IN THE SUPREME COURT OF FLORIDA

LAWRENCE SINGLETON,	:	
Appellant,	:	
vs.	:	Case No. 93,035
STATE OF FLORIDA,	:	
Appellee.	:	
	:	

APPEAL FROM THE CIRCUIT COURT
IN AND FOR HILLSBOROUGH COUNTY
STATE OF FLORIDA

INITIAL BRIEF OF APPELLANT

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

PAUL C. HELM
Assistant Public Defender
FLORIDA BAR NUMBER O229687

Public Defender's Office
Polk County Courthouse
P. O. Box 9000--Drawer PD
Bartow, FL 33831
(941) 534-4200

ATTORNEYS FOR APPELLANT

TOPICAL INDEX TO BRIEF

TOPICAL INDEX TO BRIEF (continued)

TOPICAL INDEX TO BRIEF (continued)

TABLE OF CITATIONS

TABLE OF CITATIONS (continued)

TABLE OF CITATIONS (continued)

TABLE OF CITATIONS (continued)

TABLE OF CITATIONS (continued)

TABLE OF CITATIONS (continued)

OTHER AUTHORITIES

TABLE OF CITATIONS (continued)

STATEMENT OF THE CASE

The Hillsborough County Grand Jury indicted the appellant, Lawrence Singleton, on March 5, 1997, for the first-degree, premeditated murder of Roxanne Hayes on February 19, 1997. [I R 39-40][1]

Singleton's first trial for the murder of Roxanne Hayes began on December 3, 1997. [IX T 1] That trial ended on December 10, 1997, before the completion of jury selection, when the court granted defense counsel's motion for mistrial. [XVIII T 1383, 1428-33, 1441-42, 1450-54]

Singleton was tried by jury before Judge Bob Anderson Mitchum on February 9-20, 1999. [XIX T 1474; XXXVIII, T 3999] The jury found Singleton guilty of first-degree murder as charged. [VIII R 1170; XXXVII T 4155]

The court conducted the penalty phase trial before the jury on February 23-25, 1998. [XXXVIII T 4190; XLII T 4757] The jury recommended death by a vote of ten to two. [XLII T 4824] Both parties filed sentencing memoranda. [VIII R 1236-76] Defense counsel's sentencing memorandum urged the court to find three statutory and thirty-three nonstatutory mitigating circumstances.

[1] Page references to the record on appeal are designated by a Roman numeral for the volume number, R for the record proper, and T for the transcript.

[VIII R 1255, 1259-66] The court conducted a Spencer hearing on March 30, 1998. [XLII T 4837, 4852-67]

On April 14, 1998, the court sentenced Singleton to death, finding two aggravating circumstances: (1) prior violent felony convictions for rape, kidnapping, mayhem, sodomy, and attempted murder, and (2) heinous, atrocious, or cruel. [VIII R 1287-1289, 1293; XLII T 4872-76, 4882; A 1-3, 7] The court found three statutory mitigating circumstances: (1) extreme mental or emotional disturbance, (2) substantial impairment of the capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law, and (3) Singleton's age of 69. [VIII R 1289-92; XLII T 4876-80; A 3-6] The court found nine nonstatutory mitigating circumstances: (1) the prior violent felonies were committed in 1978 when Singleton was 51 years old, (2) the intent to kill was formed during an argument or disagreement between Singleton and Hayes, (3) since his release on parole in 1987, Singleton had never been accused of or arrested for any offense except petit theft, (4) at the time of the offense Singleton was under the influence of alcohol and other possible medication, (5) Singleton suffered from alcoholism, (6) Singleton suffered from mild dementia, (7) Singleton previously attempted suicide, (8) Singleton served honorably in the armed forces of the United States, and (9) Singleton was a model prisoner while incarcerated in a California prison from 1979 to 1987. The court

did not address the other nonstatutory mitigating circumstances identified by defense counsel. [VIII R 1292-93; XLII T 4880-81; A 6-7]

The court's sentencing order also contained further findings:

> The court further finds that this was an unprovoked, senseless killing of a human being, the mother of two lovely children, without cause, provocation or justification. The fact that the victim was a prostitute in no way diminished her right to life and the pursuit of happiness, or justifies the taking of her life. This killing further exemplifies that we are living in times worse than "Sodom and Gomorrah".

[VIII R 1293; XLII T 4882; A 7]

Defense counsel filed a motion to correct sentencing error, arguing that the court erred by finding facts not in evidence, by considering only nine of thirty-one nonstatutory mitigating circumstances proposed by the defense, by failing to detail the weighing process, and by finding nonstatutory aggravating circumstances. [VIII R 1297-1301] The court heard and denied this motion on April 30, 1998. [XLII T 4885-88]

Defense counsel filed a notice of appeal on May 13, 1998. [VIII R 1302]

STATEMENT OF THE FACTS

Jury Selection

The court ruled that it would excuse prospective jurors if they had knowledge of Singleton's background and conviction in California. [XIX T 1481-82] During individual voir dire on pretrial publicity, the court granted 75 defense cause challenges to prospective jurors who had knowledge of Singleton's prior crime in California. [XX T 1658-63, 1708-17, 1740-56; XXI T 1798-1801, 1822-48, 1866-74; XXII T 1919-28, 1924-28, 1945-62, 1969-86; XXIII T 2008-17, 1030-32, 2064-73, 2099-2123; XXIV T 2131-70, 2182-2212; XXV T 2262-72, 2284-2343, 2352-55, 2374-78; XXVI T 2409-16, 2414-16, 2425-28, 2437-40, 2447-70, 2482-98, 2511-16, 2552-59; XXVII T 2603-05]

The court denied defense counsel's cause challenges to prospective jurors Crumpton, who read a newspaper article about a month before and formed the impression that Singleton killed somebody and chopped off her arms in another case, but said he could put that information aside and render a fair and impartial verdict, [XX T 1729-40; XXVIII T 2904-05] Crawford, who saw a news broadcast that Singleton had a crime in his past, but could not remember whether he was convicted, where it occurred, nor the nature of the crime, and said he could base his decision on the evidence and the law given by the court, [XXV T 2246-61; XXVIII T 2905] and Meyer, who remembered news reports about cutting off the

arms of a girl under 18 but not whether it occurred in this case or a prior case, and said he would base his verdict solely on the evidence he heard in the courtroom. [XXV T 2378-95, 2398-99; XXVIII T 2905-06]

Defense counsel asked the prospective jurors whether they could consider the consumption of alcohol, intoxication as effecting a person's mental state at the time of the offense. [XXVIII T 2767-73] Belcher responded, "I don't feel that alcohol is an excuse in any kind of crime no matter what it is." [XXVIII T 2773] After Dosal said he could not consider whether a person who killed someone was drunk, [XXVIII T 2773] the prosecutor objected that the court should tell the prospective jurors what voluntary intoxication is and ask if they can follow the instruction. The court responded that it would only ask if they can follow the law. [XXVIII T 2774-75] The court asked the prospective jurors to raise their hands if they could not follow the law and the instructions given by the court. None of them raised their hands. [XXVIII T 2812] Belcher told defense counsel that he would be able to take the defendant's mental state into consideration in deciding what punishment to recommend. [XXVIII T 2855]

Defense counsel challenged Belcher for cause because he could not consider intoxication as a defense. [XXVIII T 2903] The prosecutor argued that Belcher was not asked if he was instructed

to consider voluntary intoxication could he consider that and that Belcher unequivocally said he could follow the law. [XXVIII T 2903-04] The court denied the cause challenge. [XXVIII T 2904]

Defense counsel used peremptory challenges to excuse Crumpton, Belcher, Meyer, and Crawford. [XXVIII T 2909-11, 2915-16] Defense counsel exhausted his peremptory challenges. [XXVIII T 2909-16] The court granted both parties an additional strike, and defense counsel used his. [XXVIII, T 2917-18] Defense counsel requested another peremptory to strike juror Noriega, but the court denied the request. [XXVIII T 2921-23] Defense counsel accepted the jury subject to his prior objections. [XXVIII T 2926]

The State's Case

William Baker lived in the same neighborhood as Danny Sales and Lawrence Singleton. Baker went to Sales' house around 3:30 p.m. on February 19, 1997. [XXXIII T 3514-19, 3527] Baker saw Singleton drive up and park his white Dodge van in his driveway. [XXXIII T 3520-21, 3529] Baker did not notice any irregular driving or trouble in parking the van. [XXXIII T 3523] Singleton and a woman exited the van and went into Singleton's house. [XXXIII T 3522-24, 3529] They were not talking or arguing. [XXXIII T 3525, 3529] Baker did not notice anything unusual about Singleton's walking. [XXXIII T 3524]

Paul Hitson and his uncle, Robert Music, had been hired to paint the interior of Singleton's house at 7704 23rd Avenue East in Hillsborough County. Singleton used the nickname Bill. [XXIX T 3075-80] On the afternoon of February 19, 1997, near dusk, Hitson and his uncle went to Singleton's house to do some touch-up work. [XXIX T 3083-84, 3087] Singleton's white Dodge van was parked in the driveway with the back door open. [XXIX, T 3084-86] Hitson heard moaning and thought Singleton was having sex. [XXX T 3151] Hitson knocked on the carport door, said, "hey, Bill," and went inside. He heard two muffled calls for help. [XXIX T 3087-89; XXX T 3176] He went through the foyer and the interior door to the dining room. [XXIX T 3089; XXX T 3173-74]

Hitson saw at least five prescription medicine pill bottles spilled about the kitchen counter. [XXX T 3158, 3177] There was a strong odor of alcohol in the house. [XXX T 3158-59, 3161-62, 3177] Singleton had been drunk every time Hitson went to his house. Singleton drank two gallons of vodka a day. Hitson had found bottles of vodka hidden in Singleton's boots. [XXX T 3159-61]

Hitson went to the doorway to the living room.[2] [XXIX T 3090; XXX T 3173-74] Hitson saw Singleton, naked, bent over between the legs of a woman on the couch. He could see the woman's knee and

[2] The prosecutor referred to this room as both the "living room" and the "family room." [XXIX T 3090-93]

part of her thigh. There was a blotch of blood on her thigh. [XXIX T 3093-95; XXX T 3177] Singleton stood up and looked passed Hitson. [XXIX T 3096; XXX T 3171-72, 3175, 3177] Hitson did not see anything in Singleton's hands. [XXIX T 3096-97] Singleton knelt back down to what he was doing. Hitson ran outside. [XXIX T 3097; XXX T 3177] Hitson estimated that he stood in the doorway less than a minute, but that he was inside the house four to six minutes. [XXIX T 3096; XXX T 3172-78]

Hitson told his uncle what he had seen, grabbed a shovel or a broom, and started to go back inside. His uncle prevented him. They ran to the front of the house. [XXIX T 3099; XXX T 3179] Through the window in the front door, Hitson saw the woman sitting on the right side of the couch. Singleton was standing, leaning towards her with his hand around her neck. [XXIX T 3106-08] Hitson kicked the front door. [XXIX T 3100-02; XXX T 3181] The woman said, "Help," in a muffled voice. [XXIX, T 3108; XXX T 3181] Singleton looked over his shoulder at Hitson and said, "shut up, bitch."[3] [XXIX T 3106, 3109; XXX T 3181-82, 3197] Singleton made three "pounding" motions with his right fist, hitting the woman's head, chest and neck. Hitson heard "bone crushing" sounds each time. He did not see a weapon in Singleton's hand. [XXIX T 3110-12; XXX T 3181-82, 3194-97] Hitson estimated that he stood at the

[3] In a deposition and before the grand jury, Hitson testified that Singleton said only, "shut up." [XXX T 3182-83, 3194; XXXIV 3695-98]

front door for about four to six minutes. [XXIX T 3113; XXX T 3179]

Hitson and his uncle drove to a gas station. His uncle called 911. [XXIX T 3114-15] They drove by Singleton's house twice, but the police had not arrived. They went to Hitson's house. [XIX T 3115-17] His uncle called Diane Singleton and told her what happened. [XXIX T 3117-19] Hitson returned to Singleton's house and found that the police had arrived. [XXIX T 3119] The back doors to Singleton's van were closed, the side doors were open, and the van was farther back from the carport, closer to the door. [XXIX T 3120-21]

On the afternoon of February 19, 1997, Deputy Morffi was handling a call when he heard the dispatcher request available units to respond to a domestic trouble call at 7704 23rd Avenue East. It took him five to eight minutes to finish the call he was on, then another twenty minutes to get to Singleton's house. [XXIX T 3034-36, 3069-70] The initial dispatch call was made at 5:51 p.m. [XXIX T 3058] Morffi arrived at 6:23 p.m. [XXIX T 3039, 3058] He saw that the front door and gate were closed. There was no activity. At the side of the house, which was on a corner lot, the gates were open and there was a van in the driveway with the side doors open. He parked behind the van. [XXIX T 3036, 3039-41] There was a dog in the yard. A neighbor, Sales, secured the dog. [XXIX T 3041-42]

Deputy Morffi knocked on the carport door. [XXIX T 3042] Singleton opened the door and stepped outside. [XXIX T 3043] Singleton was wearing an unbuttoned shirt and a pair of shorts with the fly open. There was a blood stain and cut on his chest. [XXIX T 3044, 3059-62] Morffi smelled alcohol on Singleton's breath. [XXIX T 3062] Morffi explained that he was dispatched because of domestic trouble between a man and a woman and asked what happened. Singleton said he had a spat with his girlfriend, she was inside, everything was okay, and Morffi could leave. Singleton appeared to be nervous. He was jittery, bouncing around, moving from side to side, and jabbering. [XXIX T 3045-46, 3063] Morffi asked how he got cut. Singleton said he cut his chest while he was chopping turnips -- some turnips got on his chest, and he scraped them off with the knife. [XXIX T 3047, 3063]

The telephone rang. Singleton went inside the house and Morffi followed. [XXIX T 3047] Morffi went through the foyer to an interior door. [XXIX T 3048-50] Singleton tried to close the interior door behind him, but it remained open about five to eight inches. Morffi looked through the opening and saw a woman's foot on the floor. Morffi opened the door wider and saw a naked woman lying face down on the floor. There were cuts on her side. [XXIX T 3050-51, 3064-66] There was a blood clot in her nose. Her eyes were closed. She was not breathing or moving. Morffi thought she was dead or dying. [XXIX T 3052, 3066]

Morffi went to his patrol car and called for help and EMS. Singleton came out of the house and walked towards the patrol car. Morffi told Singleton he had seen the woman. He handcuffed Singleton and frisked him. Morffi removed Singleton's wallet from his pocket and put it on the ground. He put Singleton in the back of the patrol car. [XXIX T 3052-53, 3066-67, 3071-72]

Morffi returned to the woman and shook her to see if she would respond. She appeared to be dead. [XXIX T 3055-56] When Deputy Brown and EMS arrived, they entered the house. Morffi and Brown determined that the woman had no pulse. They searched for any other suspects or victims. [XXIX T 3054-55; XXXI T 3244-47] It appeared that there had been a struggle in the living room. [XXIX T 3063; XXXI T 3251] A lamp and dishes were knocked over. Brown saw alcohol containers. [XXXI T 3252] There were blood stains on the floor. [XXXI T 3255] Morffi and Brown went outside. Additional police units arrived. EMS declared the woman dead and left the scene. A deputy was posted at the door to secure the scene. [XXIX T 3056-57; XXXI T 3248]

The parties stipulated that Roxanne Hayes died on February 19, 1997, at 7704 23rd Avenue East in Tampa, Florida. [XXIX T 3074]

Detective Young arrived at Singleton's house at 7:08 p.m. on February 19, 1997. [XXXII T 3391, 3399, 3424] Singleton was sitting in a patrol car looking disheveled. When he was moved to another patrol car, he had trouble getting in and out of the cars.

He stumbled once. His speech was slurred. He appeared to be intoxicated. [XXXII T 3424]

Paramedic Christine Wiley arrived at Singleton's house around 8:00 p.m. Singleton was handcuffed in the back seat of a patrol car. [XXXI T 3232-334] He had a red abrasion on his left upper chest. [XXXI T 3235-37] Singleton told her he was assaulted with a knife. [XXXI T 3241] He said he was taking Paxil, Demerol, and Vistaril. [XXXI T 3242] The abrasion was not bleeding, and Wiley did not treat it. There were no other open cuts or wounds. [XXXI T 3237-38] Singleton complained of chest pain, but his vital signs were normal and his lungs were clear. [XXXI T 3238] She offered to take Singleton to the hospital, but he declined. [XXXI T 3239] She did not notice any sign of intoxication or impairment due to drugs or alcohol. Singleton appeared to be lucid and coherent. [XXXI T 3240]

Deputy Brown was present while Singleton was being checked by EMS. [XXXI T 3248-49] Singleton said, "We had an argument and she threw something at me so I killed her. And I guess that makes me a murderer so you've got me now." [XXXI T 3250] There was an odor of alcohol on Singleton's breath. His cheeks were flushed and red. [XXXI T 3251]

Detectives Lingo and Young saw Singleton at the homicide office between 8:30 and 9:00 p.m. [XXXIII, T 3479-80] He was a bit more sober then. Young asked him to remove his clothing -- a

shirt, shorts, socks, and shoes, but no underwear. Singleton was cooperative. [XXXII T 3393-96, 3425] Singleton was wearing a condom which appeared to be wet. Young asked him to remove it, and Singleton seemed surprised that he had it on. [XXXII T 3426; XXXIII T 3507-08]

Detective Lingo testified that State Attorney Harry Coe walked by while they were at the homicide office. [XXXIII T 3479-80] Singleton said, "Judge Coe, you know, what the hell are you doing here. I didn't vote for you. I voted for Bill James." Singleton was laughing. [XXXIII T 3480] Lingo noticed an odor of alcohol on Singleton's breath, his speech was muffled (which Lingo attributed to Singleton not having his teeth in), and his eyes were bloodshot. It appeared that he had been consuming alcohol, but he did not appear to be intoxicated. [XXXIII T 3482-84, 3506-07]

The state proffered a video, state exhibit 41, which showed Singleton answering reporters' questions as Deputy Morffi escorted him from the homicide office to a patrol car. The video had been edited to delete one of Singleton's remarks, "I was framed before," from the audio track of the tape. It included his admission, "This time I did it." [XXXIV T 3623-30; LIII R 1050-51] Defense counsel argued that the video should not be admitted because it violated Singleton's previously invoked right to remain silent when he replied "no comment" to the reporters' initial questions, it showed Singleton dressed in a blue jail uniform and handcuffs in the

custody of the police, the editing excluded only the audio and not the video of Singleton saying he was framed before, and the prejudicial effects of the video outweighed its probative value. [XXIV T 3626-27, 3630-36, 3641, 3643] The court overruled the defense objections, finding,

> But I do feel that to deny the state the right to present something which would show this defendant in the light in which he was seen that night would be prejudicial to them. And I think the prejudice to the state is far outweighed by the prejudice to the defendant. So I will allow you to admit it.

[XXXIV T 3644-45]

Deputy Morffi testified that around 9:30 p.m. on February 19 he escorted Singleton out of the homicide office and placed him in a patrol car. [XXXIV T 3651] Morffi was holding him by his right arm. [XXXIV T 3652] The court overruled defense counsel's renewed motions and objections and admitted the video, state exhibit 41, which was played for the jury. [XXXIV T 3652-54; LIII R 1050-51] The video contained the following dialogue:

> REPORTER: Who is she? Why did you kill her?
> THE DEFENDANT: I have no comment.
> REPORTER: How did you kill her?
> THE DEFENDANT: I have no comment.
> REPORTER: How did all this start?
> THE DEFENDANT: I have no comment.
> (Pause)
> THE DEFENDANT: This time I did it.
> REPORTER: You say you did do it, sir?
> THE DEFENDANT: Yeah, I done it.
> (Pause)
> REPORTER: Who is she?
> THE DEFENDANT: What? Never mind.
> REPORTER: Is she your girlfriend or --

> THE DEFENDANT: Yeah, a girlfriend.
> REPORTER: Why did you do it, sir? Did she upset you?
> THE DEFENDANT: (Unintelligible) You got that much.

[XXXIV T 3653-54]

Detective Lingo obtained a search warrant for Singleton's house which was executed around 11:30 p.m. [XXXIII T 3477-78] A video recording of the scene showed the reading of the warrant, the open side doors on the van, Singleton's wallet, $27 removed from the wallet, entry through the carport door, the foyer, the dining room, a blanket or sheet over the body, the living room, the kitchen, a couch, the front door, another couch with a blood stain, a fake fingernail on the couch, a butcher knife in front of the couch, a rope, a coffee table with items which appeared to be from a woman's purse, a dish with beans and rice, a $20 bill, beads, a small tree branch, the bedroom, the bathroom, another bedroom, the uncovered body, and a close-up of the right hand with fake fingernails. [XXXIII T 3490-99]

Lingo found a rope in the workshop area of the carport similar to the rope found on the floor. [XXXIII T 3499-3500] The van was impounded. [XXXIII T 3500] There were open prescription medicine bottles on the kitchen counter, and some were spilled. There were no turnips in the kitchen. [XXXIII T 3500-01, 3505] There was an empty wine bottle in the garbage can in the kitchen. [XXXIII T 3505] Lingo found a woman's purse which was empty except for three

condom wrappers. He found some items like a hairbrush which could have come from the purse, but no wallet, identification, or checkbook were found. [XXXIII 3503-04] Two knives were found in the living room -- a large one with no visible blood on it in front of the couch and a smaller one covered with blood behind the couch. [XXXIII, T 3404-05] Lingo did not see any drug paraphernalia in the house. [XXXIII T 3510]

Detective Young identified several state exhibits, including: 16, the knife found in front of the couch [XXXII T 3404-05]; 20 and 21, swabbings of the blood stain on the carpet near the couch [XXXII T 3407-11]; 23, a swabbing of the blood stain on the couch [XXXII T 3412-13]; 25, a fake fingernail found on a couch cushion [XXXII T 3414-15]; 28, the knife found behind the couch [XXXII T 3416-18]; and 30, a swabbing of the blood stain on the dining room floor. [XXXII T 3419-20] The court also admitted defense exhibits: 2, a photo of medicine bottles on the living room floor by the couch; 3, a photo of the medicine bottles in the kitchen; and 4 and 5, photos of a blood smear on the wall behind the couch. [XXXII T 3427-32]

Dr. Lee Miller, an associate medical examiner, observed the body of Roxanne Hayes at the scene and performed the autopsy. [XXXI T 3270-73] Dr. Miller concluded that the body had been moved before he observed it because there was a large pool of blood on the couch, marks on the carpet between the couch and the body, and

a smaller amount of blood where the body was found. [XXXI T 3306-07] He determined that the cause of death was multiple stab wounds of the trunk penetrating the heart and liver. [XXXI T 3273] There were six stab wounds to the trunk and one to the face. [XXXI T 3277] Dr. Miller could not determine the order in which they were inflicted. [XXXI T 3278; XXXII T 3344]

The stab wound to the face was about two inches deep and was not fatal. [XXXI T 3278-79] A wound to the left breast was four inches deep and was not fatal. [XXXI T 3279-80] A wound close to the left breast, towards the center of the chest, was two inches deep and did not penetrate any major blood vessel or structure. [XXXI T 3280] A wound at the junction of the chest and abdomen was two inches deep, went through the lowest part of the breast bone, penetrated the right ventricle of the heart, and caused Hayes to rapidly bleed to death. [XXXI T 3282, 3285; XXXII T 3345, 3372-73] This wound would have caused loss of consciousness in four to twenty minutes, with death following a minute or two afterwards. [XXXI T 3286] A wound to the abdomen was six or seven inches deep, penetrated the liver, scratched the spinal column, and would have been fatal without medical attention. [XXXI T 3282-83, 3285; XXXII T 3345-46] Another wound to the abdomen was four inches deep, penetrated the liver, and would have been fatal without medical attention. [XXXI T 3283-85; XXXII T 3346] A wound to the lower abdomen was one inch deep and did not penetrate any major blood

vessel or vital organ. [XXXI T 3284] A knife with a four inch blade can cause a seven inch deep wound. State exhibits 16 and 28 could have caused the wounds. [XXXI T 3300-02; XXXII T 3351]

There were deep cuts to three fingers of each of her hands. These were defensive wounds caused by holding the blade of the knife and having it yanked out of her hand. [XXXI T 3295-98; XXXII T 3370] Dr. Miller also found a small scratch on the right nostril, a small scrape on the right lower limb, a small scrape on the neck, and a small scratch on the left forearm. [XXXI T 3299] Dr. Miller did not find any bruising or other injuries to the neck, nor any injury indicating that she had been punched or hit. No bones were broken by blunt trauma. [XXXII T 3354, 3372]

Dr. Miller took blood samples from Hayes. State exhibit 38 consisted of two tubes of blood labeled with Hayes' name and the case number, but Dr. Miller was not sure they were the samples he had taken. The court admitted exhibit 38 over defense counsel's improper foundation objection. [XXXI T 3302-04]

Toxicology tests on Hayes' blood showed the presence of cocaine metabolite. Cocaine makes some people excitable and combative. [XXXII T 3358] Dr. Miller testified that he did not know whether cocaine could accelerate the onset of unconsciousness, it may be possible.[4] [XXXII T 3361] He did not think the cocaine

[4] Dr. Miller said it is possible in his deposition. [XXXII T 3366-67]

played a significant part in the timing of the loss of consciousness. [XXXII T 3369] The cocaine was probably ingested within an hour before Hayes died, but it could have been as long as two days before her death. [XXXII T 3367-68] Dr. Miller also found undigested beans, rice, and chicken in Hayes' stomach, indicating she had eaten within about 30 to 60 minutes prior to her death. [XXXII T 3357]

On February 20, 1997, Deputy Pickard went to Singleton's house and prepared a crime scene diagram of the living room. [XXXII T 3376-78] There was a rope near the couch. [XXXII T 3378] Pickard seized Singleton's prescription medications, including Trazodone, Temazepam, and Paxil. [XXXII T 3382-83] He saw a $20 bill and some condom wrappers on the living room floor. [XXXII T 3383] On April 1, 1997, Pickard and Detective Lingo were present when a nurse took blood samples from Singleton, state exhibit 39. Pickard also took hair samples. [XXXII T 3379-82] Singleton was cooperative. [XXXII T 3382]

Edward Gunther, an FDLE fingerprint examiner, examined both knives found at the scene but found no latent prints of comparison value. [XXXII T 3434-36, 3439-40]

Darren Esposito, an FDLE serology and DNA analyst, [XXXIII T 3540-45] used the PCR process to conduct a DNA analysis on items submitted in connection with the homicide investigation in this case. [XXXIII T 3549-59] Esposito explained the genetic

differences between Hayes' blood and Singleton's blood as determined by his analysis. [XXXIII T 3566-67] Blood stains found on Singleton's shirt (state exhibit 8), Singleton's socks (state exhibit 9), the living room floor (state exhibit 21), the dining room floor (state exhibit 30), the couch (state exhibit 23), the floor in front of the couch (state exhibit 20), the knife found behind the couch (state exhibit 28), and the butcher knife found in front of the couch (state exhibit 16) could have come from Hayes, but not from Singleton. [XXXIII T 3568-80] Blood stains on the fingernail found on the couch could have come from Singleton, but not from Hayes. [XXXIII T 3580-82, 3614] Saliva found on the condom recovered from Singleton could have come from Hayes. [XXXIII T 3605-10]

Esposito explained,

> No type of D.N.A. testing as it's done now can say to the exclusion of all individuals that a D.N.A. is from one individual alone. It can only say that if all six types, for example, in the type of testing I've done here are the same, then that individual could be the source of that D.N.A.

[XXXIII T 3589]

The Defense Case

Danny Sales was Singleton's former neighbor. Occasionally, he had seen Singleton drinking beer with his brother. [XXXIV T 3669-71] He had never seen Singleton when he was drunk. [XXXIV T 3679]

On February 1, 1997, Singleton ran a hose from the exhaust into the back door of his van. Sales found Singleton unconscious and foaming at the mouth. He pulled Singleton out of the van and made sure fire rescue was called. They treated Singleton and took him away. [XXXIV T 3671-72]

On February 19, 1997, Sales saw a police officer arrive at Singleton's house. [XXXIV T 3673] Singleton's dog was in the front yard. Sales walked the deputy to the carport door and put the dog in the shed. [XXXVI T 3674, 3680] Sales called Singleton to the door, telling him the police wanted to talk to him. [XXXIV T 3680-81] Singleton came out to the doorstep wearing an unbuttoned shirt and shorts. [XXXIV T 3681] Sales saw blood on Singleton's chest. [XXXIV T 3682] Singleton spoke to the deputy. [XXXIV T 3675] The phone rang. Singleton walked into the house, and the deputy followed him. The deputy came back out looking startled and went to his patrol car. [XXXIV T 3683-84] Singleton came out of the house and went to the back of his van. The van's rear doors and passenger side doors were open. Singleton tried to close the rear doors and closed the wrong one first, like he was too drunk to figure it out. [XXXIV T 3685-88] The deputy handcuffed Singleton and put him in the patrol car. [XXXIV T 3675, 3678] Singleton sounded like he had been drinking. His speech was slurred. He was not steady on his feet. He walked like he had

been drinking. [XXXIV T 3676, 3682] Singleton acted like he had quite a bit to drink. [XXXIV T 3677]

On the morning of February 19, 1998, defense counsel informed the court that some jurors were being taken to an ATM machine in the courthouse the evening before when they observed Singleton being transported in his jail clothes, handcuffs, and leg shackles. [XXXV T 3731-32] A bailiff confirmed that he had been told three jurors saw Singleton. [XXXV T 3733-34] The court individually inquired of the three jurors, Power, Roark, and Broadus. All three saw Singleton, but each said that it would not affect his or her ability to be fair and impartial. None had told the other jurors what they saw, and the court instructed them not to do so. [XXXV T 3736-41] Defense counsel moved for a mistrial. The court denied the motion. [XXXV T 3741]

Detective Burton went to Singleton's house on February 19, 1997. [XXXV T 3745-47] Around 9:45 p.m. she interviewed Paul Hitson. Hitson said he knocked on the door two times and heard a man yell. Hitson said he opened the door and yelled for Bill, then he heard a woman yell for help. [XXXV T 3747, 3755-58] Burton was present when Singleton was treated by paramedic Wiley. Burton could smell alcohol on his breath. [XXXV T 3747-48] Singleton said that "she would have got me." "She hit me with a knife." He said that he hit her with a knife and, "just let me die." He said,

"I'm a murderer now," and that he deserved the gas chamber. [XXXV T 3754-55]

The parties stipulated that at the time of her death Roxanne Hayes was six feet tall and weighed 171 pounds. [XXXV T 3759-60]

Corporal Bowling went to Singleton's house on February 19, 1997, and observed Singleton in Morffi's patrol car. [XXXV T 3760-62] Bowling noticed an odor of alcohol coming from Singleton. When Singleton was moved to another patrol car he required assistance. Bowling suspected that Singleton might have been intoxicated. [XXXV T 3763-64] Bowling heard Singleton mutter, "I'm dead." [XXXV T 3789] As a vice detective, Bowling knew Roxanne Hayes as a prostitute who frequented the area of 50th Street and Hillsborough Avenue. [XXXV T 3764-66] He did not think Hayes was an habitual user of cocaine because she was healthy and not emaciated. Bowling never found her in possession of cocaine or cocaine paraphernalia. [XXXV T 3766-68] Over defense counsel's objections, the court allowed the state to cross-examine Bowling about his knowledge of Hayes being a mother and non-violent. [XXXV T 3768-87] Hayes had three children, two girls and a boy. Bowling had never known Hayes to be violent to her customers or detectives. [XXXV T 3786-87]

Deputy Kelley went to Singleton's house on February 19, 1997. He observed that Singleton's speech was slurred, he mumbled quite a bit, and he kept making a grunting sound. [XXXV T 3796-97, 3800]

Singleton's eyes were bloodshot. He did not appear to be stable on his feet, but he had people holding each arm when he was moved, so it was hard to tell. [XXXV T 3798-99] Singleton was constantly moving around and nervous in the patrol car. [XXXV T 3800]

Singleton is Diane Singleton's brother-in-law. [XXXV T 3790] After the police finished searching Singleton's house, two days after his arrest, Diane went in to clean the house. She found two wine bottles in the refrigerator with three inches or less of wine left in each one. [XXXV T 3791-92] She knew the wine bottles were not there two days before the arrest. [XXXV T 3793] Diane had known Singleton for 50 years. It was not unusual for him to have alcohol in his house. She disagreed with the prosecutor's suggestion that Singleton can handle his liquor quite well. [XXXV T 3794]

Lawrence Singleton testified that he was born in Tampa on July 28, 1927. He was 70 years old at the time of trial. He had been convicted of seven felonies from one incident and three crimes involving dishonesty. [XXXV T 3806-07] He was 5 feet 11 inches tall and weighed 195 pounds. [XXXVI T 3856] Singleton grew up in Tampa. He dropped out of school at age 16 to go to work on the railroad for a few weeks, then at a shipyard for a year. He went to maritime school in St. Petersburg, then joined the Merchant Marine and went to sea in 1945 at age 17. [XXXV T 3807-09] He was drafted in 1950 and served in the Army in combat in Korea. He was

honorably discharged in 1952. [XXXV T 3009-10] He returned to the Merchant Marine and attended officers training school. He obtained his masters license and became a captain. [XXXV T 3810-3811] He married Shirley Ann Powels in 1958 and remained married for 14 years. [XXXV T 3812] They had a daughter, Debra Ann, in 1963. Shirley died in 1977. Debra became a psychiatric nurse in the county jail in Seattle, Washington. [XXXV T 3813]

Singleton returned to Tampa in 1988. [XXXV T 3813] He met Roxanne Hayes in December, 1996, at a KFC restaurant on Hillsborough Avenue. She agreed to have oral sex with him for $20. He took her to his house to have sex and prepared a steak dinner for her. She asked for his phone number. He gave it to her and drove her back to Hillsborough Avenue. [XXXV T 3814-16; XXXVI T 3864-67] Three weeks later, Hayes called Singleton. He picked her up and returned to his house to have oral sex and a meal. He paid her $20. He had four or five drinks, so he gave her $10 for cab fare. [XXXV T 3816-17; XXXVI T 3867-70] Singleton considered himself to be an alcoholic. He began drinking when he was in Korea. He drank heavily and regularly. [XXXV T 3817-18]

On February 1, 1997, Singleton tried to commit suicide. [XXXV T 3819] He was admitted to the psychiatric unit at St. Joseph's Hospital. He was discharged on February 10 or 11. The doctor prescribed Paxil to be taken twice a day in 40 mg doses. [XXXV T 3820-21]

On February 19, 1997, Singleton woke up before dawn feeling depressed. He took 40 mg of Paxil around 6:00 a.m. Between 9:00 and 10:00 he took two more 20 mg Paxils. At 10:00 he began drinking wine with 21% alcohol. [XXXV T 3821-22; XXXVI T 3857-58] He drank 3/4 of one bottle, then opened another bottle and began drinking it. [XXXV T 3824; XXXVI T 3859-60] He also took two antihistamines and one or two prescription sleeping pills, Vistaril. [XXXV T 3824-25; XXXVI T 3861-62] He was both drunk and drugged. [XXXVI T 3936] He picked up Hayes on Hillsborough Avenue. [XXXV T 3818; XXXVI T 3872] He brought her to his house for oral sex and companionship. He paid her $20 before they entered the house. [XXXV T 3825-26; XXXVI T 3875, 3882] They got undressed. Hayes put a condom on Singleton and performed oral sex, but he did not have an orgasm. [XXXVI T 3878-82] She ate some red beans and rice he had prepared. [XXXV T 3825; XXXVI T 3878; 3883-84] Hayes was a lovely person, nice, honest, and straight forward. Singleton liked her. [XXXV T 3826; XXXVI T 3882] That day she was more belligerent and not herself. She said the price of cocaine had gone up, and the cocaine was not as good as usual. Singleton assumed she was drugged on cocaine. [XXXV T 3826] He did not see her using cocaine. [XXXVI T 3878]

Singleton was drinking heavily, so he was going to give Hayes $10 for transportation. They sat nude on the couch while he fumbled in his wallet. Hayes jerked the wallet from his hand,

stood up, and started taking money from it. Singleton became angry. He asked her to return his wallet, but she did not comply. He grabbed her hand, twisted her arm, and took the wallet. He thought she put some money in her mouth. [XXXV T 3827-28; XXXVI T 3884-87]

Singleton kept two kitchen knives in an ashtray on the table in the living room so he could cut vegetables while he watched television. Hayes picked up the smaller knife, swore at him, and threatened to take his head off. Hayes swung the knife at his face. [XXXV T 3829-30; XXXVI T 3887-92] Singleton was afraid for his life. [XXXVI T 3891-92] He ducked and grabbed her right wrist with his left hand to take the knife away. The knife went over his head and probably struck her face. They struggled over the knife for about 30 seconds. She was still holding the knife in her right hand, but he held his hand over hers. She was cut during the struggle. Hayes switched the knife to her left hand, he grabbed her hand, and she kneed him in the groin. He fell down on her on the couch, and the knife went into her again. [XXXV T 3831-33; XXXVI T 3893-3909, 3932-33] During the struggle, Hayes grabbed the blade of the knife a couple of times. [XXXV T 3836; XXXVI T 3900-02] All of Hayes' injuries occurred during the struggle over the knife. [XXXV T 3835-36; XXXVI T 3903, 3905-06] Hayes scraped Singleton's chest with the knife during the struggle. [XXXV T 3837; XXXVI T 3904] Singleton took the knife away and dropped it

behind the couch. [XXXV T 3834-35; XXXVI T 3909-10] The larger knife was not used during the struggle, but the ashtray it was in was knocked off the table. [XXXV T 3836-37; XXXVI T 3910-11]

Singleton tried to open Hayes' mouth. She bit the middle finger on his left hand. [XXXV T 3834-35; XXXVI T 3912] Defense exhibit 6 was a photo showing the injury to his hand. [XXXVI T 3937-38] Hayes put her arms around him and asked him to hold her. Singleton saw the blood and panicked. [XXXV T 3838; XXXVI T 3911, 3914] He tried to call 911, but he picked up the TV remote instead of the phone. He told Hayes they had to get her to the hospital. She put her arm on his shoulder. He helped her get up and try to walk, but they fell on the floor in the dining room. Singleton sat on the floor and cried for about ten minutes while rubbing her face and trying to talk to her, but Hayes was dead. [XXXV T 3839-40; XXXVI T 3915-19] Singleton did not intend to kill or harm Hayes. [XXXV T 3838]

Singleton heard someone knocking on the door and calling his name. He got up, saw the police lights through the kitchen window, and put on a shirt and shorts. He walked out and met Deputy Morffi. [XXXV T 3840-41; XXXVI T 3920-21] Singleton was frightened and did not want to explain having a dead woman on his floor, so he told Morffi everything was okay. [XXXV T 3841; XXXVI T 3921-22] He did not recall telling Morffi about cutting turnips, the phone ringing, nor going back into the house and answering the

phone. [XXXVI T 3922-25] He could only vaguely remember being handcuffed. [XXXVI T 3927] He did not remember being treated by EMS. [XXXVI T 3935] He did not recall whether he had gone outside to open the van doors after the fight with Hayes. He did not recall seeing Hitson in his house during the struggle. He never hit Hayes as described by Hitson. [XXXV T 3843-44]

Penalty Phase

Defense counsel filed a motion in limine to prohibit any evidence of nonstatutory aggravating circumstances, including lack of remorse. [VI R 812-15] The court heard and granted the motion. [VII R 984, 987; XLIV T 5141-42]

Defense counsel filed a motion in limine to exclude evidence of the nature of Singleton's prior violent felonies on the ground that the prejudicial effects of the evidence outweighed its probative value. Defense counsel offered to stipulate to the fact of Singleton's prior violent felony convictions. [V R 681-89] The court heard and denied the motion. [VII R 984, 989; XLIV 5105-12] Defense counsel filed a motion in limine to exclude testimony by Mary Vincent concerning Singleton's prior violent felony convictions because the prejudicial effects of the testimony would outweigh its probative value. [VI R 872-75] The court heard and denied the motion. [XLV T 5358-69; XLVI T 5373-76] Defense

counsel renewed these motions in the penalty phase of trial, and the court again denied them. [XXXVIII T 4272-73; XXXIX T 4314-15]

The court admitted state penalty phase exhibit 1, a judgment showing that Singleton was convicted and sentenced in California on April 20, 1979, for the offenses of forcible rape, two counts of oral copulation by force, kidnapping, forcible sodomy, mayhem, and attempted murder. [XXXIX T 4318; LIV R 1052-54]

Defense counsel moved in limine to have the jury removed while Vincent took the witness stand so the jury was not unnecessarily exposed to her prosthetic limbs. The court denied the motion. [XXXIX T 4319-20] Defense counsel moved to have the court direct Vincent to keep her prosthetic limbs below the level of the witness stand so the jury would not look at them during her testimony. The court denied the motion. [XXXIX T 4320]

Mary Vincent testified[5] that she was 34 years old at the time of trial. On September 30, 1978, she was 15. [XXXIX T 4326] She was hitchhiking in Northern California when she accepted a ride from Singleton. Singleton raped her, used a hatchet to cut off her hands, and left her to die along side a drainage ditch in a road. [XXXIX T 4327-28] When Singleton picked up Vincent, he first took her to his house where he filled two gallon jugs with vodka or gin. [XXXIX T 4328-29] Singleton took the jugs with him when they left

[5] A videotaped recording of Vincent's testimony is included in the record as defense exhibit 1 at the March 30, 1998, hearing on Singleton's motion for new trial. [LXI R 2265-66]

the house. He was drinking heavily. He forced her to drink some of the alcohol when he attacked her. [XXXIX T 4329]

The prosecutor asked the court if Vincent was sworn before she testified. The court said she was not. The court directed Vincent to stand, raise her right hand, and be sworn. [XXXIX T 4330] Defense counsel objected and moved for a mistrial because her prostheses were unnecessarily exposed to the jury when the court directed her to stand to be sworn. Until that point, she did not unnecessarily expose them during her testimony. The court denied the motion. [XXXIX T 4330-31] The court asked Vincent to reaffirm her testimony under oath. [XXXIX T 4332] Over defense counsel's objection, the court asked Vincent to point out and identify Singleton. [XXXIX T 4332-33]

Douglas Filangeri, a deputy commissioner with the California Board of Prison Terms, testified for the defense that he was one of the parole officers assigned to Singleton's case when he was released on parole in April, 1987. [XXXIX T 4334-37] While incarcerated, Singleton obtained his GED and worked as a teacher's assistant in English classes while he took college classes. [XXXIX T 4340] There were three reports of minor misbehavior for mislabeling a piece of mail confidential, hiding contraband food in some tobacco, and pinching a female correctional officer. [XXXIX T 4340-41] Singleton's case required special consideration in developing assistance for him in the community because of his

notoriety and community outrage over his release. [XXXIX T 4338, 4342] Singleton was moved from jurisdiction to jurisdiction, then placed in an apartment in the town of Rodale, resulting in a demonstration by an unruly crowd and the need to use sheriff's deputies to remove him safely. [XXXIX T 4342-46] Singleton then served his parole in a travel trailer on the grounds of San Quinton State Prison. [XXXIX T 4346-47]

Filangeri noticed that while Singleton had a high average IQ of 107, he had a rambling communication style, was easily distracted, and it was difficult to keep him focused. [XXXIX T 4348-49, 4371, 4379] Singleton's records indicated that he had been an alcoholic since his mid-twenties. [XXXIX T 4370-71] Filangeri was concerned that Singleton's communication style was the result of alcoholism and wrote a letter to the social security administrator explaining the problem, defense exhibit 11. [XXXIX T 4371-74; LIV R 1055-56] Singleton was required to take antabuse as a condition of his parole. [XXXIX T 4377] It was critical that Singleton not consume any alcohol. [XXXIX T 4381] Defense counsel asked if Singleton was a disciplinary problem. Filangeri answered that he had to ask Singleton to refrain from certain areas of conversation where Filangeri was uncomfortable, but there was no reason for generating a violation report. [XXXIX T 4374] Singleton complied with all terms of his parole. [XXXIX T 4375]

When the prosecutor asked about Singleton's insistence on discussing matters with which Filangeri was uncomfortable, defense counsel objected to him asking about Singleton's assertions that he was not guilty in the Mary Vincent case on the grounds that it was outside the scope of direct and concerned a nonstatutory aggravating circumstance. The court overruled the objection. [XXXIX T 4385-86] When the prosecutor asked about Singleton's insistence that Mary Vincent offered him sex for money, defense counsel objected and moved for a mistrial on the same grounds. The court denied the motion and overruled the objection. [XXXIX T 4387-89]

Filangeri testified that Singleton claimed Vincent offered him sex for money, and he was improperly convicted. [XXXIX T 4389]

Deputy Skolnick arrived at Singleton's house at 4:45 p.m. on February 1, 1997. [XXXIX T 4422-23] The fire department arrived at about the same time. The paramedics arrived after him. Singleton was on the ground outside a white van. Danny Sales was there. [XXXIX T 4423] Skolnick found a suicide note, defense exhibit 10A, on the dining room table. [XXXIX T 4425-28; LIV R 1057-58]

Paramedic Cynthia Jones was sent to Singleton's house at 4:37 p.m. on February 1, 1997. [XXXIX T 4394-97] His car had been set up for carbon monoxide poisoning. Someone had removed Singleton from his vehicle. He was on the ground and very groggy. He could

answer some questions appropriately, but not others. The fire department was giving him oxygen. [XXXIX T 4397-98] The paramedics continued to give Singleton oxygen and took him to St. Joseph's Hospital. [XXXIX T 4398-400]

Dr. Anthony Pidala Jr., an emergency room physician at St. Joseph's Hospital, treated Singleton on February 1, 1997, for self-inflicted carbon monoxide poisoning. Singleton had a history of emphysema and depression. He had been drinking that day. He was admitted for evaluation and treatment by a psychiatrist. [XXXIX T 4405-13] His blood alcohol level was .224. [XXXIX T 4412, 4418]

Deputies Richards, Garren, and Bullard testified that Singleton had no disciplinary problems while he was incarcerated in the county jail for this offense. [XXXIX T 4431-36, 4442-43; XL T 4465-70] Garren said Singleton had no disciplinary problems while incarcerated for misdemeanors six years before. [XXXIX T 4436-41] Bullard had no disciplinary problems with Singleton during another prior incarceration. [XL T 4469]

Thomas Bennett, Singleton's next door neighbor, testified that Singleton moved into the neighborhood in July or August, 1996. Singleton was a model neighbor, always helpful and polite. [XL T 4471-75] Singleton was always working on his house or in the yard. [XL T 4477, 4487] He appeared to be self-sufficient and did not have any problems taking care of himself. [XL T 4487] He was generous and loaned an expensive jack to a friend of Bennett's. He

gave another neighbor an expensive water valve. He installed a drainage system to solve a water problem on Bennett's property. [XL T 4477-78] One day Singleton came over and cooked steaks and shrimp for Bennett and his friends. He came over for Thanksgiving and Christmas. [XL T 4479, 4487] Singleton was very smart. He talked about being a Merchant Marine and football. [XL T 4480, 4487] He appeared to have a good memory. [XL T 4486-88] Although Bennett knew about Singleton's record in California, he was not concerned about Singleton associating with his wife and daughter. [XL T 4476, 4480-81] Bennett played guitar at a lounge. Singleton came to listen to the music and dance with the ladies. He did not drink or cause any problems. [XL T 4481-82, 4488] Bennett never saw Singleton drinking, but he did see him when he was drunk two or three times. [XL T 4488-89] After Singleton got out of the hospital, he was distant, depressed, and less active. On the morning of February 19, Singleton was outside working, but his energy level was down. [XL T 4482-84] Bennett saw Singleton's arrest. Singleton acted intoxicated. He was wobbling all over the place. [XL T 4484] The murder was completely out of character for Singleton. [XL T 4485-86]

Bennett's wife, Koreen, testified that Singleton was very nice and polite. He worked in his yard and repaired his house. Although she had heard of his past record in California, she felt he was not the same man. Neither she nor her daughter were afraid

of him. He was very respectable. [XL T 4490-96] She described his intelligence and sense of humor as being very good. [XL T 4496] He was clear thinking. He never talked to her about his past. [XL T 4500] He appeared to be self-sufficient. She never saw him drinking or under the influence. [XL T 4501] She invited him over for Christmas dinner. [XL T 4496-97] When Singleton got out of the hospital after his suicide attempt he was heavily medicated. His eyes were glassy, and he was short of breath. [XL T 4497-98] Mrs. Bennett's son sold a Rotwieller to Singleton, who was very good to the dog. [XL T 4498] The murder was out of character for Singleton. She would be fearful of him if he were released. [XL T 4499]

Dr. Elizabeth McMahon, a clinical psychologist, examined Singleton. [XL T 4503-10] She was unable to determine whether he was too intoxicated to form a specific intent to kill at the time of the offense. [XL T 4511] She reviewed extensive records of the offense, medical records, Coast Guard records, and records of his incarceration in California. [XL T 4512-13] She interviewed Singleton's brothers, sister, daughter, and second wife. [XL T 4513-14] She interviewed Singleton four times for four and a half to seven hours each time. She conducted full batteries of neuropsychological and psychological tests. [XL T 4514-17]

Dr.McMahon found mild to moderate dysfunctioning, i.e., brain damage. Both sides of the brain were diffused, meaning that the

damage was throughout the brain in all areas that could be measured. [XL T 4517-18] The areas most effected were the frontal lobe and the front of the temporal lobe. Singleton's worst problems were verbal memory and ability to think flexibly, to be able to change courses when things were not going right. He was extremely slow in some of the tests. It was difficult to keep him on task; he was distractable and wanted to ramble. [XL T 4518-19] She determined that Singleton was not malingering. [XL T 4520-22]

Dr. McMahon found that Singleton had a successful career as a Merchant Marine, rising through the ranks and increasing his education in a structured situation. [XL T 4527] He married and had one child. They divorced because of his drinking. He remarried. When his first wife was dying, he took care of her for about six months. His second marriage ended because of his drinking and violence. He was unwilling to get help for his drinking and anger. His relationship with his daughter ended because he injured her when he was drinking. There was another incident between his first and second marriages when the police were called because he was drinking and struck out at another woman. [XL T 4527-29] Singleton drank with regularity. His second wife and daughter estimated that every three to six months he lost control and became verbally abusive and violent towards females. [XL T 4530-31, 4595-96] While incarcerated in California for the 1978 crimes, he received correctional counseling only once.

He had outstanding recommendations for finishing his GED, taking nine college courses including English literature, philosophy, and math, and for being a teacher's aide. Again, he functioned well in a structured prison environment where he was not drinking. [XL T 4529-30]

Following Singleton's suicide attempt, he remained extremely depressed and was medicated with an antidepressant, Paxil, and two sedating sleeping pills, Trazodone and Vistaril. On the day of the offense, Singleton was taking Paxil, Trazodone, and possibly Vistaril. He was also drinking fortified wine. [XL T 4532-35] Although Singleton was 69, his long term alcohol consumption had aged his brain, so that his scores on the neuropsychological tests were compatible with someone 15 to 20 years older. [XL T 4535-36] Dr. McMahon's research indicated that a person who suffers carbon monoxide poisoning may become irritable, violent, and emotionally unstable several days or weeks afterwards. [XL T 4536-37] In 1986 or 1987, Singleton was evaluated for social security. They found evidence of both organic brain syndrome and atypical psychosis. He was diagnosed with explosive personality disorder. Often people with this disorder lack impulse control in the face of intense anger because of the way their brain operates. [XL T 4538, 4592]

At the time of the offense on February 19, 1997, Singleton was suffering from the disease of alcoholism and mild to moderate dementia. [XL T 4541-44, 4569, 4594] He was under the influence

of an extreme mental or emotional disturbance. [XL T 4544-46, 4593] While he had the capacity to appreciate the criminality of his conduct, he could not conform his conduct to the requirements of law. [XL T 4546-49] He would not be a danger to other prisoners or guards if he were sentenced to life in prison; he does very well in prison. [XL T 4550-51]

The court admitted defense exhibits 7, Singleton's honorable discharge from the United States Army, his master's license from the Merchant Marine, and his GED certificate [LIV R 1059]; 8A and 8B, Singleton's prison records [LIV R 1063-1119]; 9, his Merchant Marine records [LIV R 1120-1210]; and 12, medication recovered from his house by the police. [XLI T 4662-63]

Dr. Barbara Stein, a psychiatrist, testified for the state that she reviewed police reports and depositions concerning the present offense, videotapes of the scene and Singleton's statements to the media, Singleton's prison records from California, medical records from St. Joseph's and the jail, social security records, Dr. McMahon's deposition, and a letter from Dr. Harold Smith, a psychologist who reviewed Dr. McMahon's test data. [XLI T 4665, 4680-92] Stein did not interview Singleton. The court instructed the jury that it would not allow Dr. Stein to interview Singleton because the state failed to give written notice of its intent to seek the death penalty as required by Florida Rule of Criminal Procedure 3.202. [XLI T 4695-96]

In Stein's opinion, Singleton did not suffer from dementia because there had been no prior diagnosis of dementia, his prior medical records indicated he was cognitively intact, he was capable of living independently, and his inconsistent statements indicated that he had the capacity to deceive. [XLI T 4698-705, 4710-15, 4728-30] When Stein initially testified that there were inconsistencies in Singleton's statements, defense counsel objected on relevance, hearsay, and improper predicate grounds. The court tacitly overruled the objections and took a recess. [XLI T 4705-10] When Stein testified that in her opinion Singleton had the capacity to deceive based upon her review of his statements, particularly those made to jail officials, defense counsel objected that was an opinion she was not qualified to give. The court overruled the objection. [XLI T 4711] Stein continued to testify about Singleton's statements concerning how much he had to drink, how much Paxil he took, and the cut on his chest. Defense counsel renewed his objections, and the court noted them for the record. [XLI T 4711-12] Stein opined that the statements showed Singleton knew what was going on and showed deception toward the police. [XLI, T 4712-13]

In Stein's opinion, Singleton was not under extreme emotional or mental disturbance when the murder was committed, but there was some emotional disturbance based upon his history of depression and consumption of alcohol. [XLI T 4715-19] Singleton had a

personality disturbance, including hostility, poor impulse control, poor judgment, poor insight, and explosive behavior, for many years. [XLI T 4719-20] The St. Joseph's records from Singleton's suicide attempt showed a diagnosis of major depression, long standing alcoholism, and antisocial personality disorder. [XLI T 4727] In Stein's opinion, Singleton's capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was not substantially impaired, although there was some impairment of his capacity to conform his conduct because of his consumption of alcohol. [XLI T 4716-20] Her opinion about the statutory mitigating factors was rendered without relying very much upon the results of the neuropsychological testing. [XLI T 4721-24]

Spencer Hearing

Clifford Tyson, Hayes' fiance, testified that they had three children, ages 4, 8, and 12. [XLII T 4853-54] Singleton said he was sorry for the death and would carry it on his conscience for the rest of his life. [XLII T 4866]

SUMMARY OF THE ARGUMENT

ISSUE I The Sixth and Fourteenth Amendments and article I, section 16, of the Florida Constitution guarantee the right to an impartial jury. The trial court deprived Singleton of his right to an impartial jury when it denied defense cause challenges to three jurors who had some knowledge of Singleton's prior crimes from prejudicial pretrial publicity and to a fourth juror who did not feel that alcohol was an excuse for any kind of crime. Despite assurances from these jurors that they could decide the case based upon the evidence at trial and the court's instructions on the law, their responses to other questions raised a reasonable doubt about their ability to be fair and impartial. The trial court's error in denying the cause challenges was preserved for appeal and prejudicial to Singleton because defense counsel exhausted his peremptory challenges, including an extra challenge granted by the court, requested another challenge, which was denied, and identified a juror upon whom the challenge would have been used. Singleton is entitled to reversal of his conviction and remand for a new trial.

ISSUE II The trial court erred by admitting a video recording made on the night of Singleton's arrest which showed Singleton in police custody wearing jail clothes and handcuffs while answering questions posed by news reporters. The admission of the video violated Singleton's Fourteenth Amendment right to be presumed

innocent. The probative value of the video was outweighed by the danger of unfair prejudice. The court's error was not harmless and requires reversal for a new trial.

ISSUE III The Eighth Amendment requires the sentencer in a capital case to consider and weigh mitigating circumstances. This Court requires the trial court to expressly evaluate each mitigating circumstance proposed by the defense and to provide a detailed, thoughtful, and comprehensive analysis of the court's weighing process. In this case, the trial court found three statutory and nine nonstatutory mitigating circumstances were established. However, the court failed to expressly evaluate more than twenty nonstatutory mitigating circumstances proposed by the defense. Moreover, the court failed to provide a comprehensive analysis of the weighing process. These errors preclude meaningful review of the trial court's sentencing order. The death sentence must be vacated, and the case must be remanded for resentencing by the court.

ISSUE IV The trial court erred by directing Mary Vincent, the victim of Singleton's prior violent felony convictions, to stand and raise her right hand to be sworn and by directing her to point out Singleton in the courtroom. The court's instructions resulted in prejudicial displays of Vincent's prosthetic hooks, which the prosecution had avoided during its presentation of her testimony. Vincent could have taken the oath without raising her hooks. Her

identification of Singleton as the person who injured her was not in dispute. While Vincent's testimony was relevant to the prior violent felony aggravating factor, the prejudicial effects of displaying her prosthetic hooks outweighed any probative value of such displays. By directing Vincent to raise her right hand to be sworn and to point out Singleton, the court abandoned its neutrality and assumed the role of prosecutor. This violated Singleton's Fourteenth Amendment right to an impartial judge. Violation of that right can never be harmless error and requires reversal for a new penalty phase trial with a new jury.

ISSUE V The trial court erred by overruling defense counsel's objections and allowing the prosecutor to cross-examine a defense penalty phase witness about Singleton's assertions that Mary Vincent offered him sex for money and that he was improperly convicted for the crimes against her. The witness's answers showed Singleton's lack of remorse, which is an invalid, inadmissible, nonstatutory aggravating circumstance. Presenting an invalid aggravating circumstance to the jury violates the Eighth Amendment to the United States Constitution. This error requires reversal of the death sentence and remand for a new penalty phase trial.

ISSUE VI The trial court erred in sentencing Singleton to death because the court found and considered two nonstatutory aggravating circumstances in determining that death was the appropriate penalty: (1) the unprovoked, senseless killing of the

mother of two children without cause, provocation or justification; and (2) the killing exemplifies that we are living in times worse than Sodom and Gomorrah. The weighing of invalid aggravating circumstances violates the Eighth Amendment to the United States Constitution. This error requires reversal of the death sentence and resentencing by the trial court.

ISSUE VII The trial court erred by allowing Dr. Barbara Stein, the state's expert psychiatrist, to testify over defense counsel's objections that in her opinion, based upon her review of Singleton's statements, Singleton had the capacity to deceive. This testimony was an improper opinion about Singleton's credibility. His credibility was in issue during the penalty phase because much of Singleton's guilt phase testimony concerned mitigating circumstances arising from his background and the circumstances of the offense. Because the error is likely to have contributed to the jury's advisory sentence of death, the death sentence must be vacated, and the case must be remanded to the trial court for a new penalty phase trial with a new jury.

ISSUE VIII The death penalty is reserved only for the most aggravated and least mitigated of first-degree murders. Singleton's case is not among those cases. There are compelling mitigating factors including: extreme mental disturbance, substantially impaired capacity to control his behavior, age 69, alcoholism, brain damage, dementia, depression, honorable service

in the Army in the Korean War, a successful career in the Merchant Marine, and ability to function well in prison. Also the offense occurred while Singleton was under the influence of alcohol and prescription drugs, and Hayes had been using cocaine. Singleton claimed that the fight began when Hayes took his wallet and swung a knife at him. His case is comparable to Kramer v. State, 619 So. 2d 274 (Fla. 1993), which involved the same aggravating factors, prior violent felony conviction and HAC, and similar but less extensive mitigating factors. This Court found Kramer's sentence to be disproportionate. This Court followed Kramer in two other cases which are comparable to Singleton's case, Sager v. State, 699 So. 2d 619 (Fla. 1997), and Voorhees v. State, 699 So. 2d 602 (Fla. 1997). This Court should follow Kramer, Sager, and Voorhees to find that the aggravating factors in this case were overshadowed by the mitigating factors and the circumstances of the offense so that the death penalty is disproportionate for Singleton.

ARGUMENT

ISSUE I

THE TRIAL COURT VIOLATED APPELLANT'S RIGHT TO AN IMPARTIAL JURY BY DENYING CAUSE CHALLENGES TO THREE PROSPECTIVE JURORS WHO HAD SOME KNOWLEDGE OF APPELLANT'S PRIOR OFFENSES AND ANOTHER WHO DID NOT FEEL THAT ALCOHOL WAS AN EXCUSE FOR ANY CRIME.

"It is well settled that the Sixth and Fourteenth Amendments guarantee a defendant on trial for his life the right to an impartial jury." Ross v. Oklahoma, 487 U.S. 81, 85 (1988); see also, Morgan v. Illinois, 504 U.S. 719, 726 (1992). The defendant is entitled to a fair trial by a panel of impartial, indifferent jurors whose verdict is based upon the evidence developed at trial. Irvin v. Dowd, 366 U.S. 717, 722 (1961). The right to trial by an impartial jury is also guaranteed by article I, section 16, of the Florida Constitution and Florida Rule of Criminal Procedure 3.251. Richardson v. State, 666 So. 2d 223, 224 (Fla. 2d DCA 1995); Wilding v. State, 427 So. 2d 1069 (Fla. 2d DCA 1983). A juror should be excused for cause if there is any reasonable doubt about the juror's ability to render an impartial verdict. Turner v. State, 645 So. 2d 444, 447 (Fla. 1994); Bryant v. State, 601 So. 2d 529, 532 (Fla. 1992); Hamilton v. State, 547 So. 2d 630, 632 (Fla. 1989); Hill v. State, 477 So. 2d 553, 556 (Fla. 1985). The trial court violated Singleton's right to an impartial jury by denying

his cause challenges to three prospective jurors who had some knowledge of his prior convictions and another juror who did not feel that alcohol was an excuse for any crime.

Singleton was convicted and sentenced in California on April 20, 1979, for the offenses of forcible rape, two counts of oral copulation by force, kidnapping, forcible sodomy, mayhem, and attempted murder. [XXXIX T 4318; LIV R 1052-54] No evidence of those crimes was introduced during the guilt phase of trial. The state presented a copy of the judgment for those offenses during the penalty phase. [XXXIX T 4318; LIV R 1052-54] Mary Vincent testified during the penalty phase that she was 15 years old on September 30, 1978. [XXXIX T 4326] She was hitchhiking in Northern California when she accepted a ride from Singleton. Vincent testified that Singleton raped her, used a hatchet to cut off her hands, and left her to die along side a drainage ditch in a road. [XXXIX T 4327-28] There was extensive pretrial publicity about Singleton's prior crimes against Vincent. [VI R 882-97, 907-12, 916; VII R 953-55, 961-62, 964, 966-75]

In Wilding v. State, 427 So. 2d at 1069, one juror stated during voir dire that he had some knowledge of previous charges against the defendant. The Second District held that the defendant was deprived of his right to an impartial jury "because the jury panel was bound to be unfairly prejudiced by virtue of their

knowledge of his arrest for another crime." The Second District reversed and remanded for a new trial.

Similarly, in Richardson v. State, 666 So. 2d at 224, a member of the venire was a corrections officer at a prison. An exchange between the prosecutor and the officer suggested that she knew the defendant through her employment and implied that he was a convicted felon who previously served time. The Second District held that this exchange deprived the defendant of his right to trial by an impartial jury, reversed the conviction, and remanded for a new trial.

In the present case, the court ruled that it would excuse prospective jurors if they had knowledge of Singleton's background and conviction in California. [XIX T 1481-82] During individual voir dire on pretrial publicity, the court granted 75 defense cause challenges to prospective jurors who had knowledge of Singleton's prior crimes in California. [XX T 1658-63, 1708-17, 1740-56; XXI T 1798-1801, 1822-48, 1866-74; XXII T 1919-28, 1924-28, 1945-62, 1969-86; XXIII T 2008-17, 1030-32, 2064-73, 2099-2123; XXIV T 2131-70, 2182-2212; XXV T 2262-72, 2284-2343, 2352-55, 2374-78; XXVI T 2409-16, 2414-16, 2425-28, 2437-40, 2447-70, 2482-98, 2511-16, 2552-59; XXVII T 2603-05]

However, the court denied defense counsel's cause challenges to prospective jurors Crumpton, who read a newspaper article about a month before and formed the impression that Singleton killed

somebody and chopped off her arms in another case, but said he could put that information aside and render a fair and impartial verdict, [XX T 1729-40; XXVIII T 2904-05] Crawford, who saw a news broadcast that Singleton had a crime in his past, but could not remember whether he was convicted, where it occurred, nor the nature of the crime, and said he could base his decision on the evidence and the law given by the court, [XXV T 2246-61; XXVIII T 2905] and Meyer, who remembered news reports about cutting off the arms of a girl under 18 but not whether it occurred in this case or a prior case, and said he would base his verdict solely on the evidence he heard in the courtroom. [XXV T 2378-95, 2398-99; XXVIII T 2905-06]

Each of these cause challenges should have been granted pursuant to the decisions in Wilding and Richardson. These prospective jurors had some knowledge of Singleton's prior unrelated crimes from the pretrial publicity, so their service on the jury would have violated Singleton's right to an impartial jury. In Singer v. State, 109 So. 2d 7, 24 (Fla. 1959), this Court observed that "it is difficult, if not impossible, for any individual to completely put out of mind knowledge, opinions or impressions previously registered. Such cannot be erased from the mind as chalk from a blackboard." Moreover, this Court ruled,

> Too, a juror's statement that he can and will return a verdict according to the evidence submitted and the law announced at trial is not determinative of his competence,

> if it appears from other statements made by him or from other evidence that he is not possessed of a state of mind which will enable him to do so.

Id. Thus, it would have been difficult, if not impossible for Crumpton, Crawford, and Meyer to put out of their minds the prejudicial information about Singleton's prior crimes against Vincent. This information from the news made it very unlikely that Crumpton, Crawford, and Meyer could return a verdict based solely on the evidence at trial despite their assurances that they could do so.

The denial of Singleton's cause challenges to Crumpton, Crawford, and Meyer is similar to the denial of the defendant's cause challenge in Reilly v. State, 557 So. 2d 1365 (Fla. 1990). In Reilly, a prospective juror read newspaper articles indicating that Reilly had confessed. The juror denied that he had formed an opinion about Reilly's guilt and said he could set aside his impressions from what he had read and decide the case on the evidence presented at trial. He said he would consider the confession if it were presented in court, but not because of having read it in the newspaper. The court denied Reilly's cause challenge to the juror. The error was preserved because defense counsel used a peremptory challenge to excuse the juror, exhausted his peremptory challenges, requested more, and identified three jurors remaining on the panel as ones he wished to excuse. Id., at 367. This Court found reversible error because the confession had

been suppressed and the juror was aware of an inadmissible fact more damaging than anything introduced in evidence. Id.. This Court explained,

> While Mr. Blackwell subsequently gave the right answers with respect to whether or not he could be an impartial juror, it is unrealistic to believe that during the course of deliberations he could have entirely disregarded his knowledge of the confession no matter how hard he tried.

Id. Crumpton's, Crawford's, and Meyer's exposure to the prejudicial news about Singleton's prior crimes raised a reasonable doubt as to their ability to serve as fair and impartial jurors, so the trial court erred in denying defense counsel's cause challenges.

The trial court also denied defense counsel's cause challenge to prospective juror Belcher, who stated during voir dire, "I don't feel that alcohol is an excuse in any kind of crime no matter what it is." [XXVIII T 2773, 2903-04] The defense presented evidence at trial that Singleton was drinking alcohol and taking prescription medicine on the day of the offense and that he may have been intoxicated. [XXXIV T 3676-77, 3682, 3685-88; XXXV T 3747-48, 3763-64, 3791-93, 3796-3800, 3821-24; XXXVI T 3857-60, 3936] Defense counsel argued to the jury that Singleton was too intoxicated on alcohol and drugs to premeditate the murder of Hayes. [XXXVII 4037-44] The court instructed the jury on the defense of intoxication. [XXXVII T 4130-31] Thus it was crucial

to the defense for jurors to have an open mind about the defense of voluntary intoxication and to be willing to consider that defense in accordance with the court's instruction. Belcher's statement that he did not feel that alcohol is an excuse for any crime demonstrated that he could not be fair and impartial in considering the defense of intoxication, so the court should have granted defense counsel's cause challenge. See Ferrell v. State, 697 So. 2d 198 (Fla. 2d DCA 1997) (reversible error to deny cause challenge to prospective juror who had problem with alcohol and drug abuse as an excuse); Ferguson v. State, 693 So. 2d 596 (Fla. 2d DCA 1997) (reversible error to deny cause challenges to three prospective jurors who had problem with intoxication defense).

The prosecutor objected to defense counsel's voir dire questions about alcohol arguing that the court should tell the prospective jurors what voluntary intoxication is and ask if they can follow the instruction. The court responded that it would only ask if they can follow the law. [XXVIII T 2774-75] The court asked the prospective jurors to raise their hands if they could not follow the law and the instructions given by the court. None of them raised their hands. [XXVIII T 2812] The prosecutor argued that Belcher should not be excused for cause because he was not asked if he was instructed to consider voluntary intoxication could he consider that and that Belcher unequivocally said he could follow the law. [XXVIII T 2903-04]

The prosecutor was wrong. This Court has stated that the "[t]he test for determining juror competency is whether the juror can lay aside any bias or prejudice and render his verdict solely on the evidence presented and the instructions on the law given to him by the court." Hamilton v. State 547 So. 2d at 633 (quoting Lusk v. State, 446 So. 2d 1038, 1041 (Fla.), cert. denied, 469 U.S. 873 (1984)). But that statement must be read together with the rule set forth in Singer v. State, 109 So. 2d at 23-24:

> [I]f there is basis for any reasonable doubt as to any juror's possessing that state of mind which will enable him to render an impartial verdict based solely on the evidence submitted and the law announced at the trial he should be excused on motion of a party, or by the court on its own motion.

Hamilton, at 632 (quoting Singer).

In Hamilton, a prospective juror stated that she had a preconceived opinion of the defendant's guilt and it would take evidence put forth by the defense to convince her he was not guilty, but in response to questions from the bench she said she could base her verdict on the evidence at trial and the law as instructed by the court. This Court found that her responses, when viewed together, established that she did not presume the defendant was innocent. Because her responses raised doubt as to whether she could be unbiased, the failure to grant the cause challenge deprived the defendant of his right to a fair trial and required reversal for a new trial. Id., at 632-633.

In this case, Belcher's statement that he did not feel alcohol was an excuse for any crime raised a reasonable doubt about his ability to be fair and impartial when confronted with a voluntary intoxication defense despite his failure to raise his hand when the judge asked if any of the prospective jurors could not follow the law and the instructions given by the court. Therefore, the denial of the cause challenge to Belcher violated Singleton's right to trial by an impartial jury pursuant to Hamilton, Ferrell, and Ferguson.

Defense counsel used peremptory challenges to excuse Crumpton, Belcher, Meyer, and Crawford. [XXVIII T 2909-11, 2915-16] Defense counsel exhausted his peremptory challenges. [XXVIII T 2909-16] The court granted both parties an additional strike, and defense counsel used his. [XXVIII, T 2917-18] Defense counsel requested another peremptory to strike juror Noriega, but the court denied the request. [XXVIII T 2921-23] Defense counsel accepted the jury subject to his prior objections. [XXVIII T 2926] Thus, the court's errors in denying the cause challenges were properly preserved and prejudicial to the defense. Reilly, 557 So. 2d at 367; Ferrell, 697 So. 2d at 199-200; cf. Mendoza v. State, 700 So. 2d 670, 674-675 (Fla. 1997), cert. denied, 119 S. Ct. 101, 142 L. Ed. 2d 81 (1998); Trotter v. State, 576 So. 2d 691, 693 (Fla. 1990). In Hill v. State, 477 So. 2d at 556, this Court ruled that

the error in denying a defense cause challenge was not harmless because:

> [I]t abridged appellant's right to peremptory challenges by reducing the number of those challenges available [to] him. Florida and most other jurisdictions adhere to the general rule that it is reversible error for a court to force a party to use peremptory challenges on persons who should have been excused for cause, provided the party subsequently exhausts all of his or her peremptory challenges and an additional challenge is sought and denied.

Accord Ferrell, at 199. This Court must reverse Singleton's conviction and remand this case for a new trial.

ISSUE II

THE TRIAL COURT ERRED BY ADMITTING THE VIDEO RECORDING OF SINGLETON WEARING JAIL CLOTHING AND HANDCUFFS WHILE IN CUSTODY ON THE NIGHT OF HIS ARREST.

The trial court erred by admitting a video recording made on the night of Singleton's arrest which showed Singleton in police custody wearing jail clothes and handcuffs while answering questions posed by news reporters. The admission of the video violated Singleton's Fourteenth Amendment right to be presumed innocent. The probative value of the video was outweighed by the danger of unfair prejudice. The court's error was not harmless and requires reversal for a new trial.

The state proffered a video, state exhibit 41, which showed Singleton answering reporters' questions as Deputy Morffi escorted him from the homicide office to a patrol car on the night of his arrest. The recording had been edited to delete one of Singleton's remarks, "I was framed before," from the audio track of the tape. It included his admission, "This time I did it." [XXXIV T 3623-30; LIII R 1050-51] Defense counsel argued that the video should not be admitted because, inter alia, it showed Singleton dressed in a blue jail uniform and handcuffs in the custody of the police, and the prejudicial effects of the video outweighed its probative value. [XXIV T 3626-27, 3630-36, 3641, 3643] The court overruled the defense objections, finding,

> But I do feel that to deny the state the right to present something which would show this defendant in the light in which he was seen that night would be prejudicial to them. And I think the prejudice to the state is far outweighed by the prejudice to the defendant. So I will allow you to admit it.

[XXXIV T 3644-45]

Deputy Morffi testified before the jury that around 9:30 p.m. on February 19 he escorted Singleton out of the homicide office and placed him in a patrol car. [XXXIV T 3651] Morffi was holding him by his right arm. [XXXIV T 3652] The court overruled defense counsel's renewed motions and objections and admitted the video, state exhibit 41, which was played for the jury. [XXXIV T 3652-54; LIII R 1050-51] The video contained the following dialogue:

> REPORTER: Who is she? Why did you kill her?
> THE DEFENDANT: I have no comment.
> REPORTER: How did you kill her?
> THE DEFENDANT: I have no comment.
> REPORTER: How did all this start?
> THE DEFENDANT: I have no comment.
> (Pause)
> THE DEFENDANT: This time I did it.
> REPORTER: You say you did do it, sir?
> THE DEFENDANT: Yeah, I done it.
> (Pause)
> REPORTER: Who is she?
> THE DEFENDANT: What? Never mind.
> REPORTER: Is she your girlfriend or --
> THE DEFENDANT: Yeah, a girlfriend.
> REPORTER: Why did you do it, sir? Did she upset you?
> THE DEFENDANT: (Unintelligible) You got that much.

[XXXIV T 3653-54]

Counsel for appellant does not contest the admissibility of Singleton's oral admissions because they were not made in response to police interrogation and they were relevant to the issue of Singleton's guilt. However, the court should not have allowed the state to prove Singleton's admissions by playing the video which showed Singleton in jail clothing and handcuffs.

The court's reasoning in admitting the video recording was seriously flawed. The state did not have the right to present something which would show Singleton in the light in which he was seen that night. Instead, the state had the right to present relevant evidence of Singleton's guilt of the murder for which he was charged so long as that evidence was not unduly prejudicial to Singleton. The fundamental test for the admissibility of any evidence is relevance. See Griffin v. State, 639 So. 2d 966, 968 (Fla. 1994), cert. denied, 514 U.S. 1005 (1995); Williams v. State, 110 So. 2d 654, 662 (Fla.), cert. denied, 361 U.S. 847 (1959); § 90.402, Fla. Stat. (1995). Relevant evidence is defined as "evidence tending to prove or disprove a material fact." Griffin, at 968; § 90.401, Fla. Stat. (1995). However, even relevant evidence is inadmissible when its prejudicial effects outweigh its probative value. Sexton v. State, 697 So. 2d 833, 837 (Fla. 1997); § 90.403, Fla. Stat. (1995). The trial court expressly found that "the prejudice to the state is far outweighed by the prejudice to the defendant."

The probative value of the video portion of the recording was outweighed by its prejudicial effects because it violated Singleton's right to be presumed innocent. The presumption of innocence is a basic component of the right to a fair trial secured by the Fourteenth Amendment. Estelle v. Williams, 425 U.S. 501, 503 (1976). A criminal defendant cannot be compelled to stand trial in prison or jail clothing because the possible impairment of the presumption of innocence would violate the Fourteenth Amendment. Id., at 504, 512; see also, Torres-Arboledo v. State, 524 So. 2d 403, 409 (Fla. 1988). While Singleton was not compelled to wear jail clothing in the courtroom during the trial, showing the video of Singleton in jail clothes and handcuffs had the same prejudicial effect upon his presumption of innocence.

In Shultz v. State, 179 So. 764, 765 (Fla. 1938), this Court observed,

> Every person is presumed to be innocent of the commission of crime and that presumption follows them through every stage of the trial until they shall have been convicted. It is, therefore, highly improper to bring a person who has not been convicted of crime, colthed as a convict and bound in chains, into the presence of a venire or jury by whom he is to be tried for any criminal offense and, when such condition is shown by the record to have obtained, in many cases it might be sufficient ground for a reversal.

Thus, restraining a defendant with shackles in view of the jury also adversely impacts the presumption of innocence. Jackson v. State, 698 So. 2d 1299, 1301-1302 (Fla. 4th DCA 1997), rev.

denied, 707 So. 2d 1125 (1998). To shackle the defendant in the presence of the jury is inherently prejudicial and must not be done in the absence of some showing of necessity. Bello v. State, 547 So. 2d 914, 918 (Fla. 1989). In this case, there was no showing of necessity to justify the admission of the video portion of the recording. The prejudicial effects of showing Singleton in jail clothes and handcuffs could have been avoided by playing the relevant audio portion of the recording for the jury without displaying the prejudicial video. Under these circumstances, the video recording was not properly admitted under section 90.403, Florida Statutes (1995), because the probative value of the video was outweighed by its prejudical impact.

The federal constitutional harmless error analysis provided by Chapman v. California, 368 U.S. 18 (1965), applies to violations of the presumption of innocence under the Fourteenth Amendment. Estelle v. Williams, 425 U.S. at 506. In State v. DiGuilio, 491 So. 2d 1129 (Fla. 1986), this Court adopted and explained the harmless error test established by Chapman v. California, 386 U.S. 18 (1967). This standard places the burden on the state, as the beneficiary of the error, to demonstrate beyond a reasonable doubt that the error did not contribute to the conviction or affect the jury's verdict. Chapman, at 23-24; DiGuilio, at 1135.

The trial court's error in admitting the video portion of the recording in violation of the presumption of innocence cannot be

found harmless under the circumstances of this case. As argued above, the prejudicial effects of the video portion of the recording outweighed its probative value, so the error was prejudicial to Singleton. See Sexton v. State, 697 So. 2d at 837. The prejudice to Singleton was not significantly diminished by the fact that the jury was told he was in custody when he made the admissions to the reporters because the visceral impact of actually seeing Singleton in jail clothes and handcuffs was far more prejudicial than merely being told that he was in custody.

Moreover, the prejudicial effects of the video were exacerbated during the defense case when three jurors inadvertently observed Singleton being transported in his jail clothes, handcuffs, and leg shackles. [XXXV T 3731-34, 3736, 3738, 3740] Although each of these jurors said that their observation of Singleton would not affect his or her ability to be fair and impartial, [XXXV T 3736-40] the jurors' claims that they were not prejudiced by such an inherently prejudicial encounter are not dispositive. Holbrook v. Flynn, 475 U.S. 560, 570 (1986). Although the inadvertent observation of Singleton in jail clothes, handcuffs, and shackles would not require the trial court to grant defense counsel's motion for mistrial standing alone, see Jackson v. State, 545 So. 2d 260, 265 (Fla. 1989), this incident further eroded the presumption of innocence to which Singleton was entitled.

Because the court erred in allowing the state to deliberately violate Singleton's right to be presumed innocent by admitting the video showing him in jail clothes and handcuffs, despite the inherent prejudice to Singleton and the lack of probative value of the video portion of the recording, the conviction must be reversed for a new trial.

ISSUE III

THE TRIAL COURT ERRED BY FAILING TO EVALUATE EACH MITIGATING FACTOR PROPOSED BY THE DEFENSE AND BY FAILING TO EXPLAIN HOW IT WEIGHED THE MITIGATING FACTORS IT FOUND TO BE ESTABLISHED.

The United States Supreme Court has repeatedly held that "in capital cases, the sentencer may not refuse to consider or be precluded from considering any relevant mitigating evidence." Hitchcock v. Dugger, 481 U.S. 393, 394 (1987); Skipper v. South Carolina, 476 U.S. 1, 2 (1986); Eddings v. Oklahoma, 455 U.S. 104, 113-14 (1982). This requirement is not satisfied solely by allowing the presentation of mitigating evidence. The sentencer is required to "listen" to the evidence and to give it some weight in determining the appropriate sentence. Eddings, 455 U.S. at 113-14 & n. 10.

Thus, in Campbell v. State, 571 So. 2d 415, 419 (Fla. 1990), this Court ruled:

> When addressing mitigating circumstances, the sentencing court must expressly evaluate in its written order each mitigating circumstance proposed by the defendant to determine whether it is supported by the evidence and whether, in the case of nonstatutory factors, it is truly of a mitigating nature.... The court must find as a mitigating circumstance each proposed factor that is mitigating in nature and has been reasonably established by the greater weight of the evidence .... The court next must weigh the aggravating circumstances against the mitigating and, in order to facilitate appellate review, must

> expressly consider in its written order each established mitigating circumstance. [Citations and footnotes omitted.]

Accord Jackson v. State, 704 So. 2d 500, 506 Fla. 1997).

To satisfy the requirements of Campbell,

> The result of this weighing process must be detailed in the written sentencing order and supported by sufficient competent evidence in the record. The absence of any of the enumerated requirements deprives this Court of the opportunity for meaningful review.

Ferrell v. State, 653 So. 2d 367, 371 (Fla. 1995); accord Hudson v. State, 708 So. 2d 256, 259 (Fla. 1998); Walker v. State, 707 So. 2d 300, 319 (Fla. 1997). In Walker, at 319, this Court further explained:

> Clearly then, the "result of this weighing process" can only satisfy Campbell and its progeny if it truly comprises a thoughtful and comprehensive analysis of any evidence that mitigates against the imposition of the death penalty. We do not use the word "process" lightly. If the trial court does not conduct such a deliberate inquiry and then document its findings and conclusions, this Court cannot be assured that it properly considered all mitigating evidence. In such a situation, we are precluded from meaningfully reviewing the sentencing order.

Accord Hudson, at 259.

The trial court's sentencing order in the present case failed to satisfy the requirements of Campbell and its progeny. First, the court failed to expressly evaluate each mitigating factor proposed by the defense. Second, the court failed to provide a thoughtful and comprehensive analysis of the weighing process.

Defense counsel filed a sentencing memorandum which identified three proposed statutory mitigating circumstances and thirty-three proposed nonstatutory mitigating circumstances. [VIII R 1255-66] In the sentencing order, the court found all three proposed statutory mitigating circumstances[6] and nine nonstatutory mitigating circumstances[7] were established. [VIII R 1289-93; A 3-7] The court expressly rejected as not mitigating the proposed circumstance that Hayes was a prostitute. [VIII R 1263, 1293; A 7] However, the court failed to expressly evaluate any of the following proposed nonstatutory mitigating circumstances identified by defense counsel in the sentencing memorandum: (9) Singleton was so lonely that he paid a prostitute more for companionship than sex; (10) Singleton did not flee after the offense; (11) he did not resist the police and cooperated with their investigation; (12) instead of portraying Hayes as evil and foul-mouthed, Singleton

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[6] The statutory mitigating circumstances were: (1) extreme mental or emotional disturbance, § 921.141(6)(b), Fla. Stat. (1996 Supp.); (2) substantially impaired capacity, § 921.141(6)(f); and (3) Singleton's age of 69, §921.141(6)(g). [VIII R 1289-92; A 3-6]

[7] The nonstatutory mitigating circumstances found by the court were: (1) Singleton's prior violent crime was committed in 1978 when he was 51 years old; (2) the intent to kill was formed during an argument or disagreement with Hayes; (3) since his release on parole in 1987, Singleton had never been accused of or arrested for any offense except petit theft; (4) Singleton was under the influence of alcohol and other possible medication at the time of the offense; (5) alcoholism; (6) mild dementia; (7) Singleton previously attempted suicide; (8) honorable service in the armed forces; and (9) Singleton was a model prisoner in California from 1979 to 1987. [VIII R 1292-93; A 6-7]

testified she was a lovely person; (13) he showed remorse; (15) he did not plan to commit the offense in advance; (17) Singleton served in a combat zone during the Korean War; (19) he completed high school and received his G.E.D. while in prison; (21) he had an excellent academic record of both high school and college courses which he took in prison; (22) Singleton was an excellent teacher of other inmates while in prison; (23) he was a model parolee in 1987 and 1988; (24) he dealt with the rules and stress of a difficult parole situation with respect and intelligence; (25) Singleton was a productive member of society while employed as a merchant seaman between 1945 and 1978; (26) he demonstrated appropriate courtroom behavior; (27) he demonstrated appropriate behavior while incarcerated awaiting trial; (28) he is capable of forming good relationships with friends and neighbors; (29) society can be protected by a sentence of life without parole; (30) Singleton will not be a danger to other inmates or prison personnel; (31) he has a daughter who is a nurse; (32) Singleton is a sad, lonely old man whose only future is life in prison and contemplation of a ruined life; and (33) the totality of the circumstances do not set this murder apart from the norm of other murders. [VIII R 1262-1266, 1292-93; A 6-7]

The trial court's failure to expressly evaluate each of these proposed mitigating factors precludes meaningful review of the sentencing order and requires that the death sentence be vacated.

Hudson, at 259; Walker, at 318-319; Jackson, at 506-507; Ferrell, at 371.

Moreover, although the trial court found three statutory and nine nonstatutory mitigating circumstances, the court did not explain how it weighed those circumstances against the aggravating circumstances except to say that "the aggravating circumstances present in this case outweigh the mitigating circumstances present." [VIII R 1289-93; A 3-7] The court's failure to provide a detailed, thoughtful, and comprehensive analysis of its weighing process also precludes meaningful review of the sentencing order and requires that the death sentence be vacated. Hudson, at 259; Walker, at 319; Ferrell, at 371. This case must be remanded for resentencing by the trial court.

ISSUE IV

THE TRIAL COURT ERRED BY DIRECTING MARY VINCENT TO RAISE HER RIGHT HAND TO BE SWORN AND TO POINT TO SINGLETON BECAUSE THE RESULTING DISPLAYS OF HER PROSTHETIC HOOKS WERE UNDULY PREJUDICIAL AND THE COURT'S INTERVENTION IN THE PRESENTATION OF THE STATE'S EVIDENCE VIOLATED SINGLETON'S RIGHT TO AN IMPARTIAL JUDGE.

Defense counsel filed a motion in limine to exclude testimony by Mary Vincent concerning Singleton's prior violent felony convictions because the prejudicial effects of the testimony would outweigh its probative value. [VI R 872-75] The court heard and denied the motion. [XLV T 5358-69; XLVI T 5373-76] Defense counsel renewed these motions in the penalty phase of trial, and the court again denied them. [XXXVIII T 4272-73; XXXIX T 4314-15]

The court admitted state penalty phase exhibit 1, a judgment showing that Singleton was convicted and sentenced in California on April 20, 1979, for the offenses of forcible rape, two counts of oral copulation by force, kidnapping, forcible sodomy, mayhem, and attempted murder. [XXXIX T 4318; LIV R 1052-54]

Defense counsel moved in limine to have the jury removed while Vincent took the witness stand so the jury was not unnecessarily exposed to her prosthetic limbs. The court denied the motion. [XXXIX T 4319-20] Defense counsel moved to have the court direct Vincent to keep her prosthetic limbs below the level of the witness

stand so the jury would not look at them during her testimony. The court denied the motion. [XXXIX T 4320]

Mary Vincent testified[8] that she was 34 years old at the time of trial. On September 30, 1978, she was 15. [XXXIX T 4326] She was hitchhiking in Northern California when she accepted a ride from Singleton. Singleton raped her, used a hatchet to cut off her hands, and left her to die along side a drainage ditch in a road. [XXXIX T 4327-28] When Singleton picked up Vincent, he first took her to his house where he filled two gallon jugs with vodka or gin. [XXXIX T 4328-29] Singleton took the jugs with him when they left the house. He was drinking heavily. He forced her to drink some of the alcohol when he attacked her. [XXXIX T 4329] The videotape of Vincent's testimony shows that she kept her arms down during her testimony, so the jury was not unnecessarily exposed to her prosthetic hooks. [LXI R 2265-66]

The prosecutor asked the court if Vincent was sworn before she testified. The court said she was not. The court directed Vincent to stand, raise her right hand, and be sworn. [XXXIX T 4330] Vincent's prostheses were prominently displayed before the jury when she was sworn. [LXI R 2265-66] Defense counsel objected and moved for a mistrial because her prostheses were unnecessarily exposed to the jury when the court directed her to stand to be

[8] A videotaped recording of Vincent's testimony is included in the record as defense exhibit 1 at the March 30, 1998, hearing on Singleton's motion for new trial. [LXI R 2265-66]

sworn. Until that point, she did not unnecessarily expose them during her testimony. The court denied the motion. [XXXIX T 4330-31] The court asked Vincent to reaffirm her testimony under oath. [XXXIX T 4332] Over defense counsel's objection, the court asked Vincent to point out and identify Singleton. [XXXIX T 4332-33] The prosthetic hook on her right arm was prominently displayed for the jury when she pointed towards Singleton. [LXI R 2265-66]

While the court had a duty to ensure that Vincent's testimony before the jury was given under oath, it was both unnecessary and unduly prejudicial to Singleton for the court to have her stand and display her prosthetic hooks while she was being sworn. She could have taken the oath without such a display. Similarly, it was both unnecessary and unduly prejudicial to Singleton for the court to direct Vincent to point Singleton out with her prosthetic hook. There was no dispute about her identification of Singleton when she was questioned by counsel for both parties. Even if further identification of Singleton was needed to clarify her testimony, she could have described him without displaying her hook. The prosecutors had presented her testimony without such displays, and the court should not have intervened to increase the prejudicial effects of her appearance before the jury. While Vincent's testimony was relevant to the prior violent felony conviction aggravating circumstance, any probative value in displaying her prosthetic hooks was outweighed by the danger of unfair prejudice

to Singleton. See Ruiz v. State, 24 Fla. L. Weekly S157, S (Fla. 1999) (error to admit 2 by 3 feet blow up photo of victim's upper body which served only to inflame the jury during penalty phase); Sexton v. State, 697 So. 2d 833, 837 (Fla. 1997) (prejudicial effects of evidence of collateral crimes outweighed probative value); Steverson v. State, 695 So. 2d 687, 688-691 (Fla. 1997) (prejudicial effects of evidence of collateral crime outweighed probative value); § 90.403, Fla. Stat. (1995).

Moreover, by intervening in the presentation of Vincent's testimony in a manner that increased its prejudicial impact upon the jury, the trial judge inferentially conveyed his opinion of the significance of her testimony and of the handicap she suffered as a consequence of Singleton's prior crimes. "It is incumbent upon all judges to avoid any comments or conduct which convey expressly or inferentially his opinion of the weight, character or credibility of any evidence adduced ...." Abrams v. State, 326 So. 2d 211, 212 (Fla. 4th DCA 1976). In Abrams, the Fourth District found reversible error in the trial judge's conduct when he shook hands and conversed with the state's key witness. The court reasoned that the jury could most reasonably infer from the judge's conduct that he believed the witness to be very credible and honest. Similarly, the trial judge's comments to the jury conveying his favorable opinion of the state's case or the credibility of the state's witnesses were found to be reversible

error in Acosta v. State, 711 So.2d 225 (Fla. 3d DCA 1998), and Brown v. State, 678 So. 2d 910 (Fla. 4th DCA 1996).

In J.F. v. State, 718 So. 2d 251 (Fla. 4th DCA 1998), the child was charged with grand theft of an automobile. A police officer testified that he obtained fingerprints from the automobile, but the test results were not available at the time of trial. After both the state and the defense rested, the court asked the officer when the results would be ready for the fingerprint analysis and directed him to have them ready within a week. The court sua sponte ordered the hearing continued pending the results. When the hearing resumed about a week later, over defense counsel's objection that the state should not be allowed to reopen the case, the court admitted the evidence which incriminated the child. The Fourth District ruled that "the trial court departs from a position of neutrality ... when it sua sponte orders the production of evidence that the state itself never sought to offer into evidence." Id., at 252. The Fourth District quoted Herman v. United States, 289 F. 2d 362, 365 (5th Cir. 1961), overruled on other grounds by United States v. Zuniga-Salinas, 952 F. 2d 876 (5th Cir. 1992):

> A trial judge "should never assume the role of prosecuting attorney and lend the weight of his great influence to the side of the government." ... In our system of administering justice the functions of the trial judge and the prosecuting attorney are separate and distinct; they must not be confused. The trial judge has a duty to

> conduct the trial carefully, patiently and impartially. He must be above even the appearance of being partial to the prosecution.

J.F., at 252 (citations omitted). The Fourth District found that the trial court assumed the role of the prosecutor by directing a witness for the state to obtain additional evidence and reversed. Id.

As in J.F., the trial judge in Singleton's case abandoned his position of neutrality and assumed the role of prosecutor when he directed Vincent to raise her right hand to be sworn and to point out Singleton, thereby causing unnecessary and prejudicial displays of her prosthetic hooks. This Court has ruled that "every litigant ... is entitled to nothing less than the cold neutrality of an impartial judge." Peek v. State, 488 So. 2d 52, 56 (Fla. 1986) (quoting State ex rel. Mickle v. Rowe, 131 So. 331, 332 (Fla. 1930)). The right to an impartial judge is so basic to the right to a fair trial under the Fourteenth Amendment that violation of that right will always invalidate the conviction and can never be harmless error. Sullivan v. Louisiana, 508 U.S. 275, 279 (1993); Arizona v. Fulminante, 499 U.S. 279, 308-310 (1991); Rose v. Clark, 478 U.S. 570, 577-578 (1986); Chapman v. California, 386 U.S. 18, 23 n. 8 (1967). A death sentence imposed by a trial judge who is not impartial cannot stand. See Porter v. State, 723 So. 2d 191 (Fla. 1998) (judge's bias in favor of death sentence required reversal of sentence), cert. denied, 143 L. Ed. 2d 801 (1999).

This Court must reverse the death sentence and remand for a new penalty phase trial before a new judge and a new jury.

ISSUE V

THE TRIAL COURT ERRED BY ADMITTING EVIDENCE OF SINGLETON'S LACK OF REMORSE FOR THE PRIOR CRIMES AGAINST VINCENT.

The trial court erred by overruling defense counsel's objections and allowing the prosecutor to cross-examine a defense penalty phase witness about Singleton's assertions that Mary Vincent offered him sex for money and that he was improperly convicted for the crimes against her. The witness's answers showed Singleton's lack of remorse, which is an invalid, inadmissible, nonstatutory aggravating circumstance. Presenting an invalid aggravating circumstance to the jury violates the Eighth Amendment to the United States Constitution. This error requires reversal of the death sentence and remand for a new penalty phase trial.

Douglas Filangeri, a deputy commissioner with the California Board of Prison Terms, testified for the defense during the penalty phase trial that he was one of the parole officers assigned to Singleton's case when he was released on parole in April, 1987. [XXXIX T 4334-37] Defense counsel asked if Singleton was a disciplinary problem. Filangeri answered that he had to ask Singleton to refrain from certain areas of conversation where Filangeri was uncomfortable, but there was no reason for generating a violation report. [XXXIX T 4374]

On cross-examination, the prosecutor asked about Singleton discussing matters with which Filangeri was uncomfortable. Defense counsel objected to the prosecutor asking about Singleton's assertions that he was not guilty in the Mary Vincent case on the grounds that it was outside the scope of direct and concerned a nonstatutory aggravating circumstance. The court overruled the objection. [XXXIX T 4385-86] Filangeri answered that the areas of conversation which made him uncomfortable were the attack and the prosecution. [XXXIX T 4387] When the prosecutor asked about Singleton's insistence that Mary Vincent offered him sex for money, defense counsel objected and moved for a mistrial on the same grounds. The court denied the motion and overruled the objection. [XXXIX T 4387-89] The prosecutor then asked if one of the areas of conversation was Singleton's assertion that Vincent offered him sex for money. Filangeri agreed and said he was uncomfortable with Singleton's continued discussion of the elements surrounding his case and the improper conviction. [XXXIX T 4389]

Singleton's assertions to Filangeri that Vincent offered him sex for money and that he was improperly convicted were evidence of Singleton's lack of remorse for the crimes against Vincent. This Court has "clearly stated that lack of remorse is a nonstatutory aggravating circumstance and cannot be considered in a capital sentencing." Shellito v. State, 701 So.2d 837, 842 (Fla. 1997), cert. denied, 118 S. Ct. 1537, 140 L. Ed. 2d 686 (1998); see also,

Pope v. State, 441 So. 2d 1073, 1078 (Fla. 1984). In Jones v. State, 569 So. 2d 1234, 1240 (Fla. 1990), this Court held that the trial court committed reversible error by allowing an officer to testify in the penalty phase that Jones showed no remorse. This Court urged the state "to refrain from injecting an issue that this Court has unequivocally determined to be inapplicable, causing us to vacate sentences in the past." Id. This Court also found reversible error in the admission of evidence of lack of remorse during the penalty phase in Derrick v. State, 581 So. 2d 31, 36 (Fla. 1991), and Colina v. State, 570 So. 2d 929, 933 (Fla. 1990).

The weighing of an invalid aggravating circumstance in reaching the decision to impose a death sentence violates the Eighth Amendment to the United States Constitution. Sochor v. Florida, 504 U.S. 527, 532 (1992). Although the court did not expressly consider Singleton's lack of remorse for the crimes against Vincent in its sentencing order, [VIII R 1287-94; A 1-8] the error in allowing the evidence to be presented to the jury created an unacceptable risk that the jury may have considered lack of remorse in making its recommendation to sentence Singleton to death. The court then considered the jury's recommendation in reaching its own decision to sentence Singleton to death. [VIII R 1287, 1293; A 1, 7] Under these circumstances, the jury's consideration of an invalid aggravating circumstance violates the Eighth Amendment. Espinosa v. Florida, 505 U.S. 1079, 1081-1082

(1992). This error requires this Court to reweigh the aggravating and mitigating circumstances or to conduct harmless error analysis. Sochor, at 532.

Whether Singleton's death sentence can stand when the state has violated his federal constitutional rights is a federal question governed by standards established by the United States Supreme Court. Chapman v. California, 386 U.S. 18, 21 (1967). Constitutional harmless error review places the burden on the state, as the beneficiary of the error, to demonstrate beyond a reasonable doubt that the error did not contribute to the conviction. Id., at 23-24; State v. DiGuilio, 491 So. 2d 1129, 1135 (Fla. 1986). In a case involving the weighing of an invalid aggravating circumstance, this Court must determine that the error did not contribute to the death sentence to find that the error was harmless beyond a reasonable doubt. Sochor, at 540.

The trial court's error in admitting evidence of lack of remorse in this case cannot be found harmless under the Chapman standard. The trial court properly found two statutory aggravating factors and numerous mitigating circumstances including: extreme mental or emotional disturbance;[9] substantially impaired capacity to conform conduct to the requirements of law; [10] Singleton's age

[9] § 921.141(6)(b), Fla. Stat. (1996 Supp.).

[10] § 921.141(6)(f), Fla. Stat. (1996 Supp.).

of 69;[11] mild dementia; alcoholism; he was under the influence of alcohol and other medication at the time of the offense; the intent to kill was formed during an argument or disagreement with Hayes; he previously attempted suicide; he served honorably in the armed forces; his prior violent felonies were committed in 1978 when he was 51 years old; he was a model prisoner in California from 1979 to 1987; and since his release on parole in 1987, Singleton has never been accused of or arrested for any offense except petit theft. [VIII R 1288-93; XLII T 4872-81; A 2-7] Because there were numerous and substantial mitigating circumstances, it is very likely that the jury's consideration of the evidence of lack of remorse tipped the balance of the jury's weighing process in favor of death. When the sentencer weighs an invalid factor in its decision, "a reviewing court may not assume it would have made no difference if the thumb had been removed from death's side of the scale." Stringer v. Black, 503 U.S. 222, 232 (1992).

If the court had not erroneously admitted the evidence of lack of remorse for the crimes against Vincent, the jury may very well have recommended a life sentence. Because there were substantial mitigating circumstances to reasonably support a life recommendation, this Court would not have sustained a decision by the trial court to override a life recommendation. See San Martin v. State, 717 So. 2d 462, 471 (Fla. 1998) (override reversed); Mahn

[11] § 921.141(6)(g), Fla. Stat. (1996 Supp.).

v. State, 714 So. 2d 391, 401-402 (Fla. 1998) (same); Pomeranz v. State, 703 So. 2d 465, 472 (Fla. 1997) (same).

Because the jury's consideration of invalid nonstatutory aggravating circumstances was not harmless under the circumstances of this case, the death sentence must be vacated. This case must be remanded for a new penalty phase trial with a new jury. Derrick v. State, 581 So. 2d at 36-37; Colina v. State, 570 So. 2d at 933.

ISSUE VI

THE TRIAL COURT ERRED BY FINDING AND CONSIDERING NONSTATUTORY AGGRAVATING CIRCUMSTANCES IN SUPPORT OF THE DEATH SENTENCE.

The trial court erred in sentencing Singleton to death because the court found and considered nonstatutory aggravating circumstances in determining that death was the appropriate penalty. The weighing of invalid aggravating circumstances violates the Eighth Amendment to the United States Constitution. This error requires reversal of the death sentence and resentencing by the trial court.

In the trial court's sentencing order, the court found two statutory aggravating circumstances -- prior violent felony convictions[12] and heinous, atrocious, or cruel.[13] [VIII R 1287-1289; XLII T 4872-76; A 1-3] The court stated, "nothing except as previously indicated in paragraphs 1 and 2 above was considered in aggravation." [VIII R 1289; XLII T 4876; A 3]

Despite the court's disavowal of the consideration of any other aggravating factors, the court expressly considered further findings in support of the death sentence:

> The court further finds that this was an unprovoked, senseless killing of a human being, the mother of two lovely children,

[12] § 921.141(5)(b), Fla. Stat. (1996 Supp.).

[13] § 921.141(5)(h), Fla. Stat. (1996 Supp.).

> without cause, provocation or justification. The fact that the victim was a prostitute in no way diminished her right to life and the pursuit of happiness, or justifies the taking of her life. This killing further exemplifies that we are living in times worse than "Sodom and Gomorrah".
>
> Accordingly, it is ORDERED AND ADJUDGED that the defendant, Lawrence Singleton, is hereby sentenced to death for the murder of the victim, Roxanne Hayes.

[VIII R 1293; XLII T 4882; A7]

These further findings constitute two additional aggravating factors: (1) the unprovoked, senseless killing of the mother of two children[14] without cause, provocation or justification; and (2) the killing exemplifies that we are living in times worse than Sodom and Gomorrah.[15] Neither of these aggravating factors is included among those provided by section 921.141(5), Florida Statutes (1996 Supp.).

Defense counsel filed a motion to correct sentencing error, arguing, inter alia, that the court erred by finding nonstatutory aggravating circumstances. [VIII R 1297-1301] The court heard and denied this motion on April 30, 1998. [XLII T 4885-88]

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[14] The evidence did not support the finding that Hayes was the mother of "two lovely children." Corporal Bowling testified that Hayes had three children, two girls and a boy. [XXXV T 3786-87] Clifford Tyson, Hayes' fiance, testified that they had three children, ages 4, 8, and 12. [XLII T 4853-54]

[15] It is improper for the court to consider religious philosophy in determining the proper sentence. See Ferrell v. State, 686 So. 2d 1324, 1328 (Fla. 1996) (quoting People v. Wash, 861 P. 2d 1107, 1135-36 (Cal. 1994)), cert. denied, 117 S. Ct. 1443, 137 L. Ed. 2d 549 (1997).

The court erred by denying the motion because it is improper for the court to consider nonstatutory aggravating circumstances. Section 921.141(5) provides that "[a]ggravating circumstances shall be limited to the following:" then provides a list of statutory aggravating circumstances. This Court has long held that the "specified statutory circumstances are exclusive; no others may be used ...." Purdy v. State, 343 So. 2d 4, 6 (Fla.), cert. denied, 434 U.S. 847 (1977); see also, Knight v. State, 721 So. 2d 287, 294 n. 10 (Fla. 1998); Grossman v. State, 525 So. 2d 833, 842 (Fla. 1988), cert. denied, 489 U.S. 1071 (1989), receded from on other grounds by Franqui v. State, 699 So.2d 1312, 1318-19 (Fla. 1997), cert. denied, 118 S. Ct. 1582, 140 L. Ed. 2d 796 (1998). Because only statutory aggravating factors may be considered, the consideration of a nonstatutory aggravating factor is impermissible. Drake v. State, 441 So. 2d 1079, 1082 (Fla. 1983), cert. denied, 466 U.S. 978 (1984); see also, Shellito v. State, 701 So. 2d 837, 842 (Fla. 1997) (lack of remorse is nonstatutory aggravating circumstance and cannot be considered), cert. denied, 118 S. Ct. 1537, 140 L. Ed. 2d 686 (1998).

The weighing of an invalid aggravating circumstance in reaching the decision to impose a death sentence violates the Eighth Amendment to the United States Constitution. Sochor v. Florida, 504 U.S. 527, 532 (1992). This error requires this Court

to reweigh the valid aggravating and mitigating factors or to conduct harmless error review. Id.

Constitutional harmless error review places the burden on the state, as the beneficiary of the error, to demonstrate beyond a reasonable doubt that the error did not contribute to the conviction. Chapman v. California, 386 U.S. 18, 23-24 (1965); State v. DiGuilio, 491 So. 2d 1129, 1135 (Fla. 1986). In a case involving the weighing of an invalid aggravating circumstance, this Court must determine that the error did not contribute to the death sentence to find that the error was harmless beyond a reasonable doubt. Sochor, at 540.

The trial court's error in finding and weighing invalid nonstatutory aggravating circumstances in this case cannot be found harmless under the Chapman standard. The trial court properly found two statutory aggravating factors and numerous mitigating circumstances including: extreme mental or emotional disturbance;[16] substantially impaired capacity to conform conduct to the requirements of law; [17] Singleton's age of 69;[18] mild dementia; alcoholism; he was under the influence of alcohol and other medication at the time of the offense; the intent to kill was formed during an argument or disagreement with Hayes; he previously

[16] § 921.141(6)(b), Fla. Stat. (1996 Supp.).

[17] § 921.141(6)(f), Fla. Stat. (1996 Supp.).

[18] § 921.141(6)(g), Fla. Stat. (1996 Supp.).

attempted suicide; he served honorably in the armed forces; his prior violent felonies were committed in 1978 when he was 51 years old; he was a model prisoner in California from 1979 to 1987; and since his release on parole in 1987, Singleton has never been accused of or arrested for any offense except petit theft. [VIII R 1288-93; XLII T 4872-81; A 2-7] Because the trial court found the existence of numerous and substantial mitigating circumstances, it is very likely that the court's consideration of the invalid nonstatutory aggravating circumstances tipped the balance of the court's weighing process in favor of death. When the sentencer weighs an invalid factor in its decision, "a reviewing court may not assume it would have made no difference if the thumb had been removed from death's side of the scale." Stringer v. Black, 503 U.S. 222, 232 (1992). Absent the court's weighing of the invalid nonstatutory aggravating factors, this case was not one of the most aggravated and least mitigated murders for which the death sentence is reserved. See Urbin v. State, 714 So. 2d 411, 416 (Fla. 1998); Kramer v. State, 619 So. 2d 274, 277 (Fla. 1993); State v. Dixon, 283 So. 2d 1, 7 (Fla. 1973), cert. denied, 416 U.S. 943 (1974).

Because the court's consideration of invalid nonstatutory aggravating circumstances was not harmless under the circumstances of this case, the death sentence must be vacated. This case must be remanded for reweighing of the valid aggravating and mitigating circumstances by the court.

ISSUE VII

THE TRIAL COURT ERRED BY ALLOWING THE STATE'S EXPERT TO TESTIFY ABOUT SINGLETON'S CREDIBILITY.

The trial court erred by allowing Dr. Barbara Stein, the state's expert psychiatrist, to testify over defense counsel's objections that in her opinion, based upon her review of Singleton's statements, Singleton had the capacity to deceive. This testimony was an improper opinion about Singleton's credibility. His credibility was in issue during the penalty phase because much of Singleton's guilt phase testimony concerned mitigating circumstances arising from his background and the circumstances of the offense. Because the error is likely to have contributed to the jury's advisory sentence of death, the death sentence must be vacated, and the case must be remanded to the trial court for a new penalty phase trial with a new jury.

Dr. Elizabeth McMahon, a clinical psychologist, examined Singleton and testified for the defense, inter alia, that Singleton suffered from mild to moderate dementia. [XL T 4503-10, 4541-44, 4569] Dr. Barbara Stein, a psychiatrist, testified in rebuttal for the state. [XLI T 4664-67] In Stein's opinion, Singleton did not suffer from dementia because there had been no prior diagnosis of dementia, his prior medical records indicated he was cognitively intact, he was capable of living independently, and his

inconsistent statements indicated that he had the capacity to deceive. [XLI T 4698-705, 4710-15, 4728-30]

When Dr. Stein initially testified that there were inconsistencies in Singleton's statements, defense counsel objected on relevance, hearsay, and improper predicate grounds. The court tacitly overruled the objections and took a recess. [XLI T 4705-10] When Stein testified that in her opinion Singleton had the capacity to deceive based upon her review of his statements, particularly those made to jail officials, defense counsel objected that was an opinion she was not qualified to give. The court overruled the objection. [XLI T 4711] Stein continued to testify about Singleton's statements concerning how much he had to drink, how much Paxil he took, and the cut on his chest. Defense counsel renewed his objections, and the court noted them for the record. [XLI T 4711-12] Stein opined that the statements showed Singleton knew what was going on and showed deception toward the police. [XLI, T 4712-13]

The court erred by overruling defense counsel's objection that Dr. Stein was not competent to testify about her opinion that Singleton had the capacity to deceive based upon her review of his statements. Singleton testified in his own behalf during the guilt phase of the trial. [XXXV T 3806 - XXXV T 3838] Much of his testimony concerned mitigating circumstances arising from his background or the circumstances of the offense, so his credibility

was at issue during the penalty phase. Dr. Stein's opinion that his statements showed the capacity to deceive called Singleton's credibility into question.

Expert witnesses are not permitted to state an opinion concerning the defendant's credibility as a witness. "It is elemental in our system of jurisprudence that the jury is the sole arbiter of the credibility of witnesses." Boatwright v. State, 452 So. 2d 666, 668 (Fla. 4th DCA 1984). "Without question, it is error for one witness to testify regarding the credibility of another witness, even if the witness testifying is an expert." Morgan v. State, 639 So. 2d 6, 12 (Fla. 1994). "It is well established ... that an expert is prohibited from commenting to the fact-finder as to the truthfulness or credibility of a witness's statements in general." State v. Townsend, 635 So. 2d 949, 958 (Fla. 1994). "It logically follows that expert testimony should not be allowed in a criminal trial to attack the credibility of the accused ...." Erickson v. State, 565 So. 2d 328, 331 (Fla. 4th DCA 1990).

Dr. Stein's testimony that Singleton had the capacity to deceive was prejudicial to the defense because it is likely to have caused the jury to disregard or to attach less weight to Singleton's testimony concerning mitigating circumstances, thereby contributing to the jury's advisory sentence of death. Because the jury's advisory sentence is entitled to great weight, Stone v.

State, 378 So. 2d 765, 772 (Fla. 1979), cert. denied, 449 U.S. 986 (1980); Tedder v. State, 322 So. 2d 908 (Fla. 1975), an error which contributes to the jury's death recommendation also contributes to the trial court's decision to impose the death sentence. See Espinosa v. Florida, 505 U.S. 1079, 1081-1082 (1992). Thus, the court's error in allowing Dr. Stein to state her opinion about Singleton's capacity to deceive contributed to the death sentence and was harmful to Singleton. The death sentence must be vacated, and this case must be remanded to the trial court for a new sentencing proceeding before a new jury.

ISSUE VIII

THE DEATH SENTENCE IMPOSED BY THE TRIAL COURT IS DISPROPORTIONATE BECAUSE SINGLETON'S CRIME IS NOT ONE OF THE MOST AGGRAVATED AND LEAST MITIGATED OF FIRST DEGREE MURDERS.

This Court conducts proportionality review of every death sentence to prevent the imposition of unusual punishment prohibited by article I, section 17, Florida Constitution. Urbin v. State, 714 So. 2d 411, 416-17 (Fla. 1998); Sinclair v. State, 657 So. 2d 1138, 1142 (Fla. 1995); Kramer v. State, 619 So. 2d 274, 277 (Fla. 1993); Tillman v. State, 591 So. 2d 167, 169 (Fla. 1991). Because death is a uniquely irrevocable penalty, death sentences require more intensive judicial scrutiny than lesser penalties under article I, section 9, Florida Constitution. Urbin, at 417; Sinclair, at 1142; Tillman, at 169. "While the existence and number of aggravating or mitigating factors do not in themselves prohibit or require a finding that death is nonproportional," this Court is "required to weigh the nature and quality of those factors as compared with other similar reported death appeals." Kramer, at 277. The death penalty is reserved "only for the most aggravated and least mitigated of first-degree murders." Urbin, at 416; Kramer, at 278; State v. Dixon, 283 So. 2d 1, 7 (Fla. 1973), cert. denied, 416 U.S. 943 (1974).

This case is far from being among the most aggravated and least mitigated of first-degree murders. The court found only two

statutory aggravating factors, prior convictions for violent felonies and heinous, atrocious, or cruel (HAC), [VIII R 1287-1289, 1293; XLII T 4872-76, 4882; A 1-3, 7] while there is compelling evidence of numerous statutory and nonstatutory mitigating circumstances.

Lawrence Singleton was a suicidally depressed, [XXXIV T 3671-72; XXXV T 3819; XXXIX T 4394-4400, 4405-13, 4422-28; XL T 4532-35] long term alcoholic [XXX T 3159-61; XXXV T 3817-18; XXXIX T 4370-71] 69 year old man whose brain functioned as though he were 15 to 20 years older. [XL T 4535-36] He was suffering from an extreme mental disturbance, [XL T 4544-46] substantially impaired capacity to control his behavior, [XL T 4538, 4546-49, 4592] brain damage, [XL T 4517-18] and mild to moderate dementia. [XL T 4541-44, 4569, 4594] He was drinking and taking prescription medication on the day of the murder. [XXXI T 3242, 3251; XXXII T 3424; XXXIV T 3675-77, 3682; XXXV T 3747-48, 3763-64, 3796-3800, 3821-25; XXXVI T 3837-62, 3936] The victim was Roxanne Hayes, a prostitute with whom Singleton had an ongoing, friendly relationship. [XXXV T 3814-17, 3826; XXXVI T 3864-70, 3882] Hayes had recently used cocaine. [XXXII T 3358, 3367-68] Singleton claimed that he thought Hayes was taking money from his wallet and that Hayes picked up a knife and swung it at him when they began fighting.[19]

[19] This portion of Singleton's account was not contradicted by the testimony of Paul Hitson, who witnessed parts of the fight after it was underway, [XXIX T 3090-97, 3100-02, 3106-12; XXX T

[XXXV T 3827-30; XXXVI T 3884-92] Singleton felt sorrow for Hayes' death. [XXXV T 3840; XXXVI T 3919-20]

Singleton served in the United States Army in combat in the Korean War and was honorably discharged. [XXXV T 3809-10; LIV R 1059] He had a successful career in the Merchant Marine, working his way up to captain. [XXXV T 3807-11; XL T 4527; LIV R 1059, 1120-1210] Although Singleton had prior violent felony convictions for his attack on Mary Vincent in California, those convictions occurred in 1979, [XXXIX T 4318; LIV R 1052-54] and Singleton was a model prisoner and parolee who obtained his GED, took college courses, and assisted in teaching other inmates. [XXXIX T 4340, 4375; XL T 4529-30; LIV R 1059, 1063-1119] After returning to Tampa, Singleton was a good neighbor. [XL T 4471, 4477-79, 4490-96] Following his arrest for this offense, Singleton was well-behaved and respectful in jail. [XXXIX T 4431-36, 4442-43; XL T 4465-70] He would not be dangerous to guards or other prisoners while incarcerated. [XL T 4550-51]

There is an abundance of prior cases which were substantially more aggravated and less mitigated than this case. See, e.g., Cole v. State, 701 So. 2d 845, 852-853 (Fla. 1997) (HAC choking murder committed during kidnapping for pecuniary gain with prior violent felonies based on contemporaneous convictions involving different victim, with nonstatutory mitigators of mental incapacity and a

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3171-72, 3181-82, 3194-97] nor by the other evidence.

deprived childhood); Kimbrough v. State, 700 So. 2d 634, 638 (Fla. 1997) (HAC beating murder during course of burglary and sexual battery with prior violent felony and only weak, nonstatutory mitigation); Rolling v. State, 695 So. 2d 278, 282-283 (Fla. 1997) (five cold, calculated, and premeditated HAC murders committed during three burglaries and three sexual batteries with prior violent felony convictions).

Singleton's case is most fairly comparable to Kramer v. State, 619 So. 2d 274 (Fla. 1993), which involved the same aggravating circumstances, HAC and prior violent felony conviction. The majority of this Court found that death was disproportionate because of the mitigating factors of alcoholism, mental stress, severe loss of emotional control, and potential for productive functioning in the structured environment of prison. Singleton's case is substantially more mitigated than Kramer's. In addition to alcoholism, use of alcohol and prescription drugs on the day of the offense, and potential for productive functioning in prison, Singleton was suffering from extreme mental disturbance, substantially impaired capacity for controlling his behavior, brain damage, mild dementia, and depression. This Court found that Kramer involved nothing more than "a spontaneous fight, occurring for no discernible reason, between a disturbed alcoholic and a man who was legally drunk." Id., at 278. Singleton's case involved a spontaneous fight between a disturbed alcoholic and a cocaine using

prostitute who probably provoked the fight by grabbing Singleton's wallet and swinging a knife at him. Like Kramer, Singleton's case "hardly lies beyond the norm of the hundreds of capital felonies this Court has reviewed since the 1970s," and is not one of the most aggravated and least mitigated murders. Id.

This Court held that the death penalty was disproportionate in two other cases similar to Kramer, Sager v. State, 699 So. 2d 619, 623 (Fla. 1997), and Voorhees v. State, 699 So. 2d 602, 614 (Fla. 1997). Sager, Voorhees, and Bostic were intoxicated. Sager and Bostic began fighting. Voorhees and Sager tied Bostic to a chair. They hit and kicked Bostic and tried to gag him. They stabbed him several times in the throat. Bostic died from a combination of blunt trauma to the head and chest, choking, binding, and incisions to the neck. Sager and Voorhees took Bostic's car, cash, ATM card and telephone calling card. Voorhees, at 605. Two aggravating factors were found for each defendant, murder committed during a robbery and HAC. Sager, at 621 n. 1; Voorhees, at 606 n. 1. Four mitigating factors were found for Vorhees: extreme mental disturbance, age 24, accomplice, and childhood abuse. Voorhees, at 606 n. 2 and 3. Four mitigating factors were found for Sager: extreme mental disturbance, impaired capacity, age 22, and accomplice. Sager, at 621 n. 2. In both cases this Court found that the aggravating factors were overshadowed by the mitigation and the circumstances of the murder, which occurred after a drunken

episode between the victim and the defendants. Sager, at 623; Voorhees, at 615.

Similarly, the two aggravating factors in Singleton's case are overshadowed by the mitigation and the circumstances of the murder, which occurred during an episode in which Singleton was drinking and Hayes had been using cocaine. This Court should follow Kramer, Sager, and Voorhees to find that the death sentence is disproportionate for Singleton. This Court should vacate the death sentence and remand for imposition of a life sentence.

CONCLUSION

Appellant respectfully requests this Honorable Court to grant him the following relief: Issues I and II, reverse the judgment and sentence and remand for a new trial; Issues IV, V, and VII, reverse the sentence and remand for a new penalty phase trial; Issues III and VI, reverse the sentence and remand for resentencing by the court; Issue VIII, reverse the sentence and remand for imposition of a life sentence.

TABLE OF CITATIONS (continued)

APPENDIX

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Candance M. Sabella, Suite 700, 2002 N. Lois Ave., Tampa, FL 33607, (813) 873-4739, on this _____ day of February, 2001.

Respectfully submitted,

JAMES MARION MOORMAN
Public Defender
Tenth Judicial Circuit
(941) 534-4200

PAUL C. HELM
Assistant Public Defender
Florida Bar Number O229687
P. O. Box 9000 - Drawer PD
Bartow, FL 33831

/pch