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IN THE SUPREME COURT OF FLORIDA

MARK ALLEN GERALDS,
Appellant,

v.

CASE NO. 75,938

STATE OF FLORIDA,
Appellee.

REPLY BRIEF OF APPELLANT

PRELIMINARY STATEMENT

Mark Geraldts relies on his initial brief to reply to the State's answer brief except for the following additions concerning Issues I, IV, and VI.

ARGUMENT

ISSUE I

ARGUMENT IN REPLY TO THE STATE AND IN SUPPORT OF THE PROPOSITION THAT THE TRIAL COURT ERRED IN DENYING DEFENSE CHALLENGES FOR CAUSE TO TWO PROSPECTIVE JURORS WHO WERE UNABLE TO FAIRLY RENDER A VERDICT DUE TO THEIR EXPOSURE TO PRETRIAL PUBLICITY.

The State contends that Geraldts did not properly preserve this issue for appellate review. However, the State misapplies this Court's decision in Trotter v. State, 576 So.2d 691 (Fla. 1990) to reach this conclusion.

Trotter requires a defendant seeking reversal of a conviction for the improper denial of a cause challenge to first expend all peremptory challenges, request additional challenges, and identify seated jurors whom he would have excused had additional challenges been provided. Defense counsel in this case complied with these requirements. (R 1100-1101). In fact, the State quotes defense counsel's objections on page 2 of the answer brief. Counsel referred to two women seated on the jury whom he would have excused peremptorily and also renewed a challenge for cause which had been previously denied. The trial court was advised that counsel had no further challenges, that at least one seated juror, whom he had challenged for cause, was still on the jury, and there were two other jurors who were objectionable. Unlike the situation in Trotter, counsel did not sit silently by and allow an objectionable juror to remain seated without seeking relief from the trial judge. The issue was preserved for appellate review.

ISSUE IV

ARGUMENT IN REPLY TO THE STATE AND IN SUPPORT OF THE PROPOSITION THAT THE TRIAL COURT ERRED IN DENYING DEFENSE COUNSEL'S REQUEST TO SEE THE HANDWRITTEN NOTES OF A STATE CRIME SCENE WITNESS WHO REFRESHED HER MEMORY FROM THOSE NOTES DURING THE COURSE OF HER TRIAL TESTIMONY.

The State contends that Laura Rousseau's notes were not discoverable under Florida Rule of Criminal Procedure 3.220 because they constituted field notes. While subsection 3.220(b)(1)(ii) specifically excludes handwritten notes from the disclosure requirements of statements of witnesses or police officers, statements of experts has no such exclusion. Fla.R.Crim.P. 3.220(b)(1)(x). The State's argument fails to recognize this distinction. Furthermore, the State also ignores the argument that the notes were discoverable under Section 90.613 Florida Statutes as materials used by the witness during trial testimony.

ISSUE VI

ARGUMENT IN REPLY TO THE STATE AND IN
SUPPORT OF THE PROPOSITION THAT THE TRIAL
COURT ERRED IN GIVING PENALTY PHASE JURY
INSTRUCTIONS WHICH FAILED TO ADEQUATELY
ADVISE THE JURY AS TO THE LIMITATIONS AND
FINDINGS NECESSARY TO SATISFY THE HEINOUS,
ATROCIOUS, OR CRUEL AGGRAVATING
CIRCUMSTANCE.

As to this issue, the State merely contends that the heinous, atrocious, and cruel aggravating circumstance has withstood vagueness attacks on its constitutionality. However, the issue here is the sufficiency of the jury instructions to apprise the jury of the constitutional parameters of that aggravating circumstance, not the constitutionality of the statute. This Court has not addressed that issue in light of Shell v. Mississippi, 498 U.S. ___, 111 S.Ct. ___, 112 L.Ed.2d 1 (1990). The State's argument fails to address the issue before this Court.

CONCLUSION

For the reasons and authorities presented in the initial brief and this reply brief, Mark Gerald asks this Court to reverse his judgements for a new trial. Alternatively, he asks this Court to reduce his death sentence to life in prison.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Reply Brief of Appellant has been furnished by hand-delivery to Mark C. Menser, Assistant Attorney General, The Capitol, Tallahassee, Florida, 32302; and a copy has been mailed to appellant, Mark Allen Gerald, #729185, Florida State Prison, Post Office Box 747, Starke, Florida, 32091, on this 3 day of October, 1991.



W. C. McLain