

**IN THE SUPREME COURT OF FLORIDA**

**KIM JACKSON,**

Appellant,

v.

**STATE OF FLORIDA,**

Appellee.

**CASE NO. SC13-2090**

**L.T. CASE NO. 2008-CF-010726**

\_\_\_\_\_/

ON APPEAL FROM THE CIRCUIT COURT  
OF THE **FOURTH** JUDICIAL CIRCUIT,  
IN AND FOR **DUVAL** COUNTY, FLORIDA

**REPLY BRIEF OF APPELLANT**

NANCY A. DANIELS  
PUBLIC DEFENDER  
SECOND JUDICIAL CIRCUIT

**NADA M. CAREY**  
ASSISTANT PUBLIC DEFENDER  
FLA. BAR NO. 0648825  
301 S. MONROE ST., SUITE 401  
TALLAHASSEE, FLORIDA 32301  
(850) 606-8500  
[nada.carey@flpd2.com](mailto:nada.carey@flpd2.com)

COUNSEL FOR APPELLANT

**TABLE OF CONTENTS**

	<b><u>PAGE (S)</u></b>
TABLE OF AUTHORITIES. . . . .	ii
PRELIMINARY STATEMENT.. . . .	1
ARGUMENT. . . . .	1
Issue 1	
THE STATE'S EVIDENCE WAS INSUFFICIENT TO PROVE JACKSON'S GUILT OF PREMEDITATED MURDER.. . . .	1
Issue 3	
THE EVIDENCE IS INSUFFICIENT TO SUPPORT THE ESPECIALLY HEINOUS, ATROCIOUS, OR CRUEL AGGRAVATING CIRCUMSTANCE WHERE, ASSUMING JACKSON'S COMPLICITY IN THE MURDER, THERE WAS NO EVIDENCE JACKSON HAD KNOWLEDGE OR CONTROL OVER THE MANNER OF DEATH.. . . .	6
CONCLUSION. . . . .	7
CERTIFICATE OF SERVICE. . . . .	7
CERTIFICATE OF FONT SIZE. . . . .	7

**TABLE OF AUTHORITIES**

<b><u>CASES</u></b>	<b><u>PAGE(S)</u></b>
<u>Horne v. State</u> , 997 So. 2d 1262 (Fla. 4 <sup>th</sup> DCA 2009) . . . . .	2
<u>Jones v. State</u> , 963 So.2d 180 (Fla. 2007) . . . . .	5
<u>Kocaker v. State</u> , 119 So. 2d 1214 (Fla. 2013) . . . . .	2
<b><u>RULES</u></b>	
Fla. R. App. P. 9.142(a)(6) . . . . .	5
<b><u>OTHER</u></b>	
<i>Charles W. Ehrhardt</i> , <u>Erhardt's Florida Evidence</u> , s. 401.1 (2013 ed.) . . . . .	2

IN THE SUPREME COURT OF FLORIDA

KIM JACKSON,

Appellant,

v.

CASE NO. SC13-2090

L.T. CASE NO. 2008-CF-010726

STATE OF FLORIDA,

Appellee.

\_\_\_\_\_ /

**REPLY BRIEF OF APPELLANT**

**PRELIMINARY STATEMENT**

Appellant files this Reply Brief in response to the arguments presented by the state as to Issues 1 and 3. Appellant will rely on the arguments presented in his Amended Initial Brief as to Issues 2, 4-5.

**ARGUMENT**

**Issue 1**

**THE STATE'S EVIDENCE WAS INSUFFICIENT TO PROVE JACKSON'S GUILT OF PREMEDITATED MURDER.**

On page 29, the state asserts that the direct evidence standard of review should apply here because the evidence of Jackson's fingerprint at the scene is direct evidence that Jackson killed Pearce. Assuming for the sake of this argument that the fingerprint was Jackson's, the fingerprint is not direct

evidence that Jackson killed Pearce because it established only that his fingerprint was in her house, not that he killed her. Additional inferences are required to prove that he killed her, that the fingerprint was placed on the sink at the time of the murder and that Jackson participated in the murder.

“Circumstantial evidence is proof of certain facts and circumstances from which the [jury] may infer that the ultimate facts in dispute existed or did not exist.” Horne v. State, 997 So. 2d 1262, 1265 (Fla. 4<sup>th</sup> DCA 2009) (citation omitted) (internal quotation marks omitted). In other words, “circumstantial evidence is evidence which involves an additional inference to prove a material fact, e.g., ‘I saw A flee the scene’ is circumstantial evidence of A’s guilt and direct evidence of flight.” Charles W. Ehrhardt, Ehrhardt’s Florida Evidence, s. 401.1 (2013 ed.). Direct evidence, on the other hand, “is evidence which requires only the inference that what the witness said is true to prove a material fact, e.g., ‘I saw A shoot B.’” Id; see also Kocaker v. State, 119 So. 2d 1214, 1225 (Fla. 2013) (“Direct evidence is evidence which, if believed, resolves a matter in issue. Circumstantial evidence also may be testimonial, but even if the circumstances depicted are accepted as true, additional reasoning is required to reach the desired conclusion”) (citation and internal quotation marks omitted).

Here, the fingerprint was used to prove that Jackson killed Pearce. The state's witness, Jacqueline Slebrch, did not testify as to when the fingerprint was left on the kitchen sink. When the prosecutor asked Slebrch if she had seen a situation where "a latent print was left behind on this object, on a sink, and that later blood kind of preserved that print or captured it by going on top of it, similar to the way black powder would be applied to a latent print to preserve it," R9:497, Slebrch said she had not seen that, but when defense counsel followed up on the prosecutor's question by asking, "Does that mean that that could never happen?," Slebrch responded, "it's possible that that could occur."<sup>1</sup> R9:506. Slebrch's testimony therefore left open the

---

<sup>1</sup> The state has asserted that appellant has misinterpreted Slebrch's testimony or misinterpreted the questions posed to her by the prosecutor and by defense counsel. See Answer Brief at 12 n.8, 31-32. First, appellant's "interpretation" is based on the exact words used by the prosecutor. Second, appellant's reading of the testimony is the only reading that makes any sense. The prosecutor's question to Slebrch (quoted above) is crystal clear, i.e, the prosecutor asked if a latent print left on the sink could have been preserved later by blood "going on top of it," similar to the way black powder is applied to a latent print to preserve it. The prosecutor's question addressed the defense theory that if the print was Jackson's, it had to have been left on the sink at some time before the murder because Jackson was in Georgia the night Pearce was killed. While defense counsel's follow-up question was artless perhaps, its meaning is clear because defense counsel explicitly referred to the prosecutor's earlier question regarding whether a print can be preserved by blood dropping on top of it later: "Now, Ms. Slebrch, you—when Mr. Mizrahi was asking you a moment ago if you had ever seen where blood had been dropped and then a print had gone through it, you stated that you have never seen that before, is that right." Slebrch responded to this question, "No, I have not." Defense counsel then asked, "Does that mean that that could never happen?," to which Slebrch responded, "No, it's possible that

possibility that Jackson's print was deposited on the sink before the murder and preserved later when blood dropped or splashed on it when Pearce was killed.

The fingerprint, if Jackson's, therefore is direct evidence of Jackson's presence at Pearce's house at some time before she was killed, which Jackson readily admitted, but not direct evidence that he killed her. Additional inferences are needed, that the print was placed on the sink at the time of the murder, and that no one else was present. Accordingly, the circumstantial evidence standard of review is appropriate here.

On page 37, the state argues that Jackson's argument that, assuming his presence when Pearce was killed, the evidence is insufficient to prove he killed her or was a principal to her murder, was not preserved. The state is correct that Jackson did not argue this theory below. This argument was presented to the jury, however, in the form of the principal instruction, which was requested by the state (the state obviously was concerned about the evidence suggesting more than one person was involved in Pearce's murder), and the evidence upon which the instruction

---

that could happen." The state's interpretation to this series of questions and answers, that everyone was talking about whether "it was possible for a print to be left after the blood," Answer Brief at 32 (emphasis added), doesn't make any sense, as the prosecutor would have no cause to negate that theory (because that theory would support Jackson's guilt) and the defense would have no cause to advance it (because that theory would not support his innocence).

was based. Regardless, the state must prove guilt beyond a reasonable doubt, and if the evidence leaves open a reasonable possibility of innocence under any theory, the state has failed to prove its case. Furthermore, this Court has an independent duty to review the entire record to determine whether sufficient evidence exists to support the murder convictions in capital cases. See Fla. R. App. P. 9.142(a)(6); see also Jones v. State, 963 So.2d 180 (Fla. 2007).



### Issue 3

**THE EVIDENCE IS INSUFFICIENT TO SUPPORT THE ESPECIALLY HEINOUS, ATROCIOUS, OR CRUEL AGGRAVATING CIRCUMSTANCE WHERE, ASSUMING JACKSON'S COMPLICITY IN THE MURDER, THERE WAS NO EVIDENCE JACKSON HAD KNOWLEDGE OR CONTROL OVER THE MANNER OF DEATH.**

On page 66 of its Answer Brief, the state argues there was no evidence that the killer (or killers) left the bloody shoe and sock impressions because there "were at least three individuals in Ms. Pearce's house after the murder that may have left the shoe or sock prints." Pearce's body was discovered late on October 18 or in the early morning of October 19. According to the medical examiner, Pearce was killed late on the 16<sup>th</sup> or in the early morning of the 17<sup>th</sup>, two days before her body was discovered. The persons who entered her house after the murder were observed there shortly before the police arrived on the 19<sup>th</sup>. Those individuals did not leave any bloody shoe or sock prints at that time because the blood would have been long dry by then. While someone, not the killer(s), could have come into the house right after the murder (and walked into the kitchen, stepped in the blood, and then walked down the hallway to the back bedroom, leaving the bloody shoe and sock prints), there is no evidence of that in the record.

**CONCLUSION**

Appellant respectfully requests this Honorable Court to grant the relief requested in his Initial Brief on the Merits.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy was furnished by electronic transmission, per parties' agreement, to **RENEE RANCOUR**, Assistant Attorney General, capapp@myfloridalegal.com, and by U.S. Mail to **KIM JACKSON**, #135963, Florida State Prison, 7819 NW 228<sup>th</sup> Street, Raiford, FL 32026, on this date, July 8, 2014.

**CERTIFICATE OF FONT SIZE**

I HEREBY CERTIFY that, pursuant to FRAP 9.210(a)(2), this brief was typed in Courier New, 12 point.

Respectfully submitted,

/s/ Nada M. Carey  
\_\_\_\_\_  
**NADA M. CAREY**  
Assistant Public Defender  
Florida Bar No. **0648825**  
Leon County Courthouse  
301 South Monroe Street  
Suite 401  
Tallahassee, FL 32301  
(850) 606-8500  
[nada.carey@flpd2.com](mailto:nada.carey@flpd2.com)

COUNSEL FOR APPELLANT