SUPREME COURT OF FLORIDA

CASE NO. 96,554

JEAN HARRT CAZEAU,

Petitioner,

- vs -

THE STATE OF FLORIDA,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW

REPLY BRIEF OF PETITIONER ON THE MERITS

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REPLY ARGUMENT

I. THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT MADE EXTEMPORANEOUS COMMENTS, OVER OBJECTION, WHICH MINIMIZED THE REASONABLE DOUBT INSTRUCTION IN VIOLATION OF APPELLANT'S RIGHT TO DUE PROCESS.

The case *sub judice* was a circumstantial case[1]. As such, when the trial court gave an improper extemporaneous, hypothetical example involving a circumstantial case, the trial court abused its discretion by instructing the jury that in a circumstantial case, there can never be reasonable doubt. The trial court instructed the venire as follows:

> **Court:** *Let me give you an example that I like give as far as reasonable doubt. Suppose you came this morning, you finally found a parking space somewhere across the street, and when you got out of the car, the parking lot was dry. The expressway was dry.*
>
> *You come into the building and sit in here with your beautiful view of downtown nowhere. You then leave the building. You walk outside. The roadway is wet. The stairs are wet. The parking lot where your car is parked is wet. Your car is wet. What do you think happened? It rained right?*
>
> *It is possible that a fire truck came along with a fire hose and just wet everywhere that you happened to have be walking? It's possible.* ***Would that be a forced doubt, or would it be a speculative doubt? I mean, it's a possibility, but it really is a reach to think that happened.***
>
> *So that's analogy that I like to give for a reasonable doubt.*

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1 The facts in the light most favorable to Appellee established a direct case proving an unoccupied trespass. However, a circumstantial case existed as to what Appellant's intent was once he entered and remained inside the property of Ms. Wilkerson. This is further demonstrated in that the trial court gave a defense requested instruction on circumstantial evidence.

Can everybody follow the law as I just explained it to you? ***Is there anybody that would hold the State to a higher burden and say that, "Gee, State, you must prove your case beyond and to the exclusion of all doubt or beyond a shadow of a doubt"?***

Defense: *Judge, can I have a side-bar?*

Defense: *I object to the analogy you gave. I object to instructing the jury of what reasonable doubt means. I think the court should read the jury instruction and nothing more.*

The reason I object is because your example, you are explaining the reasonable doubt to them, deminimizing the importance of the reasonable doubt standard, so I object.

Court: *. . . [O]bjection is overruled.*

Appellee in their Answer Brief, have failed to address Appellant's claim that the aforementioned was a highly improper, extemporaneous comment in which the court inferred that the venire could return a finding of guilty based on a probability of guilt. Furthermore, Appellee has failed to address this Court's admonition in State v. Wilson, 686 So.2d 569 (Fla.1996), wherein this Court stated that any extemporaneous explanation of sensitive legal issues that are already embraced within the standard jury instructions run the risk of creating error.

As stated in Appellant's Initial Brief, the trial court's improper hypothetical in which the trial judge expressed his personal opinion in determining what evidence does not meet the reasonable doubt threshold, coupled with supplementary extemporaneous comments, so minimized the reasonable doubt

instruction that the effect was to deny Appellant of due process rights.

Appellee's boilerplate response that the extemporaneous instruction, when considered in the light of all other instructions given, was accurately, fully, and fairly presented to the jury is unsupported by the Record in this case.

II. THE GORT ACT VIOLENT CAREER CRIMINAL PROVISIONS OF FLORIDA STATUTES §775.087 (4)(c) ARE UNCONSTITUTIONAL BECAUSE THE SESSION LAW THAT CREATED IT, CHAPTER 95-187, LAWS OF FLORIDA (1995), VIOLATE THE SINGLE SINGLE SUBJECT PROVISIONS OF THE FLORIDA CONSTITUTION, AND CONSEQUENTLY, THE DECISION OF THE THIRD DISTRICT MUST BE QUASHED AND THE DEFENDANT'S THIRTY (30) YEAR SENTENCE PURSUANT TO THE GORT ACT REVERSED AND REMANDED FOR RE-SENTENCING.

The Officer Evelyn Gort and All Fallen Officers Career Criminal Act of Florida Statutes §775.084(4)(c) (hereafter referred to as the "Gort Act") are unconstitutional because the session law that created it, Chapter 95-182, Laws of Florida, violates the single subject provisions of the Florida Constitution. The Gort Act addresses two distinct subjects: career criminal sentencing and civil remedies for victims of domestic violence. Since these two subjects are not reasonably related, Chapter 95-182, Laws of Florida, addresses more than one subject, it is therefore unconstitutional. The argument that the act does not violate the single subject requirement in that the act's "overall purpose is crime prevention" is mere sophistry.

CONCLUSION

In sum, the trial court committed an abuse of discretion when it improperly made extemporaneous comments, over objection, which minimized the reasonable doubt instruction in violation of Appellant's right to due process.

Appellant respectfully requests that this Honorable Court reverse Appellant's conviction and order a new trial, or in the alternative, order that the Petitioner be re-sentenced within the sentencing guidelines and not .

CERTIFICATE OF FONT SIZE

I HEREBY CERTIFY that this brief was typed in Times New Roman 14 point.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed via U.S. mail to the Fredericka Sands, Esquire, Office of the Attorney General, Criminal Division, 444 Brickell Avenue, Suite 950, Miami Fl. 33131, this 29th day of November, 1999.

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