

IN THE SUPREME COURT OF FLORIDA

ROBERT ECHOLS, :
 :
 Appellant, :
 :
 vs. :
 :
 STATE OF FLORIDA, :
 :
 Appellee. :
 :
 _____ :

Case No. 64,246

FILED

SID J. WHITE

JUN 7 1984

CLERK, SUPREME COURT

By *[Signature]*
Chief Deputy Clerk

APPEAL FROM THE CIRCUIT COURT
IN AND FOR PINELLAS COUNTY
STATE OF FLORIDA

REPLY BRIEF OF APPELLANT

JERRY HILL
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

W.C. McLAIN
ASSISTANT PUBLIC DEFENDER
CHIEF, CAPITAL APPEALS

Hall of Justice Building
455 North Broadway
Bartow, FL 33830-3798
(813) 533-1184; 0931

ATTORNEYS FOR APPELLANT

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PRELIMINARY STATEMENT

Appellant Echols relies on the arguments and authorities presented in his Initial Brief in reply to the State's Answer Brief, except for the following additions:

ARGUMENT

ISSUE III

ARGUMENT IN REPLY TO THE STATE AND
IN SUPPORT OF THE PROPOSITION THAT
THE TRIAL COURT ERRED IN DENYING
ECHOLS' MOTION TO CONTINUE AND
RELATED MOTION FOR COSTS TO OBTAIN
AN EXPERT IN VOICEPRINT ANALYSIS
SINCE AN EXPERT WAS NECESSARY TO THE
PREPARATION OF AN ADEQUATE DEFENSE.

On page 7 of the State's Brief, the following assertion about the alleged poor quality of the tape recording in question is made:

There was an undisputed representation to the Court that the tape in question was of such poor quality that there was only a small chance that an analysis of it would be useful to the Court.

This representation was made by the Assistant State Attorney during argument without any supporting testimony from an expert. (R559-562) The State's expert had apparently conducted a cursory examination, according to the Assistant State Attorney, and suggested that the tape quality might pose a problem. (R559-562) Echols was not required to dispute such a representation under such circumstances, and he did not in anyway concede that the quality of the tape made expert examination fruitless. In fact, Echols was in no position to dispute the representation because he

had not been afforded the opportunity to have his own expert evaluate the tape recording. The very reason for the requested continuance was to give Echols the needed expert examination of the tape in order to refute the State's assertions regarding the tape.

Also on page 7 of its brief, the State says:

There was also an undisputed representation that the analysis could not be done before trial unless the defense would stipulate to the authenticity of Echols' voice on Tape One so the expert would have something for comparison.

Again, this was a representation of the Assistant State Attorney during argument without supporting expert testimony. (R563-564) Echols did not concede to the correctness of this representation. Indeed, without a defense expert for consultation, Echols was in no position to contest or even comment on the representation. Furthermore, the Assistant State Attorney's representation was that the State's expert would be made available to the defense to examine the second tape before trial only if the defense stipulated that Echols' voice was on the first tape. (R563-564) The State was bargaining for a stipulation, not merely representing the abilities of the expert.

The State also tries to paint Echols' request for a continuance as an eleventh hour ploy to avoid trial. (State's Brief, pages 8-9) However, as outlined on pages 21 through 23 of the initial brief, an audible copy of the questioned tape was not made available to the defense until ten days before trial. When Echols heard the tape and said that it did not contain his voice,

the defense promptly asked for a continuance and requested an expert. The request for a continuance was made in good faith.

ISSUE VIII

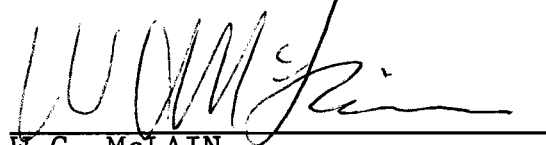
ARGUMENT IN REPLY TO THE STATE AND IN SUPPORT OF THE PROPOSITION THAT THE TRIAL COURT ERRED IN DENYING ECHOLS' REQUEST TO INSTRUCT THE JURY ON JUSTIFIABLE HOMICIDE AND EXCUSABLE HOMICIDE AS PART OF THE MANSLAUGHTER INSTRUCTION SINCE SUCH INSTRUCTIONS ARE ESSENTIAL TO AN UNDERSTANDING OF MANSLAUGHTER.

The State contends that this issue was not properly preserved for appeal. (State's Brief, pages 27-28) This contention is without merit. First, defense counsel specifically requested instructions on justifiable and excusable homicide. (R2524-2525) The court denied the request. (R2525) Objections were renewed after the instructions. (R2699) The question has been properly preserved for appeal. Spurlock v. State, 420 So.2d 875 (Fla. 1982); Thomas v. State, 419 So.2d 634 (Fla. 1982).

CONCLUSION

Upon the reasons and authorities expressed in this brief and in the initial brief, ROBERT ECHOLS asks this Court to reverse his conviction for a new trial.

JERRY HILL
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT



W.C. McLAIN
Assistant Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to the Office of the Attorney General, Park Trammell Bldg. 8th Floor, 1313 Tampa Street, Tampa, FL 33602, this 5th day of June, 1984.


W.C. McLain
Assistant Public Defender

Hall of Justice Building
455 North Broadway
Bartow, FL 33830-3798
(813) 533-1184; 0931

WCM:rkm