IN THE SUPREME COURT OF FLORIDA

ANTONIO LEBARON MELTON, :

Appellant, :

v. : CASE NO. 79,959

STATE OF FLORIDA, :

Appellee. :

_____/

REPLY BRIEF OF APPELLANT

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REPLY BRIEF OF APPELLANT

PRELIMINARY STATEMENT

Appellant relies upon his initial brief to respond to the state's answer brief except for the following additions:

ARGUMENT

ISSUE I

ARGUMENT IN REPLY TO THE STATE AND IN SUPPORT OF THE PROPOSITION THAT THE TRIAL COURT ERRED IN NOT IMPANELING SEPARATE GUILT AND PENALTY PHASE JURIES WHICH FORCED MELTON TO FOREGO HIS RIGHT TO VOIR DIRE ON THE PENALTY PHASE ISSUE OF THE JURORS' OPINIONS ON IMPOSING THE DEATH PENALTY FOR SOMEONE WHO HAD A PRIOR MURDER CONVICTION, DENIED HIM EFFECTIVE COUNSEL IN JURY SELECTION, AND DEPRIVED HIM OF THE BENEFITS AFFORDED BY THE BIFURCATED CAPITAL SENTENCING PROCEDURE.

The State argues that this issue is controlled by this Court's decision in Riley v. State, 366 So.2d 19 (Fla. 1979). However, contrary to the State's position, the issue in Riley is not identical to the issue presented here. The defendant in Riley was concerned with securing guilt phase jurors who could qualify to sit on the guilt phase of a capital trial but who

were unable to qualify for the penalty phase of the trial because of their opposition to the death penalty and inability to consider a death recommendation. In this case, Melton's concern is being forced to choose between his right to thoroughly voir dire the jury who will consider his fate in the penalty proceeding and his right not to have the guilty phase jury apprised of prejudicial and irrelevant information concerning his prior conviction for homicide. In Riley, the defendant was never deprived of the right to select an impartial jury because his right to voir dire a jury was never restricted. Furthermore, there was no problem with potentially tainting the jury with prejudicial, irrelevant information. In Riley, the defense was seeking a systemic change in the procedures, where Melton now merely seeks a change in procedures to accommodate the facts of his case. The harm involved in the two cases are simply not the same.

CONCLUSION

For the reasons presented in this reply brief and in the initial brief, Antonio Melton asks this Court to reverse his death sentence and remand his case to the trial court with directions to impose a sentence of life imprisonment.

Respectfully submitted,

NANCY A. DANIELS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

W. C. McLAIN #201170
Assistant Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Reply Brief of Appellant has been furnished by delivery to Ms. Carolyn Snurkowski, Assistant Attorney General, Criminal Appeals Division, The Capitol, Plaza Level, Florida, 32301; and a copy has been mailed to appellant, Antonio L. Melton, on this 24 day of August, 1993.

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