

IN THE SUPREME COURT OF FLORIDA

CASE NO: 69,928

VERNON AMOS,

Appellant/Defendant,

vs.

STATE OF FLORIDA,

Appellee.

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REPLY BRIEF OF APPELLANT VERNON AMOS

CRAIG A. BOUDREAU, ESQUIRE  
FLA. BAR NO. 471437  
First American Financial Center  
220 Sunrise Avenue  
Suite 207  
Palm Beach, Florida 33480  
Telephone: (407) 833-8880

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**AUTHORITIES CITED**

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Horton v. State, 442 So.2d 1064 (Fla.1st DCA 1983).

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J.H. v. State, 377 So.2d 1219 (Fla. 3d DCA 1979).

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**CONSTITUTIONS**

United States Constitution, Amendment V

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United States Constitution, Amendment VI

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United States Constitution, Amendment XIV

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Florida Constitution, Article I, Section 16

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**PRELIMINARY STATEMENT**

Appellant VERNON AMOS was the Defendant, Co-Appellant LEONARD SPENCER was the co-Defendant, and Appellee was the prosecution in the Criminal Division of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida.

In this brief, the Appellant will be referred to as VERNON AMOS, and Appellee will be referred to as the State.

The symbol "R." will be used to designate the record on appeal followed by the page number. The symbol "AB" will be used to designate the Answer Brief of Appellee, the State of Florida.

QUESTIONS PRESENTED

- I. WHETHER THE TRIAL COURT ERRED IN DENYING VERNON AMOS' MOTIONS FOR JUDGMENT OF ACQUITTAL AS TO ALL COUNTS?
- II. WHETHER THE TRIAL COURT ERRED FUNDAMENTALLY BY DENYING VERNON AMOS THE RIGHT TO TESTIFY IN HIS OWN BEHALF?
- III. WHETHER THE TRIAL COURT ERRED FUNDAMENTALLY BY DENYING VERNON AMOS' PRE-TRIAL MOTION FOR A JURY VENIRE DRAWN FROM PALM BEACH COUNTY AT LARGE (RATHER THAN FROM A "JURY DISTRICT" OF ONLY ONE-HALF THE GEOGRAPHICAL AREA OF THE COUNTY) ,
- AND
- ERRED IN VIOLATION OF "EQUAL PROTECTION" STANDARDS OF STATE AND FEDERAL CONSTITUTIONAL LAW BY DENYING A DEFENSE REQUEST FOR TRIAL IN THE WESTERN HALF OF THE COUNTY OR GLADES JURY DISTRICT,
- AND
- ERRED FUNDAMENTALLY IN DENYING THE PRE-TRIAL DEFENSE MOTION TO RE-SET THE CASE FOR TRIAL DURING A WEEK WHEN THE JURY POOL ALREADY WAS SCHEDULED TO BE DRAWN COUNTY-WIDE FOR USE IN SELECTING A NEW GRAND JURY?

I. THE TRIAL COURT ERRED IN DENYING  
VERNON AMOS' MOTIONS FOR JUDGMENT  
OF ACQUITTAL AS TO ALL COUNTS.

The State of Florida's answer brief highlights a peculiar problem that occurred at the trial level. In that brief the State argues that Amos was the person who shot the victim store clerk McAninch. (AB 25). The problem is highlighted by the State's insistence at trial that Spencer was the gunman at the convenience store. (R. 4195).

Vernon Amos was convicted at trial on the mere suggestion by the prosecutor that he was the gunman at the second crime scene. The evidence at trial never placed a gun in the hand of Vernon Amos, nor did it demonstrate an overt act on his part that would indicate that he was a participant in Leonard Spencer's crimes. The mere fact that Vernon Amos, a black male, was present when Leonard Spencer, a black male, killed two men is insufficient to support a conviction.

The State can only suggest that Amos was a participant: "The State maintains that the evidence reveals that Appellant shot Robert Bragman as the victim and Spencer struggled over keys..." (AB. 31).

The bottom line is that Vernon Amos was convicted of first degree murder because of the State's overbearing assurance to the jury that the crime occurred as they said it did in spite of the evidence only incriminating Spencer.

Since mere presence at the scene of a crime is insufficient to convict, and there exists a reasonable hypothesis of

innocence, then Vernon Amos' convictions must be reversed.

Horton v. State, 442 So.2d 1064 (Fla.1st DCA 1983); J.H. v. State, 377 So.2d 1219 (Fla. 3d DCA 1979).

II. THE TRIAL COURT ERRED FUNDAMENTALLY  
BY DENYING VERNON AMOS THE RIGHT TO  
TESTIFY IN HIS OWN BEHALF.

In its answer brief, the State attempted to claim that Vernon Amos, even though he said he did, really did not want to testify in his own defense. The State attempts to claim that there is some sort of intent test to determine whether a criminal defendant is entitled to her fundamental constitutional and human right to testify. There is no known litmus test or predicate to a defendant's right to testify.

Initially, in the case at bar, Vernon Amos indicated he did not want to testify; however, he changed his mind in a timely manner and choose to testify in his own defense. Changing his mind should not, in all fairness, eliminate his right to testify.

The State claims that this issue is a situation created by Vernon Amos' counsel. The only situation that was created at trial was the trial court's insistence that Vernon Amos subject himself to a pre-trial style deposition. It bears repeating that at no point had any party made a motion in limine questioning the admissibility of Amos' testimony. The co-defendant, Spencer, merely wanted discovery.

Vernon Amos asserts that the trial court created this situation in a successful attempt to intimidate Vernon Amos from

testifying. Vernon Amos charges that this issue is a violation by the trial court of a basic human right that is codified in the Fifth, Sixth, and Fourteenth Amendments of the U.S. Constitution and Section 16, Article I Florida Constitution.

Vernon Amos further charges that a proffer of his testimony was not necessary although his counsel offered to make a proffer through counsel which the trial court refused to accept. (R. 3883). A defendant charged with a crime, especially one punishable by death, is entitled to testify on his own behalf. Vernon Amos asserts that he could have testified with an outlandish defense that nevertheless would have been admissible as long as it was relevant. However, no party ever questioned the admissibility of Vernon Amos' testimony.

Finally, Vernon Amos is entitled to a new trial in which he is provided an opportunity to testify before a jury without the intimidation of trial judge discouraging his testimony through a burdensome process that is unprecedented in the criminal courtrooms of this State and this nation. Vernon Amos prays that this Court will grant him a new trial and further prays for directions that a different Circuit Court Judge be selected by the Chief Judge of the Fifteenth Judicial Circuit to retry this case.

III. THE TRIAL COURT ERRED FUNDAMENTALLY BY DENYING VERNON AMOS' PRE-TRIAL MOTION FOR A JURY VENIRE DRAWN FROM PALM BEACH COUNTY AT LARGE (RATHER THAN FROM A "JURY DISTRICT" OF ONLY ONE-HALF THE GEOGRAPHICAL AREA OF THE COUNTY),

AND

ERRED IN VIOLATION OF "EQUAL PROTECTION"



STANDARDS OF STATE AND FEDERAL CONSTITUTIONAL  
LAW BY DENYING A DEFENSE REQUEST FOR TRIAL IN  
THE WESTERN HALF OF THE COUNTY OR GLADES JURY  
DISTRICT,

AND

ERRED FUNDAMENTALLY IN DENYING THE PRE-TRIAL  
DEFENSE MOTION TO RE-SET THE CASE FOR TRIAL  
DURING A WEEK WHEN THE JURY POOL ALREADY WAS  
SCHEDULED TO BE DRAWN COUNTY-WIDE FOR USE IN  
SELECTING A NEW GRAND JURY.

Vernon Amos adopts by reference the reply brief file by co-  
Appellant Leonard Spencer which only discusses this issue on  
appeal. Vernon Amos further takes exception to the State's  
attempt to challenge the factual basis of the motion at the  
appellate level.

CONCLUSION

For the reasons set forth above, the Appellant, VERNON AMOS, respectfully prays this Honorable court to reverse the judgment and sentence entered by the Circuit Court of the Fifteenth Judicial Circuit, Palm Beach County, Florida.

Respectfully submitted,

Craig A Boudreau  
CRAIG A. BOUDREAU, ESQUIRE

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of this pleading was served, by hand delivery, upon **Attorney General Robert Butterworth**, Office of the Attorney General, Palm Beach County Regional Service Center, Room 204, 111 Georgia Avenue, West Palm Beach, Florida, 33401, this 15th day of August, 1988.

**CRAIG A. BOUDREAU, ESQ.**  
Attorney for Appellant  
220 Sunrise Avenue  
Suite 207  
Palm Beach, Florida 33480  
(407) 833-8880

Craig Boudreau  
CRAIG BOUDREAU  
FLA. BAR NO. 471437