IN THE SUPREME COURT OF FLORIDA

VERNON RAY COOPER,

Appellant,

v.

CASE NO. 74,611

STATE OF FLORIDA,

Appellee.

_____/

ON APPEAL FROM THE CIRCUIT COURT
IN AND FOR ESCAMBIA COUNTY, FLORIDA

REPLY BRIEF OF APPELLANT

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REPLY BRIEF OF APPELLANT

ARGUMENT

ISSUE I

THE TRIAL COURT ERRED IN OVERRIDING THE JURY'S RECOMMENDATION OF LIFE IMPRISONMENT

Appellant and appellee are in agreement that under the rule established by this Court in Tedder v. State, 322 So.2d 908 (Fla. 1975), a trial judge must accord "great weight [to] . . . a jury recommendation of life" (id. at 910), and must not "substitute[] his view of the evidence and the weight to be given it for that of the jury." Holsworth v. State, 522 So.2d 348, 353 (Fla. 1988). See Answer Brief of Appellee, at 9 (citing Tedder and Cochran v. State, 547 So.2d 928 (Fla. 1989)).

Appellee argues "that case comparisons with regard to the appropriateness of one jury override versus another jury override should not be the basis for review [and that] [r]ather, a case by case analysis of individual cases must take place." Answer Brief, at 9. It is certainly true that Tedder requires an examination of "the facts of each case" (Hawkins v. State, 436 So.2d 44, 47 (Fla. 1983)) to determine whether the trial judge was justified in taking the extreme step of "refus[ing] to accept the jury's life recommendation" notwithstanding the "great weight" to which it is "entitled" (ibid.). However, it cannot be said that this Court's prior applications of Tedder are

immaterial when applying Tedder to a new case. These prior decisions identify factors which are pertinent to the inquiry whether the jury's life recommendation should have been overridden. See, e.g., Holsworth v. State, supra, 522 So.2d at 354. Trial judges need consistent appellate identification of the relevant considerations to guide their own applications of the Tedder rule. Compare Cochran v. State, supra, 547 So.2d at 933.

One factor which this Court has repeatedly recognized as bearing heavily on the appropriateness of a jury override is the defendant's status as the non-triggerman in a felony murder. See Initial Brief of Appellant, at 27 (citing Stevens v. State, 552 So.2d 1082 (Fla. 1989), and other decisions of this Court). Appellee asserts that

> the facts regarding how the murder took place and "whether Vernon Ray Cooper was the triggerman" is not the issue in determining whether the override was appropriate. . . . Vernon Ray Cooper . . . was a full participant and acknowledges same, with the exception that Cooper maintains that he never killed Deputy Wilkerson.

Answer Brief, at 9 (emphasis added). But it is precisely this "exception" -- that appellant, although participating in the robbery, did not commit or participate in the killing -- which brings this case within the prior decisions of this Court recognizing the significance of non-triggerman status in assessing the appropriateness of an override. See, e.g., Hawkins v. State, supra, 436 So.2d at 47 (reversing an override of a life recommendation where the jury reasonably could have believed the defendant's claim that he was not the triggerman in the felony murder and that he only took part in the underlying robbery).

Appellee contends that this Court's prior caselaw on the significance of a defendant's non-triggerman status under Tedder is inapposite because the co-perpetrator, Stephen Ellis, was fatally shot by the arresting officers, and

therefore "[t]his is not a case where the jury may consider the 'disparate treatment' between co-defendants in attempting to assess who the triggerman may have been." Answer Brief, at 9.[1] See also id. at 11. It is certainly true that this Court has cited a concern for avoiding "disparate treatment" as a reason for upholding a jury's recommendation of life for a non-triggerman when the triggerman received a sentence less than death. See, e.g., Pentecost v. State, 545 So.2d 861, 863 (Fla. 1989); Barfield v. State, 402 So.2d 377, 382 (Fla. 1981). But the Tedder caselaw treating non-triggerman status as a reason for upholding the jury's life recommendation is not limited to situations in which the triggerman was apprehended and available to be tried and sentenced. See, e.g., McCaskill v. State, 344 So.2d 1276, 1280 (Fla. 1977) (reversing judicial overrides of jury recommendations of life for two non-triggermen because a third, unapprehended perpetrator apparently was the triggerman, and citing other cases in which the jury reasonably recommended life because the "trigger man either was not identified or was not before the court," id. at 1280 & n.2). It is the lesser culpability of the non-triggerman that provides the requisite "reasonable basis for the jury's recommendation of life imprisonment [under Tedder]," Hawkins v. State, supra, 436 So.2d at 47, regardless of whether the police apprehended all of the perpetrators and regardless of whether "an act of providence" enabled the police to do so without fatally "fir[ing] . . . their weapons" (Suarez v. State, 481 So.2d

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[1]/ Appellee states that "Ellis died that same day in Cooper's and Ellis' continuing attempt to [elude] detection of the Winn-Dixie robbery and the murder of Deputy Wilkerson." Answer Brief, at 9-10. In fact, the actual cause of Ellis' death was his singlehanded attempt to shoot Deputy Bates, while saying to Bates, "you're next." See Initial Brief of Appellant, at 6-7, 30-32. While this was happening, appellant sat in the Camaro, making no attempt to shoot Investigator Joye, even though he had a clear opportunity to do so. See Initial Brief of Appellant, at 8, 33. As appellant argued in his Initial Brief, his and Ellis' conduct during this sequence of events helps to prove that it was Ellis, not appellant, who killed Deputy Wilkerson. See Initial Brief, at 30-34.

1201, 1209 (Fla. 1985), cert. denied, 476 U.S. 1178, 106 S. Ct. 2908, 90 L. Ed.2d 994 (1986)).[2]

Appellee also argues that the prosecution was not obliged at trial, sentencing, or resentencing, to prove beyond a reasonable doubt that appellant was the triggerman. Answer Brief of Appellee, at 10. This is an accurate statement of the law but does not respond to the issue presently before the Court. Even though the prosecution bears no burden of proving that appellant was the triggerman, evidence that appellant was not the triggerman constitutes an appropriate mitigating factor for the jury to consider in making its sentencing recommendation. Indeed, in reversing appellant's death sentence and remanding for a resentencing hearing, this Court explicitly said that evidence that appellant "played a follower's role in the commission of the crime . . ., if accepted by the jury, . . . would . . . be[] relevant to whether [appellant] was deserving of the death penalty for this crime." Cooper v. Dugger, 526

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[2]/ The "disparate treatment" and "non-triggerman" cases are predicated on distinct rationales, although both rationales may sometimes apply to a particular fact situation. The central factor underlying the "disparate treatment" concept is the jury's reasonable perception that there is no basis for imposing a higher sentence on one of two co-perpetrators. This fairness rationale is implicated whether the defendant is less culpable than his co-defendant or equally culpable. As this Court stated in Pentecost v. State, supra, "[t]he disparate treatment of equally culpable accomplices can serve as a valid basis for a jury's recommending life imprisonment." 545 So.2d at 863. Thus, even when both perpetrators were triggermen, the "disparate treatment" principle can justify upholding "the reasonableness of [a] jury recommendation[] of life which could have been based, to some degree, on the treatment accorded . . . [to a co-perpetrator] equally culpable of the murder." Eutzy v. State, 458 So.2d 755, 759 (Fla. 1984), cert. denied, 471 U.S. 1045, 105 S. Ct. 2062, 85 L. Ed.2d 336 (1985), discussing McCampbell v. State, 421 So.2d 1072 (Fla. 1982). By contrast, the "non-triggerman" concept is based on the rationale that the lesser culpability of a non-triggerman provides a reasonable justification for a jury's recommendation of life imprisonment. See Pentecost v. State, supra, 545 So.2d at 863 (treating this rationale as distinct from the "disparate treatment" principle). The "non-triggerman" rationale justifies a life sentence even when it is not dictated by comparative considerations; it can apply in cases in which the triggerman received a death sentence, or was never apprehended, or did not live to stand trial.

So.2d 900, 903 (Fla. 1988). And, because the resentencing jury recommended a sentence of life imprisonment, evidence that appellant was not the triggerman supplies the requisite "reasonable basis in the record" to support its life recommendation under the Tedder rule. Harmon v. State, 527 So.2d 182, 189 (Fla. 1988).[3]

This Court recognized on appellant's original direct appeal that the evidence is "conflicting" on the central issue whether "Cooper fired the fatal shot." Cooper v. State, 336 So.2d 1133, 1141 (Fla. 1976), cert. denied, 431 U.S. 925, 97 S. Ct. 2200, 53 L. Ed.2d 239 (1977). All that can be said for sure is that "either Cooper or Ellis walked to Deputy Wilkerson's patrol car and fired two shots into his head." Id. at 1136 (emphasis added).[4] Appel-

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[3]/ Appellee asserts that "the instant case is very similar to that of White v. State, 403 So.2d 331 (Fla. 1981)." Answer Brief, at 10. In White, this Court upheld the judicial override of a life recommendation for a non-triggerman because of "the enormity of the aggravating facts, especially in light of the defendant's full cooperation in the robberies and complete acquiescence in the cold-blooded systematic murder or attempted murder of eight individuals." 403 So.2d at 340. But as the White opinion itself recognizes, the present case does not involve the type of heinous, atrocious and cruel killings that took place in White. See White, supra, 403 So.2d at 339 ("We believe that the events surrounding the slayings in this case readily distinguish it from the slaying which occurred in Cooper [v. State, 336 So.2d 1133 (Fla. 1976).]"). Thus, this case does not present the circumstances of "atrocity which set[] the capital felonies [in White] apart from the 'norm' of capital felonies" (403 So.2d at 339) and justified overriding a life recommendation for the non-triggerman in that case.

[4]/ This Court resolved the issue in Cooper v. State, supra, by deferring to the trial court's analysis of the evidence of the identity of the triggerman. 336 So.2d at 1141. Such deference would not be appropriate in the current appeal because of the difference in the posture of the case. When this case first came before the Court on appeal from appellant's conviction and sentence, it was a case in which a majority of the jury had recommended a sentence of death. As this Court recognized in Cooper v. Dugger, supra, 526 So.2d at 903, the original jury vote was tainted by the trial court's erroneous exclusion of non-statutory mitigating evidence. Following resentencing, the case comes before the Court as one in which the jury recommended life and the judge overrode the recommendation. Because of this life recommendation and the "great weight" which it is due (Tedder, supra, 322 So.2d at 910), the Court must now review the evidence of the triggerman's identity to determine whether the jury reasonably could have relied on this evidence in returning its life recommendation.

lant's Initial Brief demonstrated that the evidence presented to the resentencing jury reasonably supports a jury finding that the triggerman was Ellis and not appellant. See Initial Brief, at 26-36. Appellee's brief does not analyze the testimony bearing on this issue; instead, appellee simply relies on the trial judge's analysis in his sentencing order. See Answer Brief, at 10-11. But as appellant showed in his Initial Brief, there are numerous flaws in the trial court's analysis of the facts. See Initial Brief of Appellant, at 29-36. Appellee has not addressed these flaws. Nor has appellee explained the trial court's reliance on interpretations of the facts that are fundamentally inconsistent with the way the prosecutor himself argued the case to the jury. See Initial Brief of Appellant, at 30, 34. Thus, appellee has given no more than lip service to this Court's admonition in Cochran v. State, supra, that trial judges "'should place less reliance on their independent weighing of aggravation and mitigation'" (547 So.2d at 933); and appellee has failed to answer the essential point made in appellant's Initial Brief. That point remains that, on this record, the jury reasonably could have found that appellant was not the triggerman and reasonably could have concluded that a life sentence was appropriate for this reason. See Initial Brief, at 26-37.

Appellant's Initial Brief also demonstrated that "there are valid mitigating factors discernible from the record upon which the jury could have based its [life] recommendation." Ferry v. State, 507 So.2d 1373, 1376 (Fla. 1987). Appellee attempts to dismiss the mitigating evidence presented at the resentencing hearing as being merely the "same or very similar to that presented in 1974." Answer Brief, at 13. But this assertion ignores a crucial distinction. At the original sentencing hearing, the mitigation witnesses'

testimony was severely limited by "[t]he trial judge['s] repeatedly sustain[ing] . . . the prosecutor's objections to this evidence as irrelevant to the statutory mitigating factors." Cooper v. Dugger, supra, 526 So.2d at 901. "The [original sentencing] jury thus was not permitted to hear much of the mitigating evidence which petitioner sought to introduce. . . . The jury was, moreover, specifically instructed to limit its consideration to three of the statutory mitigating factors." Ibid.

In the resentencing hearing, the jury was permitted to hear and consider the mitigating evidence excluded from the original proceeding. On the basis of this evidence, the jury returned a recommendation of life. That recommendation is supported by the various mitigating factors which the decision in Cooper v. Dugger recognized to be reasonable bases for a jury's concluding that appellant should receive a life sentence: a good record of employment (id. at 902); evidence showing appellant's "potential for rehabilitation" (ibid.);[5] and

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[5]/ With regard to the mitigating evidence of appellant's good conduct while in prison, appellee states that it merely "demonstrated he was an unremarkable prisoner on death row for the last fifteen years." Answer Brief of Appellee, at 32. But this is precisely the type of evidence that Skipper v. South Carolina, 476 U.S. 1, 106 S. Ct. 1669, 90 L. Ed.2d 1 (1986), recognized to be "'mitigating' in the sense that [it] . . . might serve 'as a basis for a sentence less than death.'" 476 U.S. at 4-5, 106 S. Ct. at 1671, 90 Ed.2d at 7. See Cooper v. Dugger, supra, 526 So.2d at 902 (discussing Skipper). Indeed, the evidence in the present case is stronger than the showing in Skipper. The defendant in Skipper sought to present evidence that he was "a well-behaved and well-adjusted prisoner" for the "seven [and a half] months he spent in jail awaiting trial." 476 U.S. at 4, 106 S. Ct. at 1671, 90 L. Ed.2d at 6. In the present case, appellant presented evidence of good conduct in prison for fifteen years. In that lengthy period of time, he incurred only one disciplinary infraction, for failing to stand up during a count of prisoners, which appellee itself describes as "a minor infraction." Answer Brief of Appellee, at 26. Thus, in the present case, even more than in Skipper, there is a clear showing that appellant "would not pose a danger if spared (but incarcerated)." Skipper, supra, 476 U.S. at 5, 106 S. Ct. at 1671, 90 L. Ed. 2d at 7. Appellee also states that the evidence of appellant's relationship with his family showed "family ties [that] at best were minimal and what, one would normally expect." Answer Brief of Appellee, at 32. As appellant showed

evidence that appellant was dominated by Stephen Ellis, and "likely played a follower's role in the commission of the crime" (id. at 903). For discussion of this mitigating evidence, see Initial Brief of Appellant, at 39-44. The resentencing jury also heard evidence of appellant's history of alcohol abuse and intoxication at the time of the crime -- evidence which was not presented at the original sentencing hearing and which squarely falls within the categories of factors deemed relevant by this Court in assessing the appropriateness of a Tedder override. See Initial Brief of Appellant, at 38-39.

Appellee argues that the aggravating evidence of the circumstances of the crime and appellant's prior record outweighed the evidence in mitigation (Answer Brief, at 31-32). But, as this Court has made clear, under Tedder the weighing of aggravation and mitigation by the jury cannot be so lightly disregarded. Cochran v. State, supra, 547 So.2d at 933. "Although a trial judge may not believe the evidence presented in mitigation or find it persuasive, others may." Stevens v. State, supra, 552 So.2d at 1086. As appellant demonstrated in his Initial Brief, there was sufficient mitigating evidence -- particularly when combined with the evidence that appellant was not the triggerman -- to provide a "reasonable basis in the record to support . . . [the] jury's recommendation of life." Harmon v. State, supra, 527 So.2d at 189. Accordingly, the trial court erred in overriding the jury's life recommendation.

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in his Initial Brief, the evidence was far stronger than this, and indeed was equivalent to the type of character evidence which this Court has relied upon in reversing judicial overrides of life recommendations in other cases. See Initial Brief of Appellant, at 40-41.

ISSUE II

THE TRIAL COURT'S EXCLUSION OF THE RESULTS OF THE POLYGRAPH EXAMINATION VIOLATED FLA. STAT. § 921.141(1), THE EIGHTH AMENDMENT AND THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE FEDERAL CONSTITUTION

In response to appellant's argument that the trial court's exclusion of the polygraph examination results violated statutory and constitutional guarantees, appellee characterizes the trial court's action as an evidentiary ruling on the relevance of the proffered evidence, and contends that such evidentiary determinations are permissible under Green v. Georgia, 442 U.S. 95, 99 S. Ct. 2150, 60 L. Ed.2d 738 (1979), and Lockett v. Ohio, 438 U.S. 586, 98 S. Ct. 2954, 57 L. Ed.2d 973 (1978). Answer Brief, at 33-34. While it is certainly true that these decisions speak in terms of "relevant mitigating evidence" (id. at 33), it is readily apparent that the trial court's actions in this case did not constitute the type of evidentiary determination of relevance sanctioned by Green and Lockett. First of all, the trial court did not make a particularized judgment about the relevance of the proffered evidence; instead, the judge applied a rigid, categorical rule that all polygraph evidence is "inherent[ly] unreliable" (R. 690) and per se inadmissible. It is the sweeping and undiscriminating nature of this ruling that violates Green, Lockett, and § 921.141(1), Fla. Stat. See Initial Brief of Appellant, at 46-49. See also United States v. Piccinonna, 885 F.2d 1529, 1532 (11th Cir. 1989) (en banc) (the "tremendous advances [that] have been made in polygraph instrumentation and technique . . . [preclude a] categorical[] [statement] that polygraph testing lacks general acceptance for use in all circumstances"); Bennett v. City of Grand Prairie, 883 F.2d 400, 405 (5th Cir. 1989). Second, if the trial court had made a particularized determination of the relevance of the proffered

evidence, it would have necessarily found the evidence relevant. "'[I]t is universally recognized that evidence, to be relevant to an inquiry, need . . . only have "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."' . . . The meaning of relevance is no different in the context of mitigating evidence introduced in a capital sentencing proceeding." McKoy v. North Carolina, 58 U.S.L.W. 4311, 4313 (U.S., March 5, 1990). As in Green v. Georgia, supra, the proffered evidence bore directly on the issue of whether appellant was the triggerman in the capital felony murder -- "a critical issue in the punishment phase of the trial." 442 U.S. at 97, 99 S. Ct. at 2151, 60 L. Ed.2d at 741.

Appellee argues that "any error . . . is harmless beyond a reasonable doubt in that both at trial in 1974 and at resentencing in 1989, Vernon Ray Cooper continually maintained to both the jury and the trial judge that he did not kill Officer Wilkerson." Answer Brief, at 34. But this argument of appellee ignores the crucial role that polygraph evidence can play in aiding a factfinder's assessment of the credibility of a witness. As the en banc Eleventh Circuit recently recognized in United States v. Piccinonna, supra, polygraph evidence can "help the trier of fact to resolve the issues" by "impeach[ing] or corroborat[ing] . . . the testimony of a witness at trial." 885 F.2d at 1537. In the present case, the sentencer's assessment of appellant's credibility was not only important but critical to the capital sentencing determination. On the key issue of the triggerman's identity, all of the prosecution and defense evidence was circumstantial and equivocal, with the exception of the testimony of appellant himself. Thus, the sentencing decision turned in large part on the sentencer's assessment of whether appellant was telling the truth.

Finally, appellee argues that any error in excluding the polygraph evidence was harmless because the jury, even without hearing the polygraph evidence, returned a recommendation of life imprisonment. See Brief of Appellee, at 33. But the error was nonetheless prejudicial in that it undermined the trial court's assessment of whether to accept or override the jury's life recommendation. It is evident from the "Order Stating Reasons for Imposition of Death Sentence" that the judge's decision to override was based primarily on his conclusion that "no reasonable person could differ on th[e] interpretation of the facts" showing that appellant was the triggerman. R. 1147. Most of the Order is devoted to the judge's analysis of why the prosecution's circumstantial evidence of appellant's commission of the killing should be accepted rather than appellant's account of the events. Because the judge erroneously believed that the polygraph evidence must be excluded as a matter of law, he failed to factor this evidence into his assessment of appellant's credibility. Cf. Eddings v. Oklahoma, 455 U.S. 104, 112-13, 102 S. Ct. 869, 876, 71 L. Ed.2d 1, 9-10 (1982). If he had factored it in, he would have necessarily regarded this case as identical to Hawkins v. State, 436 So.2d 44 (Fla. 1983), where the defendant's sentencing hearing testimony that he was not the triggerman (see id. at 46) was corroborated by polygraph examination results (see id. at 46-47). Under these circumstances, there would not have been even an arguable basis for the judge to conclude that the life recommendation should be overridden on the ground that "no reasonable person could differ on th[e] interpretation of the facts" showing that appellant was the triggerman (R. 1147).

The record below is sufficient for this Court to find that the proffered polygraph evidence should have been admitted. As the Eleventh Circuit recognized in Piccinonna, supra, the appropriate criteria in determining the

admissibility of polygraph evidence are whether:

> 1) the polygraph examiner's qualifications are unacceptable; 2) the test procedure was unfairly prejudicial or the test was poorly administered; or 3) the questions were irrelevant or improper.

885 F.2d at 1537. Accord, State v. Bartholomew, 101 Wash.2d 631, 644-47, 683 P.2d 1079, 1088-89 (1984), discussed in Initial Brief of Appellant at 47 & nn. 19-20 (adopting equivalent criteria for the admission of polygraph testimony at a capital sentencing hearing, pursuant to a statute identical in all pertinent respects to § 921.141(1), Fla. Stat.). In the present case, the voir dire of polygraph examiner Warren D. Holmes unequivocally showed that he is a highly qualified expert in the field. See Initial Brief of Appellant, at 47-48. Indeed, the trial court ruled that the witness "possesses [the] requisite qualifications" to present expert testimony. R. 680. The testimony of the polygraph examiner on proffer demonstrated that the tests were administered in a proper manner. See R. 681-88. As explained earlier, the subject of the polygraph examination was clearly relevant to the issues in the resentencing hearing. Finally, appellant "provide[d] adequate notice to the opposing party that the expert testimony [would] be offered[,] . . . [and gave] the opposing party . . . [a] reasonable opportunity to have its own polygraph expert administer a test covering substantially the same questions." Piccinonna, supra, 885 F.2d at 1536. Prior to the resentencing hearing, appellant informed the prosecution of his intention to introduce the polygraph evidence, and appellant offered to submit to a polygraph examination by a prosecution expert or, at the prosecutor's option, a sodium pentothal examination. See Initial Brief of Appellant, at 12-13.

Because the record contains the testimony of the polygraph examiner on proffer, appellant would respectfully submit that this Court can, and should,

factor the polygraph evidence into its Tedder analysis on appeal, as the Court did in Hawkins v. State, supra, 436 So.2d at 47. The polygraph evidence provides an additional reason for finding that the trial court erred in overriding the life recommendation of the jury.

ISSUE III

THE TRIAL COURT ERRED AND VIOLATED APPELLANT'S EIGHTH AND FOURTEENTH AMENDMENT RIGHTS IN ADMITTING A GRUESOME AND INFLAMMATORY PHOTOGRAPH OF THE DECEASED

Appellee argues that the decision of this Court in Teffeteller v. State, 495 So.2d 744 (Fla. 1986), holds that "it is within the trial court's discretion to allow the admission of photographs of the victim during the course of a [capital resentencing] proceeding." Answer Brief of Appellee, at 34. But Teffeteller holds only that it is within the judge's discretion to permit the admission of evidence that the jury "would have been allowed to see" if it had "been the same panel that originally determined appellant's guilt," and if the evidence is "used only to familiarize the jury with the underlying facts of the case . . . in order that it may render an appropriate advisory sentence." 495 So.2d at 745.

In the present case, the judge's admission of the inflammatory and gruesome photograph of the deceased satisfied neither of these two prongs of the Teffeteller holding. The gruesome and inflammatory nature of the photograph would have required its exclusion at a trial of this case, just as at a resentencing hearing. See Initial Brief of Appellant, at 49-52 (discussing the constitutional and common law doctrines governing the admission of inflammatory photographs at trial and sentencing). And, as appellant explained in his Initial Brief, the facts of this case show that the prosecution introduced the photograph for the impermissible purpose of

"inflam[ing] . . . the jury" (Jackson v. State, 359 So.2d 1190, 1192-93 (Fla. 1978), cert. denied, 439 U.S. 1102, 99 S. Ct. 881, 59 L. Ed.2d 63 (1979)), and not merely "to familiarize the jury with the underlying facts of the case." Teffeteller, supra, 495 So.2d at 745.

CONCLUSION

Based upon the arguments presented above and the arguments presented in his Initial Brief, appellant respectfully asks this Court to reverse the trial court's sentence of death.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been served by mail on Carolyn Snurkowski, Esq., Assistant Attorney General, The Capitol, Tallahassee, Florida, 32302; and a copy has been mailed to appellant, Vernon Ray Cooper, # 042748, Florida State Prison, Post Office Box 747, Starke, Florida, 32091, on this 12th day of April, 1990.

RANDY HERTZ