IN THE SUPREME COURT OF FLORIDA

CASE NO. SC05-161

STEVEN MAURICE EVANS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, STATE OF FLORIDA

REPLY BRIEF OF THE APPELLANT

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REPLY TO THE STATE=S STATEMENT OF THE FACTS

Mr. Evans relies on the Statement of Facts as set forth in his Initial Brief. The Appellee=s Statement of Facts is nothing more than a summary of selected testimony from the evidentiary hearing. Mr. Evans notes that the Appellee confuses "facts" with the biased testimony of convicted co-defendants and uncharged participants. For example, on page 9 of Appellee's brief, the Appellee claims the following as fact: "Evans organized the first crime, the attempted murder of Argun. (R. 182)" This is not a fact. This is the summarized, biased, and false testimony of Edward Francis (aka "Jersey"), who admitted shooting the victim Argun in the head, yet was never charged with that crime. Francis received a life sentence for his participation in the instant murder. Argun was left in a vegetative state following being shot by Francis. It is noted that Francis shot the victim in the instant case (Lewis aka "Capone") with the same .22 pistol that he used to shoot Argun. The jury never heard this information at Evans' trial. Mr. Evans agrees with the State=s following statement of facts on page 20: "[Ms. Black] did not recall why she did not introduce evidence that Edward Francis had admitted to shooting Mr. Argun, a victim in a prior case."

The State's specific arguments concerning the Appellant's claims will be addressed in turn.

ARGUMENT I

THE EXECUTION OF THE MENTALLY HANDICAPPED CLAIM

In this claim, Mr. Evans has argued that his current death sentence is arbitrary and capricious, and constitutes cruel and unusual punishment under the 8th and 14th Amendments due to his paranoid schizophrenia, his terminal illness sarcoidosis, and his complete blindness. On page 24 of the State's brief, the State argues that "Neither claim contained in Evans' brief relates to his physical or mental status at the time of the offense." At the time of the offense, Mr. Evans had been diagnosed as paranoid schizophrenic. Now he has completely lost his vision and he has been struck with a terminal illness known as sarcoidosis. Contrary to the State's position, Mr. Evans' current death sentence violates the Constitution and our evolving standards of decency. Mr. Evans' claim should not be denied simply because Mr. Evans was only severely mentally ill at the time of the offense. We know now that Mr. Evans is also severely physically handicapped and disabled. Mr. Evans' death sentence should be vacated, and at the very least, he should be afforded a new penalty phase to allow a new jury to evaluate and assess the evidentiary weight to be afforded his new found mitigating illnesses.

Mr. Evans relies on the arguments raised in his Initial Brief in support of this claim.

ARGUMENT II

THE FAILURE TO FILE A MOTION TO SUPPRESS

Mr. Evans suggests that the State is wrong for failing to even stipulate that the Appellant was arrested in the instant murder case pursuant to the Department of Corrections arrest warrant stemming from his escape case. That DOC arrest warrant *was produced by the State* in postconviction and was discussed at length at the evidentiary hearing. (*See* State=s Identification A, "Composite/Fugitive Warrant for Escaped Prisoner"). An arrest warrant for Mr. Evans for the murder of Kenneth Lewis was not made prior to Evans being arrested in Orlando. Orlando law enforcement clearly arrested him for the Brevard County escape charge. Detectives took Mr. Evans into custody under authority of the fugitive warrant, they confiscated his shoes, and they used those shoes in the murder case against him (*See* Initial Brief for further specifics and record citations concerning Mr. Evans' arrest).

If a search or an arrest is not supported by a warrant, the burden shifts to the state to prove the validity of the search or arrest. *See* Bicking v. State, 293 So.2d 385 (Fla. 1st DCA 1974). In the case at bar, the Mr. Evans claimed in postconviction that his trial counsel was ineffective for failing to investigate and question the legality of his arrest, and for failing to file an appropriate motion to suppress based on an unlawful warrant. As such, the burden then fell on the State to prove the legality of the arrest. In response in postconviction, the State produced an arrest warrant generated by the Department of Corrections in an attempt to rebut Mr. Evans= claim. "Certainly the state had every opportunity to offer rebuttal evidence either by producing the warrant, if one was in existence, or by presenting testimony bearing upon the defendant=s arrest and search."

State v. Hinton, 305 So.2d 804, 808 (Fla. 4th DCA 1975), citing Mann v. State, 292 So.2d 432 (Fla. 2d DCA 1974) (held, ultimate burden of proof as to the validity of a warrantless search is on the state). In the case at bar, there was no arrest warrant on the murder charge. In the case at bar, the arrest warrant relied upon in taking Mr. Evans into custody was unlawful. On page 27 of the answer brief, the Appellee is wrong to claim that Mr. Evans failed to meet his burden with respect to this claim. The State bears the burden to prove the legality of their arrest warrant, and due to omissions and defects in the document, they have failed in that burden. As such, counsel was ineffective in failing to raise this issue at the trial level, and the lower court erred in denying this claim.

The State in their Answer Brief, on page 27, now for the first time ever, cites to Florida Statute Section 944.405 in support of the legality of the fugitive arrest warrant in this case. The lower court did not cite to this statute in its Order denying relief, the State did not advance such arguments at the lower level that Section 944.405 supported the legality of the arrest warrant, therefore the State is now procedurally barred from citing to this provision to support their position. Furthermore, this statute does not abrogate the requirement that a valid oath must be taken on an application for an arrest warrant.

Although Section 944.405 does permit the secretary's "designated representative" to "issue" a warrant for retaking the offender into custody, the statute does not permit such a representative to simply "sign an arrest affidavit" as the State suggests. This statute does not permit the State to deviate from the requirements of a proper oath as described in Collins v. State, 465 So.2d 1266 (Fla. 2d DCA 1985). Arrest affidavits need

to be made under oath. A simple signature of someone not contained within the body of the sworn affidavit cannot simply "sign off" on the facts supporting probable cause. If such is the case, Section 944.405 is absolutely unconstitutional.

On page 27 of their Answer, the State cites to that portion of the lower court's Order that suggests that the arrest warrant marked at the evidentiary hearing had no relation to the instant murder case. This suggestion flies in the face of supporting documentation in the record that the lower court ignored [*See* ROA Vol. 11, pp. 2059-2085].

Mr. Evans relies on the arguments raised in his Initial Brief in support of this claim.

ARGUMENT III

THE INEFFECTIVENESS CLAIM

Mr. Evans relies on the arguments raised in his Initial Brief in support of this claim that trial counsel was ineffective for failure to adequately prepare him for testimony. But in specific reply to the State's Answer on this claim, Mr. Evans notes the following. On page 29 of the State's Answer, the State claims, "Other than instructing Evans to lie, he has not suggested what trial counsel should have done that was not done." On page 23 of the Answer, the State claims, "Short of telling Evans to lie, he has not suggested what counsel should have done." Mr. Evans does not suggest, and has not ever suggested, that counsel was ineffective for failing to instruct him to lie. The Appellant is quite confused by these arguments.

ARGUMENT IV

THE INEFFECTIVENESS FOR FAILURE TO INVESTIGATE CLAIM

The State's Answer to this claim is nothing more than a recitation of the lower court=s Order. Therefore, Mr. Evans relies on the arguments raised in his Initial Brief in support of this claim.

ARGUMENT V

THE ALIBI WITNESS CLAIM

Mr. Evans relies on the arguments raised in his Initial Brief in support of this claim.

ARGUMENT VI

THE INEFFECTIVENESS/MENTAL STATE CLAIM

Mr. Evans relies on the arguments raised in his Initial Brief in support of this claim. To the extent that the State quotes the lower court's Order on page 49 of their Answer regarding the questions regarding the "vital info" that was never forwarded to the mental health experts, the Appellant must point out that depositions of co-defendants and uncharged participants concerning the Appellant's mental state were never forwarded to the mental health experts by trial counsel.

ARGUMENT VII

THE CUMULATIVE ERROR CLAIM

The Appellant disagrees with the State's assertion that there is no merit to any individual claims, and submits that when considered cumulatively he must be afforded relief.

CONCLUSION

WHEREFORE, based upon the foregoing arguments and authorities in this brief and in his Initial Brief, the Appellant submits that the lower court's denial of postconviction relief should be reversed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Reply Brief has been furnished by U.S. Mail to all counsel of record on this ____ day of January, 2006.

_____

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I HEREBY CERTIFY that a true copy of the foregoing Reply Brief of the Appellant, was generated in a Times New Roman, 14 point font, pursuant to Fla. R. App. P. 9.210.

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