IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

vs. : CASE NO. 70,646

RICHARD P. HOPE,

Respondent.

DISCRETIONARY REVIEW OF THE DECISION OF
THE SECOND DISTRICT COURT OF APPEAL
STATE OF FLORIDA

ANSWER BRIEF OF RESPONDENT

JOEL HIRSCHHORN, P.A.
Attorneys for Respondent
2766 Douglas Road
Miami, Florida 33133

Telephone: (305) 445-5320

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INTRODUCTION

The Respondent, RICHARD P. HOPE, was the Defendant in the Trial Court, and the Petitioner was the State of Florida. In this Brief, the parties will be referred to as the "State" and the "Respondent." The symbol "R." followed by the citation to the appropriate volume and page number, will be used to designate the Record on Appeal. The symbol "App." followed by the citation to the appropriate page number, will be used to designate the Appendix.

JURISDICTIONAL STATEMENT

This Court has jurisdiction to review Issue I, the question certified by the Second District Court of Appeal as one of great public importance, pursuant to Fla.R.App.P. 9.030 (a)(2)(A)(v).

Also submitted to this Court for review are Issues II and III, which were previously presented to the District Court. This Court has jurisdiction to consider these issues. Where the record is properly before the Supreme Court on a question certified as one of great public interest, the Court has the prerogative to consider any error in the record. Lawrence v. Florida East Coast Ry. Co., 346 So.2d 1012, 1014, fn.2 (Fla. 1977); Rupp v. Jackson, 238 So.2d 86, 89 (Fla. 1970).

STATEMENT OF THE ISSUES

I. WHETHER THE COMMISSION OF THE OFFENSE OF OFFERING A BRIBE TO A SITTING CIRCUIT JUDGE TO INFLUENCE HIS FAVORABLE TREATMENT OF A DEFENDANT IN A CRIMINAL PROCEEDING PENDING BEFORE THE JUDGE IS, IN AND OF ITSELF, A CLEAR AND CONVINCING REASON FOR DEPARTURE FROM THE RECOMMENDED GUIDELINES SENTENCE IN SENTENCING THE PERSON OFFERING THE BRIBE

II. WHETHER THE RESPONDENT WAS DENIED A FAIR AND IMPARTIAL TRIAL DUE TO THE TRIAL COURT'S REFUSAL TO CONDUCT AN IN CAMERA INSPECTION OF SWORN TESTIMONY FOR IMPEACHMENT PURPOSES

III. WHETHER RESPONDENT WAS DENIED A FAIR AND IMPARTIAL TRIAL AS A RESULT OF THE IMPROPER INTRODUCTION OF GRAND JURY TESTIMONY

STATEMENT OF THE CASE AND FACTS

On July 17, 1985, the Grand Jury for the Thirteenth Judicial Circuit of the State of Florida, in and for Hillsborough County, returned a six-count Indictment against the Respondent, Richard P. Hope, and co-defendants Arden M. Merckle and Howard L. Garrett. (R.I, 23-27). The first four counts charged Arden M. Merckle with bribery (Fla. Stat. § 838.015(1)), unlawful compensation (Fla. Stat. §838.016(2)), extortion by State officer (Fla. Stat. § 839.11), and misbehavior in office (Fla. Stat. § 775.01). Respondent and Howard L. Garrett were each charged in Counts 5 and 6 with bribery (Fla. Stat. § 838.015(1)) and unlawful compensation (Fla. Stat. § 838.016 (2)). (R.I., 23-27).

The charges alleged in the Indictment stemmed from the handling of the case State of Florida v. David Wynn Hope, III Hillsborough County Circuit Court, Criminal Division, Case Numbers 81-12164, 81-12165, 81-12166, 81-12167 and 82-2530, which then Chief Judge Arden Merckle disposed of on August 4, 1982. 1/ At such time, co-defendant Merckle accepted an "open" guilty plea from David Hope, and sentenced him to seven years probation, withheld adjudication and assessed a fine of Five Thousand Dollars ($5,000.00). (R.XXVII, 3675- 3684).

On August 26, 1985, Respondent's jury trial was commenced before the Honorable Oliver L. Green, Jr., specially assigned to the Thirteenth Judicial Circuit of the State of

1/ David Hope was charged with two counts of possession and delivery of cocaine, two counts of possession and delivery of marijuana and one count of auto theft. (R.XIII, 1857).

Florida, in and for Hillsborough County, Tampa, Florida. During the ten-day trial the State called twenty-four (24) witnesses in support of the facts alleged in the Indictment.

According to the testimony at trial, in December, 1981, David Hope was arrested after attempting to sell approximately one hundred pounds of marijuana to undercover police officers in Tampa, Florida. (R.II, 2003). Attorney Thomas Hanlon was retained by David Hope for his defense. (R.XIII, 1857). The judge assigned to the case was the Honorable Harry Lee Coe. (R.XVII, 2382). On June 16, 1982, attorney Hanlon filed a Motion for Continuance which was granted and the trial was rescheduled until August 23, 1982 when Judge Coe would have returned from vacation. (R.XIII, 1868-1870).

Hanlon testified that on August 1, 1982, David Hope visited him at his ranch and informed him that he (Hope) had decided to enter a plea. Hope told Hanlon that he did not want the case to go further because of his (Hope's) financial condition. (R.XIV, 2010). David Hope testified that the evening before telling Hanlon to dispose of the case, he had spoken to his uncle, Richard P. Hope (Respondent), who informed him that he would get probation and be fined Five Thousand Dollars ($5,000.00). (R.XIV, 2013). Although Respondent had told David Hope to enter a plea and to get it before a judge as soon as possible, at no time did Respondent specify which judge should or would hear the case. (R.XV, 2074).

According to Hanlon's testimony, on the morning of August 4, 1982, as he walked from his office to the courthouse,

he "ran into" Judge Arden Merckle. (R.XIII, 1863). After discussing several matters, Judge Merckle informed Hanlon that he would be handling Judge Coe's docket. At no time prior to this discussion did Hanlon say anything to Judge Merckle about the David Hope case. (R.XIII, 1863). After Judge Merckle mentioned that he would be handling Judge Coe's docket, Hanlon arranged to have Judge Merckle hear David Hope's case that afternoon. 2/

Approximately ten to fifteen minutes before the scheduled sentencing, Hanlon arrived at Judge Merckle's chambers with David Hope. (R.XIII, 1888). At two o'clock, Hanlon informed Judge Merckle that he was there awaiting Hope's plea and sentencing and that the State was not yet represented. (R.XIII, 1889). Hanlon testified that at that time he attempted to find Danny Fernandez, the Assistant State Attorney assigned to the case, but was unsuccessful. Instead, he asked Assistant State Attorney Cass Castillo to handle the plea for the State. (R.XIII, 1889-1891).

Castillo testified that Judge Merckle informed him that it was his intention to place Hope on probation. (R.XII, 1762). Judge Merckle then proceeded to ask Hanlon and Hope to enter his Chambers. Thereafter, Hope entered a plea of guilty to all counts. (R.XIII, 1893). After asking whether Hope was a first offender (which he was), Judge Merckle imposed a sentence of seven years probation, withheld adjudication, and imposed a

2/ Judge Merckle had advised Hanlon of a later date, however, because of a prior commitment, Hanlon informed the Judge he could not appear at that time.

fine of Five Thousand Dollars ($5,000.00). (R.XIII, 1866). [3]/

On cross-examination, David Hope testified that after being sentenced he called his uncle (Respondent) and informed him that Merckle had been the judge and what the sentence was. (R.XIV, 2018; R.XV, 2080). David Hope further testified that upon informing Respondent that Merckle had disposed of his case, Respondent "did act surprised." (R.XV, 2080). That evening, David Hope went to Respondent's house where Howard Garrett was introduced to him as "the gentlemen who was responsible for getting the probation". (R.XIV, 2065). David Hope also testified that Respondent told him that it had cost him (Respondent) Twenty-Five Thousand Dollars ($25,000.00) to have him (David Hope) placed on probation. (R.XIV, 2021).

Howard Garrett testified in his own defense and stated that although he had no specific recollection of the night of August 4, 1982, nor of being at Respondent's home, he did recall talking to Respondent about the possibility of Respondent's nephew becoming his client. (R.XX, 2911). Garrett testified that he never heard any conversation between Respondent and David Hope concerning David Hope's probation. (R.XX, 2909). Garrett stated that he never socialized with Judge Merckle and that, at best, their relationship was a professional one. (R.XX, 2911). [4]/

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[3]/ At no time during the sentencing did the State actually make an objection on the record to the sentence imposed. (R.XII, 1765).

[4]/ During trial, Respondent requested Howard Garrett's prior Grand Jury testimony from the State, in order to effectively examine the witness. This request was denied. (R.XXI, 2960-2963). See Issue II, infra at pg. 12.

Both Howard Garrett and Joseph Morse testified that there were conversations about the "handling" of David Hope's case. Morse testified that while in the employ of Respondent (to do carpentry work) he stopped by to see Garrett at his office. This occurred before the arrest of David Hope. According to Morse, at this time he and Garrett discussed the David Hope case and Garrett said he could "handle" it for Twenty-Five Thousand Dollars ($25,000.00). (R.XV, 2168-2173, 2187). Morse testified he passed this information on to Respondent. (R.XV, 2171).

Garrett testified that Morse had described to him a legal situation involving an unidentified "friend" and asked him "what kind of money would it cost for [him] to handle the case". Garrett told Morse that he could "handle" a case of that nature for Twenty-Five Thousand Dollars ($25,000.00). (R.XX, 2915).

On September 8, 1985, the jury returned its verdict of guilty on all counts as to all defendants. Respondent thereafter filed a Motion for New Trial and a Motion for Judgment of Acquittal. All post-trial motions were denied by the Court.

On October 11, 1985, the Court departed from the Florida Sentencing Guidelines, which called for "any non-state prison sanction." Respondent was sentenced to five years in State prison and was assessed a fine of Five Thousand Dollars ($5,000.00) on Count 5, to be followed by five years probation on Count 6. (R.XXXV, 3666). Therefore, Respondent appealed.

In its opinion, the Second District Court of Appeal summarized the Trial Court's reasons for departing from the

sentencing guidelines, but only found the following reason to have any arguable validity: "That the defendant orchestrated and participated in a scheme highly destructive of the criminal justice system by securing the services of an attorney to accomplish the bribe of a circuit judge." [5] Hope v. State, ___ So.2d ___ (Fla. 2d DCA, May 15, 1987)[12 F.L.W. 1243].

The District Court went on to conclude that the trial judge's reasons for departure from the sentencing guidelines were not clear and convincing. Accordingly, this cause was remanded for imposition of sentences within the recommended guidelines with the following question certified as one of great public importance:

> WHETHER THE COMMISSION OF THE OFFENSE OF OFFERING A BRIBE TO A SITTING CIRCUIT JUDGE TO INFLUENCE HIS FAVORABLE TREATMENT OF A DEFENDANT IN A CRIMINAL PROCEEDING PENDING BEFORE THE JUDGE IS, IN AND OF ITSELF, A CLEAR AND CONVINCING REASON FOR DEPARTURE FROM THE RECOMMENDED GUIDELINES SENTENCE IN SENTENCING THE PERSON OFFERING THE BRIBE

[5] It should be noted that the District Court reversed the convictions and sentences of Garrett, the attorney allegedly used to bribe Judge Merckle. Garrett v. State, ___ So.2d ___ (Fla. 2d DCA, May 15, 1987)[12 F.L.W. 1244]. (App.4).

SUMMARY OF ARGUMENT

Inherent in the charge for which Respondent was punished is the only possible reason for departure, i.e., the disruption of, and/or impact on a governmental entity. Respondent, a private citizen, did not violate a trust. The certified question should be answered in the negative.

The Trial Court erroneously failed to conduct an *in camera* inspection of grand jury testimony and, in particular, the grand jury testimony of co-defendant Howard Garrett. The United States Supreme Court recently ruled that *in camera* inspection of confidential records is necessary for due process.

The improper introduction of grand jury testimony allowed the State to impeach its own witness with inadmissible hearsay statements. Moreover, the State argued, as substantial evidence, the inadmissible statements.

ISSUE I

WHETHER THE COMMISSION OF THE OFFENSE OF OFFERING A BRIBE TO A SITTING CIRCUIT JUDGE TO INFLUENCE HIS FAVORABLE TREATMENT OF A DEFENDANT IN A CRIMINAL PROCEEDING PENDING BEFORE THE JUDGE IS, IN AND OF ITSELF, A CLEAR AND CONVINCING REASON FOR DEPARTURE FROM THE RECOMMENDED GUIDELINES SENTENCE IN SENTENCING THE PERSON OFFERING THE BRIBE

The Second District correctly held that Respondent should be sentenced in accordance with the Guidelines. Sub judice, there is no clear and convincing reason which would justify a departure from the presumptively appropriate sentence under the Guidelines.

The State does not dispute the well-settled law that departure cannot be based on a reason that is an inherent component of the crime for which the defendant is sentenced. State v. Mischler, 488 So.2d 523 (Fla. 1986). Instead, the State, without citation to any authority, suggests at pg. 9 of its Initial Brief, two "reasons" to uphold a departure:

1. "[Respondent's] criminal conduct resulted in an egregious breach of public trust," and

2. "The integrity of the judicial system would not have been compromised but for the [Respondent's] corrupt actions."

When semantics are set aside, it is clear that once again these are "reasons" inherent in the crime of Bribery. The State's use of terms such as "egregious breach," "serious criminal case" and "unjustly lenient sentence" does not change the character or nature of Respondent's offense, nor can such descriptions serve to enhance his sentence.

Both Bribery (Fla. Stat. § 838.015(1) and Unlawful Compensation (Fla. Stat. § 838.016(2)), by definition, expressly apply to "any public servant ... in performance of a public duty." Therefore, these crimes may inherently affect the "public trust," and may inherently affect the "integrity" of whatever agency/system/entity that the particular public servant is a part of. Whether the object of a bribe is a policeman, county commissioner, building inspector, governor, or judge, inherent in the act may be its impact on "the public" in general.

Moreover, it was Judge Merckle, not Respondent, who held a position in the public trust and had a duty to uphold the integrity of the judicial system. As the District Court stated:

> [Respondent] was a private citizen with no more duty, responsibility or obligation to the public than any other private citizen. This is in great contrast to the duties, responsibilities and obligations of then Judge Merckle ....
>
> Hope v. State, ___ So.2d ___ (Fla. 2d DCA, May 15, 1987)[12 F.L.W. 1243].

See, Cason v. State, 508 So.2d 448 (Fla. 3d DCA, May 26, 1987) [12 F.L.W. 1340] (Departure warranted for policeman accepting bribe, violation of public trust).

The District Court also correctly held that it would be improper "to equate the sentence of the one bribing with the sentence of the one being bribed." Hope, ___ So.2d at ___ [12 F.L.W. at 1243], citing State v. Huggins, 502 So.2d 482 (Fla. 2d DCA, Feb 4, 1987)[12 F.L.W. 466]; McCarthy v. State, 492 So.2d 462 (Fla. 5th DCA 1986); Allen v. State, 476 So.2d 309 (Fla. 2d

DCA 1985); Von Carter v. State, 468 So.2d 276 (Fla. 1st DCA 1985). Accordingly, the District Court was correct in distinguishing Respondent from Judge Merckle and holding that departure was not warranted for Respondent. The certified question presented to this Court should be answered in the negative. The decision of the Second District, with respect to Respondent's sentence, should be affirmed.

ISSUE II

THE RESPONDENT WAS DENIED A FAIR AND IMPARTIAL TRIAL DUE TO THE TRIAL COURT'S REFUSAL TO CONDUCT AN IN CAMERA INSPECTION OF SWORN TESTIMONY FOR IMPEACHMENT PURPOSES

Prior to trial, Respondent moved for disclosure of grand jury testimony. (R.I, 333-334; R.IV, 500-501). This motion was denied. The motion should have been granted in furtherance of justice to allow for effective representation during trial. At a minimum, the trial court should have conducted an in camera inspection of the grand jury testimony as the trial progressed.

During trial Respondent renewed his request for disclosure of grand jury testimony, and in particular the testimony of co-defendant Howard Garrett.[6/] (R.IV, 580). This motion was denied. The Motion was again renewed when it was obvious that inconsistent testimony would permeate the trial. (R.XI, 1642). The motion was also denied. (R.XI, 1642).

Florida Statute § 905.27 provides that otherwise secret grand jury materials may not be disclosed unless required by a court for the purpose of:

(a) ascertaining whether it is consistent with the testimony given by the witness before the court;

(b) determining whether the witness is guilty of perjury; and

(c) furthering justice.

Several State witnesses testified both at trial and before the Grand Jury as to material matters involved in this

6/ The Second District Court of Appeal reversed co-defendant Garrett's conviction. Garrett v. State, ____ So.2d ____, (Fla. 2d DCA, May 15, 1987) [12 F.L.W. 1244] (App.4).

case. More specifically, one of Respondent's co-defendants, Howard Garrett, who testified before the grand jury, took the witness stand in his own defense. A substantial portion of Garrett's trial testimony was inconsistent with that of David Hope. However, because he was denied access to Garrett's grand jury testimony, Respondent was left "empty-handed" in his attempt to effectively examine Garrett on Respondent's behalf.

The United States Supreme Court has addressed the balance between the public interest in keeping certain records secret, and a defendant's particularized need for disclosure. Pennsylvania v. Ritchie, ____ U.S. ___, 107 S.Ct. 989 (1987); Dugger v. Miller, ___ U.S.___ , 107 S.Ct. 1341 (1987). The Court in Ritchie held that a defendant is entitled to an in camera inspection of confidential records "to determine whether it contains information that probably would have changed the outcome of his trial." ____ U.S.___ , 107 S.Ct. at 1002.

The protected material in Ritchie was a Children and Youth Services (CYS) file compiled on the defendant, who was subsequently charged with the rape of his minor daughter. The Court reasoned that although the state statute which governed disclosure of CYS files:

> [C]ontemplated some use of CYS records in judicial proceedings, we cannot conclude that the statute prevents all disclosure in criminal prosecutions. In the absence of any apparent state policy to the contrary, we therefore have no reason to believe that relevant information would not be disclosed when a court of competent jurisdiction determines that the information is 'material' to the defense of the accused.
>
> Ritchie, ___ U.S. at ___ , 107 S.Ct. at 1002. [First emphasis in original, second emphasis added].

In Miller, which arose out of a Florida (State Court) conviction, the trial court had refused the defendant's request for an in camera inspection of grand jury testimony of three eyewitnesses who gave conflicting testimony at trial. The Florida Supreme Court found no abuse of the trial court's discretion in so refusing. Jent v. State, 408 So.2d 1024, 1028 (Fla. 1982), cert. denied 457 U.S. 1111, 102 S.Ct. 2916 (1982); Miller v. State, 415 So.2d 1262, 1263 (Fla. 1982), cert. denied 459 U.S. 1158, 103 S.Ct. 802 (1983). On petitions for habeas corpus, the Eleventh Circuit ordered the United States District Court to review the grand jury testimony. Miller v. Wainwright, 798 F.2d 426 (11th Cir. 1986). Thereafter, the United States Supreme Court vacated the Eleventh Circuit decision and remanded, Dugger v. Miller, ____ U.S.___ , 107 S.Ct. 1341 (1987), for further consideration in light of Ritchie. On remand, the Eleventh Circuit agreed with the defendants' argument that conflicting testimony given under oath by key eyewitnesses warranted an in camera review of the grand jury testimony. Miller v. Dugger, ___ F.2d ___ (11th Cir. 1987). (Case Nos. 85-3175, 85-3785, opinion filed June 12, 1987). Specifically, the Court held that:

> To ultimately decide the merits of the defendant's [sic] request, it is incumbent upon some court to review the grand jury testimony ... to determine if the defendant has the paticularized need sufficient to overcome the need for secrecy.7/
>
> Miller v. Dugger, ____ F.2d at ___ , (Slip Opinion at 3414) quoting Miller v. Wainwright, 798 F.2d at 430. [Emphasis added].

7/ The Miller Slip Opinion has been reproduced in the Appendix at pg.1.

In light of these rulings, it is imperative that this Honorable Court remand the instant case and instruct the trial court to review the grand jury testimony of Howard Garrett to determine whether it was inconsistent with his trial testimony or whether the information contained therein "probably would have changed the outcome of [the] trial. If it does, he must be given a new trial." Ritchie, ___ U.S. at ___ , 107 S.Ct. at 1002.

ISSUE III

RESPONDENT WAS DENIED A FAIR AND IMPARTIAL TRIAL AS A RESULT OF THE IMPROPER INTRODUCTION OF GRAND JURY TESTIMONY

Jill Babett Boyer, the girlfriend of Respondent's son, Richard Elliot Hope, testified on behalf of the State. During her testimony the State attempted to elicit evidence regarding the delivery of one hundred (100) pounds of marijuana to David Hope on the day prior to his arrest by the Tampa Police. Over Respondent's objection that this testimony was irrelevant and prejudicial, the State was permitted to inquire whether the marijuana was in the garage of her residence and whether David Hope took delivery of the contraband. (R.XV, 2131-2136).

Ms. Boyer testified that she had no direct knowledge of the marijuana or whether it had in fact been delivered to David Hope. The State believed that Boyer had previously testified before the Grand Jury differently - that is, that she herself gave the marijuana to David Hope. Outside the presence of the jury, Boyer was permitted to explain the seemingly inconsistent statements. Boyer testified that whatever she knew about the one hundred pounds of marijuana was based upon what Richard Elliot Hope had told her and that Richard Elliot Hope had said "I gave it to him." (R.XV, 2143-2159). The transcript of the grand jury testimony incorrectly made it appear as though Boyer were testifying that she gave the marijuana to David Hope when, in fact, she was merely quoting Richard Elliot Hope's statement.

Notwithstanding this valid explanation, the Trial Court granted, over numerous objections, the State's request to

have Boyer declared an "adverse witness" and permitted the State to impeach her with her prior grand jury testimony.[8]/ The result of the Trial Court's rulings was that the otherwise inadmissible hearsay statements of Richard Elliot Hope were put before the jury. This error was compounded when the State used the inadmissible/hearsay/impeachment testimony as substantive evidence during closing argument. (R.XXIII, 3197-3198). Respondent's objection and motion for mistrial during the State's closing were denied.

In order for a witness to be declared "adverse" to the State, mere failure of the witness to provide expected or desired testimony is not sufficient. Rather, the witness must "provid[e] testimony that is actually harmful to the interests of the party calling him," (here the State) before impeachment by prior inconsistent testimony is allowed. Brumbley v. State, 453 So.2d 381, 384 (Fla. 1984) (emphasis added); Hernandez v. State, 156 Fla. 356, 22 So.2d 781 (Fla. 1945); Adams v. State, 34 Fla. 185, 15 So. 905 (1894).

In Jackson v. State, 451 So.2d 458, 463 (Fla. 1984), this Court held that a witness' "lapses of memory were not 'affirmatively harmful' and thus could not be the basis for declaring him adverse or allowing him to be impeached." Likewise, in the instant case, there was nothing affirmatively harm-

8/ It is more than ironic that the State was permitted to impeach its own witness with Grand Jury testimony, while Respondent was denied the opportunity to effectively examine co-defendant Garrett with the use of his prior Grand Jury testimony. (See Issue II, infra. at pg.12). It appears that the State's interest in safeguarding the secrecy of Grand Jury testimony only applies when and if it suits their own purposes, in a chameleon-like fashion.

ful (to the State) in Boyer's trial testimony regarding the marijuana. Whether marijuana was actually delivered to David Hope was clearly collateral to the true issues at Respondent's trial. Moreover, the trial testimony of Boyer was not inconsistent with her grand jury testimony since, as she explained, the grand jury testimony was not based upon personal knowledge but, rather, upon what Richard Elliot Hope told her. The State's so-called impeachment of Boyer with prior testimony based upon inadmissible hearsay should not have been allowed by the Trial Court.

This error was exacerbated by the State's use of the hearsay impeachment testimony as substantive evidence. Where the impeachment itself is improper, as here, the use of impeachment testimony as substantive evidence is clearly erroneous and certainly prejudicial. See, Jackson v. State, 451 So.2d at 463 ("Compounding the error, the state used the impeaching testimony of the two detectives as substantive evidence in closing argument, clearly forbidden by Adams and more recent cases,") citing Rankin v. State, 143 So.2d 193 (Fla. 1962); Perry v. State, 356 So.2d 342 (Fla. 1st DCA 1978) cert. denied, 364 So.2d 889 (Fla. 1978); Pitts v. State, 333 So.2d 109 (Fla. 1st DCA 1976).[9]

[9] Reliance by the State on Moore v. State, 452 So.2d 559 (Fla. 1984), is misplaced. Unlike witness Boyer, the witness in Moore actually recanted her prior testimony on a material issue at trial. Moreover, the underlying impeachment testimony in Moore was not based upon inadmissible hearsay.

The State did not call Richard Elliot Hope (Respondent's son) to testify in the trial below. However, the State was able to introduce his hearsay statements under the guise of impeaching its own witness, Jill Babett Boyer. The State then argued, as substantive evidence, Richard Elliot Hope's hearsay statements. The result of the Trial Court's ruling, permitting the State to "back-door" this hearsay testimony, was to deny Respondent a fair and impartial trial.

CONCLUSION

For the reasons and on the basis of the law and other authorities set forth herein, Respondent respectfully requests this Honorable Court to answer the certified question in the negative, thereby affirming the District Court Opinion with respect to sentencing, and to reverse and vacate Respondent's Judgment of Conviction and/or to remand this case back to the Trial Court for further proceedings consistent with the interests of justice.

Respectfully submitted,

JOEL HIRSCHHORN, P.A.
Attorneys for Respondent
2766 Douglas Road
Miami, Florida 33133

Telephone: (305) 445-5320

By: _____
JOEL HIRSCHHORN

By: _____
ANDREW COTZIN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer Brief of Respondent was mailed, postage prepaid, on this 31st day of July, 1987 to Katherine V. Blanco, Esq., Assistant Attorney General, 1313 Tampa Street, Suite 804, Park Trammell Building, Tampa, Florida 33602.

JOEL HIRSCHHORN