IN THE SUPREME COURT OF FLORIDA

CRAIG WALL, SR.,	:	
Appellant,	:	
vs.	:	Case No. SC16-1221
STATE OF FLORIDA,	:	
Appellee.	:	
	:	

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

INITIAL BRIEF OF APPELLANT

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TENTH JUDICIAL CIRCUIT

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STATEMENT OF THE CASE

Craig Wall, Sr. was charged by indictment in Pinellas County with two counts of first-degree murder for the alleged killing of Laura Taft on February 17, 2010, and Craig Wall, Jr. (CJ) between February 5 and 6, 2010, in violation of section 782.04(1)(a), Fla. Stat. (2010). (110-114) The State filed a notice of intent to seek the death penalty on March 1, 2010. (122)

Judge Richard Luce presided over Appellant's initial pretrial conference on May 21, 2010. Mr. Wall, Sr. asked that the two charges be severed so he could change his plea to guilty on count one involving the death of Laura Taft. (126-130) The trial court would not accept Wall, Sr.'s change of plea. (131) New court appointed attorney, William Bennett, filed his notice of appearance on June 2, 2010. (142) Bjorn Brunvand was appointed as co-counsel on August 12, 2010. (156) At a pretrial hearing on June 24, 2011, Judge Luce denied Wall, Sr.'s motion to discharge William Bennett as his attorney. Judge Luce suggested that Wall, Sr. should be examined immediately. (214-231)

At pretrial hearing on May 17, 2012, it was stated that Wall, Sr.'s attorney, William Bennett, was replaced by Daniel Hernandez. (367-371, 378, 379) Judge Federico replaced Judge Luce, who retired, and his first involvement with this case was the pretrial hearing on February 5, 2013. (428) Defense counsel Brunvand indicated that Wall, Sr. had extended an offer to the State to

plead guilty to the murder of Laura Taft in exchange for the death penalty and the State dismissing the count involving CJ. That offer had been rejected by the State. Brunvand said that Wall, Sr. has always indicated that he did not kill his son, but that he did kill Laura Taft and was willing to plead to the death penalty. (421-423)

At the pretrial hearing on February 22, 2013, there was a motion to sever which was denied. (434-525, 527) At the Faretta hearing on February 27, 2013, the Court made a finding that Wall, Sr. was not allowed to represent himself. Both counts would be tried together because they are tied together in an integral way. (558, 559, 562)

The judge heard defense's motion to transport defendant to state mental hospital for psychological examination on April 12, 2013. (587-610). The judge denied the motion to transport. (597) At the conclusion of this hearing the judge made the comment: "Hopefully, the Supreme Court appreciates the patience that I'm attempting to show in this situation because that's what I'm trying to do every time we're on the record as far as that's concerned." (610)

At the pretrial hearing on May 1, 2013, Wall, Sr. objected to the way he was being represented and moved for a Faretta hearing. The trial court would not hear Wall, Sr.'s oral motion and Wall, Sr. was removed from the courtroom. (635, 636)

Brunvand indicated they had not sought the appointment of a psychologist, because Wall, Sr. said he would not participate in

an evaluation by a psychologist or psychiatrist. (636) The court indicated that he thought Wall, Sr. should be evaluated, or at least the attempt should be made even if there is no chance that Wall, Sr. would participate in an evaluation. (636, 637) There had not been a competency evaluation before Judge Federico took over this case from Judge Luce. (638) Judge Federico indicated he could appoint Dr. Poorman [the jail psychologist] to evaluate Wall, Sr. to determine if he is competent to represent himself. Brunvand suggested that if Wall, Sr. is not competent to represent himself, Poorman should do follow up to determine if there are any other competency issues. (640) Judge Federico appointed Dr. Poorman for purposes of competency for self-representation. (643)

At pretrial conference on May 29, 2013, Brunvand said that Dr. Poorman's report indicated Wall, Sr. was not competent to represent himself. Wall, Sr. requested that he be transferred to Florida State Hospital so he could be treated and medicated in hopes of being reevaluated. (664, 665)

At pretrial hearing on July 18, 2013, there was a hearing on Wall, Sr.'s motion to have his defense counsel removed. The trial court denied the motion to dismiss counsel.(711-757, 762) Wall, Sr. was not allowed to go pro se based on Dr. Poorman's report even though Wall, Sr. never talked to Dr. Poorman. (751, 758)

At the pretrial hearing on August 29, 2013, Wall, Sr.'s status had changed and the judge noted he was in cuffs and shackles. (804-807) Wall, Sr. indicated his attorneys lied to the court and he had not seen them or had any communication with them

since February. (808) Judge Federico told Wall, Sr. his security status had changed because of alleged communications he had with his attorneys regarding their representation. The judge had told Wall, Sr. the stun cuff would remain off in the courtroom if he behaved appropriately. The judge did not consider Wall, Sr. threatening to kill his attorneys as behaving appropriately, so he changed Wall, Sr.'s security status. (809) Wall, Sr. said it would be easier if he dismissed his attorneys and let him go pro se. Wall, Sr. did not want his attorneys representing him because they were not doing their job and hadn't seen him in six months. (811-813) Judge Federico denied the motion to have his attorneys removed from the case. (821)

At pretrial hearing on December 13, 2013, the court heard Wall, Sr.'s motion to dismiss counsel. Wall, Sr. complained that counsel did not represent his interest and are actively forcing a defense to which Wall, Sr. objected. His attorneys wanted to pursue a defense that Wall, Sr. did not want and told the court they were going to do it against Wall, Sr.'s wishes- - "dealing with all this psychiatric crap." Wall, Sr. stated, "They keep sending this psychiatrist at me, this Eisenstein. And, first of all, you know, supposedly I'm this evil white supremacist. I ain't talking to no fucking Jew. So you stop sending Eisenstein at me." Wall, Sr. did not want his attorneys to keep forcing upon this court that Wall, Sr. is like a crazy person. He went on to state: "Yeah, I have issues. People don't kill people and not have issues after the fact. If they don't then they're psychotic." "Clearly, I

have a problem. I killed somebody, so I might have a little bit of a problem." (900, 901)

The Court informed Wall, Sr. his goal of being sentenced to death was inconsistent with their responsibility as lawyers. Wall, Sr. said he killed somebody, so he deserved to die. The court said if you want to go directly to guilty phase (Sic) they could do that. Wall, Sr. said the court was forcing him to plead to something he didn't do. "So I'm not going to plead to something I didn't do." The court then suggested he could plead no contest. Wall, Sr. said that would still be pleading. (903) The Court went on to advise him: "Well, because your point is, you're pleading no contest means, I want to put aside all of the stuff and just get to the heart of the issue, which is I want to have the death penalty."

"So if you want to plead no contest to the second count that you don't think you did because your only - - your only goal is to get to the penalty phase." (904) Wall, Sr. explained that he did not want to drag out all the stuff that is hidden about Laura. (905)

Wall, Sr. complained that his attorney never gave his offer to the State of taking the electric chair if they would drop his son's case. Wall, Sr. argued that there is caselaw from Indiana which holds that it is not state-assisted suicide to plead guilty and accept the death penalty in a plea deal. (907, 908) Brunvand said he did present that offer to the Assistant State Attorney and it was rejected by the State Attorney. (910, 911)

Brunvand addressed some of the complaints in the motion to dismiss counsel. His client did not wish to be seen by a psychiatrist or psychologist therefor it did not matter that the psychologist was Jewish. Branvand said Wall, Sr. made it clear that he is not a white supremacist, although he had some interest in it at some point. Brunvand would get a different psychologist if he thought it would make a difference and Wall, Sr. would cooperate and see the doctor. (926, 927) Wall, Sr. said he would not talk to a psychologist or psychiatrist. (927)

Wall, Sr. stated the mitigation specialist told him to threaten to kill Brunvand in order to fire him. Wall, Sr. said Brunvand is a good dude and he would not kill him. (942, 943) The court determined he would ask Butler, the original mitigation specialist, to come back on the case, so they could have a full presentation of the facts. Wall, Sr. did not want a psychiatrist involved. He said: "I just don't want no psychiatrist. There's no psychiatrist needed." "We've already seen what happens with your psychiatrist, like Dr. Poorman." "I don't need another one coming up talking like I'm crazy." (946, 947)

Wall, Sr. then suggested he would talk to Dr. Poorman if she would evaluate him for a Faretta hearing. It was agreed that Judge Federico would send Dr. Poorman to see Wall, Sr. and that Wall, Sr. would talk to her for purposes of Faretta. (948) The Court was also going to ask Butler if she would return to the case as mitigation specialist. (950) During this hearing, the judge told Wall, Sr.: "The Supreme Court will have every chance to second-

guess me. I don’t have any issue with that.” (939)

At the next hearing on December 20, 2013, Dr. Poorman indicated she visited with Wall, Sr. on December 18th and determined that he was competent to represent himself. (1122) Dr. Poorman reviewed the jail records back to May 10, 2013, and assessed Wall, Sr. in the areas of: appraisal of his legal defenses; his ability to plan legal strategy; his ability to question and challenge witnesses; his willingness for standby counsel; and his motivation to go pro se. On May 10, 2013, Poorman had determined Wall, Sr. was not able to represent himself because he had behavioral issues, went on hunger strikes, and would not talk to Dr. Poorman. (1123) On December 20, 2013, Poorman said Wall, Sr. does have the ability to represent himself with the caveat that he would need to control his vulgar language. (1124) There was nothing psychotic in his verbalizations to Dr. Poorman. Dr. Poorman said Wall, Sr. was competent to represent himself on the 18th, but didn’t know how he would be two days from now or even that afternoon. (1125)

Dr. Poorman said Wall, Sr. feels he is the best person to handle his defense. Wall, Sr. interrupted and said he never said that. Wall, Sr. wanted to fire his lawyers and get proper representation. (1127) The judge asked Wall, Sr., if he wanted a Faretta hearing. Wall, Sr. said the court was leaving him no choice. (1130) Dr. Poorman confirmed that Wall, Sr. said that his lawyers are not competent and he would prefer to have counsel, but if forced to he would go pro se. (1134, 35)

The court ruled that he had not heard any basis to remove Brunvand or Hernandez. When Wall, Sr. was not allowed to raise another issue, he chose to go pro se. (1152-1153) Wall, Sr. had no formal legal training, but graduated from trade school. He spent time in the law library in prison, and he filed motions in his cases. The judge informed Wall, Sr. he would be held to the same standard as a lawyer. (1154, 1155) Wall, Sr. understood that if he could not comport himself with the rules and regulations of the court, his right to self-representation could be terminated, and he could ask for an attorney at any time. (1156)

When asked if he was on medication, Wall, Sr. said he quit taking it. (1157) The court then asked if Wall, Sr. had any problems being clear headed or understanding his view. He said, "No. I think I'm smarter than they are in that regard." When asked if he understood it was a bad idea to represent himself, Wall, Sr. said he didn't want to represent himself, but he was left with no choice. (1157) Against Wall, Sr.'s wishes, the Court told Wall, Sr. his attorneys were going to remain on as stand-by counsel. (1158)

Wall, Sr. said he was not able to represent himself with Brunvand and Hernandez as his stand-by counsel. (1165) The court then asked if Wall, Sr. wanted Butler back on as mitigation specialist. Wall, Sr. said: "I'm not talking to anybody. And if you're going to railroad me into the electric chair, you can do it on your own. I'm not going to cooperate with it." (1166) Wall, Sr. told Judge Federico: "You're not going to drive me insane." (1167)

When asked again if Wall, Sr. wanted Butler back on the case he responded: "Well, you'd be better off with Ms. Butler. Because if you put Ms. Adams on, I can't verify that she'll live. Straight up. That bitch is – no. I can't even verify that she'll breathe another day, including Mr. Brunvand. Establish that. I might as well just go ahead and go all in. You can shackle me and fuckin' cuff me up until the day is long. We'll come here every day looking like fuckin' Hannibal Lecter. I don't give a fuck." At that point, the court ordered Wall, Sr. removed from the courtroom. (1167, 1168) The court indicated he would like to have Wall, Sr. in the courtroom when he questioned Butler, but based on his statements and behavior he was afraid of what Wall, Sr. might do. (1169)

Wall, Sr. yelled into the courtroom that he does not want to talk to Butler. The judge ordered that the door be closed and asked the Bailiff to send Wall, Sr. back. To which Wall, Sr. replied: "All you can suck my dick." The court commented that hopefully the Supreme Court will have an opportunity to review that last outburst. (1169)

During the February 7, 2014, Faretta/Nelson hearing Wall Sr. indicated he had not seen his attorneys since Feb. 25, 2013. (1257) His attorneys have hijacked his case and a conflict of interest has lead Wall, Sr. to frustration and mental breakdowns in the jail. Wall, Sr. had to be placed in the psychiatric department under suicide precautions. (1258)

Wall, Sr. filed a motion for continuance on March 6, 2014.

(1379) At pretrial hearing on March 6, 2014, the judge denied the continuance. (1416) The court stated he didn't understand why Wall, Sr. couldn't be ready for trial because his position is he wants the death penalty for killing Taft and he is not responsible for the death of the child. Wall, Sr. responded, "No, not anymore." "As far as I'm concerned, aliens beamed me up and then left me in the car with blood on me, so- — but we can get to that." (1419)

Wall, Sr. said he didn't want Taft's family to have to go through what I go through. The court said: "Is having to deal with what you did every day on a daily basis? Is that what you're suggesting we should feel sorry for?" Wall, Sr. said not at all. He did not want the family to have to go through what he is going through. (1421) Wall, Sr. at first agreed with the judge that he would have to appear callous and inhumane in front of the jury. Then Wall, Sr. said maybe he is a mad genius convincing the trial judge not to throw Br'er Rabbit into the briar patch. Maybe Wall, Sr. is using reverse psychology and in actuality he doesn't want the death penalty. (1422)

Wall, Sr. wanted a plea deal to circumvent a lengthy procedure so he could get the death penalty. If he didn't have a plea deal, Wall, Sr. believed the Court would not allow him to be put to death because he was under duress from having lost his son, and they would not kill him for killing Taft. The court would say he was mentally incompetent when he killed her. (1435, 1436)

Wall, Sr. filed a pro se motion to disqualify Judge Federico

on April 4, 2014, alleging the he would not receive a fair trial or a fair sentencing hearing because Judge Federico has a personal bias against him and has predetermined that he would sentence Wall, Sr. to death. The motion was filed within ten days after Wall, Sr. discovered the grounds for the motion when transcripts of hearings were delivered to Wall, Sr. on March 26, 2014. The transcript from the hearing on April 12, 2013 showed Judge Federico had predetermined to impose the death penalty in his statement made after Wall, Sr. exited the courtroom: "Hopefully, the Supreme Court appreciates the patience that I'm attempting to show…" Judge Federico's predetermination to impose the death penalty was shown again on December 13, 2013 by the following statement: "The Supreme Court will have every chance to second-guess me. I don't have any issue with that." (1523-1530, 1536, 1539)

The motion to disqualify the judge was heard on April 4, 2010. (6567-6571) The trial court orally denied the motion to disqualify and followed up with an order dated April 10, 2104, denying the motion to disqualify as legally insufficient. (1589, 6571)

The court went over procedures for the jury trial which was to start on Monday. The court mentioned that Wall, Sr. on different occasions had said he wanted to be put to death for one of these murders. Wall, Sr.'s response was: "I was beamed up by aliens. I don't know what you're talking about. Like I said, the blood in the car is mine. It ain't hers. I don't have none of her

blood on anything." Wall, Sr. said he didn't know what the judge was talking about when asked if he had previously stated that he wanted the death penalty. (6597-98)

On Monday morning, April 7, 2014, before trial was to commence, Wall, Sr. relinquished his pro se status and let Brunvand represent him. Brunvand said he was not prepared for trial and moved for a continuance. (6643-44) Brunvand and Hernandez were going to represent Wall, Sr. and the trial court granted a continuance. (6644-49)

At a pre-trail hearing on February 6, 2015, prior to the trial scheduled for February 23, 2015, there were discussions of a possible plea instead of a trial. The draft plea agreement had Wall, Sr. pleading guilty to count 1, and no contest to count 2. Wall, Sr. could withdraw his plea if he did not get the death penalty. Wall, Sr. was willing to submit to a competency evaluation by State doctor. Wall, Sr. wanted to present mitigation pro se. (1820, 1821) The State did not agree that Wall, Sr. could withdraw his plea if he did not get the death penalty. (1823) The Court indicated if Wall, Sr. pled he would still have to do the independent analysis that goes with his statutory responsibility. The upside for the State is they don't have to go through a trial. "He acknowledges his guilt, and we move on from there and go to the Supreme Court." (1831, 1833)

One of the prosecutors, Davidson, said there would have to be some evidentiary showing of aggravators, unless he signed off on them. Wall, Sr. responded that he was fine with that and then

said: “if you want to throw in that I killed Ted Bundy, that’s fine, too. I don’t care.” (1834, 35) Wall, Sr. said to avoid dragging this out he would present mitigation, but he did not want to present any childhood or mental mitigation. (1836-40) Wall, Sr. said: “I’m accepting responsibility for something I didn’t do.” Wall, Sr. tried to kill himself on his son’s birthday. He claimed that he was not suicidal because he saved his pills for five months and it was preplanned. He said he did not want to die and was completely logical. When it first happened he would have jumped off the Skyway bridge but now, five years later, he is not depressed. It still bothers him. He said: “I’m not suicidal. I’m homicidal. Because there’s two people, there’s the person that did this and there’s the person that I am.” “The person that I am cannot live with the person who did that.” (1842, 43)

Davidson thought this was a ploy by Wall, Sr. to drag the case out. So they could proceed if Wall, Sr. wanted to enter a plea that day or he could be evaluated, if the Court wanted him to be evaluated. (1844, 1845) In the middle of this discussion, Wall, Sr. randomly and illogically said: “pussy boy McTear, who threw the little boy out the fucking window of the car got a Life sentence, I think, because his moma smoked crack. I don’t give a damn if your moma smoked crack. You don’t kill children, you know what I’m saying?” “Because my moma punched me in the mouth when I was little, I got scars all over me from my moma beating me, that doesn’t mean that I - - that makes me kill a girl.”(1848)

After further discussion, Judge Federico said: “I still think

we still need Gamache or whoever you were going to use to evaluate him." (1852) Assistant State Attorney, Piazza stated: "Judge, we're going to have Dr. Poorman, I know she's available next week, I'm hoping, and then Dr. Gamache. We did try to contact him and see if he was available this week. We weren't able to do that." "Judge, we would ask that Dr. Poorman, who has seen Mr. Wall previously throughout the proceedings, to do that, as well as Dr. Gamache." The Court said: "For competency, to make the decision that he wants to waive a jury and seek to have the Court impose the death penalty?" Piazza said yes if Wall, Sr. is agreeable. Brunvand said Wall, Sr. is agreeable, but he has previously been evaluated by Poorman and determined to be competent to proceed and represent himself. (1852, 53) Brunvand said Wall, Sr. seems to be clear on what he wants and had been consistent. Brunvand thought they could do the plea that day and that is what Wall, Sr. wanted to do. (1853) The judge wanted time to think about it and did not want to take the plea without having Wall, Sr. evaluated. (1853, 54) Davidson said they might enter into the plea agreement, conditioned on the psychological evaluation being performed. (1854) The judge said he would feel better if besides Poorman they had Gamache evaluate Wall, Sr. as well. (1858) The case was set for a plea on Wednesday. (1859)

Brunvand expressed concern that Wall, Sr. may not be ready for penalty phase hearing on the 23rd because he remains in the medical wing on suicide watch. "He's been there for over a month. He's filed complaints within the jail. We've been advised by the

doctor that he's not going to let him out." While on suicide watch, Wall, Sr. was naked and did not have access to anything. (1860) Judge Federico said they would do the change of plea on Wednesday if they can get Gamache and Poorman to see Wall, Sr. They would do a Faretta hearing after the plea. (1866)

At the anticipated change of plea hearing on February 11, 2105, Dr. Gamache had not yet seen Wall, Sr. Dr. Poorman saw him the day before. Judge Federico said he would rather wait until Dr. Gamache saw him which was scheduled for the next morning at 9:30. (1873) The Court wanted Dr. Gamache to see Wall, Sr. to make sure he is competent to make the decision to plead guilty to the death penalty. (1883) After the State no longer agreed to the death penalty plea, Brunvand suggested that since Poorman said Wall, Sr. is competent Brunvand didn't see a need for Dr. Gamache. The court agreed saying: "Dr. Poorman could give the information we need in that regard. So what you're proposing is that Poorman come in here, tell us what we need from her, and then do the plea today?" Burnvand said yes. Davidson agreed assuming Poorman made a decision. (1895, 96)

The judge said if Wall, Sr. does not plea unconditionally, they will go to trial. Everybody has assessed the State has one case stronger than the other and what would happen if Wall, Sr. is acquitted on the second count. Wall, Sr. said if they go to trial Laura's behavior, after their son died, will come out and the jury won't convict him on his son. (1908) The jury would then consider that they might have killed Laura too when they found out she

killed their son, and Wall, Sr. would not get the death penalty because he was distraught over losing his son. (1908) Wall, Sr. said Davidson made the plea agreement, but the Court said they don't want any part of it now. (1909)

Wall, Sr. said if he went to trial he would not get the death penalty if you throw in his childhood history. Wall, Sr. fired his mitigation specialists and is trying to keep the mitigation out to try to get the death penalty. (1912) Wall, Sr. said the State and the judge are making him choose between his son and someone he killed. He is not going to plead straight up to something he didn't do. He didn't kill his son and he would not plead without an agreement for the death penalty. They were going to trial unless the State agrees to a plea and then Wall, Sr. would sign the paper. (1915-17)

At the plea hearing on February 13, 2015, all parties and the judge signed the plea agreement. The State and Wall, Sr. agreed to the death penalty and that the aggravating circumstances outweigh the mitigating circumstances and that death is the appropriate penalty. However, both parties understood that the Court would determine the sentence. (1928)

The Court questioned Dr. Poorman in anticipation of Wall, Sr. entering a plea. Initially Poorman met with Wall, Sr. to determine if he was competent to proceed and represent himself. Poorman most recently saw Wall, Sr. on Feb 10, 2015. Poorman opined that based on her interview with Wall, Sr. he remains competent to proceed to trial. Wall, Sr. was aware of the penalties. (1933-35, 5529)

Poorman felt Wall, Sr. was competent to choose the death penalty and they talked about him wanting to accept the death penalty and not proceed to trial. He did not want to put the victim's family through a trial and many years of appeals. Poorman believed Wall, Sr. was resigned to the fact that this is what he needed to do and he was at peace with himself. Wall, Sr. was competent to stand trial and represent himself. Wall, Sr. was not on any medication when she last saw him. He had previously overdosed on Thorazine. (1936, 37) Wall, Sr. interjected that he took Thorazine for the purpose of overdosing. He had them prescribe it to him for that purpose. (1938)

Poorman said Wall, Sr. was competent, within all five criterion, to represent himself. He understands legal defenses he may have, he has a plan for a legal strategy, he is able to challenge and question witnesses, he has the willingness for standby counsel, and he has the motivation for going pro se. (1938, 39) Poorman did not have any concerns of major deficiencies in Wall, Sr.'s literacy, verbal ability, and overall level of intelligence. Poorman felt he met all constitutional prerequisites to represent himself. Defense counsel did not question Dr. Poorman. (1939)

The trial court engaged Wall, Sr. in a plea colloquy. Wall, Sr. was 40 years old, finished high school, and went to trade school. He understood he was charged with two counts of first degree murder, and the only two possible sentences were death or life imprisonment without the possibility of parole. (1940) There

was a written plea form in which Wall, Sr. was seeking to have the death penalty imposed. (1927) Wall, Sr. understood that even though he and the State were seeking the death penalty, the trial court still had an independent responsibility to determine the appropriate sentence. (1941)

The trial court explained that aggravators had to be proved beyond a reasonable doubt and mitigators had to be proved by a greater weight of the evidence. There is no formula for the judge to use in determining how much weight to give to aggravating and mitigating circumstances and the judge must determine if the aggravating circumstances outweigh the mitigating circumstances. (1942-47) Wall, Sr. understood that the death penalty is reserved for the most aggravated and least mitigated of murders. Not everyone that commits first degree murder should receive the death penalty, but that was not Wall, Sr.'s opinion. (1952)

Wall, Sr. signed the plea form and he understood he was entering a guilty plea to the murder of Laura Taft and a no contest plea to Count II, the murder of Craig Wall, Jr. That was the plea Wall, Sr. wanted to enter and he understood the court would consider aggravating and mitigating circumstances. (1954) Wall, Sr. understood all the rights in the plea form that he was giving up. He was waiving his right to a guilt phase jury. No threats or promises were made to get Wall, Sr. to enter his plea. When asked if he was under the influence of alcohol or narcotics, Wall, Sr. responded: "I wish." He asserted he had never been treated for any mental illness. (1955, 1956)

Wall, Sr. forced Dr. Hernandez to prescribe Thorazine to him by refusing to go to south division. Wall, Sr. got the Thorazine with the intent to overdose. Wall, Sr. said he is not suicidal. Wall, Sr. felt he was clear headed and understood everything he was doing when going through the plea colloquy. (1956, 1957) Wall, Sr. did not want to have a guilt phase jury trial. (1958)

The prosecutor provided the following factual basis:

> As to Count II of the indictment, your Honor, on or between the 5th day of February and the 6th day of February, 2010, in Pinellas County, the defendant unlawfully, while engaged in the perpetration of or an attempt to perpetrate the crime of aggravated child abuse, did the inflict blunt trauma on Craig Wall, Jr. As a consequence thereof, Craig Wall, Jr. died. During the incident Craig Wall, Jr. suffered broken ribs, significant subdural and subarachnoid hemorrhages caused by rotational forces and blunt trauma upon the child's brain and head.
>
> As to Count I of the indictment, this offense occurred on February 17th of 2010, approximately 3:00 a.m. at 470 Fairwood Avenue, Apartment 153, in Clearwater, Pinellas County, Florida. The defendant went to the victim's apartment, the mother of his child, in violation of the injunction. He broke into the rear sliding glass door of the apartment without permission to enter. He made contact with the victim within the house and outside the front door. He stabbed her three times. She received a defensive wound through her wrist. She received a wound to her chest that caused injury – fatal injury to her heart causing her death. The third wound was a stab to her shoulder where he struck the top lobe of her lung, and the knife handle broke off leaving the blade of 9 inches impaled in the victim.
>
> The defendant had also brought with him one additional set of brass knuckles for intimidation purposes. He subsequently was found in his vehicle in Sumter County approximately 5:52 a.m. He then made post-

> Miranda admissions to having stabbed Ms. Taft.
>
> In addition to that, evidence discovered later was that he had made previous statements of premeditation to the effect that he would choke the life out of Ms. Taft for what she was doing to him. That statement being made post the death of his child, Craig Wall, Jr.

(1958, 1959)

Brunvand did not disagree that the State could establish what they suggested in Count I. The court acknowledged that Brunvand was prepared to dispute the evidence the State indicated would be their version of the facts in Count II, but Brunvand agreed that would be the State's version. When Brunvand was asked if he was prepared to present evidence that would dispute the State's evidence as to both Counts I and II, Brunvand replied: "Certainly as to Count II." (1960)

When the court asked Wall, Sr. if he agreed with the factual basis as to Laura Taft, Wall, Sr. said it was a lie and that was not how it happened. Wall, Sr. acknowledged that he killed Laura Taft. Wall, Sr. said he was not going to dispute the facts as to the death of Craig Wall, Jr., for the plea agreement. This is what Wall, Sr. wanted to do to get the case resolved. (1961, 1962) Wall, Sr. wanted to take responsibility for his actions. Brunvand said he did not recommend that Wall, Sr. enter a plea, but he understood his position and he was respecting his position. (1964)

The court accepted the plea finding that Wall, Sr. was alert, intelligent, and entering his plea freely and voluntarily upon the advice of competent counsel with whom he was satisfied. The court

adjudicated Wall, Sr. on both counts and then proceeded to a Faretta hearing, because Wall, Sr. wanted to represent himself at penalty phase. (1965)

Wall, Sr. indicated he would like to handle cross examination of the State's witnesses regarding aggravating circumstances and present his own mitigating circumstances. (1966) Both stand-by counsel, Brunvand and Kurpiers said they were prepared to cross-examine state witnesses and present mitigation if the need arose. The court found that Wall, Sr. was alert and intelligent, he understands Faretta, and is making a free and volitional decision to represent himself, so the court allowed pro se representation. (1973, 1974) Wall, Sr. waived a jury for penalty phase. (2016) Wall, Sr. made it clear that he was going to present all the mitigation he feels is necessary. (2042)

Independent special counsel presented mitigation evidence at the Spencer hearing conducted on April 14 and 15, 2016. (4790-5380) At the sentencing hearing on June 3, 2016, Judge Federico concluded that the State had established four statutory aggravators as to each victim. The judge considered Wall, Sr.'s penalty phase presentation and independent counsel's presentation and found one statutory mitigator for Laura's murder and none for CJ's death. The court found seven non-statutory mitigating factors relevant to each count.

One aggravating circumstance applied to both cases: The defendant was previously convicted of another capital felony or a felony involving the use or threat of violence to a person. The

other aggravators that applied to the murder of Laura Taft were: The capital felony was committed while the defendant was engaged in the commission of armed burglary; the capital felony was especially heinous, atrocious or cruel; the capital felony was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification. The other aggravators that applied to CJ were: The victim of the capital felony was a person less than 12 years of age; the capital felony was committed while the defendant was engaged in the commission of aggravated child abuse; the victim of the capital felony was particularly vulnerable because defendant stood in a position of familial or custodial authority over the victim.

The trial court found no statutory mitigating circumstances presented by Wall, Sr. but did find one statutory mitigating circumstance based on the presentation by independent special counsel that applied to the murder of Taft: The capital felony was committed while defendant was under the influence of extreme mental or emotional disturbance. The trial court found the following mitigation based on the presentation by Wall, Sr.: Defendant attempted to create a familial lifestyle for his family; Defendant was capable of cultivating interpersonal relationships; Defendant was abused by his mother and attempted to shield his siblings from her abuse. The trial court found the following mitigation based on the presentation by independent special counsel: Defendant suffers from mental illness and received inconsistent mental health treatment from early childhood;

Defendant suffered significant childhood trauma and abuse; prolonged institutionalization from a young age; familial pattern of mental illness. (5488-5503, 7475-78)

The Court found the aggravating circumstances far outweighed the mitigating circumstances. The Court reviewed cases that led the Court to conclude that the death penalty is a proportionate sentence as to each victim. Craig Wall, Sr. was sentenced to death on Count 1 for the murder of Laura Taft and sentenced to death on Count 2 for the murder of Craig Wall, Jr. (5503, 7475-78)

On January 26, 2016, undersigned counsel filed a motion to withdraw as counsel, or in the alternative, motion for clarification of Appellate Counsel's role, and to allow Appellant to submit a pro se statement setting forth his position. On February 16, 2017, this Court denied the motion to withdraw and ordered counsel to proceed to prosecute the appeal in a genuinely adversary manner, providing diligent advocacy of appellant's interests.

STATEMENT OF THE FACTS

SUMMARY OF FACTS

Craig Wall, Sr.'s fiancé, Laura Taft gave birth to his biological son Craig Wall, Jr. (CJ) on December 30, 2009. Craig, Sr. and Laura had been living together and Laura's son from a prior relationship, Connor, lived with them part time. Craig Sr. and Laura agreed that after the birth of CJ, Craig Sr. would stay home to care for their newborn infant. (5487)

Laura returned to work four weeks after giving birth to CJ. On the morning of February 5, 2010, Laura left for work around 7:30 in the morning, leaving Craig, Sr. home to care for CJ. (1070, 71) CJ started coughing and having trouble breathing. (1072-74) After his unsuccessful attempts to get CJ breathing, Craig, Sr. called 911. Craig, Sr. frantically tried to follow the CPR directions provided by the 911 operator. (1087-1091, 5487)

When the paramedics arrived around 10:45 a.m., the five-week old CJ was not breathing or moving. CJ was taken to the hospital where medical staff found bleeding in CJ's eyes and brain, and rib fractures. The hospital staff reported the case to law enforcement as suspected child abuse, and the police interviewed Craig, Sr. about CJ's injuries.

CJ passed away the next day around 4 a.m. Later that day, Craig, Sr. made an emotional video denying harm to CJ and then tried to kill himself by ingesting pills. On February 6, 2010, Laura called law enforcement when she found Craig Sr. unresponsive. He was involuntarily held at Morton Plant Hospital under Florida's Baker Act. (2382, 5487)

On February 8, 2010, Laura filed for a temporary injunction against domestic violence. The temporary injunction was granted and served on Craig, Sr. at the hospital on February 9, 2010. Craig, Sr. was released from Morton Plant Hospital the next day. On February 14, 2010, Craig, Sr. went to CJ's funeral and was arrested for violating the injunction. By that time, Laura had

moved out of their shared apartment and into an apartment of her own. Wall, Sr. was released on February 15, 2010. (5487, 88)

Around 3 a.m. on February 16, 2010, Wall, Sr. drove to Laura's new apartment. He broke the sliding glass door at the rear of the apartment and entered while in possession of a knife. He stabbed Laura in the chest and shoulder where the handle broke off and the blade remained lodged. (2166, 2167, 5488) The fatal injury was the stab wound to the left side of her chest into her heart. (2172, 5488)

Penalty Phase

On February 23, 2015, after questioning by the court, Wall, Sr. continued to want to represent himself and waive a penalty phase jury. (2116-18) The judge indicated before the start of penalty phase that based on Koon v. Dugger, 619 So. 2d 246 (Fla. 1993), he must consider what the potential mitigation would be. Since Wall, Sr.'s court appointed counsel had done a lot of work towards mitigation it is important that there is a record as to what the potential mitigation is that they prepared. (2123, 24)

Hernandez advised the court they had Dr. Eisenstein, a neuropsychologist, appointed to review the records, and psychologically evaluate Wall, Sr. at the jail. (2127) Eisenstein attempted to see Wall, Sr. on more than one occasion, but Wall, Sr. refused to see him. Dr. Eisenstein reviewed a variety of records, including a psychological evaluation of Wall, Sr. when he was eight years old. (2128, 29)

Hernandez indicated that any opinions Eisenstein rendered would be underdeveloped because he didn't do a psychological evaluation. Eisenstein did meet with Wall, Sr. about 10 days before this hearing, and had a conversation where Wall, Sr. did most of the talking. Hernandez did make several unsuccessful attempts to see Wall, Sr. (2130, 31)

Another mental health expert, Dr. Butler interviewed family members and friends that Hernandez believed would have corroborated what Eisenstein believed; that the statutory mental mitigators were present. There was also significant non-statutory mitigation that could have been presented through family members who were interviewed by a previous mental mitigation specialist. (2131) Hernandez also had records from when Wall, Sr. spent time at Dozier School for Boys. (2132, 36)

Hernandez said both statutory mental mitigators were present: the capital felony was committed while the Defendant was under the influence of extreme mental or emotional disturbance, and the capacity of the Defendant to appreciate the criminality of his conduct was substantially impaired. (2133) The State did not have anything additional to proffer. When the court asked Wall, Sr. if he was going to present all of that mitigation, Wall, Sr. responded that he had a different strategy. (2134)

Detectives Joseph Ruhlin and Kerry Spaulding investigated the deaths of Laura Taft, and CJ. (2378) Spaulding responded to the apartment where CJ was being treated by paramedics on February 5, 2010, around 11 a.m. (2664-66) Wall, Sr. voluntarily

rode his motorcycle to Clearwater Police Department where Spaulding interviewed him for about four hours. Wall, Sr. was released after the interview and allowed to ride off on his motorcycle. (2666, 67) Laura Taft left their home about 7:30 that morning. The emergency responders arrived at the home to attend to CJ about 10:44 a.m. During that time, Wall, Sr. was the only person home with CJ. Wall, Sr. had taken on the role of stay-at-home dad for his son while Taft was going to financially take care of the family. (2667, 2670)

Wall, Sr. woke up about 10:00 a.m. and CJ was propped up on a pillow next to him. CJ was wet and making some sounds. (2667, 68) Wall, Sr. placed the baby on a comforter on the couch and put a bottle in his mouth. CJ was drinking from the bottle and then Wall, Sr. went into the kitchen to get something to eat for himself. (2668) Wall, Sr. heard a cough so he went back into the living room. CJ appeared limp and his eyes nearly shut, but he was not sleeping. Wall, Sr. picked up CJ and changed his diaper. He took CJ to the bathtub and put cold water on CJ to get him to respond. He breathed into CJ's mouth and mucus came out of his nose. Wall, Sr. could hear his baby's heartbeat, but he could not hear him breathing. He put CJ on the living room floor and went into the bedroom to get his phone to call 911. (2671, 72)

Wall, Sr. brought up the term "shaken baby syndrome." Throughout the interview, Wall, Sr. accepted blame and then said he didn't do anything or he didn't know what took place. Wall, Sr. was visibly distraught over his son. (2669, 2685, 2685) Wall,

Sr. repeatedly said Taft was a good mother and had not harmed the child. Wall, Sr. did not know how to do CPR, so he frantically squeezed into CJ's ribs. (2672) Wall, Sr. did not do anything to his son on purpose. There was something wrong with CJ and Wall, Sr. took responsibility because CJ was in his care, but he didn't do anything to CJ. (2712-16)

Spaulding talked to Wall, Sr. and Taft about an incident that occurred on Wednesday, February 3, 2010, when CJ had a circumcision. Taft had to suddenly stop her car to avoid an accident. There was no crash and Wall, Sr. vacillated on whether that could have caused CJ's injuries. Taft said CJ did not suffer any injury as a result of the incident. (2675, 2692) Wall, Sr. watched CJ the next day, Thursday, and did not notice any kind of massive injury. (2675-78) Wall, Sr. did tell Spaulding that on Thursday, CJ had a low temperature of 93 and he threw up on Wednesday after the circumcision. CJ continued to regurgitate until everything happened on Friday. (2686, 2687, 2746) CJ had been sick for a couple of days and was making gurgling sounds in his chest. (2728)

Spaulding hid a tape recorder in Taft's purse at All Children's Hospital in an unsuccessful attempt to get incriminating statements from Wall, Sr. regarding his son's death. Taft was aware of the hidden tape recorder, but Wall, Sr. was not. (2468, 2755, 56) Spaulding could not answer why she didn't hide the recorder on Wall, Sr. to secretly record Taft's statements. (2758) The State introduced a copy of Wall, Sr.'s

prior conviction for robbery, armed burglary, and grand theft. (2525)

Dr. Sally Smith, a pediatrician and director of the Child Protection Team is Board certified in child abuse pediatrics. (2532-35) Smith saw CJ in the evening of February 5, 2010, at All Children's Hospital. (2539-40) When the first responders arrived, the child was in critical condition. There was bluish coloration to the body, and he was completely unresponsive. When Smith examined CJ that evening, he had extensive retinal hemorrhages in both eyes indicative of abusive head trauma. This type of injury is not usually found from a car stopping quickly that did not make impact with any other object. Even with impact, extensive bilateral retinal hemorrhages are exceedingly rare. If a child had sustained those injuries in a car accident, it would not survive for 24 hours without medical attention. (2545-48)

The CT scans showed what appeared to be acute or fresh hemorrhage across the surface of the brain. That pattern of hemorrhage is almost always the result of abusive head trauma most likely from violent shaking but can be related to high force impacts of the head. There was at least one fresh rib fracture on his x-ray and the autopsy confirmed more. (2543-44)

Smith opined the combination of specific findings of abusive head trauma, which proved to be fatal, as well as multiple posterior rib fractures, occurred from physical abuse. Because a young baby's ribs can bend and are somewhat flexible, there are no cases in pediatric literature of posterior rib fractures

caused by CPR. (2548-50) It is highly unlikely that if a child had those injuries at 7:30 a.m. that he would remain alive until 10:47 a.m. Abusive head trauma was the cause of death. (2559, 60)

Smith was not aware of the autopsy findings of Dr. Steven Nelson at the time she did her initial report, a couple of months before the autopsy report was available. Smith did not do an updated report because the autopsy did not change her opinion where there was physical abuse, abusive head trauma, and rib fractures. Dr. Nelson's report indicating early organizing repair of the blood vessels did not change Smith's opinion because of all the fresh subdural blood. (2573-75)

Wall, Sr. signed a stipulation that was entered into evidence. (2151) In singing the stipulation, Wall, Sr. was agreeing not to the truth of Christopher Miller's statements, but that if Miller was called to the stand he would testify as follows:

> That Craig Wall, Sr., while incarcerated in the Pinellas County Jail, admitted he went to Laura's apartment with a knife equipped with a brass knuckle style handle.
>
> That he banged on the back sliding glass door with the knife, but could not break the glass and was concerned that the neighbors were starting to hear the noise, so he began lunging at the glass door and broke the glass, entering the apartment.
>
> He stated Laura was startled and he grabbed her, pulling her toward the back glass door. She cut her foot on the broken glass and he then brought her towards the front door. He stated Laura began stating in a quiet voice, "Someone help me" and began to call louder for help.

> He stated he stabbed Laura through the heart and took off in his truck and took sleeping pills.
>
> He also stated that a knife was a personal way to kill someone, not everybody has that in them.

(6210, 11)

Christopher and Grace Thompson (no relation) lived in the apartment above Laura Taft. On the night in question, Christopher Thompson returned home from work around 3 a.m. and noticed a red car, that usually was not there, occupied by a man. As Thompson approached his apartment, he noticed the man walk past Thompson's apartment. (2246-48, 2291) The man returned to the red car before Thompson entered his upstairs apartment. (2249)

About the time Thompson laid down, within five minutes of arriving home, he heard a loud sound of breaking glass directly below his apartment. (2253) Shortly thereafter, Thompson heard distressed yelling from a female voice which lasted about 30 to 45 seconds. Thompson called 911 and knocked on his roommate's door as he went to the front door of his apartment. (2256, 57) Grace Thompson heard a woman scream twice: "Oh God. Someone help me." (2324) Christopher stepped out onto the balcony and saw the same man he saw earlier, walk to the red car, get in, and drive away. (2258, 2259)

Christopher immediately went downstairs and saw a female in a seated position leaning against the wall in front of the doorway. He asked her if she was okay. Christopher heard some

gurgling noises coming from her throat. She was motionless and did not speak. (2260, 2327)

Danny Welker came into contact with Wall, Sr. on February 14, 2010, as they were being transported to jail in the back of a paddy wagon. (2354) Wall, Sr. told Welker that his child had died and he violated a restraining order. Wall, Sr. said the mother of the child was lying about him, and Wall, Sr. was going to choke the life out of her when he got out of jail. (2355) Welker told him he was kidding and everything would be alright. Wall, Sr. responded that he was not kidding. (2356)

At the crime scene where Taft was found, a knife handle was located near Taft's body. Photos showed Taft's body, the knife lodged in her shoulder, the handle, and the entry point at the rear of the apartment. The knife found lodged in Taft's body fit into the handle found near her body. (2385-87)

Dr. Susan Ignacio, Associate Medical Examiner, conducted an autopsy on 29 year old Laura Taft on February 17, 2010. (2164) Photographs showed an 8 inch blade of a knife, with a missing handle, lodged in Taft's left shoulder and the wound after the knife was removed. (2166, 2167) Taft sustained a stab wound all the way through her right forearm-wrist area which could have been a defensive wound. It's possible but not likely that the wound to the forearm was not a defensive wound. (2168, 2174, 2197, 2198) Another photo showed a stab wound through her left chest, the cartilage of the third and fourth ribs and into the left ventricle of the heart and ended in the left lung. (2169)

There were no significant injuries on the bottom of her feet, but there was an incised wound on the top of her right foot caused by a knife. (2171, 2204)

Ignacio determined that the cause of Taft's death was the stab wound entering her heart. (2172) Taft would have lost consciousness within seconds of the stab wound to her chest. (2174, 2218) She would have remained conscious long enough to realize that she had been fatally stabbed. (2235)

Years later Ruhlin was present when Wall, Sr. was transported to the Sheriff's Office to view evidence in this case. While there, Wall, Sr. made admissions that he killed Taft. Wall, Sr. said he got her address from a person at the funeral home. (2388, 2389)

Wall, Sr. presented a number of videos during mitigation: four videos showing Wall, Sr. interacting with his family at Christmas time, one showing Connor's preschool graduation, and one at the hospital after the birth of Taft's niece. (2854-2937). On Christmas Eve, Taft opened a big box with smaller boxes inside. The last box contained an engagement ring. Taft accepted Wall, Sr.'s proposal to marry her. (2854-61, 2869) The second video was of the Christmas tree. (2864) The third video showed presents around the Christmas tree and a train going around the tree. This is Christmas of 2009 and it showed all of Wall, Sr.'s effort to make sure that Laura and Connor would have a good Christmas. (2867, 68) Wall, Sr. and Connor are depicted in the

video along with Laura who is pregnant with CJ. (2870) Wall, Sr. picked out most of the presents for Connor. (2878)

Wall, Sr. bought $125 worth of batteries, installed them in Connor's toys and repackaged the toys, so Connor would be able to use the toys on Christmas morning. (2892, 2908, 09) Laura Taft put two packs of tissue and a washcloth in the Christmas stocking for Connor, but Wall, Sr. picked out most of the items placed in the stocking. (2893-95) Wall, Sr. said that was the best Christmas of his life. (2899) Wall, Sr. bought the train to go around the tree and Christmas hats for everyone to wear to start a family tradition. (2905, 06)

Wall, Sr. gave Taft a knife to open her present. He carries a knife at all times to protect his family. (2914) Wall, Sr. commented about one of the videos that showed his dog with a nice clean short coat because Wall, Sr. spent about 45 minutes to comb his dog and clean her up the night before Christmas. Wall, Sr. was pointing out the patience that he has. (2924, 25) Wall, Sr. commented how he stacked all the toys neatly and picked up all the wrapping paper because he is OCD about being clean. (2926)

The video of Connor's preschool graduation showed the Mohawk haircut Wall, Sr. gave to Connor. Wall, Sr. took an hour and a half to cut Connor's hair with a beard and mustache trimmer. (2933) Wall, Sr. gave Connor the haircut because he thought every little boy should have cool things to look back on. Wall, Sr. had a horrible childhood, so he tried to do as much as he could for Connor. Neither of Connor's parents paid attention to him. Wall,

Sr. gave Connor lots of attention and Connor talked about Wall, Sr. often. (2935)

Defense composite 2 included a video Wall, Sr. made (suicide video), a video of CJ hiccupping, and photographs of CJ. (2949) Wall, Sr. did not want to be present for the playing of the suicide video. The trial court commented that Wall, Sr. was clearly becoming emotional when talking about playing the video, so the judge allowed him to leave the courtroom. (2950-52)

In the video, Wall, Sr. said he made his last will and left everything to Laura and Connor. Wall, Sr. did not do anything to his son. He took a whole bottle of sleeping pills and drank Mountain Dew. (2952) Wall, Sr. missed his son and wanted him back. He could not go on hurting like this. Wall, Sr. did not know who hurt his son, but it was not him. Laura Taft could not have done anything to CJ, because she loved him too much. Wall, Sr. emotionally stated he missed his son and he was coming to be with him. (2953) Wall, Sr. was sorry he was ever upset with CJ. He never hurt CJ, but was sorry he told CJ to be quiet when he was screaming. (2954)

Wall, Sr. left his car, trucks, and everything he owned to Laura Taft. Wall, Sr. did not want to live and wanted to be cremated and buried with his son. Wall, Sr. thought he might have been able to go on if he had Laura’s love. He loved Laura above all else. (2954, 55) Wall, Sr. had not eaten and was afraid he would throw up the pills. He had to keep the pills down so he could be buried with his son. Wall, Sr. was distraught and could

not figure out what caused CJ's death. He knew he or Laura did not kill CJ. He vacillates from having done nothing to taking responsibility because he was with CJ and grasping at possibilities that CJ's head accidentally touched the floor when he place him down. Wall, Sr. questions how he could have broken CJ's ribs. (2956, 2957) After CJ's death, nothing in the world mattered to Wall, Sr. He could not bear to live without his son, so he was committing suicide. Wall, Sr. was remorseful that the police took Connor away from Laura. Wall, Sr. hoped that if he was dead, Laura would be able to get Connor back. (2958, 59)

Wall, Sr. closes the video by pleading to Laura to take care of his dog because she deserves love and attention. His dog was crying because Wall, Sr. was crying. Wall, Sr. wanted her to be Connor's dog. Wall, Sr. will always love Laura and Connor and could always love CJ because he was going to be with him. (2960, 61)

Dr. Thogmartin, chief medical examiner for District 6 since December 1, 2000, had never diagnosed or felt strongly enough that a case was shaken baby syndrome to put that on a death certificate. He had never seen a case of shaken baby syndrome. They see a lot of cases of infant head trauma and pediatricians will call it shaken baby syndrome, but after doing an autopsy they are able to see fractures that a pediatrician cannot and thus determine it is something other than shaken baby syndrome. If a baby was shaken very hard, Thogmartin would expect to see a nerve injury to the neck or cervical spine. (2979-82) They use Dr.

Steven Nelson, a Board-certified forensic pathologist and neuropsychologist, on these type of cases. (2983)

Thogmartin agreed with the autopsy performed by Dr. Palma that the cause of CJ's death was blunt trauma. (2986) Thogmartin said that based on Dr. Nelson's report that CJ had a previous subdural, he estimated that CJ suffered a head injury a week prior to his death. Thogmartin thought, to a reasonable degree of medical probability, CJ had a head injury a week before his death and then he was reinjured again. (2992, 93) It is very rare for CPR to cause rib fractures on a child. (2996)

Timothy Kane Chamberlain met Wall, Sr. when they were at a job interview together. Chamberlain and Wall, Sr. worked together for a couple of days at Millenium Tanning where Laura Taft worked at the front desk. (3039-42) Chamberlain indicated that Wall, Sr. was a nice friendly guy, very conversational. Wall, Sr. gave Chamberlain a ride home so he wouldn't have to take the bus, and they became friends. (3042, 43) A month later, Wall, Sr. was homeless and Chamberlain offered Wall, Sr. a place to stay. Wall, Sr. had a vehicle and Chamberlain did not, so Wall, Sr. would drive Chamberlain around in exchange for a place to stay. (3043)

Chamberlain has a 13 year old son, Josh. Wall, Sr. helped take care of Josh when he was living with Chamberlain. Chamberlain trusted Wall, Sr. with his son without any restrictions. Wall, Sr. loves children and would spend more time with Josh than he would adults. (3044-45)

Wall, Sr. had another friend, Brandon who needed a place to stay, so Wall, Sr. asked Chamberlain to allow Brandon, his wife, and son to stay with them. Wall, Sr. drove Brandon and his wife to work in the early morning hours because they worked overnight. They had a son, Landon, that Wall, Sr. treated like his own son. After Wall, Sr. drove Brandon and his wife to work, he would come home and put Landon in the playpen and care for him all day, while his parents were at work. Wall, Sr. loved Landon and was basically his babysitter every day. (3045-47)

Wall, Sr. went to Alabama for a period of time and when he returned to Florida he did not impose on Chamberlain for a place to stay, but they remained friends. Wall, Sr. had a pickup truck and told Chamberlain all little boys should be able to ride in a pickup truck at least once. So he put Josh in the back of the pickup truck and to Josh's delight, took him to get an ice cream cone. Wall, Sr. liked to do things to make children happy. (3048-50)

When Wall, Sr. moved in with Chamberlain the house was dirty and kept like a bachelor pad. Wall, Sr. scrubbed the house down and set up a weekly schedule to clean the house. Wall, Sr. was a little OCD about having a clean house, but not in a controlling way. He was nice and laid back. When taking care of children, Wall, Sr. was protective and would do what's best for the children. (3051-52)

When Wall, Sr. was living at Keystone Trailer Park, he called Chamberlain and told him he was dating Laura Taft. Chamberlain

asked him if he was crazy. Wall, Sr. said she is a nice girl and she was just bad at work. Wall, Sr. didn't come into contact as much with Chamberlain after he started spending time with Laura. Wall, Sr. called Chamberlain after CJ passed and he was absolutely distraught. Chamberlain told him he would be there for Wall, Sr. for anything he needed, and that was the last time they spoke. Chamberlain knows Wall, Sr. fairly well and he did not think Wall, Sr. would kill his son. (3053-54)

The prosecutor introduced a photo of Chamberlain, Zack Wood and Wall, Sr. saluting white pride. Chamberlain said it was just a photo of three individuals joking around after a night at the bar. Chamberlain and Wall, Sr. were never a part of an organized group. (3063-66)

Jeremi Ann Sliger worked at a pet store in 2009 when Wall, Sr. purchased a Siberian Husky dog. Sliger saw Wall, Sr. often at the pet store because he bought a snake from Sliger, and he was supposed to come in to the store every week or two to get food for the snake. Sliger remembered Wall, Sr. coming into the store with Laura and his dog. (3068-71)

Wall, Sr. explained in his opening that he presented videos and photographs during mitigation to show his relationship with CJ, Laura Taft, and Connor Taft, who he considered his own son. Connor considered Wall, Sr. as his dad. The video of Lucy Bredeson showed he was a loving caring person, he provided for his family, and did not kill his son. The suicide video was painful for Wall, Sr. to watch. Photos showed he cared for his family, attended

Connor's school events, and spent as much time with him as possible. Wall, Sr. loved and cared for his family. Video of CJ's birth was the happiest moment of Wall, Sr.'s life. He presented a video of how he was treated by jail personnel and how he will be treated the rest of his life because he is labeled a baby killer. (3075-77)

Wall, Sr. showed a video of his son's birth. (3087) Wall, Sr. played Bach as background music because he thought it would be soothing to his son as he came out. (3096) Wall, Sr. was present for the entire birthing process and was coaching Laura to push as their son was being born. (3099-3127) Several videos were shown of Connor at special occasions. (3135-37) Numerous photos, most taken by Wall, Sr., were shown of various family events. (3141-47)

Wall, Sr. showed pictures of his family. One of his sisters was a year and a half old when he went to prison and she was nearly 18 when he got out. He showed pictures of his visit to Erie, Pennsylvania where he was born. Wall, Sr. bought flowers to place at the graves of his grandmother and grandfather to beautify their resting place. (3164, 65) Wall, Sr. showed a photo of one of his good friends who is Venezuelan and other photos to show the whole white power thing was not real. (3167)

Wall, Sr.'s biological father was Craig Allan Stafford. That would have been his name except Wall, Sr. was born out of wedlock. His mother got pregnant with him at age 17 and she was 18 when Wall, Sr. was born. (3169) Wall, Sr. commented his grandmother is "crazier than a shit house rat." He said there is a gene trait of

crazy people in his family, but that doesn't mean that he is crazy. Wall, Sr. presented all of these childhood photos for complete mitigation and so the liberals could not say he did not show those pictures. (3170, 71) Wall, Sr. had a hard time dealing with the loss of CJ, because Wall, Sr. had never lost a close friend or family member, other than his grandfather. (3175)

Wall, Sr. used to fight the school bullies. He would stand up for the weak children that got bullied. (3178) Wall, Sr. took care of his little brother Tim and tried to protect him from their psycho mom, because she would even beat you if you were wearing a diaper. "She didn't give a fuck." Wall, Sr. felt responsible for Tim doing drugs and going to prison because he wasn't there to help him. His brother Ronnie did not try to help Tim when their mother was beating Tim. (3180)

In closing argument Wall, Sr. stated he did not kill his son, but acknowledged by his no contest plea the evidence the State would present against him. (2337) Wall, Sr. said, on the day Taft was killed, he didn't realize he had already talked to Taft at the hospital and he was going to the apartment to talk to her about what they had already talked about. Wall, Sr. was losing his mind at the time. He was distraught and out of his mind. (3246, 47)

It is like being two different people, the person you are and the person that did this. Just like these are two different cases. There is what I did to her and there is what I did not do to my son. I know I didn't do anything to my son. (3266) "For a final time, I did not kill my son. I did not harm him. And it hurts me

that I know that I caused injuries to his ribs. That bothers me." (3269) Wall, Sr. didn't do anything to his son and he only tried to save him. (3270)

After closing arguments, the court considered appointing independent special counsel because there is potential mitigation not presented such as mental health mitigation, family situation, and prior incarceration. (3274) The Court noted that Wall, Sr. argued himself that he was under the influence of extreme mental and emotional disturbance when he committed the crime against Ms. Taft and his ability to conform his conduct to the requirements of the law was substantially impaired. (3275) The Court appointed independent special counsel to determine if additional mitigation should be presented and ordered a comprehensive PSI. (3284, 3285, 3291, 3293) Independent special counsel, Jenna Finklestein and Amanda Sellers, were allowed to present mitigation evidence at the Spencer hearing conducted on April 14, and 15, 2016. (4790-5380)

Spencer Hearing

Felicia Sullivan, a mitigation specialist, testified that as a social worker she is trained to look at the entire picture which includes a person's biology, social environment, and psychology to get a comprehensive picture. Sullivan was not able to do a complete biopsychosocial because Wall, Sr. would not sign releases for her to get all of his records. (4824, 4843-4845) Wall, Sr. posed constant objections while Sullivan testified. (4849-54)

Wall, Sr.'s biological mother, Candace Wall Zilich alleged that Kathy Jones molested Wall, Sr. when he was two years old. Zillich was friends with Kathy Jones. (4855, 57, 4860)

Zilich believed Wall, Sr.'s biological father, Craig Stafford, had spent time in an institution. Craig Stafford had a twin brother, Chris Stafford who also spent time in a mental institution. (4858, 59) Zillich's older sister, Carol had been institutionalized and Norman Wall had been institutionalized and received electroshock therapy. Wall, Sr.'s maternal great aunt had also been institutionalized. (4860) Wall, Sr.'s maternal grandfather had a history of alcoholism. (4864-66)

Psychiatric records were available for Wall, Sr. from the Erie School Child State Department from 1983 when he was 8 years old and from Hamot Medical Center when Wall, Sr. was six years, ten months old. (4876-78) Wall, Sr. was admitted as an outpatient to Hamot Medical Center from the Erie School District because he was having behavioral problems in school. (4886)

Wall, Sr. was admitted to Hamot Medical Center in April of 1983 referred from Sarah Reed Partial Hospital. He was discharged after two weeks only to be readmitted on August 9, 1983. During the April hospitalization they referred him to have a brain scan and there were some irregularities that were not followed up on. (4887, 88) If Sullivan had seen this in the record she would have the client scanned contemporaneously and have a full battery of neuro-psych testing done. (4889)

Sullivan said Wall, Sr.'s mother, Zillich, had a habit of spanking, slapping and cussing at him. Zillich would make Wall, Sr. stand with his hands above his head and she would sit on the couch with a pile of shoes and throw them at him. When the pile was gone, she would make him pick up the shoes and she would start the process over again. The stepfather sat idly by while this abuse occurred. (4911, 12)

Wall, Sr. was admitted to Western Psychiatric Institution. He was having trouble with the amount of medication they put him on and they were trying to stabilize him. As early as age eight, Wall, Sr. was taking several medications at the same time. (4913) In December of 1983, Zillich reached out to the Pittsburgh Press because Wall, Sr. was on several medications and his behavior was becoming increasingly strange.

At age nine the family moved to Florida. When they left Erie, Wall, Sr. was under the care of a psychiatrist, but that was discontinued when they moved to Florida. There is a memo from Pinellas County School Board scheduling a staffing meeting to discuss the placement of Wall, Sr. into the severely emotionally disturbed program. (4915) In 1985 Craig, Sr. was evaluated by Dr. Dennis Donovan at the Children's Center for Developmental Psychiatry. (4916) Craig, Sr. was sent to R.L. Sanders, a school for emotionally disturbed children. (4917) In February of 1988, Wall, Sr. had a commitment to Pinellas Emergency Mental Health.

Craig, Sr. attended Dozier school for boys when he was fifteen years old. (4925) Wall, Sr. was taken to the emergency

room for stitches to close a wound and an antibiotic treatment while he was at Dozier. (4927)

Craig, Sr. went to adult prison at age eighteen. Craig, Sr.'s DOC mental health records cover the period from November 21, 1994, to 2008. In the DOC social it says, "Inmate believes he was sexually abused by babysitter when a toddler, and reports being physically abused by his mother." (4927, 4950) He was released from prison on September 3, 2008. Wall, Sr. was treated on medication in prison, but there is no indication that he received any follow-up treatment after his release. (4928)

Erica Dalquist, a licensed mental health counselor, was hired to identify childhood trauma to Wall, Sr. (4952-57) There were several plausible causes for severe childhood trauma suffered by Wall, Sr., including abandonment by his biological father, sexual trauma, abuse, medical neglect through overmedicating, and improperly detoxing Wall, Sr. off the medications. (4961, 62) As a child Wall, Sr. had exposure with the additional deficit of not having a consistent adult buffer. Craig, Sr. would act out by setting fires under his bed. Long term exposure to toxic stress as a child can adversely affect, in a dangerous way, how the brain develops. A child growing into an adult and not understanding true danger, by overreacting to false threats, and having unrealistic fears, might react in a way that comes across as more violent, unpredictable, or lacking impulse control. (4963-67)

It is almost irrelevant whether sexual abuse actually occurred or not, because the damage of telling a child they were

sexually abused when they were not could be just as damaging and traumatic as if the sexual abuse did occur. Children hold unconscious memories of sexual trauma. (4968) Wall, Sr. grew up in a chaotic home and his mental illness was treated inconsistently. It is not common for five or six year old children to get the type of psychotherapy and medications that Wall, Sr. received at such a young age. (4969, 70) Craig, Sr. was a child in crisis that had been physically abused by his mother. (4990, 91) He had difficulty maintaining his place in a classroom because he was noncompliant with teachers, and verbally and physically abusive to others around him. This type of abusive conduct by Craig, Sr. described in childhood records was observed by Dalquist in the courtroom on the day she testified. Such behavior could result from a life of crisis and biological factors. (4992, 93)

The treatment Wall, Sr. received as a child of being institutionalized, medicated, and ostracized from normal society exacerbated his problems. (4993) Wall, Sr. was the oldest child and only biological child Zillich had with the father who abandoned him. The other children that were born to Zillich were from Wall, Sr.'s stepfather. Thus the other children in the household may not have suffered the abuse Craig, Sr. endured, because there is often one scapegoat child. (4998, 99) When Wall, Sr. was ten, Dr. Donovan wrote in his discharge papers from the Children's Center: "With this in mind, it is strongly recommended that the opportunity for genuine, competent and caring psychotherapy be carefully weighed in the consideration the case

review committee gives to possible placement for this child. It could conceivably make the difference between a treatable individual and one we may read about in the papers one day." (5000)

Wall, Sr. was removed from the courtroom for his unacceptable behavior. On day two of the Spencer hearing, Wall, Sr. was allowed to return to the courtroom and once again represent himself. (5019- 28)

Dr. Daniel Buffington, a clinical pharmacologist, reviewed Wall, Sr.'s incomplete medical and psychiatric records in order to evaluate his case. (5033-36) Buffington was concerned that there were inconsistencies in Wall, Sr.'s medication compliance. The combinations of medications selected and used together and the early introduction of substantial psychiatric therapies in the pediatric years is well established as a risk factor for long-term neuro-pathway damage. (5050) The psychiatric disorders and diagnoses Buffington discovered for Wall, Sr. in the medical records were: bipolar disorder, attention deficit hyperactivity disorder, anger management, low impulse control, hostility, irritability, low frustration intolerance, antisocial personality, and suicide attempts. (5054) Between the age of five and ten, Wall, Sr. was prescribed many drugs and other antidepressants reflective of significant advanced stages of psychiatric conditions. (5055-56)

By age ten, Dr. Donovan and Debbie McIntyre noted that medications were used excessively and there was a minimal amount

of psychiatric counseling. By age twelve, Wall, Sr. was given additional high-end medications to counterbalance side effects from high doses. These drugs used in the most extreme of conditions in pediatrics impact the brain's development cycles. (5057) During the four year period from 1996 to 2000, the Department of Corrections records show "clinical futility" trying to identify medications alone or in combination. There were drugs used to counterbalance neuromuscular side effects, which go along with psychotropic medications which can be very severe and debilitating. Wall, Sr. was administered a multitude of mood stabilizers, antipsychotics, and more antidepressants showing the difficulty to find any drug or combinations of medications to provide clinical stability for him. (5058, 59)

Dr. Buffington found two statutory mitigators: 1) the felony was committed while the defendant was under the influence of extreme mental or emotional disturbance and 2) the existence of other factors, i.e. medical and health care related factors in Wall, Sr.'s background that would mitigate against imposition of the death penalty. Wall, Sr. suffered from multiple severe and unstable psychiatric disorders throughout his entire life up to and including the time of Laura Taft's death. Supporting factors include increased risk for long-term neural damage and psychiatric deficit associated with the use of multiple psychotropic medications in childhood and adolescence, and evidence of repeated treatment failures of multiple medications. Factors supporting the conclusion that Wall, Sr.'s behavior was impaired by extreme

mental and emotional disturbance are; poorly-controlled psychiatric status, history of erratic medication compliance, diagnosis of bipolar, diagnosis of emotional instability, anger, impulsivity, depression, multiple suicide attempts, irritability and antisocial personality. This was compounded by environmental stressors of the recent death of his child, the restraining order placed by Laura Taft, banning him from his child's funeral, and the extended police interrogation after his child's death. (5063-65)

Wall, Sr. introduced discs with all of his records from DOC. Wall, Sr. was transferred numerous times to various facilities while he was in DOC. The records included numerous disciplinary reports issued on Wall, Sr. (5130-5157) Wall, Sr. played a video showing jail guards beating him up and calling him a baby killer. (5158-77)

Wall, Sr. called additional witnesses at the Spencer hearing. John Bredeson, Laura Taft's father was present at Christmas gatherings and Wall, Sr. and Laura usually had a good time when they were home. (5207-09) Wall, Sr. played with Connor and the cat and attempted to be a good father. (5209-12) Bredeson did not want Wall, Sr. to die. He wanted him to live in general population without the chance of parole. (5014, 15)

Rhonda Buttita, Taft's mother, was very distraught when Laura Taft died. (5337-40) Wall, Sr. and Taft came to Buttita's house for her birthday party. Taft told her mother they were dating but didn't tell her Wall, Sr.'s last name. Buttita found out that he

was a convicted felon. (5242-47) Buttita thought Wall, Sr. cared about Connor to a certain degree, like a stepfather. (5255) Buttita disliked Wall, Sr. when he was with her daughter. (5261-63) When Buttita was at the hospital she heard Wall, Sr. crying over his son. (5268) Buttita made a victim impact statement about the loss of her daughter and CJ. (5270-74) Buttita wanted to see Wall, Sr. die. (5254)

Rhonda Buttita's husband, Andrew Buttita went to Wall, Sr.'s apartment on a couple of occasions. The apartment was clean. (5275-77) Wall, Sr. was thoughtful and gave Mr. Buttita a Christmas gift. (5289, 90) Wall, Sr. bought a gift for Mrs. Buttita when they left CJ with the Buttita's while they went shopping. (5290, 91) Mr. Buttita said it was hard to think of Wall, Sr. as being thoughtful when he killed Laura and CJ. (5292) Mr. Buttita thought Wall, Sr. would be a threat to other people in prison. It would be best for society if Wall, Sr. was executed. (5308, 09, 5313)

Wall, Sr. introduced a disc of his Myspace page, to show he was social. (5319, 20, 5335) Wall, Sr. took care of his younger brother, Timothy Zilich, when he was a baby. That is how Wall, Sr. knew how to feed CJ and change his diapers. Wall, Sr. and Timothy were the only children that suffered from their mother's abuse. (5337-39) Wall, Sr. said that Kathy Jones protected him and never molested him, but his mother made accusations to get rid of Jones so she could begin the cycle of abusing Wall, Sr. His mother falsely accused Wall, Sr. of being gay and molesting boys and his

sister. His mother tried to destroy Wall, Sr. every chance she got. (5340-42)

Connor was five years old when Wall, Sr. met Taft. Connor was scared living at the trailer park and wanted to get out of there. Wall, Sr. stepped in and took over the role of parent to Connor. Wall, Sr. got into a relationship with Laura Taft to protect Connor. Wall, Sr. loves children because they don't judge you. Taft basically handed over responsibility for raising Connor to Wall, Sr. (5343-46, 5364)

Wall, Sr.'s mother was like Laura, which is why he was attracted to Laura. He was attracted to women to try to save them. After Wall, Sr. started parenting Connor, his behavior improved. He took Connor to outings and they became best buddies. When Wall, Sr. asked Bredeson if he could marry his daughter, Bredeson said of course and that he was great with Connor. (5348-50)

Wall, Sr. said he shouldn't have pled no contest to killing CJ because he didn't do it. On the day CJ was choking, Wall, Sr. tried to assist but didn't know how to do CPR, so he started squeezing his ribs. Wall, Sr. wanted a child because his relationship with his parents was anything but loving and caring and he wanted to have a loving relationship in his life. Despite all the abuse Wall, Sr. suffered from his mother, he still tried to love her. Wall, Sr. couldn't remember his mom ever telling him she loved him. He said about his mother, that she named him Craig so that when she beat him she could think she was beating the man that left her. (5354-57)

Physical abuse Wall, Sr. suffered as a child from his mother included: a broken jaw, blown out eardrum, punched teeth through his mouth, punched head, and being knocked head-first into a dresser. When questioned about signs of abuse, his mother would lie and said to Wall, Sr. if he told how he got the injuries, "I'll fucking kill you." (5357-59)

Wall, Sr. caught his brother hitting his sister and corrected him not to ever hit a girl. His brother told Wall, Sr. "You can't tell me. Mom said I don't have to listen to you. You're not my real brother." (5361) Wall, Sr. said he did not kill his son and "that evil bitch got away with it." His mother never communicated with or came to see Wall, Sr. when he was in prison. Wall, Sr. was living on the streets when he was 16 because his mother wouldn't take him home. (5363-65)

SUMMARY OF THE ARGUMENT

Without a comprehensive mental health examination it is impossible to determine if Wall, Sr.'s pleas were freely, voluntarily, and knowingly entered. After initially finding that Wall, Sr. was incompetent to represent himself, and the plethora of other evidence pointing towards incompetence to proceed, it was incumbent upon the trial court to hold more than a cursory hearing to determine if Craig, Sr. was competent waive a jury trial and enter a plea to the death penalty. All parties were in

agreement that Dr. Gamache should evaluate Wall, Sr. and he posed no objection to being evaluated. The trial court erred by failing to appoint experts to evaluate Wall, Sr. for competency to proceed and not holding a proper competency hearing.

The trial court erred in denying the motion to disqualify the judge. The motion clearly stated a legally sufficient basis for having the judge recused. When an adequate motion is filed the court is supposed to grant the motion without making factual findings. The judge exceeded the scope of his authority by making factual findings or interpretations because that is the only way that the motion could be found to be inadequate. The trial judge should have recused himself before accepting a plea that never should have been accepted without a determination that Wall, Sr. was competent to proceed. Still on the case after improperly accepting the plea, the trial judge imposed the sentence he had predetermined that he would impose: i.e. the death penalty. We know the sentence was predetermined because on several occasions the judge refers to the case being reviewed by the Supreme Court. Only the Florida Supreme Court has automatic review of death penalty cases; therefore the judge predetermined he would impose death penalty. Otherwise, the case would be on appeal to the Second District Court of Appeal or perhaps not at all if a notice of appeal was not filed. The trial judge should have recused himself after receipt of the facially valid and legally sufficient motion to disqualify the trial judge.

ARGUMENT
ISSUE I

THE TRIAL COURT ERRED IN FAILING TO ORDER A COMPETENCY EVALUATION AND HOLDING A COMPETENCY HEARING BEFORE ACCEPTING PLEAS OF GUILTY AND NO CONTEST TO FIRST DEGREE MURDER CHARGES WHERE CRAIG WALL, SR. WAS SEEKING THE DEATH PENALTY.

A person whose mental condition is such that he does not have the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial. Drope v. Missouri, 95 S.Ct. 896, 903 (1975). It is not enough to find that a defendant is oriented to time and place and has some recollection of events. The "test must be whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him." Dusky v. United States, 80 S.Ct. 788 (1960). The principal of not proceeding to trial against an incompetent defendant applies equally to one tendering a plea. Baker v. State, 408 So. 2d 686, 687-88 (Fla. 2d. DCA); Alleluio v. State, 338 So. 2d 1137 (Fla. 1st DCA 1976). Without a comprehensive mental health examination and competency hearing it is impossible to determine if Craig Wall, Sr. was competent to enter pleas of guilty and no contest to first degree murder.

The Due Process Clause of the Fourteenth Amendment to the United States Constitution prohibits states from trying and convicting defendants who are not competent. Pate v. Robinson, 383 U.S. 375, 378 (1966). Florida Rule of Criminal Procedure 3.210(a) also prohibits proceeding against a mentally incompetent defendant. The competency standard is the same for pleading guilty or waiving the right to counsel as the competency standard for going to trial. Godinez v. Moran, 509 U.S. 389, 391 (1993)

The trial court, either on its own motion or on motion of defense counsel, has a duty to hold a competency hearing whenever there are reasonable grounds to believe a defendant is not competent. Florida Rule of Criminal Procedure 3.210(b). The reason for this rule is the fundamental concept, that where evidence shows a defendant is entitled to a competency hearing, the failure to hold such a hearing deprives the defendant of his constitutional right to a fair trial, in violation of the due process clause of the Fourteenth Amendment to the United States Constitution. Carrion v. State, 859 So. 2d 563 (Fla. 5th DCA 2003); See Pate v. Robinson, 383 U.S. 375 (1966); Jones v. State, 740 So. 2d 520 (Fla. 1999). To proceed against a defendant who is mentally incompetent denies that defendant his constitutional right to a fair trial. Hill v. State, 473 So. 2d 1253, 1259 (Fla. 1985)

Normally a defendant must move to withdraw his plea to preserve this issue for appeal. Burns v. State, 884 So. 2d 1010 (Fla. 4th DCA 2004). However, this case is different because it

is a death penalty case and Wall, Sr. is seeking to have the death penalty imposed. He, thus, will not on his own move to withdraw his plea. However, that does not relieve this Court of its obligation to ensure that one entering a plea to a capital offense, in order to obtain a death sentence, is competent to do so. Indeed, death penalty cases are an exception to the norm and a guilty plea in a death penalty case is subject to automatic review by the Florida Supreme Court. Robinson v. State, 373 So. 2d 898, 902 (Fla. 1979) Thus Wall, Sr. is entitled to appellate review of both his sentence of death and his first-degree murder conviction. Trawick v. State, 473 So. 2d 1235, 1238 (Fla. 1985).

Fla. R. Crim. P. 3.210(b) gives the court the authority to appoint up to three experts to examine the defendant. The trial court erred by failing to appoint experts to evaluate Wall, Sr. and hold a competency hearing before accepting a plea from someone seeking to be killed. Certainly both judges who presided over this case were aware of the need for a competency evaluation and hearing as evidenced by them indicating Wall, Sr. should be evaluated. The following sequence of events show the need for a full competency hearing after mental health evaluations:

Judge Luce, who originally presided over this case, suggested at a pretrial hearing on June 24, 2011, that Wall, Sr. should be examined immediately. After Judge Luce's retirement, Judge Federico took over the case in 2013 and remained on the case as the judge through its completion in the trial court. Even though Judge Luce suggested an immediate evaluation for Wall, Sr.

that was not done before Judge Federico took over the case. At a pretrial hearing on May 1, 2013, Brunvand had not sought the appointment of a psychologist, because Wall, Sr. said he would not participate in an evaluation. A person who is potentially mentally incompetent should not be the one making the decision as to whether or not he should be evaluated. Judge Federico, to his credit, indicated that Wall, Sr. should be evaluated, or at least the attempt should be made even if there is no chance that Wall, Sr. would participate in the evaluation. Unfortunately, the judge erred by not following through and appointing experts to have Wall, Sr. evaluated for competency to proceed to trial. The jail psychologist, Dr. Poorman, was appointed to determine if Wall, Sr. was competent to represent himself.

Dr. Poorman did a competency evaluation for self representation but was not able to do a clinical interview or a competency assessment procedure with Wall, Sr. In her very limited two page report she determined that Wall, Sr. did not have the ability to represent himself. (5529, 30) At the pretrial conference on May 29, 2013, Brunvand alerted Judge Federico of Poorman's finding that Wall, Sr. was not competent to represent himself, yet Judge Federico still did not appoint experts to evaluate Wall, Sr. and set a competency to proceed hearing.

At the pretrial hearing on July 18, 2013, Judge Federico denied Wall, Sr.'s request to represent himself based on Dr. Poorman's report even though Poorman did not talk to Wall, Sr. The Court placed enough reliance on Poorman's report to deny

Wall, Sr. his right to represent himself but he once again failed to order a competency hearing.

At the August 29, 2013 hearing Wall, Sr.'s status had changed and the judge commented, "I've got to put you in shackles and cuffs so you don't kill your lawyers." This statement alone should have put the Court on notice to schedule a competency hearing because one of the criteria to be considered regarding the issue of competency to proceed is the defendant's capacity to disclose to counsel facts pertinent to the proceedings. Fla. R. Crim. P. 3.211(a)(2)(A)(iv).

During a December 13, 2013, hearing on his motion to dismiss counsel, Wall, Sr. made further statements indicating a need for a competency hearing. Wall, Sr. indicated he would not talk to the psychiatrist Eisentein because he was Jewish and Wall, Sr. is supposed to be a white supremacist. Wall, Sr. then stated, "Yeah I have issues. People don't kill people and not have issues after the fact. If they don't then they're psychotic." "Clearly, I have a problem. I killed somebody, so I might have a little bit of a problem." Brunvand said he would get a different doctor except that Wall, Sr. said he is not going to talk to a psychologist or psychiatrist. The trial court should have required a competency evaluation and hearing before accepting the guilty and no contest pleas. Instead, without formally appointing any experts, Judge Federico asked Dr. Poorman to evaluate Wall, Sr. to see if he was now competent to represent himself.

Dr. Poorman saw Wall, Sr. on December 18, 2013 and determined that he was competent to represent himself with the caveat that he would need to control his vulgar language. Poorman said she found nothing psychotic in his verbalizations but she didn't know how he would be in a few days or even that afternoon. The court then advised Wall, Sr. that his attorneys would be standby counsel. The Court then asked Wall, Sr. if he wanted Butler back on as his mitigation specialist.

Wall, Sr.'s response was another indicator of the need for a competency hearing because one of the criteria to consider is defendant's capacity to manifest appropriate courtroom behavior. Fla. R. Crim. P. 3.211(a)(2)(A)(v):

> Well, you'd be better off with Ms. Butler. Because if you put Ms. Adams on, I can't verify that she'll live. Straight up. That bitch is – no. I can't even verify that she'll breathe another day, including Mr. Brunvand. Establish that. I might as well just go ahead and go all in. You can shackle me and fuckin' cuff me up until the day is long. We'll come here every day looking like fuckin' Hannibal Lecter. I don't give a fuck.

At that point, the court ordered Wall, Sr. removed from the courtroom. The court indicated he would like to have Wall, Sr. in the courtroom when he questioned Butler, but based on his statements and behavior he was afraid of what Wall, Sr. might do. The trial court should have had Wall, Sr. evaluated for competency to proceed at that point.

At the February 7, 2014, hearing Judge Federico was once again apprised for the need for a competency hearing. Wall, Sr.

said his attorneys have hijacked his case and there is not and never will be communication or agreement on the defense. The attorneys' behavior led Wall, Sr. to exacerbation, disgust, frustration – leading to mental breakdowns in the jail where he had to be placed in the psychiatric department under suicide precautions. If there is not communication between client and counsel, that is another basis for incompetence to proceed. The trial court has the responsibility to conduct a competency hearing whenever it reasonably appears necessary. Christopher v. State, 416 So. 2d 450, 452 (Fla. 1982). It certainly appeared necessary in this case.

Again at the pretrial hearing on April 4, 2017, Judge Federico should have order a competency evaluation and hearing based on Wall, Sr.'s illogical ranting. The court went over procedures for the jury trial and the court mentioned that Wall, Sr. on different occasions had said he wanted to be put to death for one of these murders. Wall, Sr.'s response was: "I was beamed up by aliens. I don't know what you're talking about. Like I said, the blood in the car is mine. It ain't hers. I don't have none of her blood on anything." Wall, Sr. said he didn't know what the judge was talking about when asked if he had previously stated that he wanted the death penalty. Wall, Sr. relinquished his pro se status and the case was continued. Still no experts were appointed and no competency hearing was scheduled.

At the pretrial hearing on February 6, 2015, there were discussions of a plea rather than a trial. Wall, Sr. was willing

to submit to a competency evaluation. Thus there was no longer the impediment that Wall, Sr. would not cooperate with an evaluation. Brunvand said: "He's been found competent, previously, to enter or to participate in the proceedings. You know, I think the remaining issue is his competence to make the election that he's making, as it relates to eh penalty, and will make himself available whenever they want that done." The prosecutor indicated there would still have to be some evidentiary showing of aggravators unless Wall, Sr. signed off on them. Wall, Sr. responded in a way which raised another red flag regarding his competency: "if you want to throw in that I killed Ted Bundy, that's fine, too. I don't care."

Wall, Sr. continued to make statements that should have caused Judge Federico to require a competency hearing. Wall, Sr. said: "I'm accepting responsibility for something I didn't do." Wall, Sr. tried to kill himself on his son's birthday. Although Wall, Sr. claimed that he was not suicidal and completely logical, his statements were anything but logical. If a person tries to kill himself, he meets the definition of suicidal. Yet he said: "I'm not suicidal. I'm homicidal. Because there's two people, there's the person that did this and there's the person that I am." "The person that I am cannot live with the person who did that." This statement should have caused Judge Federico to have Wall, Sr. evaluated to determine if he was competent to proceed. Judge Federico was certainly aware of the need for an evaluation when the judge said: "I still think we still need Gamache or whoever you were going to use to evaluate him." (1852)

The prosecutor thought this was a ploy by Wall, Sr. and said they could do the plea that day or Wall, Sr. could submit to an evaluation if the court wants him evaluated. In the middle of plea discussions, Wall, Sr. made this random and illogical statement raising another concern of his competency: "pussy boy McTear, who threw the little boy out the fucking window of the car got a life sentence, I think, because his moma smoked crack. I don't give a damn if your moma smoked crack. You don't kill children, you know what I'm saying?" "Because my moma punched me in the mouth when I was little, I got scars all over me from my moma beating me, that doesn't mean that I - - that makes me kill a girl."

The prosecutor then asked the court to allow Dr. Poorman and Dr. Gamache to evaluate Wall, Sr. for competency, to make the decision to waive a jury and seek to have the Court impose the death penalty. Brunvand said Wall, Sr. is agreeable. The trial court erred by not following through with having Wall, Sr. evaluated by Dr. Gamache, despite everyone involved knowing that was the right thing to do. There was time to have Wall, Sr. evaluated because they did not do the plea that day. The prosecutor said if they were convinced it wasn't a continuance ploy, they would probably enter into the plea agreement, conditioned on the psychological evaluation being performed. The Court then indicated that even if the State does not sign on to the plea agreement, he would feel better if besides Poorman they had Gamache evaluate Wall, Sr. as well. It was an abuse of discretion not to have Dr. Gamache evaluate Wall, Sr. and then

hold an adequate competency hearing. The standard of review for failing to hold a competency hearing is abuse of discretion. Kelly v. State, 797 So. 2d 1278, 1280 (Fla. 4th DCA 2001)

Wall, Sr. wanted to represent himself at penalty phase. Brunvand raised concerns that Wall, Sr. may not be ready for the penalty phase hearing because he was on the medical wing on suicide watch. This was yet another reason that Wall, Sr. should have been evaluated for competency prior to entering a plea. Judge Federico, at that point clear in his mind the need to make sure that Wall, Sr. was competent, stated they would do the change of plea on Wednesday if they could get Gamache and Poorman to see Wall, Sr.

Five days later at the anticipated change of plea hearing on February 11, 2015, the court learned that Dr. Gamache had not yet seen Wall, Sr. Dr. Poorman saw him on February 10, 2015. Judge Federico said he would rather wait until Dr. Gamache saw him. Dr. Gamache was scheduled to see Wall, Sr. the next morning at 9:30. Gamache needed six hours to see Wall, Sr. and complete his evaluation. Judge Federico wanted Dr. Gamache to see Wall, Sr. to make sure he is competent to make the decision to plead guilty to the death penalty. They ended up not taking the plea that day so there was certainly the time and opportunity to have Dr. Gamache see Wall, Sr. as scheduled.

All along Judge Federico was making the correct decision to have Dr. Gamache evaluate Wall, Sr. until the time when it mattered. Dr. Gamache had not evaluated Wall, Sr. prior to the day

the plea was entered on February 13, 2015. The court decided to rely on Dr. Poorman who did not evaluate Wall, Sr. but merely did an interview with him. There is no record evidence as to how long this interview lasted, probably because defense counsel did not cross examine Poorman. It seems that after this long and tortured saga leading to the day of the plea, all parties just wanted to be done with this case. No psychologist or psychiatrist ever performed an evaluation on Wall, Sr. to determine if he was competent to proceed. The failure to have Wall, Sr. evaluated and hold a full competency hearing was reversible error. It is incomprehensible that experts were not appointed and a full competency hearing conducted. This is especially true knowing that the question for the trial court to consider is not whether the defendant is incompetent, but whether there are reasonable grounds to believe the defendant may be incompetent. Harris v. State, 864 So. 2d 1252, 1253 (Fla. 5th DCA 2004).

What resulted was brief and cursory dialog between the judge and Dr. Poorman who met with Wall, Sr. on February 10, 2015 for an interview without performing an evaluation. Poorman offered few details of her interview with Wall, Sr. Poorman opined that based on her interview with Wall, Sr. he was competent to proceed to trial. Wall, Sr. was aware of the penalties, but Poorman didn't indicate there was any discussion of all the possible penalties especially for lesser included offenses. Poorman felt Wall, Sr. was competent to choose the death penalty and they talked about him wanting to accept the death penalty and not proceed to trial.

This procedure was little more than the inadequate status check performed in Bylock v. State, 196 So. 3d 513 (Fla. 2d DCA 2016). In Bylock, the trial court found Bylock competent after being sent back from the state hospital where they indicated he was competent to proceed. The Second District found that the trial court's statement that Bylock was competent to proceed was insufficient to constitute a proper competency hearing under Fla. R. Crim P. 3.210 through 3.212. "[I]t is necessary for courts to observe the specific hearing requirements set forth in the rules in order to safeguard a defendant's due process right to a fair trial and to provide the reviewing court with an adequate record on appeal." Dougherty v. State, 149 So. 3d 672, 676 (Fla. 2014).

The trial court certainly knew it should have had Wall, Sr. evaluated for competency. The judge even said so on a number of occasions, but in the end never entered an order pursuant to Fla. R. Crim. P. 3.210(b) and 3.211 appointing up to three experts to evaluate Wall. Sr. for competency. Such an order would have given the experts guidance on the scope of the examination. This would have resulted in true competency evaluations and not simply the cursory interview performed by the jail psychologist, Dr. Poorman. If the judge entered a written order appointing experts, the experts would have known to consider factors regarding whether the Wall, Sr. met the criteria for competence to proceed. The experts would have been instructed to consider and include in their report:

(A) the defendant's capacity to:

> (i) appreciate the charges or allegations against the defendant;
> (ii) appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the defendant;
> (iii) understand the adversary nature of the legal process;
> (iv) disclose to counsel facts pertinent to the proceedings at issue;
> (v) manifest appropriate courtroom behavior;
> (vi) testify relevantly; and
> (B) any other factors deemed relevant by the experts.

Fla. R. Crim. P 3.211 (2)

The very limited hearing held by the trial court fell far short of a hearing to determine competence to proceed because Dr. Poorman failed to address the criteria set out in the rule. Dr. Poorman simply made a conclusory statement that Wall, Sr. was competent, was aware of the penalties, and he wanted death. Thus Dr. Poorman only addressed, and in a cursory fashion at that, one of the six specific criteria to be considered for determining competency to proceed. This was not a proper competency hearing.

As pointed out in the above argument there were plenty of instances where Wall, Sr.'s competence came into question and where both Judge Luce and Judge Federico actually announced that he should be evaluated for competency. In addition, the fact that Wall, Sr. wants to engage in state assisted suicide and have the death penalty imposed, after several of his own botched suicide attempts, brings his competence into question. Although a suicide attempt, on its own does not create reasonable grounds that a defendant is incompetent, a suicide attempt is a substantial

indication of possible mental instability. Trawick v. State, 473 So. 2d at 1238. Thus Wall, Sr.'s suicide attempts and his seeking the death penalty in an attempt at state assisted suicide are additional factors which made it incumbent for the trial court to have him evaluated and conduct a full competency hearing.

Once a court has reasonable grounds to question the defendant's competency, the court had no choice but to conduct a competency hearing to resolve the issue. Zern v. State, 191 So. 3d 962, 964 (Fla. 1st DCA 2016) Certainly Judge Federico had reasonable grounds to believe Wall, Sr. was mentally incompetent as he voiced his concern about accepting a plea without having him evaluated. Once there are reasonable grounds to the believe a defendant is incompetent, the court shall immediately set a hearing to determine competency and appoint the appropriate experts to examine the defendant. Carrion v. State, 859 So. 2d at 565. In Kelly v. State, 797 So. 2d at 1280, the Fourth District held that the trial court abused its discretion in not sua sponte holding a competency hearing before proceeding to trial. Kelly had been a mental patient for twenty years. The trial court said that while Kelly is technically competent he is borderline. Defense counsel indicated that Kelly was competent but had a reduced capacity to handle stressful situations. Kelly then said he "never did anything wrong in my whole life. I'm ready to get out of ... the country and go somewhere and lay up." Kelly's irrational response was similar to Wall, Sr.'s statement: "I was beamed up by aliens. I don't know what you're talking about. Like I said, the

blood in the car is mine. It ain't hers. I don't have none of her blood on anything." This was just one of many responses by Wall, Sr. that should have triggered the setting of a competency hearing and appointment of mental health experts to evaluate Wall, Sr.

In the present case, the trial court, just as the judge in Kelly, was concerned about Wall, Sr.'s competency but proceeded without a mental health evaluation and a full competency hearing. The trial court abused its discretion by failing to formally appoint experts to evaluate Wall, Sr. and not setting a hearing to determine competency. See, Kelly, 797 So. 2d at 1280. In Kelly the case was remanded to the trial court to hold a competency hearing before allowing the parties to proceed to trial. Id. at 1280.

Generally the remedy for a trial court's failure to conduct a proper competency hearing is a new trial, if the defendant is determined on remand to be competent to stand trial. Daugherty, 149 So. 3d at 678-79. It generally cannot be determined retroactively if a defendant was competent proceed at the time he was tried. Tingle v. State, 536 So. 2d 202 (Fla. 1988) That is particularly true in this case where no experts were formally appointed to do a competency to proceed evaluation on Wall, Sr. Since it is not possible to do a retroactive evaluation at this point, the guilty and no contest pleas must be vacated. If it is determined on remand that Wall, Sr. is competent he should be allowed to enter a plea or go to trial.

ISSUE II

THE TRIAL JUDGE COMMITTED REVERSIBLE ERROR BY FAILING TO RECUSE HIMSELF AFTER A VALID MOTION TO DISQUALIFY THE TRIAL JUDGE WAS FILED.

Wall, Sr. filed a valid pro se motion to disqualify the trial judge on April 4, 2014, alleging that he would not receive a fair trial or a fair sentencing hearing because Judge Federico has a personal bias against him and has predetermined that he would sentence Wall, Sr. to death. The motion was timely filed within ten days of when Wall, Sr. discovered the grounds for the motion after transcripts of hearings were delivered to Wall, Sr. on March 26, 2014. The transcript showed Judge Federico had predetermined to impose the death penalty in the following statement made after defendant exited the courtroom on April 12, 2013: "Hopefully, the Supreme Court appreciates the patience that I'm attempting to show…" Judge Federico's predetermination to impose the death penalty was shown again on December 13, 2013 by the following statement: "The Supreme Court will have every chance to second-guess me. I don't have any issue with that."

The substantive right to seek disqualification of a judge comes from section 38.10 Florida Statutes (1993) and the procedural right is controlled by Fla. R. Jud. Admin. 2.160. Case v. State, 660 So. 2d 705, 707 (Fla. 1995). Fla. R. Jud. Admin. 2.160 was renumbered to 2.330 in 2006. At the time the motion to disqualify the judge was filed, April 4, 2014, Mr. Wall was pro se and the motion to disqualify he filed was in compliance with

section 38.10 Florida Statutes (2013), and Florida Rule of Judicial Administration 2.330.

The motion to disqualify specifically alleged in an attached affidavit that Wall, Sr. would not receive a fair trial and sentencing hearing because Judge Federico had a personal bias and prejudged the sentence to impose the death penalty. The motion was timely because it was filed within ten days of Wall, Sr. receiving the transcripts where he discovered the offending language by the trial court that showed bias. Wall, Sr. alleged that he had exited the courtroom, so he did not know of the offending language on the day of the hearing and he did not discover what the trial court said for the benefit of the record until he received the transcripts on March 26, 2014. The motion to disqualify the judge was filed and heard on April 4, 2014. The trial court orally denied the motion to disqualify and followed up with a written order dated April 10, 2104, denying the motion to disqualify as legally insufficient.

A trial court is limited to determining the legal sufficiency of the motion and may not rule on the truth of the facts alleged when ruling on a motion to disqualify. Florida Rule of Judicial Administration 2.330(f); see also MacKenzie v. Super Kids Bargain Store, Inc., 565 So. 2d 1332, 1339 (Fla. 1990). When a judge looks beyond the legal sufficiency of a suggestion of prejudice and attempts to refute the charges of partiality, he has exceeded the proper scope of the inquiry and that alone establishes a basis for his disqualification. The disqualification rule, which limits a

trial judge to a simple determination of legal sufficiency, was designed to prevent an intolerable adversarial relationship between the judge and the litigant. Bundy v. State, 366 So. 2d 440, 442 (Fla. 1978)

Thus the only question is whether the motion to disqualify filed by Wall, Sr. was legally sufficient. The determination of whether a motion to disqualify is legally sufficient is a question of law. Barnhill v. State, 834 So. 2d 836 (Fla. 2002). Thus the standard of review of a trial court's ruling on a motion to disqualify is de novo. Id. at 843; Parker v. State, 3 So. 2d 974, 982 (Fla. 2009). The standard used to determine if a motion to disqualify is legally sufficient is whether the facts alleged in the motion would place a reasonably prudent person in fear of not receiving a fair and impartial trial. Barnhill, 834 So. 2d at 843.

The trial court's statement: "Hopefully, the Supreme Court appreciates the patience that I'm attempting to show…" would place a reasonably prudent person in fear that he would not receive a fair penalty phase because the judge has already determined that he would impose the death penalty. This was not merely a slip of the tongue by an inexperienced judge. Judge Federico had been on the bench for 20 years and followed and studied death penalty law for the last 30 years. (1393, 1427) At the time Judge Federico made the statement, the case was in a pre-trial posture. Words do matter, and when the judge talks about the Supreme Court reviewing this case, the judge has predetermined that he is going to impose the death penalty. Bolstering Wall, Sr.'s interpretation that

Judge Federico's statement was not a slip of the tongue but an intentional statement is the fact that the judge referred to the Supreme Court reviewing the case on more than one occasion. On December 13, 2013, Judge Federico stated: "The Supreme Court will have every chance to second-guess me. I don't have any issue with that."

A reasonably prudent person hearing the trial court state that the Supreme Court will review this case would certainly fear that the judge has already determined to impose the death penalty. The only criminal cases that are directly and automatically reviewed by the Florida Supreme Court are death penalty cases. Florida Rule of Appellate Procedure 9.030(a). All other final orders in criminal cases are reviewed by the District Courts of Appeal. Florida Rules of Appellate Procedure 9.030(b).

The only automatic appeals are death penalty sentences which go to the Florida Supreme Court. Appeals in all non-capital criminal cases are commenced only upon the filing of a notice of appeal. Florida Rule of Appellate Procedure 9.140(b)(3). Timely filing of a notice of appeal is jurisdictional. Williams v. State, 324 So. 2d 74, 76 (Fla. 1975). Thus the trial court would not know if a non-death penalty sentence would even be reviewed on appeal.

The only cases that are reviewed automatically where the notice of appeal is not jurisdictional is in death penalty cases reviewed by the Florida Supreme Court. Robertson v. State, 143 So. 3d 907, 908 (Fla.2014). If a life sentence was imposed, appellate review would only occur if the defendant filed a notice of appeal.

If the defendant did not file a notice of appeal on any sentence other than the death penalty, there would be no appellate review. Furthermore, District Courts of Appeal were never intended to be intermediary courts, and in most cases their decisions are final and absolute. Jenkins v. State, 385 So. 2d 1356, 1357-58 (Fla. 1980). So, there would be no way for Judge Federico to know the Florida Supreme Court would ever have the chance to second guess him unless he knew he was going to impose the death penalty. At the very least that is what a reasonably prudent person would fear and Wall, Sr. did fear that Judge Federico had predetermined that he was going to impose the death penalty.

The State would have been well within their rights to file a motion to disqualify if Judge Federico had exchanged the words "Second District Court of Appeal" in place of "Supreme Court" and made the statements: "Hopefully, the Second District Court of Appeal appreciates the patience that I'm attempting to show. . ." and "The Second District Court of Appeal will have every chance to second-guess me. I don't have any issue with that." If Judge Federico had made those statements using "Second District Court of Appeal", it would indicate that he had predetermined that he was not going to impose the death penalty. If that had occurred, the State would have been on solid legal ground to file a motion to disqualify the judge because they feared that the judge had already determined that the death penalty would not be imposed.

In fact, the State has moved to disqualify a judge based on much less egregious statements made by a trial court. In Ballard

v. State, 956 So.2d 470 (Fla. 2d DCA 2007) the State moved to disqualify the trail judge, after a status conference on January, 17, 2007, claiming that Judge Roberts' "comments regarding the suitability of the death penalty in [Mr. Ballard's] case show that the Court had prejudged the decision regarding the death penalty in this matter." Ballard was a sixty-five year old man charged with first degree murder where the State was seeking the death penalty. At a status conference, the defense attorney said he could not be ready for trial and a penalty phase in two months, unless the State changed its position on the death penalty.

After learning the State was seeking the death penalty and Ballard would be 66 in May, the judge said to the defense attorney, Mr. Hileman: "Could be . . . Well, you can imagine what I might be thinking." The judge then addressed the prosecutor, Ms. Avalon: "Okay. Is [sic] that might be a waste of the State's resources. You might want to reevaluate given his advanced age." The prosecutor said: "I'll make a note of that, Your Honor." There were further discussions about scheduling where defense counsel mentioned the additional time and resources that would be needed if the death penalty remained an option. The judge then had the following discussion with the prosecutor:

> THE COURT: Okay. What would be a reasonable time for the State to go get [the case] reevaluated?
>
> MS. AVALON: With respect to whether or not we're seeking the death penalty?
>
> THE COURT: Right.

> MS. AVALON: As far as I'm concerned we're not going to abandon that position unless Mr. Hill [the State Attorney] himself says otherwise. However, I'll discuss that with him as soon as I can.

Another status conference was set in two weeks. Defense counsel announced he would be filing a motion for continuance. The judge then had the following conversation with defense counsel:

> THE COURT: Well, I don't want to do that because there's a bunch of possibilities here. You said that you could be prepared for it if all you had to prepare for is the guilt phase.
>
> MR. HILEMAN: That's a possibility, Judge.
>
> THE COURT: And there's the possibility, maybe not the probability, but a possibility that the State's not going to seek the death penalty. So, let's see how that plays out.
>
> MR. HILEMAN: All right. We'll leave it on for now. And I'll file a motion later if I feel I need to.
>
> THE COURT: All right. . . And we'll see you on the 31st at 8:30.
>
> MR. HILEMAN: Thank you, ma'am.

That concluded the status conference. Id. 471-72. Judge Roberts never said she would not impose the death penalty if a jury came back with that recommendation.

The State filed their motion to disqualify the trial judge the day after the status conference held on January 17, 2017. The State alleged that the remarks the judge directed to Ms. Avalon, "particularly [her] instruction. . . to have the State's intent to seek the death penalty reevaluated, created an appearance that

[Judge Roberts] would disregard a death recommendation." The State finally alleged that the judge's remarks showed a disposition to rule on a matter before hearing the evidence which raised "a reasonable fear of partiality." Judge Roberts found the State's motion to be legally insufficient and denied it. Id. at 472. The State filed a writ of prohibition.

The Second District said Judge Roberts' remarks at the status conference could reasonably be interpreted in two different ways. Viewed in a context of the scheduling problem which was the subject of the status conference, Judge Roberts' comments could be reasonably interpreted as comments intended to facilitate the fair and efficient administration of the case against Ballard, not a prejudgment of what sentence would be imposed if Ballard was convicted of first-degree murder. The Second District then opined that under the circumstances, they could not say the State could not reasonably conclude that the judge's remarks reflected a prejudgment of whether it would be appropriate to impose the death penalty in Ballard's case. The Second District concluded that Judge Roberts should have granted the motion to disqualify. Id. at 473.

None of Judge Roberts' comments made any indication that given a death recommendation from a jury that she would not impose the death penalty. Thus it was only the interpretation put on her comments by the state that made the comments improper. Judge Roberts made it clear that it was only a possibility and not a probability that the State would not seek the death penalty. The

standard for recusal does not require the judge to make a specific prejudgment on the issue. In Ballard, the State's fear that Judge Roberts had prejudged the appropriateness of the death penalty was reasonable, and thus a legally sufficient reason for the judge's disqualification. Id. at 473.

In the present case, Judge Federico's remarks were more determinative, than the remarks in Ballard, that he made a prejudgment that he would impose the death penalty, because the only automatic appeals to the Florida Supreme Court are when the death penalty is imposed. Mr. Wall's fear that Judge Federico had predetermined to impose the death penalty was a reasonable fear, and thus legally sufficient for the judge's disqualification. Id. at 473; See, Konior v. State, 884 So. 2d 334, 335 (Fla. 2nd DCA 2004); Pierce v. State, 873 So. 2nd 618, 620 (Fla. 2nd DCA 2004).

Wall, Sr.'s motion to disqualify must be considered on the basis of whether or not he has a reasonable fear that he would not receive a fair trial in this case. See Livingston v. State, 441 so. 2d 1083, 1085 (Fla. 1984). It is a sensitive and serious issue when judicial prejudice is raised. "Prejudice of a judge is a delicate question to raise but when raised as a bar to the trial of a cause, if predicated on grounds with a modicum of reason, the judge against whom raised, should be prompt to recuse himself. No judge under any circumstance is warranted in sitting in the trial of a cause whose neutrality is shadowed or even questioned." Id. at 1085. The alleged facts in a motion to disqualify a judge only need to show a well-grounded fear that the party will not receive

a fair trial. The judge may not dispute the facts. It is a question of what the affiant feels and the basis for that feeling. Id. at 1087. With Mr. Wall's case being in a pre-trial posture it was reasonable for him to feel he could not get a fair trial and sentence, when the judge is talking about the Florida Supreme Court reviewing his case which means the trial court was assuming Wall, Sr. would be found guilty and the death penalty would be imposed. Since the motion to disqualify was made prior to entry of the plea, this case should be remanded to a pre-trial posture in the lower court. See, Konior v. State, 884 So. 2d at 335-36 (Fla. 2nd DCA 2004).

This case must be returned to pre-trial posture because the trial judge, who should have recused himself, was improperly advising Wall, Sr. to plead no contest to a crime Wall, Sr. did not think he committed. Wall, Sr. said the court was forcing him to plead to something he didn't do. "So I'm not going to plead to something I didn't do." The court then suggested he could plead no contest and said: "Well, because your point is, you're pleading no contest means, I want to put aside all of the stuff and just get to the heart of the issue, which is I want to have the death penalty."

"So if you want to plead no contest to the second count that you don't think you did because your only - - your only goal is to get to the penalty phase." The trial court should not have initiated the option of Wall, Sr. pleading no contest when the court knew that Wall, Sr. believed he was innocent of the charge

against CJ. "The trial court must not initiate a plea dialogue; rather, at its discretion, it may (but is not required to) participate in such discussions upon request of a party." State v. Warner, 762 so. 2d 507, 513 (Fla. 2000) No party asked the Court to participate in plea discussions. The trial judge should have recused himself long before ever accepting the plea. The plea must be vacated and this case remanded to the trial court for further proceedings.

CONCLUSION

Undersigned counsel asks this Honorable Court to vacate the pleas and death sentences and remand this case for further proceedings.

CERTIFICATE OF SERVICE

I certify that a copy has been e-mailed to Marilyn Muir Beccue at marilyn.beccue@myfloridalegal.com and the Office of the Attorney General at CrimappTPA@myfloridalegal.com, on this 26th day of April, 2017.

CERTIFICATION OF FONT SIZE

I hereby certify that this document was generated by computer using Microsoft Word with Courier New 12-point font in compliance with Fla. R. App. P. 9.210 (a)(2).

Respectfully submitted,

/s/Julius J. Aulisio

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