IN THE SUPREME COURT OF THE STATE OF FLORIDA

PEDRO LUIS MEDINA,

Appellant,

vs.

CASE NO. 63-680

STATE OF FLORIDA,

Appellee.

_____/

18 Pages

REPLY BRIEF OF APPELLANT

WARREN H. EDWARDS, ESQUIRE
Suite 101, Bradshaw Building
65 N. Orange Avenue
Orlando, Florida 32801
(305) 425-7676

AND

RONALD R. FINDELL, ESQUIRE
Law Offices of Warren H. Edwards
Suite 101, Bradshaw Bldg.
65 N. Orange Avenue
Orlando, Florida 32801
(305) 425-7676

Attorneys for Appellant

TABLE OF CONTENTS

CITATION OF AUTHORITIES

STATUTES

IN THE SUPREME COURT OF THE STATE OF FLORIDA

PEDRO LUIS MEDINA,

Appellant,

vs. CASE NO. 63-680

STATE OF FLORIDA,

Appellee.

_____/

PRELIMINARY STATEMENT

The Appellant, PEDRO LUIS MEDINA, was the Defendant in the lower court. The Appellee, STATE OF FLORIDA, was the Plaintiff in the lower court. The parties will be referred to as the Defendant and the State for the purposes of this brief.

The symbol "TR" followed by an accompanying page number as well as line number (where appropriate) will denote the transcript of the record of appeal.

QUESTIONS PRESENTED

WHETHER THE TRIAL COURT ERRED IN DENYING THE DEFENDANT'S MOTION FOR DISCHARGE DUE TO THE RUNNING OF SPEEDY TRIAL.

WHETHER THE TRIAL COURT ERRED IN DENYING THE DEFENDANT'S MOTION TO SUPRESS ADMISSIONS AND STATEMENTS MADE BY THE DEFENDANT TO DETECTIVES PAYNE AND NAZARCHUCK OF THE ORANGE COUNTY SHERIFF'S OFFICE.

WHETHER THE TRIAL COURT ERRED IN DENYING THE DEFENDANT'S SEVERAL MOTIONS FOR MISTRIAL FOLLOWING MICHAEL WHITE'S STATEMENTS TO THE JURY ON THREE SEPARATE OCCASIONS THAT HE HAD BEEN STABBED BY THE DEFENDANT AND IN DENYING THE DEFENDANT'S REQUEST TO INQUIRE OF JUROR CODY WHETHER ANY OF THE OTHER JURORS HAD BEEN INFLUENCED BY MICHAEL WHITE'S REMARKS.

WHETHER THE TRIAL COURT ERRED IN SENTENCING THE DEFENDANT TO DEATH AFTER HIS CONVICTION FOR FIRST DEGREE MURDER.

ARGUMENT I

THE TRIAL COURT ERRED IN DENYING THE DEFENDANT'S MOTION FOR DISCHARGE DUE TO THE RUNNING OF SPEEDY TRIAL.

On April 8, 1982, the Defendant was arrested for possession of a stolen motor vehicle by members of the Florida Highway Patrol near Lake City, Florida. On April 16, 1982, the Defendant was arrested by Detective Daniel Nazarchuck of the Orange County Sheriff's Office for first degree murder (TR - pages 1510-1512).

On May 18, 1982, the Defendant was arraigned on the auto theft charge. On June 14, 1982, the Defendant was indicted for first degree murder (TR - page 1515). On June 16, 1982, the Defendant was arraigned on the charge of first degree murder, and was appointed the Public Defender (TR - page 1523). On July 14, 1982, the trial was set for August 31, 1982, at 9:00 A.M. (TR - page 1527).

While pursuing discovery, the Public Defender discovered that it had previously represented one of the State's witnesses, Reinaldo Dorta. On August 17, 1982, the Public Defender moved to withdraw as the Defendant's appointed counsel, stating in his Motion to Withdraw that there was a conflict of interest due to the fact that the Public Defender had once represented one of the State's witnesses, Reinaldo Dorta (TR - page 1588). On August 20, 1982, a hearing was held on the Motion to Withdraw.

At the hearing on the Motion to Withdraw, the Defendant was advised by the trial court that he (the Defendant) could waive the alleged conflict of interest and continue to be represented by the Public Defender (although he would probably be at a disadvantage in cross-examining the witness). The court also advised the Defendant that new counsel could be appointed for him, in which case a continuance of the trial would most likely be required. The Defendant responded by stating that he would leave the decision in the hands of the court. The court then granted the Public Defender's Motion to Withdraw, deciding that it would be in the

Defendant's best interest to appoint two new conflict-free counsel, one of whom spoke Spanish fluently. A written Order on the Motion was entered by the court on August 26, 1982, and the undersigned, along with Anna Tangel Rodriquez, were appointed to represent the Defendant (TR - page 1594).

On August 31, 1982, trial was set to begin. At that time, the newly appointed counsel for the Defendant stated that the Defendant was not yet ready for trial due to the fact that his newly appointed counsel had received their appointments only four days earlier. Without moving for a continuance or waiving the Defendant's right to a speedy trial, counsel asked for an additional sixty to ninety days to prepare for trial. The trial court ordered the case continued, stating that the delay in the Defendant's trial was not attributable to the State nor to the Court, but rather to the conflict of interest discovered by the Public Defender a few weeks prior to trial. The court further found that neither the Public Defender nor the newly appointed counsel were adequately prepared for trial, and that the new counsel had requested additional time to prepare. The court then charged the continuance to the Defendant, holding that a waiver of the 180 day speedy trial period had occurred, or at the very least, that the speedy trial period had been extended for an additional ninety (90) days, to and including December 1, 1982, because of the exigent circumstances (TR - page 1600).

On October 29, 1982, counsel for the Defendant filed a Motion for Discharge as to all charges, stating that the Defendant had been arrested in early April, 1982. Since 180 days had passed since that date without a waiver of speedy trial or a showing that the Defendant was not continuously available for trial, he was entitled to discharge (TR - page 1662).

A hearing on the Motion was held on November 5, 1982 (TR - pages 890-902). After counsel for the Defendant stated his grounds supporting the Motion for Discharge (TR - page 890, lines 15-25; page 891, lines 1-17), the State replied that the Motion should not be granted on the grounds that the Defense had failed to

demand a speedy trial, had not yet completed discovery, and that the prior delay had not been attributable to the State (TR - page 892, lines 15-25; page 893, lines 1-9). The court then observed that neither the newly appointed counsel nor the Public Defender had been prepared to go to trial back on August 31, 1982 (TR - page 894, lines 11-18). The court then stated that it could find no reason to grant the Motion, but could find an additional reason not to grant it on the basis that counsel for the Defendant still had a pending motion (TR - page 894, lines 19-25).

The court later entered a written Order denying the Motion for Discharge, incorporating the Order of Continuance entered September 1, 1982. The Order further stated that, at the time of the hearing on the Motion for Discharge, Defense counsel: (1) were still unprepared for trial since there were one or more witnesses still to be deposed; (2) had recently filed a motion to determine the Defendant's mental competency (which was heard immediately following the hearing, granted, and thus constituted an exceptional circumstance under Rule 3.191(d)(2), Florida Rules of Criminal Procedure); and (3) could have filed a written demand for speedy trial after the continuance of September 1, 1982, but had failed to do so (TR - page 1678).

Rule 3.191(a)(1), Florida Rules of Criminal Procedure, provides that every person charged with a crime by indictment or information shall without demand be brought to trial within 180 days if the accused is charged with a felony. If he is not brought to trial within that period of time, he shall be forever discharged from the crime, upon motion timely filed with the circuit court and served upon the prosecuting attorney.

Rule 3.191(d)(2)(ii), Florida Rules of Criminal Procedure, provides that the 180 day limit established in Rule 3.191(a)(1) may be extended by the written or recorded order of the court on the court's own motion if exceptional circumstances exist as outlined in Rule 3.191(f).

Rule 3.191(f), Florida Rules of Criminal Procedure, states that the court may order an extension of the 180 day speedy trial period where exceptional circumstances are shown to exist. The circumstances include: (1) the unexpected illness or unexpexted incapacity or unforeseeable and unavoidable absence of a person whose presence or testimony is uniquely necessary for a full and adequate trial; (2) a showing by the State that the case is so unusual and so complex, due to the number of defendants or the nature of the prosecution or otherwise, that it is unreasonable to expect adequate investigation or preparation within the 180 day time limit; (3) a showing by the State that specific evidence or testimony is not available despite diligent efforts to secure it, but will become available at a later time; (4) a showing by the accused or the State of the necessity for delay grounded on developments which could not have been anticipated and which will materially affect the trial; (5) a showing that the delay is necessary to accomodate a co-defendant, where there is a reason not to sever the cases in order to proceed promptly with the trial of the defendant; and (6) a showing by the State that the accused has caused major delay or disruption of proceedings, as by preventing the attendance of witnesses or otherwise.

Legally, without the existence of an exceptional circumstance or a delay attributable to the defense, the 180 day speedy trial limit had expired October 5, 1982, regarding the auto theft charge, and had expired October 13, 1982, regarding the first degree murder charge.

The State contends that the trial court was correct in denying the Defendant's Motion for Discharge on the basis that an exceptional circumstance was created by the Public Defender's Motion to Withdraw (as of the first trial date), and on the basis that defense counsel was unprepared for trial as of November 5, 1982, because he had a pending Motion for Psychiatric Examination and wished to depose one more witness.

It is immediately apparent that none of the exceptional circumstances stated in Rule 3.191(f) fit within the framework of the continuance granted by the court in its Order of September 1, 1982. The closest exceptional circumstance might be considered to be Rule 3.191(f)(4), but this delay must be requested by either the State or the accused. In the case at bar, neither the State nor the accused asked for a delay. This is especially true regarding the Defendant since any conflict in interest was not his fault but that of the Public Defender. Nor did he ever state that he wished the Public Defender to withdraw (said withdrawal being made on the court's own motion). His only response was that he would leave the decision of withdrawal in the trial court's hands. He never stated that he would waive speedy trial just because the Public Defender asked to withdraw. His mere acquiesence to the trial court's decision can in no way be considered to be a request for a continuance since he did not have the advice of counsel regarding his choices at the time of the granting of the Public Defender's Motion to Withdraw.

The Courts of this State have ruled previously that the withdrawal by appointed counsel does not constitute an exceptional circumstance as contemplated by Rule 3.191(d)(2), particularly where substitute counsel is appointed the same day as withdrawal (as in the case at bar). Ehn v. Smith, 426 So. 2d 570 (Fla. 5th DCA 1983). The same ruling has also been applied in holding that the withdrawal of appointed counsel does not constitute a exceptional or exigent circumstance under Rule 3.191(f), Florida Rules of Criminal Procedure. Hammock v. State, 330 So. 2d 522 (Fla. 1st DCA 1976); Hogan v. State, 305 So. 2d 835 (Fla. 1st DCA 1974); State v. J.H., 295 So. 2d 698 (Fla. 1st DCA 1974).

Additionally, as to the ruling by the trial court on September 1, 1982, that the Public Defender was not adequately prepared for the initial trial date of August 31, 1982, the Defendant would respond by stating that there are no statements on

record by the Public Defender showing that they were not yet prepared for trial on that date, only that a conflict of interest existed.

As to the ruling that the newly appointed counsel were unprepared for trial on August 31, 1982, and that a delay was attributable to the Defendant because his counsel asked for additional time to prepare for trial, it must be noted that the new counsel was appointed only four days prior to the trial date, and while asking for additional time, they specificly refused to waive their client's right to a speedy trial. Florida case law does not require a newly appointed counsel to waive his client's right to speedy trial to prepare for trial where the delay is not one attributable to the Defendant. The Defendant cannot be forced to go to trial insufficiently prepared, nor can he be forced into a continuance with a resultant waiver of speedy trial because his new counsel has not had time to adequately prepare for trial (as in the case at bar). Sumbry v. State, 310 So. 2d 445 (Fla. 2nd DCA 1975).

As to the trial court's ruling on November 5, 1982, that the Defendant was still unprepared for trial, it must be noted that the two of the court's findings deal with Defendant's motions made after the speedy trial time had legally expired, and are therefore moot. Henshaw v. State, 390 So. 2d 793 (Fla. 3rd DCA 1980); Hammock v. State, 330 So. 2d 522 (Fla. 1st DCA 1976); cert. den., 341 So. 2d 1085 (Fla. 1976); White v. State, 338 So. 2d 256 (Fla. 4th DCA 1976).

Even assuming, arguendo, that the first two findings were not rendered legally moot, the Defendant was still entitled to discharge on the merits of his Motion. Firstly, as to the finding that the Defendant was unprepared for trial because he still had one witness to depose, it is clear that the court made this finding unilaterally without ever determining from defense counsel whether he was prepared to go to trial without the witness. Secondly, as to the finding that the Defendant was unprepared for trial because of his pending Motion for Psychiatric Examination, it is clear that a motion to appoint an expert to examine a defendant

for possible incompetency does not toll speedy trial and is not evidence of a defendant's unavailability for trial. State v. Guyton, 9 FLW 391 (Op. 4th DCA February 15, 1984). Finally, as to the finding that the Defendant was unprepared because he failed to file a Demand for Speedy Trial, the Defendant would only respond by stating that he is in no way required by the law or Rules of Criminal Procedure to file a Demand for Speedy Trial, whether prepared or unprepared to go to trial.

In conclusion, it is clear that the trial court's Order of Continuance dated September 1, 1982, based on exigent circumstances was a nullity pursuant to existing Florida case law. Nor were the grounds denying the Defendant's Motion for Discharge on November 5, 1982, valid. The trial court erred in denying the Motion for Discharge since trial was not held, nor a continuance requested by the Defendant, until after October 13, 1982; therefore, the Defendant's convictions should be reversed and this cause remanded to the trial court with instructions to discharge the Defendant.

ARGUMENT II

THE TRIAL COURT ERRED IN DENYING THE DEFENDANT'S MOTION TO SUPPRESS THE ADMISSIONS AND STATEMENTS MADE BY THE DEFENDANT TO DETECTIVES PAYNE AND NAZARCHUCK OF THE ORANGE COUNTY SHERIFF'S OFFICE.

The Defendant reiterates his contention that any statements and admissions he may have made to Detective's Payne and Nazarchuck were subject to suppression as a product of his illegal arrest by the Florida Highway Patrol.

The law clearly dictates that a police officer may only arrest a person on probable cause, and while he may detain a person on less than probable cause, he may not detain a person on the mere suspicion that he has violated, is violating, or is about to violate the law. V.S. v. State, 9 FLW 562 (3rd DCA Op. March 6, 1984); Sumlin v. State, 433 So. 2d 1303 (Fla. 2nd DCA 1983); Wilson v. State, 433 So. 2d 1301 (Fla. 2nd DCA 1983); Freeman v. State, 433 So. 2d 9 (Fla. 2nd DCA 1983).

In Freeman, the defendant was observed carrying a lighted flashlight in the early morning hours through a parking lot which had suffered a rash of vehicle burglaries. He was not observed touching any automobiles and no automobiles were seen which had been tampered with. Nevertheless, the defendant was arrested for burglary. The trial court denied the defendant's motion to suppress based on lack of probable cause. The appellate court reversed, stating that the actions of the defendant gave rise to only a "bare" suspicion of illegal activity, and without more information available to the officer, could not give rise to a "founded" suspicion of illegal activity.

In V.S., the defendant and a companion were observed by a uniformed motorcycle patrol officer who, acting on a hunch, accosted the defendant and inquired as to his presence in the area. When asked for identification, the defendant replied that he lived about seven blocks away. Without making an

attempt to determine the veracity of the defendant's statement, the officer arrested him for loitering and prowling and a subsequent search revealed the illegal drug diazepam. The appellate court ruled that such an arrest was totally invalid, and thus the resulting search was also invalid.

In the case at bar, the trooper had no other information available to him except a BOLO that the Cadillac had possibly been involved in a murder. He had no information that the vehicle was stolen or that the Defendant was engaged in any criminal activity. Nevertheless, he immediately arrested the Defendant for possession of a stolen vehicle, on the mere "hunch" that the vehicle was probably stolen since it had been involved in a murder and that the Defendant was probably the murderer since he was in the vehicle. Since the arrest was illegal due to lack of probable cause, any statements made after the Defendant was arrested should have been suppressed.

As to the State's comment (on page 29 of her brief) that probable cause for the arrest comes from reasonably trustworthy facts and circumstances within the knowledge of the arresting officer to warrant a man of reasonable caution that an offense has been or is being committed, the Defendant would respond by stating once again that the arresting officer had no information that the vehicle was stolen or that the Defendant was responsible for stealing it. The fact that the Defendant may have made statements amounting to "lies" following his arrest does not create probable cause. Events subsequent to a defendant's arrest cannot remove the probable cause that existed at the time of the arrest. Dodds v. State, 434 So. 2d 940 (Fla. 4th DCA 1983).

The State also contends that the taped conversation was not subject to suppression since the Defendant allegedly waived his right to silence by making a statement after he had previously told Detective Nazarchuck that he did not wish to talk. It should be noted that the Defendant only made a statement after Detective Nazarchuck repeated the question again to the Defendant. The Defendant

contends that Detective Nazarchuck should not have asked any further questions once the Defendant had invoked his right to silence by stating that he did not wish to talk.

In support of his contention, the Defendant cites the case of Bain v. State, 440 So. 2d 455 (Fla. 2nd DCA 1983). In Bain, the arresting officer was questioned at trial regarding his administration of Miranda rights to the defendant. The officer testified that upon the conclusion of his reading of the Miranda rights to the defendant, the defendant stated that he was unsure of himself and didn't want to go any further. Defense counsel objected and asked for a mistrial, which the trial court denied.

The officer then testified that he asked the defendant two more questions: his name and address. The defendant answered by giving two different names and his address. This evidence was crucial since at the time the officer originally arrived at the scene of the burglary, the defendant told the police that he lived in the home which had just been burglarized, which was different than the address he gave later to the officer during interrogation. Therefore, the officer elicited incriminating evidence after the defendant appeared unsure about invoking his right to remain silent.

The appellate court ruled that these elicited statements violated the defendant's constitutional rights since they could easily be construed as a comment on his right to remain silent. Furthermore, the defendant's constitutional rights were violated when the arresting officer continued questioning the defendant after acknowledging that the defendant appeared uncertain about continuing the interrogation.

In the case at bar, there was no uncertainty in the Defendant's answer. When asked if he wished to talk, he replied "No". At that point, Detective Nazarchuck should have stopped all interrogation since the Defendant had invoked his constitutional right to remain silent. Not only should the statements have been

suppressed, but the introduction of said statement in front of the jury amounted to a comment on the Defendant's right to remain silent. This action is reversible error per se and this cause should be remanded to the trial court for new trial on this point alone. Trafficante v. State, 92 So. 2d 811 (Fla. 1957).

ARGUMENT III

THE TRIAL COURT ERRED IN DENYING THE DEFENDANT'S SEVERAL MOTIONS FOR MISTRIAL FOLLOWING MICHAEL WHITE'S STATEMENTS TO THE JURY ON THREE SEPARATE OCCASIONS THAT HE HAD BEEN STABBED BY THE DEFENDANT AND IN DENYING THE DEFENDANT'S REQUEST TO INQUIRE OF JUROR CODY WHETHER ANY OF THE OTHER JURORS HAD BEEN INFLUENCED BY MICHAEL WHITE'S REMARKS.

The State contends in its brief that the three comments made by Michael White regarding the stabbing of his person by the Defendant were admissible as similar fact evidence since they were probative of the State's case against the Defendant. The State completely misses the point of the Defendant's argument.

There is no issue as to the admissibility ot relevancy of the similar fact evidence at trial because the trial court specifically ruled prior to trial in granting the Defendant's Motion in Liminie that the evidence was neither probative nor relevant since it could only show the Defendant's propensity to commit crime. The trial court ruled that the evidence was not properly admissible and the State had conceded the point at trial. Such evidence is not admissible because it calls the Defendant's character into question. Russell v. State, 9 FLW 473 (3rd DCA Op. February 28, 1984); Green v. State, 190 So. 2d 42 (Fla. 2nd DCA 1966).

For example, in the case of Romar v. State, 438 So. 2d 487 (Fla. 3rd DCA 1983), the arresting officer gave testimony at trial indicating that the defendant was involved in a robbery for which he was not charged. The court concluded that a Williams violation had occurred, that the defendant was substantially prejudiced thereby, and that a reversal was necessarily mandated.

Another recent example is the case of Woods v. State, 436 So. 2d 278 (Fla. 5th DCA 1983). In Woods, the appellate court ruled that the trial court erred by admitting into evidence, over proper objection, the testimony of the victim that during the course of a beating administered to her by the defendant, he made the statement that she had lied to him, and that he had once pushed a woman from a

roof for lying to him. The court stated that the prejudicial effect of the statement could not be reasonable disputed.

So it is also with the case at bar. Once the similar fact evidence had been heard by the jury, whether purposely or inadvertantly on the part of Michael White, the only inference the jury could draw was that the Defendant had a propensity to stab people, and thus probably stabbed the murder victim. Such prejudicial effect could not be cured by an instruction to the jury to disregard the statements, and the Defendant's motion for mistrial should have been granted.

As to the State's contention that no inquiry was necessary of juror Cody or any other of the jurors, the Defendant would cite the case of Robinson v. State, 438 So. 2d 8 (Fla. 5th DCA 1983). In Robinson, the question presented was whether the trial court erred in refusing to allow defense counsel to inquire as to whether the jurors had read certain news accounts relating to the trial. The appellate court reversed, ruling that the trial court had indeed erred and should have at least made a threshold inquiry as to the possibility of prejudice.

By analogy, the same situation existed in the case at bar. It is clear from the record that all of the jurors were at least exposed to the possibility of prejudice against the Defendant following Michael White's three comments that he had been stabbed by the Defendant. The trial court at this point should have at the very least inquired of each of the jurors whether they had heard the comments, and then questioned them to determine the effect of the comments; in effect, whether they could disregard what they had heard and still render an impartial verdict based solely upon the admissible evidence introduced at trial. This was especially important in light of the fact that one juror acknowledged being prejudiced, and in light of the fact that the jury came back with guilty verdicts in less than an hour regarding a trial that had lasted an entire week. See Diaz v. State, 435 So. 2d 911 (Fla. 4th DCA 1983). The trial court's failure to conduct an inquiry was error and this cause should be reversed and remanded for new trial.

ARGUMENT IV

THE TRIAL COURT ERRED IN SENTENCING THE DEFENDANT TO DEATH AFTER HIS CONVICTION FOR FIRST DEGREE MURDER.

Appellant contends that the fact that the victim was stabbed several times and took approximately thirty minutes to die supports the trial court's finding that the murder was especially heinous, atrocious, or cruel. In Dixon v. State, 283 So. 2d 1 (Fla. 1973), cert. denied., 416 U.S. 943, 94 S.Ct 1951, 40 L.Ed. 295 (1974), this Court outlined the definition of this aggravating circumstance as follows:

> "What is intended to be included are those capital crimes where the actual commission of the capital felony was accompanied by such additional acts as to set the crime apart from the norm of capital felonies -- the conscienceless or pitiless crime which is unnecessarily tortuous to the victim." Dixon at 9.

In support of his contention that this murder was not one fitting within the framework of this definition, the Defendant would cite the case of Teffeteller v. State, 439 So. 2d 840 (Fla. 1980). In Teffeteller, the victim was walking back to his home in Ormond Beach after jogging on the beach. He was stopped by the defendant in a car driven by the defendant. The co-defendant asked for the victim's wallet. The victim stated that he had no money. A shotgun was then pointed out the passenger side window at the victim and fired. The car sped away. The victim sustained massive abdominal damage due to the shotgun blast, but remained conscious and coherent for three hours. He later died on the operating table.

In reversing the trial court's finding that this murder was especially atrocious, heinous or cruel, this Court stated that the criminal act that ultimately caused death was indeed the single blast from the shotgun. The fact that the victim lived for a few hours in undoubted pain, and knew that he was facing

imminent death, horrible as this prospect may have been, did not set this murder apart from the norm of capital felonies.

The same is true of the case at bar. Although the victim was stabbed several times, it was basically only one of the stab wounds that ultimately caused death. It is clear from the evidence that this stabbing murder was proportionately no worse than the shotgun murder in Teffeteller, and therefore, the trial court erred in finding this to be an aggravating circumstance.

In conclusion, because the judge weighed this impermissible aggravating factor along with the previously discussed impermissible aggravating factor of pecuniary gain, against the single mitigating factor of the Defendant's lack of prior significant criminal activity, it is difficult to determine what the result would have been if the impermissible factors had not been present. Therefore, the sentence of death should be set aside and reduced to life imprisonment, or at the very least remanded to the trial court for a new review and sentencing order.

CONCLUSION

Based upon the foregoing facts and arguments of law, it is clear that the trial court erred on the many points cited by the Appellant in his brief. As a result of the Court's failure to grant the Defendant's Motions for Judgment of Acquittal and Motion for Discharge, this cause should be dismissed. In the alternative, the errors committed by the trial court were of such magnitude that they entitle the Defendant to a reversal and new trial (at the very least), or to a reduction of his death sentence to life imprisonment.

Respectfully submitted,

Ronald R. Findell
for WARREN H. EDWARDS, ESQUIRE
Suite 101, Bradshaw Bldg.
65 N. Orange Avenue
Orlando, Florida 32801
(305) 425-7676

AND

Ronald R. Findell
RONALD R. FINDELL, ESQUIRE
Law Offices of Warren H. Edwards
Suite 101, Bradshaw Bldg.
65 N. Orange Avenue
Orlando, Florida 32801
(305) 425-7676

Attorneys for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Reply Brief of Appellant has been furnished to EVELYN D. GOLDEN, Assistant Attorney General, 125 North Ridgewood Avenue, Fourth Floor, Daytona Beach, Florida 32014, by mail delivery this 5th day of April, 1984.

for Ronald R. Findell
WARREN H. EDWARDS, ESQUIRE
Suite 101, Bradshaw Bldg.
65 N. Orange Avenue
Orlando, Florida 32801
(305 425-7676

AND

Ronald R. Findell
RONALD R. FINDELL, ESQUIRE
Law Offices of Warren H. Edwards
Suite 101, Bradshaw Building
65 N. Orange Avenue
Orlando, Florida 32801
(305) 425-7676

Attorneys for Appellant