IN THE SUPREME COURT OF FLORIDA

MORRIS BROWN,	:	
Appellant,	:	
v.	:	CASE NO. 68,690
STATE OF FLORIDA,	:	
Appellee.	:	
_____	:	

ON APPEAL FROM THE CIRCUIT COURT
OF THE FOURTEENTH JUDICIAL CIRCUIT
IN AND FOR JACKSON COUNTY, FLORIDA.

INITIAL BRIEF OF APPELLANT

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INITIAL BRIEF OF APPELLANT

I PRELIMINARY STATEMENT

Morris Brown is the appellant in this capital case. The record on appeal consists of thirty-four volumes and references to it will be indicated by the letter "R".

II STATEMENT OF THE CASE

An indictment filed in the circuit court for Jackson County on April 19, 1985, charged Edward Cotton and Morris Brown with first degree murder, attempted first degree murder, robbery with a firearm, robbery, and escape with a firearm (R.1-3). The case was assigned to Judge Warren Edwards, a retired county judge, who had been assigned as a temporary judge for Jackson County by this court (R.416), and who had also been assigned by this court and the chief judge of the 14th Judicial Circuit to try this specific case (R.59, 417).

Cotton and Brown pled not guilty to these offenses (R.15); subsequently, the court severed Brown's case from Cotton's case based upon Bruton v. United States, 391 U.S. 123 (1968) (R.207).

Cotton proceeded to trial and a jury found him guilty as charged on all counts (R.320-321). The jury also recommended that the court sentence Cotton to serve a sentence of life in prison for committing the murder it had found him guilty of committing (R.339). The trial court, after Brown's trial was completed, sentenced him to life in prison (R.2697).

Brown filed several pre-trial motions. Specifically, for purposes of this appeal, he filed the following motions:

1. Motion for a change of venue (R.72). This

motion was granted in part (R.94)[1/] in that the trial was moved to Bay County rather than to a county where the proportion of blacks to whites was similar to that of Jackson County.
2. Motion for Recusal (R.447). Denied (R.454).
3. Motion to challenge the jury panel selected in Bay County as not being of the same or similar racial makeup as that of Jackson County (R.460). Denied (R.2973).

Brown proceeded to trial before the honorable Judge Edwards in Bay County. After hearing the evidence, arguments, and the law, the jury found Brown guilty as charged of first degree murder, robbery, robbery with a firearm, and escape with a firearm. (R.541-42). The jury, however, found Brown guilty of aggravated assault with a firearm, a lesser included offense of the charged offense of attempted murder (R.451).

Brown proceeded to the penalty phase of the trial, and the state presented evidence of Brown's prior conviction for strong armed robbery (R.6519-6528). The state also presented evidence of the effect that this murder (of a police officer) had had upon the sheriff's office for Jackson County (R.6505). In mitigation, Brown presented unrebutted evidence that he was under the influence of a significant emotional disturbance, that his ability to conform his conduct to the requirements of the law were substantially impaired (R.6567), and that his mental and emotional age was that of a child (R.6560) and in some instances

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[1/] The state filed a motion for alternative venue relief (R.228) which is what the court granted.

that of a pre-school child (R.6549-6560).

The jury, after hearing this evidence, arguments concerning it, and the law controlling it, recommended that the court sentenced Brown to life in prison without the possibility of parole for 25 years (R.543).

The court, however, rejected that recommendation and sentenced Brown to death. In imposing this sentence, it found in aggravation that:

> 1. Brown had previously been convicted of a capital felony or of a felony involving the use or threat of violence to a person (R.720).
> 2. The murder was committed during the course of a robbery and robbery with a firearm.
> 3. The purpose of the murder was to avoid lawful arrest or to hinder or disrupt the lawful exercise of a governmental function.
> 4. The murder was especially heinous, atrocious, and cruel (R.720-23).

In mitigation, the court found only Brown's age of 18 to be a mitigating factor (R.719).

Regarding the other offenses, the court departed from the recommended guideline sentence and sentenced Brown as follows:

> a. As to count II (aggravated assault with a firearm), ten years concurrent with counts I, III, and IV.
> b. As to count III (Robbery with a firearm), life concurrent with counts I, II, IV.
> c. As to count IV (robbery), thirty years concurrent with counts I< II< III.
> d. As to count V (escape), life, consecutive with counts I, II, III, IV (R.724-29).

In justifying this departure from the guideline sentence, the court said:

> 1. The premeditated murder (capital) was not scored in determining the guideline sentence.

2. Brown had an extensive, unscored juvenile record.
3. Brown had a pattern of committing violent crimes.
4. Brown was an habitual offender. (R.731).

This appeal follows.

III STATEMENT OF THE FACTS

In the early evening hours of April 4, 1985, 19 year-old Edward Cotton was cruising about Jackson County in his father's car, with two of his 14 year-old girlfriends (R 4850). He had about $140 that he had gotten illegally (R 4946-4947), and he carried a .22 caliber pistol (R 4851). After a while, he dropped the girls off at their home, and later picked up 18 year-old Morris Brown (R 4851). They rode first to Marianna, then to Greenwood, and finally stopped across the street from a food store in Malone (R 4854).

Brown went inside the store, bought some food, and returned to the car (R 4852). He told Cotton only one person, a Mrs. Dekle, was working there (R 4854). He also put on Cotton's shirt, and Cotton gave him the gun he carried (R 4854). Cotton asked what he was to do (R 4855), and Brown told him his job was to take the money out of the cash register (R 4855).

The pair went inside the store wearing masks (R 4960), and while Cotton got the money from the cash register and tried to force open the safe, Brown held Cotton's gun to Mrs. Dekle's head (R 5017).

Cotton looked to the front of the store and saw someone pull up in a car (R 4857). Russell Conrad entered the store, but Mrs. Dekle told him to run, and he did (R 5018). Brown ran outside the store, told Conrad to return, and fired two shots when he did not (R 5081-5082).

Cotton meanwhile had fled the store with the money from the cash register and Mrs. Dekle's purse (R 4856). Brown joined him and the two drove away. As they left, Cotton was going through Mrs. Dekle's purse,throwing away items he had taken out of it (R 4860).

Some of what he threw out the window landed in the back of his truck (R 4860).

They passed Officer Bevis of the Jackson County Sheriff's office at an intersection, and having been alerted to the robbery, Bevis pursued Cotton's car (R 5134). Cotton said that Brown said they should not stop, but Cotton decided to do so (R 4861).

Bevis approached the car and asked to look inside of it, to which Cotton agreed (R 4862). Bevis found a mask and Mrs. Dekle's credit card on the seat; underneath the seat, he found the gun (R 4862-4863). Brown, by now, was outside of the car and Bevis pointed his gun at him and said that if Brown ran he would blow his head off (R 4863).

Bevis then had both men put their hands on his car, and as they stood there, he called on his radio. As he was doing this, Cotton said Brown moved to his side and said, "Let's jump him." (R 4865). Cotton said he did not want to do so (R 4865), but as Bevis tried to put his hand cuffs on Cotton, Brown jumped Bevis and the two men struggled in the road (R 4866). They fell down with Brown on top, and Cotton said he tried to break up the fight (R 4866). He evidently was unsuccessful as he returned to the middle of the road where he watched the struggle (R 4866).

Cotton heard a shot then he heard Bevis say, "please don't shoot." He then heard two more shots (R 4866).

Cotton and Brown fled in Cotton's truck, and soon another police car gave chase (R 4869). At some point, Cotton stopped his car and both fled into some nearby woods (R 4869). By this time, however, Cotton had had enough, and he returned to the road and

surrendered to the police (R 4871).

Several hours later, and after an extensive hunt by the police using dogs and a helicopter (R 5296), Brown was captured (R 5296).

Bevis had been shot three times, once in the arm, and twice in the head (R 5899). Either shot to the head would have caused instant death (R 5918-5919).

IV SUMMARY OF ARGUMENT

Morris Brown was sentenced to death for the first degree murder of a policeman from Jackson County. Judge Warren Edwards presided over this trial, and he was a retired county judge who had been specially appointed to try this case. As such, Judge Edwards did not have the requisite experience in sentencing persons convicted of serious felonies in order to qualify as a judge competent to sentence Brown to death. That is, Florida's sentencing scheme, with its judge sentencing, anticipates that the sentencer will have experience in sentencing persons who have committed serious felonies. Neither Judge Edward's one year as a county judge or his nine years as a judge in the defunct Criminal Court of Record qualified him to sentence Brown to death.

The court granted a state motion to change the venue in this case from Jackson county to Bay county. The problem is that Bay county has a total black population eligible for jury duty of only 8% blacks. In Jackson county, on the other hand,

22% of the total population eligible for jury service is black. This significant decrease in the number of blacks eligible to serve on the jury denied Brown his sixth amendment right to a jury composed of a fair-cross section of the community.

The jury in this case recommended that Brown be sentenced to life in prison without the possibility of parole for twenty-five years. The court, however, sentenced Brown to death without examining the record for any reasonable basis upon which the jury could have recommended life. Had it done so it would have found several such bases.

In sentencing Brown to death the court said that he committed this murder in an especially heinous, atrocious, and cruel manner. This

murder, however, involved a simple shot to the head, and such killings traditionally have not been classified as especially heinous, atrocious, and cruel.

The facts in this case were not particularly strong suggesting Brown's guilt, and the trial court made several errors, the accumulation of which, amount to reversible error in the interests of justice.

V ARGUMENT

ISSUE I

THE COURT ERRED IN DENYING BROWN'S MOTION TO RECUSE (A RETIRED COUNTY JUDGE AND FORMER JUDGE OF COURT OF CRIMINAL RECORD) AS JUDGE EDWARDS LACKED SUFFICIENT EXPERIENCE IN SENTENCING PERSONS CONVICTED OF SERIOUS FELONIES TO HAVE SENTENCED BROWN TO DEATH.

Judge Warren Edwards presided over this case and sentenced Brown to Death. From 1963 to 1972 he had served as a judge of a Criminal Court of Record for Orange County, but he had resigned from the bench in 1972 when a Constitutional revsion abolished the Criminal Courts of Record. In 1981, Governor Graham appointed Judge Edwards to fill the remaining year of the term of County Judge Henderson, who had died while in office. [1]

Judge Edwards served that year and retired from the bench in January 1983 (R 448, 2762). By special orders issued on January 2, 1986, this court authorized Judge Edwards to hear cases generally and this case in particular (R 416, 417). The problem posed by this issue focuses upon Judge Edwards' experience in capital sentencing and the requirement found in Proffitt v. Florida, 428 U.S.242, 96 S.Ct.2960, 49 L.Ed.2d 913 (1976) and Dixon v. State, 283 So.2d 1,8 (Fla.1972), that sentencing judges in capital cases be experienced in sentencing. As a county judge for one year and a judge in a Criminal Court of Record 14 years earlier, Judge Edwards lacked the requisite experience to sentence Brown to death.

Because death is different in its finality and irreversibility, this

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[1] See Appendix 1. The press relese was obtained from the personnel office of the State Courts Administrator.

court and the United States Supreme Court have required the state to meet unusually high procedural standard before a sentence of death can be imposed. In State v. Dixon, 283 So.2d 1 (Fla.1972), this court discussed each of the several stages that a defendant must successfully pass before he can be executed. These stages were created especially for death cases, and non-capital cases normally do not demand such high standards of due process.

For example, the sentencing process itself is a separate and distinct part of the trial, divorced from the quilt determination phase of the trial. Additionally, an exclusive and specific list of aggravating factors, peculiar to capital cases, is provided from which the sentencing judge must determine if death is the appropriate sentence. The judge's sentence moreover must be in writing which until the advent of the sentencing guidelines, was a unique sentencing requirement. Also unique to the capital sentencing is the provision for an automatic appeal to this court, and this court's proportionality review of the sentence to insure that death is the appropriate sentence for a particular case. Dixon, supra at 8, 10.

Likewise, the U.S. Supreme Court in Proffitt v. Florida, supra, noted the procedural safeguards that Florida had incorporated into its sentencing process to insure the trial court imposed an appropriate sentence. Proffitt specifically attacked the judge's imposition as opposed to the jury's imposition) of a death sentence as violative of the eighth amendment. The U.S. Supreme Court rejected that argument, however, noting that:

> [I]t would appear that judicial sentencing should lead, if anything, to even greater consistency in the imposition at the trial court level of capital punishment, since a trial judge is more experienced in sentencing than a jury, and therefore is better able to impose sentences similar to those imposed sentences similar to those imposed in analogous cases.

Id at 252 footnote omitted. (emphasis supplied.)

This position adopted the rationale of the American Bar Association Project on Standards for Criminal Justice that jury sentencing tended to be erratic, unpredictable, and inconsistent. Judicial sentencing, on the other hand, generally was more consistent because sentencing judges typically had broad and extensive experience in criminal sentencing and could, according to that experience, impose an appropriate sentence.

Similarly, this court in Dixon emphasized the pivotal role of the sentencing judge in the death sentencing process. The great benefit of judge sentencing is the experience the trial judge draws upon in determining the appropriate sentence:

> The third step added to the process of prosecution for capital crimes is that the trial judge actually determines the sentence to be imposed--guided by, but not bound by, the findings of the jury. To a layman, no capital crime might appear to be less than heinous, but a trial judge with experience in the facts of criminality possesses the requisite knowledge to balance the facts of the case against the standard criminal activity which can only be developed by involvement with the trials of numerous defendants. Thus the inflamed emotions of jurors can no longer sentence a man to die; the sentence is viewed in the light of judicial experience.

Dixson at 8. (emphasis supplied.)

Thus, experience and presumably extensive experience in

sentencing persons convicted of committing serious felonies qualifies a circuit court judge to sentence a person convicted of a capital murder.

In this case, the only experience Judge Edwards had in criminal sentencing was one years service as a county judge and nine years experience as a judge in the now defunct Criminal Court of Record. As a county judge he did not, of course, have jurisdiction over felony cases, while his tenure as a judge in a Criminal Court of Record ended in 1972, 14 years before Brown was tried. As a matter of practice, judges of Criminal Courts of Record undoubtedly sentenced felons. Significantly, however, as a matter of state Constitutional Law, Judge Edwards had no jurisdiction to hear capital cases. Art V section 9(2) Florida Constitution (1968) This was a deficiency particularly glaring in this case involving as it did a capital sentence.

Moreover, even if Judge Edwards had had the jurisdiction to try capital crimes, he would have done so under the old death penalty statute which had no judicial sentencing. As matters stand, however, it had been at least fourteen years since he had done any criminal sentencing. But what this court and the U. S. Supreme Court meant by sentencing experience is that day to day exposure to criminal sentencing in serious felonies that will provide the background or foundation upon which a trial judge can with confidence determine if a particular defendant should live or die.

Unlike what this court said concerning Judge Turner in Card v. State, Case No. 68,862 and 68,846 (Fla. October 9, 1986), Brown is not saying that but for some procedural defect Judge Edwards would have been qualified to sit in this case. Judge Edwards was not an experienced

judge regarding the sentencing phase of this case. Regardless of this court's authority under Article V of the State Constitution regarding the appointment of retired judges to serve as temporary circuit judges, Brown is claiming that in matters of capital sentencing,a judge, whether he is a circuit judge, temporary circuit judge, or a retired county judge serving as a temporary circuit judge, must have sentencing experience in serious felonies before he can impose a sentence of death.

There is, of course a first time for everything, including a first time for a judge to determine whether a sentence of death should be imposed. That, however, is not the issue. Any judge whether he is a new circuit judge whose first case is a capital case or a veteran county judge designated to sit as a temporary circuit judge should not try a capital case. They simply do not have the broad judicial sentencing experience with serious felonies. What makes this case particularly compelling is Judge Edward's very limited experience in sentencing at all and the remoteness in time that he last sentenced anyone for committing a serious felony. In this case, Judge Edwards simply lacked the experience required by this court and the U. S. Supreme Court to properly determine whether Brown should live or die. Accordingly, the court should reverse the court's imposition of death and remand for a new sentencing hearing.

ISSUE II

THE COURT ERRED IN GRANTING THE STATE'S MOTION FOR ALTERNATIVE VENUE RELIEF AND MOVING BROWN'S TRIAL TO BAY COUNTY INSTEAD OF ANOTHER COUNTY WHERE THE RATIO OF BLACKS TO WHITES WAS SIMILAR TO THAT IN JACKSON COUNTY.

It was obvious to both counsel for Brown and the prosecutors in this case that Brown could not get a fair trial in Jackson county (R 72, 228). This was due to the extensive publicity that this case had received in this small, rural county (R 886-892).

Brown moved for a change of venue (R 72) and specifically asked that his case be moved to another county where the same ratio of blacks to whites existed as that in Jackson County (R 890). The state countered this motion with a motion of its own, and it requested that venue be changed to Bay County, but once the jury had been selected the trial be held in Jackson County (R 228). The court, after hearing extensive testimony and argument (R 2804-2973), granted the state's motion to the extent that it moved Brown's trial to Bay County (R 94).

The racial makeup of Bay County, however, was significantly different than that of Jackson County. Specifically, approximately 22% of those persons in Jackson County eligible for jury duty were black (R 2784). In Bay County only eight percent of the potentially eligible jurors were black (R 2784).

In this case, the Clerk of Court for Bay County mailed 250 summons for jury duty to person's eligible for that service (R 2898).

Of those 250, only 103 (R 2902-2904) actually showed up for the trial,[1/] and of those 103, only eight were black (R 2904). If Brown had been tried in Jackson County, 21 of the 103 prospective jurors would have been black. As demonstrated at the hearing, this discrepancy between the number of blacks that should have shown up and the actual number that did was more than a three standard deviation[2/] difference. Said another way, if this case had been tried in Jackson County the chances of having only eight prospective black jurors show up for trial out of a total of 103 prospective jurors would have been less than one chance in one hundred (R 2867).

The problem here is that such a significant discrepancy, see, Castanada, supra, f.n. 17, between the number of black juror's that should have been called to serve and those who actually were called evidences a systematic or deliberate effort to exclude a large portion of the community from participating in this trial and as such, it denied Brown his sixth amendment right to a fair trial. Duren v. Missouri, 439 U.S. 357, 364, 58 L.Ed 2d 579, 995 S.Ct 664 (1979).

[1/] Actually more than 103 persons responded to the summons, but only 103 were required to show up for trial after several persons were excused for statutorily authorized reasons (R.2900-2901, 2904).

[2/] A standard deviation is a measure of the predicted fluctuations from the expected value. Castanada v. Partida, 430 U. S. 482, 97 S.Ct. 1272, 51 L.Ed.2d (1977), f.n. 17. In general, if the number of standard deviations between an observed number and the expected number is greater than two or three, then a social scientist would suspect that a particular selection was not randomly made. Id.

The historical reason and the constitutional justification for providing jury trials are that juries stand between the accused and government oppression. Williams v. Florida, 399 U.S. 78, 90 S Ct 1893, 26 L.Ed 2d 446 (1970). Juries represent the conscience of the community, Duncan v. Louisiana, 391 U.S. 145, 156, 88 S.Ct 1444, 20 L.Ed 2d 491 (1968), and as such they provide an important barrier to protect the defendant from action by the state to unfairly convict him.

Consequently, a necessary corollary to this right is the requirement that any particular jury be drawn from a fair cross section of the community Taylor v. Louisiana, 419 U.S. 522, 95 S.Ct 692, 42 L.Ed. 2d 690 (1975). That is, the right to a trial by jury is meaningless if the state can manipulate the pool of those eligible to serve on the jury so that only those it wants to serve are called. Whenever the representative quality of the jury is compromised, then the jury becomes a ready weapon for governmental oppression, and instead of being a shield to protect the defendant, it is a sword of the state.

That representational quality is important during jury deliberations where subtle influences and interplay of opinions formed by life's experiences are prominent. Peters v. Kiff, 407 US 493 33 L.Ed 2d 83, 92 S.Ct 2163 (1972). The effect of exclusion of any large and identifiable segment of the community is to remove from the jury room qualities of human nature and varieties of human experience, the range of which is unknown and perhaps unknowable. The absence of these legitimate experiences may have unsuspected importance, Peters.

In this case, a black man killed a white policeman. Race was an issue. It was not a legal issue, but it nevertheless was a factor in this case, and it was one that the jurors individually and as a body could have considered in their deliberations. By asking the court to transfer this case to Bay county where there were significantly fewer blacks than in Jackson county, the prosecutor, in a single stroke, was able to significantly reduce the likelihood that the black man's experience would be as fully appreciated and considered as it would have been had this case been tried in Jackson County.

Of course, had Brown committed this crime in Bay County, he could not argue that he was entitled to a jury with more blacks on it than statistically justified.[3/] But that argument misses the point of Brown's claim. That is, the Jackson county prosecutor, wanting to reduce the number of blacks who would have been called for jury duty in Jackson county, may very well have asked the court to move this case to Bay county because it had statistically fewer blacks than in Jackson county. That of course did not totally remove the possibility

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[3/] Brown does not argue that the jury selection process used in Bay County in any way was racially discriminatory. From the testimony of the expert the state presented at the hearing on the change of venue motions it is very apparent that Bay County's method of selecting persons for jury duty is racially neutral. (R.2931-2940). That fact, however, is irrelevant as no matter how unbiased that county's selection procedures may be, they could not duplicate the racial population proportions existing in Jackson County. In fact, the very unbiased nature of the selection process prevented anyone from skewing the selection process to more closely match the demographics of Jackson County.

that no blacks would serve, but in an imperfect and practical world that we and the prosecutor in this case live, a reduction of the percentage of blacks eligible to be called from twenty two percent to eight percent was a significant move in that direction.[4]

Yet such a move, whether racial discrimination or exclusion was the motive or not amounted to a systematic exclusion of a significant portion of the number of blacks that should have been eligible to sit as jurors , and as such it denied Brown his sixth amendment right to a jury drawn from a fair cross section of his community. Duren v. Missouri, 439 U.S.357, 99 S Ct 664, 58 Led.2d 579 (1972).

In Duren, Duren challenged Missouri's automatic excusal of women from serving on petit juries. In its opinion the U.S. Supreme Court established a three prong test that must be satisfied in order to estalblish a prima facie violation of the fair-cross section requirement of the sixth amendment. id at 364:

> 1. the group alleged to be excluded is a "distinctive" group in the community.
> 2. the representation of this group in venires

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[4]In Alexander v. Louisiana, 405 us 625, 31 led2d 536, 92 sct 1221 (1972) 21% of the population in Lafayette Parish was black and presumptively eligible to serve on the grand jury. By means of questionaires and other devices, the jury commissioners reduced that percentage down to 14% then to 7%, then to 5%, and finally eliminated any blacks from sitting on the grand jury. id at 629-630 The movement of the trial in this case from Jackson county to Bay county follows a similar pattern as that in Alexander. The elimination process was completed during voir dire when the few blacks who were called were excused by the state (R 3351, 3356, 4501, 4565).

from which juries are selected is not fair and reasonable in relation to the number of such persons in the cummunity
3. this underrepresentation is due to systematic exclusion of the group in the jury-selection process.

Applying this test to this case reveals that Brown has made a prima facie case that he has been denied a fair cross section of the community in the selection of his jury. That is he is a black man and is a member of a distinctive group in Jackson County. Second, 22% of the people called to serve on his jury should have been black, but in fact there were only eight which was about 8% of the 103 people called to serve. As mentioned above, the liklihood of this happening in Jackson county was less than one chance in one hundred. Brown has thus met the second prong of the Duren test.

Finally, this underrepresentation of blacks was systematically done (as opposed to a random or chance occurence) as it was by the court's order granting the state's motion for alternative venue relief that moved the trial to Bay county and by doing so created this under-representation. Id at 367. Brown thus has demonstrated a prima facie case of a fair cross section violation.[5]

5/ As Brown is raising this claim under the sixth amendment's guaranteed of a right to a fair trial, he does not have to show a discriminatory intent on the part of the state. He would have needed to shown such an intent only if he had raised an issue claiming a denial of equal protection in the exclusion of blacks from the venire. Duren, supra. see f.n. 26.

As the court in Duren pointed out, the state has the burden of justifying this infringement by showing that the attainment of a fair cross section is incompatible with a significant state interest. id at 368. In this case the state presented no such interest, and the only one apparent from the record is administrative convenience. That certainly is not a signifcant state interest to justify denying Brown his constittutionnal right to a fair cross-section of the community from being called to serve on his jury.

The court, therefore, erred in moving this case to Bay county.

ISSUE III

THE COURT ERRED IN OVERRIDING THE JURY'S RECOMMENDATIION OF LIFE AND SENTENCING BROWN TO DEATH AS THERE WERE SEVERAL REASONABLE BASES UPON WHICH THE JURY COULD HAVE RECOMMENDED LIFE.

The jury in this case recommended that the trial court sentence Brown to life in prison without the possibility of parole for twenty-five years (R 543). The court ignored this recommendation, however, and sentenced him to death. The court erred in doing so as the jury had several reasonable bases upon which it could have justified its life recommendation. The court, in its sentencing order, provided no justification for overriding the jury's recommendation, and at the sentencing hearing, it said only that it was aware of the great weight which it should give to the jury's recommendation.

Under the standard established by this court in Tedder v. State, 322 So.2d 908, 910 (Fla.1975), such indifference to the jury's life recommendation as the court in this case demonstrated was error. In Tedder, this court said:

> In order to sustain a sentence of death following a jury recommendation of life, the facts suggesting a sentence of death should be so clear and convincing that virtually no reasonable person could differ.

Id. at 910.

The presumption thus arises that when a jury recommends life that sentence should be imposed. To overcome this presumption, evidence or reasons must be presented from which virtually all reasonable men could agree that death was the appropriate sentence. Ignoring the jury's recommendation or simply saying that the trial court was aware that the recommendation should be given great weight, as the court did in this case, is insufficient.

Thus, the trial court's analysis in this case should not have started with an analysis of the aggravating and mitigating factors present or absent. Instead, the court should have examined the record to determine if there was any reasonable basis for the jury's life recommendation. If so, it should have then imposed a sentence of life without regard to the presence of any aggravating factors.

In performing this analysis, the trial court should have realized that it had earlier instructed the jury on the applicable law concerning imposition of a sentence of death. Accordingly, the jury presumably made its evaluation and after resolving the conflicts in the evidence and weighing the aggravating and mitigating factors, recommended life. It may have made this recommendation despite the uncontradicted presence of several aggravating factors. But, as the court had instructed, the jury weighed the aggravating factors against the mitigating factors and found that the scale tipped in favor of life.

Thus, in evaluating the jury's recommendation, the trial court must assume that if a reasonable basis exists for a life recommendation that it outweighed all of the applicable aggravating factors, and it should accordingly impose a sentence of life.[1] The court should impose this sentence despite the fact that it may have disaagreed with the jury as to the weight given to the aggravating and mitigating factors.

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[1] Morever, if there are any conflicts in the evidence regarding whether or not a particular aggravating factor applies, the court should resolve that conflict in favor of not finding that aggravating factor. Likewise, if there is any doubt as to whether a particular mitigating factor applies, the court should resolve all doubt in favor of finding that mitigating factor.

Tedder.

In short, when the jury has recommended life, the trial court should perform an analysis similar to that made with Motions for a Directed Verdict or Judgment of Acquittal. All conflicts in the evidence must be resolved in the light most favorable to supporting the jury's life recommendation.

Then, only after examining the record for any possible reasonable basis for upholding the jury's recommendation of life and finding none, and explaining why there are none, is the trial court free to conduct its own, independent examination of the facts of the case and character of the defendant. This analysis when the jury has recommended life comports with the procedure approved by the U.S. Supreme Court in Barclay v. Florida, 463 U.S. 939, 962-963, 103 S.Ct 3418, 77 L.Ed.2d 1134 (1983). In that case the court again approved Florida's death penalty sentencing procedure because each stage of that procedure narrowed or more clearly identified the class of persons who deserved to be sentenced to death. Each successive stage eliminated those who were not deserving of a death sentence, and the life recommendation and the Tedder standard serve as significant filters in the death sentencing procedure in Florida.

In this case the trial court skipped the essential first in the sentencing process by not examining the record for a reasonable basis for the jury's life recommendation. Had it conducted this analysis, it would have found several bases for upholding that recommendation.

A. THE REASONABLE BASES FOR THE LIFE RECOMMENDATION.

The most compelling basis supporting the jury's life

recommendation is Brown's impoverished background. For an older person this factor may have been of little importance, but for Brown (who was eighteen years old when he committed this murder (R 6549)) it was of major significance as he never had the opportunity to out grow the disabilities of his youth.

In virtually every sense of the word, Brown is a deprived, impoverished child. Specifically, this meant that he was probably raised without any discipline (R 6550), his mother never taught him right from wrong (R 6550), and he never learned those skills basic to survival in our society (R 6550).[3] His father provided no support for him or his mother (R 6531), and had been in prison during most of Brown's formative years. That may have been good for Brown, as his father or other persons apparently physically abused him during his childhood (R 6558).

At least the school system recognized Brown's serious problems, as he had been placed in a program at school for emotionally handicapped children (R 6563),and had been treated for this handicap at least since he was ten years old (R 6543).[4] In addition, he was

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[3] Brown is the third of six children (R 6531).

[4] Section 6A, Florida Administrative Code, (1) An emotional handicap is defined as a condition resulting in persistent and consistent maladaptive behavior, which exists to a marked degree, which interferes with the student's learning process, and which may include but is not limited any of the following characteristics:

(a) An inability to achieve adequate academic progress which cannot be explained by intellectual, sensory, or health factors;

(b) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(Footnote Continued)

being treated for his emotional problems at a guidance clinic on an out patient basis (R 6563).

Intellectually, Brown is borderline defective with an IQ between 70-75 (R 6561). He can read only on a second or third grade level (R 6561), making him virtually illiterate. Of course, low intelligence, by itself, is not necessarily a mitigating factor, Ruffin v. State, 397 So.2d 277 (Fla. 1981), but when Brown's low intelligence is coupled with his cultural poverty and emotional handicap, it becomes a compelling reason not to execute him. Yet, the jury had other evidence which could have reasonably supported its life recommendation.

Emotionally, Brown had little ability to control his impulses (R 6568), and he typically acted with little regard for the consequences of his acts (R 6568). Thus, while he was chronologically 18 years old, his emotional and moral development was that of a much younger child (R 6560), and in some respects, he had the maturity of a pre-school child (R 6549, 6560). In Amazon v. State, 487 So.2d 8 (Fla. 1986), this court said that the jury's life recommendation was reasonable in light of the facts that 19 year old Amazon had the emotional maturity of a 13 year old and in certain areas, that of a one year old.

(Footnote Continued)

(c) Inappropriate types of behavior or feelings under n ormal circumstnaces;

(d) A general pervasive mood of unhappiness or depression; or

(e) A tendency to developp physical symptoms or fears associated with personal or school problems.

(2) Criteria for eligibility. Students with disruptive behavior shall not be eligible unless they are also determined to be emotionally handicapped. A severe emotional disturbance is defined as an emotional handicap, the severity of which results in the need for a program for the full school week and extensive support services.

Like Amazon, Brown is an emotional cripple whose life and family influences were mostly negative. Brown is a frightened child (R 6556) unable to relate to others(R 6555), and who was chronically depressed and and saw himself as a failure(R 6559).

When under stress, such as undoubtedly occurred when officer Bevis stopped Cotton's car and threatended to kill him if he fled (R 4863), he reverted to pre-school behavior (R 6560), and reacted as a pre-school child (R 6562). That is, he acted or reacted before he thought of the consequences of those actions

Thus, this case is unlike Cooper v. State, 492 So. 2d 1059 (Fla.1986), where the trial court rejected (and this court approved) Cooper's age of 19 as a mitigating factor. It did this because Cooper was legally an adult, understood the difference between right and wrong and the nature and consequences of his acts. In this case, Brown is an 18 year-old boy chronologically, but in every other aspect lacks a similar level of maturity. In truth he is a child. Thus, this court's declaration that age, without more, is not a mitigating factor is inapplicable to this case. Brown's youth, when coupled with all of his disabilities, is a reasonable basis upon which the jury could have relied in recommending a life sentence.

In addition, Dr. Davidson, the psychologist who testified at the penalty phase of the trial, unambiguously said that the two mitigating factors focusing upon a defendant's mental state at the time of the murder applied to Brown (R 6567). That is, Brown committed the murder while he was under the influence of an extreme mental or emotional disturbance, and his capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law

was substantially impaired (R 6567). Section 921.141(6)(b), (f) Fla. Stats. (1985)

In its sentencing order, the trial court rejected Dr. Davidson's testimony that Brown was under the influence of an extreme mental or emotional disturbance as defined in Section 921.141 (6) (b) Fla. Stat. (1985) (R 716-717). The court did this despite Dr. Davidson's unrebutted testimony that this statutory mitigating factor applied (R 6564).[5] Similarly, the court rejected, without any reason, Dr. Davidson's testimony that Brown's capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was substantially impaired (R 718). The court's error is two fold. First, unlike the situation where there is conflicting evidence concerning the presence of the mental mitigating factors, the court in this instance was not free to totally ignore Dr. Davidson's unrebutted and uncontradicted testimony. This is especially true in light of the jury's life recommendation. Second, even if Dr. Davidson's testimony failed to establish the statutory mitigating factors, it was error to totally disregard his testimony because it did not, for example, establish Brown had an "extreme mental or emotional disturbance as contemplated by this mitigating circumstance." (R717) Lockett v. Ohio, 438 U.S.586, 98 SCt 2954, 57 Led2d 973 (1977).

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[5] In Bates v. State, case no. 67,422 (Fla. April 16, 1987) the court said that "...expert testimony ordinarily is not conclusive even where uncontradicted." In Bates the jury had recommended a sentence of death, Bates v. State, 465 So.2d 490 (Fla. 1985), and that holding should not apply to the situation here where the jury had recommended life. Tedder.

B. COMPARISON WITH OTHER CASES

Conversely, this case compares well with those cases in which this court has affirmed the trial court's life overide. In Engle v. State, 438 So.2d. 803 (Fla.1983), the trial court had information available to it which the jury did not and which justified the trial court's override of the jury's life recommendation. Here, the trial court had only the same information available to it as the jury.

Brown also made no emotional plea to spare his life. In Porter v. State, 429 So.2d 293 (Fla.1983), defense counsel described an execution in detail. That im properly swayed the jury to recommend life this court said. In Bolender v. State, 422 So2d 833 (Fla.1982), defense counsel implied that the victim was a drug dealer who deserved to die. That argument also improperly influenced the jury to recommend life. In this case, there were no similar allegations. To the contrary, the prosecutor, with perverse logic, told the jury that had the prison system not paroled Brown, this murder would not have occurred (R 6655). This comment does not reflect upon the nature of the crime or Brown's character, and it was nothing more than an emotional appeal similar to those defense tactics condemned in Engle, Porter, and Bolender.

This court has also affirmed life overides where an equally culpable co-defendant received a death sentence. Barclay v. State, 343 So.2d 1266 (Fla.1976), but see, Barclay v. State, 470 So2d.671 (Fla.1985). In this case, a jury convicted Cotton of first degree murder, but it also recommended that he live. The only evidence concerning the facts of this murder came from Cotton, and the jury could have reasonably discounted the veracity of what he said because

of his obvious interest in promoting his cause.

Thus, with so many valid reasons that the jury could have used singly or in combination with the others to justify its recommendation of life, the trial court in this case erred by not imposing a sentence of life.

ISSUE IV

THE COURT ERRED IN FINDING THAT BROWN COMMITTED THIS MURDER IN AN ESPECIALLY HEINOUS, ATROCIOUS, AND CRUEL MANNER.

In sentencing Brown to death, the court said that he committed this murder in an especially heinous, atrocious, and cruel manner. (R.723-24). The court's discussion or justification for this finding is rather lengthy, but consists of the following findings:

> 1. Bevis was a policeman who was shot with his own gun while wearing a protective vest.
> 2. Brown knocked Bevis to the ground after he had shot him in the arm.
> 3. Brown is guilty of killing Bevis, but he could have fled after having shot him in the arm.
> 4. After being shot in the arm, the side of Bevis' body was paralyzed and Bevis suffered unimaginable agony (according to medical testimony).
> 5. No greater atrocity could be inflicted upon a police officer than to be shot with his own gun while begging for his life. The pain, torture, and humiliation is immeasurable.

(R.723-24).

As unfortunate as this murder was, and no matter how much we may abhor what happen or who did it, the killing in this case was simply not especially heinous, atrocious, or cruel. In State v. Dixon, 283 So.2d 1 (Fla.1972), this court said that a murder was especially heinous, atrocious, and cruel, it was "extremely wicked or shockingly evil, outrageously wicked and vile, and designed to inflict a high degree of pain with utter indifference to or even enjoyment of the suffering of others. The capital felony must, in short, have such additional acts as to set it apart from the norm of capital felonies. m It must be

one that is conscienceless or pitiless which is unnecessarily torturous to the victim. Id.. at 9. To the average man, every murder must seem to be heinous, atrocious, and cruel. But to be so according to this statute it must be especially heinous, atrocious, and cruel. Viewed in this light, the killing of Bevis cannot be said to have been especially heinous, atrocious, and cruel.

Typically, murders which have involved a quick or instantaneous death have not been especially heinous, atrocious or cruel. For example, in Cooper v. State, 336 So.2d 1133 (Fla.1976), a police officer was shot twice in the head, causing instant death. That murder was not especially heinous, atrocious or cruel. Similarly, in Gorham v. State, 454 So.2d 556 (Fla.1984), the victim was shot one time in the heart and only was aware of his impending death for a short while. In Armstrong v. State, 399 So.2d 953 (Fla.1976), a shooting was precipitated by a robbery. The Armstrongs were at the crime scene only a short time, and those killings were not committed in an especially heinous, atrocious, or cruel manner. In none of these killings were there any additional facts to set them apart form the norm of capital murders.

Similarly, here, the struggle between Brown and Bevis which resulted in the killing was short, and there is no evidence that Brown prolonged Bevis' suffering out of some sadistic pleasure at seeing him suffer. Deaton v. State, 480 So.2d 1279 (Fla.19875). Bevis was not beaten or tortured or driven to a remote site to be killed. Scott v. State, 494 So.2d 1134

(Fla.1986). He was not bound Cooper v. State, 492 So.2d 1059 (Fla.1986), and though he may have pled for his life, there is no evidence that Brown in any way enjoyed Bevis' helplessness, and like a cat playing with a mouse it has caught, toyed with Bevis before he shot him. Francis v. State, 473 So.2d 672 (Fla.1985).

To the contrary, killings that are the direct product of an emotional rage or mental illness are not heinous, atrocious, or cruel. Huckaby v. State, 343 So.2d 29 (Fla.1977); Halliwell v. State, 323 So.2d 557 (Fla.1975). Murderers under the sway of passion or illness are presumably unable to enjoy the sufferings of others and though the method of killing may be shocking, it is nevertheless not especially heinous, atrocious, or cruel because the mental or emotional turmoil caused the murder, not the defendant. Mann v. State, 420 So.2d 578 (Fla.1982), 322 So.2d 615 (Fla.19076); Miller v. State, 332 So.2d 65 (Fla.1976).

In this case there is abundant, uncontradicted evidence that Brown is an emotional cripple who fails to consider the consequences of his acts when under pressure (R.6568). In this case, it was his immaturity that caused him to act as he did, not any latent desire to torture or humiliate a policeman. If what Brown did was heinous, atrocious, or cruel, he simply did not enjoy it. Instead, this killing was the reaction of a frightened child unable to foresee the awful consequences of his stupidity.

ISSUE V

IN THE INTERESTS OF JUSTICE THIS COURT SHOULD GRANT BROWN A NEW TRIAL AS THERE IS NO DIRECT PHYSICAL EVIDENCE TO LINK HIM TO THIS MURDER OTHER THAN COTTON'S TESTIMONY WHICH WAS SUSPECT BECAUSE OF HIS OBVIOUS INTEREST IN MINIMIZING HIS PARTICIPATION IN THIS MURDER.

After having reviewed the evidence in this case, Brown is forced to argue the difficult issue that in the interests of justice he should be given a new trial. Brown realizes the difficulty of this argument, but

it must be made because of the overall lack of any physical evidence directly linking Brown to this case and Cotton's obvious interest in minimizing his participation in the crime.

Rule 9.140(f) Florida Rules of Appellate Procedure provides the basis for this argument:

> (f) Scope of Review. The court shall review all rulings and orders appearing in the record necessary to pass upon the grounds of an appeal. In the interest of justice, the court may grant any relief to which any party is entitled. In capital cases, the court shall review the evidence to determine if the interest of justice requires a new trial, whether or not insufficiency of the evidence is an issue presented for review.

There are three reasons why this court should grant a new trial: 1) except for Cotton's testimony, the state had no evidence that Brown committed this murder as a principle or as an aider and abettor. Cotton's testimony, moreover, was obviously suspect. 2) The trial court committed several errors which, by themselves may not have warranted reversing for a new trial, but when combined amount to

reversible error. 3) The trial court's errors already argued created reversible error.

A. THE LACK OF EVIDENCE THAT BROWN COMMITTED THIS MURDER.

If we ignore for the moment all of the evidence the state presented at trial concerning what Brown and Cotton did before officer Bevis stopped them and after they fled the scene of the shooting, we discover that there is precious little evidence that linked Brown with the shooting of Bevis. In fact, other than Cotton's narration, there is no evidence.[1] The state performed a gunshot residue test on Brown after his capture, but the results of that test showed that he did not have sufficient residue on his hands to prove that he had shot Bevis (R6088). The police performed no similar residue test on Cotton (R6002-6003). Also, for as close as Cotton claimed or implied Brown and Bevis were when Bevis was shot, none of Brown's clothing had any blood on it matching Bevis' blood type (R 6035-60782). In addition, Cotton claimed that he more or less just watched the struggle between Brown and Bevis and did not participate in the shooting, yet his foot-prints were found near Bevis' body, indicating that he may have shot

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[1] In Cotton's trial Cotton claimed that he sat in the car the entire time
Bevis and Brown were fighting (R 6717). That obviously was not the story he gave at Brown's trial where he claimed that he tried to break up the fight between Bevis and Brown (R 4866).

Bevis(R 5662-5664).[2] Finally, despite Cotton's denial of any involvement in the murder, he told the police the location of where Bevis' gun could be found(R 2506).

And it is clear that the prosecutor did not believe Cotton, at least not during Cotton's trial. In his closing argument in Cotton's trial he strongly argued that Cotton shot Bevis(R 2497), yet during Brown's trial he not only argued to the jury that Brown did all of the shooting, but he went so far as to vouch for Cotton's story when he called him as a witness at Brown's trial.[3] Such tactics border on ethical violations of a lawyers duty not to knowingly mislead a tribunal or present false evidence. Section 4-3.3 of the Rules Regulating the Florida Bar.

Of course, by themselves, these weak facts would not amount to error cognizable by this court as they simply go to the inconsistencies or weakness of the state's case. Nevertheless, they need to be considered in light of the series of incorrect rulings made by the court.

B. THE LEGAL ERRORS.

1. The Instruction on Flight.

During the charge conference, the state requested and the

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[2] The pathologist estimated that the two shots to the head were fired from a gun at least three feet from Bevis' head (R 5909)

[3] The state gave Cotton immunity from further prosecution in exchange for that testimony (R 4831-4837).

court granted(over defense objection (R6337)) an instruction on flight (R 6339), and in the state's closing argument, it repeatedly referred to this instruction and the inferences that may be made from it (R 6419, 6425).

Instructions on flight and the inferences justified by them of course, are not new and generally the courts of this state have approved instructing juries on flight where appropriate. Williams v. State, 268 So.2d 566 (Fla. 3d DCA 1972); Proffitt v. State, 315 So.2d 461 (Fla.1975). Brown, however, is asking this Court to re-examine the justification for this instruction in light of the language used by this Court in In the Matter of the Use by the Trial Courts of the Standard Jury Instructions in Criminal Cases and the Standard Jury Instructions in Misdemeanor Cases, 431 So.2d 594, 595 (Fla.1981). The court in that case omitted the instructions on circumstantial evidence from the standard jury instructions:

> We note that the Criminal Law Section of the Florida Bar approved the instructions as proposed except for the elimination of the instruction on circumstantial evidence. We find that the circumstantial evidence instruction is unnecessary. The special treatment afforded circumstantial evidence has previously been eliminated in our civil standard jury instructions and in the federal courts. Holland v. United States, 348 U.S. 121 (1954). The Criminal Law Section's criticism of this deletion rests upon the assumption that an instruction on reasonable doubt is inadequate and that an accompanying instruction on circumstantial evidence is necessary. The United States Supreme Court has not only rejected this view but has gone even further, stating:
>
> > [T]he better rule is that where the jury is properly instructed on the standards for reasonable doubt, such an additional in-

> struction on circumstantial evidence is confusing and incorrect....
>
> Id. at 139-40 (1954). The elimination of the current standard instruction on circumstantial evidence does not totally prohibit such an instruction if a trial judge, in his or her discretion, feels that such is necessary under the peculiar facts of a specific case.
>
> However, the giving of the proposed instructions on reasonable doubt and burden of proof, in our opinion, renders an instruction on circumstantial evidence unnecessary.

An instruction on flight, of course, is not part of the standard instructions, but the rationale the Supreme Court used to delete circumstantial evidence from the standard instructions applies to instructions on flight where a jury is also instructed on reasonable doubt. All such an instruction does is confuse the jury.

In Palmer v. State, 323 So.2d 612 (Fla. 1st DCA 1975), this Court considered the reasonableness of a jury instruction and the inferences that can be made when a person is found in possession of recently stolen goods and offers no explanation for how he acquired them. What the court said there applies as well as to a jury instruction on flight:

> If the propriety of such an instruction were a fresh issue today, we might doubt that sensible jurors need telling of an inference that is said to arise unaided from their own reason, experience and common understanding. And if the evidence is such that the inference has not occurred to the jury after argument of counsel, we might

> doubt that it is the trial judge's business to summon up the inference either by a wink and nod or by an overt instruction. But the giving of such a charge in a proper case was approved long ago, ... and recently.

Id., at 615-16 (Citations and footnote omitted.)

In Silas v. State, 431 So.2d 231 (Fla. 1st DCA 1983), the court agreed with this argument, but said such error was harmless:

> Appellant also seeks review of the trial court's giving of a jury instruction, over objection, on the subject of "flight" as circumstantial evidence inferring guilt. Although the giving of that instruction was error because it placed undue emphasis on the proof of flight evidence and was confusing to the jury, we find it to be harmless in this case in view of the overwhelming evidence of guilt.

Id at 241 footnote omitted

Because the court removed the standard instruction on circumstantial evidence because it was unnecessary and confusing, the question whether an instruction on flight also ought to be deleted is a fresh issue and, for the reasons presented by this Court in Palmer and Silas, the trial court erred in giving this instruction.

2. Restrictions on Closing Argument.

Over defense objection(R 6361-6369) the court granted a state request that Brown be precluded from arguing that Cotton testified as he did because he had not been sentenced yet, and he

testified favorably for the state to avoid a death sentence(R6369) The court's error is that by so limiting Brown it denied him a fair opportunity to comment on Cotton's credibility, a function of closing argument Fitzgerald v. State, 227 So.2d 45 (Fla.1969).

Generally, wide latitude is granted to counsel in arguing to the jury, and any logical inferences that may be drawn from the evidence is allowed. Breedlove v. State, 413 So.2d 1 (Fla.1982), In this case, the jury knew that Cotton had already been convicted of first degree murder (and the other charged crimes) (R 4966). But if "Hope springs eternal in the human breast..."[4] surely Brown should have been able to argue to the jury that Cotton may have slanted his testimony for his benefit. That argument certainly was a fair comment on the evidence and should have been within the scope of a proper closing argument. Reaves v. State, 324 So.2d 686 (Fla. 3rd DCA 1976)(the state may comment upon the unbelievability of the defendant's testimony.)

3. Gruesome and gory Photographs.

Over defense objection(R 5837) the court admitted a photograph of an incision that a doctor had made solely to display two fragments of cartridges in Bevis' forearm (R 5832). This photograph was irrelevant as it depicted part of Bevis's body after he had died and did not tend to prove any material fact. Rosa v. State, 412

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[4] Pope, An essay on Man, Epistle I, line 83.

So.2d 891 (Fla. 3rd DCA 1982) In Rosa the appellate court reversed Rosa's conviction for second degree murder because the trial court had admitted a photograph of the blood spattered body of the deceased which depicted the results of emergency procedures performed after the stabbing, including protruding surgical tubes and sutures. That picture was irrelevant because all it did was tend to inflames the jury.

Similarly, here, the picture of Bevis' forearm cut open to expose two bullet fragments only tended to inflame the jury. Beasley v. State, 273 So.2d 796 (Fla. 1st DCA 1973). Jackson v. State, 359 So.2d 490 (Fla.1978).

These errors plus the generally weak and inconclusive facts that the state presented to the jury argue well that this court should grant Brown a new trial in the interests of justice.

CONCLUSION

Based upon the arguments presented above, Morris Brown respectfully asks this honorable court to either reverse the trial court's judgment and sentence and remand for a new trial, or reverse the trial court's sentence of death and remand with instructions to sentence Brown to life in prison without the possibility of parole for twenty-five years.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been U. S. Mail to John Tiedemann, Assistant Attorney General, The Capitol, Tallahassee, FL, 32301, this 24th day of April, 1987.

David A. Davis
Assistant Public Defender