harris. Acosta, who had recovered from her injuries, identified Appellant as the attacker. Harris, who was dying from his injury, also identified Appellant as his attacker, and died shortly afterward.

During the trial, Acosta testified as a surviving victim. Smith served as a secondary witness and testified that Appellant admitted to shooting and provided details of the offense.

ARGUMENT

THE TRIAL COURT ERRED IN DENYING APPELLANT'S SUCCESSOR MOTION TO VACATE JUDGMENT OF CONVICTION AND SENTENCE BECAUSE INITIAL REVIEW COLLATERAL COUNSEL, CCRC, WAS INEFFECTIVE IN FAILING TO RAISE THE ISSUE OF TRIAL COUNSEL'S INEFFECTIVENESS FOR FAILURE TO FULLY INVESTIGATE, PURSUE, AND OBTAIN NEUROLOGICAL TESTING AND BRAIN SCANS GRAPHICALLY DEMONSTRATING APPELLANT'S ORGANIC BRAIN DAMAGE, RESULTING IN PREJUDICE TO APPELLANT.

1. The structure and procedural process of Florida's initial-review collateral proceedings in capital cases set forth in Florida Rule of Criminal Procedure 3.851.
2. Florida provides for the appointment of counsel in collateral proceedings for death-sentenced defendant's.
3. In the instant case (herein designated Case Number 1), the Office of Capital Collateral Review Counsel (CCRC) was appointed to represent Appellant for his collateral review proceedings.
4. In case No. 1, CCRC completely failed in any way to raise the ineffectiveness of trial counsel for failing to fully investigate, pursue, and obtain the brain scans that graphically demonstrated Appellant's organic brain damage and for failing to argue that Appellant's organic brain damage was the cause of his actions. Indeed, the issue was not raised in Case No. 1 in any court until the filing of the Successor motion, resulting in procedural default of this claim in federal court.

5. However, Case Number 1 was not the only post-conviction proceeding involving Appellant to which CCRC was appointed. CCRC was also appointed to represent Appellant in another capital case, trial court case number 85-5667 (herein designated Case No. 2).

Both cases were proceeding on essentially parallel tracks, except that Case No. 1 was proceeding slightly ahead of Case No. 2.
6. Case Number 2 is relevant to this court's ruling because the issue raised in the instant case, the ineffectiveness of trial counsel for failing to raise Appellant's organic brain damage, was in fact raised in the trial level post-conviction proceedings in Case No. 2. However, the issue remains unresolved as it is currently before the United States District Court, Middle District of Florida, Tampa Division, where it is under consideration by that court in a federal habeas corpus proceeding brought pursuant to 42 U.S.C. §2254. Stewart v. Sec'y Dep't of Corrs. No. 8:11-cv-44-T-27EAJ (M.D. Fla. Filed Jan. 6, 2011).
7. The issue was raised in Case Number 2, and not in Case Number 1, because in Case Number 1, Appellant's post-conviction proceedings were conducted solely by CCRC.

By contrast, while the post-conviction proceedings in Case Number 2 were begun by CCRC, they were concluded by attorney Robert Norgard because CCRC withdrew in order to allow Appellant to retain Mr. Norgard, who then did obtain the scans and presented them, along with the testimony of experts, Dr. Hyman Eisenstein and Dr. Wood, to the post-conviction court. By the time that Mr. Norgard took over in Case Number 2, the post-conviction proceedings in Case Number 1 had been completed.

8. The facts regarding the organic brain damage suffered by Appellant, as presented to the post-conviction court in Case No. 2, are relevant to the issue presented in the instant case and to this court's ruling given the fact that the issue in this case is the ineffectiveness of Appellant's post-conviction counsel for failure to raise the ineffectiveness of trial counsel who failed to raise the issue of Appellant's organic brain damage, as revealed by the brain scans and the testimony of Dr. Eisenstein and Dr. Wood. The merit of the instant claim is thus largely dependant upon the facts as developed in Case Number 2.
9. Specifically, in Case No. 2, Appellant alleged that CCRC counsel Daphney Gaylord repeatedly assured and promised him that she would obtain brain scans in order to demonstrate

trial counsel's ineffectiveness in failing to pursue and obtain brain scans in order to demonstrate that Appellant's organic brain damage was the cause of his actions. Appellant believed, and he was led to believe that Ms. Gaylord agreed, that the issue of organic brain damage was a viable issue, one that should be raised. She repeatedly made promises to Appellant that she was going to obtain brain scans for him in order to demonstrate that organic brain damage was the cause of his behavior and to argue the ineffectiveness of trial counsel in failing to obtain the scans. She assured him repeatedly that she was working on it and was working on getting a neuropsychologist to perform the brain scans for him. Despite all the promises, however, Ms. Gaylord not only failed to obtain the brain scans, but her failure necessarily meant that the issue of organic brain damage was not raised in the post-conviction petition that she filed. It was not until the organic brain damage issue, that Appellant realized that he had been misled.

10. Therefore, on June 15, 2006, Appellant moved by joint stipulation to substitute attorney Robert Norgard for CCRC counsel. Despite Ms. Gaylord's repeated promises to interview and obtain an evaluation of Appellant by Dr. Hyman Eisenstein, a well-regarded neuropsychologist, she simply failed or refused to do so.

On June 26, 2006, the post-conviction court granted Appellant's motion to release CCRC and substitute Mr. Norgard, who then proceeded to obtain the evaluation and testing of Appellant by Dr. Hyman Eisenstein that Ms. Gaylord counsel had promised and which showed severe chronic organic brain damage.

11. In subsequent post-conviction evidentiary hearings, Dr. Hyman Eisenstein, a clinical psychologist and board certified neuropsychologist who had obtained his postdoctoral neuropsychology training at Yale University, testified that he reviewed four volumes of background material, in addition to the prior reports of three other doctors, court opinions, records from South Carolina, medical records from Tampa General Hospital, and a life history compiled by CCRC.
12. Unlike the previous psychologists, Dr. Eisenstein administered a complete battery of neuropsychological tests on Appellant. Previous testing had consisted of only brief IQ testing for academic purposes, portions of personality testing measures and some psychiatric interviews.
13. Dr. Eisenstein said that a person with brain damage would not be expected to perform poorly on all tests, only on those tests that correlate to damaged areas of the brain.

Appellant's brain showed impairment in the left hemisphere, which not only affected his ability to think clearly but also negatively impacted the proper working of his brain.

14. Dr. Eisenstein administered the Weschler Adult Intelligence Scale to Appellant, which resulted in an IQ of 98, or average intelligence.

With an IQ in that range, a person with no brain damage would be expected to perform with parity on neuropsychological tests if both sides of the brain are operating at full capacity. This was not the case with Appellant.

15. Dr. Eisenstein found that Appellant had a very well developed right side of the brain, but the left side of his brain had deficiencies and evidence of brain damage. Appellant's behavioral issues were consistent with left hemisphere damage. He also displayed statistically significant deviations between verbal comprehension (left brain) and perceptual organization (right brain). Left-brain impairment would explain Appellant's poor school performance because education focuses on left-brain skills.

16. Dr. Eisenstein noted that Appellant had a difficult time processing multiple bits of information at one time. (PC-RIV, R630) with multiple tasks, his brain shut down and would not complete the processing tasks. Multitasking requires the use of the left-brain.

When the left-brain shuts down, it prevents the right hemisphere from doing its job.

17. Dr. Eisenstein also administered the Halstead-Reitan battery, which corroborates the existence and location of brain impairment and dysfunction and is considered the hallmark of neuropsychological testing. Appellant consistently performed poorly on tests measuring left-brain function, showing impairment in both the frontal and temporal lobes. The strongest indicator of Appellant's left hemisphere impairment was his performance on the Tactile Performance Test. In the normal brain, the left brain controls the right hand and vice versa. Appellant's testing confirmed not only left hemisphere damage, but left hemisphere damage that blocked the right hemisphere from performing properly as well.

18. Dr. Eisenstein concluded unequivocally that Appellant suffered from left hemisphere brain damage, compounded by communication issues between the hemispheres, and that this damage existed from a very young age, leading to Appellant's inability to process information, problems with thinking, responding, and decision making, poor impulse control, irritability, and inflexible thinking. According to Dr. Eisenstein, alcohol consumption would be "lethal" to Appellant, even in small amounts. He believed that Appellant's behaviors were not planned or willful.

19. Dr. Eisenstein diagnosed Appellant as follows: (1) Attention Deficit/Hyperactivity Disorder (\$314.01 DSM IV); and (2) Axis I Dementia Due to Head Trauma (\$294.01 DSM IV). The DSM IV does not contain a separate category for brain damage.
20. On cross-examination, when Dr. Eisenstein was asked about Dr. Eric Weiner's report concluding that Appellant had no brain damage or dysfunction, he said that while he had not seen the report, he disputed Dr. Weiner's conclusion given Dr. Weiner's failure to perform even one neuropsychological exam. A diagnosis of brain damage could not be done with an incomplete neuropsychological exam. A partial neuropsychological exam would not be accepted in the scientific community as adequate for diagnosis. Appellant would be perfectly capable of functioning normally in certain areas and still have significant brain damage.
21. Dr. Frank Wood, a neuropsychologist recently retired from Wake Forest as a professor emeritus, also testified at the post-conviction proceedings. He testified that a PET scan would reveal whether a person's brain is abnormal. Dr. Wood administered a PET scan, CT scan and an MRI on Appellant. In order to ensure an unbiased and independent result, previous reports, or any other information about appellant before administering the tests.

22. Dr. Wood also administered a computerized assessment tool, the Continuance Performance Activation Task, in which he injected Appellant with radioactive glucose, then compared the results to his database, which consists of 107 normal PET scans, to estimate the range of variation. Dr. Wood's research results and database have been published and accepted in the scientific community. He receives federal grants to continue his peer-reviewed research.
23. Dr. Wood observed that Appellant's left lateral ventricle was enlarged compared to his right lateral ventricle; they would normally be symmetrical. In addition, Appellant's brain exhibited characteristics opposite to a normal brain in two distinct ways: (1) The left hemisphere of his brain is shorter than the right; and (2) the areas of activation and associated intensity are in the middle, while a normal brain would show activation all around the rim and no activation in the middle. Appellant's brain showed larger areas of no activation, smaller and smaller areas of intense activation, and a gap in activation on the left side. Dr. Wood believed that these abnormalities were chronic, had probably developed in utero, and were consistent with impairment in higher functions, particularly integrative functions.

24. None of the above facts were discovered by trial counsel or argued by initial review collateral counsel, CCRC, in Case Number 1, thus demonstrating the ineffectiveness of both trial counsel and initial review collateral counsel. Because this issue was not raised in any court, the doctrine of exhaustion precludes Appellant from raising it on federal habeas corpus review, resulting in procedural default of this claim to the prejudice of Appellant.

MEMORANDUM OF LAW

25. In an attempt to preserve his right to raise this issue pursuant to Martinez, to ensure that he exhaust the issue in state court, and to avoid a procedural bar in federal court, Appellant requested a hearing in the lower court to consider the issue of post-conviction counsel's ineffectiveness for failure to fully investigate, pursue, and obtain brain scans to graphically demonstrate the ineffectiveness of trial counsel for his failure to obtain brain scans and expert testimony to demonstrate Appellant's organic brain damage and to argue that Appellant's actions were the direct result of that brain damage.

26. In Martinez, the United States Supreme Court held that the ineffectiveness of initial review collateral counsel, which in Florida is post-conviction counsel, can be considered as a basis to excuse procedural default on a claim of ineffective assistance of counsel in federal court. The ineffectiveness of initial review collateral counsel here implicates Martinez, because counsel's failure to raise the issue of Appellant's organic brain damage, results in a procedural default of that claim in federal court, which may be excused pursuant to Martinez.
27. In Martinez, the defendant had been provided initial review collateral counsel, who affirmatively advised the post-conviction court that no collateral issues existed. Accordingly, no such issues were raised in initial collateral review. While the issue was apparently raised in a second collateral review proceeding, the trial court ruled that the claim was time-barred and that it was lacking in merit in any event. See Martinez v. Schriro, 2012 WL 5936566 (D. Ariz. Nov. 27, 2012).
28. When the issue was later raised in federal habeas corpus proceedings. The federal court dismissed the claim as procedurally barred. The United States Supreme Court reversed, concluding that while there was no constitutional

right to effective assistance of collateral review counsel, the lack of efficacy of initial review collateral counsel could excuse a procedural default in federal court.

29. The Martinez court specified that the performance of collateral review counsel must be evaluated pursuant to the standards set forth in Strickland v. Washington, 466 U.S. 668 (1984). Thus, in order to prevail, the defendant must show both deficient performance of collateral counsel and prejudice. Prejudice in the instant case would be shown by proof that the claim collateral counsel failed to pursue was meritorious.

30. Here, the performance of post-conviction counsel, CCRC was deficient because the issue of trial counsel's ineffectiveness for failing to pursue the issue of Appellant's organic brain damage was not raised at all. Given the fact that Appellant was the same defendant in both cases, who possessed the same initial indicators regarding brain damage, and post-conviction counsel in Case Number 2 did pursue and obtain the brain scans showing the presence of severe organic brain damage, post conviction counsel's performance in Case Number 1 was deficient as falling below prevailing professional norms.

Moreover, the claim that CCRC failed to pursue here cannot be said to be non-meritorious given the fact that the expert testimony and brain scans obtained in Case Number 2 are the same evidence that would be used in the instant case, and the issue in Case Number 2 remains unresolved in the Middle District. Thus, Appellant has demonstrated both deficient performance and prejudice since successor post-conviction counsel, Mr. Norgard, did , in fact, raise the claim in Case Number 2, and that issue remains unresolved. Accordingly, the Strickland test for here, Martinez fails to make clear where claims involving ineffective assistance of post-conviction counsel must originate in order to be considered under the Martinez umbrella. However, in at least one instance, in Arizona, the government successfully argued that those claims must originate in state court. See Gohel v. Ryan, 2012 WL 1378678, (D. Ariz. April 20, 2012). In addition, in Martinez itself, the claim was originally brought in state court in a successor collateral review proceeding. See Martinez v. Schriro, 2012 WL 5936566 (D. Ariz. Nov. 27, 2012)

31. Because Appellant does not intend to waive any claims under Martinez due to a failure to exhaust or a procedural bar, he raised in state court his claim that CCRC attorneys rendered

ineffective assistance of counsel when they failed to raise the issue of the ineffectiveness of trial counsel for failing to raise the issue Appellant's organic brain damage.

32. While appellant acknowledges that the Florida Supreme Court has held that Martinez creates no additional avenue for state court post-conviction review, see Gore v. State, 91 So. 3d 769 (Fla. 2012), since there is no settled mechanism for pursuing Martinez claims, in both Gohel and Martinez originated in state court, Appellant has no alternative but to proceed first in state court in order to preserve his right to raise this claim under Martinez umbrella. Therefore, the Successor Motion to Vacate Judgment of Conviction and Sentence should have been granted.

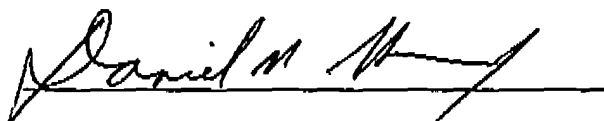
Respectfully submitted,



DANIEL M. HERNANDEZ, ESQUIRE
Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Carol Dittmar, Office of the Attorney General, Concourse Center 4, 3507 E. Frontage Road, Ste. 200, Tampa, Florida 33607, on this 15 day of July, 2014.

A handwritten signature in black ink, appearing to read "Daniel M. Hernandez", is written over a horizontal line.

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