IN THE SUPREME COURT OF FLORIDA

Case No. SC17-2151

DELMER SMITH,

Appellant,
v

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE TWELFTH JUDICIAL CIRCUIT COURT IN AND FOR MANATEE COUNTY, STATE OF FLORIDA

REPLY BRIEF OF APPELLANT

Eric C. Pinkard
Florida Bar No. 651443
Special Assistant CCRC
Capital Collateral Regional Counsel
Middle Region
13043 W. Linebaugh Avenue
Tampa, FL 33626
(813) 444-4332
epinkard@creedlawgroup.com
support@ccmr.state.fl.us
Counsel for Appellant

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

ARGUMENT IN REPLY

ARGUMENT I: MITIGATION

In their Answer Brief, the state argues that the mitigating evidence presented at the evidentiary hearing does not entitle Mr. Smith to relief because Mr. Smith allegedly prevented his counsel from discovering the mitigation and the mitigating evidence is cumulative to that put forth at the penalty phase of the trial. *See* AB at 31-40.

MR SMITH'S STATED RELUCTANCE TO HAVE HIS FAMILY MEMBERS CONTACTED IS NOT A BAR TO HIS INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM BECAUSE COUNSEL HAD FAILED TO CONDUCT AN ADEQUATE INVESTIGATION TO BEGIN WITH SO ANY ALLEGED WAIVER BY MR. SMITH IS A LEGAL NULLITY IN ACCORDANCE TO PRECEDENT FROM THIS COURT

Dr Eisenstein stated that he was asked prior to trial to conduct a neuropsychological evaluation of Mr. Smith by his attorneys. (PC-ROA 942) He was retained in June of 2012 and was given some background material and completed a two-day evaluation of Mr. Smith. (PC-ROA at 944). He began his background investigation in July of 2012, when Mr. Smith's trial was scheduled for the next month. He characterized that as not a normal amount of time to be asked to conduct a full-blown evaluation and investigation of Mr. Smith. (PC-ROA 945) He recalled no conversation from Mr. Smith's counsel about getting a continuance to conduct a more complete penalty phase investigation. (PC-ROA 946). Dr. Eisenstein outlined the materials he was provided concerning Mr. Smith. (PC-ROA 946).

Concerning family history Dr. Eisenstein stated he was provided information that Ms. Velma Shelton had moved out of the Household with Delmer Smith Sr. because he was too critical of Delmer and was abusive to him and the other children. He further stated that he was not provided an opportunity to talk to Mr. Smith's siblings to get directly from them what sort of abuse was occurring within the household. (PC-ROA 960). He stated that would be something he would like to do before giving testimony concerning mitigating circumstances. (PC-ROA 961). He stated that the lack of an opportunity to expand upon and find out details as to the extent of the abuse in the household was a handicapping factor as far as his ability to put forth the full picture of mitigating circumstances on behalf of Mr. Smith. (PC-ROA 961). Additionally, Dr. Eisenstein was not given any opportunity to speak to Mr. Smith's siblings between the August 2012 sentencing proceeding before the jury and the April of 2013 Spencer hearing, a span of approximately 8 months. (PC-ROA 962). Dr, Eisenstein was not asked to go to Detroit to interview any of Mr. Smith's siblings. (PC-ROA 962). He stated it is common in cases of abuse within a household that witnesses to it are reluctant to come forward with testimony, due to the psychological effect of such sensitive information.

Bjorn Brunvand, counsel for Mr. Smith at trial and sentencing, was also presented at the evidentiary hearing. He stated he primarily worked on the penalty phase. (PC-ROA 1010). He stated there was a time where Mr. Smith was only

interested in the guilt phase, and did not want any penalty phase investigation. (PC-ROA 1012). However, he did sign several forms to allow counsel to obtain background records before Dr. Eisenstein was retained. (PC-ROA 1012). The data was acquired by investigator Colleen Quinn-Adams. (PC-ROA 1012). Up until shortly before trial Mr. Smith did not want his family members spoken to. (PC-ROA 1014). At some point counsel decided to talk to the family members anyway. (PC-ROA 1015). He admitted to having a report from Dr. Eisenstein which made some reference to Delmer's father being abusive to him but providing no details. (PC-ROA 1018). The date of the report was August 8, 2012. (PC-ROA 1019). The only sibling the defense spoke to was Alice Smith and did not interview Janet Shelton or Patricia Smith. (PC-ROA 1019) They had not called back from telephone calls. (PC-ROA 1020). He never contemplated asking for a continuance of the penalty phase in order to locate and speak to Mr. Smith's other siblings. (PC-ROA 1020). He admitted that talking to people in person is superior to over the telephone. (PC-ROA 1021). He said had he gotten information of abuse from any of the siblings he would have used it during the penalty phase. (PC-ROA 1021). He admitted that the sentencing order discounted the abuse of Delmer because it was based upon only a "passing reference" to it in one report. (PC-ROA 1021). He further stated that he was not aware of any efforts between the penalty phase before the jury and the

Spencer hearing to contact Mr. Smith's siblings about the abuse suffered by Delmer within the household. (PC-ROA 1021).

In *State v. Lewis*, 838 So.2d 1102 (Fla. 2002), this court stated that a capital defendant cannot make a knowing and intelligent waiver of mitigating evidence unless counsel has first investigated all avenues of mitigation and advised the client so that he reasonably understands what is being waived and its ramifications and hence is able to make an informed and intelligent decision. *Id* at 1113. The decision strongly states the obligation to investigate and prepare for the penalty portion of a capital case. *Id*. In the *Lewis* case defense counsel failed to talk to family members and in postconviction it was discovered that the defendant was exposed to violence and severe neglect and prolonged child abuse. *Id.* Thus his waiver of mitigation circumstances was not knowing, voluntary and intelligent.

Here defense counsel responsible for the penalty phase did not retain a mental health expert until June of 2012, and Dr. Eisenstein did not begin any efforts to uncover mitigating circumstances until July of 2012, which was only one month before the penalty phase. He was not given an opportunity to speak to Mr. Smith's siblings which he stated hampered his ability to obtain a full understanding of the available mitigating evidence in the case.

As demonstrated by the above testimony, counsel responsible for the penalty phase made no effort to have an investigator speak to Mr. Smith's siblings although

he had information in a report about some sort of abuse in the household. He further admitted that he never contemplated asking for a continuance of the penalty phase so the evidence of abuse could be followed up upon, and most tellingly he never directed any follow up between the time of the penalty phase before the jury and the Spencer hearing which did not take place until April 19 of 2013 a span of 8 months. There is nothing in the record that explains why counsel did not follow up in the evidence of abuse in the household during Mr. Smith's childhood. There is no explanation as to why Mr. Smith would subject himself and cooperate with the objective testing of brain damage, to be presented at the Spencer hearing, but not allow his siblings to be interviewed for the important purpose of presenting the evidence of severe abuse of Mr. Smith during his childhood. The only reference of any efforts to talk to Mr. Smith's siblings were that phone calls were made and not returned. Such is not the type of investigation this Court contemplated in the *Lewis* case in order for counsel to properly prepare for the penalty phase portion of the trial.

THE MITIGATING EVIDENCE PRODUCED AT THE EVIDENTIARY HEARING WAS NOT CUMULATIVE

Dr. Eisenstein then testified as to being contacted by postconviction counsel and going to Detroit with the undersigned counsel, investigator Sophia Sustaita, to interview Mr. Smith's siblings, including Patricia Smith, Janet Shelton, and Dale Shelton. (PC-ROA 967). Dr. Eisenstein later reviewed the vide taped deposition of Patricia Smith, taken by counsel in Detroit, and introduced into evidence at the

evidentiary hearing. (Defense Exhibit #3). He felt there was important information obtained during that deposition which corroborated his direct discussions with Patricia Smith as follows:

> Delmer Smith Sr. was very strict, and used extension cords, sticks, metal rods, pots, pans and belts on the children. They all got hit, but Delmer got it the worst. Patricia stated that her father would "tear Delmer up" reminding her of slavery, leaving welts and red marks on his back. If Delmer was involved in a fight and lost his dad would beat him up. He called Delmer a half breed, the n-word, and a bitch. These beatings of Delmer would occur several times a week. Delmer was often restrained during these beatings, and sometimes would occur while he was naked and in the bathtub. Patricia was also the subject of repeated beatings from her father and still had a scar on her leg as a result. The beatings occurred until Delmer was 12 or 13 years old. (PC-ROA 967-972).

Dr. Eisenstein also relayed his conversations with Janet Shelton, one of Delmer's siblings:

> Janet Shelton lived in the household and is six years older than Delmer. When Delmer was born the members of the household were Velma Smith, Delmer Smith Sr., Janet Shelton, Dale Shelton, and Delmer Smith. Janet stated there was a lot of domestic abuse between Delmer's mother and father, and she witnessed the father striking Delmer's mother in the stomach while she was pregnant with Delmer. When Delmer was five years old the "whoopings" of Delmer started and continued until he was 12 or 13 years old. The physical abuse occurred every weekend. The father would use cords, switches and belts often when Delmer was naked in the bathtub. They would cause bleeding and welts so many you couldn't even count. She reported that when Delmer was about nine and getting bigger he would get tied up to a pole in the basement and beaten by his father. He would call Delmer a half-breed, the n-word, bitch, a piece of dirt, told he would never be anything, and was nothing, and to get out and don't come back. (PC-ROA 978-979).

Dr. Eisenstein testified that the information of the severe physical abuse obtained from Patricia Smith and Janet Shelton added a very significant dimension in terms of understanding not only diagnostically but also in terms of mitigating circumstances in terms of the effect the horrific abuse had on Delmer Smith. The abuse provided Dr. Eisenstein information for an additional diagnosis of Post-Traumatic Stress Disorder. He also stated that the additional diagnosis and evidence of severe abuse strengthened his opinion that both statutory mental mitigators were present in Mr. Smith's case. (PC-ROA 979-985)

The above evidentiary hearing testimony provided by Dr. Eisenstein contains a plethora of additional mitigating circumstances which should have been presented by counsel at the penalty phase of the case. Most importantly, significant physical abuse of Mr. Smith throughout his childhood was reported by a variety of the family members, providing Dr. Eisenstein with additional diagnostic impressions of post-traumatic stress disorder. At the evidentiary hearing counsel also presented the testimony of both Janet Shelton and Patricia Smith, who both reiterated what they told Dr. Eisenstein about their observations of the severe and repeated abuse suffered by Delmer Smith at the hands of his father during his childhood. (Defense Exhibit #3 with DVD testimony of Janet Shelton).

In *Bevel v. State*, 221 So.3d 1168 (Fla. 2017), this Court found that there was a deficient mitigation investigation which was only started 12 days before the trial

began, and in which there was prejudice for counsel to failure to uncover and present evidence of childhood sexual abuse, neglect and poor living environment while growing up, as well as mental disorders that effected his mental state at the time of the crime. The Court was clear that the standard is whether the unpresented mitigating evidence could have swayed one juror. *Id.* At 1181.

In *State v. Bright*, 200 So.3d 710 (Fla. 2016) this Court found failure of counsel to discover evidence of an abusive childhood leading to specific psychiatric diagnosis of PTSD met both the deficiency and prejudice prong of *Strickland*. Specifically, undiscovered evidence was submitted in postconviction that Bright was severely beaten by his father during childhood in his bedroom, drawing blood, leaving welts, rendering him unconscious, using an electrical cord, leather belt, or his hand. *Id.* at 723. The psychologist at the evidentiary hearing testified that the severe trauma and abuse caused him to make an additional diagnosis of Post Traumatic Stress Disorder. *Id.* The facts of the *Bright* case are very similar to Mr. Smith's case. It was established at the evidentiary hearing in Mr. Smith's case that he too suffered severe and repeated physical abuse at the hands of his father, while he was tied to a pole in the basement, often while he was nude in the bathtub. Also, like in *Bright*, expert psychologist Dr. Eisenstein gave an additional diagnosis of PTSD based upon the severe abuse greatly strengthening his testimony concerning the existence of statutory mitigating circumstances.

Contrary to the arguments of the state, the evidence of the severe abuse sustained by Mr. Smith, coupled with the additional diagnosis of PTSD, was not cumulative of the mitigation presented at the time of the trial. There was only scant mention of possible abuse of Mr. Smith, which was dismissed by the lower court due to a lack of evidentiary support. Instead, the additional mitigation presented at the evidentiary hearing was profound and meaningful and the failure to present it at Mr. Smith's trial satisfies both the performance and prejudice prong of *Strickland.* Additionally, there was absolutely no strategic reason put forth by counsel at the evidentiary hearing for not putting it on, and the state cited no detrimental effect the information could have had on Mr. Smith's presentation of mitigating circumstances.

ARGUMENT II: SEARCH OF DUFFEL BAG

The state argues in their Answer Brief that even if counsel was ineffective for failing to file a motion to suppress the evidence obtained from the Duffel Bag, no prejudice was established because there was other physical evidence linking Mr. Smith to the murder aside from the coin collection, Minnie Mouse Key Chain, men's watch, medical encyclopedia, and the lock. *See* AB 42-44.

The state's prejudice argument is incorrect as the Minnie Mouse Key Chain, men's watch, medical encyclopedia, and lock were a central and critical part of the state's case. *See Smith v. State*, 170 So.2d 745 (Fla. 2015). The reason those items

were particularly damaging evidence is because the state introduced evidence of a telephone call between Mr. Smith and Martha Tejeda where he admitted to ownership of the Duffel Bag and acknowledged the incriminating evidence within the bag. That is in contrast to the watch Michelle Quinnones testified that Mr. Smith had given to her and the necklace that Mr. James Cellecz testified that Mr. Smith asked him to pawn. Mr. Cellecz's credibility was strongly attacked at the trial. Because Mr. Smith never admitted to giving the watch to Quinnones or the necklace to Mr. Cellecz, the watch and necklace had far less evidentiary value in linking Mr. Smith to the homicide. Additionally, according to the state, Mr. Smith's fingerprint was found inside the medical textbook. Accordingly, the admission of the illegally seized items of evidence found inside the Duffel Bag was highly prejudicial.

The state is also incorrect in asserting that Mr. Smith had abandoned his ownership interest in the Red Duffel Bag. The testimony is exactly the opposite as the police absolutely knew that Mr. Smith was the owner of the Red Duffel Bag based upon the telephone conversation with Martha Tejeda. In the stipulation entered into between the state and defense at the evidentiary hearing it was agreed that Mr. Smith owned the Duffel Bag and he had asked Martha Tejeda to store it at her residence. (PC-ROA-418 – 419). No evidence in the record establishes that Martha Tejeda owned or had dual ownership or had ever "used" the bag. Contrary to the arguments of the state, that fact that property is in possession of a third party does

not give the third-party mutual ownership. Furthermore, the fact that law enforcement did obtain a search warrant for the metal box found inside the Duffel Bag is strong evidence that Ms. Tejeda had not acquired dual ownership in the Duffel Bag or its contents. If that were the case, then why did the state obtain a search warrant for the metal box? That issue if not addressed in the Answer Brief.

This case is also distinguishable from *Heyne v. State*, 214 So.3d 640 (Fla. 2017). In that case the defendant hid a box in a person's house and left it there. In those circumstances this court held that Mr. Heyne had abandoned the property. That is not the case here where Mr. Smith, as stipulated by the parties, asked Martha Tejeda to store the Red Duffel Bag. That is not an act of abandonment.

ARGUMENT III: SEARCH OF CELL PHONE

In their Answer Brief the state employs layers of convoluted logic and arguments to try and persuade this Court that Mr. Smith is not entitled to relief based upon this Court's opinion in *Smallwood v. State*, 113 So.3d 724 (Fla. 2013), where it was held that when a cell phone is obtained during an arrest, a search warrant is required before its data can be accessed by law enforcement. This is so even though the following facts are not refuted by the record:

1. Prior to Mr. Smith's trial even beginning this Court accepted review as a matter of great public importance whether a police officer can search through photographs contained in a cell phone without a warrant.

2. Mr. Smith's counsel did not take any action to preserve this issue at trial and did not file a motion to suppress even though the discovery showed that the police searched Mr. Smith's cell phone without a warrant.

3. Prior to Mr. Smith's sentencing, this Court entered its opinion in *Smallwood II* ruling that a warrant was required before the police could access data on a cell phone.

4. After *Smallwood II* counsel for Mr. Smith took no action even though clearly Mr. Smith's conviction had not become final as he had not even been sentenced.

The state's arguments concerning whether counsel for Mr. Smith should have filed a motion to suppress are that "trial counsel cannot be ineffective for failing to anticipate changes in the law". *See* AB at 53. However, in this case the change in law occurred in the middle of Mr. Smith's trial and before he was sentenced. So, there is no "hindsight" issue as argued in the Answer Brief. *See* AB at 54.

The state also contends that Mr. Smith's counsel was not ineffective for failing to file motions related to *Smallwood* after the opinion was issued in the middle of Mr. Smith's trial. *See* AB 55-56. Counsel for Mr. Smith stated that he was unaware of either the acceptance of review by this Court of *Smallwood* or the opinion of the Court in *Smallwood II*. (PC-ROA- 1104, Defense Exhibit 12); (PC-ROA 1106). He stated that he would have filed "some sort of motion" with the court had he been

aware of the *Smallwood II* opinion. (PC-ROA-1106). The state argues that even when this Court issues an opinion that has direct bearing on the presentation or suppression of key evidence in a homicide case, it is not deficient performance for counsel to remain ignorant of the opinion and take no action. The state is simply incorrect in stating that counsel could do nothing because Mr. Smith's case was not yet final and he was legally entitled to application of *Smallwood II* to his case and a new trial. A motion for new trial would have been successful.

The state also argues that the numerous witnesses called at trial from Mr. Smith's cell phone contact list provided minimal and insignificant testimony. *See* AB at 56. However, the record does not bear out the state's assertions.

The state made great use of these records and called witnesses from Mr. Smith's contact list to establish calls were not made where anyone besides Mr. Smith picked up or answered the phone. This was done to negate any contention that Mr. Cellecz had borrowed Mr. Smith's phone on the day of the homicide. The defense had presented a theory that Mr. Cellecz was the true killer in the case.

Using the Phone Examination Report the state called a parade of witnesses from the phone contacts obtained from Mr. Smith's phone including Michelle Quinones (#45 on the contact list), Kim Osborne (#39 listed as "Kim Neighbor"), Joshua Koch (#32)(ROA 2507), Brian Illyes (#19)(ROA 2513). Jack Jones

(#27)(ROA 2516), Wesley Mills (#62)(ROA 2520, 2521), Robert Witte (#10)(ROA 2533-2535), Kimberly Jackques (#35)(ROA 2538-2539).

The Assistant State Attorney devoted not less than seven pages of his rebuttal argument going over the testimony of these witnesses found in Mr. Smith's contact list. (ROA 2633-2640), all to negate the defense that Mr. Cellecz was the killer. This evidence, along with the cell phone tracking made possible by the warrantless search of Mr. Smith's cell phone and recovery of the Mobile Device Number, was highly prejudicial to Mr. Smith.

ARGUMENT IV: RILEY V. CALIFORNIA

In their Answer Brief the state asserts that Mr. Smith is procedurally barred from application of *Riley v. Carpenter* 134 S.Ct. 2473 (2014) because his case is final and in postconviction and because Mr. Smith should have raised the issue on direct appeal, citing *Tefteller v. Duggar*, 734 So. 2d 1009 (Fla. 1999). *See* AB at 60, 61.

The state's reliance on *Tefteller* is misplaced as that opinion also says that in order to raise the claim on direct appeal the *Caldwell* claim had to be preserved at trial by proper objection of counsel. *See Tefteller* at 1019. In fact the opinion states that Tefteller would have no claim for ineffective assistance of appellate counsel for failing to raise and preserve the *Caldwell* claim at trial. *Id.* This places Mr. Smith in legal limbo. The state asserts his *Riley* based claim is procedurally barred because it

was not raised on direct appeal, and case law from this Court states claims not preserved at trial cannot be the subject of a direct appeal.

The opinion in *Moreland v. State* 582 So. 2d 618 (Fla. 1991) states that fundamental fairness is a concern in deciding if a case's holding should be applied retroactively, citing *Witt v. State* 387 So.2d 922 (Fla. 1980), that he doctrine of finality should be abridged only when a more compelling objective appears, such as ensuring fairness and uniformity in individual adjudications.

Such a compelling objective appears in this case, as the only reason Mr. Smith was not able to raise the issue of the application of *Riley* on direct appeal was because his counsel did not preserve the underlying issue of the efficacy of the search of Mr. Smith's cell phone. In other words, because Mr. Smith's counsel was ineffective in preserving the issue, he is now procedurally barred. Mr. Smith respectfully request that equity be applied and that *Riley* be applied to his case. Appellant relies upon his previous arguments concerning the prejudice associated with the contacts derived from Mr. Smith's cell phone during the warrantless and illegal search of his phone.

Additionally, in *Carpenter v. United States*, 138 S.Ct. 2206 (2018), the Court held that it is necessary that the police obtain a search warrant before obtaining information from third party cell phone providers in order to "track", via historical data, a particular person's cell phone locations.

Mr. Smith asserts that the *Carpenter* case should be applied retroactively to Mr. Smith's case because (1) it emanates from the United States Supreme Court. (2) is constitutional in nature, and (3) constitutes a development of fundamental significance. *See Mosely v. State*, 209 So.3d 1248 (Fla. 2016). Should this Court apply Carpenter retroactively to Mr. Smith's case, the prejudice is apparent. The cell phone tracking was relied upon heavily in obtaining a conviction against Mr. Smith, with this Court stating as follows:

This Court summarized the state's presentation of cell phone and cell tower data as follows:

> The State presented evidence to establish that on 3:44 p.m. on the day of the murder, Smith's cell phone was at a location close to where the murder took place—a fact that was established when Smith's cell phone received a call that went unanswered and records indicated that his cell phone used a cell tower that was 1.24 miles away from the victim's home. This timing was particularly striking because the victim had left Publix at 3:38 p.m. and lived only a few minutes away from the store. Cell phone records further demonstrated that both before and after this time, Smith's cell phone was located close to where Smith lived in Sarasota County. The State also called numerous people who had called Smith's cell phone number or had received a phone call from Smith's cell phone number on the day of the murder. While none of the witnesses could recall specific telephone calls they made on August 3, nobody reported receiving a call from Smith's number from a person other than Smith. Similarly, nobody recalled calling Smith and having anyone other than Smith answer the call.

Smith at 751.

We now know that the Government obtained the information as to Mr. Smith's locations on the day of the homicide through an unconstitutional search of third party cell phone providers. Justice dictates that relief be granted.

ARGUMENT V: USE OF CELL TOWER EXPERT

The state asserts in the Answer Brief that expert Robert Aguero "agreed with much of the work that Detective Diamond did in the case." *See* AB at 68. The state is incorrect in that assertion. Mr. Aguero specifically stated that Detective Diamond's trial testimony that "the furthest tower connection you're going to get is maybe 7 to 8 miles" was not accurate. (PC-ROA 1075). The actual maximum range is 30 miles. (PC-ROA 1074-1075) Therefore, the 3:44 call could have been made between a short distance (a few blocks) and 30 miles from the tower, encompassing the area over the bay and Skyway Bridge. (PC-ROA 1076). Additionally, Mr. Aguero took issue with width of the sectors used by Detective Diamond, causing a very narrow range of coverage for the sector that the call at 3:44 P.M. utilized. (PC-ROA 1077).

The difference between 7 miles and 30 miles as the maximum tower range is of great significance in this case. If Detective Diamonds assertions on that topic are correct, then at 3:44 p.m. Mr. Smith's phone was within seven miles of the tower which was only 1.2 miles of the victim's home. However, if Mr. Aguero's testimony is correct as 30 miles being the correct maximum tower range, then at 3:44 p.m. Mr.

Smith's phone could have been 30 miles away from the tower encompassing an area much farther from the victim's home. Such testimony is critical and undermines the value of the cell tower testimony. Counsel was ineffective for not hiring an expert to present those findings to raise reasonable doubt.

Furthermore, the state's assertion that counsel articulated a sound strategic reason for not employing a cell tower expert is incorrect. Trial counsel merely stated he did not retain a cell phone expert because he did not believe it would be helpful to the case. (PC-ROA at 1109, 1112, 1127). However, he never articulated why he did not think such an expert would be helpful. Only his conclusory opinion without underlying justification.

ARGUMENT VI: *Hurst*

Mr. Smith relies on the arguments put forth in his Initial Brief concerning *Hurst.*

CONCLUSION

Relief is warranted in the form of a new trial or a new penalty phase, or any other relief the Court deems proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing reply brief has been electronically furnished upon opposing counsel of record, on this 5th day of September, 2018.

/s/ Eric C. Pinkard
Eric C. Pinkard
Florida Bar No. 651443
Special Assistant CCRC
Capital Collateral Regional Counsel
Middle Region
13043 W. Linebaugh Avenue
Tampa, FL 33626
(813) 444-4332
epinkard@creedlawgroup.com
support@ccmr.state.fl.us

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that a true copy of the foregoing RELY BRIEF OF THE APPELLANT was generated in Times New Roman, 14 point font, pursuant to Fla. R. App. 9.210(a)(2).

/s/ Eric C. Pinkard
Eric C. Pinkard
Florida Bar No. 651443
Special Assistant CCRC
Capital Collateral Regional Counsel

Middle Region
13043 W. Linebaugh Avenue
Tampa, FL 33626
(813) 444-4332
epinkard@creedlawgroup.com
support@ccmr.state.fl.us