IN THE SUPREME COURT OF FLORIDA

CLARENCE EDWARD HILL,

Appellant,

v.

CASE NO. 68,706

STATE OF FLORIDA,

Appellee.

REPLY BRIEF OF APPELLANT

MICHAEL E. ALLEN
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

STEVEN L. BOLOTIN
ASSISTANT PUBLIC DEFENDER
POST OFFICE BOX 671
TALLAHASSEE, FL 32302
(904) 488-2458

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CITATIONS

IN THE SUPREME COURT OF FLORIDA

CLARENCE EDWARD HILL,	:	
Appellant,	:	
v.	:	CASE NO. 68,706
STATE OF FLORIDA,	:	
Appellee.	:	
	:	

REPLY BRIEF OF APPELLANT

I PRELIMINARY STATEMENT

The state's brief will be referred to herein by use of the symbol "AB." Other references are as denoted in appellant's initial brief.

This reply brief is directed solely to Issue III. As to the remaining issues, appellant will rely on the arguments made in his initial brief.

IV ARGUMENT

THE TRIAL COURT ERRED IN REFUSING TO INSTRUCT THE JURY ON THE STATUTORY MITIGATING CIRCUMSTANCE THAT THE DEFENDANT ACTED UNDER EXTREME DURESS OR UNDER THE SUBSTANTIAL DOMINATION OF ANOTHER PERSON.

The state (as did the trial judge below) insists on construing the evidence in the light most favorable to itself. (See AB. 2, 25-26). Proceeding from that false assumption, the state engages in appellate jury argument, marshalling the evidence which best supports its own position to try to convince this Court that appellant was not dominated, or was not substantially dominated, by Cliff Jackson (AB.25-26). Ignoring the fact that this case was presented to the penalty jury as one involving felony murder (predicated on the bank robbery) as well as premeditated murder, the state huffily exclaims that appellant could not have been under the substantial domination of Jackson, because the unarmed Jackson was being handcuffed at the time appellant approached the officers and the shooting began (AB.26). That is entirely appropriate jury argument; the prosecutor could have argued (and did argue, R.669-71) to the jury that appellant, not Jackson, was the dominant partner, or that they were co-equals. But, on the other hand, taking the evidence in the light most favorable to the defense, there was evidence that Cliff Jackson was the dominant partner, particularly in regard to the bank robbery [See appellant's initial brief, p.26-28). According to Jackson's own testimony, he was the leader (R.595-96, 598-99), he was the one who decided to rob the Savings and Loan (T.574-75), and he was the one calling the shots (T.574-78). Taking the evidence in the light most favorable to the defense, the jury could reasonably have concluded that, but for the dominant influence of Cliff Jackson, the robbery, and thus the murder, would never have taken place. The jury, of course, was not required to believe Cliff Jackson, or to reach the conclusion that appellant was

acting under his domination. But the jury, as trier of fact, had a right to believe Cliff Jackson, and appellant had a right to have the jury fully instructed on the applicable law.

The trial court did not refuse to give the requested instruction because he thought there was no evidence to support it. Rather, he refused to give the instruction because, in his opinion, "if you take the evidence from the side of the State, they completely refuted he [Jackson] was leading." (R.662). In other words, the trial court chose to disbelieve Cliff Jackson's testimony, and chose to believe instead the testimony relied on by the state. By refusing, because of his own assessment of the credibility of the witnesses, to instruct the jury on the law applicable to this disputed issue of fact, the trial court usurped the jury's function, and deprived appellant of his constitutional right to full and fair consideration of all proffered mitigating circumstance. See Lockett v. Ohio, 438 U.S. 586 (1978); Robinson v. State, 487 So.2d 1040, 1042-43 (Fla. 1986); Toole v. State, 479 So.2d 731, 733-34 (Fla. 1985); Cooper v. State, 336 So.2d 1133, 1140 (Fla. 1976); State v. Johnson, 257 SE 2d 597, 616-17 (N.C. 1979).

CONCLUSION

Based on the foregoing argument, reasoning, and citation of authority, and that contained in his initial brief, appellant respectfully requests that this Court reverse his death sentence, and remand this case to the trial court for a new penalty proceeding before a newly impaneled advisory jury (which would not be informed of the original jury's finding of premeditation), or, in the alternative, imposition of a life sentence without possibility of parole for twenty-five years.

Respectfully submitted,

MICHAEL E. ALLEN
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

Steven L Bolotin

STEVEN L. BOLOTIN
ASSISTANT PUBLIC DEFENDER
POST OFFICE BOX 671
TALLAHASSEE, FL 32302
(904) 488-2458

ATTORNEY FOR APPELLANT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by hand delivery to Assistant Attorney General John W. Tiedemann, The Capitol, Tallahassee, FL, 32301, this 7 day of November, 1986.

Steven L Bolotin
Steven L. Bolotin
Assistant Public Defender