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William Jay Sheaffer
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RE: SCOTTY RAY MERSON
Case No. 90-5351

Anyone who will Listen

~~Mr Sheaffer~~

I am a Law-Clerk at this institution and have read the transcripts of Scotty's trial. The reason that I am mailing this direct to your office, is that to my understanding Scotty's family is to have a apointment with you this week and I thought that you may want to read this before discussing the case with them, (a copy of this will be mail to Scotty's family). Mr. Sheaffer I feel that this case can be over-turned and that there won't be a new trial, the state will let Scotty cop-out, BUT, then I may be a little prejudiced because I also wear blues.

Here are some of the errors that I've found. I will try to be brief, and at the same time give you a clear picture of the trial errors. I am enclosing a copy of my hand written notes, the reason that I am omtting some of the notes is that a 3.850 motion has been filed and there for lost.

On page 90 and 91, the state is making sure that nothing is said about the hair samples that were taken. In the closing statement, Mr. Eide accused the state of conducting the text on the hair fibers and saliva, but never turning over the results to him. Now if this ~~is in~~ fact what happen then we have a "Brady" violation. (I have not received the record on appeal)

On page 104, the state in it's opening statement, after making references about girl friends and loyalty from friends, went on to say "and, lastly, think of who, who has the most opportunity to lie during their testimony." This by itself is no error, but again in the closing statement by the state he goes on to call all of the defense witnesses liars, that can be argued as reversible error because this case rests on the credibility of all the witnesses.

From page 112-116, the competency of Michelle [redacted] is question by Mr. Eide, on page 116, the court denied vior dire. In doing so the court created reversible error for not conducting a hearing. See; State v. Townsend, 19 FLW S202 (Fla 1994); Townsend v. State 556 So 2d 817, (Fla 5th DCA 1990). (Townsend I)

Townsend 635 So 2d 949 (Fla 1994) 613 So 2d 534 Townsend II

On page 233 and 234, the court in it's effort to meet the requirement of 90.803 (23), concerning Angela [redacted] hearsay testimony, came up short, in that part of his determination was no more than "Boiler plate" language of the statute. And only made the findings as to what was said at breakfast but the witness testimony also dealt with what happened after the child was picked up from school. See, Perz v. state, 536 So. 2d. 206, (Fla 1988)., cert. denied, 109 S. Ct. 3253, (1989).

Page 258 line 7, The Court: and having heard the officer's assertions concerning his opinion regarding her reliability based on his review of cases of this nature. The Court then went on to allow the statements made by Angela concering the incident. It is a well established, however, that an expert is prohibited from commenting to the fact-finder as to the truthfulness or credibility of a witness's statement in general. Tingle v. State, 536 So 2d. 202, (Fla1988); Fuller v. State 540 So. 2d 182, (Fla 5th DCA 1989).

A picture of the state's examination of all the defense witnesses was one of argumentative and intimidation (improper prosecuteral conduct)

On page 515, the Court admonished Mr. Eide in front of the jury "I don't want to hear any more argument or any more discussion on it." I have read where the court should ask the lawyer to come up to the bench, because the harm could flow over to the defendant.

Page 548; Mr. Eide: We believe the evidence has come out that would allow trespass. If it shows that a person was there and the person had any permission in the past then, Obiously, trespass could be a lesser included. Mr. Bender (State): The state's position is, Your Honor, although we don't feel trespass should be included as one of their choices, in an abundance of caution, to aviod any possible reversible error, we have no problem with that being given to the jury. Court: This is a long instruction on the trespass in here. I'm not going to give the trespass instruction. I don't think it's appropriate. Where both the state and defense agree to the instructions the court should give them. Socher v. State, 580 So. 2d. 595, (Fla 1991), Hayes v. State 564 So. 2d. 161, (Fla 2d DCA 1990).

From page 632 to 625, Mr.Eide, is giving the reasons as to why the instructions on lewd and lascivious should be given, with the court dening the request. (625 line 8); King v. State 19 FLW D1079, (Fla 2d DCA 1994). 642 and 649

From page 633 to 634, The State committed reversible error by playing on the sympathy of the jury and bostering the credibility of the victims. Stone v State 626 So. 2d. 296, (Fla 5th DCA 1993), Reyes v. State, 547 So. 2d. 347, (Fla 3rd DCA 1987). And on page 637 the state again is up to his tricks,"both girls had no reason

to lie." further down the page he says, "And I submit to you that their testiomony was believable and credible; no reason to lie, no inconsistencies," On page 638 line 10, "I would say that their credibility is beyound reproach." (Officer Roach) Page 639 line 11, State, All I can tell you and I would submit to you, is that they are all liars in one way or another. page 639 line 24, I think it makes it abundantly clear that their stories were full of contradictions and full of lies. Clark v. State, 632 So. 2d. 88, (Fla 4th DCA 1994). This is one of the issues that should have been raised on direct appeal.

This goes on all through the state's closing statement. I have read cases where courts have held that by using the word SUBMIT before the comment is madc that thc error is harmless. ~~In this~~ case because the whole issue is credibility of the witnesses it can not be held harmless. Rily v State 560 So. 2d. 279, (Fla 3rd DCA 1990); U.S. v Garate-Vergara, 942 F. 2d. 1543, (11 Cir. 1991),

On page 653 Mr. Eide is talking about the evidence taken from Scotty and the fact that no results were turned over to the defense. (Bardy voilation) Brown v. State 19 FLW D1544(Fla 4th DCA 1994).

Page 669 line 12; Mr. Eide: ~~There's~~ no testimony from a certified crime scene technician. Just today I got a response back from the Orlando Police Department and we will be making arrangements to get a copy of their files.

Page 694 line 21, State, Mr. Eide has told you, and rightfully so, that the state has presinted not one iota of physical evidence linking Mr. Merson to this crime. That is true. And I told you from the very beginning, I would see no need to call crime scene technician Bob Welch to the stand to tell you he came up with zip. This adds more strength to my belief that the state held out on the results on purpose.

Now I have to take you back to Page 627 line 14; court; Both closing should take no longer than half and hour. This is a very simple case, from the stand point of the issues here between the parties as to who the jury believes. So I don't know of any reason we can't conclude closing arguments within half and hour. Munez v. State, 19 FLW D2125 (Fla 3rd DCA 1994), citing Adams 585 So. 2d. at 1093 (conviction reversed where judge stated: "this is not an extensive case it's a very simple case," and permitted only fifteen minutes for closing argument.) Here, the trial lasted two two days, during which five witnesses testified, the testimony was confliction regarding the circumstances surrounding the confrontation, and defendant was charged with a serious felony punishable by an extensive sentence. Therefore, we reverse the conviction and sentence and remand the cause for a new trial. This case is dead on point with Scotty's case, the judge made the same comment and it was a four day trial, and how much more extensive can you get than a life sentence.

Another question that needs to be researched is what was discussed in the judge's chambers, after the jury asked a question. Savino V State, 555 So.2d. 1237 (Fla 4th DCA 1987) quashed on other grounds 567 So. 2d. 892

Anyone who can help

~~Mr. Sheaffer~~, the reason that I am not better prepared for this letter is because, like I said earlier I am still trying to get all the information that I can from the State Attorney's Office and the Orlando Police Department, and therefore, I have not done all the research as to the best cases to use with this case.

The post-conviction history of this case consist of a direct appeal, with compentancy being the main issue raised, and a 3.850 motion that in my opinion the same issue was raised. Different wording but same isuue.

In closing, I think that this is a winable case and if I can be of further assistance, Please feel free to ask. I have known Scotty for a few months and I feel that he's worth the time and effort.

Sincerely,

Jose A. Romero

Jose A. Romero

cc file
family