

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC22-1547

LEO L. BOATMAN,

Appellant,

versus

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE CIRCUIT COURT OF THE EIGHTH
JUDICIAL CIRCUIT, IN AND FOR BRADFORD COUNTY, FLORIDA

INITIAL BRIEF OF APPELLANT

Respectfully submitted,

JOFFE LAW, P.A.
Attorney for Appellant
The 110 Tower Building
110 S.E. 6th Street
17th Floor, Suite 1700
Ft. Lauderdale, Florida 33301
Telephone: (954) 723-0007
Facsimile: (954) 723-0033

TABLE OF CONTENTS

	<u>Page</u>
Table of Contents	i
Request for Oral Argument	v
Table of Authorities	vi
Statement Regarding Record Citations	xvii
Statement of Jurisdiction	xvii
Standard of Review	xviii
Statement of the Issues	4
Statement of the Case:	
1. Course of Proceedings and Disposition in the Court Below	4
2. Statement of Facts	21
A. The Facts of the Crime	21
B. The Trial	23
C. The Penalty Phase	31
D. The Sentencing Hearing	37
Summary of Argument	38

Argument:

I.	The Trial Court Erred in Denying BOATMAN’S Motion to Adjudicate the Defendant Incompetent to Proceed. . .	41
II.	The Trial Court Erred in Denying BOATMAN’S Motion to Disqualify Judge	45
III.	The Trial Court Erred in Denying BOATMAN’S Motion in Limine to Exclude Gruesome, Inflammatory and Unnecessary Crime Scene and Autopsy Photographs and Video	50
IV.	The Trial Court Erred In Denying BOATMAN’S Motion And Renewed Motion To Preclude Penalty Phase.....	56
V.	The Trial Court Erred In Its Ruling As To Sequestering Jury and The Language To Be Presented To The Jury Regarding Publicity.....	62
VI.	The Trial Court Erred in Denying Boatman’s Motion to Use Photographs and Video During Voir Dire Examination of Prospective Jurors.....	67
VII.	The Trial Court Erred in Denying BOATMAN’S Motion to Strike Jury Panel.....	71

VIII. The Trial Court Erred In Denying Boatman's Challenges For Cause Of Jurors During Jury Selection	74
IX. The Trial Court Erred In Permitting The State To Introduce Inadmissible Evidence That Prejudicially Impacted BOATMAN	76
X. The Evidence Was Insufficient To Support BOATMAN'S Conviction For First Degree Murder	88
XI. The Trial Court Committed Reversible Error In Denying BOATMAN'S Motion For Judgment Of Acquittal	91
XII. The Trial Court Abused Its Discretion In Denying BOATMAN'S Request for The Trial Court to Include the Instruction of "Unnecessary Killing to Prevent Unlawful Act" in the Jury Instructions and Denying his Objections.....	94
XIII. The Trial Court Erred in Accepting BOATMAN'S Waiver of Jury during Penalty Phase	102
XIV. The Death Penalty is Unconstitutional For Failure to Narrow the Class of Those Eligible for the Penalty of Death.....	106

XV. The Trial Court Erred in Sentencing BOATMAN to Death Where There Were Mitigating Circumstances to Warrant a Life Sentence	113
Conclusion	129
Certificate of Compliance	130
Certificate of Service	131

REQUEST FOR ORAL ARGUMENT

The resolution of the issues in this action will determine whether LEO L. BOATMAN lives or dies. This Court has allowed oral argument in other capital cases in a similar procedural posture. A full opportunity to air the issues through oral argument would be appropriate in this case, given the seriousness of the claims involved and the fact that a life is at stake. Accordingly, Mr. Boatman requests that this Court permit oral argument.

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Pages</u>
<u>Alston v. State</u> , 723 So.2d 148 (Fla.1998)	xix,76
<u>Alston v. State</u> , 894 So.2d 46 (Fla.2004)	43,45
<u>Anderson v. State</u> , 841 So. 2d 390 (Fla. 2003)	126
<u>Atkins v. Virginia</u> , 536 U.S. 304 (2002).....	121,122, 126
<u>Blanco v. State</u> , 452 So.2d 520 (Fla.1984)	88
<u>Botte v. Pomeroy</u> , 497 So.2d 1275 (Fla. 4th DCA 1986)	51
<u>Boykin v. Alabama</u> , 395 U.S. 238, 89 S.Ct. 1709 (1969).....	102
<u>Bozeman v. State</u> , 714 So.2d 570 (Fla. 1st DCA 1998)	xx,94,101
<u>Bradley v. State</u> , 787 So.2d 732 (Fla. 2001).	88
<u>Brooks v. State</u> , 918 So.2d 181 (Fla.2005)	81
<u>Brown v. Dewell</u> , 131 Fla. 566, 573, 179 So. 695, 697-98 (1938)	47
<u>Brown v. St. George Island, Ltd.</u> , 561 So.2d 253 (Fla. 1990) .	49
<u>Bruno v. State</u> , 807 So.2d 55 (Fla. 2001).....	xvii
<u>Bryant v. State</u> , 34 Fla. 291 (Fla. 1894)	90
<u>Bush v. State</u> , 461 So.2d 936 (Fla.1985)	55
<u>Campbell Soup Company v. Roberts</u> , 676 So. 2d 435 (Fla. 2d DCA 1995).....	49
<u>Carnley v. Cochran</u> , 369 U.S. 506, 82 S.Ct. 884 (1962).....	102

TABLE OF AUTHORITIES
(Continued)

<u>Cases (Cont.)</u>	<u>Pages</u>
<u>Carratelli v. State</u> , 961 S.2d 312 (Fla. 2007)	xix
<u>Cheshire v. State</u> , 568 So. 2d 908 (Fla. 1990)	120
<u>Clausell v. Buckney</u> , 475 So.2d 1023 (Fla. 1st DCA 1985)	51
<u>Cozzie v. State</u> , 225 So. 3d 717 (Fla. 2017).....	127
<u>Crawford v. Washington</u> , 541 U.S. 36, 124 S.Ct. 1354 (2004)	80,82,87
<u>Crist v. Ervin</u> , 56 So.3d 745, 747 (Fla.2010)	xx
<u>Crosby v. State</u> , 97 So.2d 181 (Fla.1957)	49
<u>Cummings v. Dugger</u> , 862 F.2d 1504 (11th Cir.1989).....	66
<u>Dessaure v. State</u> , 891 So.2d 455 (Fla. 2004)	xviii,50
<u>Deauville Realty Co. v. Tobin</u> , 120 So. 2d 198 (Fla. 3d DCA 1960).....	49
<u>Dickenson v. Parks</u> , 104 Fla. 577, 140 So. 459 (1932)	47
<u>Donaldson v. State</u> , 722 So.2d 177 (Fla. 1998)	92
<u>Douglas v. State</u> , 878 So. 2d 1246 (Fla. 2004)	52,120
<u>England v. State</u> , 940 So. 2d 389 (Fla. 2006)	118,127
<u>Evans v. State of Florida</u> , 177 So.3d 1219 (Fla. 2015).....	81,87
<u>Fitzpatrick v. State</u> , 900 So.2d 495 (Fla. 2005)	92

TABLE OF AUTHORITIES
(Continued)

<u>Cases (Cont.)</u>	<u>Pages</u>
<u>Fla. Dep't of Revenue v. City of Gainesville</u> , 918 So.2d 250, 256 (Fla.2005)	106
<u>Ford v. State</u> , 374 So.2d 496 (Fla.1979) <i>cert. denied</i> , 445 U.S. 972, 100 S.Ct. 1666 (1980)	xviii-xix
<u>Foster v. State</u> , 778 So.2d 906 (Fla.2001)	62
<u>Furman v. Georgia</u> , 408 U.S. 238 (1972)	106
<u>Gill v. State</u> , 14 So. 3d 946 (Fla. 2009)	118
<u>Gore v. State</u> , 24 So.3d 1 (Fla.2009)	xviii
<u>Great Am. Ins. Co. v. 2000 Island Blvd. Condo. Ass'n.</u> , 153 So. 3d 384 (Fla. 3d Dist. 2014)	47
<u>Gregg v. Georgia</u> , 428 U.S. 153 (1976)	107,125
<u>Grim v. State</u> , 971 So.2d 85 (Fla.2007).....	xx
<u>Guzman v. State</u> , 238 So. 3d 146 (Fla. 2018)	xix
<u>Hall v. State</u> , 78 Fla. 420 (Fla. 1919).....	90
<u>Hardy v. State</u> , 716 So.2d 761 (Fla.1998)	43
<u>Hayslip v. Douglas</u> , 400 So.2d 553 (Fla. 4th Dist. 1981)	47
<u>Hernandez v. State</u> , 946 So.2d 1270 (Fla. 2d DCA 2007).....	81
<u>Hertg v. State</u> , 803 So. 2d 629 (Fla. 2001)	52
<u>Hooper v. State</u> , 476 So.2d 1253 (Fla.1985)	94

TABLE OF AUTHORITIES
(Continued)

<u>Cases (Cont.)</u>	<u>Pages</u>
<u>Howell v. Winkle</u> , 866 So.2d 192 (Fla. 1st DCA 2004)	xx,101
<u>Hughes v. State</u> , 901 So.2d 837 (Fla. 2005)	129
<u>Hurst v. Florida</u> , 136 S.Ct. 616 (2016).....	58
<u>Ivey v. Allstate Ins. Co.</u> , 774 So.2d 679 (Fla. 2000)	56,101,129
<u>Jennings v. State</u> , 123 So.3d 1101 (Fla. 2013)	52
<u>Kelley v. State</u> , 637 So. 2d 972 (Fla. 1 st DCA 1994).....	129
<u>Kearse v. State</u> , 662 So. 2d 677 (Fla. 1995)	120
<u>Larkins v. State</u> , 655 So.2d 95 (Fla.1995).....	55
<u>Law Offices of Herssein & Herssein, P.A. v.</u> <u>United Servs. Auto. Ass'n</u> , 271 So. 3d 889 (Fla. 2018)	xviii
<u>Lewis v. State</u> , 530 So.2d 449 (Fla. 1st Dist. 1988).....	47
<u>Light v. State</u> , 841 So.2d 623 (Fla. 2d DCA 2003)	89
<u>Livingston v. State</u> , 441 So.2 d 1083 (Fla. 1984)	46-47
<u>Lowenfield v. Phelps</u> , 484 U.S. 231, 244 108 S. Ct. 546 (1988).....	106
<u>Lyles v. State</u> , 742 So. 2d 842 (Fla. 2nd Dist. 1999)	47
<u>Lynch v. State</u> , 841 So.2d 362 (Fla.2003).....	xx,120
<u>Mansfield v. State</u> , 758 So.2d 636 (Fla.2000)	xix,55

TABLE OF AUTHORITIES
(Continued)

<u>Cases (Cont.)</u>	<u>Pages</u>
<u>Mason v. State</u> , 597 So.2d 776 (Fla.1992).....	44
<u>McDuffie v. State</u> , 970 So.2d 312 (Fla. 2007)	xviii,50
<u>Milton v. State</u> , 993 So.2d 1047 (Fla. 1st DCA 2008).....	80-81
<u>Muhammad v. State</u> , 782 So.2d 343 (Fla.2001).....	105
<u>Mu'Min v. Virginia</u> , 500 U.S. 415, 111 S.Ct. 1899 (1991)	62
<u>Ocha v. State</u> , 826 So. 2d 956 (Fla. 2002)	91
<u>Owens-Corning Fiberglas Corporation v. Parsons</u> , 644 So.2d 340 (Fla. 1st DCA 1994)	50
<u>Pagan v. State of Florida</u> , 830 So.2d 792 (Fla. 2002)	xix
<u>Palmes v. State</u> , 397 So.2d 648 (Fla.1981)	94
<u>Pangbum v. State</u> , 661 So. 2d 1182 (Fla. 1995)	52
<u>Parker v. State</u> , 3 So. 3d 974 (Fla. 2009).....	xviii
<u>Penry v. Lynaugh</u> 492 U.S. 302 (1989)	126
<u>Peters v. State</u> , 874 So.2d 677 (Fla. 4th DCA 2004).....	75
<u>Pham v. State</u> , 70 So. 3d 485 (Fla. 2011)	127
<u>Pope v. State</u> , 679 So.2d 710 (Fla. 1996).....	52
<u>Richardson v. State</u> , 666 So.2d 223 (Fla. 2d DCA 1995)	73
<u>Roby v. Kingsley</u> , 492 So.2d 789 (Fla. 1st DCA 1986).....	51

TABLE OF AUTHORITIES
(Continued)

<u>Cases (Cont.)</u>	<u>Pages</u>
<u>Roper v. Simmons</u> , 543 U.S. 551 (2005).....	121,122, 126
<u>Santiago-Gonzalez v. State</u> , 301 So.3d 157 (Fla. 2020).....	59
<u>Scott v. State</u> , 717 So.2d 908 (Fla.1998)	45
<u>Sifford v. Trans Air, Inc.</u> , 492 So.2d 407 (Fla. 4th DCA 1986)	91
<u>Simmons v. State</u> , 934 So.2d 1100 (Fla. 2006).....	88
<u>Slomowitz v. Walker</u> , 429 So.2d 797 (Fla. 4 th DCA 1983)	93
<u>Smith v. State</u> , 424 So.2d 726 (Fla.1982)	94
<u>Stanford v. Kentucky</u> , 492 U.S. 361 (1989)	126
<u>State v. Carr</u> , 336 So.2d 358 (Fla.1976)	105
<u>State v. DiGuilio</u> , 491 So.2d 1129 (Fla.1986).....	74
<u>State ex rel. Brown v. Dewell</u> , 131 Fla. 566, 179 So. 695 (1938)	47
<u>State ex rel. Davis v. Parks</u> , 141 Fla. 516, 194 So. 613 (1939)	48
<u>State v. Gray</u> , 435 So. 2d 816 (Fla. 1983).....	60,61
<u>State v. Mischler</u> , 488 So.2d 523 (Fla. 1986)	93
<u>State v. Polak</u> , 598 So.2d 150 (Fla. 1st DCA 1992)	88
<u>State v. Poole</u> , 297 So.3d 487 (Fla. 2020).....	59

TABLE OF AUTHORITIES
(Continued)

<u>Cases (Cont.)</u>	<u>Pages</u>
<u>State v. Smith</u> , 951 So.2d 954 (Fla. 1st DCA 2007)	129
<u>State v. Vazquez</u> , 419 So.2d 1088 (Fla.1982).....	xviii
<u>State v. Williams</u> , 742 So.2d 509 (Fla. 1st DCA 1999)	xx
<u>United States v. Carvajal</u> , 2005 WL 476125 (S.D. N.Y. 2005).	129
<u>United States v. Kloda</u> , 133 F.Supp.2d 345 (S.D. N.Y. 2001).	129
<u>Urbín v. State</u> , 714 So. 2d 411 (Fla. 1998)	127
<u>Valle v. Moore</u> , 837 So.2d 905 (Fla.2002).....	105
<u>Way v. State</u> , 760 So.2d 903 (Fla.2000)	xx
<u>Wilding v. State</u> , 427 So.2d 1069 (Fla. 2d DCA 1983)	73
<u>Williams v. Osking</u> , 105 So.3d 653 (Fla. 4th DCA 2013)	xix
<u>Williams v. State</u> , 143 So.2d 484 (Fla.1962)	49
<u>Williams v. State</u> , 37 So. 3d 187 (Fla. 2010)	118
<u>Windom v. State of Florida</u> , 886 So.2d 915 (Fla. 2004).....	67
 <u>Florida Statutes</u>	
§90.403.....	50,76,77
§741.30.....	111
§741.315.....	111
§775.21.....	111

TABLE OF AUTHORITIES
(Continued)

<u>Florida Statutes (Cont.)</u>	<u>Pages</u>
§775.082(l)(b)	59
§782.04.....	60
§782.04(1)	108
§782.04(1)(a).....	58
§782.04(1)(a)(1)	4,89
§782.04(l)(b)	59
§782.04(2)	89
§782.07(1)	89
§782.084(1)(b).....	5
§784.046.....	111
§874.03.....	111
§916.12.....	43
§921.141.....	58,59,60
§921.141(1)	102,104
§921.141(5)(h).....	8,16
§921.141(5)(l)	8,16
§921.141(6)	5,108
§921.141(6)(a).....	5,9,10

TABLE OF AUTHORITIES
(Continued)

<u>Florida Statutes (Cont.)</u>	<u>Pages</u>
§921.141(6)(b)	5,9,10
§921.141(6)(h)	5
§921.141(6)(i)	5
§921.141(7)(b)	6,15
§921.141(7)(e)	7,16
§921.141(8)	8,16
§944.47(1)(c)	4
 <u>Florida Rules of Appellate Procedure</u>	
Rule 9.142	xvii
Rule 9.045(b)	130
 <u>Florida Rules of Criminal Procedure</u>	
Rule 3.140(a)(1)	60
Rule 3.202(b)	6,15
Rule 3.202(c)	6,15
 <u>Florida Standard Jury Instruction</u>	
7.1	95
7.7(b)	94,101

TABLE OF AUTHORITIES
(Continued)

Florida Constitution

Pages

Article I, Section 15(a).....	56,57,60, 61
Article I, Section 17	8,16,112
Article. V, Section 3(b)(1).....	xvii
Article V, Section 3(b)(9).....	xvii

United States Constitution

Sixth Amendment	58
Eighth Amendment	58,106,107 112,121, 125, 126
Fourteenth Amendments	107

Other Authorities

American Psychiatric Association, Diagnostic And Statistical Manual Of Mental Disorders, Fifth Edition (Dsm-5). May 2013 at 275.....	122-123,124
Kirchmeier, Jeffrey L., "Casting a Wider Net: Another Decade of Legislative Expansion of the Death Penalty in the United States, 34 Pepp L. Rev. 1 (2006).....	108,112

TABLE OF AUTHORITIES

(Continued)

<u>Other Authorities (Cont.)</u>	<u>Pages</u>
Sec, Liebman, James and Lawrence C, Marshall, "Symposium: The Jurisprudence of Justice Stevens: Panel I: Criminal Justice: Less is Better: Justice Stevens and the Narrowed Death Penalty," 74 Fordham L. Rev. 1607 (March 2006)	111

STATEMENT REGARDING RECORD CITATIONS

This is an appeal by LEO L. BOATMAN, of his conviction and death penalty sentence entered by the Trial Court of the Eighth Judicial Circuit in and for Bradford County, Florida. LEO L. BOATMAN, the Appellant shall be referred to as “BOATMAN”. The State shall be referred to as “State” or “Appellee”.

Citations to the pleadings, transcripts and orders filed in the Trial Court will be referenced by “R” followed by the Trial Court’s designated docket entry number. Citations to the trial transcript shall be referenced by “RT” followed by the court reporters page number. Citations to the penalty phase transcript shall be referenced by “PT” followed by the court reporters page number

STATEMENT OF JURISDICTION

BOATMAN has presented several issues which involve mixed questions of law and fact, thus a *de novo* standard applies. *Bruno v. State*, 807 So.2d 55 (Fla. 2001).

The Supreme Court of Florida has jurisdiction pursuant to Fla.R.App.P. 9.142; and Article. V, Section 3(b)(1) and Article V, Section 3(b)(9), Florida Constitution.

STANDARD OF REVIEW

“[W]hen analyzing a competency determination on appeal, this Court applies the competent, substantial evidence standard of review to the trial court's findings.” *Gore v. State*, 24 So.3d 1, 10 (Fla.2009).

The standard of review of a trial judge's determination on a motion to disqualify is de novo. *Law Offices of Herssein & Herssein, P.A. v. United Servs. Auto. Ass'n*, 271 So. 3d 889, 893 (Fla. 2018) (quoting *Parker v. State*, 3 So. 3d 974, 982 (Fla. 2009)).

The standard of review of a Trial Court's ruling on a Motion in Limine is abuse of discretion. See *Dessaure v. State*, 891 So.2d 455, 466 (Fla.2004). Such discretion is limited by the rules of evidence, and a Trial Court abuses its discretion if its ruling is based on an “erroneous view of the law or on a clearly erroneous assessment of the evidence.” *McDuffie v. State*, 970 So.2d 312, 326 (Fla.2007)

The standard of review for cases involving the consolidation or severance of charges is one of abuse of discretion. *State v. Vazquez*, 419 So.2d 1088 (Fla.1982).

Generally, sequestration of a jury during trial is within the discretion of the Trial Court absent a showing of harm or prejudice to the defense. *Ford*

v. State, 374 So.2d 496 (Fla.1979), *cert. denied*, 445 U.S. 972, 100 S.Ct. 1666 (1980).

A Trial Court's decision to admit photographic evidence will not be disturbed absent an abuse of discretion. *Mansfield v. State*, 758 So.2d 636 (Fla.2000).

The denial of a motion to strike the jury panel is reviewed for abuse of discretion. *Williams v. Osking*, 105 So.3d 653, 655 (Fla. 4th DCA 2013). See *Guzman v. State*, 238 So. 3d 146, 155 (Fla. 2018).

The standard of review of a Trial Court's discretionary decision regarding the granting or denying of a challenge for cause is for manifest error. *Carratelli v. State*, 961 S.2d 312 (Fla. 2007).

A Trial Court's ruling on the admissibility of evidence will be upheld absent an abuse of discretion. See *Alston v. State*, 723 So.2d 148, 156 (Fla.1998).

The standard of review of whether there is sufficient evidence to support a conviction is *de novo*. *Pagan v. State of Florida*, 830 So.2d 792 (Fla. 2002).

The standard of review of the Trial Court's denial of a motion for a judgment of acquittal is *de novo*. *State v. Williams*, 742 So.2d 509 (Fla. 1st DCA 1999).

A Trial Court's decision on the giving or withholding of a proposed jury instruction is reviewed under the abuse of discretion standard of review. *Bozeman v. State*, 714 So.2d 570, 572 (Fla. 1st DCA 1998). *Howell v. Winkle*, 866 So.2d 192, 197 (Fla. 1st DCA 2004).

A defendant may waive the advisory jury in the penalty phase of a capital case, provided the waiver is voluntary and intelligent. *Grim v. State*, 971 So.2d 85, 101 (Fla.2007).

Determination of whether a statute is constitutional is a pure question of law which is reviewed *de novo*. When the question involves both factual and legal issues, the Court will review a trial court's factual findings for competent, substantial evidence, while the legal question is reviewed *de novo*. See *Crist v. Ervin*, 56 So.3d 745, 747 (Fla.2010).

This Court's "task on appeal [of a death sentence case] is to review the record to determine whether the trial court applied the right rule of law for each aggravating circumstance and, if so, whether competent substantial evidence supports its finding." *Lynch v. State*, 841 So.2d 362, 368 (Fla.2003) (quoting *Way v. State*, 760 So.2d 903, 918 (Fla.2000)).

STATEMENT OF THE ISSUE

I.

**WHETHER THE TRIAL COURT ERRED IN DENYING
BOATMAN'S MOTION TO ADJUDICATE THE DEFENDANT
INCOMPETENT TO PROCEED.**

II.

**WHETHER THE TRIAL COURT ERRED IN DENYING
BOATMAN'S MOTION TO DISQUALIFY JUDGE.**

III.

**WHETHER THE TRIAL COURT ERRED IN DENYING
BOATMAN'S MOTION IN LIMINE TO EXCLUDE GRUESOME,
INFLAMMATORY AND UNNECESSARY CRIME SCENE AND
AUTOPSY PHOTOGRAPHS AND VIDEO.**

IV.

**WHETHER THE TRIAL COURT ERRED IN DENYING
BOATMAN'S MOTION AND RENEWED MOTION TO
PRECLUDE PENALTY PHASE.**

V.

WHETHER THE TRIAL COURT ERRED IN ITS RULING AS TO SEQUESTERING JURY AND THE LANGUAGE TO BE PRESENTED TO THE JURY REGARDING PUBLICITY.

VI.

WHETHER THE TRIAL COURT ERRED IN DENYING BOATMAN'S MOTION TO USE PHOTOGRAPHS AND VIDEO DURING VOIR DIRE EXAMINATION OF PROSPECTIVE JURORS.

VII.

WHETHER THE TRIAL COURT ERRED IN DENYING BOATMAN'S MOTION TO STRIKE JURY PANEL.

VIII.

WHETHER THE TRIAL COURT ERRED IN DENYING BOATMAN'S CHALLENGES FOR CAUSE OF JURORS DURING JURY SELECTION.

IX.

WHETHER THE TRIAL COURT ERRED IN PERMITTING THE STATE TO INTRODUCE INADMISSIBLE EVIDENCE THAT PREJUDICIALLY IMPACTED BOATMAN.

X.

**WHETHER THE EVIDENCE WAS INSUFFICIENT TO
SUPPORT BOATMAN'S CONVICTION FOR FIRST DEGREE
MURDER.**

XI.

**WHETHER THE TRIAL COURT COMMITTED REVERSIBLE
ERROR IN DENYING BOATMAN'S MOTION FOR JUDGMENT
OF ACQUITTAL.**

XII.

**WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN
DENYING BOATMAN'S REQUEST FOR THE TRIAL COURT
TO INCLUDE THE INSTRUCTION OF "UNNECESSARY
KILLING TO PREVENT UNLAWFUL ACT" IN THE JURY
INSTRUCTIONS AND DENYING HIS OBJECTIONS.**

XIII.

**WHETHER THE TRIAL COURT ERRED IN ACCEPTING
BOATMAN'S WAIVER OF JURY DURING PENALTY PHASE.**

XIV.

**WHETHER THE DEATH PENALTY IS UNCONSTITUTIONAL
FOR FAILURE TO NARROW THE CLASS OF THOSE
ELIGIBLE FOR THE PENALTY OF DEATH.**

XV.

**WHETHER THE TRIAL COURT ERRED IN SENTENCING
BOATMAN TO DEATH WHERE THERE WERE MITIGATING
CIRCUMSTANCES TO WARRANT A LIFE SENTENCE.**

STATEMENT OF THE CASE

1. Course of Proceedings and Disposition in the Court Below.

On November 4, 2019, the State of Florida issued a two count True Bill charging BOATMAN and William E. Wells with premeditated murder in violation of *Fla.Stat.* §782.04(1)(a)(1) (Count I); and charging BOATMAN and William E. Wells with having been lawfully committed to custody of the Department of Corrections of the State of Florida, and being lawfully confined at Florida State Prison, a state correctional institution, did then and there while in such lawful confinement, possess, carry upon his person, or have under his control, a weapon, to-wit: a sharp instrument and/or cloth ligatures, in violation of *Fla.Stat.* §944.47(1)(c) (Count II). (R.43-45).

On December 13, 2019, the State filed their Notice of Intent to Seek Death Penalty alleging that “[p]ursuant to Florida Statute 782.084(1)(b), the State of Florida hereby provides notice to the Defendant of the following list of Aggravating Factors pursuant to Florida Statute 921.141(6) that the State intends to prove at sentencing trial: (1) F.S. 921.141(6)(a): the Capital Felony was committed while the defendant was previously convicted of felony and under sentence of imprisonment. (2) F.S.921.141(6)(b): the Capital Felony was committed while the defendant was previously convicted of another Capital Felony or of a felony involving the use or threat of violence to another person.(3) F.S.921.141(6)(h): the Capital Felony was especially heinous, atrocious, or cruel. (4) F.S.921.141(6)(i): the Capital Felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral obligation or legal justification.”(R.61-62)

On August 10, 2020, BOATMAN’S Trial Counsel filed a Motion to Adjudicate the Defendant Incompetent to Proceed and to Schedule Hearing to Determine Housing During Restoration Plan. (R.87-88) On February 25, 2021, the Trial Court entered its Order denying BOATMAN’S Motion to Adjudicate the Defendant Incompetent to Proceed. (R.99-100). The Trial Court ruled that BOATMAN was competent to proceed. (R.99).

On August 6, 2021, the Trial Court held a Pre Trial-Conference. At the conference BOATMAN moved for continuance due to the problems that Trial Counsel is having scheduling the depositions of key witnesses. (R.151-168). The Trial Court did not grant or deny the request at the hearing. (R.167).

Because of the Trial Court's opinion regarding the actions of defense counsel, BOATMAN filed his Motion to Disqualify on August 6, 2021. (R.169-176). On August 10, 2021, the Trial Court denied BOATMAN'S Motion to Disqualify. (R.180-182).

On April 22, 2022, BOATMAN filed his Notice of Intent to Present Expert Testimony of Mental Mitigation. (R.211-212). BOATMAN filed said Notice "pursuant to Rule 3.202(b) and (c) of the Florida Rules of Criminal Procedure and provides the following notice of intent to present expert testimony of mental mitigation. It is the intention of the defendant to present, during the penalty phase of the trial, if any, expert testimony of a mental health professional, who has tested, evaluated, or examined the Defendant, in order to establish statutory or non-statutory mental mitigating circumstances. Those experts are Dr. Michael Quinones and Dr. Geoffrey Colino who are expected to provide expert testimony regarding 921.141(7)(b) extreme mental or emotional disturbance, (f) capacity to conform conduct was substantially impaired, and (h) existence of other

factors in the Defendant's background that would mitigate against the imposition of the death including but not limited to: family trauma, sexual abuse, community trauma, abuse by others, neglect by others, educational and societal deficits, incarceration and commitment of the Defendant and others, exposure to violence, the effects of intoxicants on the Defendant and those around the Defendant, brain injury or trauma, and/or developmental delays, and potentially 921.141(7)(e) acted under extreme duress or under the substantial domination of another." BOATMAN listed Dr. Michael Quinones and Dr. Geoffrey Colino as his witnesses. (R.211).

On April 26, 2022, BOATMAN filed his Motion to Preclude Penalty Phase if the State Secures a Conviction of First-Degree Murder. (R.213-233)

On April 26, 2022, BOATMAN filed the following Motions:

- (a) Motion in Limine to Prohibit the Prosecutor from using Peremptory Challenges to Strike Jurors Who are Death Scrupled but Are not Excludable for Cause and For Appropriate Relief. (R.234-240)
- (b) Motion for Individual and Sequestered Voir Dire as to Death Penalty and Publicity. (R.241-244)
- (c) Motion to Take Reasonable Steps to Limit the Effect of Courtroom Security Measure on the Outcome of the Trial. (R.245-246)

- (d) Motion to Declare Florida's Capital Sentencing Scheme Unconstitutional as Violative of Either Amendment, Corresponding Article 1, Section 17 Florida Constitution and Evolving Standards of Decency. (R.247-258).
- (e) Motion to Declare Florida Death Penalty Statute Unconstitutional as It Fails to Narrow the Class of those Eligible for the Sentence of Death. (R.259-265).
- (f) Motion to Declare Section 921.141(5)(h), *Fla.Stat.* Unconstitutional. (R.266-270).
- (g) Motion to Declare Section 921.141(5)(l), *Fla.Stat.* Unconstitutional. (R.271-286).
- (h) Motion to Declare Section 921.141(8), *Fla.Stat.* Unconstitutional. (R.287-299).
- (i) Motion for Juror Information in Timely Manner and Proposal for Juror Questionnaire. (R.303-318)
- (j) Motion for Discovery of Prosecutorial Investigations of Prospective Jurors. (R.319-320).
- (k) Motion to Record Jury Venire Qualifying. (R.321-323).

- (l) Motion in Limine to Exclude Gruesome, Inflammatory and Unnecessary Crime Scene and Autopsy Photographs and Video. (R.324-326).
- (m) Motion to Use Photographs and Video during Voir Dire Examination of Prospective Jurors. (R.327-332).
- (n) Motion for Additional Peremptory Challenges. (333-336).
- (o) Motion for Disclosure of Impeaching Information. (R.337-338).
- (p) Motion to Compel Disclosure of Mitigating Circumstances. (R.339-341).
- (q) Motion to Preclude Improper Argument and Notice of Objection. (R.342-346)
- (r) Motion for Standing Objection on Federal and Florida Constitutional Grounds. (R.347-349).
- (s) Motion to Exclude Evidence or Argument Designed to Create Sympathy for the Deceased (Victim Impact Evidence. (R.350-361).
- (t) Motion Requesting Proffer of "Victim Impact Evidence". (R.362-363)
- (u) Motion in Limine to Prohibit Doubling 921.141(6)(a) and 921.141(6)(b). (R.364-365).
- (v) Motion for Preservation of Jury Materials. (R.366-367).

(w) Motion in Limine to Prohibit Doubling 921.141(6)(a) and 921.141(6)(b). (R.368-369).

On April 27, 2022, BOATMAN filed another Motion in Limine. (R.372-382).

On May 3, 2022, the Trial Court granted BOATMAN'S Motion for Standing Objection on Federal and Florida Constitutional Grounds. The Trial Court held that ORDERED AND ADJUDGED "[w]henver defense counsel articulates an objection the court will recognize the appropriate Federal and Florida constitutional grounds even if not specifically cited by counsel." (R.383-384).

On May 3, 2022, the Trial Court denied BOATMAN'S Motion for Additional Peremptory Challenges without prejudice and held "[t]he Defendant may move the Court for additional peremptory challenges during voir dire as outlined in the Florida Rules of Criminal Procedure." (R.385-386)

On May 3, 2022, the Trial Court granted BOATMAN'S Motion for Disclosure of Impeaching Information. (R.387-388). The Trial Court held: "[t]he State of Florida shall provide to opposing counsel a summary of any criminal histories derived for all witnesses in this cause. Furthermore, that State shall provide opposing counsel with the following information if contained within their files: records of criminal convictions for the witness,

pending prosecutions where the witness is a witness/victim/defendant, and any promise of benefit from the State to the witness (including but not limited to deferred prosecution agreements, pre-trial intervention agreements, or any other promise to dismiss charges against the witness.” (R.387).

On May 3, 2022, the Trial Court granted BOATMAN’S Motion Requesting Proffer. (R.389-390). The Trial Court held that: “[s]hould the State of Florida intend to present victim impact evidence it will first be proffered outside the presence of the jury.” (R389).

On May 3, 2022, the Trial Court denied BOATMAN’S Motion for Individual and Sequestered Voir Dire as to Death Penalty and Publicity. (R.391-392). The Trial Court held: “[f]or the reasons articulated on the record the Court does not feel that individual and sequestered voir dire is necessary. The Court further denies the Defendant’s request to question the jurors in small groups.” (R.391).

On May 3, 2022, the Trial Court granted in part and denied in part BOATMAN’S Motion to Record Jury Venire Qualifying. (R.393-394). The Trial Court held: “[d]efense counsel will be permitted to be present during the qualification of the prospective jurors and may articulate any objections to the Court at that time. The Court will then go on record to properly address counsel’s objections, if any.

On May 3, 2022, the Trial Court granted in part and denied in part BOATMAN'S Motion for Juror Information in Timely Manner and Proposal for Juror Questionnaire. (R.395-396). The Trial Court held: "[t]he Court grants counsel's request for the list of jurors summoned for trial in this cause. However, for the reasons articulated on the record the Court denies counsel's request to send a juror questionnaire." (R.395).

On May 3, 2022, the Trial Court denied BOATMAN'S Motion for Preservation of Jury Materials. (R.397-398).

On May 3, 2022, the Trial Court denied BOATMAN'S Motion to Use Photographs and Video during Voir Dire Examination of Prospective Jurors.(R.399-400). The Trial Court held: "[n]either State's counsel nor Defendant's counsel may publish photos or videos of this cause during voir dire. At their discretion counsel for the State and/or counsel for the Defendant may describe the video to the jurors in order to properly evaluate their ability to consider mitigation and otherwise reach a lawful decision during a penalty phase proceeding." (R.400).

On May 3, 2022, the Trial Court denied BOATMAN'S Motion to Compel Disclosure of Mitigating Circumstances as moot holding that "[t]he State of Florida indicated to the Court and defense counsel that they were not aware of any mitigating circumstances in this cause. Furthermore, as discussed on

the record the Court declines to order the State to meet their ongoing obligation to turn over favorable evidence to the Defendant. The Court expects that the State will meet its ethical duty to turn over favorable evidence immediately upon becoming aware of it". (R.401-402).

On May 3, 2022, the Trial Court granted in part and denied in part BOATMAN'S Motion to Take Reasonable Steps to Limit the Effect of Courtroom Security Measure on the Outcome of the Trial. (R.403-404). The Trial Court held: "[t]he Court denies counsel's request to limit the amount of Bradford County Sheriff Deputies and Florida Department of Corrections Officers in the courtroom during trial. However, as discussed during the hearing on Defendant's motion the Court will limit the restraints on Mr. Boatman during the trial to the use of an appropriate shock device. The Defendant shall not be in leg shackles or hand shackles in the presence of the jury."(R.403).

On May 3, 2022, the Trial Court granted BOATMAN'S Motion for Discovery of Prosecutorial Investigations of Prospective Jurors. (R.405-406). The Trial Court held: "[t]he State of Florida shall provide to opposing counsel a summary of any criminal histories derived from their use of FCIC/NCIC to investigate a prospective juror. Furthermore, that State shall provide opposing counsel with the following information if contained within their files:

records of criminal convictions, pending prosecutions where the juror is a witness/victim/defendant, and any promise of benefit from the State to the prospective juror (including but not limited to deferred prosecution agreements, pre-trial intervention agreements, or any other promise to dismiss charges against the prospective juror). (R.405).

On May 3, 2022, the Trial Court denied BOATMAN'S Motion to Preclude Improper Argument and Notice of Objection for being premature. (R.407-408). The Trial Court held that "[t]he Court will consider contemporaneous objections during the trial and rule at that time." (R.407).

On May 11, 2022, BOATMAN filed his Motion to Declare Florida Capital Sentencing Scheme, Arbitrary, Capricious and Unconstitutional Based on the Lack of Proportionality Review, and to Bar Death as a Possible Penalty. (R.413-421).

On July 25, 2022, BOATMAN filed the following Motions:

- (a) Motion to Use Photographs and Videos During Voir Dire Examination of Prospective Jurors. (R.422-423).
- (b) Motion for Individual and Sequestered Voir Dire as to Death Penalty and Publicity. (R.424-425).
- (c) Motion for Juror Questionnaire. (R.426-428).

(d) Motion to Compel Disclosure of Impeaching Information. (R.429-430).

On August 7, 2022, BOATMAN filed his First Amended Notice of Intent to Present Expert Testimony of Mental Mitigation. (R.437-438). Pursuant Rule 3.202(b) and Rule 3.202(c) of the Florida Rules of Criminal Procedure, BOATMAN provided the following notice of intent to present expert testimony of mental mitigation. It is the intention of the defendant to present, during the penalty phase of the trial, if any, expert testimony of a mental health professional, who has tested, evaluated, or examined the Defendant, in order to establish statutory or non-statutory mental mitigating circumstances. Those experts are Dr. Michael Quinones, Dr. Geoffrey Colino, Dr. Joseph Wu, and Dr. Tonia Werner who are expected to provide expert testimony regarding 921.141(7)(b) extreme mental or emotional disturbance, (f) capacity to conform conduct was substantially impaired, and (h) existence of other factors in the Defendant's background that would mitigate against the imposition of the death including but not limited to: family trauma, sexual abuse, community trauma, abuse by others, neglect by others, educational and societal deficits, incarceration and commitment of the Defendant and others, exposure to violence, the effects of intoxicants on the Defendant and those around the Defendant, brain injury or trauma, and/or developmental

delays, and potentially 921.141(7)(e) acted under extreme duress or under the substantial domination of another. (R.438).

On April 29, 2022, a hearing was held regarding the various motions filed by BOATMAN. (R.10-61-1155). Most of BOATMAN'S Motions were argued and ruled upon. The only pending motions remaining to be ruled upon were the following:

(a) Motion to Declare Florida's Capital Sentencing Scheme Unconstitutional as Violative of Either Amendment, Corresponding Article 1, Section 17 Florida Constitution and Evolving Standards of Decency. (R.247-258).

(b) Motion to Declare Florida Death Penalty Statute Unconstitutional as It Fails to Narrow the Class of those Eligible for the Sentence of Death. (R.259-265).

(c) Motion to Declare Section 921.141(5)(h), *Fla.Stat.* Unconstitutional. (R.266-270).

(d) Motion to Declare Section 921.141(5)(l), *Fla.Stat.* Unconstitutional. (R.271-286).

(e) Motion to Declare Section 921.141(8), *Fla.Stat.* Unconstitutional. (R.287-299).

(f) Motion to Preclude Penalty Phase if the State Secures a Conviction of First Degree Murder. (R.213-233)

During the April 29, 2022 hearing the Trial Court concluded: "I've read your other motions. I just want to state this right now for our record. You have a motion to preclude the penalty phase. You have a motion to declare Florida's capital sentencing scheme unconstitutional. You have a motion to declare the Florida death penalty statute unconstitutional, you have a motion to declare Section 921, 141, 5H, 51, and Sub A all unconstitutional .

So my first question is, because, again, I mentioned it the other day. You all have fully articulated and encapsulated your argument to preserve those matters of issues for Mr. Boatman and for this case. None of those require testimony or evidentiary type of presentation, do they?(R.1133-1134)

MR. EISENMENGER: Not that I'm aware of. I'll say Mr. Miller has ultimately written some of them. I've written some of them and Mr. Goldman has written some of them.

THE COURT: Right, but you are not going to be calling witnesses to testify or presenting evidence in support of the arguments on the constitutionality of the statutes? (R.1134)

MR. EISENMENGER: That is a realistic constitutionality. It's not that I'm anticipating. Again, I'd have to defer to Mr. Miller.

THE COURT: And do you disagree that currently, the body of law is contrary to the positions you are raising here?

MR. EISENMENGER: It is and it is not, and that's why I'd like the opportunity to have a full blown hearing at least as it relates to one of the motions that I'm prepared to argue which is the motion to preclude the State from proceeding to penalty phase. I don't agree it's entirely contrary. I think I think what the Supreme Court has done is carried forward some opinions that they need to revisit and they need to take a look at, and I'd like the opportunity to tell the Court why that is and to, at the very least, get the Court to make some sort of ruling.” (R.1133-1135).

The trial was from August 15, 2022 through August 19, 2022. (RT.1-1125). On August 19, 2022, the jury found BOATMAN guilty of first degree murder as charged in Count I and guilty of possession of a weapon by state prisoner as charged in Count II. (R.474).

On August 21, 2022, BOATMAN filed his Motion to Prevent Introduction of Prior Crimes of Violence. (R.475-478).

On August 25, 2022, BOATMAN, filed his Waiver of Jury Trial During Penalty Phase, *pro se*. (R.482).

On August 21, 2022, BOATMAN filed his Eighth Reciprocal Discovery and listed documents that BOATMAN may introduce during the scheduled

penalty phase: (1) Missing persons article regarding Shelia Boatman and Obituary of Shelia Boatman.(2) Orlando Sentinel article about murder of Mary Ann Price. (3) Victim Impact Statement of Carla Blackshear. (4) DJJ CIS Abuse Report forms concerning Leo Boatman. (5) DJJ Behavioral Evaluation of Leo Boatman dated March 1999. (6) DJJ Booking photos of Leo Boatman. (7) Letter from Steve Schick dated 6/5/1999. (8) Suncoast Center letter dated 7/26/ 1 999. (9) Commitment order for Leo L. Boatman - juvenile court dated 7/28/1999. (10) DJJ Psychological evaluation of Leo Boatman dated 8/1 1/2003. (11) Department of Corrections Medical Records for Leo L. Boatman (12) Letters from Leo Boatman to Irene Sullivan, (dated 7/29/10; 4/26/11; 7/7/19; 7/11/19) (13) Incomplete school records from Pinellas County School Board. (14) Various photos of Leo Boatman.

On August 27, 2022, BOATMAN filed his Ninth Reciprocal Discovery and listed the following documents generated by the Defense experts or otherwise to be introduced during the penalty phase of this case: (1) Charlotte County - Depo Transcript of Dr. James Bynum (previously provided by email) (2) Jury Instructions - Charlotte County (previously provided by email) (3) Curriculum Vitae of Dr. Michael Quinones (previously provided by email) (4) Report of Dr. Michael Quinones (previously provided by email) (5) Materials/Notes from Dr. Geoffrey Colino: (a) Leo Boatman - Drugs of Abuse

Checklist (b) Leo Boatman - Epilepsy Spectrum Questionnaire (c) Leo Boatman - History of Present Illness (H&P) (d) Leo Boatman - Mini Mental State Examination (MMSE) (e) Leo Boatman - Neurological Injury Review (6) Curriculum Vitae of Dr. Geoffrey Colino (7) Professional Certificates of Dr. Geoffrey Colino (a) Florida Forensic Examiner Training - August 2015 (b) Hologic QDR-1000 X-Ray Bone Densitometer Operator Certificate - April 1994 (c) Lunar DPX Bone Densitometers course certificate - July 1994 (d) Society for Clinical Densitometry Membership Certificate.(R.690-691).

BOATMAN'S Penalty Phase began on August 22, 2022 and ended August 30, 2022. (RT.1125-2073).

On September 30, 2022, BOATMAN filed his Sentencing Memorandum. (R.695-737). The State filed their Sentencing Memorandum on October 1, 2022. (R.738-750).

On November 9, 2022, the Trial Court entered its Judgement finding BOATMAN guilty of first-degree murder and possession of a weapon by a state prisoner. (R.752-755). BOATMAN was sentenced to death. (R.756-781). On November 9, 2022, BOATMAN filed his Notice of Appeal. (R.751). As such, BOATMAN'S appeal now ensues.

2. Statement of Facts.

A. Facts of the Crime.

On July 5, 2019, BOATMAN, along with his co-defendant, William E. Wells, entered the dayroom in I-Wing in Florida State Prison with the premeditated intent to kill the victim, William Chapman. Florida State Prison is a maximum- security prison. Upset that their Close Management level would not be reduced, BOATMAN and Wells decided to kill a fellow inmate as an act of revenge against the Department of Corrections. Ultimately, they chose inmate William Chapman as the intended victim because he had “disrespected” BOATMAN on the prison wing. In preparation for the murder, BOATMAN and Wells acquired shanks and ligatures to facilitate the killing.

BOATMAN walked over to the victim, speaks to him, and the two walk out of the dayroom camera’s view into an area that contains a blind spot. Wells then moves toward where BOATMAN and Chapman are standing and wraps a white ligature around Chapman’s neck. While Wells is strangling Chapman, BOATMAN begins punching him. Chapman can be seen struggling as the two co-defendants are choking and hitting him. BOATMAN then moves in front of the dayroom door, blocking it with his foot. He then pulls out two large shanks, one in each hand, tied to his wrists. During the attack, correctional officers unsuccessfully attempted to open the dayroom

door, blocked by BOATMAN with his body and foot. As the attack continued, BOATMAN and Wells stabbed Chapman in his eyes, neck, torso, back, and face.

The correctional officers were able to slightly open the dayroom door and deploy a chemical agent into the room. Once the door was ajar, Chapman places his fingers in the gap, trying to open the door and escape. However, Chapman was unable to get away from BOATMAN and Wells' attack. Wells then began leaning against the dayroom door while BOATMAN continued stabbing Chapman. BOATMAN then gives Wells one of the shanks. Wells begins stabbing Chapman, ultimately leaving one of the shanks in the victim's neck. As he and Wells are stabbing Chapman, BOATMAN continues to communicate with the correctional officers who were situated outside of the dayroom door. Ultimately, Chapman falls to the floor; and BOATMAN and Wells take a short break. BOATMAN subsequently stomps on the victim seven times. After which, he stabs the victim with the second shank, leaving it in the back of his neck. BOATMAN then stomps on the shank with such strength that it bends the metal. The entire attack lasted approximately 12 minutes. Once BOATMAN and Wells were certain that Chapman was dead, they allowed the correctional officers into the room.

Ultimately, Chapman was unable to be revived. And it was determined that his death was the result of being beaten, stabbed, and strangled.

B. The Trial.

The Trial began August 15, 2022, and ended August 19, 2022. (RT.1-1124).

The State called Eric Prock, who is a corrections officer and the rank of Sergeant. (RT.512-514). Sergeant Prock testified in July of 2019, he was on Delta Shift in wing “I” or “India wing”. Sergeant Prock testified that I wing was three floors and 96 cells. (RT.514).

Sergeant Prock testified that Officer Merchain, Officer Davis and himself were on Delta Shift. Officer Merchain was keeping an eye on the inmates of the dayroom and Sergeant Prock and Officer Davis were continuing wing checks, counts, anything else that needed to be on the wing. (RT.549).

Sergeant Prock testified that Officer Merchain “yelled out to me that he saw another inmate choking an inmate or rolling around on the ground with him” in the dayroom. Sergeant Prock testified that he and Officer Davis ran over to see what was going on in the dayroom. (RT.550).

Sergeant Prock testified that he did not recognize the two inmates but that they were both Caucasian and that when he broke the “seal on my

chemical agents and went to open the door, and at that time Mr. Boatman jumped onto the door.” (RT.551-552).

Sergeant Prock testified that other officers came to help open the door and were able to open it a crack and applied chemical agents into the room to try to get them to cease what they were doing. (RT.555). Sergeant Prock testified that “[o]nce our OIC [officer in charge] showed up, saw what was happening he ordered them to stop and activated the DART team, which is our emergency response team with weapons. (RT.555-556).

Sergeant Prock testified that they would bring 12 inmates down to the dayroom and that all the inmates are CM3 or close management because of disciplinary referral (DR). (RT.562). Sergeant Prock testified that the inmate would put his clothes on the bar if they wanted to go to the dayroom and the officers inspect their clothes and their body to make sure they had no weapons or anything and then they sit them on the other side and go to the next inmate. (RT.563). Sergeant Prock testified that everyone was coughing and their eyes were watering because of the chemical spray, but that BOATMAN wasn’t coughing and his eyes weren’t watering. (RT.564-565).

Sergeant Prock testified that they found two weapons and that they were with Mr. Chapman. (RT.567). Sergeant Prock testified that they found another weapon in the dayroom the day after the incident that was around

the TV and that there are weapons in DOC even though the officers try to keep them out. (RT.568).

Sergeant Prock testified that on July 5th there were 12 inmates in the dayroom sitting close together and that Officer Merchain was sitting down in a chair and that all alleged prison rapes must be reported and that Assistant Warden McClellan does the recording of said allegations. (RT.575-576).

The State then called Brandon Woods who is a correctional officer with the rank of captain at Florida State Prison and he was a captain on July 5, 2019. (RT.581-583). Captain Woods was the supervising captain on July 5, 2019. (RT.591). Captain Woods testified that there are approximately 1300 inmates and around 500 employees. (RT.591).

Captain Woods testified that the prison has max management, close management and open population dorms. (RT.591). Captain Woods testified that the inmates in the open dormitories have very little contact with the max management and close management and if they do, they are supervised by staff. (RT.593).

Captain Woods testified that he heard the call and went to I Wing and “it was kind of a chaotic situation. There was several staff members outside of a dayroom, with several inmates inside a dayroom. And I saw two inmates who were—appeared to be attacking and really were attacking another

inmate.” (RT.596). Captain Woods testified he could see into the dayroom through the windows. Captain Woods saw the weapons and told the staff to stop and he activated the DART team. Captain Woods testified that the victim was a CM3 inmate. (RT.602).

Captain Woods testified that he was familiar with PREA and that it is the Prison Rape Elimination Act and that his officers all know about it. Captain Woods testified that there are multiple complaints regarding rape and sexual harassment and that there are reports of rape in the prison. (RT.604-605). Captain Woods testified that once the DART team arranged the inmates got on the ground. (RT.607). Captain Woods testified that there are incidents of violence throughout the prison. (RT.609).

Captain Woods testified that Mr. Chapman was pulled out and was unconscious and was handcuffed because he still had at least one weapon in his body and they did not want him waking up and grabbing the weapon and stabbing the staff. (RT.613). Captain Woods testified no officers were harmed and he does not know if Mr. Chapman made a statement or when he lost consciousness. (RT.614).

The State then called David Meacham who is a special agent for the Florida Department of Law Enforcement. (RT.632). Agent Meacham was working for FDLE and was called into a scene involving a homicide at the

Florida State Prison. (RT.634). Agent Meacham was paired up with Agent Carlisle who was the lead investigator. (RT.636). Agent Meacham testified that BOATMAN agreed to speak with him and that he did take a statement from BOATMAN. (RT.639).

The State then called Dr. William Hamilton, who is the district medical examiner of the Eighth District of Florida. Dr. Hamilton testified that their office conducts public death investigations which include homicides, suicides, accidents suddenly when in apparent good health, put in prison or police custody, when a public health hazard may have caused the death, deaths due to occupation and there's a few other categories. (RT.659-660).

Dr. Hamilton testified that he did the postmortem examination of William Chapman on the 6th day of July 2019. (RT.663). Dr. Hamilton testified that Mr. Chapman's death was homicide. (RT.676).

Dr. Hamilton testified that homicide is the killing of one human being by another and homicide includes first-degree murder, second degree murder, manslaughter, and an act in self-defense that resulted in the death of another human being. (RT.677-678).

Dr. Hamilton testified that if there were no other injuries that he would have certified that the strangulation of Mr. Chapman caused his death.

(RT.679). Dr. Hamilton testified he could not determine when Mr. Chapman lost consciousness. (RT.681).

The State called John Garrett Carlisle who is a special agent for the Florida Department of Law Enforcement. (RT.683). Agent Carlisle was the on-call agent on July 5, 2019. (RT.687). Agent Carlisle testified that the term “trying” or “try me” refers to someone trying to make sexual advance towards another inmate or trying to challenge another inmate. (RT.693). Agent Carlisle testified that “prospecting” “is when inmates will try to recruit people for certain things, whether it’s bringing in contraband in or whether it’s trying to get someone to do something for a sexual favor or some sort of gratification.” (RT.694). Agent Carlisle testified that “fuck boy” is “often used to sort of be, like, a sex toy or someone that, you know, people have sex with a lot of times.” (RT.695).

Agent Carlisle testified that while interviewing BOATMAN that BOATMAN said the victim tried some gay shit and that “try” could mean something sexual and that inmates that are targeted by other inmates are sometimes known as bitches or boys and even ho’s. (RT.735).

Agent Carlisle testified that he did not know when the weapons were crafted and that there were other weapons located in the prison. (RT.736). Agent Carlisle testified that it was possible that BOATMAN could be at risk if

it was put out there by kite, that he was a bitch or a boy or a fuck boy. (RT.737).

The State rested and BOATMAN'S Trial Counsel moved for judgment of acquittal. Said motion was denied. (RT.770-71).

BOATMAN then called Jeffrey McClellan to the Stand. (RT.795-824)

BOATMAN then took the stand. (RT.824-896)

BOATMAN then called Maurice Bell to the stand. (RT.896). Mr. Bell testified he was an inmate at Florida State Prison and was in CM back in 2019 for two years and is currently at Bardford County Jail. (RT.896-897). Mr. Bell testified that you could have sex in the dayroom and in the Kiosks and in the bathroom if you sneak around. (RT.897). Mr. Bell testified that if someone puts your name out there you have to beat them up, hurt them, do whatever you feel like you need to do to clean your face. Mr. Bell testified that prison is about violence and respect. (RT.898).

BOATMAN then called Reginald Arline to the stand. (RT.905). Mr. Arline is in CM at Florida State Prison and has known BOATMAN since childhood and that he is transgender. (RT.906). Mr. Arline testified that BOATMAN had earned the privilege of being out of his cell to wax the floors and that the officers liked him and he was trying to get out of CM and into the general public. Mr. Arline testified that everyone gets depressed when

they work to get out of CM and are denied. (RT.906-907). Mr. Arline testified you have less privileges than regular DOC inmates and that BOATMAN has been on CM for a long time. (RT.909). Mr. Arline testified that you do not go to the CO'S because you are labeled a snitch and your life is in danger. (RT.910). Mr. Arline testified that if you're thought of as being weak "[y]our life can be in serious danger because other people is going to feel like that they can try you, that you ain't going to stand up for yourself." (RT.911-912).

Mr. Arline testified that being a boy means you are gay and a bitch that you are weak and that snitches and child molesters are both at the bottom of the barrel. (RT.912). Mr. Arline testified about a kite that came to his cell and he intercepted it. Mr. Arline also testified that Will Chapman was gay but didn't want nobody to know except for whoever he did it with. (RT.914). Mr. Arline testified that Maurice Bell is gay and that everybody knows of his reputation. Mr. Arlin testified that BOATMAN was not gay and that "[t]he kite had his name in it and was homosexual activity and stuff like that. And I couldn't believe it because he don't even put himself in that situation." (RT.916) Mr. Arline testified that Will Chapman disrespected other inmates including BOATMAN and that Chapman "had a habit or problem telling the wing to suck his penis and calling peoples outside their name, disrespecting everybody, including the officers and that Chapman and Bell both

disrespected people sexually and verbally. (RT.916-917). Mr. Arline testified that to say “suck my penis—suck my dick” is an insult and it is “an insult that a person have to do something because they’re being disrespected and disrespected of their manhood.” (RT.917).

C. The Penalty Phase

The penalty phase was from August 22, 2022 through August 30, 2022. (PT.1125-2073)

The State called Eric Dice, who was an officer with Marion County Sheriff’s Office, who testified about the murders committed by BOATMAN in the Ocala National Park. (PT.1238-1208). Officer Dice testified that BOATMAN gave a statement even when told not to by his attorney, and advised the Officer that he did not plan on killing the victims and that he did not like touching the dead bodies. (PT.1205-1207).

That State called Jospeh Hamner who was a law enforcement inspection with the Department of Corrections and testified about a complaint regarding BOATMAN at Cross City Corrections Facility. (PT.1208-1212). Mr. Hamner testified about the incident with Mr. Mr. Apicella. (PT.1208-1235). During his testimony, Mr. Hamner acknowledged that BOATMAN pled guilty to the charges from said incident. (PT.1237).

The State then called Kevin Michael Ortiz, who is a senior inspector for the Department of Corrections. (PT.1238). Inspector Ortiz testified about an incident that occurred on August 18, 2010, at Charlotte Correctional. (PT.1242). Inspector Ortiz testified that “there was an incident between two inmates in one of the close management cells and that one was seriously injured” and that it was between BOATMAN and Ricky Morris (PT.1250-1251) Inspector Ortiz testified that Ricky Morris was involved in another altercation with another inmate before his altercation with BOATMAN and that Ricky Morris attempted to gouge out the other inmate’s eyes. (PT.1253). Inspector Ortiz testified that he did not know of any problems prior between Ricky Morris and BOATMAN and that Ricky Morris was put into BOATMAN’S cell. (PT.1258). Inspector Ortiz was investigating the discrepancies in the reports of the two corrections officers involved in this matter and no determination was made as to the truth of the officers’ reports. (PT.1262-1264). Inspector Ortiz testified that Ricky Morris died and that BOATMAN was convicted of third-degree murder. (PT.1261). Inspector Ortiz testified that Ricky Morris had a mental health history of hallucinations, bipolar disorder, mood swings and suicidal behavior. (PT.1268-1269).

The State then called Special Agent John Carlisle who is an agent for Florida Department of Law Enforcement and who was the lead investigator

in this case. (PT.1270). Special Agent Carlisle testified that the altercation in this case occurred July 5th – 15 days after BOATMAN and Wells had their close management reviews where they were told they would remain in Close Management. (PT.1271-1272). Special Agent Carlisle testified that about a year prior to this attack, Chapman was charged with aggravated battery on an inmate where he stabbed an inmate in Madison Correctional Institute and that a couple days before this attack BOATMAN received a “kite” from Chapman. (PT. 1284-1286)

The State rested and over BOATMAN’S objection, the State read a letter to the jury from the victim’s sister. (PT.1286-1288)

BOATMAN then called Eric Martin who is currently housed at Appalachia Correctional Institute. (PT.1289) Mr. Martin testified he has known BOATMAN since 1996 when they were housed in the Polk Halfway House. (PT.1289). Mr. Martin testified that respect was very important in prison and that if someone is trying to take it away from you then “[y]ou’ve got to handle it, you know? Just got to do what you got to do, survive the prison.” (PT.1296). Mr. Martin testified that the small and young white boys are pressured and threatened into having sex or being hurt. (PT.1296-1297). Mr. Martin testified that Wells is a lunatic and that BOATMAN is a good guy.

(PT.1298). Mr. Martin testified that reputation is based upon how you treat other inmates not an inmate's criminal history. (PT.1304).

BOATMAN called Kein Griffin to the stand who testified that "a kite came to him, talking, like -- basically, like, pitching Leo off as he's a homosexual. And from my understanding, the kite got to Leo, and it just -- that's just how everything just transpired from there. He was tried as a homosexual, and he's not a homosexual" and that kind of rumor is very dangerous. (PT.1306-1310).

BOATMAN then moved for a directed verdict as to cold, calculated, and premeditated. Trial Counsel argued "[w]e believe the State has failed to prove, even in the light most favorable, competent and substantial evidence of heightened premeditation." (PT.1322-1324). Said Motion was denied. (PT.1324).

BOATMAN then called Irene Sullivan who was a former judge for the Sixth Circuit, Pinellas County. Judge Sullivan spent nine years as a juvenile judge. (PT.1332). Judge Sullivan testified that she wrote a book "called *Raised by the Courts: One Judge's Insight into Juvenile Justice*. And I used the true stories, for the 12 years I was there, of the kids I saw in court, their real stories, both foster children, delinquent children, and their families." (PT.1340). Judge Sullivan testified that she reached out to BOATMAN and

communicated with him about his life and how he was doing in prison and how hard it was for him as he was mostly in solitary confinement. Judge Sullivan testified she would send him stories and that he was very curious about the world. Judge Sullivan testified that she obtained permission to review his juvenile files and the DCF files regarding his childhood. (PT.1340-1346). Judge Sullivan testified that she visited BOATMAN twice in prison, once in Charlotte County and once in Florida State Prison. (PT.1346). Judge Sullivan identified a letter from BOATMAN to her discussing his life and the problems he had. Said letter was published to the jury. (PT.1354-1382)

BOATMAN called Tonia Werner who is a psychologist who evaluated BOATMAN on June 4th with regards to competency to proceed, as he had had several suicide attempts and actually been admitted to Shands Hospital. (PT.1632-1633).

BOATMAN called Felicia Sullivan, who is a mitigation specialist. (PT.1676). Ms. Sullivan testified about whom she spoke to in BOATMAN'S family and the history of BOATMAN and his family. (PT.1676-1689).

Ms. Sullivan testified that she did receive Leo's file from the Department of Family and Children Services and there's a notation that BOATMAN was born while his mother was a patient at G. Pierce Wood Hospital and that his father was a psychiatric patient at said facility. And then

the first entry from those records is from January 8 of 1990, when Leo turns three. And there was a report filed that -- alleging neglect and threatened harm towards Leo and Rose Boatman on the part of their mother. Ms. Sullivan testified that the pattern continues, where DCF documents mother's either neglect or abuse of the children. (PT.16890) Ms. Sullivan also reported that there is a report that documents the grandmother's troubles and abuse of BOATMAN and that the grandmother gives up her rights to BOATMAN after she's already adopted him, and he enters into the foster care system. (PT.1689).

BOATMAN then called Dr. Michael Quinones who is a clinical psychologist. (PT.1698-1699) Dr. Quinones is qualified as a forensic clinical psychologist and also specializes in trauma-based psychotherapy. (PT.1700-1701). Dr. Quinones met with BOATMAN a year ago for two four-hour sessions. (PT.1706). Dr. Quinones testified that "I came to the conclusion that Leo Boatman was exposed to a large number of adverse childhood experiences. He was also faced with development when he -- he was raised in a development that was primarily or frequently just chaotic, hostile, inconsistent, and traumatizing." (PT.1707).

Other witnesses were called to testify about BOATMAN'S traumatic life and issues. (PT.1699-2012).

BOATMAN'S Trial Counsel argued that "Mr. Boatman deserves life in prison. Of this there is no question. Yet his life still has value. This Court must be willing to consider and weigh his profound mitigation as the constitution and the judicial canons require. This Court should recognize that but for his own self-destructive behavior, the very manifestation of his neurological conditions, Mr. Boatman would have been granted life, even mercy, by at least one juror of his peers. As was true for the jury, this Court is neither compelled nor required to give Mr. Boatman death. He should be given life because Mr. Boatman's life has value, even if he doesn't correct it. He deserves compassion, even if he's guarded or unable to give it. And finally he deserves mercy, even if he doesn't want it." (PT.2067).

D. The Sentencing Hearing

The sentencing hearing was held on November 9, 2022. (R.938-951).

There were no witnesses and BOATMAN chose not to testify.

As such, the Trial Court found "Mr. Boatman, I do find, based on everything that was presented, that the aggravating circumstances that were proven beyond a reasonable doubt in your case far outweigh, to the Court, the mitigating circumstances which the Court has heard and considered. And so as to the charge of first-degree murder of William Chapman in the indictment, the Court adjudicates you, Leo Boatman, guilty of that offense,

and I do hereby sentence you to death. It is ordered that you, Leo Boatman, be taken by the proper authority to the Florida Department of Corrections to be housed there until your date of execution. It's further ordered that on such scheduled date you, Leo Boatman, be put to death. You are hereby notified that this sentence is subject to automatic review by the Florida Supreme Court." (R.947-948).

The Trial Court further ordered as to Count II, that "as to that count, then, in the indictment, it would be an adjudication of guilt. It'd be five years in the Department of Corrections, that sentence to run consecutive to any other number of years sentences that you're serving in the Department of Corrections, which would mean you're not entitled to any credit time served; so it'd be zero days and costs." (R.949-950).

SUMMARY OF ARGUMENT

The Trial Court erred in finding BOATMAN competent to proceed where Dr. Werner's competency evaluation found that BOATMAN was incompetent to proceed.

The Trial Court erred in denying BOATMAN'S Motion to Disqualify Judge. The denial of said motion prevented BOATMAN from having a fair and just trial.

The Trial Court erred in denying BOATMAN'S Motion in Limine. Said denial allowed gruesome and prejudicial evidence to be introduced in order to prejudice the jury against BOATMAN.

The Trial Court erred in denying BOATMAN'S Motion and Renewed Motion to Preclude Penalty Phase. The indictment in the instant case fails to allege the aggravating elements that would "death qualify" the Defendant for a capital penalty. As it currently reads, it outlines the elements of a non-capital first-degree murder and therefore, the penalty phase should not have followed the trial.

The Trial Court erred in failing to use the language requested by BOATMAN to determine publicity related issues to the case at hand and BOATMAN.

The Trial Court erred in denying BOATMAN'S Motion to use photographs and video during voir dire. Said request was made to assure that BOATMAN was being judged by a fair and impartial jury. Said denial was clearly a violation of BOATMAN'S due process rights.

The Trial Court erred in denying BOATMAN'S Trial Counsel's *ore tenus* motion during voir dire to strike the entire panel. Said denial prevented BOATMAN from the right to an unbiased jury.

The Trial Court erred in denying BOATMAN'S Challenges for Cause of four prospective jurors. Said denial caused BOATMAN to use his peremptory strikes when cause should have been granted.

The Trial Court erred in allowing evidence to be introduced by failing to sustain BOATMAN'S Trial Counsel's objections. The Trial Court's errors allowed highly prejudicial evidence to be introduced against BOATMAN and said action violated BOATMAN'S due process rights.

The evidence was insufficient to convict BOATMAN of first-degree murder. Viewing the evidence in the light most favorable to the State, there was still ample evidence to support a finding of not guilty as to the charge of first-degree murder.

The Trial Court committed reversible error in denying BOATMAN'S Motion for Judgment of Acquittal. BOATMAN'S motion should have been granted by the Trial Court where the testimony and evidence presented at the trial did not support BOATMAN'S conviction for first degree murder.

The Trial Court abused its discretion by denying BOATMAN'S request for a special jury instruction of the unnecessary killing to prevent an unlawful act.

The Trial Court erred in accepting BOATMAN'S waiver of jury during the penalty phase. BOATMAN did not have the ability to knowingly and intelligently waive having a jury decide his penalty.

BOATMAN argues that the Trial Court erred in sentencing him to death where the death penalty is unconstitutional for failing to narrow the class of those eligible for the penalty of death.

The Trial Court erred in sentencing BOATMAN to death where there were mitigating circumstances that warranted a sentence of life. The Trial Court erred in failing to find that there were mitigating circumstances to support a sentence of life imprisonment instead of the death penalty. Therefore, the Trial Court's sentence was unreasonable in light of the totality of the circumstances, to wit, BOATMAN'S history of mental health and other mitigating factors.

ARGUMENT

I.

THE TRIAL COURT ERRED IN DENYING BOATMAN'S MOTION TO ADJUDICATE THE DEFENDANT INCOMPETENT TO PROCEED.

On August 10, 2020, BOATMAN'S Trial Counsel filed a Motion to Adjudicate the Defendant Incompetent to Proceed and to Schedule Hearing

to Determine Housing During Restoration Plan. (R.87-88) BOATMAN'S Trial Counsel alleged that "counsel provided the Court with a copy of Dr. Werner's competency evaluation opining that the Defendant is incompetent to proceed. Dr. Werner noted that Mr. Boatman meets the diagnostic criteria . . . as described in the DSM-5. An essential feature of this disorder is presence of emotional and behavioral symptoms in response to an identifiable stressor. Mr. Boatman's identifiable stressor is his housing in close confinement with no identifiable end in sight. Dr. Werner noted that Mr. Boatman's distress is also related to his extensive history of childhood abuse. Dr. Werner notes that Mr. Boatman, while having an adequate understanding of the proceedings, is not currently capable of making a free and rational decision as it relates to his decision to plea or go forward with a trial. Specifically, Mr. Boatman's short-term goal of changing his housing arrangements is without a full appreciation of the long-term consequences of the plea. Assistant State Attorneys Luis Bustamante and Bruce Helling have indicated they will not seek a second evaluation of Mr. Boatman, however they are not in a position to stipulate to Dr. Werner's report." (R.87)

On February 25, 2021, the Trial Court entered its Order denying BOATMAN'S Motion to Adjudicate the Defendant Incompetent to Proceed.

(R.99-100). The Trial Court ruled that BOATMAN was competent to proceed.
(R.99).

In order to determine whether a defendant is competent to proceed at trial or in postconviction proceedings, the postconviction court must discern whether he “has sufficient present ability to consult with counsel with a reasonable degree of rational understanding—and whether he has a rational as well as a factual understanding of the pending collateral proceedings.” *Alston v. State*, 894 So.2d 46, 54 (Fla.2004) (quoting *Hardy v. State*, 716 So.2d 761, 763 (Fla.1998)).

Fla.Stat. §916.12 provides the following:

(1) A defendant is incompetent to proceed within the meaning of this chapter if the defendant does not have sufficient present ability to consult with her or his lawyer with a reasonable degree of rational understanding or if the defendant has no rational, as well as factual, understanding of the proceedings against her or him.

...

(3) In considering the issue of competence to proceed, an examining expert shall first consider and specifically include in his or her report the defendant’s capacity to:

- (a) Appreciate the charges or allegations against the defendant.
- (b) Appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the defendant.
- (c) Understand the adversarial nature of the legal process.
- (d) Disclose to counsel facts pertinent to the proceedings at issue.
- (e) Manifest appropriate courtroom behavior.
- (f) Testify relevantly.

In addition, an examining expert shall consider and include in his or her report any other factor deemed relevant by the expert.

(4) If an expert finds that the defendant is incompetent to proceed, the expert shall report on any recommended treatment for the defendant to attain competence to proceed. In considering the issues relating to treatment, the examining expert shall specifically report on:

(a) The mental illness causing the incompetence.

(b) The completion of a clinical assessment by approved mental health experts trained by the department to ensure safety of the patient and the community.

...

(e) The likelihood of the defendant's attaining competence under the treatment recommended, an assessment of the probable duration of the treatment required to restore competence, and the probability that the defendant will attain competence to proceed in the foreseeable future.

The examining expert's report to the court shall include a full and detailed explanation regarding why the alternative treatment options referenced in the evaluation are insufficient to meet the needs of the defendant.

In the case at hand, BOATMAN filed Dr. Werner's competency evaluation opining that the Defendant is incompetent to proceed. Dr. Werner's report clearly included all that was required for the Trial Court to find that BOATMAN suffered from mental illness which made him incompetent to proceed and assist in his own defense.

"Where there is sufficient evidence to support the conclusion of the lower court, [this Court] may not substitute [its] judgment for that of the trial judge." *Mason v. State*, 597 So.2d 776, 779 (Fla.1992). "A trial court's

decision regarding competency will stand absent a showing of abuse of discretion.” *Alston*, 894 So.2d at 54. “[A] trial court's decision does not constitute an abuse of discretion ‘unless no reasonable person would take the view adopted by the trial court.” *Scott v. State*, 717 So.2d 908, 911 (Fla.1998). In the case at hand, the Trial Court clearly abused its discretion in finding BOATMAN competent to proceed. Therefore, based upon the Trial Court’s ruling, this Court must substitute its judgment and vacate BOATMAN’S conviction and have him again evaluated to determine if he can proceed with a new trial.

II.

THE TRIAL COURT ERRED IN DENYING BOATMAN’S MOTION TO DISQUALIFY JUDGE

On August 6, 2021, BOATMAN filed his Motion to Disqualify the Trial Judge. (R.169-176). Trial Counsel argued: “The Court’s retort to Mr. Miller mischaracterized the previous representations by undersigned counsel, (see the transcripts of the 2021 Case Management Conferences filed as docket items 117-120 of the court file). . . The effect of this exchange with counsel has left Mr. Boatman with the impressions outlined in his sworn statement in support of disqualification . . . Mr. Boatman’s beliefs as outlined in his statements are objectively reasonable in light of the Court’s statements on

July 28th and are a lawful basis for disqualification as discussed below.”
(R.170).

On August 10, 2021, the Trial Court denied said Motion and ruling that Defendant's motion is hereby DENIED as legally insufficient. (R.180-181).

The Florida Supreme Court discussed the law governing recusal of a trial judge in *Livingston v. State*, 441 So.2d 1083, 1085-86 (Fla. 1984). Citing prior cases, the Court said: Prejudice of a judge is a delicate question to raise but when raised as a bar to the trial of a cause, if predicated on grounds with a modicum of reason, the judge against whom raised, should be prompted to recuse himself. No judge under any circumstances is warranted in sitting in the trial of a cause whose neutrality is shadowed or even questioned. It is a matter of no concern what judge presides in a particular cause, but it is a matter of grave concern that justice be administered with dispatch, without fear or favor or the suspicion of such attributes. The outstanding big factor in every lawsuit is the truth of the controversy. Judges, counsel and rules of procedure are secondary factors designed by the law as instrumentalities to work out and arrive at the truth of the controversy. The judiciary cannot be too circumspect, neither should it be reluctant to retire from a cause under circumstances that would shake the confidence of litigants in a fair and impartial adjudication of the issues raised. *Livingston v. State*, 441 So.2d

1083, 1085-86 (Fla. 1984) citing *Dickenson v. Parks*, 104 Fla. 577, 582-84, 140 So. 459, 462 (1932.) The Court went on to note that “it is not a question of how the judge feels; it is a question of what feeling resides in the affiant’s mind and the basis for such feeling.” *State ex rel. Brown v. Dewell*, 131 Fla. 566, 573, 179 So. 695, 697-98 (1938). See also *Hayslip v. Douglas*, 400 So.2d 553 (Fla. 4th Dist. 1981). The question of disqualification focuses on those matters from which a litigant may reasonably question a judge’s impartiality rather than the judge’s perception of his ability to act fairly and impartially.” *Livingston* at 1086.

A Motion to Disqualify a Judge is legally sufficient when the alleged facts would place a reasonably prudent person in fear of not receiving a fair and impartial trial. *Lewis v. State*, 530 So.2d 449 (Fla. 1st Dist. 1988). When a judge takes actions that give the appearance of favoring one side over the other, recusal or disqualification is proper. *Lyles v. State*, 742 So. 2d 842, 843 (Fla. 2nd Dist. 1999) (“Whether intentional or not, the trial judge gave the appearance of partiality by taking *sua sponte* actions which benefit the State.”); see also *Great Am. Ins. Co. v. 2000 Island Blvd. Condo. Ass’n.*, 153 So. 3d 384, 390 (Fla. 3d Dist. 2014) (citing *Livingston v. State*, 441 So.2d 1083, 1086 (Fla. 1983) (“the question of disqualification focuses not on what the judge intended but rather how the message is received and the basis of

the feeling.”)) The requirement of judicial impartiality is at the core of our system of criminal justice. As our supreme court said in a much quoted and memorable passage: “This Court is committed to the doctrine that every litigant is entitled to nothing less than the cold neutrality of an impartial judge. It is the duty of Courts to scrupulously guard this right and to refrain from attempting to exercise jurisdiction in any matter where his qualification to do so is seriously brought in question. The exercise of any other policy tends to discredit the judiciary and shadow the administration of justice. “It is not enough for a judge to assert that he is free from prejudice. His mien and the reflex from his court room speak louder than he can declaim on this point. If he fails through these avenues to reflect justice and square dealing, his usefulness is destroyed. The attitude of the judge and the atmosphere of the court room should indeed be such that no matter what charge is lodged against a litigant or what cause he is called on to litigate, he can approach the bar with every assurance that he is in a forum where the judicial ermine is everything that it typifies, purity and justice. The guaranty of a fair and impartial trial can mean nothing less than this.” *State ex rel. Davis v. Parks*, 141 Fla. 516, 519-520, 194 So. 613, 615 (1939). More recently, in a similar vein, the court elaborated: [. . .] The judge must above all be neutral and his neutrality should be of the tough variety that will not bend or break under

stress. He may ask questions to clarify the issues but he should not lean to the prosecution or defense lest it appear that his neutrality is departing from center. The judge's neutrality should be such that even the defendant will feel that his trial was fair.” *Williams v. State*, 143 So.2d 484, 488 (Fla.1962); see also *Crosby v. State*, 97 So.2d 181 (Fla.1957). In *Campbell Soup Company v. Roberts*, 676 So. 2d 435 at 436, (Fla. 2d DCA 1995) the second DCA held that a judge’s comments insinuating that she didn’t believe the attorneys for Campbell Soup warranted concerns about the fairness of the trial: “During the process in which Campbell discharged its trial counsel, an affidavit from its corporate legal staff was presented to the trial court. After examining the affidavit, it expressed doubt as to its reliability, commenting that ‘ [I]f the president of Campbell Soup were to file a similar affidavit, I don’t know how much credence I would give it if it had the same things in it.’ As a general proposition, a statement by a trial judge that he or she feels a party has lied in the case is generally regarded as indicating a bias against the party. *Deauville Realty Co. v. Tobin*, 120 So. 2d 198 (Fla. 3d DCA 1960). More recently, a petition for writ of prohibition was granted because the trial court, having been presented an affidavit from a party, commented, “If [the party] were here I wouldn’t believe him anyway.” *Brown v. St. George Island, Ltd.*, 561 So.2d 253 (Fla. 1990). A district court discussed a similar judicial

comment about a party's believability ("as thin as a balloon") and granted a petition for writ of prohibition. *Owens-Corning Fiberglas Corporation v. Parsons*, 644 So.2d 340 (Fla. 1st DCA 1994)." Therefore, based on the foregoing, the Trial Court erred in denying BOATMAN'S Motion and because of same, BOATMAN did not receive a just and fair trial. Accordingly, both BOATMAN'S conviction and sentence must be vacated.

III.

THE TRIAL COURT ERRED IN DENYING BOATMAN'S MOTION IN MOTION IN LIMINE TO EXCLUDE GRUESOME, INFLAMMATORY AND UNNECESSARY CRIME SCENE AND AUTOPSY PHOTOGRAPHS AND VIDEO.

The standard of review of a Trial Court's ruling on a motion in limine is abuse of discretion. See *Dessaure v. State*, 891 So.2d 455, 466 (Fla.2004). Such discretion is limited by the rules of evidence, and a Trial Court abuses its discretion if its ruling is based on an "erroneous view of the law or on a clearly erroneous assessment of the evidence." *McDuffie v. State*, 970 So.2d 312, 326 (Fla.2007)

A motion in limine is usually based upon the analysis found in *Fla.Stat.* §90.403 which states: "Relevant evidence is inadmissible if its probative value is substantially outweighed by the danger of unfair prejudice, confusion

of issues, misleading the jury, or needless presentation of cumulative evidence."

Motions in limine may also be used to prevent the introduction of inadmissible evidence at trial, such as hearsay, parole evidence violations, privileged information, and opinions which lack a proper foundation. A motion in limine may also be used to prevent the opposition from offering embarrassing or humiliating evidence about a defendant that has little to do with the case. For example, evidence regarding sexual preference was properly excluded in *Roby v. Kingsley*, 492 So.2d 789 (Fla. 1st DCA 1986). Similarly, evidence regarding a Plaintiff's prior drug use may be excluded as a result of a motion in limine. See *Clausell v. Buckney*, 475 So.2d 1023 (Fla. 1st DCA 1985); *Botte v. Pomeroy*, 497 So.2d 1275 (Fla. 4th DCA 1986).

On April 26, 2022, BOATMAN'S Counsel filed BOATMAN'S Motion in Limine to Exclude Gruesome, Inflammatory and Unnecessary Crime Scene and Autopsy Photographs and Video. (R.324-326) BOATMAN'S Trial Counsel argued that "[t]he State has disclosed photographs and video to the defense. These disclosed photographs and video are frequently gruesome, inflammatory and/or unnecessary." Many times the photographs are cumulative and that "[t]he State's photographs and video depict blood and gore that will likely induce an emotional response of anger, disgust or

repulsion among jurors. These images are so shocking in nature as to defeat the value of their relevance.” (R.324-325).

Case law is clear that the Trial Court has discretion when it comes to the admission of photographic evidence and that the Trial Court’s ruling will not be disturbed on appeal absent a clear showing of abuse of discretion. *Douglas v. State*, 878 So. 2d 1246, 1255 (Fla. 2004); *Pangbum v. State*, 661 So. 2d 1182, 1187 (Fla. 1995). In admitting or denying the admission of photographic evidence the Trial Court had to find that the photographic evidence is relevant rather than mere necessity.” *Pope v. State*, 679 So.2d 710, 713 (Fla. 1996)). “[P]hotographs are admissible if they are relevant and not so shocking in nature as to defeat the value of their relevance.” *Jennings v. State*, 123 So.3d 1101, 1126 (Fla. 2013) (quoting *Hertg v. State*, 803 So. 2d 629, 641 (Fla. 2001)). “Crime scene photographs are considered relevant when they establish the manner in which the murder was committed, show the position and location of the victim when he or she is found by police, or assist crime scene technicians in explaining the condition of the crime scene when police arrived.” *Hertg v. State*, 803 So. 2d at 641.

On April 29, 2022, the Trial Court held a hearing on BOATMAN’S Motion in Limine to Exclude Gruesome, Inflammatory and Unnecessary Crime Scene and Autopsy Photographs and Video. (R.1103-1106)

BOATMAN'S Trial Counsel argued "[w]e would love to exclude the video. We don't know that's going to occur. If the Court were inclined, that's our request because it is extremely disturbing and could harm the jurors, give them different psychological issues, could cause them to grow physically ill, and we think it could be abusive to the jury. That said, we don't anticipate the Court ruling in our favor on that. So then there are the photographs which—". (R.1103-1104). The Trial Court denied said Motion and held "[t]o the extent that the motion is about the video that captures the event that Mr. Boatman is charged with, your motion will be denied as to the video." (R.1104).

BOATMAN'S Trial Counsel then argued "[r]egarding the photographs. There are still photographs of the video that would seem redundant. If there are photographs that are not contained within the video, they may just be for shock and/or not for any sort of evidentiary value. That's what we are seeking to limit . And as we mentioned with Judge Morris, he made it 10 to 12 photos. Danny Rolling was a gruesome case. Here there's a video. That video is extremely gruesome. What we would ask is that the Court limit the photographs and/or allow the Defense counsel to see them so we can object in advance. So if there are only three photos that the State intends to introduce, we ask that they produce them in advance so if there are any further hearings, we can do that before the jury gets here." (R.1104).

The State argued that “I think those are relevant. And again, as Judge Morris allowed 12 of those, I think I'm only going to have maybe three possibly four, not for the shock value but just to show exactly where some of the injuries were and to see the extent of the heinous and atrocious nature of the crime.” (R. 1105).

The Trial Court concluded that “[a]ll right. I mean that sounds to me, I'm not looking at the photos, haven't seen the photos, but it sounds to me like a relatively reasonable number, small number, of photographs, you are saying that you intend to introduce. I mean, gruesome photos are admitted under the same basis as any other photo in terms of whether they have relevance and that relevance is somehow overborne by the gruesome nature or whatnot, but there's many arguments that you may present as to why those photos may have relevance and, therefore, would be admissible. I think motion denied without prejudice. My expectation would be that you let them know as we are progressing toward our trial, you identify for the Defense and let them know which of these three or four photos they are that you intend to use. That way then if there's something, Mr. Goldman, you think you need to re-raise as to those three or four specific photos, then you just let me know and we'll make a record and then review each of them

individually as to what the objection is and what the argument is for their relevance and the admissibility.” (R.110-1106).

Although the Trial Court ruled that the motion is denied without prejudice as to the photos but denied the motion as to the video, that the Trial Court failed to consider the prejudicial impact said videos and then the photos would have. The initial test for determining the admissibility of photographic evidence is relevance, not necessity. See *Mansfield v. State*, 758 So.2d 636 (Fla.2000). Photographs are admissible if “they assist the medical examiner in explaining to the jury the nature and manner in which the wounds were inflicted.” *Bush v. State*, 461 So.2d 936, 939 (Fla.1985). Moreover, photographs are admissible “to show the manner of death, location of wounds, and the identity of the victim.” *Larkins v. State*, 655 So.2d 95, 98 (Fla.1995). On the other hand, trial courts must be cautious in not permitting unduly prejudicial or particularly inflammatory photographs before the jury. The photographs were not necessary since the testimony of the witnesses was sufficient to explain to the jury the violent manner in which the victim was attacked and the medical examiner’s testimony was sufficient to explain the number of stab wounds the victim suffered and the cause of his death. The pictures and video were merely introduced for the shock value. They were not needed “to show exactly where some of the injuries were and

to see the extent of the heinous and atrocious nature of the crime” as was argued by the State at the hearing. (R. 1105). Again, the testimony was clearly sufficient to explain the injuries and the heinous and atrocious nature of the victim’s death. Because the Trial Court abused its discretion, BOATMAN’S conviction and sentence must be vacated in order to assure that BOATMAN’S due process rights are protected and to avoid a miscarriage of justice by upholding his conviction. *See generally, Ivey v. Allstate Ins. Co.*, 774 So.2d 679 (Fla. 2000).

IV.

THE TRIAL COURT ERRED IN DENYING BOATMAN’S MOTION AND RENEWED MOTION TO PRECLUDE PENALTY PHASE.

In BOATMAN’S Motion filed on April 26, 2022, BOATMAN moved to preclude the State of Florida from seeking the death penalty, should they secure a conviction of first-degree murder, pursuant to the *Article 1, Section 15(a), Florida Constitution* arguing: “[t]he indictment in the instant case fails to allege the aggravating elements that would “death qualify” the Defendant for a capital penalty. As it currently reads, it outlines the elements of a non-capital first-degree murder. To the extent the State seeks a sanction beyond a life sentence upon a conviction as charged, the indictment is

constitutionally insufficient. The State of Florida lacks the authority to decide whether to seek a capital penalty against a citizen of this State. The State only has the authority to decline to seek a capital penalty following a grand jury indictment containing the elements necessary to seek a capital penalty. The State's method for seeking a death sentence here is to take a grand jury indictment that does not allege the necessary elements to death qualify the Defendant and then, without the input of a grand jury, issue a notice of intent to seek death penalty reciting bare statutory language they believe make the defendant death eligible." (R.213).

In Florida, an indictment by a grand jury is the constitutionally mandated predicate for seeking the death penalty. *Article I, Section 15(a), Florida Constitution*. It is the province of the grand jury in Florida to determine whether the power of the State to take a life is to be utilized. The Florida Constitution grants no such authority to state attorneys.

A grand jury indictment is a limitation on the scope of the prosecution that follows. It is axiomatic that a prosecutor cannot prosecute a crime greater than what is contained in the grand jury indictment. The grand jury in the instant case did not make findings of aggravating elements within the four corners of the individual counts alleging basic first-degree premeditated

murder or felony murder in this case. Absent aggravating elements, the maximum sentence for count I is life in prison.

Based on the decisions by the U.S. and Florida Supreme Courts in the *Hurst* cases, capital murder must now consist of elements beyond the mere allegation of first-degree premeditated murder or first-degree felony murder under Section 782.04(l)(a), Florida Statutes.

In *Hurst v. Florida*, 136 S.Ct. 616 (2016), the Court found Florida's death penalty scheme unconstitutional on Sixth Amendment, not Eighth Amendment, grounds. Specifically, the court held the aggravating factors under *Fla.Stat.* §921.141 were not constitutionally cognizable as "circumstances" subject to a majority jury recommendation, but rather would have to be elements found by a jury to be proven beyond a reasonable doubt.

The Florida Supreme Court reviewed *Hurst* on remand from the U.S. Supreme Court. *Hurst v. State*, 202 So.3d 40 (Fla. 2016). A majority of the Florida Supreme Court found there was a requirement of not only a unanimous verdict on the issue of whether an aggravator was proven, but furthermore a unanimous recommendation on the appropriate sentence. Justice Canady, writing in dissent, pointed out the difference between aggravators as elements of the offense and the necessity of subjective judgment involved in comparing aggravators to mitigators. *Id.* at 81-82. It

appears from the ruling that the majority does not reject this dichotomy but rather accepts it while still treating that comparison as an element requiring unanimity.

The 2016 attempted revision by the Florida Legislature further provided for notice by the State Attorney of the intent to seek the death penalty with an additional requirement the notice identify the aggravating factors to be proven. *Fla.Stat.* §775.082(l)(b). Accordingly, probable cause and notice of the essential elements that give rise to a capital prosecution are not found and announced by a grand jury as required by the Florida Constitution, but rather come after a finding by a state attorney alone with notice to the defendant. The grand jury is unconstitutionally cut out of the process that determines whether the offense is a capital one or not. The thing that takes a first-degree murder case with an upper limit penalty of life in prison and turns it into a capital murder case punishable by death is the existence of some aggravating element that exposes the citizen to the death penalty. *State v. Poole*, 297 So.3d 487 (Fla. 2020) and *Santiago-Gonzalez v. State*, 301 So.3d 157 (Fla. 2020).

Where *Poole* differs from BOATMAN'S argument herein, is that *Fla.Stat.* §921.141, and the notice required by *Fla.Stat.* §782.04(l)(b), together create the offense of "murder plus one or more aggravating

circumstances”. This however is not the case, *Fla.Stat.* §921.141 is only triggered when a Defendant has been convicted of a “capital felony”. *Fla.Stat.* §782.04 does not codify such an offense. While it labels murder in the first degree a “capital felony”, it does not include the aggravating circumstances required. *Fla.Stat.* §782.04 simply cross references *Fla.Stat.* §921.141 as the “procedure” that shall be followed if the prosecutor has filed a timely death notice and the Defendant has been convicted of murder in the first degree.

“Capital crimes” are those that are punishable by death. *Article 1, Section 15(a)* of the Florida Constitution provides “[n]o person shall be tried for capital crime without presentment or indictment by a grand jury...”. *Fla. R. Crim. P. 3.140(a)(1)* reiterates the constitutional requirement that an offense that may be punished by death shall be prosecuted by indictment. There are two points in the process of seeking a capital penalty against a citizen where jurors can intervene and say “no.” The first is at the grand jury stage, and the second at the sentencing stage.

Each and every element of the offense charged must be charged in the indictment or information. In *State v. Gray*, 435 So. 2d 816, 818 (Fla. 1983), the Florida Supreme Court held “a conviction on a charge not made by the indictment or information is a denial of due process of law.”. The Court

then stated unequivocally: “Where an indictment or information wholly omits to allege one or more of the essential elements of the crime, it fails to charge a crime under the laws of the state. Since a conviction cannot rest upon such an indictment or information, the complete failure of an accusatory instrument to charge a crime is a defect that can be raised at any time — before trial, after trial, on appeal, or by habeas corpus.” *State v. Gray*, 435 at 818. The above is the problem in this case. BOATMAN was charged by indictment. There is no allegation made by the grand jury regarding the elements of the offense in count I that would make it a capital crime as opposed to a crime punishable by life imprisonment. Under the Florida Constitution, the State Attorney lacks the authority to charge someone with a capital crime, the grand jury is the only entity with the constitutional authority to charge capital crimes. *Article 1, Section 15(a), Florida Constitution*. Because the indictment in this case is fatally defective, BOATMAN’S motion should have been granted. However, since it was not, then BOATMAN’S death sentence must be vacated, and the matter remanded so to properly sentence BOATMAN.

V.

**THE TRIAL COURT ERRED IN ITS RULING AS TO
SEQUESTERING JURY AND THE LANGUAGE TO BE
PRESENTED TO THE JURY REGARDING PUBLICITY.**

Individual voir dire to determine juror impartiality in the face of pretrial publicity is constitutionally compelled especially if the Trial Court's failure to ask these questions renders the trial fundamentally unfair. See *Mu'Min v. Virginia*, 500 U.S. 415, 430, 111 S.Ct. 1899 (1991).

In determining if pretrial publicity was seen by the jury in connection with anything related to BOATMAN, his co-defendant and/or the crime itself, the Trial Court had to determine the following: “(1) when the publicity occurred in relation to the time of the crime and the trial; (2) whether the publicity was made up of factual or inflammatory stories; (3) whether the publicity favored the prosecution's side of the story; (4) the size of the community exposed to the publicity; and (5) whether the defendant exhausted all of his peremptory challenges in seating the jury”. See *Foster v. State*, 778 So.2d 906, 913 (Fla.2001).

As to the sequestering of the jury to determine publicity issues, BOATMAN’S Trial Counsel argued in his Motion and at the hearing that “[t]he trial judge has the discretion to determine whether to allow this. As to

pretrial publicity, this is complicated, and the reason why it's complicated is Mr. Wells and Mr. Doty as well as Mr. Boatman, this county has unfortunately experienced quite a few prison murders. There's Mr. Doty and Mr. Wells. Now there's Mr. Wells and allegedly Mr. Boatman. So a juror may have heard about one or the other and mix up what they know. So that publicity, if it were to spread, and the misinformation were to get out, or the Court has to refocus a single juror, it would be better to do it just a single juror at a time. Second, as to the penalty phase, we think it's absolutely essential that jurors be sequestered and individual. The arguments are within the motion. It's clearly within the Court's discretion and it is something that the courts within this circuit have done before. (R.1095-1096)

The Trial Court concluded that "I do understand all of that, Mr. Goldman and Mr. Eisenmenger, Mr. Bustamante, respectfully, I do not intend to do individual and sequestered voir dire. I know some have chosen to conduct it in that fashion. I have some experience with death cases and only one of those was done in an individual and sequestered manner. All of the others were done in a group setting just like jury selection. I just really -- so as is the case with all of us, kind of our impressions are shaped and formed by some of our own experiences and my own experiences with these type of cases indicate to me it simply isn't necessary. It does, I think, become more

burdensome than providing any additional safeguards or benefits to Mr. Boatman or to the State . So I would not intend to do individual sequestered So I don't intend to do that. What I would ask to do is, I think you all should get together and by next Wednesday agree upon what you think is an appropriate summary of information about this case that this Court can read to the courtroom of prospective jurors to try to trigger whether or not they are aware of anything, and I'm going to make it clear to them they are not to tell me anything in this setting, and they are not to share anything that they know with any other fellow prospective jurors; but I do think that we have to have an agreement about what is appropriate for me to explain to them in a summary fashion about the allegations so that they will know . (R.1097-1098).

The Trial Court continued with “I do think the three things that I would intend to cover with them right out of the gate is going to be the issue of any publicity. Obviously the issue of length of their service is going to be a concern, and then obviously that it is, in fact, a death case. Those things will need to be covered off the bat. Now, should, obviously, I don't want to confuse, I don't want you to be confused by the Court's ruling. Should a juror indicate that they have a familiarity, you know, a specific unique familiarity with the case, obviously we would discuss that in a sequestered and

individualized format. We would not engage in that type of discussion in front of the entire group. I figured that would go without saying, but I don't want you all to be unclear about that in any way.” (R.1099).

At the December 1, 2022 hearing, BOATMAN’S Trial Counsel advised the Trial Court that BOATMAN objected to the State’s factual summary that was requested by the Trial Court at the previous hearing. (R.873). BOATMAN’S Trial Counsel argued that the issue of publicity was in fact a concern and that the paragraphs in question should be read to the jury and that he objected to the Trial Court not reading the instruction as written. (R.894-898).

The discretion afforded the Trial Court to conduct voir dire as it sees fit must be bounded by protection of BOATMAN’S constitutional rights, simply asking members of the jury venire to indicate by a show of hands whether they heard anything about this case or BOATMAN or his co-defendant, and then asking if the publicity would impair their ability to render an impartial decision did not and does not adequately protect BOATMAN’S constitutional rights. The preferred approach is to conduct individual examination of the jurors. Individual voir dire allows the Trial Court to probe the effect of any adverse publicity on the juror and insulates the jurors from one another's

prejudicial comments. *Cummings v. Dugger*, 862 F.2d 1504, 1507-1508 (11th Cir.1989).

BOATMAN'S Trial Counsel's argument regarding the issue of publicity and its relevancy to obtaining an impartial jury should have been agreed to by the Trial Court. Therefore, the Trial Court should have agreed to the language proposed by Trial Counsel and not have found that the requested instruction and/or question was in fact not relevant and necessary. (R.893-895). Therefore, considering the totality of the circumstances, the Trial Court did in fact abuse its discretion in denying BOATMAN'S request to include the paragraphs regarding that BOATMAN is serving two life sentences for his involvement in the murder of two people in Ocala National Forest or the facts surrounding BOATMAN'S co-defendant, Mr. Wells and him being known as the "monster of Mayport". (R.894-895). It is clear that said facts should have been brought to the jury and questions asked regarding their knowledge of same.

Furthermore, in the case at hand, BOATMAN clearly used up all of his peremptory challenges and in fact had to request an additional one. And, all but a few of his challenges for cause were denied. Because of said abuse of discretion by the Trial Court, the upholding of BOATMAN'S conviction would seriously affect the fairness, integrity and public reputation of the

judicial proceedings, which cannot be allowed to happen by this Honorable Court. See generally, *Windom v. State of Florida*, 886 So.2d 915 (Fla. 2004).

VI.

THE TRIAL COURT ERRED IN DENYING BOATMAN'S MOTION TO USE PHOTOGRAPHS AND VIDEO DURING VOIR DIRE EXAMINATION OF PROSPECTIVE JURORS.

On April 26, 2022, BOATMAN'S Trial Counsel filed BOATMAN'S Motion to Use Photographs and Video during Voir Dire Examination of Prospective Jurors. (R.327-332). On May 3, 2022, the Trial Court denied BOATMAN'S Motion to Use Photographs and Video during Voir Dire Examination of Prospective Jurors. (R.399-400). The Trial Court held: "[n]either State's counsel nor Defendant's counsel may publish photos or videos of this cause during voir dire. At their discretion counsel for the State and/or counsel for the Defendant may describe the video to the jurors in order to properly evaluate their ability to consider mitigation and otherwise reach a lawful decision during a penalty phase proceeding." (R.400).

At the hearing on February 2, 2022, BOATMAN'S Trial Counsel argued that "what we are asking is that we be able to either use photographs or the video in voir dire in a limited fashion and we think that there's certainly that, the motion covers it. What we are saying is that the Court should allow it to

happen. Why? Because pictures is worth a thousand words. Why? Because there are studies, I think some of them are cited within the motion that show jurors do get PTSD. State has described it as extremely gruesome. Our job here is to get a fair jury, an impartial jury. One that we will be able to ask questions about, can you evaluate mitigation, will you automatically seek death? So it's not to pre-try the case." (R.1106-1107).

The Trial Court held that "[i]t's coming in, but isn't it kind of pre-trying the case? I mean, you are asking me to allow you to present to the venire what sounds to be the most critical piece of the State's case and then ask questions of them about it after they've seen only that one piece of evidence, which sounds like is a very, perhaps, powerful or compelling depiction of an event taking place and then you ask questions of them about that. And it seems to me it would be so prone to misleading jurors because they've not yet really received the instruction, any instruction from the Court as to how they are to evaluate a case, how a case proceeds, how they are supposed to be considering evidence, what their role is, what my role is, what your role is, how the trial is going to proceed, the other types of things that may be presented for their consideration before they make certain decisions in the guilt or in a potential penalty phase either one. There is just so much left out

of that, that you show them this really overwhelming potentially piece of evidence. . .” (R.1107-1108).

In response, Trial Counsel argued “I think I have three different sections of response, if the Court will allow me? . . . The misleading part. I have no intention of asking about the substance of the video. Play the video. It's not whether or not they think he's guilty of a crime, whether he did something else. Can you value this person for mitigation as it said in Morgan and many other cases. Can you automatically do death? Is this a death case? Does this have to be -- are you even going to listen to anything else? We could describe it for them and I expect we will. This is going to be an extremely brutal case. You'll see a video. That does not describe it. Extremely gruesome is the words. So do jurors know what they are getting themselves into? Ladies and Gentlemen, this is a driving case, and then they see a DUI with someone that crashes. It doesn't really do it. What makes this different? . . . So this, essentially the second phase or the answer is, this is a death case. We are talking about sentencing as well as guilt. It's entirely different than your normal garden variety case. Ladies and Gentlemen, we are asking you to put aside that he's guilty or innocent. We want you to think about what you are going to do once you find him guilty. Once we are almost forced to say, Ladies and Gentlemen, we are not saying he's guilty, but we

are going to talk to you about what happens if he is, and the State is going to ask about whether or not they can find someone guilty and whether or not they can implement the death penalty. So, we are asking whether or not a picture's worth a thousand words. However, many seconds, minutes, hours, of this video the Court wishes to show so these jurors know what they are getting themselves into. They cannot possibly fathom what they are going to watch. There is no way this jury can know what they are getting into and say, yes, I can be a fair and impartial juror. I can listen to what the State says and find aggravation. Yes, I can listen to what the Defense says and find mitigation. There is no way they can get to that point without seeing some of that video. The Court says it's coming in, the State says it's coming in, the State is going to play it. There's no dispute about that at this point. We've objected, the Court overruled it. So it's coming in. No argument about that. They are going to see it. So we'd like to know, not hey, do you see a crime there? Can you be fair and impartial?" (R.1108-1110)

The Trial Court concluded "I understand your argument, Mr. Goldman, but I'm not going to allow you all to show the video or show photos or show any evidence to the venire during the voir dire process. I'll allow you all to talk about it in whatever detail you choose to want to discuss it or talk about it to make sure that you are comfortable the jury understands, whatever the

nature. I haven't seen the video. You guys have seen it, right, I haven't seen it. And I don't know that I need to see it to rule, but I think you guys can appropriately question the prospective jurors about those issues without having to show them the video of the offense.” (R.1110-1111). Said denial of BOATMAN’S request prevented BOATMAN from having an unbiased jury and being tried by a jury whose reaction in seeing the gruesome pictures that would be shown during the trial was not determined. As such, the denial of BOATMAN’S request prevented him from having a fair and just trial.

VII.

THE TRIAL COURT ERRED IN DENYING BOATMAN’S MOTION TO STRIKE JURY PANEL.

During voir dire, the Trial Court advised the jury, during BOATMAN’S Trial Counsel’s questioning of the panel that “I’ve just been advised by counsel—and you may have already gleed this, but they’re indicating they plan to spend eight, nine hours or more with their questioning; so you may want to reach out to your-. . . (RT.232). Because of said statement by the Trial Court, BOATMAN’S Trial Counsel made an *ore tenus* motion to strike the entire panel. (RT.233). Trial Counsel argued that “[t]he Court has just told the jury that it is entirely the defense’s fault that we will be here until—it is now 2:30 in the afternoon—that we will be here until at least 11:00, if not till

1:00 in the morning, when clearly, they've had an expectation this would be during business hours. And clearly, we have the ability to come back tomorrow and/or the next day or any of the, roughly, three weeks that are reserved for this trial. We think that it's not only demeaning of the defense; it also tells them that any frustration they may have regarding jury selection is based entirely on the defense because we are doing a thorough jury selection in a death penalty case that lasted longer than Mr. Helling's hour and a half. Now, that is problematic for the defense because it seems as if the Court is favoring one side, if not, another. It also is problematic because now every juror there- and we just heard as juror asked Mr. Bustamante and would not even speak at look at me, hey, how long are we really going to be here? So that is the problem, your honor." (RT.233-234). The Trial Court denied the motion. (RT.235).

Thereafter counsel and the Trial Court had a lengthy discussion, the Trial Court then advised the jury that "we will continue to work with the jury selection till about the end of business, and then we'll just see where we're at. And then I'll probably have a discussion with you all about the remainder of the day and/or evening. But we'll do that." (RT.235-246)

BOATMAN'S Trial Counsel renewed their motion to strike the panel after jury selection and advised the Trial Court that "given that we moved to

strike the entire panel earlier, we do not accept the panel, but do agree that this is the jury as selected.” BOATMAN’S Trial Counsel argued to the Trial Court that “I believe that the Court has an obligation to tell the jurors that this is a slow, deliberate process, and we’re using their time wisely, and that identifying the Defense as the reason we were taking so much time improperly targeted us and caused anger from the jurors. I agree that Mr. Goldman said that he would be taking quite a while and even agreed to the timetable, but our objection was to the Court identifying the Defense as a reason for that versus just the entire process.” (RT.473). Again, the Motion was denied, and the objection was overruled. (RT.474).

BOATMAN has a constitutional right to trial by a fair and impartial jury. *See Richardson v. State*, 666 So.2d 223, 224 (Fla. 2d DCA 1995). Although the Trial Court attempted to correct his statement and remove any negativity from BOATMAN by implying the late night was due to BOATMAN and/or his Trial Counsel by giving the jury a choice and the jury chose to stay and finish the voir dire, it is still quite clear that BOATMAN was deprived of that right because of the possibility that the jury panel was unfairly prejudiced by virtue of the Trial Court’s initial statement.(RT.385-386). *See Wilding v. State*, 427 So.2d 1069 (Fla. 2d DCA 1983). It is clear that if the harmless error test to the facts presented here, this Court cannot say beyond a reasonable doubt

that the Trial Court's statement did not affect the jury's verdict. *State v. DiGuilio* 491 So.2d 1129, 1139 (Fla.1986). Based on the above, BOATMAN'S conviction and sentence must be vacated.

VIII.

THE TRIAL COURT ERRED IN DENYING BOATMAN'S CHALLENGES FOR CAUSE OF JURORS DURING JURY SELECTION.

In addition to moving to have the jury panel stricken due to the Trial Court's statement, BOATMAN'S Trial Counsel also moved to strike several of the jurors for cause. (RT.444-475).

BOATMAN'S Trial Counsel challenged juror #354 because "his 90 percent death and 'I can't consider certain types of mitigation' as a whole shows that there's a reasonable doubt that he's able to consider life as a potential punishment." (RT.444) The Trial Court denied said challenge for cause and BOATMAN was forced to use a peremptory challenge. (RT.444-445).

BOATMAN'S Trial Counsel challenged Mr. McLoughlin for cause arguing that "[h]e indicated that incarcerated people are away from their past and we should only be concerned with current behavior. We believe he's mitigation impaired as it relates that he cannot consider things about the

defendant's history and can only consider things about the crime. And one of the theories of our defense is the defendant's history and Mr. McLoughlin would not be able to consider that, based upon his responses." (RT.445-446). Again, the Trial Court denied said challenge forcing BOATMAN to again use a peremptory challenge. (RT.445-447).

BOATMAN'S Trial Counsel again sought to challenge Rigdon for cause "based on her indicating that she could not consider mitigation as it was – as it did not relate to the crime facts and that child sex abuse is not a mitigator, in her mind." (RT.447). Again, the Trial Court denied said cause and again BOATMAN had to use peremptory challenge. (RT.448).

BOATMAN'S Trial counsel further challenged for cause Mr. Loper arguing that "the benefit of the doubt would go to an officer" and that "he thought it was a first-degree murder, then the death penalty comes with it." (RT.451). Said challenge for cause was denied and BOATMAN again had to use a peremptory challenge to assure he had a fair and impartial jury. (RT.451-452).

Where the record demonstrates a reasonable doubt about a juror's ability to be impartial, the Trial Court abused its discretion in denying the cause challenge. See *Peters v. State*, 874 So.2d 677, 679 (Fla. 4th DCA 2004). Although the jurors in question were not seated, the fact that the Trial

Court denied said challenges for cause, which caused BOATMAN to use his peremptory challenges clearly prejudiced BOATMAN. Furthermore, the fact that the Trial Court denied said challenges for cause should lead this Honorable Court to believe that the Trial Court was clearly not impartial to BOATMAN and in ruling as it did, supports BOATMAN'S claim that his due process rights were violated and his right to a fair trial did not occur. Based upon the foregoing BOATMAN'S conviction and sentence must be vacated.

IX.

THE TRIAL COURT ABUSED ITS DISCRETION IN PERMITTING THE STATE TO INTRODUCE INADMISSIBLE EVIDENCE THAT PREJUDICIALLY IMPACTED BOATMAN

A Trial Court's ruling on the admissibility of evidence will be upheld absent an abuse of discretion. See *Alston v. State*, 723 So.2d 148, 156 (Fla.1998). BOATMAN argues that the Trial Court erred in allowing evidence to be introduced in violation of BOATMAN'S due process rights.

The Evidence Code provides that “[a]ll relevant evidence is admissible, except as provided by law.” *Fla.Stat.* §90.403. The Code places the following limitation on the admission of evidence: “Relevant evidence is inadmissible if its probative value is substantially outweighed by the danger of unfair

prejudice, confusion of issues, misleading the jury, or needless presentation of cumulative evidence.” *Fla.Stat.* § 90.403.

During the testimony of Sergeant Prock, the State asked him “[w]hat was the first thing that you saw that you can recall?” (RT.551). BOATMAN’S Trial Counsel objected arguing best evidence. Said objection was overruled. The fact that the Trial Court previously denied BOATMAN’S Motion in Limine to keep out the pictures and videos because they were relevant, contradicts the Trial Court denying the objection and allowing testimony and not requiring the best evidence, i.e., the pictures and videos to be the only evidence for the jury to determine its verdict; not someone’s interpretation.

BOATMAN’S Trial Counsel also objected when Sergeant Prock was asked “[what is it that he said that you can recall?” and his answer was “I believe”. Again, said testimony was prejudicial since he “believed” and was not sure or did not remember what actually was said. BOATMAN’S Trial Counsel continued to object during Sergeant Prock’s testimony regarding testifying about conversations he heard between BOATMAN and Mr. Wells. Said testimony was hearsay and clearly prejudicial to BOATMAN especially when Sergeant Prock testified specifically as to what Mr. Wells said to BOATMAN. However, the Trial Court overruled both objections. (RT.557-559). Said denial of BOATMAN’S hearsay objection also was a violation of

BOATMAN'S right of confrontation of Mr. Wells, since Mr. Wells did not testify.

During the testimony of Agent Meacham, the transcript of Agent Meacham's interview of BOATMAN after the incident was being introduced. BOATMAN'S Trial Counsel advised the Trial Court that they did not receive a copy of the transcript. (RT.640-641). Although BOATMAN'S Trial Counsel advised they did not have the transcript, the Trial Court allowed same to be "followed along by the jury". (RT.64). BOATMAN'S Trial Counsel again objected arguing that the concern was "who transcribed it?" and that "It's just a matter of whether or not that's an accurate representation. There are some parts that are difficult to hear." (RT.642). The Trial Court rejected the argument and held "I'm still inclined to go, and then if there is something notices, you're proceeding at your own peril, and we'll deal with it if something is off". (RT.642). BOATMAN'S Trial Counsel again raised their objection to the transcripts and advised the Trial Court that they were not waiving their right to a Richardson hearing nor their objection to the use of the transcript. (RT.643). Based upon said objection, the Trial Court read the jury instruction regarding the use of transcripts of recordings and the transcript was published. (RT.644).

During the examination of Dr. Hamilton, the State introduced seven photographs and an x-ray of the decedent. BOATMAN'S Trial Counsel again objected to said pictures and the x-ray and said objection was a standing objection as to the pictures coming in. (RT.664).¹ The Trial Court found them to be relevant and did not find them cumulative nor did the Trial Court find them overly prejudicial to outweigh the probative. However, said introduction was more prejudicial than probative based upon the number of pictures introduced. (RT.664-665).

During the testimony of Agent Carlisle, the State had him identify various videos that were introduced into evidence. (RT.696-697). After having Agent Carlisle identify the videos as being truly and accurately reflective of what his investigation revealed, the State asked Agent Carlisle "What do they show?" (RT.697). Trial Counsel objected arguing best evidence and said objection was overruled. Again, the Trial Court denied BOATMAN'S Motion in Limine and allowed the videos and pictures to come in, yet the Trial Court allowed the witness to testify what was on the videos. Why then submit the videos if someone could narrate the video. Allowing

¹ . Said objection related back to Trial Counsel's Motion in Limine and the argument regarding same that is argued herein below.

the videos in were prejudicial to BOATMAN and were introduced merely to influence the jury.

Also during the testimony of Agent Carlisle, Agent Carlisle responded to a question regarding why the photo being shown was taken and his response was “I had asked one of the COS about what of weapons he’s seen over the year and he indicated . . . So I described to him what type of weapon would be about nine or ten inches long, made of—possible of brass . . . and he indicated it sounded like the plungers that were in the pipe chase on the dorms. . . .” (R.726-727).

BOATMAN’S Trial Counsel objected as the testimony being hearsay and same was overruled. Said testimony coming for a CO that BOATMAN could not cross examine was not harmless error and clearly prevented BOATMAN from his right to confrontation.

McWatters argues that since these statements were testimonial and these witnesses did not testify at trial, his right to confront these witnesses as set out in *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354 (2004), was violated. “In considering a trial court's ruling on admissibility of evidence over an objection based on the Confrontation Clause, our standard of review is *de novo*.” *Milton v. State*, 993 So.2d 1047, 1048 (Fla. 1st DCA 2008) (citing *Hernandez v. State*, 946 So.2d 1270 (Fla. 2d DCA 2007)).

In reviewing the errors that occurred during BOATMAN'S trial, it is quite clear that he did not receive a fundamentally fair trial. "Where multiple errors are discovered in the jury trial, a review of the cumulative effect of those errors is appropriate because 'even though there was competent substantial evidence to support a verdict ... and even though each of the alleged errors, standing alone, could be considered harmless, the cumulative effect of such errors [may be] such as to deny to defendant the fair and impartial trial that is the inalienable right of all litigants in this state and this nation.' " *Brooks v. State*, 918 So.2d 181, 202 (Fla.2005). BOATMAN concedes that he is not entitled to a "perfect trial", but BOATMAN has clearly shown that the errors that were committed by the Trial Court during his trial in connection with its evidentiary rulings prevented him from receiving a fair trial. Accordingly, because the improperly admitted evidence constituted singular and cumulative error that infected the entire trial and prejudiced BOATMAN, this Court should vacate BOATMAN'S conviction. *Evans v. State of Florida*, 177 So.3d 1219 (Fla. 2015).

Said errors continued in the penalty phase as well.

During the testimony of Eric Dice, who was an officer with Marion County Sheriff's Office, BOATMAN'S Trial Counsel raised a hearsay objection arguing:

Counsel: “I believe these photos would violate the confrontation clause because these were not taken by this particular officer, and he did not view the bodies in this particular manner.

THE COURT: Any response?

MR. BUSTAMANTE: Your Honor, hearsay is allowed in these type of proceedings, and I think this is part of the investigation. And this officer will say that these are the photographs that were described to him, even though he was not there at that particular scene, but also part of the investigative materials that was developed in this case.

THE COURT: Anything further?

MR. GOLDMAN: Your Honor, that's not a proper foundation. And the confrontation clause certainly does apply in the penalty phase.

THE COURT: All right. The objection is noted and overruled. I'll allow them.” (PT.1180-1181). Again, said error was a violation of BOATMAN’S right to confrontation. And, because the Trial Court overruled the objection and allowed said testimony and pictures to be admitted, BOATMAN’S due process rights were again violated. *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354 (2004).

BOATMAN’S Trial Counsel also objected to the pictures as follows:

“Counsel: In addition to the previous objection, the confrontation clause objection, I would also note that these photographs are particularly inflammatory and depict a gruesome scene that this witness is not even familiar with, doesn't -- he can't -- he can't even say whether or not that is the way it looked when they got there. And at this point, it's becoming a feature of the penalty phase, and so I would object on that separate basis as well.

THE COURT: Response?

MR. BUSTAMANTE: The same argument that we made before, your Honor. And these are not inflammatory. They're actually a select few, in which it shows parts of the scene and parts of the injuries.

THE COURT: All right. So the objection is overruled, including the current, new objection about the gruesomeness.” As such, the pictures were admitted into evidence. (PT.1184).

Said hearsay objections were again raised during the testimony of Joseph Hamner, who was a law enforcement inspection with the Department of Corrections and testified about a complaint regarding BOATMAN at Cross City Corrections Facility. (PT.1208-1212). BOATMAN’S Trial Counsel again objected to his testimony arguing hearsay and confrontation since his testimony was based on the reports he reviewed. BOATMAN’S Trial Counsel

asked for a “standing objection” as to hearsay and confrontation issues which was overruled. (PT.1212-1213).

BOATMAN’S Trial Counsel continued to object and at sidebar, the following was discussed:

“THE COURT: Sure. Do Counsel want to approach briefly. . .

THE COURT: So the objection is overruled. Do you want a standing? Or do you not want a standing? It makes no difference -- MR. EISENMENGER:

Your Honor, we transitioned from law enforcement to the alleged victim; so -

THE COURT: Right. So do you want a standing objection? You're taking the position no hearsay is allowed.

MR. EISENMENGER: Not hearsay, your Honor. Hearsay in violation of the confrontation clause. That is our objection. This violates the confrontation clause --

THE COURT: I'm just asking you do you want a standing? Or do you want to keep making -- I don't care either way, but when you -- you guys have asked for a standing on at least two occasions. I've given you that, but you keep making them. And I just want you to know if you're unclear that I made it clear you have a standing, then I wanted to make it clear at the sidebar you have a standing but --

MR. EISENMENGER: Then if the Court's saying I have I have a standing to this entire investigation and that any confrontational clause issues would be preserved by that objection, then I am satisfied. But I'm concerned that as we transition from witness to witness, some Court in the future may say that I've waived that objection.

THE COURT: I don't want to do any -- I'm not trying to have you do something that you feel that you can't do or are uncomfortable doing. I'm just trying to make sure you understood I was willing to give you a standing, but if you feel like you need to make it as you transition from witness, then make it.” (PT.1216-1217).

The Trial Court continued to allow improper testimony to be admitted. During Mr. Hamner's testimony, Mr. Hamner testified that Mr. Apicella said that he and Boatman had not had a lot of problems in the cell during the time that they were housed together. He mentioned that prior to -- the week prior to this incident that Boatman told him that he had stabbed an officer while he was at Marion County jail.” (PT.1217).

BOATMAN'S Trial Counsel objected arguing:

MR. EISENMENGER: Your Honor, this is improper character evidence. It has no relation to any existing conviction. I move for a mistrial at this point based on this testimony. Further, it's multiple layers of hearsay and, as I've

already articulated, the confrontation clause issue. There is no evidence of any sort of stabbing of a correctional officer with the Marion County Sheriff's Office. This is not even true testimony.

MR. MILLER: It didn't happen.

THE COURT: Hold on. I don't know the nature of the statement. Let me give them a chance to respond.

MR. BUSTAMANTE: Your Honor, during their opening statement, the Defense said that this was something that was self-defense. And the fact that the victim, once he sees that this guy has done this -- maybe he lied to him, but it goes to show that the victim was -- would not have been the aggressor because if this guy has done something violent in the past, he's not going to mess with him.

MR. MILLER: All right. This is where the confrontation clause is hugely important.

THE COURT: Can we just pause for a minute?" (PT.1217-1218).

Thereafter, the BOATMAN'S Counsel and the State entered a stipulation regarding the testimony which was read to the jury. The Trial Court denied the Motion for Mistrial and BOATMAN'S Trial Counsel preserved said objection even with the stipulation: MR. MILLER: Judge, I have to make this record because that is the very definition of testimonial

hearsay. It was in the course of their investigation that they interviewed this guy who was very much alive, and he gave a statement to them which another officer is telling this Court about, and we can't confront it. Under *Crawford*, that absolutely should not be admissible, Judge.” (PT.1219-1228) Even with the stipulation and the ability to impeach Mr. Apicella, BOATMAN’S Trial Counsel’s continuous objections should have been granted.

The issue of hearsay and confrontation continued during Inspector Ortiz’ testimony. Officer Ortiz testified that “[he [a corrections officer] attempted to get assistance from other staff. So sometimes the way they do that in the evening is they'll take their flashlight and shine it towards the officer's station. And he said at that point Boatman began to beat Morris some more.” (PT.1257). BOATMAN’S Trial Counsel objected as same being “hearsay and confrontation as to the Officer Cross.” Said objection was overruled. (PT.1257).

Accordingly, because the improperly admitted evidence constituted singular and cumulative error that infected the entire penalty phase and prejudiced BOATMAN both before the jury and the Trial Court. Therefore, this Court should vacate BOATMAN’S sentence. *Evans v. State of Florida*, 177 So.3d 1219 (Fla. 2015).

X.

**THE EVIDENCE WAS INSUFFICIENT TO SUPPORT
BOATMAN'S CONVICTION FOR FIRST DEGREE MURDER.**

A Trial Court's ruling on the admissibility of evidence will not be disturbed absent an abuse of discretion. *Blanco v. State*, 452 So.2d 520 (Fla.1984); *see also State v. Polak*, 598 So.2d 150 (Fla. 1st DCA 1992). This Court reviews *de novo* whether there is sufficient evidence to support a conviction. This Court must examine the evidence in the light most favorable to the government to determine whether a reasonable jury could have concluded beyond a reasonable doubt that the defendant was guilty of the crimes charged.

In deciding this matter, "the question is whether, after viewing the evidence in the light most favorable to the State, a rational trier of fact could have found the existence of the elements of the crime beyond a reasonable doubt." *Simmons v. State*, 934 So.2d 1100, 1111 (Fla. 2006) (*quoting Bradley v. State*, 787 So.2d 732, 738 (Fla. 2001)). Although there were a lot of pictures and videos introduced by the State at trial, the evidence did not help in deciding the state of mind of BOATMAN. Even the testimony is questionable. However, the testimony and evidence clearly should have caused doubt in the jury's mind regarding not the what but the why.

BOATMAN is charged with first -degree murder which is “[t]he unlawful killing of a human being: When perpetrated from a premeditated design to effect the death of the person killed or any human being;” *Fla.Stat.* §782.04(1)(a)(1). Although the State does not have to prove that BOATMAN intended to cause death, the State still has to prove that BOATMAN had “a fully formed conscious purpose to kill. The State failed to prove this element.

The elements for a conviction for second degree murder are: “[t]he unlawful killing of a human being, when perpetrated by any act imminently dangerous to another and evincing a depraved mind regardless of human life, although without any premeditated design to effect the death of any particular individual.” *Fla.Stat.* §782.04(2). *See also, Light v. State*, 841 So.2d 623, 625 (Fla. 2d DCA 2003).

Under *Fla.Stat.* §782.07(1), manslaughter is defined as the “killing of a human being by the act, procurement, or culpable negligence of another, without lawful justification,” and “in cases in which such killing shall not be excusable homicide or murder.” Although not defined by statute, manslaughter is considered voluntary when a killing happens in the heat of the moment without planning. Manslaughter is considered involuntary when a killing happens as a result of recklessness or negligence.

The testimony of both BOATMAN and Mr. Arline clearly supported a guilty verdict of anything but first-degree murder. “The reasonable doubt which the law requires shall acquit a defendant is one that arises in’ the minds of the jury ‘after . . . consideration, comparing and weighing of all the testimony in the case. Proof beyond a reasonable doubt must be had as to all facts necessary to make out the case of the prosecution. After considering all the evidence in the case, if the jury has a reasonable doubt as to the existence of any fact necessary to constitute guilt on defendant's part, there should be an acquittal.” *Hall v. State*, 78 Fla. 420, 426 (Fla. 1919) (quoting *Bryant v. State*, 34 Fla. 291 (Fla. 1894)). In reviewing the testimony and evidence, it is clear that BOATMAN should not have been found guilty of first-degree murder. Yes, BOATMAN caused the death of Mr. Chapman, but when you consider the testimony of Mr. Arline, BOATMAN and Dr. Werner, it is clear that BOATMAN acted out of a form of self-defense, based upon the threats made by Chapman, the fact that he was constantly overlooked when it came time to be moved from CO to the dormitories, even when BOATMAN was acting properly, and the stress pushed him over the edge. As such, BOATMAN, should have been found guilty of a lesser included charge and not first-degree murder. “And, therefore, in Mr. Boatman's mind, as testified to by even Dr. Werner, there was a subjective

belief that his actions were to prevent the things that could happen to him after Mr. Chapman's threats, after intercepting the kite, and knowing what he knew about the way that things operated in the Department of Corrections.” (RT.971).

This Court has a mandatory obligation to independently review the sufficiency of the evidence underlying BOATMAN’S conviction, and the “customary review” evaluates whether the conviction is supported by competent, substantial evidence. *Ocha v. State*, 826 So. 2d 956, 965 (Fla. 2002). It is evident that at trial, the evidence presented by the State clearly did not support the jury finding BOATMAN guilty of first-degree murder and therefore, his conviction must be vacated.

XI.

THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN DENYING BOATMAN’S MOTION FOR JUDGMENT OF ACQUITTAL.

“[A]n appellate court should reverse a jury verdict when there is no rational basis in the evidence to support the verdict of the jury.” *Sifford v. Trans Air, Inc.*, 492 So.2d 407, 408 (Fla. 4th DCA 1986).

BOATMAN’S Trial Counsel moved for judgment of acquittal at the close of the State’s case. (RT.770). BOATMAN’S Trial Counsel argued

“[w]e'd move for a judgment of acquittal as to the charge of first-degree murder. We believe that the State, even in the light most favorable to the State -- that there's no competent substantial evidence of premeditation in this particular case. Mr. Boatman's own words, which form the basis for the premeditation is that he snapped and that he was angry at Mr. Chapman for the sleight against Mr. Chapman. And, again, in his own words at the first opportunity he had to rectify that, he was going to take it. And we believe that shows the heat of passion and a continuation of Mr. Boatman's anger at Mr. Chapman, which was provoked by the incidents that we've heard about so far. And for that reason, we would ask the Court to reduce this to a second-degree murder to the jury as opposed to first-degree murder.” (RT.770). The Trial Court denied the Motion and held “[v]iewing the evidence in the light most favorable to the nonmoving party, the State, the motion would be denied.” (RT.770).

Because BOATMAN moved for a timely judgment of acquittal as to all material elements, this Court must review the sufficiency of the evidence. “In reviewing a motion for judgment of acquittal, a *de novo* standard of review applies.” *Fitzpatrick v. State*, 900 So.2d 495, 507 (Fla. 2005). An Appellate Court will not reverse a conviction that is supported by competent, substantial evidence. *Donaldson v. State*, 722 So.2d 177 (Fla. 1998). In the

case at hand, the evidence presented did not support the verdict of first-degree murder and therefore, BOATMAN'S motion for judgment of acquittal argued at trial should have been granted and BOATMAN should have been found guilty of second-degree murder.

"Clear and convincing evidence requires that the evidence must be found to be credible, the facts to which the witnesses testify must be distinctly remembered, the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief and conviction, without hesitancy, as to the truth of the allegation sought to be established." *State v. Mischler*, 488 So.2d 523, 525 (Fla. 1986) [*quoting, Slomowitz v. Walker*, 429 So.2d 797, 800 (Fla. 4th DCA 1983)].

Accordingly, the evidence and testimony were not precise and explicit. The evidence clearly should have produced doubt and hesitancy in the minds of the jury and therefore, the Trial Court committed reversible error in denying BOATMAN'S Motion for Judgment of Acquittal. *State v. Mischler*, 488 So.2d 523, 525 (Fla. 1986) [*quoting, Slomowitz v. Walker*, 429 So.2d 797, 800 (Fla. 4th DCA 1983)]. Based upon this, BOATMAN'S convictions must be vacated.

XII.

THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING BOATMAN'S REQUEST FOR THE TRIAL COURT TO INCLUDE THE INSTRUCTION OF "UNNECESSARY KILLING TO PREVENT UNLAWFUL ACT" IN THE JURY INSTRUCTIONS AND DENYING HIS OBJECTIONS.

A Trial Court's decision on the giving or withholding of a proposed jury instruction is reviewed under the abuse of discretion standard of review. *Bozeman v. State*, 714 So.2d 570, 572 (Fla. 1st DCA 1998). A "[d]efendant is entitled to have the jury instructed on the rules of law applicable to his theory of defense if there is any evidence to support such instructions." *Hooper v. State*, 476 So.2d 1253, 1256 (Fla.1985) (citing *Smith v. State*, 424 So.2d 726 (Fla.1982); *Palmer v. State*, 397 So.2d 648 (Fla.1981)).

In the case at hand, BOATMAN'S Trial Counsel requested that standard jury instruction 7.7(b) be added as a lesser included offense.

Florida Standard Jury Instruction 7.7(b) provides:

To prove the crime of Unnecessary Killing to Prevent an Unlawful Act, the State must prove the following four elements beyond a reasonable doubt:

1. (Victim) attempted to commit [a felony] [an unlawful act].
2. (Victim's) attempt to commit [a felony] [an unlawful act] was independent of a[n] [[threatened] unlawful act] directed

- solely toward (defendant).
3. (Defendant) resisted (victim's) [failed] attempt to commit [a felony] [an unlawful act] by intentionally committing an act or acts that caused the death of (victim).
 4. (Defendant's) killing of (victim) was unnecessary.
A[n] (name of felony or unlawful act attempted to be committed by victim) is defined as (give elements of felony or unlawful act).
The Court instructs you that (name of felony or unlawful act) is [a felony] [an unlawful act].

In order for (victim) to have attempted to commit (name of felony or unlawful act), the following would have had to have occurred:

1. (Victim) did some act toward committing the (name of felony or unlawful act) that went beyond just thinking or talking about it.
2. (Victim) would have committed the (name of felony or unlawful act) except that someone prevented [him] [her] from committing it or [he] [she] failed.

The defendant cannot be guilty of Unnecessary Killing to Prevent an Unlawful Act if the killing was either justifiable or excusable homicide, as I have previously instructed you. (*The explanations of justifiable homicide and excusable homicide are in Instruction 7.1, Introduction to Homicide.*) Give if requested.

In support of said request, BOATMAN'S Trial Counsel argued that the "felony" that Mr. Chapman was attempting to commit on BOATMAN was a battery or a sexual battery. (RT.950-951). The State objected and the following transpired:

THE COURT: Well, it's not even a category two; right? It's not in the one or two of lessers; so it's one that's being requested. It doesn't even fit in the schedule, and, I guess, the problem for the Court is I'm not aware of any

evidence presented in the trial that could support this instruction, which is what -- even for a category two what would be required is to make sure it was pled correctly to include the elements of this and that there was evidence presented during the course of the trial to support it. Neither thing exists.

MR. EISENMENGER: It's the Defense's position, your Honor, that this is actually an alternate version of manslaughter under the statutes because it's punished the same. It is designed to punish the same conduct, and it -- we do believe that it's been proven during the trial, and we believe that we should be allowed to present it to the jury.

THE COURT: Based on what's been presented in this courtroom? Because that's what has to be -- the case law is no different because you're trying to switch it around to apply for Mr. Boatman as a lesser in the crime. You believe there's sufficient evidence to support the crime of attempted sexual battery by Mr. Chapman against Mr. Boatman.

MR. GOLDMAN: Your Honor, if I could take your questions out of order. The first one was why is this -- why should this be included since it's not a lesser included? If we go to 782.11, the statute, it says Whoever shall unnecessarily kill another while resisting an attempt by such person or such other person to commit any felony or to do any other unlawful act, or after such attempt shall have failed, shall be deemed guilty of manslaughter, a

felony of the second degree. So when the statute says that you're guilty of manslaughter if you're convicted of this crime, we believe it falls within the lesser-included offenses; so that's the first part. Was he prevented from committing a crime? That crime was set in place by a series of acts, and it was thwarted by Mr. Boatman's actions. The reason why it was thwarted was because he took this violent action. Now, it's not an excusable homicide because it's just not. It doesn't qualify; so what is it in between? It's this crime. Now, was there an act that actually put it in motion? Yes. It was the kite. And I think that's a decision for the jury. . . . First is there was -- the attempt becomes real when the conspiracy becomes real, when he has a second person with him, when Smurf is with him. Whether the Court chooses to believe Reginald Arline or Leo Boatman is the Court's decision. I think the jury should decide whether or not they believe -- once that conspiracy is in motion, it's more than just talk; it's action, and, therefore, there's an attempt. So when someone talks about the hitman and hires the hitman, well, then the crime is now happening; it's no longer just talk. And that's what this is -- happening.

THE COURT: I totally understand your argument. It's not attempt.

MR. GOLDMAN: The next part is, even if it is not a crime that they're looking for, it's an unlawful act. The reason why it's unlawful is because it's

violating the administrative code because they are not allowed to do any of those things. So the violation of the code, an unlawful act, which is right there in the jury instruction and also in the statute -- any other unlawful act.

THE COURT: I'm not giving it.

MR. GOLDMAN: It doesn't say on any other unlawful act that is a felony or any other unlawful act that is not in a code.

THE COURT: Not sufficient. There's not any evidence to support that instruction; so --

MR. EISENMENGER: Understanding the Court's ruling, there is evidence that these people were going to engage in sexual acts within the Department of Corrections, which Assistant Warden McClellan has testified during this trial, is a violation of DOC policy and administrative code and is subject to disciplinary measures and, therefore, an unlawful act under the laws of the state of Florida. There's further conspiracy to engage in this sexual behavior

. . .

THE COURT: . . .the Court's belief is there is no evidence, under any strain of persuasion, that would support that Mr. Chapman was committing an unlawful sexual battery, which is what you requested: There was an

unlawful sexual battery taking place against Mr. Boatman, and, therefore, Mr. Boatman had to kill him. (RT.950-956). The Trial Court denied said request, although it is quite clear that there was evidence to support the instruction. (RT.955-956).

Mr. Arline testified about a kite that came to his cell and he intercepted it. Mr. Arline also testified that Will Chapman was gay but didn't want nobody to know except for whoever he did it with. (RT.914). Mr. Arline testified that Maurice Bell is gay and that everybody knows of his reputation. Mr. Arlin testified that BOATMAN was not gay and that "[t]he kite had his name in it and was homosexual activity and stuff like that. And I couldn't believe it because he don't even put hisself in that situation." (RT.916) Mr. Arline testified that Will Chapman disrespected other inmates including BOATMAN and that Chapman "had a habit or problem telling the wing to suck is penis and calling peoples outside their name, disrespecting everybody, including the officers and that Chapman and Bell both disrespected people sexually and verbally. (RT.916-917). Mr. Arline testified that to say "suck my penis—suck my dick" is an insult and it is "an insult that a person have to do something because they're being disrespected and disrespected of their manhood." (RT.917).

BOATMAN'S Trial Counsel further requested that a proper instruction as to self defense be given.

MR. EISENMENGER: The second issue, which we're going to get to in a moment, is self-defense and whether or not that is a proper instruction. This is regarding -- this statute has been used in the past to prosecute police officers who were engaged in their duties -- but not justified in their shooting.

THE COURT: So if two -- you're saying -- you believe what this is saying is if Maurice Bell and Mr. Chapman were over in a corner at the end of close management, about to engage in a consensual sexual act, that Mr. Boatman, then, could go over -- because that would be a violation of DR and the rules of the prison -- and kill Chapman and that is this crime?

MR. EISENMENGER: That is this version of manslaughter. That he's preventing an unlawful act unnecessarily.

THE COURT: There's no evidence of that. It still comes down to the attempt. Right? There's got to be something going on it. It isn't, Three days earlier, I saw a note that revealed that maybe these two could be having relations. He never -- there's no testimony -- Mr. Boatman testified he never saw relations. He has no evidence that relations ever occurred. It's all, I heard, I thought, I believed, now I'm disrespected. And he talked about the danger of that, but he never saw any unlawful act ever.

MR. EISENMENGER: He saw the kite and --

THE COURT: So the kite's the unlawful act now?

MR. EISENMENGER: The kite itself is evidence of the conspiracy to commit the unlawful act, yes. (RT.956-958).

BOATMAN'S Trial Counsel further objected to the manslaughter instruction and argued that "we believe the proper manslaughter instruction is 7.7(b). The Trial Court overruled BOATMAN'S objection. (RT.958-959). Again, the testimony of Mr. Arline and BOATMAN supports the objection and the instruction should have been given. A Trial Court's decision on the giving or withholding of a proposed jury instruction is reviewed under the abuse of discretion standard of review. *Bozeman v. State*, 714 So.2d 570, 572 (Fla. 1st DCA 1998. *Howell v. Winkle*, 866 So.2d 192, 197 (Fla. 1st DCA 2004).

Because the Trial Court abused its discretion by not giving the requested instructions, BOATMAN did not receive a fair and just trial as the jury was not properly instructed as to the law. Accordingly, BOATMAN'S conviction for first degree murder must be vacated in order to assure that BOATMAN'S due process rights are protected and to avoid a miscarriage of justice by upholding his conviction. *See generally, Ivey v. Allstate Ins. Co.*, 774 So.2d 679 (Fla. 2000).

XIII.

THE TRIAL COURT ERRED IN ACCEPTING BOATMAN'S WAIVER OF JURY DURING PENALTY PHASE.

On August 25, 2022, BOATMAN, filed his Waiver of Jury Trial During Penalty Phase, *pro se*. (R.482). The Trial Court accepted his waiver over objection by BOATMAN'S Trial Counsel, arguing that BOATMAN was not competent to knowingly and intelligently to waive said right.

Fla.Stat. §921.141(1), governs the procedure to be followed in the penalty phase of a capital trial. It provides, in pertinent part: "If the trial jury has been waived, or if the defendant pleaded guilty, the sentencing proceeding shall be conducted before a jury impaneled for that purpose, unless waived by the defendant."

In 1974, shortly after the enactment of the above, statute, this Court stated that the defendant's right to a penalty-phase jury is *an essential right of the defendant under our death legislation, though it may be waived*. The question before this Court is whether the appellant has waived this right intelligently and voluntarily. *Boykin v. Alabama*, [395 U.S. 238, 89 S.Ct. 1709, (1969)]; *Carnley v. Cochran*, 369 U.S. 506, 82 S.Ct. 884, (1962).

In reviewing the transcript of the experts during the penalty phase and reviewing BOATMAN'S Sentencing Memorandum, it is obvious that

BOATMAN did not waive his right to a jury during the penalty phase knowingly and intelligently, even though the record shows that a colloquy was performed to ascertain BOATMAN'S waiver. (PT.1636-1649).

BOATMAN was interviewed by Dr. Werner regarding this issue and the following occurred:

"Q In light of his diagnosis, do you have concerns about the free nature of that decision?

A I do. Again, I think that, you know, it's difficult for him to be able to -- for that, to be able to say that that's a free decision based on, you know, him thinking, I have to stay in close management probably for the rest of my life. And he related to someone who had testified earlier who kind of alluded to that, didn't necessarily say that but alluded to that: that it would be a very long time and a long process for him to get out of there. But he's unsure of what he needs to do or show in order to get off of max management because he hasn't had any DRs, and he hasn't had any problems. And I kind of equate that to almost an addiction. And so when a smoker -- you know, I testify in the tobacco trials, and they say, you know, Why didn't they just quit? Well, because it's no longer a free choice after they're addicted to nicotine because when they put it down or try to put it down, there are consequences to that.

And so his consequences are that he's still in this close management, and this is the only way he can see to get out of that.

Q So in that regard, do you think that he can freely, knowingly, and voluntarily make the decision to waive a jury under these circumstances?

A I think that's a question, and I think clearly he sees that he -- and he wouldn't -- he wouldn't acknowledge this, although I did ask him, but I think that he clearly sees that his best chance of getting to death row is through a bench trial as opposed to a jury trial. And he would laugh when I said that and say, Well, those are your words, not mine.

Q Right. And so would that, in your opinion, be a free, knowing, or voluntary decision?

A. I don't believe so. (PT.1651-1652).

BOATMAN suffers from mental and emotional disabilities. Therefore, it must be clear that BOATMAN *voluntarily and intelligently* waived the right to have a sentencing jury render its opinion on the appropriateness of the death penalty, granted him by the express provision of *Fla.Stat.* §921.141(1).

Even though Dr. Werner testified that his waiver was not voluntary and intelligent, the Trial Court did find that BOATMAN waived his right to a jury for the penalty phase. (RT.1668-1669)(R.939-943).

Case law is clear that a defendant may waive the advisory jury in the penalty phase of a capital case, provided the waiver is voluntary and intelligent. *Valle v. Moore*, 837 So.2d 905, 908 (Fla.2002). However, “even when a capital defendant makes a voluntary and intelligent waiver of the advisory jury's recommendation, the trial judge ‘may in his or her discretion either require an advisory jury recommendation, or may proceed to sentence the defendant without such an advisory jury recommendation.’ ” *Muhammad v. State*, 782 So.2d 343, 361 (Fla.2001) (quoting *State v. Carr*, 336 So.2d 358, 359 (Fla.1976)).

Based upon the Trial Court's interpretation of BOATMAN'S decision, BOATMAN'S mental and emotional disabilities and the fact that it appeared that BOATMAN made an impulsive decision based upon what he perceived as an “empathetic jury”. BOATMAN'S Waiver of Jury Trial During Penalty Phase, *pro se* should have been denied. (R.482). Because his waiver was not intelligently and knowing, BOATMAN'S entitled to a new penalty phase.

XIV.

THE DEATH PENALTY IS UNCONSTITUTIONAL FOR FAILURE TO NARROW THE CLASS OF THOSE ELIGIBLE FOR THE PENALTY OF DEATH.

The determination as to the constitutionality of a statute is reviewed de novo. *Fla. Dep't of Revenue v. City of Gainesville*, 918 So.2d 250, 256 (Fla.2005).

The Eighth Amendment requires, among other things, that a capital sentencing scheme "genuinely narrow the class of persons eligible for the death penalty and must reasonably justify the imposition of a more severe sentence on the defendant compared to others found guilty of murder." *Lowenfield v. Phelps*, 484 U.S. 231, 244 108 S. Ct. 546 (1988). Florida's capital statute begins with a broad range of death eligible defendants. Not including premeditation, the felony murder provision standing alone creates a group of eighteen (18) death eligible defendants. The statute's selection of nineteen (19) types of murder for the death penalty does not narrow the death-eligible class in a way consistent with the Eighth Amendment.

In *Furman v. Georgia*, 408 U.S. 238 (1972), the Supreme Court struck down capital statutes that gave broad discretion to jurors. One way that state legislatures responded to the Furman decision was by writing new death

penalty statutes that gave sentencing jurors specific aggravating and mitigating factors to consider. Four years later, in *Gregg v. Georgia*, 428 U.S. 153 (1976), a plurality held that Georgia's death penalty statute which contained ten (10) 2 aggravating circumstances for juries to consider, provided "clear and objective standards" to give guidance to the sentencing jury, and therefore, did not violate the Eighth and Fourteenth Amendments.

In 2002, a death penalty commission appointed by Illinois Governor Ryan issued a report that made recommendations for improving the reliability and fairness of the death penalty. In its report, the Illinois Governor's Commission on Capital Punishment recommended that if a state is going to have the death penalty, the category of murders eligible for the death penalty should be narrow because broad penalties allow for more arbitrariness and increase the risk that innocent defendants will be sentenced to death. The Commission recommended limiting the list of aggravating circumstances to five: (1) murder of a peace officer or firefighter killed in the performance of official duties; (2) murder of any person at a correctional facility; (3) murder of two or more persons; (4) murder of a person involving the use of torture; and, (5) murder by a person who is under investigation or who has been charged with or has been convicted of a crime which would be a felony where the victim is anyone involved in the investigation, prosecution, or defense, of

that crime including, but not limited to, witnesses, jurors, judges, prosecutors and investigators. Kirchmeier, Jeffrey L., "Casting a Wider Net: Another Decade of Legislative Expansion of the Death Penalty in the United States, 34 Pepp L. Rev. 1 (2006).

The extensive list of designated felonies under *Fla. Stat.* §782.04(1) (a) provides the prosecutor broad discretion in determining which defendants should be death eligible. "If legislatures continue to add eligibility factors, the death penalty will apply to all-or almost all-murders." Kirchmeier, Jeffrey L., "Casting a Wider Net: Another Decade of Legislative Expansion of the Death Penalty in the United States, 34 Pepp L. Rev. I. 33 (2006). Such broad statutes do not serve the constitutional requirement of narrowing the group of defendants eligible for the death penalty and result in arbitrary application by state prosecutors who are vested with authority of deciding who should be death eligible.

The failure to narrow the class does not end with prosecutorial discretion, it is evident in the sentencing scheme as well. *Fla.Stat.* §921.141(6) provides the jury with a list of sixteen (16) aggravating factors to consider:

- (a) The capital felony was committed by a person previously convicted of a felony and under sentence of imprisonment

or placed on community control or on felony probation.

- (b) The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.
- (c) The defendant knowingly created a great risk of death to many persons.
- (d) The capital felony was committed while the defendant was engaged, or was an accomplice, in the commission of: or an attempt to commit, or flight after committing, or attempting to commit, any robbery; sexual battery; aggravated child abuse; abuse of an elderly person or disabled adult resulting in great bodily harm, permanent disability, or permanent disfigurement; arson, burglary; kidnapping; aircraft piracy; or unlawful throwing, placing, or discharging of a destructive device or bomb.
- (e) The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.
- (f) The capital felony was committed for pecuniary gain.
- (g) The capital felony was committed to disrupt or hinder the

lawful exercise or any governmental functions or the enforcement of laws.

- (h) The capital felony was especially heinous, atrocious, or cruel.
- (i) The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification.
- (j) The victim of the capital felony was a law enforcement officer engaged in the performance of his or her official duties.
- (k) The victim of the capital felony was an elected or appointed public official engaged in the performance of his or her official duties if the motive for the capital felony was related, in whole or in part, to the victim's official capacity.
- (l) The victim of the capital felony was a person less than 12 years of age.
- (m) The victim of the capital felony was particularly vulnerable due to advanced age or disability, or because the defendant stood in a position of familial or custodial authority over the victim.
- (n) The capital felony was committed by a criminal gang

member, as defined in s.874.03. The capital felony was committed by a person designated as a sexual predator pursuant to s.775.21 or a person previously designated as a sexual predator who had the sexual predator designation removed.

- (o) The capital felony was committed by a person subject to an Injunction issued pursuant to s.741.30 or s.784.046, or a foreign protection order accorded full faith and credit pursuant to s.741.315 and was committed against the petitioner who obtained the injunction or protection order or any spouse, child, sibling, or parent of the petitioner.

The nine (9) felonies designated in subsection (d) makes for a grand total of twenty-four (24) aggravating factors. This exhaustive list of aggravating factors, taken as a whole, encompasses all capital crimes. The only conclusion to be drawn from such a lengthy list is that aggravation serves to broaden the sentencer's discretion to impose death, rather than narrow the class of death eligible defendants. Sec, Liebman, James and Lawrence C, Marshall, "Symposium: The Jurisprudence of Justice Stevens: Panel I: Criminal Justice: Less is Better: Justice Stevens and the Narrowed Death Penalty," 74 Fordham L. Rev. 1607 (March 2006)

Recent evaluations of capital punishment statutes have recommended that the number of eligibility factors in death penalty statutes be limited. Broad death penalty statutes with a large number of eligibility factors give more discretion to prosecutors and juries and increase the risks of arbitrariness and unfair application of the death penalty. Kirchmeier, Jeffrey, "Casting a Wider Net: Another Decade of Legislative Expansion of the Death Penalty in the United States," 34 Pepp L. Rev. 1 (2006).

The Eighth Amendment requires narrowed capital-eligibility criteria. A long list of aggravating factors, such as we have here in Florida, does serve the constitutional requirement of subjecting only "the worst of the worst" to the death penalty. In addition, the costs to the system comes at a time when there is no reliable evidence that these expansions to death eligibility add any benefits to society. Even if one assumes that there may be some general deterrent effect resulting from the death penalty instead of life imprisonment, there is no statistical evidence which supports the theory that additional eligibility factors increase the deterrent effect 34 Pepp L. Rev. at 36.

BOATMAN would state that Florida's capital sentencing scheme violates the Eighth Amendment of the United States Constitution and *Article I, Section 17* of the Florida Constitution. The expansive list of defendants found to be death eligible raises the primary concern of ensuring that only

the "worst of the worst" are put to death. Second, the expansion of the death penalty raises constitutional issues -as the crime itself becomes so broad that practically every murder qualifies for the death penalty. Third, a large class of death eligible murder offenses provides the prosecutor unconstitutionally broad discretion in selecting which cases are to be treated as "death" cases. Finally, the large pool of death eligible candidates that emerges from that class allows for increased arbitrary discretion by prosecutors and juries.

XV.

THE TRIAL COURT ERRED IN SENTENCING BOATMAN TO DEATH WHERE THERE WERE MITIGATING CIRCUMSTANCES TO WARRANT A LIFE SENTENCE.

The Trial Court gave the following instruction: Now, you are instructed that this evidence, along with the evidence that you've already heard during the guilt phase of this trial, is presented in order for you to determine, as you will be instructed, whether each aggravating factor is proven beyond a reasonable doubt, whether the aggravating factors found to exist beyond a reasonable doubt are sufficient to justify the imposition of the death penalty, whether the mitigating circumstances are proven by the greater weight of the evidence, whether the aggravating factors outweigh the mitigating

circumstances, and whether the defendant should be sentenced to life in prison without the possibility of parole or death. . . An aggravating factor is a standard to guide the jury in making the choice between a verdict of life imprisonment without the possibility of parole, or death. It is a statutorily enumerated circumstance that increases the gravity of a crime or the harm to a victim. You must unanimously agree that each aggravating factor was proven beyond a reasonable doubt before it may be considered by you in arriving at your final verdict. In order to consider the death penalty as a possible penalty, you must unanimously determine that at least one aggravating factor has been proven beyond a reasonable doubt. The State has the burden to prove each aggravating factor beyond a reasonable doubt. A reasonable doubt is not a mere possible doubt, a speculative, imaginary, or forced doubt. Such a doubt must not influence you to disregard an aggravating factor if you have an abiding conviction that it exists. On the other hand, if, after carefully considering comparing, and weighing all the evidence, you do not have an abiding conviction that the aggravating factor exists, or, if, having a conviction, it's one which is not stable but one which wavers and vacillates, then the aggravating factor has not been proven beyond a reasonable doubt and you must not consider it in providing your verdict on the appropriate sentence to the Court. Now, a reasonable doubt

as to the existence of an aggravating factor may arise from the evidence, conflicts in the evidence, or the lack of evidence. If you have a reasonable doubt as to the existence of an aggravating factor, you must find that it does exist. However, if you have no reasonable doubt, you should find that the aggravating factor does exist. Now, before moving on to the mitigating circumstances, you must determine that an aggravating factor -- that the aggravating factor or factors are sufficient to impose a sentence of death. If you do not unanimously agree that the aggravating factor or factors are sufficient to impose death, then do not move on to consider the mitigating circumstances.” (PT.1135-1137)

The Trial Court gave the following instruction regarding mitigation. “Now, mitigating circumstances: Should you find sufficient aggravating factors to exist to justify the imposition of the death penalty, it will then be your duty to determine whether the aggravating factors that you unanimously find to have been proven beyond a reasonable doubt outweigh the mitigating circumstances that you find to have been established. Unlike aggravating factors, you do not need to unanimously agree that a mitigating circumstance has been established; rather, whether a mitigating circumstance has been established is an individual judgment made by each individual juror. A mitigating circumstance is not limited to the facts surrounding the crime. It

can be anything that might indicate that the death penalty is not appropriate for the defendant. In other words, a mitigating circumstance may include any aspect of the defendant's character, background, or life or any circumstance of the offense that reasonably may indicate that the death penalty is not an appropriate sentence in this case.” (PT.1137-1138).

A mitigating circumstance need not be proven beyond a reasonable doubt by the defendant. A mitigating circumstance need only be proven by the greater weight of the evidence, which means evidence that, more likely than not, tends to prove the existence of a mitigating circumstance. If you determine by the greater weight of the evidence that a mitigating circumstance exists, you may consider it established and give that evidence such weight as you've determined it should receive in reaching your conclusion as to the sentence to be imposed.” (PT.1138).

During the penalty phase, BOATMAN’S Trial Counsel objected to the jury and the Trial Court considering the aggravators separately. At the time of the homicide Mr. Boatman was serving a life sentence for one count of first-degree murder out of Marion County Florida. That same conviction serves as the basis for the proof of his Prior Conviction of a Another Capital Felony. BOATMAN further maintains his objection to the consideration of the Attempted Second-Degree Murder of Mark Apicella in Dixie County and/or

the Third-Degree Murder of Ricky Morris in Charlotte County as neither are a previous crime of violence against the person of William Chapman. (R.772).

In order to prove the aggravating circumstances, the State called Officer Dice from the Marion County Sheriff's Office to testify about the murders that BOATMAN did in the Ocala National Park. Officer Dice testified that BOATMAN gave a statement even when told not to by his attorney, and advised the Officer that he did not plan on killing the victims and that he did not like touching the dead bodies. (PT.1205-1207) As such, said testimony evidences that BOATMAN took responsibility for the crime and that said crime was not cold, calculated, and premeditated without pretense of moral or legal justification (CCP).

Mr. Hamner testified about the incident with Mr. Mr. Apicella which was another aggravating circumstance being argued by the State. (PT.1208-1235). During his testimony, Mr. Hamner acknowledged that BOATMAN pled guilty to the charges from said incident. Therefore, again, BOATMAN took responsibility for his actions and again, it was not cold, calculated, and premeditated without pretense of moral or legal justification (CCP).

The State argued that the killing of Mr. Chapman was cold, calculated, and premeditated without pretense of moral or legal justification (CCP).

(R.742-744)(PT:1139-1152) In order to establish the CCP aggravator, the evidence must show: (1) “the killing was the product of cool and calm reflection and not an act prompted by emotional frenzy, panic, or a fit of rage (cold)”; (2) “the defendant had a careful plan or prearranged design to commit murder before the fatal incident (calculated)”; (3) “the defendant exhibited heightened premeditation (premeditated)”; (4) “the defendant had no pretense of moral or legal justification.” *Williams v. State*, 37 So. 3d 187, 195 (Fla. 2010). The Circuit Court's finding of this aggravating factor is reviewed for competent, substantial evidence. *See England v. State*, 940 So. 2d 389, 403 (Fla. 2006). “A determination of whether CCP is present is properly based on a consideration of the totality of the circumstances.” *Gill v. State*, 14 So. 3d 946, 962 (Fla. 2009). There was nothing cold about BOATMAN’S killing of Mr. Chapman. As repeatedly stated by the State he was upset about being passed over on his close management review.

As testified by Dr. Quinones, Dr. Wu, and Dr. Colina, Mr. Boatman would have been in a heightened state and any planning would have been secondary to his fight or flight response. Further there was a pretense of both moral and legal justification. Mr. Chapman's actions put BOATMAN at risk of harm from Mr. Chapman and others within the Department of Corrections. Though not rising to a true legal defense, there was a pretense. Furthermore,

we must judge this aggravator by the prison code, and BOATMAN'S actions were morally justified under prison code, or at least had a pretense of the same.

Furthermore, the testimony of Agent Carlisle also negates that the attack was cold, calculated, and premeditated without pretense of moral or legal justification. Agent Carlisle testified that the altercation in this case occurred July 5th – 15 days after BOATMAN and Wells had their close management reviews where they were told they would remain in Close Management. (PT.1271-1272). Special Agent Carlisle also testified that about a year prior to this attack, Chapman was charged with aggravated battery on an inmate where he stabbed an inmate in Madison Correctional Institute and that a couple days before this attack BOATMAN received a “kite” from Chapman. (PT. 1284-1286). So, it is possible that said attack was in fact a type of self-defense due to the facts surrounding the attack. Clearly the attack was not “cold, calculated, and premeditated without pretense of moral or legal justification.

As a result of the above testimony, BOATMAN moved for a directed verdict as to cold, calculated, and premeditated. BOATMAN'S Trial Counsel argued “[w]e believe the State has failed to prove, even in the light most favorable, competent and substantial evidence of heightened premeditation.”

(PT.1322-1324). Said Motion was denied. (PT.1324). It is quite clear that the killing was not cold, calculated due to the kite sent by Chapman regarding BOATMAN and alleging he was homosexual when he was not; thus putting BOATMAN at risk. Based on this alone, said motion should have been granted.

The State also sought the death penalty arguing that there was sufficient evidence to justify the Circuit Court's finding that the murder of Mr. Chapman was especially heinous, atrocious, and cruel (HAC). (PT.1272). Case law is clear that the HAC aggravator applies only in torturous murders—those that evince extreme and outrageous depravity as exemplified either by the desire to inflict a high degree of pain or utter indifference to or enjoyment of the suffering of another. *Kearse v. State*, 662 So. 2d 677 (Fla. 1995); *Cheshire v. State*, 568 So. 2d 908 (Fla. 1990). “In determining whether the HAC factor was present, the focus should be upon the victim's perceptions of the circumstances as opposed to those of the perpetrator.” *Lynch v. State*, 841 So. 2d 362, 369 (Fla. 2003). Moreover, “the evidence must show that the victim was conscious and aware of impending death.” *Douglas v. State*, 878 So. 2d 1246, 1261 (Fla. 2004).

In the case at hand, Chapman was unaware of his impending death and the medical examiner, Dr. Hamilton testified that if there were no other

injuries that he would have certified that the strangulation of Mr. Chapman caused his death. (RT.679). Dr. Hamilton testified he could not determine when Mr. Chapman lost consciousness. (RT.681). Again, the actions of BOATMAN, i.e., the stabbing was not determined to be the cause of death of Mr. Chapman and the evidence does not clearly show if Mr. Chapman lost consciousness and therefore, no testimony as to his pain and suffering was introduced.

In response to the State's argument, BOATMAN argued several mitigating factors that would prevent the death penalty, including mental illness.

BOATMAN argued and presented testimony and evidence that proved that BOATMAN suffered from serious mental illness. Said diagnosis renders the death penalty an unconstitutional sentence. Just as those with intellectual disability and those under eighteen are exempt from the death penalty, so too should BOATMAN due to him suffering from a serious mental illness. See *Roper v. Simmons*, 543 U.S. 551 (2005) (excluding juveniles) and *Atkins v. Virginia*, 536 U.S. 304 (2002) (excluding those with retardation).

Atkins and *Simmons* discerned Eighth Amendment principles requiring that juveniles and those with intellectual disability be excluded as classes

from the death penalty. The Court's rationale in those cases applies with equal force to those afflicted with a serious mental illness.

Those afflicted with a serious mental illness share characteristics that (1) minimize their moral culpability for criminal acts; (2) undercut society's justification for capital punishment (deterrence and retribution); and (3) reduce the reliability of trial outcomes. *Atkins* and *Simmons* gave constitutional status to these factors. By extension, those with a serious mental illness must be excluded from the death penalty.

The evidence presented at the penalty phase was competent and substantial to support a finding that BOATMAN suffered from several mental deformities that prevent him from being sentenced to death:

(a) Fetal Alcohol Syndrome, Posttraumatic Stress Disorder (PTSD), and Adjustment Disorder. BOATMAN'S disabling traits render him less morally culpable, and derail the penological purposes of retribution and deterrence.

(b) Posttraumatic Stress Disorder (PTSD) is a serious mental illness recognized by the American Psychiatric Association. Individuals with PTSD may be quick tempered and may even engage in aggressive verbal and/or physical behavior with little or no provocation (e.g., yelling at people, getting into fights, destroying objects). American Psychiatric Association, Diagnostic

And Statistical Manual Of Mental Disorders, Fifth Edition (Dsm-5). May 2013 At 275. They may also engage in reckless or self-destructive behavior such as dangerous driving, excessive alcohol or drug use, or self-injurious or suicidal behavior. Id. PTSD is often characterized by a heightened sensitivity to potential threats, including those that are related to the traumatic experience (e.g., following a motor vehicle accident, being especially sensitive to the threat potentially caused by cars or trucks) and those not related to the traumatic event (e.g., being fearful of suffering a heart attack). American Psychiatric Association, Diagnostic And Statistical Manual Of Mental Disorders, Fifth Edition (Dsm-5) May 2013 at 275-276.

(c) Adjustment Disorder is defined by the DSM-5 as the "presence of emotional or behavioral symptoms in response to an identifiable stressor." American Psychiatric Association, Diagnostic And Statistical Manual Of Mental Disorders, Fifth Edition (Dsm-5) May 2013 at 277. The stressor may be a single event, or there may be multiple stressors. Id. Stressors may be recurrent or continuous. Some stressors may accompany specific developmental events (e.g., going to school, leaving a parental home, reentering a parental home, getting married, becoming a parent, failing to attain occupational goals, retirement). The DSM-5 further describes the functional consequences of this disorder as "The subjective distress or

impairment in functioning associated with adjustment disorders is frequently manifested as decreased performance at work or school and temporary changes in social relationships." American Psychiatric Association, Diagnostic And Statistical Manual Of Mental Disorders, Fifth Edition (Dsm-5). May 2013 At 288.

(d) Fetal Alcohol Syndrome (FAS) is described by the Centers for Disease Control and Prevention as "the most involved end of the FASD [Fetal Alcohol Spectrum Disorder] spectrum. People with FAS have central nervous system problems, minor facial features, and growth problems. People with FAS can have problems with learning, memory, attention span, communication, vision, or hearing. They might have a mix of these problems. People with FAS often have a hard time in school and trouble getting along with others." (<https://www.cdc.gov/ncbddd/fasd/facts.html>. September 2022) FASDs last a lifetime. The CDC describes the following secondary conditions which are often found in people with FASDs: 1. Mental Health Problems, 2. Disrupted School Experience, 3. Trouble with the law, 4. Inappropriate Sexual Behavior, and 5. Alcohol and Drug Problems. (<https://www.cdc.gov/ncbddd/fasd/secondary-conditions.html>)

Although there is no cure for FASDs, if there is early diagnosis, involvement in special education and social services, loving, nurturing, and

stable home environment, a life absent of violence, there is a chance that the Child can have a normal life. However, in reviewing the history of BOATMAN, it is quite clear that his upbringing failed to meet even one of these protective factors for FASDs.

These abnormalities that BOATMAN suffers from merit death-exclusion because he falls far outside the range of those "normal" adults for whom the extreme sanction of death is constitutionally permitted. BOATMAN'S mental illness undermines the principal justifications for the death penalty. Subjecting him to execution would fail to deter future offenders and would provide no more retribution for his crime than the execution of a juvenile or intellectually disabled defendant. Simply put there is no justice in the death penalty as applied to Mr. Boatman in light of his mental illness.

In addition to the fact that BOATMAN'S mental disabilities should exclude him from the death penalty, so should the constitution to wit the Eighth Amendment and the equal protection of the constitution.

The most basic principle marking the modern era of capital jurisprudence is the edict that death is not an appropriate sentence for all convicted murderers. Death must be reserved to punish only the worst of the worst murderers who commit the most serious homicide offenses. See *Gregg v. Georgia*, 428 U.S. 153 (1976). BOATMAN'S affliction separates

him from the "worst of the worst" offenders and excludes him from the death penalty. "Because the death penalty is the most severe punishment, the Eighth Amendment applies to it with special force." *Simmons*, 543 U.S. at 566. *Atkins* and *Simmons* discerned constitutional principles that logically extend to those afflicted with BOATMAN'S serious mental illness. Making BOATMAN face the death penalty violates those constitutional principles. See e.g., *Penry v. Lynaugh* 492 U.S. 302 (1989) (held that death can be imposed on those with intellectual disability; reversed by *Atkins*); *Stanford v. Kentucky*, 492 U.S. 361 (1989) (holding that death can be imposed on 16 and 17 year old juveniles, reversed by *Simmons*). The constitutional principles of *Atkins* and *Simmons* require a change in the law for those afflicted with BOATMAN'S serious mental illness. The evolving standards of decency preclude the imposition of death penalty against those defendants that are severely mentally ill. BOATMAN should also be excluded from the death penalty under the guise of equal protection relief.

This Court reviews the proportionality of each death sentence "to determine whether the crime falls within the category of both the most aggravated and the least mitigated of murders, thereby assuring uniformity in the application of the [death] sentence." *Anderson v. State*, 841 So. 2d 390, 407-08 (Fla. 2003) In conducting its proportionality review, this Court

does not compare the number of aggravating and mitigating circumstances. *Pham v. State*, 70 So. 3d 485, 500 (Fla. 2011). Rather, “the Court looks at the totality of the circumstances to determine if death is warranted in comparison to other cases where the sentence of death has been upheld.” *England v. State*, 940 So. 2d 389, 408 (Fla. 2006). *Cozzie v. State*, 225 So. 3d 717, 734 (Fla. 2017). A proportionality review therefore entails “a *qualitative* review by this Court of the underlying basis for each aggravator and mitigator rather than a quantitative analysis.” *Urbain v. State*, 714 So. 2d 411, 416 (Fla. 1998).

The totality of circumstances that led BOATMAN to stab Mr. Chapman clearly distinguishes this case from other prison homicide cases. BOATMAN stabbed Mr. Chapman for two reasons. The first reason was that BOATMAN was disincentivized from good behavior by the perceived indefinite stay in solitary confinement called Close Management. The second reason was Mr. Chapman was a trusted friend that betrayed BOATMAN by involving BOATMAN in the prison sex subculture. This betrayal was done by Mr. Chapman - a known dangerous inmate with a recent history of stabbing inmates, battering guards, and placed on Close Management. The danger to BOATMAN was imminent and real. Past trauma, sexual abuse, and his brain chemistry rendered him particularly vulnerable psychologically to the

provocation of Mr. Chapman and the threat Mr. Chapman posed both to BOATMAN directly and indirectly. BOATMAN'S own victimization directly led to this homicide. "I will not be a victim again".

When considering all of the factors, both mitigating and aggravating, this case does not fall within the category of crimes that juries currently consider the "worst of the worst". BOATMAN'S decision to waive a jury is a mitigating factor, not an aggravating one, as he took responsibility for his crime. BOATMAN killed a single individual, and that individual was someone who had put him at considerable risk of harm within the prison community if he didn't act. More importantly, BOATMAN'S case is among the most mitigated cases one can imagine. He was left to fend virtually for himself from the day he was born, he suffered unthinkable abuse at the hands of everyone who was supposed to be caring for him, and he suffered from a brain abnormality due to the alcohol and drug use of his mother. All of the mitigation the Circuit Court heard was unrebutted.

In the case at hand, aggravation can only come from the four factors that were presented to the Trial Court. Mitigation, however, can come from anywhere. Mitigation can even simply be mercy, mercy that is not earned but is bestowed. Mercy and compassion are a part of justice. "A country which is secure in its institutions, confident in its laws should not be ashamed of

the concept of mercy.” Justice Kennedy, ABA speech 2003. Punishment should not be more severe than that necessary to satisfy the goals of punishment. *United States v. Carvajal*, 2005 WL 476125 (S.D. N.Y. 2005). A judge must sentence “without ever being indifferent to defendant’s plea for compassion, for compassion also is a component of justice”. *United States v. Kloda*, 133 F.Supp.2d 345 (S.D. N.Y. 2001). Accordingly, BOATMAN’S sentence must be vacated in order to assure that BOATMAN’S due process rights are protected and to avoid a miscarriage of justice by upholding his sentence of death. *State v. Smith*, 951 So.2d 954, 958 (Fla. 1st DCA 2007)(“that the trial court made an error so serious that it amounts to a miscarriage of justice.”)

CONCLUSION

Reversal of a judgment or conviction “in the interest of justice” is viable and an independent ground for appellate reversal. *Kelley v. State*, 637 So. 2d 972 (Fla. 1st DCA 1994). The upholding of BOATMAN’S conviction seriously affects the fairness, integrity and public reputation of the judicial proceedings, which cannot be allowed to happen by this Court and is clearly a miscarriage of justice. *See generally, Hughes v. State*, 901 So.2d 837 (Fla. 2005); *Ivey v. Allstate Ins. Co.*, 774 So.2d 679 (Fla. 2000). This Court should explicitly adopt BOATMAN’S position based upon law and equity. For all

the reasons alleged in this brief, this Court should vacate BOATMAN'S conviction and remand for a new trial.

Based upon the above argument and caselaw, sentencing BOATMAN to death, lies outside the range of what the facts of this case dictate as being a reasonable sentence and is vastly disproportionate to the crime. Because the Trial Court abused its discretion, BOATMAN'S sentence must be vacated.

JOFFE LAW, P.A.
Attorney for Appellant
The 110 Tower Building
110 S.E. 6th Street,
17th Floor, Suite 1700
Ft. Lauderdale, Florida 33301
Telephone: (954) 723-0007
Facsimile: (954) 723-0033
davidjoffe@aol.com

By David J. Joffe
DAVID J. JOFFE, ESQUIRE
Florida Bar No. 0814164

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief is in compliance with Fla.R.App.P. 9.045(b) and that the brief has 27,671 words and has been typed in Arial 14-point font.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 28, 2023, I electronically filed the foregoing document with the Clerk of the Court, and a copy of was served Via E-mail to the Assistant Attorney General Rick Buchwalter, Rick.Buchwalter@myfloridalegal.com and to Leo Boatman DC No 129327, Union C.I., PO Box 23608, Tampa, FL 33623.



DAVID J. JOFFE, ESQUIRE