IN THE SUPREME COURT OF FLORIDA

JOHN HUGGINS,)
)
Appellant,)
)
vs.) CASE NUMBER SC02-2364
)
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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ARGUMENTS

POINT I

IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT UNDER THE PECULIAR FACTS OF THIS CASE, APPELLANT'S TRIAL WAS RENDERED UNCONSTITUTIONALLY UNFAIR WHEN THE TRIAL COURT ALLOWED THE STATE TO INTRODUCE EVIDENCE THAT APPELLANT HAD SHAVED HIS PUBIC REGION, WHICH SUBSEQUENTLY LED TO THE STATE INTRODUCING APPELLANT'S NINE PRIOR FELONY CONVICTIONS, EVEN THOUGH APPELLANT NEVER TESTIFIED.

Counsel relies on the argument and authority set forth in the initial brief.

POINT II

IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT THE TRIAL COURT ERRED IN OVERRULING APPELLANT'S TIMELY AND SPECIFIC OBJECTION AND ALLOWING THE OFFICE MANAGER TO TESTIFY TO BLATANT HEARSAY THAT ESTABLISHED THE ONLY EVIDENCE CONCERNING CARLA LARSON'S PLANS ON THE DAY OF HER MURDER.

Appellee points out that Section 90.803(3), Florida Statutes, provides that a declarant's statement of intent is admissible to infer the future act of the declarant. Appellant points out that at trial, the state never relied on this argument. Additionally, the trial court never articulated this particular basis for overruling appellant's timely and specific objection. ***See Stoll v. State***, 762 So.2d 870 (Fla. 2000) and ***Robertson v. State***, 829 So.2d 901 (Fla. 2002).

POINT III

IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT THE TRIAL COURT ERRED IN ALLOWING THE STATE TO ILLEGALLY EXCLUDE AFRICAN-AMERICANS FROM APPELLANT'S JURY RESULTING IN A DENIAL OF HIS CONSTITUTIONAL RIGHTS TO DUE PROCESS OF LAW AND TO A FAIR TRIAL.

The state seems to imply that undersigned counsel is attempting to somehow hide the fact that this issue involves a cause challenge by the state rather than a peremptory challenge. Answer Brief at 49. Appellant certainly intended no subterfuge. Appellant contends on appeal that the state unfairly injected race into its use of a cause challenge. Appellant also contends that the state's improper use of a cause challenge was unevenly applied to a potential African American juror. Appellant writes only to clarify his argument for opposing counsel and this Honorable Court.

POINT IV

IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT THE DEFENDANT WAS DENIED A FAIR TRIAL BASED ON IN CONTRAVENTION OF APPELLANT'S CONSTITUTIONAL RIGHTS TO A FAIR TRIAL, THE TRIAL COURT ERRED BY EXCLUDING RELEVANT, ADMISSIBLE EVIDENCE THAT TENDED TO PROVE THAT ANOTHER INDIVIDUAL, NOT THE APPELLANT, KILLED CARLA LARSON.

Appellant writes only to refute the government's assertion that Huggins did not seek admission of the "Calvin Rewis" evidence as "similar fact" evidence, i.e., reverse ***Williams*** Rule evidence. Answer Brief at 51-52. Trial counsel did specifically offer the evidence under that theory below. As the state quotes the record, defense counsel stated that the evidence was offered "under three recognized areas of 404." (VIII 298) Answer Brief at 52. Trial counsel identified the three recognized areas of 404 as being "pattern of criminality, motive, opportunity." (VIII 298) This section of the evidence code as well as the particular language cited by trial counsel is generally referred to as ***Williams*** Rule evidence. The fact that Huggins also described the evidence as "simply relevant evidence that the defense had the right to present to the jury in order to establish reasonable doubt" does not change the fact that the disputed evidence was, in fact,

reverse ***Williams*** Rule evidence.

POINT V

IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT THE TRIAL COURT ERRED BY ADMITTING IRRELEVANT, INFLAMMATORY, AND PREJUDICIAL EVIDENCE THAT WAS NOT RELEVANT TO ANY CONTESTED ISSUE.

Appellee states that the photograph of the victim's vaginal area suggest the possibility of pre-mortem injury, as well as demonstrating the decomposition of the victim's body. Answer Brief at 58. Appellant responds that the relevance of this evidence is severely reduced by the fact that the state did not charge Huggins with sexual battery.

The assistant attorney general also claims that appellant's trial counsel preserved nothing for review regarding Doctor Gore's testimony regarding strangulation. Answer Brief at 59-60. Specifically, counsel for the state takes issue with undersigned counsel's statement in the initial brief that the testimony was admitted "over repeated defense objections." Initial Brief at 61; Answer Brief at 59.

Counsel concedes that during Doctor Gore's actual testimony, trial counsel made only one objection which was overruled. However, defense counsel had filed a pretrial motion in limine based on the inflammatory testimony of Doctor Gore at

Huggins' first trial in Jacksonville. (XIV 889-909) The trial court denied the motion prior to Dr. Gore's testimony. Clearly, appellant has preserved this issue for review despite the state's contention to the contrary.

The state's argues in a conclusory manner that there is no basis for appellant's assertion that the medical examiner would be unqualified to testify about the psychological and emotion effect of murder by strangulation. "Such matters are within the expertise of a medically trained person, and was proper testimony in all respects." Answer Brief at 60. Interestingly, the state cites no authority for this conclusion.

Similarly, the state dismisses appellant's complaints that the victim impact evidence was so prejudicial that it outweighed any possible probative value. The state concludes that the evidence concerning the victim's baby carrier and Toys-R-Us credit card are relevant to the "*res gestae*" of the offense, and was properly admitted. Answer Brief at 61. This "citation of authority" is of no help whatsoever to this Court.

POINT VI

IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR JUDGMENT OF ACQUITTAL WHERE THE CIRCUMSTANTIAL EVIDENCE PRESENTED BY THE STATE FAILED TO RULE OUT THE REASONABLE HYPOTHESIS THAT JOHN HUGGINS DID NOT COMMIT THE PREMEDITATED NOR FELONY MURDER OF CARLA LARSON.

Appellant wishes to clarify that he contends on appeal that the evidence is insufficient to rule out the reasonable hypothesis that **John Huggins did not commit the premeditated nor felony murder of Carla Larson**. Initial Brief at 66. Contrary to the state's assertion, appellant contests the sufficiency of the evidence under both theories of murder as well as the underlying felonies of kidnaping and carjacking. The gist of appellant's argument relates to alternative theories concerning Larson's death, i.e., that death could have occurred at a site other than where the body was recovered; Larson could have been killed in the heat of passion; her death was accidental; or she was killed without premeditated design. (XXV 1380-92); Initial Brief at 67. In the initial brief, appellant points out that, "The evidence is just as consistent that Larson's vehicle and property were taken as an afterthought and, as such, was not the primary motive for the murder." Initial

Brief at 70.

In arguing that the evidence was sufficient to support appellant's convictions, the state relies on the trial court's written findings of fact rather than citing to record evidence. Answer Brief at 62-64. In doing so, the state falls into the same trap as the trial court. In Point IX, appellant takes issue with the trial court's findings of fact regarding the circumstances of Carla Larson's death. Initial Brief at 78-85. In that argument, appellant points out the rampant speculation engaged in by the trial court. Such as not the type of evidence required to support a conviction and consequent death sentence in this state.

POINT VII

IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT THE TRIAL COURT ERRED IN DENYING APPELLANT'S REQUESTED INSTRUCTION REGARDING CIRCUMSTANTIAL EVIDENCE, A VIOLATION OF HUGGINS' FIFTH, SIXTH, AND FOURTEENTH AMENDMENT RIGHTS.

Appellant does not believe that he is reading too much into the trial court's comments as the state suggest. At the charge conference, the trial court denied appellant's requested jury instruction relating to the special treatment of circumstantial evidence, stating that this Court, "many, many, many years ago did away with the circumstantial evidence instructions, ...". (XXVI 1583) Counsel maintains that the trial court was under the mistaken impression that he had no discretion to instruct the jury as to circumstantial evidence. If there is any doubt whatsoever, a remand would be appropriate to determine the trial court's understanding of the law.

POINT VIII

IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION TO DISQUALIFY THE PROSECUTOR.

The state suggests that Huggins has demonstrated no prejudice as a result of assistant state attorney Ashton's misconduct. Answer Brief at 67. Appellant begs to differ. In addition to the four unsuccessful motions to disqualify Jeff Ashton, appellant filed several unsuccessful, related motions including a motion to preclude the state from introducing any new evidence at his second trial. (XII 581-86, 620-21) Appellant's contention below was that the state's case became slightly stronger with the passage of time. This passage of time occurred only as a result of Jeff Ashton's misconduct.

Additionally, counsel for the state makes much of the fact that Huggins makes no mention of the final resolution of his bar grievances filed against Jeff Ashton. Answer Brief at 67-68. Appellant maintains that the resolution of these bar grievances have little or no bearing on the issue of Jeff Ashton's disqualification from the prosecution of appellant's case. Rather, the fact that Huggins personally filed such grievances against Ashton has legal significance. Specifically, appellant's action in filing bar grievances against Ashton gave Ashton his own personal stake in

Huggins' successful prosecution. That, in and of itself, should have resulted in disqualification.

POINT IX

IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT THE TRIAL COURT ERRED IN FIND IN THAT THE MURDER WAS COMMITTED FOR PECUNIARY GAIN, DURING THE COURSE OF KIDNAPING, AND THAT THE MURDER WAS HEINOUS, ATROCIOUS, OR CRUEL.

As he did in the issue regarding the denial of his motions for judgment of acquittal, appellant writes to clarify that he **does** challenge the sufficiency of that evidence to support his kidnaping conviction as well as the kidnaping aggravator. Appellant's argument was generally based on the failure of the evidence to rule out any reasonable hypothesis of innocence, including one involving Larson's voluntary accompaniment of Huggins from the shopping center.

In contending that the evidence supported the finding of the pecuniary gain aggravator, the state relies on this Court's recent opinion in ***Spann v. State***, 857 So.2d 845 (Fla. 2003). Answer Brief at 72-73. In ***Spann***, the defendant told a codefendant that they needed to kill the victim of the carjacking so that she could not identify them and they would have enough time to get away with the car. Appellant's case contains no such admission to the police nor to anyone else. This Court's holding in ***Spann*** has no applicability to appellant's case.

The state also takes issue with appellant's argument with the trial court's finding that the murder was especially heinous, atrocious, or cruel is supported by substantial, competent evidence. Answer Brief at 76-77. Specifically, the appellee writes that Huggins' "complaint is with the trial court's finding that 'there was no evidence that Carla Larson was unconscious when she was strangled and' ... Huggins does not dispute that fact, either, choosing instead to respond to it with a statement that 'Nor is there any evidence that she was conscious.'" Answer Brief at 76. Appellant's submits that by pointing out that there was no evidence that the victim was conscious he is, in fact, disputing the material fact of the victim's consciousness or unconsciousness. The state cannot rely on mere speculation and conclusions that are not based on evidence. Death sentences should not be grounded on flimsy assumptions and speculative conclusions.

POINT X

IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT THE DEATH PENALTY IS NOT WARRANTED IN THIS CASE WHERE THE SEQUENCE OF EVENTS LEADING TO THE VICTIM'S DEATH ARE STILL UNKNOWN AND WHERE ONLY TWO VALID "GARDEN VARIETY" AGGRAVATORS EXIST, WHILE THE MITIGATION IS SUBSTANTIAL.

Counsel relies on the argument and authority set forth in the initial brief.

POINT XI

IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT THE TRIAL COURT ERRED IN SENTENCING JOHN HUGGINS TO DEATH BECAUSE SECTION 921.141, FLORIDA STATUTES, UNCONSTITUTIONALLY ALLOWED THE TRIAL COURT TO DO SO WITHOUT, AMONG OTHER THINGS, AN UNANIMOUS DEATH RECOMMENDATION FROM THE JURY. ADDITIONALLY, THE TRIAL COURT'S ACTION IN REWRITING THE JURY INSTRUCTIONS AND CHANGING THE PENALTY PROCEDURES VIOLATED THE SEPARATION OF POWERS CLAUSE OF FLORIDA'S CONSTITUTION.

Counsel relies on the argument and authority set forth in the initial brief.

CONCLUSION

Based upon the foregoing cases, authorities, policies, and arguments, as well as those cited in the Initial Brief, Appellant respectfully requests this Honorable Court to grant the following relief: as to Points I through V, VII, and VIII reverse and remand for a new trial; as to Point VI, reverse and remand for discharge; and as to Points IX through XI vacate the death sentence and remand for imposition of imprisonment without the possibility of parole.

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. John Huggins, #059121, Florida State Prison, 7819 N.W. 228th St., Starke, FL 32026, this 4th day of February, 2004.

_____
CHRISTOPHER S. QUARLES
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 pt.

_____
CHRISTOPHER S. QUARLES
ASSISTANT PUBLIC DEFENDER