IN THE SUPREME COURT OF FLORIDA

CASE NO. 81,346

LEO ALEXANDER JONES,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE CIRCUIT COURT
OF THE FOURTH JUDICIAL CIRCUIT,
IN AND FOR DUVAL COUNTY, STATE OF FLORIDA

REPLY BRIEF OF APPELLANT

MARTIN J. MCCLAIN
Florida Bar No. 0754773
Chief Assistant CCR

GAIL E. ANDERSON
Florida Bar No. 0841544
Assistant CCR
1533 South Monroe Street
Tallahassee, Florida 32301
(904) 487-4376
Attorneys for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

ARGUMENT IN REPLY

A. GLEN SCHOFIELD'S CONFESSIONS ARE ADMISSIBLE

The State does not argue that Glen Schofield's confessions would not be admissible if Schofield himself were on trial. However, the State contends that these confessions would be inadmissible at Mr. Jones' trial. Because the State chose to prosecute Mr. Jones rather than Schofield, Schofield's confessions, according to the State, are meaningless. Of course, neither a grand jury nor a petit jury would find these confessions meaningless. Rather, a grand jury would find Schofield's admissions sufficient to support an indictment, and a petit jury would find Schofield's admissions sufficient to convict Schofield or to raise a reasonable doubt about Mr. Jones' guilt. The State uses statements to jailhouse informants every day in order to obtain convictions, but when Mr. Jones attempts to use such statements to establish his innocence, the State cries foul.

Mr. Jones' argument is that due process and fundamental fairness require admission and consideration of Schofield's confessions. The State merely glosses over Mr. Jones' fundamental fairness argument in one paragraph (Answer Brief at 42), not wishing to deal with the basic unfairness inherent in rules that would allow the State to use Schofield's admissions to convict Schofield, but that would not allow Mr. Jones to use the same admissions to establish a reasonable doubt.

Mr. Jones should be accorded the same right to present evidence against Glen Schofield as the State would enjoy if Schofield were on trial. This Court has ruled that, as a matter of fundamental fairness, where a defendant seeks to present evidence which inculpates a third party and exculpates the defendant, such evidence should be admitted as if the third person were on trial.

The State misunderstands this argument as some kind of Williams rule argument (Answer Brief at 42), when the argument simply boils down to what's fair for one party is also fair for the other. Mr. Jones cited a Williams rule case in support of this fundamental fairness argument, because that case explains that if "a defendant's purpose is to shift suspicion from himself to another person, evidence . . . should be of such nature that it would be admissible if that person were on trial for the present offense." State v. Savino, 567 So. 2d 892, 894 (Fla. 1990). In Crump v. State, 622 So. 2d 963 (Fla. 1993), this Court further ruled that the test for admissibility of evidence regarding other suspects to a crime, when offered by the defendant wrongfully charged with the crime, is whether such evidence would be admissible against the other suspect were he on trial. Further, the Florida courts have cautioned that where evidence tends in any way to establish a reasonable doubt of a defendant's guilt, it would be error to deny its admission. Rivera v. State, 561 So. 2d 536, 539 (Fla. 1990); Estrano v.

State, 595 So. 2d 973 (Fla. 1st DCA 1992); In Interest of K.C., 582 So. 2d 741 (Fla. 4th DCA 1991).

The basic premise of these cases, unrecognized by the State, is that fundamental fairness requires that the law apply evenly to both sides in a criminal case. If the State can use certain kinds of evidence against criminal defendants, then fairness requires that criminal defendants be allowed to use the same kind of evidence to raise a reasonable doubt.

The State's brief simply does not address this argument. Rather, without contesting that Schofield's confessions would be admissible against Schofield, the State nevertheless argues that Mr. Jones may not be allowed to rely on the same kind of evidence the State uses every day to obtain convictions.

The State does argue that Schofield's confessions are not "probative enough to obtain a conviction of Schofield" (Answer Brief at 42). The State offers no support for this argument, probably because none exists. Indeed, the lower court found that Schofield's confessions are probative and are capable of evaluation by the trier of fact (PC-R2. 240, 246). Further, as this Court recognized in its last opinion in Mr. Jones' case, Mr. Jones' conviction itself rests upon "Jones' short two-sentence confession," which "the State relied heavily upon" at trial. Jones v. State, 591 So. 2d 911, 913 (Fla. 1991). Thus, according to the State's present position, this "short two-sentence confession" was sufficient for the State at Mr. Jones' trial and is now sufficient to deny Mr. Jones relief, but Schofield's

admissions are worthless. The State's position is inconsistent and illogical.

Schofield's admissions to the murder of Officer Szafranski are just that, admissions. Were Schofield on trial, these admissions would clearly be admissible against him. In conjunction with the testimony of the eyewitnesses who saw Schofield at the scene with a weapon, the evidence of Schofield's confessions would probably result in Schofield's conviction for murder. It is just as probable that those confessions would result in Mr. Jones' acquittal.

B. THE EVIDENCE CORROBORATING SCHOFIELD'S NEWLY DISCOVERED CONFESSIONS SHOULD HAVE BEEN CONSIDERED BY THE LOWER COURT

As with Schofield's confessions, the State argues that the evidence offered by Mr. Jones to corroborate those confessions should not be considered. Again, if Schofield were on trial, the State would most certainly use evidence such as Schofield's request that Patricia Owens provide him with an alibi to obtain a conviction. But, according to the State, Mr. Jones may not use such evidence to corroborate Schofield's confessions because such evidence does not technically qualify as "newly discovered." Thus, according to the State, Schofield's confessions must be considered in a vacuum, with Mr. Jones given no opportunity to corroborate them.

The point of Mr. Jones' argument is that the newly discovered evidence--including Schofield's confessions and the testimony of Daniel Cole and Denise Reed about seeing Schofield fleeing the scene carrying a rifle--highlights the importance of

other evidence which, while not technically "newly discovered," is nonetheless relevant to any fair consideraton of Mr. Jones' claim. That is, the newly discovered evidence changes the entire picture. Cf. Kyles v. Whitley, 115 S. Ct. 1555, 1566 (1995) (a Brady violation is shown when "the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict"). The newly discovered evidence shows that other evidence which may not previously have seemed significant is significant and relevant.

The State does not argue that Patricia Owens' testimony that Schofield asked her to provide him a false alibi for the night of the murder does not corroborate Schofield's confessions. Clearly, Schofield's request for an alibi is relevant and probative. The State does argue that some of the evidence proffered by Mr. Jones is inconsistent with evidence presented at trial. Again, the State misses the point that the newly discovered evidence changes the picture and changes the significance of other evidence.

C. MR. JONES IS ENTITLED TO RELIEF

Although arguing that the trial court applied the appropriate standard to Mr. Jones' claim, the State then engages in exactly the same erroneous analysis relied upon by the trial court--requiring Mr. Jones to invalidate the trial evidence. The State does not address Mr. Jones' argument that under the "probably produce an acquittal" standard, the question is whether the new evidence raises a reasonable doubt about guilt.

The standard argued by the State and applied by the trial court is the precise standard this Court rejected in Mr. Jones' previous appeal. The previous standard was stated in Hallman v. State, 371 So. 2d 482, 485 (Fla. 1979): "the alleged facts must be of such a vital nature that had they been known to the trial court, they conclusively would have prevented the entry of the judgment." This Court stated that the trial court's previous denial of relief was correct under the Hallman standard because "[i]n light of Jones' confession as well as the other evidence introduced at the trial, it could not be said that the newly discovered evidence would have conclusively prevented Jones' conviction." Jones, 591 So. 2d at 916. That is, under the Hallman standard, the defendant was required to prove that the new evidence rendered the State's case at trial insufficient to support a conviction as a matter of law.

The position advocated by the State here, and the standard upon which the trial court relied, is the old standard. Both the State and the trial court have required Mr. Jones to show that the new evidence invalidates the trial evidence, making the trial evidence insufficient for conviction. But the question is not the legal sufficiency of the trial evidence. The question is whether the new evidence would probably produce an acquittal. An acquittal does not require that the evidence be legally insufficient for a conviction. After all, a jury can acquit a defendant even if the trial court has denied a motion for a

judgment of acquittal, which is premised upon the legal insufficiency of the evidence.

In the Brady context, the United States Supreme Court has explained that evaluation of a claim concerning evidence which did not come out at trial does not involve a sufficiency of the evidence test:

> A defendant need not demonstrate that after discounting the inculpatory evidence in light of the undisclosed evidence, there would not have been enough left to convict. The possibility of an acquittal on a criminal charge does not imply an insufficient evidentiary basis to convict. One does not show a Brady violation by demonstrating that some of the inculpatory evidence should have been excluded, but by showing that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.

Kyles v. Whitley, 115 S. Ct. 1555, 1566 (1995). Just as with the standard applied to a Brady claim, the "probably produce an acquittal" standard applied to a newly discovered evidence claim "does not imply an insufficient evidentiary basis to convict." That, however, is what the lower court and the State are requiring Mr. Jones to show.

For a criminal defendant to be entitled to an acquittal, there must be a reasonable doubt about guilt. Thus, if the evidence presented by Mr. Jones raises a reasonable doubt, Mr. Jones would be entitled to an acquittal. The circuit court did not apply this standard, and the State's brief does not address this standard.

Mr. Jones' initial brief sets forth in detail the errors in the lower court's application of the standard, and that discussion will not be repeated herein (Initial Brief, pp. 60-64). In short, application of the proper standard demonstrates that Mr. Jones is entitled to relief. If Schofield's confessions, as well as the evidence showing Schofield was at the scene carrying a rifle, were admitted, there would be even stronger evidence against Schofield than there has ever been against Mr. Jones. As the circuit court recognized, aside from his statement, only circumstantial evidence connects Mr. Jones to the offense. Considering all the evidence, as the circuit court was required to do, the evidence of Schofield's confessions and his presence at the scene carrying a rifle raises a substantial reasonable doubt about Mr. Jones' guilt.

CONCLUSION

As to any matters not addressed herein, Mr. Jones relies upon his initial brief. Based upon the record and the discussions herein and in his initial brief, Mr. Jones respectfully urges that this Court reverse the lower court's order and grant Mr. Jones a new trial and sentencing.

I HEREBY CERTIFY that a true copy of the foregoing brief has been furnished by United States Mail, first class postage prepaid, to all counsel of record on September 25, 1995.

MARTIN J. MCCLAIN
Florida Bar No. 0754773
Chief Assistant CCR

GAIL E. ANDERSON
Florida Bar No. 0841544
Assistant CCR
Post Office Drawer 5498
Tallahassee, Florida 32314-5498
(904) 487-4376
Attorneys for Defendant

Copies furnished to:

Curtis French
Assistant Attorney General
Department of Legal Affairs
The Capitol
Tallahassee, FL 32399-1050