IN THE SUPREME COURT OF FLORIDA

SONNY RAY JEFFRIES

Appellant,

v. **CASE NO. SC94994**

STATE OF FLORIDA,

Appellee.

_____/

ON APPEAL FROM THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE

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STATEMENT OF THE CASE AND FACTS

Suppression Motion:

The State agreed that Jeffries had been arrested and held in jail by Georgia authorities unlawfully.[1] (SR 64). Jeffries claimed that this rendered the admission into evidence of the seizure and testing of the shoes he was wearing at the time inadmissible. (SR 64). The State contended "that the shoes would inevitably have been found any way" and should be admitted into evidence. (SR 64). The State asked the lower court to "take judicial notice of the arrest affidavit for the arrest warrant which is in the court file . . .." (SR 64).

Orlando Police Department Homicide Detective Barbara Bergin was the lead investigator in the murder of Jeffries' victim, Wilma Martin. (SR 66). In that capacity, Ms. Bergin prepared an affidavit for an arrest warrant to be executed on Jeffries. (SR 66). Detective Bergin arrived back in Orlando about midnight and planned to obtain the arrest warrant the next day. (SR 67-68). However, at 1:30 AM, on September 10, 1993, she received a phone call and learned that "a subject matching Sonny Jeffries" had been detained in Georgia with Harry Thomas who was wanted on a Florida arrest warrant for a separate robbery and a be-on-the-look-out had been posted for Thomas "from Florida to New Jersey." (SR 67, 68, 71).

Prior to Jeffries' Georgia detention, Detective Bergin had

[1] "SR" refers to the Supplemental Record on Appeal.

obtained information from persons to whom Jeffries had made statements of “very specific knowledge that . . . only people involved in the murder would have . . ..” (SR 67). She had also learned that Jeffries had abandoned his fiancee, Donna Moodhard, in Daytona “the same weekend the homicide occurred,” and “he had left quiet (sic) of (sic) bit of his clothing with his fiancee.” (SR 72). Detective Bergin had been told that Ms. Moodhard had given a sworn statement to New Jersey authorities stating that Jeffries had directed her to wash his clothing, specifically including his black Nike tennis shoes. (SR 76-77). Jeffries “became upset when she didn’t wash the shoes “as he asked.” (SR 77).

Detective Bergin flew to New Jersey and interviewed Ms. Moodhard and Jeffries’ sister, Ms. Faisst. (R 749). These women had approached New Jersey law enforcement authorities, stating “they possibly had information regarding the homicide of Wilma I. Martin.” (R 749). On August 21, 1993, Ms. Moodhard had flown to Florida to meet with Jeffries, and she found him in Ocala at Harry Thomas’ home. (R 749). “He had spent the money she had sent to rent a home.” (R 749). On August 24, 1993, she and Jeffries went to Daytona Beach “to look for work and a place to live.” (R 749). They checked in to a hotel and “got into an argument.” (R 749). “During the argument, Sonny Jeffries demanded a diamond ring back which he had given to her upon her arrival in Florida.” (R 749). Ms. Moodhard “questioned him about the ring and where it came

from." (R 749). Jeffries told her:

> 'Ok, you fat assing bitch, if you want to know, if you want to take those diamonds and put 'em in a wedding band of your choosing and not let the jeweler do it that I had planned out, then you're going to get your fat ass picked up because they're as hot as hell. Harry and I just took them the other night. We just got them the other night. Harry and I took them or stole them the other night. If you try to use any, they are going to pick your ass up.'

(R 749). Ms. Moodhard "passed out and when she woke . . ., Jeffries was gone and the ring he had given her was removed from her hand." (R 749).

Jeffries' sister, Ms. Faisst, was also interviewed by Detective Bergin. (R 749). She said that Jeffries' other sister, Roxanne Jeffries, phoned her and asked if Ms. Moodhard had left for Florida. (R 749). Ms. Faisst "asked where Sonny was?" (R 749). "Roxanne said that Sonny and Harry Thomas were out doing robberies near Disney World because Sonny had spent all of Donna's money she had sent for a house to rent." (R 749).

On September 8, 1993, Detective Bergin spoke with "the step-daughter of Harry Thomas," Lena Colin. (R 751). Ms. Colin reported that "two to three weeks ago" she accompanied Harry Thomas and Jeffries "to three pawn shops." (R 751). At the Bargain Box, Thomas and Jeffries gave her two rings which she pawned for $35. (R 751). At Frontier Pawn, Mr. Thomas went in "with two rings but was unable to pawn them." (R 751). At Ocala Drive-In Pawn and Gun Shop,

she was given four rings "which she pawned for $25.00 and turned the money over to Harry Thomas and Sonny Jeffries." (R 751).

The following day, law enforcement officers went to the pawn shops identified by Ms. Colin. They found jewelry which had been pawned as described by Ms. Colin and which belonged to Ms. Martin. (R 751, 752).

Ms. Colin also gave "a taped statement" to officers on September 9, 1993. (R 752). Therein, she said that

> Harry Thomas told her Sonny Jeffries asked Harry to drive him to a lady's house to get stuff that she had. Harry agreed . . .. Sonny Jeffries said the lady was talking about the Jeffries and Thomases being trash. He wanted to gut her and kill her. . . . Harry drove Sonny to the residence. When they pulled up, the spotlight came on and when Sonny walked up it went off. The victim, Wilma I. Martin, opened the door and he went in. A short time later, Sonny came out with blood on his foot and leg. Harry asked Sonny what he was doing and Sonny then returned to the house and came back with a bag of stuff and eating the lady's "Chicken McNuggets." . . . Sonny said that he killed her, kicked her in the head and face, and kicked her face off. . . . Harry described the bag Sonny Jeffries used to carry the things out of the house as a pink pillow case which was found to be missing from the victim's bedroom.

(R 752).

Prior to learning of Jeffries' detention, Detective Bergin intended to secure an arrest warrant and place it in the NCIC computer system. (SR 68). She had received information from Jeffries' relatives and his fiancee, who were cooperating with the

authorities, indicating that Jeffries would return to his home town in New Jersey. (SR 69). The detective planned to advise the agencies along the route from Florida to New Jersey that Jeffries and Thomas were likely to be traveling in their area. (SR 69). Had Jeffries been arrested in New Jersey on the anticipated warrant, Detective Bergin would have "requested and obtained his shoes." (SR 70). Indeed, she "would have asked for any and all clothing that was in his possession at the time believing I could have had other evidence there." (SR 72).

Had he been arrested in New Jersey, the detective would have obtained the shoes by complying with the local requirements. (SR 70-71). Some "jurisdictions requires (sic) to write a search warrant in order to acquire their clothes." (SR 71). "Others, as in our jurisdiction, once they're arrested they're property with them would become available to us. . . . [I]f I would have had to I would have requested a search warrant or . . . whatever their jurisdiction required, in order to obtain them." (SR 70-71).

The New Jersey authorities knew Jeffries from prior contacts with him. (SR 70). They also knew "his family and his hangouts." (SR 70). Jeffries was detained in Richmond Hill, Georgia, a small town off of I-95 on the route to New Jersey. (SR 78).

Detective Bergin obtained an arrest warrant for Jeffries on September 10, 1993 at 1:30 PM. (SR 73). The detective had spent the morning faxing "photos back and fourth, fingerprints,

attempting to identify the person [detained in Georgia] as Sonny Jeffries since a different name had been given by him." (SR 73).

Trial:

The first witness presented by the State of Florida was Jeffries' brother, Kevin Jeffries. (R 377-79). Kevin, originally from Camden, New Jersey, was a ten year resident of Orange County, Florida in 1993. (R 378). While living in Orange County, he, his girlfriend, Kelly, and their children rented from the victim, Wilma Martin. (R 380). He had been in Ms. Martin's property for approximately 8 years, having left it a couple of months before Ms. Martin's murder. (R 381, 385). He and Kelly paid the rent in cash. (R 382). Kevin had been to Ms. Martin's home and described her as "like a mom to my kids. She took care of me." (R 383).

Sonny Jeffries moved to Florida from New Jersey in 1993; he had previously lived in Florida. (R 383, 384). Although Kevin had not introduced Sonny to Ms. Martin, he was "pretty sure he knew Wilma." (R 384). He had talked to Ms. Martin about Sonny, and she would have recognized the name as his brother's. (R 384). When Sonny came to Florida in 1993, he stayed with his sisters, Roxanne and Tammy. (R 385). Roxanne was living with Dennis Thomas, who was the brother of Harry Thomas. (R 392-93). Kevin had little contact with Sonny. (R 391).

Kevin learned of Ms. Martin's murder on a Sunday when someone called to tell him. (R 386). He gave a statement to the police.

(R 386).

On cross, Kevin said he had “never really known Sonny really to be a drinker.” (R 391). He never talked to Sonny about Ms. Martin having jewelry or money. (R 391). However, Sonny spoke with him about Ms. Martin in the context of Sonny’s “looking to rent a place . . ..” (R 391).

The next witness was Roxanne Jeffries. (R 394). Roxanne testified that she resides with Dennis Thomas, with whom she had been living for eighteen years. (R 394-95) They lived in Kenly, North Carolina. (R 394-95). She had previously “lived in Orlando for 12 years.” (R 395).

Roxanne and Kevin were close, and she had met Ms. Martin “a couple times.” (R 396). Ms. Martin “would stop over and talk to Kevin,” and Roxanne met her that way. (R 396). Ms. Martin and Kevin were friends as well as having a landlord and tenant relationship. (R 396). In fact, Kevin and Ms. Martin were “[m]ore than just” friends. (R 397). Sonny stayed with sister, Tammy, in Winter Garden when he came to Florida in 1993. (R 397-98).

Jeffries met Harry Thomas through Roxanne and Dennis. (R 398). They became friends. (R 398). One evening while she was playing a card game at her residence, she heard “Sonny was talking about that if he had to kill somebody to get some money that he would.” (R 399, 402). He and the others had been drinking alcohol and all of

them shared "a 12 pack they had."[2] (R 403). Sonny then suggested to Harry that they go rob someone. (R 399). He also suggested the possibility of killing the person robbed. (R 399). In fact, his "exact words" were: "[I]f he had to kill somebody to get some money, that's what he would do." (R 405). Thereafter, Jeffries and Harry left together, telling Roxanne "they were going to Disney World." (R 400). When he left, Sonny was wearing "black hightops." (R 409).

A few days later, Jeffries had "some rings and money that he didn't have that night." (R 400). There were four rings and "some 50's and 20's . . .." (R 400). Jeffries told his fiancee that "he had like a ring for her for a wedding ring and engagement ring." (R 401). It was one of the four he showed up with after the discussion with Harry about robbing, and possibly killing, someone. (R 401). Roxanne added that Sonny made a statement "about the rings making him rich forever," but she did not know what he meant by that. (R 401).

Dennis Thomas was the next witness. (R 411). He is the brother of Harry Thomas and had lived with Roxanne Jeffries for a number of years. (R 411). Jeffries and Harry Thomas became

[2] Later, Roxanne said that Harry Thomas had "about two beers," and Sonny had more than that. (R 407). She also said that although she did not know whether Sonny used cocaine, she thought he had "done it a couple times." (R 407). However, she had never seen him use it. (R 410).

acquainted through Dennis and Roxanne. (R 412).

Dennis knew Ms. Martin, having "met her once or twice." (R 412). She was Kevin's landlady and friend. (R 412). Dennis overheard a conversation between Jeffries and Harry about committing an offense against Ms. Martin. (R 412). Jeffries commented about Ms. Martin "collecting rents and . . . everybody knew she collected rents on Friday." (R 413). Jeffries was going to go over to Ms. Martin's "acting -- he wanted to go rent a place . . .." (R 414). Jeffries also made the statements about robbing Ms. Martin. (R 414, 418). "Sonny had more knowledge about Wilma than my brother did," although Harry participated in the conversation. (R 418). Defense Counsel's attempts to characterize the conversation Dennis overheard as the same one that Roxanne overheard were unsuccessful. (R 416-17).

Orlando Police Department Sergeant William Mulloy, Jr. took possession of a ring from Linda Richards at a pawn shop in Bunnell. (R 429). It was admitted into evidence without objection. (R 430-31). The State and the Defense stipulated the "items obtained" by Sergeant Mulloy from Ms. Richards "were pawned by the defendant on August 21, 1993." (R 431).

The next witness was Orlando Police Department Crime Scene Technician Ron Rogers. (R 432). Through his testimony, the State introduced diagrams of the crime scene. (R 434-35). Technician Rogers lifted a number of latent fingerprints from the crime scene.

(R 437-38).

The State next called Jesse Giles, Deputy Corner Forensic Pathologist for Mahoney County, Youngstown, Ohio. (R 439). He was employed as Associate Medical Examiner in Orange County when the instant crime occurred. (R 440). The defense stipulated that Dr. Giles is an expert in the area of forensic pathology. (R 441).

Dr. Giles first saw Ms. Martin's body "[a]t the scene of her death" to which he responded upon receiving a call from law enforcement. (R 442). He reviewed and discussed several slides which had been admitted into evidence. One showed "a bloody . . . shoe print;" another photo showed another bloody print. (R 446). The doctor found "multiple blunt force injuries and some sharp force injuries," abrasions, lacerations, and bruising on Ms. Martin. (R 447). Ms. Martin had "heavy bruising around the eyelids," as well as "injuries around the mouth . . . [and] the right jaw. (R 448). She also had "fractured nasal bones, . . . a laceration of the lip, . . . [and] some bruising inside the lips." (R 448). Ms. Martin suffered an injury to the top of her eyeball from a "direct impact in that area." (R 449). There was a "stab wound at the right side of the neck" which "ends in the bone" and "[w]ould have hurt" and "caused local bleeding." (R 449-50).

This wound was inflicted with "[a] blade of some sort" and was approximately three inches deep. (R 451). There were also blunt force traumas, including "lacerations . . . at the head," one

of which “exposed broken nasal bones.” (R 451). She also had bruises on her back and neck caused by blunt force trauma. (R 453). The doctor estimated that from the time she received the blunt force traumas until her heart stopped beating was approximately “three minutes.” (R 454).

One of the marks on Ms. Martin’s beaten and bruised body was a pattern which could have been made by a shoe. (R 455). Some of the other injuries as well indicated that Ms. Martin had been stomped on her neck or kicked with a shoe. (R 455). She had “multiple areas of bruising” on her “right forearm and hand,” which injuries were “defensive” in nature. (R 455). There was “an actual cut on the small finger of the left hand” which was “a defensive injury” and was made by a sharp instrument like a knife. (R 456).

Ms. Martin died “from multiple blunt and sharp force injuries . . ..” (R 457-58). She would not have died from the sharp force injuries alone. (R 458).

Ms. Martin had “some hairs stuck to her hand.” (R 459). Although the doctor did not know whose hair it was, he felt that “it resembled hers.” (R 459). The hair evidence was sent to the Orlando Police Department lab. (R 460).

Orlando Police Department Crime Scene Technician Louis Knack testified next. (R 461). He was the lead crime scene technician involving the death of Ms. Martin. (R 462). He removed some of the doors from the kitchen cabinets near where the body was found and

processed them for latent fingerprints. (R 462). Two of the bloody cabinet doors were admitted into evidence without objection. (R 463). The doors were sent to the crime lab for examination. (R 464).

Captain Mark Long of the Richmond Hill Police Department in Georgia testified next. (R 476). He was involved in the arrest of Jeffries and Harry Thomas on September 10, 1993. (R 477). He first saw the vehicle in which the two men rode "around 12:14 A.M." (R 477). Prior to spotting the vehicle, some "two or three nights before," he had been given a be-on-the-lookout for the vehicle. (R 477). Heading toward I-95, the officer saw the vehicle coming out of a Texaco gas station. (R 478). The officer followed the vehicle toward I-95. (R 478). The vehicle stopped at another gas station, and "Mr. Thomas got out of the car and went in . . . to the bathroom." (R 479). Jeffries "stayed seated in the car." (R 479). The officer called in the tag and identifying information, and his dispatcher called back and said it was the car "wanted . . . for armed robbery and aggravated battery out of Marion County, Florida."[3] (R 480).

When Mr. Thomas returned from the bathroom, the officer spoke

[3] This was not the instant case. (R 483). Mr. Thomas had a cut on his leg which was consistent the gunshot wound reported in the Marion County battery/robbery for which the warrant had been issued. (R 485). Mr. Thomas claimed that "he had been cut by a piece of metal . . .." (R 485).

to him when Thomas asked for directions. (R 480). The officer arrested him on the outstanding Florida warrant. (R 480-81). The officer told Jeffries to exit and put his hands on the windshield. Jeffries "kept on telling me that he wasn't involved in it, that he didn't know what I was talking about." (R 482). The officer responded that it would be "cleared up," and "[i]f he wasn't involved in it, he would be released." (R 482).

The next witness was Bryan County Georgia Deputy Sheriff William Bashlor. (R 486). He was with the Richmond Hill Police Department at the time Jeffries was arrested in Georgia. (R 487). He "placed one of the defendants in the holding cell and . . . took his shoes from him." (R 487). He identified Jeffries as that defendant. (R 487-88). Thereafter, he identified the shoes as those that "were taken off the defendant at our holding facility." (R 491). He "wrote a property receipt on the Nike shoes" which belonged to "owner Sonny Raymond Jeffries." (R 494). The shoes were admitted into evidence over the chain of custody objection of the Defense. (R 496).

The State next presented Jeffries' sister, Tammy Avant Todd. (R 497-98). Ms. Todd resided in "Atlantic City, New Jersey" at the time of trial, but had lived in Winter Garden, Florida in 1993 at the time of the instant crime. (R 498). In August or September, 1993, Jeffries came to visit and stayed with her for a short time. (R 498).

Ms. Todd knew Wilma Martin and learned that she had been murdered. (R 499). Thereafter, she saw Jeffries with some rings that he had not had before Ms. Martin's death. (R 499). She gave law enforcement a statement and identified the rings she saw Jeffries with as those shown in the photographs which had belonged to Ms. Martin. (R 500). The photographs from which she identified the rings were admitted into evidence without objection. (R 501). The defense stipulated with the State that the rings introduced into evidence in State's Exhibit 1 belonged to Wilma Martin. (R 525-26).

Ms. Todd had a conversation with Jeffries about the murder. (R 504). She described her sister, Roxanne's, reputation for truthfulness to be "not good at all." (R 504). She did not know what Roxanne's reputation for truthfulness in general was, only that she was known to lie "to the family." (R 505).

The next witness was Orlando Regional Crime Laboratory Senior Crime Laboratory Analyst, Terrell Kingery. (R 509). Mr. Kingery worked in the Latent Print Section and also did shoe tract comparisons. (R 509). He was accepted as an expert without objection. (R 510).

Mr. Kingery received "three pieces of tile" which he examined. (R 511). A photograph of the shoe print on the tile was made and submitted to Mr. Kingery. (R 511). In fact, "there were numerous footwear impressions" submitted for his examination. (R 514). He

used these items to compare Jeffries' shoes to the print left at the crime scene. (R 511-12). He also went to the crime scene and personally viewed the shoe impressions there. (R 516-17). He identified the test impressions he made of Jeffries' shoes, and they were placed into evidence with no objection. (R 513).

Mr. Kingery said that he could not make a positive identification that Jeffries' shoes made the shoe impressions at the crime scene because of the amount of time that passed between the making of the impressions at the murder scene and the collection of the shoes from Jeffries. (R 515-16). "During that time the individual adds additional wear to the shoe and it can change the characteristics." (R 515). Shoe print identification involves both class characteristics and individual characteristics.[4] (R 517). The class characteristics of Jeffries' shoes were "all identical" to those of the impressions left at the scene. (R 518). The individual characteristics were "in the same position" but were different due to additional wear. (R 520).

[4] Class characteristics are those placed on the shoe during manufacturing. They can be used "to eliminate a shoe but you cannot use them to identify a shoe to say that . . . only that shoe left that impression." (R 517). Individual characteristics are the marks put on a shoe once a person begins wearing it. They are used "to specifically identify and it's what makes a particular shoe unique from all other shoes." (R 518). However, where time has passed and the individual characteristics have changed, the marking comparisons are given less weight. (R 519-20). "So I would go from an identification to maybe a probability but I wouldn't eliminate the shoe." (R 520).

Therefore, Mr. Kingery could not say "positively it's the shoe," but it "probably is the shoe."[5] (R 520, 521).

Mr. Kingery compared the crime scene shoe impressions to three sets of tennis shoes he was given. (R 522). He had a pair of Jordash shoes, Nike Magnum Air Force shoes, and XJ 900 shoes. (R 522). The Nike shoes belonged to Jeffries, and the XJ 900 shoes belonged to Harry Thomas. (R 522-23). Mr. Kingery did not know who owned the Jordash shoes. (R 523).

The final guilt phase witness was FDLE Crime Scene Analyst, Gary McCullough. (R 526-27). Mr. McCullough worked as a latent print examiner for FDLE out of Orlando in 1993 at the time of the instant murder. (R 527). He was given some cabinet doors for the purpose of locating finger or palm prints. (R 527-28).

Mr. McCullough said that the doors appear to have blood on them. (R 529). He could not determine whether the blood was human." (R 529). There were prints visible on the doors within the red, bloody substance. (R 530).

The defense stipulated that fingerprints of Jeffries were given to Mr. McCullough for the purpose of comparing them to those on the doors. (R 530-31). He positively identified the print

[5] There were three shoe impressions at the scene which "probably" were made by Jeffries' shoes, and one which probably was made by Harry Thomas' shoes (removed from a tile). (R 521, 524). In addition, "there were nine that could have been made" by Jeffries' shoes. (R 521).

within the bloody substance on Ms. Martin's kitchen cabinet door as having been made by Jeffries. (R 532). There were "no other prints of value on the item." (R 533). Pursuant to FDLE procedure, a second analyst made an independent examination and verified Mr. McCullough's determination that the print at issue was made by Jeffries. (R 535). The photographs of the crime scene prints were "always" available for additional examinations and opinions, however, in this expert's opinion, if any examiner disagreed with the conclusion reached on the positive identification of Jeffries' print as the one on the cabinet door, "they will be wrong." (R 537).

The State rested its case. (R 537).

The defense moved for a judgment of acquittal on the robbery count, claiming that there was no testimony "that anything was stolen from Mrs. Martin." (R 538). According to Jeffries, there was "no circumstantial evidence which establishes a robbery to the exclusion of every reasonable hypothesis of innocence." (R 539). He explained that "she could have given it to" him or "he could have found them" [the rings]. (R 539). Regarding the burglary charge, he argued that there was "no evidence of any forced entry into the house." (R 540). Regarding the murder count, he again claimed that the evidence "can't exclude every reasonable hypothesis of guilt (sic)." (R 540). He claimed that "throughout this case we have suggested and implied and elicited testimony that

it was Harry Thomas who was present in the house and Harry Thomas who committed this murder." (R 540). The trial court denied the motion on all three counts. (R 549-50).

The defense then rested. (R 550). Jeffries was found quilty of the first degree murder of Ms. Martin, as well as an armed robbery of her. (R 1380-81).

Jeffries presented three penalty phase experts on the subject of his mental health: Dr. Michael Gutman, Dr. Eric Mings, and Dr. Brad Fisher. Dr. Gutman, "a medical doctor and psychiatrist," was accepted as an expert "in the area of forensic psychiatry." (R 359, 360). He first interviewed Jeffries on April 7, 1990 and diagnosed him as having "adult attention deficit disorder;" he specifically ruled out bipolar manic disorder. (R 361). He concluded that Jeffries "is [an] antisocial personality."[6] (R 377). Dr. Gutman also saw Jeffries on March 6, 1994, May 23, 1996, and January 31, 1997. (R 361). At some point thereafter, Dr. Gutman "talked about mental illness and schizophrenia." (R 361).

"[S]chizophrenia is a disease . . . a mental process . . .." (R 361). It "is usually thought to be genetic and hereditary," although syphilis can result in "a schizophrenic type illness." (R 362, 363). However, "gonorrhea doesn't have the same effects on

[6] An antisocial personality is "an individual who's inclined toward criminal acting out behavior . . . and an inclination to do things and not care about the effects, not learn from experience, and not be affected by a conscience." (R 377).

the brain as syphilis does; but gonorrhea, if in a very severe, . . . long term . . . would show itself as an active infection." (R 363). However, "by the time it gets to the brain and causes severe brain damage, the person would die." (R 363).

Dr. Gutman diagnosed Jeffries "as schizophrenic, paranoid schizophrenia, inclined toward delusions and hallucinations" with varying degrees of severity. (R 365). These problems are not "related to gonorrhea." (R 365). The disorder inclines Jeffries "to have odd and peculiar thinking" which can become "bizarre and irrational." (R 365). However, at the time of the murder, Jeffries was "able to know right from wrong" and knew what he was doing. (R 366).

Dr. Gutman opined that at the time of the murder, Jeffries was "actively schizophrenic;" the schizophrenia was "in remission" at the time of the trial. (R 366). As a result of the schizophrenia, Jeffries had "a diminution of [his] capacity to control [his] behavior" which was also related to "drug use." (R 366). The doctor added that Jeffries "could . . . have criminal responsibility for the specific event but . . . still . . . be out of touch with reality." (R 367).

Jeffries "has been for most of his adolescent to adult life in institutional settings, that is, incarcerative settings." (R 373).

During Dr. Gutman's 1990 evaluation of Jeffries, he told the doctor that he had lied to another doctor (Dr. Benson) and had

"acted crazy when, in fact, he was not." (R 376). His motivation had been "overcrowding of the jail" and the desire "to get out of the unit he was in." (R 376). Based on this acting, Dr. Benson concluded that Jeffries was schizophrenic. (R 376). However, in 1990, Dr. Gutman disagreed and did not diagnose Jeffries as schizophrenic. (R 376).

Dr. Gutman's diagnosis of Jeffries as an antisocial personality has never wavered. It has been there from the first evaluation in 1990 and continued through the date of the penalty phase proceeding. (R 377-78). Moreover, the other mental health reports Dr. Gutman reviewed -- Dr. Danzier's and the State Hospital -- also consistently diagnosed Jeffries as an antisocial personality. (R 378).

Dr. Gutman testified that although he believes that Jeffries "has shown signs of schizophrenia," he also "fakes and malingers." (R 379). However, sometimes when he says that he is lying, that is a lie. (R 379-80).

Dr. Gutman acknowledged that Jeffries had been hospitalized in the District Three North Florida Evaluation and Treatment Center on two separate occasions. (R 380). During those lengthy stays, the medical care providers observed no evidence of hallucinations or delusions. (R 380, 381). Indeed, when they returned Jeffries to prison, "he wasn't on antipsychotic medications and didn't appear to express any symptoms." (R 381).

Dr. Gutman had not seen Jeffries since February 10, 1997. (R 382). Nonetheless, he opined that Jeffries "believes he had gonorrhea and it affected his brain and that is what made for the schizophrenia." (R 382). This belief "is schizophrenic thinking showing itself." (R 382). However, this is the only possible evidence of schizophrenic behavior Dr. Gutman is aware of since early 1997. (R 383). Moreover, connecting venereal disease to mental illness is somewhat reality-based and is "on track." (R 383). Jeffries simply mixed-up the specific disease which can cause such illness. (R 383).

Dr. Gutman said that in regard to the time of the murder, he could point to no evidence indicating that Jeffries was suffering any kind of psychotic symptoms. (R 384). Indeed, he knew of no active psychotic symptoms. (R 384). Moreover, someone suffering from schizophrenia could still appreciate the criminality of his conduct and be able to conform it to the requirements of the law. (R 385). Regarding Jeffries specifically, the only thing that Dr. Gutman could identify which he felt indicated that Jeffries could not appreciate the criminality of his conduct and conform it to the law at the time he murdered Ms. Martin was his wonderment "why he would do such heinous things to the victim" in terms of the way she was killed. (R 385). The doctor felt that this indicated that there was "some sort of craziness about him." (R 385).

Dr. Gutman asked: "Why do something to somebody so harmful .

. . other than than (sic) just a maniacal acting out coming out." (R 385). He added: "Was it just evil meanness, or was it something that drove him internally that he couldn't control?" (R 386). Dr. Gutman chose to believe that "his illness played a role at that time and did drive him to do such heinous things."[7] (R 386). However, he testified that he has never even been asked to examine Jeffries to make a determination of the statutory mental mitigators. (R 387). Dr. Gutman thinks Jeffries "has antisocial behavior," and the "schizophrenia makes him the clumsy bungler that he is, and . . . he has a lot of violent potential." (R 388). Regarding his conclusion of inability to conform his conduct to the requirements of the law, Dr. Gutman admitted that "[i]f there are witnesses that say he . . . was just as cool and just as capable of forming thought that he's forming today . . ., I would defer and I would say I was wrong." (R 392).

Dr. Eric Mings evaluated Jeffries in 1994 at the request of the court in the context of "a competency-to-proceed evaluation." (R 394). At that time, Dr. Mings developed the "impression that he was paranoid and showing some evidence of psychosis." (R 395). He also "thought there was the possibility of some malingering." (R 395).

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[7] However, the doctor admitted that the "idea of just plain meanness is not inconsistent with Mr. Jeffries' history." (R 386). Indeed, he has committed "other acts of excessive violence that show some pretty meanness." (R 386).

The doctor did "another competency-to-proceed evaluation in April of 1996." (R 395). Dr. Mings "felt that he showed evidence consistent with a history of mental illness, probably schizophrenia . . .." (R 395). The doctor concluded that Jeffries was "sufficiently delusional . . . that [he] was concerned about his competency to proceed at that time." (R 395). Dr. Mings said that he has "thought that at times that the symptoms I saw were consistent with" schizophrenia. (R 396).

Dr. Mings was one of the mental health providers to whom Jeffries later confessed to have been "faking" his schizophrenic symptoms. (R 397). He added that if Jeffries had confessed as early as 1990 (to Dr. Gutman) that he had been "faking," that would possibly alter his conclusions reached prior to Jeffries' admission to Dr. Mings that he had been faking. (R 400).

Among the apparently delusional beliefs espoused by Jeffries to Dr. Mings in 1994 was that he had learned "of a financial scam," and "since that time, the C.I.A. had been out to get him." (R 400-01). He claimed that he was "concerned that the C.I.A. will have him assassinated." (R 401). These claims were among those to which Jeffries admitted in 1997 to have faked. (R 402). However, in 1997, he continued to express his concern that gonorrhea could cause mental illness. (R 402). Dr. Mings attempted to see Jeffries on two occasions after his confessions in 1997, but Jeffries "was very hostile towards me and refused to see me." (R 402).

Jeffries' final mental health expert was Dr. Brad Fisher, a clinical forensic psychologist out of Chapel Hill, North Carolina. (R 434-35). He was accepted as an expert in this area. (R 435).

Dr. Fisher reviewed a great deal of information on Jeffries, including the reports of several doctors and hospitals. (R 436-37). He said that he thinks that Jeffries suffers from a schizophrenic condition, but has not interviewed him enough "in recent time to know whether it's in remission now or not." (R 437). Apparently, the last time he saw Jeffries was February of 1998. (R 437).

Dr. Fisher said that in going through the great volume of records he had on Jeffries, he "didn't see anything anywhere that referred to a venereal disease," but he "supposed" that having such a disease "could" affect Jeffries' mental condition. (R 438). He said that "[t]he nature of a schizophrenic condition is a person who does not have consistent good touch with reality . . .." (R 439). In his opinion, Jeffries had some problems with "an accurate perception of reality . . . in 1983 (sic) at the time of this crime." (R 439). These problems "could well have affected [his] capabilities to make normal . . . rational judgments . . .." (R 440). A schizophrenic person could have "intelligent or normal behaviors in many . . . times and in many areas . . ." and still qualify for the diagnosis. (R 440).

Dr. Fisher testified that he would not expect violent behavior to result from Jeffries' schizophrenic condition. (R 441).

Rather, in Jeffries, he would expect "'bad thinking' and 'bad reality contact.'" (R 441). Schizophrenia might "have led to serious limitations in the extent to which [Jeffries] would have been able to appreciate the criminality of the situation or made . . . appropriate law-abiding judgments." (R 443).

Dr. Fisher said that Jeffries had been diagnosed at various times as "schizophrenic, manic-depressive, anti-social personality disorder and malingering." (R 444). He agreed that it is very difficult to know how much of what he has seen and heard from Jefferies is malingering. (R 444).

Dr. Fisher said that the mental health history records indicate that while in the New Jersey State Mental Hospital, he took an overdose of "a mild pain killer." (R 450). However, the doctor did not believe that in so doing Jeffries was trying to end his life, but "was simply trying to get out of the jail system and into the hospital system . . .." (R 452). Once he was in the hospital (in August 26, 1996), "'[i]t became clear very rapidly that he was not manifesting any evidence of mental illness nor marked depression. He was very unhappy with being in prison . . ..'" (R 452). This hospital, whose purpose is "to watch people . . . over a long period of time to assess their mental functioning" concluded that Jeffries simply "malingers." (R 453). Indeed, it ruled out psychotic disorder, including schizophrenia. (R 454).

Jeffries was hospitalized in Florida a second time. (R 454).

Upon admission, he was on anti-psychotic medication "[t]o decrease the symptoms of a schizophrenic condition." (R 454). Observation showed that "when the anti-psychotics were eliminated, . . . the psychotic symptoms did not recur." (R 455). Dr. Fisher conceded that it is well documented that Jeffries has successfully faked mental illness symptoms in the past. (R 460).

Dr. Fisher testified that as far as he knows, Jeffries has acted appropriately without delusion for the past year and a half. (R 456). Such is inconsistent with a true schizophrenic illness; "to think the C.I.A. was after them three years ago and now with no medication to be delusion-free."[8] (R 456). Moreover, it would be most unusual for schizophrenia to be "unmedicated in remission . . . with no symptoms" for such a long period of time. (R 456).

To the best of his recollection, Dr. Fisher saw nothing in any of the records he reviewed that reflected any type of delusional or psychotic behavior by Jeffries at or near the time of the crime. (R 459). There "is nothing" that the doctor could point to to support an indication that at the time of the murder he was suffering from

[8] As will be mentioned in greater detail, *infra*, after hearing this testimony at penalty phase, Jeffries decided to again make the C.I.A. claim at the subsequent *Spencer* hearing.

psychotic symptoms or illness.[9] (R 459). Indeed, even if he had schizophrenia, it could well have been in remission at that time. (R 460).

At the *Spencer* hearing, under oath, Jeffries himself testified:

> I'm not going to sit here today and play along with this game and deny that I was the one that killed Wanda (sic) Martin. I killed her, not Harry Thomas. Harry Thomas was not even in the house at the time of Wilma Martin's murder. I was the only one.
>
> . . .
>
> I took her life in her kitchen. I beat her to death.

(R 693). He proceeded to explain that he murdered Ms. Martin because she was giving his brother, Kevin, money which Kevin was using to buy alcohol. (R 694). Jeffries claimed that alcohol was ruining Kevin's life, and so, to save his brother from the ravages of alcohol, he killed the ultimate supplier, Ms. Martin. (R 694, 697). Another motive was to get money to "continue running . . . from the government." (R 693).

The trial court found the following mitigating factors and assigned them the weight indicated below:

(1) Statutory Factor: Inability to appreciate criminality of

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[9] Indeed, although Dr. Fisher maintained that he "thinks" Jeffries was schizophrenic as late as 1997, no one has examined him since, and he simply does not know whether that diagnosis is now accurate. (R 461).

conduct or conform it to the requirements of the law. Assigned "some weight."

(2) Non-Statutory Factors:

a. Co-defendant pled to second degree and received a 20 year sentence, given "some weight."

b. History of Mental/emotional problems, given "slight weight" because it was "self-recanted."

c. Some use of alcohol and drugs, given "little weight."

d. Attempt to commit suicide, given "little weight."

e. State offered a plea to life in prison, given "little weight."

f. Good conduct during trial, given "little weight."

g. Confessed to murder of Ms. Martin, given "minor weight" because "this confession come (sic) only at the absolute end of the Court proceedings . . .."

(R 1605-1608). The court found two aggravators:

(1) Committed during a robbery; and,

(2) Heinous, atrocious, and cruel.

(R 1600, 1602). The trial judge followed the 11 to 1 death recommendation of the jury and imposed the death penalty. (R 1438, 1611-13).

SUMMARY OF THE ARGUMENTS

POINT I: The trial court correctly denied Appellant's motion to suppress the shoes seized from him upon his illegal arrest in Georgia. The evidence would inevitably have been discovered, and therefore, was admissible in the instant case. Moreover, any error in admission of the shoes and shoeprint evidence was harmless beyond a reasonable doubt due to the overwhelming evidence of Appellant's guilt.

POINT II: The trial court correctly permitted the State's peremptory challenge of an African American prospective juror. The reason given for the strike was facially neutral, and Appellant did not carry his burden to persuade the court that the strike was the result of purposeful racial discrimination. The vague, conclusory allegations of Appellant are either procedurally barred, or insufficient to carry his burden of proof.

POINT III: The trial court correctly denied Appellant's motion for judgment of acquittal. The evidence adduced at trial was sufficient from which the jury could exclude Appellant's reasonable hypothesis of innocence. The evidence overwhelmingly established Appellant's guilt of the instant armed robbery and first degree murder.

POINT IV: The trial court properly evaluated the proposed mitigation. Appellant failed to prove extreme mental or emotional disturbance, or that he was an accomplice who was a minor

participant. He failed to establish that any false belief he has that he suffers from a veneral disease is mitigating in nature.

POINT V: Appellant's sentence of death is not a disproportionate penalty. The two weighty aggravators far outweigh the mitigation. Appellant's sentence is proportionate and should be upheld.

POINT I

THE TRIAL COURT DID NOT ERR IN DENYING APPELLANT'S MOTION TO SUPPRESS HIS SHOES SEIZED UPON HIS ILLEGAL ARREST WHERE SAME WOULD HAVE INEVITABLY BEEN DISCOVERED BY LEGAL MEANS.

Jeffries complains that the trial court should not have denied his motion to suppress the shoes seized from him upon his arrest in Georgia. (IB 24). The State stipulated that his arrest and detention were illegal, and he claims that the evidence presented below was insufficient to show that the shoes would have inevitably been discovered. (IB 24). He is incorrect.

"If the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered . . . then the evidence should be received." *Nix v. Williams*, 467 U.S. 431, 444 (1984). To apply the inevitable discovery doctrine, "there does not have to be an absolute certainty of discovery, but rather, just a reasonable probability." *State v. Ruiz*, 502 So. 2d 87, 87 (Fla. 4th DCA 1987).

In *Craig v. State*, 510 So. 2d 857 (Fla. 1987), *cert. denied*, 484 U.S. 1020 (1988), this Court considered a similar issue grounded on the inevitable discovery doctrine. In *Craig*, the State conceded that the interrogation of the defendant which led to location of the bodies "was illegal for failure to observe constitutional requirements." 510 So. 2d at 862. The evidence at the suppression hearing showed that "if appellant had not led

police to the bodies, they would ultimately have been located very soon thereafter by means of ordinary and routine investigative procedures." *Id.* This evidence was in the form of testimony from the investigating officers

> that the surrounding areas of all sinkholes in the region would have been closely examined as a matter of routine. Also, co-defendant Schmidt had . . . inform[ed] the police that the bodies had been disposed of in deep water. This routine examination of sinkholes would have revealed the drag marks, debris, clothing fibers, and other indicators that were present at Wall Sink where the bodies were found. Wall Sink was the largest and deepest sink in the general area. These indicators, . . . would inevitably have caused police to concentrate their deep-water searching capabilities at Wall Sink.

Id. at 862-63. Since the evidence "would have been found . . . by means of normal investigative measures that inevitably would have been set in motion as a matter of routine police procedure," the suppression motion was properly denied. *Id.* at 863.

Later, in *Maulden v. State*, 617 So. 2d 298 (Fla. 1993), this Court again rejected a claim of error in denying suppression of evidence based on the inevitable discovery rule. In *Maulden*, "[t]he evidence found in the truck was . . . admissible even if Maulden's . . . arrest was illegal" because it "would ultimately have been discovered by legal means." 617 So. 2d at 301. The evidence showed that:

> [T]he Las Vegas police located the truck and confirmed that it was stolen before they began the search for Maulden, and therefore well

> before they arrested and questioned him. Thus, . . . Maulden's arrest had nothing to do with the discovery of the truck. Because the gun and other evidence were on the front seat of the truck, there can be no doubt that the items would have been discovered and properly seized.

Id. This Court upheld the admissibility of the evidence based on the inevitable discovery exception to the exclusionary rule. *Id.*

In the instant case, the State agreed that Jeffries had been arrested and held in jail unlawfully. (SR 64). However, the State contended "that the shoes would inevitably have been found any way" and would have been admitted into evidence. (SR 64).

Orlando Police Department Homicide Detective Barbara Bergin testified at the suppression hearing. (SR 66). She was the lead investigator in the murder of Jeffries' victim, Wilma Martin. (SR 66). In connection with that investigation, she prepared an affidavit for arrest warrant to be executed on Jeffries. (SR 66).

Detective Bergin had planned to obtain an arrest warrant for Jeffries prior to learning that he had been detained in Georgia. (SR 66). The warrant would be based on information from persons to whom Jeffries had made statements of "very specific knowledge that the only people involved in the murder would have . . .." (SR 67). The detective arrived back in Orlando about midnight and planned to obtain the arrest warrant the next day. (SR 67-68). At 1:30 AM, she received a phone call indicating that "a subject matching Sonny Jeffries" had been detained in Georgia with Harry Thomas who was wanted on a Florida arrest warrant for a separate robbery and a

be-on-the-look-out had been posted for Thomas "from Florida to New Jersey." (SR 67, 68).

Detective Bergin had learned that Jeffries had abandoned his fiancee in Daytona "the same weekend the homicide occurred," and "he had left quiet (sic) of (sic) bit of his clothing with his fiancee." (SR 72). She "would have asked for any and all clothing that was in his possession at the time believing I could have had other evidence there." (SR 72).

Also well prior to Jeffries' detention in Georgia, Detective Bergin had been told that Jeffries' fiancee, Donna Moodhard, had given a sworn statement that Jeffries had directed her to wash his clothing, specifically including his black Nike tennis shoes. (SR 76-77). Further, Jeffries "became upset when she didn't wash the shoes he asked her to wash." (SR 77). The detective received notice of this statement on September 1, 1993.[10] (SR 77).

Detective Bergin flew to New Jersey and interviewed Ms. Moodhard and Jeffries' sister, Ms. Faisst, who had approached New Jersey law enforcement authorities, stating "they possibly had information regarding the homicide of Wilma I. Martin." (R 749). On August 21, 1993, Ms. Moodhard had flown to Florida to meet with Jeffries, and she found him in Ocala at the home of Harry Thomas.

[10] The victim was murdered "between eight twenty to eight twenty-one" of 1993. (SR 71). Jeffries was detained in Georgia on September 10, 1993. (SR 71).

(R 749). "He had spent the money she had sent to rent a home." (R 749).

On August 24, 1993, she and Jeffries went to Daytona Beach "to look for work and a place to live." (R 749). They checked in to a hotel and "got into an argument." (R 749). "During the argument, Sonny Jeffries demanded a diamond ring back which he had given to her upon her arrival in Florida." (R 749). Ms. Moodhard "questioned him about the ring and where it came from." (R 749). Jeffries told her:

> 'Ok, you fat assing bitch, if you want to know, if you want to take those diamonds and put 'em in a wedding band of your choosing and not let the jeweler do it that I had planned out, then you're going to get your fat ass picked up because they're as hot as hell. Harry and I just took them the other night. We just got them the other night. Harry and I took them or stole them the other night. If you try to use any, they are going to pick your ass up.'

(R 749). Ms. Moodhard "passed out and when she woke . . ., Jeffries was gone and the ring he had given her was removed from her hand." (R 749).

Jeffries' sister, Ms. Faisst, was also interviewed by Detective Bergin. (R 749). She said that Jeffries' other sister, Roxanne Jeffries, phoned her and asked if Ms. Moodhard had left for Florida. (R 749). Ms. Faisst "asked where Sonny was?" (R 749). "Roxanne said that Sonny and Harry Thomas were out doing robberies near Disney World because Sonny had spent all of Donna's money she had sent for a house to rent." (R 749).

On September 8, 1993, Detective Bergin spoke with "the

step-daughter of Harry Thomas," Lena Colin. (R 751). Ms. Colin reported that "two to three weeks ago" she accompanied Harry Thomas and Jeffries "to three pawn shops." (R 751). At the Bargain Box, Thomas and Jeffries gave her two rings which she pawned for $35. (R 751). At Frontier Pawn, Mr. Thomas went in "with two rings but was unable to pawn them." (R 751). At Ocala Drive-In Pawn and Gun Shop, she was given four rings "which she pawned for $25.00 and turned the money over to Harry Thomas and Sonny Jeffries." (R 751).

The following day, law enforcement officers went to the pawn shops identified by Ms. Colin. They found jewelry which had been pawned as described by Ms. Colin and which belonged to Ms. Martin. (R 751, 752).

Ms. Colin also gave "a taped statement" to officers on September 9, 1993. (R 752). Therein, she said that

> Harry Thomas told her Sonny Jeffries asked Harry to drive him to a lady's house to get stuff that she had. Harry agreed . . .. Sonny Jeffries said the lady was talking about the Jeffries and Thomases being trash. He wanted to gut her and kill her. . . . Harry drove Sonny to the residence. When they pulled up, the spotlight came on and when Sonny walked up it went off. The victim, Wilma I. Martin, opened the door and he went in. A short time later, Sonny came out with blood on his foot and leg. Harry asked Sonny what he was doing and Sonny then returned to the house and came back with a bag of stuff and eating the lady's "Chicken McNuggets." . . . Sonny said that he killed her, kicked her in the head and face, and kicked her face off. . . . Harry described the bag Sonny Jeffries used to carry the things out of the house as a pink pillow case which was found to be missing from

the victim's bedroom.

(R 752).

Prior to learning of Jeffries' detention, Detective Bergin intended to secure the arrest warrant and to place it in the NCIC computer system. (SR 68). She had received information from Jeffries' relatives and his fiancee, who were cooperating with the authorities, indicating that Jeffries would return to his home town in New Jersey. (SR 69). The detective planned to advise the agencies along the route from Florida to New Jersey that Jeffries and Thomas were likely to be traveling in their area. (SR 69). Had Jeffries been arrested in New Jersey on the anticipated warrant, Detective Bergin would have "requested and obtained his shoes."[11] (SR 70). Indeed, she "would have asked for any and all clothing that was in his possession at the time believing I could have had other evidence there." (SR 72).

The New Jersey authorities knew Jeffries from prior contacts with him. (SR 70). They also knew "his family and his hangouts." (SR 70). Jeffries was detained in Richmond Hill, Georgia, a small town off of I-95 on the route to New Jersey. (SR 78).

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[11] Had he been arrested in New Jersey, the detective would have obtained the shoes by complying with the local requirements. Some "jurisdictions requires (sic) to write a search warrant in order to acquire their clothes. Others, as in our jurisdiction, once they're arrested they're property with them would become available to us. . . . [I]f I would have had to I would have requested a search warrant or . . . whatever their jurisdiction required, in order to obtain them." (SR 70-71).

Detective Bergin obtained an arrest warrant for Jeffries on September 10, 1993 at 1:30 PM. (SR 73). The detective had spent the morning faxing "photos back and fourth, fingerprints, attempting to identify the person [detained in Georgia] as Sonny Jeffries since a different name had been given by him." (SR 73).

The evidence presented at the suppression hearing, which included the arrest warrant affidavit, well exceeds the "reasonable probability" standard and establishes that the shoes would have inevitably been discovered. Detective Bergin had all of the information on which the subsequently issued arrest warrant was based prior to Jeffries' illegal detention in Georgia. She would have obtained the warrant sooner except that it was so late by the time she returned to Orlando, and the next morning she was consumed with trying to identify the person Georgia was holding with Mr. Thomas.[12] Thus, it is clear that the arrest warrant would have been issued based on the information known to the Florida authorities prior to the Georgia detention.

It is also clear that the Florida authorities would have obtained the clothing, including the shoes, incident to the arrest on the Florida warrant. Moreover, had any further steps been necessary to secure the clothing, such as a search warrant, the Florida authorities would have obtained it. Thus, it is clear that

[12] This extended identification process was necessary because Jeffries had given a false identity.

the shoes would have been turned over to the Florida authorities and their evidentiary value determined. Of course, once it was determined that the shoes had evidentiary value in the instant case, they would have been (and were) introduced into evidence at trial.

At the very least, the shoes would have been seized upon Jeffries' return to Florida. The Georgia officials held Jeffries illegally and that hold had nothing to do with the Florida murder. Jeffries was still being held illegally in Georgia at the time the Florida warrant for his arrest was issued. At that point, Jeffries would have been (and was) transported to Florida on the warrant. As Detective Bergin testified, in our jurisdiction, his clothing would have been seized and made available to the authorities. Since he was wearing the shoes when detained in Georgia, they would have accompanied him to Florida where they would have been seized and tested as was done in the instant case. Thus, the shoes would have inevitably been seized from Jeffries by the Florida authorities and tested as they were for evidence in connection with Ms. Martin's murder. The suppression motion was properly denied based on the inevitable discovery doctrine. *See Hall v. State*, 733 So. 2d 565, 566 (Fla. 2d DCA 1999)[ring seized during illegal interrogation admissible where would have been removed during routine booking procedures].

Finally, even had Georgia released Jeffries, the evidence

adduced at the suppression hearing shows that he would have been arrested upon his arrival in New Jersey. Since the only shoes he had in his possession were the ones he was wearing, and since he had not disposed of them in the three weeks since the murder, it is reasonably probable that he would have still been wearing them when he reached New Jersey. The New Jersey authorities, as well as Jeffries' relatives and fiancee, were all cooperating with the Florida authorities in regard to the Martin murder investigation and Jeffries' participation therein in particular. Thus, as the trial judge reasoned, even had he been let go from Richmond Hill, he would have gone to New Jersey where he would have been arrested and his shoes seized and delivered to the Florida authorities.

Assuming *arguendo* that it was error for the trial judge to admit the shoes under the inevitable discovery doctrine, that error was harmless. The evidence at trial showed that Jeffries conceived and presented to Harry Thomas his plan to rob Ms. Martin. He also contemplated the possibility of killing her in order to get what he wanted and made it clear that he was willing and able to kill his intended victim. His fingerprint was found on the bloody door of Ms. Martin's kitchen cabinets at the exact place where she was so brutally killed. Immediately after Ms. Martin's murder, he possessed her valuables, including her diamond engagement ring, wedding band, and mother's ring. Within a day of her murder, he pawned these items for rediculously low sums. He left Florida

immediately thereafter. Also, at the *Spencer* hearing, Jeffries confessed that he killed Ms. Martin in her kitchen by beating her to death. Due to the overwhelming evidence of his guilt, any error in connection with the admission of the shoe and the shoe print testing based thereon was harmless beyond a reasonable doubt. Jeffries is entitled to no relief.

POINT II

THE TRIAL COURT DID NOT ERR IN DENYING APPELLANT'S CHALLENGE TO THE STATE'S USE OF A PEREMPTORY TO EXCUSE AN AFRICAN AMERICAN PROSPECTIVE JUROR.

Jeffries complains that the State improperly used a peremptory challenge to exclude an African American, Margie Melvin, from the jury venire. (IB 29). When asked to explain his reason for striking Ms. Melvin, the prosecutor indicated that her "answers to Questions 19, 20 and 21 are equivocal on the death penalty." (R 332). Jeffries claims that since the State agreed with the defense attorney prior to the commencement of the questioning of the individual potential jurors that Ms. Melvin was not one who it was initially felt should be individually questioned, the State "had no problems with juror Melvin's answers to the questions . . .." (IB 33). This claim is clearly not preserved for presentation to this Court on appeal because it was not raised in the trial court.

In *Fernandez v. State*, 730 So. 2d 277 (Fla. 1999), this Court held a claim that prospective jurors who were allegedly rehabilitated by Defense Counsel should not have been excused procedurally barred because "defense counsel did not specifically object on these grounds . . .." Neither did Defense Counsel in the instant case ever contend below that the State could not peremptorily strike Ms. Melvin because it did not object to the defense contention that individual questioning of her was not necessary. Thus, this part of Jeffries instant claim is

procedurally barred.[13]

Jeffries further claims that "a simple check of the answers that the jurors who sat on appellant's case gave to the same questions clearly highlights the pretextual nature . . .." (IB 34). He then points to three instances which he claims prove his point, as follows:

(1) Juror Meldrum - did not answer question 21;

(2) Juror Riley - answers to questions 20 and 21 were "simplistic;" they were: "'not always' and 'answered above;'" and,

(3) Juror Murphy-Steen - answered 20 with: "[N]o. If there is a reason '[indecipherable].'"

(IB 35). He says that the State's failure to challenge these three shows that the challenge to Ms. Melvin "can be nothing more than pretextual." (IB 35).

Questions 19, 20, and 21 were answered by Ms. Melvin as follows:

> 19. What are your feelings or opinions about the death penalty? Please explain:
>
> I guess in some cases it is all right
>
> 20. Do you think the death penalty should <u>always</u> be imposed in cases of murder?

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[13] The State also points out that appellate counsel has provided no citation of authority for his bald assertion that the prosecutor was obligated to further question Ms. Melvin if he was considering peremptorily striking her based on her equivocal responses to the subject questions. The State contends that he is incorrect in this representation.

> No i (sic) Dont (sic) think in all cases but i (sic) do think in some if the murder was intented (sic)
>
> 21. Do you think the death penalty should never be imposed in cases of murder? Please explain.
>
> Yes i (sic) do think the death penalty should never be imposed in cases of murder it want (sic) bring the person - person's Back (sic).

(Appendix A, at 3). Her response to question 3 indicated "Race: N." Presumably, that stands for "Negro," although there is nothing on the form which indicates that is, in fact, the case.[14]

In *Melbourne v. State*, 679 So. 2d 759 (Fla. 1996), this Court again clarified the law of this State in regard to the exercise of peremptory challenges which are alleged to be race-based. A three-step procedure was established, to-wit:

(1) The objecting party must make a timely objection to the peremptory challenge on racial grounds, show that the prospective juror is a member of a distinct racial group, and ask for the striking party's reason for the strike;

(2) The striking party must state its reason for the strike; and,

(3) If the reason appears race-neutral, the trial court must

[14] It is noted that the "n" contained at answer 3 is made differently than the "ns" contained in the answers to the other questions. Thus, the shape of the "n" in answer 3 may have been a factor in the prosecutor's questioning of the race of the potential juror.

determine whether, "given all the circumstances surrounding the strike, the explanation is not a pretext."

679 So. 2d at 764. "Throughout this process, the burden of persuasion never leaves the opponent of the strike to prove purposeful racial discrimination." *Id.* Moreover, at all times, two principles must be adhered to:

> First, peremptories are presumed to be exercised in a nondiscriminatory manner. Second, the trial court's decision turns primarily on an assessment of credibility and will be affirmed on appeal unless clearly erroneous.

(footnotes omitted) *Id.* at 764-65.

The *Melbourne* Court quoted with approval from the United States Supreme Court's decision in *Purkett v. Elem*, 514 U.S. 765 (1995), *rehearing denied*, 115 S.Ct. 2635 (1995). In *Purkett*, the Court explained:

> The second step of this process does not demand an explanation that is persuasive, or even plausible. 'At this [second] step of the inquiry, the issue is the facial validity of the prosecutor's explanation. Unless a discriminatory intent is inherent in the prosecutor's explanation, the reason offered will be deemed race neutral.'
>
> . . .
>
> . . . [I]n step 3 '[the] whole focus [is not] upon the *reasonableness* of the asserted nonracial motive ... [but] rather ... the *genuineness* of the motive .... a finding which turn[s] primarily on an assessment of credibility.'

(citations omitted) (emphasis in original) *Id.* at 763-64.

In *Rodriguez v. State*, 25 Fla. L. Weekly S89, S92 (Fla. Feb. 3, 2000), this Court explained:

> [T]he relevant circumstances that the court is to consider in determining whether the explanation is pretextual include such factors as the racial makeup of the venire; prior strikes exercised against the same racial group; a strike based on a reason equally applicable to an unchallenged venireperson; or singling out the venireperson for special treatment.

This Court emphasized that "the trial court's decision . . . turns primarily on an assessment of credibility, [and] will be affirmed on appeal *unless clearly erroneous*." (emphasis in original) *Id.*

In the instant case, the prosecutor exercised a peremptory challenge against Ms. Melvin. (R 331). Defense Counsel responded that the prospective juror "is an African American" and asked that the reason for the strike be explained. (R 331-32). The prosecutor replied that he did not know whether Ms. Melvin was African American or not. (R 332). The defense insisted that she is, claiming that it is apparent from the answers to the juror questionnaire.[15] (R 332). The court asked for the reason for the strike, and the prosecutor replied: "The answers to questions 19, 20 and 21 are equivocal on the death penalty." (R 332). Defense Counsel responded: "We have tons of jurors who are Caucasian who are equivocal on the death penalty on this jury." (R 332). The

[15] See footnote 13, *supra*.

trial court found “it’s a racially neutral strike” and allowed it. (R 333).

Jeffries failed to sustain his burden to persuade the trial court that the facially neutral reason given by the prosecutor was pretextual and that purposeful racial discrimination motivated the strike. He never identified a single specific instance where a juror whose answers to the subject questions had been equivocal (as were Ms. Melvin’s) had been seated by the State. The three mentioned to this Court on appeal were not offered to the trial court below, and therefore, consideration of them on appeal is procedurally barred. *Fernandez*, 730 So. 2d at 281. *See generally Steinhorst v. State*, 412 So. 2d 332 (Fla. 1982)[specific ground of objection must be presented to trial court to preserve for appellate review]. Moreover, on appeal, Jeffries has not shown that any of the three were equivocal on the death penalty; rather, one failed to answer one of the three questions, one answered in terms appellate counsel characterizes as “rather simplistic,” and the last word of another’s answer to one of the three questions is, in appellate counsel’s opinion, “[indecipherable].” (IB 34-35). Thus, Jeffries’ claim that the prosecutor did not strike Caucasian jurors who had equivocal answers to the subject questions is wholly unsupported by the record and is utterly without merit.

The trial judge observed the demeanor and tone of the prosecutor’s statement that he was not even aware of the race of

Ms. Melvin when he decided to strike her, as well as his facially neutral reason for the strike. The vague, conclusory allegation of the defense that "tons" of unidentified Caucasian prospective jurors "who are equivocal on the death penalty on this jury" was obviously not deemed persuasive by the trial court. Jeffries has failed to carry his burden to establish that the trial court's ruling on the State's peremptory challenge was clearly erroneous. He is entitled to no relief. *Melbourne*.

POINT III

THE TRIAL COURT DID NOT ERR IN DENYING APPELLANT'S MOTION FOR JUDGMENT OF ACQUITTAL AS THE EVIDENCE WAS SUFFICIENT FROM WHICH THE JURY COULD DETERMINE THAT IT EXCLUDED HIS HYPOTHESIS OF INNOCENCE.

Jeffries complains that the trial judge improperly denied his motion for a judgment of acquittal because the evidence which he characterizes as "completely circumstantial" does not exclude every reasonable hypothesis of innocence. (IB 36). He identifies the relevant hypothesis as "that someone other than appellant killed Wilma Martin." (IB 36). He also claims that the "evidence is also legally insufficient to support a guilty verdict for robbery," but fails to state why he believes that is so. Thus, this claim is legally insufficient on which to grant relief as it is a barebones, facially insufficient pleading. *See Knight v. Dugger*, 574 So. 2d 1066, 1073 (Fla. 1990)[summary denied of 3.850 motion appropriate where claims are insufficiently plead]. *Roberts v. State,* 568 So. 2d 1255, 1259 (Fla. 1990)[3.850 motion containing conclusory allegations does not merit a hearing];

Jeffries admits that the basis for the judgment of acquittal in the trial court was that the "evidence failed to exclude the possibility that appellant was not guilty of the murder and that there was no evidence that established that property was taken from the victim at the time of her murder." (IB 36). The acquittal motion regarding the robbery was that the State failed to prove

"that anything was stolen from Mrs. Martin."[16] (R 538). Jeffries added there was "no testimony that anything was taken from Wilma Martin by force." (R 539). Counsel implied that Ms. Martin could have given the rings to Jeffries, "or he could have found them." (R 539).

Regarding the murder, the defense conceded Ms. Martin "died by . . . a homicide." (R 539). Jeffries argued: "[W]e have suggested and implied and elicited testimony that it was Harry Thomas who was present in the house and Harry Thomas who committed this murder."[17] (R 540).

"A motion for judgment of acquittal should only be granted if there is no view of the evidence from which a jury could make a finding contrary to that of the moving party." *Zack v. State*, 753 So. 2d 9, 17 (Fla. 2000). *See Gordon v. State*, 704 So. 2d 107, 112 (Fla. 1997). The evidence presented must be such that the jury cannot exclude every reasonable hypothesis of innocence offered by

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[16] In closing to the jury, the defense argued that "[m]any times in life people end up with stolen property . . . and are not the person who committed the violent acts against the individual." (R 605). However, at the *Spencer* hearing, Jeffries made it clear that he alone murdered Ms. Martin; Harry Thomas was not present when Jeffries killed her. (R 693).

[17] In arguing to the jury during closing, Counsel said: "I suggest rather strongly that Harry Thomas was at the scene." (R 605).

the defense except that of guilt. *Gordon*, 704 So. 2d at 112. Where "there is competent evidence from which the jury could infer guilt to the exclusion of all other inferences," the acquittal motion is properly denied. *Id.* at 112-13. Jeffries has not demonstrated error in the denial of his acquittal motion made on the above mentioned grounds.

In *Gordon v. State*, the defendant contended that the evidence did not exclude all reasonable hypotheses of innocence. The evidence showed "extensive planning and surveillance activities in the weeks and months leading up to Dr. Davidson's murder." 704 So. 2d at 113. Gordon "was present at Thunder Bay apartments the day Dr. Davidson was murdered," and "he met Dr. Davidson at his car, and . . . walked with him toward his apartment." *Id.* Although apparently no evidence placed him in the apartment where the murder occurred, Gordon "does not account for his precise whereabouts during the time . . . when . . . the homicide occurred." *Id.* "In other words, Gordon has no alibi." *Id.* This Court upheld the sufficiency of the evidence establishing that Gordon killed Dr. Davidson and approved the trial court's denial of the acquittal motion based on the failure to overcome any reasonable hypothesis of innocence. *Id.*

In the instant case, on appeal, as in the trial court, Jeffries identifies his reasonable hypothesis of innocence as to the murder as being that Harry Thomas "committed the murder alone."

(IB 43). While the evidence adduced at trial may indicate that Mr. Thomas was in Ms. Martin's house at the time of, or after, she was killed, it clearly establishes that Jeffries was at the precise scene of the crime scene when Ms. Martin was killed. That evidence includes:

Jeffries came to Florida shortly before Ms. Martin was killed. He spent the money his fiancee had given him to secure a home for them to live in subsequent to their marriage. He spent time in a house where Harry Thomas was also present, and the two men became friends. (R 398). Jeffries' sister, Roxanne, overheard Jeffries "talking about that if he had to kill somebody to get some money he would." (R 399, 402). Jeffries suggested to Mr. Thomas that they rob someone and suggested the possibility of killing that person. (R 399). Thereafter, the two men left together. (R 400).

Dennis Thomas was present during a conversation between his brother, Harry Thomas, and Jeffries.[18] Dennis heard the two men talking about robbing Wilma Martin. (R 412, 414, 418). Jeffries said he was going to go over to Ms. Martin's house and act like he wanted to rent a place from her." (R 414). Ms. Martin would recognize his name because Jeffries' brother, Kevin, was a close friend and former tenant of Ms. Martin. (R 381, 383, 385).

[18] Although Defense Counsel repeatedly tried to establish that this was the same conversation Roxanne overheard, he was unable to do so. (R 416-17).

Jeffries had knowledge about the victim, and Kevin was "pretty sure he knew Wilma." (R 384, 418).

A few days after the conversation which Roxanne overheard, Jeffries had "some rings and money that he didn't have that night." (R 400). He told his fiancee, Donna Moorhard, that "he had like a ring for her for a wedding ring and engagement ring." (R 401). That ring was one of the four he showed up with after the discussion with Mr. Thomas about robbing, and possibly killing, someone. (R 401). Jeffries' sister, Tammy, also saw the rings which first appeared after Ms. Martin's death. (R 499). Tammy identified the rings she saw Jeffries with as those belonging to Ms. Martin. (R 500).

Within three weeks after Ms. Martin's murder, her rings were recovered from a pawn shop; they were admitted into evidence without objection. (R 429, 430-31). It was stipulated that those rings "were pawned by the defendant on August 21, 1993," within a day after Ms. Martin's brutal murder. (R 431, 437-38, 457-58). It was also stipulated that those rings did, in fact, belong to Ms. Martin. (R 525-26). (Thus, any claim that she had given them to Jeffries is defeated by his stipulation at trial that they belonged to the victim.)

Shoeprint expert, Terrell Kingery, testified that three bloody footprints found at the scene of Ms. Martin's brutal murder were "probably" made by Jeffries' shoes. (R 521). Nine additional shoe

impressions "could have been made" by Jeffries' shoes. (R 521). A positive identification of the shoe impressions could not be made because the passage of time had resulted in additional wear marks which made an exact match impossible.[19] (R 515-16).

Fingerprint expert, Gary McCullough, identified a bloody fingerprint left on the kitchen cabinet at the scene of Ms. Martin's death as positively belonging to Jeffries. (R 532). In fact, Defense Counsel conceded that the crime scene print was Jeffries.' (R 546). There were "no other prints of value on the item." (R 533). The photograph of the bloody fingerprint was shown to the jury, and the cabinet containing the bloody print was placed into evidence and available to the jury during deliberations. (R 463).

As in *Gordon*, the instant evidence shows that Jeffries planned to rob and possibly murder Ms. Martin in the hours and/or days before the murder occurred. What were "probably" Jeffries' shoe prints were found in Ms. Martin's blood, and what was unquestionably his bloody fingerprint was found on the kitchen

[19] There was absolutely no evidence to support Appellate Counsel's claim that "the shoes that were taken from appellant are a very common variety of shoes that can be purchased at virtually any department shoe or shoe store . . ..." (IB 42). In any event, such a fact, even if true, is irrelevant. Jeffries' shoes matched all of the class, and most of the individual, characteristics of the shoe prints left at the crime scene. The differences were entirely accounted for by the approximately one month of additional wear Jeffries' shoes underwent from the time he left his bloody prints at the scene and the time the shoes were seized.

cabinet where Ms. Martin was brutally killed. (R 445, 446). Thus, Jeffries was at the exact scene of the crime when Ms. Martin was murdered. Indeed, on appeal, Jeffries (as did Gordon) concedes that he was at the scene of the crime, implying that he was inside Ms. Martin's kitchen to talk to her about renting a residence. (IB 41). Moreover, in this case, unlike *Gordon*, the evidence shows that Jeffries possessed and pawned Ms. Martin's jewelry within a day of her murder. To suggest that this woman gave her 14 carat diamond engagement ring and matching wedding band, as well as another three or four other rings, including a mother's ring, to a man she hardy knew is absurd, as is the claim that Jeffries just happened to "find" them![20] No reasonable person, be it juror or judge, would believe such a preposterous, and totally unsupported, claim! Clearly, there was ample evidence from which the jury could, and did, exclude every reasonable hypothesis except that of guilt of murder and robbery. Jeffries is entitled to no relief.

[20] On appeal, counsel contends that "it is certainly possible . . . that Harry Thomas . . . could have taken the rings and then gave (sic) them to appellant who subsequently pawned them." (IB 42). This hypothesis was not presented to the lower court, and therefore, it is not appropriate on appeal. *Steinhorst v. State*, 412 So. 2d 332 (Fla. 1982).

POINT IV

APPELLANT HAS FAILED TO SHOW THAT THE TRIAL COURT'S SENTENCING ORDER REFLECTS AN IMPROPER EVALUATION OF THE PROPOSED MITIGATING FACTORS.

Jeffries complains that the trial judge rejected three items of proposed mitigation. He claims that he qualifies for the statutory mitigators that the crime was committed while he "was under the influence of extreme mental or emotional disturbance" and "the defendant was an accomplice" whose "participation was relatively minor." (IB 47, 50). He adds that the proposed nonstatutory mitigator that his "behavior is motivated by his false belief that he suffers from an untreated venereal disease, which is slowly driving him insane and killing him" should have been found. (IB 51). The State contends that he has failed to carry his burden to establish any error.

Proposed Statutory Mitigators

Extreme mental or emotional disturbance:

To support his claim that the trial judge erred in rejecting the proposed statutory mitigator of committed under the influence of extreme mental or emotional disturbance, Jeffries says that "[a]ll of these doctors who had examined appellant extensively, concluded that appellant was suffering from a schizophrenic condition." (IB 49). That is the only evidence which Jeffries offers on appeal in support of his claim that the extreme mental or

emotional disturbance mitigator should have been found.[21] Even if true, such evidence does not compel a finding of the statutory mitigator.

Jeffries presented three penalty phase experts on the subject of his mental health: Dr. Michael Gutman, Dr. Eric Mings, and Dr. Brad Fisher. Dr. Gutman first interviewed Jeffries on April 7, 1990; he diagnosed him as having "adult attention deficit disorder" and "rule[d] out bipolar manic disorder." (R 361). He also concluded that Jeffries "is [an] antisocial personality."[22] (R 377). The doctor also saw Jeffries on March 6, 1994, May 23, 1996, and on January 31, 1997. (R 361). At some point after these interactions with Jeffries, Dr. Gutman "talked about mental illness and schizophrenia." (R 361).

"[S]chizophrenia is a disease . . . a mental process . . ."

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[21] Jeffries also points out that Dr. Gutman said he believed that Jeffries did not have the ability to conform his behavior to the requirements of the law. (IB 49). This statutory mitigator was found and weighed by the trial court.

[22] This is "an individual who's inclined toward criminal acting out behavior . . . and an inclination to do things and not care about the effects, not learn from experience, and not be affected by a conscience." (R 377). Dr. Gutman's diagnosis of Jeffries as an antisocial personality has never wavered. It has been there from the first evaluation in 1990 and continued through the date of the penalty phase proceeding. (R 377-78). Moreover, the other mental health reports Dr. Gutman reviewed -- Dr. Danzier's and the State Hospital -- also consistently diagnosed Jeffries as an antisocial personality. (R 378).

and "is usually thought to be genetic and hereditary." (R 361, 362, 363). However, some diseases, such as syphilis, can result in "a schizophrenic type illness." (R 363). Gonorrhea is not one that can produce such an illness as it "doesn't have the same effects on the brain as syphilis does." (R 363).

Dr. Gutman diagnosed Jeffries "as schizophrenic . . . inclined toward delusions and hallucinations" with varying degrees of severity. (R 365). The disorder inclines Jeffries "to have odd and peculiar thinking" which can become "bizarre and irrational." (R 365). However, at the time of the murder, Jeffries was "able to know right from wrong" and knew what he was doing. (R 366).

Dr. Gutman opined that at the time of the murder, Jeffries was "actively schizophrenic;" the schizophrenia was "in remission" at the time of the trial. (R 366). As a result of the schizophrenia, Jeffries had "a diminution of [his] capacity to control [his] behavior" which was also related to "drug use." (R 366). Nonetheless, the doctor acknowledged that Jeffries "could . . . have criminal responsibility for the specific event but . . . still . . . be out of touch with reality." (R 367).

Dr. Gutman said that although he believes that Jeffries "has shown signs of schizophrenia," he also "fakes and malingers."[23] (R

[23] During the 1990 evaluation, Jeffries told Dr. Gutman that he had lied to Dr. Benson and had "acted crazy when, in fact, he was not." (R 376). Dr. Benson, unaware that Jeffries was only acting, concluded that Jeffries was schizophrenic. (R 376). However, in 1990, Dr. Gutman disagreed and did not diagnose Jeffries as schizophrenic. (R 376).

379). However, in the doctor's opinion, sometimes when Jeffries says that he is lying, that is a lie. (R 379-80).

Jeffries had been hospitalized in the District Three North Florida Evaluation and Treatment Center on two separate occasions. (R 380). During those lengthy stays, the medical care providers observed no evidence of hallucinations or delusions. (R 380, 381). Indeed, when they returned Jeffries to prison, "he wasn't on antipsychotic medications and didn't appear to express any symptoms." (R 381).

Dr. Gutman had not seen Jeffries since February 10, 1997. (R 382). Nonetheless, he opined that Jeffries "believes he had gonorrhea and it affected his brain and that is what made for the schizophrenia." (R 382). The doctor opined that this belief "is schizophrenic thinking showing itself," but agreed that this is the only possible evidence of schizophrenic behavior of which Dr. Gutman is aware since early 1997. (R 382, 383). Moreover, connecting venereal disease to mental illness is somewhat reality-based and is "on track." (R 383). Jeffries simply mixed-up the specific disease which can cause such illness. (R 383).

In regard to the time of the murder, Dr. Gutman could point to no evidence indicating that Jeffries was suffering any kind of psychotic symptoms. (R 384). Indeed, he knew of no active psychotic symptoms. (R 384). Moreover, someone suffering from

schizophrenia could still appreciate the criminality of his conduct and be able to conform it to the requirements of the law. (R 385). Regarding Jeffries specifically, the only thing that Dr. Gutman could identify which he felt indicated that Jeffries could not appreciate the criminality of his conduct and conform it to the law at the time he murdered Ms. Martin was his wonderment "why he would do such heinous things to the victim" in terms of the way she was killed. (R 385). The doctor felt that this indicated that there was "some sort of craziness about him." (R 385).

Dr. Gutman asked: "Why do something to somebody so harmful . . . other than than (sic) just a maniacal acting out coming out." (R 385). He added: "Was it just evil meanness, or was it something that drove him internally that he couldn't control?" (R 386). He chose to believe that "his illness played a role at that time and did drive him to do such heinous things."[24] (R 386).

Thus, Dr. Gutman did not conclude to a medical certainty that Jeffries "lacked the appreciation and capacity to conform his behavior to the requirements of law" except in regard to the **way or manner** in which he killed Ms. Martin, as distinguished from his

[24] However, the doctor admitted that the "idea of just plain meanness is not inconsistent with Mr. Jeffries' history." (R 386). Indeed, he has committed "other acts of excessive violence that show some pretty meanness." (R 386).

decision to kill her.[25] The State submits that Dr. Gutman's testimony did not adequately support the statutory mitigator found, much less the extreme mental or emotional disturbance mitigator which the trial judge did not find and about which Jeffries complains on appeal. Indeed, regarding his conclusion of inability to conform his conduct to the requirements of the law, Dr. Gutman admitted that "[i]f there are witnesses that say he . . . was just as cool and just as capable of forming thought that he's forming today . . ., I would defer and I would say I was wrong." (R 392). Moreover, Dr. Gutman testified that he has never even been asked to examine Jeffries to make a determination of that statutory mental health factor. (R 387).

Dr. Eric Mings evaluated Jeffries in 1994 and developed the "impression that he was paranoid and showing some evidence of psychosis." (R 394, 395). He also "thought there was the possibility of some malingering." (R 395). The doctor did "another competency-to-proceed evaluation in April of 1996," and "felt that he showed evidence consistent with a history of mental illness, probably schizophrenia . . .." (R 395). The doctor said that he has "thought that at times that the symptoms I saw were consistent

[25] Indeed, when the doctor testified to a belief within a reasonable degree of medical certainty, it was in regard to "whether this schizophrenic illness was in existence and affecting him;" the "affect" that the doctor testified to was the heinous way or manner in Jeffries killed his victim, not in his decision to kill her. (R 386-87).

with" schizophrenia. (R 396).

It is apparent that Dr. Mings was not comfortable with a schizophrenia diagnosis. This is likely because of his very strong concern that Jeffries was "possibly primarily malingering." (R 836). Dr. Mings was one of the mental health providers to whom Jeffries later confessed to have been "faking" his schizophrenic symptoms. (R 397).

Among the apparently delusional beliefs espoused by Jeffries to Dr. Mings in 1994 was that he had learned "of a financial scam," and "since that time, the C.I.A. had been out to get him." (R 400-01). He claimed that he was "concerned that the C.I.A. will have him assassinated." (R 401). These claims were among those to which Jeffries admitted in 1997 to have faked. (R 402). Dr. Mings attempted to see Jeffries on two occasions after his confessions in 1997, but Jeffries "was very hostile towards me and refused to see me." (R 402).

Jeffries' final mental health expert was Dr. Brad Fisher, who had reviewed a great deal of information on Jeffries, including the reports of several doctors and hospitals. (R 436-37). Dr. Fisher said that he thinks that Jeffries suffers from a schizophrenic condition, but has not interviewed him enough "in recent time to know whether it's in remission now or not." (R 437). Apparently, the last time he saw Jeffries was February of 1998. (R 437).

Dr. Fisher said that "[t]he nature of a schizophrenic

condition is a person who does not have consistent good touch with reality . . ..” (R 439). In his opinion, Jeffries had some problems with “an accurate perception of reality . . . in 1983 (sic) at the time of this crime.” (R 439). These problems “could well have affected [his] capabilities to make normal . . . rational judgments . . ..” (R 440). He added, though, that a schizophrenic person could have “intelligent or normal behaviors in many . . . times and in many areas . . .” and still qualify for the schizophrenia diagnosis. (R 440).

Dr. Fisher testified that he would not expect violent behavior to result from Jeffries’ schizophrenic condition. (R 441). Rather, in Jeffries, he would expect “’bad thinking’ and ‘bad reality contact.’” (R 441). He added that schizophrenia might “have led to serious limitations in the extent to which [Jeffries] would have been able to appreciate the criminality of the situation or made . . . appropriate law-abiding judgments.” (R 443).

Dr. Fisher said that Jeffries had been diagnosed at various times as “schizophrenic, manic-depressive, anti-social personality disorder and malingering.” (R 444). He agreed that it is very difficult to know how much of what he has seen and heard from Jefferies is malingering. (R 444). Afterall, when Jeffries was in the hospital, whose purpose it is “to watch people . . . over a long period of time to assess their mental functioning,” the mental health staff concluded that Jeffries simply “malingers.” (R 453).

It entirely ruled out psychotic disorder, including schizophrenia. (R 454).

Moreover, on a subsequent trip to the hospital, Jeffries arrived on anti-psychotic medication "[t]o decrease the symptoms of a schizophrenic condition." (R 454). Again, the in-hospital observations showed that "when the anti-psychotics were eliminated, . . . the psychotic symptoms did not recur." (R 455). Dr. Fisher conceded that it is well documented that Jeffries has successfully faked mental illness symptoms in the past. (R 460).

Dr. Fisher testified that as far as he knows, Jeffries has acted appropriately without delusion for the past year and a half. (R 456). Such is inconsistent with a true schizophrenic illness; "to think the C.I.A. was after them three years ago and now with no medication to be delusion-free."[26] (R 456). Moreover, it would be most unusual for schizophrenia to be "unmedicated in remission . . . with no symptoms" for such a long period of time. (R 456).

Dr. Fisher said that to the best of his recollection, there is nothing in any of the records he reviewed that reflects any type of delusional or psychotic behavior by Jeffries at or near the time of the crime. (R 459). There "is nothing" that the doctor could point to to support an indication that at the time of the murder he was

[26] As will be mentioned in greater detail, *infra*, after hearing this testimony at penalty phase, Jeffries decided to again make the C.I.A. claim at the subsequent *Spencer* hearing.

suffering from psychotic symptoms or illness.[27] (R 459). Indeed, even if he had schizophrenia, it could well have been in remission at that time. (R 460).

Thus, the only mental health professional who opined that Jeffries suffered some inability to conform his conduct to the requirements of the law was Dr. Gutman. Even his opinion was given in the context of explaining the heinous manner in which Jeffries killed his victim, as distinguished from the decision to kill her. Thus, the trial court's finding of the impaired capacity mitigator was only marginally supported by the evidence, and was certainly entitled to no more weight than the court assigned it.

In the sentencing order, the trial judge rejected the statutory mitigator of under the influence of extreme mental or emotional disturbance as not established sufficiently to convince the court that Jeffries was under such influence or disturbance "at the time of the murder of Wilma Martin." (R 1603-04). The court did, however, find as nonstatutory mitigation that Jeffries "has a long history of emotional and mental problems." (R 1606). In so doing, the court noted that most of the reported information to support this type of mitigation was self reports. (R 1606). The court also implied that Jefferies' self-recantation of that

[27] Indeed, although Dr. Fisher maintained that he "thinks" Jeffries was schizophrenic as late as 1997, no one has examined him since, and he simply does not know whether that diagnosis is now accurate. (R 461).

information was a factor in the amount of weight assigned to this nonstatutory mitigator. (R 1606).

The appellate attempt to have this Court substitute its judgment for that of the trial court and conclude that the statutory mitigator (under extreme emotional or mental disturbance) exists should fail. Whether a proposed mitigator has been proved by the evidence is a matter within the discretion of the trial judge. *Foster v. State*, 679 So. 2d 747, 755 (Fla. 1996), *cert. denied*, 117 S.Ct. 1259 (1997); *Preston v. State*, 607 So. 2d 404, 412 (Fla. 1992), *cert. denied*, 507 U.S. 999 (1993). A finding of the statutory extreme mental or emotional disturbance mitigator is not compelled by the presence of expert opinion testimony to that effect. *Foster*, 679 So. 2d at 755. Where the trial judge "considered all of the evidence, the . . . determination of lack of mitigation will stand absent a palpable abuse of discretion." *Id.*

In *Roberts v. State*, 510 So. 2d 885, 895 (Fla. 1987), *cert. denied*, 485 U.S. 943 (1988), the defense experts opined that Roberts had "organic brain damage," and that "this condition existed at the time of the offense . . .." They further testified that "the use of alcohol and/or drugs would have caused this defendant to act in a violent rage-like state . . .." 510 So. 2d at 895. Finally, they concluded that "as a result of his 'organic brain damage,' the defendant would be under the influence of extreme mental or emotional disturbance and could not appreciate

the criminality of his conduct or conform his conduct to the requirements of the law." *Id.* The trial court rejected these expert opinions, and this Court upheld noting that there was no evidence that Roberts "was exhibiting any of the behavioral characteristics at the time of the murder, which would support or corroborate the bald assertions of the existence of extreme emotional or mental disturbance.' *Id.*

It is axiomatic that a trial court can accept parts of an expert's opinion and reject other parts of it. Thus, the judge was well within his discretion to accept the parts of all three doctor's testimony which indicated that Jeffries malingered his psychotic symptoms and reject any conclusions that he suffered from schizophrenia. Indeed, Dr. Fisher made it clear that the mental hospital had ruled out schizophrenia (or any psychotic disorder), and even at times declined to diagnose Jeffries as schizophrenic.

Moreover, only one doctor (Gutman) testified that he believed Jeffries was affected by a schizophrenic state at the time of the murder. That doctor described the effect as being such that it would impair Jeffries ability to appreciate the criminality of his conduct or conform it to the law as indicated by the manner in which he murdered Ms. Martin. He did not, nor did any other witness, testify that Jeffries was under the influence of extreme mental or emotional disturbance at the time of the murder.

In addition, another doctor (Fisher) indicated that any

schizophrenia Jeffries had may well have been in remission at the time of the murder, as it had been for the approximately two years since Dr. Fisher had seen Jeffries. (R 460). The doctor knew of nothing in any of the records that showed any type of delusional or psychotic behavior at, or near, the time of the crime. (R 459). Further, it would be most unusual for schizophrenia to be "unmedicated in remission . . . with no symptoms" for such a long period of time. (R 456). That this coincides with the period when Jeffries informed the professionals that he had been lying to them to fake mental illness underscores the validity of this opinion. Thus, the State contends that the evidence presented through Dr. Fisher well supports the conclusion that there was no mental illness affecting Jeffries at the time of the crime, much less that it was so severe that it met the requirements for the statutory mitigator of extreme mental or emotional disturbance.

Moreover, Dr. Gutman testified that at the time of the murder, Jeffries was "able to know right from wrong" and knew what he was doing. (R 366). He "could . . . have criminal responsibility for the specific event but . . . still . . . be out of touch with reality." (R 367). Dr. Gutman had no evidence indicating that Jeffries was suffering from any kind of active psychotic symptoms at the time of the murder. (R 384). In fact, he had not been asked to make a determination of whether Jeffries met the requirements for the mental health mitigators. (R 387). Finally, Dr. Gutman

conceded that if the evidence showed Jeffries "was just as cool and just as capable of forming thought" on the date of the crime as he was at the penalty phase proceeding, he would have to change his conclusion of inability to conform his conduct to the law. (R 392).

The evidence adduced at trial shows just such a cool and capable individual. Jeffries calmly planned the robbery and murder, discussing it at some length with his codefendant, on one or more occasions, in the presence of other witnesses who testified at trial. Very shortly after the crime, Jeffries himself proceeded to pawn the ill-gotten gains. Certainly, the defendant has indicated nothing that would show that the man was not cool and capable of thought at the time he murdered Ms. Martin. Thus, he has utterly failed to carry his burden to establish the subject mitigation.

Moreover, the State contends that a diagnosis of schizophrenia does not compel a finding of this mitigator. In *Bruno v. State*, 574 So. 2d 76 (Fla. 1991), *cert. denied*, 502 U.S. 834 (1991), this Court emphasized that a trial judge has discretion to reject testimony of a defense mental state expert regarding the existence of statutory mitigators. 574 So. 2d at 82. In *Bruno*, a psychiatrist testified "that Bruno's drug abuse had left him with some brain damage." *Id.* The doctor also opined that Bruno was "extremely mentally or emotionally disturbed." *Id.* Noting that "it is undisputed that Bruno had a long history of drug abuse, this Court held that the trial judge "had discretion to discount much of

[the doctor's] opinion." *Id.* This Court noted:

> Bruno testified at length in the penalty phase, and the judge had an opportunity to evaluate his mental capacity. Despite this use of drugs, Bruno had worked as a member of a band and thereafter as a mechanic. He articularly endeavored to try to exonerate himself of blame for killing Merland who . . ..

Id.

In the instant case, the trial judge had numerous and lengthy opportunities to observe Jeffries and evaluate his mental capacity. Indeed, Jeffries himself conducted the defense presentation of the penalty phase proceeding, and he authored several motions on which the court held hearings. Moreover, the trial judge observed Jeffries as he confessed to murdering Ms. Martin at length at the *Spencer* hearing. He also watched as the man articulately attempted to exonerate himself from responsibility for the crime by again raising the specter of insanity or serious mental illness. Having heard Dr. Fisher testify at the immediately preceding penalty phase hearing that it would be inconsistent with a true schizophrenic illness for the C.I.A. delusion to disappear without medication, Jeffries followed his confession with ranting about the government plot to get him. Thus, as in *Bruno*, the trial judge had the discretion to discount much of what the defense mental health experts had to say about the existence and/or severity of the alleged schizophrenia, or any other type of mental or emotional illness or defect.

In *Robinson v. State*, 24 Fla. L. Weekly S393 (Fla. Aug. 19,

1999), the defense experts opined that tests on Robinson's brain indicated brain damage. One defense doctor testified that

> while Robinson's particular brain deficits would interfere with his daily life, 'it wouldn't be of a degree that would necessarily keep him from functioning in normal, everyday society.' . . .. Although the trial court gave little weight to the existence of brain damage because of the absence of any evidence that it caused Robinson's actions on the night of the murder, the sentencing order clearly reflects that the trial court considered the evidence and weighed it accordingly. The fact that Robinson disagrees with the trial court's conclusion does not warrant reversal.

24 Fla. L. Weekly at S396. This Court rejected the claim that the trial court did not give this mental state mitigation appropriate consideration and/or weight.

In the instant case, one doctor testified that he believed that Jeffries had "active" schizophrenia at the time of the crime, and he was the only one of the three defense experts who opined that Jeffries had some inability to conform his conduct to the law. Another of his doctors testified that he would not expect violent behavior to result from the type of schizophrenic condition from which Jeffries' may suffer. He added that a schizophrenic person could have "intelligent or normal behaviors in many . . . times and in many areas . . .." (R 440). The defense doctors said that Jeffries knew right from wrong and knew what he was doing at the time of the murder. All three doctors admitted that Jeffries had confessed to malingering mental illness and that hospital staff

observations of Jeffries validated those self-reports. Moreover, they said that even if Jeffries was schizophrenic, his condition may have been in remission at the time of the crime. The only doctor who opined that Jeffries' schizophrenia was "active" at the time of the crime also testified that he had never been asked to examine Jeffries to make a determination of the statutory mental health factors. (R 387).

At most, the mental health evidence presented marginally supported the unable to conform to the requirements of the law statutory mitigator found and otherwise constituted no more than nonstatutory mitigation entitled to slight weight. The practice of recognizing such mitigation as nonstatutory mitigation even though offered to establish a proposed statutory mitigator is well recognized and approved by this Court. *See, e.g., Knight v. State*, 746 So. 2d 423, 436 (Fla. 1998). Jeffries has failed to carry his burden to demonstrate a palpable abuse of judicial discretion in failing to find the complained-of statutory mitigator. He is entitled to no relief.

Accomplice/Minor Participant:

On appeal, Jeffries complains that the trial judge incorrectly concluded that he had not proved that he was an accomplice in the murder which was committed by Harry Thomas and that his participation was relatively minor. Specifically, he complains that the trial court wrongly stated that "there was no evidence to

support or suggest this factor." (IB 50). Appellant counsel says that the trial judge was "simply incorrect" in two respects, to-wit: Harry Thomas' conviction for second degree murder of Ms. Martin is in the record, and a witness testified that a shoe impression found at the crime scene was consistent with the shoes of Mr. Thomas. (IB 50).

At the *Spencer* hearing, under oath, Jeffries himself testified:

> I'm not going to sit here today and play along with this game and deny that I was the one that killed Wanda (sic) Martin. I killed her, not Harry Thomas. Harry Thomas was not even in the house at the time of Wilma Martin's murder.[28] I was the only one.
>
> . . .
>
> I took her life in her kitchen. I beat her to death.

(footnote added) (R 654, 692, 693). Moreover, Mr. Thomas' plea was to second degree murder, whereas Jeffries was convicted of first degree murder. Thus, the Thomas conviction of a second degree murder supports the trial court's determination that Jeffries was not the accomplice, or a minor participant. Finally, that a possible shoeprint of Mr. Thomas was found in the kitchen where three probable and nine possible shoe prints of Jeffries was found does nothing to lessen Jeffries' responsibility for Ms. Martin's

[28]Thus, the shoe print identified as possibly that of Harry Thomas was left after Jeffries had beaten Ms. Martin to death.

brutal murder, and certainly does nothing to prove that he was Thomas' accomplice and a minor participant. Finally, as the trial judge observed, Jeffries "initiated the plan to rob the victim." The trial judge's rejection of this proposed mitigation should be upheld.

Proposed Non-Statutory Mitigator

False Belief of Venereal Disease:

The trial court rejected Jeffries' false belief that he has gonorrhea as mitigation. (R 1607). Jeffries has offered no precedent for his claim that it should have been held to be a nonstatutory mitigator, and the State has found none. It is Jeffries' burden to establish a palpable abuse of discretion in the trial judge's determination of a lack of mitigation, and he has utterly failed to do so. *Provenzano v. State*, 497 So. 2d 1177, 1184 (Fla. 1986), *cert. denied*, 481 U.S. 1024 (1987).

Moreover, the record contains ample evidence from which the trial judge could have concluded that "there is no competent evidence to support this allegation" that Jeffries' false belief motivates his behavior. Jeffries has repeatedly told the mental health experts that he lied about his symptoms and made up stories about the C.I.A. (and others) which were false. Moreover, all of the doctors concluded that Jeffries was, in fact, malingering, they simply did not know to what extent he did so. The determination of

whether a proposed mitigating factor has been proved is within the trial court's discretion, and Jeffries has utterly failed to demonstrate an abuse of that discretion in the trial judge's conclusion that the evidence did not establish this proposed mitigation. *See Preston v. State*, 607 So. 2d 404 (Fla. 1992), *cert. denied*, 507 U.S. 999 (1993).

Jeffries is entitled to no relief.

POINT V

APPELLANT'S DEATH SENTENCE IS NOT DISPROPORTIONATE.

Jeffries complains that his death sentence is disproportionate when compared with other two aggravator cases. (IB 53). He concedes that HAC was well proved, but quibbles with the finding of the committed during a robbery aggravator on an evidentiary basis.[29] (IB 53). Further, he alleges that he "presented an overwhelming amount of mitigating factors," to-wit: (1) "mental status including . . . schizophrenic with paranoid delusions, . . . long term alcohol and drug abuse, . . . [and] delusional preoccupation with the false belief that he suffers from long term gonorrhea . . .." (IB 56). Jeffries is entitled to no relief as his death sentence is proportionate.

Jeffries' trial judge found the following mitigating factors and assigned them the weight indicated below:

(1) Statutory Factor: Inability to appreciate criminality of conduct or conform it to the requirements of the law. Assigned "some weight."

(2) Non-Statutory Factor: Co-defendant pled to second degree and received 20 year sentence. Assigned: "some weight."

(3) Non-Statutory Factor: History of Mental/emotional

[29] This issue was raised in Point III, *supra*, and is without merit.

problems. Assigned: "slight weight" (weight discounted because "self-recanted."

(4) Non-Statutory Factor: Some use of alcohol and drugs. Assigned: "little weight."

(5) Non-Statutory Factor: One attempt to commit suicide. Assigned: "little weight."

(6) Non-Statutory Factor: State offered a plea to life in prison. Assigned: "little weight."

(7) Non-Statutory Factor: Good conduct during trial. Assigned: "little weight."

(8) Non-Statutory Factor: Confessed to murder of Ms. Martin. Assigned: "minor weight" because "this confession come (sic) only at the absolute end of the Court proceedings . . .." (R 1605-1608). These mitigators were weighed against the two aggravators found by the trial court, to-wit:

(1) Committed during a robbery; and,

(2) Heinous, atrocious, and cruel.

(R 1600, 1602).

"This Court's proportionality review focuses on the totality of the circumstances in a case and compares it with other capital cases to insure uniformity in application." *Mansfield v. State*, 24 Fla. L. Weekly S245, S248 (Fla. March 30, 2000). In *Mansfield*, the trial court found two aggravators, to-wit: Committed during a sexual battery and heinous, atrocious, and cruel. 24 Fla. L. Weekly

at S246. This was aligned against five nonstatutory mitigators, to-wit: Good conduct during trial, Defendant was an alcoholic and under the influence of alcohol at the time of the murder, had a poor upbringing and a dysfunctional family, Defendant's mother was an alcoholic during his childhood, and Defendant suffered from brain injury due to head trauma and alcoholism. *Id.* This Court rejected Mansfield's claims that additional mitigation should have been found and that the mitigation found should have been given greater weight, and upheld the death sentence as proportionate. *Id.* at S248.

In *Shellito v. State*, the trial court found two aggravating circumstances, to-wit: Prior violent felony and pecuniary gain/committed during a robbery.[30] 701 So. 2d 837, 840 (1997), *cert. denied*, 523 U.S. 1084 (1997). The judge found Shellito's age as statutory mitigation and his background and character as nonstatutory mitigation. *Id.* Rejecting Shellito's complaints about the weight given the mitigators, especially the statutory mitigator, this Court found the death penalty proportionate. *Id.* at 844-45.

Finally, in *Cardona v. State*, 641 So. 2d 361 (Fla. 1994), this Court upheld the death penalty where only a single aggravator -

[30] As in the instant case, the jury recommendation of death was 11 to 1. *Id.*

heinous, atrocious, and cruel - was found.[31] In *Cardona*, two mental mitigators - under extreme mental or emotional disturbance at the time of the murder and substantial impairment of ability to conform conduct to the requirements of the law - were found. 641 So. 2d at 363. The court also found three nonstatutory mitigators. *Id.* This Court upheld the death sentence against a proportionality challenge, noting the brutal nature of the murder. *Id.* at 365-66.

The murder in the instant case was certainly brutal. The evidence showed that Ms. Martin was repeatedly and savagely kicked, beaten, and stabbed. The elderly woman tried in vain to defend against the attack as indicated by the defensive wounds found on her brutalized body. The death scene, including the kitchen tile and cabinets, was soaked in Ms. Martin's blood and she lay with her face in a pool of it.

In this case, there are two valid and weighty aggravators which are almost identical to those in *Shellito*. The difference being that the committed during a felony was burglary in *Shellito* and was armed robbery in the instant case. The State contends that if a statutory mitigator and some nonstatutory mitigation in the form of background and character type evidence was insufficient to render Shellito's death sentence disproportionate, the weak mitigation in the instant case is certainly inadequate to do so.

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[31] The jury recommendation for death was 8 to 4. *Id.* at 363.

Jeffries' reliance on *Kramer v. State*, 619 So. 2d 274 (Fla. 1993) is misplaced. In *Kramer*, this Court said:

> While substantial competent evidence supports a jury finding of premeditation here, the case goes little beyond that point. The evidence in its worst light suggests nothing more than a spontaneous fight, occurring for no discernible reason, between a disturbed alcoholic and a man who was legally drunk.

619 So. 2d at 278. Such are certainly not the facts of the instant case where Jeffries had planned to rob and possibly murder Ms. Martin in the hours and/or days before the murder occurred. What were probably his shoe prints were found in Ms. Martin's blood, and what was unquestionably his bloody fingerprint was found on the elderly woman's kitchen cabinet. He admitted that he "beat her to death." (R 693). Moreover, within hours after her brutal murder, Jeffries pawned the dead woman's jewelry, including her diamond engagement ring and mother's ring. *Kramer* is not comparable to the instant case.

Jeffries' instant death sentence is proportionate, and the trial court's order should be upheld.

CONCLUSION

For the reasons set out above, Jeffries conviction and sentence of death should be affirmed in all respects.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above has been furnished by U.S. Mail to Michael S. Becker, Assistant Public Defender, 112 A. Orange Ave., Daytona Beach, FL 32114, on this __ day of June, 2000.

Of Counsel