IN THE SUPREME COURT OF FLORIDA

DOUGLAS CANNADY,

Appellant,

v. CASE NO. 76,262

STATE OF FLORIDA,

Appellee.

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

REPLY BRIEF OF APPELLANT

NANCY A. DANIELS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

DAVID A. DAVIS
ASSISTANT PUBLIC DEFENDER
LEON COUNTY COURTHOUSE
FOURTH FLOOR NORTH
301 SOUTH MONROE STREET
TALLAHASSEE, FLORIDA 32301
(904) 488-2458

ATTORNEY FOR APPELLANT
FLA. BAR #271543

TABLE OF CONTENTS

	PAGE
TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
ISSUE II	
THE COURT ERRED IN EXCLUDING ANGELA CANNADY'S TESTIMONY THAT HER MOTHER HAD TOLD HER BOISVERT HAD RAPED HER.	1
ISSUE IV	
THE COURT ERRED IN FINDING THAT BOTH MURDERS WERE COMMITTED IN AN ESPECIALLY HEINOUS, ATROCIOUS, AND CRUEL MANNER.	3
ISSUE V	
THE COURT ERRED IN FINDING THAT BOTH MURDERS WERE COMMITTED IN A COLD, CALCULATED, AND PREMEDITATED MANNER WITHOUT ANY PRETENSE OF MORAL OR LEGAL JUSTIFICATION.	7
ISSUE VI	
THE COURT ERRED IN SENTENCING CANNADY TO DEATH BECAUSE SUCH A SENTENCE IS NOT PROPORTIONATELY WARRANTED UNDER THE FACTS OF THIS CASE.	13
CONCLUSION	19
CERTIFICATE OF SERVICE	20

TABLE OF CITATIONS

CASES	PAGE(S)
Breedlove v. State, 413 So.2d 1 (Fla. 1982)	1
Brown v. State, 526 So.2d 903 (Fla. 1988)	4,6
Bruno v. State, Case No. 71,419 (Fla. January 3, 1991) 16 F.L.W. S65	10
Caruthers v. State, 465 So.2d 496 (Fla. 1985	14
Christian v. State, 550 So.2d 450 (Fla. 1989)	12
Cochran v. State, 547 So.2d 928 (Fla. 1989)	5,6
Downs v. State, Case No. 73,877 (Fla. January 18, 1991) 16 F.L.W. S106	2
Garron v. State, 528 So.2d 353 (Fla. 1988)	15
Gunsby v. State, Case No. 73,616 (Fla. January 15, 1991) 16 F.L.W. S114	9
Hamilton v. State, 547 So.2d 630 (Fla. 1989)	16
Harvard v. State, 414 So.2d 1032 (Fla. 1987)	5
Henry v. State, Case No. 70,816 (Fla. January 3, 1991)	10,11
Huff v. State, 495 So.2d 145 (Fla. 1986)	4
King v. State, 514 So.2d 354 (Fla. 1987)	14
Nibert v. State, Case No. 71,980 (December 13, 1990) 16 F.L.W. S3	17,18
Occhicone v. State, 570 So.2d 902 (Fla. 1990)	8
Penn v. State, Case No. 74,123 (Fla. January 15, 1991)	11
Phippen v. State, 389 So.2d 991 (Fla. 1980)	16
Porter v. State, 564 So.2d 1060 (Fla. 1990)	9,16
Rembert v. State, 445 So.2d 337 (Fla. 1984)	14

Rogers v. State, 511 So.2d 526 (Fla. 1987) 7

Ross v. State, 474 So.2d 1170 (Fla. 1985) 14

State v. Breedlove, 413 So.2d 1 (Fla. 1982) 5

State v. Dixon, 283 So.2d 1 (Fla. 1972) 7

State v. Law, 559 So.2d 187 (Fla. 1990) 7

Tefteller v. State, 439 So.2d 840 (Fla. 1983) 6

Wilson v. State, 493 So.2d 1019 (Fla. 1986) 15,16

IN THE SUPREME COURT OF FLORIDA

DOUGLAS CANNADY, :

Appellant, :

v. : CASE NO. 76,262

STATE OF FLORIDA, :

Appellee. :

_____:

REPLY BRIEF OF APPELLANT

ISSUE II

THE COURT ERRED IN EXCLUDING ANGELA CANNADY'S TESTIMONY THAT HER MOTHER HAD TOLD HER BOISVERT HAD RAPED HER.

On pages 14 and 15 of its brief, the State makes a remarkable statement about what this court held in Breedlove v. State, 413 So.2d 1 (Fla. 1982):

> Second, Breedlove, recognizes that to establish an exception to the hearsay rule, the defendant must show communication of the statement to him and action in reliance upon it. Thus, the admissibility of the statement is dependent upon communication and reliance, but never on the truth of the matter asserted.

This court never recognized that in Breedlove. Instead it approved the trial court's admitting statements Breedlove's mother and brother had made to two police officers, not for their truth, but to show the effect on Breedlove.

In this case, Angela Cannady's statements corroborated Cannady's claim that he believed his wife had been raped, and

they were not admitted to prove she had in fact been sexually assaulted.

The State also relies upon this court's opinion in Downs v. State, Case No. 73,877 (Fla. January 18, 1991) 16 F.L.W. S106. The court held that the victim's statements of her fear of the defendant could not be used to establish Downs' state of mind, and second, contrary to the trial court's ruling, the statements objected to were hearsay. Hence, Downs is not applicable to this case because Cannady wanted them introduced not to prove that in fact his wife had been raped but to bolster his claim that he believed that she had.

ISSUE IV

THE COURT ERRED IN FINDING THAT BOTH MURDERS WERE COMMITTED IN AN ESPECIALLY HEINOUS, ATROCIOUS, AND CRUEL MANNER.

The State, with commendable effort, tries to make these killings into something they are not: especially heinous, atrocious, and cruel. While the facts of the case show that the killings were not so terribly done to merit a finding of this aggravating factor, Cannady needs to point out several flaws in the State's reasoning on this issue.

On page 18 of its brief, the State asserted that the firearms expert established that the gun could not have gone off accidentally. Cannady never claimed that he accidentally shot his wife in the sense suggested by the State. The gun did not have a "hair" trigger, nor did it go off when he dropped it on the floor. He accidentally shot her as he stumbled when he got off the chair he was sitting in.

As to the "operative facts" presented on the same page of the State's brief, several were not found by the court in its sentencing order:

1. Douglas Cannady retrieved his gun and ammunition.

2. Douglas Cannady methodically cleaned and reloaded his gun.

3. Douglas Cannady aimed his gun at Georgia.

Moreover, there is no evidence Cannady did nothing for his wife because he wanted her dead. When he went to her, he saw that she was already dead, so there was nothing for him to do (T 1242).

The State, on pages 19-21 then uses several cases to justify the trial court's finding of this aggravating factor as it applied to Georgia Cannady.

In Huff v. State, 495 So.2d 145 (Fla. 1986), Huff killed his father and mother as they sat in a car. The father, who was in the front seat, was shot as he turned to face his son who was in the back. He was evidently aware his son was going to shoot him because he put up his hand in self-defense. This court found that murder especially heinous, atrocious, and cruel. The mother, who had just witnessed her husband's murder was killed next. Huff shot her twice in the head and then while she was conscious, savagely beat her 8 or 9 nine times. That murder was also especially heinous, atrocious, and cruel.

As the State pointed out in its brief, this case is distinguishable from the murder of the father in Huff primarily because the father's awareness of his impending death by his son. Here there is no evidence Georgia Cannady had any inkling she was about to die. When the police found her body, it was in a sitting position, the house was neat, and there was no evidence of any struggle (T 966, 972). There is no evidence Georgia Cannady had any awareness of her impending death.

Moreover, in light of the subsequent refinement of what the heinous, atrocious, and cruel aggravating factor means, it is doubtful this court would now find that aggravating factor applied to the father's murder in Huff. In Brown v. State, 526 So.2d 903 (Fla. 1988), Brown and his companion fled the scene of a robbery, but a police officer stopped them a few miles

away. Brown jumped the officer and during the ensuing struggle, he took the policeman's gun and shot him in the arm. He killed him as he begged not to be shot. That murder was not especially heinous, atrocious, and cruel.

In Cochran v. State, 547 So.2d 928 (Fla. 1989), the defendant kidnapped the victim, and as she drove her car she jumped him. He shot her, and she begged to be taken to a hospital. Instead of doing as she had requested, he dumped her body along side the road. Failure to get medical help did not make this murder especially heinous, atrocious, and cruel money, nor did Cochran's actions after the girl had lost consciousness make it so. In short, where the death resulted from a single shot, and there were no additional acts of cruelty or torture, the murder is not especially heinous, atrocious, or cruel.

Accordingly, the murder in Harvard v. State, 414 So.2d 1032 (Fla. 1987) was especially heinous, atrocious, and cruel because it was denouement of the defendant stalking, threatening, and harassing his wife. In this case, on the day of the murder in October, there is no evidence Cannady had made any threats to beat his wife. She had been scared in July (T 1011), but there is no evidence that three months later, she was afraid not only of being beaten but of being killed. Thus, Harvard has no application in this case.

Neither does State v. Breedlove, 413 So.2d 1 (Fla. 1982) where the defendant stabbed the victim as he slept, and who suffered considerably before eventually dying. This court

found that murder to have been especially heinous, atrocious, and cruel, but the continuing validity of that holding has been cast in doubt by Tefteller v. State, 439 So.2d 840, 846 (Fla. 1983). In that case the defendant shot the victim in the chest with a shotgun and who lingered in great pain for several hours before he died. That murder was not especially heinous, atrocious, and cruel.

As to Gerald Boisvert's murder, the State claims Boisvert was alive after Cannady shot him once in the head. Whether he was or not is irrelevant because there was no evidence he was conscious, and even if he had been conscious, the fatal bullets were fired only seconds after the first shot to the head. Under this court's holdings in cases such as Brown, Cochran, and Tefteller, supra, that murder was not especially heinous, atrocious, and cruel. Also, that Boisvert was shot several times generally has no relevancy unless the victim has some awareness of that fact. What happens to the victim after his death or unconsciousness is irrelevant to finding the murder especially heinous, atrocious, and cruel. Here, the State never proved by any evidence that Boisvert was conscious after Cannady had shot him. Because of this failure, it never proved beyond a reasonable doubt that the victim was aware of his impending death and that the defendant enjoyed his suffering. In short, Cannady killed Boisvert with the same speed as he did his wife. Neither knew or did not know for long that they were about to be killed. Neither murder was committed in an especially heinous, atrocious, and cruel manner.

ISSUE V

THE COURT ERRED IN FINDING THAT BOTH MURDERS WERE COMMITTED IN A COLD, CALCULATED, AND PREMEDITATED MANNER WITHOUT ANY PRETENSE OF MORAL OR LEGAL JUSTIFICATION.

The State argues, first, that this court's decision in State v. Law, 559 So.2d 187 (Fla. 1990) has no application to penalty phase issues involving circumstantial evidence. (Appellee's brief at p. 23) In State v. Dixon, 283 So.2d 1 (Fla. 1972) this court said that the aggravating factors defined those murders which were death worthy. It also said that those factors had to be proven beyond a reasonable doubt. In a sense then, the penalty phase of a trial differs from the guilt phase only in what has to be proven, not the level of proof. Thus, if the State can establish an aggravating factor by circumstantial evidence, then the law concerning that evidence should also apply. To do otherwise, especially when there is no compelling reason to do so, would not make sense.

The State on page 23 also makes some assumptions not supported by the record. Cannady has discussed his notion of Georgia's murder being accidental in the previous issue. The State claims that "Cannady, at some point, decided to kill his wife." But it never established when that point occurred, and that was crucial, because this court has required the defendant have a heightened premeditation for this aggravating factor to apply. Such extended premeditation consists of a careful plan or prearranged design. Rogers v. State, 511 So.2d 526 (Fla. 1987). Here there was none. To the contrary, nothing could

have helped the State prove its case against Cannady better than what he did. That is, he committed the murder virtually in front of his son, and then he took him along to memorialize what he did. He made no effort to conceal the murder or prevent either victim from calling for help, such as Occhicone did in Occhicone v. State, 570 So.2d 902 (Fla. 1990) when he cut the telephone line going into his girlfriend's house before he entered and killed her. That Cannady had thought about killing his wife for only a short while can also be deduced from the lack of any resistance from his wife. Her body was found sitting on the couch, and a can of beer was on the table in front of her. Moreover, there is no evidence that Cannady ever suspected that his wife was unfaithful to him which may have provided some provocation for committing the murder.

The State also claims Cannady "aimed the gun," but the bullet entered Georgia's body lower than it exited. Thus, Cannady would have had to have almost squatted to have shot his wife so that the bullet could have followed an upward trajectory. On the other hand, he claimed the gun went off as he stumbled while rising from his chair, and that explanation for the homicide agrees better with the bullet's track.

There is, in short, precious little evidence to establish the killing was premeditated, much less that it was one done with the heightened premeditation this court has required for the cold, calculated, and premeditated factor to apply. The cases cited by the State also do not support the trial court's ruling that this aggravating factor applied.

In Porter v. State, 564 So.2d 1060 (Fla. 1990), the defendant and his victim/girlfriend, had had a stormy relationship almost from the time he began living with her. He had, in the past, threatened to kill her and her daughter. He disappeared for several months, during which his girlfriend acquired a new lover. Porter returned and told the victim's mother that he wanted to see her daughter but was told that she no longer wanted to see him. Some time later, he told a friend that "You'll read about it in the paper," and he stole a gun from another friend. On each of the two days preceding the murder, he drove by his former girlfriend's house. On the night before the murder, he got drunk, and the next morning he killed the woman and her boyfriend. This court approved the trial court's finding of cold, calculated, and premeditated because of the extensive threats Porter had made and the calculation he had demonstrated. The murder was not impulsively done.

Likewise, this court approved this aggravating factor in Gunsby v. State, Case No. 73,616 (Fla. January 15, 1991) 16 FLW S114 because Gunsby had shown extensive thought about committing the murder he was convicted of. When he learned that his friend had had a fight with the proprietor of a nearby grocery store, he left the party he was attending, went to the store, but departed when he learned the person he wanted was no longer there. He returned to the party and told someone that he was "tired of the damned Iranians messing with the blacks." He then left the party again but returned shortly wearing a

camouflage suit and carrying a gun. He then went to the store where he killed a clerk. Over Justices Kogan's and Barkett's dissent, this court held that Gunsely had committed the murder in a cold, calculated, and premeditated manner. It specifically rejected his claim of moral justification that he believed he was the protector of the black community.

In this case, there is no evidence Cannady got his gun to kill his wife. The only evidence on this point was that he was tired of his wife's complaining about Boisvert's rape of her, and he retrieved the weapon so he could give it to her to call her bluff that she wished Boisvert were dead (T 1238).

In Bruno v. State, Case No. 71,419 (Fla. January 3, 1991) 16 FLW S65, Bruno had planned to kill his victim for two weeks and in doing so he savagely beat the him helpless and shot him twice in the head at point blank range. The murder was essentially an execution. It was also cold, calculated, and premeditated. Bruno is readily distinguishable from this case because there was no long time spent in planning either Georgia's or Boisvert's deaths. There was also no beatings, nor was there any attempt to silence his gun or otherwise avoid detection. To the contrary, Cannady's son immediately came out of his room when he heard the single shot that killed his mother. Also, when Cannady shot Boisvert, it was in his front yard during the day with at least one man watching besides Cannady's son (T 863).

Other recent cases in which this aggravating factor was not found compare favorably with this case. In Henry v. State,

Case No. 70,816 (Fla. January 3, 1991). Henry was married but living with another woman. He returned home to talk with his wife about getting Christmas presents for her son. They began arguing and he repeatedly stabbed her with a kitchen knife. That murder was not cold, calculated and premeditated.

In Penn v. State, Case No. 74,123 (Fla. January 15, 1991), Penn killed his mother with a hammer while she slept after returning several times to her house at night to steal things from her. That killing also was not cold, calculated and premeditated even though Penn's wife had told him that his mother stood in the way of them ever reconciling.

So here, there is no evidence Cannady methodically planned to kill his wife or that he had thought about it for any extensive amount of time. Until he shot her there is no evidence he was going to do so, which could not be said of Gunsley or Bruno but could of Henry and Penn. Thus, Cannady's killing of his wife was not cold, calculated and premeditated.

As to Boisvert, the State's brief on pages 24-26 argues what Cannady willingly concedes. He killed that man in a cold, calculated and premeditated manner. The legislature, in creating this aggravating factor, however, recognized that some people will commit a first degree murder under the mistaken and flimsy belief that they were justified, either legally or morally, in doing so. The legislature was not justifying "vigilante tactics" when it added the qualifying language to the cold, calculated, and premeditated aggravating factor. It was simply acknowledging that people who commit malum in se

crimes often have a pretense of justification for doing so. Fathers kill drug pushers who sold heroin to their daughters. Husbands kill men who had raped their wives. Inmates kill other inmates who threatened to kill them. Christian v. State, 550 So.2d 450 (Fla. 1989). None of these acts are justifiable. To do so would legitimate vigilante and self-help tactics. But neither does the law overlook the valid emotions that drive men and women to do these things. Thus, rather than justifying or legitimating what these people have done, it simply says that as to this one aggravating factor, some compassion, some recognition of human failings may be shown. A person may be convicted of first degree murder, but he cannot be executed if he committed it in a cold, calculated and premeditated manner when he believed (as unjustified as it may have been) that the law would sanction his homicide.

Thus, what the State wants this court to do is erase the qualifying language of this aggravating factor. If Cannady committed the murder in a cold, calculated and premeditated manner as he admits, then that is sufficient for this aggravating factor to apply. That he may have had a pretense of moral or legal justification should not enter into the determination of whether this aggravating factor applies. Such a novel approach is not one this court should adopt since the language of the statute defining this factor is so clear. The task really is one the legislature should undertake rather than this court, and it should leave it to that body to amend what it has said.

ISSUE VI

THE COURT ERRED IN SENTENCING CANNADY TO DEATH BECAUSE SUCH A SENTENCE IS NOT PROPORTIONATELY WARRANTED UNDER THE FACTS OF THIS CASE.

The State has two arguments on this issue: 1) Cannady's alcoholism was not that bad, and 2) he killed two people, tried to kill a third, and may have killed a fourth but for his son's refusal to cooperate with him. Neither of them refutes the conclusion that this is not a death case.

CANNADY'S ALCOHOLISM

Every mental health expert that examined Cannady agreed that he was an alcoholic and had been so for many years (T 1328, 1356, 1487). Virtually everyone else who had had any contact with the defendant, from police officers to relatives, commented that whenever they saw him he had been drinking, was drunk, or was an alcoholic (T 1137, 1141, 1144, 1148, 1160-62, 1187, 1286). Moreover, he had repeated run-ins with the law over the years, almost all of which had been drinking related (T 1148). Thus, it is hard to credit the State's claim that "The proffered mitigation in this case was weak." (Appellee's brief at p. 29)

Predictably, on the day of the murders, Cannady had drunk a lot of beer. Dr. Macaluso based his conclusions upon Cannady having drunk 14 cans of beer. (not 26 as the State claims. (Appellee's brief at p. 30)) (T 1327, 1335) One of the uncontradicted results of such extensive and heavy drug use was the loss of his memory, his ability to make adequate judgment

decisions and to perceive correctly (T 1325), which is typical of alcoholics (T 1325, 1329). At that time, he was also very angry and out of control (T 1491) because he perceived that everyone had turned against him and in particular the police were unwilling to prosecute Boisvert for the rape of his wife (T 1491). Thus, he shot him because he felt morally justified in doing so (T 1491), which feeling arose from his alcoholism mixed with "prominent paranoid anti-social and borderline characteristics." (T 1491)

Such justification may not have exonerated Cannady for the killings, but in the penalty phase of this trial, such a consideration was irrelevant. So, that Drs. MacLaren and Walker "both agreed that Cannady was sane and competent during these murders" (Appellee's brief at p. 31), misses the point because their determinations have relevance during the guilt portion of the a capital trial but none during the penalty phase. C.f. King v. State, 514 So.2d 354 (Fla. 1987).

Cannady also has never argued that his alcoholism by itself justifies a life sentence in every case (Appellee's brief at p. 29). It is a dominant and controlling feature of this case because it more than anything else defined this defendant, and it is a disease this court has repeatedly recognized can mitigate a death sentence. Ross v. State, 474 So.2d 1170 (Fla. 1985); Rembert v. State, 445 So.2d 337 (Fla. 1984); Caruthers v. State, 465 So.2d 496 (Fla. 1985).

THE MULTIPLE KILLINGS

This case is admittedly unusual because of the double homicide and the attempted murder, but it is not unique. This court has either reduced at least two death sentences to life in prison where the defendant has killed more than one person or suggested that death was an inappropriate punishment. Garron v. State, 528 So.2d 353 (Fla. 1988); Wilson v. State, 493 So.2d 1019 (Fla. 1986).

In Garron, the defendant killed his wife and step-daughter, and apparently tried to kill a second step-daughter. On the night of the shooting Garron had been drinking and he shot his wife as they argued. When one of his step-daughters tried to call the police, he killed her. The other child ran to a neighbor's house, and as she fled, she heard Garron fire more shots which she presumed were aimed at her. Garron then tried, unsuccessfully, to commit suicide.

On appeal, this court reversed Garron's convictions and sentences and remanded for a new trial. It also, however, rejected each of the four aggravating factors the trial court found,[1] and it suggested that a death sentence was disproportional because the deaths resulted from a heated domestic confrontation. Id. at 361.

---

[1]Prior conviction for a crime of violence; to avoid lawful arrest; especially heinous, atrocious, and cruel; cold, calculating, and premeditated.

In Wilson, the defendant killed his father and 5 year old nephew, and almost succeeded in killing his mother. On appeal, this court said the murder of the nephew was only a second degree murder, but that of his father was a first degree murder. Moreover, a death sentence for the father's death was not proportionally warranted because it was the result of a heated domestic fight. This court reached this conclusion even though Wilson had not been drinking, and the court properly found that the killing was especially heinous, atrocious, and cruel; and he had a prior violent felony conviction.

In other cases involving multiple murders, this court has reversed on other grounds, but it has suggested that death was not the correct sentence in any event. Hamilton v. State, 547 So.2d 630 (Fla. 1989); Phippen v. State, 389 So.2d 991 (Fla. 1980); Porter v. State, 564 So.2d 1060 (Fla. 1990) (Barkett, dissenting).

This case shares many of the underlying similarities of the cases just cited. The killings arose out of an essentially domestic dispute. Georgia Cannady was killed while she and her husband argued about what she was going to do about Boisvert having raped her. Boisvert, in turn, was killed to avenge the rape of his wife and the police department's apparent unwillingness to do anything about it. Further mitigating these killings, Cannady was an alcoholic and had been drinking heavily the day he committed these crimes.

What makes this case different from the others is the time difference between the first homicide and the murder of

Boisvert. Yet Cannady did not shoot his wife then calmly drive to where Boisvert lived and shoot him. Instead, he rushed over there and shot this victim several times in the head. Obviously this man with his alcohol soaked brain and paranoid disorders committed this murder under the influence of the frustrations he felt towards Boisvert and his inability to bring him to justice. The rage that had been building for several months finally erupted at the shock of his wife's death, and once unleashed, it remained unchecked until he returned home. In short, the months of brooding over Boisvert raping his wife and his wife's refusal to prosecute the case against the man who had injured her (and indirectly, him), finally erupted into one booze created and sustained frenzy of criminal activity.

Other mitigating evidence supports Cannady's proportionality argument. When arrested, the defendant was taken to jail, and while there, he made a serious attempt to commit suicide, which would have succeeded but for the herculean efforts of the doctors who saved his life (T 1492-93). At the sentencing phase of the trial, he asked for the death penalty for killing Boisvert (T 1501). Also, because these killings were alcohol induced crimes of passion, he will likely be able to adjust to prison life and get along well in that setting (T 1498). Such essentially unchallenged mitigation, along with the wealth of other mitigating evidence is sufficient to reduce Cannady's death sentences to life in prison. Nibert v. State, Case No. 71,980 (December 13, 1990)

16 FLW S3 (Death sentence not proportionally warranted because Nibert had an abused childhood, was a chronic alcohol, and lacked substantial control over his behavior.)

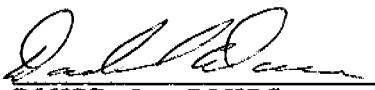
While Cannady may have been sane when he committed the murders, it is also evident that his pickled brain had stopped functioning sufficiently rationally to withstand the waves of emotions crashing on him. A death sentence is not proportionally warranted in this case.

CONCLUSION

Based upon the arguments presented here, Douglas Cannady respectfully asks this honorable court to grant the following relief: 1) reverse the trial court's judgment and sentence and remand for a new trial, 2) reverse the trial court's sentence and remand for imposition of two sentences of life in prison without the possibility of parole for twenty-five years, 3) reverse the trial court's sentence and remand for a new sentencing hearing before a new jury.

Respectfully submitted,

NANCY A. DANIELS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT



DAVID A. DAVIS
Assistant Public Defender
Leon County Courthouse
Fourth Floor, North
301 South Monroe Street
Tallahassee, Florida 32301
(904) 488-2458

ATTORNEY FOR APPELLANT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by hand delivery to Carolyn Snurkowski, Assistant Attorney General, The Capitol, Tallahassee, Florida, and a copy has been mailed to appellant, DOUGLAS CANNADY, #A-009898, Florida State Prison, Post Office Box 747, Starke, Florida 32091, on this 1st day of May, 1991.

DAVID A. DAVIS