

IN THE SUPREME COURT OF FLORIDA

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ANDREA HICKS JACKSON,

Appellant,

v.

CASE NO. 64,973

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE CIRCUIT COURT
OF THE FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY, FLORIDA

REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
I PRELIMINARY STATEMENT	1
II ARGUMENT	
<u>ISSUE VII</u>	2
THE TRIAL COURT PREJUDICIALLY ERRED IN OVERRULING APPELLANT'S REPEATED OBJECTIONS TO THE TESTIMONY OF SHERIFF DALE CARSON SINCE THAT TESTIMONY WAS NOT RELEVANT TO ANY STATUTORY AGGRAVATING CIRCUMSTANCE, AND THEREFORE RENDERED APPELLANT'S PENALTY PHASE HEARING VIOLATIVE OF THE FIFTH, EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.	
III CONCLUSION	4
CERTIFICATE OF SERVICE	4

TABLE OF CITATIONS

<u>CASES</u>	<u>PAGE(S)</u>
<u>Armstrong v. State</u> , 399 So.2d 953 (Fla. 1981)	2
<u>Doyle v. State</u> , ___ So.2d ___ (Fla. 1984) [9 FLW 453]	2
<u>Menendez v. State</u> , 368 So.2d 1278 (Fla. 1979)	2
<u>Phippen v. State</u> , 389 So.2d 991 (Fla. 1980)	2
<u>Simmons v. State</u> , 419 So.2d 316 (Fla. 1982)	2
<u>State v. Dixon</u> , 283 So.2d 1, 9 (Fla. 1973)	2
<u>Zant v. Stephens</u> , ___ U.S. ___, 77 L.Ed.2d 235 (1983)	3
 <u>CONSTITUTIONS</u>	
Fifth Amendment, United States Constitution	2
Eighth Amendment, United States Constitution	2,3
Fourteenth Amendment, United States Constitution	2
 <u>STATUTES</u>	
Section 921.141, Florida Statutes	2,3

IN THE SUPREME COURT OF FLORIDA

ANDREA HICKS JACKSON, :
Appellant, :
v. : CASE NO. 64,973
STATE OF FLORIDA, :
Appellee. :
_____ :

REPLY BRIEF OF APPELLANT

I PRELIMINARY STATEMENT

Appellee's brief will be referred to as "AB." Other references will be designated as set forth initially.

With respect to those issues not addressed herein, appellant will rely upon her initial brief.

II ARGUMENT

ISSUE VII

THE TRIAL COURT PREJUDICIALLY ERRED IN OVERRULING APPELLANT'S REPEATED OBJECTIONS TO THE TESTIMONY OF SHERIFF DALE CARSON SINCE THAT TESTIMONY WAS NOT RELEVANT TO ANY STATUTORY AGGRAVATING CIRCUMSTANCE, AND THEREFORE RENDERED APPELLANT'S PENALTY PHASE HEARING VIOLATIVE OF THE FIFTH, EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

Appellee, in effect, concedes that Sheriff Carson's testimony did not tend to prove that appellant's intent at the time of the capital felony was to hinder law enforcement, but rather showed only the resulting disruption to law enforcement as an aftermath of the killing (AB 34-36). This concession mandates reversal of appellant's sentence and a remand for a new penalty phase hearing.

This Court has long recognized that the aggravating circumstance established by Section 921.141(5)(g), Florida Statutes, like those established by Sections 921.141(5)(e) and (f), pertains to the offender's motive for the capital felony. State v. Dixon, 283 So.2d 1, 9 (Fla. 1973); Phippen v. State, 389 So.2d 991 (Fla. 1980); Simmons v. State, 419 So.2d 316 (Fla. 1982); Menendez v. State, 368 So.2d 1278 (Fla. 1979); Armstrong v. State, 399 So.2d 953 (Fla. 1981); Doyle v. State, ___ So.2d ___ (Fla. 1984) [9 FLW 453]. The circumstance was obviously intended to cover killings motivated by an intention to disrupt or hinder government or law enforcement such as political assassinations or terrorist activities. Unquestionably, the

circumstance was not aimed at ascertaining the effect of a homicide. If appellee's position were correct, subsection (g) would apply to every homicide since "disruption" to law enforcement automatically results. So viewed, subsection (g) would be violative of the Eighth Amendment since the aggravating circumstance would totally fail to narrow the class of persons eligible for the death penalty. Zant v. Stephens, ___ U.S. ___, 77 L.Ed.2d 235 (1983). Appellant asseverates therefore that the circumstance established by subsection (g) is applicable only where the offender's intent at the time of the killing was the disruption or hindrance of the lawful exercise of government or law enforcement.

Since the circumstance is so limited, Sheriff Carson's testimony was clearly inadmissible. As appellee concedes, Carson's testimony showed only the effect of the homicide - "how this particular homicide, as opposed to the killing of a private citizen, affected the community as a whole" (AB 36). The testimony was not, in the slightest, relevant to appellant's intent or motive. If this Court remains faithful to its precedent, the erroneous admission of Carson's testimony showing a nonstatutory aggravating circumstance mandates reversal of appellant's death sentence.

III CONCLUSION

For the reasons set forth in Issues I, II, III, V and XII, appellant requests a reversal of her conviction and a remand for a new trial. For the reasons set forth in Issue IV, appellant seeks a reversal of her conviction and a reduction to second degree murder. Due to the errors enumerated in Issues VI, VII, VIII, IX, X and XI, appellant's death sentence must be vacated and reduced to life or alternatively, the cause must be remanded for a new sentencing trial before a newly impaneled jury.

Respectfully submitted,

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PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

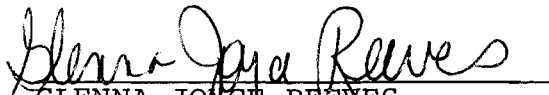


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by hand to Assistant Attorney General Henri Cawthon, The Capitol, Tallahassee, Florida; and by mail to Ms. Andrea Hicks Jackson, #279567, Post Office Box 8540, Pembroke Pines, Florida, 33024, this 2nd day of January, 1984.



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