

A05-1882

STATE OF MINNESOTA

IN SUPREME COURT

State of Minnesota,

Respondent,

vs.

Frederick Kemond Jackson,

Appellant.

**APPELLANT'S PRO SE SUPPLEMENTAL BRIEF**

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FREDRICK JACKSON

A05-1882

STATE OF MINNESOTA

IN SUPREME COURT

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State of Minnesota,

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vs.

Frederick Kemond Jackson,

Appellant.

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**PROCEDURAL HISTORY**

- Oct. 21, 2004: Date of incident.
- Dec. 17, 2004: Indictment filed in Hennepin County District Court charging appellant with aiding and abetting first-degree murder while attempting to commit aggravated robbery in violation of Minn. Stat. §§ 609.05, 609.185(a)(3) (2004).
- Apr. 6, 2005: Appellant moved to suppress statements given to law enforcement and to dismiss the indictment.
- May 18, 2005: Pretrial motion hearing, the Honorable Bruce A. Peterson presiding; the district court reserved ruling on appellant's statement until a determination was made of whether appellant was going to testify and whether the state would be using appellant's statements in rebuttal.
- May 19, 2005: The district court filed its order denying appellant's motion to dismiss the indictment.
- May 31-June 3, 2005: Jury voir dire, the Honorable Bruce A. Peterson, presiding.
- June 3, 2005: Appellant moved the district court to obtain Mr. Bell's medical records from jail and to conduct an in camera review of those

records to determine whether Mr. Bell's mental illness was relevant to trial.

- June 9, 2005: Competency hearing, the Honorable Bruce A. Peterson presiding; appellant moved to suppress Mr. Bell's statement, arguing that he was incompetent to testify. The district court denied appellant's motion.
- June 10-17, 2005: Jury trial, the Honorable Bruce A. Peterson presiding; the jury found appellant guilty of the charged offense.
- June 17, 2005: The district court committed appellant to the custody of the Commissioner of Corrections for life.
- Sept. 15, 2005: Appellant filed notice of appeal.
- Jan. 9, 2006: State Public Defender's Office received complete transcripts.
- Mar. 9, 2006: Appellant moved this court of a 30-day extension of time to file appellant's brief, which this court granted.
- Apr. 10, 2006: Appellant moved this court of a 5-day extension of time to file appellant's brief, which this court granted.

LEGAL ISSUE

1. MUST APPELLANT CONVICTION FOR FIRST DEGREE FELONY MURDA BE REVERSE BECAUSE THE TRIAL JUDGE ADMITTED HIGHLY PREJUDICE EVIDENCE OF APPELLANT BEING SHOT WHICH WASN'T RELEVANT TO THE CASE.

THE JURY FOUND APPELLANT GUILTY OF CHARGED OFFENSE.

APPOSITE AUTHORITY  
MINN RULES OF EVIDENCE 403 404B 2004  
STATE V HARRIS 521 N.W.2D 348

2. WAS APPELLANT DENIED A FAIR TRIAL BY THE PROSECUTOR WHEN VIOLATED THE JUDGE RULEING NOT TO USE OTHER CRIMES OR BAD ACTS WHICH WAS NOT RELEVANT OR CLEAR-N-CONVINCING AND PROSECUTOR FAILED TO GIVE A SPREIGL NOTICE

APPOSITE AUTHORITY  
MINN RULES OF EVIDENCE 404B 403  
STATE V HARRIS 521 N.W.2D 348

FREDRICK JACKSON

## STATEMENT OF THE CASE

Appellant, Frederick Kemond Jackson, was charged by indictment in Hennepin County District Court on December 17, 2004, with aiding and abetting first-degree murder while attempting to commit aggravated robbery in violation of Minn. Stat. §§ 609.05, 609.185(a)(3) (2004). Dominique Jefferson and James Bell also were indicted for the same offense, which involved the attempted aggravated robbery of a convenience store in North Minneapolis, MN, and the shooting death of one of the store's clerks on October 21, 2004.

On April 6, 2005, appellant moved the district court to suppress the statements he gave to law enforcement. Appellant also moved the district court to dismiss the indictment, arguing in part that the state provided the grand jury with inadmissible hearsay evidence in the form of an officer testifying that Mr. Bell implicated appellant in the incident during a police interview. At the pretrial motion hearing on May 18, 2005, the district court reserved ruling on appellant's statements until a determination was made regarding whether appellant was going to testify and whether the state would be using appellant's statements in rebuttal. [T. 3-4].<sup>1</sup> At the same hearing, the state informed the district court that Mr. Bell would be testifying at trial. [T. 4-5]. As a result, the district court relied on *State v. Scruggs*, 421 N.W.2d 707, 716-17 (Minn. 1988), in which this court concluded that co-defendants' statements were sufficient to support a grand jury indictment despite the defendant's claim that they were inadmissible hearsay where one

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<sup>1</sup> "T." denotes the May 18, 2005, hearing transcript as well as the transcripts of appellant's jury trial held on May 31-June 17, 2006, all of which are paginated in seven consecutive volumes.

co-defendant's statement was admitted at trial, and filed its order denying appellant's motion to dismiss the indictment on May 19, 2005.

Jury voir dire was conducted on May 31, to June 3, 2005, the Honorable Bruce A. Peterson presiding. At the end of voir dire on June 3, 2005, appellant's trial attorney informed the district court that he had learned that Mr. Bell was seeing a mental health professional and taking medication while in jail. [T. 767-68]. The attorney moved the court to obtain Mr. Bell's medical records and to conduct an in camera review of those records to determine if Mr. Bell's mental health was relevant to the trial. [T. 768].

A hearing to determine Mr. Bell's competency was held on June 9, 2005, the Honorable Bruce A. Peterson presiding. At that hearing, appellant moved the district court to suppress Mr. Bell's statement, arguing that his mental health issues rendered him incompetent to testify. [T. 790, 810-11]. Dr. Lawrence Panciera, the director of Forensic Psychological Services, testified regarding his half-hour examination of Mr. Bell and his review of Mr. Bell's medical records. [T. 793-809]. Dr. Panciera testified that Mr. Bell reported hearing voices, generally when he was alone. [T. 794-95]. According to Mr. Bell's medical reports, he recounted hearing voices since he was five years old. [T. 801]. Dr. Panciera testified that the voices were not commanding Mr. Bell to do anything; instead, they were self-criticisms telling him that he belonged in jail and would remain in jail. [T. 805-06]. Mr. Bell also reported that he was seeing visions. [T. 803]. Dr. Panciera testified that there was no indication of delusional thinking on Mr. Bell's part, that Mr. Bell discussed his legal predicament in a coherent fashion, that Mr. Bell understood the difference between the truth and a falsehood, and that Mr. Bell had the

capacity to accurately discuss the facts surrounding the case. [T. 795-96]. Based on Dr. Panciera's evaluation, the district court determined that Mr. Bell was competent to testify because he would be able to understand the oath administered to him and relay the events accurately to the jury. [T. 814].

At the same hearing, stated moved the district court to prevent appellant from asking Mr. Bell about his experiences with hearing voices and seeing visions. [T. 814-15]. The district court denied the state's motion, reasoning that the jury could consider Mr. Bell's mental health when making credibility determinations. [T. 821-22].

A jury trial was held on June 10-17, 2005, the Honorable Bruce A. Peterson presiding. The jury found appellant guilty of the charged offense. On June 17, 2005, the district court committed appellant to the custody of the Commissioner of Corrections for life.

Appellant, who presently is incarcerated at MCF – Oak Park Heights, now appeals from the judgment of conviction.

## STATEMENT OF THE FACTS

Dominique Jefferson, James Bell, and appellant, who is Mr. Bell's cousin by marriage, were implicated in the robbery of a Super USA convenience store in North Minneapolis, MN, and the shooting death of one of the store's clerks on October 21, 2004. That day, M [REDACTED] M [REDACTED] E [REDACTED] and I [REDACTED] B [REDACTED] were working the night shift at the store, which was open seven days per week between 6:00 a.m. and 11:00 p.m. [T. 871, 874, 877, 879]. The store generally had two clerks working the night shift and there were two cash registers behind the counter. [T. 878]. Mr. B [REDACTED] was operating the cash register closest to the front door while Mr. E [REDACTED] was operating the cash register farthest from the door. [T. 883]. For security purposes, the store had several interior and exterior surveillance cameras, a security alarm attached to the front door, and a security button to contact the police on the clerks' side of the counter by the cash register farthest from the front door. [T. 881-83, 996-97].

Around 9:00 p.m., the store's surveillance video showed Mr. Jefferson, Winfred Davis, Lemont Kilgore, and Isaac Childress in the store. [T. 1240, 1507-08, 1541-42]. Mr. Jefferson appeared to be casing the store. [T. 1554]. Neither Mr. Bell nor appellant was depicted on the tape. [T. 1555]. To prepare the store for closing, Mr. E [REDACTED] and Mr. B [REDACTED] mopped the floors and reduced some of the interior and exterior lighting. [T. 881-82]. At approximately 10:50 p.m., the surveillance video showed two black men in their late teens or early twenties entering the store. [T. 883-84, 898-99, 917, 926, 1277, 1531]. The surveillance video did not show anyone else standing outside at the corner of the store during the incident acting as a lookout. [T. 1272-73]. The two

men demanded money from the clerks, and one of the men was carrying a rifle with a red bandana and a white string attached to it. [T. 883-84, 898-99, 926]. The men were wearing dark sweatshirts or coats with the hoods up and had bandanas covering most of their faces. [T. 889-90, 898, 916]. The taller man carrying the rifle later was identified as Mr. Bell, and the shorter man later was identified as Mr. Jefferson. [T. 889, 1096, 1354, 1365]. At the time, both clerks were behind the counter trying to finish ringing up the closing rush of customers. [T. 884]. The store's customers included R [REDACTED] J [REDACTED]; his fiancé, T [REDACTED] D [REDACTED] Ms. D [REDACTED]' 12-year-old daughter, F [REDACTED] N [REDACTED]; Ms. D [REDACTED]' 12-year-old niece, A [REDACTED] G [REDACTED]; and Mr. J [REDACTED]'s granddaughter who was between one and two years old. [T. 910-11, 921, 930]. Mr. J [REDACTED] and Ms. D [REDACTED] were inside the store purchasing a phone card and some snacks, which Mr. E [REDACTED] was ringing up when Mr. Jefferson and Mr. Bell entered the store. [T. 911, 914-15, 924]. Ms. N [REDACTED], Ms. G [REDACTED], and the baby, who had been waiting in the car, were walking up to the store's entrance when they saw Mr. Jefferson and Mr. Bell enter the store. [T. 925, 932, 935].

Another customer that night was A [REDACTED] H [REDACTED], Sr., who had gone to the store to purchase cigarettes. [T. 895, 897]. Mr. H [REDACTED] had just handed Mr. B [REDACTED] a \$20 bill when Mr. Jefferson and Mr. Bell entered the store. [T. 885, 897]. Mr. H [REDACTED] testified that Mr. Bell was the one giving orders, and Mr. Bell told Mr. H [REDACTED] something to the effect of, "It's not you, homie." [T. 897, 900, 904-05].<sup>2</sup> Mr. B [REDACTED]

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<sup>2</sup> Mr. B [REDACTED] testified, however, that it was the shooter, later identified as Mr. Jefferson, who spoke to Mr. H [REDACTED]. [T. 888].

was trying to give the men the money from his cash register when Mr. Jefferson took the rifle from Mr. Bell and, without warning, shot Mr. E [REDACTED]. [T. 885-86, 888-89, 900, 906, 1365-66]. Mr. H [REDACTED] was so close to the bullet that he felt wind movement when the rifle went off. [T. 900-01]. Ms. G [REDACTED] and Ms. N [REDACTED] were still standing outside the store's entrance and heard the gunshot. [T. 925, 933]. Right after hearing the gunshot, they saw Mr. Jefferson and Mr. Bell run out of the store and behind the building. [T. 925, 928]. Ms. N [REDACTED] did not see a third person standing around watching the store and did not see a third person running away from the store. [T. 936]. As the men were exiting, Ms. G [REDACTED] and Ms. N [REDACTED] heard one man say to the other something like, "Oh, man, why did you do that?" [T. 926, 933]. The two older girls then ran back to their vehicle. [T. 927]. Immediately after Mr. E [REDACTED] was shot, Mr. H [REDACTED] ran to the back of the store where other customers had gathered, and Mr. B [REDACTED] took cover by opening a security door behind the cash registers. [T. 887, 901]. After Mr. Jefferson and Mr. Bell left, Mr. H [REDACTED] checked Mr. E [REDACTED]'s pulse and phoned 911 while Mr. B [REDACTED] re-entered the store and also phoned 911. [T. 889, 901]. Mr. Jefferson and Mr. Bell left without any money from the store. [T. 992, 997, 1532]. The whole incident from the time Mr. Jefferson and Mr. Bell entered the store until the time they exited took approximately 14 seconds. [T. 1007-08, 1015].

The 911 operator dispatched the police as well as medical personnel to the scene. [T. 941]. When the police officers arrived, they learned that Mr. E [REDACTED] already had passed away. [T. 948, 1531]. He died from the single gunshot wound to his right

chest. [T. 1136, 1138].<sup>3</sup> The officers secured the area, interviewed witnesses, canvassed the neighborhood, and drove witnesses to the police station so their statements could be taken. [T. 943-45, 948-49, 953-56]. Neither interviewing the witnesses nor canvassing the neighborhood procured any leads as to the identity of the store's robbers. [T. 956]. The sergeant on the scene also called for the crime lab technicians and homicide investigators. [T. 954]. The technicians took photographs of the scene and collected Mr. H [REDACTED]'s \$20 bill on the counter in front of the first cash register, a discharged cartridge casing, and a copper bullet jacket along with the cigarette package it was lodged in, which were located behind the counter. [T. 992-93, 999, 1019]. When the store's owner arrived, the officers and the crime lab technicians watched the surveillance video to determine whether the robbers had touched any items that could be examined for fingerprints. [T. 970, 984].

The crime lab technicians ultimately processed the interior and exterior sides of the front door, the door handles, the front counter, the \$20 bill, and the discharged cartridge casing for fingerprints. [T. 1000, 1005, 1022-23]. The technicians were unable to recover any identifiable prints from the casing, the handles, or the \$20 bill. [T. 1005-06, 1022-23]. Of the 13 prints recovered from the door, only three were sufficient for comparison, but the technicians were unable to find matches to the prints in their database. [T. 1002-03]. The technicians also specifically compared the prints to those of

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<sup>3</sup> The bullet traveled through Mr. E [REDACTED]'s right chest, hitting his right fifth rib and his breast bone where it then traveled through his heart, aorta, and left lung before exiting through his back around his left ninth rib. [T. 1137-38]. The pattern created by the bullet as well as the large number of small fragments throughout his chest is known as a snowstorm pattern and is typical of a high velocity bullet. [T. 1138].

Mr. Jefferson, Mr. Bell, and appellant, but they did not match. [T. 1003-04]. One of the technicians also revisited the store to determine whether the store's robbery camera, which was activated when pre-marked "bait" money was taken from the cash register, had been triggered. [T. 1025-26]. The technician learned that bait money had not been removed from the cash register, and the robbery camera had not been activated. [T. 1026-27].

The investigators received their first lead in the case from Joseph Zeilbeck, a bus driver for Jefferson Lines. Mr. Zeilbeck drove a bus route from Minneapolis, MN, to Kansas City, MO, making several rest stops in between that included Albert Lea, MN. [T. 1037, 1039]. Most of Mr. Zeilbeck's passengers would transfer to other destinations once arriving in Kansas City. [T. 1038]. On October 24, 2004, Mr. Zeilbeck was driving his usual route. [T. 1039, 1051]. He had approximately 20 passengers onboard, including a young, black male, later identified as Mr. Jefferson, whose final destination was Little Rock, AR. [T. 1040, 1049, 1054]. When Mr. Zeilbeck made the scheduled rest stop in Albert Lea, he overheard Mr. Jefferson speaking to a young woman named Candy Poindexter who was another passenger on the bus. [T. 1042, 1534]. Specifically, Mr. Zeilbeck heard Mr. Jefferson tell Ms. Poindexter something to the effect of, "I need to get out of the State of Minnesota. You heard about the convenience store shooting that just happened. I need to get out of the State of Minnesota." [T. 1042-43]. At the time, Mr. Zeilbeck and Mr. Jefferson were looking at each other, and the conversation between Mr. Jefferson and Ms. Poindexter ended. [T. 1043].

Mr. Zeilbeck then went inside the convenience store they were stopped at and called his dispatch to report what he had heard. [T. 1043]. Dispatch advised Mr. Zeilbeck to call the authorities, so Mr. Zeilbeck phoned the Albert Lea Police Department. [T. 1043-44]. Because Ms. Poindexter's final stop was Albert Lea, Mr. Zeilbeck located her where she was waiting for a cab and verified what he had heard Mr. Jefferson tell her. [T. 1045]. Ms. Poindexter told Mr. Zeilbeck that she did not understand why Mr. Jefferson would have told her what he did. [T. 1045]. Mr. Zeilbeck informed Ms. Poindexter that he had called the police and took down her name and telephone number. [T. 1045].

When the Albert Lea police arrived, they interviewed Mr. Jefferson for approximately one hour. [T. 1054]. Mr. Jefferson told the police that he was traveling to Arkansas to visit his sick grandmother. [T. 1055]. He also said he wanted to go to Arkansas to obtain his birth certificate so that he could get his driver's license. [T. 1055]. Mr. Jefferson denied any knowledge of the incident at the convenience store. [T. 1055]. The Albert Lea police placed a few telephone calls, including to Mr. Jefferson's mother and the Minneapolis Police Department, to obtain Mr. Jefferson's Minneapolis address. [T. 1056]. The Albert Lea police also spoke with a lieutenant with the Minneapolis Police Department to obtain information about the incident at the convenience store. [T. 1056]. The lieutenant told the Albert Lea police to take a picture of Mr. Jefferson and send it to him. [T. 1056]. Having no reason to hold Mr. Jefferson, the Albert Lea police eventually let him re-board the bus. [T. 1058].

When one of the lead homicide investigators in this case received a report regarding the incident involving Mr. Jefferson in Albert Lea, he attempted to locate Mr. Jefferson in Little Rock. [T. 1533-34]. Once he located Mr. Jefferson, he and his partner traveled to Little Rock to interview him. [T. 1535]. Mr. Jefferson denied any involvement in the robbery, but he was able to tell them specific details, which he explained he learned firsthand from Lemont Kilgore, whom he identified as the actual shooter. [T. 1537-38]. Mr. Jefferson told the investigators that they could find Mr. Kilgore at a home in North Minneapolis. [T. 1539]. The investigators then obtained a search warrant for the home, which was rented by Nayana Persaud. [T. 1073, 1539]. Ms. Persaud's house was approximately two blocks from the convenience store. [T. 1155, 1186]. Many people lived with Ms. Persaud, including Ms. Persaud's goddaughter, Kimberly Wright; Ms. Persaud's five children, her children's friends, and Mr. Jefferson. [T. 1071, 1072-73, 1150, 1152, 1182-83, 1184]. Ms. Persaud's house was a gathering point for young men in the neighborhood, and it was not unusual for people come and go on a regular basis. [T. 1073, 1107-08]. It also was a place where people were known to smoke marijuana. [T. 1107]. When the investigators executed the search warrant at Ms. Persaud's home, they brought in several people for questioning, including Ms. Persaud, Ms. Wright, and Ms. Persaud's daughter, 16-year-old D█████ P█████. [T. 1149, 1539]. Based on those interviews, the investigators' focus shifted to Mr. Jefferson, Mr. Bell, and appellant as the persons responsible for the incident. [T. 1540].

According to Ms. Wright, on the evening of the incident she was cooking dinner at Ms. Persaud's house, and, as usual, there were many people there, including Ms. Persaud;

D [REDACTED] and Ms. Persaud's four other children; D [REDACTED]'s boyfriend, Winfred Davis, whose nickname was Catman; Lamont Kilgore, Mr. Jefferson; and Mr. Jefferson's brother, who was Ms. Persaud's boyfriend at the time. [T. 1072, 1076-77, 1107, 1153, 1155, 1183, 1185]. While Ms. Wright was cooking, Ms. Persaud, D [REDACTED], D [REDACTED]'s brothers, Mr. Davis, Mr. Kilgore, and Mr. Jefferson's brother were watching movies. [T. 1155]. Around 9:00 p.m., Mr. Davis borrowed Ms. Persaud's van, and he, Mr. Jefferson, Mr. Kilgore, and Mr. Childress drove to the convenience store. [T. 1156, 1185].

According to Ms. Wright, at some point in the evening Mr. Bell and appellant came over to Ms. Persaud's house and went upstairs to talk to Mr. Jefferson. [T. 1079-80, 1109].<sup>4</sup> She did not hear the conversation and did not know how long they were talking to each other. [T. 1109]. Ms. Wright further recounted that Mr. Jefferson then asked Ms. Wright for a ride up the street and offered to give her \$5 in return. [T. 1080-81, 1110]. Around that same time, Ms. Wright had decided to go to her brother's house to purchase some marijuana, so she agreed to give him a ride. [T. 1077, 1081]. Ms. Wright occasionally sold marijuana and she also smoked it, but she denied smoking it or using any other drug that night. [T. 1077-78]. Ms. Wright asked Ms. Persaud if she could borrow Ms. Persaud's van to drive to her brother's house, and, in exchange, Ms. Wright said she would give Ms. Persaud gas money. [T. 1078, 1188]. Ms. Wright asked D [REDACTED] to ride with her because she did not want to drive to her brother's house by herself. [T.

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<sup>4</sup> D [REDACTED] later testified that she had no recollection of Mr. Bell or appellant coming to the house; she only saw Mr. Jackson. [T. 1171]. Ms. Persaud later testified that she saw neither Mr. Bell nor appellant at her house that night. [T. 1189].

1078, 1157-58]. D█████ reluctantly agreed to go, and D█████ asked Mr. Davis to ride along as well. [T. 1078, 1157].

According to Ms. Wright, she, D█████, Mr. Davis, and Mr. Jefferson walked out to the backyard where Ms. Persaud kept her van and were met by Mr. Bell and appellant who already were standing by the van. [T. 1081-82].<sup>5</sup> Once everyone was inside, Mr. Jefferson directed Ms. Wright to 37<sup>th</sup> and Girard, which was approximately one block from the convenience store. [T. 1082, 1084, 1112]. Ms. Wright recalled that Mr. Jefferson, Mr. Bell, and appellant were all dressed in dark clothing, but she did not see any guns, and she did not hear any conversation among them. [T. 1083, 1112]. Similarly, D█████ did not see any of the three men with guns, either. [T. 1172]. When they arrived at 37<sup>th</sup> and Girard, Mr. Jefferson told Ms. Wright where to stop, which was in front of a house, and Mr. Jefferson, Mr. Bell, and appellant exited the van. [T. 1083-84, 1112, 1159-60]. Mr. Jefferson told Ms. Wright that he would be right back and would give her the \$5 when he returned. [T. 1083, 1113, 1160]. Ms. Wright and D█████ saw the three men walk to the back of a house. [T. 1084, 1113]. Ms. Wright did not see any of the men conceal their faces or put anything up over their heads when they exited the van. [T. 1096-97]. Ms. Wright waited in the van for approximately five minutes, and then she decided she had to get to her brother's house before he left. [T. 1085, 1114].

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<sup>5</sup> D█████ testified somewhat differently. She said that Mr. Jefferson was already out by the van with Mr. Bell and appellant when she, Ms. Wright, and Mr. Davis arrived in the backyard. [T. 1157-58]. D█████ recounted that she asked Ms. Wright why she had to ride along if other people were going with her, and Ms. Wright told her that she was dropping off the men at a friend's or a cousin's house. [T. 1158].

D [REDACTED] testified, however, that they waited for approximately ten to fifteen minutes and then D [REDACTED] told Ms. Wright that they should leave. [T. 1161].

Ms. Wright drove around the block and was driving through the alley not far from the store when she heard a "big boom," which she said sounded like a firecracker. [T. 1085-86, 1116]. According to Ms. Wright, she saw appellant in the alley, and appellant got into the van and told her to hurry up and go. [T. 1086, 1120]. When Ms. Wright gave her statement to the police approximately eight days after the incident, she told them that she saw appellant running before she heard the big boom. [T. 1116-18, 1125-26]. Ms. Wright also agreed that she told the police that appellant could not have fired the shot because he already was in the van when she heard the noise. [T. 1121]. She testified that she was telling the police the truth and that her trial testimony was that she saw appellant running in the alley before she heard the shot. [T. 1117, 1119, 1120]. She also testified at trial, however, that she could not really remember the sequence of events, but she thought she heard the shot and then turned in the alley and saw appellant. [T. 1124-25]. After picking up appellant, Ms. Wright drove further along the alley and picked up Mr. Jefferson and Mr. Bell. [T. 1086].

Ms. Wright recounted that, once the three men were inside the van, they began arguing. [T. 1086-87]. Ms. Wright could not recall what the argument was about, and she did not see any guns when they got back inside the van. [T. 1087]. Ms. Wright kept asking for her \$5, and when she did not receive it, she stopped the van, took the keys out, and told the three men to get out of the van. [T. 1087]. According to Ms. Wright, Mr. Bell and appellant exited the van. [T. 1088]. Ms. Wright then drove back to Ms.

Persaud's house where she finished cooking. [T. 1088]. She heard Mr. Jefferson repeatedly saying that he had "fucked up," so she talked to Ms. Persaud about what had transpired. [T. 1123]. D [REDACTED] also spoke to Ms. Persaud about what happened. [T. 1191]. She told her mother that Mr. Jefferson was crying and that he "had done something stupid." [T. 1191]. D [REDACTED] asked Ms. Persaud what she could do to help calm down Mr. Jefferson. [T. 1191]. After Ms. Wright finished cooking, she went to her brother's house to pick up the marijuana. [T. 1088-89]. When Ms. Wright returned to Ms. Persaud's house, Mr. Jefferson remorsefully told her that "they" had robbed the convenience store and that he shot Mr. E [REDACTED] in the chest. [T. 1089-90]. Mr. Jefferson told Ms. Wright that he shot Mr. E [REDACTED] because he thought Mr. E [REDACTED] was going to shoot him. [T. 1090].

D [REDACTED] had been smoking marijuana that night and took some ecstasy that Mr. Davis had given to her, which may have limited her ability to understand what was happening. [T. 1156-57, 1168]. She recalled hearing the gunshot and that it sounded as though it was "kind of close." [T. 1161]. D [REDACTED] testified that Mr. Jefferson, Mr. Bell, and appellant all came running back at the same time. [T. 1162]. D [REDACTED] recounted that the men were "frantic and kind of angry" when they got back into the van. [T. 1162]. According to D [REDACTED], she heard appellant ask Mr. Jefferson or Mr. Bell where his gun was and say that he wanted to go back and get it. [T. 1162]. D [REDACTED] testified that she got into an argument with appellant about it, telling him that they were not going to pick up a gun in her mother's van. [T. 1162-63]. D [REDACTED] then told the men to get out of the van.

[T. 1163]. D█████ testified that Mr. Bell and appellant exited the van, but she did not see where they went. [T. 1164].

D█████'s statement to the police and grand jury testimony, however, were drastically different from her trial testimony. She was interviewed by the police for one or two hours and never once told them that appellant was with them in the van that night. [T. 1166, 1167]. Instead, she only talked about Mr. Jefferson and Mr. Bell. [T. 1166]. She told the police that it was Mr. Jefferson and Mr. Bell who came running back to the van after the shot was fired and that they only dropped off Mr. Bell after the incident occurred. [T. 1166-67]. She never told the police anything about appellant being in the van and saying something about wanting to go get a gun. [T. 1176]. During her grand jury testimony, D█████ testified contrary to her statement to police by recounting that appellant was in the van along with Mr. Jefferson and Mr. Bell. [T. 1178].<sup>6</sup> She testified before the grand jury that she was "gone off drugs," that her "mind was in a whole different world," that "[t]he drugs affect your brain a whole lot differently," and that on that night she "was understanding without understanding." [T. 1169-70]. She also testified in front of the grand jury that she had spoken with Ms. Wright about the incident and had told Ms. Wright that she did not "even know what happened." [T. 1170-71]. She further testified in front of the grand jury that "[h]alf of everything [she] remember[ed] ha[d] been said to [her]." [T. 1170-71]. She told the grand jury that she did not know whether all three men came back to the van at the same time because of the

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<sup>6</sup> D█████ testified at trial that she did not mention appellant to the police because she was "kind of scared," although she did not say that she was scared of appellant. [T. 1177].

effects of the drugs she was on. [T. 1175]. She also told the grand jury that she remembered some arguing in the van, but she did not remember what was said. [T. 1175]. D [REDACTED] admitted that her trial testimony was the first time she said anything about appellant saying something about wanting to go get a gun while they were in the van. [T. 1176-77, 1179].

Given what the police had learned from Ms. Wright, Ms. Persaud, and D [REDACTED], during the afternoon on October 29, 2004, three members of the Minneapolis Police Department and one member of the U.S. Marshall's Office went to Mr. Bell's house in Minneapolis, which also was only a few blocks from the convenience store, to look for Mr. Bell and appellant. [T. 1198, 1216, 1333]. Mr. Bell's brother, Arthur Bell, answered the front door when the police arrived. [T. 1199, 1327]. The officers asked about appellant, and Mr. Bell told the officers that appellant as not in the house. [T. 1202]. Mr. Bell agreed to go with the officers to the police station for questioning. [T. 1285]. One of the officers thought Mr. Bell was too eager, so they stalled at the house to buy some time. [T. 1285].

While the officers were speaking to Mr. Bell, another officer was in the back of the Bell residence, and saw appellant exit the house on the second-story deck. [T. 1217, 1220]. According the officer, who was dressed in plain clothes, appellant looked at him and then returned inside the residence without either man saying a word to the other. [T. 1217, 1225]. Appellant then exited the rear of the residence on the first floor and the officers took him into custody. [T. 1203, 1218, 1286]. The police froze the scene to obtain a search warrant. [T. 1203]. When Mr. Bell heard this, he told the officers that he

did not want his door damaged, so he ran back inside to get a house key. [T. 1204]. One officer followed Mr. Bell inside and upstairs to his bedroom. [T. 1204]. He observed Mr. Bell grab a claw hammer and then go over to the bed where he “starting fumbling through something.” [T. 1204-05]. The officer then grabbed Mr. Bell and saw that Mr. Bell had a black hoodie in his hand with a box underneath. [T. 1205]. The officer then handcuffed Mr. Bell. [T. 1205]. Inside the box, the officer found four .357-caliber bullets. [T. 1205, 1289, 1296]. Mr. Bell and appellant then were arrested and taken to jail. [T. 1206, 1219].

Once the officers received the search warrant they searched the Bell residence. [T. 1206-07, 1219]. Inside Mr. Bell’s bedroom, the officers found a bulletproof vest in between the bed’s mattress and box spring, and an unloaded AK-47 rifle with a white homemade sling wrapped in a blue T-shirt under a floor vent. [T. 1207-08, 1211, 1289, 1299, 1367]. The officers also searched a laundry shoot in the upstairs hallway that was obstructed by a green blanket. [T. 1219-21]. The officers pulled out the blanket and found a banana ammunition clip with live rounds in the magazine and a loaded .45 caliber Ruger P90 semi-automatic pistol. [T. 1221, 1302]. Additionally, the officers found a piece of mail with Mr. Bell’s name on it, a dark-colored hooded sweatshirt, two pairs of dark-colored jeans, and one red-and-white bandana. [T. 1289].

The rifle, the pistol, the banana clip, the ammunition in the clip, the pistol’s magazine, and the ammunition in the magazine were all processed for fingerprints. [T. 1304, 1305-06]. The pistol, the magazine, and the ammunition from the magazine and the clip did not have any useable fingerprints. [T. 1305-07]. The rifle had one partial

print that was insufficient for comparison. [T. 1304-05]. The banana clip had two partial prints, one of which was sufficient for comparison, but no match was made to Mr. Jefferson, Mr. Bell, or appellant. [T. 1305, 1307-08]. Additionally, the police tested fired the rifle and compared the tested bullet and the discharged cartridge casing with the bullet and casing found at the scene. [T. 1317-18]. The police were not able to determine whether the cartridge casings matched, but the police were able to determine that the bullet found at the scene was fired from the rifle found in Mr. Bell's home. [T. 1318, 1320].

When Mr. Bell was interviewed by the police, he gave several different versions of the evening's events. [T. 1376, 1503-04]. Very early on during the interview, the police asked about appellant, but Mr. Bell told them that appellant was not there that night. [T. 1377]. The police continued to bring up appellant's name throughout the interview, and Mr. Bell kept telling them that appellant was not there. [T. 1378]. Toward the end of the interview, however, Mr. Bell told the police that he, Mr. Jefferson, and appellant were involved in the robbery. [T. 1387-88].

Mr. Bell has been hearing voices in his head since he was five years old, and he began hearing them again while he was in jail. [T. 801, 1369]. The voices were telling him that he would never get out of jail. [T. 1369, 1465]. He told medical personnel at the jail that he "didn't do it, but sometimes something takes over [him] to say, yeah, [he] did do it." [T. 1372]. Mr. Bell also experienced visual hallucinations wherein he saw his deceased grandmother and uncle. [T. 1371, 1465-66]. Medical personnel placed Mr. Bell on medication, but his symptoms continued, and the voices got worse as his trial

date approached. [T. 1371-73]. Mr. Bell entered a plea agreement with the state on April 7, 2005, right around the time he was scheduled to go to trial on the first-degree-felony-murder charge. [T. 1357, 1367, 1373]. The state allowed Mr. Bell to plead guilty to the lesser offense of second-degree intentional murder in exchange for his testimony. [T. 1357-58, 1362, 1367-68]. A psychiatrist who evaluated Mr. Bell during appellant's trial testified that Mr. Bell suffered from schizophrenia. [T. 1461, 1477]. The psychiatrist further testified that Mr. Bell told her that his inner voices did not instruct him to confess to the crime or turn in his co-defendants. [T. 1479]. The psychiatrist also testified that Mr. Bell's mental illness did not impact his competency because he was able to receive, recall, and relate information and that his illness did not impact his capacity to testify truthfully. [T. 1478-79, 1482-83]. The psychiatrist stated that his ability to testify truthfully, however, did not mean that he testified truthfully. [T. 1480].

Mr. Bell testified that appellant was at his house on the evening of October 21, 2004. [T. 1332-33]. According to Mr. Bell, another person named James Brown also was at his house talking about robbing places. [T. 1333-34]. Mr. Bell said that they all started talking about robbing the convenience store, although Mr. Bell also testified that there was no planning and that, instead, the robbery happened "spontaneously." [T. 1333, 1336]. Mr. Bell testified that the three of them talked about a "send off man" – someone who would do anything. [T. 1337]. According to Mr. Bell, they identified Mr. Jefferson as their send off man. [T. 1337]. Mr. Bell testified that he, Mr. Brown, and appellant went to Ms. Persaud's house around 10:30 p.m. to talk to Mr. Jefferson. [T. 1338-39]. Mr. Bell said that it was appellant who actually spoke to Mr. Jefferson inside

the house while Mr. Bell stood outside. [T. 1339-40]. After that, Mr. Jefferson, D [REDACTED], Ms. Wright, Mr. Davis, and appellant came outside and got into Ms. Persaud's van. [T. 1340]. When they got to 37<sup>th</sup> and Girard, Mr. Bell, Mr. Jefferson, and appellant exited the van, and Mr. Jefferson told Ms. Wright to wait for them. [T. 1343].

Mr. Bell testified that once they got to the alley by the store, Mr. Jefferson told him and appellant that they were going to rob it. [T. 1344, 1379]. Mr. Jefferson then pulled a rifle from his pant leg. [T. 1344]. According to Mr. Bell, Mr. Jefferson told him that he had to go into the store with him, and Mr. Jefferson told appellant to wait in the alley and act as a lookout. [T. 1344-45, 1382]. Mr. Jefferson and Mr. Bell pulled up their hoods and covered their faces. [T. 1345-46]. Mr. Bell did not see appellant with a pistol, and he testified that Mr. Jefferson gave him the rifle and forced him to the store. [T. 1346-47, 1379, 1382]. Mr. Bell was afraid of Mr. Jefferson because "[w]hoever had the gun had the power" so he did not want to risk refusing to comply with Mr. Jefferson. [T. 1380-81]. Mr. Jefferson's attitude was that "[he] was going to get [his] money [his] way or nobody gets money." [T. 1383]. Before going into the store, Mr. Jefferson told Mr. Bell, "We'll get money my way; if I have to lay somebody down to get it, that's what I'm going to do." [T. 1383].

Mr. Bell testified that, once inside, Mr. Jefferson said, "Give me the money." [T. 1347]. Approximately two seconds later, Mr. Jefferson took the rifle from Mr. Bell and shot Mr. E [REDACTED]. [T. 1347]. After Mr. Jefferson shot Mr. E [REDACTED], Mr. Bell ran out of the store and back to where Ms. Wright had dropped them off. [T. 1347]. Along the way, Mr. Bell ditched the rifle under a tree. [T. 1348]. When Mr. Jefferson

and Mr. Bell got back into the van, appellant already was inside. [T. 1348, 1382]. According to Mr. Bell, a lot of arguing then transpired. Mr. Jefferson and Mr. Bell were arguing with appellant because he had not acted as the lookout like Mr. Jefferson had ordered. [T. 1349, 1382]. Mr. Bell argued with Mr. Jefferson and asked him why he shot Mr. E [REDACTED]. [T. 1349]. Mr. Jefferson explained that he shot Mr. E [REDACTED] because he was reaching for something. [T. 1349-50]. And, Mr. Jefferson was arguing with Ms. Wright and D [REDACTED] regarding money. [T. 1350]. Mr. Bell testified that when Ms. Wright dropped off Mr. Bell and appellant, the two went back to Mr. Bell's house. [T. 1350]. Mr. Jefferson called Mr. Bell, and then Mr. Bell went back to retrieve the rifle because Mr. Jefferson was talking about shooting people, and Mr. Bell wanted to prevent him from doing so. [T. 1350-51]. According to Mr. Bell, when he returned to his house with the rifle, he gave it to appellant because appellant knew someone who could get rid of it. [T. 1351].

While appellant was in jail, he was housed with another inmate named Daniel Mack from February 24, 2005, until March 29, 2005. [T. 1407-08, 1409, 1428, 1550]. Mr. Mack was in jail on second-degree drug possession charges and facing a 98-month prison sentence if convicted. [T. 1407, 1420]. Mr. Mack was charged with the crime after the police found crack cocaine on him, although he lied to the police and told them that it was not his. [T. 1427]. Additionally, Mr. Mack has felony convictions for second-degree assault, third-degree assault, and second-degree drug possession. [T. 1407]. According to Mr. Mack, he and appellant initially discussed people they knew in common. [T. 1409-10]. For example, they both knew a person who, at one point in time,

had shot appellant. [T. 1447]. Appellant also showed Mr. Mack a tattoo of his when they were discussing another person they knew in common. [T. 1447-48]. Mr. Mack stated that appellant eventually became more comfortable with him and began talking to him about why he was in jail. [T. 1409-10, 1414]. Mr. Mack testified that appellant asked him legal questions like whether a jury could convict based on the testimony of co-defendants. [T. 1412-13]. Mr. Mack further testified that appellant was able to communicate with Mr. Jefferson while both were in jail, and that Mr. Jefferson warned appellant to keep his mouth shut. [T. 1413].

According to Mr. Mack, appellant told him that it was his plan to rob the store and that appellant initially had chosen Mr. Kilgore rather than Mr. Bell to help him. [T. 1415]. Mr. Mack testified that appellant approached Mr. Jefferson about the robbery because Mr. Jefferson owed appellant a favor. [T. 1452]. Mr. Mack further testified appellant told him Mr. Kilgore backed out so he was forced to use Mr. Bell. [T. 1415]. Mr. Mack said appellant told him he should not have chosen Mr. Bell because Mr. Bell was a weak link. [T. 1416]. He also told Mr. Mack that Mr. Bell “was like his cousin,” but Mr. Mack did not know if they actually were cousins. [T. 1448]. According to Mr. Mack, appellant said that he, Mr. Jefferson, and Mr. Bell got a ride from a female to the store, and appellant stayed outside in the alley acting as a lookout while Mr. Jefferson and Mr. Bell went inside and robbed the store with an AK-47 that Mr. Bell had. [T. 1414, 1416]. Mr. Mack further testified that appellant told him he was supposed to fire a warning shot if anyone came near the store. [T. 1415]. Mr. Mack also testified that appellant said Mr. Jefferson and Mr. Bell argued when everyone got back into the van

because Mr. Jefferson believed Mr. Bell had frozen up while in the store. [T. 1418]. According to Mr. Mack, he and appellant were watching a television show one day in which a P89 Ruger pistol was depicted. [T. 1411-12]. Mr. Mack testified that appellant told him that the P89 Ruger was like the gun he had on the day of the incident. [T. 1412]. Mr. Mack further stated that appellant told him he had smoked marijuana and taken ecstasy on the night of the incident. [T. 1417].

Mr. Mack also said that appellant spoke with him about the circumstances surrounding his arrest. [T. 1416]. According to Mr. Mack, appellant said he was at Mr. Bell's house on the back porch when he saw the police arrive so he went back inside and got rid of the gun he was holding by throwing it either in a laundry basket or down a laundry shoot. [T. 1416-17]. Mr. Mack further testified that appellant told him the rifle was in Mr. Bell's bedroom under a floorboard and that a vest and some ammunition were in there as well. [T. 1417].

In March 2005, appellant was transferred and Mr. Mack was then housed with Mr. Jefferson from April 6, 2005, until April 25, 2005. [T. 1418, 1429, 1550]. At that point, Mr. Mack neither spoke with his lawyer nor contacted the authorities about what he purportedly learned from appellant. [T. 1430]. And, almost immediately after Mr. Jefferson arrived in jail, Mr. Mack had conversations with him about the case as well. [T. 1429-30]. Mr. Mack agreed that Mr. Jefferson liked to talk about the case and even talked about the case in front of other people. [T. 1430]. Mr. Mack said Mr. Jefferson told him that he had gone to the store earlier that day and cased it, noting the surveillance cameras. [T. 1433]. Mr. Mack further said that Mr. Jefferson told him that Mr. Bell

initially had the AK-47, that appellant also had a gun, that Mr. Jefferson and Mr. Bell went inside to rob the store, and that when Mr. E [REDACTED] fumbled for something, Mr. Jefferson told Mr. Bell to get him. [T. 1435-36]. When Mr. Bell hesitated, Mr. Jefferson took the rifle from him and shot Mr. E [REDACTED] and said that the top of his head exploded. [T. 1436, 1448].

According to Mr. Mack, Mr. Jefferson told him that he tried to take a gun from appellant when they all were back in the van because he wanted to shoot Mr. Bell for freezing up inside the store. [T. 1449]. Mr. Mack testified that appellant prevented Mr. Jefferson from doing so. [T. 1449]. Mr. Mack stated that Mr. Jefferson told him he took a bus to Arkansas after the incident. [T. 1449]. Finally, Mr. Mack testified that he was in jail with Mr. Jefferson when Mr. Jefferson learned that Mr. Bell would be testifying against him. [T. 1450]. According to Mr. Mack, Mr. Jefferson said, "It's time to call the exterminator." [T. 1450]. Mr. Mack also overheard some phone calls Mr. Jefferson placed in which he discussed "some rats and roaches on this case." [T. 1450].

Mr. Mack came forward and was interviewed by the police on April 19, 2005, although that interview was not recorded. [T. 1548]. He eventually called the prosecutor directly in May 2005. [T. 1418]. Mr. Mack gave a statement on June 3, 2005, and then four days later entered into a plea agreement with the state in exchange for his testimony. [T. 1424]. Mr. Mack's reason for coming forward was that he wanted to get out of jail earlier to help take care of his youngest son who has sickle cell anemia. [T. 1419-20]. His son had been to the doctor several times and recently was in the hospital, which was putting quite a bit of stress on his son's mother and made Mr. Mack feel like he was not

being a very good father. [T. 1423-24]. In exchange for his testimony, Mr. Mack received a plea deal in which the 98-month sentence he was facing on his current drug charge would be stayed, he would serve one year in jail, and he would be placed on probation for five years. [T. 1420-22]. In other words, he would be home to his family much sooner than if he was required to serve the 98-month prison term. [T. 1426].

Mr. Mack agreed that appellant seemed to be familiar with the evidence the state had or did not have against him. [T. 1428]. Mr. Mack also agreed that it was not unusual for inmates to have paperwork regarding their case. [T. 1437]. The inmates were allowed to keep their paperwork in their cells, and they could bring it out of their cells during break times. [T. 1438]. Further, the doors to the cells were unlocked, including when the inmates were gathered in the common areas. [T. 1438-39]. Mr. Mack explained that some inmates even send their paperwork out “[b]ecause of things like this, like they wouldn’t want nobody to get their paperwork and read their paperwork” and then testify against that person. [T. 1439].

After hearing this evidence, the jury convicted appellant of aiding and abetting first-degree felony murder. This appeal follows.

ARGUMENT #1

TRIAL JUDGE DENIED APPELLANT'S RIGHT TO A FAIR TRIAL WHEN HE ALLOWED THE PROSECUTOR TO QUESTION STATE'S WITNESS DANIEL MACK ABOUT APPELLANT BEING SHOT WHICH WAS HIGHLY PREJUDICE OR RELEVANT TO THE CASE AND HAD NO PROBATIVE VALUE. (STATE V. HARRIS ~~521~~ N.W.2D ~~348~~ MINN 1995

521 348

ADMITTING APPELLANT BEING SHOT ONLY SHOWED THE JURY THAT APPELLANT WAS BAD GUY THAT WAS INVOLVED IN OTHER CRIMINAL ACTIVITIES OR GANG ACTIVITIES THAT WOULD GET APPELLANT SHOT.

STATE V HARRIS IS SIMILAR TO APPELLANT'S CASE WHERE INADMISSABLE EVIDENCE WAS ADMITTED THAT HAD NO PROBATIVE VALUE AND ONLY SUGGESTED TO THE JURY THAT HARRIS WAS A BAD MAN AND THE PERFECT CANDIDATE FOR PUNISHMENT

APPELLANT WAS NOT ON TRIAL FOR BEING SHOT AND ADMITTING THIS INTO EVIDENCE WAS HIGHLY PREJUDICE AND HAD NO PROBATIVE VALUE.

IT WAS ERROR FOR TRIAL COURT TO ADMIT APPELLANT BEING SHOT AND I RESPECTFULLY ASK THE SUPREME COURT TO REVERSE APPELLANT CONVICTION FOR FIRST DEGREE MURDER

FREDRICK JACKSON

ARGUMENT#2

THE PROSECUTOR COMMITTED SERIOUS MISCONDUCT BY INTENTIONALLY BRING IN INADMISSIBLE OTHER CRIMES OR BAD ACT'S DURING TRIAL AFTER THE JUDGE MADE A RULEING THAT THE PROSECUTOR COULD NOT USE OTHER CRIME'S OR BAD ACT'S AS EVIDENCE

THE JURY COULD HAVE USED THE INADMISSIBLE EVIDENCE AND CONVICTED APPELLANT. THEY COULD HAVE CAME TO THE CONCLUSION THAT THE REASON JEFFERSON ALLEGELLY OWED APPELLANT A FAVOR IS EITHER BECAUSE APPELLANT COMMITTED A SERIOUS CRIME FOR JEFFERSON OR WITH JEFFERSON INORDER FOR JEFFERSON TO ROB A STORE FOR APPELLANT, WITH THIS EVIDENCE BEING PRESENTED BOTH APPELLANT BEING SHOT AND JEFFERSON ALLEGELLY OWEING APPELLANT A FAVOR IS SUGGESTING TO THE JURY THAT APPELLANT IS A BAD GUY THAT DID SOMETHING WRONG INORDER TO GET ~~AND~~ AND HAVE COMMITTED OTHER CRIMES WITH JEFFERSON IN THE PAST. IT WAS AN IMPROPER ATTACK ON APPELLANT'S CHARACTER AND WAS HIGHLY PREJUDICE AND A WASTE OF TIME. IF THE PROSECUTOR WOULD HAVE GAVE A SPREIGL NOTICE WHICH IS REQUIRED APPELLANT'S ATTORNEY COULD HAVE QUESTION WITNESS AND BEEN PREPARED TO REBUTE THAT JEFFERSON SUPPOSENLY OWED APPELLANT A FAVOR ~~BECAUSE~~ AND THAT'S WHY HE ROBBED THE STORE. IT WASN'T CLEAR-N-CONVINCING DANIEL MACK SAID 2 DIFFERENT THINGS UNDER OATH AT (1415 LINE 20) PROSECUTOR ASKED DID APPELLANT INDICATE TO YOU WETHER HE CHOSE JEFFERSON HE SAID NO. FROM (PG. 1450-1452 THE PROSECUTOR CONTINUED TO ASK DANIEL MACK DID APPELLANT ~~DID APPELLANT~~ TELL YOU HE APPROACHED JEFFERSON TO ROB THE STORE BECAUSE JEFFERSON OWED HIM A FAVOR HE SAID YEAH. BELL TESTIFIED THAT JAMES BROWN CHOSE JEFFERSON EVIDENCE WASN'T CLEAR-N-CONVINCING THAT THE REASON APPELLANT ALLEGELLY APPROACHED JEFFERSON BECAUSE JEFFERSON OWED APPELLANT A FAVOR

RULE 404B STATE'S THAT YOU HAVE TO GIVE A SPREIL NOTICE IT ALSO STATE'S THAT EVIDENCE HAVE TO BE CLEAR-N-CONVINCING INORDER TO BE ADMITTED.

(RULE 403 404B)

THE PROSECUTOR ASKED DANIEL MACK NUMEROUS OF TIME'S OVER DEFENSE OBJECTION DID APPELLANT TELL YOU HE APPROACHED JEFFERSON TO ROB THE STORE BECAUSE JEFFERSON OWED HIM A FAVOR. STATE V HARRIS 521 NW 2D 348

ARGUMENT #3

THE DISTRICT JUDGE COMMITTED MISCONDUCT WHEN HE ALLOWED THE PROSECUTOR TO QUESTION STATE'S WITNESS ABOUT APPELLANT HAVING A TATTOO WHICH WAS HIGHLY PREJUDICE.

THE STATEMENT WAS PREJUDICE AND ONLY SUGGESTED TO THE JURY THAT APPELLANT WAS IN GANG THE PROSECUTOR ASKED DANIEL MACK IN CONNECTION WHEN YOU AND JACKSON WAS TALKING ABOUT A GUY YOU BOTH KNEW DID HE THEN SHOW YOU A TATTOO. THE STATEMENT WAS HIGHLY PREJUDICE AND IT WASN'T RELEVANT. (RULE 403)

FREDRICK JACKSON

ARGUMENT#4

I 'AM RAISING ALL INEFFECTIVE ASSISTANCE ISSUE IN MY SUPPLEMENTAL BRIEF TO PRESERVE FOR MY POST CONVICTION PROCEEDINGS.

MY ATTORNEY FAILED TO CONTACT WITNESSES THAT COULD HAVE HELP ME. WITNESS ISACC CHILDRESS WAS UP STAIRS AT THE PERSAUD'S HOUSE GETTING HIS HAIR DONE THE NIGHT THIS INCIDENT HAPPEN. I WAS BEING ACCUSED OF GOING UPSTAIRS TO TALK TO JEFFERSON BY KIMBERLY WRIGHT. ISACC CHILDRESS WAS QUESTIONED BY DETECTIVE'S AND HE GAVE A STATEMENT THAT HE WAS UPSTAIRS AND HE NEVER SEEN ME COME UP THERE. NEITHER DID NAYANA, D [REDACTED] LAMONT OR ANYBODY IN THE PERSAUD'S HOUSE SEEN ME INSIDE THAT NIGHT.

WITNESS MS. LONGHOFF THAT WAS ALSO INTERVIEWED THE NIGHT OF THE MURDER WAS PRESENT OUTSIDE THE STORE WHEN THE MURDER TOOK PLACE, SHE STATED, AFTER THE SHOT WAS FIRED SHE SEEN A BLACK MALE RUN NORTH BOUND WITH A RIFLE SHE THEN WENT TO THE ALLEY AND DIDN'T SEE NO ONE IN THE ALLEY WHEN THE SHOT WAS FIRED AND MY LAWYER FAILED TO DO A PROPER INVESTIGATION. IF HE WOULD HAVE QUESTIONED THESE WITNESSES AND CALLED THEM TO TESTIFY THE OUTCOME OF MY TRIAL WOULD HAVE BEEN DIFFERENT. THE NIGHT OF THE MURDER BELL / TESTIFIED IN TRIAL I WAS WALKING AROUND WITH HIM AND WE SEEN RANARLDO ROLLINS (A COUSIN) RANARLDO ROLLINS CALLED MY LAWYER AND LEFT A MESSAGE THAT HE WOULD TESTIFY BUT MY LAWYER NEVER CALLED HIM TO TESTIFY.

THERE WERE NUMEROUS OF PEOPLE INSIDE THE PERSAUD'S HOUSE THE NIGHT OF THE MURDER, MY LAWYER NEVER ATTEMPTED TO INVESTIGATE WHAT THEY KNEW. WINFRED DAVIS WAS ON THE WITNESS LIST HE WAS PRESENT THE NIGHT OF THE MURDER, MY LAWYER NEVER ATTEMPTED TO TALK TO HIM. BELL TESTIFIED THAT HIS FRIEND JAMES BROWN WAS PRESENT AT HIS HOUSE AND JAMES BROWN TALKED ABOUT ROBBING PLACES, MY LAWYER NEVER ATTEMPTED TO INVESTIGATE THIS ISSUE. THERE WERE 36 VIDEO TAPES IN THE STORE NEITHER DID MY LAWYER OR THE OFFICER'S VIEW THOSE TAPES TO SEE IF I CASED THE STORE WITH MR. BELL. BELL TESTIFIED THAT I WALKED NEAR THE STORE WITH HIM, HE TOLD THE POLICE I CASED THE STORE WITH HIM. MY LAWYER MADE NO EFFORT TO INVESTIGATE THIS ISSUE. THE STATE'S THEORY OF THE CASE WAS THAT I PLANNED AND CASED THE STORE WITH BELL. THE JURY COULD HAVE BELIEVED THAT, WITHOUT THE ACCOMPLICE INSTRUCTION BEING READ AT MY TRIAL.

THERE IS A GREAT POSSIBILITY THAT THE JURY BELIEVED I CASED THE STORE WITH BELL. MY ATTORNEY ALSO FAILED TO ASK THE COURT TO GIVE THE JURY AN ACCOMPLICE INSTRUCTION TELLING THE JURY THAT BELL WAS AN ACCOMPLICE. BY MY ATTORNEY FAILING TO CONTACT WITNESSES THAT COULD HAVE TESTIFIED THAT BELL WAS LYING AND

THER WAS NOBODY IN THE ALLEY WHEN SHOT WAS FIRED, THAT I NEVER  
WENT UP STAIRS IN THE PERSAUD'S HOUSE THE JURY VERDICT WOULD  
HAVE BEEN DIFFERENT

FREDRICK JACKSON

CONCLUSION

FOR THE ABOVE-STATED REASON, APPELLANT RESPECTFULLY REQUESTS THIS COURT TO REVERSE HIS CONVICTION FOR FIRST-DEGREE FELONY MURDA.

DATED: 5-5-06

RESPECTFULLY SUBMITTED

FREDRICK JACKSON

[REDACTED]  
[REDACTED]

*Fredrick Jackson*

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