IN THE SUPREME COURT FLORIDA

OSVALDO ALMIEDA,	)	
	)	
Appellant,	)	
	)	
vs.	)	CASE NO. 89,402
	)	
STATE OF FLORIDA,	)	
	)	
Appellee.	)	
	)	
	)	

REPLY BRIEF OF APPELLANT

On Appeal from the Circuit Court of the Seventeenth Judicial Circuit of Florida, In and For Broward County [Criminal Division].

RICHARD L. JORANDBY
Public Defender
15th Judicial Circuit of Florida
Criminal Justice Building
421 Third Street/6th Floor
West Palm Beach, Florida 33401
(407) 355-7600

JEFFREY L. ANDERSON
Assistant Public Defender
Florida Bar No. 374407

Counsel for Appellant

TABLE OF CONTENTS

AUTHORITIES CITED

CASES

ARGUMENT

GUILT PHASE

POINT I

THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION TO SUPPRESS.

Appellee claims that the present issue was resolved by this Court in State v. Almeida, 22 Fla. L. Weekly S521 (Fla. Aug. 28, 1997). This is not true. In State v. Almeida, supra, this Court merely dealt with a certified question. This Court did not address the specifics of the instant situation.[1] This Court did not deal with the issue involving the distinction between an equivocal response made during substantive questioning versus during the Miranda process. The issue of the retroactive application of caselaw was never addressed. This Court's decision resolving a certified question in State v. Almeida, supra, has no precedential value for deciding the issues in the present appeal.

Appellee claims that Appellant's question -- "Well, what good is an attorney going to do?" was merely a statement and not a form of equivocal request which required clarification. Appellee's claim is directly contrary to the Fourth District's conclusion that Mr. Almeida's question constituted an equivocal request for counsel:

> Appellant contends that the trial court erred in denying his motion to suppress his taped confession, as his comment, "Well, what good is an attorney going to do?" was an equivocal invocation of his Miranda rights to counsel.

* * *

[1] The certified question is not applicable to the issue raised in this Point.

> We agree that under the relevant case law, the appellant made an equivocal invocation of his right to counsel. In Towne v. Dugger, 899 F.2d 1104 (11th Cir.), cert. denied, 498 U.S. 991, 111 S.Ct. 536, 112 L.Ed.2d 546 (1990), the court held that a suspect's question, "Officer, what do you think about whether I should get a lawyer?" was an equivocal request for an attorney which precluded further questioning before the suspect's concerns were clarified. In United States v. Mendoza-Cecelia, 963 F.2d 1467 (11th Cir.), cert. denied, 506 U.S. 964, 113 S.Ct. 436, 121 L.Ed.2d 356 (1992), the court, quoting Towne, defined an equivocal request as "'an ambiguous statement, either in the form of an assertion or a question, communicating the possible desire to exercise [the] right to have an attorney present during questioning.'" Id. at 1472 (quoting Towne, 899 F.2d at 1109). In Mendoza-Cecelia, the accused stated, "I don't know if I need a lawyer -- maybe I should have one, but I don't know if it would do me any good at this point." This too was considered an equivocal request for an attorney.

687 So. 2d at 37-38.

Appellee has not disputed that equivocal requests made during the Miranda process, as opposed to during substantive questioning, does not fall under Davis v. United States, 512 U.S. 451 (1994) and State v. Owen, 22 Fla. L. Weekly S246 (Fla. May 8, 1997); Utah v. Leyva, 906 P.2d 894 (Utah App. 1995), rev. granted, 919 P.2d 909 (Utah. 1996). Instead, Appellee argues that Appellant's equivocal request was made during substantive questioning by police and not during the time of any Miranda process. Such an argument is totally without merit. The pertinent colloquy between Appellant and Detective Mink was as follows:

> Q [By Detective Mink] All right. Prior to us going on this tape here, I read your Miranda rights to you, that is the form that I have here in front of you, is that correct? Did you understand all of these rights that I read to you?
>
> A [By Appellant] Yes.
>
> Q Do you wish to speak to me now without an attorney present?

A Well, what good is an attorney going to do?

Q Okay, well you already spoke to me and you want to speak to me again on tape?

Q (By Detective Alllard [sic]) We are, we are just going to talk to you as we talked to you before, that is all.

A Oh, sure.

SR 5-6 (emphasis added). Obviously, this is during a Miranda process and not during substantive questioning. The fact that Appellant had previously waived his Miranda rights does not diminish the fact that Appellant made an equivocal request during the Miranda process which the police were required to clarify. The officers' sole responsibility at the time of informing the suspect of his rights is to listen to see if the suspect may be exercising those rights. Equivocal statements during any process of giving and waiving Miranda rights are far different than equivocal statements made during substantive questioning. During the substantive questioning the officer's concentration is on a suspect's responses to questions and developing a line of questioning. The officer is beyond the stage of focusing on a suspect's understanding and invocation of his right. Logically, an ambiguous or equivocal statement by a suspect at this stage will not be recognized as needing clarification where the officer's focus is on the suspect's substantive admissions. Thus, it makes sense to relieve the officer of the burden of recognizing something he is not concentrating on. Again, it cannot be legitimately said that Appellant's equivocal request came during substantive questioning. During the process of giving and waiving Miranda rights the officer is not dealing with substantive questions and answers. His sole concentration should

be narrowly focused on the suspect's understanding and possible invocation of his Miranda rights. That is precisely what is present here and when a suspect makes an equivocal or ambiguous statement during the process of giving and waiving Miranda rights, the officer needs to clarify the situation to ensure there is a knowing and voluntary waiver of those rights or whether there has been an invocation of those rights. It would make no sense to relieve the officer of his sole duty during the Miranda process -- informing the suspect of his rights and listening to his responses to determine if he may wish to exercise any of his rights (whether that wish is expressed equivocally or unequivocally).

Appellee has not addressed pages 28-29 of Appellant's Initial Brief which explains the unique problem of Appellant coming from a different culture and Detective Mink's dilution of Miranda warnings and the policy of not clarifying a suspect's request.

Finally, Appellee claims that this Court rejected Appellant's argument regarding the retrospective application of Owen in State v. Almeida, 22 Fla. L. Weekly S521 (Fla. Aug. 28, 1997). In State v. Almeida, supra, this Court merely dealt with a certified question and did not deal with the issue of applying new caselaw retroactively or retrospectively. Appellee also claims that the new rule of law announced in State v. Owen, 22 Fla. L. Weekly S246 (Fla. May 8, 1997) was applied retroactively in Owen and therefore the new caselaw should be applied retroactively to Appellant's case. However, the Owen situation is totally different from Appellant's situation. At the time of Mr. Owen's interrogation the police were not governed by caselaw which clearly required clarification of an equivocal request. However,

at the time of the interrogation of Appellant Owen v. State, 560 So. 2d 207 (Fla. 1990) controlled the actions of police by requiring clarification of an equivocal request. Thus, applying the new Owen decision to Mr. Owen is not in conflict with not applying the new Owen decision to Appellant's case. Appellee has not challenged the rationale for not applying the new rule of law to Appellant's case -- that police conduct must be governed by the law in effect at the time of their conduct. Failure to apply the law at the time of the conduct would have the unwarranted consequence of police ignoring the existing law governing their conduct because of knowledge that it will not be enforced by the judicial system. Appellant relies on his Initial Brief for further argument on this point.

POINT II

THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION TO SUPPRESS WHERE OFFICER ABRAMS FAILED TO ADVISE APPELLANT OF HIS MIRANDA RIGHTS PRIOR TO QUESTIONING ABOUT CHIQUITA COUNTS.

Appellee has unnecessarily recited a confusing and inaccurate version of the interrogation involving this case (the Chiquita Counts killing). However, one important thing is clear -- Appellant was never advised of his Miranda rights for the interrogation regarding the Counts' killing R 308.[2] Appellee essentially claims that the warnings by different officers involving a different crime and reminding Appellant that he had been given warnings previously automatically replaces the requirement of specifically advising Appellant of his rights. Appellee's Brief at 19-21. As explained in the Initial Brief

[2] The officers in the Counts' investigation testified that they relied on the Miranda rights from a prior investigation R 308-09.

such is not true. Cf. Michigan v. Mosley, 423 U.S. 96 (1975) (assertion of a right during one investigation is not automatically applied to a separate and independent investigation)[3]; Sapp v. State, 690 So. 2d 581, 585-86 (Fla. 1997) (one cannot anticipatorily invoke his Miranda rights).[4]

Appellee does not, and cannot, legitimately dispute pages 35-38 of Appellant's brief that under the totality of the circumstances of this case specific Miranda warnings for the Chiquita counts investigation were required. As pointed out Appellee relies on an automatic carryover of warnings from investigation to investigation which is contrary to the law.

Finally, Appellee totally fails to address the most important fact which required specific Miranda warnings for the Counts investigation -- the fact that the set of Miranda warnings were flawed by police efforts to violate the protections of Miranda.[5] In response to Appellant's question about an attorney, Detective Mink told Appellant that he had already spoken and that Mink wanted him to speak again R 156; SR 6. In essence, Mink was telling Appellant that he did not need an attorney. In Martin v. State, 557 So. 2d 622, 625 (Fla. 4th DCA 1990), the appellate court held that an officer's advice that the

---

[3] Appellee mistakenly relies on cases that involve a single investigation to support its claim. Obviously, a single investigation case is different than where multiple investigations are involved.

[4] Thus, it follows that one cannot anticipatorily waive Miranda rights to a later investigation by waiver of rights during an earlier investigation.

[5] Obviously, if the only specific warnings given to a suspect are flawed -- reminding the suspect that he had previously been given a warning would be of no value.

suspect did not need an attorney was far from a neutral stance required for Miranda warnings and warranted suppression of the subsequent confession. Likewise, the officer's vitiation of the Miranda warnings in this case requires reversal where Appellant was not later properly advised of his Miranda rights to the second interrogation. To make the situation worse, the police also stepped out of the neutral position on Appellant's right to remain silent by emphasizing to him that the interrogation was an "opportunity for you to tell your side of the story" R 1436. While this by itself may not make the confession inadmissible, it was a significant dilution of Miranda warnings. See State v. R.M., 22 Fla. L. Weekly D1639 (Fla. 4th DCA July 2, 1997) (upholding trial court's suppression of statement where police told suspect that anything can be used for or against you in a court of law). The cumulative effect of vitiating Miranda warnings (by in essence telling Appellant he did not need an attorney) and by further diluting Miranda warnings (by telling it was the opportunity to tell his side of the story) certainly requires reversal where Appellant was not properly advised of his Miranda rights for the second interrogation.

POINT III

THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR MISTRIAL.

Appellee has acknowledged by the citation of Spencer v. State, 645 So. 2d 377 (Fla. 1994) and James v. State, 695 So. 2d 1229 (Fla. 1997) that Appellant's objection to the use of factual hypotheticals not involved in this case was preserved. However, Appellee claims that Appellant's pointing out that the hypotheticals misstated the law and

also showed the exercise of prosecutorial discretion to the jury was not preserved for appeal. Appellee does not understand this issue or the harm of improperly using factual hypotheticals. Appellant's observations on pages 40-41 of the Initial Brief demonstrate the harm and prejudice of improperly presenting factual hypotheticals to the jury in this case and shows why a new trial is required. They are not isolated and separate issues as Appellee has misunderstood them to be.

Appellee concedes that the factual hypotheticals were not involved in this case but merely says there was no error because of the context of the prosecutor's argument. The problem is that the context of the prosecutor's argument was to invade the province of the jury by presenting as law that certain facts constitute second degree murder. See Appellant's Initial Brief at 39-40.

Appellee also claims there was no harm because the prosecutor was not misstating the law when stating that a husband shooting his wife in the heat of passion was a second degree murder. Appellee was unable to cite any cases to support its claim. The caselaw is clear that such facts are a classical manslaughter and not second degree murder as the prosecutor misrepresented. E.g. Febre v. State, 158 Fla. 853, 30 So. 2d 367 (Fla. 1947). Contrary to Appellee's claims, the prosecutor never told the jury that he was giving two "examples" of second degree murder. The prosecutor never used the word example. The prosecutor represented these as the situations involving second degree murder. The prosecutor improperly misrepresented the law to demean the lesser included offense.

Finally, Appellee claims the error is harmless because there was evidence of premeditation and standard jury instructions on lesser

offenses were given. However, the improper demeaning of the lesser included offense which the jury was to consider (second degree murder) by misleading the jury cannot legitimately be deemed harmless. The evidence showed that Appellant "was not thinking" when he shot Counts R 1450, and that he was "not planning to shoot her", it came to him "all of a sudden" R 1453. There was a very legitimate question as to whether this was a first or second degree murder. The error of improperly denigrating second degree murder by misstatements of law regarding factual hypotheticals cannot be deemed harmless beyond a reasonable doubt. State v. DiGuilio, 491 So. 2d 1129 (Fla. 1986). Furthermore, the fact that the abstract standard instruction was given on second degree murder does not cure the error. By the improper use of the factual hypothetical the prosecutor had convinced the jury that second degree murder was not involved. Also, the abstract standard instruction does not tell the jury to ignore the prosecutor's misstatement. Because the impropriety involved second degree murder which is but one step removed from first degree murder, the error cannot be deemed harmless. See State v. Lucas, 645 So. 2d 425 (Fla. 1994). Appellant relies on his Initial Brief for further argument on this point.

POINT IV

THE TRIAL COURT ERRED IN RULING THAT THE STATE HAD AN ABSOLUTE RIGHT TO INTRODUCE EVIDENCE TO THE JURY OF APPELLANT'S STATEMENT REGARDING A COLLATERAL MURDER IF APPELLANT TRIED TO ELICIT EVIDENCE THAT HIS CONFESSION WAS NOT VOLUNTARY DUE TO APPELLANT'S RESPONSES DURING THE GIVING OF MIRANDA WARNINGS.

Appellee claims under the rule of completeness that if Appellant had elicited evidence his confession was not voluntarily given due to Appellant's responses during the giving of Miranda warnings the state could have elicited all of Appellant's responses during the giving of Miranda warnings. Appellant totally agrees with this claim. However, that is not the issue here. The issue is whether the questioning of Appellant on a different subject matter (the facts of the crime versus the understanding of his rights) is required by the rule of completeness. Of course, it is not. In fact, the rule of completeness is not a device to allow the introduction of evidence on a different subject matter. Christopher v. State, 583 So. 2d 642, 646 (Fla. 1991) (later conversation "did nothing to explain earlier conversation"). Appellee has not cited any authority to the contrary. Nor has Appellee explained how it would be fair to introduce evidence of other collateral crimes by the introduction of substantive part of Appellant's confession when the procedural Miranda process is what is truly in question. As explained in the Initial Brief, the introduction of collateral crime evidence would be unfair.

Finally, Appellee claims the error was harmless because Appellant answered at times that he understood his rights. This ignores the totality of the circumstances including the fact that Appellant came

from a different culture and that a lot of the interrogation suggested that Appellant may not have understood his rights.[6] It was up to the jury to decide whether Appellant's statement was voluntary and due to the trial court's error they were deprived of evidence which supported Appellant. The error was not harmless.

PENALTY PHASE

POINT V

THE DEATH PENALTY IS NOT PROPORTIONALLY WARRANTED IN THIS CASE.

Despite the existence of only one aggravating circumstance and the existence of two statutory mitigating circumstances (including a mental mitigator) and numerous nonstatutory mitigating circumstances, Appellee claims that this Court should not follow the well-settled rule in McKinney v. State, 579 So. 2d 80, 81 (Fla. 1991) and the line of cases holding that in cases involving only a single aggravator the death sentence will be upheld only where there is either nothing or very little in way of mitigation. In the present case the trial court found two statutory mitigating circumstances -- (1) extreme mental or emotional disturbance and (2) age -- which have been recognized as important and cannot be deemed "nothing or very little" in the way of mitigation. The statutory mental mitigator has been deemed important mitigation which falls well beyond very little in mitigation.

In Robertson v. State, 22 Fla. L. Weekly S404 (Fla. July 3, 1997) there were two aggravating circumstances (including HAC) and this Court held that the presence of a statutory mental mitigator and age combined

---

[6] Dr. Strauss even noted this fact R 387,386.

with Robertson's abused and deprived childhood and low intelligence made death disproportionate. Appellee does not attempt to legitimately distinguish Robertson except to imply in footnote 12 that the trial court had made a finding that the statutory mental mitigator and age had substantial weight. Appellee is incorrect. In Robertson the trial court gave the mitigating circumstances little weight. It was during the proportionality review by this Court in Robertson that this Court considered the mitigation and concluded that death was not proportionate for a two aggravator case where a 19-year-old under the influence of an extreme mental or emotional disturbance and having an abusive childhood commits a senseless murder of a young woman. Likewise, in this case the death penalty is not proportionate where there is one aggravator and important statutory mitigation of extreme mental or emotional disturbance and age along with other mitigation which includes a capacity for rehabilitation; a difficult/abusive childhood; history of alcohol abuse and alcohol abuse on the date of the incident; good behavior while incarcerated; remorse; cooperation with police.

Appellee also claims that Nibert v. State, 574 So. 2d 1059 (Fla. 1990), Penn v. State, 574 So. 2d 1079 (Fla. 1991), and Smalley v. State, 546 So. 2d 720 (Fla. 1989), where the death penalty was found to be disproportionate because they were not the most aggravated and least mitigated of crimes, are totally different from the present case because the mitigators in those cases were found to be significant. However, in Nibert, Penn, and Smalley the trial court either did not find the mitigators or gave them very little weight. It was this Court in performing its proportionality review that compared the existence of mitigating circumstances in other cases, independent of the trial

court's weighing of the circumstances, to determine whether the death penalty was proportionally warranted.[7]

As Appellee concedes, the mitigators in Robertson, Nibert, Penn and Smalley were all significant. The mitigators in those cases were similar to the mitigators present in this case. See Initial Brief at 53-55.[8] It should also be noted that until the week of the killing of Heath and Counts, Appellant had no history of criminal activity. While the mitigation in all of these cases may not be identical, they do have one thing in common -- this type of mitigation is significant. The point is it cannot be said that there was nothing or very little in

---

[7] Appellee mistakenly states that this Court reweighed the mitigating circumstances in Nibert, Penn and Smalley. However, the mitigating circumstances are not reweighed. Of course, this Court cannot rely on a trial court's weighing of circumstances in performing its independent proportionality review of a case. Instead, this Court looks at the existence of mitigating circumstances in the case under review and compares them with the existence of mitigators in other cases. Comparison between cases is done; not reweighing of circumstances.

[8] For example, in Smalley, this Court found the defendant's mental state to be an important contributing factor in finding the death penalty to be disproportionate. Smalley became depressed due to family difficulties and the depression made it "difficult for him to control his emotions and deprived him of the ability to respond appropriately to emotional stimuli." 546 So. 2d at 723. Smalley overreacted and thus killed. Likewise, in the present case Appellant was very severely depressed due to his marital separation R 1959. As explained at pages 45-47 of the Initial Brief, Appellant's depression, emotional and mental state, along with his lack of coping skills explains his lack of ability to respond appropriately after Chiquita Counts had insulted and demeaned him. As in Smalley, Appellant overreacted and used violence. In both cases, death is not proportionate.

mitigation so as to make the death penalty proportionate in this case which involves only one aggravating circumstance. McKinney, supra.[9]

Appellee relies on Ferrell v. State, 680 So. 2d 390 (Fla. 1996) and Duncan v. State, 619 So. 2d 279 (Fla. 1993) to claim that the death penalty is proportionate in this case. However, there are a number of significant differences which distinguish these cases from Appellant's case. Both Ferrell and Duncan are cases in which no statutory mitigating circumstances were found. Whereas, in the present case there were two statutory mitigating circumstances -- the mental mitigator of extreme mental or emotional disturbance and age -- present which alone take the instant case out of the class of least mitigated cases for which the death penalty is reserved. Also, unlike in Ferrell and Duncan, where the victims were planned to be killed, there is no allegation or evidence that Appellant went out with the intention of hurting anyone the night of the incident. Instead, the killing was the senseless result of Appellant's emotional response.

In addition, neither Ferrell nor Duncan involve a close temporal proximity of the prior violent felony to the offense for which they were being sentenced. Instead, there were a number of years between the offenses and both Ferrell and Duncan had served prison sentences in between the offenses. Both men had been given the opportunity to change, but instead turned into recidivist killers who society could not deal with. In fact, Duncan's prior murder occurred while he was in prison. These cases contrast greatly with Appellant's situation

---

[9] In pages 40 to 51 of its brief, Appellee disagrees with the trial court's finding mitigating circumstances in this case. Appellant will address the attack of the mitigation later in this point.

where the prior offense was only 1 week before the killing of Chiquita Counts. This was a time when Appellant was under some of the same emotional and mental stresses that he suffered from in this case. Unlike Ferrell and Duncan, Appellant was not a failed recidivist who had been given a chance to reform.[10] Appellee claims that these differences are not important because Appellant did not claim to be insane at the time of the killings and could reform within a week's period of time. Such an argument is without merit. The fact that the killings occurred within a week's time while Appellant was under an extreme emotional or mental distress certainly separates it from Ferrell and Duncan where the killings are years apart and after serving prison terms. Contrary to Appellee's claims, the rejection of the opportunity to reform after a prison term or being formally convicted through the justice system has been recognized by society as a basis for distinguishing a more severe punishment than a less severe punishment. E.g. State v. Barnes, 595 So. 2d 22, 24 (Fla. 1992) (recognizing that the reason for justifying the habitual offender status is that one who is convicted through the justice system, and who

---

[10] Appellant's case is much more similar to cases in which the prior violent felony is a murder but death is found disproportionate. Besaraba v. State, 656 So. 2d 441 (Fla. 1995); Santos v. State, 629 So. 2d 838 (Fla. 1994). Appellant's situation is closer to Besaraba and Santos than to Ferrell and Duncan for two reasons. First, Appellant's case involves statutory mitigating factors (including statutory mental mitigation) as in Besaraba and Santos, but which was rejected in both Ferrell and Duncan. Second, the offense in this case was within a week of the prior violent felony and thus contemporaneous or nearly contemporaneous like in Besaraba and Santos as opposed to the prior murders in Ferrell and Duncan which were years apart and represent recidivist killings following prison terms.

with knowledge of that conviction, commits another offense has rejected his opportunity to reform).

In addition, it should be noted that the prior violent felony aggravator in this case is much less weighty than in Ferrell and Duncan. Appellant's killing of Ms. Leath was an overreaction to a robbery. After Appellant had asked Leath to leave his car, Leath called to her sister who had a knife R 1744. Leath told Appellant that her sister had a knife and that he had better give her his wallet R 1758. Leath also took the keys from the ignition to Appellant's car at this time R 1744. Appellant did as Leath ordered and Leath took the money from Appellant's wallet and threw the wallet back in his face R 1744. Leath and her sister laughed about the robbery R 1745. Appellant became very upset and fired one shot R 1745-46. The one shot resulted in the death of Leath. Although the robbery and humiliation of Appellant did not justify Appellant's actions of shooting Leath while he was under an extreme mental or emotional distress, it certainly lessens the weight of the lone aggravator in comparison such the prior felony aggravators that existed in Ferrell and Duncan. See also Chaky v. State, 651 So. 2d 1169 (Fla. 1995) (prior violent felony given less weight than normal because it occurred under "unusual circumstances"); Wright v. State, 688 So. 2d 298 (Fla. 1996) (prior violent felony of less weight because related to the murder conviction for which he was sentenced).

Appellee rejects the fact that this killing was the result of a senseless drunken episode between Appellant and Chiquita Counts. However, Appellee fails to give any explanation of this killing other than it being the result of a drunken argument between Counts and

Appellant. Appellee claims that there was no evidence of intoxication. However, this is contrary to the trial court's finding of Appellant's alcohol abuse at the time of the incident R 2488. There was evidence that Appellant had consumed a six-pack of beer R 1457, and that he was "confused" and "not thinking" when he shot Counts R 1457,1450. Counts clearly was intoxicated. She had .147 grams percent alcohol and .13 milligrams of cocaine in her system R 1511-12. Appellant and Counts argued R 1437,1444. Counts called Appellant a cracker, bastard, and other names R 1444. This type of episode where both the victim and defendant are under the influence of intoxicants and get in an argument resulting in death is not the type of killing for which the death penalty is reserved. See Voorhees v. State, 22 Fla. L. Weekly S357 (Fla. June 19, 1997) (death disproportionate where victim and defendant under influence where 2 aggravators and one mental mitigator and age of 24); Kramer v. State, 619 So. 2d 274 (Fla. 1993) (2 aggravating factors -- prior violent felony and HAC).

Finally, Appellee claims that the mitigation found by the trial court is virtually non-existent and disagrees with the trial court's even finding the mitigation. Appellant will primarily rely on his Initial Brief at pages 48 to 53 in discussing the mitigation and will briefly discuss Appellee's contentions.

(1) Extreme Mental Or Emotional Disturbance

Appellee attacks this statutory mental mitigator on the grounds that it is not important and that the trial court was wrong in finding it. This Court's cases have consistently recognized the importance of this statutory mental mitigating circumstance. See Rose v. State, 675 So. 2d 567, 573 (Fla. 1996) (stating that this Court has consistently

recognized this a mitigating factor "of the most weighty order"). Appellee claims that the trial court should not have found this mitigator because Appellant's and his relatives' reports of abuse, depression, and alcohol abuse were not credible. However, in finding this mitigator the trial court inherently disagreed with Appellee's evaluation of credibility. Thus, the trial court's finding of this important mitigator cannot be deemed wrong. In fact, in Nibert v. State, 574 So. 2d 1059 (Fla. 1990) this Court found the same statutory mental mitigator to be "substantial" where the evidence to support the mitigator came from the defendant's reports to a doctor.[11]

Appellee also points to facts not found by the trial court in an attempt to negate this mitigation such as the allegation that Appellant was not abused in Brazil because he was happy when he arrived in America. Of course he would be happy -- he thought he was free from the abuse he suffered in Brazil. Appellee also claims that the abuse (such as giving Appellant a prostitute at the age of 12) was motivated by love and thus not mitigation. However, even if abuse is motivated by good intentions, the fact is that future emotional and psychological disturbances are caused by early age abuse and these abnormal activities affected Appellant throughout his life.[12]

---

[11] In Nibert, this mitigator was labeled substantial in evaluating despite the fact that the trial court overlooked the importance of this mitigator.

[12] See pages 45-46 if Appellant's Initial Brief which explains in detail how Appellant's background would influence his later life R 1871.

(2) Age Of Appellant At The Time Of The Offense

Appellee claims that Appellant was very mature as shown by his successful family life and marriage. However, the record does not support such an allegation. Appellant's marriage was a failure and he separated from his wife. Instead of having the maturity to reconcile with his wife, Appellant exhibited immaturity by handling his problems by drinking and accompanying prostitutes. Under the circumstances of this case, age is an important mitigator. But for the immaturity of this 19-year-old in being unable to handle his family problems, Appellant would not have visited a prostitute which resulted in death.

(3) Capacity For Rehabilitation

Appellee does not argue, nor can there by any doubt, that capacity for rehabilitation is a very significant mitigating circumstance. See Cooper v. Dugger, 526 So. 2d 900, 902 (Fla. 1988). However, Appellee claims that there is no evidence to support this factor. Appellee overlooks that the trial court found this factor and that Dr. Macaluso (and Dr. Bukstel R 1974) testified that Appellant's problems can be treated through medication R 1801, and that the structured environment of prison will help Appellant's condition R 1808. Nibert v. State, 574 So. 2d 1059, 1061 (Fla. 1990) (structured environment of prison helpful for rehabilitation).

(4) Good Behavior While Incarcerated

Again it cannot be legitimately argued that a defendant's disposition to make a well-behaved peaceful adjustment to life while incarcerated is not a strong mitigating factor. Skipper v. South Carolina, 106 S.Ct. 1669, 1671 (1986) (especially when such evidence comes from jailers). Appellee claims that the evidence does not

support the fact that Appellant would be a well-behaved prisoner. However, all the testimony from the jailers was unanimous that Appellant had adjusted very well to incarceration. See pages 15-16 of the Initial Brief for a summary of this testimony.

(5) Difficult/Abusive Childhood

Once again there can be no legitimate claim that this would not be a significant mitigating circumstance. However, Appellee argues that there is only the evidence from Appellant and his relatives to support this mitigator and they have no credibility. The trial court disagreed with Appellee's evaluation of credibility and found this mitigator. Despite the fact that the evidence supporting this mitigation came from Appellant's report to his doctors and from relatives does not negate this factor as being significant. Nibert v. State, 574 So. 2d 1059 (Fla. 1990) (mitigator found significant by Florida Supreme Court during proportionality review despite fact that supporting evidence came from Nibert's reports to his doctor).

Appellee also points to facts not found by the trial court in an attempt to negate this mitigation such as the allegation that Appellant was not abused in Brazil because he was happy when he arrived in America. Of course he would be happy -- he was free from the abuse he suffered in Brazil. Appellee also claims that the abuse (such as giving Appellant a prostitute at the age of 12) was motivated by love and thus not mitigation. However, even if abuse is motivated by good intentions, the fact is that future emotional and psychological disturbances are caused by early age abuse and these abnormal activities affected Appellant throughout his life.

(6) History Of Alcohol Abuse And Alcohol Abuse On The Date Of The Incident

Appellee claims that there is no evidence to support this mitigator. However, this is contrary to the trial court's findings R 2488. Dr. Strauss and Dr. Bukstel both testified that the use of alcohol played a role in Appellant's actions R 1873,1942.

(7) Remorse

Contrary to Appellee's claims there was evidence of remorse in Appellant's statement to police R 1457, and in his interview with the doctors R 1974.

Appellee also disagrees with the existence of the other mitigating circumstances. However, the trial court found these circumstances and Appellant will rely on his Initial Brief for further argument regarding them.

Finally, Appellee claims that this Court should not consider other mitigation in determining proportionality based on Lucas v. State, 568 So. 2d 18 (Fla. 1990). However, the portion of Lucas that Appellee cites has nothing to do with this Court's proportionality review -- it only deals with what mitigators the trial court must address. However, in determining a sentence all mitigation in the record must be considered. Farr v. State, 621 So. 2d 1368, 1369 (Fla. 1993). Clearly, all mitigation must be considered in performing a proportionality review.

Under the totality of the circumstances of this case it cannot be said that this is one of the most aggravated and least mitigated cases for which the death penalty is reserved. Appellant's death sentence

must be vacated. Appellant relies on his Initial Brief for further argument on this point.

POINT VI

THE TRIAL COURT ERRED IN FAILING TO EXERCISE DISCRETION IN EVALUATING MITIGATING CIRCUMSTANCES.

Appellee has not addressed this issue presented at pages 60-67 of Appellant's Initial Brief. Instead, Appellee misstates the issue by saying that Appellant disagrees with the weight given to the mitigators. However, in the Initial Brief Appellant made it very clear that the issue involved the failure to exercise discretion in weighing mitigators. It was explained that discretion is not merely the raw power to choose between alternatives with no valid reason for the choice made. Appellant's Initial Brief at 61. In Jackson v. State, 22 Fla. L. Weekly S690 (Fla. Nov. 6, 1997) this Court recently reversed due to the failure of the trial court to exercise discretion by summarily disposing of mitigation:

> The trial court's order in this case summarily disposes of the statutory and nonstatutory mitigators. With regard to the statutory mitigators, the sentencing order does not even refer to the testimony of the three experts who all opined that these mitigators existed. Nor does it refer to any evidence to the contrary. Instead, the order indicates without explanation that the trial court found all the testimony offered in support of the statutory mitigators noncredible.

22 Fla. L. Weekly at S692 (emphasis added). Likewise, in this case the trial court failed to exercise discretion by summarily giving important mitigation "little weight" without any explanation. See Initial Brief at 62-65. Appellee has not contested this fact. Appellant relies on his Initial Brief for further argument on this point.

POINT VII

THE SENTENCE OF DEATH MUST BE VACATED WHERE THE CONVICTION USED TO SUPPORT THE LONE AGGRAVATING CIRCUMSTANCE IN THIS CASE HAS BEEN REVERSED AND VACATED.

Appellee argues that as a result of this Court's decision in State v. Almeida, 22 Fla. L. Weekly S521 (Fla. Aug. 28, 1997) that the Fourth District Court of appeal must reinstate Appellant's prior conviction. This is not true. This Court merely answered a certified question and remanded for further proceedings. The conviction may still be vacated.

POINT VIII

THE TRIAL COURT ERRED BY GIVING UNDUE WEIGHT TO THE JURY'S DEATH RECOMMENDATION.

Appellee spends the majority of its argument discussing the standard jury instruction given in this case. The present issue has nothing to do with the jury instructions. Instead, the present issue deals with the trial court giving undue weight to the jury recommendation.

Appellee claims that the trial court never gave undue weight to the jury recommendation under the totality of the circumstances.[13] However, in its sentencing order the trial court unequivocally stated that the jury had reached a death recommendation that "should not be overruled unless no reasonable basis exists for the recommendation" R 2490. A truly independent evaluation of the appropriate sentence

---

[13] The totality of the circumstances includes the death recommendation of the jury and a truly independent evaluation of the case cannot occur when the trial court is giving undue weight to a death recommendation.

cannot be performed when a standard that a death recommendation "should not be overruled unless no reasonable basis exists for the recommendation" is utilized. It cannot be legitimately said the trial court did not give undue weight to the death recommendation.

Appellee relies on Elledge v. State, 22 Fla. L. Weekly S597, 599 (Fla. Sept. 18, 1997) to claim that this Court found no error where the trial court made identical comments as in this case. Appellee's Brief at 63. Appellee is incorrect. In Elledge, the trial court never stated that a death recommendation "should not be overruled unless no reasonable basis exists for the recommendation." Elledge simply did not involve the present issue.[14] Instead, Ross v. State, 386 So. 2d 1191 (Fla. 1980) is relevant to the present issue. As explained in the Initial Brief, the statements in this case were even stronger than those in Ross and require a resentencing. Appellant relies on his Initial Brief for further argument on this point.

POINT IX

THE SENTENCE OF DEATH MUST BE VACATED AND THE SENTENCE REDUCED TO LIFE WHERE THE TRIAL COURT FAILED TO MAKE THE FINDINGS REQUIRED FOR THE DEATH PENALTY.

Appellee points out that the trial court found the lone aggravator in this case to be "significant." Appellee then claims that section 921.141(3) only requires that the trial court find that the aggravator be "significant." This is not true. Section 921.121(3) specifically requires that a finding that "sufficient" aggravation be

---

[14] Appellee has confused this issue with issue number X which involved a totally separate issue where the trial court states that death is to be presumed when one or more aggravating circumstances are present.

present to justify the death penalty be made by the trial court. Appellee claims that Appellant is arguing that magic words need to be used. No such claim has been made. However, while magic words are not required, words with the same meaning are required. If the trial court had found that the aggravator was "adequate" or "good enough" to justify the death penalty there would be no argument. However, to merely say that an aggravator is "significant" is not sufficient. The word "significant" does not have the same meaning as "sufficient."[15] Thus, as explained in the Initial Brief, the trial court did not make the finding that the aggravator was sufficient to justify the death penalty.[16] Appellant relies on his Initial Brief for further argument on this point.

POINT X

THE TRIAL COURT ERRONEOUSLY APPLIED A PRESUMPTION OF DEATH.

Appellee claims that it was not improper for the trial court to erroneously apply a presumption of death because otherwise the trial court properly performed its duties. Appellee's argument is a non-sequitur. The trial court cannot properly perform its duties when misapplying a presumption of death. This has been made clear in Jackson v. Dugger, 837 So. 2d 1469 (11th Cir. 1988) which Appellee has

---

[15] For example, while a person who dies in a valiant attempt to reach the peak of Mt. Everest can be said to have made a "significant" effort, it could not be said that this person has made a "sufficient" effort.

[16] In addition, to not using the word, or equivalent word(s) to "sufficient", the trial court failed to find "to justify the death penalty."

not, and cannot, dispute. The erroneous death presumption is a serious constitutional error. Jackson, supra.

Appellee also relies on Elledge v. State, 22 Fla. L. Weekly S597, 599 (Fla. Sept. 18, 1997) to claims that the improper presumption of death in a case involving a single aggravator is harmless. Appellee's Brief at 67. Appellee mistakenly believes that Elledge had but a single aggravator. However, Elledge had four aggravators. 22 Fla. L. Weekly at S598. Thus, Elledge is not applicable to the present single aggravator case in determining the harm of the error. Where there is but a single aggravating circumstance, it cannot legitimately be said that improperly applying a presumption of death is harmless beyond a reasonable doubt. See State v. DiGuilio, 491 So. 2d 1129 (Fla. 1986). Appellant relies on his Initial Brief for further argument on this point.

POINT XI

THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR SUPPLEMENTAL VOIR DIRE.

Appellee claims that it was not error to prohibit supplemental voir dire for Appellant to determine if there would be an underlying bias in the penalty phase caused by the prior murder that was to be used in aggravation because the jurors had previously indicated that they could follow the law.[17] However, the mere fact that jurors promise to follow the law has never been a justification for prohibiting proper voir dire on juror bias. Morgan v. Illinois, 504 U.S. 719 (1992). This is particularly true when the jurors state that they can

[17] Without knowing about the prior murder conviction.

follow the law without being questioned about possible biases. Jurors' response cannot be judged in a vacuum.

Appellee next claims that there was no error because parties are not allowed to ask specific fact questions regarding aggravation or mitigation. However, Appellant was never seeking to ask jurors how they would react to specific facts of the case. Rather, Appellant was seeking to discover whether jurors would automatically vote for death merely due to the prior conviction R 1669-70. In a capital case, a defendant has the right to examine prospective jurors regarding their ability to recommend a life sentence. E.g., Fitzpatrick v. State, 437 So. 2d 1072 (Fla. 1983); Thomas v. State, 403 So. 2d 371 (Fla. 1981); Poole v. State, 194 So. 2d 903 (Fla. 1967). Moreover, a defendant has the right to ask prospective jurors if particular facts or circumstances would trigger a bias rendering them unable to fairly consider a life sentence recommendation in view of that fact. Ibid.

Finally, Appellee claims that Appellant was not entitled to a separate jury for his penalty phase. The key issue here is whether Appellant was entitled to a fair and impartial penalty phase jury. Contrary to Appellee's position, this Court has recognized that the trial court has the authority to remove a juror for the penalty phase even after the juror reached a decision in the guilt phase. Jennings v. State, 512 So. 2d 169 (Fla. 1987). Specifically, this Court noted that the juror could be replaced by an alternate in the penalty phase due to her view of the death penalty regardless of her participation in the guilt phase:

> Finally, the fact that the alternate did not deliberate guilt with the other panel did not prevent that juror from reaching a sound decision as to the penalty. Florida Rule

> of Criminal Procedure 3.280 authorizes the court to substitute alternates for jurors who "become unable or disqualified to perform their duties." Had the subject juror originally stated during voir dire that she could not vote for death at the penalty phase, she would have been subject to removal for cause.

512 So. 2d at 173. Supplemental voir dire has been permitted, in fact required, in various stages of trial. See Powell v. Allstate Insurance Co., 652 So. 2d 354 (Fla.1995) (inquiry regarding open discussion about racial bias); Salas v. State, 544 So. 2d 1040 (Fla. 4th DCA 1989) (inquiry into prejudicial publicity). The supplemental voir dire was indispensable to the bifurcated trial procedure which Florida has chosen to utilize.

As fully explained in the Initial Brief, Appellant could not have legitimately questioned the jury about an unyielding bias toward a prior murder conviction in the guilt phase.

POINT XII

> THE TRIAL COURT ERRED IN FAILING TO CONSIDER LIFE WITHOUT PAROLE AS A SENTENCING OPTION AND FAILING TO INSTRUCT THE JURY ON THIS OPTION.

Appellee asserts that Appellant was not entitled to consideration of the life with no parole option because he did not affirmatively request this option and thus it could not be considered due to "ex post facto" concerns AB 71-74. However, Appellee's analysis is completely contrary to the analysis of the Oklahoma Court of Criminal Appeals in a similar situation.

The Oklahoma Court of Criminal Appeals has held that the failure to instruct the jury and to consider the life with no parole option is fundamental error which requires resentencing in all circumstances.

Salazar v. State, 852 P.2d 729 (Okl.Cr. 1993); Fontenot v. State, 881 P.2d 69 (Okl.Cr. 1994); Cheatham v. State, 900 P.2d 414 (Okl.Cr. 1995). Appellee seems to agree with this analysis insofar as it agrees that if Appellant had requested the life with no parole instruction he would have been entitled to it. However, it claims that it would violate the Ex Post Facto Clause if this option was not specifically requested by the defense. However, this is contrary to the Ex Post Facto analysis employed by the United States Supreme Court and is specifically rejected by the Oklahoma cases. The United States Supreme Court has defined the two critical elements that must be present for a law to violate the Ex Post Facto Clause.

> Our decisions prescribe that two critical elements must be present for a criminal or penal law to be ex post facto: it must be retrospective, that is, it must apply to events occurring before its enactment, and it must disadvantage the offender affected by it.

Weaver v. Graham, 450 U.S. 29, 30, 101 S.Ct. 960, 964, 67 L.Ed.2d 17, 22 (1981).

The Oklahoma Court of Criminal Appeals has applied the analysis of the United States Supreme Court and specifically rejected the claim that the life with no parole option violates the Ex Post Facto Clause.

> There is no question that in this case consideration of the life without parole sentence is a retroactive application of a punitive statute. However, our analysis may not stop here. In order to affirm the trial court's refusal to consider this punishment, we must also find that imposition of the sentence could have disadvantaged Appellant by subjecting him to a harsher punishment than was available a the time he committed the crimes. While we will not speculate as to the comparative drawbacks between a life in prison without chance of parole and the actual imposition of the death penalty, we believe that any possibility of a sentence which avoids the death penalty cannot be said to be disadvantageous to the offender.

Allen v. State, 821 P.2d 371, 376 (Okl.Cr. 1991).

Consideration of the life with no parole option cannot be considered disadvantageous to Appellant as it may well have saved his life. Both the United States Supreme Court and this Court have recognized the right of a capital defendant to every lawful option to avoid death. Beck v. Alabama, 447 U.S. 625 (1980); Jones v. State, 569 So. 2d 1234 (Fla. 1990).

Appellee relies on a series of Florida cases for the proposition that the failure of the defense to request this option bars its consideration. None of these cases support this proposition. In Larzelere v. State, 676 So. 2d 394, 403 (Fla. 1996) this Court held that the defendant can personally waive the right to conflict free counsel. In State v. Upton, 658 So. 2d 86 (Fla. 1995) this Court held that a defendant can personally waive the right to a jury trial. In Armstrong v. State, 579 So. 2d 734 (Fla. 1991) this Court held that the failure to instruct on justifiable or excusable homicide is fundamental error. However, it held that this error can be waived if the defense affirmatively requests an incorrect instruction. This Court went on to hold that mere silence does not waive the issue. These cases, especially Upton and Larzerle support the argument that this is fundamental error. Here, there was silence as to the life with no parole option, but the Oklahoma Court of Criminal Appeals has held that this issue is fundamental error, and that a defendant's silence does not waive this issue. Salazar; Fontenot.

Appellee claims that it would be improper to apply the Oklahoma caselaw without a specific request from Appellant due to the fact that in Oklahoma the life with no parole is an intermediate sentence.

Appellant would assert that this is no barrier to the consideration of the life with no parole option. Assuming arguendo that this Court feels that this poses some barrier to consideration of the life with no parole option, there is an easy answer to this problem. It would be to require instruction and consideration of all three options in cases in which the offense was committed prior to May 25, 1994 and the trial was conducted after that date. This would accommodate the concerns of all parties. It would allow the defendant consideration of the life with no parole for twenty five years option and it would allow life with no parole for those cases in which this is the only appropriate alternative to the death penalty. It would avoid Ex Post Facto problems, satisfy due process concerns, and effectuate the intent of the legislature in enacting this law. See Salazar, supra at 739 ("The Oklahoma Legislature, as representatives of the citizens of this State, has determined in some cases, life without the possibility of parole can accomplish the societal goals of retribution and deterrence, without resorting to the death penalty.") Thus, this case must be remanded for a jury resentencing, with consideration of the life with no parole option.

POINT XIII

THE TRIAL COURT ERRED IN ALLOWING THE STATE TO INTRODUCE THE DETAILS OF PRIOR VIOLENT FELONY CONVICTIONS.

Appellee makes no attempt to respond to the substantive policy arguments raised in Appellant's Initial Brief nor to the well-reasoned case of Brewer v. State, 650 P.2d 54 (Okl.Cr. 1982).

This court adopted the rule that the prosecution can introduce the details of a prior violent felony almost twenty years ago. This rules has proven to be unworkable. It has spawned tremendous litigation over the extent, nature, and source of evidence concerning prior violent felonies. Trawick v. State, 473 So. 2d 1235 (Fla. 1985); Stano v. State, 473 So. 2d 1282 (Fla. 1985); Tompkins v. State, 502 So. 2d 415 (Fla 1986); Rhodes v. State, 547 So. 2d 1201 (Fla. 1989); Freeman v. State, 563 So. 2d 73 (Fla. 1990); Duncan v. State, 619 So. 2d 279 (Fla. 1993); Finney v. State, 660 So. 2d 674 (Fla. 1995). The rule in Brewer is far preferable. It provides a bright line rule as opposed to the current imprecise balancing test. Appellant relies on his Initial Brief for further argument on this point.

POINT XIV

THE TRIAL COURT ERRED IN ALLOWING THE EVIDENCE CONCERNING THE PRIOR VIOLENT FELONY TO BECOME A FEATURE OF THE CASE.

Appellee argues that the evidence of the prior violent felony did not become a feature of the penalty phase. However, all of the state's evidence at the penalty phase concerned the details of the prior violent felony R 1734-39. None of the prosecution evidence in the penalty phase dealt with the present case or Appellant's background.

POINT XV

ALLOWING DETECTIVE ABRAMS TO TESTIFY TO WHAT UNIDENTIFIED WITNESSES HAD TOLD HIM DURING HIS INVESTIGATION IS HEARSAY AND VIOLATED APPELLANT'S RIGHTS UNDER THE CONFRONTATION CLAUSES OF THE UNITED STATES AND FLORIDA CONSTITUTIONS.

Appellee claims that admission of hearsay testimony did not violate the confrontation clause because Appellant had an opportunity

to cross-examine Detective Abrams about the substance of the hearsay. Such a claim is without merit. Appellant had no opportunity to cross-examine the witness who claimed to have seen Appellant with the victim prior to the offense. Abrams did not witness this alleged event and thus it would be of no use to cross-examine him on the event. The introduction of these statements is clearly hearsay.

Appellee also claims that the error is harmless because Appellant confessed and the improper evidence would not impact the aggravator. Appellee overlooks the fact that such evidence was never contained in Appellant's confession and could very well impact how the jury views the prior violent felony aggravator. The hearsay evidence, from witnesses that Appellant never had an opportunity to confront,[18] placed Appellant with the victim previously in the same area. This indicates that there was more than a response to a robbery as Appellant's confession shows. Appellee's statement about a robbery by a prostitute he had visited for the first time becomes less likely if one accepts as fact that Appellant had been seen with the prostitute on other occasions by other witnesses. This is the importance of the statements of the unidentified witnesses which Appellant had no opportunity to confront. These unconfrontable hearsay statements are given extra credibility in the eyes of the jury because they are introduced through a police officer who the jury views as objective and disinterested. Perez v. State, 371 So. 2d 714, 717 (Fla. 2d DCA 1979). It cannot be said beyond a reasonable doubt that the error was harmless. State v. DiGuilio, 491 So. 2d 1129 (Fla. 1986).

---

[18] Indeed, Abrams would never even identify the witness.

POINT XVI

THE TRIAL COURT ERRED IN ALLOWING THE PROSECUTOR TO ELICIT EVIDENCE REGARDING APPELLANT'S SANITY.

Appellee claims that the evidence regarding sanity is relevant to the mental mitigating circumstances. However, Appellee fails to cite to any case endorsing such a proposition. Moreover, such a proposition is contrary to Campbell v. State, 571 So. 2d 415, 418-19 (Fla. 1990) (improper to use "sanity" standard in rejecting mental mitigation).

Appellee also claims that the error is harmless because the trial court did not actually utilize a sanity standard in evaluating the mental mitigators. This is incorrect. The trial court utilized the sanity standard (knowledge of right from wrong) in rejecting the mental mitigator of impaired capacity R 2486. This is particularly born out by the fact that the trial court found none of the experts found Appellant to be insane when evaluating the impaired capacity mitigator R 2486.[19] More importantly, the jury was also exposed to this irrelevant evidence. If a trained trial judge is unable to ignore irrelevant evidence, how can a lay jury be guaranteed to do so. It cannot be said beyond a reasonable doubt that the error was harmless. See State v. DiGuilio, 491 So. 2d 1129 (Fla. 1896).

---

[19] The trial court was mistaken as to this fact. Dr. Strauss had found Appellant to be insane at the time of the killing R1904.

CONCLUSION

Based on the foregoing arguments, this Court should vacate Appellant's convictions, vacate or reduce his sentences, and remand this cause for a new trial or grant relief as it deems appropriate.

Respectfully submitted,

RICHARD L. JORANDBY
Public Defender
15th Judicial Circuit of Florida
Criminal Justice Building
421 Third Street/6th Floor
West Palm Beach, Florida 33401
(407) 355-7600

Jeffrey L. Anderson

JEFFREY L. ANDERSON
Assistant Public Defender
Florida Bar No. 374407

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to SARA D. BAGGETT, Assistant Attorney General, Suite 300, 1655 Palm Beach Lakes Boulevard, West Palm Beach, Florida 33401-2299, by courier this 11th day of December, 1997.

Jeffrey L. Anderson

of Counsel