IN THE FLORIDA SUPREME COURT

ROBERT SHANNON WALKER, II, Appellant, v. STATE OF FLORIDA, Appellee.	CASE NO. SC04-2381

ON APPEAL FROM THE CIRCUIT COURT
OF THE EIGHTEENTH JUDICIAL CIRCUIT,
IN AND FOR BREVARD COUNTY, FLORIDA

REPLY BRIEF OF APPELLANT

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PRELIMINARY STATEMENT

ROBERT SHANNON WALKER, Appellant, was the Defendant in the trial proceedings; this brief will refer to Appellant as Mr. Walker or Appellant. Appellee is the State of Florida; this brief will refer to Appellee as the State or Appellee.

The record on appeal consists of eighteen volumes. Volumes one through seventeen volumes contain pleadings and testimony transcripts. Volume eighteen contains the exhibits that were filed in this case. The entire record has been transmitted to this Court. Each volume will be referred to by its designation in the Index on Appeal. "IB" will designate Appellant's Initial Brief, followed by any appropriate page number. “AB” will designate Appellee’s Answer Brief, followed by any appropriate page number.

All bold-type emphasis is supplied, and all other emphasis is contained within original quotations unless the contrary is indicated.

STATEMENT OF THE CASE AND FACTS

Appellant relies on the State of the Case and Facts stated in his Initial Brief.

ARGUMENT

ISSUE I

THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT DENIED APPELLANT'S MOTION TO SUPPRESS STATEMENT AND ADMISSIONS HE MADE TO BREVARD COUNTY LAW ENFORCEMENT, AND BECAUSE THE EVIDENCE SHOWED THAT DUE TO APPELLANT'S EXCESSIVE DRUG USE AND AGGRAVATED BIPOLAR CONDITION HIS WAIVER OF HIS MIRANDA RIGHTS WAS NOT DONE KNOWINGLY AND INTELLIGENTLY.

Merits

Contrary to Appellee's arguments, the trial court did commit reversible error by denying his Motion to suppress his statements and admissions. While it is correct that a trial court's factual findings are accorded a presumption of correctness, the Motion to Suppress involves issues of fact and law, and can be subject to an independent review by this court. *See, Connor v. State*, 803 So.2d 598, 608 (Fla. 2001), and *State v. Taylor*, 784 So.2d 1164 (Fla. 2d DCA 2001).

Appellant relies on his previously stated arguments that his requests for a lawyer were unequivocal. He reiterates the following facts: The State's witness, Lieutenant Williams, that based on his behavior, Appellant could have very possibly been under the influence. (II. 262, 267); Officer Creech testified that Appellant exhibited signs of someone who was on methadone.

(III. 290); and Dr. Bernstein's un-contradicted testimony that Appellant's drug use and lack of sleep magnified his mental illness, and rendered his statement to police less than intelligent. (II. 211-224)

When this court conducts an independent review of the Motion to Suppress hearing, this court will conclude that under the totality of the circumstances Appellant's drug induced condition, combined with his previously undiagnosed bipolar condition vitiated the possibility that he knowingly and intelligently waived his rights. The State failed to prove by a preponderance of the evidence that the confession was voluntary. *Lego v. Twomey*, 404 U.S. 477, 92 S.Ct. 619, 30 L.Ed.2d 618 (1972); and *Roman v. State*, 475 So.2d 1228, 1232 (Fla. 1985). Therefore, this case should be remanded with directions to the trial court to suppress Appellant's statement, and order a new trial without the use of this statement.

Harmless Error

Contrary to Appellee's arguments, admitting his confession cannot be considered harmless beyond a reasonable doubt. Appellee points to the facts that there were two eyewitnesses to the beating, and that they "heard the kidnaping, and (Appellant) told Gibson he had gotten rid of Walker." (AP. 36) Appellee

then argues that the “gun in the victim’s truck which (Appellant) used to intimidate Ritter and Gibson was the same gun that shot the victim.” (AB. 36) However, there was no evidence that Appellant even threatened either of these women with the gun. Appellee also argues that the victim’s blood was on the gun, and the flex ties “binding the victim’s hands were the same type as those in the truck.” (AB. 36) Yet, they had no eyewitness that Appellant actually shot the victim, or that he was even at the scene when the victim was shot. Without the illegal statement, there is nothing to show that Appellant shot the victim. Therefore, by admitting this illegal statement, this prejudiced Appellant beyond a reasonable doubt.

ARGUMENT

ISSUE II

THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT DENIED APPELLANT'S MOTION TO DECLARE 921.141, FLA. STAT. UNCONSTITUTIONAL BECAUSE A JURY NOT A JUDGE SHOULD MAKE A UNANIMOUS BEYOND A REASONABLE DOUBT DETERMINATION AS TO DEATH PENALTY AGGRAVATORS.

Merits

Appellant relies on his arguments in his Initial Brief that Florida's Death Penalty scheme violates his Florida and Federal Right to a Jury Trial and Equal Protection. In their breif, Appellee cites to *Gamble v. State*, 877 So.2d 706 (Fla. 2004); *Grim v. State*, 841 So.2d 455 (Fla. 2003); *Kormondy v. State*, 845 So.2d 41 (Fla. 2003), and *Lugo v. State*, 845 So.2d 74 (Fla. 2003). In each of these cases, this court denies relief under *Apprendi v. New Jersey,* 530 U.S. 466 (2000) and *Ring v. Arizona,* 536 U.S. 584 (2002). This court then further notes that because the defendants were convicted by the jury of murder during a felony, or based on other felonies. However, the additional notation of the jury's finding does not change the fact that it still is the judge, and not a unanimous jury making a finding beyond a reasonable doubt that makes the final decision.

Again, interpreting the law to find that Florida's capital

scheme violates clearly established federal law is within this court's authority. All capital defendants in the United States are receiving their fundamental right to a jury trial in the guilt phase and penalty phase. All capital defendants except for the ones in Florida. This is inequitable. *Apprendi*, *Ring*, and *Blakely v. Washington*, Therefore, this court should enter a ruling declaring Florida's death penalty scheme as provided in § 921.141, FLA. STAT. is unconstitutional.

ARGUMENT

ISSUE III

THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT DENIED APPELLANT'S MOTION FOR JUDGMENT OF ACQUITTAL BECAUSE THE STATE'S CIRCUMSTANTIAL EVIDENCE CASE WAS CONSISTENT WITH AND DID NOT REBUT APPELLANT'S REASONABLE HYPOTHESIS OF INNOCENCE AS TO HIS CAPITAL MURDER CHARGE.

Merits

Appellee argues that Appellant's capital case was not composed entirely of circumstantial evidence because of Ms. Ritter and Ms. Gibson's watching Appellant beating the victim, and Appellant asking the victim if he was ready to die. (AB. 39) Their overhearing statements by Appellant had "taken care of" the victim, and hearing the victim being put in the trunk of a car. (AB. 39) However, the evidence they cite to only raises inferences that Appellant did kill the victim. This is not direct evidence.

Appellee also argues that there was direct evidence to support Appellant's capital murder case because "Appellant made a full confession to the police." (AB. 39) This is incorrect. Unlike *Meyers v. State*, 704 So.2d 1368 (Fla. 1997), and *Hardwick v. State*, 521 So.2d 1071 (Fla. 1988) which is cited by Appellee, Appellant did not give a full confession to murder.

In his taped statement Appellant made comments about using the

45 caliber Llama gun Joel gave him. (XIV. 1577-1578) However, when asked where Mr. Hamman was when he shot him, Appellant stated "I never said I shot him. But, I never – but I was standing there." (XIV. 1593) Even if one were to argue that Appellant was a principal to the murder, there was no direct evidence presented by the State that Appellant was the mastermind behind this crime, or that he intended to participate in the murder of the victim. The State's only direct evidence is of his involvement in the Aggravated Assault which was witnessed by Ms. Ritter and Ms. Gibson, and solely for the sake of argument without making any concession, Appellant's involvement in the kidnaping based on the matters overheard by the witnesses. If Appellant was only standing there, then that leaves unrebutted his hypothesis of innocence that Joel actually shot Mr. Hamman.

"When the State has presented sufficient evidence to establish the guilt of one accused of a serious crime, it is the responsibility of the courts to acknowledge that evidence." *Ballard v. State*, 2006 Fla. LEXIS 273 (Fla. February 23, 2006). However, this court went on further to note that, "it is equally the duty of the courts to ensure that the State is held to its burden of proof when someone is charged with a serious crime and

liberty and life are at risk." The State failed to meet its burden of proof, and the trial court erred in denying Appellant's Motion for Judgment of Acquittal. Therefore, Appellant's case should be remanded with directions to the trial court to grant Appellant's Motion for Judgment of Acquittal as to his capital murder charge.

ARGUMENT

ISSUE IV

THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN ITS WEIGHING OF THE AGGRAVATING ELEMENTS AND MITIGATING FACTORS FOUND IN APPELLANT'S CASE.

Merits

Appellant respectfully disagrees with Appellee's arguments, and relies on the arguments he raised in his Initial Brief.

ARGUMENT

ISSUE V

THE TRIAL COURT ABUSED ITS DISCRETION IN ALLOWING IN PHOTOGRAPHIC EVIDENCE WHICH WERE GRUESOME AND UNDULY PREJUDICIAL.

Merits

Appellee argues that the photographs admitted into evidence at Appellant's trial were relevant to a material fact. However, unlike cases such as *Boyd v. State*, 910 So.2d 167 (Fla. 2005); *Davis v. State*, 859 So.2d 465 (Fla. 2003); *Boyd v. State*, 910 So.2d 167 (Fla. 2005); *Pope v. State*, 679 So.2d 710 (Fla. 1996), these photographs did not support medical testimony, does not explain the manner of death, or explain the location of the wounds.

At trial, the State agreed that the blood stains were not the victim's. (XII. 1166-1167) The trial court even pointed out that it did not see the evidentiary value in the photographs because witnesses had already testified to seeing the blood stains. (XII. 1167-1168) Yet, this evidence was admitted. Additionally, the autopsy photographs were not relevant because Dr. Quaiser testified to the injuries, the cause of death was by gunshot, not a beating, and the trial court pointed out that

evidence of aggravators were already in the record. These prejudicial and cumulative photographs should not have been admitted at trial. The trial court abused its discretion in allowing in this evidence, its decision should be reversed, and Appellant be granted a new trial.

ARGUMENT

ISSUE VI

THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT DENIED APPELLANT'S MOTION FOR STATEMENT OF PARTICULARS AS TO AGGRAVATING CIRCUMSTANCES AND THEORY OF PROSECUTION BECAUSE DUE PROCESS REQUIRES THAT APPELLANT RECEIVE SUCH NOTICE.

Merits

Contrary to Appellee's argument, prior to this court's decision in *State v. Steele*, 2005 Fla. LEXIS 2043, 31 Fla.L.Weekly S74 (Fla. 2005), the trial court had the authority to order the State to provide Appellant with a list of potential aggravating circumstances. *See, e.g. Darden v. United States*, 430 U.S. 349 (1977), and *Stuben v. State*, 366 So.2d 657 (Fla. 1978). Contrary to Appellee's argument, the trial court does not have the discretion to depart from a defendant's due process rights. Due process requires that Appellant be given ample notice and an opportunity to be heard. *See,* Amdnt. XIV, U.S. CONST., and Article 1, § 9, FLA. STAT. The trial court's order denied Appellant of this opportunity by not granting Appellant's Motion for States of Particulars as to Aggravating Circumstances. Due Process and the holding of *Steele* should be applied. Therefore, the trial court's order should be reversed.

ISSUE VII

THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY DENYING APPELLANT'S MOTION FOR FINDINGS OF FACTS IN A SPECIAL VERDICT FORM BY THE JURY BECAUSE UNDER *APPRENDI* AND *RING*, SUCH A FINDING IS WARRANTED.

Merits

Appellant respectfully disagrees with Appellee's arguments, and relies on the arguments he raised in his Initial Brief on this matter, and the Reply arguments in Issue II of this Brief.

CONCLUSION

Based on the foregoing discussions, Appellant respectfully requests that this court reverse his capital conviction, and any other conviction this finds is deficient. He also requests that this court vacate Appellant's death sentence, and remand his case for a new trial.

Respectfully submitted,

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I HEREBY CERTIFY that a copy of the following Reply Brief was sent by Priority Mail to Barbara C. Davis, Assistant Attorney General, Florida Attorney General's Office, 444 Seabreeze Boulevard, Suite 500, Daytona Beach, FL 32118, a by U.S. Mail to Robert Shannon Walker, DOC #126605, Florida State Prison, 7819 N.W. 228th Street, Raiford, FL 32026-1160 this 1st , day of May 2006.

_s/Denise O. Simpson _
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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the font requirements of Fla. R. App. P. 9.210.

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