

FILED

SID. J. WHITE

FEB 17 1995

CLERK, SUPREME COURT

By

Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

JAMES E. HUNTER,)

Appellant,)

vs.)

STATE OF FLORIDA,)

Appellee.)

CASE NUMBER 82,312

APPEAL FROM THE CIRCUIT COURT
OF THE SEVENTH JUDICIAL CIRCUIT

SUPPLEMENTAL REPLY BRIEF OF APPELLANT

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

GEORGE D.E. BURDEN
ASSISTANT PUBLIC DEFENDER
FLORIDA BAR NO. 0786438
112 Orange Avenue, Suite A
Daytona Beach, Florida 32114
(904) 252-3367

COUNSEL FOR APPELLANT

TABLE OF CONTENTS

PAGE NO.

TABLE OF CONTENTS

i

TABLE OF CITATIONS

ii

POINT I

1

IN REPLY TO THE STATE AND IN CONTENTION THAT
THE TRIAL COURT ERRED IN DENYING THE
DEFENDANT'S MOTION FOR MISTRIAL BASED ON THE
FAILURE OF THE STATE TO DISCLOSE TO THE
DEFENDANT EVIDENCE WHICH TENDED TO EXCULPATE
HIM.

CONCLUSION

5

CERTIFICATE OF SERVICE

5

TABLE OF CITATIONS

CASES CITED:

PAGE NO.

<u>Brady v. Maryland</u> 373 U.S. 83 (1963)	1, 3
<u>Hansbrough v. State</u> 509 So.2d 1081 (Fla. 1987)	1
<u>Hegwood v. State</u> 575 So.2d 170 (Fla. 1991)	1
<u>Medina v. State</u> 466 So.2d 1046 (Fla. 1985)	1
<u>Smith v. State</u> 641 So.2d 1319 (Fla. 1990)	1
<u>Spaziano v. State</u> 570 So.2d 289 (Fla. 1990)	1
<u>Wuornos v. State</u> 644 So.2d 1000 (Fla. 1994)	1

IN THE SUPREME COURT OF FLORIDA

JAMES E. HUNTER,
Appellant,
vs.
STATE OF FLORIDA,
Appellee.

CASE NUMBER 82,312

SUPPLEMENTAL INITIAL BRIEF OF APPELLANT

POINT I

IN REPLY TO THE STATE AND IN CONTENTION
THAT THE TRIAL COURT ERRED IN DENYING
THE DEFENDANT'S MOTION FOR MISTRIAL
BASED ON THE FAILURE OF THE STATE TO
DISCLOSE TO THE DEFENDANT EVIDENCE WHICH
TENDED TO EXCULPATE HIM.

The state contends that the Appellant's Brady¹ claim lacks any legal basis. The state initially argues that it is not required to "make a complete and detailed accounting to the defense of all police investigatory work on a case." Spaziano v. State, 570 So.2d 289 (Fla. 1990); see also, Wuornos v. State, 644 So.2d 1000, 1006 (Fla. 1994); Hegwood v. State, 575 So.2d 170 (Fla. 1991); Smith v. State, 641 So.2d 1319, 1322 (Fla. 1990); Hansbrough v. State, 509 So.2d 1081 (Fla. 1987); Medina v. State, 466 So.2d 1046, 1049 (Fla. 1985). Appellant agrees with the state on the above statement of case law; however, such statement does not apply to the facts of this case.

¹ Brady v. Maryland, 373 U.S. 83 (1963)

The facts are that appellant agreed with the state to participate in reciprocal discovery in the instant case. The appellant and state have a duty to disclose evidence that they intend to use at trial and the state has an additional duty to share exculpatory evidence in its possession. The state took pictures of appellant on two occasions immediately after the crimes committed in the instant case and failed to disclose the fact that such pictures were taken, and failed to provide either set of pictures to appellant through the formal means of exchange of information. This distinction is extremely important.

For example, to illustrate the fallacy of the state's disclosure argument picture that a Mr. X was charged with committing a crime and Mr. Y was also suspected as a co-defendant. Defense counsel for Mr. Y was present during the deposition of a state witness in the case against Mr. X. During the deposition defense counsel provides the name of a witness, Mr. Z, that is a potential alibi witness for Y in the prosecution of Mr. X. In a subsequent prosecution of Mr. Y for a different crime, defense counsel calls Mr. Z as an eyewitness to the crime without providing Mr. Z's name through the reciprocal discovery process. To be sure, the state would argue, and successfully, that Mr. Z's testimony should be barred because of defense counsel's failure to disclose Mr. Z through the discovery process.

The above is analogous to what occurred in the instant case. The state gave a photostatic copy of a lineup book that

was presented to state witness Donald Clark. Appellant was never charged in the armed robbery of Donald Clark which occurred at a different time and place than crimes committed in the instant case. The lineup sheet was expressly provided to defense counsel as potential state evidence in an armed robbery charge against appellant that never materialized.

The state complains that appellant's argument is form over substance. The state argues that the fact that the pictures (although in a different context) were made available satisfies the disclosure requirement. Appellant disagrees. To judge whether a Brady violation occurred, the Court must look at the totality of circumstances. In the instant case the exculpatory evidence was the fact that immediately after appellant's arrest the state took pictures of appellant on two occasions. The pictures in and of themselves have no value whatsoever. What initially makes the pictures exculpatory is when they were taken, not that they exist. Had the state disclosed to defense counsel that they took pictures of appellant immediately after his arrest they would have a more compelling argument. From the record it was clear that the prosecution team did not know that such pictures were taken and at no time have they asserted that they disclosed that fact to defense counsel. Therefore, their assertion that Brady material was properly disclosed is without merit.

The state also makes the argument that the pictures taken of Mr. Hunter were done with his knowledge therefore the

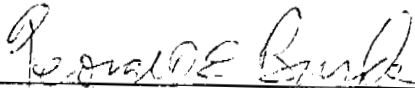
fact of when they were taken was vicariously within the knowledge of defense counsel. There are no facts in the record to support such an inference. The state is further aware that Mr. Hunter thought he was "Commander of the Third World" and thereafter "King James," and that defense counsel filed two motions to determine Mr. Hunter's competence to stand trial. One main theme of these motions were that Mr. Hunter suffered from a mental infirmity that manifested in a complete and total inability by Mr. Hunter to assist counsel in any way. To say that defense counsel could have obtained knowledge of the pictures from Mr. Hunter is without factual foundation, and based upon Mr. Hunter's mental condition is rather disingenuous.

Because the State failed to provide both sets of photographs that were both material information in its possession to the defense which could have reasonably resulted, if fully developed, in a different outcome at trial, a new trial is required.

CONCLUSION

Based upon the foregoing cases, authorities, policies and argument, as well as those set forth in the initial brief, and supplemental initial brief, James Hunter respectfully requests that this Honorable Court vacate his convictions and sentences and remand for a new trial where life imprisonment is the maximum possible sentence.


Respectfully submitted,


GEORGE D.E. BURDEN
ASSISTANT PUBLIC DEFENDER
Florida Bar Number 0786438
112 Orange Avenue, Suite A
Daytona Beach, FL 32114
(904) 252-3367

ATTORNEY FOR APPELLANT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand delivered to the Honorable Robert A. Butterworth, Attorney General, 444 Seabreeze Blvd., Fifth Floor, Daytona Beach, FL 32118 in his basket at the Fifth District Court of Appeal, and mailed to Mr. James E. Hunter, #115624 (44-2193-A1), P.O. Box 221, Raiford, FL 32083, this 16th day of February, 1995.


GEORGE D.E. BURDEN
ASSISTANT PUBLIC DEFENDER