

IN THE SUPREME COURT OF FLORIDA

DARRYL BRYAN BARWICK,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

AUG 19 1988  
CLERK OF COURT  
STATE OF FLORIDA  
TALLAHASSEE, FLORIDA  
CASE NO. 70,097

ON APPEAL FROM THE CIRCUIT COURT OF  
THE FOURTEENTH JUDICIAL CIRCUIT OF  
AND FOR BAY COUNTY, FLORIDA

REPLY BRIEF OF APPELLANT

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I PRELIMINARY STATEMENT

Darryl Barwick relies on his initial brief to reply to the State's answer brief, except for the following additions concerning Issues I and II.

## II ARGUMENT

### ISSUE I

ARGUMENT IN REPLY TO THE STATE AND IN SUPPORT OF THE PROPOSITION THAT THE TRIAL COURT ERRED IN RULING THAT BARWICK, WHO IS WHITE, HAD NO STANDING TO OBJECT TO THE PROSECUTOR'S DISCRIMINATORY USE OF PEREMPTORY CHALLENGES TO EXCLUDE BLACKS FROM THE JURY IN VIOLATION OF ARTICLE I, SECTION 16, OF THE FLORIDA CONSTITUTION AND AMENDMENTS SIX AND FOURTEEN OF THE UNITED STATES CONSTITUTION.

A review of the pertinent parts of the record, which the State has set forth in its brief, shows that the trial court ruled that Barwick had no standing to object to the prosecutor's peremptory challenges under State v. Neil, 457 So.2d 481 (Fla. 1984), because he is white. (R 310-311) To appease the prosecutor, the trial judge also made a statement that he saw no pattern of discrimination against Barwick. (R 311-312) As a fall back argument, the State now asserts that the record supports the contention that there was no discrimination, because all three black jurors excused peremptorily said they could not impose the death penalty. (State's brief, pages 13-14) The State relied solely upon the comment of the trial judge to support this contention. After the prosecutor volunteered a reason for excusing juror Miller, the court said,

Well, I can save you some trouble here. Mrs. Miller, Mrs. Tibbs, Cannon, all of them expressed the thought that they could not vote to impose the death penalty and I don't think that the challenges were racially motivated so that's the reason there was no Neil hearing so the motion will be denied.

(R 322-323) As Barwick pointed out in his initial brief on page 19, the trial judge was wrong. Prospective jurors Cannon and Nickolas never expressed reservations about the death penalty. (R 12, 46-52, 229, 246-252) In fact, no one ever questioned them on the subject. (R 12, 46-52, 229, 246-252)

ISSUE II

ARGUMENT IN REPLY TO THE STATE AND IN SUPPORT OF THE PROPOSITION THAT THE TRIAL COURT ERRED IN REFUSING TO DECLARE DEFENSE WITNESS JAMES BELLER AN EXPERT WITNESS AND IN RESTRICTING HIS TESTIMONY ON THE SOLE GROUND THAT HE DID NOT HOLD A DOCTORATE IN PSYCHOLOGY.

On pages 15 and 21 of the State's brief, the claim is made that the court did not refuse to qualify Beller as an expert because he lacked a Ph.D. and a license to practice psychology. The thrust of the prosecutor's objection to granting expert status to Beller was that he did not have a doctorate and a license. (R 889-892) Ruling in the State's favor, the court commented on its reasons as follows:

In this case I think that Mr. Beller, as I said before, is support personnel for professional level people. He may be professional. The license is not determinative, it's only indicia of whether or not he can himself secure clients or engage clients in the psychological field. Psychology after all is while you spit in the eye of somebody, he'll strike you on the nose or anywhere else he can do it; and I think it takes -- Mr. Beller, I don't in any way tend to negate the qualifications of Mr. Beller to assist people in these things, but when you reach the level of an expert, that's one who knows just about everything about the subject is he about to do. Mr. Beller has not reached that level in education. For instance, there is yet another step that he must reach before he can truly be called a doctor of philosophy -- or, psychology, excuse me; and I think his present position employed by Dr. Warringer makes him support personnel rather than professional level, and for that reason there will be no announcement from the Court.

(R 897) The State's claim regarding the basis of the trial judge's ruling is simply inaccurate.

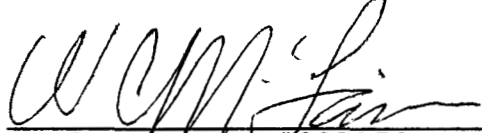


III CONCLUSION

For the reasons expressed in the reply brief and in the initial brief, Darryl Barwick asks this Court to reverse his judgments and sentences.

Respectfully Submitted,

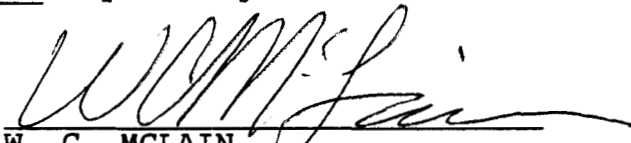
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have hand delivered a copy of the foregoing to the Attorney General's Office, The Capitol, Tallahassee, Florida on this 15<sup>th</sup> day of August, 1988.

  
W. C. MCLAIN