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IN THE SUPREME COURT OF FLORIDA

CASE NO. 90,030

AKEEM MUHAMMAD,

APPELLANT,

VS.

STATE OF FLORIDA,

APPELLEE.

REPLY BRIEF OF PRO SE APPELLANT

APPEAL FROM THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FL.

AKEEM MUHAMMAD #106732
APPELLANT PRO SE
UNION C. I.
P.O. BOX 221 (A-1)
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PRELIMINARY STATEMENT

APPELLANT, AKEEM MUHAMMAD, WAS THE DEFENDANT IN TRIAL COURT BELOW AND WILL BE REFERED TO HEREIN AS "APPELLANT" OR "DEFENDANT". APPELLEE WILL BE REFERED TO HEREIN AS "APPELLEE" OR "THE STATE".

THE FOLLOWING SYMBOLS WILL BE USED:

SB = APPELLANTS SUPPLEMENTAL INITIAL BRIEF

SR = SUPPLEMENTAL RECORD

AB = APPELLEES' ANSWER BRIEF

APPELLANT IN THIS HIS REPLY ONLY RESPONDED TO THE ANSWER BRIEF OF APPELLEE PORTIONS THAT HE FELT WARRENTED A REPLY. THE PORTIONS OF APPELLEES ANSWER BRIEF THAT APPELLANT DIDN'T REPLY TO ONLY MEANS THAT APPELLANT STANDS ON HIS INITIAL BRIEF WITHOUT ADDITIONS, ON THOSE POINTS.

ISSUE I

APPELLANTS 1991 P.S.I. WAS ORDERED IN VIOLATION OF RULE 3.711 OF THE FLA. CRIMINAL PROCEEDURE RULES

THE APPELLEES ANSWER (AB PG. 90) TO THIS ISSUE IS THAT APPELLANT WAS SENTENCED TO PROBATION FOR HIS 1991 OFFENSE, AND IN ANY EVENT, APPELLANT HAS NOT SHOWN ANY PREJUDICE.

IN REGARDS TO APPELLANT BEING SENTENCED TO PROBATION IN CASE NO. 91-19662CF10A (SR 51), APPELLANT WAS ~~[illegible]~~ ARRAIGHNED ON THIS CASE IN OCT. 1991, AND THE P.S.I. WAS ORDERED ON SEPT. 19, 1991 IN CASE NO. 91-14257CF10 DURING ARRAIGHNMENT, AND IT WAS IN CASE NO. 91-14257CF10 THAT APPELLANT PLEADED GUILTY ON 4-14-93 AND WAS SENTENCED TO THE FLA. STATE PRISON. (SR 51). THE RECORD REFLECTS THAT APPELLANT WAS SENTENCED TO PRISON AND PROBATION FOR ALL FOUR OF HIS 1991 OFFENSES, AND THIS OCCURED ALMOST 2 YEARS AFTER THE ORDERING OF THE P.S.I., AND THE STATE IS AWARE OF THIS AND THE DATES AND TIMES THAT APPELLANT PLEAD GUILTY.

THE STATES' ARGUMENT THAT APPELLANT

WAS SENTENCED TO PROBATION, (IN ADDITION TO PRISON) IS IRRELEVENT AND WITHOUT MERIT.

APPELLANT HAS BEEN PREJUDICED BY THE ILLEGAL ORDERING OF HIS 1991 P.S.I. IN THAT THIS P.S.I. WAS UNLAWFULLY PREPARED, CONTAINS HERESAY, CONTAINS UNTRUE-PREJUDICIAL STATEMENTS, AND IT IS BEING USED (AGAINST APPELLANT) IN THIS INSTANT CASE THROUGH THIS PRESENT DAY.

ISSUE II

FLA. STATUTE 921.231 (1)(9)(I) IS UNCONSTITUTIONAL AND VIOLATES NUMEROUS FLA. STATUTES

APPELLEES ANSWER (AB PG. 92) TO THIS ISSUE IS THAT THE STATES' ACTIONS FURTHERS A COMPELLING STATE INTEREST THROUGH THE LEAST INSTRUSIVE MEANS. THE APPELLEE HAS FAILED TO STATE OR PROVE THAT THEIR ACTIONS ARE THE "LEAST INSTRUSIVE MEANS", NOR HAVE THEY JUSTIFIED THE CONFLICTING FLA. STATUTES AND LAWS, AND THEIR RELIANCE ON J.A.S. V. STATE, 705 SO. 2d 1381, 1383 (FLA. 1998) IS NOT PROPER. J.A.S. V. STATE, ID. DEALT WITH

"CRIMINAL RECORDS" AND NOT FAMILY RELATIONSHIP AND MEDICAL RECORDS.

ISSUE III

FLA. STATUTE 921.231 (1)(A)(G)(I) IS LEGALLY VAGUE

THE STATE IN ITS ANSWER (AB PG# 93) TO THIS ISSUE DOES NOT DISPROVE APPELLANTS ARGUMENTS.

THE STATES' IDEA THAT FLA. STATUTE 921.231 MUST BE READ TOGETHER WITH FLA. R. CRIM. P. 3.711 SHOULD BE REJECTED. IT IS THIS IDEA THAT HAS BEEN USED IN APPELLANTS CASE, AND THE P.S.I. INFORMATION DESCRIBING THE "CIRCUMSTANCES" OF THE "PRESENT OFFENSE" IS MOST PREJUDICIAL TO ~~###~~ APPELLANT AND IT WILL CONTINUE TO BE SO.

THE P.S.I. UNDER "CIRCUMSTANCES" (SR PG. 46) STATES THAT "AFTER INTERVIEWING THE WITNESSES, IT WAS LEARNED THAT THE DEFENDANT HAD BEEN SEARCHING FOR THE VICTIM...." AND

IT MADE THE CRIME TO BE A "HATE-CRIME". NONE OF THIS WAS INTRODUCED BY THE STATE AT APPELLANTS TRIAL, AND IT CAN BE ARGUED THAT THIS ADDITIONAL "EVIDENCE" WEIGHED WITH THE JUDGE IN SENTENCING APPELLANT. THIS IS THE CLEAR EXAMPLE WHY THE P.S.I. SHOULD NOT CONTAIN ANY DESCRIPTION OF THE SITUATION SURROUNDING THE CRIMINAL ACTIVITY CHARGED.

THE FACT THAT THE FLA. DEPARTMENT OF CORRECTIONS HAS BEEN PREPARING P.S.I.'S IN THE WAY APPELLANT DEMONSTRATES AS UNLAWFULL, AND THE FACT THAT THIS COURT HAS RECOGNIZED SAID P.S.I.'S IS OF NO AVAIL AND IRRELLEVENT. SEE: U.S. V. LOWERY, 15 F. SUPP. 2d 1348, 1358 (S.D. FLA. 1998).

ISSUE IV

THE PROCESS OF OBTAINING APPELLANTS HEALTH AND REHABILITATION SERVICES, FOSTER CARE RECORDS FOR THE PURPOSE OF PREPARING HIS 1991 AND 1996 P.S.I.'S WAS A VIOLATION OF LAW

IN THAT THOSE RECORDS ARE CONFIDENTIAL

IN THE STATE'S ANSWER (AB PG. 96) TO THIS ISSUE THEY AGGREE THAT FOSTER CARE RECORDS ARE CONFIDENTIAL. HOWEVER, THE STATE ARGUES THAT THE DEPARTMENT OF CORRECTIONS MAY HAVE ACCESS TO FOSTER CARE RECORDS FOR PURPOSES OF PREPARING A P.S.I. THE STATE RELIES ON <u>BELL V. STATE</u>, 365 SO. 2d 463 (FLA. 1ST DCA 1978), <u>DICKENS V. STATE</u>, 368 SO. 2d 950 (FLA. 1ST DCA 1979) AND FLA. STATUTE 985.04 IN THEIR ARGUMENT THAT FOSTER CARE RECORDS MAY BE DISCLOSED TO THE DEPARTMENT OF CORRECTIONS, HOWEVER, THESE CASE LAWS AND STATUTE DEALS WITH JUVINILE "CRIMINAL RECORDS" AND NOT JUVINILE "FOSTER CARE" RECORDS AND THEREFORE ARE IRRELEVENT TO APPELLANTS ISSUE.

THE STATE HAS NOT DEMONSTRATED THAT FOSTER CARE RECORDS MAY BE DISCLOSED TO ANY PERSON WITHOUT THE CONSENT OF APPELLANT, AND THEREFORE APPELLANT MUST SUCCEED ON THIS ISSUE.

ADDITIONALLY, APPELLANT HAS BEEN PREJUDICED BY THE DISCLOSURE OF HIS FOSTER CARE RECORDS IN HIS P.S.I. REPORTS. THE STATE IN ITS

ANSWER BRIEF, PAGE #64, ADMITS THAT ENTRIES IN APPELLANTS' P.S.I. ARE "INCONSISTENT", AND THE ENTRY THAT THE STATE SEEMS TO REJECT IS THE ENTRY ON PAGE 8 OF THE PSI (SR 52) WHICH IS IN REGARDS TO APPELLANTS ADMITENCE TO THE CORAL REEF HOSPITAL IN MAY OF 1989. TO INCLUDE "INCONSISTENT" ENTRIES IN A P.S.I. IS PREJUDICIAL TO A DEFENDANT BECAUSE THE COURT WILL BE FORCED INTO A "PICKING" PROCESS IN DETERMINING WHICH ENTRY TO BELIEVE.

ADDITIONALLY, THE ENTRY IN APPELLANTS P.S.I., WHICH THE STATE SEEMS TO REJECT, STATES THAT:

1). APPELLANT "TRIED TO INCITE A RIOT";
2). APPELLANT "TRIED TO ATTACK STAFF MEMBERS";
3). APPELLANT HAD "INTENTIONS TO RAPE A FEMALE";
4). APPELLANT "AT AGE 18 WILL BE DIAGNOSED AS A SOCIAPATH ANTI SOCIAL PERSONALITY";
5). APPELLANT "WILL BE ANOTHER TED BUNDY",

SEE "SR PAGE 52."

THESE STATEMENTS ARE VERY PREJUDICIAL, AND TAKEN WITH THE PSYCHIATRIC EVALUATION THAT APPELLANT HAD BEHAVIORAL PROBLEMS (SR 49), AND DISTRICT JUDGE CONCIDERING THESE STATEMENT PRIOR TO SENTENCING APPELLANT TO DEATH, THESE STATE-

MENTS WERE NO LESS THEN "AGGRAVATORS" AGAINST APPELLANT, AND AGGRAVATORS NOT PROVEN ARE PREJUDICIAL, AND WILL CONTINUE TO BE PREJUDICIAL.

THE ABOVE IS THE CLEAR EXAMPLE WHY FOSTER CARE RECORDS SHOULD NOT BE DISCLOSED IN CRIMINAL PROCEEDINGS.

CONCLUSION

APPELLANT HAS DEMONSTRATED THE VOLUME OF NON-FACTUAL PREJUDICIAL INFORMATION IN HIS P.S.I. REPORTS:

1). "AFTER INTERVIEWING THE WITNESSES, IT WAS LEARNED THAT THE DEFENDANT HAD BEEN SEARCHING FOR THE VICTIM...." ;

2). THE CRIME WAS A HATE-CRIME ;

3). APPELLANT "TRIED TO INCITE A RIOT" ;

4). APPELLANT "TRIED TO ATTACK STAFF MEMMERS" ;

5). APPELLANT "HAD INTENTIONS TO RAPE A FEMALE" ;

6). APPELLANT "AT AGE 18 WILL BE DIGNOSED AS A SOCIAPATH ANTI SOCIAL PERSONALITY" ;

7). APPELLANT "WILL BE ANOTHER TED BUNDY";

8). APPELLANT HAD "BEHAVIORAL PROBLEMS", AND TOGETHER WITH THE FACT THAT APPELLANTS P.S.I. WAS UNLAWFULLY ORDERED, PREPARED AND OBTAINED, IT CANNOT BE STATED THAT THIS PREJUDICIAL INFORMATION DID NOT INFLUENCE THE DISTRICT JUDGE IN SENTENCING APPELLANT, AND THAT THIS PREJUDICIAL INFORMATION WILL NOT CONTINUE TO PREJUDICE APPELLANT.

APPELLANTS REQUESTED RELIEF IN HIS SUPPLIMENTAL INITIAL BRIEF SHOULD BE GRANTED.

RESPECTFULLY SUBMITTED.

[signature]

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I HEREBY CERTIFY THAT A COPY OF THE FOREGOING WAS MAILED TO GARY CALDWELL, 421 3rd ST., W. PALM BEACH, FL. 33401 AND DAVID SCHULTZ, 1655 PALM BEACH LAKES BLVD., W. PALM BEACH, FL 33401, THIS 16 DAY OF DEC., 1998.

[signature]

AKEEM MUHAMMAD #706732