

IN THE SUPREME COURT OF FLORIDA

JOHN LOVEMAN REESE,

Appellant,

v.

CASE NO. 91,411

STATE OF FLORIDA,

Appellee.

_____ /

ON APPEAL FROM THE CIRCUIT COURT
OF THE FOURTH JUDICIAL CIRCUIT,
IN AND FOR DUVAL COUNTY, FLORIDA

SUPPLEMENTAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
SUMMARY OF ARGUMENT	1
ARGUMENT	
ISSUE I	1
THE TRIAL COURT ERRED IN FINDING THE MURDER WAS COLD, CALCULATED, AND PREMEDITATED AND IN GIVING THE JURY AN UNCONSTITUTIONAL JURY INSTRUCTION ON THIS AGGRAVATOR	
CONCLUSION	3
CERTIFICATE OF SERVICE	3

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Appellant, :
v. : CASE NO. 91,411
STATE OF FLORIDA, :
Appellee. :

SUPPLEMENTAL BRIEF OF APPELLANT

SUMMARY OF ARGUMENT

Appellant asks this Court to revisit whether the murder was cold, calculated, and premeditated, and whether it was harmless error to give the jury an unconstitutional instruction on this aggravator.

ARGUMENT

ISSUE PRESENTED

THE TRIAL COURT ERRED IN FINDING THE MURDER WAS COLD, CALCULATED, AND PREMEDITATED AND IN GIVING THE JURY AN UNCONSTITUTIONAL JURY INSTRUCTION ON THIS AGGRAVATOR.

On the initial appeal in this case, appellant argued the trial court erred in finding the murder was cold, calculated, and premeditated (CCP) because the killing was the product of violent

emotions triggered by the loss of a love relationship.

Appellant's argument was based in part on Dr. Krop's testimony that this was a crime of rage and that Reese was seriously impaired at the time of the murder.

Appellant also argued in the initial appeal that the trial court erred in failing to expressly evaluate, find, and weigh un rebutted mitigating evidence, including Dr. Krop's testimony that this was a crime of rage and that Reese was seriously impaired at the time of the murder.

The Court affirmed the CCP aggravator but agreed with Reese "there was mitigation offered in the record which was apparently un rebutted" and remanded for entry of a new sentencing order.

This Court's affirmance of CCP therefore was based on a sentencing order deficient in its evaluation of evidence critical to the CCP issue. This Court's affirmance of CCP thus is unreliable and appellant asks the Court to revisit this issue when a valid sentencing order as to mitigation is rendered.

CONCLUSION

Appellant respectfully asks this Court to reverse and remand for a new penalty phase proceeding before a newly empaneled jury.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY a copy of the foregoing has been furnished to Assistant Attorney General Barbara J. Yates, by delivery to The Capitol, Plaza Level, Tallahassee, Florida, and a copy has been mailed to appellant, **JOHN LOVEMAN REESE**, #123069, Union Correctional Institution, Post Office Box 221, Raiford, Florida 32083, on this ____ day of January, 1998.

Nada M. Carey