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IN THE

SUPREME COURT OF THE STATE OF FLORIDA

CARLTON BLACK, Petitioner, vs. STATE OF FLORIDA, Respondent.	)	CASE NO. 77,130 DCA NO. 89-2912

PETITIONER'S REPLY BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Petitioner was the Defendant and Respondent was the Prosecution in the Criminal Division of the Circuit Court of the Seventeenth Judicial Circuit, In and For Broward County, Florida.

In the brief, the parties will be referred to as they appear before this Honorable Court.

All emphasis has been supplied by Petitioner unless otherwise noted.

The following symbol will be used:

R = Record on Appeal

STATEMENT OF THE CASE AND FACTS

Carlton George Black, Petitioner, relies on the Statement of the Case and Facts in the Petitioner's Brief on the Merits.

ARGUMENT

THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR A MISTRIAL WHEN THE OFFICER TESTIFIED HE WAS TARGETING NARCOTICS TRANSACTIONS, BUYERS AND SELLERS, IN A "HIGH CRIME AREA".

Respondent/State maintains the error was waived by Petitioner's refusal to accept a curative instruction. However, a curative instruction does not always vitiate the error. Bates v. State, 422 So.2d 1033 (Fla. 3d DCA 1982). In Bates, the defense attorney objected to testimony and moved for a mistrial. The Court denied the motion but was willing to give a curative instruction. The defense attorney refused the instruction stating the instruction would not cure the prejudice. The court ruled that the curative instruction will not necessarily erase the effect of improper testimony from the jury. See Graham v. State, 479 So.2d 824, 825-826 (Fla. 2d DCA 1985) (instruction to disregard insufficient to "unring the bell" that the jury already heard); United States v. Garza, 608 F.2d 659, 666 (5th Cir. 1979) ("if you throw a skunk in the jury box, you can't instruct the jury not to smell it," "after the thrust of the saber it is difficult to say forget the wound").

Additionally, at bar there was a motion in limine that was made regarding potentially prejudicial comments by the police (R3). In the discussion of the motion, the prosecutor admitted he instructed the officers not to mention the area was a "high crime area" (R3). Subsequently when the comment was made by Officer Polan, the court commented that this statement had been the subject

of the motion about twenty minutes earlier and expressed concern about the statement saying he would find it to be an intentional act if it repeated again (R22-27). Additionally the prosecutor agreed the comment was improper (R24). Therefore, the police knew he was not suppose to make the statement.

Secondly, Respondent claims the comment is harmless. However, in Gillion v. State, 16 F.L.W. 72 (Fla. Jan. 10, 1991) this Court ruled the comment could be unduly prejudicial under some circumstances. This Court held in Gillion that because the comment was an observation of the officer not a comment about the reputation of the area as in Beneby v. State, 354 So.2d 98 (Fla. 4th DCA 1978) the error was harmless.

The result of the comment infers guilt by association. Such comments have been held to be improper, Johnson v. State, 559 So.2d 729 (Fla. 4th DCA 1990) (comment that arrest occurred in predominately black neighborhood known for narcotics, prostitutions, robberies and burglaries); Williams v. State, 561 So.2d 1339 (Fla. 2d DCA 1990) (where testimony that vicinity of defendant's arrest was a high crime area known for narcotics was not harmless); Cabral v. State, 550 So.2d 46 (Fla. 3d DCA 1989) (scene of arrest as reputed narcotics area only served to unduly prejudice the jury).

In Wilkins v. State, 561 So.2d 1339, 1340 (Fla. 2d DCA 1990) in referring to testimony that the location of defendant's arrest was a high crime area known for narcotics" the court stated "[N]ot only does this testimony 'impugn the character of the neighborhood'

it also creates an indelible impression that Wilkins was there for no other purpose than to deal in drugs."

Here that is exactly what is done. Respondent claims the comment here was amorphous and did not single out Petitioner or the location of his arrest. However, the testimony shows that the location was in fact singled out.

> Q. Okay. And what led you to approach this abandoned structure?
>
> A. We had a white male walking through the area of Northwest One Avenue.
>
> Q. Why does that have any significance to you?
>
> A. Well this is a high crime area --

(R21-22).

Prejudice arises because an accused is associated with the infamous region which is irrelevant to the case. From this irrelevant evidence, the trier of fact is free to infer that a defendant observed in this area is guilty. His character is disparaged because he is placed in an area frequented by criminals.

As in Petitioner's Initial Brief and in Beneby v. State, the location of where defendant's arrest described as a "high crime area" was the abandoned structure is irrelevant.

This Court should quash the decision of the Fourth District Court of Appeal and reverse Petitioner's conviction. Petitioner relies on his Initial Brief for further argument and authorities.

CONCLUSION

Petitioner respectfully requests that this Court answer the certified question in the affirmative and reverse the decision of the Fourth District Court of Appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereto has been furnished to Sylvia Alonso, Assistant Attorney General, Elisha Newton Dimick Building, Suite 204, 111 Georgia Avenue, West Palm Beach, Florida, 33401 by courier this 1st day of March, 1991.

Of Counsel