IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Appellant,

v. **CASE NO. SC96216**

JOHN STEVEN HUGGINS,

Appellee.

_____/

ON APPEAL FROM THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT, IN AND FOR ORANGE COUNTY, FLORIDA

REPLY BRIEF OF APPELLANT

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CERTIFICATE OF FONT

This brief is typed in Courier New 12 point.

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REPLY TO STATEMENT OF THE FACTS

On pages 1-7 of his *Answer Brief*, Huggins sets out a Statement of the Facts which is little different from the Statement of the Facts contained in Appellant's *Initial Brief*. Huggins has not identified any disagreement with the Appellant's Statement of the Facts as required by the *Florida Rules of Appellate Procedure*, and the basis for his inclusion of a Statement of the Facts in his *Answer Brief* is not apparent. Huggins has not included any of the facts from his capital trial, even though those facts are critical to any understanding of the issues before this Court.

I. HUGGINS'S ARGUMENT THAT THE TRIAL COURT'S ORDER IS SUPPORTED BY COMPETENT, SUBSTANTIAL EVIDENCE IS NOT RESPONSIVE TO THE ISSUES BEFORE THIS COURT

On pages 8-38 of his *Answer Brief,* Huggins argues that "the trial court's grant of a new trial is correct as a matter of law and is supported by competent substantial evidence." However, Huggins' argument does not respond to the argument contained in the State's *Initial Brief*, which is that the trial court's order granting a new trial is not supported by competent substantial evidence because the **evidence** does not support the factual conclusions reached by the trial court. Huggins has not responded to the State's argument setting out the various possible dates for the Ausley "sighting" and comparing the known whereabouts of the Ford *Explorer* with those dates. The only oblique response to that argument is Huggins' reference, on page 31 of the *Answer Brief*, to

Angel Huggins being in the International Drive area of Orlando on June 14, 1997. However, as explained in the State's *Initial Brief*, the *Explorer* was in Cocoa Beach on June 14, 1997, **until it was picked up by Huggins that afternoon**. *Initial Brief,* at 20. Moreover, the uncontroverted evidence from trial was that the white *Explorer* was painted **black** on June 13 or 14. (SR958). If Huggins' argument is that Ausley made his "sighting" on June 14, that is not possible because the vehicle was in Cocoa Beach at that time. If Huggins' argument is that the "sighting" took place on June 15, that is likewise impossible because the vehicle had, as established by the uncontroverted evidence, been painted black at that time. Ausley's "suppressed testimony", as Huggins calls it, did nothing to "bolster" Huggins' claim that Angel Huggins was in any way involved in the murder for which he was convicted and sentenced to death[1].

When Huggins' arguments are objectively considered, nothing remains beyond a generic argument in support of affirmance of the lower court's order. The true facts are that Ausley's "sighting" cannot have occurred as the trial court, and Huggins, assert that it did. In fact, Huggins' argument in his brief is inconsistent

[1]In his brief, Huggins alleges that Defense Exhibits 6 and 7 (which are Holiday Inn receipts) show that Angel Huggins checked into an International Drive Holiday Inn "about the same time as Ausley's sighting." *Answer Brief*, at 31. No time for the transaction is shown on those receipts, and the State can only assume that Huggins' statement in his brief is meant to refer to the date (June 14, 1997), rather than any certain time on that day.

with the “facts” stated by the circuit court, which apparently accepted June 11, 1997 as the date of Ausley’s “sighting”. Huggins, on the other hand, argues in his brief that the usefulness of the Ausley “sighting” to the defense was that it “placed” Angel Huggins in the *Explorer* in the International Drive area, on June 14 or 15, 1997. Those interpretations are hopelessly irreconcilable, and, on their face, demonstrate the lack of competent substantial evidence to support the lower court’s order. The Circuit Court’s order granting a new trial should be set aside.

II. THE TRIAL COURT DID NOT ASSESS THE CREDIBILITY OF WITNESSES AND THAT DEFICIENCY PRODUCED A DECISION THAT IS NOT ENTITLED TO DEFERENCE

On pages 38-43 of his brief, Huggins argues that this Court must defer to the trial court’s “assessment of the credibility of witnesses.” That argument fails because the circuit court did not make such a credibility “assessment”, and explicitly stated that it had no intention of doing so. (R814). In the face of the Circuit Court’s statement that credibility determinations were the responsibility of the jury as the factfinder, Huggins cannot argue that the trial court did, in fact, evaluate the credibility of the witnesses and generate an order that is entitled to deference under *State v. Spaziano*, 692 So.2d 174 (Fla. 1997). That argument is an attempt to fit a square peg into a round hole. The trial court’s order in this case is not entitled to “deference” because the credibility issue, which is fundamental to the truth-seeking

function of the courts, was overlooked in this case. Because that is so, there is no competent substantial evidence to support the lower court's order -- it should be reversed.

CONCLUSION

Based upon the foregoing arguments and authorities, the State of Florida respectfully suggests that the lower court's order granting a new trial is in error and should be reversed and Huggins' conviction and sentence of death reinstated. Huggins has not disputed the factual basis for the State's argument contained in its *Initial Brief*, and has, at least implicitly, conceded the correctness of the arguments set out therein. Because that is so, the State suggests that it would be appropriate for this Court to decide this case without oral argument.

Respectfully submitted,

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I HEREBY CERTIFY that a true and correct copy of the above has been furnished by U.S. Mail to Tyrone A. King, 126 E. Jefferson Street, Orlando, Florida 32801, on this _____ day of June, 2000.

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Of Counsel