IN THE SUPREME COURT OF FLORIDA

JOHN W. ELLIS,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 96,551
	)	
STATE OF FLORIDA,	)	
	)	
Respondent.	)	

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REPLY BRIEF OF PETITIONER

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ON REVIEW FROM THE SECOND DISTRICT COURT OF APPEAL
LAKELAND DIVISION

APPEAL NO. 98-3330

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The type font utilized throughout this Initial Brief is 12 point Courier New, a font that is not proportionately spaced.

REBUTTAL ARGUMENT

I. THE PRISON RELEASEE REOFFENDER ACT IS UNCONSTITUTIONAL.

A. THE PRISON RELEASEE REOFFENDER ACT VIOLATES THE SEPARATION OF POWERS CLAUSE OF THE FLORIDA CONSTITUTION.

Appellant relies upon the arguments set forth in his Initial Brief.

B. THE PRISON RELEASEE REOFFENDER ACT VIOLATES DUE PROCESS.

Although the State cites Florida's habitual offender statutes and the federal three strikes legislation in support of its argument that the Prison Releasee Reoffender Act does not violate due process, the State's argument is misplaced because both the habitual offender statutes and the federal three strikes legislation contain a requirement that the defendant be notified of the possibility of an enhanced sentence. See §775.084(3)(a)(2), Fla. Stat. (1997) and 21 U.S.C. §851(a)(1)(requiring prosecuting attorney to disclose convictions to be relied upon in seeking enhanced sentence) and 18 U.S.C. §3559(4)(requiring minimum sentence upon conviction of certain qualified offenses but requiring notice provision in accordance with 21 U.S.C. §851(a)(1)). Indeed, the notice requirements set forth in the habitual offender statutes and the federal three strikes legislation actually lend more support to Appellant's argument that

the absence of such provision violates due process.

II. THE COURT ERRED BY DENYING PETITIONER'S MOTION FOR JUDGMENT OF ACQUITTAL.

A. THE STATE FAILED TO PROVE THE IDENTITY OF THE ACCUSED AS THE PERPETRATOR.

Appellant relies upon the arguments set forth in his Initial Brief.

B. THE ONLY EVIDENCE OF CRIMINAL CONDUCT AROSE FROM INCONSISTENT HEARSAY STATEMENTS.

Appellant relies upon the arguments set forth in his Initial Brief.

III. THE COURT ABUSED ITS DISCRETION BY ADMITTING HEARSAY UNDER THE CHILD VICTIM EXCEPTION TO THE HEARSAY RULE.

A. THE COURT MADE INSUFFICIENT FINDINGS OF FACT.

The State's argument that Appellant failed to preserve this issue for appeal is not supported by the record. Immediately after the trial court's recital of the boilerplate language relating to the admissibility of child hearsay statements under Florida Statute §90.803(23), Appellant objected to the admissibility of the hearsay statements. (I:142). Even before the trial court made its ruling, Appellant stressed the factors which the trial court had to consider in determining the admissibility of the hearsay statements. (I:128-130). Appellant even cited State v. Townsend,

635 So.2d 949 (Fla. 1994), to further emphasize the factors which needed to be considered. Appellant renewed the objections prior to each witnesses' testimony. (I:55-56,108; II:137,217).

Even if Appellant's objections were not artfully articulated after the trial court made its ruling with respect to the reliability of the hearsay statements, it is clear that when considered within the context of the ruling, Appellant was attacking the trial court's insufficient findings of fact. In Mathis v. State, 682 So.2d 175 (Fla. 1st DCA 1996), the trial court recited boilerplate language in support of its ruling allowing hearsay statements of the alleged victim. The defendant objected. The appellate court rejected the state's argument that the defendant had failed to preserve the error for appeal, observing that the objection, when viewed within the context of the trial court's ruling, was sufficient enough to place the trial court on notice of the potential error. See also In the Interest of R.L.R., 647 So.2d 251 (Fla. 1st DCA 1994)(hearsay objection sufficient to preserve error relating to admissibility of child hearsay statements under Florida Statute §90.803(23) since trial counsel is not required to specify each finding of fact which is being objected to).

It is clear that Appellant's objection immediately following

the trial court's ruling on the admissibility of the alleged victim's hearsay statements encompassed and included an objection to the findings of fact recited by the trial court. When Appellant's objection is viewed in context with the relevant portions of the record, including those portions where trial counsel identifies the specific factors to be considered by the trial court, including a citation to State v. Townsend, 635 So.2d 949 (Fla. 1994), it is obvious that the trial court and Appellee understood that Appellant's objection encompassed the issue relating to the sufficiency of the trial court's findings. This is especially true when considered within the context of Appellant's argument relating to the factors to be considered by the trial court prior to the trial court's decision. In any event, Appellant's objections were sufficient enough to place the trial court on notice of the potential error and, since this case is not factually distinguishable from either Mathis or R.L.R., the error was preserved.

B. THE HEARSAY STATEMENTS WERE CUMULATIVE.

Appellant relies upon the arguments set forth in his Initial Brief.

IV. THE COURT ABUSED ITS DISCRETION BY ADMITTING HEARSAY UNDER THE EXCITED UTTERANCE EXCEPTION TO THE HEARSAY RULE.

Appellant relies upon the arguments set forth in his Initial

Brief.

V. THE COURT ERRED IN DENYING PETITIONER'S MOTION TO SUPPRESS STATEMENTS, ADMISSIONS, OR CONFESSIONS.

Appellant relies upon the arguments set forth in his Initial Brief.

VI. THE TRIAL COURT ERRED IN RESENTENCING APPELLANT ON COUNT II.

Appellant relies upon the arguments set forth in his Initial Brief.

CONCLUSION

For the foregoing reasons, this Court should reverse Petitioner's convictions or, barring that, this Court should reverse and remand for a new trial or resentencing, as appropriate.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to John M. Klawikofsky, Esq., Attorney General Office, 2002 North Lois Avenue, Suite #700, Tampa, Florida 33602 via U.S. mail this 23rd day of November, 1999.

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