IN THE SUPREME COURT OF FLORIDA
CASE NUMBER 68,631

STATE OF FLORIDA :
Appellee,
:
vs. :

AMOS LEE KING, JR., :
Defendant/ Appellant. :
:

APPELLANT AMOS LEE KING'S REPLY BRIEF

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AS TO THE STATE'S STATEMENT OF THE CASE AND OF THE FACTS

The state, in its answer brief, omits a statement of facts which shows "...areas of disagreement, which should be clearly specified..." Therefore, it may be inferred that the state could not demonstrate that the facts set forth by Mr. King in his initial brief were anything other than consistent with the record on appeal. Fla. R. App. P. 9.210[c].

AS TO THE STATE'S RESPONSE TO KING'S FIRST POINT OF APPEAL

With regard to the defendant's claim that the trial court allowed the state to systematically exclude black people from the jury panel, the state does not take issue with the following facts: [a] the defendant is black, [b] the state used peremptory challenges to remove 67% [two of three] of the black people who would otherwise have been on the jury and [c] the state lawyer admitted that one of the reasons she [Assistant State Attorney McKeown] removed black venireperson Brinson from the panel was that she [Ms. Brinson] and King were both young black persons. [See the state's answer brief, pages 6,7.]

The state argues that Mr. King's first point on appeal should be denied because there is in every criminal case a "presumption" of prosecutorial nondiscrimination and that at least as to Ms. Brinson, she was properly challenged peremptorily because "...of her feelings about the death penalty" and her partiality. [the state's brief, pages 8-11]

While Mr. King acknowledges that the state should not be

presumed to engage in discriminatory tactics, it's difficult to avoid such a conclusion when the state's lawyer as much as says so right on the record.[R1209]

And we don't know what to make of the state's footnote on page 11 of it's answer brief to the effect that "...neither this court nor any Florida court had [has?] specfically found a reason given by a prosecutor for the peremptory challenge of a juror to be unacceptable" citing Taylor v. State, 491 So. 2d 1150 [Fla. 4th DCA 1986]. All we can say in this regard is that if this court and the supreme court of the United States had over the past fifty years based their decisions solely on the "reasons given by a prosecutor" and those acting on behalf of the state of Florida, black people would still not have the right to vote, to attend the University of Florida Law School, to counsel, to sit on juries and many other rights protected by the constitutions of Florida and the United States of America. To suggest that the supreme court of Florida and the district courts of appeal always follow the state's justification for the exclusion of black people in any case is contrary to the Florida appellate courts' commitment to equal justice under law as evidenced by their words in Neil v. State, 457 So. 2d 581[Fla. 1984] and, for example, the actions of the third district court of appeal in Graham v. State, 475 So. 2d 264 [Fla. 3DCA 1985].

It is quite difficult to seriously consider the state's argument that Ms. Brinson might have been partial due to her work

as a clerk for the St. Petersburg police department. [state's answer brief, 9-11]. As we pointed out in our initial brief, her partiality, if any was in favor of the state, not against it.

Nor can there be any serious argument that Ms. Brinson did not support the death penalty in certain cases since, when asked, she expressly stated that there were cases where it's imposition would be appropriate. [R1204-1205] If the court will peruse the voir dire examination of the dozens of white people questioned in this case, it becomes clear that Ms. Brinson's feelings on the death penalty [that in some cases it was appropriate and in other's it was not] are right, as she said, "in the middle" [R1204,1205] with theirs. [R848-1217]

AS TO THE STATE'S RESPONSE TO KING'S SECOND POINT OF APPEAL

The state argues essentially that Mr. King had his one "bite at the apple" regarding the issue of his innocence in 1977 during his first state court trial and is not entitled to another. It chooses to ignore the sound logic of Smith v. Wainwright, 741 F.2d 1248 [5th. Cir. 1983] which holds that innocence evidence is most relevant to the issue of punishment in a Florida capital case.

More importantly, the state ignores the prosecutor's actions during Mr. King's re-trial of the penalty phase wherein the prosecutor hammered away time and time again regarding his alleged guilt.

The state now tries to minimize the inequity by noting that the prosecutor in a penalty phase hearing does not have to present his case "...in a vacuum." [The state's answer brief at 15.] If the court will reread Mr. King's initial brief, it will see that the state went far beyond filling a vacuum regarding the basic facts of the case. Instead, the state chose to present, through largely hearsay testimony, specific and particular "evidence" that went only to the issue of guilt for guilt's sake-- while denying Mr. King the opportunity to defend himself on this issue. An example of this is noted below.

The prosecutor had former Pinellas County deputy sheriff Manuel Pendakas testify, based on hearsay, that a knife allegedly found between Mrs. Brady's residence and the work release center and used by Mr. King to stab Officer McDonough had come from Mrs. Brady's home. [R1284, 1285,1292,1293,1296] Although the supreme court of Florida never mentions this damaging and extremely incriminating "evidence" in its original decision [indicating perhaps that no such evidence was actually presented in the original 1977 trial; see King v. State, 390 So. 2d 315] and although Mr. King was not allowed to present evidence to the contrary, the trial court admitted the testimony.

Obviously, the prosecutor felt that the jury and judge would want to believe that they had the right man before deciding whether the death sentence was appropriate, especially regarding a case that was some seven years old. The state was allowed to try

to convince them of that proposition albeit via unreliable testimony. Should not the defendant been allowed to contest that "evidence" by presenting information that would create doubt as to his guilt?

AS TO THE STATE'S RESPONSE TO THE THIRD POINT ON APPEAL

Mr. King relies on his initial brief with regard to this point on appeal.

AS TO THE STATE'S RESPONSE TO THE FOURTH POINT OF APPEAL

The defendant relies on his initial brief regarding this point on appeal except as noted below.

Defense counsel contends that he did in fact accurately describe the substance of deputy Pendakas' testimony regarding the allegation that Mrs. Brady was aware that someone was trying to break into her house. Proof of this is found on page 1267 of the record on appeal. Furthermore, defense counsel objected on several occasions to the hearsay testimony of deputy Pendakas until it became obvious that the trial court was committed to allowing that witness to testify accordingly. [R1260,1277,1289,1293]

The state contends that defense counsel could have called a "rebuttal witness" to attack hearsay testimony about broken dowels found near Mrs. Brady's home that supposedly belonged to her. [the state's brief at page 20] What rebuttal witness? Mr. Pendakas never revealed during his testimony who told him about Mrs. Brady's cognizance that her house was about to be burglarized. And contrary to the state's contention, the name of the this particular witness was not revealed to defense counsel by the prosecutor on pages 1277 or 1278 of the record on appeal.

It should also be noted that, in response to the defendant's demand for discovery, the state listed the names of some 58 witnesses [R120-122,258] which was nothing more than a recaptulation of the original witness list filed in 1977 in case no. 77-02173. [R123] In other words, instead of providing court appointed defense counsel [located 225 miles from Pinellas County;R 123 showing defense counsel's Tallahassee office address] with a witness list that fairly revealed the names of the witnesses the state expected to call during the penalty phase re-trial[the state called only six witnesses at the re-trial; R1253-1483], the state simply listed the names of all persons with information regarding the guilt/innocence and penalty phases of the original trial. Under these circumstances, it is difficult to fault defense counsel for not anticipating the necessity of calling a witness to rebut the hearsay testimony of Mr. Pendakas concerning the dowels.

Finally, the state misses the point regarding Mr. Pendakas's testimony about the knife found near the work release center. According to Pendakas, that knife which was used by King to stab McDonough, came from Mrs. Brady's house, no ifs, ands or buts about it. [R1292] This testimony ties King directly to the Brady homicide. No such direct testimony was presented at Mr. King's original 1977 trial. For example, Dr. Wood, the medical examiner could only say that the knife in question was "consistent" [whatever that means] with Mrs. Brady's wounds. A knife salesman

could only say that the knife was "similar in design" to other knives found in Mrs. Brady's home. And Mrs. Brady's "friend" stated only that the knife "resembled" a knife she had seen at Mrs. Brady's. See King v. Strickland, 714 F.2d, 1481,1484 [11th Cir. 1983].

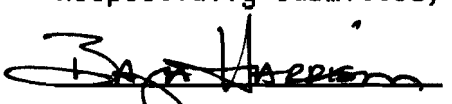
CONCLUSION

Wherefore the defendant/appellant request that relief set forth in his initial brief filed in this cause.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing reply brief has been provided to Michael Kotler, assistant attorney general, counsel for State of Florida, appellee, 1313 Tampa Street, Suite 804, Park Trammell Building, Tampa, Florida, 33602, by U. S. mail delivery, this 26th day of January, 1987.

Respectfully Submitted,



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