UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA

vs. **Case No. 3:06-cv-611-J-33MMH**

DERREL HANNAH

_____/

PETITIONER HANNAH'S CORRECTED SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF PETITION FILED UNDER 28 U.S.C. § 2254

Comes Now DERREL HANNAH, by and through his counsel, WILLIAM MALLORY KENT, and files this supplemental memorandum of law in support of his petition filed under 28 U.S.C. § 2254.

MEMORANDUM OF LAW

HANNAH RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL BECAUSE HIS DEFENSE COUNSEL, JOHN E. BERGENDAHL, FAILED TO FILE A MERITORIOUS MOTION TO SUPPRESS THE PHYSICAL EVIDENCE (COCAINE, DRUG PARAPHERNALIA, $92,000 CASH, ETC.) IN THIS SINGLE COUNT DRUG CASE; AND HAD SUCH A MOTION BEEN FILED, HANNAH WOULD NOT HAVE PLED GUILTY TO TRAFFICKING IN COCAINE (28 GRAMS OR MORE BUT LESS THAN 200 GRAMS), BUT INSTEAD HAVE PLED NOT GUILTY AND INSISTED ON TAKING THE CASE TO TRIAL IF NECESSARY.

FACTS

There were two searches at issue in this case, (1) a warrantless, non-consensual search of Hannah's vehicle on March 13, 2003, followed by (2) a search of Dereck Borom's residence, 421 North Clay Street, St. Augustine, Florida, on April 8, 2003, based on a search warrant issued April 4, 2003. [Appx. F]

The search of Hannah's vehicle resulted in the seizure of $92,740.10 and a small amount of marijuana. The search of Borom's residence yielded cocaine, marijuana, drug paraphernalia and cash. [Appx. F plus Search Warrant Inventory and Return attached hereto]

Based on the evidence seized in the two searches Hannah was charged with trafficking in cocaine in violation of Florida Statutes, § 893.135 on April 29, 2003. [Appx. A]

From the existing record there appears no lawful basis for the stop of Hannah's vehicle; there was no probable cause for his arrest or the subsequent search of the vehicle; no warrant was obtained, and Hannah did not consent to the search.[1] Thus,

[1] Hannah alleged in his original 2254 petition that he was unaware of any formal forfeiture proceeding having been filed with respect to the seizure of his $92,740.10. We would respectfully request the Court order the State to respond to that allegation and file with this Court a certified copy of the state court forfeiture file in that proceeding if there was such a proceeding, and if not, to submit an affidavit from the officers responsible for the seizure of the $92,740.10 explaining under oath the disposition of the money.

there was no legal authority for the search of Hannah's vehicle and as such it was subject to suppression by a timely filed motion to suppress.

Regarding the search of Borom's residence, obviously Hannah would not have standing to challenge the search warrant, *per se*, which was the basis for the search of Borom's residence, absent a reasonable expectation of privacy in that residence. The current record is silent on that issue. However, the evidence seized in that search would nevertheless have been subject to challenge by Hannah, because it was derived from the illegal search of his vehicle.

The search warrant affidavit for the Borom residence search warrant specifies the facts in support of probable cause for that search warrant and can be summarized as follows:

1. Information supplied by an unidentified "confidential source," who is adjectivally described as "reliable," without however providing any facts to support that claim;

2. The search and seizure from Hannah's vehicle on March 13, 2003; and

3. Surveillance of Borom's residence.

[Appx. F]

Hannah complained in his state habeas under Rule 3.850, Florida Rules of Criminal Procedure, that his counsel had been ineffective for not challenging the

evidence upon which the case was based, which Hannah argued was based on nothing more than an unreliable tip. Hannah argued that had his counsel properly filed a motion to suppress he would not have pled guilty. [Appx. H] He noted that neither he nor his counsel had ever been provided with the affidavit for the search warrant, if one existed. [Appx. D]

In response the State filed with the state court the missing affidavit for the search warrant. [Appx. F] The State's response was not served on Hannah, only filed with the Court. [Appx F - no certificate of service to Hannah] After reviewing the affidavit, the state trial court found that there was probable cause for issuance of the search warrant. [Appx. G]

In upholding the search warrant the state court expressly relied upon the evidence seized from the search of Hannah's automobile as establishing probable cause for the search warrant. [Appx. G]

Hannah had never seen the affidavit for the search warrant until the trial court denied his 3.850 motion in reliance upon it, therefore his arguments in response to it were not presented until he filed his motion for rehearing on the denial of the 3.850 motion. [Appx. H] Hannah noted that the affidavit for the search warrant was not in the court file -- he had previously requested a copy of the affidavit from the court and state - - as was established by the fact that the state trial court had originally set his

3.850 motion for an evidentiary hearing, and only reversed that ruling and summarily denied relief when the State produced the affidavit. [Appx. H; Appx. G]

Hannah asked for permission to amend his 3.850 motion to respond to the new evidence - - that is, the affidavit - - and argued in his motion for rehearing that the affidavit did not contain any evidence to substantiate the claim that the confidential source was in fact reliable. [The state trial judge had implicitly accepted the argument that the reliability of the confidential source had not been established, because his order denying relief based its ruling instead on the affidavit's recital of the search and seizure from Hannah's vehicle and the surveillance of the residence.] [Appx H]

Hannah argued that the search of his vehicle and seizure of the $92,000 and marijuana from it on March 13, 2003 was illegal: it was warrantless, without probable cause, and without his consent, and therefore it was improper to rely upon it to determine that there was probable cause to search Borom's residence. [2] [Appx. H]

Hannah correctly noted that the surveillance described in the search warrant affidavit did not describe any evidence of criminal activity and did not satisfy a totality of circumstances test sufficient by itself to corroborate the tipster. [Appx. H]

The state trial court ignored Hannah's request for permission to amend his

---

[2] Borom and Hannah had both filed 3.850 motions and both challenged the judge's denial in a consolidated pleading.

3.850 and failed to address his arguments challenging the newly produced search warrant affidavit, including the argument that the search and seizure of his vehicle was illegal and improperly relied upon to establish probable cause to search Borom's residence, instead the state trial court summarily denied relief essentially without explanation.[3] [Appx I]

Hannah appealed the summary denial of his 3.850 to the Florida Fifth District Court of Appeal. He argued on appeal that no basis for the reliability of the confidential source was presented in the search warrant affidavit. Hannah also expressly argued that his counsel was ineffective for allowing the State to use the fruit of the poisonous tree to justify the warrant. [Appx. K] Hannah argued that the affidavit for the warrant was deficient because (1) nothing was presented to establish the reliability of the confidential source, (2) the surveillance presented no evidence of illegal activity, and (3) that the traffic stop and search and seizure from his vehicle was without probable cause and without a warrant. [Appx. K]

Hannah noted that the lower court had upheld the warrant finding that it was not based *solely* on the basis of a tip from an informant whose reliability was not established, but also based on the existence of surveillance and the evidence derived

---

[3] The State never challenged Hannah's contention that the search and seizure from his vehicle on March 13, 2003 was illegal.

from the prior search and seizure of his vehicle. [Appx. K]

Hannah reiterated that the State obtained its conviction based on the fruit of the poisonous tree and that had his counsel challenged this and presented these arguments, he would not have pled guilty but would have elected a trial by jury to preserve the merits of the arguments. [Appx. K]

The Fifth District Court of Appeal summarily denied his appeal without written opinion. *Hannah v. State*, 928 So.2d 1237 (Fla. 5th DCA 2006).

ARGUMENT

Based on the current record, the search of Hannah's car on March 13, 2003 and the evidence seized as a result of that search, was clearly subject to suppression. There is no record basis for the initial stop of the vehicle, therefore the stop itself was unlawful and therefore the initial illegal detention would taint anything that followed.[1] "As a general rule, evidence gathered as a result of an unconstitutional stop must be suppressed. *See Wong Sun v. United States,* 371 U.S. 471, 484-85, 83 S.Ct. 407, 416, 9 L.Ed.2d 441 (1963)." *United States v. Chanthasouxat,* 342 F.3d 1271, 1280 (11th Cir. 2003).

Even if there were a proper *Whren* basis for the initial stop, or if it were a proper *Terry* stop, Hannah did not consent to a search of the vehicle, nor was there probable cause for Hannah's arrest or for the search of the vehicle nor was there a

---

[1] "The Fourth Amendment protects individuals from unreasonable search and seizure." *United States v. Purcell*, 236 F.3d 1274, 1277 (11th Cir.), cert. denied, 534 U.S. 830, 122 S.Ct. 73, 151 L.Ed.2d 38 (2001); see U.S. Const. amend. IV. However, a traffic stop is a constitutional detention if it is justified by reasonable suspicion under *Terry* or probable cause to believe a traffic violation has occurred under. *Whren v. United States*, 517 U.S. 806, 810, 116 S.Ct. 1769, 1772, 135 L.Ed.2d 89 (1996). "The touchstone of the Fourth Amendment is reasonableness...." *United States v. Knights*, 534 U.S. 112, 118, 122 S.Ct. 587, 591, 151 L.Ed.2d 497 (2001). Thus, in order to determine whether or not a specific Fourth Amendment requirement such as probable cause or reasonable suspicion has been met, the court must determine if the officer's actions were reasonable. See *Ornelas v. United States*, 517 U.S. 690, 696, 116 S.Ct. 1657, 1661-62, 134 L.Ed.2d 911 (1996), *United States v. Chanthasouxat,* 342 F.3d 1271, 1275 (11th Cir. 2003).

warrant for the search. Therefore the search and seizure violated the Fourth Amendment to the United States Constitution and had it been challenged, this evidence would have been suppressed. "In order to make effective the fundamental constitutional guarantees of sanctity of the home and inviolability of the person, *Boyd v. United States*, 116 U.S. 616, 6 S.Ct. 524, 29 L.Ed. 746, this Court held nearly half a century ago that evidence seized during an unlawful search could not constitute proof against the victim of the search. *Weeks v. United States*, 232 U.S. 383, 34 S.Ct. 341, 58 L.Ed. 652." *Wong Sun v. United States*, 371 U.S. 471, 484, 83 S.Ct. 407, 416 (1963).

Hannah's counsel would have been on notice of the facts upon which to construct this argument if he had simply reviewed the discovery he was entitled to under Florida's liberal rules of discovery in criminal cases. That is, the basis for the challenge - - or at least a sufficient basis to put counsel on notice of a duty to inquire further - - would have been apparent from the face of the affidavit for the search warrant.

The motion to challenge the admissibility of the vehicle search in turn would have led directly to the argument that the evidence seized at Borom's residence under the April 4, 2003 search warrant was inadmissible as fruit of the poisonous tree of the vehicle search.

The exclusionary prohibition extends as well to the indirect as the direct products of such invasions. *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 40 S.Ct. 182, 64 L.Ed. 319. Mr. Justice Holmes, speaking for the Court in that case, in holding that the Government might not make use of information obtained during an unlawful search to subpoena from the victims the very documents illegally viewed, expressed succinctly the policy of the broad exclusionary rule:

'The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the Court but that it shall not be used at all. Of course this does not mean that the facts thus obtained become sacred and inaccessible. If knowledge of them is gained from an independent source they may be proved like any others, but the knowledge gained by the Government's own wrong cannot be used by it in the way proposed.' 251 U.S. at 392, 40 S.Ct. at 183.

The exclusionary rule has traditionally barred from trial physical, tangible materials obtained either during or as a direct result of an unlawful invasion. . . . We now consider whether the exclusion of Toy's declarations requires also the exclusion of the narcotics taken from Yee, to which those declarations led the police. The prosecutor candidly told the trial court that 'we wouldn't have found those drugs except that Mr. Toy helped us to.' Hence this is not the case envisioned by this Court where the exclusionary rule has no application because the Government learned of the evidence 'from an independent source,' *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 392, 40 S.Ct. 182, 183, 64 L.Ed. 319; nor is this a case in which the connection between the lawless conduct of the police and the discovery of the challenged evidence has 'become so attenuated as to dissipate the taint.' *Nardone v. United States*, 308 U.S. 338, 341, 60 S.Ct. 266, 268, 84 L.Ed. 307. We need not hold that all evidence is 'fruit of the poisonous tree' simply because it would not have come to light but for the illegal actions of the police. Rather, the more apt question in such a case is 'whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary

> taint.' Maguire, Evidence of Guilt, 221 (1959). We think it clear that the narcotics were 'come at by the exploitation of that illegality' and hence that they may not be used against Toy.

Wong Sun v. United States, 371 U.S. 471, 484-485, 487-488, 83 S.Ct. 407, 416-417 (1963).

The exclusionary rule prohibits the introduction of derivative evidence, both tangible and testimonial, that is the product of primary evidence seized during an unlawful search or that is otherwise acquired as the indirect result of an unlawful search, up to the point at which the connection with the unlawful search becomes so attenuated as to dissipate the taint. *Murray v United States*, 487 US 533, 101 L Ed 2d 472, 108 S Ct 2529 (1988) Thus, under the "fruit of the poisonous tree" doctrine, evidence which is located by the police as a result of information or leads obtained from illegally seized evidence is inadmissible in a criminal prosecution. *Alderman v United States*, 394 US 165, 22 L Ed 2d 176, 89 S Ct 961, reh. den. 394 US 939, 22 L Ed 2d 475, 89 S Ct 1177 (1969). However, evidence will not be excluded as fruit of the poisonous tree unless the illegality is at least the "but for" cause of the discovery of the evidence. *Segura v United States*, 468 US 796, 82 L Ed 2d 599, 104 S Ct 3380 (1984).

In determining whether evidence obtained after an illegal arrest or search should be excluded, the question is whether, granting establishment of the primary

illegality, the derivative evidence has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint; to properly undertake this inquiry, the court must consider (1) the time elapsed between the illegality and the acquisition of the evidence, (2) the presence of intervening circumstances, and (3) the purpose and flagrancy of the official misconduct. *State v. Frierson*, 926 So. 2d 1139 (Fla. 2006).

Without the illegally derived evidence from the Hannah vehicle search, the State would not have had probable cause to obtain the search warrant. Clearly the State exploited the illegally obtained evidence without any dissipation of the taint to obtain the later search warrant.

The state trial court order implicitly conceded that the search warrant affidavit's confidential source information did not provide a basis upon which to determine probable cause, because there was no representation made as to the basis for the statement that the confidential source had been found to be reliable.

Florida and federal law is clear on this point - - the basis for the reliability of a confidential source must be set forth in the affidavit - - failing which, the confidential source information cannot be used to make a probable cause finding. *Delacruz v. State*, 603 So.2d 707 (Fla. 2nd DCA 1992), *Vasquez v. State,* 491 So.2d 297 (Fla. 3rd DCA), *review denied,* 500 So.2d 545 (Fla.1986), *Brown v. State*, 561

So.2d 1248, (Fla. 2nd DCA 1990) ((holding that an allegation that the informant had previously provided reliable information to the Hillsborough County Sheriff's office was insufficient to establish the informant's reliability, where the affidavit failed to set forth facts from which the magistrate could find the affiant had personal knowledge of the confidential informant's reliability or facts which corroborate the reliability of the confidential informant from an independent source.). The Honorable James S. Moody, Jr. relied in part upon the *Brown* decision to grant a motion to suppress last year in *United States v. Acuna*, 2006 WL 1280994 (M.D.Fla. 2006).

The search warrant affidavit contained nothing to corroborate the confidential source's alleged reliability, therefore the information provided by the confidential source could not be considered in determining probable cause.

The surveillance referred to in the state court order was not evidence of illegal activity, not was it in any way corroborative of the information from the confidential source so as to uphold the warrant under the *Gates* test. *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317 (1983). The surveillance disclosed nothing other than a car found parked at the Borom residence. The confidential source had not told the officers what kind of vehicle Hannah was supposedly driving, so the presence of a car that had not previously been described did nothing to corroborate the confidential source. The affidavit states that the confidential source said Hannah would arrive in

approximately forty-five minutes, but it does not state when that was, so there is nothing on the face of the warrant to determine if the time estimate was corroborated either. In short, there was nothing corroborative about the surveillance.

That leaves nothing other than the evidence derived from the illegal vehicle search itself - - which the state court judge expressly relied upon in upholding the validity of the Borom search. Because that evidence was directly exploited without any intervening dissipation of the taint of the illegality, and but for the use of that evidence there would not have been probable cause to authorize the search warrant, it is clear that the evidence derived from the search under the search warrant of the Borom residence (the cocaine that was the apparent basis for the trafficking charge) was excludable under *Wong Sun*. Clearly the State court's order denying relief - - which failed to even address this issue - - was contrary to established Supreme Court precedent and is subject to no deference.

Equally clearly it was ineffective assistance of counsel under the Sixth Amendment to not challenge the use of this evidence against Hannah. This Court is very familiar with the applicable standard under *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984). Both *Strickland* prongs are met on these facts -

unreasonable performance and prejudice.[2]

We cannot tell from this record whether the exclusion of this evidence would have been dispositive or merely rendered the State's prosecution untenable or unwinnable such that the state would have dropped the charges, reduced the charges or otherwise offered a better plea agreement. In any event, Hannah repeatedly alleged that he would have not pled guilty had his defense counsel challenged this evidence. This is a classic *Hill v. Lockhart* claim. *Hill v. Lockhart*, 474 U.S. 52, 106 S.Ct. 366 (1985).[3] Hannah argues that his plea was not free and voluntary - - because the plea

---

[2] There is nothing in this record to even suggest strategic choice. This performance could not be the result of strategic choice because strategic choice at the outset requires an investigation of the facts of the case sufficient to determine what legal defenses are available, and then a conscious and reasoned decision made to waive such defenses. We know from this record that the defense attorney *never saw the affidavit in question* so no informed strategic choice could have been made. "Strickland requires that counsel either make a reasonable investigation of the law and facts relevant to a case or make a reasonable decision not to carry out a particular investigation. *Strickland*, 466 U.S. at 690-91, 104 S.Ct. at 2066. "Strategic choices made after thorough investigation of the law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support limitations on investigation." *Parker v. Secretary for Dept. of Corrections,* 331 F.3d 764, 787 (11th Cir. 2003).

[3] The State's response to Hannah's *pro se* petition appears to have overlooked this rule, that is, the Supreme Court has held that "a defendant who pleads guilty upon the advice of counsel 'may ... attack the voluntary and intelligent character of the guilty plea by showing that the advice he received from counsel was not within [the range of competence demanded of attorneys in criminal cases].' " *Hill*, 474 U.S. at

was based on counsel's failure to explain and pursue the Fourth Amendment claims explained above, it was not an informed choice.

> We hold, therefore, that the two-part *Strickland v. Washington* test applies to challenges to guilty pleas based on ineffective assistance of counsel. In the context of guilty pleas, the first half of the *Strickland v. Washington* test is nothing more than a restatement of the standard of attorney competence already set forth in *Tollett v. Henderson*, supra, and *McMann v. Richardson*, *supra*. The second, or "prejudice," requirement, on the other hand, focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process. In other words, in order to satisfy the "prejudice" requirement, the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.

Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S.Ct. 366, 370 (1985).

56-57 (quoting *Tollett v. Henderson*, 411 U.S. 258, 267, 93 S.Ct. 1602, 36 L.Ed.2d 235 (1973)).A habeas petitioner may raise a Sixth Amendment issue by arguing that his attorney's handling of a suppression issue was incompetent. In sum, a guilty plea does not waive a claim of ineffective assistance of counsel relating to the knowing and voluntary nature of the plea.

Hannah's claim of ineffective assistance of counsel requires a constitutional scrutiny of his lawyer's representation and advice concerning the plea proceedings. The Sixth Amendment right to counsel implicitly includes the right to effective assistance of counsel. *McMann v. Richardson*, 397 U.S. 759, 771 & n. 14, 90 S.Ct. 1441, 1449 & n. 14, 25 L.Ed.2d 763 (1970); *Chatom v. White*, 858 F.2d 1479, 1484 (11th Cir.1988), cert. denied, 489 U.S. 1054, 109 S.Ct. 1316, 103 L.Ed.2d 585 (1989); see *Powell v. Alabama*, 287 U.S. 45, 53, 53 S.Ct. 55, 58, 77 L.Ed. 158 (1932). A defendant is entitled to this constitutional guarantee of effective assistance of counsel whether he is represented by a retained or court-appointed attorney. *Scott v. Wainwright*, 698 F.2d 427, 429 (11th Cir.1983).

In this Court's review of Hannah's allegation of ineffective assistance of counsel, the Court is not bound by the determination of the Florida courts. *Gates v. Zant*, 863 F.2d 1492, 1496 (11th Cir.) (per curiam), cert. denied, 493 U.S. 945, 110 S.Ct. 353, 107 L.Ed.2d 340 (1989).

"A guilty plea is open to attack on the ground that counsel did not provide the defendant with 'reasonably competent advice.' " *Cuyler v. Sullivan*, 446 U.S. 335, 344, 100 S.Ct. 1708, 1716, 64 L.Ed.2d 333 (1980) (quoting *McMann*, 397 U.S. at 770, 90 S.Ct. at 1448). The Supreme Court has held "that the two-part *Strickland v. Washington* test applies to challenges to guilty pleas based on ineffective assistance

of counsel." *Hill v. Lockhart*, 474 U.S. 52, 58, 106 S.Ct. 366, 370, 88 L.Ed.2d 203 (1985); *Slicker v. Dugger*, 878 F.2d 1380, 1381 n. 1 (11th Cir.1989) (per curiam); *Holmes v. United States*, 876 F.2d 1545, 1551 (11th Cir.1989); *McCoy v. Wainwright*, 804 F.2d 1196, 1198 (11th Cir.1986) (per curiam).

In order to obtain relief under the familiar *Strickland* test, a defendant complaining of ineffective assistance of counsel must show: 1) "that counsel's representation fell below an objective standard of reasonableness," and 2) "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland v. Washington*, 466 U.S. 668, 688, 694, 104 S.Ct. 2052, 2064, 2068, 80 L.Ed.2d 674 (1984); *Heath v. Jones*, 863 F.2d 815, 821 (11th Cir.1989) (per curiam); see *Futch v. Dugger*, 874 F.2d 1483, 1486 (11th Cir.1989); *Tafero v. Wainwright*, 796 F.2d 1314, 1319 (11th Cir.1986) (per curiam), cert. denied, 483 U.S. 1033, 107 S.Ct. 3277, 97 L.Ed.2d 782 (1987).

It is important to note that for the prejudice determination under *Hill v. Lockhart* it is not necessary that Hannah establish that without the complained of error, the outcome of the trial, had the case proceeded to trial, would have been successful. In other words, under *Hill* Hannah does not have to prevail on his argument that the search of his vehicle was illegal, or that the evidence found in the Borom residence search would have been suppressed as fruit of the poisonous tree.

Instead, the determination of the meritoriousness *vel non* of the Fourth Amendment argument is only a factor for the court to consider in judging the likelihood that properly advised Hannah would have not pled guilty - - or in this case, not pled guilty under a plea agreement requiring thirteen years in prison followed by ten years probation and a $50,000 fine for a first offender. *Hill*, 474 U.S. 52, 59-60, 106 S.Ct. 366, 370-371 (1985).

Whether meritorious, as we argue, or merely strong, the Fourth Amendment claim and its dereliction is sufficient to establish that it is more likely than not that had Hannah been properly advised by competent counsel after an appropriate investigation of the facts of the case, a motion to suppress would have been filed, and either the State would have dropped the charges, reduced the charges below that which Hannah pled to, or offered Hannah a substantially better plea agreement, failing which Hannah would have taken the case to trial and preserved any evidentiary ruling were the court to have denied his motion to suppress, or prevailed at trial, had the motion to suppress been granted, due to the lack of corroborating physical evidence.

CONCLUSION

Accordingly, based on the above authority and just cause, Petitioner DERREL HANNAH respectfully requests that this honorable Court grant the requested relief, that is, vacate his plea, judgment and sentence. In the alternative, Hannah requests that this matter be set for an evidentiary hearing on the issues discussed above.

Respectfully submitted,

THE LAW OFFICE OF
WILLIAM MALLORY KENT

s/William Mallory Kent
William Mallory Kent
Florida Bar No. 0260738
1932 Perry Place
Jacksonville, Florida 32207-3443
(904) 398-8000
(904) 348-3124 FAX
(904) 662-4419 Cell Phone
kent@williamkent.com
ATTORNEY FOR HANNAH

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 31, 2006, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

Assistant Attorney General Timothy D. Wilson

timothy_wilson@oag.state.fl.us

s/William Mallory Kent
William Mallory Kent