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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

REPLY BRIEF OF APPELLANT

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ARGUMENT

I.

THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING BOATMAN'S MOTION TO ADJUDICATE THE DEFENDANT INCOMPETENT TO PROCEED.

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).

The State argues that because Dr. Werner who examined BOATMAN found that he had "an adequate understanding of the proceedings and an adequate ability to participate in his own defense if he so choses" that the Trial Court denying BOATMAN'S Motion to Adjudicate the Defendant Incompetent to Proceed was not an abuse of discretion. (State's Answer Brief, page 26). It is true that Dr. Werner noted that Mr. Boatman, while having an adequate understanding of the proceedings, was not currently capable of making a free and rational decision as it relates to his decision to plea or go forward with a trial. (R.87) However, not having the ability to make a free and rational decision does mean that BOATMAN was incompetent to proceed.

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. (emphasis added)
> . . .

If it was concluded by Dr. Werner that BOATMAN was not currently capable of making a free and rational decision as it relates to his decision to plea or go forward with a trial; doesn't that mean that he did not and could not have the "reasonable degree of rational understanding" that is necessary to proceed. *Fla.Stat.* §916.12(1)(R.87)

The State further argues that "Boatman is not challenging in this claim whether any decision of his was freely and voluntarily entered, but only whether he initially possessed the competency to make decisions." (State's Answer Brief, page 26). Isn't not being able to freely and voluntarily make a decision define someone being "incompetent to proceed" under *Fla.Stat.* §916.12? After all, if this was a plea colloquy and the Defendant was found to have not freely and voluntarily entered into the plea, the plea would not be accepted. Why then if someone "was not currently capable of making a free and rational decision as it relates to his decision to plea or go forward with a trial be competent to do either? (R.87)

The test for whether a defendant is competent to stand trial is "whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him." *Dusky v. United States,* 362 U.S. 402, 402, 80 S.Ct. 788, (1960). "The trial court must consider all evidence relative to competence and its decision will stand absent a showing of abuse of discretion." *Carter v. State,* 576 So.2d 1291, 1292 (Fla.1989)). Whether someone has to ability "to be acting freely, voluntarily, and with a clear head" is also part of being competent to proceed. *See generally*, *Peed v. State*, 955 So.2d 480, 497-498 (Fla. 2007). Therefore, the finding that BOATMAN was competent must be vacated.

In addition, the State's argument regarding the record also fails to support this Court finding that the Trial Court did not abuse its discretion in finding BOATMAN competent. The State is correct that if there is sufficient evidence to support the conclusion of the lower court, the Appellate Court nor this Court may not substitute its judgment. *Mason v. State,* 597 So.2d 776, 779 (Fla.1992). However, where the State's argument fails is the fact that "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, because Dr.

Werner found that BOATMAN was unable to act freely and voluntarily in making his decisions, "no reasonable person would take the view" that BOATMAN was competent to proceed. Therefore, the Trial Court clearly abused its discretion in finding BOATMAN competent to proceed. In order to avoid a miscarriage of justice and from further violating BOATMAN'S due process rights, 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

The State again believes that the Trial Court did not err in finding that BOATMAN'S Motion was legally insufficient and therefore denying same. (R.180-181). The State argues that the Trial Court denying the Motion should be upheld because the Trial Court did not call BOATMAN'S lawyers "liars" but merely "expressed his concern about delays in the scheduling" and that "[s]uch discussions are completely appropriate for a court to engage in while attempting to determine whether a trial continuance is warranted." (State's Answer Brief, pages 32-33). However, "[n] judge under any circumstances is warranted in sitting in the trial of a cause whose neutrality is shadowed or

even questioned." *Livingston v. State***,** 441 So.2d 1083, 1085-86 (Fla. 1984). It is quite clear that "[i]t 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.2 d 1083, 1085-86 (Fla. 1984) (citing *Dickenson v. Parks***,** 104 Fla. 577, 582-84, 140 So. 459, 462 (1932.))

Case law is clear 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). Therefore, even if the Trial Court did not call BOATMAN'S "liars", it was implied and questioned as to the motive of why they were not ready to proceed to trial. Therefore, there is no doubt that BOATMAN lost confidence in the Judge being impartial to him and his counsels and therefore in fear of

not receiving a fair and impartial trial. *Lewis v. State***,** 530 So.2d 449 (Fla. 1st Dist. 1988). 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 convict and sentence must be vacated.

III.

THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING BOATMAN'S MOTION IN LIMINE.

The State's argument as to this is that the photographs and videos were relevant. The State argues that the video of "Boatman and Wells *actually committing the murder* is 'independently relevant' evidence as it is 'evidence tending to prove or disprove a material fact' – that Boatman was one of the two prisoners who attacked Chapman.. .". (State's Answer Brief, page 38). This argument fails to take into consideration BOATMAN'S argument that 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**." (emphasis added). *McDuffie v. State,* 970 So.2d 312, 326 (Fla.2007)

BOATMAN'S argument regarding the photos and the video was 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).

It is clear that the Trial Court abused its discretion because the Trial Court was clearly erroneous in its view of the law and in its assessment of the evidence. (emphasis added). *McDuffie v. State,* 970 So.2d 312, 326 (Fla.2007).

In *Czubak v. State,* 570 So.2d 925 (Fla.1990), this Court discussed the admissibility of gruesome photographs: "This Court has long followed the rule that photographs are admissible if they are relevant and not so shocking in nature as to defeat the value of their relevance. Where photographs are relevant, "then the trial judge in the first [instance] and this Court on appeal must determine whether the gruesomeness of the portrayal is so inflammatory as to create an undue prejudice in the minds of the jury and [distract] them from a fair and unimpassioned consideration of the evidence." We have consistently upheld the admission of allegedly gruesome

photographs where they were independently relevant or corroborative of other evidence." *Czubak v. State,* 570 So.2d 925, 928 (Fla.1990).

In ruling as it did, the Trial Court failed to consider the prejudicial impact that both said videos and then the photos would have and that showing both the videos and the photographs was cumulative and more prejudicial than probative. Again, BOATMAN argues that the photographs and the videos 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. 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.

The State argues that BOATMAN "fails to provide any compelling reason for the Court to reconsider its recent decision in *Lott*. Therefore, the Court should deny this claim." (State's Answer Brief, page 40). The main flaw in that argument is the State's reliance on *Lott.* This Court did not rule on the issue in *Lott* because this Court found that "this claim should have been brought on direct appeal and is therefore procedurally barred." *Lott v. State*, 303 So.3d 165, 166 (Fla. 2020).

Second, the issue itself has not been addressed since 2011 and BOATMAN would argue that this Court needs to reconsider its ruling in the cases cited by the State to wit: *Pham v. State*, 70 So. 3d 485, 496 (Fla. 2011) (citing, *e.g.*, *Coday v. State*, 946 So. 2d 988, 1006 (Fla. 2006); *Ibar v. State*, 938 So. 2d 451, 473 (Fla. 2006); *Kormondy v. State*, 845 So. 2d 41, 54 (Fla. 2003)).

Again, in reviewing both BOATMAN'S Motion filed on April 26, 2022 and his argument in his Initial Brief, BOATMAN gives this Court a compelling reason to grant this claim. In his Motion, 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 his Initial Brief, BOATMAN argues that case law is clear that 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.

"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.

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 ABUSED ITS DISCRETION WHEN IT DENIED BOATMAN'S MOTION FOR SEQUESTERED JURY SELECTION AND DENIED STATEMENTS BOATMAN

SOUGHT THE COURT TO READ TO THE VENIRE REGARDING PRE-TRIAL PUBLICITY.

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).

In *Bolin,* the Court addressed the issues raised by BOATMAN: "we hold that the preferred approach for Florida trial courts is to conduct individual and sequestered voir dire of prospective jurors whenever, . . . "the timing and content" of pretrial publicity creates the probability that prospective jurors have been exposed to prejudicial information that will not be admissible at trial. . . Moreover, the entire jury venire likely would have been tainted by knowledge of all of this inadmissible evidence if the trial judge or counsel had questioned prospective jurors in the presence of other

venirepersons regarding exposure to pretrial publicity. *Bolin v. State,* 36 So.2d 1160, 1165-1160 (Fla.1999).

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)

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).

This Court will not disturb a ruling of a Trial Court regarding the scope of voir dire absent a finding of an abuse of discretion. *Chamberlain v. State,* 881 So.2d 1087, 1095 (Fla. 2004). This standard is only met if no reasonable person would arrive at the same conclusion as that of the Trial Court. *Trease v. State,* 768 So.2d 1050, 1053 n.2 (Fla. 2000) (citing *Huff v. State,* 569 So.2d 1247, 1249 (Fla. 1990)). 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). Accordingly, 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. 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 ABUSED ITS DISCRETION IN DENYING BOATMAN'S MOTION TO USE PHOTOGRAPHS AND VIDEO DURING VOIR DIRE EXAMINATION OF PROSPECTIVE JURORS.

The State argues that the Trial Court's ruling cannot be interfered with unless the Trial Court abuses it's discretion and because the Trial Court allowed counsel "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" the Trial Court did not abuse its discretion. (R.1110-1111) (State's Answer Brief, page 44). Also, the State argues that case law does not allow counsel to "pre-try

the case in questioning jurors during voir dire." (State's Answer Brief, page 45).

BOATMAN'S Counsel's intention was not to "pre-try the case by questioning the jurors during voir dire or by showing them the pictures. The only intention was to use the pictures to properly determine if the jurors would be bias or prejudice against BOATMAN because how gruesome the pictures and video were. Therefore, BOATMAN argues that the Trial Court did in fact abuse its discretion. After all, "pictures speak louder than words". And, because they were already allowed to be introduced during the trial, then where was the fear if they were presented during voir dire? Merely being allowed to question the prospective jurors without the pictures 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.

The State's argument that said claim is waived is not supported by the facts of the case or the arguments made by BOATMAN'S counsel during voir dire nor BOATMAN'S arguments in his Initial Brief. 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).

As such, this Court must determine if the Trial Court's denial of BOATMAN'S challenges to the jurors cited in BOATMAN'S Initial Brief, was a "manifest error". *Carratelli v. State*, 961 S.2d 312 (Fla. 2007).

The State argues that the error, if any, was harmless due to the fact that none of the jurors served on the jury. (State's Answer Brief, page 57-58). However, the rulings in and of themselves were in error and said error did in fact prejudice BOATMAN.

"Manifest error" is tantamount to an abuse of discretion. *See Kimbrough v. State,* 700 So.2d 634, 638–39 (Fla.1997) (stating that court's determination of juror's competency "will not be overturned absent manifest error" and concluding that trial court did not abuse its discretion in excusing a juror for cause). A potential juror may be excused "for cause" if the juror has a state of mind regarding the case "that will prevent the juror from acting with impartiality.

In a capital case as in this case, the standard is met if a juror's views on the death penalty "prevent or substantially impair the performance of his or her duties as a juror in accordance with the juror's instructions or oath." *Fernandez v. State,* 730 So.2d 277, 281 (Fla.1999). " "A juror must be excused for cause if any reasonable doubt exists as to whether the juror possesses an impartial state of mind." *Ault v. State,* 866 So.2d 674, 683

(Fla.2003). In the case at hand, there should have been a reasonable doubt that the jurors in questions “possesses an impartial state of mind” as to the death penalty and in deciding to consider mitigation factors. As such, the denial of BOATMAN’S challenges was a manifest error.

So, BOATMAN’S argument is that the denial by the Trial Court of BOATMAN’S 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.

BOATMAN DOES DEMONSTRATE THAT BOATMAN WAS DENIED A FAIR TRIAL

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 State in its Answer Brief, although discusses each and every “objection” raised by BOATMAN in his Initial Brief, does not address the actual “objection” made by BOATMAN.

The State argues that the Court properly overruled the best evidence objection because Prock’s observation and testimony about the two

struggling on the floor is not subject to the 'best evidence' portrayed in the video does not show this part of the struggle. . ." (State's Answer Brief, pages 62-63). If that was and is the case, then why were the videos and pictures allowed to be introduced to begin with. If they did not depict "much of what occurs during the murder cannot be seen on the video", then why was BOATMAN'S Motion in Limine denied? Again, 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.

The State then argues that BOATMAN'S objection to Sergeant Prock's testimony regarding testifying about conversations he heard between BOATMAN and Mr. Wells was not properly preserved by Trial Counsel. Whether that is true or not, said issue is preserved for appellate review as the denial of same was fundamental error as allowing said testimony was a violation of BOATMAN'S right of confrontation of Mr. Wells, since Mr. Wells did not testify. Fundamental error is a legal term provided by United States Courts to describe an error which occurs whenever a judgement violates a federal fundamental right. BOATMAN'S right to confront his

Mr. Wells regarding the testimony presented by Sergeant Prock is a fundamental right under both the United States Constitution and the Florida Constitution. Therefore, said issue is a valid issue to be reviewed by this Court.

Furthermore, in reviewing the testimony in question, it is evident that said testimony was in fact "used" in connection with sentencing BOATMAN to death. It was used in order to prove the crime was cold, calculated, and premeditated without pretense of moral or legal justification (CCP) and especially heinous, atrocious, and cruel (HAC). Therefore, said error was clearly not "harmless". *State v. DiGuilio,* 491 So.2d 1129, 1139 (Fla.1986).

The State, in arguing against this issue, fails to bring to the Court's attention that BOATMAN'S argument as to this issue is argued at length in his argument regarding the denial of his Motion in Limine. As such, BOATMAN stands by that argument and the fact that the pictures were cumulative and more prejudicial then probative. (RT.664-665).

As to the State's argument that the Trial Court denying BOATMAN'S objections raised during the testimony of Agent Carlisle as being harmless, BOATMAN would argue that the testimony was not harmless because again, it is evident that said testimony was in fact "used" in connection with sentencing BOATMAN to death. It was used in order to prove the crime was

cold, calculated, and premeditated without pretense of moral or legal justification (CCP) and especially heinous, atrocious, and cruel (HAC). Therefore, said error was clearly not "harmless". *State v. DiGuilio,* 491 So.2d 1129, 1139 (Fla.1986).

Also, the fact that 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 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. The State argues that the

statements were not testimonial and therefore, BOATMAN'S right to confront the witness was not violated. *Crawford v. Washington,* 541 U.S. 36, 124 S.Ct. 1354 (2004). "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 why the testimony was introduced it was clearly "testimonial" and allowing same did violate BOATMAN'S due process rights and therefore was not "harmless error" as argued by the State. (State's Answer Brief, pages 76-79).

In reviewing the errors that occurred during BOATMAN'S trial, it is quite clear that he did not receive a fundamentally fair trial. 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).

X.

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

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 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, it is clear that BOATMAN acted out of a form of self-defense, based upon the threats made by Chapman. 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).

Also, the testimony of Dr. Werner that there was a subjective belief that his [BOATMAN'S] 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). Again, this was not "premeditated".

Finally, as the State pointed out in their Answer Brief, BOATMAN continued to stab the victim, not because of his premediated intent but because Mr. Wells told him "he's still alive. Keep stabbing him." (State's Answer Brief, page 95). Again, that is not premeditated, that is being told what to do by another inmate, who also was involved in the killing.

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.

Again, the State argues that BOATMAN'S argument is meritless because "[t]here was certainly competent substantial evidence to establish each element of the crimes charged." (State's Answer Brief, pages 98-100).

A motion for judgment of acquittal should not be granted "unless the evidence is such that no view which the jury may lawfully take of it favorable to the opposite party can be sustained under the law." *Pagan v. State,* 830 So.2d 792, 803 (Fla. 2002). In reviewing the motion, this Court uses a *de novo* standard of review and upholds the conviction if it is supported by competent, substantial evidence. *Pagan v. State,* 830 So.2d 792, 803 (Fla.2002).

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).

A Trial Court should not grant a motion for judgment of acquittal "unless there is no view of the evidence which the jury might take favorable to the opposite party that can be sustained under the law." *Coday v. State,* 946 So.2d 988, 996 (Fla.2006). "In determining the sufficiency of the evidence, 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)).

Furthermore, when there is a defense raised by a defendant, the proper test in whether to grant or deny a motion for judgment of acquittal is to determine, first, whether the defendant produced competent evidence of an affirmative defense and, second, whether the state has carried its burden of contradicting that evidence to the extent that a jury issue is made. Only if the evidence taken as a whole leads the Trial Court to determine that the jury *could conclude only* that there is a reasonable doubt as to the defendant's guilt should a motion for judgment of acquittal be granted. *Holmes v. State,*

374 So.2d 944 (Fla.1979), *cert. denied,* 446 U.S. 913, 100 S.Ct. 1845, 64 (1980); *Jones v. State,* 332 So.2d 615, 620 (Fla.1976).

In the case at hand, there was sufficient evidence for the jury to find that the murder was not "premeditated" but was due to anger and "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." (RT.770). Said evidence supported an affirmative defense to the charge of first degree murder and the State failed to meet its burden of contradicting that evidence. Accordingly, the evidence and testimony were not precise and explicit to support a conviction of first degree murder. 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. 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.

The State again argues that the Trial Court did not abuse its discretion in denying BOATMAN'S request because there "was no evidence to support the trial court giving the instruction." (State's Answer Brief, page 101). BOATMAN disagrees. Also, the State in their Answer Brief cites to the transcript; however, failed to include the following which supports BOATMAN'S request:

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.

As pointed out by the State: "[t]he jury instruction clearly requires that there must be evidence that the victim 'did some act toward committing the felony or unlawful act that went beyond just thinking or talking about it'". (State's Answer Brief, page 103). That is what occurred when Mr. Arline testified about a kite that came to his cell and he intercepted it. (RT.914). The "kite" was, as counsel argued "[t]he kite itself is evidence of the conspiracy to commit the unlawful act, yes." (RT.956-958).

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.

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).

The State quoted from the transcript of Dr. Werner's testimony and where she clearly testified as follows:

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).

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 is 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 State argues that BOATMAN'S argument is "meritless" and relies on *Wells v. State*, 364 So. 3d 1005 (Fla. 2023), *reh'g denied*, 2023 WL 3938086 (Fla. June 12, 2023), and *cert. denied sub nom. Wells v. Florida*, 2023 WL 7287192 (U.S. Nov. 6, 2023). (State's Answer Brief, pages 117-118).

Although the Courts have rejected the argument that the death penalty statute violates the Eighth Amendment because it fails to sufficiently narrow the class of murderers eligible for the death penalty, BOATMAN points out that same is not the case. The class is clearly not “narrowed” to be the worst of the worst.

In reviewing Florida's capital statute it is clear that it begins with a broad range of death eligible defendants, again not narrowing the list. 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.

The same can be found to be true with *Fla. Stat*. §782.04(1)(a) which 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)

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.

Based on the above, Boatman provides to this Court a compelling reason for it to reverse its position on this matter and find 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. Therefore, BOATMAN'S claim must be granted.

XV.

THE TRIAL COURT ERRED IN SENTENCING BOATMAN TO DEATH.

The State argument regarding this issue fails to address the evidence and instead makes conclusory arguments alleging that "there is competent substantial evidence to support the Court's findings. (State's Answer Brief pages 124 and 128). The State fails to consider the actual testimony provided by the State's witnesses.

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, called by the State, 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 same is true regarding the State's argument in its Answer Brief wherein the State argues the Court was correct in finding that the killing of Mr. Chapman was cold, calculated, and premeditated without pretense of moral or legal justification (CCP). (State's Answer Brief, pages 120-124).

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).

As testified by Dr. Quinones, Dr. Wu, and Dr. Colina, Mr. Boatman would have been in a heighted 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 the 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. 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 same holds true for the State's argument in its Answer Brief that the murder of Mr. Chapman was especially heinous, atrocious, and cruel

(HAC). (State's Answer Brief pages, 124-128). "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.

The State argues that BOATMAN "presents no new compelling reason for the Court to reconsider its established precedent on this issue" and therefore this Court should "reject this argument". State's Answer Brief page 130). However, what the State and this Court must consider and realize is that said "precedent" is based upon the facts of each individual case and

therefore, this Court can and should consider BOATMAN'S argument and decide its ruling not a precedent but on the facts enumerated in this case.

Therefore, this Court must consider the evidence presented at the penalty phase and not "precedent" because the facts of this case do in fact "presents new compelling reason for the Court to reconsider its established precedent on this issue" and find that there was competent and substantial evidence 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. 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/factslillnl. 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. (htrps://mvw.cdc.goy/ncbddd/fasd/secondar:y:-conditions.html)

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.

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.

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 BOATMAN'S conviction "in the interest of justice" is viable and an independent ground for appellate reversal since BOATMAN has clearly shown that the errors that were committed by the Trial Court and the Trial Court's abuse of discretion. *Kelley v. State*, 637 So. 2d 972 (Fla. 1st DCA 1994).

Furthermore, BOATMAN has shown that the Trial Court abused its discretion in sentencing BOATMAN to death; causing BOATMAN to receive a sentence that was unfair and unjust. This Court must reverse BOATMAN'S sentence since both the Trial Court and the Appellate Court violated the established principle of law resulting in a miscarriage of justice. *Ivey v. Allstate Ins. Co.*, 774 So.2d 679 (Fla. 2000).

For all the reasons alleged in BOATMAN'S Initial Brief and his Reply Brief, this Court should vacate BOATMAN'S conviction and sentence and remand for a new trial.

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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 11,441 words and has been typed in Arial 14-point font.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 18, 2024, 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.

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