IN THE SUPREME COURT OF FLORIDA

DANNY MICHAEL TAYLOR,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

CASE NO. 68,213

PETITIONER'S REPLY BRIEF ON THE MERITS

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

KENNETH WITTS
ASSISTANT PUBLIC DEFENDER
112 Orange Avenue, Suite A
Daytona Beach, Florida 32014
Phone: 904/252-3367

ATTORNEY FOR PETITIONER

TABLE OF CONTENTS

	PAGE NO.
TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
ARGUMENT	
THIS COURT SHOULD ANSWER THE CERTIFIED QUESTION IN THE AFFIRMATIVE AND HOLD THAT IT IS REVERSIBLE ERROR FOR THE TRIAL COURT TO ALLOW JURORS TO SEPARATE AFTER JURY DELIBERATIONS HAVE BEGUN.	1
CONCLUSION	3
CERTIFICATE OF SERVICE	3

TABLE OF CITATIONS

CASES CITED:	PAGE NO.
Franklin v. State 472 So.2d 1303 (Fla. 1st DCA 1985)	1
Livingston v. State 458 So.2d 235 (Fla. 1984)	1-2
Raines v. State 65 So.2d 558 (Fla. 1953)	2
Taylor v. State 481 So.2d 970 (Fla. 5th DCA 1986)	2

ARGUMENT

THIS COURT SHOULD ANSWER THE CERTIFIED QUESTION IN THE AFFIRMATIVE AND HOLD THAT IT IS REVERSIBLE ERROR FOR THE TRIAL COURT TO ALLOW JURORS TO SEPARATE AFTER JURY DELIBERATIONS HAVE BEGUN.

In its answer brief, Respondent argues that defense attorney sub judice did not go far enough in his objection to separation of the jury. Respondent likens the defense attorney's actions to those of trial counsel in Franklin v. State, 472 So.2d 1303 (Fla. 1st DCA 1985). The fact remains, however, that in the case at bar the trial counsel did make an objection to the separation, something that was not done in Franklin. Livingston v. State, 458 So.2d 235 (Fla. 1984), does not require a motion for mistrial be made. The issue was properly preserved by trial counsel.

Reason does exist to extend the motion that separation of deliberating jurors is per se reversible error in all felony cases. As Petitioner has argued in his initial brief on the merits the danger of outside influence on jurors who have begun to decide the ultimate issue among themselves comes from other sources beside the media.

Petitioner would argue that no specific allegations of outside influence need be made. It is obvious that as soon as a juror leaves the courthouse exposure to such influences begins. While it is true that the same exposure takes place when court adjourns while testimony and arguments are taking place, after

deliberations have begun the situation changes. This Court seems to have accepted this in Livingston and Raines v. State, 65 So.2d 558 (Fla. 1953). In asking this Court to answer the certified question in the affirmative and extend the Livingston principle to non-capital felonies, the Petitioner can only echo the dissent of Judge Dauksch in Taylor v. State, 481 So.2d 970 (Fla. 5th DCA 1986): "... is is of no real legal significance to me that this criminal proceeding is a non-capital one while Livingston is a capital case. The degree of punishment should not affect the principle".

CONCLUSION

BASED UPON the arguments made and authorities cited herein and in Petitioner's Brief on the Merits, Petitioner asks this Honorable Court to remand this cause for a new trial.

Respectfully submitted,

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

Kenneth Witts

KENNETH WITTS
ASSISTANT PUBLIC DEFENDER
112 Orange Avenue, Suite A
Daytona Beach, Florida 32014
Phone: 904/252-3367

ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the Honorable Jim Smith, Attorney General, 125 N. Ridgewood Avenue, Fourth Floor, Daytona Beach, Florida 32014; and mailed to Danny Michael Taylor, 4419 Edgemoor Street, Orlando, Florida 32811, on this 7th day of April, 1986.

Kenneth Witts

KENNETH WITTS
ASSISTANT PUBLIC DEFENDER