

IN THE SUPREME COURT OF FLORIDA

FILED
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CLERK SUPREME COURT
Tanya

JUAN ROBERTO MELENDEZ,

Appellant,

vs.

Case No. 66,244

STATE OF FLORIDA,

Appellee.

BRIEF OF APPELLEE

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TABLE OF CONTENTS

	<u>PAGE</u>
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE	1
STATEMENT OF THE FACTS	2
SUMMARY OF THE ARGUMENT	4
ISSUE I	6
WHETHER APPELLANT WAS DENIED DUE PROCESS BY THE INVESTIGATORS FAILURE TO PRESERVE AND COLLECT CERTAIN NONCRITICAL EVIDENCE.	
ISSUE II	14
WHETHER THERE WAS PROOF BEYOND A REASONABLE DOUBT TO SUPPORT THE TRIAL COURT'S FINDING OF AGGRAVATING CIRCUMSTANCES.	
ISSUE III	19
WHETHER THE TRIAL COURT PROPERLY DENIED MOTION FOR MISTRIAL WHEN TWO NON-SUBPOENAED DEFENSE WITNESSES REFUSAL TO APPEAL TO TESTIFY AS TO AN UNRELATED INCIDENT.	
ISSUE IV	22
IF A DEFENDANT IS FOUND GUILTY OF FIRST DEGREE MURDER AND ARMED ROBBERY, ALL OF WHICH WAS ONE TRANSACTION IS IT IMPROPER TO SENTENCE HIM FOR BOTH OFFENSES.	
CONCLUSION	25
CERTIFICATE OF SERVICE	25

TABLE OF CITATIONS

	<u>PAGE</u>
<u>Armstrong v. Collier</u> , 536 F.2d 72 (5th Cir. 1976)	6
<u>Baisden v. State</u> , 203 So.2d 194 (Fla. 4th DCA 1967)	20
<u>Barclay v. State</u> , No. 64,765 (Fla. May 30, 1985) [10 F.L.W. 299]	18, 22
<u>Blanco v. State</u> , 452 So.2d 520 (1984)	22
<u>Booker v. Wainwright</u> , F.2d (11th Cir. Case No. 84-3306, opinion filed June 21, 1985)	18
<u>Brady v. Maryland</u> , 373 U.S. 83, 87, 83 S.Ct. 1194, 1196, 10 L.Ed.2d 215 (1963)	11
<u>Breedlove v. State</u> , 413 So.2d 1, 8 (Fla.), cert. denied, 459 U.S. 882, 103 S.Ct. 184, 74 L.Ed.2d 149 (1982)	23
<u>Buford v. State</u> , 403 So.2d 943, 949 (1981)	16, 23
<u>Bundy v. State</u> , No. 59,128 (May 9, 1985) [10 F.L.W. 269]	17
<u>Clark v. Blackburn</u> , 632 F.2d 531 (5th Cir. 1980)	18
<u>Clark v. State</u> , 443 So.2d 973 (Fla. 1983)	17
<u>Combs v. State</u> , 403 So.2d 418 (Fla. 1981), cert. denied, 456 U.S. 984, 102 S.Ct. 2258, 72 L.Ed.2d 862 (1982)	16
<u>Cooper v. State</u> , 336 So.2d 1133, 1138 (Fla. 1976)	11

TABLE OF CITATIONS CONTINUED

	<u>PAGE</u>
<u>Demps v. State</u> , 395 So.2d 501 (Fla.), cert. denied, 454 U.S. 933, 102 S.Ct. 430, 70 L.Ed.2d 239 (1981)	17
<u>Elledge v. State</u> , 346 So.2d 998 (Fla. 1977)	17
<u>Francois v. Wainwright</u> , 741 F.2d 1275 (11th Cir. 1984)	18
<u>Garcia v. State</u> , 142 So.2d 318 (Fla. 2d DCA 1962)	20
<u>Griffin v. State</u> , No. 62,819 (May 2, 1985) [10 F.L.W. 264]	24
<u>Hall v. Wainwright</u> , 733 F.2d 766 (11th Cir. 1984)	18
<u>Henry v. Wainwright</u> , 661 F.2d 56 (5th Cir. 1981)	18
<u>Hill v. State</u> , 133 So.2d 68 (Fla. 1961)	16, 23
<u>Jackson v. State</u> , 438 So.2d 4 (Fla. 1983)	17, 20
<u>Johnson v. Bentley</u> , 457 So.2d 507 (Fla. 2d DCA 1984)	6
<u>Johnson v. Pittman</u> , 731 F.2d 1231 (5th Cir. 1984)	6
<u>Kelly v. State</u> , 202 So.2d 901 (Fla. 2d DCA 1967)	20
<u>King v. State</u> , 258 So.2d 21 (Fla. 2d DCA 1972)	20
<u>Larry v. State</u> , 104 So.2d 352 (Fla. 1958)	23
<u>Mason v. State</u> , 438 So.2d 374 (Fla. 1983), cert denied, <u>U.S.</u> , 104 S.Ct. 1330, 79 L.Ed.2d 725 (1984)	16

TABLE OF CITATIONS CONTINUED

	<u>PAGE</u>
<u>McCutchen v. State,</u> 96 So.2d 152 (Fla. 1957)	23
<u>McKinney v. Estelle,</u> 657 F.2d 740 (5th Cir. 1981)	18
<u>Moore v. Illinois,</u> 408 U.S. 786, 795, 92 S.Ct. 2562, 2568, 33 L.Ed.2d 706, 713 (1972)	12
<u>Paramore v. State,</u> 229 So.2d 855 (Fla. 1969) modified on other grounds, 408 U.S. 935, 92 S.Ct. 2857, 33 L.Ed.2d 751 (1972)	20
<u>Peavy v. State,</u> 442 So.2d 200 (Fla. 1983)	18
<u>Polk v. State,</u> 179 So.2d 236 (Fla. 2d DCA 1965)	23
<u>Prokos v. State,</u> 209 So.2d 484 (Fla. 3d DCA 1968)	20
<u>Ray v. State,</u> 403 So.2d 956 (Fla. 1981)	18, 22
<u>Rhodes v. State,</u> 104 Fla. 520, 140 So. 309, 310 (1932)	16, 23
<u>Rose v. State,</u> No. 64,484 (May 16, 1985) [10 F.L.W. 280]	16
<u>Routly v. State,</u> 440 So.2d 1257 (Fla. 1983), cert. denied, 104 S.Ct. 3591 (1984)	18
<u>Salvatore v. State,</u> 366 So.2d 750 (Fla. 1978)	20
<u>Shriner v. State,</u> 386 So.2d 525 (Fla. 1980), cert. denied, 449 U.S. 1103, 101 S.Ct. 899, 66 L.Ed.2d 829 (1981)	17

TABLE OF CITATIONS CONTINUED

	<u>PAGE</u>
<u>State v. Counce,</u> 392 So.2d 1029 (Fla. 4th DCA 1981)	7, 11
<u>State v. Coney,</u> 272 So.2d 550, 553 (Fla. 1st DCA 1973)	11
<u>State ex rel. Alcala v. Grayson,</u> 156 Fla. 435, 23 So.2d 484 (1945)	20
<u>State ex rel. Wilson v. Lewis,</u> 55 So.2d 118 (Fla. 1951)	20
<u>State v. Ritter,</u> 448 So.2d 512 (Fla. 5th DCA 1984)	7
<u>State v. Sobel,</u> 363 So.2d 324 (Fla. 1978)	6
<u>State v. White,</u> No. 64,791 (April 25, 1985) [10 F.L.W. 247]	16
<u>Strawn v. State ex rel. Anderberg,</u> 332 So.2d 601 (Fla. 1976)	20
<u>Squires v. State,</u> 450 So.2d 208 (Fla. 1984)	16
<u>Tate v. Gray,</u> 292 So.2d 618 (Fla. 2d DCA 1984)	20
<u>Ulster County v. Allen,</u> 442 U.S. 140, 99 S.Ct. 2213, 60 L.Ed.2d 777 (1979)	18
<u>Warren v. State,</u> 221 So.2d 423 (Fla. 2d DCA 1969)	20
<u>Weaver v. State,</u> 220 So.2d 53 (Fla. 2d DCA 1969)	23

OTHER AUTHORITIES

Florida Rule of Criminal Procedure 3.390	17
Florida Statutes 775.021(4)	24

PRELIMINARY STATEMENT

Juan Roberto Melendez will be referred to as "Appellant" in this brief. The State of Florida will be referred to as the "Appellee." The Record on Appeal will be referred to by the letter "R" followed by the appropriate page number.

STATEMENT OF THE CASE

The State accepts Appellant's Statement of the Case as a substantially accurate account of the proceedings below with such exceptions or additions as set forth in the Argument portion of this Brief.

STATEMENT OF THE FACTS

On the evening of September 13, 1983, police officers, responding to a call from the victim's sister discovered the body of Delbert Baker (a/k/a Mr. Del). (R 365) The officers discovered the body in a backroom of the school Mr. Del operated. Delbert Baker was lying on the floor which was covered with blood. (R 365) He had a pair of white socks and a pair of jockey shorts on. The rest of his clothing was not found. (R 369) Mr. Del's throat had been slashed and he had been shot in the head and shoulders several times.

There was substantial testimony, (R 255, 264) that Mr. Del normally wore alot of jewelry, including a wrist watch, a gold link bracelet, four diamond rings, and a diamond pendant. There was, however, no jewelry found on the body nor was it ever located. (R 371)

Several months later the Appellant, Juan Melendez, met with David Luna Falcon and confessed to the killing of Mr. Del. (R 439, 440) Falcon testified at trial that Melendez told him that he (Melendez) and two other guys had gone to Mr. Del's school. He left one of the guys, John, in the car and the other guy went in with him. (R 441) Melendez and his accomplice went inside where they robbed Mr. Del, cut his throat and shot him. (R 443) They then cleaned up any fingerprints they may have left, took the jewelry and the money and proceeded outside to meet the driver of the car John. (R 444) The accomplice then went to Delaware to sell the jewelry. (R 444)

This testimony was confirmed by John Berrien, the driver of the car. (R 295)

Berrien testified that Juan Melendez and George Berrien asked John to drive them to Auburndale to get their hair done and pick up some money. (R 305) Melendez had a bulge in the back of his pants that John suspected was a gun because he knew Melendez sometimes carried a .38. (R 311) According to John's testimony, George and Juan got out of the car and said to pick them up in about a hour and a half to two hours. (R 312) He picked them up two hours later. When Juan got in the car he had a towel in his hands with the two ends held together. (R 314) The next day George asked John to drive him to the train station because he planned to take a train to Willimington Delaware to check on his children. Melendez went with them to the train station. (R 320)

Numerous other witnesses were heard substantiating the State's theory as to the events surrounding the murder. The jury heard the evidence and found Appellant guilty of first degree murder and armed robbery. (R 764) Appellant received the death penalty for the murder conviction and a life sentence for the armed robbery. (R 803) This appeal followed.

SUMMARY OF THE ARGUMENT

ISSUE I

Appellant was not denied due process by the investigators' good faith failure to preserve and collect certain noncritical evidence, as the evidence at trial clearly established that Melendez was the perpetrator of the crime.

ISSUE II

In the instant case the trial judge found four aggravating circumstances and no mitigating circumstances. The record supports the finding of these aggravating circumstances beyond a reasonable doubt.

Appellant also questions the propriety of the instructions given to the jury regarding aggravating circumstances. Appellant claims that it was error for the trial court to only read the list of aggravating circumstances to the jury without defining or illustrating the technical meaning of any of the words. However, as Appellant did not raise this issue at trial he has procedurally defaulted the right to raise this issue on appeal.

ISSUE III

There was no absolute necessity to declare a mistrial in the instant case because the testimony of Jim Reagan was not relevant to the issue at hand and because the essence of his testimony was presented to the jury by way of stipulation.

ISSUE IV

Appellant failed to object to the jury verdict form, therefore, he is precluded on appeal from questioning the validity

of sentencing for both first degree murder and armed robbery.

Further, it is well settled that when Appellant is indicted for premeditated murder, the jury was instructed on premeditated murder and the evidence supports a conviction of premeditated murder, it is not error to convict and sentence for both.

ISSUE I

WHETHER APPELLANT WAS DENIED DUE PROCESS BY
THE INVESTIGATORS' FAILURE TO PRESERVE AND
COLLECT CERTAIN NONCRITICAL EVIDENCE.

It is the contention of Appellant Melendez that certain evidence that was discovered during the course of the instant homicide investigation was negligently handled and, therefore, was not available for his defense. Melendez alleges that it "is fundamentally unfair, and a violation of due process to allow the negligent disposal or failure to recover, of critical evidence." (Brief of Appellant pg. 14)

To support this position, Appellant relies on Armstrong v. Collier, 536 F.2d 72 (5th Cir. 1978) and Johnston v. Pittman, 731 F.2d 1231 (5th Cir. 1984).

In these cases, the Fifth Circuit adopted a three-prong test for determining whether to excuse the State for failing to preserve evidence. The three factors to be reviewed include:

- 1) The State's bad faith or negligence,
- 2) The importance of the evidence
- 3) The other evidence of guilt adduced at trial.

This test has not been expressly adopted by Florida Courts. Cf. Johnson v. Bentley, 457 So.2d 507 (Fla. 2d DCA 1984); State v. Sobel, 363 So.2d 324 (Fla. 1978). Nevertheless, each of these factors are used by Florida courts in determining if a defendant has been prejudiced.

1) Bad faith:

"Lack of knowledge resulting from bad faith would not relieve the State of its duty to disclose to the defense material that is otherwise unavailable to the defense."

State v. Counce,
392 So.2d 1029 (Fla. 4th DCA 1981)

2) The importance of the evidence:

"It would be fundamentally unfair, as well as a violation of rule 3.220, to allow the state to negligently dispose of critical evidence."

State v. Ritter,
448 So.2d 512 (Fla. 5th DCA 1984)

3) The sufficiency of other evidence adduced at trial.

"Because Counts I and II could have been proven without establishing the nature of the substance involved in the transaction, we think the trial court erred in dismissing these counts."

State v. Ritter, supra.

Thus, while never having expressly adopted the test used in federal courts, the same criteria is relied on by Florida courts.

In the instant case, a review of these factors would most logically start with the second prong - the importance of the evidence - in light of the extensive list of allegedly mishandled evidence.

The evidence Appellant complains of having been lost, destroyed or not recovered consists of:

- 1) Blood sample taken from the scene.
- 2) Stain on the victim's car seat.

- 3) Vernon James' shoes
- 4) David Falcon's gun.
- 5) The shoes found beside the body.
- 6) The hunting knife found in a drawer in the beauty shop office.
- 7) Harold Landrum's shoes.

For the purpose of clarification each of these items will be addressed individually.

1. The Blood Sample

The blood sample to which Appellant refers was collected from the scene and never tested. (R 397) Sergeant John Knapp of the Auburndale Police Department testified that that sample was taken from the floor which was covered with the victim's blood. (R 369) Even had the blood sample been tested and found to belong to someone other than the defendant or the victim it would not have been sufficient to override the overwhelming evidence against Melendez because it was never a theory of the prosecution that Melendez was the only one present during the incident.

2. The Stain on the Victim's Car Seat

Sergeant John Knapp also testified that a white substance or wetness was found on the seat of the victim's car. (R 388) It was not tested because the condition in which the victim was found led to no conclusion other than that the victim was killed in the room where he was found. There was nothing to indicate that the murder was committed elsewhere and the body transported.

3. Vernon James' shoes

Detective Jerry Richardson, of the Auburndale Police

