

IN THE SUPREME COURT OF FLORIDA

CLARENCE JACKSON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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CASE NO. 68,097

Janja

ON APPEAL FROM THE CIRCUIT COURT
OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA.

REPLY BRIEF OF APPELLANT

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

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ARGUMENT

ISSUE I

ARGUMENT IN REPLY TO THE STATE AND IN SUPPORT OF THE PROPOSITION THAT THE TRIAL COURT ERRED IN ADMITTING IRRELEVANT EVIDENCE OF COLLATERAL CRIMES WHICH ONLY TENDED TO PROVE JACKSON'S PROPENSITY TO COMMIT CRIMES AND BAD CHARACTER.

On page 13 of the State's brief, the assertion is made that this Court's decision on the first appeal of this case is irrelevant. This assertion is without merit. The Williams rule problem addressed in Jackson v. State, 451 So.2d 458 (Fla. 1984), is identical to the one now raised in this second appeal. While the "thoroughbred killer" remark and the assault on Sylvester Dumas was not admitted as evidence, evidence of immaterial assaults and possession of weapons was introduced. In Jackson, this Court condemned the use of the irrelevant assault on Dumas. The fact that evidence of the extraneous assault in the instant appeal was upon some unnamed individual does not make it any more relevant.

The State also contends that this court approved the admissibility of Lucas's questioned testimony in the first appeal. This was impossible. No objections were lodged to the testimony in issue at the first trial, and consequently, the issue was not raised in the first appeal. Jackson, 451 So.d 485. Since Lucas was unavailable for the second trial, the State asked to use his prior trial testimony. At that time

appropriate relevancy objections were made. It was then the State's burden to justify the relevance of any portion of the prior testimony.

Finally, the State argues that a portion of questioned testimony was elicited by the defense on cross-examination of James Lucas at the first trial and was, therefore, invited error. While this argument may have had some merit on the first appeal, it is meaningless now. The cross-examination did not occur in this second trial. The State wanted to use the prior trial testimony. The defense objected to the irrelevant portions whether appearing in the direct or cross. No error was invited or created by the defense; objections were made in a methodical and careful fashion to the irrelevant material. (R 2078-2148, 2760-2996)

ISSUE II

ARGUMENT IN REPLY TO THE STATE AND IN SUPPORT OF THE PROPOSITION THAT THE TRIAL COURT ERRED IN REFUSING TO GRANT A MISTRIAL AFTER WITNESSES TWICE COMMENTED ON JACKSON'S RIGHT TO REMAIN SILENT AND THE PROSECUTOR ARGUED THIS FACT IN HIS CLOSING ARGUMENT TO THE JURY.

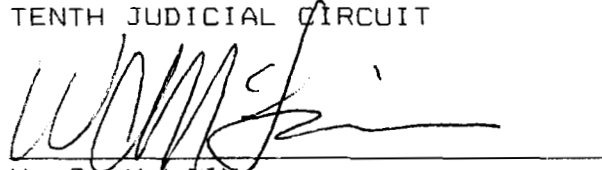
Regarding the comment Detective Luis made about Jackson's silence at arrest, the State contends that the error was invited because it occurred while defense counsel questioned the witness. (State's brief at page 22) This argument completely ignores the specific, express findings of fact the trial judge made on this point. (R2057) The trial judge, who was present and could hear the questions and answers and view the demeanor of the witness, found that the witness's comments were gratuitous. (R 2057) Defense's counsel's question did not invite the remarks.

CONCLUSION

For the reasons expressed in the Initial Brief and in this Reply Brief, Clarence Jackson asks this Court to reverse his case for a new trial, or alternatively, reduce his death sentence to life imprisonment.

Respectively Submitted

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

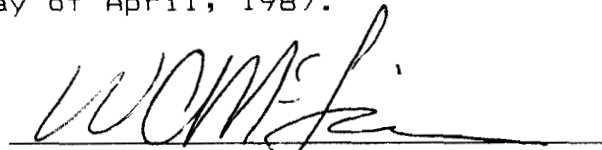


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by hand delivery to Assistant Attorney General Kim W. Munch, 1313 Tampa Street, Suite 804, Park Trammell Bldg., Tampa, FL, 33602, this 15 day of April, 1987.



W. C. McLain
Assistant Public Defender