IN THE SUPREME COURT OF FLORIDA

MICHAEL L. ROBINSON,

Appellant, CASE NO. 85,605

v.

STATE OF FLORIDA,

Appellee.
_____/

ON APPEAL FROM THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA.

ANSWER BRIEF OF APPELLEE

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATEMENT OF THE CASE AND FACTS

Appellee accepts the statement of the case and facts as recited by Appellant subject to the following modifications and additions.

Prior to the plea colloquy defense counsel indicated that they had obtained two experts. Dr. Berland had been very active in the case but the defense indicated they had experienced difficulty with Dr. Antoinette Appel. She had dropped the ball on them. She saw Michael Robinson on only one occasion. They called her a dozen times to get her to come back but they could not reach her (R 4). She did not do a report (R 5). Defense counsel requested another competency evaluation by a local doctor and that the plea be made contingent upon the outcome of the evaluation. The defense felt Robinson was competent. Dr. Berland found him so. Defense counsel wanted to go forward with the plea (R 2) If Robinson was subsequently found to be incompetent or insane then the defense would withdraw the plea and take further steps to evaluate Robinson (R 3). The court allowed the plea to go forward contingent on Dr. Kirkland's report (R 3).

The plea form indicates that neither the state nor the court had agreed to anything. Counsel explained to Robinson that the state was seeking the death penalty, and Robinson understood that

(R 6).

Counsel indicated that Robinson did not wish to present any defense, did not wish to proceed to trial, did not wish for counsel to make any motions on his behalf or present mitigation at a penalty phase, and was, in fact, seeking the death penalty (R 6). Counsel sought extensive colloquy to be sure Robinson understood the rights he was giving up and so the record would reflect that counsel had explained to him what would be involved , that there were certain defenses he could raise, and that this was not, in counsels' opinion, necessarily a death penalty case and that an appellate court would not necessarily uphold a death sentence (R 6).

The court addressed Robinson and he indicated that he wanted to enter a plea to first-degree murder. He understood the only sentencing options if he pled would be death or life in prison (R 7).

After being sworn, Robinson indicated that his full name was Michael Lee Robinson; he was twenty-nine years old; he went to the 12th grade in school, received a GED, and finished his junior year in high school in vo-tech, computer electronics. He dropped out because his parents got divorced and he stayed with his father while his mother returned to Florida with his little brother (R 8-

9). He received the second highest score in the state of Missouri on his GED. He went back and took computer electronics courses because his father is a computer engineer and he thought about following in his footsteps. He had moved around a lot as a child as his father was moved by the company he worked for, MSI Data Corp. He lived in Jacksonville, St. Louis, Memphis and Lamar, Missouri (R 8). After completing his courses he went to work, joined the National Guard, and married a widow. The marriage lasted only two years because she had mental, drug and alcohol problems caused by her previous marriage. Robinson admitted to having used drugs himself, marijuana and crack cocaine (R 9). He last used crack days before the incident. He indicated that he was not feeling the affects at the time of the murder (R 10). He has never been under the care of a psychiatrist or psychologist. He worked at Gencor in 1992 before his previous arrest. He was rehired there on February 14, 1994, and worked there until May 25, 1994. From May until June he worked on televisions, VCRs, camcorders, etc. at a small appliance shop. He had his own business trimming trees and he also worked for Aspen Tree Trimming Company (R 10-11).

Robinson stated that he wanted to plead guilty to murder in the first degree of Jane Silvia and was entering such plea freely

and voluntarily. He indicated that he was not under the influence of any drugs or alcohol. He had been seeing a doctor in the jail. Dr. Berland, a psychologist, did an evaluation on him. Robinson stated that Dr. Berland told him that because he had told the doctor that the blood was localized and did not get all over the place, and didn't get on him or on the floor, it demonstrated forethought, competency and complete sanity. It indicated that he was thinking about it at the time. Robinson agreed. He also saw Dr. Appel but she never came back (R 11-12).

The court inquired of Robinson *why* he had killed Jane Silvia. Robinson responded that he was on parole for seven years until 2001. He had just finished Orange County work release April 8. He was in prison for a nine year sentence for grand theft and violation of probation on grand theft auto to run consecutive with a total of nine years. He was released in nine months on CRD. He went to work release. He has a misdemeanor marijuana charge from 1989 which he received before going to prison (R 11-13). He had stolen a TV, microwave, and VCR from Jane. She made a report to the police but did not ask that charges be pressed. He was dating her. They were going to move in together. She was hoping he would give her things back and work everything out. She was given seven days to call back and have the charges initiated. If she made the

call he was facing seventeen years in prison. Ten years in prison on top of the seven years he would get for violation of parole. When the court indicated he was now looking at more than that Robinson responded "If I got away, I was looking at nothing." (R 13). He thought he could possibly get away with it. If he didn't he would rather face death than go back to prison for seventeen years, because his life, he felt, would be over. Robinson does not like prison. He has been there four times already (R 14). Robinson indicated that he was facing natural life behind prison bars, that he was a healthy young man and had a long time to live. When asked by the court "And you don't want to live it in prison?" He responded "Ma'am, it's a nightmare. I have been there. It's a nightmare." (R 15).

The court next inquired "*How* did you kill her?" Robinson responded:

> With a hammer, your honor. And blunt to the head with a hammer while she was sleeping. I had went back to the people that I had sold the things to. They had resold them things I had stolen from her, and there was no possibility of me getting them back. I took her with me. She didn't hear them tell me that. So she wasn't aware of the danger that she was in. And I understood that once I had explained to her that she would no longer be able to get her things back, she was going to make the call. And I couldn't, at that time, I didn't feel like I could take that risk.

(R 15).

They had dated for only two months. He had known her a couple of weeks before that. She worked at a 7-11 behind where he lived. She lived in the same complex (R 16).

Robinson reiterated that he was entering the plea freely and voluntarily. No one had promised him anything. He was satisfied with his attorneys. They tried to explain everything to him; the possibilities; what they could do; and they went to court, as well. He indicated they even got him an extra lawyer. The court acknowledged that it had appointed him two of the best. Robinson responded:

> Best, and they are very good, and I'm very satisfied with what they have tried to do for me. And even after me explaining to them that I don't want them to try and do anything, they have abided by my wishes. And they have showed me, Mr. Irwin has sent me case law explaining that they have to do what I asked them to do concerning my defense as long as I am competent. And Mr. Bender has explained to me and showed me case law concerning the court proceedings. And so they filled their obligations in my defense to a hundred percent.

Robinson did not think they could have done another thing to help him. He did not believe that they could go to trial and win. He had given a full confession to the police which the state could use as evidence. He further indicated that his lawyers had done everything that he wanted them to do. There was nothing they had done that he did not want them to do, although they did try to talk

him into fighting this (R 17). Robinson was absolutely certain that he did not want his lawyers to do another thing to keep him from going to the electric chair. He stated "I am a Christian. I do believe in heaven. And that to me would be better than spending life in prison." The court inquired "Having killed somebody, do you still think you would go to heaven?" Robinson responded "I think that I am forgiven for my sins through Jesus Christ, and I believe I'll go to heaven." He indicated that no one else had promised him anything (R 18).

When the state set forth a factual basis on the record at the plea hearing the state offered into evidence a copy of the transcript of the taped statement Michael L. Robinson gave to Detective Griffin in which he admitted his guilt (R 21).

Robinson hit Jane Silvia in the head with a hammer as she slept. The hammer went through her skull. She then sat up. Robinson hit Jane a second time. He then hit her in the head a third time using the claw end of the hammer (R 20). The knife Robinson stabbed Jane through the neck with, in an effort to stop her heart, was a serrated one (R 20).

After Robinson left the apartment and went to Cocoa Beach he returned and wrapped the body in plastic bags, placed it in the closet of the apartment and then took down the shower curtains and

found some bed spreads, wrapped her body in a fetal position, tied it and put it in his vehicle, and drove north to Apopka Boulevard in Orange County where he dug a shallow grave and buried her there (R 20). Robinson led the police to the area where they could find the hammer and he let the authorities know that she was buried in that shallow grave (R 20).

The autopsy revealed that Jane died on July 25, 1994, as a result of skull fractures and brain injury due to blunt force trauma to the head. She had numerous lacerations and fractures of the skull which would be consistent with being struck in the head with a hammer (R 20). There were also two stab wounds to her neck and three stab wounds to her chest (R 21). The report did not indicate how long she had suffered (R 21). Upon questioning by the court Robinson indicated she did not wake up when he hit her the first time. When she sat up it was a body reflex (R 21-22). The defense indicated that at a deposition the medical examiner concluded that the first blow would have rendered Jane unconscious and there would have been no pain. Death was not instantaneous, however. It occurred within minutes of the first blow. She would not have felt any of the subsequent blows, and probably not the first (R 22).

Prior to the judge accepting Robinson's plea she asked if he

would like to say anything. Robinson responded as follows.

> Only that I've been in a lot of trouble in my life. I happen to be a very intelligent person. I feel that, you know, it's a waste, that I could have been a much more productive citizen than I am. This whole incident has been brutal and traumatic to everyone involved. I killed someone, and I feel that I deserve the death penalty because of that. And that's all I have to say, your honor.

(R 22-23).

Robinson's counsel, Mr. Bender, addressed Robinson on the record. Robinson agreed that he, Mr. Bender and Mr. Irwin had a number of discussions while Robinson has been incarcerated. Robinson acknowledged that they had informed him that they felt there were some defenses to his case and there were a number of, perhaps, mitigating factors that they could present to the court in the hope of achieving something other than a death sentence. Robinson responded, however, that " You said that. I didn't feel that way, but you said that." (R 23). Robinson further acknowledged that they had explained to him possible negotiations with the state; the state's burden of proof; what he could expect in a possible trial; the penalty phase; mitigating factors regarding his childhood and upbringing; and other problems that he has had during his life. Robinson affirmed that it was his desire for his attorneys not to present those things to the court on his

behalf (R 24). Robinson acknowledged further that the attorneys had doctors speak with him about certain aspects of his life and upbringing and that they would like to help him and do all that they can to prevent a death sentence but that he does not want them to do that. Robinson requested the court to sentence him to die in the electric chair. He does not want a life sentence. Robinson further indicated that his attorneys had shown him case law indicating that they were required to proffer mitigation anyway even though he does not want it presented (R 26). He also acknowledged that his attorneys had taken extensive depositions and had shown him all of the evidence the state had against him, including photographs of the crime scene and autopsy and police reports, statements of other witnesses, and his own statement (R 26). Robinson stated that he was satisfied with the way his attorneys handled the discovery process and there was nothing they had not done that he had wanted them to do (R 27).

The prosecutor, Mr. Culhan, stated for the record that despite the fact that Robinson was entering the plea the state fully intended to seek the death penalty (R 28).

The other prosecutor, Mr. Ashton, inquired of Robinson. If his attorneys could show him a way to get off and not go to prison Robinson indicated that he would take it. Robinson acknowledged

that his attorneys had explained his defenses to him. He stated that he did not feel that there was any chance that his defenses would succeed (R 28). Based on the evidence he did not see how he could get off on anything but insanity. Robinson understood that the plea would not affect the penalty and indicated he was not entering it to expedite his execution. He knew he could get the death penalty even if he went through a jury trial (R 29). Robinson stated that he was waiving sentencing by jury and presentation of mitigating factors. He understood, however, that his preference for the death penalty could not be considered by the court as a reason to impose it. Robinson was sure of his decision (R 30).

The judge indicated that she had asked more questions than normal to get a feel for where Robinson was mentally (R 30). It appeared to the court that Robinson was alert, intelligent, and understood the consequences. The judge indicated, however, that she would require one more doctor, Dr. Kirkland, to see Robinson prior to any sentencing. Although Dr. Berland did everything that should be done, the judge did not think that Dr. Appel did the same (R 31).

Counsel for the defense indicated that they would be waiving the jury for the penalty phase. Robinson stated that he had

discussed that with his attorneys and didn't feel that he needed it. He specifically waived his right to a jury recommendation at sentencing (R 32-33).

The prosecution indicated a preference for a jury since this was such an important decision and the lower court would be aided by the guidance of a jury recommendation, since the jury is the conscience of the community. The judge stated that since the defense was not asking for one, she did not think it was necessary (R 33).

The lower court accepted Robinson's plea, finding that he was alert and intelligent, seemed to understand the consequences of his plea, and that there was a factual basis for the plea. One day was set for the penalty phase (R 35).

Robinson indicated he had one more statement to make (R 35). He stated that "According to Mr. Berland's report, I am of above average intelligence, and that I am responsible for everything that I have done." (R 36).

The victim's family addressed the court. John Thomas, Jane Silvia's brother stated:

> I just have--excuse me. Mike Robinson's asking for the death penalty. That is the best thing that could happen to him, so he says. The worst thing could be life in prison. For my family, I don't care what he wants. It doesn't matter. The family wishes for the death penalty.

> The citizens of the state of Florida are asking for the death penalty. Because there are animals out there preying on the weak. He killed her July 25th. She turned forty July 16th, just a little over a week. He killed her. She lost forty-two pounds. She was a weak, she was a weak woman. She wasn't street-wise. At the age of forty she was just beginning to live, and he took that away. I'm sorry. The worst thing--we don't care what Mike wants. I'm talking for the family. Let God forgive the family, let God forgive the family for taking a life, because we are asking for the death penalty. Maybe God says we shouldn't do it, but we are. God will judge us for that. Okay? Everybody has their own religious beliefs. He will burn in hell for what he did to Jane. She was a beautiful girl. She was weak, though. And these animals that prey on the weak, the family, we look to you, the justice system in America, to protect us. Let's not waste no more money. How much money did we spend already? Please, no more money. Let's put the maggots away; the maggots. Let's put them away if they deserve to go to the jail. Animals, let's kill them. God, I hope that I am still alive, because what's going to happen is the family is going to have the choice how we put these animals to death. You're very fortunate that the law got a hold of you, Mike.

(R 36-37).

Robinson then addressed John Thomas, stating, "I'm sorry, Tom."

(R 37). Mr. Thomas responded:

> My name is John, not Tom. Okay. Everybody has been calling Jane Silvia, Jane Silvia. No, that's all I have to say, your honor. The family and the state, the citizens and the good people look to you for justice. And we don't care what he wants, what's good for him and what's bad for him. Let's make room, take the animals off the face of the earth. Spend our money where it's supposed to be spent. Let's put the maggots away, but animals, take them out and let God judge us for making the choice of sending someone to death. Jane didn't have a choice. He just, he took it.

(R 38).

The penalty phase commenced on March 30, 1995. Robinson waived an advisory sentencing jury, stating on the record that it was correct that he did not want to have a jury recommendation (R 41). He had a discussion with his attorneys the day before and it was still his desire to waive a jury recommendation (R 41-42).

The state called Detective David Griffin. He was the lead homicide investigator in the case (R 47). It was the second August 16, 1994, taped interview of Robinson that Detective Griffin played. Detective Griffin had taken two taped statements from Robinson (R 47). The first statement was on August 10, 1994. He read Robinson his Miranda warnings and he waived them (R 48). In this first statement Robinson blamed drug dealers to whom he had sold or traded Jane's property to for cocaine for her murder (R 69). Robinson subsequently called Griffin and requested another meeting. Detective Griffin picked him up at the Orange County Jail on August 16, 1994. He took Robinson to the scene where Jane Silvia's body was recovered (R 48). During the course of the ride in the police vehicle he took another sworn, tape recorded statement from Robinson (R 49). As soon as Detective Griffin picked Robinson up he advised him of his Miranda warnings (R 52). Robinson indicated he understood his rights, had spoken to his

lawyer, and had decided, himself, to go ahead and talk to the detective (R 53). Detectives Howard and Leuzzi were also present at the interview (R 52). The August 16, 1994, taped statement and a transcript thereof were admitted into evidence as State's Exhibit 1 and 2, respectively (R 50).

In the second August 16, 1994, statement Robinson recanted the part of his statement blaming the murder on drug dealers (R 69). He indicated that the police should disregard the other statement entirely (R 53). Robinson stated that he had taken a TV, microwave, and VCR from his girlfriend, Jane Silvia, and pawned them to a drug dealer for crack cocaine. His mother sent money to Jane for them to get her things back. They went down to the drug dealer on Monday evening to get the things back but he told them he had sold them to someone else (R 54). They had used a little of the money but Jane had approximately a hundred dollars in her shoes (R 54). They went back to his house at Monterey Village around 10:30p.m. Jane fell asleep on the couch. He went out to his truck and got a long, steel-handled drywall hammer with a waffle pattern on the head from behind the seat. Jane was stirring a little bit as he came back in. He took the hammer, wrapped in clothes, into his bedroom, laid it down, went in and got a drink of water and sat in front of the couch where Jane was lying. He waited for her to

go back to sleep. After he felt that she was sleeping soundly he went back in and got the hammer. He laid in front of the couch again to make sure she wasn't stirring. He was nervous and shaken because he had never done anything like that before. He was kind of scared about what he was planning to do (R 55). He stood between the wall and the couch and hit her in the head with the hammer. It went through the skull and into her brain. She didn't move for a minute then her body raised up, and, as it did, he hit her again in the top of the head (R 56). She laid there for a few minutes and her body raised up again (R 57). He wanted to make sure she wasn't conscious so he turned the hammer around to the claw part and stuck it through her head. He indicated that there was matter in the claw of the hammer (R 57). The hammer went through the skull each time he hit her. She was asleep when he delivered the first blow and he felt that she was not conscious after the first blow (R 56). But her body kept moving (R 56). As the body raised up, blood came out of the mouth. She was still breathing and her heart still beating (R 57). Her eyes were closed. Robinson stated that there was no way that she was conscious. No verbal sound came from her mouth. He believed the movements were just body reactions (R 57). He opined that she died in her sleep. He stated again that there was blood coming from her

mouth but that she was breathing and making gurgling sounds. Since walls were thin he was worried about a neighbor hearing the noises. He stuck a serrated butcher knife, twelve to eighteen inches long, down the soft part of her throat down into her chest, to try to stop the heart and breathing so the noise would stop. He was successful (R 58).

Robinson further indicated that the rest of the story concerning the burial and burning the couch was consistent with what he had said earlier (R 58). When he found her she was in a fetal position, rolled up in a ball. He covered her with a blanket, tied with a coat hanger, a red or maroon belt off a bathrobe, and cable from a TV cable connection. She was wrapped in bed sheets, the shower curtain and a tarp, all from his apartment (R 59).

Robinson took Detective Griffin to show him where he had disposed of the hammer and knife (R 20). Robinson indicated that the hammer was laying outside the trailer and the knife was inside in a five-gallon bucket with welding equipment. The knife was Japanese, made of stainless steel, with a serrated point. It belonged to Leo, who had given it to him when they were working together on drywall (R 60-62). The shovel the police found out by the trailer was the one he had used to bury her. It came from his

home (R 61).

Robinson further indicated that he was giving the statement of his own free will and against the advice of his attorney because "he has a conscience" (R 62). He thought it was unnecessary. He wanted to get it over with. He was sorry for what he did. He wanted to be punished. He didn't want to draw it out any longer than necessary. He also said that he loved Jane very much. They had no arguments. She had told him that she was going to stick by him through his drug treatment. She was trying to help him as much as she could (R 63). He stated that what he did was really unnecessary and would like to be given the electric chair as punishment (R 64).

Robinson and the detective subsequently went back on tape for a supplement to the first tape while returning from Apopka Boulevard where Jane Silvia's body was buried. Robinson showed police the spot by the trailer where the hammer was that he used to kill Jane (R 64). The hammer had already been collected by the police (R 65). Robinson also showed Detective Griffin the knife inside a bucket in the living room of the trailer that he had used to stab Jane to get her heart to stop (R 65). Robinson further stated that after he had killed Jane he took what was left of the money his mother had sent them, approximately one hundred dollars.

Jane had told him it was in her shoes. He elaborated:

> That was one of the reasons that I killed her, was to retrieve that money from her. I didn't want to go through any physical battle with her and have her call the police...The other reason was that she had did a report to the police about me taking her VCR, TV and microwave... She had this seven-day period when she could call back and the charges would be pressed...If she didn't call back then the charges wouldn't be pressed. Well, that was on my mind, that if I killed her she couldn't call back. And if I was able to, you, know, bury the body and get rid of all the evidence that I wouldn't be caught with that, either, that there would be no reason for me to be arrested, you see.

(R 66).

Jane had told Robinson that she had the money in her shoes when one of the drug dealers came to the car and told her that Robinson owed him twenty dollars. Jane got a twenty dollar bill out of one of her shoes and gave it to him. Robinson saw her separate some of the money and put some in each shoe. He took that money after she was dead then burned the shoes (R 66). He also burned her driver's license which was in her shoes along with the money (R 67). Robinson further stated "Like I said, just, you know, the reason I killed her was to basically stay out of jail and to retrieve the

money" (R 67).

The grand theft police report Jane Silvia had filled out on July 24, 1994, alleging that Robinson had sold her TV, VCR and microwave was admitted as State's Exhibit 3 (R 68).

At the conclusion of Detective Griffin's testimony defense counsel, Mr. Irwin, indicated that Robinson had requested no cross-examination of Detective Griffin. Robinson, upon questioning by the court stated "I don't believe it's necessary, your honor. His statement and my statement on the tape was honestly and truly given." (R 69).

Robinson did not wish for his defense attorneys to present any mitigation evidence (R 46). Among the mitigation evidence offered was that Robinson thought his parole was going to be revoked and he would be sent back to prison due to the grand theft report (R 71). Defense counsel also represented that they could present evidence of Robinson's cooperation with police as far as confessing, taking them to the crime scene and showing them where the victim's body was buried and where the weapons used were at (R 71). Defense counsel also indicated there was evidence of remorsefulness. Counsel said only that there was "some evidence" of mental illness which Dr. Berland discussed in his report. Dr. Berland and Dr. Kirkland both found Robinson competent and sane at the time of the

homicide (R 71-72).

The state argued the existence of aggravating factors, that no real mitigation had been presented and that the aggravating factors far outweighed any mitigators, meeting the requirements for the court to impose the death penalty (R 91).

The defense indicated that again, without going into it because Mr. Robinson did not wish to present it, it would proffer that it would have presented argument against the aggravators, as well as having presented mitigating evidence (R 92). Defense counsel also indicated that the Rules of Professional Responsibility required that they follow their client's wishes within the confines of *Koon v. Dugger,* 619 So.2d 246 (Fla. 1993). Counsel indicated further that Robinson not only stipulated to the aggravators but asked the court to find them beyond a reasonable doubt. Robinson indicated to the court that such was true. Robinson did not wish for his attorneys to make closing argument on his behalf (R 93).

At the conclusion of the penalty phase Robinson told the court that he was satisfied with what his attorneys had done for him and there was nothing he wanted them to do that they had not done (R 97). He further indicated they had done exactly as he requested, had tried to encourage him to present something on his behalf to

try and save his life, and almost badgered him (R 98). He thought they were excellent lawyers (R 98). Robinson took full responsibility for the decision that was made (R 98).

In her written sentencing order the sentencing judge found the aggravating factors that (1) the capital felony was committed for the purpose of avoiding or preventing a lawful arrest; i.e., witness elimination; (2) the capital felony was committed for pecuniary gain; and (3) the capital felony was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification. The court carefully considered the proffered mitigation. Of greatest concern was Robinson's competency and history of mental health. The defendant allowed the reports of Doctors Kirkland and Berland into evidence. Said reports are attached hereto as Appendix A. The court noted that:

> Although he has had some head injuries and possible genetic mental illness, nothing about the Defendant today or the date of the murder or the date of the plea indicates he is not competent to participate in these court proceedings or that he was not totally aware of what he was doing at the time of the offense or the ramifications of those actions. He is well above average intelligence.

(R 261).

The court further found that although there was evidence that Robinson was afraid he would go to prison, that evidence was not something that rose to the level of mitigation. The court found that although Robinson did cooperate with the detectives, he did so only after his first statement proved untrue. The court found there was some evidence he had a cocaine problem since the state's evidence reflected that he traded the victim's property for

cocaine. The court further found that there was no evidence at all that the other proffered mitigators existed (R 261). The court further indicated that "As requested by the Defendant, the Court has not considered the mitigators." The court then concluded that "The Court has very carefully considered and weighed the aggravating circumstances and satisfied itself that any potential mitigating circumstances proffered would not have affected the life or death decision in this case, being ever mindful that human life is at stake in the balance." (R 262). The court then specifically found that "the aggravating circumstances present in this case outweigh any potential mitigating circumstances." The court then sentenced Robinson to death (R 262). A copy of the sentencing order is attached hereto as Appendix B.

SUMMARY OF THE ARGUMENT

I. The sentencing court fully complied with the dictates of *Farr v. State*, 621 So.2d 1368 (Fla. 1993), and considered all possible mitigation apparent from the record, psychiatric evaluations and the P.S.I. Appellant really complains that the lower court did not refer to proffered mitigation as though it were established mitigation.

II. The state proved beyond a reasonable doubt that the murder was committed for pecuniary gain. The defendant stated that he had killed the victim to retrieve money she had been sent. Robinson had no right to such money, it having been sent to the victim as a form of restitution for his theft of her property.

III. The sentencing judge properly found that the murder was committed to avoid a lawful arrest. The victim was going to initiate theft charges against the defendant and he indicated that he killed her to prevent her from thereby sending him to prison again.

IV. The state proved beyond a reasonable doubt that the murder was committed in a cold, calculated and premeditated manner. The evidence reflects that the idea of murdering the victim occurred to the defendant when he learned that he could not get her stolen property back and she would initiate charges against him.

Defendant's actions in procuring a weapon and waiting for her to drift off to sleep then methodically and without emotion killing her with a hammer exhibit the heightened premeditation necessary to sustain a finding in aggravation of CCP.

V. This Court has declined to recede from its decision in *Hamblen v. State*, 527 So.2d 800 (Fla. 1988), on numerous occasions, and this occasion should be no different.

ARGUMENT

1. THE SENTENCING COURT FULLY COMPLIED WITH THE DICTATES OF *FARR v. STATE* AND CONSIDERED ALL POSSIBLE MITIGATION.

As his first point on appeal, Appellant argues that the dictates of *Farr v, State,* 621 So.2d 1368 (Fla. 1993), were not complied with by the lower court as the sentencing judge was under the mistaken impression that she was obligated to ignore valid mitigating evidence. Appellant contends that the lower court declined to consider the mitigating evidence at the request of the defendant and cites, in support thereof, a passage from the written sentencing order which indicates " as requested by the Defendant, the Court has not considered the mitigators." (R 260-61).

Appellant contends that the record contains substantial, uncontroverted mitigating evidence. Appellant complains that the lower court asked Dr. Kirkland to examine him only to corroborate that he was competent to proceed and Dr. Kirkland, therefore, did not attempt to develop any mitigating evidence, although his report reveals that Robinson has a lengthy history of abuse of alcohol and other drugs. D. Ex. 1. Appellant relies also on the report of Dr. Berland as establishing mitigating circumstances: chronic, psychotic disturbance of genetic origin involving thought disorder and mood disturbance; antisocial character disturbance mediated by

manic disturbance; episodes of depression and manic disturbances; and bilateral cerebral cortical impairment or organic brain damage. Appellant also contends that the record reflects extreme remorse and that his confession reveals his extreme emotional state at the time he committed the murder. Appellate counsel also urges the Court to review the PSI which he claims contains a plethora of substantial mitigating evidence, adding to the list of nonstatutory mitigating factors ignored by the sentencing court, supporting the statutory mitigating factor of no significant prior criminal history and corroborating the difficult family history and substantial brain damage.

Appellant further accuses the lower court of rubber-stamping the state's position on the aggravating circumstances in contravention of *Hamblen v. State*, 527 So.2d 800 (Fla. 1988), and allowing the defendant to stipulate that the state had proved the aggravating circumstances beyond a reasonable doubt.

Appellant concludes that this Court must vacate his death sentence and remand for a new penalty phase where the sentencing court must weigh all available mitigating evidence against the aggravating factors. IBA pp. 11-25

In *Farr v. State*, 621 So.2d 1368, 1369 (Fla. 1993), this Court indicated that a trial court is required to consider any evidence

of mitigation in the record, including a psychiatric evaluation and presentence investigation. The Court further stated " We repeatedly have stated that mitigating evidence must be considered and weighed when contained anywhere in the record, to the extent it is believable and uncontroverted. That requirement applies with no less force when a defendant argues in favor of the death penalty, and even if the defendant asks the court not to consider mitigating evidence." 621 So.2d at 1369. The dictates of *Farr* were complied with in this case.

The only evidence cited by Appellant in support of his claim that the sentencing judge did not consider mitigating evidence is one statement, taken out of context, from the written sentencing order which indicates " As requested by the Defendant, the Court has not considered the mitigators." This isolated aside would seem only to refer, standing alone, to the lack of evidence to support *other* proffered mitigators, which mitigators could not properly be considered by the court, the result *defendant* desired for *all* proffered mitigation. The balance of the order reflects careful consideration of all possible mitigation.

The lower court first listed the statutory and nonstatutory mitigation proffered by defense counsel (R 260). The court next, in compliance with *Campbell v. State*, 571 So.2d 415 (Fla. 1990),

evaluated each mitigating circumstance proposed by Appellant's counsel to determine whether it was supported by the evidence and whether it was truly of a mitigating nature. Such evaluation would have been unnecessary if the lower court had simply decided not to entertain mitigation at the defendant's behest, as Appellant now contends. The court then concluded:

> THE COURT HAS VERY CAREFULLY considered and weighed the aggravating circumstances and satisfied itself that *any potential mitigating circumstances proffered would not have affected the life or death decision in this case,* being ever mindful that human life is at stake in the balance. The court finds that the *aggravating* circumstances present in this case *outweigh any potential mitigating circumstances*.

(R 261-62).

The above statement of the lower court, as well as its specific findings in mitigation, would clearly indicate that the court had considered and weighed the mitigation in the sentencing balance.

The Appellant seems to take umbrage not at the actions or analysis of the lower court but at the fact that the lower court in its order did not refer to proffered mitigation in terms of it being established mitigation, which is not the case. In *Pettit v. State*, 591 So.2d 618, 620 (Fla. 1992), this Court stated "the trial judge must carefully analyze the *possible* statutory and nonstatutory mitigating factors against the aggravators to assure

that death is appropriate." That is exactly what was done in this case and it was determined that the aggravating circumstances present outweighed any potential mitigating circumstances.

it clear that the lower court considered the reports of Doctors Kirkland and Berland as the sentencing order indicates that the court had reviewed them (R 256;261). At the penalty phase defense counsel only argued that there was "some evidence" of mental illness which Dr. Berland discussed in his report (R 71-72). Dr. Kirkland's psychiatric report indicates that Robinson has no psychiatric history aside from drug and alcohol abuse and that the mental status exam showed no abnormality of emotional tone or thought process. Dr. Kirkland is a psychiatrist, director of psychiatry at an intensive treatment unit, and is a diplomate of the American Board of Psychiatry and Neurology at Florida Hospital center for psychiatry. Dr. Berland is much lesser-credentialed. He is not a doctor at all, of medicine, but has a PH.D. in psychology. His report was less than conclusive and spoke in terms of *evidence* of *both* mental illness and antisocial character disturbance, which is incongruous ((see, *Card v. State,* 453 So.2d 17 (Fla 1984)(testimony of psychologist that defendant was a sociopathic personality did not establish any particular mitigating circumstance)); *evidence* of brain damage; and *symptoms* of mental

illness associated with biological defects in brain functioning. Berland makes no actual diagnosis at all. Dr. Berland noted that despite these "symptoms" Robinson "provided me with a lengthy and remarkably detailed account of his actions and the events leading up to and including the offense to which he has recently pled guilty." Dr. Berland found that "It was evident from both the actions that he described and from his reports of his thoughts at the time that he was clearly aware of the nature, the immediate consequences, and the wrongfulness of his actions at the time of this offense." Additionally, Robinson denied recent substance abuse. Testing also revealed that Robinson fell into the superior range of intelligence. D.Ex 1 The sentencing court properly considered these reports and did find *possible* genetic mental illness to be mitigating, although tempered by the fact that nothing indicates that Robinson was not totally aware of what he was doing at the time of the offense or the ramifications of those actions. That the court considered this in mitigation is obvious from the statement following its analysis: "...As to his other mitigators." (R 261). Appellant simply quarrels with the weight given to this nonstatutory mitigator. The weight to be given a mitigator to the death penalty, however, is left to the trial judge's discretion. *Mann v. State*, 603 So.2d 1141 (Fla. 1992).

The sentencing court did not focus solely on Robinson's sanity at the time of the murder and competence to proceed, as argued above. The issue of sanity is, however, relevant to mental health mitigation. *Ponticelli v. State,* 593 So.2d 483 (Fla. 1991). Considering the nature of the experts' reports, even if the sentencing order could be construed as not finding mental health mitigation the sentencing court still fulfilled its sentencing obligation pursuant to *Durocher v. State,* 604 So.2d 810, 812 (Fla. 1992), as the judge "carefully considered and weighed all of the evidence that could be gleaned from Robinson's statements, from the reports of the mental health experts who examined him and from counsel's statement in court."

The sentencing court also found in mitigation that Robinson did cooperate with the detectives but such finding was tempered by the fact that Robinson did so only after his first statement proved untrue. The court also considered and found evidence of a cocaine problem (R 261).

The lower court properly found no evidence of the existence of the other proffered mitigators. While Robinson's desire for punishment is fitting, the lower court observed no real remorse and noted "Even to this day, when the Defendant described the murder, he does so in a matter-of-fact manner with no emotion. He

describes the sound of the hammer hitting her head--like a watermelon, blood gurgling from her mouth, all with no emotion." (R 260). There was no evidence at all that Robinson was in an extreme emotional state at the time of the murders either in the record or the doctors' reports. The record reflects this to be just the opposite, a cold-blooded, calculated, ruthless, crime committed to avoid returning to prison. The crime was also committed by a defendant of superior intelligence and "evidence" of "possible" organic brain damage is hardly sufficient to establish that this fully contemplated murder was committed by one in an extreme emotional state. Cf. *Roberts v. State,* 510 So.2d 885 (Fla. 1987). No evidence was introduced or appears in the record concerning Robinson' worry about losing his job or that he had a good jail record. Such evidence would be entitled to no weight, in any event. Robinson had been in custody before and obviously chose not to benefit from it. A finding of any of these "mitigators" would be in the context of only "nonstatutory" mitigation, if it rose to the level of mitigation at all, they would be entitled to minuscule weight, would have no appreciable effect upon the sentencing balance, and any error in not finding such factors is harmless beyond a reasonable doubt. *State v. DiGuilio,* 491 So.2d 1129 (Fla. 1986).

The sentencing court properly found that Robinson's fear of going to prison, which actually prompted the murder, was not something that rose to the level of a mitigator (R 261).

Appellant covertly argues the existence of mitigation in the PSI while ostensibly still keeping such information private. Appellee will respond, of necessity, to all areas implicated in the PSI in Appellant's brief. The written sentencing order reflects that the judge did review the PSI (R 256). The PSI in possession of Appellee does not contain a plethora of substantial mitigating evidence. It contains no difficult family history, save for the family moving around a bit due to the father's job, a fact that the sentencing court was already aware of from Robinson's statements before it. The PSI hardly removes brain damage from the realm of mere hypothesis based on the self-reporting of Robinson, especially where "Defendant did not attempt to offer any of these incidents as an excuse for his behavior." The mitigating circumstance of no significant history of prior criminal activity need not be found even where there are only misdemeanor offenses and charges. *Funchess v. Wainwright*, 772 F.2d 683 (11th Cir. 1985). The mitigating factor of no significant criminal activity may also be rebutted by record evidence of criminal activity, including *drug activity*. *Slawson v. State*, 619 So.2d 255 (Fla. 1993).

The sentencing court hardly rubber-stamped the state's position on the existence of aggravating circumstances or allowed the defendant to stipulate to them. Although such factors are based on the Appellant's confession and in-court statements that is in the nature of guilty plea proceedings and is not the equivalent of accepting a stipulation. Confessions admitted into evidence at trial also provide a basis for finding aggravating circumstances. Considering the admissions of Appellant any such stipulation would be superfluous, in any event. The sentencing order reflects careful and independent analysis by the sentencing judge and this issue is without merit.

II. THE STATE PROVED BEYOND A REASONABLE DOUBT THAT THE MURDER WAS COMMITTED FOR PECUNIARY GAIN.

To establish the capital sentencing aggravating factor that the murder was committed for pecuniary gain the state must prove pecuniary motivation for the murder. *Clark v. State*, 609 So.2d 513 (Fla. 1992). Such motivation has been proven beyond a reasonable doubt in this case.

The sentencing court found the pecuniary gain aggravator to be clearly applicable in this case. The written sentencing order reflects the following reasoning.

> The defendant knew the victim had $100 in her shoes. His mother had sent it to her so she could retrieve her stolen property. She had already spent $20 of the money. She used that to pay a debt of the Defendant. Prior to the killing, the Defendant had no money. He'd stolen Jane's property to get drugs. His own mother had sent Jane the money to pay to get her property back. The Defendant admits he took the money from her shoes after he killed her. Although not the primary reason for killing Jane Silvia, even the Defendant admits in his own statement to the police, "...so that was one of the reasons that I, uh, killed her was to retrieve that money from her." He reiterated this later in his statement. Consequently, this aggravator is proved beyond a reasonable doubt.

(R 258-259).

In a supplement to Robinson's second August 16, 1994, statement Robinson indicated that after he had killed Jane he took

what was left of the money his mother had sent them, approximately one hundred dollars. Jane had told him it was in her shoes. Robinson stated "that was one of the reasons that I killed her, was to retrieve that money from her. I didn't want to go through any physical battle with her and have her call the police." (R 66). Jane had told Robinson she had the money in her shoes when one of the drug dealers came to the car and told her that Robinson owed him twenty dollars. Jane got a twenty dollar bill out of one of her shoes and gave it to him. Robinson saw Jane separate some of the money and put some in each shoe. Robinson reiterated to the authorities that "Like I said, just, you know, the reason I killed her was to basically stay out of jail *and to retrieve the money.*" (R 67).

Robinson's statements were never disputed below. Appellant's argument that Robinson can have no credibility on the issue because his entire motivation in the case was to attain a death sentence is without merit. It is axiomatic that issues of credibility are best left to the trier of fact. The record in this case reflects that Robinson believed he could get away with the murder. He stated:

> Well, that was on my mind, that if I killed her she couldn't call back. And if I was able to, you, know, bury the body and get rid of all the evidence that I wouldn't be caught with that, either, that there would be no

reason for me to be arrested, you see.

(R 66).

His desire for the death penalty only came when he was proved wrong. At the time of his admission above Robinson was hardly versed in death penalty parlance and was certainly not setting up an aggravating factor. Nothing in the record indicates that the statement was given for any other reason than the one offered by Robinson: that he has a conscience. Robinson did not enter a plea in the hope of expediting his execution (R 29). He also understood that his preference for the death penalty could not be considered by the court as a reason to impose it (R 30).

Contrary to the Appellant's argument, it is clear that Robinson did not have as much right to the money as Jane. Robinson had stolen Jane's property and given it to drug dealers as payment for drugs. Jane clearly had the option of pressing charges against Robinson. Robinson believed that when he explained to Jane that he could not get her things back that she would make the call that would send him to prison again (R 15). The money sent by Robinson's mother was as restitution to get Jane's property back and put her in the same position she was in before the theft. It was Jane who exercised control over the money. It is a far stretch of the imagination to envision joint control of money in the hands

of a potential prosecutrix in this case who was not yet even living with Robinson. It was only Robinson's faulty reasoning that created a false entitlement. He obviously felt that by pressing charges against him she would thereby divest herself of any right to the money. Since he couldn't allow her to press charges she certainly wouldn't be needing the money and he could easily "retrieve" it. Robinsons's own statements demonstrate that taking the money was not at all an after thought but a primary reason for the murder.

III. THE FINDING THAT THE MURDER WAS COMMITTED TO AVOID A LAWFUL ARREST IS SUPPORTED BY THE EVIDENCE.

The sentencing court properly found that Robinson murdered Jane Silvia to avoid arrest. The written order reflects the reasoning of the lower court:

> The Defendant freely admits he killed Jane Silvia to prevent her from prosecuting the theft of her TV's, microwave, and VCR. She had already reported the theft, and it was the Defendant's understanding that she had 7 days to decide if she wanted to act on that complaint. If she did not call the law enforcement agency back, nothing would happen. To his credit, he and Jane attempted to get the items back, but when the Defendant learned it would be impossible, he decided to kill her. Because he was on Control Release from the Department of Corrections, he knew that a law violation would cause him to be returned to prison to serve 17 years. He wanted to avoid this at any cost. This is proved beyond any doubt at all based on his admission and the fact that he has gone to great lengths to convince this court to impose the death penalty instead of life in prison. Additionally, he testified that he and Jane had no argument before this occurred and he loved her. This and possible pecuniary gain are the only reasons for killing Jane, but avoiding arrest and prison was very definitely the dominant reason. There is absolutely no pretense of moral or legal justification for killing her. This aggravator is proved beyond a reasonable doubt.

(R 257-258).

It is clear that murder with the motive to eliminate a

potential witness to an antecedent crime can provide a basis for finding the aggravating factor of committing murder for the purpose of avoiding or preventing a lawful arrest. *Fotopoulos v. State*, 608 So. 2d 784 (Fla. 1992). In the case at bar, the dominant motive was the elimination of Jane Silvia as a witness or prosecutrix to the antecedent crime of theft.

In a strikingly similar case, *Wright v. State*, 473 So.2d 1277 (Fla. 1985), this court found that testimony of a witness that the defendant admitted he killed the victim because she recognized him and he, like Robinson, did not want to return to prison, was sufficient to support the trial judge's finding that the defendant committed the murder for the purpose of avoiding arrest. *Cf. Shere v. State*, 579 So.2d 86 (Fla. 1991); *Johnson v. State*, 465 So.2d 499 (Fla. 1985).

Admissions of defendants have supported the finding of this factor in numerous cases. *Eg. Remeta v. State*, 522 So.2d 825 (Fla. 1988); *Lopez v. State*, 536 So.2d 226 (Fla. 1988) and *Johnson v. State*, 465 So.2d 499 (Fla. 1985). Again, Appellant provides no basis for his theory that the confessions of murderers who prefer the death penalty over life imprisonment should be discounted. The truthfulness of appellant's statements are supported by the coinciding injuries apparent at autopsy, his ability to locate the

murder weapon, and the grand theft police report Jane Silvia had filled out on July 24, 1994, which was admitted as State's Exhibit 3 (R 68).

IV. THE STATE PROVED BEYOND A REASONABLE DOUBT THAT THE MURDER WAS COMMITTED IN A COLD, CALCULATED, AND PREMEDITATED MANNER WITHOUT ANY PRETENSE OF MORAL OR LEGAL JUSTIFICATION.

The sentencing court properly found that Robinson murdered Jane in a cold, calculated and premeditated manner without any pretense of moral or legal justification. The written sentencing order reflects the following:

> The Defendant planned the murder of Jane Silvia very deliberately once learning he could not retrieve her property. He watched her sleeping; he got his hammer from the truck and put it in the bedroom. He sat in front of the couch watching her, waiting for her to fall asleep. He went to the bedroom to get the hammer. He came back and lay on the floor next to the couch and watched her some more. Then, when she seemed to be asleep, he began hitting her in the head with the hammer. He said that each time he hit her, the hammer went into her brain, but she was not dying fast enough and she was making some noises that the Defendant was afraid neighbors would hear. So he turned the hammer around and used the claw side to hit her. She was still breathing, so he stuck a serrated butcher knife into the soft part of her throat and down into her chest to try to stop her heart and breathing. After she was dead, he wrapped her in the shower curtain secured with a coat hanger, coax cable, and a belt and buried her. Later his first statement to the police was that some drug dealers had killed her, but ultimately when the police were zeroing in on him on August 16, 1994, he gave his final statement admitting to Detective Griffin that he killed Jane Silvia. He carried out this murder in a cold, calm manner with plenty of time to reflect on the consequences. There was no argument, no frenzy, no rage. He even said he loved Jane. He carefully planned how he would kill Jane and he waited for her to fall asleep so there'd be no physical fight. The manner in which he killed Jane was deliberate and ruthless. There was absolutely no pretense of moral or legal justification.

> Even the Defendant admits this. Even to this day, when the Defendant describes the murder, he does so in a matter-of-fact manner with no emotion. He describes the sound of the hammer hitting her head--like a watermelon, blood gurgling from her mouth, all with no emotion. This aggravator is proved beyond a reasonable doubt.

(R 259-260).

Further proof of this aggravator is provided by the defendant's in-court statement that:

> I had went back to the people that I had sold the things to. They had resold them things I had stolen from her, and there was no possibility of me getting them back. I took her with me. She didn't hear them tell me that. *So she wasn't aware of the danger that she was in. And I understood that once I had explained to her that she would no longer be able to get her things back, she was going to make the call.* And I couldn't, at that time, I didn't feel like I could take that risk.

(R 15).

An inference could certainly be drawn from the above statement that the planning began the moment Robinson found out that he could not get Jane's stolen property back. That he intended to harm her at that moment is clear from the statement "She wasn't aware of the danger that she was in." Appellant's contention that Robinson reached the actual decision to kill only seconds before he committed the act is totally without record support.

The calculation and planning continued when Robinson and Jane returned to the house. When she fell asleep on the couch he took

the opportunity to go out into his truck to get the murder weapon and smuggle it into the house and conceal it. He then came back in and sat in front of the couch watching Jane to assure himself that she was sleeping soundly. Satisfied she was asleep he got the hammer, came back, and again made sure she wasn't stirring before he delivered the fatal blows (R 55). Robinson, far from vacillating, put his plan into action and killed her with the skill of a steel-minded technician. This "tortured individual who could not decide what to do" delivered the first blow and took time to observe that the hammer had gone through the skull and into the brain. He waited, observing. When the body kept raising up he deliberately turned the hammer around to the claw end and coldly stuck it through her head, although he took time to first decide that the movement was just the result of body reactions. He also noted that she was still breathing and her heart was still beating. This "tortured" individual then decided that the gurgling sounds must cease since the walls were thin and a neighbor might hear them so he found a serrated butcher knife and coldly stuck it down the soft part of her neck into her chest (R 55-58). He calmly related his "success" at stopping her breathing and the noise (R 58). A heightened form of premeditation can be demonstrated by the manner of killing. *Hamblen v. State*, 527 So.2d 800 (Fla. 1988). This

murder not only fulfills the criteria for finding in aggravation that it was cold, calculated and premeditated but goes far beyond that to the realm of ghoulish. Robinson had ample time during the series of events leading up to the murder to reflect on his actions and their consequences. Cf. *Jackson v. State*, 522 So.2d 802 (Fla. 1988). Robinson's actions and later description of the same were delivered totally devoid of any emotion. This case nowhere parallels the factual scenario in *Thompson v. State*, 565 So.2d 1311 (Fla. 1990), and by no stretch of the imagination could this killing be considered the result of "rage." Later proclamations of love for Silvia hardly make this so. Robinson obviously defines love in a manner different than most. His definition authorizes killing when the loved one becomes an impediment. He had even weighed his chances of doing so successfully: "Well, that was on my mind, that if I killed her she couldn't call back. And if I was able to, you, know, bury the body and get rid of all the evidence that I wouldn't be caught with that, either.." (R 66). He told the judge during the course of the plea hearing that "If I got away, I was looking at nothing." (R 13). This killing was carried out as though it was a matter of course. Cf. *Cruse v. State*, 588 So.2d 983 (Fla. 1991). The level of premeditation required for the aggravating circumstance of cold, calculated, and premeditated

murder is appropriately found where the evidence indicates that the defendant's actions were accomplished in a calculated manner, i.e., by careful plan or prearranged design to kill. *Capehart v. State*, 583 So.2d 1009 (Fla. 1991). That is certainly the case here.

V. APPELLANT HAS PRESENTED NO PERSUASIVE REASON FOR THIS COURT TO DEPART FROM STARE DECISIS AND RECEDE FROM ITS DECISION IN *HAMBLEN V. STATE*.

This Court has previously declined to recede from its decision in *Hamblen v. State*, 527 So.2d 800 (Fla. 1988). *Farr v. State*, 621 So.2d 1368, 1369 (Fla. 1993); see also, *Durocher v. State*, 604 So.2d 810 (Fla. 1992).

In *Clark v. State*, 613 So.2d 412, 413-414 (Fla. 1992), this Court stated:

> Contrary to Clark's contention, *Klokoc v. State*, 589 So.2d 219 (Fla. 1991), in which we refused to dismiss the mandatory appeal and directed Klokoc's counsel to prosecute that appeal, does not control this case nor does it require that we recede from *Hamblen* and the other cases when defendants have waived introducing mitigating evidence.

In *Farr v. State*, 621 So.2d 1368, 1369 (Fla. 1993), the appellant argued that the decision in *Hamblen* was inconsistent with the decision of this Court in *Klokoc*, and that to cure this inconsistency this Court should recede from *Hamblen*. This Court disagreed.

Koon v. State, 619 So.2d 246, 250 (Fla. 1993), requires that when a defendant, against counsel's advice, refuses to permit presentation of mitigating evidence in the penalty phase, counsel must inform the court on the record of the defendant's decision and

indicate whether, based on his investigation, he reasonably believes there to be mitigating evidence that could be presented and what that evidence would be. *Farr* requires the trial court to consider any evidence of mitigation in the record, including psychiatric evaluations and presentence investigation. 621 So.2d at 1369. *Pettit v. State*, 591 So.2d 618, 620 (Fla. 1992), requires the trial judge to carefully analyze the possible statutory and nonstatutory mitigating factors against the aggravators to assure that death is appropriate. Section 921.141(4), Florida Statutes (1995), provides for automatic, mandatory review of every judgment and sentence of death by the Supreme Court of Florida. Even though a defendant may express a desire to be executed, this Court, nevertheless, examines the record to be sure that the imposition of the death sentence complies with all of the standards set by the Constitution, the Legislature and the courts. *Goode v. State*, 365 So.2d 381, 384 (Fla. 1978). The death penalty statute and the decisions of this Court, taken together, ensure that the death penalty will be applied in a constitutionally permissible manner and not as an incidence of state-assisted suicide. The decision in *Klokoc*, far from being inconsistent, is an integral part of this process. Contrary to Appellant's assertion, procedures are in place to ensure that pertinent facts are presented in the record.

CONCLUSION

Based upon the foregoing arguments and authorities, Appellee respectfully requests that this Honorable Court affirm the judgment and sentence of the trial court.

Respectfully submitted,

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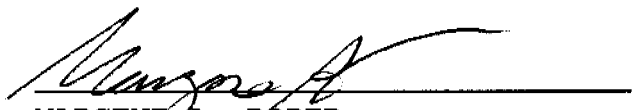

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