

JURISDICTIONAL BRIEF
IN THE SUPREME COURT OF FLORIDA

CRAIG CUMMINGS,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

CASE NUMBER.: SC13-1343

Lower Tribunal Case Number (S).:

5D12-2155, 05-1994-CF-023601-A

ON REVIEW FROM THE DISTRICT COURT
OF APPEAL, FIFTH DISTRICT
STATE OF FLORIDA

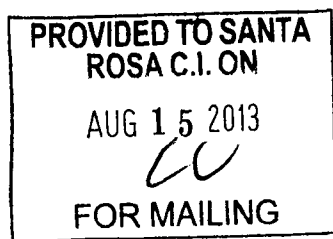
BY

CLERK OF THE COURT

2013 AUG 19 PM 2:10

THOMAS D. HALL

FILED



Craig Cummings, 251646
Craig Cummings, 251646
Santa Rosa Correctional Institution
5850 East Milton Road
Milton, Fl. 32583

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4). Whether A Pro'se Petitioner Shows "Cause" And "Prejudice" And That There Was A Objective Factor External To The Appellate Counsel And Petitioner, Which Impeded Their Efforts To Comply With State's Procedural Rules, Shouldn't Petitioner's Federal Issues Be Heard On The Merits Under Murray V. Carrier, 106 S.Ct. 2639 (1986)?

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5). Whether A Pro'se Petitioner Raises Evidence Or Testimony That The Jury Didn't Hear At Guilt Phase Can The Petitioner Be Let Through The Gateway Under Schlup V. Delo, 115 S.Ct. 851 (1995); And Under Kuhlman V. Wilson, 106 S.Ct. 2616 (1986) Where The Ends Of Justice May Be Required In Its Case?

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6). Whether A Pro'se Petitioner Can File A Fundamental Error, A Manifest Injustice Constitutional Error or A Fundamental Miscarriage Of Justice At Anytime Under Wilson V. State, 752 So.2d 1227 (Fla. 5th DCA 2000); Also Under Stephen V. State, 974 So.2d 456 (Fla. 2nd DCA 2008)?

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7). Whether A Pro'se Petitioner Raises That He Is Actual Innocent Of First Degree Premeditated Murder And That A Fundamental Miscarriage Of Justice And It Is Clear The Only Way The Courts Could See What Petitioner Is Arguing Is By The Courts Have Untranscribed Transcripts Transcribed, Shouldn't Have The Courts Have Had Transcripts Transcribed To Correct A Fundamental Miscarriage Of Justice?

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8). Is There Any Properable Cause In A Death Penalty Case That The Competency Hearing; Motion To Dismiss Counsel; Proffered Testimony; Voir Dire; Penalty Phase; Closing Arguments; Sentencing Hearing And All Jury Instructions Was Not Transcribed Or Missing?

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9). Is It Correct To Say That A Petitioner Facing Death, Shouldn't The Petitioner Have The Right On Direct Appeal And Collateral Attack Have A Right To A Full Review On Both Levels With All Transcripts In A Capital Case?

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10) Whether A Petitioner Was Incompetent To Stand Trial, Is It Right For The Fifth District Court Of Appeal To Ignore It, When In Carrion V. State, 859 So.2d 563 (Fla. 5th DCA 2003) That Their Jurisprudence Does Not Proceed Against Incompetent Prisoner's

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11). Whether The Fact That Trial Attorney And Not Petitioner, Points Out That It Has Been A Conspiracy To Convict Petitioner By Both Prosecutors In Brevard And Pinellas County, Florida, Should Have The Courts Had Untranscribed Transcripts Transcribed To See What Attorney Brian O'Neck Was Talking About?

CONCLUSION

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CERTIFICATE OF SERVICE

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Wilson v. State,

752 So.2d 1227 (Fla. 5th DCA 2000)

6, 9

Zeigler v. State,

632 So.2d 48 (Fla. 1993)

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STATEMENT OF THE CASE AND FACTS

First the Petitioner must point something out to the Court about this case. Lower Tribunal Case Number (S)

SD12-2155, SD11-4158, SD11-4320, is derived from 05-1994-CF-023601-A which was very confusing to the Petitioner as the Court will see.

On August 22, 2011 Petitioner filed a Post-Conviction 3.850 successive Petition.

On August 31, 2011 filed Amended Memorandum Of Law In Support Of Petition For Post-Conviction 3.850 Successive Petition.

On November 2, 2011 Order Dismissing Defendant's Postconviction 3.850 Successive Petition And Ordering Defendant To Show Cause Why He Should Not Be Barred From Further Pro Se Filings.

On November 29, 2011 Petitioner filed Petition Ordering Defendant To Show Cause Why He Should Not Be Barred From Further Pro Se Filings.

On November 29, 2011 Petitioner filed Suggestion For Certification.

On November 29, 2011 Petitioner filed Notice Of Appeal.

On November 29, 2011 Petitioner filed Petition For Writ Of Certiorari

On December 9, 2011 Court Order in Case No.: SD11-4158, Order that if Petitioner is seeking review of the court's order dismissing his post conviction motion rendered November 2, 2011 which is an order that is not reviewable by certiorari but is reviewable on appeal, he shall show cause, within twenty days of the date hereof, why his Petition for Writ of Certiorari should not be treated as a notice of appeal. If Petitioner is seeking review of a different order, he shall identify that order and attach a copy of it to his response.

On December 16, 2011 Petitioner filed Response To Court Order.

ON January 12, 2012 Order By The Court: Upon consideration that Petitioner is seeking review of a court order dismissing his post conviction motion rendered November 2, 2011, an order reviewable on appeal not by certiorari, it is Ordered that Petitioner's Petition will be treated as a Notice of appeal and Appellant has fifteen day to file an initial brief. See Florida Rule of Appellate Procedure 9.141(b)(c).

ON January 24, 2012 Petitioner filed Initial Brief.

ON February 13, 2012 Order By The Court: Ordered that this Court's January 12, 2012 order is withdrawn. It is further Ordered that this appeal shall proceed as a summary appeal of an order dismissing a post conviction motion under Florida Rule of Appellate Procedure 9.141(b)(2) and Petitioner's petition shall be treated as the notice of appeal and his initial brief. The clerk of the Brevard County Circuit Court shall prepare and forward the summary record to this Court within twenty (20) days of the date hereof.

Also ON February 7, 2012 case No.: 5D11-4320 was PER CURIAM. AFFIRMED.

ON February 14, 2012 Petitioner filed Motion For Rehearing / Rehearing ENBANC / Motion For Written Opinion in case No.: 5D11-4320

ON March 27, 2012 Motion for Rehearing denied in case No.: 5D11-4320

ON April 17, 2012 Case No.: 5D11-4158 PER CURIAM. AFFIRMED.

ON April 23, 2012 Petitioner file Motion for Rehearing / ENBANC in case No.: 5D11-4158.

ON May 10, 2012 Court Order in Lt. Case No.: 05-1994-CF-023601-AXXX-XX Order Prohibiting The Defendant From Filing ANY Further Pro'se Pleadings under the above case number.

ON May 20, 2012 Petitioner Appeal Court Order case No.: 05-1994-CF-023601-AXXX-XX.

ON May 21, 2012 Court Order of The Court: Rehearing denied in case No.: 5D11-4158.

On May 31, 2012 ACKNOWLEDGEMENT OF NEW CASE SD12-2155.

On August 20, 2012 By Order Of The Court: ORDERED, sua sponte, that Appellant shall file with this court and show cause, on or before ten days from the date hereof, why the above-styled appeal should not be dismissed for failure to file an initial brief in this cause. In Case No.: SD12-2155.

On August 29, 2012 Petitioner filed a reply to show cause why above styled appeal should not be dismissed for failure to file an initial brief in this cause. Case No.: SD12-2155

On September 14, 2012, By Order Of The Court: ORDERED that Appellant's September 4, 2012 Response is accepted and the time to file the initial brief is hereby extended to October 1, 2012. Case No.: SD12-2155.

On September 30, 2012 Petitioner filed Initial Brief. Case No.: SD12-2155

On November 28, 2012 Attorney General filed Answer Brief in Case No.: SD12-2155.

On December 10, 2012 Petitioner filed Reply Brief case No.: SD12-2155.

On January 10, 2013 Petitioner filed Amended Reply Brief in case No.: SD12-2155.

On January 15, 2013 Court stricken Appellant's Amended Reply Brief, filed January 14, 2013, because as unauthorized. Case No.: SD12-2155

On May 21, 2013 Case No.: SD12-2155 was PER CURIAM. AFFIRMED.

On June 3, 2013 Petitioner filed Motion For Rehearing / En Banc in Case No.: SD12-2155.

On June 26, 2013 By ORDER OF COURT: Ordered that Appellant's Motion for Rehearing, filed June 5, 2013 is denied and the Motion for Rehearing En Banc is stricken. In Case No.: SD12-2155

SUMMARY OF ARGUMENT

The Petitioner has a capital case and is serving a natural life sentence without parole. Whether a constitutional error of dimension and whether a constitutional for "Cause and Prejudice" and justification for failure to abide by Florida Procedural Rules is supported by evidence, wherefore the lower tribunal order of raising abusive process is a departure from the essential requirements of law by using an excuse to avoid from correcting a fundamental miscarriage of justice.

The Petitioner was facing the death penalty and the State of Florida and both Public Defenders on both levels has refused to give the Petitioner or the records for Direct Appeal the jury voir dire; jury instructions on premeditated, reasonable doubt, intent and manslaughter; competency hearing; proffered testimony of witnesses; penalty phase; closing arguments; whole sentencing transcripts and not pieces and most of these portions was n't transcribed and this Court holds the prob. See Appendix (O) which this Court has the letter dated 11/1/04. Which under Delap v. State, 350 So.2d 462 (Fla. 1977) and Thomas v. State, 828 So.2d 456 (Fla. 4th DCA 2002), had the right to a full transcript for direct appeal.

The lower courts overlooked the fact that Petitioner's direct Appeal and post conviction 3.850 has been abridged by this constitutional error, which has stripped Petitioner of his constitutional rights to redress with a full transcript where it was important facts to show on all levels the Petitioner is actual innocent of first degree premeditated murder.

The Petitioner showed "Cause and Prejudice" under the "Carrier" Standard at 106 S.Ct. 2639 (1986); also should have been let through the gateway under Schlup v. Delo, 115 S.Ct. 851 (1995);

the Petitioner showed justification for filing past the 2 year limitation for past conviction 3.850 under Christopher V. State, 489 So.2d 25 (Fla. 1986), Green V. State, 765 So.2d 825 (Fla. 2nd DCA), Guess V. Barton, 599 So.2d 770 (Fla. 1st DCA 1992); and the Petitioner should have let through the gateway under the Federal approach in Kinder V. State, 779 So.2d 512, 515 (Fla. 2nd DCA 2000) and Schlup V. Delo, 115 S. Ct. 851 (1995).

An attorney's errors during an appeal on direct review may provide cause to excuse a procedural default; if the attorney appointed by the State to pursue the direct appeal is ineffective, the state prisoner has been denied fair process and the opportunity to comply with the state's procedures and obtain an adjudication on the merits of his claims. Accord Martinez V. Ryan, 132 S. Ct. 1309 (U.S. 2012).

If this Honorable Court have the untranscribed transcripts transcribed, it will show the Petitioner was not capable of first degree premeditated murder and show the fundamental miscarriage of justice and the conspiracy trial counsel Brian O'Neck was telling trial judge Jere Lober that it has been a conspiracy by both prosecutors in Brevard and Pinellas County to convict Petitioner at the sentencing hearing and Judge Jere Lober said if he found out it was a conspiracy in his courtroom he would make them start all over. Accord Appendix (1) of Exhibit (J), which can lighten the Courts about that issue.

If this Court review what the Petitioner is trying to show the Courts, this will warrant Petitioner a new trial or an evidentiary hearing, because the Petitioner has been trying to get the Courts to review the transcripts that's been hid for 18 years, that the State of Florida or Trial Counsel Randy Moore want any court to see.

JURISDICTIONAL STATEMENT

This Court has jurisdiction to review all capital cases when death or life without parole is involved because both is on the boarderline of unconstitutional and the decision of the lower courts in this case expressly and direct conflicts with the decision of there court and other courts and this Court. This court has jurisdiction to issue a writ of common law certiorari under Article V Section 3 Florida Constitution (1980), and Fla. R. App. 9.030(b)(2)(A) Certorari lies to review conflict of interest, manifest injustice and fundamental miscarriage of justice to be corrected. See e.g. Christopher V. State, 489 So.2d 25 (Fla. 1986); Stephen V. State, 974 So.2d 456 (Fla. 2nd DCA 2008); Wilson V. State, 752 So.2d 1227 (Fla. 5th DCA 2000); Carrión V. State, 859 So.2d 563 (Fla. 5th DCA 2003); also accord Schlup V. Delo, 115 S. Ct. 851 (1995).

This Court has the power to look beyond procedural errors by Petitioner, when the Petitioner is trying to show the courts he is actual innocent of first degree premeditated and it has been a fundamental miscarriage of justice in the Eighteenth Judicial Circuit Court.

ARGUMENT

If this Honorable Court comb the record and have the untranscribed transcripts transcribed, it will show the fundamental miscarriage of justice and the conspiracy trial counsel Brian O'Neck was telling trial judge that it has been a conspiracy to convict Mr. Cummings by both prosecutors in Brevard and Pinellas County. See Appendix (c).

Also the Petitioner was a scarifice at any means, because if this court check the records after Petitioner was convicted, state prosecutor in the case John Griesbaum became a criminal judge in the 18th Judicial Circuit Court in and for Brevard County, Florida.

The Petitioner is serving a natural life sentence with a capital case unconstitutional and through unfair acts not part of the United States of Florida Constitution.

All the Petitioner is requesting is that this Court review case, so the fundamental miscarriage of justice is corrected. Petitioner just requesting for this one review, because the lower tribunal says the Petitioner is filing frivolous claims. But not once have the Courts ordered the Clerk of Court have record of transcripts transcribed or ordered an evidentiary. The Petitioner's allegations will look frivolous when none of the Courts order the untranscribed transcripts be transcribed or produced. The lower tribunal says the Petitioner is making piece meal motions, well thats been going on since Petitioner's direct appeal, because all the transcripts that was given was piece meal transcripts.

Where have a Court ever seen or heard that four (4) officers and the leading detective of the case was denied by trial court to be a witness for Petitioner in a so called self-defense case.

During the trial the defense had nine witnesses and the

trial court denied all nine witnesses too make sure Petitioner was found guilty of first degree premeditated, so John Griesbaum could be a judge. Check the records, it don't have too be in black and white for everyone to see, but the Petitioner wants this Court to see what took place.

Petitioner just request for one fair review of this case, but the untranscribed transcripts must be transcribed, it is over ~~2500~~ transcripts, and the Petitioner don't believe its 1500 transcripts to the Fifth District Court of Appeal to review.

The Petitioner stand on the same merits on both levels.

The lower tribunal wants to bar the Petitioner from filing pro'se in its court under case No.: 05-1994-CF-023601-AXXX-XX.

The Petitioner has been begging for transcripts for sixteen years, Petitioner never received important transcripts that would have showed the courts Petitioner was incompetent, actual innocent of first degree premeditated murder, fundamental miscarriage of justice, the conspiracy by the prosecutors, fraud upon The Courts when Petitioner has noticed that the Respondents keep saying the Petitioner and victim was arguing, thats not true, Petitioner don't nowhere that come from. If this Court get the sworn affidavits of witnesses Shannon Muench and Dawn Woods of the night of the shooting, the Petitioner was not arguing with the victim, the victim kept coming back and forth in Petitioner's apartment with threats of violence.

The Petitioner may fit the criteria of the law Stand Your Ground Law. Petitioner was on his premises.

This order should be reversed and remanded for the courts to correct this fundamental miscarriage of justice and that the questions being presented be considered "questions" one of great public importance.

QUESTIONS PRESENTED

- 1). Whether A Pro'se Petitioner Show Justification Of Why The Federal Constitutional Claims Being Presented After The Two-Year Time Period Under Christopher V. State, 489 So.2d 25 (Fla. 1986), Green V. State, 765 So.2d 825 (Fla. 2nd DCA 2000), Ziegler V. State, 632 So.2d 48 (Fla. 1993), also Carrier Standard, 106 S.Ct. 2639 (1986) ?
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- 3) Whether A Pro'se Petitioner With A Capital Case And Serving A Natural Life Sentence Without Parole Should N't They Be Treated Like A Death Row Inmate, Only Difference Its Slow Death ?
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- 10). Whether A Petitioner Was Incompetent To Stand Trial, Is It Right For The Fifth District Court Of Appeal To Ignore It, When In Carrión V. State, 859 So.2d 563 (Fla 5th DCA 2003) That Their Jurisprudence Does Not Proceed Against Incompetent Prisoners?
- 11). Whether The Fact That Trial Attorney And Not Petitioner, Points Out That It Has Been A Conspiracy To Convict Petitioner By Both Prosecutors In Brevard And Pinellas County, Florida, Should Have The Courts Had Untranscribed Transcripts Transcribed To See What Attorney Brian O'Nek Was Talking About?

CONCLUSION

The Petitioner Pray that this Honorable Court accept and grant Petitioner's Jurisdictional Brief and reverse the courts orders and reverse case back to the lower courts to correct the fundamental miscarriage of justice, have the untranscribed transcripts transcribed and reviewed with an evidentiary hearing or this court take full jurisdiction of the questions presented under the standard De Novo and One of A Great Public Importance.

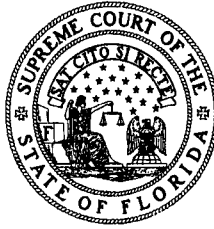
The 5th DCA did not withdraw its order to just let Petitioner's petition proceed as a summary appeal for the fun of it. It was something that caught their attention, but it seems they don't want to be the ones to correct the fundamental miscarriage of justice.

Petitioner ask mercy of the Court not to turn their heads based on cost retrying Petitioner, its been over 18 years the Petitioner will plea out; the Petitioner has suffered and has been stripped in a capital case of his life and liberty without constitutional rights through a fundamental miscarriage of justice. It is cruel and unusual punishment of how Petitioner was convicted and sentenced.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy hereof has been furnished by U.S. Mail To: Carmen F. Corrente, Attorney General Office, 444 Seabreeze Blvd, Suite 500, Daytona Beach, FL 32118 on this 15th day of August, 2013.

Craig Cummings, 251646
Craig Cummings, 251646
Santa Rosa Correctional Institution
5850 East Milton Road
Milton, FL 32583



Supreme Court of Florida

Office of the Clerk
500 South Duval Street
Tallahassee, Florida 32399-1927

THOMAS D. HALL
CLERK
SUSAN DAVIS MORLEY
CHIEF DEPUTY CLERK
KRY S GODWIN
STAFF ATTORNEY

PHONE NUMBER (850) 488-0125
www.floridasupremecourt.org

ACKNOWLEDGMENT OF NEW CASE

July 30, 2013

RE: CRAIG CUMMINGS vs. STATE OF FLORIDA

CASE NUMBER: SC13-1343

Lower Tribunal Case Number(s) : 5D12-2155, 05-1994-CF-023601-A

Lower Tribunal Filing Date: 7/15/2013

The Florida Supreme Court has received the following documents reflecting a filing date of 7/15/2013.

Notice to Invoke Discretionary Jurisdiction

The Florida Supreme Court's case number must be utilized on all pleadings and correspondence filed in this cause. Moreover, ALL PLEADINGS SIGNED BY AN ATTORNEY MUST INCLUDE THE ATTORNEY'S FLORIDA BAR NUMBER.

FOR GENERAL FILING INFORMATION AND ADMINISTRATIVE ORDER NO. AOSC04-84, PLEASE VISIT THE CLERK'S OFFICE WEBSITE AT <http://www.floridasupremecourt.org/clerk/index.shtml>

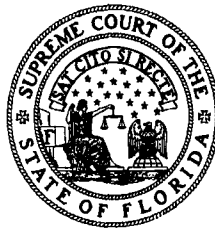
tg

cc:

HON. PAMELA R. MASTERS, CLERK
CRAIG SHAWN CUMMINGS
CARMEN F. CORRENTE

APPENDIX (O)

LEADERS USE ONLY!
→ →



Supreme Court of Florida

Office of the Clerk
500 South Duval Street
Tallahassee, Florida 32399-1927

THOMAS D. HALL
CLERK
DEBBIE CAUSSEAU
CHIEF DEPUTY CLERK
PORSCHE SHANTZ
STAFF ATTORNEY

PHONE NUMBER (850) 488-0125
www.flcourts.org/clerk.html

July 7, 2003

RE: CRAIG SHAWN CUMMINGS vs. STATE OF FLORIDA

CASE NUMBER: SC03-603

Lower Tribunal Case Number : 5D02-3335

The Florida Supreme Court has received the following documents reflecting a filing date of 6/26/2003.

Petitioner Letter

Please be advised that we charge \$1.00 per page for copies. To obtain a copy of the Request for Appointment of Counsel, please submit a check or money order in the amount of \$1.00 made payable to "Clerk, Florida Supreme Court."

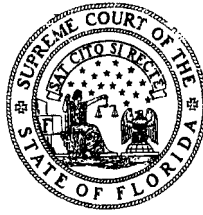
The Florida Supreme Court's case number must be utilized on all pleadings and correspondence filed in this cause. Moreover, ALL PLEADINGS SIGNED BY AN ATTORNEY MUST INCLUDE THE ATTORNEY'S FLORIDA BAR NUMBER.

bhp

cc:

HON. CHARLES J. CRIST, JR.
HON. FRANK J. HABERSHAW, CLERK
CRAIG SHAWN CUMMINGS

Exhibit (7)(K)



Supreme Court of Florida

Office of the Clerk
500 South Duval Street
Tallahassee, Florida 32399-1927

THOMAS D. HALL
CLERK
DEBBIE CAUSSEAU
CHIEF DEPUTY CLERK
PORSCHÉ SHANTZ
STAFF ATTORNEY

PHONE NUMBER (850) 488-0125
www.flcourts.org/clerk.html

December 30, 2004

RE: CRAIG SHAWN CUMMINGS vs. STATE OF FLORIDA

CASE NUMBER: SC03-603
Lower Tribunal Case Number : 5D02-3335

The Florida Supreme Court has received the following documents reflecting a filing date of 11/04/2004.

Petitioner's Letter dated 11/1/04

Please be advised that we charge \$1.00 per page for copies. To obtain a copy of letter dated 7/29/04, please submit a check or money order in the amount of \$2.00 made payable to "Clerk, Florida Supreme Court."

The Florida Supreme Court's case number must be utilized on all pleadings and correspondence filed in this cause. Moreover, ALL PLEADINGS SIGNED BY AN ATTORNEY MUST INCLUDE THE ATTORNEY'S FLORIDA BAR NUMBER.

ad

cc:

CRAIG SHAWN CUMMINGS
HON. CHARLES J. CRIST, JR.
HON. FRANK J. HABERSHAW, CLERK

APPENDIX (1)

James V. Pierce
Assistant Public Defender

Criminal Courts Complex
5100 144th Avenue North
Suite B100
Clearwater, Florida 34620



(813) 464-6876

ROBERT E. JAGGER
PUBLIC DEFENDER
SIXTH JUDICIAL CIRCUIT OF FLORIDA

June 13, 1995

Ms. Frances R. Brown
The Florida Bar
880 N. Orange Avenue, Ste. 200
Orlando, FL 32801-1035

Re: Complaint of Craig Cummings
TFB No. 95-31,782(18B)

Dear Ms. Brown:

Mr. Cummings' accusations that I was involved in a plot with the Assistant State Attorney and court to frame him are false. As you know, Mr. Cummings had a First Degree Murder charge pending in Brevard County and an Attempted First Degree Murder Charge pending in Pinellas County simultaneously. I advised Mr. Cummings that it would not be in his best interest to resolve the Pinellas County case before the Brevard County case; because it would be an aggravating factor for the First Degree Murder charge if he was convicted. Furthermore, a concurrent disposition may be offered if Mr. Cummings was convicted of the Brevard County case.

Pursuant to the prosecution's request in both Brevard County and Pinellas County, Mr. Cummings was tried on the Pinellas County case first. I met with Mr. Cummings on several occasions prior to his trial on March 1, 1995, and reviewed with him all depositions and discovery which had been done in his case. I was prepared for trial, and had no basis to seek a continuance. Mr. Cummings was provided ample opportunity to review the documentation in his case and consult with counsel.

Mr. Cummings' complaint that I did not allow him to pick his jury is unfounded. It is my practice in jury selection to encourage participation by the client and seek their input in making decisions about prospective jurors. Mr. Cummings and I reviewed the venire panel from a chart with which I had completed during jury selection, and I considered his thoughts about the

EXHIBIT (J)

Ms. Frances R. Brown
June 13, 1995
Page Two

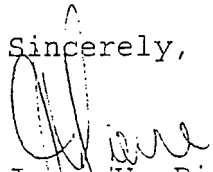
Exhibit (B) (J)

prospective jurors in my decision making process.

Mr. Cummings' assertion that I failed to interview witnesses on his behalf is false. When he was interviewed by our office on September 8, 1994, he failed to provide the name of any witnesses to this offense. During the week prior to trial, he provided the name of another inmate as a defense witness. That witness testified at the trial. A self defense argument was presented at trial and Mr. Cummings testified. The jury rejected the self defense argument but found Mr. Cummings guilty of the lesser included offense of Attempted Murder in the Second Degree with a firearm.

Please feel free to contact my office if you need additional information.

Sincerely,


James V. Pierce
Assistant Public Defender

JVP/kh

Exhibit (Q)

F22

IN THE CIRCUIT COURT IN AND
FOR BREVARD COUNTY, FLORIDA
EIGHTEENTH JUDICIAL CIRCUIT

STATE OF FLORIDA,

Plaintiff,

vs.

CRAIG CUMMINGS,

Defendant,

CASE NO. 94-23601-CF-A

FILED IN OFFICE
ROCKLEDGE
MAR 14 4 53 PM '95
CLERK

MOTION TO STRIKE POTENTIAL AGGRAVATING CIRCUMSTANCE

COMES NOW THE DEFENDANT, CRAIG CUMMINGS, by and through undersigned counsel and moves this Court to strike his St. Petersburg conviction as an aggravating circumstance, and as grounds would stat

1. Defendant is charged by indictment with First Degree Murder Shooting Into an Occupied Vehicle, and Possession of Firearm by a Convicted Felon.

2. The Defendant was arrested on September 30, 1994, on the above charges while he was pending trial on felony charges in Pinellas County.

3. Defendant was transported from Pinellas County Detention Center to Brevard County to answer to the charges contained in the indictment.

4. The Defendant was informed by his Pinellas County counsel that his trial in Pinellas would be after his Brevard County charges were tried.

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Exhibit (a)

5. The Defendant was represented by the Pinellas County Public Defender's Office and did not have contact with his St. Petersburg attorney while in Brevard County custody.

6. The Defendant was transported to Pinellas County from Brevard County on February 23, 1995, without any prior notice to the Defendant or his undersigned counsel.

7. The Defendant's right to counsel guaranteed by the Sixth Amendment of the United States Constitution and Article I section 16 of the Florida Constitution was violated by the State's covert transport of the Defendant.

8. The prosecution of said Defendant in Pinellas County prior to disposition of his Brevard County charges was a coordinated effort by the State to create an additional aggravating circumstance.

9. The Defendant has been denied his right to effective assistance of counsel as the complete lack of notice to the Defendant enabled the State to enhance their ability to seek the death penalty by clandestinely proceeding and creating an aggravating circumstance.

10. Previous conviction of a violent felony is the only aggravating circumstance which the State has the ability to manipulate and the State's efforts against the Defendant violate his constitutional rights to due process.

WHEREFORE, Defendant requests this Court strike his St. Petersburg conviction as a potential aggravating circumstance.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing

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