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IN THE SUPREME COURT OF FLORIDA

WILLIAM B. CRUSE, JR.,)
))
 Appellant,))
))
vs.))
))
STATE OF FLORIDA,))
))
 Appellee.))
_____)

CASE NO. 74,656

APPEAL FROM THE CIRCUIT COURT
OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY

REPLY BRIEF OF APPELLANT

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

JAMES R. WULCHAK
CHIEF, APPELLATE DIVISION
ASSISTANT PUBLIC DEFENDER
Florida Bar No. 249238
112 Orange Avenue, Suite A
Daytona Beach, Florida 32114

(904) 252-3367

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

	<u>PAGE NO.</u>
TABLE OF CONTENTS	i
STATEMENT OF THE FACTS	1
CONCLUSION	5
CERTIFICATE OF SERVICE	6

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REPLY BRIEF OF APPELLANT

STATEMENT OF THE FACTS

The appellant relies on the statement of facts contained in the initial brief as a fair and accurate recitation of the relevant facts of the case, and objects to the appellee's statement of facts as biased, unsupported, misleading, and/or irrelevant. Specifically, the appellant disagrees with or wishes to clarify the following "facts" contained in the appellee's brief.

The first five pages of the appellee's facts apparently are a recitation of the trial court's sentencing order. (See Appellee's brief, p. 2) Many of the statements contained therein have been given record citations by the state. However, noticeably missing from quite a few of the statements are record

citations, which the appellant submits do not have record support. (Merely because they are included in the trial judge's findings do not make them true.) The appellee contends that the defendant purchased a rifle and ammunition as a result of difficulty with neighborhood children. (Appellee's brief, pp. 2, 3) There appears to be no evidence in the record that the purchase of the weapon was in any way connected with the problems in the neighborhood; in fact, the record shows that there was no apparent connection between the two. (R 3585) Also, the appellee states that this rifle is not designed for home protection and is designed to "inflict hideous destruction to the human body." (Appellee's brief, p. 2) Again there is no record evidence of these statements and the appellant questions the accuracy of the statements.

The appellee states that the defendant was familiar with the weapon and had practiced firing it. (Appellee's brief, p. 3) Again there is no record support of which appellant is aware for these statements. Also, the appellee characterizes the actions of the defendant as "stalking" a police officer, "following" victims out of the store to shoot at them, specifically "looking for targets," and selecting targets to attempt to kill them. (Appellee's brief, pp. 5-6) The appellant objects to these characterizations, which are inaccurate and have no record support. Additionally, the appellee claims that the defendant on more than one occasion held a gun to the head of Robin Brown, a hostage. (Appellee's brief, p. 6) The record citations given by

the appellee do not talk of pointing a gun at the hostage. In fact, the defendant only pointed a gun once at her head for the benefit of the police waiting outside the store when he was seeking a car to leave the county (where he said the police could then shoot him); he repeatedly told Robin Brown that he would not harm her in any way and exhibited concern for her well-being. (R 2641, 2678)

The appellee contends that Dr. Afield testified that "in spite of his delusions, the defendant knew it would have been wrong if he shot people." (Appellee's brief, p. 8) Similarly, the state says that Dr. Kirkland indicated that at the videotaped interview with police the defendant knew it was wrong to shoot people. (Appellee's brief, p. 14) These statements are misleading as this specific doctors' testimony related to the defendant's mental state not at the time of the incident, but rather his mental state some time later when speaking to police and trying to figure out what he had done. (R 3456, 3942-3946) Similarly, the testimony of Dr. Wooten that the defendant indicated to police that he must have wanted to demonstrate to the people who were out to get him that he was a person to be reckoned with (Appellee's brief, p. 10), was not a reflection of his mental state at the time of the incident, but rather shows the defendant, at a later time, trying to make sense of what had happened. (R 3570)

The state maintains that Dr. Berland did not reach a conclusion regarding the defendant having a fear for his physical

well-being until during the trial. (Appellee's brief, p. 18)
This evidence was not discovered by others but was obtained by Dr. Berland because he had an ongoing examination of the defendant and took the time to speak at length to the defendant and acquaintances on several occasions. (R 4730)

Finally, the testimony of Dr. Kirkland, the state's psychiatrist, indicates that he based his conclusions of legal sanity on the "insane delusions" test. (Appellee's brief, pp. 14-15) (R 3966-3967)¹ Dr. Kirkland, who knew of the defendant's delusions but knew nothing of his hallucinations, indicated that if the defendant suffered from hallucinations, his opinion could possibly be different. (R 4030-4031) Additionally, Dr. Kirkland indicated that there was ample evidence to support the other doctors' conclusions that the defendant was insane, and that it was possible, even in Dr. Kirkland's mind, that the defendant was insane. (R 4045-4057)

¹See Point III of the initial brief regarding the propriety of this standard for insanity in Florida.

CONCLUSION

BASED UPON the cases, authorities, and policies cited herein and in the initial brief, the appellant requests that this Honorable Court reverse the judgments and sentences and grant the following relief:

1. As to Points I - VII, remand for a new trial;
2. As to Point VIII-XI, remand for imposition of life sentences or, in the alternative, a new penalty phase trial.

Respectfully submitted,

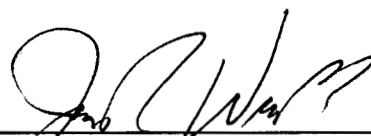
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JAMES R. WULCHAK
CHIEF, APPELLATE DIVISION
ASSISTANT PUBLIC DEFENDER
Florida Bar # 249238
112 Orange Avenue - Suite A
Daytona Beach, FL 32114
(904) 252-3367

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand delivered to: The Honorable Robert A. Butterworth, Attorney General, Westwood Center, 7th Floor, 2002 N. Lois Avenue, Tampa, FL 33607, and mailed to: Mr. William B. Cruse, Inmate Number 117051, Corrections Mental Health Institution, P.O. Box 875, Chattahoochee, FL 32324, this 14th day of February, 1991.



JAMES R. WULCHAK
CHIEF, APPELLATE DIVISION
ASSISTANT PUBLIC DEFENDER