IN THE SUPREME COURT OF FLORIDA

GRANVILLE RITCHIE,

Appellant,

v.

STATE OF FLORIDA,

Appellee.
_____/

CASE NO. SC20-1422
L.T. NO. 2014-CF-011992-A-HC
DEATH PENALTY CASE

ON APPEAL FROM THE CIRCUIT COURT
OF THE THIRTEENTH JUDICIAL CIRCUIT,
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE

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PRELIMINARY STATEMENT

Citations to the record in this brief will be designated as follows: The record on direct appeal which consists of documents, pleadings, motions, orders and transcripts of hearings will be referred to as "DR" followed by the appropriate page number. Reference to the trial transcripts from the direct appeal will be referred to as "DT" followed by the appropriate page number.

STATEMENT REGARDING ORAL ARGUMENT

The State respectfully submits that oral argument is not necessary on this appeal. Argument will not materially aid the decisional process.

STATEMENT OF THE CASE AND FACTS

On August 28, 2014, Granville Ritchie was charged by indictment with one count of first-degree murder, one count of capital sexual battery, and one count of aggravated child abuse alleged to have occurred on or between May 16th and 17th, 2014. (DR:103-106).

The case proceeded to jury trial before Circuit Judge Michelle Sisco on September 9, 2019, and the jury returned a guilty verdict on all counts, as charged, on September 25, 2019. (DT:1-3780; DR:947-948). The penalty phase of the trial commenced on September 26, 2019, and on September 27, 2019 the jury returned a verdict finding that Ritchie should be sentenced to death. (DT:4366-4368; DR:958-960).

GUILT PHASE

On May 16, 2014 at 5:06 p.m. the communications center in Temple Terrace, Florida received a 911 hang-up call from phone number (727) 288-3413. The 911 dispatcher twice tried to reach the caller, but each time, the call went straight to voice mail. Temple Terrace Officer Tiffany Morris was dispatched to the area of the cell phone tower from which the call was directed, located at Temple

Terrace Highway Fire Station One at 124 Bullard Parkway, by the intersection of Bullard Parkway and 56th Street. The officer circulated the area, including driving through the plaza where a CVS is located, but she did not locate anyone in distress. (DT:2156-2159; 2258-2260). A month later, Temple Terrace Detective Thomas Carroll discovered, as a result of his review of Ritchie's phone records, that the 911 hang-up call was made from Ritchie's phone. (DT:2453-2457).

Five hours after the 911 hang-up call, FW's mother, Felicia Demerson, waived down Hillsborough County Sheriff's Deputy Dominique Daniels at the intersection of Bullard Parkway and 56th Street. A distressed Demerson told the deputy that her 9-year-old child, FW, was missing. Demerson told the deputy that Eboni Wiley was the last person Demerson knew to have seen FW

Deputy Daniels met Wiley at a Burger King nearby, where she briefly interviewed Wiley. Because Wiley could not recall the address where she last saw FW, Deputy Daniels asked her to go back and locate the address. About five minutes later, Wiley returned and informed Deputy Daniels that the address was 8910 Tanglewood Trail, Apartment 721, Temple Terrace. (DT:1513-1516).

Because FW was last seen in Temple Terrace, Temple Terrace Police Officer Martin Ramirez responded to the location to take over the investigation. (DT:1518). He interviewed both Demerson and Wiley. Wiley informed him that she was at her friend Vivian's apartment with FW and left FW watching a movie while Wiley showered. When she was done showering, FW was gone. (DT:1528-1541; 1753-1758).

Officer Ramirez briefed the on-call detective that night, Detective Elmer, and Detective Elmer then interviewed Wiley and concluded that FW was a runaway juvenile. Because she was believed to be a runaway and was unfamiliar with the area, a BOLO was issued, and he and other detectives and officers spent several hours searching the area for her. However, they were unable to locate her. (DT:2206-2214).

The following morning, May 17, 2014, Detective Elmer and Detective Leigh Smith went to the Doral Oaks apartment complex, where the apartment where FW was last seen is located. Because nobody was present at the apartment, they met with the leasing office manager who put them in touch with the resident, Gloria Gibson. She then gave them permission over the phone to check the

apartment, but the victim was not there. (DT:1597-1601; 2215).

Detective Smith then went to Bradenton to interview Gibson in person. She provided him a written statement corroborating Wiley's story that FW walked off while Wiley was in the shower. During the interview, Gibson also mentioned that she had a son named "Trevor." (DT: 1602-1605; 2910).

At approximately 1:00 p.m. that same day, Detective Carroll and Corporal Robert Staley went to interview Wiley a second time. The police then learned for the first time that a man was involved in the case when Wiley informed them that "Vivian is a man." Wiley then agreed to return with them to the Temple Terrace Police Department where they questioned her further. Wiley explained that she was actually having sex with a man named "Trevor" in the shower, and when she got out, FW was gone. (DT:1773-1776; 2299-2303).

Aware that the apartment was rented by Gloria Gibson, the police researched Gibson and people related to her. As a result, they obtained a driver's license photo of Ritchie, who Wiley identified as "Trevor." (DT:2304).

Wiley was left in the interview room multiple times during the questioning and allowed to use her phone. (DT:1781; 2306). Wiley

contacted Ritchie and informed him that she told the police he was at the apartment with her. However, she did not inform Gibson. (DT:1777-1778). At the request of the police, she called Ritchie multiple times to try to convince him to come to the station and speak to the police. (DT:1779-1781).

Corporal Staley called "Trevor" on his cell phone and spoke to him around 3:00-4:00 p.m. that afternoon. "Trevor" agreed to meet with Staley but said that he would be delayed because he was in a traffic accident. He agreed to meet at a nearby Winn Dixie but stated that it would take a couple of hours. When Corporal Staley informed him that the matter was urgent, Ritchie agreed to meet him there in 15 minutes. However, Ritchie never showed up. Corporal Staley again spoke with Ritchie, who stated that he needed to drop off a female but agreed to meet at a nearby auto parts store in about 45 minutes. Ritchie was brought into the station from there and agreed to a videotaped interview. (DT:3088-3092).

When Detective Smith returned to the station, he learned Wiley's story had changed, and returned to Bradenton to confirm the statements provided by Gibson. When he returned to Bradenton with Detective Elmer to question Gibson again, Gibson still acted like she

knew FW. Towards the end of Detective Smith's interview of Gibson, Detective Elmer learned that the Clearwater Police Department discovered a body that was possibly FW. (DT:1605-1608; 2218-2220).

Clearwater Police Detective Keri Spalding testified she was heading into work for her 4:00 p.m. shift that day when she was informed that a body had been discovered in the water off the Courtney Campbell Causeway, which connects Hillsborough and Pinellas counties. She headed directly to the crime scene, arriving at 3:47 p.m. She also testified that this section of the roadway is concealed by trees and bushes from the causeway. (DT:2078-2080; 2120-2121).

The Causeway has a one lane westbound access road on its northside. However, to avoid driving several miles into Hillsborough County to head westbound on the road to the crime scene, Detective Spaulding got on the road from the west and headed eastward. She specifically recalled at trial that there was a line of vegetation consisting of primarily mangroves on the northside of the access road that scratched up her driver's side door on the narrow single lane road. She did not take any photos of the scratches because she had

no reason to believe they would be relevant to this case, but she recalled being upset about them because she was driving a new car. (DT:2082-2087).

Detective Spaulding learned about the Temple Terrace Police Department BOLO and believed her victim resembled FW. Temple Terrace Police Department was notified, and the Pinellas County Sheriff's Office forensics team placed a photo of the dead child on a disc and on their website so that it could be reviewed with detectives from both the Temple Terrace and Clearwater Police Departments. (DT:2104-2110).

During the interview of Ritchie conducted at the Temple Terrace Police Department by Corporal Staley and Detective Thomas Carroll, Ritchie stated he met Wiley recently and "hooked up" with her. He stated that he did not see her again until May 16th, and that was when he met the victim. Wiley described her to him as a "troubled" girl, and he tried to encourage Wiley to help her. They picked her up and took her out to get something to eat and then went to his mother's apartment at Doral Oaks. After they spoke to her, he put on a cartoon for her to watch while he and Wiley had sex in one of the rooms. When they came out of the room, the victim was gone.

(DT:2325-2328; 3092-3095).

He further stated that he sent Wiley to look around the complex in the car while he was on the porch looking to see if the girl returned. He claimed that Wiley became concerned that the family would be angry with her and eventually brought her home so she could consult with the girl's parents. (DT:2329-2331).

Ritchie told the detectives that after dropping Wiley off, he went to Thonotosassa to look for a friend, and then returned to the apartment in Temple Terrace where he remained until about 11:00 p.m. At one point, Wiley returned and informed him that the police had been contacted. He agreed to speak to them, which is why he was at the station giving the interview. (DT:2331-2333).

Ritchie told the police he thought Wiley informed them that she was at the apartment with his mother because she did not want to feel like she "messed up." He told her to tell the truth. He further stated he believed that his mother told the same fabricated story because Wiley must have called her and spoken with her, and he only learned about this from his mother after the fact. (DT:2352-2354).

He told the detectives that after he left the apartment in Temple Terrace, he went straight to Kellesia Kelly's in St. Petersburg and was

with her most of May17th. He stated he arrived around 12:00 a.m.-12:30 a.m. (DT: 2354-2370).

During the interview of Ritchie, Detective Carroll learned about the body found off the causeway. He initially thought it was the victim but was wrongly informed that it was not. He never informed Ritchie of this and did not yet know about any sexual component to the case. (DT:2450-2451).

At the station, Detective Carroll viewed the photos brought back by Detective Elmer and Detective Smith. They appeared to be FW. He then interviewed Wiley a third time. She was read her Miranda[1] rights and agreed to waive them. When she learned that the victim was dead her story changed dramatically. (DT:1780-1783; 2459-2462).

Eboni Wiley testified that she was the 24-year-old neighbor of victim FW at the time of FW's murder. (DT:1685-1687). She became close with the child and considered herself sort of a godmother to FW. (DT:1688). Wiley first met Ritchie, who Wiley knew as "Trevor", about three days before FW's murder when she was walking down the road with one of FW's sisters. (DT:1690-1696). He pulled up behind Wiley

[1] Miranda v. Arizona, 384 U.S. 436 (1966).

in a silver Lexus and began speaking with her. (DT:1692). They exchanged numbers, and a few minutes later, he called her. (DT:1693-1694).

That evening, he picked her up in the silver Lexus, they went to his apartment, he provided her some "Molly," which she described as a drug similar to "Ecstasy" which made her feel "sexual." They drank some Hennessy and had sex. (DT:1697-1701). Ritchie told her he was not involved in a relationship, and she fell in love with him that night. (DT:1704). She even listed his name in her phone as "My husband." (DT:1763).

Wiley did not see Ritchie again until May 16th, although they continued to text and talk on the phone (DT:1705-1707). Wiley informed Ritchie about FW and vented to him about her anger that FW had shown up at Wiley's workplace during school hours. She raised the possibility of reporting this to "HRS." (DT:1707-1708). Ritchie suggested they instead take her out to McDonald's and discuss the situation. Wiley agreed to do so. (DT:1708).

Ritchie picked Wiley up in the Silver Lexus between 3:00 and 3:30 p.m., and they went and picked up FW. (DT:1709-1711). However, Ritchie started driving towards his apartment, instead of

McDonald's, but then agreed to go to the Checkers near the Temple Terrace apartment where FW ordered something to eat and drink at the drive-through. (DT:1712-1714). A receipt from Checkers confirmed the purchase at 3:49 p.m. (DT:1715).

When they got to the apartment, Wiley took some "Molly" Ritchie gave her, and they went upstairs to Ritchie's apartment to talk to FW about Wiley's concerns about FW. (DT:1719-1720). After about 10-15 minutes, Ritchie asked Wiley if she could get him some marijuana. Wiley called her grandfather and learned she could get some if she came over. (DT:1723). Wiley instructed FW to come along, but Ritchie convinced Wiley not to bring FW because Wiley would have drugs in the car and she did not have a driver's license. (DT:1723-1724).

Ritchie gave Wiley the silver Lexus to drive to her grandfather's, and she met with Waldimar Vernon, who sold her the marijuana. (DT:1725-1726). At trial, Wiley's grandfather and Vernon both confirmed her calling about and purchasing the marijuana, and Vernon said she showed up in a gray Lexus. (DT:1886-1894; 2481-2486).

After purchasing the marijuana, Wiley drove straight back to Ritchie's apartment. Before arriving, she called Ritchie about the

apartment complex gate code. She also learned from Ritchie that he gave FW some money to go to the CVS to buy some candy, but she never returned. When Wiley tried the gate code, it did not work. She called Ritchie multiple times to get the correct code, but he did not pick up. (DT:1730-1732).

Wiley decided to drive over to the CVS. (DT:1732-1733). Wiley did not see FW anywhere at the CVS. Nor did Wiley see the girl on Wiley's way back to the apartment complex. (DT:1734). She spoke with Ritchie, who informed her that the gate code was correct, but when she arrived, the code still did not work. However, someone else typed in a code to let her in. (DT:1736-1737).

When Wiley arrived at the apartment, Ritchie was outside the apartment shirtless and sweating, even though he had been fully dressed when she left. (DT:1738). When they returned to the apartment, they drank, Ritchie smoked pot, and the two had sex in the front room of the apartment on the floor. Wiley never searched the rest of the apartment or back porch for FW. (DT:1742). At some point, Wiley called FW's sister to inform her that the child was missing. (DT:1743).

Before Wiley left the apartment, she and Ritchie spoke about

what they were going to say about FW's disappearance. Ritchie told Wiley not to tell FW's family that there was a man at the apartment. He told her to tell them that his mother was at the apartment. He said that Wiley would otherwise be seen as a bad person, and he would be seen as irresponsible. This is when they fabricated the story that Wiley was at the apartment with a woman, and the victim walked out the door while Wiley was in the shower. Ritchie provided Wiley his mother's phone number, and "Vivian" was going to be the woman at the apartment. (DT:1746-1749).

After Ritchie drove Wiley to her grandmother's, Wiley called FW's sister back to speak again and they agreed to meet at a nearby liquor store in East Tampa. (DT:1745). When Wiley met the victim's sister, Wiley told her the fabricated story. The victim's sister then called her mother, and Wiley met her at the Burger King along with the law enforcement officers. (DT:1750-1752).

Wiley told them the same story. When the officers asked her to get the address of the apartment, her friend Shelton brought her back to the apartment to get the address, and while they were there, they saw Ritchie standing by the Lexus. She let Ritchie know that the police were on their way. She never went up to the apartment to look

around, looked in the Lexus, or saw any suitcases. (DT:1754-1756). Wiley went to the Temple Terrace Police Department, where she remained until 3:00-3:30 a.m., but stuck to the fabricated story. (DT:1756).

In the early morning hours of May 18, 2014, a search warrant was executed at the apartment located at the Doral Oaks Apartment complex at 8910 Tanglewood Place, Apartment 721. Detective Carroll noticed drag marks on the carpet from the patio area in through the kitchen, some damage and scuff marks on the door and wall, and scuff marks on the kitchen floor and drag marks across the carpet in the living room. There was a suitcase laying on a pile of clothes and a second suitcase off to the side. There was also a pile of items on the floor as if they had been dumped from something. (DT:1545-1565; DR:1573-1582).

On May 21, 2014, during the daytime execution of a second search warrant that also involved the Hillsborough County Sheriff's Office, scuff marks on the patio that were consistent with the scuff marks seen during the execution of the previous warrant were discovered, as was a broken small plastic suitcase wheel. There were also impressions in the carpet and scuff marks on the hallway and

opposite sides of the kitchen, which at points were parallel. Detective Carroll also interviewed Gloria Gibson at the apartment that evening and she admitted that her two previous statements were not true. (DR:1568-1576; 2472-2473).

At some point, Wiley spoke with Ritchie's mother and informed her about the story Wiley told the police. Ritchie told Wiley she needed to let his mother know in case the police tried to speak to her. Ritchie's mother was receptive to the story. The two spoke several times because neither was able to get ahold of Ritchie. (DT:1756-1759). The day following FW's disappearance, the three of them had a 3-way conversation. During that call, Ritchie's mother informed him that he needed to get his stuff and "Go, go, go." (DT:1761). Right after she hung up is when the detectives arrived.

Detective Elmer prepared an affidavit for the arrest of Eboni Wiley for providing a false statement during a missing persons investigation and then was assigned to take photographs of the silver Lexus and do a cursory search of it. It was at an auto parts store and a search warrant already had been obtained from a judge. He took the photos and noticed scratches all along the passenger side door from the front to the back panel. There was also plant debris in the

headlight and stuck in the car's undercarriage. The vehicle was impounded and processed by the Hillsborough County Sheriff's Office. (DT:1608-1618).

Wiley did not recall any of the scratches that were all over the Lexus even though she initially got into it on the passenger side and later drove it. There was no black suitcase in the vehicle. Nor did she recall the scuff marks on the apartment floor. There were no bedding items or sheets sprawled out on the floor. (DT:1785-1787). She never saw the drag marks coming off the carpet nor a broken zipper piece. (DT:1792-1793).

On May 19, 2014, Detective Elmer obtained medical records from the victim's dentist for identification and then attended the autopsy performed by Dr. Kurz of the Pinellas County Medical Examiner's Office. Dr. Lipton reviewed FW's dental records and made the identification from them. (DT:2219-2223).

On May 21, 2014, Detective Elmer collected samples of plants along the side of the Causeway. The following day, he collected sand and soil samples from the Lexus. (DT:2229-2237).

On May 29, 2014, Detective Carroll received date and time-stamped videos of red-light cameras for two Temple Terrace

intersections. They showed what appeared to be the same 1998 Lexus driven between 3:47 p.m. and 10:51 p.m. on May 16, 2014. They showed the Lexus westbound at 4:51 p.m. in the direction of Wiley's grandfather's home, and then about 45 minutes later turning into the CVS parking lot at 5:39 p.m.

Detective Carroll testified at trial that there are no red-light cameras on the Courtney Campbell Causeway, but Ritchie's cell phone records showed his phone being used near the causeway between 11:00 p.m. and 12:00 a.m. on May 17, 2014, and tracking in the same direction as the photos excerpted from the red light camera video. No cell phone was used further east of Doral Oaks apartments in the direction of Thonotassasa. (DT:2486-2502; 2555).

Samples of soil and sand were collected from four locations: the area where the victim's body was recovered, the other side of the Causeway, Clearwater Beach, and an intersection in Clearwater. They were all provided to Dr. Christian Wells at the University of South Florida. (DT:2515-2516).

Special Agent Justin Fleck testified that he is a member of the FBI's Cellular Analysis Survey Team (CAST). They provide regional assistance to local, state, and federal law enforcement agencies. The

work he does includes mapping of cell tower usage by cellphones.

Special Agent Fleck was consulted by the Temple Terrace Police Department and the Hillsborough County State Attorney's Office regarding the homicide investigation of FW. He testified he used Ritchie's phone records to plot the location of Ritchie's phone use between 10:36 p.m. on the 16th and just past midnight on the 17th. (DT:2912-2926).

His analysis demonstrated that the phone usage started in the direction of the Courtney Campbell Causeway from the apartment between 10:36 p.m. and 11:10 p.m. At 11:12 p.m., the phone utilized the cell tower at Rocky Point at the intersection of the Courtney Campbell Causeway. He testified that at 12:11 a.m. a call was made from a point that would place the phone on the causeway moving in the direction of where the victim's body was found the next day. (DT:2937-2966). The phone was in the area of the Courtney Campbell Causeway for an hour or more. (DT:2980).

Dr. Christian Wells testified that he is a professor of anthropology at the University of South Florida and has worked on a number of forensic archeology research projects over the years. He runs a laboratory of soils research that focuses on geochemistry of

soil and sediment samples. (DT:3259-3261).

In 2014 he consulted with the Temple Terrace Police Department involving the homicide of the victim. They already had samples collected from the actual location where the body was found. He advised the detectives to collect sand from other locations to act as control samples. He then used plasma mass spectrometry to identify different elements and their concentration levels. (DT:3267-3274).

He compared the sand in the Lexus to the soil from the location where the victim was found and determined that there was a 99.5% chance that the sediment from the front seat passenger floor mat matched the sediments recovered from the location of the victim. The 99.5% match rate has a high degree of scientific certainty. There was a 70% chance the rear passenger floor mats' sediment matched the parking area. There was only a .04% chance the sediment on the front passenger side floor mats matched the sand from Clearwater Beach, and there was no match between the sediment from the car and the intersection in Clearwater. (DT:3276-3279).

Dr. Matthew Gitzendanner testified that he is a scientist at the University of Florida and manages the University of Florida Museum

of Natural History Laboratory for Molecular Systematics and Evolutionary Genetics. He works on forensic botany. He received two samples from the Temple Terrace Police Department. One was marked as being from the front passenger headlight and he was asked to determine if it was white mangrove. He worked with Dr. Landis, who did the DNA lab work, and Dr. Hodel helped them develop protocols for extracting DNA from the samples due to there being such a small sample. He also provided samples from his own collections for comparison. Dr. Gitzendanner testified that it is his opinion within a reasonable degree of scientific certainty that the piece of plant material from the headlight was white mangrove. (DT:2824-2842).

Joe Ferris testified that he is the Temple Terrace city arborist. He is familiar with the plants, flora, trees, and bushes within the city. The area around Bullard and 56th Street is the city's downtown area. He has never come across any mangrove trees growing in the city limits of Temple Terrace, including the city parks along the Hillsborough River. (DT:2842-2848).

Dr. James Clause Upshaw Downs testified he is a consultant on medical-legal cases involving primarily forensic pathology. He is

board certified in anatomic pathology, clinical pathology, and forensic pathology.(DT:2567-2574).

He did not actually conduct the autopsy, but he was contacted by the State Attorney's Office and provided the records of the medical examiner, the medical examiner's photographs, and 16 sets of photographs to review. (DT:2576).

Dr. Downs testified the victim died of manual strangulation. He opined that the victim suffered numerous injuries to her head, neck, body, and genitalia during the course of a sexual battery and homicide. Dr. Downs noted that the extensive injuries to the victim's neck, signs of internal injury and bleeding in the neck and head, hemorrhaging of the blood vessels of the eyes, and deep injuries to her tongue caused by forceful biting, all indicate that the victim was alive, conscious, and struggling for her life during the rape and homicide. (DT:2596-2694).

He stated that he saw quite a bit more injury to the neck muscles in this case than is usual in strangulation cases. He noted that often in sexual homicides there is someone who occludes the blood vessels so that the victim becomes unconscious, releases the pressure so that the victim comes to, and then repeats this again and

again. (DT:2596-2597).

He concluded that all the inflicted pre-mortem injuries are consistent with having been inflicted at or around the time of the victim's death. The injuries could have all happened within a matter of minutes, and he estimated a ballpark time of five minutes. The findings were consistent with forced sexual penetration and manual strangulation and attack. The manner of death was homicide. (DT:2703-2706).

He testified that because the body was in the water, his ability to ascertain the time of death is affected but his findings were consistent with death at 5:00 p.m., the victim being placed in the water at 11:30 p.m., and being found the next day at 3:00 p.m. (DT:2703-2706).

Dr. Randall Alexander testified that he is a child abuse pediatrician and Chief of the Division of Child Protection and Forensic Pediatrics at the University of Florida in Jacksonville. His specialty is child abuse pediatrics and he was in the group that first became certified in the sub-specialty. He was previously the statewide medical director for Florida Child Protection Teams. (DT:2711-2718).

He was contacted by the State Attorney's Office in 2014 regarding the genital injuries in this case. He focused on the scene and autopsy photos. (DT:2723-2724). The hymen is missing from the 5:00-7:00 position, and there is a "rip" that extends through the hymen and a tiny bit into the vagina. There was an additional injury a little further out. (DT:2731-2733).

He concluded that the lacerations were caused by blunt force because there was a ripping of the tissue. They were consistent with having been inflicted. They were also consistent with non-accidental injury and typical for one of the ways in which he saw sexual abuse. The injuries appeared to be 0-3 days old, or so. He noted that generally, there is no injury with sexual assaults unless it is acute sexual assault. (DT:2733-2739). It was his opinion within a reasonable degree of medical certainty that the injuries were consistent with inflicted and non-accidental trauma and sexual abuse. (DT:2742-2743).

Dr. Wayne Daniels Kurz testified that he is the associate medical examiner for Pinellas and Pasco Counties, and he performed the autopsy on the victim. He found that the manner of death was homicide and the cause of death was strangulation. (DT:2848-2854).

There were multiple injuries that were consistent with strangulation, including to the eyes, the heart, the neck, blunt injuries below the skin's surface, and tongue. In addition, he testified that there were injuries to the victim's head and back. (DT:2861-2886). He, however, concluded that the injuries to the genitalia were post-mortem because he did not see hemorrhaging. He did not rule out that the injuries were inflicted while the victim was attacked but does not believe they were really an impact injury but overstretching if inflicted by an attack. Based on the lack of blood, he thought they were most likely caused by the rocks in the Causeway water. However, he also noted that because the victim was found in the water, things can be washed away. (DT:2887-2889).

After the State rested its case, Ritchie moved for Judgment of Acquittal, which was denied. (DT:3351-3353). The defense then put on its case. It called two witnesses. The first was Officer Dale Kelley of the Temple Terrace Police Department. He testified that on May 17, 2014, he interviewed the victim's sister, Jeromecia Williams, who told him that Wiley drove by and cussed at her and the victim a day or two earlier. She further stated to him that she confronted Wiley about why, and Wiley told her she was trying to tell them to go home.

Williams also told him that the victim was not satisfied with the answer and went to Wiley's place of employment the following day. (DT:3406-3407).

Officer Kelley also testified that he contacted Amy McFadyen with NOAA regarding a drift pattern analysis she did for the police department. He incorrectly told McFadyen that the victim's height was four and a half feet and her weight was approximately 100 pounds. He never corrected this information or checked to see if an additional 20 pounds would have affected the analysis. The NOAA report stated that the victim's body was most likely deposited at a different location on the causeway from where it was found, but that it is also probable that it could have been at a different location on the north side further to the east of where the victim was found. (DT:3407-3415).

The defense then called Dr. William Robert Anderson. He testified that he specializes in the area of pathology. He looked at the autopsy report, photos, evidence collected and reports of the evidence. He avoided opinions, other people's reports, and depositions to try to avoid bias. (DT:3442-3445).

He testified that the multiple tears in the skin without bleeding

means that they are postmortem. He agreed this was also not a typical strangulation due to the pattern of injuries. He concluded this implied force across the upper chest and lower larynx. He agreed with pathologist regarding the manner of death but believed this was a compression-type injury where something was forced down on the chest. He further testified that he does not believe that this was a sudden death. (DT:3442-3445).

He stated that he feels that someone either pressed an arm down or maybe kneeled on the victim, and she was unconscious in less than a minute. This is consistent with a person weighing less than 150 pounds, while kneeling down on the victim. He cannot determine if it is a man or a woman. (DT:3445-3449).

He also testified that he believed that the two injuries to the area of the vagina were caused by vaginal swabbing. It has happened to him several times during his career. The swabs were done on the 17th before photos were taken during the autopsy on the 18th. The medical examiner took a biopsy and concluded that there was not trauma in that area. Also, there were no findings in the autopsy, sex assault kit, or DNA findings that suggested a sexual assault. (DT:3470-3475).

The defense then rested, and the State called Dr. Kurz in rebuttal. He testified that the injuries to the victim's vagina were already there when the vaginal swabs were taken and were not caused by the vaginal swabs. (DT:3537-3539).

After closing arguments, the jury was instructed by the court and returned a verdict of guilty as charged as to all counts. (DT:3667-3780).

SENTENCING PHASE

The State argued that three aggravating factors applied to this case: (1) the victim was less than 12 years old, (2) during the commission of the murder Ritchie was engaged in capital sexual battery, and (3) the murders were committed in an especially heinous, atrocious, or cruel manner. The State relied on the convictions in this case to prove the first two aggravators. To prove the third aggravating factor, the State called Dr. Downs back as a witness.

Dr. Downs testified about the pain that the victim suffered during the attack. He discussed the deep bruising to the victim's shoulder, the blunt force injury to her forehead, and the injuries to her tongue. He explained that the bleeding in her shoulder and the

internal hemorrhaging and bruising to the forehead would be significantly painful. He pointed out that the face and tongue are highly innervated areas and the injury to these areas all happened in a single attack. (DT:3827-3834).

Dr. Downs also explained that the vagina is very sensitive, and this greater sensitivity would contribute to the pain. He discussed the overstretching inside the victim's vagina, the tearing of its flesh, how each additional thrust of the penis would cause additional pain, and the penetration and expansion of the internal vaginal canal would cause pain at every penetration. He explained that the fight or flight phenomenon would cause vaginal dryness which would compound the pain. He pointed out that the rupture of the hymen would be especially painful for a 9-year-old child. (DT:3838-3845).

He then testified about the fear the victim would experience. He explained that she would experience confusion and terror prior to unconsciousness. He testified that he usually sees 3-5 hemorrhages in a strangulation case. In this case there were a total of 10. He pointed out that the bleeding causes swelling that increases the pain. This pain, he testified, would be compounded by her fear of not being able to breathe, in addition to just the pressure around her neck

which would have caused a fairly significant amount of pain. He added that the strangulation itself would cause trepidation and apprehension. (DT:3851-3859). The victim would have felt a sense of dread right up to the very end. (DT:3862-3868).

The State also presented the victim impact testimony of the victim's mother, Felicia Demerson, and two photos of her with the victim and a selfie of the victim. She testified about what a good child FW was and her involvement in different activities. She discussed how FW's family missed her and hurt every day. She also testified that she had been diagnosed with chronic depression and had not been able to return to work in the last five years. Finally, she read a verse from Matthew 18:16(sic), "If anyone causes one of these little ones, those who believe in me, to stumble, it would be better for them to have a large milestone (sic) hung around their neck and be thrown in the depths of the sea." After reading the verse, she stated that "the scripture is talking about somebody who knows better. And Granville Ritchie knew better." (DT:3814-3818).

The defense then called three witnesses: Dr. Hyman Eisenstein, Aubrey Land, Sr., and Dr. Joseph Chong-Sang Wu. The defense also played a video filmed in Jamaica, where Ritchie was born and raised,

which had excerpts of statements from different witnesses who discussed the Kingston area as poverty-stricken and crime-infested. They discussed Ritchie's difficult childhood, including beatings from his father who had several families with different women.

Dr. Hyman Eisenstein, a licensed psychologist specializing in clinical neuropsychology, testified as to Ritchie's mental health at the time of the offense. (DT:3886). Over a period of approximately eight visits with Ritchie at the Hillsborough County Jail, Dr. Eisenstein performed neuropsychological evaluations on Ritchie and conducted a number of clinical interviews. (DT:3890). As a result of his examinations, Dr. Eisenstein concluded that Ritchie exhibits signs of "unequivocal brain damage" resulting from prior instances of impact trauma to the frontal lobe of his brain. (DT:3895-3909). Dr. Eisenstein testified that the frontal lobe controls "executive functioning," and as a result of damage suffered to that area of the brain, Ritchie exhibits neuropsychological deficits, executive functioning deficits, impulsivity, and problems with judgment and decision-making when under stress. (DT:3893-3904).

Based on his testing, combined with Ritchie's self-reporting of historical head injuries and cognitive difficulties, Dr. Eisenstein

found Ritchie to exhibit low-average intelligence, deficits in the executive functioning of the brain, Attention Deficit Disorder (ADD), Attention Deficit Hyperactivity Disorder (ADHD), and Post-Traumatic Stress Disorder (PTSD). (DT:3892-3919). While Dr. Eisenstein acknowledged that the alleged incidents where Ritchie suffered head injuries were mostly self-reported with no records or documentation to corroborate them, he concluded that the evidence derived from his evaluations of Ritchie, combined with reports of Ritchie's historical cognitive deficits, indicated that traumatic brain injuries explain Ritchie's behavior. (DT:3916-3917). Ultimately, Dr. Eisenstein opined that Ritchie's capacity to appreciate the criminality of his conduct to the requirements of the law was substantially impaired and Ritchie committed this offense while he was under the influence of extreme mental or emotional disturbance. (DT:3910-3957).

Dr. Wu testified that he conducted a statistical image analysis on the results of the PET and MRI scans of Ritchie's brain. (DT:3995-4003). His analysis of these exams revealed multiple abnormalities in Ritchie's brain which is consistent with traumatic brain injury, including low "neocortical to cerebellar activity," and damage to the frontal lobe. This results in executive functioning deficits, a lack of

impulse control, and an inability to regulate aggressive behavior. (DT:4009-4047). The scans also revealed evidence of abnormalities in the "limbic system" of Ritchie's brain, the area that controls fear, aggression, and sexual drive. (DT:4028). Dr. Wu stated that his analysis is consistent with Ritchie's reports of multiple head injuries throughout his life. Dr. Wu concluded that Ritchie's "multiple brain abnormalities" have an adverse effect on Ritchie's ability to regulate his behavior. (DT:4053-4054).

Ritchie also called Aubrey Land, Sr. to testify about Ritchie's ability to adjust to life in prison. He stated that Ritchie will be housed in maximum security. (DT:3966). He pointed out that Ritchie has conformed to the rules of the local jail according to the staff and believes that Ritchie would be able conform to an open population and the rules required. (DT:3971-3971). He described Ritchie as fairly mild and meek – not a problem inmate. (DT:3972).

The State called Dr. Lawrence Holder and Dr. Emily Lazarou to testify in rebuttal to Dr. Eisenstein and Dr. Wu, as well as Georgette Redley, who was raised in Jamaica and familiar with the area where Ritchie was raised and the type of circumstance in which he was raised.

Dr. Holder, board certified in diagnostic radiology and nuclear medicine, testified that the methodology utilized by Dr. Wu to analyze Ritchie's imaging results is not accepted at all in the scientific community of radiologists and nuclear medicine doctors. (DT:4136; 4144). The doctor emphasized that PET and MRI scans are not used in the medical community as a method either to diagnose personality disorders or nonspecific brain injuries or to confirm neuropsychological testing or results, contrary to Dr. Wu's testimony. (DT:4139-4140). Dr. Holder also reviewed the results of Ritchie's PET scan and MRI results and opined that he found no sign whatsoever of brain damage or abnormality. (DT:4143-4146).

Dr. Lazarou, a general and forensic psychiatrist, also testified during the penalty phase of Ritchie's trial. (DT:4180). In preparation for her testimony, she reviewed Defendant's medical, employment, and school records, reviewed the casefile and recording of Ritchie's interview with law enforcement, and reviewed the transcripts of interviews conducted with Ritchie's family and associates who were involved in the circumstances of the offense. (DT:4184-4186). Dr. Lazarou also conducted a forensic psychiatric evaluation of Ritchie. (DT:4186).

Dr. Lazarou testified she found no evidence from Ritchie's records, or from her own evaluation, that Ritchie suffered any sort of traumatic head injury; that he suffered from ADD, ADHD, or PTSD; or that he suffered from any diminished cognitive or intellectual functioning. (DT:4200-4204). Instead, Dr. Lazarou diagnosed Ritchie with Antisocial Personality Disorder. (DT:4192). In support of her diagnosis, Dr. Lazarou emphasized Ritchie's pattern of deceitfulness and manipulation of others for his own benefit or pleasure, his consistent irresponsibility with regard to his financial obligations, and his lack of remorse for having hurt or mistreated others. (DT:4179; 4206; 4218). Dr. Lazarou supported her findings by pointing out Ritchie's pattern of manipulating and using women in his life to financially support him, as well as the manipulation of Eboni Wiley prior to the offense in order to get to the victim, FW. (DT:4206-4208; 4215). Dr. Lazarou underscored that the actions taken by Ritchie, preceding and following the rape and murder of the victim, were carefully thought out and executed to avoid detection and responsibility for the offense. She explained that these are not the behaviors of someone who was incapable of controlling their actions due to mental defect. (DT:4197-4199; 4207-4216).

After additional argument from the State and defense, the jury recommended sentencing Ritchie to death for the murder of FW. The jury found the following aggravators with regard to her murder: the victim was less than 12 years old, the capital felony was committed during the commission of a sexual battery, and the murder was especially heinous, atrocious, or cruel.

A Spencer[2] hearing was held on January 7, 2020, (DR:2088-2101) and a sentencing hearing was held on September 11, 2020. (DR:5-26; DR:1045-1070; DR:2102-2158). In the trial court's order sentencing Ritchie to death, the court found the following aggravating factors existed with regard to the murder and assigned them the following weights: the victim was under 12 years old (great weight); the capital felony was committed during the commission of a sexual battery (great weight); and the murder was especially heinous, atrocious, or cruel (great weight).

The court found Ritchie established the following mitigating circumstances and assigned them the following weights: he had no significant history of prior criminal activity (moderate weight); the

[2] Spencer v. State, 615 So. 2d 688 (Fla. 1993).

existence of other factors in his background that would mitigate against imposition of the death penalty: he suffered mental and physical abuse by his father and his father was often absent because of four different families (moderate weight); he was raised in a poverty-stricken and violent neighborhood in Kingston, Jamaica (little weight); he was the oldest of 18 siblings and helped raise them (little weight); he was gainfully employed at various jobs such as a worker at Kingston Airport and at Comtrans Communication making cell phone towers (little weight); he was kind and generous to others and possessed other positive redeeming qualities (little weight).

The court found that the following circumstances were not proven: the capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance, his capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired, he suffered a significant head injury as a child but received no medication and has continued to have migraines afterward, he has a low risk of recidivism, he was an accomplice in the murders and his participation was relatively minor, and finally, there were other factors in his background or life or the circumstance of the offense

that should mitigate his sentence.

Ritchie filed his notice of appeal on September 28, 2020. (DR:1098-1099). This appeal follows.

SUMMARY OF THE ARGUMENT

Issue 1: There is no legal basis for reversing Ritchie's death sentence based on either any individual comment of the prosecutor or his collective comments. None of the alleged improper comments were fundamental error, and the one objection that may have been preserved, if improper, was harmless error. The cumulative effect of these comments does not rise to fundamental error and did not deprive Ritchie of a fair trial.

Issue 2: The victim impact testimony did not render Ritchie's death sentence unconstitutional. Florida's statute allowing victim impact testimony does not permit testimony that amounts to non-statutory aggravation, and the testimony of the victim's mother did not deprive Ritchie of a fair penalty phase.

Issue 3: The trial court did not abuse its discretion in redacting portions of the video Ritchie presented during the sentencing phase of the trial or in permitting the rebuttal testimony about the contents of the video. The court ruled the redacted portions were irrelevant, but if the court did err in ordering any of the redactions made, the error was harmless. The court correctly overruled the only objection that was made to this rebuttal testimony. However, if the objection

should have been sustained, the court's error was harmless. There was no fundamental error regarding the balance of the testimony for which there was no objection, and Ritchie was not deprived of a fair trial.

ARGUMENT

ISSUE I

THERE IS NO LEGAL BASIS FOR VACATING RITCHIE'S DEATH SENTENCE BASED ON ANY OF THE COMMENTS MADE BY THE PROSECUTOR DURING HIS CLOSING ARGUMENTS.

Ritchie claims that during the penalty phase of the trial, the prosecutor made "numerous impermissible comments during his closing arguments." (IB at 12). Ritchie contends this includes no fewer than seven types of comments made by the prosecutor. He alleges these include (1) suggesting the jury show the same mercy to Ritchie that he showed the victim; (2) violating the Golden Rule; (3) commenting on Ritchie exercising his right to a jury trial; (4) raising anti-immigrant sentiments against Ritchie; (5) unfavorably comparing Ritchie's life to President Reagan's; (6) speculating about what defense witnesses in a video would state if cross-examined; and (7) asserting a life sentence is a violation of the jury's duty.

A. Ritchie's claims are only cognizable on appeal for review for fundamental error.

In Urbin v. State, 714 So. 2d 411, 418 n 8 (Fla. 1998), this Court stated, "We have long held that allegedly improper comments are not cognizable on appeal absent a contemporaneous objection."

"The only exception to this procedural bar 'is where the unobjected-to comments rise to the level of fundamental error.'" Conahan v. State, 844 So. 2d 629, 641 (Fla. 2003), citing Brooks v. State, 762 So. 2d 879, 899 (Fla. 2000), quoting McDonald v. State, 743 So. 2d 501, 505 (Fla. 1999).

The only objection raised during the State's sentencing phase closing argument occurred during the prosecutor's extensive argument that Ritchie's murder of 9-year-old victim, FW, was heinous, atrocious, and cruel ("HAC"). (DT:4283-4296).[3] However, this objection was not properly preserved.

As the prosecutor was preparing to conclude his HAC argument (he continued to discuss the point for less than a page and a half following the bench discussion noted below), the prosecutor stated:

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[3] Commencing with "In her opening statement, Ms. Johnson referred to HAC or H-A-C. It's an acronym in the law that stands for heinous, atrocious and cruel. This is an aggravating factor that you will now have to consider from both the evidence you heard in the guilt phase and the evidence you have heard in the penalty phase, especially the testimony of Dr. Downs, who came back down here from Georgia to talk to you, to talk to all of us in the courtroom about what this little girl went through." and concluding with "This aggravating factor alone justifies a sentence of death, we don't even have to look at the other two; but of course, as I stated to you earlier, you have already found we have proven the other two beyond a reasonable doubt." (DT:4283-4296).

He is squeezing her neck and cutting off her jugular vain *(sic)* and prevented oxygenated blood from going to the brain and continuing to do that while the brain's using the oxygen and she gets close to death and had to continue to do it for a minute by minute by minute until she died, until she lost her life.

So I want you to think about this, again, when you're back there deliberating, when you're considering whether you should give him life and whether you should personally extend mercy to this defendant. Did he extend mercy to this little girl? Because in the heinous, atrocious and cruel instruction –

MR. HERNANDEZ: Judge, I have an objection. May we approach.

THE COURT: Yes.

(A BENCH CONFERENCE WAS HELD, AS FOLLOWS:)

MR. HERNANDEZ: Judge, at this time we move for a mistrial, that the State has made two maybe three mercy arguments, and I would cite – What's the cite? *Merck vs. State of Florida*, 975 So. 2d 1054. What are you pointing at, this?

MR. BRUNVAND: I am not pointing at anything.

MR. HERNANDEZ: Okay. That indicates that it's error for The State to continuously make references to the mercy argument. They have done it at least twice, maybe three times.

MR. HARMON: It's on the jury instruction on HAC, whether it's merciless or pitiless. I'm talking about his failure to exercise mercy to her. Clearly, it's part of the instruction on HAC.

MR. BRUNVAND: The difference is, you can't say give the same mercy he gave to –

MR. HARMON: I didn't say that.

MR. BRUNVAND: Yes.

THE COURT:I don't recall him saying that, but obviously relate the term mercy related to the context of HAC. Don't relate it to any mercy the jury may or may not show the defendant, okay.

All right. Thank you.

(THE BENCH CONFERENCE CONCLUDED.)

(DT:4294-4295).

Just this past April, in Smith v. State, __ So. 3d __ (Fla. 2021), 46 Fla. L. Weekly S83 (Fla. Apr. 22, 2021), the Court reviewed a capital murder case in which three years prior to trial, the defendant moved for a change of venue on which the trial court reserved ruling until after the jury was selected, and then never ruled. Smith renewed his motion for mistrial at the beginning of jury selection, but the trial court again deferred ruling on the motion. At the end of jury selection, counsel stated that they had no further objections and did not renew the objection or request a final ruling on the motion for change of venue when the jury was sworn at the beginning of trial. The Court found that because there was no ruling on the motion, the

issue was not preserved and would only be reviewed for fundamental error. Id. at 3 citing Rhodes v. State, 986 So. 2d 501, 513 (Fla. 2008), as modified on denial of reh'g (failure to obtain a ruling on a motion to depose a DNA expert prior to appellate review waives the issue) and Jones v. State, 998 So. 2d 573, 581 (Fla. 2008), as revised on denial of reh'g (defendant's Brady claim was not preserved because it was not addressed by the trial court).

Similarly, in this case, Ritchie never obtained a ruling from the trial court on his motion for mistrial. Based on this Court's decision in Smith and the cases it cites, the failure of trial counsel to obtain a ruling on the mistrial motion "waives the issue". See Rhodes v. State, 986 So. 2d 501, 513 (Fla. 2008). Because the entirety of Ritchie's argument objecting to the prosecutor's comments is raised in the manner of the mistrial motion, and the issue the motion raises is deemed waived, the objection has not been preserved and all of the prosecutor's comments should only be reviewed for fundamental error.

However, even if the Court concludes that the objection to this second comment was properly preserved and the comment was improper, any error was harmless because there is no reasonable

probability that the improper comment affected the verdict. See Braddy v. State, 111 So. 3d 810, 846 (Fla. 2012).

B. The prosecutor's comments do not individually or collectively constitute fundamental error.

This Court has repeatedly defined a fundamental error as one that "must reach down into the validity of the trial itself to the extent that a verdict of guilty could not have been obtained without the assistance of the alleged error." Morris v. State, 233 So. 3d 438, 447 (Fla. 2018), citing Calloway v. State, 210 So. 3d 1160, 1191 (Fla. 2017), quoting Brown v. State, 124 So. 2d 481, 484 (Fla. 1960).

When the case involves remarks related to a death sentence, the standard is modified to reflect that the error "must reach down into the validity of the trial itself to the extent that a death sentence could not have been obtained without the assistance of the alleged error." Bush v. State, 295 So. 3d 179, 212 (Fla. 2020) (emphasis added), quoting Card v. State, 803 So. 2d 613, 622 (Fla. 2001).

"Each case must be considered on its own merits, however, and within the circumstances surrounding the complained of remarks." Bonifay v. State, 680 So. 2d 413, 418 (Fla. 1996). In this instance, none of the remarks of the prosecutor that Ritchie alleges are

improper amount to fundamental error, nor does the cumulative effect of any improper remarks amount to fundamental error.

1. The alleged mercy arguments

Ritchie cites to Urbin v. State, 714 So. 2d 411, 421 (Fla. 1998), Richardson v. State, 604 So. 2d 1107, 1109 (Fla. 1992), and Rhodes v. State, 547 So. 2d 1201, 1206 (Fla. 1989) as cases finding mercy arguments as impermissible and asserts that the prosecutor made two separate mercy arguments. He acknowledges that a contemporaneous objection was made only to the second comment, which is the comment quoted and discussed above. However, because the objection was not properly preserved, it is only cognizable for fundamental error.

The first of the two alleged mercy arguments also occurred during the prosecutor's HAC argument. After the prosecutor discussed the process of manual strangulation, its brutality - including the injuries the victim suffered to her neck and tongue from Ritchie strangling her – how it is actually difficult to strangle someone, the dread of impending death this child would have felt as she struggled while being strangled, and the additional injuries to her head, shoulder, and genitals, he made the following statement:

> This isn't pleasant to think about. It isn't pleasant. It's not natural to sit here and think about this and walk through this. This is ugly. This is nastiness. But you have to think about this because you're considering what his penalty should be. And to ultimately, to be able to do that in an honest and fair and just manner, you have to consider what this little girl suffered and what she went through.
>
> Remember this when you're back there deliberating. Remember this when the idea of mercy maybe starts to peculate (*sic*) a little bit up into your mind. Remember that during these several minutes at least three minutes to inflict all of these injuries to her body, remember there was never, not for one second, relief for this little girl. She never had relief during this. She was suffering in excruciating pain from here to the top of her head, from her genitals all the way up. There was nothing that wasn't unpleasant, painful about this murder. He absolutely brutalized her.
>
> What this little girl endured, no child should have to go through. She suffered an agonizing death. This isn't a very efficient way of killing. But none of that stopped this defendant. And you can consider that when you're considering whether we have proven whether this is heinous, atrocious or cruel or torturous, because you can consider, like I said earlier, whether he exerted any mercy at all to her, any pity to her.

(DT:4289-4290).

This argument is clearly distinguishable from those referred to in Urbin, Richardson, and Rhodes. In each of those cases, the prosecutor's remarks directly and distinctly link the jury's consideration of any mercy it shows towards the defendant to the equivalent mercy shown by the defendant to the victim. In Urbin, the

Court noted that "the prosecutor improperly concluded . . . 'show him the same amount of mercy, the same amount of pity that he showed . . . and that was none.' " Urbin, 714 So. 2d at 421. In Richardson, the prosecutor asked the jury to show "as much pity as he showed his victim." Richardson at 1109. In Rhodes, the prosecutor concluded his argument by "urging the jury to show [defendant] the same mercy shown to the victim on the day of her death." Rhodes at 1206.

In this case, the prosecutor's initial comment that Ritchie contends is a mercy argument makes no reference whatsoever to any consideration of mercy that the jury should or should not have for Ritchie, let alone state that Ritchie deserves no more mercy than that which he exhibited to the victim. Although the prosecutor expressly suggested that the jury should consider mercy in making their sentencing decision, that suggestion exclusively links the term to the manner of the victim's murder and its evidentiary value in proving that her murder was heinous, atrocious, and cruel.

The prosecutor's second alleged mercy argument, which drew the motion for a mistrial, presents a closer question. The prosecutor neither expressly argued to the jury that it should show no more mercy to Ritchie than he showed to the victim nor that he was

undeserving of mercy. Rather, the comment mentions the jury potentially considering whether Ritchie deserves mercy and rhetorically questions whether he extended mercy to the victim. See Conahan v. State, 844 So. 2d 629, 641 (Fla. 2003) (the prosecutor stating that there is a balancing act between mercy for the defendant and justice for the victim rather than urging the jury to show the defendant as much mercy as he showed his victim, did not inflame or unnecessarily evoke the sympathies of the jury) (emphasis added).

However, even if the prosecutor's second comment in this case qualifies as a mercy argument, it is not fundamental error because one cannot say that the jury's recommendation of death could not have been made without reliance upon one or both of the prosecutor's comments. Doorbal v. State, 837 So. 2d 940, 957 (Fla. 2003).

The initial verdict finding Ritchie guilty on the charge of capital sexual battery established two aggravators: the murder was committed while Ritchie was engaged in committing a sexual battery and the victim was under 12 years old. Furthermore, there was clearly sufficient evidence that the murder was committed in an especially heinous, atrocious, or cruel manner. See Doorbal, 837 So. 2d at 957. ("When we consider the statements, along with the

magnitude of physical and testimonial evidence . . . we are convinced that the prosecutor's remarks at issue here did not affect the jury's verdict.") (emphasis added). Moreover, the prosecutor's statement was an isolated statement, and he immediately after this statement returned to his argument on HAC and properly discussed mercy exclusively in the context of HAC as instructed by the trial court following the bench conference. Therefore, the prosecutor's alleged mercy argument(s) do not amount to fundamental error.

2. The prosecutor's comments did not violate the Golden Rule.

Ritchie also claims that fundamental error resulted from the prosecutor allegedly violating the Golden Rule. The Court has stated that these are "arguments that invite a jury to place themselves in the victim's position and imagine the victim's final pain, terror, and defenselessness." Merck v. State, 975 So. 2d 1054, 1062 (Fla. 2007), citing Bertolotti v. State, 476 So. 2d 130, 133 (Fla. 1985). Ritchie asserts that there were several Golden Rule violations.

Among the Golden Rule violations Ritchie claims the prosecutor made, was an alleged imaginary script. The Court in Urbin stated that an imaginary script is a "subtle" Golden Rule argument. Urbin,

741 So. 2d at 421. The alleged imaginary script will be addressed separately below.

Aside from the alleged imaginary script, Ritchie contends that there were two Golden Rule violations made by the prosecutor, both of which were part and parcel of his argument regarding HAC.

The first alleged Golden Rule violation discussed in Ritchie's initial brief refers to comments made about the victim's pain she suffered from his attack on her. He initially began his argument by referring to the process of manual strangulation:

> The process of manual strangulation, killing someone with your hands, it's not an easy task. It's not easy to kill another human being, even a little girl, with bare hands, with no weapon, just your bare hands. It takes brutality and it takes time. It's equated to water-boarding, the effect it had on her, the mental effect, the mental anguish. Think about that, to water-boarding, simulated drowning.
>
> So in effect, this little girl was tortured to death. The panic that she experienced, the air hunger that she experienced. What an apt word, the dread. The dread. That's a word that we don't use very much. Sometimes we dread things in our lives that are unpleasant. **Can you imagine the dread of knowing your life is ending and your feeling pain all over your body as it's bleeding internally from all of these injuries, the pain and suffering of feeling the penetration, feeling the tearing and ripping of sensitive tissue** in her genitalia as he penetrated her as far as we know over and over. We have no reason to know that he didn't do that. And that pain would have been

exponentially greater for a little girl, a little, innocent girl.[4] (DT:4287-4288). The prosecutor then went on to discuss the pain the victim suffered from the compression on the structures of her neck and the internal hemorrhaging it caused, the deep hemorrhaging to her tongue, and the injury to her head.

The second alleged Golden Rule violation occurred when the prosecutor, as Ritchie describes it, "invited the jury to 'go back' to the 60-second vigil he held for FW at the end of the guilt phase." (IB at 19). Ritchie describes this "60-second vigil" as "this moment in the guilt phase closing argument the prosecutor was harkening back to was one where he stood silent for a full minute in order to demonstrate the length of time Ritchie would have been 'compressing her neck waiting for her to die.'" (IB at 19).

Although the prosecutor's penalty phase argument was interrupted by the objection discussed earlier, this is the point in the prosecutor's argument when he summarized how the evidence demonstrated HAC because the jury can consider whether Ritchie extended mercy or showed pity towards the victim, and, as the

[4] The highlighted portion of the statement is the limited quotation appearing in the Initial Brief of Appellant.

prosecutor argued, each second he compressed her neck "was an opportunity for this defendant to show mercy, and to let up, to let her live. Each opportunity – each one of those seconds was an opportunity for him to show pity on this little girl, and he showed no pity. This was a merciless, pitiless murder, there is no doubt about that. He showed no mercy to her." (DT:4295-4296).

Ritchie's contention that these types of statements violate the Golden Rule are analogous to the arguments raised in Merck v. State, 975 So. 2d 1054, (Fla. 2007), also a case in which no objection was made during trial. The Court determined there was no fundamental error when the arguments were viewed in the context in which the statements were made. Id. at 1062. The Court then pointed out that the trial transcript reflected that the prosecutor's arguments about which the defendant complained "were all made in support of the State's position that the HAC aggravating factor was established by the evidence and supported a recommendation of death." Id. at 1063. The Court noted that the first four comments by the prosecutor describing the victim's injuries and suffering were based on facts in evidence and reasonable inferences from those facts, and the final comment was designed to illustrate that one minute can be a

significant period of time. Id. at 1064, citing Bertolotti v. State, 476 So. 2d 130, 133 (Fla. 1985).

Likewise, in this case, when the prosecutor's arguments are placed in the proper context, it is clear that they were being made in support of the State's position that the HAC aggravating factor was established by the evidence and supported a recommendation of death. They were made to demonstrate that Ritchie's murder of FW was both brutal and merciless – that one minute, let alone several, provided ample opportunity for Ritchie to show mercy – yet he failed to do so. Therefore, like the arguments in Merck, they are not improper and do not qualify as fundamental error.

3. The alleged imaginary script

Ritchie next complains that the prosecutor created an "imaginary script" when he argued that prior to Ritchie raping and killing the victim, she had obtained his phone and made the 911 call, questioned herself about why Ritchie was raping her, looked into his eyes as he strangled her to death, and referred back to his guilt phase closing argument when he had discussed the fear FW must have felt and why.

The Court has "condemned the use of arguments that present

imaginary first-person scripts." Braddy v. State, 111 So. 3d 810, 850 (Fla. 2012), citing Urbin v. State, 714 So. 2d 411, 4421 (Fla. 1998) and Garron v. State, 528 So. 2d 353, 359 (Fla. 1998). However, despite the Court's condemnation of such arguments, the Court has found in multiple cases that the particular remarks that are the subject of the complaint but for which no objection was preserved, did not constitute fundamental error "given the totality of the evidence presented regarding the circumstances" of any death. See Braddy v. State, 111 So. 3d 810 and Gonzalez v. State, 136 So. 3d 1125. See also McDonald v. State, 743 So. 2d 501 (Fla. 1999) ("the jury was well aware of the facts of this case . . . we do not believe that the prosecutor's comments so tainted the jury's verdict so as to warrant a new penalty phase proceeding.").

In McDonald, the prosecutor was accused of making improper comments about what the Court described as "the pain and suffering" felt by the victim:

> They subdued him and tied him. Why, ladies and gentlemen, did they have to do this to him? Why did they have to blindfold him, gag him, they had to gag him because he was crying out and they had to keep him quiet.
> . . . .
> There was more violence than that. They broke three of his ribs. Gagging on the mouth, look at the mouth injury? How

> tightly he was gagged. And why? Because he was crying out for mercy. He was crying out.
>
> . . . .
>
> He is lying there. He is tied up and he is down and what it happening, the water is filling up . . . . We all filled up our bath tub before, and what was Dr. Davidson having to do during that period of time? Listen to the water as it filled that bath tub, with him either in it or out of it, it doesn't matter. Listen to water as it filled up. And as he knew his life was going to be taken away. And under their scenario I sure hop they held him down, because if you think about it, if they didn't hold him down when he was trying to get up then what he did is he would have had to necessarily he hog tied like he was, hearing the water falling.
>
> . . . .
>
> Think about the time frame when you go back to the jury room. Think about the time frame if [sic] would take. How long it would take to fill the tub up. Twenty minutes? How long they were in the house. It is a lot longer that it sounds. And if he is lying like this, ladies and gentlemen, and that water is filling up and they're not holding his head down. Is he drowning with the possibility of ever getting any air at all as that bath tub is filling up with water as he is drowning face down not able to get up, not able to do anything but rock and roll. That is the method of this killing and the ordeal that this doctor went through. That is the aggravating circumstance of heinous, atrocious and cruel.

Id. at 504.

Of considerable significance to the present case is the Court's criticism in footnote 9 of the prosecutor's argument. The Court noted that while gagging the victim to keep him quiet is a reasonable inference, the evidence that he literally "begged for mercy" or was

"crying out" was neither supported by any evidence, as no witness testified to this happening, nor could such an inference reasonably be drawn from the evidence. Furthermore, "the prosecutor's embellishment on what the victim may or may not have said, without factual support in the record, was an appeal to the emotions of the jurors." Id. at 505, fn 9. However, the Court went on to note:

> Here, the record reveals that the prosecutor's remarks came during his discussion of the applicability of the HAC aggravator. Thus, the comments appear to be more of an attempt to describe the heinousness of the crime than a request to the jury to consider what the victim must have felt.

Id.

The nature of the arguments of the prosecutor in this case are strikingly similar in nature to those of the prosecutor in McDonald. As previously noted, the prosecutor's argument on HAC ran from pages 4283-4296 in the trial transcript. Therefore, all of the comments from the sentencing phase closing about which Ritchie complains relate to his HAC argument, other than the comments he makes about the 911 call.

Like the embellished comments of the prosecutor in McDonald, the prosecutor's comments regarding the thoughts running through

the victim's head while Ritchie raped and murdered her, or her looking into his eyes as he strangled her, were stated during his argument on HAC. They were not argued for the purpose of requesting that the jury consider what the victim must have felt but were argued in support of the jury finding that Ritchie's actions were heinous, atrocious, or cruel.

However, although it is a reasonable inference that the victim made the 911 call (the call occurred during the time period she was alone with Ritchie, he neither had any known reason to call 911 or mentioned calling 911 when he was interviewed by the police about FW having gone missing from the apartment, and FW's mother had taken away FW's phone), the prosecutor's statements about the fear she felt, his speculation whether she called because Ritchie possibly kissed her, fondled her, or undressed her, and that he did so well before raping and killing her, may exceed what can reasonably be inferred from the evidence actually introduced. Regardless, they are clearly not "so egregious to undermine the jury's recommendation." Id.

The jury was well aware of the facts of this case. They knew that the victim was a 9-year-old child who experienced a monstrous

sexual attack, they heard the graphic details from the medical experts describing the appalling physical injuries she suffered as Ritchie choked the life from her, and they viewed the autopsy photos depicting them. See McDonald at 505 (the jury was well aware of the victim being gagged when in the tub the prosecutor imagined him begging for mercy and crying out); Gonzalez at 1154 (the jury was well aware of the nine children in the house the prosecutor imagined the dying mother to be thinking about). Based on the totality of the evidence presented regarding the circumstances of FW's death, the comments of the prosecutor do not constitute fundamental error. See Gonzalez at 1154 and Braddy at 850.

C. The prosecutor did not improperly comment on Ritchie exercising his right to a jury trial.

Ritchie next claims that the prosecutor "attacked Ritchie's choice to exercise his constitutional right to a jury trial." (IB at 28). The claim is meritless. In fact, the prosecutor never even mentions Ritchie's exercise of his right to a jury trial. He merely acknowledges that this right exists – along with other constitutional rights of the accused – and how lucky Ritchie is to live in a country where we all possess such rights:

> He immigrated here to this country years ago. And as he lived here, he enjoyed the benefits of this country we live in, the greatest country on the face of the earth.
>
> He enjoyed all these benefit *(sic)* we talked about. He enjoyed the due process rights we talked about. He enjoyed the fact that we carry the burden of proof to prove his guilt, that he is presumed innocent, that he is entitled to a jury of his peers to not just determine whether he's guilty or not, but a jury of his peers to determine the appropriate sentence. Because this isn't Jamaica or some other country, this is the United States where this defendant gets to have you determine his sentence, not some bureaucrat, not some single judge, not some single person, not some star chamber, but you, his fellow citizens. He is (*sic*) enjoyed all these benefits. He's enjoyed the benefit of a neutral and unbiased judge. He's enjoyed the benefit of competent – very competent defense counsel during this case.

(DT:4301-4302).

These comments were made in response to the mitigating factor asserted by Ritchie that he was raised in a poverty-stricken and violent neighborhood in Kingston, Jamaica. Immediately preceding these remarks, he pointed out to the jury that Ritchie actually enjoyed greater privilege than others raised around him due to Ritchie's father's position as the "Don" of his neighborhood, including attending a prestigious high school and having the ability to emigrate from Jamaica to the United States where he now enjoys all the rights the prosecutor discussed above. (DT:4301).

Ritchie cites to Evans v. State, 177 So. 3d 1219 (Fla. 2015), receded from on other grounds, Johnson v. State, 252 So. 3d 1114 (Fla. 2018), federal cases and cases of other states which all stand for the proposition that it is improper for a prosecutor to disparage a defendant for exercising his constitutional right to trial. However, that is not what happened in this case. As the Court explained in Evans:

> these comments were . . . specifically directed at Evans' decision to seek a jury trial despite the significant incriminating evidence against him. Such a comment negatively reflected upon Evans' exercise of his constitutional right because it suggested that he wasted the time of the court and the jury by seeking a jury trial.

Id. at 1236. The remarks Ritchie complains about here bear no resemblance to the type of remarks this Court condemned in Evans or the similar remarks criticized in the other cases Ritchie relies upon in support of this claim. When placed in proper context, it is clear that there was no fundamental error in the prosecutor making them.

1. The Reagan anecdote

Ritchie next contends that the anecdote the prosecutor told about President Ronald Reagan and his ability to succeed to the presidency despite the difficulties he faced as a youth both

improperly converted a mitigating circumstance, Ritchie's poverty and physical abuse, into something aggravating, and improperly appealed to the jury's emotions. See Walker v. State, 707 So. 2d 300, 314 (Fla. 1997).

Ritchie clearly misapprehends the purpose of the anecdote. The prosecutor never suggested or implied that Ritchie's failure to rise above his difficult childhood should somehow be considered an aggravating circumstance. Rather, he expressly remarked that the jury needed to decide "*the weight* you want to give to that." (DT:4304). See Bush v. State, 295 So. 3d 179, 211 (Fla. 2020) (prosecutor commenting on defendant's ability to put childhood difficulties behind him, graduate from high school, and obtain an IT certificate affecting the weight the jury should give the mitigating factor).

The prosecutor noted that Ritchie was also "able to pull himself out of that situation" and create opportunities for himself by coming to the United States. (DT:4302). The prosecutor then went on to discuss that many people have difficult childhoods, including growing up impoverished, and yet manage to overcome such obstacles. He then commenced telling the story of how President Reagan, the son of an alcoholic and abusive father, managed to reach

the pinnacle of success despite his very humble and difficult childhood to illustrate for the jury that this was not mitigation of the sort that the jury should place great weight on.

Nor did this anecdote about Ronald Reagan somehow improperly appeal to the jury's emotions. Ritchie cites Ruiz v. State, 743 So. 2d 1 (Fla. 1999) in support of this contention, specifically referring to the portion of the case that discusses the error made by the prosecutor there discussing her father's service in Desert Storm. However, Ritchie's reliance on this discussion in Ruiz to support his contention is spurious.

In Ruiz, the Court noted four separate concerns with the prosecutor's argument in that case: (1) It personalized the prosecutor and gained sympathy for her and her family; (2) It unfavorably contrasted the defendant with the prosecutor and her father; (3) It exempted from admissibility the requirement and "the crucible of cross-examination" what was now new evidence in the case; and (4) "most important" it equated the father's sacrifice with the jury's "moral duty to sentence the defendant to death." Id. at 7. None of these concerns apply to the use by the prosecutor in this case of the relatively well-known story about President Reagan's childhood. It

did not personalize the prosecutor or gain sympathy for him and his family. It did not unfavorably contrast the defendant with the prosecutor and his father. It did not introduce "new evidence" into the case. And, most importantly, it was not related to any suggestion that the jury had some moral duty to sentence Ritchie to death.

The anecdote was properly used by the prosecutor to urge the jury to limit any weight the jury may place on this mitigating circumstance and does not amount to fundamental error.

2. Alleged anti-immigration comments

In addition, Ritchie claims that the prosecutor's argument was designed to appeal to any anti-immigration sentiment the jury may have. He grossly mischaracterizes the prosecutor's statements. The prosecutor made none of the statements implied in Ritchie's argument. (IB at 35-42).

The prosecutor merely pointed out the rights Ritchie enjoyed as a result of living in the United States and invoked the penalty phase testimony of Dr. Lazarou rebutting Ritchie's claim for mitigation based on a substantial impairment when she testified about Ritchie's manipulative ability:

> So we know that he was able to pull himself up out

> of that situation, move here where he had all these opportunities to this country. And we saw how he took advantage of those opportunities. He took advantage by manipulating all these women in his life for a car, for money, how he hadn't worked for months but how he was still able to live a fairly good life. And, in fact, we have seen through his manipulation and the intelligence he has to do that that (*sic*) Dr. Lazarou talked about, that over the last five years he's gained all this weight because he manipulated Kelissa Kelley, who we know she is his girlfriend even though she didn't want to tell us that. How about that? That she has been putting money into his canteen, which she didn't rant (*sic*) to talk about really, for five years and allowed him to gain all this weight and made it comfortable for him in the jail while he waited for his trial.
>
> You really think that would happen in Jamaica? You think that would happen in the countries of the Caribbean? It happens in this country because he enjoyed all those rights, the constitutional rights. He enjoyed what Mr. Land talked about, the prison expert yesterday, who was an expert in the quality control and treatment of inmates in prisons, in jails . . . he told us inmates have to be treated well. If they are not, people like [Ritchie] join in lawsuits where they sue prisons and jails for maltreatment of prisoners. This defendant has enjoyed all of these things.

(DT:4302-4303).

The prosecutor never argued that sentencing Ritchie to death was necessary to protect community values, preserve civil order, or deter future law-breaking. See United States v. Boskovic, 472 Fed. Appx. 607, 610 (9th Cir. 2012), quoting United States v. Koon, 34 F.3d 1416, 1443 (9th Cir. 1994) (See IB at 32). No reference to him

as an "illegal immigrant" or a "gypsy" or "links to the mafia" (See IB at 33). No appeal to "ethnic unity." (See IB at 36). No "us against them" pleas "pitting 'the community' against [Ritchie]." (See IB at 37). There was no attempt at all to rile up the jury against him based on the mere fact that he was not born in this country.

Rather, the prosecutor's comments related Ritchie's actions to Dr. Lazarou's testimony by underscoring his ability to seize upon the circumstances in which he has found himself, whether it be before he committed this murder or afterward, and demonstrating that the substantially impaired capacity mitigator did not apply to Ritchie, and at the same time, highlight the lack of veracity of Kelley's testimony who denied she was Ritchie's girlfriend so that her testimony would not appear as biased. As the trial court noted in the section in the Sentencing Order discussing the substantially impaired capacity mitigator, which the court determined was not established:

> Dr. Lazarou accentuated that the actions taken by Defendant preceding and following the rape and murder of the child-victim in this case were carefully thought out and executed in an effort to avoid detection and responsibility of the offense. These acts included manipulating people associated with Defendant before and after the offense. Specifically, Dr. Lazarou characterized that Defendant

> "conned" Eboni Wiley, prior to the offense in order to get to the child-victim, persuaded Ms. Wiley and his mother to provide false information to law enforcement to deflect responsibility from himself, and also instructed his girlfriend, Kellisa Kelley, from jail, to limit her cooperation with the State to help him hinder the prosecution. Dr. Lazarou concluded that Defendant's behaviors are not those of an individual who is mentally incapable of controlling his actions, or who does not understand the consequences of what he is doing, but were instead the result of careful forethought and planning.

(DR:1061-1062).

The prosecutor's comments complained about were not only unrelated to any anti-immigration sentiment, they specifically focused on responding to a contested mitigating factor and raised the very argument that the trial court referred to when it rejected this attempt in mitigation. To the extent that this Court may find improper any reference to how Ritchie would have been treated if incarcerated in Jamaica or another Caribbean country, the statement was not the sort of egregious statement to undermine the jury's verdict. See McDonald, 743 So. 2d at 505.

3. The State's inability to cross-examine the witnesses in Ritchie's video

Ritchie next contends that the comments by the prosecutor about his inability to cross-examine the witnesses who spoke about

Ritchie in the video taken in Jamaica were improper. He cites this Court's opinion in Hutchinson v. State, 882 So. 2d 943 (Fla. 2004), abrogated on other grounds, and Deparvine v. State, 995 So. 2d 351 (Fla. 2008), in support of this contention. However, as Ritchie acknowledges, Hutchinson discusses the impropriety of comments suggesting that information not presented to the jury supports the evidence that was presented to them is a form of improper bolstering of the evidence presented. Id. at 953. The prosecutor's comments in this case make no such suggestion. Similarly, Ritchie's reliance on Thompson v. State, 318 So. 2d 549 (Fla. 4th DCA 1975) is misplaced as the prosecutor never suggested that he possessed additional knowledge or information about the case that had not been disclosed to the jury. See Id. at 551-552.

The prosecutor's comments raise the very opposite point from either Hutchinson or Thompson. He pointed out that due to his inability to cross-examine the witnesses, "We didn't get an opportunity and you didn't get an opportunity to hear what we would have asked them and what they may have told us if we cross-examined them. You got a light most favorable-to-the-defendant version of the events." The prosecutor pointed out that as a result of

his inability to cross-examine the witnesses there is information that remains unknown to both the State and the jury – not that he possesses additional information not presented to the jury that would support evidence the State already introduced or possesses additional information that would undermine the evidence Ritchie introduced. Therefore, there is no fundamental error in the prosecutor commenting on his inability to discover and present information to the jury that now remains unknown to both.

4. A true and just verdict

Ritchie's final complaint about the prosecutor's comments alleges that the prosecutor's statement that the aggravating factors support a death sentence is similar to the prosecutor's comments that "a life sentence would be irresponsible and a violation of the juror's lawful duty" that so concerned the Court in Urbin v. State, 714 So. 2d 411, 421 (Fla. 1998). However, Ritchie first cherry-picks the prosecutor's statements and takes them out of context to make it appear as though his statements suggest that it would be unlawful for the jury to return a verdict other than one for a death sentence.

Instead, the prosecutor in this case merely argued that the aggravating factors supported the death sentence, and because they

did, the jury would not have to spend the rest of their lives questioning whether what they did was "right and just":

> These aggravating circumstances, as I said, they tower because they are giant pillars of proof, they really are. They are like mountains of proof with deep running, deep foundations that support them; the kind of proof, the kind of aggravating factors you can stand on in determining that this defendant should be sentenced to death; the kind of evidence that would support that decision and give you the firm belief and knowledge that it's the true and just verdict in this case; and it allows your decision to be one that you can live with for the rest of the day, for the rest of the week, for the rest of this year and for the rest of your lives knowing you did the right and just thing sentencing this defendant to death.

(DT:4317-4318).

These comments of the prosecutor exhibit no error, let alone fundamental error.

D. The cumulative effect of any improper comments by the prosecutor do not constitute fundamental error and did not deprive Ritchie of a fair penalty phase.

Finally, Ritchie claims that the cumulative effect of the objected-to and unobjected-to comments of the prosecutor requires reversal. Ritchie is again mistaken in this conclusion, even if one considers as properly preserved the objected-to comment by the prosecutor that Ritchie claims is an improper mercy argument. This is because when viewed in the full context of the trial, neither the cumulative effect of

the unpreserved objections constituted fundamental error nor did the cumulative effect of any improper comments, whether or not preserved, deprive Ritchie of a fair penalty phase. See Morris v. State, 233 So. 3d 438, 449 (Fla. 2018); Braddy v. State, 111 So. 3d 810, 846-47, 855-56 (Fla. 2012).

Two of the aggravators were already established by the verdict during the guilt phase of the trial. Tthe trial court agreed with the jury's findings concerning the aggravators, including HAC, and gave each of them great weight. The court found Ritchie failed to establish two of the three statutory mitigators argued, provided only moderate weight to the one that was established, failed to establish two of the of the seven non-statutory mitigators argued, gave little weight to four of the five that were established, and moderate weight to the other. See Card v. State, 803 So. 2d 613, 622-23 (Fla. 2001) (in considering whether the prosecutor's improper argument errors compromised the integrity of the judicial process and deprived the defendant of a fair penalty phase, the Court considered the trial court's findings regarding aggravating and mitigating circumstances). See also, Calloway v. State, 210 So. 3d 1160, 1191 (Fla. 2017) (fundamental error must amount to a denial of due process.).

ISSUE II

THE VICTIM IMPACT TESTIMONY DID NOT RENDER RITCHIE'S SENTENCE OF DEATH UNCONSTITUTIONAL.

Ritchie next claims that the victim impact testimony in this case renders his death sentence unconstitutional. He argues both that Florida's particular scheme for permitting victim impact testimony is per se unconstitutional and that it was unconstitutionally applied in this case due to the Bible verse recited by the victim's mother during her statement to the jury.

A. Florida's victim impact scheme is constitutional.

Ritchie filed a motion objecting to the admission of victim impact evidence and seeking the trial court to declare unconstitutional § 921.141(8), Florida Statutes, which permits it; a proffer of the State's victim impact evidence; and a pre-trial determination as to whether the danger of unfair prejudice presented by that evidence outweighs its probative value or otherwise denies Ritchie a fair hearing (DR:750-757). The court denied the motion to the extent it sought to declare § 921.141(8) unconstitutional but granted the motion as to Ritchie's request for a proffer and pre-trial ruling. (DR:818). At the hearing, the court instructed the State to proffer victim impact evidence to Ritchie by July 8, 2019. (DR:2278).

The determination of a statute's constitutionality is subject to de novo review. Crist v. Florida Ass'n of Criminal Lawyers, Inc., 978 So. 29 134, 139 (Fla. 2008).

Ritchie acknowledges that the Supreme Court has held that the Eighth Amendment does not bar per se the use of victim impact testimony if a state elects to allow it. (IB at 63 citing Payne v. Tennessee, 501 U.S. 808, 827 (1991)).

The Supreme Court in Payne explained the basis for its decision stating:

> We are now of the view that a State may properly conclude that for the jury to assess meaningfully the defendant's moral culpability and blameworthiness, it should have before it at the sentencing phase evidence of the specific harm caused by the defendant. "[T]he State has a legitimate interest in counteracting the mitigating evidence which the defendant is entitled to put in, by reminding the sentencer that just as the murderer should be considered as an individual, so too the victim is an individual whose death represents a unique loss to society and in particular to his family.

Payne v. Tennessee, 501 U.S. 808, 825 (1991), citing with approval Booth v. Maryland, 482 U.S. 496, 517 (1999) (WHITE, J., dissenting) (emphasis added). Ritchie contends, however, that Florida Statute 921.141. permits comment beyond that the Supreme Court permitted in Payne and allows capital jurors to consider

impermissible sentencing factors.

The applicable provision in the statute states:

> Once the prosecution has provided evidence of the existence of one or more aggravating factors as described in subsection (6), the prosecution may introduce, and subsequently argue, victim impact evidence to the jury. Such evidence shall be designed to demonstrate the victim's uniqueness as an individual human being and the resultant loss to the community's members by the victim's death. Characterizations and opinions about the crime, the defendant, and the appropriate sentence shall not be permitted as a part of victim impact evidence.

§ 921.141(8), Fla. Stat. (emphasis added).

Clearly, the express language of the statute does not permit comment beyond the Supreme Court's language explaining its holding in Payne. Both focus on the individuality of the victim and the effect of the subsequent loss of that person as a result of his or her death. In fact, Florida's statute even expressly limits evidence regarding "characterizations and opinions about the crime, the defendant, and the appropriate sentence." § 921.141(8), Fla. Stat.

Ritchie further acknowledges that this Court in Windom v. State, 656 So. 2d 432, 438 (Fla. 1992) "approved the use of victim impact evidence as long as it is limited to that which is relevant as specified in the statute." (IB at 64). However, he contends that the

result of this decision allows capital jurors to consider impermissible sentencing factors. This is the identical issue raised in Windom. ("Defendant asserts, first, that this evidence was in essence nonstatutory aggravation."). Windom, 656 So. 2d at 438. However, Ritchie contends that this decision was wrongly decided and cites to the psychological impact on the jury of such evidence. He concludes that the jury's exposure to such evidence violates due process and the Eighth Amendment.

In essence, Ritchie seeks the per se bar that the Supreme Court expressly rejected in Payne. He ignores the explanation provided by the Supreme Court for allowing such evidence – that the victim is an individual whose death represents a unique loss to society and in particular to his family, and that it is appropriate for jurors to be reminded of this.

Ritchie provides no compelling reason for this Court to reverse its ruling in Windom and his contention should be rejected.

B. Because Ritchie failed to contemporaneously object to the statements of the victim's mother, he failed to preserve this claim for appeal.

In Windom, the defendant did not object specifically to the victim impact testimony of a police officer. As a result, the Court

found the objection was not properly preserved on appeal. Windom, 656 So. 2d at 438. ("Defendant did not object to this testimony specifically, and thus his objection on appeal is procedurally barred.") See also Kormondy v. State, 845 So. 2d 41, 53 (Fla. 2003) (Because no objections to this testimony were lodged in any of the three instances of which the defendant now complains, this issue has not been properly preserved for appellate review) and Sexton v. State, 775 So. 2d 923, 932 (Fla. 2000) ("The failure to contemporaneously object to a comment on the basis that it constitutes improper victim testimony renders the claim procedurally barred absent fundamental error."). As a result of not properly preserving the objection, the statement can only be reviewed for fundamental error.

C. Victim's mother's statement was not fundamental error.

As previously noted, Florida Statute 921.141 allows victim impact testimony, but expressly limits the testimony to (1) demonstrating the uniqueness of the victim as a human being and the resulting loss to the community due to the victim's death; and (2) expressly prohibits characterizations and opinions about the crime, the defendant, and the appropriate sentence. The victim's mother's

initial remarks about the victim were entirely appropriate. However, her quotation of scripture and final comment about Ritchie exceed the scope of evidence relevant to the statute. Windom, 656 So. 2d at 438 ("Victim impact evidence must be limited to that which is relevant as specified in section 921.141(7).").

That said, her remarks provide no basis for reversal in this case as they do not rise to the level of fundamental error. For instance, the remarks did not become a feature of the sentencing phase of the trial. See Kormondy v. State, 845 So. 2d at 54. Nor did the prosecutor repeat her remarks in his closing argument. The remark was but a brief moment in what did feature the descriptions provided by two medical doctors of the pain her child suffered as a result of the brutality of Ritchie's physical and sexual attack on a 9-year-old. In addition, even if the objection had been properly preserved, it would be harmless error because the Capital Sentencing Order (DR:5-26) correctly determined that the aggravation in this case was strong and the mitigation was relatively weak. Alston v. State, 723 So. 2d 148, 160 (Fla. 1998).

ISSUE III

THE TRIAL COURT PROPERLY REDACTED THE VIDEO AND ALLOWED THE REBUTTAL TESTIMONY ABOUT IT.

The final issue raised by Ritchie is his claim that the trial court committed reversible error by improperly limiting his presentation to the jury of the video that was recorded in Jamaica and allowed the State to present improper rebuttal of the portions of the video the trial court allowed. Section 921.141(1), Florida Statutes (2008), expressly provides that:

> In the [penalty phase] proceeding, evidence may be presented as to any matter that the court deems relevant to the nature of the crime and the character of the defendant and shall include matters relating to any of the aggravating or mitigating circumstances enumerated in [the statute]. Any such evidence which the court deems to have probative value may be received, regardless of its admissibility, under the exclusionary rules of evidence, provided the defendant is accorded a fair opportunity to rebut any hearsay statements.

§ 921.141(1), Fla. Stat. As a result, this Court has stated that the statute provides the trial court "wide latitude" in determining the admissibility of evidence in the penalty phase and such decisions are reviewed for abuse of discretion. Snelgrove v. State, 107 So. 3d 242, 254 (Fla. 2012).

Regarding the limitations placed on the video presentation,

Ritchie lists five separate redactions from the video he contends were error: (1) the "driver" stating that in the 1980s a particular street was the location of a lot of gang violence; (2) the driver discussing an increase in gang activity following the 2010 extradition to the United States of a local community leader; (3) reports of shootings, travel warnings, restrictions, and commentary about the violence present in the neighborhood in which Richie grew up that occurred at the time his defense team was in Jamaica; (4) testimony about local police corruption and brutality; (5) and how newcomers to the neighborhood were either terrorized or killed.

Regarding the rebuttal, Ritchie contends that the witness, a Jamaican immigrant working as an intern working for the State Attorney's Office, Georgette Redley, based her testimony on speculation and her personal beliefs.

A. The trial court did not abuse its discretion in redacting portions of the video.

Ritchie initially objected to any redactions being made to the video. (DT:3597). Trial counsel noted that the court previously indicated that comments made by the taxicab driver should be redacted. (DT:3597-3598). While conceding that the taxicab driver is

not a "direct witness regarding Mr. Ritchie," trial counsel maintained the "he does give insight as to what the situation is there." (DT:3598). The court responded "we will argue about it when we get to it, but I think there is (sic) other friends and family members that provide insight into the neighborhood. So I don't think the driver is the only one that does that, but I'll take notes as we go along. All right." (DT:3598).

1. Maxfield Avenue was the location of a lot of gang violence in the 1980 decade.

The first statement Ritchie complains the trial court wrongfully redacted is the statement by Sheldon:

> They have a lot of gang related issues, family against family, friends against friends, gun runnings, weed. So it's a bit of challenge for this area that we're in, like most of our areas that is in Jamaica. This is Maxfield Avenue. Back in the 80's, it was a hot avenue or a road. Hot meaning a lot of gang violence and those stuff would be happening on this side. They have a shooting that we were told the other day, so hence we did not enter the area as a result of the tension. Don't know exactly who's against who and what exactly what was happening.

(DT:3638). The court stated in making its ruling, "You can show Maxfield Avenue, that's fine, but not the commentary about the shooting that just happened the other night and what's going on, because again, this defendant's in the U.S. for eight years."

(DT:3638) (emphasis added). According to the transcript, the court never prevented Ritchie from publishing the speaker's comment about Maxfield Avenue in the 1980's.

> 2. The increase in gang activity following the 2010 extradition to the United States of a local community leader

Next, Ritchie claims that the court wrongfully redacted a portion of the video addressing what he characterizes as an increase in gang activity after a community leader was extradited to the United States, describing it as "flourish[ing] even more than normal." (IB at 87).

> . . . lawlessness, what they do have -- is they will have The Don, which is the area leader of the area. And after that area, most of the time for some of these areas, they are the one that will basically control or try to control crime. The perfect example . . . he was extradited to the US in 2010. He was one of our Don here. So he would have been a example of Donship, showing these guys how it should be done. So we have quite a few gang members here.

(DT:3639).

It is not entirely clear that the point the speaker is making is that crime actually got worse after the extradition, suggesting it was there before – although without any indication as to how bad that was – or just that gangs now exist in the area and did in 2010. In any event, the court redacted this portion based on this happening in

2011 after Ritchie left Jamaica. (DT:3639). Still, the court allowed Ritchie to show the video depicting the neighborhood, but without the audio. (DT:3639).

3. Reports of shootings, travel warning restrictions, and commentary about violence present in the neighborhood in which Ritchie grew up that occurred at the time his defense team was in Jamaica

Next, Ritchie contends that violence presently occurring in Jamaica was improperly redacted. The court properly ruled that none of the "recent incidents of violence in Jamaica," including the State Department Travel Warning was appropriate because Ritchie has "now been gone from Jamaica for a while." (DT:3644). However, the court again ruled that Ritchie could still show the video without the commentary. (DT:3644).

4. Testimony about local police corruption and brutality

The next portion of the videotape involved a statement by Ritchie's brother, Trevor Ritchie, that if a person does not have a job and the police see you, "you a gunman. That is the police around here don't like you and plant a gun by you and tell you the shooter. Innocent people in jail right now will never pull a trigger at the police and police shoot them, kill them people, and say they got charge for

police shooting when nothing like that happen." The court found the statement irrelevant because the time period of the alleged police brutality is unspecified. (DT:3632-3633).

5. How newcomers to the neighborhood were either terrorized or killed

The final redacted excerpt about which Ritchie claims the trial court erred in excluding is that of a statement by Stacy Ann Taylor discussing that Taylor's friends and other people from a different community were shot and killed "and stuff like that," including the friend's house being burned down. The trial court questioned the relevancy because the time frame of the incident is not known, pointing out that Ritchie has been in the U.S. for eight years. In addition, the statement did not even mention Ritchie. The court noted that it "certainly isn't a reference to a time period when we can even assume he was there." Although trial counsel responded that it was his "understanding" that the neighborhood was bad for 10-20 years, the court ultimately determined that there was an insufficient nexus between what Taylor reported and the time period that Ritchie was living there. (DT:3630-3632). The court also noted that most of Sheldon's commentary is "rank hearsay." (DT:3634).

In addition, the court expressly permitted Ritchie to show the redacted portions of the video which depicted a view of the neighborhood, but without the redacted commentary. (DT:3634).

The court not only correctly redacted the video, it accommodated Ritchie by allowing the redacted portions to be shown and overruled multiple objections from the State. There is no abuse of discretion by the court demonstrated by Ritchie.

B. There was no fundamental error in permitting rebuttal to the video.

Ritchie also claims that the trial court erred by allowing the rebuttal testimony of Georgette Redley, a native of Jamaica, who lived there for 24 years before emigrating in 2005. (DT:4101). He contends that her testimony is speculative, irrelevant, prejudicial, and misleading, pointing out that she neither grew up in the same neighborhood as Ritchie, nor had personal knowledge of him or his family. However, her testimony was limited to either the specific or general matters with which she was familiar. In addition, although Ritchie did object to speculation at one point, it was limited to a particular question, and therefore, that is the only objection that was preserved. The balance of her testimony is reviewable only for

fundamental error. See McDonald v. State, 743 So. 2d 501, 505 (Fla. 1999).

Redley testified that she lived in St. Andrew, which is "right outside" Kingston, but which technically is included in the same parish. (DT:4102). She was asked, and did testify, about "typical discipline" in Jamaica and discussed that a "whooping" is not atypical. She never specifically explained what a "whooping" involved but did characterize it as "tough love." (DT:4103-4104). Her statement that "it's nothing" was not related to the manner of how physical the punishment was (or about any "whooping" Ritchie in particular received), but rather, was directed at the fact that physical punishment is so acceptable in Jamaica that "your neighbor can "whoop" you and it's nothing." (DT:4104). She never denied that Ritchie's "whoopings" were abusive.

After Redley explained that the ghetto areas in Jamaica had local leaders referred to as a "Don," she explained that this title comes with power and entitles the Don to a "certain level of respect." (DT:4110). She also explained that the title is passed down to the eldest son of the Don. She noted that the video contained comments about Ritchie's father being killed, she read newspaper articles that

were referred to in the video, as well as other reports, and discovered that they referred to Ritchie's father as such a leader. Immediately after this comment, she was asked about how community leaders live and are viewed in the area. When she began to discuss one person in the video who stated that she met Ritchie's father through politics, trial counsel objected to speculation, but the objection was overruled. (DT:4111). Because the objection was made, this objection to Redley's testimony would be the one ruling that the Court should review for abuse of discretion. Braddy v. State, 111 So. 3d 810, 858 (Fla. 2012).

Redley then explained that politicians in Jamaica team up with the local Don as a means of obtaining the votes of the Don's community, and in return, the politicians provide the Don money to support the community. She pointed out in the video that people kept describing how they respected Ritchie's father. (DT:4112). Although Ritchie's trial counsel objected to speculation regarding Redley's testimony about how the arrangement between politicians and local leaders generally work in Jamaica, her testimony is about her own general common knowledge. Similarly, Redley never expressly testified that Ritchie's home was one of the best in the garrison, but that based on her personal knowledge of Jamaican society, "if you're

the community leader, you're going to have one of the best homes in the garrison." (DT:4116).

Redley did express her personal skepticism about the 2002 crime statistics in Jamaica stating, "often times there's a lot of information about crimes and stuff happening in Jamaica that is not true." However, there was no objection made to this testimony, and the general purpose of cross-examination, which is when this testimony arose, is to point out a weakness in a witness's testimony such as Ritchie's counsel did with his follow-up question in which he exposed that Redley was aware of no statistics that contradicted the crime statistics about which he asked. On the other hand, Redley pointed out that the statistics contradicted her own personal experience of crime in the area. (DT:4119-4121).

Because it cannot be said that the jury would not have returned a verdict in favor of a death sentence without the testimony of Redley based on the totality of the evidence of aggravation introduced, there is no fundamental error in the court permitting her testimony, nor was Ritchie denied a fair penalty phase. See Conahan v. State, 844 So. 2d 629, 641 (Fla. 2003). If the court erred in allowing her testimony about Jamaica's local politics, the error was harmless.

ISSUE IV

THERE IS SUFFICIENT EVIDENCE TO CONVICT RITCHIE OF THE MURDER OF FW

Although Ritchie did not raise a claim regarding the sufficiency of the evidence for the conviction of FW's murder, this Court has the mandatory obligation to determine the sufficiency of the evidence to sustain the homicide conviction. Jones v. State, 963 So. 2d 180, 184 (Fla. 2007). See also Bush v. State, 295 So. 3d 179 (Fla. 2020) (abandoned its previous special standard of review for convictions based wholly on circumstantial evidence and adopted the substantial, competent evidence standard for all cases).

All medical experts who testified agreed that FW was strangled to death. Dr. Downs concluded that the 9-year-old victim was sexually battered at the time of her murder.

Wiley testified that FW was alive when Wiley left her at the apartment with Ritchie, but when Wiley was on her way back from going to purchase marijuana Ritchie informed her that FW had gone to the CVS to purchase candy and never returned to his apartment. Wiley further testified that the gate code Ritchie provided her was not the correct code, even after she contacted him to confirm it. When she did get into the complex with the help of a child who opened the

gate for her, and only after first seeking out FW at the CVS, she found Ritchie was shirtless and sweating. She also testified that Ritchie fabricated a story to tell the family that conveniently avoided mentioning his presence by convincing Wiley it would limit the family blaming her for leaving FW alone with a male stranger. There is also evidence that could lead a jury to reasonably infer that Ritchie manipulated Wiley into bringing FW to his apartment in the first place and talking Wiley into leaving FW alone with him in the apartment when Wiley went to purchase the marijuana he asked her about getting him.

Furthermore, the FBI agent who reviewed Ritchie's cell phone records and analyzed Ritchie's whereabout by determining what cell phone towers his phone used during this period of time, testified that when Ritchie left his apartment in the evening after he dropped Wiley off and returned home, he drove northwest over to the Courtney Campbell Causeway, which heads to Clearwater, where FW's body was recovered the following day, and then returned east towards Tampa before heading to St. Petersburg. In fact, at one point the FBI agent testified that Ritchie was either on the Causeway or in the water. Moreover, when questioned by the police about where he went

after dropping off Wiley, Ritchie stated that he only went first to Thonotosassa, which is east, and then to St. Petersburg where he stayed overnight.

There was also testimony by the Clearwater homicide detective about the scratches her new car sustained on the driver's side while driving the wrong way on the Causeway access road and the scratches all over the Lexus' passenger side. There also was the expert testimony that the sediment found in the Lexus had a high certainty of similarity to the sediment found at the location where FW's body was recovered and the shrubbery found on the Lexus was the same type of shrubbery planted along the Causeway, while none existed in Temple Terrace.

In the apartment, there was a pile of clothes, the two suitcases, the personal items laying on the floor as if dumped from something, and a broken luggage wheel. There were scuff marks on the patio, drag marks on the carpet running from the patio into the kitchen, scuff marks on the kitchen floor, and drag marks across the living room carpet. The broken luggage wheel and a broken zipper pull found in the Lexus were both from the same brand of luggage. The State argued that a missing piece of luggage was used by Ritchie to

hide FW's body and then drag it from the patio, across the apartment, and down to the car he was using.

Finally, there is the 911 hang-up call made from Ritchie's cell phone between the time Wiley drove the Lexus from the apartment to purchase the marijuana and return. Ritchie never picked up either of the police departments' two follow up calls or mentioned these calls to the police during his interview when they questioned him about the events of that night.

Therefore, there is substantial competent evidence in the record from which a jury could conclude that Ritchie is the person who strangled FW to death.

CONCLUSION

For the foregoing reasons, the State of Florida respectfully requests this Honorable Court affirm the judgment and sentence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of July, 2021, I electronically filed the foregoing with the Clerk of the Court by using the Florida Courts E-Portal Filing System which will send a notice of electronic filing to the following: Rachel Paige Roebuck and Steven L. Bolotin, Assistant Public Defenders, Post Office Box 9000-Drawer

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CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 14-point Bookman Old Style and the word count is 18,916 in compliance with Fla. R. App. P. 9.210.

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