

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC03-139

NATHANIEL WILLIAMS,

Petitioner,

-vs-

STATE OF FLORIDA,

Respondent.

REPLY BRIEF OF PETITIONER ON MERITS

ON PETITION FOR DISCRETIONARY REVIEW
FROM THE DISTRICT COURT OF APPEAL OF
FLORIDA, THIRD DISTRICT

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ARGUMENT

I.

THE THIRD DISTRICT COURT OF APPEAL ERRED IN CONCLUDING THAT THE IMPROPER LIMITATION OF CROSS EXAMINATION WAS HARMLESS ERROR SINCE AFTER REVIEWING THE ADMISSIBLE EVIDENCE IN THE CASE THE COURT WAS NOT NECESSARILY CONVINCED THAT THE ERROR DEPRIVED DEFENDANT A FAIR TRIAL.

In point one Williams argued that the Third District Court of Appeal erred in concluding that the improper limitation of Williams' right to cross-exam Hunt concerning his expulsion from the police explorers was harmless error. In its brief the state argues that (1) the Third District Court of Appeal erred in concluding that Williams was prohibited from questioning Hunt concerning whether he was expelled from the police explorers; (2) the Third District Court of Appeal erred in concluding that the state was allowed to bolster Hunt's character with evidence that he was in the police explorers (3) the Third District Court of Appeal erred in failing to conclude that Williams waived his right to fully cross-examine Hunt as to why he left the police explorers since Williams did not object when the state introduced evidence that Hunt was in the police explorers and (4) that Williams argument that the Third District Court of Appeal used an improper harmless error standard is based upon semantics.

A brief review of each of these arguments will establish that none of the state's arguments have any merit and that Williams is entitled to a new trial.

A. THE THIRD DISTRICT COURT OF APPEAL DID NOT ERR IN CONCLUDING THAT THE TRIAL COURT IMPROPERLY LIMITED WILLIAMS' RIGHT TO CROSS EXAM HUNT CONCERNING HIS EXPULSION FROM THE POLICE EXPLORERS.

At trial and on direct appeal Williams argued that once the state decided to introduce evidence that Hunt was a member of the police explorers he had the right to inform the jury of the rest of the story concerning Hunt's career in the police explorers which established that he was expelled from the explorers due to an aggravated assault conviction in which he received a withhold of adjudication. (T. 7-9, 219-221).

Both the trial court and the Third District Court of Appeal concluded that since Hunt received a withhold of adjudication, defense counsel did not have the right to cross-examine Hunt concerning the fact that he was expelled from the police explorers based upon the aggravated assault arrest. The Third District did conclude, however, that the trial court's order which prohibited defense counsel from asking any questions concerning why Hunt left the police explorers was error since Williams had the right to establish that Hunt was expelled from the police

explorers.¹

The state in its brief argues that the Third District erred in concluding that Williams did not have the right to elicit the fact that Hunt was expelled from the police explorers. The record in this case establishes that the state's argument is frivolous and that the Third District correctly concluded that the trial judge's order prohibited defense counsel from eliciting why Hunt left the police explorers.

At the conclusion of the state's direct examination of Hunt, defense counsel renewed his argument that the state, by introducing evidence that Hunt was a member of the police explorers, opened the door to allow the defense to establish that Hunt had been thrown out of the police explorers when he committed an

¹It is Williams' position that the Third District erred in concluding that defense counsel could not rely upon the aggravated assault conviction since this court has recognized that when the state opens the door to inadmissible testimony defense counsel has the right to cross-examine the witness with evidence that normally would not be admissible. Therefore, once the state decided to bolster Hunts' credibility with the fact that he was a police explorer, Williams had the right to bring out the fact that he was thrown out of the explorers for committing an aggravated assault regardless of whether he received a withhold of adjudication or not since the state opened the door to this testimony. See *Ramirez v. State*, 739 So.2d 568 (Fla. 1999) and *Rodriguez v. State*, 753 So.2d 29, 42 (Fla. 2000)(this court held where defendant sought to establish that witness disliked him the state had the right to shed light on why the witness disliked him even if the reason consisted of evidence of uncharged crimes which would normally be inadmissible). Therefore if this Court reverses the conviction in this case the court should also find that Williams at a new trial has the right to explore with Hunt the actual reason why he was thrown out of the police explorers.

aggravated assault. The trial judge ruled that defense counsel could ask any questions he wanted concerning Hunt's membership in the explorers but that he could not ask any questions concerning **WHY** Hunt left the explorers. (T. 221).

Both defense counsel and the Third District Court of Appeal properly recognized that any question which would have elicited the fact that Hunt was expelled from the police explorers would have violated the trial judge's order which specifically prohibited defense counsel from questioning Hunt why he left the police explorers.

In its brief the state suggests that defense counsel could have asked the witness how his affiliation with the police explorers ended or whether he left the police explorers voluntarily or involuntarily and that these questions would not have violated the court's order prohibiting defense counsel from inquiring from the witness why he left the explorers. A review of hypothetical questions posed by the state in its brief reveals that both questions would have been objected to by the state since both questions are clearly designed to elicit why the witness left the explorers.

Since the record establishes that the trial judge specifically prohibited defense counsel from questioning the witness concerning why he left the police explorers this Court should reject the state's argument that the Third District wrongfully

concluded that Williams right to fully cross-examine Hunt was denied.

B. THE THIRD DISTRICT CORRECTLY CONCLUDED THAT THE STATE'S REASON FOR INTRODUCING EVIDENCE THAT HUNT WAS A POLICE EXPLORER FOLLOWED BY AN EXPLANATION AS TO WHAT A POLICE EXPLORER WAS, WAS AN ATTEMPT TO BOLSTER THE CHARACTER OF HUNT.

In its brief the state argues that it never intended to bolster the character of Hunt and that the state introduced the employment record of all of their witnesses as a matter of course. In this case the state was not satisfied with introducing evidence that Hunt was a pastor, security guard and when he was younger a member of the police explorers. After eliciting all of this irrelevant information the state decided that in order to make sure the jury was impressed with Hunt's character, they decided to ask the witness what a police explorer was. In response Hunt told the jury that a police explorer was a teenager who stayed out of trouble and worked with the police.

In its brief the state fails to set forth any relevance to this information since it is obvious that the only reason why the state wanted to let the jury know that Hunt was a member of the police explorers was so that they would think he was a teenager who did not get in trouble. Therefore, the Third District properly concluded that once the state decided to tell the jury that Hunt was a teenager who did not get in trouble, the defense at a minimum had the right to tell the jury the rest

of the story which was that Hunt was expelled from the police explorers.²

C. WILLIAMS NEVER WAIVED HIS RIGHT TO CROSS-EXAMINE HUNT CONCERNING WHY HE LEFT THE POLICE EXPLORERS.

Prior to trial the state filed a motion in limine to prohibit defense counsel from introducing evidence that Hunt was expelled from the police explorers due to an aggravated assault conviction since the conviction was resolved with a withhold of adjudication. (T. 7-9). Defense counsel specifically argued that if the state decided to introduce evidence that Hunt was a police explorer, Williams should have the right to cross-examine Hunt concerning why he left the police explorers. Despite this argument the state decided during direct examination of Hunt to elicit the fact that he was a police explorer. Prior to cross-examination, defense counsel's renewed argument that the state opened the door to inquiry as to why Hunt left the explorers was denied. (T. 220-1). Therefore, the state's argument that Williams has waived this argument on appeal is void of any merit.

Furthermore, even if Williams had not objected to the procedure followed in this case, the law establishes that the mere fact that a party chooses not to object to

²Once again William's position throughout this litigation is that once the state established the partial picture of Hunt being a good teenager who did not get in trouble with the police defendant had the right to complete the entire picture by letting the jury know that Hunt got thrown out of the police when he was arrested for committing an aggravated assault.

improper testimony on direct-examination does not mean that that same party gives up his right to fully cross-examine the witness concerning the inadmissible testimony. See *Washington v. State*, 752 So.2d 1148 (Fla. 4th DCA 2000). In *Washington*, the defense elicited testimony on direct examination concerning an uncharged crime. The court held that once defense counsel decided to open the door to this otherwise inadmissible testimony the state on cross-examination had the right to fully exam all the details of this uncharged crime even though they did not object to its initial introduction since “often one side will allow the opposition to introduce inadmissible testimony so as to attack it on cross-examination.” *James v. State*, 388 So.2d 35 (Fla. 5th DCA 1980).

Therefore, since defense counsel continually objected to the improper limitation of cross examination prior and subsequent to the state’s introduction of evidence that Hunt was a police explorer the state’s argument that Williams waived his right to fully cross-examine Hunt concerning why he left the police explorers should be rejected by this court.

D. WILLIAMS ARGUMENT THAT THE THIRD DISTRICT COURT OF APPEAL USED AN IMPROPER STANDARD IN DETERMINING WHETHER THE IMPROPER LIMITATION OF HIS CONSTITUTIONAL RIGHT TO CROSS-EXAMINE WITNESSES IS NOT BASED ON SEMANTICS.

In its opinion, the Third District concluded that the error in limiting Williams

right to cross-examine Hunt was harmless because, “given all of the other evidence as to Williams guilt, we cannot conclude that this error necessarily deprived Williams of a fair trial to warrant reversal.” In the initial brief, Williams spent a majority of the brief explaining why the standard used by the Third District directly conflicted with all of this Court’s cases which outline the harmless error doctrine in the State of Florida. Rather than be repetitious, Williams will rely upon the argument made in its initial brief which clearly explains why the Third District’s harmless error analysis in this case was error since it failed to require the state to establish beyond a reasonable doubt that the error did not contribute to the jury’s verdict.

In its brief the state tries to minimize the Third District’s error by arguing that just because the analysis was short does not mean that the Third District did not apply the proper test for harmless error. The error in this case was not that the Third District was brief in their analysis but instead, that the opinion clearly reflects that the Third District failed to consider how the error may have effected the jury verdict and wrongfully placed the burden on the defense to prove that the error was harmless.

Furthermore, as was outlined in detail in the initial brief, if the court had used the correct standard it would have been impossible for the state to prove beyond a

reasonable doubt that the improper limitation of cross-examination of a crucial state witness did not contribute to the jury's verdict.³ Therefore, this Court should enter an order reversing Williams' conviction with instructions to grant him a new trial.

II.

**THE THIRD DISTRICT COURT OF APPEAL
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Since all of the state's arguments are addressed in the initial brief, Williams will rely upon the arguments made in the initial brief to support his position that the trial judge erred in allowing the state to introduce the irrelevant photograph of the victim in his military uniform in light of the fact that the trial was conducted approximately thirty days after the tragedy of September 11.

³Counsel would rely upon the argument contained on pages 15-17 in his initial brief to support his position that the error in this case was not harmless.

CONCLUSION

Based upon the foregoing, this Honorable Court should quash the decision below.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed to the Office of the Attorney General, Richard Valuntas, Assistant Attorney General, 9th Floor, 1515 North Flagler Street, West Palm Beach, FL 33401 this ____ day of July, 2003.

ROBERT KALTER
Assistant Public Defender

CERTIFICATE OF FONT

Undersigned counsel certifies that the type used in this brief is 14 point proportionately spaced Times New Roman.

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