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IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

TERRY JEROME ROCK,

Petitioner,

v.

CASE NO. 82,530

STATE OF FLORIDA,

Respondent.

REPLY BRIEF OF PETITIONER ON THE MERITS

NANCY A. DANIELS  
PUBLIC DEFENDER  
SECOND JUDICIAL CIRCUIT

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REPLY BRIEF OF PETITIONER ON THE MERITS

PRELIMINARY STATEMENT

Appellant files this reply brief to the argument presented by the state as to Issue II. Appellant will rely on the arguments presented in the initial brief as to Issue I.

ARGUMENT

ISSUE II

**THE TRIAL COURT ERRED IN ADMITTING INTO EVIDENCE MR. ROCK'S STATEMENT THAT HE HAD NEVER BEEN IN THE EN VOGUE BEAUTY SALON.**

The state has responded this issue was not preserved.

This argument is meritless. During the hearing on the motion in limine, trial counsel said:

**MS. OWENS:** . . . . The crux of my argument, Your Honor, is that the State Attorney cannot show that these statements are **false**.

**THE COURT:** All right.

**MS. OWENS:** If they're going to -- Your Honor, they're going to attempt to introduce there **was** a fingerprint taken off of a moveable item, a can, something that you can pick **up** and move, and that the fingerprint was taken off of that moveable item and because they have Mr. Rock's fingerprint on that moveable item, they can prove or they can show that Mr. Rock's statement is false. Mr. Rock never said I didn't touch the **can**. Mr. Rock said I've never been in the beauty salon. I don't think Mr. De La Rionda can prove his statement false on an identification of an item that can be moved from one place to another.

( T 139 ).

Counsel renewed her argument during trial when the state sought to introduce the statement:

**MS. OWENS:** My argument, sir, **was** that [the fingerprint on the can] does not prove that Mr. Rock burglarized the store.

**THE COURT:** Well, it doesn't prove he didn't either.

**MS. OWENS:** No. No. No. The point is, Your Honor, I think the legal issue to be decided is whether or not the State has

proved that my client's statement that he's never **been** in En Vogue and he's only been in one other beauty salon has been proven false. **And** I don't believe it **has** been proven false.

( T 196-197 ).

The sufficiency of the state's proof of the falsity of Mr. Rock's statement **was** the issue presented below and the **issue** raised here. The trial court plainly was apprised of the issue.

The statement should not have been admitted **as** there **was** no proof of its falsity independent of proof of **Mr. Rock's** guilt. The error was not harmless, and this Court should reverse Mr. Rock's conviction on this ground.

CONCLUSION

**Based** upon the arguments, **reasoning**, and citation of authority presented here and in the initial brief, petitioner requests that this Court reverse and remand for a new trial.

Respectfully submitted,

NANCY A. DANIELS  
PUBLIC DEFENDER  
SECOND JUDICIAL CIRCUIT



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Bradley R. Bischoff, **Assistant** Attorney General, by delivery to The Capitol, Plaza Level, Tallahassee, Florida, and a copy has been mailed to Steve Mason, Esquire, 609 E. Central Boulevard, Orlando, Florida 32807, and a copy has **been** mailed to Petitioner, **TERRY JEROME ROCK**, #279143, Lawtey Correctional Institution, Post Office Box **229**, Lawtey, Florida 32058, on this 18<sup>th</sup> day of April, 1994.



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NADA M. CAREY