

IN THE SUPREME COURT OF FLORIDA

GARY LAWRENCE,
APPELLANT

CASE NO.: SC00-2290
LOWER TRIBUNAL NO.: 94-397CF

VS.

**STATE OF FLORIDA,
APPELLEE**

APPELLANT'S REPLY BRIEF

APPEAL FROM DENIAL OF 3.850 MOTION FOR POST
CONVICTION RELIEF

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ISSUE I

**THE TRIAL COURT ERRED IN DENYING
AN EVIDENTIARY HEARING AS TO ISSUES
INVOLVING INEFFECTIVE ASSISTANCE OF
COUNSEL CONTRARY TO THE V, VI AND XIV
AMENDMENTS TO THE UNITED STATES
CONSTITUTION**

**(STANDARD OF REVIEW – INDEPENDENT
STANDARD – 3.850 ALLEGATIONS NOT
CONCLUSIVELY REBUTTED)**

APPELLANT, GARY LAWRENCE rejects the State's analysis of Issue

No. I that a 3.850 hearing was unnecessary. By its Order denying the 3.850, the trial court simply ruled that defense counsel Miller had done enough at trial. Appellant urges this court to find this issue must be resolved in an evidentiary hearing. This position is clearly supported by *Freeman v. State*, 761 So. 2d 1055 (Fla. 2000).

The State suggest that Appellant should have shown whether defense counsel could have obtained another expert. *Gaskins v. State*, 737 So. 2d 509 (Fla. 1999) directly addresses this contention by holding there to be no requirement to allege names and identities of witnesses.

An evidentiary hearing is required.

ISSUE II

**THE TRIAL COURT ERRED IN DENYING
DEFENDANT'S 3.850 INEFFECTIVE COUNSEL
CLAIM BASED UPON COUNSEL'S CONCESSION
OF GUILT IN BOTH GUILT AND PENALTY PHASES
WITHOUT ON THE RECORD CONSENT BY
DEFENDANT (CONTRARY TO DUE PROCESS
AND ASSISTANCE OF COUNSEL PROVISIONS OF
V, VI AND XIV AMENDMENTS OF THE UNITED
STATES CONSTITUTION AND SECTIONS 9 AND
16, FLORIDA CONSTITUTION)**

(STANDARD OF REVIEW-INDEPENDENT STANDARD)

Appellant concede that Florida Law leans against him as to a concession of guilt argument. Appellant urges that constitutionally the law should lean in his direction with requirement of an on record waiver or acknowledgment of counsel's tactics. Otherwise, a not intellectually gifted defendant's testimony versus that of a learned trial counsel is tantamount to no standard at all. If the record is clear, then the problem is solved forever and should be constitutionally mandated.

There should be no difference in the law between concession of guilt as charged as opposed to concession of guilt to a lesser offense.

ISSUE III

**THE TRIAL COURT ERRED IN DENYING
DEFENDANT'S 3.850 INEFFECTIVE COUNSEL
CLAIM BASED UPON COUNSEL'S FAILURE
TO ADEQUATELY ADVISE DEFENDANT OF
HIS RIGHT TO TESTIFY AND FAILURE TO
OBTAIN A RECORD WAIVER OF THIS RIGHT
(VIOLATION OF V, VI AND XIV AMENDMENTS**

OF THE UNITED STATES CONSTITUTION AND
SECTIONS 9 AND 16 OF THE FLORIDA
CONSTITUTION)

(STANDARD OF REVIEW-COMPETENT
SUBSTANTIAL EVIDENCE-INDEPENDENT
STANDARD)

Appellant's position here is the same as Issue II. The matter of defendant's testifying is particularly troubling when recollections of counsel and defendant must be had with nothing on the record.

Again, Appellant urges this court adopt a constitutional standard requiring an on the record waiver conducted by the trial judge.

ISSUE IV

THE COURT ERRED IN DENYING
DEFENDANT'S 3.850 MOTION UPON
GROUNDS THE PROSECUTION ENGAGED

IN BURDEN SHIFTING ARGUMENT
(INEFFECTIVE ASSISTANCE OF COUNSEL)
IN THE PENALTY PHASE AND INDIRECT
COMMENTS ON DEFENDANT’S FAILURE
TO TESTIFY IN THE GUILT PHASE (UNITED
STATES CONSTITUTION, ARTICLES V AND
XIV, AMENDMENT SECTION 9, FLORIDA
CONSTITUTION)

(STANDARD OF REVIEW – COMPETENT
SUBSTANTIAL EVIDENCE – INDEPENDENT
STANDARD)

The State seems to argue that because they had a strong case at trial that the prosecutor should thus be permitted to use “uncontroverted” as it applies to Defendant’s statements. No one but defendant is capable of controverting his own statements. This issue calls for reversal because it hits squarely at the burden of proof standard. A prosecutor should not be excused for impropriety of argument because he may have a strong case.

ISSUE V

**THE COURT ERRED IN FAILING TO GRANT
DEFENDANT'S 3.850 MOTION TO REQUIRE
CO-COUNSEL IN A DEATH PENALTY CASE
(VIOLATION OF V, VI AND XIV AMENDMENTS
OF THE UNITED STATES CONSTITUTION,
SECTION 9 CONSTITUTION OF THE STATE
OF FLORIDA)**

**(STANDARD OF REVIEW – ABUSE OF
DISCRETION)**

Florida law is against Appellant on this issue, but it seems that co-counsel should be a requirement in any death penalty case. It is simply not possible for one counsel to adequately work both guilt and penalty phases of a death case. Trial counsel never requested one. That seems to be ineffective assistance.

ISSUE VI

**THE COURT ERRED IN IMPROPERLY
INSTRUCTING THE JURY ON THE
AGGRAVATOR UNDER SENTENCE OF
IMPRISONMENT – INEFFECTIVE COUNSEL
(VIOLATION OF V, VI AND XIV AMENDMENTS
OF THE UNITED STATES CONSTITUTION AND
SECTION 9, FLORIDA CONSTITUTION)**

**(STANDARD OF REVIEW – COMPETENT
SUBSTANTIAL EVIDENCE – INDEPENDENT
STANDARD)**

Defendant should not be presented to the jury as being under sentence of imprisonment without qualification that his release was lawful.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by regular U.S. Mail to the Office of the BARBARA YATES, ASST ATTORNEY GENERAL, The Florida Capitol Building, Plaza Level One, Tallahassee, Florida 32399-1050, and The Office of the State Attorney, JOHN MOLCHAN, ASA, Santa Rosa County, P O Box 645, Milton, Florida 32572 this the _____ day of August, 2001.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing APPELLANT’S REPLY BRIEF
APPEAL FROM DENIAL OF 3.850 MOTION FOR POST CONVICTION
RELIEF complies with Rule 9.100(1) and Rule 9.210(a)(2), FLORIDA RULES OF
APPELLATE PROCEDURE, and that this Brief has been submitted in **Times
New Roman 14-point font.**

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