IN THE SUPREME COURT OF FLORIDA

ROBERT MORRIS,	:	
Appellant/Cross-Appellee,	:	
vs.	:	Case No. SC95623
STATE OF FLORIDA,	:	
Appellee/Cross-Appellant	:	
	:	

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

REPLY BRIEF/ANSWER BRIEF OF APPELLANT/CROSS-APPELLEE

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TENTH JUDICIAL CIRCUIT

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TOPICAL INDEX TO BRIEF

TABLE OF CITATIONS

TABLE OF CITATIONS (continued)

TABLE OF CITATIONS (continued)

PRELIMINARY STATEMENT

The state's brief will be referred to by use of the symbol "SB". Other references are as denoted in appellant's initial brief.

The reply portion of this brief is directed to Issue III (proportionality). With regard to Issues I, II, IV, and V, appellant will rely on his initial brief.

STATEMENT OF THE CASE (Cross Appeal)

The following pretrial developments, mentioned in appellant's initial brief, also pertain to the issues raised by the state in the cross appeal:

After appellant's motion to sever the sexual battery count was granted and the trial court's order in limine was entered, the state sought certiorari review of both rulings in the Second DCA. When that was unsuccessful, the prosecutor initially indicated that he would try the murder, robbery, and burglary counts first; then changed his mind and elected to try the sexual battery count first (see 7/1232,1239,1247-50,1276,1289-92; SR50-51,63-64,68-69). The sexual battery case went to trial commencing on November 9, 1998, and ending ten days later with a deadlocked jury (8/1332). A mistrial was declared, and the trial court subsequently granted a judgment of acquittal on the ground that there was no evidence introduced at trial tending to exclude the hypothesis that the victim died before the sexual battery, or even the attempted sexual battery, began (8/1332-33). Accordingly, in his written order dated December 30, 1998, the trial court stated that "the defendant, Robert Morris, is hereby adjudged not guilty of Count III, sexual battery" (8/1333).

ARGUMENT

ISSUE III

THE DEATH SENTENCE IS DISPROPORTIONATE.

Proportionality review is a two-pronged inquiry, "to determine if the crime falls within the category of both (1) the most aggravated and (2) the least mitigated of murders." Cooper v. State, 739 So. 2d 82, 85 (Fla. 1999); Almeida v. State, 748 So. 2d 922, 933 (Fla. 1999). While it is undoubtedly proper for the state, as an advocate, to highlight the aggravating circumstances, the fact remains that in its brief the state has focused almost exclusively on the prong of the proportionality test which appellant has conceded, while virtually ignoring the contested prong; i.e., whether this is among the least mitigated murder cases. The state claims that appellant is asking the court to "reweigh the aggravating and mitigating factors and reach a different conclusion than that reached by the trial court and jury below" (SB31, see 26). Obviously, proportionality review would be a hollow exercise if this Court were not free to reach a different conclusion than the trial judge and jury; every proportionality reversal in a non-"life-override" appeal demonstrates that this Court, while according deference to the trial judge's factual determinations, independently scrutinizes each case to determine whether the ultimate penalty of death is proportionally warranted, or whether the interests of justice can be satisfied by a sentence of life imprisonment.

Far from asking this Court to reweigh the mitigating evidence, appellant submits that in the instant case the trial court's own statements in his sentencing order regarding mitigating circumstances amply show that this is not among the least mitigated murder cases. In addition to finding that appellant suffers from frontal lobe brain damage and has a borderline IQ, the trial court found that at the time of the offense his ability to conform his conduct to the requirements of law was substantially impaired (SR94,97). Much of the evidence in the penalty phase of this trial (see initial brief, p. 10-32, 63-68) concerned appellant's background and life history. The trial court found that these interrelated nonstatutory mitigating factors were clearly established by the evidence and entitled to great weight (SR94,95). As for the cumulative impact of the mitigation, the trial court stated, "Indeed, many of the factors combine together to have an impact greater than the sum of their individual weights. For instance, the factors relating to the defendant's upbringing, taken together, are truly substantial factors in the court's consideration" (SR98). Thus it is not necessary to "reweigh" the aggravators and mitigators; it is sufficient to apply the test set forth in Cooper and Almeida. This case, like Cooper, involves more than enough aggravation to support a death sentence, but it also involves more than enough mitigation to show that the death penalty is neither necessary nor proportionally warranted. Contrast Freeman v. State, 563 So. 2d 73, 77 (Fla. 1990) ("[t]here were no statutory mitigat-

ing circumstances, and the nonstatutory mitigating circumstances were not compelling"). The second prong of the proportionality test has not been met. Appellant's death sentence should be reversed, and the case remanded for imposition of a sentence of life imprisonment without possibility of parole.

CROSS APPEAL

(I). THE STATE'S APPEAL OF THE TRIAL COURT'S ORDER SEVERING THE SEXUAL BATTERY COUNT FROM THE REMAINING COUNTS IS (1) MOOT, (2) UNAUTHORIZED BY STATUTE, AND (3) VIOLATIVE OF THE PROHIBITION AGAINST DOUBLE JEOPARDY, SINCE APPELLANT HAS BEEN ACQUITTED BY THE TRIAL COURT OF THE SEXUAL BATTERY COUNT.

(II). THE TRIAL COURT'S ORDER IN LIMINE, ENTERED AFTER BALANCING THE PROBATIVE VALUE AGAINST THE PREJUDICIAL IMPACT OF THE EVIDENCE SUGGESTING THAT A SEXUAL BATTERY OCCURRED (WHERE THE EVIDENCE DID NOT NEGATE THE HYPOTHESIS THAT THE SEXUAL BATTERY OCCURRED AFTER THE VICTIM'S DEATH) DID NOT CONSTITUTE AN ABUSE OF DISCRETION.

As the state sort of acknowledges, in the event of a reversal of the murder, robbery, and burglary convictions for a new trial on those counts, the double jeopardy clauses of the state and federal constitutions would prohibit any retrial of the severed sexual battery count, of which appellant has already been acquitted. See State v. Gaines, 770 So. 2d 1221 (Fla. 2000). The state words its concession on this point gingerly, saying it would "likely be precluded" from retrying appellant on the acquitted charge (SB41-42), but the prohibition against a retrial after either a jury acquittal or (as here) a judgment of acquittal without a prior jury guilty verdict is more than just

"likely"; it is "perhaps the most fundamental rule in the history of double jeopardy jurisprudence". Hudson v. State, 711 So. 2d 244, 247 (Fla. 1st DCA 1998), quoting United States v. Ball, 163 U.S. 662; 670-71 (1896). See, e.g., United States v. Martin Linen Supply Co., 430 U.S. 564 (1977); State v. Gaines, supra, 770 So. 2d at 1225-26 (Fla. 2000); Rincon v. State, 700 So. 2d 412 (Fla. 3d DCA 1997); Watson v. State, 608 So. 2d 512 (Fla. 2d DCA 1992); Watson v. State, 410 So. 2d 207 (Fla. 1st DCA 1982). Consequently, the severance issue is moot, and since it involves a discretionary ruling tied to the unique facts and circumstances of this case, the general rule that moot issues should not be decided on appeal is applicable. See Padovano, Florida Appellate Practice (2d Ed. 1, 1997) §1.4, p.5-9.

In addition, for reasons related to the mootness and double jeopardy bars, it is doubtful that the order severing the sexual battery count is even an appealable order in this case. Unlike a defendant's right to appeal, which is derived from the Florida Constitution, the state's right to appeal an order in a criminal case is purely statutory. State v. Creighton, 469 So. 2d 735, 740 (Fla. 1985); State v. Allen, 743 So. 2d 532, 533-34 (Fla. 1st DCA 1997); Hudson v. State, 711 So. 2d 244, 246 (Fla. 1st DCA 1998); State v. Fudge, 643 So. 2d 23, 24 (Fla. 2d DCA 1994). An order severing charges is not a proper subject of an interlocutory appeal by the state, nor may it be raised on petition for certiorari. State v. Lewek, 656 So. 2d 263 (Fla. 4th DCA 1995); King v. Rau, 763 So. 2d 563, 564 n.1 (Fla. 5th DCA

2000). While the state may cross appeal "[a] ruling on a question of law when the defendant is convicted and appeals from the judgment", Fla.Stat., §924.07(1)(d), see Fla.R.App.P. 9.140(1)(I), appellant submits that this section does not authorize the state's cross appeal of a severance order when the defendant has been convicted of only one (or one set) of the severed charges, but has been acquitted of the other severed charge or set of charges. In this situation -- illustrated by the instant case -- double jeopardy stands as an absolute bar to a retrial on the severed charge. For this reason, §924.07(1)(d) and Rule 9.140(1)(I) must be construed to permit a state cross appeal of an order granting a severance only when the defendant has been convicted of the main charge or charges, and he had also been convicted (or jeopardy has not yet attached) on at least one of the severed charges. If the statute and rule were construed to the contrary, to permit the state to cross appeal an order granting a severance when the defendant has been acquitted of the severed charge (or all of one set of the severed charges), then the statute and rule would violate the double jeopardy provisions of the Fifth Amendment to the United States Constitution and Article I, Section 9 of the Florida Constitution. See this Court's analysis in State v. Gaines, supra, 770 So. 2d at 1223-26 and 1229-30 (affirming Fourth DCA decision dismissing state's appeal because a retrial would violate the constitutional prohibition against double jeopardy).

Therefore, considerations of mootness, double jeopardy, and statutory construction all require that this Court dismiss, or deny without reaching the merits, the state's cross appeal of the severance order.[1]

With respect to the order in limine, the state's cross appeal is procedurally proper but faulty on the merits, because (1) the order, entered after the trial court balanced the probative value of the proffered evidence against its prejudicial impact -- and which permitted the state to introduce its DNA evidence in a reasonably effective manner, while preventing it from turning the posthumous sexual assault into a feature of the

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[1] Without retreating from his position that the state's cross appeal on this issue is unauthorized, unconstitutional, and moot, appellant would, if necessary, rely on his arguments as to the order in limine to show that the trial court did not abuse its discretion in concluding that, under the unusual circumstances of this case, severance of the sexual battery charge was necessary to ensure that appellant could receive a fair trial on the capital murder charge and, if convicted, a constitutionally reliable penalty determination. This conclusion is bolstered by the fact that a JOA was ultimately granted on the sexual battery count for lack of proof of an element of the offense. If that count had been tried together with the murder charge, a curative instruction would have been ineffective to dispel the prejudicial impact upon the jury's guilt and penalty deliberations. The cases relied on in the state's brief (SB42-47), in addition to being factually dissimilar to the situation in the instant case, are all legally dissimilar as well. The state cites no case where a trial court's granting of a severance, in order to protect a defendant's right to a fair trial on the main charge, was held to be an abuse of discretion. Rather, the state's cited cases are all appellate decisions finding that the respective trial courts did not abuse their discretion when they denied severances, or granted consolidation of charges. As with any discretionary ruling, a trial court is afforded wide latitude to make reasoned decisions designed to preserve the fairness of the trial, and the trial court's decision in the instant case to sever the sexual battery charge falls into that category.

murder trial and penalty phase -- was well within the trial court's discretion, and (2) since by the time of the murder trial, appellant had already been acquitted of the sexual battery charge, after a trial which resulted in a deadlocked jury, based upon the trial court's finding that an element of the offense was not proven, the state could not thereafter be allowed to introduce evidence of the sexual battery in the murder trial without violating this Court's unequivocal holding in State v. Perkins, 349 So. 2d 161, 163-64 (Fla. 1997) that "evidence of crimes for which a defendant has been acquitted is not admissible in a subsequent trial." See Rivadeneira v. State, 586 So. 2d 500 (Fla. 3d DCA 1991).

In State v. McClain, 525 So. 2d 420 (Fla. 1988) and, most recently, in Stephens v. State, __So. 2d __ (Fla. 2001) [26 FLW S161] (case no. SC92987, opinion dated March 15, 2001), this Court has emphasized the role of the trial court in the balancing test:

> Under section 90.403, Florida Statutes (1997), relevant testimony may be excluded if the probative value of the evidence is substantially outweighed by the likelihood of unfair prejudice. However, the trial court should be given wide discretion in determining whether the evidence is unduly prejudicial. See Sims v. Brown, 574 So. 2d 131 (Fla. 1991) (finding the weighing of relevance versus prejudice or confusion is best performed by the trial judge who is present and best able to compare the two); Lewis v. State, 570 So. 2d 412, 415 (Fla. 1st DCA 1990)(holding the trial judge should be given wide discretion in determining whether evidence should be admitted over a section 90.403 objection).

[26 FLW at S164].

The trial court should exercise its discretion to exclude modestly relevant evidence when the danger of unfair prejudice from its introduction substantially outweighs its probative value. Hill v. State, 768 So. 2d 518, 520 (Fla. 2d DCA 2000); see State v. McClain, supra, 525 So. 2d at 421; State v. Tagner, 673 So. 2d 57, 60 (Fla. 4th DCA 1996).

When the trial court employs the §90.403 balancing test:

> . . . In weighing the probative value against the unfair prejudice, it is proper for the court to consider the need for the evidence; the tendency of the evidence to suggest an improper basis to the jury for resolving the matter, e.g., an emotional basis; the chain of inference necessary to establish the material fact; and the effectiveness of a limiting instruction.

State v. McClain, supra, 525 So. 2d at 422 (quoting Ehrhardt, Florida Evidence, §403.1 at 100-03 (2d Ed. 1984).

"Where a trial court has weighed probative value against prejudicial impact before reaching its decision to admit or exclude evidence, an appellate court will not overturn that decision absent a clear abuse of discretion". Persaud v. State, 755 So. 2d 150, 153-54 (Fla. 4th DCA 2000). Where the trial court's decision was "neither arbitrary nor cursory", and was a matter about which reasonable people could differ, then no abuse of discretion has been shown. Persaud, 755 So. 2d at 154. See, generally, Quince v. State, 732 So. 2d 1059, 1062 (Fla. 1999); Files v. State, 586 So. 2d 352, 354 (Fla. 1st DCA 1991), aff'd, 613 So. 2d 1301 (Fla. 1992); Miller v. State, 764 So. 2d 640, 644

(Fla. 1st DCA 2000) (a court's ruling on a discretionary matter will be sustained unless no reasonable person would take the view adopted by the court).

In the instant case, the trial court's order in limine allowed the state to introduce its DNA evidence subject to the following limitation:

> 1. Evidence related to the following will be admissible during the trial of Counts I, II, and IV of this case:
>
> A). That biological materials and fluids were collected during the course of the autopsy of Violet Livingston without reference to the bodily site of collection.
>
> B). That biological material and fluids recovered from the body of Violet Livingston were submitted for DNA testing.
>
> C). That procedures were undertaken by the FDLE lab and Cellmark Diagnostics to determine DNA testing results and the results of said testing.
>
> 2. The State will not be permitted to introduce evidence during the trial of Counts I, II, and IV which infers sexual activity between the perpetrator of the offenses and the victim.

(7/1147).

The state unsuccessfully sought review by certiorari of this order and the order severing charges in the Second DCA. Then, after initially choosing to try the murder, robbery, and burglary counts first, the prosecutor changed his mind and elected to try the sexual battery count first (7/1232,1239,1247-50,1276,1289-92; SR50-51,63-64,68-69). The sexual battery case went to jury

trial, and ended in a deadlocked jury, followed by a mistrial and a subsequent judgment of acquittal granted by the trial court (8/1332-33). The JOA was based on a failure of proof of an element of the offense, in that there was no evidence tending to negate the hypothesis that the victim died before the sexual battery, or even the attempted sexual battery, began (8/1332-33). During the murder trial, a stipulation (initially rejected but later accepted by the prosecution) was read to the jury explaining that "Locations A, B, and C are three places on the body of Violet Livingston where biological materials or fluids were recovered during the autopsy performed on September 2, 1994 by Dr. Alexander Melamud" (9/1500; 25/2755-56, see 25/2736,2740-41). The state's DNA experts proceeded to testify that appellant could not be excluded as the source of the DNA obtained from two of these locations on Mrs. Livingston's body, and from the kitchen curtain (23/2267-76,2282-93,2311-12,2430-33; 24/2434-42,2458-63,2486-93,2502-04,2510-13). Each side then called population geneticists, who gave differing testimony as to the statistical frequency of this DNA pattern.

One of the factors the trial court is directed to consider in the §90.403 balancing test is the need for the evidence. State v. McClain, supra. Since the state was able to inform the jury that DNA matching appellant's profile was recovered from two locations on Mrs. Livingston's body, the trial court was within its discretion to conclude that the state didn't need to name those locations, especially in view of the potentially

inflammatory effect of injecting necrophilia into the guilt/innocence and penalty determinations. The trial judge was in the best position to determine whether the jury was becoming confused. Stephens v. State, supra; Sims v. Brown, supra. The judge was absolutely right in not admitting irrelevant, or marginally relevant, prejudicial evidence merely because the prosecutor was becoming confounded.

Under the trial court's ruling, the state was able to present its identification evidence in a fair and reasonable manner. It complains on cross appeal that it was deprived of the "full force and effect of its identification evidence" (SB48), but the only effect it was deprived of was an inflammatory and irrelevant effect. The state also complains that it should have been able to introduce evidence of sexual activity to show motive (SB52). The problem with this theory -- especially in light of the trial court's granting of a judgment of acquittal on the sexual battery charge due to failure of proof that the victim was alive when the sexual assault or even the attempted sexual assault began -- is that there is no evidence of an antecedent sexual motive for the murder of Mrs. Livingston. The actions committed upon her body are at least equally consistent with an afterthought,[2] or, more likely in this case, the culmination of an impulsive and disorganized rage reaction which occurred when

[2] See, e.g., Mahn v. State, 714 So. 2d 391, 402 (Fla. 1998); Clark v. State, 609 So. 2d 513, 515 (Fla. 1992); Troedel v. State, 462 So. 2d 392, 398 (Fla. 1984); Parker v. State, 458 So. 2d 750, 754 (Fla. 1984).

appellant (who suffers from frontal lobe brain damage) was surprised or confronted by the awakened victim in the midst of a burglary attempt. (See the trial court's sentencing order at SR97).

In addition to the §90.403 balancing test, an additional -- and powerful -- reason why the trial judge properly restricted the state, in presenting its DNA evidence, from injecting the issue of posthumous sexual activity into the murder trial is this Court's unequivocal holding in State v. Perkins, supra, 349 So. 2d at 163-64, that "evidence of crimes for which a defendant has been acquitted is not admissible in a subsequent trial." See Rivadeneira v. State, supra, 586 So. 2d at 501. See also Burr v. State, 576 So. 2d 279, 280-81 (Fla. 1991) (Perkins rule is based on the Florida Constitution, and also applies to penalty phase of a capital trial).

Both the rule established in Perkins, and the fair trial considerations underlying that rule, apply in the instant case:

> . . . it is fundamentally unfair to a defendant to admit evidence of acquitted crimes. To the extent that evidence of the acquitted crime tends to prove that it was indeed committed, the defendant is forced to reestablish a defense against it. Practically, he must do so because of the prejudicial effect the evidence of the acquitted crime will have in the minds of the jury in deciding whether he committed the crime being tried. It is inconsistent with the notions of fair trial for the state to force a defendant to resurrect a prior

> defense against a crime for which he is not on trial.[3]

Perkins, supra, 349 So. 2d at 163.

Moreover, a defendant's attempt -- compelled by the state's introduction of evidence of the acquitted crime -- to reestablish his prior defense to that crime can easily turn the collateral matter into a feature of the trial. See Rivadeneira, 586 So. 2d at 501. In State v. Zenobia, 614 So. 2d 1139, 1140 (Fla. 4th DCA 1993), regarding the §90.403 balancing test, the appellate court cautioned:

> If the use of the [other crimes evidence] threatens to become the central focus of the trial, or if that evidence is significantly different from the evidence of the crime on trial in such a way that it might so "poison the well" that all the jury instructions in the world may not conceivably undo, then under those circumstances the trial judge should certainly exclude it.

In Rivadeneira, the court noted that "[t]he State could have avoided running afoul of Perkins by simply eliciting testimony to

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[3] Contrast Holland v. State, 466 So. 2d 207, 209 (Fla. 1985)(declining to extend holding in Perkins to situations where defendant was not acquitted of the collateral crime, but instead the charge was nolle prossed):

> The fundamental unfairness which occurs when a defendant is forced to defend against similar fact evidence of a crime for which he has been acquitted is simply not present in cases like the present one where the defendant has never had to stand trial on the collateral charge. In the former situation, the defendant has been charged with a crime and been made to defend against it.

explain defendant's presence at the scene of the altercation that led to the battery charge. Evidence of the D.U.I. charge was not necessary for the explanation."[4] 586 So. 2d at 501. In the instant case, the trial court's order in limine was the product of a proper and reasoned balancing of prejudicial impact versus probative value as mandated by §90.403, and it also had the salutary effect of allowing the state to introduce its DNA evidence without violating Perkins. If the state had been allowed to introduce evidence suggesting a sexual assault, double jeopardy, collateral estoppel, and Perkins would clearly have precluded the state from contending that the victim was alive at the time (since the trial court's order granting a judgment of acquittal explicitly found that the state had failed to prove that element during the sexual battery trial). If the state, in the murder trial, had merely thrown the sexual battery out there, without making any contention whether the victim was alive or dead at the time, appellant would have been forced to resurrect his prior defense, at the risk of distracting the jury and turning the posthumous sexual battery into a feature of the murder trial He would have been placed in the untenable position of having to argue to the jury (1) that he was not the person who committed the murder and (2) that whoever did commit the murder perpetrated the sexual assault after the victim was already dead.

[4] See, State v. McClain, supra, 525 So. 2d at 422 (need for the evidence is a factor in §90.403 balancing test).

This is the very situation which this Court found to be fundamentally unfair, and which Perkins is designed to prevent.

As a final reason why the trial court's order in limine was not an abuse of discretion, it should not be lost sight of that both §90.403 and the Perkins rule (see Burr) apply to the penalty phase of a capital trial. Error in the admission of prejudicial and/or irrelevant evidence during the guilt phase of the trial can easily infect the penalty phase. Such evidence may require reversal of a death sentence for a new penalty trial, even in situations where the error was found to be harmless as to the guilt phase. See Burr v. State, supra, 576 So. 2d at 280-81; Castro v. State, 547 So. 2d 111, 115-16 (Fla. 1989); Morton v. State, 689 So. 2d 259, 264-65 (Fla. 1997). The prosecution's penalty phase evidence must be "directly related to a specific statutory aggravating factor. Otherwise, our turning of a blind eye to the flagrant use of nonstatutory aggravation jeopardizes the very constitutionality of our death penalty statute. Kormondy v. State, 703 So. 2d 454, 463 (Fla. 1997). The Eighth Amendment requires a heightened degree of reliability in capital sentencing. Lockett v. Ohio, 438 U.S. 586 (1978); Caldwell v. Mississippi, 472 U.S. 320 (1985). A jury's penalty verdict must reflect a logical analysis of the evidence in light of the applicable law, rather than an inflamed or emotional response to the crime or the defendant. Bertolotti v. State, 476 So. 2d 130, 134 (Fla. 1985). Evidence of a sexual assault upon the dead body of a murder victim is guaranteed to evoke an angry and emotional

reaction from jurors; while at the same time such evidence is irrelevant to any statutory aggravating factor. The law is clear that actions done to the victim's body after death (or even after unconsciousness) cannot be used to support a finding of the HAC aggravating factor. Jackson v. State, 451 So. 2d 458, 463 (Fla. 1984); Peavy v. State, 442 So. 2d 200, 203 (Fla. 1983) (McDonald, J., concurring); Herzog v. State, 439 So. 2d 1372, 1380 (Fla. 1983); Halliwell v. State, 323 So. 2d 557, 561 (Fla. 1975). It is equally clear that all the curative instructions in the world would fail to prevent jurors from considering such an act as heinous and atrocious, or from weighing it heavily as a reason to impose the death penalty.

The trial court's order in limine was a reasoned and balanced ruling designed to ensure a fair trial, and the state has shown no abuse of discretion. The state's cross appeal should be dismissed as moot or summarily rejected (as to the severance issue) and should be rejected (as to the order in limine).

CONCLUSION

Based on the foregoing argument, reasoning, and citation of authority, and that contained in his initial brief, appellant respectfully requests this Court to grant the following relief:

Reverse his convictions and death sentence and remand for a new trial [Issues I and II].

Reverse the death sentence and remand for the imposition of a sentence of life imprisonment without possibility of parole [Issue III].

Reverse the death sentence and remand for a new penalty trial [Issue V].

Reverse the death sentence and remand for resentencing [Issue IV].

Dismiss or summarily reject the state's cross appeal (as to the order severing charges) and reject the state's cross appeal (as to the order in limine).

CERTIFICATE OF SERVICE

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

CERTIFICATION OF FONT SIZE

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Respectfully submitted,

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