

IN THE SUPREME COURT OF FLORIDA

JERRY LAYNE ROGERS,
Appellant,
vs.
STATE OF FLORIDA,
Appellee.

CASE NO. 66,356

FILED
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APPEAL FROM THE CIRCUIT COURT
IN AND FOR ST. JOHNS COUNTY
FLORIDA

REPLY BRIEF OF APPELLANT

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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REPLY BRIEF OF APPELLANT

POINT I

IN RESPONSE TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT THE TRIAL COURT ERRED IN FAILING TO PROVIDE WRITTEN JURY INSTRUCTIONS WHEN REQUESTED BY THE APPELLANT, THEREBY DENYING HIS FEDERAL CONSTITUTIONAL RIGHTS TO DUE PROCESS, EQUAL PROTECTION AND TO A FAIR TRIAL.

Appellant concedes that Delap v. State, 440 So.2d 1242 (Fla. 1983) appears to be on point. However, Appellant urges this Court to reconsider the holding in Delap, supra. Without sending the instructions back with the jury Appellant fails to see the rationale of requiring written jury instructions in capital cases in this modern age when everything is transcribed by a court reporter.

POINT II

IN REPLY TO THE STATE AND IN SUPPORT OF
THE CONTENTION THAT THE TRIAL COURT
COMMITTED REVERSIBLE ERROR IN RESTRICT-
ING APPELLANT'S PRESENTATION OF EVIDENCE
WHERE SUCH EVIDENCE WAS CRUCIAL TO HIS
DEFENSE THEREBY RESULTING IN A VIOLATION
OF APPELLANT'S CONSTITUTIONAL RIGHTS
UNDER THE SIXTH AMENDMENT.

B. The Trial Court Abused Its Discretion In Refusing To Allow
The Introduction Of Relevant Evidence Consisting Of Medical
Records Of A Damaging State Rebuttal Witness.

The State did not contend below as it does on appeal that the medical records did not support Carol Guemple's testimony. As such, a formal proffer for the record was unnecessary, since there was no doubt what the medical record contained. Since the impeachment of James Lancia was of critical importance, any evidence that would support the defense's attempt to prove that Lancia was a mentally imbalanced individual who suffered from delusions and hallucinations during his jail stay with McDermott and Rogers should have been revealed to the jury. Sims v. State, 444 So.2d 922 (Fla. 1983) is distinguishable from the instant facts. While the medical records were corroborative of a defense witness' testimony, the records were relevant to a material issue of fact. As such, they should have been admitted.

POINT III

IN RESPONSE TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT THE TRIAL COURT ERRED IN REFUSING TO DISMISS THE INDICTMENT RETURNED BY A GRAND JURY CONTAINING THE FATHER-IN-LAW OF THE VICTIM OF ONE OF THE CRIMES CHARGED, THEREBY DENYING THE APPELLANT DUE PROCESS OF LAW AND A FAIR TRIAL GUARANTEED BY THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTIONS 9, 15, AND 16 OF THE CONSTITUTION OF FLORIDA.

Appellant submits that the problem that was uncovered once the State revealed the list of grand jurors (that of the relationship of one juror to a victim/witness) was not apparent until the list was finally furnished by the State. Until that time, Appellant had no reason to envision the problem that was eventually revealed. Formal rules should be applied with reason. To require the Appellant to object to the inclusion of Suppinger in the grand jury before that body was impaneled and sworn would be requiring form over substance. This Court should not hold the Appellant to an absurd and impossible burden.

POINT IV

IN RESPONSE TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT IN VIOLATION OF APPELLANT'S CONSTITUTIONAL RIGHTS GUARANTEED BY THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTIONS 9 AND 16 OF THE FLORIDA CONSTITUTION, THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION TO DISMISS DUE TO PRE-ARREST DELAY.

Appellee relies strongly upon his assertion that no one, who could have positively been able to make an identification at the time of the incident, lost that ability due to the passage of time. See Appellee's brief page 42. Appellant's point below focused on the contention that these witnesses would have been able to look at the Appellant and conclude that he was not the culprit, in essence, a nonidentification.

POINT V

IN RESPONSE TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT THE TRIAL COURT ERRED IN OVERRULING APPELLANT'S NUMEROUS OBJECTIONS, DENYING THE MOTIONS IN LIMINE, FOR MISTRIAL AND FOR JUDGMENT OF ACQUITTAL AND ALLOWING DETAILED EVIDENCE AND ARGUMENT ON COLLATERAL CRIMES WHICH BECAME A FEATURE OF THE TRIAL THUS DENYING APPELLANT HIS CONSTITUTIONAL RIGHT TO A FAIR TRIAL.

Appellant submits that the amount of similar fact evidence presented at the trial is not as important as its devastating impact upon the jury. Appellant submits that this impact was substantial. While glossing over the differences between the instant offense and the collateral offenses, Appellee calls them "distinctions without a difference." See Appellee's brief page 52. Appellant believes that this Court is aware of the importance of similarity between the offense charged and any Williams Rule evidence.

Appellee also contends that the Appellant, if any one, made the collateral offenses a feature of trial through his cross-examination of the State witnesses. Appellant submits that evidence of collateral offenses under the Williams Rule is devastating in nature as a character attack upon a defendant. A defendant should not be limited from a full and complete cross-examination of collateral offense witnesses presented by the State in an attempt to bear the brunt of said character attack.

POINT VI

IN RESPONSE TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT THE TRIAL COURT ERRED IN DENYING THE DEFENDANT'S MOTION TO PRECLUDE IDENTIFICATION TESTIMONY WHERE THE IDENTIFICATION WAS TAINTED THROUGH THE STATE'S VIOLATION OF A COURT ORDER REQUIRING DEFENSE COUNSEL TO BE INFORMED OF AND PRESENT AT A PHOTO LINE-UP IN VIOLATION OF THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND ARTICLE I, SECTIONS 9 AND 16 OF THE FLORIDA CONSTITUTION.

The thrust of Appellant's argument is that the State, through the express violation of a court order, tainted any subsequent identification of the Appellant by a key state witness. The showing of Appellant's photograph immediately prior to the witness encountering the Appellant in person at the deposition constituted the suggestive show-up. This tainted any subsequent identification by that witness in court or otherwise.

Appellee goes to great lengths to convince this Court that Mrs. Suppinger's identification of the Appellant at trial was an extremely reliable one. Appellee then uses the other side of his mouth to gloss over the fact that Mrs. Suppinger identified the Appellant as the one holding the gun on her, while Thomas McDermid testified that he was the culprit pointing the gun at Mrs. Suppinger. This indicates the unreliability of the identification. The State should not be allowed both custody and consumption of their cake.

POINT VIII

IN RESPONSE TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT APPELLANT WAS DENIED HIS CONSTITUTIONAL RIGHT TO A FAIR TRIAL WHERE THE STATE WAS ALLOWED TO CONDUCT AN IMPROPER, PREJUDICIAL AND IRRELEVANT CROSS-EXAMINATION OF A KEY DEFENSE WITNESS WHICH DEGENERATED INTO A CHARACTER ASSASSINATION.

Appellant submits that this error was adequately preserved by his initial objection to the prosecutor's line of questioning. (R7251-7253) This objection was overruled, so any further actions in terms of motions for mistrial would have been a futile act.

POINT IX

IN RESPONSE TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT IN CONTRAVENTION OF APPELLANT'S RIGHTS GUARANTEED BY THE FOURTH AND FOURTEENTH AMENDMENTS, THE TRIAL COURT ERRED IN DENYING THE MOTION TO SUPPRESS AND ALLOWING EVIDENCE OBTAINED AS A RESULT OF AN UNREASONABLE SEARCH AND SEIZURE OF APPELLANT'S HOME AND SHOP.

Appellant submits that this point has been preserved by repeated renewals and the granting of a standing objection at trial. (R6612-6614,6639-6704)

CONCLUSION

Based upon the cases, authorities and policies cited herein and in the Initial Brief, Appellant respectfully requests the following relief:

As to Points I, II, V, VI, VII, VIII and X, Appellant respectfully request that this Honorable Court reverse the judgment and sentence and remand for new trial.

As to Point III, Appellant respectfully requests that this Honorable Court reverse the judgment and sentence and remand for discharge or, in the alternative, remand with instructions to quash the indictment.

As to Point IV, Appellant respectfully requests that this Honorable Court reverse the judgment and sentence and remand for discharge.

As to Point IX, Appellant respectfully requests that this Honorable Court reverse the judgment and sentence and remand for a new trial with instructions to suppress the physical evidence obtained as a result of the search.

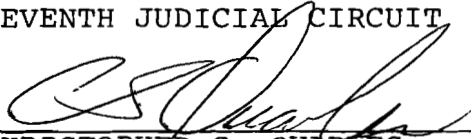
As to Point XI, Appellant respectfully requests that this Honorable Court vacate the death sentence and remand for a new penalty phase.

As to Point XII, Appellant respectfully requests that this Honorable Court reduce the death sentence to life imprisonment or remand for a new penalty phase.

As to Point XIII, Appellant respectfully requests that this Honorable Court declare Florida's death sentence to be unconstitutional.

Respectfully submitted,

JAMES B. GIBSON
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by mail to the Honorable Jim Smith, Attorney General, 125 N. Ridgewood Ave., 4th Floor, Daytona Beach, FL 32014 and to Jerry Layne Rogers, A092118, Florida State Prison, P.O. Box 747, Starke, FL 32091, on this 7th day of July, 1986.



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