IN THE SUPREME COURT OF FLORIDA

SONNY RAY JEFFRIES,	)	
	)	
Appellant,	)	
	)	
vs.	)	CASE NUMBER SC94-994
	)	
STATE OF FLORIDA,	)	
	)	
Appellee.	)	
_____	)	

APPEAL FROM THE CIRCUIT COURT
IN AND FOR ORANGE COUNTY, FLORIDA

REPLY BRIEF OF APPELLANT

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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STATEMENT OF THE FACTS

Appellant strenuously objects to the portion of the statement of facts set forth by appellee regarding the suppression motion. Particularly, appellant objects to the facts beginning on page 2 of appellee's brief with the paragraph "Detective Bergin flew to New Jersey" and continuing to page 4 of the answer brief with the block-indented quote. The reason for this objection is that these so called "facts" were never brought out at the suppression hearing. Rather, appellee is quoting from an affidavit for an arrest warrant that was prepared by Detective Bergin. At the beginning of the suppression hearing, the prosecutor called Detective Bergin to the stand and stated:

> As Detective Bergin is entering I would ask

> the court to take judicial notice of the arrest affidavit for the arrest warrant which is in the court file filed in the criminal division September tenth nineteen-ninety-three. I have a copy here for the court. It may be hard to find in the volumus [sic] file.
>
> If I may offer this to the court there is a copy in the court file as well.

(SR Vol. VI, R 64-65) Although the prosecutor requested the court to take judicial notice, the court at no time announced it was taking judicial notice of this document. Additionally, there is nothing on the record to indicate that the trial court considered this document at all. There is no reference by the trial court to this document at any time during the hearing on the motion to suppress. The state never sought to admit the affidavit into evidence. Consequently, those "facts" may not be considered by this court since there is no indication that they were considered by the trial court. It was incumbent upon the prosecutor to get a ruling on his request to take judicial notice. Therefore, appellee's citation to these "facts" is highly improper.

Even if the court did take judicial notice of this affidavit, it still would not have meant that the contents were admissible into evidence, since this affidavit contained pure hearsay which was not admissible under any exception to the hearsay rule. This court has very recently emphasized that merely because a

document is subject to being judicially noticed, it is not necessarily admissible into evidence. ***Stoll v. State***, 25 Fla. L.Weekly S 591, 593(Fla. July 13, 2000) While defense counsel did not make this argument below, it was unnecessary since the trial court never announced it was taking judicial notice of that document, and the state never sought admission of the affidavit into evidence.

POINT I

IN REPLY TO THE STATE AND IN SUPPORT OF THE PROPOSITION THAT IN VIOLATION OF ARTICLE I SECTION 12 OF THE FLORIDA CONSTITUTION AND THE FOURTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION TO SUPPRESS THE SHOES SEIZED FROM HIM WITHOUT A WARRANT.

Appellee argues that the trial court correctly determined that the shoes seized from appellant pursuant to his concededly-illegal arrest and detention would have been inevitably discovered by the police. However, appellee's arguments are purely speculative.

Appellee relies on the cases of ***Craig v. State***, 510 So.2d 857 (Fla. 1987), ***cert. denied*** 484 U.S. 1020 (1988) and ***Maulden v. State***, 617 So.2d 298 (Fla. 1993) for its conclusion that the shoes would have been inevitably discovered. However, the facts in those cases are completely distinguishable from the instant case. In ***Craig***, the evidence sought to be suppressed were the bodies of the victims which were located in a sink hole. Craig had given the police the location of the bodies during a concededly-illegal interrogation. However, the evidence adduced in that case was that the police were planning on searching every lake and

sink hole in the area as part of their normal investigation and thus would have ultimately found the bodies. In ***Maulden***, the arrest of the defendant was illegal. However, the seizure of the defendant's truck with the incriminating evidence in it was independent of the illegal arrest since it was seized before the arrest occurred. Therefore, the seizure of the evidence had nothing at all to do with the illegal arrest. In the instant case, the only reason that the police were able to seize appellant's shoes is because they illegally seized appellant. It must also be remembered that this illegal detention of appellant occurred some three weeks after the death of Wilma Martin. While the police were in the process of obtaining an arrest warrant for appellant, the fact remains that such arrest warrant was not obtained until nearly twelve hours after appellant was illegally detained by the Georgia police. It is pure speculation that absent the illegal detention of appellant, the police would have been able to seize the shoes.

Once again, appellee quotes extensively from an affidavit that was prepared by Detective Bergin in anticipation of seeking an arrest warrant. (AB pp. 34-37) Appellee then states "the evidence presented at the suppression hearing, *which included the arrest warrant affidavit, well exceeds the "reasonable probability" standard and establishes that the shoes would have inevitably been discovered."* (AB p.38) As noted in the Statement of the Facts previously, appellee's citation to

these “facts” contained in the affidavit for the search warrant is completely improper. The prosecutor attempted to have the court judicially notice the affidavit yet the trial court never stated it was going to judicially notice the affidavit. Even if it had judicially noticed the affidavit, it still would not have been admissible into evidence because it contained blatant hearsay which was inadmissible under any exception to the hearsay rule. ***See Stoll v. State***, 25 Fla. L.Weekly S 591, S593 (Fla. July 13, 2000). Importantly, the state never sought to admit the affidavit into evidence. Therefore, based on the evidence presented at the suppression hearing, the trial court incorrectly ruled that the shoes would have been inevitably discovered. While Richmond Hill, Georgia is indeed an exit off of I-95, this does not lead to the conclusion that appellant was going to New Jersey. That conclusion cited by appellee is nothing more than rank speculation.

Appellee’s conclusion that if the trial court erred, it was harmless because of the overwhelming evidence of appellant’s guilt is simply incredible. The evidence adduced at trial linking appellant to the offense included a single fingerprint which could not be determined as to the time of placement, some vaguely-remembered conversations between appellant and Harry Thomas concerning a proposed robbery, and the fact that appellant pawned some of the victim’s jewelry.

Appellee's notation to the ***Spencer***[1] hearing wherein appellant reportedly confessed that he killed the victim, can certainly not be considered as part of the overwhelming evidence **at trial,** since this was never presented **at trial**. Appellee's citation to this hearing is completely improper and must be ignored by this Court. Due to the paucity of actual physical evidence tying appellant to the murder, the admission of the shoes and the evidence of the comparison analysis cannot be deemed harmless. ***Goodwin v. State***, 751 So.2d 537 (Fla. 1999)

[1] ***Spencer v. State***, 615 So.2d 688 (Fla. 1993)

POINT II

IN REPLY TO THE STATE AND IN SUPPORT OF THE PROPOSITION THAT IN VIOLATION OF THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 16 OF THE FLORIDA CONSTITUTION, THE TRIAL COURT ERRED IN OVERRULING APPELLANT'S OBJECTION TO THE STATE'S USE OF A PEREMPTORY CHALLENGE TO AN AFRICAN AMERICAN JUROR WHERE THE REASON GIVEN BY THE PROSECUTOR WAS INSUFFICIENT AND PRETEXTUAL.

Appellee initially argues that this issue is not properly preserved for appeal. This failure of preservation argument has two facets. First, because appellant argued in the initiall brief that the state did not choose to question juror Melvin about her views on the death penalty individually, that this is indicative that the state had no problems with the answers to those questions, which was not argued below, that somehow it cannot be argued on appeal. (AB p. 42) Second, the fact that appellant argued in the initial brief that several particular jurors had also given equivocal responses to these same questions yet were not excused by the prosecutor was not argued below precludes that argument being considered on appeal. (AB p. 43-44) However, such bald assertions by appellee indicate a total misunderstanding of the issue on appeal.

When the prosecutor exercised his peremptory challenge on juror Melvin, defense counsel immediately objected. Ms. Melvin was identified as an African American and while the prosecutor stated that he did not recall whether juror Melvin was an African American, the trial court required an explanation for the peremptory challenge.[2] When the prosecutor gave his reason for exercising the peremptory challenge, it was simply that the answers to three questions were equivocal. Defense counsel immediately stated that there were "tons of juror who are Caucasian who are equivocal on the death penalty on this jury." The fact that the three individual jurors identified in the initial brief were not mentioned by name, is not fatal to the argument on appeal. Rather, defense counsel had no opportunity to give the individual names since the prosecutor below incorrectly told the judge that it was not necessary to go any further if the reason he gave was race neutral. Appellee cites the correct test for determining the propriety of peremptory challenges. Step 3 of the analysis requires the trial court to focus on

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[2] Appellee's attempt in footnote 14 of the answer brief at page 44 that the letter "n" on the juror questionnaire under the answer for the race of the juror is different from the other "n's" contained in the questionnaire is troubling. Appellee states that "*the shape of the 'n' in answer 3 may have been a factor in the prosecutor's questioning of the race of the potential juror*" is highly speculative. At no time did the prosecutor raise this issue below. The fact that the trial court proceeded to an inquiry, is a recognition that the juror was African American.

the genuineness as opposed to the reasonableness of the explanation. However, the prosecutor told the court:

> The issue for the court under Melbourne simply is that true and clearly it is. Clearly her answers are equivocal **and that's the only inquiry,** unless the defense is disputing the fact that those are her answers. **Then I think that's the end of the inquiry**. I will say - -

(Vol. III, T 333) Simply put, it is not enough for the prosecutor merely to give a race-neutral reason for the peremptory challenge. This reason must also be genuine. This issue was preserved for appeal by defense counsel noting that other jurors similarly situated were not excused by the prosecutor. The fact that the prosecutor perfunctorily or in the instant case totally failed to examine the juror concerning the questioned issue and the fact that the challenge was based on a reason that was equally applicable to jurors who were not challenged by the state are considerations that this Court is required to make under ***State v. Slappy***, 522 So.2d 18 (Fla. 1988). It is hard to imagine that appellee is suggesting that trial counsel needed to preserve something in the trial court that is the duty of the appellate court to independently do.

Appellee's contention that the trial court's decision below turned primarily on an assessment of credibility is misplaced. (AB p. 46) The credibility of juror

Melvin was never at issue. Even so, the trial court's assessment is clearly erroneous since it failed to follow all the steps in assessing the validity of the claim under Melbourne. Appellant is entitled to a new trial.

POINT III

IN REPLY TO THE STATE AND IN SUPPORT OF THE PROPOSITION THAT THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR JUDGMENT OF ACQUITTAL WHERE THE EVIDENCE WAS COMPLETELY CIRCUMSTANTIAL AND DID NOT EXCLUDE EVERY REASONABLE HYPOTHESIS OF INNOCENCE.

Incredibly, appellee argues that this issue is not properly preserved for appeal. However, appellee does not dispute that the motion for judgment of acquittal specifically argued (1) that the circumstantial evidence failed to exclude the possibility that appellant was not guilty of the murder and (2) that there was no evidence that established that property was taken from the victim at the time of her murder. These are the exact grounds that are argued on appeal. Appellee's assertion that these arguments are not preserved for appeal strains credulity.

Turning to the merits, appellee contends that the "while the evidence adduced at trial may indicate that Mr. Thomas was in Ms. Martin's house at the time of, or after, she was killed, it clearly establishes that Jeffries was at the **precise scene of the crime scene [sic] when Ms. Martin was killed**." (AB p. 52) This statement is absolutely incorrect. Nothing at all indicates appellant was there at the precise time of the murder. The evidence which appellee points to as

supporting this assertion is the conversations overheard by Roxanne Jeffries and Dennis Thomas. However, neither of these individuals could state with any precision as to when the conversations occurred. If, as appellee suggests, there were two separate conversations, the failure to pinpoint the date of the conversations is even more fatal to the state's case. The fact that several days after the conversation heard by Roxanne, appellant was seen in possession of some rings, does not prove that appellant murdered Ms. Martin or committed a robbery. Again, the failure to pinpoint the time indicates that these rings could have been taken at a time other than the murder of Ms. Martin. The shoe-prints could not be absolutely tied to appellant. The remaining bit of evidence, the sole fingerprint found on the kitchen cabinet, is insufficient since it could not be shown that the fingerprint was made only at the time of the murder. None of this evidence excludes the reasonable hypothesis of innocence stated by trial counsel below that someone else committed the murder. The fact that on appeal appellant is arguing that perhaps Harry Thomas did it in no way changes the argument that was made below. Simply put, the evidence presented below was insufficient to exclude every reasonable hypothesis except that of guilt. As such, the trial court had to grant a judgment of acquittal on both charges. Failing to do this, this Court must reverse appellant's judgment and sentences and remand for discharge.

A final comment is necessary concerning appellee's footnote 16 on page 50 of her answer brief. The issue on appeal is whether **the evidence presented at trial** was sufficient to prove a *prima facie* case of guilt. In footnote 16, appellee alludes to a statement appellant made at a ***Spencer***[3] hearing wherein he purportedly took sole credit for the murder of Wilma Martin. The ***Spencer*** hearing occurred on October 15, 1998, which was six months after the trial in this case. Appellee's suggestion that this Court should consider evidence at that hearing in determining whether the evidence presented by the state at trial is sufficient is clearly improper.

[3] ***Spencer v. State***, 615 So.2d 688 (Fla. 1993).

POINT IV

IN REPLY TO THE STATE AND IN SUPPORT OF THE PROPOSITION THAT IN VIOLATION OF THE FIFTH, EIGHTH, AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION AND ARTICLE I SECTIONS 9 & 17 OF THE FLORIDA CONSTITUTION THE TRIAL COURT ERRED IN IMPOSING THE DEATH SENTENCE WHERE THE SENTENCING ORDER REFLECTS AN IMPROPER EVALUATION OF THE MITIGATING FACTORS BY THE TRIAL COURT.

Appellant relies on the arguments presented in the initial brief on this point. Appellant draws this Court's attention, however, to the numerous notices of filing by counsel for appellee wherein letters purportedly from appellant were submitted to this Court. Appellant contends that a simple perusal of the sometimes-incoherent and fantastic nature of the assertions in these letters fully support the argument made in the initial brief by appellant in this regard.

POINT V

IN REPLY TO THE STATE AND IN SUPPORT OF THE PROPOSITION THAT IN VIOLATION OF THE EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND ARTICLE I, SECTION 17, OF THE FLORIDA CONSTITUTION, THE IMPOSITION OF THE DEATH PENALTY IS PROPORTIONALLY UNWARRANTED IN THIS CASE.

Appellant respectfully relies upon the arguments presented in the initial brief in this point.

CONCLUSION

Based upon the foregoing reasons and authority cited herein as well as those in the Initial Brief, Appellant respectfully requests this Honorable Court to reverse his judgment and sentences and remand with instructions to discharge him. Alternatively, appellant requests this Honorable Court to grant a new trial or to remand for resentencing to life.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand- delivered to the Honorable Robert A. Butterworth, Attorney General, 444 Seabreeze Boulevard, Fifth Floor, Daytona Beach, Florida 32118, via his basket at the Fifth District Court of Appeal and mailed to, Mr. Sonny Ray Jeffries, #X18736, Florida State Prison, P.O. Box 181, Starke, FL 32091-0181, this 10th day of August, 2000.

_____
MICHAEL S. BECKER
ASSISTANT PUBLIC DEFENDER

CERTIFICATE OF FONT

I hereby certify that the size and style of type used in this brief is point proportionally spaced Times New Roman, 14 point.

_____
MICHAEL S. BECKER
ASSISTANT PUBLIC DEFENDER