IN THE SUPREME COURT OF FLORIDA

CASE NO. 73,492

DIETER RIECHMANN,

Appellant,

vs.

STATE OF FLORIDA,

Appellee.

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SUPPLEMENTAL BRIEF
OF APPELLANT
(In Appeal from The
Circuit Court of The
Eleventh Judicial Circuit)

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Lee Weissenborn
Attorney for Appellant
OLDHOUSE
235 N.E. 26th Street
Miami, Florida 33137
(305) 573-3160
(Fla. Bar #086084)

## THE TRIAL COURT ERRED AND THE DEFENDANT'S CASE WAS SEVERELY PREJUDICED BY THE ADMISSION OF HEARSAY TESTIMONY IN BEHALF OF THE STATE

Unfortunately for Defendant, hearsay evidence came in against him which the trial court should not allowed. This occurred throughout the trial and particular with reference to State's witness Dina Mohler, the self-professed prostitute who described in elaborate detail what Kischnick had told her concerning her life with Defendant. In this regard it would not be an exaggeration to say that this State witness' testimony was riddled with her statements as to what Kischnick had alledgedly told her (T-7/22/88-8-88). The same was true to a lesser degree with respect to the testimony of State witness Ernst-Siegfried Steffen, the most glaring example thereof being when he testified that he heard that Kischnick was to be married (impliedly to someone other than Defenant) and that it was Defendant's idea (T-7/19/88-129). A defense objection and motion to strike was granted but, of course, the jury had already heard the answer.

The most frequently cited objections to hearsay evidence are that it does not afford cross-examination essential to the proper focus to the truth, and if admitted would lack the sanction of an oath. Furthermore, in criminal proceedings particularly, where the admission of hearsay evidence result s in the denial of the accused's right to confront witnesses testifying against him, this may constitute a violation of the Sixth Amendment to the U.S. Constitution. 23 Fla. Jur. 2d (Sect. 224, Evidence and Witnesses).

The Defendant also argues that the trial testimony of State witnesses Regina Kischnick and Peter Meyer-Reinach contained hearsay testimony (App.- 1; T-7/18/88-115-143; T-7/19/88-174-212).

THE TRIAL COURT ERRED IN FAILING TO SUPPRESS ANY USE BY THE STATE OF A PAPER FOUND IN THE TRUNK OF DEFENDANT'S RENTAL CAR LISTING THE INSURANCE POLICIES OF DEFENDANT AND KERSTEN KISCHNICK

The motion to suppress the insurance papers found in the trunk of Defendant's rental car was included in his general motion to suppress (R-89).

The Defendant testified at the suppression hearing that he did not give the police permission to go in the trunk of his car or to take anything out of the car except the person of Kischnick (T-7/15/88-59,60). Officer Psaltides testified at the suppression hearing that Defendant refused to sign a consent form relative to the police searching the car (T-7/7/88-138). Officer Trujillo testified at the suppression hearing that the police opened the trunk at the police station with a key secured from the case file (T-7/8/88-71-74). Defense argued that there was no probable cause for believing there was evidence of a crime in the trunk or the instrumentality used to commit a crime (T-7/12/88-20,21). The State argued there was, in fact, consent even if there was not probable cause for the issuance of the search warrant; that the car was a crime scene; and that the police didn't need a warrant to get a body out of the trunk (T-7/12/88-31,32).

The constitutional deficiency of the involved search warrant has already been argued in behalf of Defendant in the initial and reply briefs, as has the Defendant's contention in his appeal that the State did not prove that he knowingly and intentionally waived his involved constitutional rights.

For those reasons Defendant avers that the trial court erred in refusing the grant the motion to suppress the search and seizure of the trunk and, as is averred in the Defendant's person, listing of the additional grounds he wishes presented in this appeal (App.-1), but for the unconstitutional search, etc, of the trunk the list of the insurance policies would not have been found, which evidence, i.e., the fact of the existence of the insurance policies, was a major link in the State's all-circumstantial evidence case against Defendant.

The Defendant cites and relies upon Gonzalez v. State, 547 So. 2d 253 (4th DCA 1989); State v. Wells, 539 So.2d 464 (Fla. 1989); Robbins v. California, 101 S.Ct. 2841 (1981); and Bumper v. North Carolina (1968).

## IT WAS ERROR FOR THE TRIAL COURT TO DENY THE DEFENDANT'S MOTIONS FOR MISTRIAL, THE MOTIONS FOR JUDGMENT OF ACQUITTAL, THE MOTION FOR NEW TRIAL

The substantive bases for the involved motions asserted in behalf of the Defendant have been argued under other points in the initial and reply briefs but to insure that there is no waiver of the trial court's specific rulings on these motions, Defendant would here specifically assert that the trial court erred in denying all of these involved motions.

Further, since this Court denied Defendant's earlier-filed Motion to Relinquish Jurisdiction back to the trial court to hear the Defendant's Motion for Relief under Rule 3.850, Florida Rules of Criminal Procedure, upon the personal request of Defendant---- as undersigned counsel interprets paragraph #4 of his request for the filing of supplemental grounds in this appeal, it is moved in Defendant's behalf that this Court consider in this appeal the grounds raised in his Rule 3.850 motion (App. 2) so that he will not have been deemed as waiving those grounds.

THE CONVICTION OF DEFENDANT SHOULD BE REVERSED AND SET ASIDE BECAUSE PROVEN FALSE TESTIMONY FORMED PART OF THE STATE'S CASE

In his request for the filing of a separate ground asking that his conviction be set aside because of "proven false testimony", (App. 2, paragraph #5), Defendant personally asserts that the following parts of the State's case constituted "false testimony": "Matthews (Detective)(put him in a holding cell); Hanlon and Lonergan (police officers)(flashlight allegedly in trunk); no alcohol smell, false affidavit; Schleith and Wenk (German police officers)(lied about validity of search in Germany--have been investigated in Germany for Perjury, case dropped because of loophole in German law which does only cover Perjury as crime in German Court in Germany, not' testimony of Germans in foreign courts." (App. 2, paragraph #5)

Regarding Sgt. Matthews' contention that he gave no instructions that Defendant be placed in the holding cell (T-7/6/88-168-170), undersigned counsel dealt with that subject at some length in his initial and reply briefs and while such counsel did not actually apply the term "perjury" to Matthews' contention that he did not order Defendant placed in the holding cell, it is, indeed, difficult to believe that he was telling the truth in this regard considering the testimony of the other Miami Beach police officers on point.

In this regard, if another part of Matthews' testimony is looked to, to-wit: his testimony at the suppression hearing that he didn't remember telling Defendant that if he didn't answer his questions, he would be arrested but that that was "the theme" of what he had said in that regard, his candor and truthfulness

is certainly in doubt (T-7/7/88-112-115). And earlier in his suppression hearing testimony, Matthews gave incredible testimony that if he wasn't mistaken, the questions he asked Defendant on October 29. 1987, weren't about the homicide. (T-7/7/88-98,99). What in the name of heaven else was there for him to talk about with Defendant except the killing of Kischnick? There's and old adage that seems appropriate when considering the veracity of the testimony of this officer which is to the effect that it is the curse of a liar that even when he's telling the truth, he's not to be believed.

Regarding the German court order Defendant impliedly refers to in his paragraph #5 (with his contention that German officers Schleith and Wenk committed perjury in testifying as to the validity of some --- if not all --- of the searches in Germany, etc., undersigned counsel has endeavored to reach the German translater who assisted at the trial in this case to have her furnish a translation of the two German documents Defendant wishes to have undersigned counsel "introduce in the initial appeal brief" in time to have same filed in the appendix hereto, but such counsel has not succeeded in this regard and thus is including in the said appendix the original documents in German and will seek leave as soon as possible hereafter to substitute English translations thereof.

The Defendant is apparently contending that one of these German documents finds that these two German officers did commit

perjury in testifying as to the alleged validity of the German searches, etc., in the Florida trial court below but that such is not prosecutable under German law because the perjury was not committed in Germany. If, in fact, this is the case, such could only serve to strengthen the challenges already lodged against the constitutional validity of the German searches raised in the initial and reply briefs.

With reference to his paragraph #5, the Defendant places his reliance in Pyle v. Kansas, 63 S.Ct. 177.

THE MIAMI BEACH POLICE DEPARTMENT OVERSTATED THE STATUS OF DEFENDANT IN THEIR COMMUNICATION OF OCTOBER 29, 1987. TO THE GERMAN POLICE AS BEING A STRONG OR PRIME SUSPECT IN THE MURDER OF KISCHNICK --- OR THE ONLY SUSPECT --- THEREBY CAUSING THE GERMAN POLICE TO COLLECT EVIDENCE AGAINST DEFENDANT

Officer Psaltides testified at the suppression hearing that when he communicated with the German police "thereafter", i.e., after October 25, 1987, he told them that Defendant was under investigation (T-7/6/88-56-58). He said he never requested a search, etc., by the German police, but he also admitted questioning them if the German apartment could be searched without a warrant (T-7/6/88-60-63). He testified he told the German police on November 9, 1987, that Defendant was a prime suspect (T-7/6/88-67,68). He said he told the German police that Defendant was "a strong suspect" a couple of weeks after October 25, 1987 (T-7/6/88-70,71). But Psaltides also tesitified that he did not ever tell the German police Defendant was "a strong suspect" or even "a suspect", but then immediately thereafter he testified that he told the Germans on November 9. 1987, that Defendant was "a prime suspect." (T-7/6/88-76-79).

Officer Hanlon testified that he told the German police on October 29, 1987, that Defendant was "only a suspect" when Defendant was arrested on that date by the federal ATF officers (T7/6/88-122,123). Officer Lonergan testified that he told the German police both that Defendant was "a witness" and "a suspect."

(T 7/8/88-122,123).

On this state of the State's evidence, the German search warrants were received in evidence at the suppression hearing and, more importantly, the trial court's stamp of approval was given to the German searches, or at least the first one on November 5, 1987.

The Defendant's personal contention that the German authorities were deliberately misled by the Miami Beach Police is absolutely a correct one and he is also right in concluding that this led to a further bootstrapping whereby the puffing of the wares by the Miami Beach Police in turn led to the securing of evidence in Germany which was used as part of the circumstantial evidence against him in the trial court below.

THE STATE'S GUNSHOT RESIDUE EXPERT, MR RAO, GAVE PERJURED TESTIMONY "AS PROVEN BY THE RECORD"

Undersigned counsel made this same argument in his initial brief without using the word "perjury." But whether that word is used or not, this witness's testimony at the trial proves by and of itself that he was not a truthful witness.

UNDER THE CIRCUMSTANCES OF THE GOVERNMENT'S CONFIDENTIAL INFORMANT, SYMKOWSKI, BEING ALLOWED TO TESTIFY AS A STATE WITNESS, IT WAS ERROR FOR FOR THE TRIAL COURT TO HAVE RESTRICTED DEFENDANT FROM HAVING FULLY TESTIFIED AS TO THE CIRCUMSTANCES OF HIS INCARCERATION AT MCC AND OF WHAT HAPPENED THERE REGARDING WHAT HE SAID TO WHOM

Here again, undersigned counsel agrees that Defendant raises a valid complaint although such counsel thought he had dealt with in the earlier briefs. The trial court should not have restricted Defendant in any manner in giving testimony as his version of things testified to by this very unsavory witness called by the State.

THE POLICE CIRCUMVENTED
THE SPEEDY TRIAL RULE
BY DEFERRING FILING THE
MURDER CHARGE AGAINST
DEFENDANT ALTHOUGH THEY
HAD DETERMINED ON THE FOURTH
DAY AFTER THE KILLING OF
KISCHNICK THAT HE WAS THE
SUSPECT

As was dealt with herein earlier, the Miami Beach Police had zeroed in on Defendant as "a suspect", "a strong suspect", "a prime suspect", "the only suspect" no later than four days after the date of Kischnick's shooting and to some exten as of the very date of the shooting. And as was dealt with at length in the earlier briefs, although Defendant was not formally arrested for murder until after he was acquitted of the ATF charges in December of 1987, he was in de facto custody from the very beginning and he is thus correct in undersigned counsel's opinion that the rule speedy trial time began to run against him at least by October 29, 1987. Defendant accurately cites this Court's holding in Thomas v. State. 374 So.2d 508 (1979) for the proposition that, "the spirit of the Speedy Trial Rule would not condone the withholding of some charges and an arrest on others so as to effectively extend the time periods of the rule where there is ample evidence to support probale cause as to all charges..."

THE GERMAN COURT ORDER
OF NOVEMBER 8, 1988,
WHICH REFERS TO ITEMS
FOUND IN DEFENDANT'S
APARTMENT DOES NOT
REFER TO "TREFFPUNKT"
MAGAZINE

In his paragraph #10 ---wherein he urges that the German documents in the appendix hereto ---be made part of the initial appeal brief, Defendant complains bitterly that "TREFFPUNKT" magazine --- which undersigned counsel has learned means something to the effect of "Swingers" magazine --- was not found in his apartment, nor was it ever in his possession, the testimony of German Officer Wenk to the contrary notwithstanding (he testified at trial that he found TREFFPLUNCKT in Defendant's apartment during his search of November 5, 1987 --- T-7/20/88-78-81).

In this regard, Defendant is absolutely right that the German document in the appendix hereto dated November 8, 1988, makes no mention whatsoever of that magazine.

Although the Record on Appeal in unclear in this regard, it is apparently in TREFFPLUNKT that the photograph of Kischnick showing her nude from her pelvis up to her head with with "her face obliterated by a heart shape black mark" and "in a one piece bathing suit covering all this CK (six) genitalia" appears (T-7/19/88-146-148). State at the trial referred to same as, "a link in the chain." (T-7/19/88-146-148).

## CONCLUSION

The Appellant, DIETER RIECHMANN, again prays the Court to enter its order reversing the judgments of guilt and the the sentence of death entered against him and ordering him forthwith released.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy hereof will be delivered to the Attorney General's Office at 401 N.W. 2nd Avenue, Miami, Florida, on January 25, 1991.

LEE WEISSENBORN
Attorney for Appellant
OLDHOUSE
235 N.E. 26th Street
Miami, Florida 33137
(305) 573-3160
(Fla. Bar #086064)