IN THE SUPREME COURT OF FLORIDA

DAVID WYATT JONES,

Appellant,

v. CASE NO. 90,664

STATE OF FLORIDA,

Appellee.
_____/

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

REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

PAGE(S)

CASES

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REPLY BRIEF OF APPELLANT

PRELIMINARY STATEMENT

Appellant relies on his initial brief to reply to the State's answer brief, with the additional arguments presented in this brief concerning Issues I and V.

Undersigned counsel certifies that this brief has been prepared using 12 point, Courier New, a font which is not proportionally spaced.

ARGUMENT

ISSUE I

ARGUMENT IN REPLY TO THE STATE AND IN SUPPORT OF THE PROPOSITION THAT THE TRIAL COURT ERRED IN DENYING JONES' MOTION TO SUPPRESS STATEMENTS SINCE JONES HAD REASSERTED HIS RIGHT TO COUNSEL AND THE STATEMENTS WERE OBTAINED IN VIOLATION OF HIS RIGHTS UNDER EDWARDS V. ARIZONA.

On page 24 of the Answer Brief, the State asserts that Jones's request for counsel was not unambiguous or unequivocal. Jones' request to talk to his lawyer was direct and clear. Correctional Sergeant Frazier, to whom the request was made, understood the request. Frazier testified that Jones said,

> ...he wanted to talk to his mom. He wanted to talk to his attorney. He wanted to talk to detective[Parker]....

(T7:1307-1308) Frazier had no trouble understanding Jones' words. According to her testimony, Jones made the request to talk to his lawyer with the same clarity that he requested to talk to Detective Parker.(T7:1307-1308) She summoned the detective. (T7:1310) She advised Detective Parker of Jones' request to see his lawyer. (T7:1326-1329) Parker failed to honor Jones' request to talk to counsel.

There is nothing inconsistent about Jones' request to talk his lawyer coupled with a request to talk to the detective. Jones had the right to have the assistance and advice of counsel, even if he was also contemplating giving a statement to law enforcement. Jones was emotionally distraught at the time, but, perhaps because

of that fact, he realized the assistance of counsel would be wise before and during any conversation with the detective. The fact that Jones ultimately talked to Detective Parker after he had requested counsel does not, in any way, reflect that the request itself was ambiguous or equivocal. See, Smith v. Illinois, 469 U.S. 91, 100 (1984)("an accused's *postrequest* responses to further interrogation may not be used to cast retrospective doubt on the clarity of the initial request itself").

Jones relies on his initial brief to reply to the State's remaining arguments.

ISSUE V

ARGUMENT IN REPLY TO THE STATE AND IN SUPPORT OF THE PROPOSITION THAT THE TRIAL COURT ERRED IN EXCLUDING AS IRRELEVANT THE TESTIMONY OF A DEFENSE WITNESS WHO WAS TO TESTIFY DURING THE PENALTY PHASE ABOUT THE IMPACT OF CRACK COCAINE ADDICTION BASED ON HIS OWN EXPERIENCE AS A FORMER ADDICT AND HIS BACKGROUND AS A PSYCHIATRIST WHO TREATS ADDICTS.

On page 51 of the answer brief, the State asserts that, "Jones has not provided this Court with an accurate accounting of what transpired below concerning Dr. Eaton." ***Jones' initial brief did provide an accurate account of the facts relevant to the trial judge's ruling excluding the witness's testimony***. The State's brief has provided this Court with some red herrings to distract from the real issue concerning the real basis for the court's ruling excluding the testimony. Jones' initial brief did not burden this Court with an account of collateral matters not relevant to the trial judge's ruling. There were questions concerning discovery earlier in the case which were resolved. There were some concerns, logistically, about how to present Dr. Eaton's testimony since he desired to maintain some anonymity due to concerns of his employer. However, *the trial court's ruling excluding Dr. Eaton's testimony did not pertain to any of those matters*. As Jones presented in his initial brief at page 56, and

the State, in fact, acknowledges in its answer brief at page 61, the court ruled:

> And I find this witness may not testi[fy], the one that's unwilling to give his name because [his] job requires all this but not for that reason but for the fact that I don't think he's testifying to anything to except his personal problems and he's not giving an expert opinion as to how it relates to this defendant.

(T25:1839-1840)

In spite of the express ruling of the trial court, *supra.*, the State in its answer brief avers, "...the trial court did not exclude Dr. Eaton as a witness, rather the defense chose not to subpoena him, in an attempt to conceal his identity from the jury." (Answer Brief at 58) The defense did not subpoena the witness because he was not unwilling to testify as the State suggests. (T24:1589-1595) Defense counsel was requesting and pursuing alternate means of presenting Dr. Eaton's testimony in deference to the witness's concerns about complete public disclosure of his identity and employment. (T24:1589 -1595) However, before any resolution of those matters, *the prosecutor cut short further discussion of these points* and urged the court to rule that Eaton's proposed testimony simply was not admissible at all. (T25:1830) He said,

> ... the question is -- the witness form Gainesville problem is essentially two fold, whether you can permit the witness to not give his name and tell us where he

> works or anything, which essentially I would suggest would hamstring effective cross-examination. But more to the point I can find no case that suggests this type of evidence is admissible....

(T25:1830) The prosecutor effectively shifted the focus of the discussions away from how Eaton's testimony might be presented to whether it could be presented in any form. (T25:1830-1840) Ultimately, the trial court ruled that Eaton's testimony was not admissible, regardless of how it might be presented. (T25:1839-1840)

As discussed in the initial brief, Jones was entitled to present an expert witness, who had not examined Jones, for the purpose of educating the jury about the impact of crack cocaine addiction. (See, Arguments and authorities in Initial Brief at pages 56-60) The trial court incorrectly ruled that Jones could not do so.

CONCLUSION

For the reason presented in the initial brief and this reply brief, David Wyatt Jones asks this Court to reverse his convictions and remand for a new trial. Alternatively, Jones asks this Court to reduce his death sentence to life imprisonment.

Respectfully submitted,

NANCY A. DANIELS
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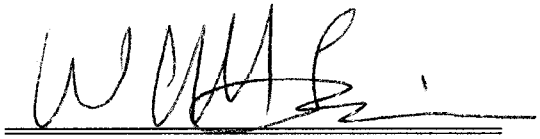

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by delivery to Mark S. Dunn, Assistant Attorney General, Criminal Appeals Division, The Capitol, Plaza Level, Tallahassee, Florida, 32301, and by U. S. Mail to appellant, on this 12 day of October, 1998.

W. C. McLAIN
Assistant Public Defender