IN THE SUPREME COURT OF FLORIDA

JONATHAN HUEY LAWRENCE,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

CASE NO. SC00-1827

ON APPEAL FROM THE CIRCUIT COURT
OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR SANTA ROSA COUNTY, FLORIDA

SUPPLEMENTAL ANSWER BRIEF OF APPELLEE

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STATEMENT OF THE CASE AND FACTS

In light of the Supplemental Issue and the State's positions infra that the defense not only opened the door to Detective Hand's opinion testimony contested here but also extensively fought to open it against the State's opposition, the State adds the following facts to those in its Answer brief of Appellee.

Although the instant issue concerns Detective Hand's testimony, defense counsel had earlier engaged in the following attempted cross examination of **Detective McCurdy**,[1] to which the State objected:

> Q Mr. McCurdy, you talked to both the defendants, did you not?
> A yes, I did.
> Q Were you able to form an opinion who was the leader and who was the follower?
>
> MR. MOLCHAN [prosecutor]: Objection, Your Honor. No foundation.
>
> THE COURT: Sustained.

(T-IV 471-72) Defense counsel continued cross-examination:

> Q Based on your conversation with the two of them were you able to discern who was the person who was making the decisions in this matter?
>
> MR. MOLCHAN [prosecutor]: Objection. Lack of foundation and also this is going beyond the scope of direct examination.

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[1] In this brief, emphasis is supplied and referencing conventions are the same as in the Answer brief of Appellee, except "SIB" references Lawrence's Supplemental Initial Brief and "AB" references the State's Answer Brief previously filed in this case.

THE COURT: Absent more of a foundation I'll sustain the objection.

MR. KILLAM [defense counsel]: I'd like the witness on-call for tomorrow.

(T-IV 472)

After the foregoing cross-examination and very shortly before the State rested its case (T-IV 561), the prosecutor objected to **Detective Hand** opining regarding aspects of Lawrence's personality:

MR. MOLCHAN [prosecutor]: Judge, if we could approach on an issue. I understand that they're going to do some cross examination of Detective Hand. I anticipate – just total anticipation. I haven't had a chance to talk to Counsel, but one of the questions will be, 'Who was the leader, who was the follower?' I mean, we would object to that question on the fact that this is basically an ultimate issue type of question that's being asked. This is not proper for this particular question.

We're going to the ultimate issue that the jury is going to decide as to who was – whether Jeremiah was the dominant person over Jon Lawrence. And our objection is basically from that. There's no question that they can go into words and deeds of those individuals, but to ask him the ultimate issue is in our opinion basically objectionable at this point.

A law enforcement officer in a marijuana case for instance cannot look at the – cannot testify about the amount of the marijuana and whether it's consistent with intent to distribute. And I believe that that falls into the same range of what Detective Hand may[ ]be asked in this situation, so just –

MR. KILLIAM [defense counsel]: Judge, the dynamics of the detective is reading people and determining who is the leader and who is the follower. And he's got a case file this thick (Indicating). And he was probably in the presence of both of these defendants more than anybody. And I think we can lay a foundation and he can answer that simple question, if he has an opinion, as to who was the dominant person of those two.

THE COURT: I'd have to see the foundation and have to hear what the foundation is.

MS. STITT [defense counsel]: The foundation would be, 'How much time have you spent with John Lawrence? How much time have you spent with Jeremiah Rodgers? Have you taken statements from both defendants? Did you spend time in the car?'

MR. KILLAM: 'Did you compile an extensive file on this case and review that file? Did you give a deposition for Mr. White and Ms. LeBoef[2] that lasted from 9:00 in the morning until 2:30 in the afternoon on this issue? You've been down here a number of weeks.' He's the main man to answer that question, as far as none of us have been in the presence of the Defendant as much as Mr. hand. I think he's qualified to answer that question, which one was dominant. It's a thought process he has to pretty much determine before he goes into situations –

MS. STITT: How many cases –

MR. KILLAM: – the dynamics of the investigation.

MS. STITT: – has he dealt when there have been co-defendants?

MR. KILLAM: And you use that dynamic to find the truth, you know, the ol' mut and Jeff approach.

THE COURT: I don't have any problem with the, you know, specific facts, or incidences, or things that happened that would go to that; but my question is whether he can give the ultimate conclusion or opinion as a lay witness basically, a lay opinion as to who was the dominant player in this role and that is the ultimate fact. I don't have any question about you being able to ask him, you know, specific facts or questions that would allow you to make the argument to the jury; but the problem is asking him that ultimate question.

MR. KILLAM: Well, I would submit to the Court the rules of evidence are relaxed; and this opinion is one that he is imminently –

THE COURT: Right.

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[2] White and LeBoef were trial counsel for Jeremiah Martel Rodgers, whose case is on appeal and awaiting briefing in this Court in Case #SC01-185. White appeared in this case when Lawrence called Rodgers as a witness (See T-IV 562-65).

> MR. KILLAM: – qualified to make as a detective. And it's inhibiting our right to present mitigating testimony, and we're not allowed to ask that question.
>
> THE COURT: Well, let me think about it a little bit.
>
> MR. MOLCHAN: Our basic issue to base it on the aspect is to give an opinion on an ultimate issue for a jury to resolve.

(T-IV 550-53) The trial judge then ruled that the defense question was beyond the scope of direct exam but reserved ruling, in the context of the defense use of the opinion in its case in the penalty phase, on whether

> it would be proper or improper to allow the officer to give that lay opinion basically. And I don't know the answer to that question. I'm going to have to do some research.

(T-IV 554-55)

After the State rested and after the defense had called several other witnesses, the trial judge ruled that, although it would, absolutely without question, be inadmissible in the guilt phase, he would allow primary investigators to opine in this penalty phase "on who was the dominant person" (T-V 706). The trial judge indicated that he could find "no cases on point" but that he would err on the side of caution in the context of a penalty phase where the "normal scopes and the rules of evidence are relaxed somewhat" (Id. at 707). The prosecutor asked for "permission if we find authority to revisit this issue in the morning ... " (Id.). After the trial judge reiterated how he struggled with the issue and decided

to err "on the side of liberality" (Id. at 708), the prosecutor reiterated his opposition:

> *** It's our position that you are asking a layman to give opinions as to the ultimate issue, which is a jury question. *** I understand the Court's ruling. And what the State would ask is that if we find authority, that we be permitted to revisit this issue with the Court ... .

(Id.)

Defense counsel explained what it perceived to be the State's burden in showing that the opinion testimony should be excluded:

> ... domination as the mitigating issue ... is the reason for the testimony. In other words, I think they haven't had a case where the Defense is trying to establish the substantial domination of the co-defendant[, which is] what they have got to find *** to prevent this from coming in, otherwise it's going to be in error.

(Id. at 709)

Defense counsel indicated that it would introduce the evidence through Todd Hand and asserted that Hand was an expert:

> And it's not a lay person that we submit here. We have an expert detective with years of experience and schools involving interviewing techniques, and personalities, and type of thing. I'm not talking about pulling somebody off the street with no law enforcement experience and asking for that type of opinion. I think to say that he's a lay person is not exactly correct.

(Id. at 710-11) The prosecutor then argued that it was lay testimony and the judge agreed but said that, after thinking about it "hard," the best decision was to admit the testimony. (Id. at 711).

The trial court discussed jury instructions and other legal matters for a short while then adjourned and resumed those types of discussions the next morning. (See Id. at 711-42)

The defense then called Detective Todd Hand to testify regarding the personalities of Lawrence and Jeremiah Rodgers, including the relationships between their personalities (See Id. at 743-49) and the detective's qualifications , e.g., on direct examination, defense counsel elicited the following testimony:

> I've been to several training schools as to interview and interrogation. *** [An interview involves psychology because] when you interview anyone be it a suspect or a witness or a victim you, you have to try to identify their, where they are coming from, their position, and be able to anticipate what they may say, what they may not say in reference to your investigation.

(Id. at 745-46)

The defense's direct examination continued:

> Q And is it helpful to have an opinion about a personality type that you are interviewing?
> A Yes.
> Q And in very basic terms do you believe that we have alpha males and beta males?
> A Yes.
> Q Would you consider Jeremiah Rodgers to be an alpha male?
> A It all depends in what context.
> Q In relation to Jonathan Lawrence (sic [in original transcript]) would you consider him to be alpha and Jonathan to be beta?
> A I don't know.
> ***
> Q You spent a lot of time taking statements from ... Rodgers?
> ***
> [A] Yes.
> Q And Jonathan Lawrence, you spent a lot of time taking statements from him?

A Yes.
Q And based upon the time that you spent taking statements from him and being in their presence you were unable to form an opinion as to who was the dominant person between the two of them?
A Well, I have an opinion on it if that's what you want to hear.
Q Yes. I'd like your opinion.
A My opinion is in a public forum, I believe, perhaps here, you'll find Jeremiah Rodgers to be the alpha male that you are talking about, be gregarious, outgoing, social. In this type of situation you would find Mr. Lawrence as a quiet, introverted type of individual in an openly public area.
Q Well, are you telling me they are different when they are in private or do you have an opinion on that?
A My opinion is yes, they are different.
Q And how different are they?
A I believe the biggest difference is in Mr. Lawrence. I think – the more I talk to him face-to-face, or one-on-one or two-on-one he began to open up to me and talk more loud and freely and more relaxed than he did in public when I would confront him let's say at his residence or in the presence of other people.
Q So, do you have an opinion as, between the two of them was there a dominating person?
How long did it take you to build the rapport with Jonathan?
A In hours? probably two or three.
Q What about Mr. Rodgers?
A One or two. When I first, after he was arrested, we're talking post arrest – or I am talking post arrest.
Q Is it not true, Mr. hand, that you told me that you felt like there was an alter ego inside of Jonathan Lawrence that Jeremiah Rodgers took advantage of?
A Yes.
***
Q Do you believe that he shot her in the back of the head?
A Meaning Jeremiah Rodgers?
Q No. Jonathan. Is the evidence unrefuted that Jeremiah Rodgers is the shooter in this case?
A I believe so.

(Id. at 746-49)

The prosecutor's cross-examination of the detective elicited testimony that Lawrence initially denied knowing the victim, that in public settings Lawrence is going to be a much more introverted individual, and that Rodgers is a much more extroverted individual. (Id. at 749-50) The prosecutor then asked:

> Q ... you also have an opinion about when they are together?
> A Yes.
> Q Isn't it true that basically when they combined together they were working together? Or there was a relationship of some sort that they worked together?
> A I believe that they, when they are in each other's company they have – I don't want to say equal relationship as far as his calling the shots or whatever, but I believe that Jon Lawrence is much more open and outgoing in front of Jeremiah because of their friendship. Which is only natural.

(Id. at 750)

On redirect exam, defense counsel elicited additional testimony concerning the relationship between Lawrence and Rodgers, including the following, which flowed from the detective's question whether counsel was referring to a certain date:

> Q We were talking [at deposition] about basically the whole chain of events that resulted in this situation that we have before us today: The shooting, the other killing.[3]
> Didn't you have an opinion that he was following the directions of Mr. Rodgers? That is Jonathan was?
> A I think possibly to a certain extent he may have been, yes.
> Q And did you not make a statement to me that you felt like there was an alter ego in Jonathan Lawrence that Jeremiah Rodgers took advantage of? You were

[3] This paragraph is not included in the quote at IB 2.

seated here, I was seated here, and we were looking at each other dead in the eye and you said that?

A I recall that in detail but --

Q And you also admit that what goes on between these men in private –

MR. MOLCHAN [prosecutor]: Judge –

THE COURT: He said 'but'. Did you want to allow him to finish or allow him to state –

MR. KILLIAM: Judge, he answered the question and admitted that it took place.

THE COURT: I'll allow the state if you need to cross. Go ahead.

(Id. at 752) On redirect exam, the detective denied that Lawrence was cooperative. Instead, before arresting Lawrence, "He continuously lied" to the detective, and after the arrest he was "[s]omewhat" cooperated. (Id. at 753)

The entire re-cross examination of the prosecutor, targeted in the SUPPLEMENTAL ISSUE consisted of the following:

Q Now, Investigator Hand, you were getting ready to say something to the jury and you had a 'but'. Can you explain your thought process on that, your comment to Mr. Killam?

A I believe that was a reference to Mr. Lawrence's alter ego. And naturally I'm not a psychologist or sociologist or anything like that, but from my judgment –

MR. KILLAM: Then he is not qualified to answer a question.

THE COURT: Overruled.

A Anyway, I said something about an alter ego on Jon Lawrence's part, and I believe that he does have an alter ego when he is with Mr. Rodgers. And I believe that the night that – that Justin Livingston was murdered and also Jennifer Robinson, I believe that Jon becomes the person that he wanted to be, he always wanted to be and couldn't be in society.

> And I believe that he becomes very demanding and forceful and violent. And I think that the evidence speaks for itself.
>
> MR. KILLAM: Judge, at this time I move the [C]ourt for a mistrial based upon his testimony.
>
> THE COURT: Denied.
> You may step down.

(T-V 755-56)

SUMMARY OF ARGUMENT

Defense counsel fought long and hard and successfully convinced the trial court to allow Detective Hand to opine regarding the personalities of Lawrence and Rodgers and how those personalities interact with each other. Then, after the defense opened the door to this subject and elicited the testimony it desired on it, it tried to close the door, which would have unfairly left the jury with a misleading impression of the detective's opinion.

The trial court did not abuse its discretion in allowing the detective's recross-examination testimony because the defense had opened the door to the subject; it was within the scope of redirect examination, as clearly shown by the recross-exam answer explaining his cut-off redirect-exam answer that ended in "but --"; it was within the scope of defense counsel's concession that the detective was an expert; and, it would have misled the jury regarding the detective's true opinion to not allow him to finish his answer. Moreover,

this testimony was elicited during the penalty phase, where the rules of evidence are relaxed.

In any event, in the context of the totality of facts in the case, the detective's 13 lines of testimony attacked here are harmless beyond a reasonable doubt.

ARGUMENT

SUPPLEMENTAL ISSUE

DID THE TRIAL COURT REVERSIBLY ERR BY ALLOWING INVESTIGATOR HAND TO TESTIFY ON RECROSS-EXAMINATION CONCERNING LAWRENCE'S PERSONALITY? (Restated)

The SUPPLEMENTAL ISSUE attacks[4] the 13 lines of the prosecutor's recross examination testimony of Detective Hand (at T-V 755-56), in which he explained his answer on the defense's redirect examination that he recalled telling defense counsel that Lawrence had an alter ego that Rodgers "took advantage of *** but --" (T-V 752). The following is the recross testimony at issue here:

Q Now, Investigator Hand, you were getting ready

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[4] Defense counsel objected to the testimony only on the ground that the question exceeded the qualification of the witness (T-V 755). Therefore, other grounds that Lawrence now argues, e.g., constitutional rights (SIB 1), are not preserved. See White v. State, 753 So.2d 548, 549 (Fla. 1999) ("this argument [state Constitutional due process] was not raised to the trial court or to the district court of appeal during the direct appeal from his conviction ... we decline to consider this argument because White has not preserved this issue for review"); Knight v. State, 721 So.2d 287, 296 (Fla. 1998) ("Knight claims ... violation of the confidentiality provision of Florida Rule of Criminal Procedure 3.211, Knight's Fifth Amendment right against self-incrimination, and his Sixth Amendment right to counsel"; "never raised the confidentiality provision, Fifth Amendment, or Sixth Amendment issues in the trial court ... those sub-claims are procedurally barred"); Melbourne v. State, 679 So.2d 759, 765 (Fla. 1996)(jury selection claim waived if not renewed "before the jury was sworn"); Hill v. State, 549 So.2d 179, 182 (Fla. 1989)("constitutional argument grounded on due process and Chambers was not presented to the trial court. Failure to present the ground below procedurally bars appellant from presenting the argument on appeal").

> to say something to the jury and you had a 'but'. Can you explain your thought process on that, your comment to Mr. Killam [defense counsel]?
>
> A I believe that was a reference to Mr. Lawrence's alter ego. And naturally I'm not a psychologist or sociologist or anything like that, but from my judgment – *** [defense objection] Anyway, I said something about an alter ego on Jon Lawrence's part, and I believe that he does have an alter ego when he is with Mr. Rodgers. And I believe that the night that – that Justin Livingston was murdered and also Jennifer Robinson, I believe that Jon becomes the person that he wanted to be, he always wanted to be and couldn't be in society.
>
> And I believe that he becomes very demanding and forceful and violent. And I think that the evidence speaks for itself.

(T-V 755-56)

The STATEMENT OF THE CASE AND FACTS, supra, establishes defense counsel's persistence, over State opposition, to have a detective opine in the subject matter now contested on appeal. Defense counsel's persistence has three implications, each of which is fatal to this issue: the defense opened the door to the brief recross examination attacked here, the recross examination was within the scope of the redirect examination, which clarified what would have otherwise been misleading, and the detective's expertise in this matter was essentially stipulated by the defense.

STANDARD OF APPELLATE REVIEW.

To prevail on appeal on this issue, Lawrence must establish the unreasonableness of the trial court's ruling that the detective on recross examination be allowed to explain his redirect examination answer. Compare Ray v. State, 755 So.2d

604, 610 (Fla. 2000) ("Admission of evidence is within the discretion of the trial court and will not be reversed unless there has been a clear abuse of that discretion"); Jent v. State, 408 So. 2d 1024, 1029 (Fla. 1982)("trial court has wide discretion concerning the admissibility of evidence, and, in the absence of an abuse of discretion, a ruling regarding admissibility will not be disturbed"); Crump v. State, 622 So.2d 963, 970 (Fla. 1993)("beyond the scope of direct examination"), with Canakaris v. Canakaris, 382 So. 2d 1197, 1203 (Fla. 1980)(to establish an abuse of discretion, Appellant must show that the trial court's ruling was "arbitrary, fanciful, or unreasonable"). See also §90.612(2), Fla. Stat. ("court may , in its discretion, permit inquiry into additional matters").

In the words of Jones v. State, 440 So. 2d 570, 574 (Fla. 1983), "Absent an obvious showing of error, this Court should not tamper with a trial judge's determination of admissibility."

The trial court's ruling should be affirmed if it is correct for any reason. See Dade County School Board V. Radio Station WQBA, et al., 731 So.2d 638, 64-45 (Fla. 1999) (collecting authorities); Murray v. State, 692 So.2d 157, 159 n. 2, 159-60 (Fla. 1997) (trial court summarily denied motion to suppress; "the trial court reasonably could have denied Murray's motion to suppress because" of consent); Caso v. State, 524 So.2d 422, 424 (Fla. 1988) ("conclusion or decision

of a trial court will generally be affirmed, even when based on erroneous reasoning, if the evidence or an alternative theory supports it"); Vandergriff v. Vandergriff, 456 So.2d 464, 466 (Fla. 1984)("the well-established rule that trial court decisions are presumptively valid and should be affirmed, if correct, regardless of whether the reasons advanced are erroneous"); Dandridge v. Williams, 397 U.S. 471, 475 n. 6, 90 S.Ct. 1153, 1156 n. 6, 25 L.Ed.2d 491 (1970) ("prevailing party may, of course, assert in a reviewing court any ground in support of his judgment").

Lawrence has failed to meet his appellate burden for multiple, alternative reasons.

REASONABLENESS OF TRIAL COURT'S RULING.

The reasonableness of the trial court's ruling should be viewed in the general context of the relaxed rules of evidence that are applicable to this penalty-phase proceeding. See Wuornos v. State, 644 So.2d 1012, 1018 (Fla. 1994) ("usual rules of evidence are relaxed during the penalty phase ..."); 921.141(1), Fla. Stat. ("Any such evidence which the court deems to have probative value may be received, regardless of its admissibility under the exclusionary rules of evidence ..."). Indeed, defense counsel argued (T-IV 553), and the trial court expressly considered this "relaxation" (Id.; T-V 707) in allowing the defense to elicit opinion testimony from

Detective Hand concerning Lawrence's and Rodgers' relative personalities.

Even without the relaxed rules of evidence, defense counsel not only **opened the door** to the testimony attacked here but wood-chippered the door by repeatedly insisting[5] that a detective could opine regarding Lawrence's personality and the relationship between his personality and Rodgers'. (See T-IV 472, 551-53, T-V 709-711, STATEMENT OF THE CASE AND FACTS, supra) Following up on this persistent pursuit of this subject, on redirect examination of Detective Hand, defense counsel asked for his opinion regarding whether Lawrence followed Rodgers in the "**whole chain of events** that resulted in" the murder of Jennifer Robinson here. (T-V 752) Those events included attempting to kill Leighton Smitherman by Rodgers' shooting Smitherman and Lawrence's and Rodgers knifing Justin Livingston to death, all within a 39-day period. Thus, defense counsel added, "The shooting, the other killing." (Id.)

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[5] The defense's questions regarding Lawrence's personality and its relationship with Rodgers' was over the prosecutor's repeated protestations. (See T-IV 471-72, 550-53, T-V 707, 711)

However, contrary to Rodgers assertion (SIB 6), the opened-door principle does not require that the other party attempt to keep the door closed. Indeed, here, the witness tried to explain his answer on redirect with "but -" (T-V 752), but defense counsel cut him off and then, when the trial judge indicated that the State would be allowed to pursue the matter on recross, defense counsel was silent (See T-V 752-53).

Defense counsel then asked about the detective's opinion regarding Lawrence's "alter ego," but when the detective attempted to explain it, defense counsel cut him off. (See Id.)[6] It is clear that the prosecutor's recross examination, in which he asked the detective to explain the "but" in his redirect examination answer, merely pursued a subject on which defense counsel had opened the door:

> Investigator Hand, you were getting ready to say something to the jury and you had a '**but**'. Can you explain your thought process on that, your comment to Mr. Killam [defense counsel]?

(T-V 755)

In Holton v. State, 573 So.2d 284, 288 (Fla. 1990), "defense counsel opened the door to ... [a] line of questioning" that "suggested that other similar homicides had been committed prior to Holton's arrest but that none had occurred after his arrest." There and here, it was "proper for the state" to pursue a "line of questioning" to "rebut the inferences raised by the defense," here that Lawrence was a sheep that alter-ego'd Rodgers dominated.

Geralds v. State, 674 So.2d 96, 100 (Fla. 1996), held that the defense had opened the door to other evidence:

> Geralds also denied killing Tressa Pettibone and stated that he worked in the Pettibone home for two or three months. We find that by denying on direct examination that he murdered Tressa Pettibone, Geralds opened the door to be examined or impeached with evidence that linked him to the murder. Accordingly, we find no abuse

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[6] Indeed, Lawrence's Initial Brief (IB 29, 63-64) relied upon the detective's alter-ego opinion.

> of discretion by the trial court in permitting the state's cross-examination.

Here, there was no abuse of discretion to recross examine the detective on the very same subject on which he had been examined by the defense.

In Wuornos v. State, 644 So.2d 1012, 1018 (Fla. 1994):

> The State itself then rebutted with a cross-examination of the same defense witness that tended to undermine that fact. Our conclusions might be different if the State had opened the door to the hearsay here, but that is not the case. Defense counsel opened the door and will not be heard to complain now.

Here, the reach of the State's cross-examination was shorter than rebutting a matter elicited on cross-examination; it merely afforded the witness the opportunity to explain his redirect examination answer. The redirect exam opened the door and the defense should "not be heard to complain now."

Jackson v. State, 530 So.2d 269, 273 (Fla. 1988), upheld the prosecutor's explicit inquiry into the defendant's "prior criminal convictions," basing the affirmance, in part, upon the defense's introduction of testimony that he was "always" "positive influence in the lives of [his] children." Jackson reasoned, in part:

> Moreover, we cannot say that appellant's claim that he had 'always' been a positive influence in the lives of his children did not open the door to demonstrate, with his prior felony convictions, that this was not 'always' the case.

Here, the defense opened the door for the detective to explain what he meant by "alter ego."

In Blair v. State, 406 So.2d 1103, 1106 (Fla. 1981),

> [t]he defense ... moved for a mistrial because of the insinuation that defendant got his stepdaughter pregnant. The court ruled that 'the door was open' on direct examination and denied the motion for mistrial. Defendant has failed to show reversible error in this ruling.

Here, "the door was open[ed] by defense counsel's redirect examination into the same subject.

Pierre v. State, 597 So.2d 853, 855 (Fla. 3d DCA 1992), as here, concerned a witness's opinion properly elicited through an opened door. It held that "an indirect opinion" of one witness regarding another witness's credibility was permissible because "the defendant clearly opened the door for such a question by eliciting from the same witness testimony that the child victim was the kind of child who would lie to get her way."

Analogously, in Johnson v. State, 660 So.2d 637, 646 (Fla. 1995), in the penalty phase, evidence that defendant "was loving and a good father figure to his son and to her daughter from a prior relationship" allowed State to introduce evidence of defendant's prior violence. A fortiori, here, the recross examination directly followed up on a specific question that the defense asked.

See also Garcia v. State, 644 So.2d 59, 62-63 (Fla. 1994) ("Although the complained-of statements [of the prosecutor] were clearly improper when read out of context, these comments must be considered as a response to defense counsel's direct comments against the prosecutor, whom defense counsel had

accused of using this prosecution to attain her ambitions and build a reputation for herself"); Medina v. State, 466 So.2d 1046, 1049 (Fla. 1985) ("trial court correctly cautioned Median's counsel that pursuing the stabbing on cross-examination would open that matter to intensive examination").

Knight v. State, 746 So.2d 423, 433 (Fla. 1998), upheld the use of evidence vis-a-vis a claim that it exceeded the proper scope of rebuttal. There, the State's inquiry was proper because "the defense opened the door to" it. Knight concluded: "Therefore, we can discern no unfair prejudice to Knight from this line of questioning. Accordingly, we find no merit in this claim." Here, Lawrence "opened the door" to the subject of his alter ego vis-a-vis Rodgers and what the detective meant by it.

In sum, the opened-door principle allows the State to introduce evidence that would otherwise be prohibited. Here, the specific context of the State's introduction of the evidence was recross examination. Thus, the function of cross examination is another principle supporting the trial court's ruling allowing the evidence. Here, "**[c]ross-examination** of [Detective Hand was] limited to the **subject matter of the direct examination**," §90.612(2), Fla. Stat., i.e., the meaning and explanation of "alter ego in Jonathan Lawrence that Jeremiah Rodgers took advantage of" (T-V 752). This is clear,

as the recross explained and continued the detective's "but" on redirect.

Moreover, as explained in Bryan v. State, 533 So.2d 744, 749-50 (Fla. 1988), quoting Coco v. State, 62 So.2d 892, 895 (Fla.1953), quoting American Jurisprudence:

> [C]ross-examination is not confined to the identical details testified to in chief, but extends to its entire subject matter, and to all matters that may modify, supplement, contradict, rebut or make clearer the facts testified to in chief by the witness on cross-examination.

Here, a fortiori, the recross was confined to explaining the Detective's alter-ego testimony that the detective had attempted to explain on redirect with "but --."

McCrae v. State, 395 So.2d 1145, 1151-52 (Fla. 1980), concerned an open door pursued within the proper scope of cross examination, as here. There, as here, the defense opened the door to prosecution clarification. There, as here, the defense's "questioning could have deluded the jury into" incorrectly underestimating the matter that the previously admitted evidence concerned. McCrae reasoned:

> Consequently, the state was entitled to interrogate appellant regarding the nature of his prior felony in order to negate the delusive innuendoes of his counsel. As stated by one learned scholar:
>
> > (T)he rule limiting the inquiry to the general facts which have been stated in the direct examination must not be so construed as to defeat the real objects of the cross-examination. One of these objects is to elicit the whole truth of transactions which are **only partly explained in the direct examination**. Hence, questions which are intended to fill up designed or accidental omissions of the witness, or to call out facts tending to **contradict, explain or modify some inference which might otherwise be drawn from his**

> **testimony**, are legitimate cross-examination. [citations omitted]

Here, the defense's redirect examination did less than "only partly explained" what the detective meant by "alter ego in Jonathan Lawrence that Jeremiah Rodgers took advantage of"; the trial court properly allowed the State on recross to elicit an explanation and modification of the redirect testimony and inferences from it.

In Johnson v. State, 608 So.2d 4, 9 (Fla. 1992),

> [o]n redirect examination the prosecutor asked Smith if Johnson had talked about what his defense might be. Smith responded that Johnson 'said he could play like he was crazy, and they would send him to the crazyhouse for a few years and that would be it.'

There, the testimony was "'admissible on redirect which tend[ed] to qualify, explain, or limit cross-examination testimony.'" Here, the recross corrected the misimpression that the detective thought that Respondent was dominated by an alter ego in this crime. There and here, there was "no abuse of discretion," where the State's questions "rebut[ted] an inference created by questioning," 608 So.2d at 10, by the opposing party of the same witness, there on cross-examination, here on redirect.

In Monlyn v. State, 705 So.2d 1, 4 (Fla. 1997),

> Monlyn initially denied knowledge of the victim and the crime because he said that he was asked about a 'murder' and he did not know then that his victim was dead. It was therefore relevant on cross-examination to ask about Monlyn's understanding of the seriousness of the injuries with which he left Watson.

Here, it was "relevant on cross-examination to ask about" the detective's understanding of his own redirect exam testimony.

Cases such as Holton, Jackson, Johnson (Fla. 1995), McCrae, Johnson (Fla. 1992), suggest the next point. Without the State's recross question, the jury would have been misled into inferring, without qualification, that the detective believed that Lawrence was dominated by Rodgers. As illustrated by those cases, it is axiomatic that the law disfavors **misleading the jury**.

Moreover, although in hindsight, Lawrence's counsels have questioned the **scope of the expertise of Detective Hand**, defense counsel had expressly conceded that he was an expert in this matter:

> And it's **not a lay person** that we submit here. We have an **expert detective** with years of experience and schools involving interviewing techniques, and personalities, and type of thing. I'm not talking about pulling somebody off the street with no law enforcement experience and asking for that type of opinion. I think to say that he's a lay person is not exactly correct.

(T-V 710-11. See also T-IV 553) Lawrence should be bound by this concession. He should not be allowed to willy nilly contest the very expertise that he conceded when it served his needs. See also Floyd v. State, 569 So.2d 1225, 1231-32 (Fla. 1990) (Multiple officers' opinions, including Detective Engelke testified that the murder was committed by a "creep-in burglar"; "Lay witness opinion testimony is admissible if it is within the ken of an intelligent person with a degree of experience"; "officers' testimony within the permissible range

of lay observation and ordinary police experience. Hence, the trial court did not abuse its discretion in admitting this particular testimony").

Thus, if the detective was not qualified to render an opinion, defense counsel nevertheless invited it. See Terry v. State, 668 So.2d 954, 962 (Fla. 1996) ("[m]ost importantly, a party may not invite error and then be heard to complain of that error on appeal"); White v. State, 446 So.2d 1031, 1036 (Fla. 1984) (invited error applied to the submission of a chart; "cannot at trial create the very situation of which he now complains and expect this Court to remand for resentencing on that basis"); Behar v. Southeast Banks Trust Co., 374 So.2d 572, 575 (Fla. 3d DCA 1979) (order "induced by stipulation of the parties. One who has contributed to alleged error will not be heard to complain on appeal"); Francois v. Wainwright, 741 F.2d 1275, 1282 (11th Cir. 1984)(citing and summarizing several cases).

HARMLESS.

In any event, the 13 lines of the Detective's testimony attacked here (T-V 755-56) are harmless beyond a reasonable doubt. It did not change the outcome of the 11-1 jury recommendation (T-VI 963) or the sentence order (R-II 331-51, AB App. A) Without the 13 lines of recross examination testimony, the totality of facts in the case (See AB 6-7, 10-11, 14-29, 56-61, Appendices A, B, C) would have produced the

same death-sentence outcome. See Morgan v. State, 639 So.2d 6, 10 (Fla. 1994) (Morgan's statement to an expert that "I must kill [the victim]"; "Moreover, even if the statement had been erroneously admitted, we find that its introduction was harmless. Morgan gave numerous versions of how the murder occurred to different experts and this was but one of many conflicting statements he made to different experts regarding his state of mind during the crime"); Holton v. State, 573 So.2d 284, 288-89 (Fla. 1990) (comments that defendant's mind was "twisted" and that no similar crime had been committed since defendant's arrest; held, harmless); State v. DiGuilio, 491 So.2d 1129, 1135 (Fla. 1986).

CONCLUSION

Based on the foregoing discussions, the State respectfully requests this Honorable Court affirm Appellant's sentence of death.

And, even if this Court were to reject all of the above arguments and hold that the Detective's recross-examination testimony was erroneously admitted and that it was not harmless, the remedy would not be to mandate a life sentence, contrary to Lawrence's assertion (SIB 8); instead, in such a situation, the case should be remanded for new penalty proceedings. See, e.g., Perry v. State, 26 Fla. L. Weekly S702, 2001 WL 1241060, *9 (Fla. Oct. 18, 2001) (evidence erroneously admitted in penalty phase; "remand for a new sentencing proceeding before a new jury").

SIGNATURE OF ATTORNEY AND CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to David A. Davis, Esq., Assistant Public Defender, Leon County Courthouse, Suite 401, 301 South Monroe Street, Tallahassee, Florida 32301, by MAIL on February 7, 2002.

Respectfully submitted and served,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the font requirements of Fla. R. App. P. 9.210.

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