

IN THE SUPREME COURT OF FLORIDA

CASE NOS. 74,098 and _____

WAYNE TOMPKINS,
Petitioner,

v.

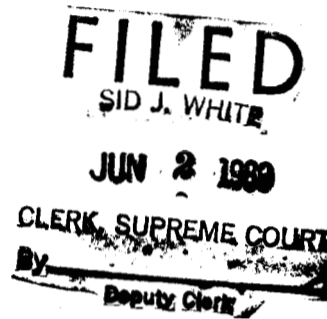
RICHARD L. DUGGER, Secretary
Department of Corrections,
State of Florida,

Respondent.

WAYNE TOMPKINS,
Appellant,

v.

STATE OF FLORIDA,
Appellee.



REPLY TO STATE'S BRIEF AND SECOND
SUPPLEMENTAL STAY APPLICATION

The State in its brief filed June 1, 1989, made misrepresentations of fact and law which require more of a response than Mr. Tompkins' counsel has time to muster overnight under warrant with competing and conflicting demands on his time. By way of example, counsel notes that at page 21 of its brief the State asserts: "The defendant ignores the effective cross-examination of the State's witnesses by Mr. Hernandez which attempted to place in the minds of the jury the possibility that Lisa was seen alive at a time subsequent to the time of the murder (R. 217-221)."

However, the actual text shows neither an "effective cross-examination" nor much of a chance that the jury understood that a witness on March 24, 1983, made a statement to the police in front of the victim's mother verifying Mr. Tompkins' description

of what Lisa was wearing when she left the house and that indeed she left the house alive and disappeared into a brown Pinto with tinted windows:

Q. What was the reason that you couldn't get the dental records?

A. They didn't have them.

Q. Shortly after the day of March 23, 1984, did you speak to a Kathy Stevens?

A. No, sir.

Q. Does the name Kathy Sample ring a bell?

A. Yes, sir.

Q. Who is Kathy Sample?

A. Lisa's girlfriend.

Q. You have never heard her referred to as Kathy Stevens?

A. No, sir.

Q. What conversation did you have with Kathy Sample?

MR. BENITO: I apologize, Mr. Hernandez. I object, Judge, as to hearsay.

THE COURT: Approach the bench.

[There was a discussion at bar as follows]:

THE COURT: What is she going to say?

MR. HERNANDEZ: Judge, she is going to say, and there will be other people that have told Barbara DeCarr that they saw Lisa after the 23rd of March, 1984.

MR. BENITO: She is going to testify, Judge, to that. She will be here to testify that she did tell Mrs. DeCarr that Lisa called her from New York and that she was all right, but she also testified that that was a lie.

Anything coming from this witness as to what Kathy said is strictly hearsay.

MR. HERNANDEZ: I have a question now if we are talking about the same person, Kathy Sample and Kathy Stevens.

MR. BENITO: I believe we are. Either way, Kathy Stevens was the one that talked about New York and the phone call. I

think she is confused.

THE COURT: Why is this not hearsay?

MR. HERNANDEZ: Your Honor, I can rephrase the question.

THE COURT: Okay.

[Proceedings in open court follow]:

BY MR. HERNANDEZ:

Q. Mrs. DeCarr, isn't it a fact that after the day that Lisa disappeared that you were informed by several people that Lisa DeCarr, your daughter, had been seen elsewhere around the community?

A. Yes, yes, sir.

BY MR. HERNANDEZ:

Q. Is it correct that you were informed, your investigation and neighborhood survey, or whatever, that --

MR. BENITO: Excuse me, Mr. Hernandez. Judge, I believe the question is predicated upon hearsay.

THE COURT: I will have to hear the question.

BY MR. HERNANDEZ:

Q. You were informed that Lisa had run away?

THE COURT: Excuse me. I will sustain it.

BY MR. HERNANDEZ:

Q. Isn't it a fact that Lisa had been suspended from school or, at least, to a point where she had to go back with you --

A. Yes.

Q. -- before she could go back to school?

A. Yes, sir.

Q. It's your testimony that Lisa had never run away?

A. Yes, sir.

Q. Had she ever talked about running away?

A. No, sir.

Q. How many people told you that they had seen Wendy, that they had seen Lisa after the day she disappeared?

MR. BENITO: Judge, same objection. That question is predicated upon hearsay.

THE COURT: I will sustain the objection.

MR. BENITO: Can we approach the bench?

THE COURT: I will sustain the objection.

MR. BENITO: I need to approach the bench on another matter.

THE COURT: Approach the bench.

[There was a discussion at bar as follows]:

MR. BENITO: I would ask the Court to advise Mr. Hernandez that all these questions he is asking, he is getting his point across without having the answers come from the witness. They are all hearsay.

THE COURT: Are you congratulating him on his tactics?

MR. BENITO: I object to the form of the question which is predicated on hearsay.

THE COURT: I will deny your standing objection. If you have an objection, make it.

MR. BENITO: The question and statement is already out. He can't predicate his questions on hearsay.

THE COURT: I don't presume to question his ways.

MR. BENITO: When I hear him say informed or advised, I will stand up at this time; and if you say you have to hear the question, that will make it null and void anyway.

[Proceedings in open court follow]:

BY MR. HERNANDEZ:

Q. Isn't it a fact, Mrs. DeCarr, that in your subsequent check, looking for Lisa, that you determined that there was someone else that had seen Lisa in jeans and a maroon top?

MR. BENITO: Objection, Judge.

THE COURT: I will sustain the objection.

BY MR. HERNANDEZ:

Q. This occurred on -- Lisa's disappears occurred in March, 1984; is that correct?

A. '83.

(T. 217-21).

WHEREFORE, Mr. Tompkins renews his request for a stay of execution and an opportunity to fully brief the issues presented in this case, and such other relief the Court determines appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing motion has been forwarded by hand delivery ~~U.S. MAIL/FEDERAL~~ to Robert Krauss, Assistant Attorney General, Department of Legal Affairs, Park Trammel Building, 1313 Tampa Street, Tampa, Florida 33602, this 2nd day of June, 1989.

Mart J McClain
Attorney