SUPREME COURT OF FLORIDA

LAMAR BROOKS,

Appellant,

vs. CASE NO.: 94,308

STATE OF FLORIDA,

Appellee.

______________________/

ON APPEAL FROM THE CIRCUIT COURT
OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR OKALOOSA COUNTY, FLORIDA

REPLY BRIEF OF APPELLANT

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SUPREME COURT OF FLORIDA

LAMAR BROOKS,

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REPLY BRIEF OF APPELLANT

ARGUMENT

STATEMENT OF THE CASE AND FACTS

IN REPLY AND IN SUPPORT OF THE STATEMENT OF THE CASE AS PRESENTED IN AMENDED INITIAL BRIEF OF APPELLANT

In the Answer Brief of Appellee, the State cites to XVIII 2100. This citation, according to the State, contains Mr. Brooks' saying to Terrance Goodman that "he rode in the backseat of the victim's car to Crestview." (Appellee Brief p.4). A close reading of Mr. Goodman's testimony reveals that Mr. Brooks never talked to Goodman about the crime itself but did discuss the *presentation of his defense*. (T 2100). The discussion of a defense tactic, albeit misplaced, was not an admission of riding in the backseat and is not a statement of a fact as so listed in the subheading. It is misleading to characterize Mr. Brooks' defense tactics as a fact/admission. To inundate the Appellee's Brief with this mischaracterization is improper.

POINT ONE

IN REPLY AND IN SUPPORT THAT THE TRIAL COURT ERRED BY PERMITTING IMPROPER HEARSAY

In the Answer Brief of Appellee, the State claims that Davis' statements to Samms, Johnston, Sievers, Mantheny and R. Jones were co-conspirator statements and thus admissible. (Appellee Brief p. 11-12). Although the Answer Brief includes this conclusory language, it is silent regarding the requirement that any co-conspirators statements must be made "during the course of the conspiracy." Calvert v. State, 730 So.2d 316 (Fla. 5th DCA 1999). Davis made statements to Samms, Johnston and Sievers approximately one month before the homicides. Davis made statements to Mantheny, including applying for the life insurance policy in February 1996, three months prior to the homicides. Assuming, *arguendo*, that a conspiracy began upon Mr. Brooks' arrival in Florida three days before the homicides, the above Davis' statements were not made during the course of the conspiracy. As a result, all of the Davis' statements were inadmissible. Additionally, Appellant relies on arguments and citations previously enumerated in Amended Initial Brief of Appellant.

POINT TWO

IN REPLY AND SUPPORT THAT THE TRIAL COURT ERRED BY PERMITTING CO-CONSPIRATORS' HEARSAY STATEMENTS WHERE NO

INDEPENDENT EVIDENCE OF A CONSPIRACY EXISTED AND STATEMENTS WERE NOT MADE DURING NOR IN FURTHERANCE OF ANY CONSPIRACY

In the Answer Brief of Appellee, the State attempts to rescue the trial court by merely concluding that the record supports the trial courts conclusion that a conspiracy existed. (Appellee Brief p. 14). The State ignores, *inter alia*, the point urged by Appellant that the trial court considered the hearsay statement sought to be admitted in determining that a foundation was laid. (Amended Initial Brief of Appellant p. 43). In fact, the State cites to Foster v. State, 679 So.2d 747 (Fla. 1996); Romani v. State, 542 So2d. 984 (Fla. 1989) and Briklod v. State, 365 So2d. 1023 (Fla. 1978). (Appellee Brief p. 14). All of the cases cited by the State stand for the proposition that in order for a trial court to determine whether an adequate foundation has been laid, the court must consider evidence other than the co-conspirator admission itself. Additionally, Appellant relies on arguments and citations previously enumerated in Amended Initial Brief of Appellant.

POINT THREE

IN REPLY AND IN SUPPORT THAT THE TRIAL COURT ERRED BY VIOLATING APPELLANTS RIGHTS TO CONFRONT WITNESSES AND DUE PROCESS BY PERMITTING NONTESTIFYING CO-DEFENDANTS STATEMENTS THAT INCULPATED APPELLANT

The State urges this Court to construe Davis' statements/admissions made just prior to his arrest as a statement made as part of the conspiracy. (Appellee Brief p. 17). The State has conceded that Davis, just prior to his arrest, tried to shift the blame to Brooks. (Appellee Brief p. 17). It is unimaginable that this blame-shifting admission/statement could have possibly been made in furtherance of a conspiracy. To that end, the blame-shifting was directed at Davis' supposed co-conspirator. This State argument is disingenuous. The State notes in its brief that Davis consistently denied any involvement in the murders. (Appellee Brief p. 17). Additionally, the State admits that the prosecution sought to and admitted contradictory statements of Davis, under the guise of co-conspirator statements. (Appellee Brief p. 17). The State chose to prop up the "straw man" and proceeded to systematically knock it/him down. Importantly, under the State's theory, Davis and Brooks were one. (T 2852). The State raised the issue of alibi through Davis,

knowing they would knock it down with Davis' confession. At the same time, the prosecution raised a Brooks alibi, only to knock it down with Davis' confession and implication of Brooks. Brooks never claimed an alibi defense. In closing argument, the prosecutor argued:

1. "Walker Davis, Jr.… He lied, and I'll prove he lied by a lot of evidence. He lied. He said, 'I wasn't in Crestview, stayed home here with my cousin, Lamar'…" (T 2851);
2. "That's what this man was being talked about, and at that time Lamar Brooks lied. He said, 'I was never in Crestview, Florida last night.' He said the same thing that Walker Davis, Jr. said, and that's the theme you're going to hear over and over again in this closing argument because they are one." (T 2852);
3. "The really important thing that Lamar Brooks told Karen Garcia at that time, and I know you'll remember it, is 'Every minute that Walker Davis, Jr. has not been at work I have been with him.'" (T 2853);
4. "Lamar Brooks lied, 'I was not in Crestview that night."
5. "Lamar Brooks was there, as he told the OSI agents and the police 'I was together with Walker Davis, Jr., every minute that he wasn't at work.'" (T 2873);

6. "…Garcia and Clough talk to Walker Davis. He lies. He tells the Heavy alibi. We walked Heavy." (T 2910);

7. "Brooks lies to Garcia, tells the Heavy alibi, the same thing Walker Davis, Jr., said." (T 2911);

8. "Brooks and Davis's alibi is destroyed." (T 2912);

9. "There's no evidence that he was somewhere else, none. His lies that were patterned together with Walker Davis, Jr.'s lies mean something, they do." (T 2914).

The issue of alibi was raised by the State and led the jury to believe that Mr. Brooks had the burden of proving his innocence. Dixon v. State, 430 So2d. 949 (Fla. 3d DCA 1983); Bayshore v. State, 437 So.2d 198 (Fla. 3d DCA 1983); Kindell v. State, 413 So2d 1283 (Fla. 3d DCA 1982); Brown v. State, 524 So.2d 730 (Fla 4th DCA 1988). The State asks and hopes this Court will construe the "knocking down" of the false alibi as statements made by a co-conspirator resulting in proper closing argument by the prosecutor. The improper admission of Davis' statements/lies under the guise of 90.803(3) led to the improper introduction of Walker Davis, Jr.'s blame-shifting statements as co-conspirator statements. The latter allowed the State to knock down the previous statements/ lies admitted under 90.803(3). The admission of the non-testifying co-defendants' (Davis) statements

that attempted to shift blame was reversible error standing alone. The additional prosecutorial comments exacerbated the prejudice to Lamar Brooks. In appellate review of this type of an improper argument, the key question is "whether or not the court can see from the record that the conduct of the prosecuting attorney did not prejudice the accused, and unless this conclusion can be reached, the judgment should be reversed." Coleman v. State, 420 So.2d 354, 356 (Fla. 5th DCA 1982), citing to McCall v. State, 120 Fla. 707, 163 So. 38 (1935). Like the Appellant in Brown, Brooks actual defense was that he was not the person who committed the crime. These judgments should be reversed. Additionally, Appellant relies on arguments and citations previously enumerated in Amended Initial Brief of Appellant.

POINTS 4-10

Appellant relies on arguments and citations previously enumerated in

Amended Initial Brief of Appellant.

POINT 11

IN REPLY AND IN SUPPORT THAT THE COURT ERRED IN DENYING THE APPELLANTS MOTION FOR JUDGMENT OF ACQUITTAL

The State relies on extensive case law that holds that any conflicts in the evidence must be resolved in favor of the judgment or verdict. While this is true, in this case, there are no material conflicts in the evidence. There is no conflict in the evidence that Walker Davis, Jr. spoke of killing Rachel Carlson and her child, purchased a life insurance policy on the child naming himself as the beneficiary, shopped for expensive motor vehicles, bragged about coming into money, complained about owing Rachel Carlson money, as well as planned, orchestrated and confessed to being with the victims the night they were murdered as well as being present when Rachel Carlson died. There is no conflict in the evidence that the lab analyst and blood stain pattern interpreter could not testify that one or two people committed these homicides. There is no conflict in the evidence that the lab analyst and blood stain pattern interpreter could not testify if one or two knives were used to commit these homicides. There is no conflict in the evidence that the lab analyst and blood stain pattern interpreter collected no latent fingerprints for

comparison. There is no conflict in the evidence that the two victims died of stab wounds as testified to by the medical examiner. There is no conflict in the evidence that the forensic hair examiner found no hairs in the victim's vehicle that matched Lamar Brooks. There is no conflict in the evidence that no items collected from Lamar Brooks matched either of the victims. There is no conflict in the evidence that any inculpatory DNA testing was performed. There is no conflict in the evidence that the expert and senior crime scene analyst found no trace of blood at the Thomas residence. There is no conflict in the evidence that the fingerprint expert matched Walker Davis, Jr.'s fingerprint to a note found on Walker Davis, Jr.'s person and did not match Lamar Brooks' prints to any item of evidence. There is no conflict in the evidence that the forensic document examiner could not form an opinion whether to include or exclude Lamar Brooks as the author of two pieces of evidence. There is no conflict in the evidence that Terrance Goodman never spoke to Lamar Brooks "about the crime itself" and "doesn't know anything about how the murder occurred." There is no evidence, let alone a conflict, which places Mr. Brooks in the vehicle at the time of the homicides. There is no conflict in the evidence that only after Walker Davis, Jr. was confronted with his lies, did he implicate Lamar Brooks. There is no conflict in the evidence that only after Davis implicated Brooks, was an arrest warrant prepared for Mr. Brooks. The State did

not present evidence from which the jury could exclude every reasonable hypothesis except that of guilt. If all of the incompetent evidence is properly excluded, the State failed to introduce competent evidence which is inconsistent with Appellant's theory of events.

POINTS 12-15

Appellant relies on arguments and citations previously enumerated in

Amended Initial Brief of Appellant.

CONCLUSION

Based upon the foregoing cases, authorities, policies, and argument, as well as those set forth in the Appellant's Amended Initial Brief, Lamar Brooks requests that this Honorable Court vacate his convictions and sentences and enter judgments of acquittal. In the event this Court does not enter judgments of acquittal, it should vacate the judgments and death sentences and remand for a new trial before a different judge. In the event this Court does not remand for a new trial, it should

vacate the death sentences and remand for a new penalty phase conducted before a different judge and a new jury panel. If this court affirms the convictions and does not grant a new penalty phase, it should vacate the death sentences and remand with instructions to impose life sentences.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Hand/Courier/U.S. Mail/Facsimile/Overnight delivery to Barbara J. Yates, Esquire located at the Office of the Attorney General, The Capitol, Tallahassee, Florida 32399-1050, and by U.S. Mail delivery to Lamar Brooks, DC #124538, located at Union Correctional 124538(A-1), P.O. Box 221, Raiford, Florida 32083, this the _________ day of ____________________, 2000.

Respectfully submitted,

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The undersigned states that this brief was typed in 14-point font using Times New Roman style.

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