IN THE SUPREME COURT OF FLORIDA

DANIEL EUGENE REMETA,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

CASE NO. 92670

ON APPEAL FROM THE FIFTH JUDICIAL CIRCUIT
IN AND FOR MARION COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

JUDY TAYLOR RUSH
ASSISTANT ATTORNEY GENERAL
Florida Bar No. 0438847

KENNETH S. NUNNELLEY
ASSISTANT ATTORNEY GENERAL
Florida Bar No. 0998818
444 Seabreeze Boulevard
Suite 5
Daytona Beach, Florida 32118
(904) 238-4990

COUNSEL FOR APPELLEE

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PRELIMINARY STATEMENT

The Appellee's brief in this proceeding is being filed anticipatorily, and the points addressed in this brief are based upon the issues raised in the circuit court Rule 3.850 proceedings and any other anticipated issues arising from the course of those proceedings. To the extent that the appellee may have addressed an issue in this brief that Remeta did not raise as a point on appeal, such is withdrawn by the appellee.

Because this brief is being filed anticipatorily, and in the interest of the expeditious resolution of this appeal, the appellee incorporates herein by specific reference all of the pleadings heretofore filed in connection with this case.

STATEMENT OF THE CASE AND FACTS

In its opinion affirming Remeta's conviction and sentence on direct appeal, this Court stated the facts as follows:

> Remeta had been involved in a series of murders and robberies throughout three states during a two week period in early 1985. On February 8, 1985, the clerk of an Ocala, Florida, convenience store was murdered during a robbery. An autopsy of the victim revealed four gunshot wounds: one to the stomach, one to the upper chest, and two to the head, all made by a .357 Magnum gun. The appellant, Daniel Remeta, was later extradited to Florida in response to an indictment charging him with the murder.
>
> Two days after the Ocala murder, on February 10, 1985, Remeta and one companion entered a convenience store in Waskom, Texas, where they robbed the cashier, Camillia Carroll, at gunpoint, abducted her to a location two to three hundred feet from the store and shot her five times with the .357 Magnum used in the Ocala shooting.

Miraculously, Carroll lived and testified to the events of that day at Remeta's trial in Florida. At the time of the Florida trial, Remeta had not been convicted of the crimes against Carroll.

On February 13, 1985, the manager of a Stuckey's gas station located along Interstate Highway 70 in Kansas was shot and killed with the same .357 Magnum gun used in the Ocala murder. Shortly thereafter, a Kansas sheriff following Remeta's car on the highway noticed suspicious activity and signaled for him to pull over. When he approached, one of Remeta's companions exited the passenger side of the car and shot the sheriff twice.

Remeta and his companions fled the scene and went to a grain elevator, where they abducted two men and took their truck. Shortly thereafter, the men were made to lie face down in the roadway and each was shot in the back of the head and killed with the same .357 magnum gun. The truck was later chased into a farmyard by Kansas authorities and a shootout occurred, in which one of Remeta's companions was killed and the other injured. Remeta pled guilty to charges of homicide and aggravated robbery against the Stuckey's store clerk and received two consecutive life sentences. Remeta also pled guilty to the killings of the grain elevator employees and received two consecutive life sentences with no eligibility for parole for eighty-five years.

The Florida trial commenced in May, 1986. Defense counsel, after consulting with Remeta in a holding cell outside the courtroom, waived Remeta's presence during preliminary questioning of the jury venire. Before trial, the state filed a notice of intent to offer evidence of other crimes, wrongs, or acts pursuant to section 90.404(2), Florida Statutes (1985). At trial, the state was allowed to introduce the testimony of Camillia Carroll over Remeta's objection.

Carroll testified that on February 10, 1985, after Remeta and his friend had robbed the convenience store where she was working, they kidnaped her and drove her to a location two to three hundred feet away and shot her five times. Remeta objected to the testimony on the basis that it was not relevant to any material fact in issue, that the evidence was relevant solely to prove bad character or propensity, that the evidence was not necessary to the state's case, and that the evidence was not sufficiently

similar to modus operandi and identity. The state presented a stipulation of fact that one of the bullets recovered from Carroll's body was fired by the gun which had killed the Ocala convenience store clerk two days earlier and which was found three days later in close proximity to Remeta.

In its case-in-chief, the state also presented several statements made by Remeta which the trial court found to have been freely and voluntarily made. A Kansas Bureau of Investigation agent had interviewed Remeta at Remeta's request and related that Remeta admitted involvement in both of the convenience store clerks' shootings, but implicated his deceased companion as the triggerman in both incidents. Remeta was also interviewed at his request by a newspaper reporter. Remeta told the reporter that he and his friends had robbed the Ocala convenience store because they needed money, and that he was the only one who had planned the robbery. Remeta also admitted sole possession of the ,357 magnum revolver at the time of the Ocala murder. Remeta offered several alternative explanations for killing the victim, including that he "just liked to kill people" and that he "just didn't care." In a different interview with a television reporter, Remeta made a general comment on his intent to eliminate witnesses by stating, "[L]ike Florida, they ain't got no witnesses. Anytime I seen a witness, I took him out, or at least shot him."

In an interview with a member of the state attorney's office, Remeta first stated that he had committed the Ocala murder, but, at a later point, changed his story to implicate his companion as the triggerman. There was also presented videotaped portions of Remeta's testimony in other court proceedings, in which he stated he had possession of the gun used in the Ocala murder while in Kansas. Carroll had testified it was Remeta who had the gun at the Texas convenience store robbery. Remeta, as part of his theory of defense, attempted to establish that it was his accomplice who had possession of the murder weapon and was the triggerman in the Ocala murder. Remeta was found guilty by the jury of first-degree murder for the Ocala robbery.

During the penalty phase of the trial, Remeta introduced testimony of his mother, an expert clinical psychologist, and several social workers who had known Remeta since his childhood.

> The state presented evidence of appellant's prior convictions, including his pleas of guilty to the Kansas crimes of first-degree murder and aggravated robbery. It also presented portions of a videotaped interview which the appellant had with a reporter containing his admission of executing two hostages so that they would not cause trouble.
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> The jury recommended imposition of the death sentence and the trial judge imposed the death penalty, finding that the four statutory aggravating factors clearly outweighed the four mitigating factors.

Remeta v. State, 522 So.2d 825, 826-827 (Fla. 1988).

> Remeta was extradited to Florida, where he was tried, convicted, and sentenced to death for the Ocala murder. On direct review, his conviction and sentence were affirmed by the Florida Supreme Court. *Remeta v. State,* 522 So. 2d 825 (Fla. 1988). The United States Supreme Court denied his petition for a writ of certiorari. *Remeta v. Florida,* 488 U.S. 871, 109 S. Ct. 182, 102 L. Ed. 2d 151 (1988). Remeta next filed both a motion for state post-conviction relief with the state circuit court pursuant to Florida Rules of Criminal Procedure 3.850 and a state habeas petition with the Florida Supreme Court. Following an evidentiary hearing, the trial court denied the Rule 3.850 motion. The Florida Supreme Court consolidated the Rule 3.850 appeal and the habeas petition, affirmed the trial court's denial of the motion for post-conviction relief, and denied the habeas petition. *Remeta* v. *Dugger,* 622 So. 2d 452 (Fla. 1993). Remeta then petitioned the federal district court for the Middle District of Florida for habeas corpus relief pursuant to 28 U.S.C. § 2254. In 1994, the district court denied the petition after finding that Remeta was either procedurally barred or not entitled to relief on the claims raised therein. The district court also granted Remeta's motion for a certificate of probable cause to appeal.

Remeta v. Singletary, 85 F.3d 513, 515-516 (11th Cir. 1996). The federal appellate court upheld the district court's order denying Remeta any relief. *Id.* at 519. The United States Supreme Court denied certiorari review on March *24,* 1997. *Remeta v. Singletary,*

117 S. Ct. 1320 (1997).

On February 18, 1998, Remeta's CCRC attorney filed a motion to withdraw from representation of the defendant. The Marion County Circuit Court denied that motion and Remeta appealed. On March 6, 1998, this Honorable Court affirmed the trial court's denial of the motion to withdraw. *Remeta v. State, No.* 92,411, slip op. at 2 (Fla. March 11, 1998). On March 18, 1998, Remeta filed a Petition for Writ of Habeas Corpus in the United States District Court for the District of Kansas. Therein, he sought to challenge the seven (7) Thomas County, Kansas convictions and sought a stay of the Florida execution scheduled for March 31, 1998. The State of Florida, on behalf of Respondent Singletary, filed a Motion to Dismiss for Lack of Jurisdiction in regard to the requested stay of execution. A telephonic hearing was held on March 24, 1998. The following day, the federal district judge issued an order which purported to stay the Florida execution. On March 25, 1998, an Emergency Application was filed in the Tenth Circuit Court of Appeals, seeking vacation of the lower court's order. The Tenth Circuit Court of Appeals ordered Remeta to file a response to the Emergency Application by 1 o'clock on March 26, 1998, and he did so. Shortly, thereafter, the appellate court issued an order vacating the purported stay of the Florida execution.

On March 24, 1998, Remeta filed an Emergency Motion to Vacate Judgment and Sentence and Request for Evidentiary Hearing and Stay

of Execution in the Marion County Circuit Court. The State of Florida filed a Response to that Motion on March 25, 1998. A *Huff*[1] hearing was held that same afternoon, and an order from the Honorable Judge Carven D. Angel was entered on March 27, 1998, denying Remeta's requested relief. Notice of Appeal was given, and this appeal follows.

PROCEDURAL DEFENSES

THE *3.850* MOTION IS TIME-BARRED

On December 17, 1997, this Honorable Court entered an order scheduling oral argument in Remeta's case for March 4, 1998. Implicit therein was a directive that the circuit court Rule *3.850* litigation be concluded prior to that time. Remeta should have brought his successive Rule *3.850* motion in a timely fashion, instead of filing it less than seven days prior to his scheduled execution. In view of the lengthy period of time that Remeta has had to bring any successive Rule 3.850 motion, and his defiance of this Court's implied order regarding the time in which to file same, this Court should hold that the instant motion is untimely. See *Stano* v. *State,* No. 92,614, slip op. at *3* (Fla. March 20, 1998).

OTHER PROCEDURAL BAR DEFENSES

Each claim and sub-claim contained in Remeta's successive

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[1] *Huff v. State,* 622 So.2d 982 (Fla. 1993).

Rule 3.850 motion is untimely, successive, and an abuse of procedure which should be summarily denied. To the extent that the motion raises claims that Remeta alleges are based on "new evidence," Remeta cannot establish the due diligence component of Rule 3.850(b)(1). As a result, he is not entitled to an evidentiary hearing on that issue. *See Fla.R.Crim.P.* 3.850(f); *Mills v. State,* 684 So.2d 801 (Fla. 1996); *Bolender v. State, 658* So.2d 82 (Fla. 1995); *Zeigler v. State,* 632 So.2d 48 (Fla. 1993); *Foster v. State,* 614 So.2d 455 (Fla. 1992).

To the extent that Remeta alleges that the claims contained in the motion could not have been raised within the time limitations of Rule 3.850 because he has only now obtained the information upon which those claims are based, that claim has no factual basis. The Public Records Act (Chapter 119 of the *Florida Statutes)* has been available to Remeta at all relevant times. The fact that he chose not to avail himself of Chapter 119 until after his death warrant had been signed and execution scheduled establishes that he has not exercised due diligence. Because that is true, Remeta cannot avoid the preclusive effect of Rule 3.850's time limitation on the bringing of successive claims. *See Zeigler v. State, 632* So.2d 48 (Fla. 1993); *Zeigler v. State, 654* So.2d 1162 (Fla. 1995); *Agan v. State,* 560 So.2d 222 (Fla. 1990); *Demps v. State,* 515 So.2d 196 (Fla. 1987). The facts of this case are identical to those of

Zeigler.[2] Thus, Remeta cannot demonstrate "due diligence" under any definition of that term. Remeta's motion is time-barred, and relief should be denied on that basis.

In addition to being time-barred, each claim and sub-claim contained in the motion is subject to the *Florida Rule of Criminal* Procedure 3.850(f) successive petition bar. The claims and sub-claims are either based on grounds for relief that were decided on the merits in Remeta's prior Rule 3.850 proceedings, OK constitute an abuse of procedure because the grounds could and should have been raised in Remeta's prior collateral proceeding. *Mills v. State,* 684 So.2d 801 (Fla. 1996); *Atkins v. State, 663* So.2d 524, 626 (Fla. 1995); *Bolender* v. *State,* 658 So.2d 82 (Fla. 1995); Zeigler v. *State,* 654 So.2d 1162 (Fla. 1995); *Zeigler v. State, 632* So.2d 48 (Fla. 1993); *Foster v. State,* 614 So.2d 455 (Fla. 1992).

Remeta has also raised claims and sub-claims that could have been, but were not, raised on direct appeal. Those claims are procedurally barred under the provisions of Rule 3.850(c), which states: "This rule does not authorize relief based on grounds that could have or should have been raised at trial and, if properly preserved, on direct appeal of the judgment and sentence." See

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[2]For example, Remeta sent a letter to the Attorney General's Office on June 7, 1995, in which he purported to seek access to records. That "request" was never followed up on by Remeta. A second request was made on December 15, 1997. Remeta's CCRC investigator finally inspected the Attorney General's files on January 13, 1998.

James v. State, 615 So.2d *668* (Fla. 1993); *Kelley v. State, 569* So.2d *754* (Fla. *1990); Lambrix v. State, 559* So.2d 1137 (Fla. 1990); *Henderson v. State, 522* So.2d 835 (Fla. 1988).

Claims alleging "new evidence" must satisfy a two-part test before they operate to excuse an otherwise untimely filing. The asserted facts must have been unknown at the time of trial, and such facts must have not been discoverable through the exercise of due diligence. *See Robinson v. State,* 23 Fla.L.Weekly S85 (Fla. 1998); *Blanco v. State,* 702 So.2d 1250 (Fla. 1997); *Jones v. State,* 591 So.2d 911 (Fla. 1991). Where the alleged newly discovered evidence is discovered subsequent to the trial, the defendant "must demonstrate as a threshold requirement that his motion for relief was filed within two years of the time when evidence upon which avoidance of the time when it was based could have been discovered through the exercise of due diligence."[3] *Bolender v. State,* 658 So.2d 82 (Fla. 1994)(citations omitted). Indeed, even "[i]f the proffered evidence meets the first prong, to merit a new trial, the evidence must substantially undermine confidence in the outcome of the prior proceedings or the newly discovered evidence must be of such a nature that it would probably produce an acquittal on retrial." *Stan0 v. State, No. 92,614,* slip op. at 4 (Fla. March 20,1998). None of Remeta's alleged newly

[3]The time period is now one year. *See Fla.R.Crim.P. 3.850.*

discovered evidence claims can satisfy that standard. Thus, the denial of relief should be affirmed in all respects.

THERE IS NO BASIS FOR A STAY OF EXECUTION

Remeta has filed an untimely, successive, abusive post-conviction motion which should be summarily denied under Florida *Rule of Criminal* Procedure 3.850 and the case law that has developed concerning the various procedural bars contained in that rule. Remeta has pleaded no facts to demonstrate that he might be entitled to relief, or that an evidentiary hearing on any claim or sub-claim in the motion is required.

To the extent that Remeta alleges that he received (or is receiving) ineffective assistance of post conviction counsel, that claim is not properly raised before this Court in this proceeding. The law is clear that a claim of ineffective assistance of post-conviction counsel has no legal basis, and it is not a basis for a stay of execution. See, e.g., *Lambrix v. State, 698* So.2d 247 (Fla. 1996) ; *see also Coleman v. Thompson, 501* U.S. 722, 111 S. Ct. 2546, 115 L. Ed. 2d *640* (1991); *Murray v. Giarxatano, 492* U.S. 1, 109 S. Ct. *2765,* 106 L. Ed. 2d 1 (1989); *Pennsylvania v. Finley,* 481 U.S. *551, 107* s. ct. 1990, 95 L. Ed. 2d 539 (1987). Further, through the exercise of due diligence, Remeta could have raised any potential ineffective assistance claims based on the matters at issue herein in prior proceedings, and he "cannot continue to raise such claims in a piecemeal fashion." *Buenoano v. State, No.*

92,522, slip op. at 10-11, n.8 (Fla. March 26, 1998) (citations omitted). In any event, even if the due diligence component did not defeat any such claim, Remeta would still not be entitled to relief because there is no reasonable probability that the outcome would have been different. Id.

ARGUMENT[4]

At various points throughout this brief, the State addresses, in the alternative, the merits of Remeta's claims. The discussion of the merits is alternative and secondary to the procedural bar defenses which are adequate and independent grounds for the denial of relief. No factual averment contained in Remeta's motion or initial brief is admitted unless such is expressly indicated herein.

POINT I

THE TRIAL COURT'S ORDER HOLDING THAT REMETA'S **JUDICIAL ELECTROCUTION CLAIM IS PROCEDURALLY BARRED AND IS FORECLOSED BY THE RESULT IN *JONES* *V.* STATE SHOULD BE UPHELD.**

Remeta asserts that execution of a sentence of death by electrocution is a per se violation of the Florida Constitution, and "the manner and conditions in which the State proposes to carry

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[4]In the event that Remeta raises a claim concerning the denial of the "Motion to Admit Amicus Curiae Standing" filed by his wife, there is no error associated with the denial of said motion. ***Durocher v. Singl*** etary, 623 So.2d 482 (Fla. 1993).

out" Remeta's sentence violate the State and Federal Constitutions. (Rule 3.850 motion at 11-151). This claim was decided adversely to Remeta's position in ***Buenoano v. State, No.*** 92,622 (Fla. March 25, 1998), Jones v. ***Butterworth,*** 701 So.2d 76 (Fla. 1997), and ***Jones v. Butterworth,*** 691 So.2d 481, 482 (Fla. 1997). Thus, Remeta is not entitled to relief.

First, this claim does not allege a proper basis for granting a stay of execution, or any other relief, because it is procedurally barred. Remeta did not raise the issue on direct appeal, or in his first ***Florida Rule of Criminal Procedure 3.850*** Motion. See Summary of Issues Raised in Prior Proceedings. Therefore, his per se electrocution claim is procedurally barred. See 6-9, above.

Moreover, all facts pertinent to this claim Were recently decided by the Florida Supreme Court in ***Jones v. Butterworth,*** 701 So.2d 76 (Fla. 1997). That decision is the Law of this State on the issue, and Remeta is not entitled to relitigate same in his successive Rule 3.850 motion. ***See Bertolotti v. State, 565*** So.2d 1343 (Fla. ***1990); White v. State,*** 565 So.2d 322 (Fla. 1990); ***Hamblen v. State,*** 565 So.2d 320 (Fla. 1990); ***Squires v. State, 565*** So.2d 318 (Fla. 1990); ***Buenoano v. State,*** 565 So.2d 309 (Fla. 1990).

To the extent that Remeta attacks the constitutionality of execution by electrocution per se under the state and/or federal

constitutions, such claim is procedurally barred and/or without merit, as this Court held in the initial Jones opinion. *Jones, 691* So.2d at 482. See, *e.g., Mills v State, 684* So.2d at *801; Atkins* v. *State,* 663 So.2d 624, 627 (Fla. 1995)("endless repetition of claims is not permitted"); *Francis v. Barton, 581* So.2d 583, 584 (Fla. 1991)(habeas corpus is not to be used to relitigate issues considered in prior proceedings). All matters which could have been asserted earlier, through due diligence, are procedurally barred at this juncture.

As to any challenge under the state and/or federal constitution to Florida's electric chair in its present condition, Remeta has failed to demonstrate any reason why the Florida Supreme Court's recent decision in *Jones v. Butterworth* should not be controlling. Virtually all of the matters contained in the appendix to Remeta's petition were presented to either the circuit court, this Court, or both, in the *Jones* case. This Court, as well as the circuit court in *Jones,* has already considered the testimony of Remeta's experts, such as Oren Devinsky, Theodore Bernstein, Deborah Denno, Jonathan Arden, Robert Krischner, and David Price. Indeed, this Court specifically afforded Jones an evidentiary hearing so that this testimony could be presented. *Jones v. Butterworth,* 695 So.2d 679 (Fla. 1997). The declaration of Dr. Wikswo was presented to this Court as part of Jones' appeal in Case No. 90,231. In this Court's final opinion in *Jones,* this Court not

only found that Florida's electric chair does not constitute cruel or unusual punishment, citing to such federal precedents as Gregg *v. Georgia,* 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976), and *Louisiana ex rel Francis v. Resweber,* 329 U.S. 459, 67 S.Ct. 374, 91 L.Ed.2d 422 (1947), but also expressly rejected the contention that either *Farmer v. Brennan,* 511 U.S. 825, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994), or "the evolving standards of decency" (as exemplified by the number of jurisdictions which continue to utilize electrocution as a means of execution) provided any basis for relief. *Jones,* 701 So.2d at 79. Remeta, who has completely ignored the above holdings, provides no good cause for this Court to revisit them, and no relief is warranted as to this claim.

Moreover, the claims contained in Remeta's successive Rule 3.850 motion are based solely on the events of the execution of Pedro Medina in March of 1997. Subsequent to the Medina execution, there have been two more executions in Florida, both of which occurred without incident. Because that is so, Remeta has raised no claim that has not been litigated and decided by the Florida Supreme Court in the Jones decision. Each and every component of Remeta's judicial electrocution claim was decided by that Court in *Jones,* and that result is binding on this Court. Remeta is not entitled to an evidentiary hearing that will present essentially no new evidence beyond that presented in *Jones.* This Court's decision in *Jones* is controlling precedent. This claim is procedurally

barred.

In footnote 5 of page 11 of his Motion, Remeta claims that the ***per*** se electrocution issue is properly before this Court based upon this Court's actions in the Buenoano death warrant litigation. He is incorrect. In ***Buenoano,*** this Court expressly held the electrocution ***per se*** claim procedurally barred (as the trial court had also done) .[5] ***Buenoano v. Chiles, No.*** 92,572 (Fla. March 18, 1998). This claim is squarely foreclosed. The trial court's order summarily denying same should be upheld.

POINT II

THE TRIAL COURT DID NOT ERR IN REJECTING REMETA'S INADEQUATE FUNDING CLAIM.

Remeta asserts that he has a right to effective post-conviction counsel, and it is being denied to him because his counsel lacks the funds to properly represent him.[6] (3.850 Motion at 151-170). This claim was not raised in a timely fashion. The

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'Only the "gender specific" claims raised by Buenoano were transferred to the trial court. Buenoano lost on that claim in this Court on March 25, 1998.

[6]On page 156 of the Emergency Motion to Vacate, Remeta complains that he does not have enough money to address matters that he learned about in February of 1998. Regardless of how that component of this claim is viewed, the true facts are that Remeta did not raise that claim until seven days prior to his scheduled execution, even though he has had plenty of time to call that claim to the appropriate court's attention in a manner that would allow timely disposition of it. See, e.g., ***Bell v. Lynaugh, 858*** F.2d 978, 985-986 (5th Cir. 1988) (Jones, J., concurring) (his motive in late-filing must have been to play 'chicken' with the State and Federal Courts on the eve of execution.")

"funding crisis" has existed, according to Remeta's attorney, since February 3, 1998, when a proceeding was filed in this Court claiming that the Southern Region Capital Collateral Regional Counsel was in a "financial crisis." Despite having known of this claim for almost two months, Remeta's attorney waited until seven days before Remeta's scheduled execution to raise it. Such action - or inaction - constitutes an abuse of process, justifying the denial of relief. ***See Stano*** v. State, No. 92,614, slip op. at 2-3 (Fla. March 20, 1998). Thus, the trial court's order summarily denying this claim should be upheld on this basis alone.[7]

Moreover, the "funding" claim contained in Remeta's Rule 3.850 Motion is the functional equivalent of the Emergency Application for Stay of Execution and Petition for Writ of Habeas Corpus raised by Leo Alexander Jones in this Court on March 23, 1998. This Court denied Jones' claim.[8] ***Jones v. State, No.*** 92,633 (Fla. March 23, ***1998).***

To the extent that Remeta seeks to raise a claim concerning public records (either in Florida or Kansas), that claim is also made too late. Remeta has been represented by CCRC, or its predecessor agency, CCR, at all times, including during a four-day

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[7]To the extent that Remeta raises a "continuous representation" claim, that claim was also rejected in ***Stano. No.*** 92,614, slip op. at 6.

[8]Leo Jones was executed on March 24, 1998. Jones also raised the same issue contained in Claim II of Remeta's proceeding in his Petition for Writ of Certiorari in the United States Supreme Court. Obviously, that petition was denied.

hearing held in the trial Court in 1991. If Chapter 119 investigation still has not been completed, that is due to a lack of diligence on Remeta's part.

To the extent that Remeta suggests that there is further "investigation" to be done, this case should have been (and was) fully investigated at the time of Remeta's first Rule 3.850 motion which was filed on February 19, 1990. It is too late to seek delay based upon a claim that "further investigation" is necessary, when Remeta has been, at all times, represented by the same counsel. Any claim to the contrary is indicative of bad faith, and highlights the desire to delay Remeta's execution by any means possible. Had this claim had any basis whatsoever, it should have been brought long ago, not less than seven days before the scheduled execution.[9]

The Public Records Act (Chapter 119 of the Florida Statutes), has been available to Remeta at all times. Because that is true, he cannot avoid the preclusive effect of Rule 3.850's time limitation on the bringing of successive claims. *See Zeigler v. State,* 654 So.2d 1162 (Fla. 1995); *Zeigler v. State, 632* So.2d 48 (Fla. 1993) ; *Agan v. State, 560* So.2d 222 (Fla. 1990); *Demps v. State, 515* So.2d 196 (Fla. 1987). The facts of this case are substantially identical to those of *Zeigler.* Therefore, Remeta

[9]In any event, a claim of noncompliance with Chapter 119 is not a basis for failing to timely litigate a post-conviction proceeding.

cannot demonstrate "due diligence" under any definition of that term.

Remeta's motion is time-barred, and relief should be denied on that basis. To the extent that Remeta may suggest that there is "new evidence," that claim is spurious. Chapter 119 has been available to Remeta at all times pertinent, and there is no "newly discovered evidence" present in this case. ***Cf. Zeigler v. State,*** 654 So.2d 1162 (Fla. 1995).

To the extent that Remeta suggests, in connection with the "funding" issue that he is a "false confessor,"[10] that claim is subject to a triple layer of procedural bar. It should have been raised at trial, on direct appeal, and in Remeta's first Rule 3.850 proceeding. On direct appeal, this Court found "the evidence clearly sufficient to sustain Remeta's conviction of first-degree murder. "[11] *Remeta* v. State, 522 So.2d at 828. See pages 6-9, above. Moreover, the evidence relied upon in support of this claim was available at the time of the prior proceedings. As a result, it does not meet the criteria for "newly discovered evidence." *See* pages 5-8, above. Finally, this claim is time-barred. See pages

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[10]In his first Rule 3.850 motion, Remeta alleged ineffective assistance of counsel for not pursuing an involuntary intoxication defense. ***Remeta v. Dugger,*** 622 So.2d 452 (Fla. 1993). Since such a defense states, "I did it, but I was too drunk to know what I was doing," a claim that he falsely confessed, i.e., "I did not do it," would be wholly inconsistent and incredible.

[11]To the extent that Remeta attempts to raise an *Enmund/Tison* issue, that claim is procedurally barred, and, alternatively, it is meritless. ***See Valdes v. State,*** 626 So.2d 1316 (Fla. 1995).

5-8, above.

To the extent that Remeta pleads certain "evidence" that he claims mitigates his sentence of death, that evidence is of the same character and quality as that presented at the hearing on his first Rule 3.850 motion. See *Remeta* v. *Dugger*, 622 So.2d 452 (Fla. 1993). To the extent that a claim is pleaded based upon this "evidence," that claim is procedurally barred because it is successive as well as being an abuse of the Rule 3.850 process. To the extent that any of the "evidence" pleaded in support of this claim was not presented at the evidentiary hearing on the first Rule 3.850 motion, such evidence was available at that time; the failure to present those matters in the first collateral proceeding is a procedural bar to presentation of that evidence in a second Rule 3.850 motion. See 6-9, above.

To the extent that Remeta attempts to plead a claim based on "new evidence" relating to the facts of the crime, those facts were fully litigated at trial and on direct appeal. *See Remeta v. State*, 522 So.2d 825 (Fla.1988). Remeta has not presented any colorable claim of "new evidence," nor has he even attempted to plead facts that would enable him to come within any exception to the one-year limitation on the presentation of "new evidence" claims. While the state does not concede that the conclusory allegations containing suggestions of "new evidence" is sufficient to plead such a newly discovered evidence claim, to the extent that this Court may disagree, there has been no showing that avoids the

effect of the one-year time limitation on the presentation of such claims. See pages 6-9, above.

Finally, and alternatively, even if there is some "newly discovered evidence," there is no reasonable probability that such evidence would produce an acquittal on retrial. As the Florida Supreme Court found in ***Stano v.*** State:

> In order to qualify as newly discovered evidence, "the asserted facts must have been unknown by the trial court, by the party, or by counsel at the time of trial, **and** it must appear that defendant or his counsel could not have known them by the use of diligence." ***Robinson*** v. State, 23 Fla.L.Weekly S85, S85 (Fla. Feb. 12, 1998). If the proffered evidence meets the first prong, to merit a new trial the evidence must substantially undermine confidence in the outcome of the prior: proceedings or the newly discovered evidence must be of such a nature that it would probably produce an acquittal on retrial. ***Id.***

Stano v. ***State, No.*** 92,614, slip op. at 4 (March 20, 1998). None of the "evidence" alluded to by Remeta in his successive Rule 3.850 motion meets either prong of the "new evidence" test. Therefore, he is entitled to no relief.

Indeed, at most, the "evidence" alluded to is either cumulative to evidence presented previously, or entirely circumstantial. In the face of Remeta's multiple confessions (which included a video taped confession) there is no reasonable probability of a different result. ***See Stano*** v. State, No. 92,614, slip op. at 3 (Fla. March 20, 1998). This Court affirmed the finding of the Brevard County Circuit Court that a successive Rule 3.850 motion filed under circumstances similar to those present in this case was untimely, and therefore, time-barred. ***Id.*** This

Court should do likewise in this case.

POINT III

THE TRIAL COURT DID NOT ERR IN DENYING RELIEF ON REMETA'S CLAIM THAT SOME OF THE FELONIES ON WHICH THE PRIOR VIOLENT FELONY AGGRAVATOR WAS BASED MIGHT BE VACATED.

In sentencing Remeta to death, the Marion County Circuit Court found the following aggravating circumstances:

> (1) that Remeta had been previously convicted of nine felonies which involved the use or threat of force to another person; specifically, three first-degree murders, two aggravated kidnappings, two aggravated robberies, an aggravated battery of a law enforcement officer, and an aggravated battery; (2) that this first-degree murder was committed while the defendant was engaged in the commission of a robbery; (3) that this first-degree murder was committed for the purpose of avoiding or preventing a lawful arrest, based on the defendant's own statements that he "took the witnesses out" or "tried to"; and (4) that this first-degree murder **was committed in a cold,** calculated, and premeditated manner without any pretense of moral or legal justification.

Remeta v. State, 522 So.2d 825, 828 (Fla. 1988). This Court **affirmed the trial court's finding of those four aggravators.** *Id.* at **829.**

In his successive Rule 3.850 motion, Remeta claims that he is entitled to a stay of execution based upon the pendency of litigation collaterally attacking seven of the nine prior violent felonies underlying the prior violent felony aggravator.

In addition to the seven Thomas County, Kansas convictions at issue in Remeta's Kansas proceedings, he has two prior, felony convictions from **Gove County, Kansas.** Neither of the Gove County

convictions are being, or ever have been, collaterally challenged.'* Those convictions are for first-degree murder and aggravated robbery. (R 2554).

Moreover, the evidence submitted as a basis for overturning the Kansas convictions was essentially the same as that submitted to the Florida courts as mitigation,[13] see *Remeta v. State, 522* (Fla. 825 (Fla. 1988), and does not bear on the guilt issue in the Kansas convictions. To the extent that he complains that there was a "miscarriage of justice" as a result of the acquittal of his Kansas co-defendants, that claim is incorrect as a matter of law. *Larzalere v. State,* 676 So.2d 394, 407 (Fla. 1996). Thus, Remeta has failed to demonstrate any likelihood, much less a probability, that his Thomas County convictions will be set aside.

Under settled Florida law, the fact that collateral proceedings concerning some of Remeta's prior convictions are now pending does not entitle him to relief from the sentence of death imposed by the trial court. Likewise, the pendency of the collateral litigation does not provide a basis for a stay of execution. See *Bundy* v. State, 538 So.2d 445, 447 (Fla. 1989)("The fact that these convictions [for the Chi Omega murders1 are being

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[12]No appellate proceedings of any sort have ever been instituted in the Gove County cases. Remeta has not attempted to directly appeal those guilty pleas, nor has he brought a post-conviction challenge to those convictions.

[13]Insofar as the Kansas Collateral proceedings are concerned, there are multiple procedural bars Remeta must overcome before the merits of the claims can be considered.

attacked in collateral proceedings does not entitle Bundy to relief."). *See also Buenoano* v. State, No. 92,522, slip op. at 11 (Fla. March 26, 1998) ("The fact that the denial of relief likely will be appealed does not entitle Buenoano to relief.")

Moreover, assuming *arguendo* that Remeta's Thomas County convictions were set aside, it would not affect the validity of the prior violent felony aggravator because the unchallenged Gove County convictions alone will support the finding of that aggravator. The factual scenario presented by this case is essentially the same as presented in *Henderson v. Singletary, 617* So.2d 313, 316 (Fla. 1993), where this Court denied a stay of execution based upon the same grounds asserted by Remeta. Specifically, this Court held:

> Moreover, Henderson would be entitled to no relief even if the claim were not barred. Although Henderson sought postconviction relief in connection with the prior convictions, all relief was denied by the trial court and an appeal of that denial is currently pending before the Fifth District Court of Appeal. [footnote omitted] Because the Putnam County convictions have not been vacated *Johnson v. Mississippi, 486* U.S. 578, 108 S. Ct. 1981, 100 L. Ed. 2d 575 (1988), is inapplicable. *Tafero v. State,* 561 So.2d 557 (Fla.), *cert. denied, 495* U.S. 925, 110 S. Ct. 1962, 109 L. Ed. 2d 324 (1990); *Eutzy v. State,* 541 So.2d 1143 (Fla. 1989); *Bundy v. State, 538* So.2d 445 (Fla. 1989). Even if the Putnam County convictions were vacated, the aggravating factor of prior conviction of a capital felony would still have been established beyond a reasonable doubt. In this case, Henderson was convicted of three counts of first-degree murder and sentenced to death for each. As noted above, each of these convictions supports the finding of a prior capital felony conviction in connection with the other sentences. Thus, consideration of the Putnam County convictions would be harmless beyond a reasonable doubt because there is ample independent support for this

aggravating factor. ***Tafero, 561*** So.2d at 559. ***Henderson v. Singletary,*** 617 So.2d 313, 316 (Fla. 1993). Recently, this Court applied ***Henderson*** and rejected the same claim advanced herein by Remeta in the death warrant litigation preceding Gerald Stano's execution.[14] ***See Stano v. State,*** No. 92,614, slip op. at 4 (Fla. March 20, 1998) (rejecting the incomplete ***Johnson v. Mississippi***[15] claim).

Even more recently, this Court addressed this issue in ***Buenoano v. State, No.*** 92,522 (Fla. March 26,1998). Buenoano had collaterally challenged one of two prior convictions which supported the prior, violent felony aggravator. No. 92,522, slip op. at 11. This Court held that even if the challenged conviction from Escambia County was overturned, the unchallenged conviction from Santa Rosa County "is sufficient to support the prior violent felony aggravator." ***Id.*** at 12.

Even if Remeta's Thomas County convictions are not considered, there is independent, unchallenged support for the prior violent felony aggravator in the Gove County convictions. ***Henderson, Stano, and Buenoano*** are squarely on point with the facts of this case, and they control disposition of Remeta's claim regarding the

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[14]Stano was executed on March 23, 1998.

[15]*Johnson* ***v. Mississippi, 486*** U.S. 578 (1988).

Kansas convictions.[16]

Finally, in ***Buenoano,*** this Court pointed out that even if the prior, violent felony aggravator was not considered, "there are three other valid aggravating factors . . .." No. 92,522, slip op. at 12. The same is true in the instant case.[17] The trial court's denial of Remeta's ***Johnson v. Mississippi***[18] claim should be affirmed.

Remeta also claims that "invalid prior convictions" - specifically, his Thomas County, Kansas convictions - were introduced into evidence during the guilt phase of his trial as *Williams* Rule evidence. (Rule 3.850 Motion at 170). He also complains that the "facts" of those convictions were introduced. *Id.* at 171. He claims that in his Kansas habeas petition, he "set forth evidence establishing his innocence of the Kansas convictions." Id. at 171-172.

The fact is that "**Remeta** presented similar fact evidence" in the Ocala case 'in an effort to demonstrate that his companion possessed the Ocala murder weapon during the shootout in Kansas."

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[16]Moreover, Remeta has a subsequent conviction in Arkansas, which would be usable in any resentencing proceeding. Therefore, any error is harmless. ***State v. DiGuilio, 672*** So.2d 542 (Fla. 1996).

[17]Although the trial judge found some nonstatutory mitigation in this case, he made it clear that the aggravating factors "far outweigh" the slight mitigation. (R 2551). Clearly, that is so.

[18]*See* footnote 15.

Remeta v. *State,* 522 So.2d 825, 827 (Fla. 1988) (emphasis added). The only *Williams* Rule evidence the State presented was that of Remeta's Texas victim, Camillia Carroll. See Exhibit A. Remeta's attempt to blame the State for his presentation of the facts of his Kansas crimes at his Ocala trial is reprehensible. The allegation that the State presented the facts of the Kansas murders as *Williams* Rule evidence is wholly false, and there is no basis for relief.

To the extent that the State brought out any evidence regarding the facts of the Kansas convictions, any error, was clearly invited by Remeta. Invited error does not entitle Remeta to relief. *See Terry v. State,* 668 So.2d 962, 963 (Fla. 1996); *Thompson v. State,* 648 So.2d 695 (Fla. 1994).

To the extent that Remeta's claim regarding the presence of the Kansas *Williams* rule evidence might be regarded as raising an ineffective assistance of trial counsel claim, that claim is procedurally barred as it could, and should, have been raised on direct appeal, or in his first Rule 3.850 motion. *See Buenoano v.* State, No. 92,522, slip op. at 10-11, n.8 (Fla. March 26, 1998). See also pages 6-9, above. Moreover, even if the time bar were not applicable there is no reasonable probability that the result of the trial would have been different had the Kansas *Williams* rule evidence not been presented.

The issue, as framed by Remeta in his motion, is procedurally

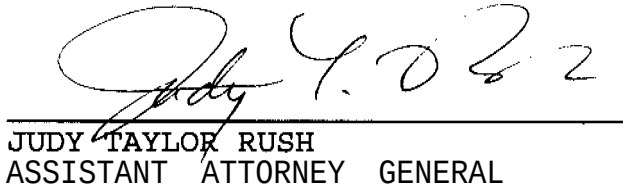
barred because he could have raised it at trial, on direct appeal, or in his prior post-conviction pleadings. However, even if it were not procedurally defaulted, it is frivolous since he is the one who introduced the very evidence about which he now complains.[19] Clearly, Remeta is entitled to no relief.

CONCLUSION

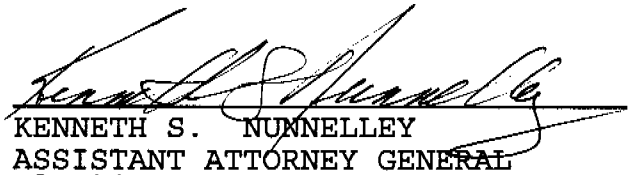
Based upon the above and foregoing argument the denial of post-conviction relief should be affirmed.

Respectfully submitted,

ROBERT A BUTTERWORTH
ATTORNEY GENERAL



JUDY TAYLOR RUSH
ASSISTANT ATTORNEY GENERAL
Florida Bar No. 0438847



KENNETH S. NUNNELLEY
ASSISTANT ATTORNEY GENERAL
Florida Bar No. 0998818
444 Seabreeze Blvd. 5th FL
Daytona Beach, FL 32118
(904) 238-4990

[19]The convictions were introduced into evidence during the penalty phase and went solely to the issue of the prior, violent felony aggravator. (R 2073).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above has been furnished by facsimile transmission and U.S. Mail to Todd Scher, Capital Collateral Regional Counsel, Southern District, 1444 Biscayne Blvd., Suite 202, Miami, Florida 33132, this 27th day of March, 1998.

Of Counsel

IN THE SUPREME COURT OF FLORIDA

DANIEL EUGENE REMETA,

Appellant,

v. CASE NO.

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE FIFTH JUDICIAL CIRCUIT
IN AND FOR MARION COUNTY, FLORIDA

EXHIBIT A

File

IN THE SUPREME COURT OF FLORIDA

DANIEL E. REMETA,

Appellant,

VS.

CASE NO. 69,040

STATE OF FLORIDA,

Appellee.
_____/

ON APPEAL FROM THE CIRCUIT COURT
OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR MARION COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

JOSEPH N. D'ACHILLE, JR.
ASSISTANT ATTORNEY GENERAL
125 N. Ridgewood Avenue
Fourth Flaor
Daytona Beach, FL 32014
(904) 252-2005

COUNSEL FOR APPELLEE

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State Marion 85-1471-CFAY
DIRECT APPEAL Daly

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POINT TWO

THE TRIAL COURT PROPERLY ADMITTED SIMILAR FACT EVIDENCE DURING THE GUILT PHASE OF APPELLANT'S TRIAL AS IT WAS RELEVANT TO PROVE IDENTITY; SAID EVIDENCE WAS ADMISSIBLE AS ITS PROBATIVE VALUE OUTWEIGHED ANY UNDUE PREJUDICE, ETC., ARISING DURING THE PENALTY PHASE.

The appellant also argues that the trial court erred in admitting the testimony of Camillia Carroll regarding the robbery/kidnapping/attempted murder of her by the appellant. The appellant challenges the trial court's ruling on two related grounds. First, the appellant asserts that Carroll's testimony was inadmissible under section 90.404(2), Florida Statutes (1985), as her testimony was not relevant to prove any material fact and tended only to prove bad character or propensity. However, his only specific challenge to this evidence was that since the issue of identity was proven by his own statements, there was no necessity to introduce Williams Rule evidence: consequently, the admission of said evidence was error. Williams v. State, 110 So.2d 654 (Fla. 1959). Second, the appellant asserts that the evidence in question was inadmissible under section 90.403, Florida Statutes (1985), as its probative value was outweighed by several countervailing factors recognized by the rules of evidence. The appellant, however, specifically claims that any unfair prejudice arose only during the penalty phase.

The appellant's arguments, however, are based on substantial misrepresentations of the evidence in the record. The appellant ardently maintains that the jury was erroneously permitted to

hear numerous witnesses testify regarding the appellant's crime spree in Kansas. He fails to admit, however, that it was he who presented this evidence during the guilt phase in an effort to demonstrate it was Walter, and not he, who possessed the Reeder murder weapon during the shoot-out in Kansas (IX 1594-1612, 1623-1624) (X 1808-1865). Since it was the appellant who opened the door to his criminal activity in Kansas, he should not now be heard to claim error. Toole v. State, 479 So.2d 731 (Fla. 1985). The appellant also describes Carroll's testimony as cumulative. In analyzing the evidence presented by the state, Carroll's testimony can not be cumulative to evidence regarding the appellant's prior convictions for capital felonies and felonies involving violence in Kansas as each was introduced to prove different material facts at separate stages of the trial; the former was offered to prove the appellant's possession of the murder weapon while the latter was offered to prove a statutory aggravating circumstance. Furthermore, the appellant does not make it clear that Carroll's testimony was presented only during the guilt phase, that the jury was instructed twice as to the proper method to evaluate Williams Rule evidence in determining guilt, and that there was no evidence or argument regarding Carroll's testimony or the incident in Texas during the penalty phase.

The appellant's Williams Rule argument is totally without merit. This Court has consistently held that the relevancy, not the necessity, of the evidence in question is the proper standard in determining the admissibility thereof. Ruffin v. State, 397

So.2d 277 (Fla. 1981): Oats v. State, 446 So.2d 90 (Fla. 1984);. see also, Ferguson v. State, 417 So.2d 631 (Fla. 1982) and Ashley v. State, 265 So.2d 685 (Fla. 1972) [both holding Williams Rule evidence properly admitted even though state introduced evidence of defendant's confession]. This argument should be rejected.

There is also case law authority to suggest that this evidence would be admissible based on its relevancy alone without regard to section 90.404(2), Florida Stautes (1985). It must be noted that the appellant made several statements regarding his involvement in the Tenneco robbery/murder; in two of those statements he claimed that Walter had been the triggerman in both the Ocala and the Texas crimes (IX 1737-1740). Since Walter had been conveniently killed in the Kansas shoot-out, the state was faced with the very real possibility that the appellant would try to implicate Walter at trial. Therefore, the trial court properly admitted Carroll's testimony that the appellant was the triggerman in the Texas robbery; such testimony was necessary to explain or contravert a relevant statement made by the appellant. Waterhouse v. State, 429 So.2d 301 (Fla. 1983).

Although the issue is not contested by the appellant, the appellee maintains that the Williams Rule evidence - Carroll's testimony and the stipulations of fact indicating she was shot with the same gun which killed Reeder - was properly admitted as evidence of identity. §90.404(2), Fla. Stat, (1985). The evidence in question was relevant to the disputed issue of appellant's possession of the Reedex murder weapon at a time proximate to the Ocala murder. O'Connell v. State, 480 So.2d

1284 (Fla. 1985) [admission of Williams Rule evidence-demonstrating connection of defendant to murder weapon upheld]; Ruffin, supra [admission of Williams Rule evidence demonstrating connection of defendant to murder weapon through the theft of a weapon stolen from an officer shot by defendant upheld]: Ferguson, supra [admission of Williams Rule evidence demonstrating defendant's possession of weapon upheld). Ashley, supra [admission of Williams Rule evidence demonstrating that defendant committed four murders hours prior to alleged murder by use of same gun upheld].

The evidence in question was also sufficiently similar to the circumstances of the Ocala murder to constitute modus operandi evidence of identity. The appellee asserts that these two crimes share a particular uniqueness. Both crimes involved the robbery of a gas station/convenience store; both stores were located near interstate highways; both stores only had one clerk on duty: both robberies involved the purchase of small packages of candy as a ruse to have the clerk open the cash register; both crimes were committed within two days of each other; and both crimes were facilitated with the use of the same gun. What is more proof of the shared uniqueness of these crimes is that they were committed hundreds of miles apart - a distance to be covered in two days of automobile travel - yet the same gun was used in each crime; the only reasonable and logical inference is that these similar crimes were committed by the same person traveling cross-country. That person, according to Carroll, the surviving robbery victim, was the appellant. The appellee

maintains this second position as an additional basis to uphold the trial court's admission of Carroll's testimony. Williams, supra; see also, Chandler v. State, 442 So.2d 171 (Fla. 1983) [explanation regarding passage of time between alleged and collateral crimes relevant to determining similarity of offenses].

Any dissimilarity between the Ocala murder and the collateral crimes in Texas can be reasonably attributed to a difference in the opportunities presented to the appellant and not a difference in modus operandi. Chandler, supra. Therefore, the following dissimilarities do not render as error the trial court's ruling admitting said evidence. The age and sex of the clerk as well as the time of day the crimes occurred are attributable to circumstance in light of the reasonable inference that the appellant was traveling cross-county on the interstate highway system. Also, the kidnapping of Carroll is attributable to the appellant's desire to avoid detection from people inhabiting the houses directly behind the Mobile station; such a concern was not necessary to the appellant when he committed the Ocala robbery under cover of darkness.

As to the appellant's second claim, the appellee would ask this Court to note that the decision to admit evidence based on its relevancy is one for the trial court: its decision should not be reversed absent an abuse of discretion. Blanco v. State, 452 So.2d 520 (Fla. 1984). The appellant has only made the naked allegation that this evidence was irrelevant and unduly prejudical. On the other hand, the appellee has amply

demonstrated the substantial relevance of Carroll's testimony, The appellee asserts that no abuse of discretion has been shown. To dispose of the appellant's claim, the appellee cites Randolph v. State, 463 So.2d 186 (Fla. 1984), which holds that the admission of evidence relevant to an issue in the guilt phase of a capital trial will not be held as error based on a claim of possible prejudice in the penalty phase. The appellant's argument ignores the very basis of a bifurcated trial, the separation of the issue of guilt from the issue of the jury's advisory sentence; therefore, this argument should be rejected.

Even if this argument were to be examined, this Court would find it without merit. Under section 90.403, Florida Statutes (1985), the decision to exclude evidence based on a claim of unfair prejudice is one for the trial court; as before, the appellant has failed to demonstrate any abuse of discretion. In the face of the substantial relevance of this evidence, the appellant has failed to demonstrate that any countervailing factor(s) outweighed the probative value of the evidence in question. As previously stated, Carroll's testimony was not cumulative to the state's evidence of the appellant's convictions for crimes in Kansas; each was introduced to prove a different material fact. See, Black's Law Dictionary, 343 (5th Ed. 1979). Nor could the evidence of the Texas crimes be considered as causing a confusion of issues, thereby misleading the jury. Carroll's testimony was admitted during the guilt phase of the trial and the jury was twice instructed on how to consider such evidence (IX 1701) (XI 2003). The appellant can not presume such

an instruction was ignored. At most, the appellant fantasizes that he has suffered prejudice. It is rather unlikely that on the eleventh day of court proceedings - the day of the penalty phase proceeding - the jury was overwhelmed by testimony it heard six days earlier. The appellee adamantly disputes the appellant's contention that Carroll's testimony was "a raw appeal to juror emotion" which infected the penalty phase proceeding and unfairly prejudiced his defense therein. [Appellant's Initial Brief, page 21-223. When compared to the appellant's unabated brutality as evidenced by his crimes in Kansas, the Texas incident seems almost insignificant. The appellee asserts that there was no undue prejudice from Carroll's testimony, therefore the trial court's admission thereof could not have been error.

Finally, it is interesting to note that the appellant tries to argue that the admission of Carroll's testimony caused undue prejudice as it amounted to prosecutorial overkill. As mentioned earlier, the appellee posits that the introduction of the appellant's statements actually <u>necessitated</u> the introduction of Carroll's testimony. Carroll's testimony was relevant to the state's case to show that the appellant lied when he tried to pin the Texas crimes on Walter after Walter had died: this evidence leads to the logical inference that the appellant also lied when he tried to blame the Reeder murder on Walter. The trial court properly admitted Carroll's testimony as it was relevant to disprove an anticipated defense. For this reason, as well as the numerous aforementioned reasons, the trial court properly admitted Carroll's testimony and the related stipulations of