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IN THE SURPEME COURT OF FLORIDA

STATE OF FLORIDA,

PETITIONER,

-VS-

CASE NO. 64,618

LARRY WILLIAMS,

RESPONDENT.

PETITIONER'S REPLY BRIEF

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IN THE SUPREME COURT OF FLORIDA

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PETITIONER'S REPLY BRIEF

PRELIMINARY STATEMENT

Respondent stated in his brief that he did not accept the statement of the facts because it did not state them in the light most favorable to respondent.

There is no legal requirement that petitioner state the facts in the light most favorable to respondent. Indeed, the correct legal requirements compel the appellate courts to view the facts in the light most favorable to prevailing party in the trial court, in this case the State of Florida. Parrish v. State, 97 So.2d 356 (Fla.1957); Stone v. State, 378 So.2d 765 (Fla.1979). This is because questions of fact are decided at the trial level and not on the basis of a cold record. Tibbs v. State, 397 So.2d 1120 (Fla.1981).

ISSUES PRESENTED

ISSUE I

THIS COURT PROPERLY ACCEPTED DISCRETIONARY REVIEW OF THE CASE FOR THE DECISION OF THE LOWER TRIBUNAL IS IN DIRECT CONFLICT WITH DECISIONS OF THIS COURT ON THE SAME QUESTION OF LAW.

ISSUE II

THE TRIAL COURT DID NOT ERR IN DENYING DEFENDANT'S CHALLENGES FOR CAUSE AND THE DECISION OF THE LOWER TRIBUNAL HOLDING ERR WAS COMMITTED PREDICATED UPON IMPLIED OR INHERENT JUROR BIAS IS CONTRARY TO ESTABLISH PRINCIPLES OF LAW.

ISSUE I

THIS COURT PROPERLY ACCEPTED DISCRETIONARY REVIEW OF THE CASE FOR THE DECISION OF THE LOWER TRIBUNAL IS IN DIRECT CONFLICT WITH DECISIONS OF THIS COURT ON THE SAME QUESTION OF LAW.

ARGUMENT

Petitioner respectfully submits this Court properly found the lower tribunal's decision rendered in the instant case is in direct and express conflict with the decisions of this Court in Morgan v. State, 415 So.2d 6 (Fla.1982); Lusk v. State, 446 So.2d 1038 (Fla.1984) and McCollum v. State, 74 So.2d 74 (Fla.1954) and correctly concluded it had jurisdiction under Art. V, Fla.Const.

ISSUE II

THE TRIAL COURT DID NOT ERR IN DENYING DEFENDANT'S CHALLENGES FOR CAUSE AND THE DECISION OF THE LOWER TRIBUNAL HOLDING ERR WAS COMMITTED PREDICATED UPON IMPLIED OR INHERENT JUROR BIAS IS CONTRARY TO ESTABLISH PRINCIPLES OF LAW.

ARGUMENT

Respondent, relying upon People v. Culhane, 33 N.Y. 90, 305 N.E.2d 469 (1973); Commonwealth v. Jones, 383 A.2d 874 (Pa. 1978) and Irvin v. Dowd, 366 U.S. 717 (1961), contends the appellate court did not err in concluding the prospective juror Addison and McCann should have been excused for cause because of their inherent bias or suspicion of bias or prejudice. Petitioner respectfully disagrees and submits the aforementioned cases do not support respondent's position.

Culhane, supra, actually supports the petitioner's argument! In that case several correctional officers who had expressed either an opinion regarding the defendant's guilt, 305 N.E.2d at 473-474, or expressed a difficulty in believing an inmate were found not biased by the trial judge. It was argued that they should have been excused under §376 of The Code Crim.Pro which statutorily included implied bias, if the prospective juror was within a particular class. The court, after discussing the "logic" of the argument advanced which is quoted on page 11 of respondent's brief refused to include correctional officers

within the class and proceeded to determine whether the record showed "actual bias" under subsection 2 of The Code. 305 N.E.2d at 479. The court concluded that the specific answers given by the prospective jurors established they were biased.

It is rather obvious the Court declined to imply or presume bias just as this Court did in Morgan and Lusk.

Commonwealth v. Jones, 383 A.2d 874 (Pa.1978) has absolutely nothing to do with this case for police officers were the prospective jurors sought to be removed, not correctional officers. Of course, police officers are an excluded class under the statutory law of this State and are disqualified from jury service, Section 40.013(2), Fla.Stat., whereas correctional officers are not. Morgan and Lusk.

Respondent's reliance upon Irvin v. Dowd, supra, is even less compelling in light of the recent decision rendered by the United States Supreme Court in Patton v. Yount, ___ U.S. ___ (1984), 35 Cr.L. 3152, Opinion filed June 26, 1984.

In Patton a federal appellate court granted a writ of habeas corpus to a prisoner convicted in a state court on the basis that adverse pretrial publicity was such that there was a presumption of prejudice and because the state trial judge erred in refusing to excuse several jurors because of their bias. The Supreme Court reversed holding the issue of individual juror bias was a question of fact to be decided by the trial judge and not by an appellate court upon a "cold record" 35 CrL

at 3156. The court specifically held the Irvin analysis is inapplicable to a case in which the partiality of an individual juror is placed in issue. 35 CrL at 3155.

It is interesting to note that the Supreme Court applied the same "manifest error" test in reviewing the trial court's finding that this Court established in Singer v. State, 109 So.2d 7, 22 (Fla.1959). The Court recognized what the petitioner stressed in its original brief; that the trial judge because he hears and sees the juror while testifying is in a unique position to determine the latter's sincerity not only by the words spoken but by his demeanor. 35 CrL at 3156, note 14. This is true even where the juror's answers were ambiguous, which is not involved in the instant case. Finally the court noted "special deference" should be accorded to findings of a trial judge even on direct appeal. Counsel's statement that under Irvin juror bias "is a mixed question of law and fact" (App's Br. at 24) was repudiated in Patton. The court distinguished both Irvin and Reynolds v. United States, 98 U.S. 145 (1879), another case relied upon by the respondent, and said individual juror bias "is plainly one of historical fact: did a juror swear that he could set aside any opinion he might hold and decide the case on the evidence, and should the juror's protestation of impartiality have been believed." 35 CrL at 3155.

Petitioner observes that Patton v. Yount, was reported prior to the filing of respondent's brief but is not even mentioned therein. No doubt this was an oversight, however, it is clear that the cases relied upon by respondent have authoritatively been found inapplicable and erroneously relied on.

CONCLUSION

The trial judge did not commit manifest error in refusing to excuse prospective jurors Addison and McCann and the lower tribunal erred in finding the contrary on the basis of the "cold record" and resorting to the inherent juror bias doctrine. Judge Mills was correct in his dissent that this was a matter for the presiding judge who observed the prospective jurors when they testified. The majority decision of the District Court should be quashed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Reply Brief has been forwarded to Paula S. Saunders, Assistant Public Defender, Post Office Box 671, Tallahassee, FL 32302, via U. S. Mail, this 1st day of August 1984.

Raymond L. Marky

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Assistant Attorney General