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AUG 15 1990
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IN THE SUPREME COURT OF FLORIDA

BRUCE DOUGLAS PACE,

Appellant,

v. CASE NO. 75,056

STATE OF FLORIDA,

Appellee.

_______________________________/

ON APPEAL FROM THE CIRCUIT COURT
OF THE FIRST JUDICIAL CIRCUIT, IN
AND FOR SANTA ROSA COUNTY, FLORIDA

INITIAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE AND FACTS

Procedural Progress of the Case

On December 14, 1988, a Santa Rosa County grand jury indicted Bruce Douglas Pace for the first degree murder and armed robbery of Floyd Convington. (R 1132-1133) Pace pleaded not guilty to the charges. (R 1252) He proceeded to a jury trial on August 21, 1989, and the jury found him guilty as charged. (R 4, 1210) The penalty phase of the trial was conducted the following day, and the jury recommended a death sentence with a vote of seven to five. (R 1211)

Circuit Judge Ben Gordon adjudged Pace guilty and sentenced him to death for the murder and 15 years imprisonment for the robbery on November 16, 1989. (R 1238-1243) In support of the death sentence, the court found three aggravating circumstances: (1) Pace had a previous conviction for a violent felony, a robbery in 1982; (2) Pace was on parole at the time of the homicide; and (3) the homicide was committed during the course of a robbery. (R 1234-1235) The court found no mitigating circumstances. (R 1236-1237)

Pace timely filed his notice of appeal to this Court on November 17, 1989. (R 1244)

Facts -- Guilt Phase

Floyd Covington operated a taxi cab in Patterson Town in Santa Rosa County. (R 574) He was a large man and relied on a cane when he walked. (R 576, 623) Around 10:00 a.m. on

November 4, 1988, his daughter, Barabara Mack, talked to him on the radio. (R 578) She advised him that she did not need a ride to the cab stand. (R 578) Later in the day, Mack was unable to contact her father via radio. (R 583) Frankie Covington, Floyd's daughter-in-law, filed a missing person's report with the sheriff's office on November 7, 1989. (R 588-593) Investigators found Covington's taxi, a white, Buick station wagon, that evening around 7:00 down a trail in a wooded area which had been covered with a pile of brush. (R 608-609) The taxicab medallion was gone from the top of the car. (R 613) There were blood stains in the interior of the car. (R 638-641) Seriology testing showed the blood was consistent with Covington's, ABO type O. (R 777-784) Jan Johnson, a blood stain pattern analyst, was of the opinion that the blood stains showed someone was shot while sitting behind the steering wheel of the car with the shot coming from the passenger side. (R 809- 817) Based on some smeared blood on the seat, Johnson also was of the opinion that the victim was moved to the other side of the car. (R 816-819) On November 10, 1989, Covington's body was found in another wooded area 12.1 miles from the taxi cab. (R 601-605, 618-621, 889) Covington's empty wallet was found about 20 feet from the body. (R 734-735, 746)

The medical examiner, Dr. David Nicholson, observed the body at the scene and performed an autopsy the following day. (R 627-630) He concluded that the body had been at the scene between two and seven days before it was discovered. (R 630)

Covington had been shot twice in the chest with a shotgun. (R 628) Either of the wounds alone would have caused death. (R 631) Nicholson thought one shot was fired from five to seven feet away and the second was fired from a distance of three to four feet. (R 628) The plastic wadding and shot cups from the shells were recovered from the body. (R 628-629) One piece of the wadding was removed from the abdomen, and the others were in the victim's shirt and had not entered the body. (R 628-629) Nicholson said the angle of one wound was straight across the body, slightly front to back. (R 631) The second wound was slightly downward and straight into the body. (R 631) Nicholson said the angle of the wounds would be consistent with the theory that the shots originated from the passenger side of the car and struck the victim as he sat behind the wheel on the driver's side. (R 631)

Phillip Brand stated that he saw a white station wagon taxicab around 10:30 on the morning of November 4th. (R 660-661, 666) The car had a yellow or orange taxi insignia on the top. (R 661) Brand was driving on Highway 87 and the cab was angling off the road into a grassy ditch headed toward a sandy-looking road. (R 663-664) He only saw the car for 15 to 20 seconds and could not identify any characteristics of the driver. (R 662) He did not see anyone in the passenger seat. (R 662) Although he thought it odd to see a taxi going into a wooded area, Brand had no reason to report his observations until he read an article in the newspaper about the discovery of a taxi in the woods. (R 664-665)

During the evening of November 3, 1988, Bruce talked to his cousin, Angela Pace. (R 680) Over defense objections, she was allowed to testify to the contents of the conversation she had with Bruce. (R 680-682) Bruce talked to Angela about the money problems he was having, specifically he told her he was tired of being broke. (R 682) According to Angela, Bruce said, "[T]here's something that I do, I hate to do, but I want to have some money tomorrow." (R 682) Bruce did not say what he intended to do. (R 683) He never mentioned robbing anyone or shooting anyone. (R 685) Bruce never mentioned Floyd Covington. (R 684) Angela was aware that Bruce sometimes performed odd jobs for Covington. (R 684) Angela said that Bruce and her boyfriend were to paint her sister's house the following morning, but she did not see Bruce the next day. (R 683, 685-686) She said it was not unusual for Bruce to be gone for days or even weeks at a time. (R 685)

Orestine Franklin said she saw Floyd Covington and her nephew, Bruce Pace, in Covington's taxi about 9:30 on the morning of November 4, 1988. (R 668-672) The cab was headed in the direction of the house of Bruce's mother and stepfather, Harvey and Lilly Rich. (R 670) Kim Linburger also saw Bruce that day around 12:30 or 1:00 p.m. (R 922) He wore a vest-type jacket, white pants and blue tennis shoes. (R 923) He did not appear to be injured or upset. (R 923) Linburger did not see any blood on Bruce, but his clothes were dirty. (R 925) She did not know if Bruce had any money at that time, but she was told that he borrowed $20 from her boyfriend. (R 924, 926)

On Nobember 5, 1988, Michael Green and his mother, May Green, saw Bruce. (R 698, 706) Michael was driving down the road toward his mother's house when he saw Bruce walking. (R 698-699) Michael had known Bruce all of his life. (R 698) As he had done since a child, Bruce also visited May Green on occasion. (R 705-707, 725) Michael gave Bruce a ride, and they talked about getting a gun to do some shooting in May Green's backyard. (R 699) Michael suggested going to his brother's house to borrow his gun. (R 699) Bruce said he had a gun available and the two of them went to get it. (R 699) They went to and unoccupied house about a block away. (R 699-700) Bruce walked around the house and secured a shot gun from some shrubs. (R 700-701) The gun was broken down into three pieces. (R 701) After returning to May Green's house, Michael and Bruce shot the gun in the backyard. (R 701) Since Bruce had no shells, they used Michael's. (R 701) Bruce left the shotgun on the front porch and they watched a football game. (R 702) Michael left about 3:00 p.m. (R 702) Although she did not see Bruce bring a gun to her house, May Green said she saw Bruce on her porch with a gun. (R 707) When he left, he left the gun. (R 711) Green later gave the gun to an investigator. (R 711) Two Busch beers were also left on her porch. (R 721-722) She said Bruce was wearing old, grayish, faded pants, a jacket with zip-out sleeves, and tennis shoes. (R 708) There were spots on the back of the pants and May Green asked Bruce about them. (R 709-710) He said he had been squirrel hunting and the spots were from squirrel blood. (R 710)

Harvey Rich, Bruce's stepfather, had not seen Bruce for several days and was concerned that Bruce's absence and Floyd Covington's disappearance might be related. (R 850-851) Rich contacted the sheriff's department. (R 851) When Bruce came home, he talked to his stepfather. (R 852) Rich told Bruce that the police were looking for him. (R 861) Bruce told Rich that he needed to leave and that he thought something had happened to Covington. (R 852) Floyd Covington drove Bruce home on Friday morning. (R 853) Because he did not have his house key, Bruce entered the house through and unlocked window. (R 853-854) When he went into his room, he noticed that his brother's shotgun was missing from the gun rack. (R 854) At about the same time, someone jumped him from behind and choked him to unconsciousness. (R 854) Bruce woke up in the woods near Covington's car. (R 852) He saw his brother's gun and picked it up. (R 852, 863) He saw blood on the inside of the car. (R 852) Bruce then walked to the Greens' residence. (R 855) He did not say what he did with the gun. (R 855) Bruce voluntarily went to the sheriff's office with his stepfather. (R 861-862)

Investigators obtained some clothing and two expended shotgun shells from the Richs' residence. Bruce's stepfather discovered two red shotgun shells near his driveway. (R 857) The shells were eight to ten feet apart. (R 858) He said it was not unusual to see shotgun shells in his yard because his boys always did target shooting around the house. (R 857-858) However, he had not seen red shells in the yard before. (R 857)

During cross-examination, defense counsel attempted to elicit the fact that a third red shell was found in the yard. (R 866, 881) However, the court prohibited the inquiry. (R 866, 881-882) Lilly Rich, Bruce's mother, later picked up the shells and turned them over to an investigator. (R 877-878) She also gave investigators a pair of pants, a jacket and a pair of canvas shoes from Bruce's room. (R 874-876)

A firearms examiner, Donald Champagne, testified about his examination of the shotgun obtained from May Green, the expended shells found near the Richs' driveway, and the wadding and pellets removed from the body. (R 891-906) He concluded that the two expended shells were .12 gauge and manufactured by Federal Cartridge Corporation. (R 897) The plastic waddings found with the body were consistent with the type used in Federal shells. (R 894-897, 900) However, he could not identify the waddings as having come from any particular Federal shell. (R 894-897, 900-901) Champagne test fired the single, barrel .12 gauge shotgun and determined that the two expended shells submitted for examination were fired from that gun. (R 897) He could not determine when the shells were fired from the gun. (R 901) A third expended shell of Federal manufacture was also examined. (R 901-902) Champagne concluded that shell was, like the other two, fired from the .12 gauge shotgun. (R 901-902)

Five latent fingerprints were submitted for possible comparison. (R 772) The fingerprint examiner, Charles Richards, found four suitable for identification. (R 773) One

print, found on the exterior top of the driver's side window of the taxicab, matched Bruce Pace's left ring finger. (R 766-767) Richards could not tell how long the print may have been on the window. (R 768) The other four prints did not match Bruce's prints or that of Floyd Convington or Booker Jones, who had been a suspect. (R 772-774) No latents were found on the victim's wallet or the Busch beer can found near the taxi. (R 769-771)

A seriologist, Lonnie Ginsberg, tested the clothing obtained from the Richs' home for the presence of blood. (R 787-800) He found type O human blood on the pants. (R 787-788) The largest stain was on the back of the pants and appeared to have originated on the outside and was then absorbed into the fabric. (R 789-790) Since Covington and Bruce both have type O blood, DNA testing was attempted. (R 793-795) The blood stain proved to be insufficient for DNA testing. (R 794) Ginsberg could not determine from whom the blood originated since type O was consistent with blood of Bruce and Covington. (R 795-800) Human blood was found on the jacket and on one shoe, but the quantity was inadequate for ABO testing. (R 791-793)

Penalty Phase and Sentencing

The State and defense presented additional evidence during the penalty phase of the trial. In aggravation, the State introduced a 1981 judgment for strong armed robbery. (R 1037) Robert Mann, Bruce's parole officer, also testified that Bruce was on parole for the robbery at the time of the homicide. (R

1038-1039) Bruce presented testimony from his former teachers, employers and relatives concerning his background and childhood. (R 1042, 1049, 1057, 1063) A correctional officer from the jail also testified about Bruce's exemplary behavior while incarcerated awaiting trial. (R 1039-1041)

Bruce's highschool football coach, Hurley Manning, testified about his experiences with Bruce during his for years in highschool. (R 1042) He said Bruce was a good athlete and did not have any unusual problems in the program. (R 1044) Manning said Bruce was never a discipline problem in the program or for any of the other teachers. (R 1044) Bruce was generally quiet and hard working. (R 1044-1045)

Robert Settles was Bruce's vocational teacher and later his employer in the construction business. (R 1049) He started working with Bruce when Bruce was in the tenth grade. (R 1051) Shortly after Bruce graduated Settles left teaching and started a truss manufacturing business. (R 1051) He hired Bruce to work on a saw cutting trusses. (R 1051-1052) Settles considered Bruce to be naturally gifted working with the saw and a master sawman. (R 1052) He thought Bruce had a lot of capabilities but did not always live up to his potential. (R 1052-1054) Bruce worked with Settles for about a year and half when Bruce began work finishing concrete. (R 1055)

Eleanor Rich, Bruce's aunt, testified about Bruce's character and family background. (R 1057) She said Bruce was always a loving, caring person. (R 1059) When Bruce was around 14, his stepfather, Harvey Rich, left the family for over a

year. (R 1059-1060) As the oldest, Bruce assumed more responsibilities caring for his three younger siblings. (R 1060) She also mentioned the time when she had surgery, and Bruce would always come to her house to be sure she had lunch. (R 1060)

Finally, Bruce's mother, Lillian Rich, testified about his background and family life. (R 1063) Bruce never knew his real father, but his stepfather treated him as he did his own children. (R 1065) His stepfather left the family for a year when Bruce was 14. (R 1065) This may have had a negative effect on Bruce, since he admired his stepfather and spent time with him when he ran a service station. (R 1066) Bruce always tried to support the family including providing money when he began working. (R 1066-1067)

SUMMARY OF ARGUMENT

1. Before his arrest, Pace gave an exculpatory statement to his stepfather. Although the State asserted that the statement was false, there was no proof Pace lied. Nevertheless, the State sought to introduce the statement as showing consciousness of guilt. The trial court erroneously admitted the statement in violation of the rule precluding the admission of self-serving hearsay.

2. Two State witnesses, Pace's stepfather and mother, testified about two, red shotgun shells found in their yard. The shells were of the same manufacture as the two shells used to kill the victim. Additionally, the shells were fired from a shotgun seen in Pace's possession. On cross-examination, counsel asked about a third red shell which was of the same manufacture, fired from the same shotgun and found at the residence. The court improperly precluded the inquiry on the grounds that it was beyond the scope of direct. This left the jury with the inference that only two shells were found which matched the fact that the victim was shot twice.

3. The day before the victim disappeared, Pace had a conversation with his cousin in which he mentioned that he had money problems. She testified that Bruce said there was something he hated to do but he wanted some money the next day. This statement was improperly admitted as a prior threat since it never identified that Pace intended to commit a crime.

4. The two red, shotgun shells found in the yard where Pace lived were improperly admitted into evidence. These

shells were never linked to the crime. The State proved only two things: the victim was killed with shells made by the same manufacturer and a shotgun Pace possessed fired the shells. Although the prosecutor pushed the inference that the shells found were the ones fired to kill the victim, there was no evidentiary link to support this inference. Any minimal relevance the shells had was outweighed by the misleading inferences their admission created. Section 90.403 Florida Statutes should have precluded the admission of the shells.

5. The State failed to prove that Bruce Pace committed the homicide. Five items of evidence were used in an effort to prove Pace committed the crime. First, Bruce was seen with the victim in the taxicab on the morning the victim disappeared. Second, Bruce's fingerprint was found on a window in the cab. Third, Bruce had possession of a shotgun which fired the same brand of shells which were used to kill the victim. Fourth, Bruce had blood on his clothing. Fifth, Bruce made statements about needing money, and, being aware that the police wanted to question him, Bruce made an exculpatory statement to his stepfather. However, all of this evidence was circumstantial and failed to exclude every reasonable hypothesis of innocence. The trial judge should have granted the motion for judgment of acquittal.

6. During penalty phase, Pace presented unrefuted testimony in mitigation from his former teachers, employers and relatives concerning his background and childhood. A correctional officer from the jail also testified about Pace's

exemplary behavior while incarcerated awaiting trial. The State did not refute this evidence of nonstatutory mitigating circumstances, and, in fact, conceded the existence of this mitigation in a sentencing memorandum. In his sentencing order, the judge acknowledged that the testimony presented five nonstatutory mitigating circumstances for his consideration. However, the court did not find any of the circumstances to exist and weighed nothing in mitigation when determining sentence. The judge should have found these nonstatutory mitigating circumstances. His failure to do so skewed the sentencing weighing process rendering the death sentence unconstitutional.

7. At best, the State proved that Pace committed a murder during a robbery. There was no evidence of the details of the offense or what may have precipitated the shooting. Felony murders typically do not qualify for the imposition of a death sentence absent other compelling aggravation. Pace's death sentence is disproportional to the crime committed and must be reversed.

ARGUMENT

ISSUE I

THE TRIAL COURT ERRED IN ADMITTING INTO EVIDENCE EXCULPATORY HEARSAY STATEMENTS PACE MADE TO HIS STEPFATHER.

Bruce's stepfather, Harvey Rich, was concerned that Bruce's absence and Floyd Covington's disappearance might be related. Rich contacted the sheriff's department. When Bruce came home, he talked to his stepfather. (R 852) Rich told Bruce that the police were looking for him. (R 861) Bruce told his stepfather that he needed to leave and that he thought something had happened to Covington. (R 852) Bruce then rela ted the events which had occurred. He said Floyd Covington drove him home on Friday morning. (R 853) Because he did not have his house key, Bruce said he entered the house through and unlocked window. (R 853-854) When he went into his room, Bruce said he noticed that his brother's shotgun was missing from the gun rack. (R 854) At about the same time, someone jumped him from behind and choked him to unconsciousness. (R 854) Bruce woke up in the woods near Covington's car. (R 852) He saw his brother's gun and picked it up. (R 852, 863) He saw blood on the inside of the car. (R 852) Bruce then walked to the Greens' residence. (R 855) He did not say what he did with the gun. (R 855) Bruce voluntarily went to the sheriff's office with his stepfather. (R 861-862)

Prior to the introduction of this statement, Pace objected and moved to prohibit the testimony. (R 825-835) The defense's position was that this was an unrefuted, exculpatory statement

and, consequently, inadmissible hearsay. Rejecting this argument, the trial judge ruled the statement was admissible and allowed the testimony. (R 835) The court erred because the statement was inadmissible hearsay. Pace urges this Court to reverse his conviction for a new trial.

In Moore v. State, 530 So.2d 61 (Fla. 1st DCA 1988), the First District Court addressed a similar problem. Moore was charged with aggravated child abuse for the excessive beating of his 17-year-old daughter. His daughter also alleged a sexual battery, but she later admitted that allegation was false. When investigators initially interviewed the defendant, he denied the beating and sexual battery. In a second interview, he admitted striking his daughter. The State was allowed to introduce the statements over the objection that they were inadmissible, self-serving hearsay made by a defendant who did not testify at trial. Although finding the admission of the statements harmless, the appellate court agreed with the defense that the statements were inadmissible. Thoroughly discussing the issue in a clarification on rehearing, the First District said,

> The state contends that its purpose for seeking the introduction of appellant's statements given during his first interview with the police chief was to show consciousness of guilt and unlawful intent, rather than to impeach. We recognize that exculpatory statements, when shown to be false, are rendered inculpatory and are treated as admissions. Brown v. State, 391 So.2d 729, 730 (Fla. 3d DCA 1980). See also Padro v. State, 428 So.2d 290 (Fla. 3d DCA), review dismissed, 436 So.2d 100 (Fla. 1983). As admissions, the statements may

be introduced during the state's case-in-chief as evidence from which guilt may be inferred. See generally, Smith v. State, supra; Ehrhardt, Florida Evidence, § 803.18 (2d ed. 1984). Section 90.803(18)(a) recognizes as an exception to the rule against inadmissible hearsay, admissions made by a party in his individual or representative capacity. If, however, no proof is adduced showing the defendant's admissions to be false, such statements retain their self-serving character and must be considered as inadmissible hearsay declarations. Although the state recognizes that self-serving statements are inadmissible on such grounds if offered by a defendant, it urges that this principle has no application against the state. In this vein, the state characterizes our initial opinion's reference to Watkins, Logan, Fagan, and Lowery as authority for our position that the lower court erred in admitting the defendant's statements as inapposite, as there -- the state points out -- the statements were offered by the defendant in an effort to bolster his own testimony, while in the case at bar the statements were offered by the state in order to show the defendant's consciousness of guilt.

We agree that in most instances, the defendant, rather than the state, is the person who attempts to introduce out-of-court exculpatory statements. We disagree, however, with the state's argument that such declarations are automatically admissible under section 90.803(18), if offered by the state. The threshold for admissibility of all evidence is relevancy. See § 90.402, Fla. Stat. (1985). Furthermore, the relevancy of sought-after evidence must be demonstrated by the party seeking its admission. Hitchcock v. State, 413 So.2d 741 (Fla.), cert. denied, 459 U.S. 960, 103 S.Ct. 274, 74 L.Ed.2d 213 (1982). Because the state has not shown the relevancy of appellant's unrefuted exculpatory statement, the section 90.803(18) exception does not apply.

530 So.2d at 65-66.

Exactly the same circumstances exist here. Pace made an out-of-court, exculpatory statement and did not testify at trial. The State sought to introduce the statement as an admission showing consciousness of guilt. However, as in Moore, there was no evidence refuting and proving false the statement. Consequently, as in Moore, the statement was not relevant as an admission. The prosecution failed to carry its burden of showing that a hearsay exception applied. Therefore, the general rule precluding the introduction of self-serving hearsay applied. Bruce's statements to his stepfather were inadmissible hearsay.

At trial, the State argued that the statements were admissible under Brown v. State, 391 So.2d 729 (Fla. 3d 1980) and Smith v. State, 424 So.2d 726 (Fla. 1982). However, both of these cases are distinguishable. In Brown, the State presented evidence that the defendant lied when he gave an alibi statement when questioned after his arrest. The appellate court affirmed, recognizing that a defendant's exculpatory statements become admissible when proven to be false because they then show a consciousness of guilt. In Smith, the pretrial, exculpatory statements were admitted to show how his story changed during a series of interviews. This placed his confession in context and was relevant to show he lied to escape prosecution. Again, the key is the State proved the exculpatory statements were false. The State presented no evidence proving Bruce's statements to be false. Consequently,

the statements never lost their purely exculpatory nature and were inadmissible.

The trial judge should have excluded the testimony about the exculpatory statements Bruce made to his father. This Court must now reverse this case for a new trial.

ISSUE II

THE TRIAL COURT ERRED IN LIMITING CROSS-EXAMINATION OF STATE WITNESSES ABOUT THE EXISTENCE OF A THIRD SHOTGUN SHELL AT THE SAME HOUSE WHERE THE TWO SHELLS WHICH THE STATE INTRODUCED IN EVIDENCE AND ALLEGED AS THE SHELLS FROM THE TWO FATAL SHOTS.

Bruce's stepfather discovered two red shotgun shells near his driveway. (R 857) The shells were eight to ten feet apart. (R 858) He said it was not unusual to see shotgun shells in his yard because his boys always did target shooting around the house. (R 857-858) However, he had not seen red shells in the yard before. (R 857) During cross-examination, defense counsel attempted to elicit the fact that a third red shell was found in the yard. (R 866, 881) However, the court prohibited the inquiry as beyond the scope of direct examination. (R 866) Defense counsel attempted the same questions on cross-examination of Lilly Rich, Bruce's mother, and the court again sustained the State's objection that the inquiry was beyond the scope of direct. (R 881-882) Lilly Rich testified on direct that she picked up the two shells and turned them over to an investigator. (R 877-878) The State's ballistics expert testified pursuant to defense questioning to examining a third expended shotgun shell manufactured by Federal. (R 901-902) This shell had also been fired from the same shotgun. (R 901-902)

Denying Pace the right to demonstrate that a third shell of Federal manufacture and fired from the same gun was found at the defendant's residence deprived the jury of a critical fact.

As a result, the jury was left with the inference that only two shells were found, which exactly matched the fact that two shots killed the victim. The prosecutor argued this inference in his closing statement. (R 968, 980) Pace was denied his Sixth Amendment right to confront and cross-examine his accuser. See, Pointer v. Texas, 380 U.S. 400, 85 S.Ct. 1065, 13 L.Ed.2d 923 (1965); Zerquera v. State, 549 So.2d 189 (Fla. 1989); Coxwell v. State, 361 So.2d 148 (Fla. 1978); Coco v. State, 62 So.2d 892 (Fla. 1953); Nelson v. State, 362 So.2d 1017 (Fla. 3d DCA 1978). This Court must reverse this case for a new trial.

The improper restriction of cross-examination on the theory that the questions are beyond the scope of direct is not a new issue in this Court. Recently, this Court reversed a first degree murder conviction in Zerquera because the trial court improperly restricted cross-examination concerning the existence of certain bullets. The defendant wanted to elicit on cross the fact that the .22 caliber bullets in evidence were found in his codefendant's belongings. Through other evidence, the prosecutor had made the inference that the bullets were Zerquera's. The fact that the codefendant had the bullets was favorable to Zerquera's defense. Reversing for a new trial, this Court held that the prosecutor's objections that the inquiry was beyond the scope of direct examination should not have been sustained:

> The dispositive issue on the first degree murder conviction concerns the denial of admissions of evidence that would

> have shown that the .22 caliber bullets were found in Puttkamer's belongings. Zerquera argues that it was reversible error for the court to allow the state to block his attempt to present this evidence to the jury. The state consistently objected during Zerquera's cross-examination of Puttkamer and the investigating detective concerning the discovery of the bullets and their location. We find it was error to sustain these objections. The objections were clearly not sustainable on the basis that they were beyond the scope of direct examination.

549 So.2d at 192.

In Coco, 62 So.2d 892, the trial court improperly ruled that the defense cross-examination of a state fingerprint expert was beyond the scope of direct. On direct examination, the state had the expert describe the lifting of latent prints from the murder weapon. The expert also identified known fingerprint cards containing the defendant's prints. However, the prosecutor did not ask the results of the comparisons between the known prints and the latents because the witness would have testified that the prints did not match. When defense counsel began to ask a question on this point, the prosecutor objected and the judge sustained the objection. This Court reversed after concluded that the defendant had the right to bring out cross the complete use of the fingerprints discussed on direct. The trial judge had adopted an unduly restrictive interpretation of the defendant's right to cross-examine.

This Court reversed another murder conviction in Coxwell, 361 So.2d 148, because the defendant's right to cross-examine

was improperly restricted. On direct of a state witness the prosecutor elicited testimony about conversations and plans the witness discussed with the defendant concerning the killing of the defendant's wife. The witness said that he never carried out any of the plans. On cross, the defense wanted to bring out the fact that other plans were made by another individual to kill the victim. The trial judge sustained the state's objections that the inquiry was beyond the scope of direct. Rejecting the trial court's ruling, this Court relied on Coco v. State, 62 So.2d 892, and wrote,

> Acknowledging that there are certain factual differences, we are nonetheless convinced that Coco is controlling authority in every material respect. Here, as in Coco, the defendant in a capital case was denied the opportunity to elicit testimony from a key prosecution witness as to the most critical factual issue in the case -- identification. Here, as in Coco, the state's narrow characterization of the scope of direct examination ignores the expansive perimeters of subject matter relevance which the constitutional guarantee of cross-examination must accommodate to retain vitality. And here, as in Coco, where the fingerprint expert "purportedly gave the jury a complete picture" yet in reality, did not, Kipatrick's abridged testimony concerning his conversations with Coxwell left an accusatory implication which Coxwell was barred from refuting.

361 So.2d at 152.

Defense counsel's questions in this case were also well within the scope of direct. The witnesses testified about the discovery of two red shells near the driveway. Harvey Rich also testfied that it was not unusual to find shotgun shells in the yard. Certainly, counsel was entitled to inquire about the

discovery of a third red shell elsewhere in the yard. This evidence would have refuted the inference that the two red shells could have been left in the yard only as the result of the two fatal shots. Pace was denied his right to fully develop his defense due to the restriction of the cross-examination of the witnesses on this matter. The jury was left with incomplete testimony and misleading inferences as a result. This Court must reverse this case for a new trial.

ISSUE III

THE TRIAL COURT ERRED IN ADMITTING INTO EVIDENCE STATEMENTS PACE MADE TO HIS COUSIN THE DAY BEFORE THE VICTIM DISAPPEARED.

During the evening of November 3, 1988, Bruce talked to his cousin, Angela Pace. (R 680) Over defense objections, she was allowed to testify to the contents of the conversation she had with Bruce. (R 680-682) Bruce talked to Angela about the money problems he was having. Specifically, he told her he was tired of being broke. (R 682) According to Angela, Bruce said, "[T]here's something that I do, I hate to do, but I want to have some money tomorrow." (R 682) Bruce did not say what he intended to do. (R 683) He never mentioned robbing anyone or shooting anyone. (R 685) Bruce never mentioned Floyd Covington. (R 684) Defense counsel argued that these statements were not specific enough to be relevant as evidence of a prior threat or intent to commit this offense. (R 11-17, 680-681) In fact, there was evidence of other things Bruce might have "hated to do" in order to obtain money. His mother testified that she had arranged a loan for him from an uncle, and his cousin said that Bruce and her boyfriend were to paint a house the following day. (R 683-686, 879)

This alleged statement was insufficient to be relevant as a threat of future criminal conduct. Evidence of prior threats must be specific enough to identify the crime and, at least, the class of victims. See, Sikes v. State, 252 So.2d 258 (Fla. 2d DCA 1971). Neither a crime nor a victim was mentioned in these statements. The fact that Bruce needed money and had to

do something he did not like does not show a plan to commit a crime or an intended victim. As stated in Sikes,

> Before such testimony is competent as evidence of a threat the law is clear that the quoted language must be directed at the victim or at a class to which the victim belongs, which class is sufficiently restrictive so that a reasonable inference may be made that the threat necessarily focused on the victim or on one against whom the assault was directed if other than the victim.

252 So.2d at 260.

The court ruled the evidence of Bruce's statements admissible as an exception to the hearsay rule under Section 90.803(3) Florida Statutes. (R 14-17) This exception pertains to statements which demonstrate a then existing mental, emotional, or physical condition. The prosecutor specifically relied on this Court's decision in Jones v. State, 440 So.2d 577 (Fla. 1983) which dealt with statements which tended to prove or explain subsequent conduct. (R 14) However, Jones is distinguishable since the statements he made identified the class of persons Jones intended to kill. Jones was on trial for killing a police officer and a witness testified that he had earlier complained about police hassling him and that he "`intended to kill a pig'." 440 So.2d at 577. There is no such specificity in the statements Bruce made to his cousin.

Bruce has been denied his rights to due process and a fair trial. See, Amends. V, VI and XIV U.S. Const. Testimony about his statements to his cousin were inadmissible hearsay. He asks this Court to reverse his conviction.

ISSUE IV

THE TRIAL COURT ERRED IN ADMITTING TWO EXPENDED SHOTGUN SHELLS INTO EVIDENCE SINCE THESE ITEMS WERE IRRELEVANT AND NEVER LINKED TO THE CRIME.

Harvey Rich found two, red shotgun shells near the driveway of his home. (R 857) He frequently saw shotgun shells in the yard since his sons fired guns in the yard around his house. (R 857-858) However, he had not seen red shells in the past. (R 857) A third red shell was also recovered from the yard, but the State did not introduce this shell in evidence at trial. (R 18, 26, 866, 881, 901-902) These shells were manufactured by Federal Cartridge Corporation. (R 897, 901-902) The waddings recovered from the victim were of the type found in Federal shells. (R 894-897, 900-902) The ballistics expert could not identify if the waddings recovered came from any particular Federal shell. (R 894-897, 900-901) The three shells proved to have been fired, at some time, from the shotgun seen in Bruce's possession. (R 897, 901-902)

Before trial, the defense moved to exclude the shells from evidence on the grounds that they were not relevant and any probative value they might have was outweighed by the prejudicial impact. (R 17-29) The court denied the motion and recognized a continuing objection to the introduction of the shells and waddings. (R 29)

Section 90.403 Florida Statutes states that even relevant evidence is inadmissible if the possible prejudice outweighs

the probative value of the evidence. The statute, in part, reads as follows,

> Relevant evidence is inadmissible if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, or needless presentation of cumulative evidence....

Prejudical impact includes the tendency of the evidence to suggest to the jury an improper basis for deciding the issue in question. See, State v. McClain, 525 So.2d 420, 422 (Fla. 1988). This is the harm of the shotgun shell evidence in this case. The shells could not be linked to the crime. Yet, the prosecutor urged that the two shells recovered were the shells which fired the two fatal shots. This improper inference was compounded by the State's preventing evidence showing that the third red shell was also found in the yard. The trial judge should have excluded the shotgun shells.

This Court in McClain applied Section 90.403 and approved a trial judge's exclusion of the presence of cocaine in the defendant's blood in a vehicular manslaughter while intoxicated case. Even though the cocaine had some relevance to the intoxication issue, this Court said exclusion of the evidence was proper,

> Applying these principles to the instant case, it is clear that the probative value of the evidence of cocaine in McClain's blood was minimal. The amount of cocaine was so small that the chemist could express no opinion with respect to whether it would have had any effect at all upon McClain's driving. On the other side of the scales, McClain could have been seriously prejudiced in the eyes of the jury if it became

> known that he had ingested even a trace amount of cocaine. Therefore, we cannot say that the trial court abused its discretion in refusing to admit the evidence of the cocaine in McClain's blood.

525 So.2d at 422. The same reasoning applies here. The jury could have been improperly lead to the conclusion that Bruce fired the fatal shots merely because a gun he once possessed fired shells of the same manufacture as the shells which killed Covington. Since the probative value of the shotgun shells was minimal, testimony concerning them should have been excluded.

While the cocaine use in McClain was also evidence of another crime, the principles also apply to evidence which does not suggest the commission of a collateral crime. In Jackson v. State, 522 So.2d 802 (Fla. 1988), for example, this Court held that references to the defendant's having merely possessed a firearm and bulletproof vest on another occasion inadmissible. In Simmons v. Wainwright, 271 So.2d 464 (Fla. 1st DCA 1973), the court condemned the introduction, in a burglary prosecution, of the defendant's possessing " unusual tools" a few days after the crime. The court said,

> The forgoing is one more example of overzealous prosecutors submitting evidence of collateral acts on the part of a defendant that are not relevant to the issue being tried. The prosecutor is not permitted to adduce every description of evidence which according to their own notions may be supposed to elucidate the matter in dispute.

271 So.2d at 465. Finally, in Beagles v. State, 273 So.2d 796 (Fla. 1st DCA 1973), the prosecutor elicited evidence in a murder prosecution that the defendant's car had been seen the

night before in certain "lover's lane" area. The victim was found dead in another "lover's lane." Reversing, the appellate court found the evidence was insufficiently connected to the charge being tried. Ibid., at 799.

The evidence that a shotgun, once seen in Pace's possession, at one time fired three shell of the same manufacture as the shells which killed the victim is too remote to be probative of the identity of the perpetrator. However, such evidence is likely to lead a jury to the improper inference that the expended shells were the shells which killed the victim. The prosecutor encouraged the jury to draw such a conclusion, which further confused and mislead the jury in its fact-finding function. This evidence should have been excluded to avoid this prejudice to the fairness of the trial. Bruce Pace urges this Court to reverse his conviction for a new trial.

ISSUE V

THE TRIAL COURT ERRED IN DENYING PACE'S MOTION FOR JUDGMENT OF ACQUITTAL SINCE THE EVIDENCE WAS INSUFFICIENT TO PROVE HE WAS THE PERPETRATOR OF THE CRIME.

The State relied on five items of evidence in an effort to prove Pace committed the crime. First, Bruce was seen with the victim in the taxicab on the morning the victim disappeared. Second, Bruce's fingerprint was found on a window in the cab. Third, Bruce had possession of a shotgun which fired the same brand of shells which were used to kill the victim. Fourth, Bruce had blood on his clothing. Fifth, Bruce made statements about needing money, and, being aware that the police wanted to question him, Bruce made an exculpatory statement to his step-father. However, all of this evidence was circumstantial. Consequently, before it will sustain a conviction, it must satisfy the special review standard for such evidence. As this Court said in Jaramillo v. State, 417 So.2d 257 (Fla. 1982),

> A special standard of review applies where a conviction is wholly based on circumstantial evidence. In McArthur v. State, 351 So.2d 972, 976 n. 12 (Fla. 1977), we reiterated this standard to be that "[w]here the only proof of guilt is circumstantial, no matter how strongly the evidence may suggest guilt a conviction cannot be sustained unless the evidence is inconsistent with any reasonable hypothesis of innocence."

Ibid. "Circumstances that create nothing more than a strong suspicion that the defendant committed the crime are not sufficient to support a conviction." Cox v. State, 555 So.2d 352, 353 (Fla. 1989). The evidence here failed to meet this

test, and the trial court should have granted Pace's motion for judgment of acquittal.

1. Bruce's Being Seen With The Victim

Orestine Franklin testified that she saw Bruce with Floyd Covington in the taxicab around 9:30 in the morning on November 4, 1988, the day Covington disappeared. (R 668-670) This fact is of little probative value for several reasons. Initially, it was not unusual for Bruce to ride in Covington's taxicab. Many people in this small community rode in the cab. Furthermore, Bruce occasionally did odd jobs for Covington, including working on the taxicab. (R 586-587, 862) Additionally, Covington was alive and spoke to his daughter on the cab's radio 30 minutes later, around 10:00 a.m. (R 578, 582-583) Assuming the white car Brand saw turning into a wooded area was Covington's taxi, this occurred even later, around 10:30 a.m. (R 666) Consequently, the fact that Bruce was seen in the taxi at 9:30, does not establish that he was in the cab or with Covington at the time the homicide allegedly occurred. Only through an improper compounding of inferences can this piece of evidence possibly link Bruce Pace to the homicide. See, Gustine v. State, 86 Fla. 24, 97 So. 207 (Fla. 1923); Collins v. State, 438 So.2d 1036 (Fla. 2d DCA 1983); Chaudoin v. State, 362 So.2d 398 (Fla. 2d DCA 1978). "Where two or more inferences ... must be drawn from the evidence and then pyramided to prove the offense charged, the evidence lacks the conclusive nature to support the conviction." Collins, 438 So.2d at 1038. The fact

that Bruce was seen with the victim the morning he disappeared does not exclude a reasonable hypothesis that someone other than Pace committed the homicide.

2. The Fingerprint

The second circumstance was the presence of Bruce's fingerprint on the window of the taxicab. This, too, was of no probative value. Bruce was in the taxicab at various times. His fingerprint could have been placed on the car at numerous innocent times. In order to be probative as identification of the perpetrator, it must be established that the fingerprint could only have been made at the time of the crime. Such is not the case here.

Jaramillo v. State, 417 So.2d 257, is on point. In that case, the defendant's fingerprints were found on various items in the victim's home -- a knife, packaging for the knife and a grocery bag. Jaramillo explained that his prints were placed on these items while he helped the victim's nephew cut some boxed while cleaning the garage. Reversing his conviction, this Court said,

> Proof that Jaramillo's fingerprints were found on certain items in the murder victim's home was the only evidence offered by the State to show that Jaramillo was involved in these murders. This proof is not inconsistent with Jaramillo's reasonable explanation as to how his fingerprints came to be on these items in the victim's home. The State failed to establish that Jaramillo's fingerprints could only have been placed on the items at the time the murder was committed.

417 So.2d 257. Just as in Jaramillo, the presence of Bruce's fingerprint on the taxicab proves nothing.

3. The Shotgun and Shells

A ballistics expert testified that a shotgun seen in Bruce's possession fired two shells found in Bruce's parents yard which were of the same manufacture as the shells used to kill Floyd Covington. (R 891-902) The expert could not say that the shell's fired from the gun killed the victim. At most, the expert merely concluded that the victim was killed by Federal brand shotgun shells and two shells which were once fired from the shotgun were also made by Federal. This evidence does not, however, link Pace to the crime. Once again, an improper pyramiding of inferences is necessary to suggest that these facts prove Pace committed the homicide. Gustine; Collins; Chaudoin. First, an inference would have to be made that Pace's firearm, out of many other shotguns which could have fired the fatal shot, killed the victim. The fact that the shotgun once fired shells from the same manufacturer as the shells which killed the victim does nothing to prove this inference. A second inference would have to be that Pace actually used the firearm. His mere possession of the weapon at a later time does not create such an inference.

4. The Blood

On November 5, 1988, May Green saw a stain on Bruce's pants and asked him about it. (R 709-710) He replied that he had been hunting and the stain was squirrel blood. (R 710) Later, after Bruce's arrest, a pair of pants was seized from his home which proved to have type O human blood stains. (R 787-788) However, May Green could not identify those pants as the ones he wore when she saw Bruce on November 5th. (R 709) Bruce and the victim have type O blood. (R 793-795) There were also some human blood stains found on Bruce's jacket and tennis shoes. (R 791-793) Two problems are present regarding this evidence. First, the pants were never identified as the pants Bruce wore. Second, the blood found on the clothing could have been Bruce's blood. Nothing linked the stains to the victim.

5. The Statements

The State introduced two statements Bruce made as inferences of his guilt. Bruce's cousin, Angela Pace, testified to the first. Bruce talked to her about not having money. He told her he was tired of being broke, and said, "[T]here's something that I do, I hate to do, but I want to have some money tomorrow." (R 682) Bruce did not say what he intended to do. (R 683) He never mentioned robbing anyone or shooting anyone. (R 685) Bruce never mentioned Floyd Covington. (R 684) In the second statement, Bruce related to his stepfather what happened to him the morning Covington disappeared. Bruce told his stepfather that he needed to leave and that he thought

something had happened to Covington. (R 852) He said Floyd Covington drove him home on Friday morning. (R 853) Bruce said he entered the house through and unlocked window because he did not have his key. (R 853-854) When he went into his room, Bruce said he noticed that his brother's shotgun was missing from the gun rack. (R 854) At that time, someone jumped him from behind and choked him to unconsciousness. (R 854) Bruce woke up in the woods near Covington's car. (R 852) He saw his brother's gun and picked it up. (R 852, 863) He saw blood on the inside of the car. (R 852) Bruce then walked to the Greens' residence. (R 855) He did not say what he did with the gun. (R 855)

Bruce denied committing the crime. However, the State's theory was his exculpatory statements were not true. But, the State had no evidence to refute Bruce's story. Even under the State's theory, however, Pace's statements do not infer guilt to the exclusion of every reasonable hypothesis of innocence. There are innocent inferences to be made from the statements, even assuming the statements are false. First, as the State suggests, Bruce is guilty and fabricated his exculpatory statement. Second, Bruce is not guilty, but knowing the police were looking for him, decided an exculpatory story would avoid trouble. Either inference still leaves a reasonable hypothesis of innocence.

The State failed to prove that Bruce was the perpetrator of the crime. The circumstantial evidence did not exclude every reasonable hypothesis of innocence. His conviction on

such evidence violates his right to due process, and he urges this Court to reverse his judgments with directions that he be discharged.

ISSUE VI

THE TRIAL COURT ERRED IN FAILING TO FIND NONSTATUTORY MITIGATING CIRCUMSTANCES SINCE EVIDENCE ESTABLISHING THEM WAS UNREFUTED AND THE STATE CONCEDED THEIR EXISTENCE.

During penalty phase, Pace presented testimony in mitigation from his former teachers, employers and relatives concerning his background and childhood. (R 1042, 1049, 1057, 1063) He also had a correctional officer from the jail who testified about Bruce's exemplary behavior while incarcerated awaiting trial. (R 1039-1041) The State presented nothing to refute this evidence of nonstatutory mitigating circumstances (R 1037-1072), and in a sentencing memorandum, the State conceded the existence of this mitigation. (R 1220-1221) In his sentencing order, the judge acknowledged that the testimony presented five nonstatutory mitigating circumstances for his consideration:

> As to those mitigating factors enumerated in Florida Statute 941.141(6), the Court finds that none of those exist in this case. In addition, the Court has carefully considered other possible mitigating factors including, but not limited to the fact that the defendant has behaved himself in custody and seems to have manifested a positive attitude during that period of time; second, that he was a good athlete in high school; third, that his father deserted his mother and he when he was a child; fourth, that he was a good, loving child; and fifth, that the defense contends the case as a whole was somewhat "flaky."

(R 1236) However, the court found that "none of the mitigating factors suggested have been established." (R 1236) The trial judge then proceeded to his sentencing, weighing nothing in

mitigation. (R 1236) This skewed the sentencing weighing process and rendered the death sentence unconstitutional. Amends. V, VI, VIII, XIV U.S. Const.; Eddings v. Oklahoma, 455 U.S. 104 (1982).

In Campbell v. State, Case. No. 72,622 (Fla. June 14, 1990), this Court clarified the trial judge's responsibility to find mitigating circumstances when supported by the evidence. This Court wrote,

> When addressing mitigating circumstances, the sentencing court must expressly evaluate in its written order each mitigating circumstance proposed by the defendant to determine whether it is supported by the evidence and whether, in the case of non-statutory factors, it is truly of a mitigating nature. See, Rogers v. State, 511 So.2d 526 (Fla. 1987), cert. denied, 484 U.S. 1020 (1988). The court must find as a mitigating circumstance each proposed factor that has been reasonably established by the evidence and is mitigating in nature ....The court next must weigh the aggravating circumstances against the mitigating and, in order to facilitate appellate review, must expressly consider in its written order each established mitigating circumstance. Although the relative weight given each mitigating factor is within the province of the sentencing court, a mitigating factor once found cannot be dismissed as having no weight.

Campbell, slip opinion at 8-10. (footnotes omitted) A short time later, this Court reiterated this point in Nibert v. State, Case No. 71,980 (Fla. July 26, 1990):

> A mitigating circumstance must be "reasonably established by the evidence." Campbell v. State, No. 72,622, slip op. at 9 (Fla. June 14, 1990); Fla. Std. Jury Instr. (Crim) at 81; see, also, Rogers v. State, 511 So.2d 526, 534 (Fla. 1987), cert., denied, 484 U.S. 1020 (1988).

> "[W]here uncontroverted evidence of a mitigating factor has been presented, a reasonable quantum of competent proof is required before the factor can be said to have been established." Campbell, slip op. at 9 n.5. Thus, when a reasonable quantum of competent, uncontroverted evidence of a mitigating circumstance is presented, the trial court must find that the mitigating circumstance has been proved....

Nibert, slip opinion at 6-7. The judge in this case did not properly fulfill these sentencing responsibilities in regard to the finding of mitigating circumstances. His sentencing order is defective, and the death sentence was imposed without weighing the mitigating circumstances present.

Bruce Pace's death sentence has been imposed in an unconstitutional manner. He urges this Court to reverse his sentence.

ISSUE VII

THE TRIAL COURT ERRED IN SENTENCING PACE TO DEATH BECAUSE THE SENTENCE IS DISPROPORTIONAL TO THE CRIME COMMITTED.

The State prosecuted this case as a premeditated murder during a robbery. Under the best evidence available to the State, a death sentence is inappropriate. A premeditated murder during the commission of another felony, without any additional aggravation, simply does not qualify for a death sentence when compared to similar cases. See, e.g., Proffitt v. State, 510 So.2d 896 (Fla. 1987); Caruthers v. State, 465 So.2d 496 (Fla. 1985); Rembert v. State, 445 So.2d 337 (Fla. 1984); Richardson v. State, 437 So.2d 1091 (Fla. 1983). Pace's death sentence violates the Eighth and Fourteenth Amendments and must be reversed.

This Court has consistently reversed death sentences imposed simply for murders committed during a robbery or burglary. Ibid. Even the complete absence of mitigating factors has not changed this result. Rembert, 445 So.2d at 340. Bruce Pace's offense is easily comparable to these cases. He allegedly shot a taxicab driver during the commission of an armed robbery. Although the trial court found nothing in mitigation, Pace presented unrefuted evidence of nonstatutory mitigating circumstances. (See Issue VI, supra.) In Caruthers, the defendant shot a store clerk three times during an armed robbery. After disapproving the premeditation and avoiding arrest aggravating factors, this Court held that Caruthers,

whose only prior offense was for stealing a bicycle, should not die. 465 So.2d at 499. In Rembert, the defendant bludgeoned a store owner to death during a robbery. No other aggravating circumstances were present and no mitigating circumstances were found. His death sentence was reduced to life. 445 So.2d at 340. In Proffitt, the defendant stabbed his victim as he awoke during the burglary of his residence. The trial court found the homicide was cold, calculated and premeditated in addition to being committed during the burglary. Proffitt had no significant criminal history. This Court reduced his sentence. 510 So.2d at 898. In Richardson, the defendant beat his victim to death during a residential burglary. This Court approved four of the six aggravating circumstances found. Although the jury recommended life, no mitigating circumstances were found to exist. His sentence was reversed for imposition of life imprisonment. 437 So.2d at 1094-1095. In Menendez v. State, 419 So.2d 312 (Fla. 1982), the defendant shot a store owner twice during a robbery. No other aggravating circumstances existed, and Menendez had no significant criminal history. This Court reversed his death sentence. Finally, in Holsworth v. State, 522 So.2d 348 (Fla. 1988), the defendant stabbed two victims, killing one, during a burglary of a residence. Three aggravating circumstances were approved and no mitigating circumstances were found, but this Court concluded that jury could have based its life recommendation on evidence of drug usage and past history of nonviolence. Holsworth's death sentence was reduced to life.

Like the defendants in each of these cases, Pace also does not deserve to die for his offense. Bruce Pace's death sentence is disproportional to his crime. He urges this Court to reverse his death sentence with directions to the trial court to impose a life sentence.

CONCLUSION

For the reasons presented in Issues I through IV, Bruce Pace asks this Court to reverse his convictions for a new trial. In Issue V, Pace asks that his convictions be reversed with directions that he be discharged. Alternatively, Pace asks, for the reasons in Issues VI and VII, that his death sentence be reduced to life imprisonment.

Respectfully submitted,

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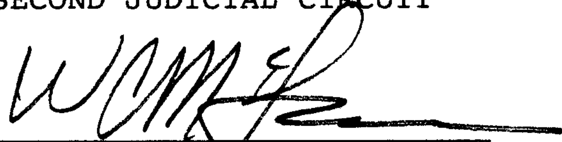

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Initial Brief of Appellant has been furnished by hand-delivery to Mr. James Rogers, Assistant Attorney General, The Capitol, Tallahassee, Florida, 32302; and a copy has been mailed to appellant, Douglas Bruce Pace, #084643, Florida State Prison, Post Office Box 747, Starke, Florida, 32091, on this 15 day of August, 1990.

W. C. McLAIN