IN THE SUPREME COURT OF FLORIDA

RANDALL SCOTT KNOWLES,

Appellant,

v.

CASE NO. 79,644

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE CIRCUIT COURT
OF THE FOURTH JUDICIAL CIRCUIT,
IN AND FOR NASSAU 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 NO. 271543

TABLE OF CONTENTS

TABLE OF CITATIONS

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_____ :

REPLY BRIEF OF APPELLANT

ARGUMENT

ISSUE I

THE COURT ERRED IN DENYING KNOWLES' CAUSE CHALLENGE OF TWO PROSPECTIVE JURORS, AND IT COMPOUNDED THAT ERROR BY REFUSING TO GIVE THE DEFENDANT MORE PEREMPTORY CHALLENGES AS HE REQUESTED, IN VIOLATION OF HIS SIXTH AND FOURTEENTH AMENDMENT RIGHTS TO A FAIR AND IMPARTIAL JURY.

This court's opinion in Trotter v. State, 576 So. 2d 691 (Fla. 1990) provides the greatest support for the state on this issue, so Knowles must explain why that case has no determinative relevance here. First, however, he must clarify the situation in which this issue arose.

By the end of the next to the last round of challenges, defense counsel had exercised all of his peremptory challenges (T 524). This included excusing three prospective jurors he believed the court should have removed for cause (T 524). The court, recognizing that the state was "pretty much now in the driver's seat," (T 526) called ten more prospective jurors

(T 529). After both sides had questioned them, it excused two for cause (at the defendant's request) and three were peremptorily challenged by the state (T 577-78, 581)[1] That left five people eligible to sit on the jury, at which point counsel for Knowles asked for, but was denied, additional peremptories (T 583). Two of the five, McCoy and Taylor, sat as jurors, and two of the remaining three served as alternates (T 588).[2]

When counsel asked for the additional peremptories, he obviously wanted to use them on McCoy or Taylor since they were the only ones new to the jury which he had not been able to use a peremptory on before.[3] Under the Trotter rationale, when a defendant has indicated a small class of identifiable prospective jurors he would have used peremptory challenges on, that should be sufficient to preserve the issue for appellate review. In other words, he has done enough to show that the trial court's error in incorrectly denying Knowles' cause challenges was harmful error.

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[1]The state also backstruck a Mr. Plews (T 579).

[2]The court excused one of the remaining three for cause because he had a cousin sentenced to death (T 584-85).

[3]Before the final round began, counsel had one peremptory challenge left when he asked for more. After the court denied the request, he used the last peremptory challenge on a Mrs. Herrington (T 524), evincing an intent on counsel's part to get the best panel of ten jurors he could. Thus, after the final voir dire, he probably would not have wanted to use any peremptory challenge the court may have given on one of those ten jurors.

Of course, Knowles recognizes that this court said "he initially must identify a specific juror whom he otherwise would have struck peremptorily." Id. at 693. This court, has never required defense counsel to explicitly identify "Mrs. Jones" or "Mr. Smith" as the prospective juror he would excuse if given additional challenges. It should be enough that defense counsel identifies that of the remaining prospective jurors he has problems with at least one of them to justify the request. In other words counsel should indicate he needs more peremptory challenges because he has problems with some, specific jurors rather than because he has a nebulous, general desire for a better jury.

In this case, before the final round of the voir dire, with only one challenge left, counsel requested more. The court denied that request, at which point, he used his last challenge (T 523-24). The request for more peremptory challenges at that point was nothing more than a general request similar to the one Trotter made, which this court found as being nothing more than a "general request for a challenge that could be exercised in the future." Id. at 693, f.n. 7.

However, after the final ten prospective jurors had been questioned and their number whittled to five and finally two, McCoy and Taylor, counsel's concerns were more focussed, and the request for more challenges was more specific. It was evident Knowles at most had in mind only two more prospective jurors whom he wanted excused. By the time he made his last request, the voir dire was over, 10 of the 12 members of the

jury had been picked, and the remaining two were about to be chosen. The field of challengeable venirepersons was identifiably small, and the request was made with particular persons in mind. Knowles' request sufficiently alerted the court that he had a problem with at least one of the remaining two prospective jurors to have preserved this issue for appeal.

As to the merits of the cause challenge, Knowles relies on his Initial Brief. Based on what he said there and argues here, this court should reverse the trial court's judgment and sentence and remand for a new trial.

ISSUE II

THE COURT ERRED IN OVERRULING KNOWLES' OBJECTION TO THE PROSECUTOR ASKING HIM ON CROSS-EXAMINATION IF AN EARLIER WITNESS, WHO HAD TESTIFIED DIFFERENTLY THAN KNOWLES, WAS LYING.

The state, making no effort to distinguish the cases Knowles cited to support his argument on this issue, merely "maintains that under the circumstances here the questions were proper." (Appellee's Brief at p. 28) Its apparent rationale for supporting this bald assertion is that "the questions fairly established the illogical nature of Appellant's testimony." Id. The state, however, has missed the point of what the Fourth District Court of Appeal said in Boatwright v. State, 452 So. 2d 666 (Fla. 4th DCA 1984): that the jury, not the witnesses are "the sole arbiter of the credibility of witnesses. . . Absent some evidence showing that that witness is privy to the thought processes of the other, the first witness is not competent to pass on the other's state of mind." Id. at p. 668.

As pointed out in Knowles' Initial Brief the state could have argued in closing that the defendant conveniently developed a selective amnesia; it could not, however have asked Knowles to explain why another witness may have lied.

The state predictably declares the trial court's error harmless because the evidence presented showed the defendant's guilt. (Appellee's Brief at p. 28) While its list of evidence supports a guilty verdict, the state has missed the point raised in Knowles' Initial Brief: the erroneously admitted

testimony attacked the very essence of the defendant's case. He was so drunk and strung out from huffing toulene that he did not recall killing two people. As to the harm done to that defense, the state says nothing. Because it has not shown the harmlessness of the trial court's error, this court should reverse the judgment and sentence and remand for a new trial.

ISSUE IV

THE COURT ERRED IN REPEATEDLY DENYING KNOWLES' MOTIONS FOR A JUDGMENT OF ACQUITTAL BECAUSE THE STATE PRODUCED INSUFFICIENT EVIDENCE THAT HE PREMEDITATEDLY MURDERED CARRIE WOODS AND HIS FATHER.

The state claims Knowles failed to preserve this issue for review because he did not adequately argue it at the trial level. Specifically, it says that his motion for Judgment of Acquittal was "perfunctory, boilerplate motion[]." (Appellee's brief at p. 34) Counsel is unaware that sincerity is a requirement to preserve an issue for appeal. This court in Castor v. State, 365 So. 2d 701, 703 (Fla. 1978) said:

> To meet the objectives of any contemporaneous objection rule, an objection must be sufficiently specific both to apprise the trial judge of the putative error and to preserve the issue for intelligent review on appeal.

In this case, defense counsel sufficiently alerted the trial court that he did not think Knowles had premeditatedly killed either Carrie Woods or his father:

> We would take the position, Your Honor, that at this time based upon the evidence and in the light most favorable to the State the state has failed to set forth the prima facie case of Mr. Knowles on the 13th day of July, 1990, that he did unlawfully from a premeditated design to effect the death of said Carrie Woods, did kill the said Carrie Woods, a human being, by shooting her with a firearm.
>
> With the regard to the second count of the information (sic), we would respectfully submit to the Court that base upon the evidence take in a light most favorable to the State that the State has failed to establish that on or about the 13th day of July, 1990 that Mr. Knowles did unlawfully and from a premeditated design to effect the

> death of Alfred Knowles, did kill the said Alfred Knowles by shooting him with a firearm.
>
> Your Honor, that goes particular with regard to the theory of premeditation.

(T 922).

Judge Parsons has been a circuit court judge for several years, and he has assuredly tried a number of first degree murder cases. He knew the defendant's mental state when Knowles killed his two victims was the only contested issue, and though the motion for the Judgments of Acquittal may seem perfunctory, the trial court was sufficiently apprised of the problems here to make an intelligent ruling. Moreover, the state and defense adequately developed the record for this court to review.

Regardless of the adequacy of counsel's objection, this court has an independent statutory duty to review the entire record to ensure the sufficiency of the evidence. Section 921.141(4) Fla. Stat. (1991).

Rather than analyzing the evidence using the factors identified in Larry v. State, 104 So. 2d 352 (Fla. 1958), the state has left the evidence in a pile for this court to sort through much as one does with tomatoes at a grocery store. From Appellee's brief at pages 35-38 Knowles has culled the following points.

1. The prior threats (Appellee's brief at pp 35-36.) See Issue III. Even if such evidence provided some evidence of premeditation, considering the defendant's drugged and drunken mind on the day of the killings as well as the long interval

between what he said and the killings, they cannot provide sufficient evidence of premeditation.

2. Knowles' familiarity with Carrie Woods and how he killed her (Appellee's brief at p. 36). That Knowles did not know Woods strongly supports his argument he did not plan to kill her. See, Purkhiser v. State, 210 So. 2d 448 (Fla. 1968). Moreover, the manner in which the girl was killed evince the intervention of tragic fortuity, not premeditation. She was killed quickly by a bullet from .22 caliber gun, which by chance happened to pierce her heart.

3. Wingate's testimony that Knowles was drunk but not on a "toulene high." This is what Earl Wingate said regarding Knowles' level of intoxication:

> Q. When you left him that day, he was drunk, wasn't he."
>
> A. Yes, sir.
>
> Q. He wasn't on one of these toulene highs, was he?
>
> A. No, he wasn't. He wasn't on a high like mumbling Randy, no.
>
> Q. He wasn't that bad off, was he?
>
> A. He was drunk.
>
> Q. But not on one of these toulene highs?
>
> A. At that time, no.
>
> A. He hadn't been hollering, or screaming, or doing anything like that that he reached that high, had he?
>
> Q. No.

* * *

Q. Just his normal old self when he left you that afternoon, wasn't he, Mr. Wingate?

A. Yes, He was drunk and he had been huffing. I don't know if the high was still on him or not. It could have been.

Q. But he wasn't out of it, was he?

A. He was pretty messed up.

* * *

Q. How would you describe his condition then?

A. Very drunk. And he had been huffing.

(T 1056-58).

Earl Wingate, Knowles' beer drinking and toulene huffing buddy, clearly said his friend was very drunk immediately before the murders, so in a sense how he got that way does not particularly matter. Moreover, Wingate seems hardly to be one to judge another person's level of intoxication since on the day Knowles was one step away from howling at the moon, Wingate had also huffed and drunk to the point being intoxicated (T 1053-54). His mother, Alice Pitts, clarified her son's testimony. Knowles was in the worst shape she had ever seen him. "He just looked like he wasn't there. He was just gone." (T 1068).

4. Actions after the killings. While flight can evince a guilty mind, it does not necessary demonstrate the defendant knew he had committed a premeditated murder. In this case, Knowles' actions after the murders are consistent with those of a person whose memory is spotty, and whose conduct is bizarre.

5. The defense case. Predictably, the defense witnesses supported Knowles' theory that he had lacked the requisite intent to kill. Dr. Fennel, a neuropsychologist, found that Knowles had a significant "disruption in brain function, higher brain function, of an organic type." (T 1108) He also had a history of psychotic symptoms under the influence of the combinations of beer and huffing (T 1135). She admitted, as the state noted in its brief (Appellee's brief at p. 37) that his MRI (roughly translated, a picture of the brain) was normal with just minor abnormalities. The MRI, however, was not particularly helpful because it mainly shows lesions on the brain, and Knowles' problems were not the sort amenable to that imaging technique (T 1140).

The state also noted that Dr. Krop, another defense expert, admitted that Appellant's ability to recall certain aspects of the murders twelve hours after he committed them indicated that Appellant knew the killings were wrong. (Appellee's brief at p. 37) What he also said was "My opinion is that those two time periods are very distinct, and certainly a person can appreciate wrongfulness after the fact but not have appreciated wrongfulness at the time of the offense." (T 1310)

6. The state's rebuttal. The state supports its argument by noting that the experts called by the state both found Knowles suffering from organic brain damage but that he was sane. (Appellee's brief at p. 38) Sanity, however, has little to do with intent or premeditation because many of those clearly

insane fully intend to commit murders or other violent acts because "God told them to do so" or some other compulsion drove them. Sanity issues focus on the cognitive ability of the defendant to know and appreciate what he is doing. It has little to do with his intentions. See, Standard 7-6.1. "The Defense of Mental Nonresponsibility [Insanity]" Criminal Justice Mental Health Standards, (Chicago: American Bar Association, 1984)

Thus, the state's argument collapses, and the analysis provided by the defendant in his Initial Brief, and which the state has made no effort to refute, stands intact. Whatever "conflicts" the state noted do not detract from the essential argument that it failed here and at the trial level to present sufficient evidence Knowles ever had a "fully formed, conscious purpose to kill." Asay v. State, 580 So. 2d 610, 612 (Fla. 1991). It never rebutted his reasonable theory that on the day of the killings he had huffed so much toulene or drunk so much beer that his marginally functioning brain could not fully form any premeditated thoughts, much less one to kill two people. This court should reverse the trial court's judgment and sentence and order that his convictions be reduced to second degree murder and he be sentence accordingly.

ISSUE V

THE COURT ERRED IN FINDING THAT KNOWLES COMMITTED THE MURDER FOR THE PURPOSE OF AVOIDING OR PREVENTING A LAWFUL ARREST.

The meat of the state's argument on this issue is on page 40 of its brief, and it raises several points that merit reply but not serious consideration by this court. It first claims "Under the circumstances, the jury could have believed that Appellant's father was leaving to seek help and that Appellant killed him to prevent it."

That conclusion presumes the elder Knowles knew his son had just killed Carrie Woods, but nothing in this record supports that conclusion. Knowles said "No, you won't." immediately before he shot his father, but again the state presented nothing to put that statement in context. The defendant may have said that because his father would not let him have the truck, not because the elder Knowles wanted it to get the police (Why could not the father have more easily called them on the telephone?), but, like everyone else who saw him that day, because his son was drunk. The jury, in short, had to speculate about the reason Knowles shot his father.

The state also says the truck "was Appellant's only source of transportation." There is no evidence of that. He could have as easily fled into the woods if escape was his intention than steal a truck, drive 250 miles to tell a friend he had shot several people, and then call the Nassau County sheriff's office to ask them if he had shot anyone.

The state, however, claims the defendant shot his father, not to steal the truck, but "to eliminate him as a witness." There is no evidence he saw his son shoot Carrie Woods, and the state has never (at least until now) claimed the murder was committed to eliminate the elder Knowles as a witness to the earlier killing. Instead, during its penalty phase closing argument, it asserted that the defendant killed his father to avoid arrest for the robbery of the truck (T 1828), and that is the same reason the trial court used to justify finding this aggravating factor (T 2417).

The state also cites two cases to support its argument on the merits, but they have no relevance. In Jones v. State, Case No. 78,160 (Fla. December 17, 1992), 18 F.L.W. S11, 12-13, the defendant killed two people who were sleeping in a truck he wanted to steal. In sentencing Jones to death, the court never found as an aggravating that the defendant had murdered them to avoid lawful arrest. The focus, instead, was on the cold, calculated, and premeditated manner he had murdered his victims. That case has no significance here.

In Bryan v. State, 533 So. 2d 744 (Fla. 1988), the defendant had stolen a boat and sailed north, eventually stopping in Mississippi because it developed mechanical problems. Bryan kidnapped a night guard, took his wallet and car keys and then drove him to a remote location where he killed him. This court found that Bryan had committed that murder to avoid lawful arrest because he was wanted for another robbery and he wanted to silence the guard to prevent an alarm

from being raised. That the body was discovered a month after the murder and then only with the help of Bryan's girl friend supported this reasoning.

In this case, Knowles, of course, did not kidnap his father and take him to a remote location. To the contrary, he killed him in front of several witnesses whom the state had testify about what they had seen. This case is easily distinguishable from Bryan.

The state concludes its argument on this issue by predictably arguing that whatever error occurred in finding that Knowles committed the murder of his father to avoid lawful arrest was harmless. That claim becomes very difficult to sustain, however, because the court instructed the jury on this aggravating factor and the state asked the jury to find it. The state, nevertheless boldly goes forth by minimizing the extensive and essentially uncontroverted mitigation Knowles presented. As presented in the proportionality argument in Knowles' Initial Brief:

> "[H]e presented compelling evidence that his life, at least since he was 14, was one of heavy drug use, including, incredibly, "huffing" paint thinner. Compounding this addiction was his heavy dependency on alcohol, particularly beer. A drinking buddy testified, for example that Knowles drank a twelve pack or case of bee each day (T 1012). Not surprisingly, he had a low intelligence, and there was evidence that he was brain damaged (T 1108, 1110, 1244, 1329, 1452, 1599), again not a very surprising fact considering that he had been "huffing" toulene for almost 25 years and was taking headache powders by the gross to kill the pain in his head (T 934).

Initial Brief at p. 62.

The error here could not have been harmless beyond a reasonable doubt.

ISSUE VI

THE COURT ERRED IN FINDING THAT KNOWLES COMMITTED THE MURDER OF HIS FATHER DURING THE COURSE OF A ROBBERY.

If the state had charged Knowles with the robbery of his father's truck, and if this court were reviewing the sufficiency of the evidence that he did so, would it be satisfied with what the prosecution produced here to show a superior possessory interest by the father in the truck? Typically, in such cases, the state proves that the victim either owned the property stolen or at least had a temporary superior possession of it. Such interest is not established when the defendant has an interest in the property as well as the victim. See, Taylor v. State, 355 So. 2d 465 (Fla. 3rd DCA 1978). Where there is the possibility that the defendant "stole" that which was his, the state must exclude that likelihood by positive evidence, and not rely on an argument of superior possession by the victim as a default claim.

For the state to rely on the aggravating factor that Knowles killed his father during the course of a robbery, it must prove beyond a reasonable doubt that the elder Knowles had a superior possessory interest in the truck over that of his son. C.f., State v. Dixon, 283 So. 2d 1 (Fla. 1972). Because it did not do so, this court should reverse the trial court's sentence and remand for a new sentencing hearing before a jury.

ISSUE IX

THE COURT ERRED IN OVERRULING SEVERAL DEFENSE OBJECTIONS TO THE STATE'S CLOSING ARGUMENT DURING THE PENALTY PHASE OF THE TRIAL.

Knowles stands by the argument he made in his Initial Brief regarding the propriety of the state's closing argument in which the prosecutor blamed Knowles for his mother's mental problems. He does, however, need to reply to the state's contentions regarding the state's repeated arguing that Knowles showed no remorse in killing either his father or Carrie Woods.

The state initially makes the distinction that it was arguing remorse, not as a nonstatutory aggravating factor, but to rebut the defendant's claimed mental mitigation. (Appellee's Brief at p. 50) This is part of what the prosecutor said in closing:

> And what are his actions of committing the murders at the time that he probably remembers them most clearly? The desire to have sexual intercourse, which is a very normal reaction, not consistent with remorse for kill a child and his father, and very respectfully, not consistent with substantial impairment or extreme emotional disturbance, but consistent with logical clear thinking, like the clear thinking described by the witnesses her today.

(T 1835-36) (emphasis added.)

The state, in short, used Knowles' purported lack of remorse to argue he had committed the two murders in a cold, calculated and premeditated manner. That statutory aggravating factor, however, did not apply in this case (T 1749). Moreover, even though the state talked about Knowles' lack of

remorse in the context of the mitigation, he wanted the jury to consider it as nonstatutory aggravation:

> Is that consistent with emotional disturbance, or is it substantial impairment, or is [it] consistent with the testimony today that many times, or close periods to the crime, he thinks clearly.

(T 1836).

The state also says that the lack of remorse argument was "directly responsive to Appellant's claimed mental mitigation." (Appellee's Brief at p. 50) Hardly. The state's thrust was that Knowles did not have the fogged brain he claimed, and as the above quotes indicate, he wanted to convince the jury that Knowles had a functioning mind and thought clearly. Contrary to the state's claim in its brief, that the defendant lacked remorse was not directly responsive to his claimed mitigation, and it did not provide much support for its own argument about the clarity of his thoughts. Instead, it only introduced an extraneous factor for the jury to consider.

As to the harmlessness of the court's error, Knowles relies on what he argued in his Initial Brief on pages 56-57.

The state also argues that Knowles had not adequately preserved the issue by objecting in a timely manner. (Appellee's Brief at p. 49) As is common in trials, opposing counsel often waits until the other side has concluded its closing argument before objecting to an improper argument. In this case, Knowles' lawyer must have sensed that the state was almost done when it made the objectionable comments because within a minute or so it concluded. At that point, counsel

asked for a recess and to approach the bench. The court, however, deferred the conference until after the recess at which time Knowles' attorney raised the objections that form the basis of this issue (T 1838-39). At no time did either the state or the court mention that counsel's objections were untimely for the very good reason that it was not.

Knowles respectfully asks this honorable court to reverse the trial court's sentence and remand for a new sentencing hearing before a jury.

ISSUE X

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

The state's recitation of facts on this issue ignores the wealth of uncontroverted evidence that on the day of the murder Knowles was very drunk either from beer or "huffing" toulene. In proportionality review the defendant's state of mind has been an important consideration, and if the defendant was intoxicated at the time he committed a murder, this court tends to reduce the death sentences imposed to life in prison. Ross v. State, 474 So. 2d 1170 (Fla. 1985); Caruthers v. State, 465 So. 2d 496 (Fla. 1985). For the state to have completely ignored Knowles' drunkenness when he killed his father and Woods fatally undermines the persuasiveness of its argument.

ISSUE XI

THE COURT ERRED IN INSTRUCTING THE PENALTY PHASE JURY ON THE WEIGHT THEIR RECOMMENDATION WOULD HAVE IN DETERMINING THE APPROPRIATE SENTENCE THE COURT WOULD IMPOSE ON KNOWLES, IN VIOLATION OF THE EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 17 OF THE FLORIDA CONSTITUTION.

The question implicit in this issue is how the United States Supreme Court's decision in Espinosa v. Florida, 505 U.S. ___, 112 S.Ct. ___, 120 L.Ed.2d 654 (1992) has affected Florida's capital sentencing scheme. In that case, the nation's high court defined it in a manner that elevates the importance of the jury's penalty recommendation. It did so, by accepting at face value, what this court said in Tedder v. State, 322 So. 2d 908, 910 (Fla. 1975): "That a Florida trial court is required to pay deference to a jury's sentencing recommendation, in that the trial court must give 'great weight' to the jury's recommendation, whether that recommendation be life . . . or death." Espinosa at 120 L.Ed.2d 859. Instead of viewing our death penalty statute as placing the decision of whether to sentence a defendant to death exclusively with the trial judge, it viewed our scheme as having two sentencers: the jury first, with the trial court having a veto power only in the rarest of circumstances.

If, as the Supreme Court said in Espinosa, this court considers the jury a vital element in this state's capital sentencing scheme then it follows that the trial court must clearly and adequately instruct them on the applicable death

penalty law. This focus on the jury instructions flows from the rationale articulated in Caldwell v. Mississippi, 472 U.S. 320, 105 S.Ct. 2633, 86 L.Ed.2d 231 (1985) that death penalty sentencing required a significantly greater scrutiny than non-capital sentencing and the process should facilitate the "responsible and reliable exercise of sentencing discretion." Id. at 329. Vague or incomplete guidance, therefore, is immediately suspect. If courts at all levels must give the jury's recommendation "great weight" then the trial court must properly instruct the jury on the applicable law, otherwise the trial judge may give its advice more consideration than it deserves.

The trial court in this case, therefore, erred in not fully informing the jury of its role in sentencing Knowles to death, and that failure fatally infected the reliability of its death recommendation.

ISSUE XII

THE COURT ERRED IN NOT FINDING IN MITIGATION THAT KNOWLES SUFFERED FROM AN IMPAIRED CAPACITY, SECTION 921.141(6)(F), AND IT FAILED TO EXPRESSLY EVALUATE IN ITS WRITTEN ORDER THE MITIGATING CIRCUMSTANCES PROPOSED BY THE DEFENDANT, IN VIOLATION OF HIS EIGHTH AND FOURTEENTH AMENDMENT RIGHTS.

The issue as narrowed by the State in its brief is whether a mere recitation of the mitigating evidence in the trial court's sentencing order satisfies this court's demands as articulated in Campbell v. State, 571 So. 2d 415, 418-19 (Fla. 1990). To correct the recurring problem of trial court's summarily rejecting defense mitigation, this court held:

> 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 nonstatutory factors, it is truly of a mitigating nature.

Id.

Merely listing the mitigating evidence, without any indication the court evaluated the weight it should receive does not comply with what this court required in Campbell. In short, the sentencing order should show exhibit the agony the trial court experienced as it determined whether Knowles should live or die. When a man's life is at stake, it is not too much to ask a court to explain what mitigation it found and why it believed it merited so little weight that a death sentence was justified. To accept a trial court's listing of the mitigating evidence without any further requirement that it justify its

sentence denigrates the importance of its sentencing order and reduces capital sentencing to the level of a sentencing departure from a guidelines sentence.

Here, Knowles presented significant evidence that merited serious consideration. In other cases, evidence of intoxication similar to that presented here has so influenced this court that it has reduced a death sentence to life in prison even though the sentencing jury may have recommended the defendant die. Ross v. State, 474 So. 2d 1170 (Fla. 1985); Caruthers v. State, 465 So. 2d 496 (Fla. 1985). To merely list what Knowles introduced without expressly evaluating its mitigating value hinders this court's review of the justness of the imposed sentence. Nor does it create any confidence that the trial court performed any character analysis or otherwise fully considered the evidence and reasons Knowles presented of why he should live.

Its sentencing order in this case does not meet the requirements articulated in Campbell, and this court should remand for a new sentencing hearing.

CONCLUSION

Based on the arguments presented in this brief, the appellant, Randy Knowles, respectfully asks this court to 1) reverse the trial court's judgment and sentence and remand for a new trial, 2) reverse the trial court's sentence of death and remand for a new sentencing hearing, or 3) reverse the trial court's sentences of death and remand for imposition of two life sentences in prison.

Respectfully submitted,

NANCY A. DANIELS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

DAVID A. DAVIS
Assistant Public Defender
Fla. Bar No. 271543
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 to Sara D. Baggett, Assistant Attorney General, by delivery to The Capitol, Plaza Level, Tallahassee, Florida, and a copy has been mailed to appellant, RANDALL SCOTT KNOWLES, #122817, Florida State Prison, Post Office Box 747, Starke, Florida, 32091, on this 16th day of February, 1993.

DAVID A. DAVIS