IN THE SUPREME COURT OF FLORIDA

MICHAEL COLEMAN,

Appellant,

-v-

CASE NO. 74,944

STATE OF FLORIDA,

Appellee.

APPELLANT'S REPLY BRIEF

TED A. STOKES

ATTORNEY FOR APPELLANT

Post Office Box 84
Milton, Florida 32572
(904) 623-3260
Florida Bar No. 132682

TABLE OF CONTENTS

TABLE OF CITATIONS

ARGUMENT

POINT I: WHETHER THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION TO SEVER

Appellee appears to recognize the applicability of this Court's recent decision in Bryant -v- State, ___ So. 2d ___ (Fla. Mar. 29, 1990), 15 F.L.W. S178, but seeks to distinguish it because redacted statements of codefendants were not used against Coleman.

That differentiation removes only the Bruton question and does nothing to alleviate the other concerns recognized by this Court in Bryant.

Coleman was tried for first degree murder along with three codefendants like Bryant. He moved to sever prior to trial and renewed the motion on various grounds numerous times during the trial. Codefendant Frazier did not testify at trial.

Codefendant Robinson testified that he was in New Jersey at the time of the crime in the face of overwhelming DNA evidence which inculpated him but exculpated Coleman.

Had the trial court severed the trials of Robinson and Coleman, there would have been no confusing DNA evidence presented, but at the joint trial the jury was so confused they submitted a written question to the court asking whether the vaginal swabs taken from Mildred Baker and Amanda Merrell matched the blood taken from the Appellant.

The trial court further exacerbated the error in denying the severance and added to the jury's confusion by refusing to clarify the jury's concerns on that most critical issue.

POINT II

WHETHER THE TRIAL COURT ERRED IN FAILING TO ANSWER A JURY QUESTION OR READ THEM TESTIMONY OR GRANT A MISTRIAL

Appellee's brief illustrates that Appellant sought to have the State stipulate that the blood of Michael Coleman did not match that found on the vaginal swabs taken from the rape victims, but despite such offer the trial court rejected the same and incorrectly instructed the jury that he could not answer either of the questions submitted by them.

Appellee appears to acknowledge that to be an incorrect statement of the law in arguing that the Court had wide discretion in deciding whether to answer the jury questions.

Coupled with the trial court's error in failing to sever the trials of the codefendants, the refusal to clarify the jury's confusion regarding the complex DNA testimony lead to an unjust verdict from a jury unsure about the facts contrary to the essential requirements of law.

POINT III

WHETHER THE TRIAL COURT ERRED IN ALLOWING THE STATE TO PEREMPTORILY CHALLENGE A BLACK JUROR WITHOUT AN ADEQUATE RACE-NEUTRAL EXPLANATION

In Bryant -v- State, ___ So. 2d ___, 15 F.L.W. S179, this Court further examined the above point on appeal and quoting from Thompson -v- State, 548 So. 2d 198 (Fla. 1989), reiterated:

> In Slappy, we extended the principles of Neil by holding that "broad leeway" must be accorded to the objecting party, and that any doubts as to the existence of a "likelihood" of impermissible bias must be resolved in the objecting party's favor, Slappy, 522 So. 2d at 21-22. Whenever this burden of persuasion has been met, the burden of proof then rests upon the State to demonstrate "that the proffered reasons are, first neutral and reasonable and, second, not a pretext".

Appellant demonstrated on the record that jurors Velma Horne and Carolyn Freeman are black. The burden then shifted to the State to demonstrate that its peremptory challenges thereof were exercised in a race-neutral manner. The State failed to so demonstrate and to satisfy its burden of proof in that regard.

Velma Horne was pretextually challenged because she knew Jocelyn Moultrie who the State asserted to be a participant in a conspiracy relating to the murders.

Jocelyn Moultrie was not a witness at trial and there was no illustration on the record or inquiry of the prospective juror about her opinion of Ms. Moultrie or how her knowledge of that person might impact upon her ability to sit as a fair and impartial juror.

It may be inferred from the record that the State Attorney also knew Jocelyn Moultrie and it may be presumed that he would not for that reason disqualify himself as a potential juror. Because no adequate inquiry of juror Horne was made, the State has not met its burden to show that its challenge was race-neutral and it must be presumed that she was struck only because she was a black woman.

Carolyn Freeman also was a black woman who originally indicated some concerns about the death penalty. However after questioning at the bench, she indicated that she could follow the Court's instructions and vote to recommend imposition of the death penalty. Once those concerns has been alleviated , the State had no basis to strike her other than her race and demonstrated no reasons upon the record.

POINT IV

WHETHER THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION TO SUPPRESS IN COURT IDENTIFICATION

Appellee's argument consists of a reprint of the trial court's findings and an analysis of whether the identifications of Arabella Washington, Amanda Merrell and Tina Crenshaw were reliable or the product of an impermissibly suggestive identfication procedure.

Appellee's brief does nothing to refute Appellant's contentions and it is therefore unnecessary to rehash the arguments contained in Appellant's Initial Brief except to remind the Court that it is onlynecessary to find that one of the three witnesses named above was improperly allowed to testify in order to justify a reversal of Appellant's convictions.

POINT V

WHETHER THE TRIAL COURT ERRED IN OVERRIDING THE JURY'S RECOMMENDATION OF LIFE AND IMPOSING THE DEATH PENALTY

Appellee's argument again consists primarily of republishing the trial judge's finding and reiterating his "try'em and fry'em" philosophy.

Appellee relies heavily upon **Thompson -v- State**, 553 So. 2d 153 (Fla. 1988) and **Torres - Arboledo -v- State**, 524 So. 2d 403 (Fla. 1988). Both can easily be distinguished because it is obvious from the record that Coleman was not the triggerman and it is apparent from the cases that Thompson and Torres - Arboledo were.

In **Thompson**, p. 155, "They then took Savoy out to sea on Thompson's boat and tortured him by beating. "Afterwards, Savoy was wrapped in chains, shot by Thompson in the back of the head and dumped overboard."

In **Torres - Arboledo**, witness George Williams observed the perpetrator with a gun immediately after the murder and Torres - Arboledo pointed the gun at him.

On the contrary, the State's star witness Amanda Merrell testified that Coleman could not have killed the victims herein. They died of gunshot wounds and she observed appellant in possession of only a knife.

This case is more akin to Hallman -v- State, 15 F.L.W. S207 (Fla. Apr. 1990) and Carter -v- State, 15 F.L.W. S255 (Fla. Apr. 1990). In Hallman this Court stated:

> Our focus when the judge has overriden a life sentence recommendation is on the reasonableness of the jury's recommendation. In the leading case of Tedder -v- State, "the facts suggesting a sentence of death should be so clear and convincing that virtually no reasonable person could differ." Looked at another way, the inquiry is whether there is any reasonable explanation for the jury's recommendation.
>
> We believe there is, though we agree with the trial judge that none of the statutorily enumerated mitigating circumstances applied. Hallman produced considerable testimony regarding non-statutory mitigation, for which the jury may consider and other aspect of the defendant's character or record or any other circumstance of the offense.
>
> While no single facet to Hallman's penalty phase evidence was particularly compelling there was sufficient testimony to support the defense position that Hallman was given to appalling errors of judgment when he was under stress.

> Most significantly, the jury reasonably could have found that Hallman should be spared becouse of the shooting: Hallman fired in reaction to Hunick's shots and after he saw Hunick was disabled did not fire again even after he has been shot.

In Carter the court said:

> Indeed we find the present case similar to our recent decision in **Freeman -v- State**, 547 So. 2d 125 (Fla. 1989), in which a similar jury override was disapproved. In both cases the jury heard evidence that, if true, would establish both statutory and non-statutory mitigating evidence regarding the defendant's mental capacity, psychological state and childhood abuse. Indeed, we believe the mitigating evidence presented in the present case is more extensive than that argued in **Freeman**, since it also tended to establish that Carter is amenable to rehabilitation, see **Cooper -v- Duggen**, 526 So. 2d 900, 902 (Fla. 1988), and suffered the ill effects of chronic alcohol and drug abuse.

It is readily apparent that the Coleman jury could reasonably have found that Coleman could be rehabilitated; suffered the abuse of a childhood in the Liberty City section in Miami; was a man with good qualities who made errors under stress according to his mother's testimony and considering the circumstance that Appellant was not the triggerman properly recommended life.

CONCLUSION

This Court should reverse Appellant's conviction, remand for a new trial and set aside the imposition of the death penalty.

Respectfully Submitted,

TED A. STOKES
Attorney for Appellant
Post Office Box 84
Milton, Florida 32572
(904) 623-3260
Florida Bar No. 132682

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished to Robert Butterworth, Esquire, Assistant Attorney General, The Capitol, Tallahassee, Florida 32301, by delivery, this 13 day of August, 1990.

TED A. STOKES
Attorney for Appellant
Post Office Box 84
Milton, Florida 32572
(904) 623-3260
Florida Bar No. 132682