

No. \_\_\_\_\_

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IN THE SUPREME COURT OF THE UNITED STATES

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ROBERT NATHANIEL BROWN,  
*Petitioner,*

v.

STATE OF FLORIDA,  
*Respondent.*

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ON PETITION FOR WRIT OF CERTIORARI TO THE FLORIDA FIRST  
DISTRICT COURT OF APPEAL

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APPENDIX TO APPLICATION FOR EXTENSION OF TIME TO FILE  
PETITION FOR WRIT OF CERTIORARI

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# Supreme Court of Florida

THURSDAY, SEPTEMBER 22, 2022

**CASE NO.: SC22-675**

Lower Tribunal No(s).:

1D20-2213; 162014CF000122AXXXMA

ROBERT NATHANIEL BROWN vs. STATE OF FLORIDA

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Petitioner(s)

Respondent(s)

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the petition for review is denied.

No motion for rehearing will be entertained by the Court. See Fla. R. App. P. 9.330(d)(2).

CANADY, POLSTON, LABARGA, COURIEL, and GROSSHANS, JJ., concur.

A True Copy

Test:



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John A. Tomasino  
Clerk, Supreme Court



**CASE NO.:** SC22-675

Page Two

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Served:

MICHAEL L. SCHAUB

MICHAEL R. UFFERMAN

HON. KRISTINA SAMUELS, CLERK

HON. MARIANNE LLOYD AHO, JUDGE

HON. JODY PHILLIPS, CLERK

DISTRICT COURT OF APPEAL, FIRST DISTRICT  
2000 Drayton Drive  
Tallahassee, Florida 32399-0950  
Telephone No. (850)488-6151

April 26, 2022

**CASE NO.: 1D20-2213**  
L.T. No.: 16-2014-CF-000122-AX

Robert Nathaniel Brown v. State of Florida

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Appellant / Petitioner(s), Appellee / Respondent(s)

**BY ORDER OF THE COURT:**

Appellant's motion docketed February 03, 2022, for rehearing is denied.

**I HEREBY CERTIFY** that the foregoing is (a true copy of) the original court order.

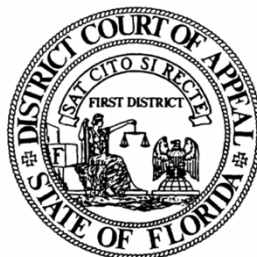
Served:

Hon. Ashley Moody, AG  
Michael Ufferman

Michael L. Schaub, AAG

th

  
KRISTINA SAMUELS, CLERK



FIRST DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

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No. 1D20-2213

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ROBERT NATHANIEL BROWN,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

---

On appeal from the Circuit Court for Duval County.  
Marianne L. Aho, Judge.

January 19, 2022

LONG, J.

Robert Brown appeals the trial court's order denying relief on all seven of the claims raised in his motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. We affirm the order on all grounds and write only to discuss Ground Three, an ineffective assistance of counsel claim which was summarily denied.

To successfully establish an ineffective assistance of counsel claim, the claimant must show that counsel's representation was deficient, and that the deficiency so affected the proceeding that confidence in the outcome is undermined. *Johnston v. State*, 70 So. 3d 472, 477 (Fla. 2011). Deficient representation means "errors so serious that counsel was not functioning as the 'counsel'

guaranteed the defendant by the Sixth Amendment.” *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

The State charged Brown with one count of DUI manslaughter and two counts of DUI causing serious bodily injury. One of the key issues at trial was a dispute over whether it was Brown’s or the victim’s vehicle that was travelling the wrong way into oncoming traffic. The State asserted that it was Brown and presented the testimony of two crash reconstruction experts to support this theory. The experts explained their reconstruction methodologies and concluded that Brown’s vehicle was driving against traffic, resulting in the crash. On cross-examination, Brown’s trial counsel highlighted several inconsistencies in witness accounts of the crash. He pointed out that some witnesses believed it was the victim’s car that was driving in the wrong direction. Trial counsel also challenged the experts’ analysis of the crash and highlighted the uncertainties inherent in a reconstruction.

Brown alleged that his trial counsel was ineffective for failing to retain and present an independent accident reconstruction expert to refute the State’s witness testimony. Brown argued that, had trial counsel retained a defense expert, the expert would have opined that it was the victims’ vehicle driving in the wrong direction. On appeal from the trial court’s summary denial, Brown argues this claim was facially sufficient and not conclusively refuted by the record and so it should have been heard at an evidentiary hearing. We disagree.

First, Brown’s claim is pure speculation. He assumes a hypothetical third expert would have analyzed the crash differently than the first two and that the new analysis would have been favorable. “Relief on ineffective assistance of counsel claims must be based on more than speculation and conjecture.” *Connor v. State*, 979 So. 2d 852, 863 (Fla. 2007). There is no need to hear from trial counsel at an evidentiary hearing when the claim is legally insufficient.

Second, regardless of the speculative nature of the claim, “*Strickland* does not enact Newton’s third law for the presentation of evidence, requiring for every prosecution expert an equal and

opposite expert from the defense. In many instances cross-examination will be sufficient to expose defects in an expert's presentation." *Harrington v. Richter*, 562 U.S. 86, 111 (2011). This is exactly what happened here. Even if the claim were facially sufficient, the trial strategy of Brown's trial counsel is both obvious and sufficient. The record conclusively refutes the claim.

AFFIRMED.

MAKAR and NORDBY, JJ., concur.

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***Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.***

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Michael Ufferman of Michael Ufferman Law Firm, P.A., Tallahassee, for Appellant.

Ashley Moody, Attorney General, and Michael L. Schaub, Assistant Attorney General, Tallahassee, for Appellee.