

FILED

IN THE SUPREME COURT OF FLORIDA

DEC 5 1988

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DOUGLAS JACKSON)
Appellant,)
vs.)
STATE OF FLORIDA,)
Appellee.)

Case No: 68,882

Trial Ct. No: 81-2081 CF

BRIEF OF THE APPELLANT

Appeal from the Circuit Court
17th Judicial Circuit in and for
Broward County, Florida
Judge Thomas M. Coker, Jr.

Prepared by:

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SUMMARY OF ARGUMENT

A new trial is required in the instant case based upon prosecutorial misconduct, that being the deliberate eliciting, before the jury, of the fact that the Appellant had been previously convicted by another jury and sentenced to prison in the very case that was the subject of the trial in this case. This action was carried on by the prosecutor despite the fact that the same prosecutor had suffered through an earlier mistrial due to the jury reading a note on one of the evidence boxes that the Appellant had been found guilty by yet another previous jury. However, the prosecutor chose to question the Appellant, after objection, about the fact that he was, in fact in prison after being convicted on the very charges that were the subject of the trial. Certainly, this destroyed the presumption of innocence in the eyes of the jury and did not afford the Appellant a fair trial in the instant matter.

Similarly, the prosecutor intentionally brought before the jury the fact that the Defendant had been arrested for an armed robbery some twelve years previously, although the prosecutor knew that the case was dismissed and there were no convictions. This was not proper impeachment, as no conviction resulted, and any probative value which could be argued would be overwhelmed by the prejudicial effect. While Appellant's counsel did bring out the matter through

cross examination of a testifying co-defendant, the co-defendant had misled the attorney in a contradictory deposition answer, and the matter was immediately dropped by Appellant's counsel, to be picked up and exploited by the prosecutor.

Finally, the prosecutor chose to bring out unrelated prejudicial matters regarding the Defendant handcuffing and beating his wife, all as a character attack upon the Appellant.

A new trial is also required because Appellant's right to a fair trial was destroyed by the trial court's treatment of the trial attorney in continuously belittling the defense and the defense tactics, by making objections sua sponte, by bringing to the jury's attention pre-trial motions that were done out of the presence of the jury, and further by making comments indicating that the pre-trial motions were used in some surreptitious manner to keep evidence from coming before the jury. It was the cumulative effect of the trial court's loss of patience and eventually of neutrality before the jury which prevented the Appellant from receiving a fair trial.

A new trial is also required due to the trial court's restriction of cross examination of a critical State witness, as the court prevented cross examination of Lieutenant Schlein about accusations of suborning perjury

and departmental action regarding such matters and by restricting cross examination regarding the character and drug use of victim Larry Finney. The character of Finney, particularly drug use, went to the heart of the defense being that the killings were drug related, where the cross examination of Detective Schlein went to discredit Schlein's testimony regarding burn marks on the Appellant's face soon after the burning of the victims involved - both critical areas which were "protected" by the trial court in the unreasonable restriction of cross examination.

The cumulative effect of various trial court rulings also require a new trial to be granted, including the failure to question a juror who was overheard discussing her friendship with members of the Broward Sheriff's Office after denial of such friendship, the failure of the trial court to grant a mistrial when the jury saw the Appellant in handcuffs, the admission by the trial court of overly heinous and repulsive photographs for the sole purpose of inflaming the passions of the jury, the trial court's admission of testimony regarding the victim Edna Washington being pregnant at the time of her death, the admission of irrelevant evidence, to wit: .38 caliber cartridges, in a general character attack of the Appellant, and in failing to grant mistrial for instances of prosecutorial misconduct.

Finally, the trial court erred in imposing the death sentence upon the Appellant, as not only was the sentence of death disproportionate in a statewide comparison of death sentences approved, but there exists an unconstitutional disparity between the death sentence imposed upon the Appellant and the life sentence imposed upon co-defendant Aubrey Livingston, who was the person who had the gun the whole time and probably did the shooting in the matter.