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IN THE SUPREME COURT OF FLORIDA

ANDREA HICKS JACKSON,

Appellant,

v.

CASE NO. 87,345

STATE OF FLORIDA,

Appellee.

REPLY BRIEF OF APPELLANT

PRELIMINARY STATEMENT

The Appellant, Andrea Hicks Jackson, relies on the initial brief to reply to the State's answer brief with the following additions concerning Issues I and II.

ARGUMENT

ISSUE I

ARGUMENT IN REPLY TO THE STATE AND IN SUPPORT OF THE PROPOSITION THAT THE TRIAL COURT ERRED IN INSTRUCTING THE JURY ON AND IN FINDING AS AN AGGRAVATING CIRCUMSTANCE THAT THE HOMICIDE WAS COMMITTED IN A COLD, CALCULATED AND PREMEDITATED MANNER.

A. HOMICIDE NOT THE PRODUCT OF CALM, COOL REFLECTION

On pages 21 through 26 of the answer brief, the State argues that the homicide was the product of calm and cool reflection because: (1) Andrea **was** not intoxicated and (2) Andrea acted in a calm fashion before, during and after the homicide. These propositions were not proven beyond a reasonable doubt.

(1) Evidence of Intoxication

The State references the testimony of several witnesses who testified that Andrea did not appear intoxicated. However, the State omitted the portions of the witnesses' testimony which questions their ability to make such a judgement. Additionally, the State does not address the testimony of many other witnesses who corroborate Andrea's alcohol and drug usage that day.

Edith Croft used drugs and alcohol with Andrea on a daily basis. (Tr 1456-1464) On the day of the homicide, Croft said she and Andrea began the day between 7:00 and 8:00 a.m. using T's and Blues, drinking liquor and smoking marijuana. (Tr 1459-1463) This usage continued into the late afternoon. (Tr 1463-1464) Croft was present at the apartment where Andrea was later arrested. (Tr 1464-1466) She said Andrea was still "glowing." (Tr 1466)

Richard Washington drank alcohol with Andrea between 10:00 a.m. and 1:30 p.m. on the day of the homicide. (Tr 1446-1447) He

said Andrea had been drinking before they met that morning. (Tr 1447)

Adam Gray, the auto salesman, testified that Andrea did not appear to be on drugs to him when she was in his office. (Tr 730-732) This contact occurred in the afternoon of May 16, 1983, several hours before the homicide which occurred in the early morning of May 17. (Tr 525, 732)

Gina Rhoulac stated that Andrea did not stagger and seemed to be able to talk to Officer Bevel. (Tr 567-568) However, Rhoulac's observations were from a distance. (Tr 572) She was not close enough to hear what Andrea said or to detect any odor of alcohol. (Tr 572)

Anna Nelson testified that Andrea's speech did not appear slurred and Andrea did not fall down or slip when walking. (Tr 584-585) Nelson admitted that her observations were from 60 feet away and she was not concerned with determining if Andrea was under the influence of drugs or alcohol. (Tr 599-600) She was not close enough to tell if Andrea smelled of alcohol. (Tr 613)

Mable Coleman did not see Andrea stumble and she said Andrea did not appear drunk. (Tr 658-659) Coleman admitted that she was not close enough to determine if Andrea smelled of alcohol. (Tr 682) Coleman also stated she has no idea how someone on drugs acts. (Tr 683)

Officer Griffin, who assisted Officer Bevel, stated that Andrea smelled of alcohol when he talked to her. (Tr 724) He said that Andrea did not slur her speech or stumble when she walked. (Tr 715-717) Griffin admitted that it would be hard to determine

the behavior of someone who **was** under the influence of alcohol, marijuana, cocaine and T's and Blues taken on the same day. (Tr 722-723) Furthermore, Griffin said if he had seen someone smashing a car and cursing it like a person that such irrational behavior would cause him to suspect the person was under the influence of some substance. (Tr 723-724)

David Lee, the firefighter who gave Andrea a ride shortly after the homicide, testified that Andrea seemed excited and "fumbled" as she got into his truck. (Tr 1371, 1376-1378) When Andrea got inside the truck, Lee saw that she was hysterical and smelled of alcohol. (Tr 1372-1377)

Joi Shelton, Andrea's friend who picked her up from Lee's truck, said Andrea was excited, nervous and upset. (Tr 1486) Joi asked Andrea if she had been drinking. (Tr 1487)

Shirley Freeman saw Andrea at least an hour after the homicide. (Tr 769-770) Freeman testified that Andrea smelled of alcohol but she did not slur her speech or have trouble walking. (Tr 772-773) Freeman had been using pain medication herself that day. (Tr 779) **Joi Shelton**, who **was** also present, testified that Freeman drank vodka with Andrea while they were at **Joi's** house. (Tr 1495)

Carl Lee, the taxi driver who drove Andrea away from **Joi's** house, testified his first impression of Andrea was that she was high or sleepy. (Tr 791) He said that she did not appear normal. (Tr 791) After she entered the car, he concluded that Andrea was not drunk or high because she could converse with him. (Tr 789)

Lee saw Andrea at 4:15 a.m., about four hours after the homicide.
(Tr 787)

Officer Dipernia arrested Andrea at 4:45 a.m. (Tr 796)
Andrea ferociously fought the officer in an irrational manner.
(Tr 808) However, Dipernia said he did not smell alcohol on
Andrea and in his opinion, she was not intoxicated. (Tr 804, 808)
Officer Barge, who assisted with the arrest, also said he did not
think Andrea was intoxicated, but he smelled alcohol on Andrea.
(Tr 1121, 1124)

John Bradley, the investigator who observed Andrea at the
time of her arrest, testified that Andrea was under the influence
of alcohol or drugs. (Tr 548-549) He did not believe she **was**
intoxicated to the point she could not "understand the English
language" or communicate with the him. (Tr 557-558)

Records of the medical screening done at the detention cen-
ter right after Andrea's arrest indicated that Andrea was hos-
tile, admitted using various drugs, and her pupils were dilated
and had little reaction to light. (Tr 1157-1164) Andrea stated
she blacks out when she drinks and loses control of her actions.
(Tr 1165) Records from the University Hospital, where she was
taken for treatment after her arrest (over five hours after the
homicide), indicated Andrea was belligerent. (Tr 1145, 1149-1148)
Pamela Ferreira, the nurse who saw Andrea at the hospital, said
Andrea was belligerent and stared off with a set expression. (Tr
1579) Although Ferreira at first said she did not think Andrea
was intoxicated (Tr 1579-1580), she said she would have suspected
influence of drugs had she realized Andrea had dilated pupils

with little reaction to light. (Tr 1583) Ferreira had not examined Andrea's eyes. (Tr 1584-1585)

(2) Evidence Andrea Was Enraged and Emotional

On page 25 of the answer brief, the State argues:

Contrary to Jackson's assertion in her brief that she was enraged and out of control, the record reflects that, with the exception of the doctors' testimony, witnesses who observed her before, during and after the murder, testified that she was acting in a calm fashion.

Witnesses who observed Andrea before, during and after the homicide testified as follows:

Anna **Nelson** testified that before the homicide Andrea was **angry** at her car and destroyed it. (Tr 578-580) Andrea also cursed the car. (Tr 579-580) Nelson said she had never seen a rational person act in this manner. (Tr 612) Nelson also testified about the confrontation with Officer Bevel. (Tr 590-593) When Bevel told Andrea she was under arrest, Nelson testified that Andrea "got angry" and "lunged toward him and was like hitting him up in his chest." (Tr 591)

Leanderaus Fagg saw the confrontation between Andrea and Bevel. (Tr 638-648) Fagg testified Andrea "came up and hostile - she say, 'where do you take my god damn car'." (Tr 639) Bevel told her that he advised her it would be towed. (Tr 639) Fagg said the situation **was** 'hostile.' (Tr 639) Andrea responded to Bevel, saying, "I told you don't take my god damn car nowhere." (Tr 639) Bevel then advised Andrea she was under arrest. (Tr 639) Fagg testified that Andrea struggled and resisted "violently" and was "immensely hot and **angry**." (Tr 644 -645)

Mable Coleman testified that Andrea was angry and cursed her car like it was a person, (Tr 654-655, 686-687) Andrea told the car, "You're one mother **fucker** I don't have to worry about." (Tr 655) Coleman said Andrea was obviously angry at the car. (Tr 687) Coleman also saw the confrontation between Andrea and Bevel. (Tr 665-667)

David Lea, the motorist who gave Andrea a ride shortly after the homicide, testified that when he first saw her, he noticed that her clothing and hair were out of place. (Tr 1371) He described Andrea as excited, hysterical, nervous and frightened. (Tr 1371, 1372-1373)

Joi Shelton, who took Andrea to her house after the shooting, said Andrea sounded excited and nervous when she talked to her on the telephone. (Tr 1486) While riding in the car, **Joi** said Andrea was upset and crying when Andrea spoke of shooting the policeman. (Tr 1490) Once at **Joi's** house, Andrea became hysterical after learning that the officer was dead. (Tr 1495-1496) Andrea was upset and screaming. (Tr 1496) **Joi** testified that Andrea "went crazy." (Tr 1496)

Contrary to the State's assertion, these witnesses did not see Andrea behaving in a calm, cool and reflective manner.

B. THE HOMICIDE WAS NOT CAREFULLY PLANNED

For the State's theory of a preplanned homicide to have validity, the evidence would have to prove: (1) Andrea knew she was going to be arrested before she went to Shelton's apartment the last time before the homicide; (2) in order to avoid that arrest,

Andrea armed herself and went to confront and kill the police officer; (3) rather than shooting the officer when she saw him and had ample opportunity to do so, she waited until she and the officer were in a physical struggle in the patrol car and cleverly dropped her keys during the struggle, knowing this would distract the officer so she could shoot him in the head. The evidence is to the contrary.

(1) No Proof Andrea Knew She Was To Be About To Be Arrested

On pages 26-27 of the answer brief, the State contends "Jackson knew or should have known that she was about to be arrested." The evidence does not support this position.

The evidence shows that Andrea did not know she was to be arrested until the officer advised her and began effecting the arrest. At the time Andrea went back to the apartment the last time, there had not been any confrontation between the officer and Andrea. (Tr 587, 662) Bevel talked to Anna Nelson while Andrea was gone, and Nelson told him Andrea had damaged the car. (Tr 588-589) Officer Bevel did not make a decision to arrest Andrea until after she returned from the apartment. At the time Andrea returned and was seen in the patrol car, Bevel was still confirming his suspicions about Andrea having destroyed her own car and having made a false report. (Tr 590-591, 664-665) Although Bevel's suspicions were noted as the last entry on his paperwork, there is no indication exactly when that notation was made. (Tr 531-532) Andrea was seen looking at papers in the patrol car, but it is only speculation she saw Bevel's notation. (Tr 590-591, 601-603, 664) Andrea's reaction when Bevel

confronted her about being in his car indicated she did not know Bevel was planning to arrest her. (Tr 665, 681) Andrea's response was to confront the officer about towing her car. (Tr 665, 638-639, 695) She expressed no concern about an arrest. (Tr 665, 638-639, 695)

(2) No Proof Andrea Armed Herself To Shoot The Officer

On page 28 of the answer brief, the State argues that Andrea armed herself for the purpose of shooting Bevel. The only evidence the State presented about Andrea arming herself was the testimony of Mable Coleman. (Tr 663-664) Coleman said she saw Andrea place a pistol in the waist of her pants just as she started down the stairs from Shelton's apartment the last time before the shooting. (Tr 663-664) Coleman testified that she had not seen the gun before that time. (Tr 664) With only this evidence, the State asserts that Andrea was not carrying the gun on earlier occasions, Answer Brief at 28., and therefore the conclusion can be made that Andrea armed herself to confront and shoot Officer Bevel.

The State's reasoning is faulty. Coleman's observation of Andrea with a gun at one point in time cannot prove Andrea did not have a gun on her person earlier. Contrary to the State's assertion, Andrea did have the gun at her estranged husband's apartment. Coleman's observation of Andrea with a gun on the stairs **was** as Andrea left her husband's apartment. (Tr 663-664) Additionally, there is no evidence that Andrea did not have the gun on her person when she first talked to Officers Bevel and Griffin. There is also no evidence that Andrea did not have the

gun on her person **when she complained about her car at Rocket Motors**. Consequently, the evidence that Andrea started regularly carrying a gun for her protection is relevant and explains why Andrea had the firearm. (Tr 965-967)

**(3) No Proof Andrea Dropped Her
Keys As A Ploy To Shoot The Officer**

On page 29 of the answer brief, the State argues that Andrea dropped her keys during the struggle to create an opportunity to shoot Officer Bevel. This position is not supported by the evidence.

The only evidence is that keys dropped during the struggle between Andrea and the officer. There is no evidence as to whether the keys were dropped intentionally or accidentally. Anna Nelson saw Bevel struggling to get Andrea into the patrol car. (Tr 605-606) Nelson heard Andrea ask Bevel why he was manhandling her. (Tr 606) Then, Nelson saw Bevel bend down and grab Andrea's knees. (Tr 606-607) Bevel's grabbing Andrea's knees caused her to fall back onto the backseat of the patrol car. (Tr 606-607) At that point, Nelson heard Andrea mention the dropped keys. (Tr 594-595, 606-607) Leanderaus Fagg testified that Bevel bent down to place Andrea into the backseat of the patrol car. (Tr 641) After Andrea was down on the seat, Fagg heard Andrea tell the officer that he made her drop her keys. (Tr 641) Mable Coleman saw Bevel taking Andrea to the backseat of the patrol car. (Tr 667) Coleman remembers seeing Andrea on the back seat with her feet still outside of the car when Andrea mentioned the dropped keys. (Tr 675)

C. HOMICIDE WAS COMMITTED WITH A PRETENSE OF MORAL OR LEGAL JUSTIFICATION

A pretense of moral or legal justification can arise solely from the statement of the defendant about his or her actions. Banda v. State, 536 So.2d 221 (Fla. 1988); Cannady v. State, 427 So.2d 723 (Fla. 1983). In this case, Andrea told the first person she talked to about the shooting that she thought the officer was trying to rape her. (Tr 1496-1497, 1511-1515) Joi Shelton testified that Andrea told her that the officer was trying to arrest her, he was on top of her, she thought he was going to rape her and she shot him. (Tr 1490, 1496-1497, 1511-1515) This statement, alone, establishes the pretense of legal or moral justification.

All three mental health professionals who evaluated Andrea agreed that Andrea misperceived Officer Bevel's actions as an attempt to rape her. (Tr 1019-1020, 1285-1287, 1383-1395, 1400-1405) The State's suggestion, Answer Brief at 29-30, that the expert's conclusions were inconsistent or contradictory is simply not supported in the testimony presented.

Dr. Mutter testified Andrea suffered a flashback during the struggle with Officer Bevel and thought Bevel was attempting a rape:

Q. Doctor Mutter, what did she perceive it as being according to what was brought out under hypnosis?

A. My conclusions based on what I saw and other information was later brought to light was within reasonable medical probability that she had a flashback at the time and was terrified. And perceived this as a sexual assault, not just an arrest.

(Tr 1287)

Dr. Walker agreed that Andrea had suffered a flashback during the struggle with Bevel and misinterpreted Bevel's actions as an attempted rape. (Tr 1019-1021) Walker testified as follows:

Q. And what is your opinion as to her state of mind at the very time of the shooting of Officer Bevel in 1983 as to what was happening in her mind?

A. In my professional opinion she was re-living the flashbacks of the traumatic sexual assaults that she had experienced, both with her father and Shelton, and perhaps with some of the other people that forced her into the back seat of the cars. And that she -- that was what was in her mind and survival or trying to just stop being hurt was the primary -- if she had any thought at all and my professional opinion she was incapable of rational thinking then. That it was a survival instinct, a basic instinct that doesn't involve actual thinking but rather just doing to survive.

(Tr 1019-1020)

Dr. Miller also agreed that Andrea's mental condition left her at risk for misinterpreting events. (Tr 1383-1395, 1400-1405) Miller did not conclude Andrea had a flashback experience at the time of the shooting, but he did not rule a flashback out as a possibility. (Tr 1405) Miller did conclude that **Andrea's disorders** and long-term drug and alcohol **abuse** caused paranoid thinking, and Andrea was behaving at basic instinctual and emotional level. (Tr 1383-1395, 1400-1404) Miller also concluded that Andrea's sexual abuse history affected her perceptions and reactions to men. (Tr 1403) Andrea's sexual abuse history is likely cause for her to misinterpret behavior of men as threatening. (Tr 1403) Miller concluded Andrea misperceived Bevel's actions **as** more than an arrest, and she reacted instinctively for self-protection. (Tr 1402-1405) Miller testified:

A person such as Miss Jackson would be more incline[d], particularly when under the influence of alcohol, slash, drugs to interpret these events of an arrest as having something to do more with the individual designs and subjective feelings of the arresting officer than as a product simply of the fact that he was called to respond to a complaint and taking her into custody because she was a suspected violator. She did not have the capability, intellectually, neurologically, physiology, psychologically to put together these various components and make the jigsaw puzzle turn into the picture it really is. It turned into a distorted picture.

* * * *

Q. Was, in your opinion, Doctor Miller, the defendant actually able to objectively understand at that point and time at this primitive level of thought exactly what the police officer was trying to do?

A. I don't think she had reached a point of completely departing from all realities in this world. I do not think she was in the state of mind to bring together all the ingredients of the events in which she was involved to make a meaningful haul out of them and to draw conclusions and act in accordance with prudent behavior, correct behavior, appropriate behavior.

(Tr 1404-1405)

On pages 13, 30 and 34 of the answer brief, the State accuses Dr. Mutter of using "suggestive" techniques in the hypnotic regression he performed with Andrea. There is no record support for this accusation. Specifically, on page 13 of the answer brief, the State alleged:

In observing and reviewing the hypnotic regression session by Dr. Mutter, it was Dr. Miller's observation that the questions used might be leading or suggestive.

Answer Brief, at 13. The State cited Dr. Miller's testimony at page 1418. On that page, Miller merely confirmed his earlier testimony that he did not necessarily agree that Andrea suffered a flashback. (Tr 1418) Miller said nothing about Mutter's questions being leading or suggestive as the State claims. (Pages

1417-1418 of the record are attached as an appendix to this brief). A review of Miller's entire testimony does not reveal such an evaluation of Mutter's regression session. (Tr 1378-1441) Miller merely referenced the regression session as part of the background materials available to him for his evaluation of Andrea. (Tr 1383)

ISSUE II

ARGUMENT IN REPLY TO THE STATE AND IN SUPPORT OF THE PROPOSITION THAT THE TRIAL COURT ERRED IN FAILING TO PROPERLY FIND, WEIGH AND CONSIDER ANDREA JACKSON'S MENTAL AND EMOTIONAL CONDITION AT THE TIME OF THE SHOOTING IN MITIGATION.

In Nibert v. State, 574 So.2d 1059 (Fla. 1990), this Court stated that a trial court does have the discretion to reject a mitigating circumstance asserted by a capital defendant. However, the trial court can reasonably exercise that discretion only where the record contains positive evidence refuting the mitigating circumstance:

A trial court may reject a defendant's claim that a mitigating circumstance has been proved, however, provided that the record contains "competent substantial evidence to support the trial court's rejection of these mitigating circumstances." Kight v. State, 512 So.2d 922, 933 (Fla. 1987), cert. denied, 485 U.S. 929, 108 S.Ct. 1100, 99 L.Ed.2d 262 (1988); Cook v. State, 542 So.2d 964, 971 (Fla. 1989) (trial court's discretion will not be disturbed if the record contains "positive evidence" to refute evidence of the mitigating circumstance); see also Pardo v. State, 563 So.2d 77, 80 (Fla.1990) (this Court is not bound to accept a trial court's findings concerning mitigation if the findings are based on a misconstruction of undisputed facts or a misapprehension of law).

Nibert, 574 So.2d at 1062. This Court concluded that the trial court in Nibert had improperly rejected statutory and nonstatutory mitigating circumstances based on Nibert's mental condition.

These factors the trial judge improperly rejected in Nibert included some of the same factors present in Andrea Jackson's case now before this Court -- child abuse history and extensive drug and alcohol addiction. 574 So.2d at 1062-1063. Additionally, Nibert's trial judge, as did Jackson's trial judge in the present case, rejected the statutory mental mitigating factors

where there was expert, factually-supported, opinion testimony that the circumstances **applied. Ibid.** Disapproving of the trial court's failure to find this mitigation in Nibert, this. Court wrote:

... Nibert produced uncontroverted evidence that he had been physically and psychologically abused in his youth for many years. The trial court found this to be "possible" mitigation, but dismissed the mitigation by pointing out that "at the time of the murder the Defendant was twenty-seven (27) years old and had not lived with his mother since he **was** eighteen (18)." We find that analysis inapposite. The fact that a defendant had suffered through more than a decade of psychological and physical abuse during the defendant's formative childhood and adolescent years is in no way diminished by the fact that the abuse finally came to an end. To accept that analysis would mean that a defendant's history as a victim of child abuse would never be accepted as a mitigating circumstance, despite well-settled law to the contrary. Nibert reasonably proved this nonstatutory mitigating circumstance, and there is no competent, substantial evidence to support the trial court's refusal to consider it. See, e.g., Brown v. State, 526 So.2d 903, 908 (Fla.) (defendant's disadvantaged childhood, abusive parents, and lack of education and training, constitute valid mitigation and must be considered), cert. denied, 488 U.S. 944, 109 S.Ct. 371, 102 L.Ed.2d 361 (1988).

* * * *

Finally, Dr. Merin, an expert in the field of brain dysfunction, testified without equivocation that in his opinion, Nibert committed the murder under the influence of extreme mental or emotional disturbance, and that his capacity to control his behavior was substantially impaired. Dr. Merin supported those conclusions with a battery of psychological examinations conducted over a two-and-one-half-year period; with **interviews** of Nibert and his family; and with Dr. Merin's examination of the record evidence in this case. Moreover, there was proof that Nibert has suffered from chronic and extreme alcohol abuse since his preteen years; that he was a nice person when sober but a completely different person when drunk; that he had been drinking heavily on the day of the murder; and that, consistent with the physical evidence at the scene, he was drinking when he attacked the victim. We have held that such evidence is relevant and supportive of the mitigating circumstances of extreme mental or

emotional disturbance and substantial impairment of a defendant's capacity to control his behavior. See Ross v. State, 474 So.2d 1170, 1174 (Fla.1985) (trial court erred in not considering in mitigation, among other things, that defendant had drinking problems and had been drinking when he attacked the victim); cf. Carter, 560 So.2d at 1168-69 (jury override vacated upon considering evidence of defendant's extreme emotional disturbance, impaired ability to appreciate criminality of his conduct, amenability to rehabilitation, and defendant "suffered the ill effects of chronic alcohol and drug abuse at the time of his offense").

Nibert, 574 So.2d at 1062 -1063.

The trial judge in Andrea Jackson's case did no analysis of the evidence before rejecting Andrea's childhood sexual abuse history as mitigation. The court simply wrote, "no aspect of the Defendant's character is sufficient to be of a mitigating nature." (R 237) Just as in Nibert, there is no competent substantial evidence justifying the trial court's decision to reject childhood abuse as a mitigating factor.

Additionally, the trial judge in his sentencing order did no analysis of the evidence before rejecting the corroborated and supported testimony of three mental health professionals who concluded that Andrea's condition at the time of the crime qualified for the two statutory mental mitigating factors. Sections 921.141(6)(b) & (f), Fla. Stats. The court simply wrote:

1. **The crime for which the Defendant is to be sentenced was committed while the Defendant was under the influence of extreme mental or emotional disturbance.** Florida Statutes 921.141 (6)(b). The defense suggested the defendant suffered a flashback of a childhood rape. The Court believes this testimony to be noncredible.

2. **The capacity of the Defendant to appreciate the criminality of her conduct or to conform her conduct to the requirement of the law was substantially impaired.** Florida Statutes 921.141(6)(f). The defense argues this was due to self induced drugs and alcohol.

The Court likewise believes this testimony to be of no significance.

(R 236-237) Just as in Nibert, there is no competent substantial evidence justifying the trial court's decision to reject the evidence of these statutory mitigating circumstances.

In its answer brief, the State cites to Walls v. State, 641 So.2d 381 (Fla. 1994) and Foster v. State, 679 So.2d 747 (Fla. 1996) for the proposition that the trial court has the discretion to accept or reject expert opinion testimony, and then argues that the trial judge was free to reject the mental mitigation presented in Andrea's defense. Answer Brief, at 38-42. Walls and Foster, however, presented a different case. In those cases, the trial judge's order reflected a careful evaluation of the mental mitigating evidence, and in both cases, the court found and weighed much of this evidence as statutory or nonstatutory mitigating circumstances. Walls, 641 So.2d at 383, (trial court carefully evaluated and found as nonstatutory mitigation Wall's emotional handicap, brain damage, and low IQ); Foster, 679 So.2d at 755-756, (trial court rejected extreme mental or emotional disturbance mitigating circumstance, but court found Foster's brain damage, low IQ, substance abuse history and the influence of drugs and alcohol at the time of the crime qualified for the statutory mitigator of substantially impaired capacity), In contrast, the trial judge in this case dismissed the mental mitigating evidence presented in support of the statutory mitigating factors with two conclusory sentences. (R 236-237) The court did the same for the evidence in support of nonstatutory mitigating factors. (R 237) Much of this evidence established

facts which, as a matter of law, constitute mitigating circumstances:

- * Post-traumatic Stress Disorder. Clark v. State, 609 So.2d 513 (Fla. 1992); Masterson v. State, 516 So.2d 256 (Fla. 1987)
- * Childhood sexual abuse. Clark v. State, 609 So.2d 513.
- * Excessive drug and alcohol use at time of homicide. Clark; Nibert, 574 So.2d 1059; Ross v. State, 474 So.2d 1170 (Fla. 1985)
- * Chronic alcohol and drug dependency. Clark; Ross.

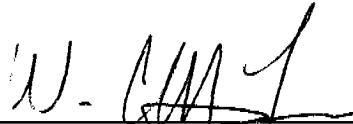
However, the trial court's sentencing order, without discussion of the evidence, rejects the evidence as nonstatutory mitigation. (R 237) There is no support in this record and sentencing order for the proposition that the sentencing judge carefully and reasonably exercised his discretion to reject mitigation.

CONCLUSION

For the reasons presented in this reply brief and the initial brief, Andrea Jackson asks this Court to reverse her sentence of death and to remand her case to the trial court with directions to impose a life sentence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a copy of the foregoing Reply Brief of Appellant has been furnished by delivery to Carolyn M. Snurkowski, Assistant Attorney General, Criminal Appeals Division, The Capitol, Plaza Level, Tallahassee, Florida, 32301; and a copy has been mailed to appellant, Ms. Andrea Hicks Jackson, on this 27 day of March, 1997.



W.C. McLain

IN THE SUPREME COURT OF FLORIDA

ANDREA HICKS JACKSON,

Appellant,

V.

:

CASE NO. 87,345

STATE OF FLORIDA,

:

Appellee.

A P P E N D I X

TO

REPLY BRIEF OF APPELLANT

1 crimes were contributed to T's and Blues, do you
2 recall what the percentage was, was it a high
3 percentage?

4 A Low percentage.

5 Q How many of -- what percentage was it; 30,
6 35 percent?

7 A Of the homicides?

8 Q Yes, sir.

9 A I didn't think it was that high,

10 Q Do you recall the number?

11 A I don't recall the number.

12 Q Was it attributable to T's and Blues,
13 people on T's and Blues becoming violent?

14 A I don't think -- as I recall the study it
15 was only the violence, it wasn't that it was only
16 violence of T's and Blues, but they had used T's and
17 Blues in conjunction with other substances.

18 Q Do you think when people take alcohol and
19 drugs is to kind of get away from it all?

20 A Certainly they do.

21 Q And when people do that in a party, et
22 cetera, doesn't mean they're necessarily going to go
23 out and kill somebody, right?

24 A Of course not.

25 Q And I think you stated on direct that you

1 didn't necessarily agree with the flashback theory
2 either, did you?

3 A No.

4 Q She also told you in her history regarding
5 how much alcohol she had, et cetera, I think it's on
6 page three that she had run into this person named
7 Richard, an uncle?

8 A Yes.

9 Q And she had some beer and liquor with him?

10 A That's right.

11 Q And regarding that day, she never told you
12 about a lady named Edith Croft, did she?

13 A No.

14 Q And in fact, in your interview of her,
15 your attempt to interview her, you, never getting a
16 history from her, she never told you about the
17 shooting at all, did she?

18 A She didn't remember the shooting.

19 Q And regarding your -- did you look at
20 Doctor Mutter's videotape or the --

21 A I did.

22 Q -- transcript?

23 A Yes.

24 Q She never went into details about the
25 shooting there either?