

IN THE SUPREME COURT OF FLORIDA

JOHN F. MOSLEY, JR.,

Appellant,

vs.

CASE NO. SC23-1091

STATE OF FLORIDA,

Lower Tribunal No.:
16-2004-CF-006675

Appellee.

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

INITIAL BRIEF OF APPELLANT

MATTHEW S. METZ
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

GEORGE D.E. BURDEN
Florida Bar No. 0786438
ASSISTANT PUBLIC DEFENDERS
444 Seabreeze Blvd. Suite 210
Daytona Beach, Florida 32118
(386) 254-3758
burden.george@pd7.org

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

	<u>PAGE NO.</u>
TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
STATEMENT OF THE CASE AND FACTS	1
SUMMARY OF ARGUMENTS	12
ARGUMENTS	13
POINT ONE:	13
IN VIOLATION OF THE EIGHTH AND FOURTEENTH AMENDMENT OF THE U.S. CONSTITUTION, THE JURY WRONGFULLY IGNORED MITIGATION EVIDENCE.	
POINT TWO:	17
WHETHER THE TRIAL COURT ERRED IN DENYING APPELLANT’S REQUEST FOR AN EVIDENTIARY HEARING ON APPELLANT’S CLAIM FOR NEWLY DISCOVERED EVIDENCE IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION.	
CONCLUSION	20
CERTIFICATE OF SERVICE	21
CERTIFICATE OF FONT COMPLIANCE	21

TABLE OF CITATIONS

Cases Cited:	Page No.
<u>Foster v. State</u> , 132 So.3d 40 (Fla. 2013)	17
<u>Furman v. Georgia</u> , 408 U. S. 238 (1972)	13
<u>Gregg v. Georgia</u> , 428 U. S. 153 (1976)	13
<u>Hurst v. Florida</u> , 577 U.S. 92 (2016)	8
<u>Lockett v. Ohio</u> , 438 U.S. 586 (1978)	12, 13
<u>Mosley v. State</u> , 46 So.3d 510 (Fla. 2009)	1
<u>Sparf v. United States</u> , 156 U.S. 51 (1895)	14, 15
<u>Spencer v. State</u> , 615 So. 2d 688 (Fla. 1993)	9
<u>Woodson v. North Carolina</u> , 428 U. S. 280 (1976)	13
 Statutes	
§ 90.603, Fla. Stat. Ann.....	17
Section 921.141(3)(a)-(b), Florida Statutes (2015)	8
 Rules	
Rule 9.045(b), Florida Rules of Appellate Procedure	20
Rule 9.210(a)(2), Florida Rules of Appellate Procedure	20

STATEMENT OF THE CASE AND FACTS

Mr. John F. Mosley, Jr., hereinafter Appellant, was convicted of two counts of first-degree murder for the April 2004 deaths of his girlfriend, Lynda Wilkes, and their infant son, Jay-Quan Mosley. The Appellant received a sentence of death for the murder of his son, Jay-Quan, and a sentence of life imprisonment for the murder of Wilkes. In 2009, this Court affirmed his convictions and sentence of death. Mosley v. State, 46 So.3d 510 (Fla. 2009).

On direct appeal, this Court summarized the relevant facts as follows:

Although Mosley was married, he had a number of romantic relationships with other women in the Jacksonville area, including Lynda Wilkes. Because Wilkes was receiving Medicaid benefits for their son, Jay-Quan, she was required to participate in a proceeding to establish paternity. After Mosley failed to answer the petition to determine paternity, a default judgment was entered against him, and he was ordered to pay \$35 a week in child support, with an additional \$5 a week for retroactive child support. On March 12, 2004, Mosley filed a motion to have the final judgment set aside. A hearing on this motion was set for May 3, 2004.

Around this time period, Mosley, who was thirty-nine, met Bernard

Griffin, who was fifteen, and asked Griffin if he would be willing to kill a baby. During his attempts to convince Griffin to kill the child, Mosley pointed out Wilkes's house and gave him a sketch of the house's layout, but Griffin refused.

On April 21, 2004, Mosley went to see Wilkes at her house in Jacksonville and asked Wilkes to meet him the next day at J.C. Penney so he could take Jay-Quan shopping. On April 22, 2004, Wilkes took her other children to school. That afternoon, she and Jay-Quan met Mosley at J.C. Penney, and together they left in Mosley's vehicle, a burgundy Suburban. Mosley picked up Griffin, and eventually drove to a deserted dirt road in another part of Jacksonville. Mosley asked Wilkes to get out and pretended to look for something in the seat. He then turned and strangled Wilkes, who futilely attempted to defend herself. After she stopped moving, Mosley took a plastic shopping bag from the back of the vehicle, put it over Wilkes's head, and put her body in the back of the Suburban. Mosley put a crying Jay-Quan in another garbage bag, tied it, and also placed it in the back of his vehicle. He used a blue tarp to cover Wilkes's body and the bag with the baby in it. Initially, Griffin heard the baby crying, but after a while, the baby stopped. Mosley dropped Griffin off and went to work.

Later that evening, while he was still at work, another of Mosley's girlfriends, Jamila Jones, called and asked him for some gas money. He agreed that he would give her some money before she needed to leave for work the next day. That evening, Mosley clocked out of work at 11:01, and sometime after that picked up Griffin again in his Suburban. Griffin noticed that the vehicle smelled bad. Mosley drove out of Jacksonville towards Waldo, which was approximately sixty miles from Jacksonville. A few miles south of Waldo, Mosley turned and went down a number of dirt roads, eventually finding a suitable spot to dispose of Wilkes's body. After Griffin refused to participate, Mosley pulled Wilkes to a clearing by himself, poured lighter fluid over her body, and then tossed a burning rag on her body. As the body began to burn, Mosley and Griffin ran to the vehicle and left. Mosley then drove approximately forty miles further south to Ocala and dumped the trash bag with the baby in a dumpster behind a Winn-Dixie store. He also threw his shoes and gloves into the dumpster. On the way back to Jacksonville, Mosley gave Griffin \$100.

Once they arrived in Jacksonville, it was daylight. After asking Griffin to give him back \$20, Mosley stopped by Jones's apartment at six that morning and gave her \$20. Jones asked Mosley why he did not answer his

cell phone when she tried to call him the previous evening, and Mosley replied that he was “doing something for his mom.” Although Mosley was supposed to be back at work at six that same morning, he called in and said that he would be late because he did not get any sleep that night. He finally arrived at work at 12:49 p.m. on April 23.

The victim's family knew something was wrong when Wilkes failed to pick up her children from school on the afternoon of April 22. The family called the police, reported Wilkes as missing, and began a search for her and Jay-Quan immediately. During the evening hours of April 22, they found her car abandoned at the J.C. Penney's parking lot.

On the morning after her disappearance (April 23), one of Wilkes's daughters (Naquita) and a family friend saw Mosley driving his vehicle and caught up to him while he was stopped at a traffic light. They told Mosley that Wilkes was missing. Initially, Mosley denied seeing her. After Naquita asked Mosley whether he failed to show up at J.C. Penney the previous day, Mosley admitted that he saw Wilkes the day before but claimed that he had dropped her off at her car. They asked Mosley if he could pull over, but he refused and drove away.

On Saturday, April 24, Mosley changed all four tires on the Suburban,

despite the fact that the tires could be driven for a few more thousand miles. Mosley was adamant that the mechanic load his old tires into his vehicle.

During the investigation into Wilkes's disappearance, the police attempted to contact Mosley numerous times, trying to arrange for an in-person interview. Mosley never met with any police officer until after he was taken into custody, but he did talk to numerous officers over the phone. He claimed that he and Wilkes met at the J.C. Penney's parking lot on April 22 and left to see some nearby houses that Wilkes was considering renting. He further claimed that he dropped her off back at her car around one that afternoon.

Days after the murder, after seeing news reports about the missing woman and baby, Griffin told his mother that he knew something about the case. He then talked to the police and eventually led police to the locations where Mosley killed Wilkes, where he burned her remains, and where he dumped the baby. Griffin was subsequently convicted of two counts of being an accessory after the fact for his involvement in the murders.

Based on Griffin's assistance, the police were able to recover Wilkes's remains, which were badly burned. Wilkes's watch, which was

found with the burned body, stopped at 2:29. Mosley's cellular phone records established that at 2:24 a.m., on April 23, an outgoing call was made from Mosley's cellular phone, and the cellular antenna used for this call was close to where Wilkes's body was found. Despite a diligent search for the baby's body, the baby's body was never recovered.

Wilkes's DNA was found on a carpet sample from the Suburban. The medical examiner testified that after a person was strangled to death, the body could exude pinkish blood from the nose and mouth. After Mosley was arrested, he wrote Jones a letter, asking her to tell the police that he was alone when he came to her house on April 23 at 6:08 a.m. He also told her, "It is legal and okay to change your statement in court if you let the jury know the police pressured and coerced you to say something before they took the statement and during the statement." Mosley also talked to his wife, Carolyn Mosley, asking her to "remember" that his mother stayed over that night and that he came home from work that night at 11:30. He told his wife that he needed her, their daughters, and his mother to write notarized statements that he arrived home that night at 11:30 and was there all night.

During his defense at trial, Mosley presented evidence through his

wife and daughters that he was at home the night that Griffin claimed they disposed of the bodies. Mosley's doctor also testified that he was treating Mosley for some injuries sustained in a car accident. While the doctor discussed Mosley's injuries in depth, he also admitted that the injuries would not have made it impossible for Mosley to lift a body. The jury convicted Mosley of two counts of first-degree murder.

Following the penalty phase, the jury recommended a life sentence for the murder of Lynda Wilkes and, by a vote of eight to four, and recommended a sentence of death for the murder of Jay-Quan Mosley. The Court held a Spencer hearing and, after independently weighing the aggravating factors and mitigating circumstances, agreed with the jury's recommendation of death for the murder of Jay-Quan. In imposing the death sentence for the murder of Jay-Quan, the trial court found four aggravators applied, each of which was given great weight: (1) the victim of the capital felony was under twelve years of age; (2) the murder was cold, calculated, and premeditated (CCP); (3) the murder was committed for pecuniary gain; and (4) the defendant had been previously convicted of a capital felony (the contemporaneous murder of Wilkes).

The trial court determined that twenty-nine non-statutory mitigating

circumstances applied, but found that they were outweighed by the significant aggravation and thus sentenced Mosley to death for the murder of his son. On direct appeal, this Court affirmed Mosley's convictions and sentences, including the sentence of death.

In Hurst v. Florida, 577 U.S. 92 (2016) the United States Supreme Court declared Florida's capital sentencing scheme, codified at section 921.141(3)(a)-(b), Florida Statutes (2015), unconstitutional because the "[t]he Sixth Amendment requires a jury, not a judge, to find each fact necessary to impose a sentence of death. A jury's mere recommendation is not enough." Hurst at 95. Based upon the high court's decision in Hurst, this Court vacated Mosley's death sentence and remanded the case for a new penalty phase.

On December 2, 2019, the trial court proceeded with Mosley's penalty phase. (R 144) At the conclusion of the penalty phase, the jury unanimously found that the State had proven four aggravating factors: (1) the murder was especially heinous, atrocious, or cruel; (2) the murder was committed in a cold, calculated, and premeditated manner; (3) the victim was less than twelve years of age; and (4) Mosley was previously convicted of another capital felony (the Wilkes murder). The jury

unanimously found that the aggravating factors were sufficient to impose the death penalty and found no mitigating circumstances. (R 443-451) And the jury unanimously found that the aggravating factors outweighed the mitigating circumstances. (R 146) Mosley was again sentenced to death.

On direct appeal, this Court found reversible error. Specifically, the trial court's failure to address Mosley's Motion to represent himself at his Spencer hearing. (R 150) This Court vacated Mosley's sentence of death and remanded back to the trial court solely for a new hearing pursuant to Spencer v. State, 615 So. 2d 688 (Fla. 1993), and a new sentencing hearing.

Spencer Hearing

The Spencer Hearing began with the Appellant bringing to the Court's attention that prison officials at Union Correctional Institution did not allow the Appellant to bring his legal papers. (R 360) Secondly, the Appellant argued that since Judge Weatherby is over the age of 75 he is not permitted to conduct the Spencer Hearing. (R 360)

The Appellant called four witnesses at the Spencer Hearing. The Appellant called his daughters, Amber Mosley and Alexis Mosley; his mother, Barbara McKinney; and his wife, Carolyn Mosley. Amber Mosley,

now a registered nurse, testified that her father was a great source of comfort to her mother Carolyn Mosley while she battled breast cancer. (R 365) Alexis Mosley testified that her father encouraged education. (R 366) Alexis Mosley has kept in constant communication with her father and he provides her life advice. (R 369) The Appellant encouraged her to join the United States Navy. (R 368) Barbara McKinney confirmed that the Appellant's wife suffered from breast cancer, and her son was supportive and affectionate with his wife. (R 373) Carolyn Mosley has been married to the Appellant for 37 years, and she keeps in contact with him through email, phone calls and visits to prison. (R 374) Carolyn Mosley suffered breast cancer and the Appellant was praying for her which gave her great comfort. (R 376)

The Appellant appeared for resentencing. (R 1,349) The Appellant addressed the Court: "On this case where three-time convicted felon, admitted liar, Bernard Griffin, is the Florida standard used to convict and sentence me, an innocent man, whom there is absolutely no evidence against." (R 1,350) The Court found that the aggravating factors heavily outweigh the mitigating circumstances and that the death penalty is the proper penalty for the murder of Jay-Quan Mosley. (R 1,356)

The Appellant filed a timely Notice of Appeal. (R 711) The Office of the Public Defender was appointed to represent the Appellant on appeal. (R 713) This appeal follows.

SUMMARY OF THE ARGUMENT

Point I: In this case the jury found that the Appellant did not prove any valid mitigating evidence. To find no mitigation evidence the jury clearly ignored the judge's instructions to find what mitigation had been proven. We know this because the trial judge in his sentencing order found 29 non-statutory mitigating factors. The jury does not have the discretion to ignore mitigation evidence. The Appellant should be given a new penalty phase trial.

Point II: The Appellant claimed that the Chief Medical Examiner Margarita Arruza that testified in his original trial, had been mentally incompetent as early as 2001 and at the time of his 2005 trial. This was newly discovered evidence. The trial judge erred in dismissing this claim without an evidentiary hearing.

ARGUMENTS

POINT ONE

IN VIOLATION OF THE EIGHTH AND FOURTEENTH AMENDMENT OF THE U.S. CONSTITUTION, THE JURY WRONGFULLY IGNORED MITIGATION EVIDENCE.

Mitigation, also referred to as "mitigating factors" or "mitigating evidence," is evidence the defense can present in the sentencing phase of a capital trial to provide reasons why the defendant should not receive a death sentence. This evidence, which can include mental problems, remorse, youth, childhood abuse or neglect, a minor role in the homicide, or the absence of a prior criminal record, may reduce the culpability of the defendant in the killing or may provide other reasons for preferring a life sentence to death. The United States Supreme Court in Lockett v. Ohio, 438 U.S. 586 (1978) has ruled that in deciding between the death penalty and life in prison, the jury may consider any mitigating evidence a juror finds relevant. The jury is instructed to weigh the mitigating factors presented by the defense against the aggravating factors presented by the prosecution.

Eighth Amendment jurisprudence establishes two separate prerequisites to a valid death sentence. First, sentencers may not be given

unbridled discretion in determining the fates of those charged with capital offenses. The Constitution instead requires that death penalty statutes be structured so as to prevent the penalty from being administered in an arbitrary and unpredictable fashion. Gregg v. Georgia, 428 U. S. 153 (1976); Furman v. Georgia, 408 U. S. 238 (1972). Second, even though the sentencer's discretion must be restricted, the capital defendant generally must be allowed to introduce any relevant mitigating evidence regarding his "character or record and any of the circumstances of the offense." Lockett at 604. Consideration of such evidence is a "constitutionally indispensable part of the process of inflicting the penalty of death." Woodson v. North Carolina, 428 U. S. 280, 304 (1976)

In the case at bar, the jury found that the Appellant did not prove any valid mitigating evidence. To find no mitigation evidence the jury clearly ignored the judge's instructions to find what mitigation had been proven. We know this because the trial judge in his sentencing order found 29 non-statutory mitigating factors. The issue in the case at bar is whether the jury has the discretion to ignore mitigation evidence.

This is a matter of "reverse" jury nullification. Reverse jury nullification in the context of a capital murder trial is where the jury ignores

the trial judge's jury instructions relating to consideration of mitigation.

Reverse jury nullification by a jury in a capital case gross violation of Due Process, and should be rejected by this Court. The Appellant submits that the Eighth and Fourteenth Amendments require that sentencers consider all mitigating factors surrounding the convicted murderer before reaching a verdict of the death penalty.

The case of Sparf v. United States, 156 U.S. 51 (1895) the United States Supreme Court clarified questions related to the duty of criminal trial juries. In Sparf the defendants there, convicted of murder, sought review on the theory that the trial judge had unconstitutionally usurped the jury's province by instructing it that, although it had the power to bring in a verdict of manslaughter, any verdict other than a conviction for murder or a total acquittal would violate its oaths and duties. The Supreme Court rejected their argument, holding that, although a jury has an absolute power to ignore a judge's directions, it has no such right and to do so, and ignoring jury instructions is wrong:

The trial was thus conducted upon the theory that it was the duty of the court to expound the law, and that of the jury to apply the law as thus declared to the facts as ascertained by them. In this separation of the functions of court and jury is found the chief value, as well as safety, of the jury system. Those functions cannot be confounded or disregarded without

endangering the stability of public justice, as well as the security of private and personal rights.

Sparf at 106. In the case where a jury ignores the trial judge's instructions related to the constitutional requirement to consider mitigation, the Appellant was denied a fair trial. In this instance, the Appellant should be granted a new penalty phase where the jury properly follows the trial judge's jury instructions, and weighs the proven mitigation evidence against the aggravating circumstances and then renders a just verdict.

POINT TWO

WHETHER THE TRIAL COURT ERRED IN DENYING APPELLANT'S REQUEST FOR AN EVIDENTIARY HEARING ON APPELLANT'S CLAIM FOR NEWLY DISCOVERED EVIDENCE IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION.

The Appellant, through counsel, requested that his previously filed pro se Request for Evidentiary Hearing on Motion to Set Aside Conviction Based on Newly Discovered Evidence be considered by the trial court. (R 266) The Appellant claimed that the medical examiner (Chief Medical Examiner Margarita Arruza) that testified in his original trial, had been mentally incompetent as early as 2001 and at the time of his 2005 trial. The request for an evidentiary hearing was denied without hearing on two grounds. First, even if the Appellant's allegations were true, it would not have changed the trial outcome. Second, the Appellant's argument is based upon correspondence and filings that predate the murders and there is no reason this evidence could not have been presented at trial to impeach Dr. Arruza. The trial judge reasoned that this is post-conviction claim should have been directed at trial counsel for failure to investigate this matter. (R 277) This was error.

To establish a claim of newly discovered evidence and entitlement to

a new trial, “the defendant must show that the evidence was not known by the trial court, the party, or counsel at the time of trial and the defendant could not have known of it by use of due diligence. Second, the evidence ‘must be of such a nature that it would probably produce an acquittal on retrial.’” Foster v. State, 132 So.3d 40, 65 (Fla. 2013)

In the instant case due diligence by trial counsel would not have discovered that the medical examiner was suffering with dementia. The medical condition of individuals is confidential information. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) is a federal law that protects "individually identifiable health information" (or "protected health information"). It does so through the Privacy Rule. The trial judge’s finding that trial counsel could have discovered the medical examiners medical condition is without merit.

Concerning the competency issue, the court is required to disqualify a witness when the court determines that the person is incapable of expressing himself or herself concerning the matter in such a manner as to be understood; or, the witness is incapable of understanding the duty of a witness to tell the truth. See § 90.603, Fla. Stat. Ann. Without an evidentiary hearing, it is unknown whether Dr. Arruza should have been

disqualified as a witness at trial pursuant to § 90.603, Fla. Stat. Ann.

Moreover, without Dr. Arruza's testimony the jury would acquit the Appellant. Therefore, the Appellant is entitled to an evidentiary hearing to determine whether the medical examiner should have been disqualified as a witness.

CONCLUSION

Based upon the foregoing cases, authorities, policies, and arguments, Appellant respectfully requests this Honorable Court to vacate the Appellant's sentences and remand for a new penalty phase trial as to Point One, and order an evidentiary hearing as to Point Two.

Respectfully submitted,

MATTHEW S. METZ
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

/s/ George D.E. Burden
GEORGE D.E. BURDEN
Florida Bar No. 0786438
ASSISTANT PUBLIC DEFENDER
444 Seabreeze Blvd. Suite 210
Daytona Beach, Florida 32118
(386) 254-3758
burden.george@pd7.org

ATTORNEY FOR APPELLANT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been filed electronically in the Fifth District Court of Appeal, through the Florida Courts E-Filing Portal at www.myflcourtagency.com, which will e-mail a copy of the filing to the Office of the Attorney General, Assistant Attorney General, Lisa- Marie Lerner, at capapp@myfloridalegal.com; and a copy delivered by mail to John F. Mosley, DOC# J30192, Union Correctional Institution, PO Box 1000, Raiford, FL 32083, on this 9th day of January, 2024.

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the font used in this brief is either 14-point Arial or Bookman Old Style, in compliance with Rule 9.045(b), Florida Rules of Appellate Procedure, and that the word count complies with Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

/s/ George D.E. Burden
GEORGE DE BURDEN
ASSISTANT PUBLIC DEFENDER