

FILED

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IN THE SUPREME COURT OF FLORIDA

CASE NO. 92,558

CLERK, SUPREME COURT
By 
Chief Deputy Clerk

DYRON TUCKER,

Petitioner,

-vs-

THE STATE OF FLORIDA,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW

REPLY BRIEF OF PETITIONER ON THE MERITS

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INTRODUCTION

In this reply brief, as in the initial brief on the merits, all emphasis is supplied unless the contrary is indicated.

ARGUMENT

THE LOWER COURT ERRED IN AFFIRMING THE DEFENDANT'S CONVICTION, WHERE THE STATE INTRODUCED EVIDENCE OF THE DEFENDANT'S PRIOR CONVICTION FOR CARRYING A CONCEALED FIREARM, OVER DEFENSE OBJECTION, AND WHERE THE PROBATIVE VALUE OF THIS EVIDENCE, IF ANY, WAS FAR OUTWEIGHED BY THE DANGER OF UNFAIR PREJUDICE.

In its brief of respondent on the merits, the state asserts that the jury in this case "was not apprised as to the nature of the prior convictions." (Brief of Respondent at 14). This assertion is refuted by the record. Specifically, the trial judge allowed the prosecutor to introduce into evidence the *unedited* certified copies of all three prior convictions for burglary, robbery and carrying a concealed firearm, over defense counsel's objections (TR. 142). Moreover, the state's fingerprint technician witness orally informed the jury that the prior convictions were for the offenses of burglary, robbery, and carrying a concealed firearm. (TR. 142). Finally, during closing arguments, the prosecutor instructed the jury to look at Mr. Tucker's certified convictions, and to look specifically "at the *particular* felonies for which he was convicted." Therefore, there is no question that the jury in this case was made aware of the nature of Mr. Tucker's prior convictions.

The state goes on to assert in its brief that the prior convictions introduced by the prosecution were "not likely to support the defendant's conviction on improper grounds," and that "the risk of prejudice was minimal," as compared to the high probative value of the prior conviction evidence (Brief of Respondent at 14, 19). This assertion is untenable. Mr. Tucker was charged in this case with unlawfully possessing a firearm, which was allegedly used during the commission of a robbery (TR. 201-206). Two of the three prior convictions introduced by the state were for robbery and carrying a concealed firearm-- virtually the exact same behavior for which the defendant was standing trial. There was clearly a high risk that the jury would improperly take the prior convictions, particularly the conviction for carrying a firearm, as evidence that the defendant committed the present possession of a firearm offense. Moreover, the defense offered to stipulate to Mr. Tucker's status as a convicted felon, which would have conclusively established that element of the offense (TR. 141). Therefore, the introduction of the prior convictions in this case was completely unnecessary, carrying no additional probative value whatsoever, while creating a substantial danger of unfair prejudice.

Finally, the state asserts that this issue was not preserved

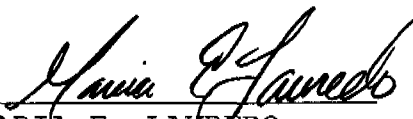
for appellate review because defense counsel did not renew his previous contemporaneous objection at the close of the evidence (Brief of Respondent at 14). The Respondent cites no authority to support this proposition, and indeed, no such authority exists. Rather, it is well established that a contemporaneous objection to the evidence in question is sufficient to preserve an issue for appellate review. See *Castor v. State*, 365 So. 2d 701, 703 (Fla. 1978) ("The requirement of a contemporaneous objection. . .places the trial judge on notice that error may have been committed, and provides him an opportunity to correct it at an early stage of the proceedings").

CONCLUSION

Based on the foregoing facts, authorities and arguments, Petitioner respectfully suggests that *Parker v. State* should be clarified and harmonized with the United States Supreme Court's recent decision in *Old Chief v. United States*, and urges that he be granted a new trial.


Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered by mail to Roberta G. Mandel, Assistant Attorney General, Office of the Attorney General, Criminal Division, 444 Brickell Avenue, Suite #950, Miami, Florida 33131, this 5th day of June, 1998.



MARIA E. LAUREDO
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