IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC06-1408

JOHN F. MOSLEY,

Appellant,

vs.

STATE OF FLORIDA,

Appellee.
_____/

APPELLANT'S REPLY BRIEF

On direct review from a decision of the Circuit Court of the Fourth Judicial Circuit imposing a sentence of death

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PRELIMINARY STATEMENT

This reply brief is being filed to respond to some of the State's arguments. By filing this brief, Mr. Mosley does not waive any of the components of his initial brief. Additionally, by filing this reply brief, Mr. Mosley does not concede any of the factual assertions or arguments made by the State in its answer brief.

STATEMENT OF FACTS

During the time of the alleged murders the defendant was at Quality Tires around 1 pm. The defendant was observed by James Horton and Horton stated that there were no bodies or tarps in the back of the defendant's SUV. Tr. 1636.

Also, Bernard Griffin stated in a prior interview with law enforcement that he did not see Jay-Quan being put into a dumpster. Tr. 745-746.

REPLY ARGUMENT

ARGUMENT 1: THE DUE PROCESS CLAUSE OF THE FLORIDA CONSTITUTION PROVIDES MORE PROTECTION TO CRIMINAL DEFENDANTS THAN THE FEDERAL DUE PROCESS CLAUSE

To be clear, this argument section was drafted to define the scope of the Florida due process clause vis-a-vis its federal counterpart. The rest of the initial brief goes on to detail how due process was violated in this particular case.

This Court has never actually defined the scope of Florida's Due Process Clause. If this Court holds that the Florida due process clause provides more protection, then all of this Court's prior precedent would not automatically apply to the due process issues in this brief. Federal case law is also no longer dispositive.

There is no indication that any other past Florida Supreme Court decision applied any additional protections to the Florida Due Process Clause, as a general rule. It must be presumed that past decisions of this

Court were deeming the two due process clauses to be on an equal plane. There has been no holding to the contrary. We have no idea what comparative force courts have been applying to Florida's due process clause.

The State cites to Troy v. State, 948 So.2d 635, 644 (Fla. 2006), for its position on this issue. This court did not resolve this issue in Troy. This Court was merely relaying what the Second District held on this issue in Barrett v. State, 862 So.2d 44, 48 (Fla. 2d DCA 2003), within the context of a voluntary intoxication defense. This Court never explicitly adopted Barrett's conclusion about Florida's due process clause.

ARGUMENT 3: THE TRIAL COURT ERRED IN RULING THAT THE RECORDED HUSBAND-WIFE JAIL CONVERSATIONS WERE ADMISSIBLE

The State asserts that the defendant has waived this issue because Carolyn Mosley was called to the stand to testify about the conversations. The defense was forced into calling her because of the trial court's ruling allowing the recorded conversations into evidence. The defense never voluntarily waived its arguments on this issue.

The defense was prejudiced on this issue because it caused the jury to disregard the honesty of Ms. Mosley on all matters of her pertinent testimony. This also caused a domino effect of negative credibility determinations as to the testimony of the defendant's children.

ARGUMENT 4: THE TRIAL COURT ERRED IN DENYING THE DEFENSE'S MOTION FOR A CONTINUANCE AND FOR A MISTRIAL BASED ON A DEFENSE WITNESS FAILING TO APPEAR AT TRIAL

The testimony of Wanda Swearingen would have proven that the child Jay-Quan was in the arms of an unknown black man at the time the child was alleged to have been dead. This was prejudicial error because it went to the very heart of the defense's case.

In addition, the cumulative effect of not having Billy Powell testify was prejudicial, and the trial court erred in not continuing the case to secure his attendance. See Webb v. State, 336 So.2d 416 (Fla. 2d DCA 1976). There is a reasonable probability that the result would have been different

had the defense been allowed to present the testimony of these two witnesses.

ARGUMENT 7: THE TRIAL COURT ERRED IN DENYING THE DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL BECAUSE THE STATE FAILED TO PROVE ITS CASE BEYOND A REASONABLE DOUBT

There is insufficient evidence that the child Jay-Quan is dead. Compare Terzado v. State, 232 So.2d 232, 235 (Fla. 4th DCA 1970) (the identity of a murder victim is an essential element of the corpus delicti in homicide cases). In a similar vein, there must also be sufficient proof that the person is actually dead.

CONCLUSION

For all the foregoing arguments and authorities, the Appellant/Defendant, JOHN F. MOSLEY, respectfully requests this Honorable Court to reverse his convictions and release him forthwith or

remand for a new trial/penalty phase, or reduce his sentence to life imprisonment.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to the OFFICE OF THE ATTORNEY GENERAL, Attn: Meredith Charbula, Esq., The Capital, PL-01, Tallahassee, Florida 32399-1050 on this 2nd day of September 2008.

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CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the instant brief has been prepared with Times New Roman 14-point font in compliance with Fla.R.App.P. 9.210(a)(2) on this 2nd day of September 2008.

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Appellate Attorney for Defendant