

IN THE SUPREME COURT OF FLORIDA

JEREMIAH MARTEL RODGERS,

Appellant

vs.

CASE NO. SC SC01-185  
Cir. No. 98-274-CFA

STATE OF FLORIDA,

Appellee

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**INITIAL BRIEF OF APPELLANT**

This is the direct appeal from Jeremiah Rodgers' conviction and sentence of death in the Circuit Court in and for Santa Rosa County, Florida. The record on appeal consists of five (V) volumes of pleadings and orders (numbered with Roman numerals), twenty-seven (27) volumes of transcripts (numbered with Arabic numerals), and four (4) supplemental volumes. Standards of review are noted in each argument in compliance with Florida Rule of Appellate Procedure 9.210(b)(5).

**STATEMENT OF THE CASE**

Jeremiah Rodgers pled guilty to being an accessory to the murder of Jennifer Robinson.<sup>1</sup> The jury recommended the death penalty by a vote of 9-3. The

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<sup>1</sup>Appellant was allowed not to agree to the State's supposed factual basis for the plea. Vol. 1, p. 106. He also pled guilty to conspiracy to commit murder,

sentencing judge found that Jeremiah, who was 21 years old at the time of the offense:

a.) was remorseful and sorrowful for the offense (Vol. V, p. 932);

b.) suffered from life-long, crippling mental illness (Vol. V, pp. 921, 931 [“long and extensive history of his mental illness;” “the record is replete;” “It is uncontroverted”]); and

c.) had been relentlessly sexually and physical abused as a child, in an “abhorrent” environment (Vol. V, pp. 927 - 930) (“substantial evidence before the Court regarding Defendant’s background that would mitigate against imposition of the death penalty”).

However, the Court found that two statutory aggravating factors outweighed this mitigation. Jeremiah and his co-defendant, Jonathan Lawrence, had been convicted of two other crimes of violence. One involved the attempted murder of Leighton Smitherman, a crime for which Jeremiah was found guilty in a trial in Santa Rosa County conducted shortly before the trial herein.<sup>2</sup> The other involved the murder of Lawrence’s cousin, Justin Livingston, a crime to which Jeremiah had pled guilty. Vol. V, pp. 915-917. The crimes happened days apart, and shortly before the crime in this

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giving alcohol to a person under twenty-one, and (as a principal) to the mutilation and abuse of a dead human body.

<sup>2</sup>That case is on appeal to the District Court of Appeal for the First District of Florida. *See* Argument VI, *infra*.

case. These prior convictions were found by the judge in support of the statutory aggravating factor under Section 921.141(5)(b), Fla. Stat. (1997) (conviction of prior violent felony). The second aggravating circumstance found was that the crime was committed in a cold, calculated, and premeditated manner. *Id.*, (5)(i).

Appellant argues in this appeal, *inter alia*, that the lower court erred in the process it adopted for assessing (and allowing the jurors to assess) Lawrence's and Jeremiah's relative culpability. Appellant also contends that the lower court failed to accord sufficient weight to the evidence that Lawrence was primarily responsible for the episodes.

## **STATEMENT OF THE FACTS**

This case involves tragedies on a epic scale. One struggles to avert the eyes from the chilling crime and from Jeremiah's tortured being. A focused assessment of this difficult evidence forces the conclusion that Jeremiah is the most mitigated person ever to come before this Court, and that the aggravation was not primarily his doing.

### **I. Jeremiah Rodgers' Short, Tortured, Perverse "Upbringing"**

#### **A. 5 years old—"there is something pretty obviously wrong because he is so young"**

A confidential psychological evaluation was conducted on Jeremiah when he was **five** years old and in *kindergarten*. V. 11, p. 1922. Kindergarten was the first

time that “anyone outside the home got a good look at him,” *id.*, and it is “really unusual” for a kindergarten teacher to refer a child of that age for serious psychological evaluation: “it means there is something pretty obviously wrong because he is so young.” *Id.* (Angela Mason, licensed social worker). What was wrong was how Jeremiah was being treated.

Jeanelle Spoon Rodgers became pregnant by Steven Rodgers at age 14.<sup>3</sup> They married, and their daughter, Jeremiah’s older sister Tamica, was born in January 1976. Steven and Jeanelle intermittently lived together, and Jeanelle became pregnant again. Jeremiah was born in April, 1977, in Orlando, Florida.

Jeanelle “moved”<sup>4</sup> to Pensacola with Tamica and Jeremiah. She wrote Steven’s mother, Mary Pruitt, and told Pruitt to come and get the children or she would “give them away.” Pruitt testified that she drove to Pensacola and picked up Tamica and Jeremiah. Vol. 10, at 1753. When Pruitt arrived, *Jeanelle had no diapers, baby bottles, formula, or baby blanket—nothing to take care of the children*, and no baby

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<sup>3</sup>As will be shown, by the time Jeremiah was fourteen, Jeanelle, his mother, had coerced him into being her full-time “lover” by plying him with alcohol and other substances (like marijuana laced with **formaldehyde**, Vol. 11, p. 1960). One of Jeremiah’s first memories is being sexually abused by his mother at the age of 3.

<sup>4</sup>This was not a “move” in the traditional sense. Jeanelle simply always traveled, staying short periods of time with friends or relatives, and did not really live anywhere. Tamica testified that “we never really had our own place except for the last place we lived before I moved to my dad’s” at age 10. Vol. 11, p. 1848.

toys. *Id.* at 1754. Jeremiah was six weeks old. *Id.* at 1753.

Thereafter, Jeanelle would occasionally pick-up Tamica and Jeremiah and take them wherever she happened to be going, and then, if they were lucky, she would return the babies to Pruitt. *Id.* at 1755. On at least one of these perilous treks, Jeanelle attempted to hitchhike to Orlando to leave Jeremiah and Tamica for adoption—just drop them off on the doorstep (literally) of children’s services.<sup>5</sup> When Pruitt learned of this planned, total, abandonment, she sought and obtained legal custody of the children. *Id.* at 1759. She continued to let Jeanelle take them away, however.

Despite their inability to care for any children, Steven and Jeanelle had another child, Elijah, in 1979. Jeanelle was 17 or 18 years old. Things just got worse. Steven would show up for a few days and then leave for months at a time, providing no support, even during all three pregnancies. Vol. 10, p. 1629. When Jeanelle and Steven were together, they drank alcohol and smoked marijuana all the time in front of the children. *Id.* at 1630.<sup>6</sup> Steven would get drunk and beat Jeanelle with the children

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<sup>5</sup>One of Pruitt’s relatives picked Jeanelle, Steve, Tamica, and Jeremiah up at the side of the road, learned of the abandonment road trip, convinced Jeanelle and Steven to “give her the kids,” and took them to Pruitt. Vol. 10, p. 1759.

<sup>6</sup>Tamica testified at sentencing that Jeanelle smoked pot and got drunk all the time. Zack, Jeremiah’s step-brother born a little later, testified that his first memory of Jeanelle was her smoking marijuana from a “bong” in the living room, which he did not know was illegal until he started going to school. *See* section B, *infra*.

in the room, watching, *id.* at 1631, leaving bruises “quite often.” *Id.* at 1728, 1740.

David Waldrup and his wife Faye knew Jeanelle and witnessed first hand the chaotic, life-threatening, and criminal environs her infants endured. For instance, Jeanelle came over to the Waldrup’s home and asked for a ride to the welfare office in Orlando “to take Elijah down there and drop him off on the doorstep.” Vol. 10, p. 1632. Diane told Jeanelle not to do that, and Jeanelle said “well, you just take him then.” *Id.* at 1638. The Waldrups agreed to adopt Elijah, who was three months old, *id.* at 1728, so long as Jeanelle and Steve would leave them all alone. Jeanelle agreed, and Steven, who was not to be found, “didn’t give a damn.” *Id.* at 1637. The Waldrups raised Elijah as their son from then on, *id.* at 1638,<sup>7</sup> and his life was markedly different from Jeremiah’s.

Thereafter, Jeanelle was constantly back and forth between Pensacola, Orlando, and other places unknown, and her occasional visits with Tamica and Jeremiah were very disruptive. When she would take them from Pruitt, they might stay anywhere.<sup>8</sup>

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<sup>7</sup>The Waldrups moved with Elijah to California, and received a letter from Jeanelle saying that she wanted to give Tamica and Jeremiah up for adoption also. Vol. 10, p. 1643. They did not respond to this. They later moved back to the Pensacola area with Elijah.

<sup>8</sup>Tamica testified that during these infant years she and Jeremiah were simply nomadic: “there was no one person that I was living with for a long period of time.” Vol. 11, p. 1847. They never knew where they might sleep. “On the floor ...[O]n the couch ...Just, you know, depending on where we were at.” Vol. 11, p.

Jeanelle could not care for them, i.e., once when Jeremiah was a toddler Pruitt got him from Jeanelle and he was very sick. Pruitt took him to a doctor, and the doctor immediately admitted him to the hospital with pneumonia. Vol. 10, p. 1762.

On one occasion Jeanelle weakly tried to get custody back from Pruitt by saying she was married to a man whose name Pruitt could not remember. Pruitt refused, because she “didn’t like the looks of the person.” Vol. 10, p. 1760.<sup>9</sup> Jeanelle then married a man named Ronnie Walker. Pruitt allowed Jeanelle to have custody at that point,<sup>10</sup> but Jeremiah and Tamica continued to live for long stretches of time with Pruitt. *Id.* at 1764. Jeanelle and Walker then had a son, Zack.

**B. Age 5 - 9: “something is very deeply wrong”**

Jeremiah was promoted from the second and third grades of school, but he did not pass them. “He wasn’t able to focus and concentrate in school, and they moved him up, even though he was not academically ready.” Vol. 11, p. 1925 (Angela Mason). Then he was placed in a severely emotionally disturbed class, “[a]

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1849 (Tamica’s testimony). Letters written by Jeanelle during this time document this rootless existence. Vol. 10, pp 1733-34.

<sup>9</sup>According to Mr. Waldrup who adopted Elijah, the suitor’s name was Carlson. Jeanelle married him for the sole purpose of using his money and she only stayed with him for two or three days and then left him. Vol. 10, p. 1748.

<sup>10</sup>Walker was supposed to be Zack’s father, but Pruitt doubted that he was. Jeanelle constantly told Zack that Walker was not his father. Vol. 10, 1761, 1824.

classification that is most profound.” *Id.* at 1928. “Sometimes a child will be placed in Emotionally Handicapped; if that’s not sufficient, that’s sort of the end of the line. They might [as here] be placed in a special school for severely and emotionally disturbed.” *Id.* at 1928. This means “they have tried everything else.”

This is not about behavior—this is way beyond behavior ... this means *something is very deeply wrong*. He just couldn’t function in the classroom. He didn’t respond to even a small class setting with a lot of attention. *Id.* at 1929 (Angela Mason).

Jeremiah’s home life between the age of five and nine was hellish. He lived with his older sister, Tamica, and his younger step-brother, Zack.<sup>11</sup> Jeanelle stayed drunk and stoned, beat the kids,<sup>12</sup> and openly engaged in sex acts with various people the children did not know.<sup>13</sup> They never stayed in one place for long--“every time it came time to pay the bills, that’s when we moved .... at least once a month, it felt like.” Vol 11, p. 1827 (Zack’s testimony). They never had money, Jeanelle never kept a job, and

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<sup>11</sup>Zack lived with Jeanelle and Ronnie Walker until he was about two years old, and then Ronnie Walker left. After Zack was two, Jeremiah and Tamica lived with Zack and Jeanelle “sometimes,” until Zack was dropped off on Walker’s doorstep by Jeanelle when Zack was five or six years old. Vol 11, p. 1821. Like Jeremiah’s brother Elijah, Zack thus escaped from Jeanelle; sadly, Jeremiah did not.

<sup>12</sup>Jeanelle had other forms of torture for the children also. For example, she made them wear soiled underwear around on their heads as punishment for soiling them. Vol. 11, p. 1843; *see also id* at 1829.

<sup>13</sup>Jeanelle would have sex with men while eight year old Tamica was in the bed. Vol. 11, p 1857.



they never owned a reliable car. Vol 11, p. 1849 (Tamica's testimony).

Whatever child care-taking occurred fell to Tamica, beginning at about age 8. *Id.* at 1850. When she failed at child raising—cooking, cleaning, getting the boys to school—she would be “smacked in the face” and beaten with a belt. *Id.* at 1852. Jeanelle was much worse to Jeremiah. When Jeanelle beat him she “couldn't stop” and Jeremiah “would have belt bruise marks, like, on his back, on his butt, and on his legs, and it would bruise.” *Id.* (Tamica's testimony)<sup>14</sup> “I didn't get it like that,” Tamica said. *Id.*<sup>15</sup>

Jeanelle “drank and smoked a lot of reefer, definitely,” Tamica testified. Vol. 11, p. 1857. “She was drunk all the time.” *Id.* Zack's earliest memory of his mother is her “smoking out of a bong in the living room in an old trailer with a bunch of people partying.” *Id.* at 1822. She smoked marijuana “quite frequently,” and Zack “didn't even know it was illegal until I went to school.” *Id.* Jeanelle was constantly (“lots”) doing drugs and partying with different men (“a lot of different ones”) in the

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<sup>14</sup>Jeanelle would stay sober until 10:00 a.m., and then she would get drunk, beat the children, and yell angrily at everyone. Vol. 11, at 1828 - 1825.

<sup>15</sup>Tamica did not get beaten like Jeremiah, did not get raped repeatedly by her parent, had a positive experience at school, where she got good grades, and was doted over and loved by Pruitt. Elijah left the environment when he was an infant, as did Zack. Jeremiah is different from his sister and his brothers because they “didn't get it” the way Jeremiah did.

presence of the children. *Id.* at 1823, 1830-31.<sup>16</sup> She went to bars and took the children with her, or she just left them at home alone unsupervised. The kids often awakened in the middle of the night with no adults in the house—they were at a bar. Vol. 11, pp. 1859-60. Tamica remembers her mom being arrested for alcohol related offenses on some of the evenings when the children were left at home alone. *Id.*

At age nine, Jeremiah went to live with his father Steve. One year later Tamica did the same. Before that she had seen her father Steven once, and he was drunk. *Id.* at 1854.<sup>17</sup>

**C. Ages 9 - 13: Self-mutilation, predator mother, Prozac, and hospitalization: “he needs more mental health care than jail time”**

Tamica reports that when Jeremiah was 10 years old he was in deep psychological turmoil and was “hurting himself.” Vol 11, p. 1888. “He put tacks in his arms. He would take, like, a knife and make marks on his arms, just – just make lines – cuts on his arms.” *Id.* “And then shortly after that, everything just kind of led

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<sup>16</sup>Zack testified that Jeanelle’s boyfriends “beat her, and called her names” in front of him. Vol. 11, p. 1829. Numerous police reports document that Jeanelle was beaten by different men in the home when the children were there. Vol. 11, p. 1955, 1958.

<sup>17</sup>When she lived for the next year with Steve, he “would come home extremely drunk–falling over drunk. Couldn’t stand up hardly, and my step-mom would have to help him eat, take a shower, whatever. For the whole complete year, that’s all I knew of my dad, pretty much.” Vol. 11, p. 1882.

– you, know – he started leaving the house, going out the window leaving. Things like that.” *Id.* p. 1889. Jeremiah was drinking alcohol and “huffing gasoline.” *Id.* at 1889. He would try to flee whenever he could, sometimes taking his father’s car. He committed petty crimes and would get locked up in the detention facility. *Id.* at 1883.

When Jeremiah was 11 or twelve years old, he was hospitalized at Laurel Oaks for depression and prescribed Prozac, which Steven did “not fill[] continuously.” Defense Exhibit 54; *see also* Vol. 11, pp. 1947 (testimony of Angela Mason). Testing at school indicated that he was in the “clinical range for internalized behavior,”<sup>18</sup> and he was designated for “severely emotionally disturbed” placement. Defense Exhibit 30D.<sup>19</sup> Jeremiah deteriorated. West Lake Hospital in Longwood, Florida, is a psychiatric hospital. Jeremiah was admitted on October 2, 1990, at **age 13**, with an admitting diagnosis of **major depression**. He was suicidal. Defense Exhibit 31. “Patient appears to have a **longstanding problem** of about 4-5 years that was **not treated** at any point.” *Id.* (emphasis added).<sup>20</sup>

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<sup>18</sup>According to David Foy, a defense psychologist and expert in such tests, this testing revealed that “he is ill.” Vol. 12, p. 2059.

<sup>19</sup>School records from when Jeremiah was **eleven** years old document that he had admitted to suicidal ideas.

<sup>20</sup>“[A] significant stressor occurred 3 months ago in which the patient’s uncle committed suicide by shooting himself in the head with a gun, after he killed someone else.” Defense Exhibit 31.

He was kept at this psychiatric facility for 2 ½ weeks. He “discussed his **history** of being **physically/sexually/emotionally abused** by his biological mother as well as her husbands and boyfriends,” Defense Ex. 31A, and described “**severe parental abuse** by mother ... severe beatings and her wanting him to take drugs.” *Id.* (emphasis added). “He had made a police report on his mother due to the mother selling marijuana and cocaine.” *Id.* His father confirmed that “there was possible physical abuse by mother when he was living with mother.” *Id.*<sup>21</sup> Psychiatric staff diagnosed the *13 year old* with Post-traumatic stress disorder, and other ailments. The staff medicated him and *placed him in four point restraints* because he was so traumatized. Staff again prescribed **Prozac** for depression, and also Ativan for trauma. *Id.*

Jeremiah was discharged in October, 1990. Within a few weeks he was placed in a juvenile facility after fleeing his parents and going into the residence of one of his mom’s male friend’s, resulting in a charge of burglary. It was refuge, however, not property, that Jeremiah had sought (nothing was stolen)—he was afraid of “home.”

Staff prepared a social history that detailed the corruption, sexual abuse, and betrayal Jeremiah faced on a daily basis, and from which he had fled. The staff

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<sup>21</sup>Jeremiah reported to Angela Mason that “his mother sexually abused him until age nine when he went to live with his dad.” Vol. 11, p. 1940-41.

reported that Jeremiah's "mother gave him *beer* when he was *2 years old*" and that "Jeremiah states that his mother started *sexually abusing him at age 3*. Client reports that he never told anyone because his mother would threaten him." "*His father* has threatened to shoot him and he *put an unloaded gun to the client's head*." "Jeremiah reports that **he runs away to avoid beatings**."

While Jeremiah was depressed about being in JDC ... he said he would rather be there than with his father. Client said he is afraid of his father." "Jeremiah said he attempted suicide 5 times (on different occasions) and has the marks on his wrist where he cut with a razor. Client said he *is not allowed to talk at home*. His father decides when Jeremiah can talk. According to Jeremiah, when he was 5 years old, he stopped talking for several months. At age 8, he did the same thing.<sup>22</sup> He would communicate in school by writing letters to his teachers." The report recited that Jeremiah was supposed to be being treated with prescribed medications for mental illness, but that the prescriptions were not getting filled. Defense Exhibit 54.

On December 5, 1990, personnel at the Children's Home Society of Florida recommended to the juvenile court that Jeremiah receive psychological counseling at

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<sup>22</sup>Alexithymia is the loss of words and symbols to communicate with others and is seen when children are so overwhelmed by trauma that they lose semantic construct for feelings and emotion.

an in-house facility, the Grove. They reported that Jeremiah was severely emotionally disturbed, that he had been diagnosed with Dysthymia (chronic depression), that “both of his parents are polysubstance abusers,” and that “his mother is a severe and chronic alcoholic who is currently serving a five year sentence for repeated DUI offenses.” Defense Exhibit 51. Because Jeremiah clearly “**needs** inpatient treatment,” *id.* (emphasis added), the Court sent him to the Grove.

Soon -- on December 20<sup>th</sup>, 1990 -- Jeremiah knocked a hole in the wall of a bathroom at the Grove. He had locked himself in the bathroom. When he came out *he stated that it was better to kick the wall than to kick a person.* He was charged with criminal mischief, but the arresting police officer opted for a diversion-type program, observing that “I believe the subject has made a mistake. **He needs more mental health care than jail time.**” Defense Exhibit 53 (emphasis added).

Over the next several months, Jeremiah continued to free-fall. Social service agencies closed his file in September, 1991, when he was 14 years old. A discharge summary noted that outpatient individual and family therapy, as well as medication monitoring at Florida Psychiatric Services, had been funded. But “these services were not utilized by the family after the 2<sup>nd</sup> or 3<sup>rd</sup> visit.” Defense Ex. 50. “Thus, little progress was realized in this family,” Defense Exhibit 50, even though Jeremiah kept telling people that his mother was molesting him. The conclusion of the social services

agencies in 1991 was that: **“Jeremiah has been abused, physically and sexually....His current relationship with his mother is pathological.”** Defense Exhibit 50.

**D. Age 14: Continuous Rape by mom; re-offending to stay away from home**

This pathology was not addressed by anyone.<sup>23</sup> And it inevitably and predictably worsened. As Jeremiah told many, many, people his mother repeatedly (at least ten times) had full sexual relations with him when he was fourteen years old, i.e., raped him. At that time he was living with his father and he would travel to visit his mother. She always pressured him to have sex with her; he could not do that unless he was intoxicated from drugs. So she supplied him drugs, he ingested them, and they had oral sex and full sexual intercourse. Vol. 11, p. 1959; *see also* Defense

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<sup>23</sup>Jeremiah reported to a children’s services caseworker in December 1990 that “his mother abused him until age 9 when he went to live with his dad.” Defense Exhibit 51. This was “reported to the Abuse Registry, as is required by law,” Vol. 11, p. 1941, but there was no follow-up: “I saw indication of reports, but they said they had called and made a report, but I couldn’t find anything on, you know, the actual investigation, but there were various reports.” *Id.* at 1942 (Angela Mason, licensed social worker). While Florida Child Protection “was definitely called” about this sex abuse, “[o]ften the Child Protection is overwhelmed and not at all organized about their reports.” Vol. 11, p. 1942. This sort of neglect has recently seen the light of day. Tallahassee Democrat. 7-14-02 B8. & TD. 8-14-02 A1; Orlando Sentinel, 7-30-02, A10; Tallahassee Democrat. 5-6-02, A1. & TD. 5-12-02. A1; NPR: Weekend Edition of All Things Considered. 5-11-02; Tallahassee Democrat. 5-17-02. B7.

Exhibit 1 (Section III, B, 2, *infra*). When he told his father that his mother had sex with him, his father simply asked: “Oh, did you like it?” Vol. 11, pp. 1959-1961.

By committing petty, non-violent, crimes, Jeremiah could stay at juvenile facilities, which was far safer than being with either Jeanelle or Steve. If he was not placed in a facility long enough, he would do something to be able to stay longer:

He walked out of the facility shortly before he was released to go home because he didn't want to go home, and he says this to people. So he's attempting to avoid home because either place, either his mother's or father's, was an abusive place and so he really had to have some place to go.

Vol. 12, p. 2183 (Dr. DeLand, psychiatrist). As a consequence of walking away, “the Court would sentence him to remain in that group home or special school would be extended and that there – and so he could avoid going home.” *Id.*

Jeremiah was placed in Dozier School for Boys, a state institution long recognized for its inadequacy. Dozier records indicate that Jeremiah had a history of being prescribed psychotropic medications (Tegretol and Prozac), and that he required individual therapy. He attempted to re-enter a regular program of living away from Dozier, but was unable to do so. In 1993 when Jeremiah was 15, he was still in the seriously emotionally disturbed classes at school.<sup>24</sup> At age 15 Jeremiah took a car and

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<sup>24</sup>In June 1992, Jeremiah was administratively placed in the 9<sup>th</sup>, his last, grade because of “age-appropriateness.” In August he was placed in a full-time special education class for the “Severely Emotionally Disturbed/Varying Exceptionalities.”



was promoted to adult court. He was sentenced to prison rather than juvenile detention. Prison was also safer than home.

## **II. Defense Exhibit 38: Color Coded Disabilities and “The Crazy-Making Environment”**

### **A. Exhibit 38: Jeremiah’s Multi-Colored, Multi-Dysfunctional, Lineage**

Angela Mason, a licensed social worker, testified as an expert that “this is not a typical family.....This family had everything under the sun. I really couldn’t believe how many problems one family could have.” Vol. 11, p. 1967. Multi-generational: incest; crippling mental illness, suicides, sex/physical/emotional abuse, chaos, abandonment, chronic neglect—Jeremiah’s family presents “some of **the most profound and severe** family disabilities.” *Id.* at 1979 (emphasis added). These actions/conditions significantly shaped Jeremiah. *Id.* at 1974.

Defense Exhibit 38 is a color coded family tree that reflects this profoundly crippled family. Colors and patterns are assigned for discrete conditions (i.e., a color and pattern is assigned for “incest victim,” a different color and/or pattern for mental illness, etc.). If a family member has or had that condition, then they get that color and/or pattern. The more colors or patterns a person receives, the more likely they are to suffer from some form of mental disease or defect, or to be unable to endure a pre-existing disease. A copy of Exhibit 38 is included in the Appendix hereto, at

Tab 1. Look at Steve, Jeanelle, and Jeremiah—they are multi-colored. The following examples help to explain.

Jeanelle is the fifth of six children, all of whom have severe disabilities.<sup>25</sup>

Renaë, the oldest, is bipolar and suffers depression. She is an alcoholic and drug dependent, but is in recovery. The next oldest, Colleen, is an active alcoholic who drinks every day to the point of incontinence and is unable to refrain from alcohol for even short periods. Next in age were twins David and Paul; David was a drug user and alcoholic who died of alcohol induced liver disease in 1994; his fraternal twin, Paul, the only non-alcoholic, weighed 660 pounds before undergoing a stomach-stapling procedure. The youngest, Tony, was a drug abuser and alcoholic who killed himself with a shotgun, after killing someone else, in 1990. Vol. 11, pp. 1965-1969; Defense Exhibit 38, admitted at 1964.

Jeanelle was sexually abused as a child by her uncle. Throughout her life she had sudden and inexplicable mood swings and shifts in personality. She began using drugs in her early teens, and, as discussed above, first became pregnant at age 14. Her addiction to drugs and alcohol persisted for the rest of her life, and she was repeatedly

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<sup>25</sup>The father in this “family” was a chronic alcoholic who physically and emotionally beat his wife and children and drowned due to alcohol when Jeanelle was 9 years old. He was imprisoned for manslaughter in the death of his first wife who was killed by his drunk driving. This family was very poor.

imprisoned for alcohol-related offenses. *Id.* She killed herself with a gun in 1996.

Steven Rodgers, Jeremiah's father, was ill-equipped for raising children. He was born on September 18, 1957, and was the oldest child of his mother Mary, who was 17 when he was born. She had two more children, Debbie and Tony, before divorcing their father, Martel Rodgers, and marrying Jim Pruitt, when Steve was 7. Martel Rodgers is an alcoholic who is now demented. All three of his children with Mary – Steve, Debbie, and Tony --- are or have been addicted to drugs and alcohol.

*Id.* at 1969 - 1972; Defense Exhibit 38. Jim Pruitt, Steven's stepfather, physically abused his wife and her children. He and Mary Pruitt were also heavy drinkers. The children sometimes stayed with their maternal grandparents. This grandfather, too, was an alcoholic. This grandfather's brother, "Uncle Bud," sexually abused Steve's sister Debbie over a period of years, beginning when she was four years old. He eventually drank himself to death, after losing his leg in a fire when he was drunk. When Steven was 15, he left home to live with his maternal grandparents after a confrontation with Jim Pruitt, his stepfather, about Jim's physical abuse of Debbie.

*Id.*

#### **B. "A crazy-making environment"**

Dr. David Foy, a professor of psychology and a practicing clinical psychologist for over twenty years, is a nationally recognized expert, teacher, and consultant in

trauma and mental illness caused by trauma. Vol. 12, p. 2016; Exhibit 150 (resume, admitted at 2079). He learned Jeremiah Rodgers' history, and testified, without objection, to why Jeremiah was mentally ill. There are risk factors for developing mental illness, based upon environment. *Id.*, at 2020. These factors include: poverty, the mother's mental illness, chronic marital discord or abuse, the child living out of the home, overcrowding in living space, and parental criminality. *Id.*, at 2021-23. Jeremiah is six out of six<sup>26</sup> and was at extremely high risk for suffering from a significant mental illness, *id.*, at 2027, through no fault of his own.<sup>27</sup> In Jeremiah's case, there was added the devastating effect of "severe discipline and abuse .... sexually abusive experiences," *id.* at 2048, *by a caretaker* – "a double whammy." *Id.* at 2049.<sup>28</sup>

Dr. Foy testified from this "crazy-making environment," *id.* at 2076, Jeremiah was almost *certain to* develop major mental illnesses such as post-traumatic stress disorder, *and* to have his brain damaged irreparably. Trauma causes "brain changes

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<sup>26</sup>Other significant stressors for Jeremiah included the suicides of his mother and uncle. Vol. 12, p. 2050

<sup>27</sup>Jeremiah had no control over "childhood physical abuse, childhood sexual abuse, continuing domestic violence." Vol. 12, pp. 2049-50.

<sup>28</sup>According to Dr. Foy, while all sexual abuse is horrible and results in marked damage to the victim, Jeremiah suffered "the worst category of sexual abuse," i.e., sexual abuse by a parent or primary caretaker. Vol. 12, at 2051.

... in terms of how the brain functions and the neurotransmitters that are involved in brain functioning, as well as the size and health of the brain.” *Id.* at 2055.<sup>29</sup> Long term, trauma victims suffer from dissociation (losing touch with what is actually occurring at the moment) and psychosis (disorganized thinking, delusions). *Id.* at 2073.<sup>30</sup> They also come to believe “I am not going to have a full life,” and they go about living “not as a spontaneous person, who has full life expectations ahead, but as someone who knows their life can be cut short today or tomorrow.” *Id.* at 2041. They suffer “a sense of foreshortened future.” *Id.*

### **III. Jeremiah’s Diagnoses and Long Documented Suffering**

Dr. Sarah DeLand is a board certified psychiatrist. Vol. 12, p. 2089. She has extensive experience in the psychiatric treatment of inmates. She completed a forensic psychiatry fellowship at the University of Florida, Gainesville, providing services, including consultations, for the North Florida Treatment Center, one of the biggest forensic hospital facilities in the state. Vol. 12, p. 2093. Today she is relied upon by courts throughout Louisiana to determine competency, sanity, and release

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<sup>29</sup>While Jeremiah was in the Santa Rosa County jail awaiting trial, he was medicated by jail physicians with prescription drugs that treated the damaged neurotransmitters in his brain. *See* section XV, *infra*.

<sup>30</sup>Trauma victims “get temporary relief by using alcohol or other drugs to make [him] feel better in the short term.” Vol. 12, p. 2074. This then leads to its own set of troubles.

recommendations. Most relevant for Jeremiah, Dr. DeLand, as Medical Director of Community Forensic Services for the State of Louisiana, “helps to monitor individuals” who have been “committed to the hospital and then later on down the road released with special supervision.” Vol. 12, p. 2090. While Jeremiah was in prison, he was regularly committed to the state forensic psychiatric facility. His treatment there, and his release with no special supervision of psychiatric aftercare, were pertinent to many issues at his capital sentencing. Dr. DeLand addressed them.

**A. Jeremiah Rodgers’ mental illnesses are tied to familial trauma**

Dr. DeLand extensively interviewed Jeremiah--six times. Vol. 12, p. 2118. She reviewed all of the records documenting Jeremiah’s social history,<sup>31</sup> including eleven volumes of psychiatric records amassed in 4 ½ years by the psychiatric services providers for the State of Florida, admitted below as Defense Exhibit 1. Vol. 12, p. 2096.<sup>32</sup> She diagnosed Jeremiah as suffering from dissociative disorder, post-

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<sup>31</sup>“I mean, when you have, I’ll call it the luxury, I guess, of having this incredible amount of documentation of history, it’s invaluable in examining a person like Jeremiah Rodgers who has a reason to not be truthful.” Vol. 12, p. 2140.

<sup>32</sup>These mental health treatment records take up eleven volumes, stand over three feet tall, and fill a large banker’s box. Dr. DeLand is an expert in such institutional records and stated that “[i]t’s a very large record for somebody to amass” in 4 ½ years. She also noted that the people creating the records recognized that they were remarkable, Vol. 13, p. 2265, as reflected in an entry on 11/14/96: “Long history of self-injurious behaviors-more than 100 scars. Multiple

traumatic stress disorder, borderline personality disorder, and substance abuse in remission. Vol. 12, p. 2120.

*Dissociative disorder* “describes problems that people have when several areas of mental functioning are not all integrated and working together as they should be.” Vol. 12, p. 2120. The sufferer may spontaneously not “know where they are and what situation they are in,” *id.* at 2120, and may fail to perceive reality correctly and believe that “what’s going on around them and the things around them and even themselves may not be real.” *Id.* at 2123. This illness almost always follows childhood sexual abuse, and “it begins as a protective mechanism so that somebody can endure what is happening to them.” *Id.* at 2125. “But as time goes on, it can get more and more severe to where they can’t do that [dissociate] just when they want to because something bad is happening. It can just happen to them spontaneously.” *Id.*

*Borderline personality disorder* can also manifest in losing touch with reality. Mental illnesses were at one time roughly divided into 2 categories, neurosis and psychosis. “Neurotic meaning sort of anxiety, depression, and psychotic meaning the more severe, losing touch with reality, hearing voices, and [people] were called borderline because they were felt to be right on the border line between being in touch

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admissions to CSU’s-TCU’s and 3 admissions to DCMHI. 4 and ½ sentence--1 year remaining-Inmate has accumulated 10 medical charts.” Defense Exhibit 1.

with reality and not in touch with reality.” Vol. 12, p. 2129. “People with this disorder frequently have a history of childhood sexual abuse. The self-injury and cutting that people engage in is frequently – happens in borderline personality disorder, too, as I said before, they want to make sure they’re real.” Vol. 12, p. 2128. This disability can cause a person to lose touch with reality, to experience delusional thinking, and to hallucinate. Vol. 12, p. 2130.

*Post-traumatic stress disorder* also afflicts abuse survivors. When a person suffers a traumatic event or events,<sup>33</sup> the aftershocks of that physical or emotional injury may be long-term debilitating. If the sufferer has any of the following, then they have PTSD: (1) **avoidance or numbing**, as shown in Jeremiah’s case (“throughout his history,” Vol. 12, p. 2133) by his not wanting to talk about the abuse he endured (Vol. 12, pp. 2133-34), and by efforts to avoid the activities, places or people that arouse recollection of the trauma (Vol. 12, p. 2135); (2) **inability to recall** an important aspect of the trauma, as shown in Jeremiah’s case where “[w]e have a lot

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<sup>33</sup>Dr. DeLand found Jeremiah had suffered trauma--“there are just so many abusive traumatic events in his past and in his childhood.” Vol. 12, p 2122, 2132:

There were a number of abusive incidents; physical abuse by his mother, physical abuse by his father as severe as holding a gun to his head, and, of course, I think one of the major events was the incest perpetrated on him by his mother .... incest is the outstanding event, but I believe that there were problems long before that.



of corroboration for a lot of the abusive incidents that happened, other family members, other times he told mental health professionals, long ago about this happening, and yet he, both in the past and in the here and now, minimizes his history of abuse.” Some things we know happened but “he does not remember.” Vol. 12, p. 2136; (3) feeling of **detachment or estrangement** from others, as shown in Jeremiah’s case in that, other than with his sister Tamica, “he has a great deal of trouble trusting people and forming any attachments to people.” Vol. 12, p. 2136; (4) **restricted range of affect**, as with Jeremiah whose “affect is flat, meaning, just no expression in his face, both in his records, that’s just a common thing that comes up over and over again, that his affect is flat.” Vol. 12, p. 2137. “The overwhelming record by the mental health professionals is that his affect is flat, his affect is flat, his affect is flat.” *Id*; (5) a sense of **foreshortened future**, as in Jeremiah’s case where he has had no expectation of a family life but **has had to live and survive day to day “focused upon escaping from his home ...[,] the main goal of his life.”** Vol. 12, p. 2138 (emphasis added); (6) **re-experiencing the traumatic event**, as in Jeremiah’s case where, as is documented throughout Exhibit 1, he has intrusive, distressing recollections of the abuse he suffered, and has acted or felt like the traumatic events were recurring. Vol. 12, p. 2140-41; (7) **intense psychological**

**distress**, as with Jeremiah, who actively cuts his body up to relieve his stress and distress. Vol. 12, pp. 2143-44; (8) **increased arousal or arousal symptoms**, as with Jeremiah, who has had chronic problems sleeping, and who, throughout all of his records, has had arousal symptoms of increased irritability. Vol. 12, p. 2145; and (9) **hypervigilance**, as with Jeremiah who always turns around and checks every noise around him, “constantly scanning.” Vol. 12, p. 2149;

Dr. DeLand concluded that as a result of these conditions Jeremiah had been unable to stay out of an institution, had had difficulty in functioning day to day, had been psychotic and out of touch with reality, and had had difficulty maintaining relationships. Thus, Dr. DeLand confirmed that he has PTSD.

#### **B. Defense Exhibit 1: State Documented Mental Illness**

Many of the criteria necessary for the diagnoses of severe mental illness are documented in Defense Exhibit 1.

1. “[I]nmate’s body looks like a cutting board” (Exhibit 1, 2/26/96)

Dr. DeLand reviewed Defense Exhibit 1, which documents Jeremiah’s “*very deep [self-inflicted cuts], injuring nerves, cutting through major arteries or major blood vessels [which] some of the time required well over a hundred, hundred and seventy, stitches* in order to close the wounds. And several of these lacerations if gone unchecked without medical treatment, would have resulted in his bleeding out and

dying.” Vol. 12, p. 2111 (emphasis added). There were at least six episodes where over 85 stitches were required. *Id.* Frequently he would pull the stitches out requiring further medical attention and re-suturing. Vol. 12, p. 2112.

Dr. DeLand testified that persons like Jeremiah who suffer from borderline personality disorder or from dissociative disorder often cut themselves to make certain that they are real, and people with PTSD cut or otherwise injure themselves to relieve stress, to avoid hurting others, and to forget about what is torturing them.<sup>34</sup> But, with Jeremiah, “[s]ome of them, I believe, were genuine suicide attempts,” said Dr. DeLand. Vol. 12, p. 2122.<sup>35</sup> Indeed, State and, later, Santa Rosa County) officials

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<sup>34</sup>“And certainly in the DOC records there are lots of instances where he has either cut himself or he’s screaming or banging his head against the wall, and having memories of his mother, in particular, the incest episodes that he can’t get out of his head.” Vol. 12, p. 2141 (Dr. DeLand testimony). Some of the self-mutilation was over (unwarranted) shame from this forced incest, Vol. 13, p. 2216, and some was because Jeremiah “states that he feels stress, feels nervous, feels anxious, and that cutting himself relieves the tension, and that is one thing that – that some people with this type of illness repeat also, that’s not just something that Jeremiah says. That’s something that I heard a lot from these people.” Vol. 13, p. 2216.

<sup>35</sup>Dr. DeLand testified that some of the self-injury was manipulative, Vol. 13, p. 2216, and that “[p]eople with mental illness are capable of being manipulative and especially so in correctional settings.” Vol. 13, p. 2252. But “I just don’t believe that -- that cutting oneself to the point of near death is a totally manipulative gesture.” Vol. 13, p. 2243.

As someone that’s worked as a mental health professional in the correctional system, I can tell you that you do not have to go anywhere near close to cutting yourself to require over a hundred

repeatedly kept Jeremiah in four point restrains to keep him from killing himself. *See* Appendix hereto, Tab 2 (examples of self-mutilation).<sup>36</sup>

2. *Documentation of sexual abuse--mother “sexually forced herself on him”*

*See* Exhibit 1, entries on 6/10/94 (“a **dysfunctional family with sexual abuse**”); 7/18/94 (mother “sexually forced herself on him.”); 1/15/94 (“during his early teens (14) **his mother sexually molested him**”); 2/3/95 (“History of Sexual and/or Physical Abuse; **his mother began sexually abusing him** when he got out of Dozier

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stitches to get moved. That’s just way over the top. You don’t have to cut yourself to the point where you have to be life-flighted to the hospital in order to get moved, and you certainly don’t have to cut your penis in order to get moved within the correctional system.

Vol. 13, p. 2225.

<sup>36</sup>Jeremiah’s suicidality was also evident in the Santa Rosa County jail after his arrest. As Dr. DeLand describes it:

There’s one incident in which he had to be life-flighted to the hospital because he had lost so much blood by the time he was found, and then another occasion in which he also required emergency care because he had lost so much blood he was already losing consciousness at the time he was found.

Vol. 12, p. 2115-16. “If I saw one episode of requiring over a hundred and seventy stitches, that would really have made me sit up and notice, and with his having multiple episodes of requiring over a hundred stitches, having to be life-flighted by helicopter out, that’s a serious, a very serious situation.” Vol. 12, p. 2211. *See also* section XV, *infra*.

School for Boys in Marianna. Reports that **he has been physically abused by both his mother and father.**”); 3/6/95 (“was physical abused by his mother since age 7 and at age 14 **he was a victim of sexual abuse at the hands of his mother;**” “**sexual abuse suffered** at the hands of his mother at a great developmental age of about 14 years old for a period of two years. The patient was an active sexual partner of his mother. ... **continues to plague** the patient... Patient does present a danger to himself and possible others although *there is no incidence here where he has been physically aggressive toward other people.*”); 8/1/95 (“reports being **physically abused by both parents and his mother sexually abused him...**He had sex with his mother because she gave him drugs”); 11/7/95 (childhood “**filled with physical abuse** inflicted by both parents. ... He also reported that he was a **victim of sexual abuse**”); 2/23/96 (“inmate was **sexually abused by his mother** throughout childhood. He has a history of behavior problems and depression since age 11. His first suicidal gesture was at age 14.”); 7/9/96 (“**his mother began to initiate sexual intercourse with him**”).

### *3. Mutilation/Hallucinations and Jeremiah’s Mother’s “Spirit”*

Jeremiah’s anguish over his victimization manifested in two particularly pathetic

types of episodes. **First:** he attempted self-castration.<sup>37</sup> Dr. DeLand explained:

For a period of time when he was in DOC before the incident, he is having a lot of problems, a lot of instability. There's lots of mental health notes at that time about the incest, about the sexual abuse by his mother, and he talks about wanting to be a different person. And at some point I think he begins thinking that if he were not a man, if he were not male that—that he would be a different person and then something like that would never happen again, and he does refer to that both at that time and then later when I spoke with him about those incidents when he lacerated his penis with a desire to cut it off.

Vol. 13, p. 2220. **Second:** he often smeared his own feces all over himself and his cell.<sup>38</sup> Dr. DeLand explained that when Jeremiah was very young he got food poisoning which resulted in vomiting and uncontrollable diarrhea. His mother was disgusted by that, and “not only did she not take care of him, but she actively yelled at him and stayed away from him and would not touch him because she was so

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<sup>37</sup>See Exhibit 1 entries: 5/23/95 (Nursing Note: “...Thinking: confused, delusional; Mood: inappropriate; states, ‘I’ve got to hurt myself. **I’m going to pull my penis off.**’ ...Referred to psychiatrist”); 6/15/95 (Jeremiah was found “holding a **razor blade...with large amounts of blood on pubic area** and dried blood on skin and floor”. “Self inflicted laceration in left forearm and penis.”); 7/27/95 (“Reason for Admission: ...Inmate caused multiple self-inflicted lacerations on himself. He stated, ‘I wish I could kill myself in an easier way, I am angry because I did not have time to cut off my penis. I want to cut it off because I had sex with my mom when I was 14” ...He expressed feelings of **hopelessness, helplessness** and very low self-esteem).

<sup>38</sup>See, e.g., Defense Exhibit 1, entry on 10/30/95 (“He has painted his entire body and walls of the cell with feces. At this time he is standing naked in the center of his room with a smile on his face.” Jeremiah is placed back in 4-point restraints.)

repulsed by it.” Vol. 12, p. 2142. This account was confirmed by Jeremiah’s sister Tamica. *Id.* “Since feces was something that kept her away from him when he has these events where he believes that his [dead] mother is coming back and trying to do something to him, he uses his own feces in an effort to repel his mother.” *Id.*<sup>39</sup>

#### *4. State Doctors’ Diagnoses—All Sorts of Psychotic Disorders*

State doctors provided various diagnoses for Jeremiah, all of which manifested with psychotic symptoms. *See* Defense Exhibit 1 (5/16/94, Needs further psychiatric evaluation.... discharge diagnosis of **Psychotic Disorder**; 6/21/94, Dr. Nguyen writes **Psychotic Disorder**, 6/24/94 ... **Patient requires intensive, long term mental health treatment ... Diagnosis of Bipolar Disorder and Post traumatic stress disorder**; 7/6/94 **His profile is most associated with a schizophrenic diagnosis**; 3/1/95 Admits to experiencing **auditory hallucinations** in the past. ...**Axis I: Schizophrenia, paranoid type**, continuous... .Expresses persecutory delusions,

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<sup>39</sup>Dr. DeLand considers this a psychotic episode: “he has this belief that she still has this power to come and, well, essentially torture him, as he put it, and that somehow the smearing of feces will keep her spirit or whatever it is away.” Vol. 12, p. 2143. This episode occurred some years after his mother’s suicide. He also described smells that “he associates with his mother’s house and where he endured the sexual abuse,” all of which are “psychotic symptoms.” *Id.* He has been psychotic when cutting himself also, as the records show: “5/28/94 Progress-- “I’m hearing voices telling me to go off and kill myself.” “I need to talk to someone before I do it this time.” Defense Exhibit 1.

believing he is being poisoned by everyone; 3/6/95 **Depressive Disorder NOS; Borderline Personality Disorder;** 3/8/95 Admitting diagnosis is **Depressive Disorder, NOS;** 7/27/95 **Depressive Disorder, NOS, Post Traumatic Stress Disorder;** 12/26/95 History of severe abuse by family...Realizes he needs further treatment. Final Diagnosis: **Axis I Mood Disorder, NOS;** 2/15/96 **Precautions: Acute psychosis - suicidal;** 2/21/96 **Diagnosis: Dysthymic Disorder;** 3/5/96 **Dysthymic disorder).**<sup>40</sup>

*5. State Doctors' Prescriptions—All Sorts of Anti-psychotics*

State physicians prescribed medications for Jeremiah. Lots of medication. Dr. DeLand said that “the first medication that I noted was when he was thirteen years old and admitted to West Lake Hospital and he was treated with Prozac which is an antidepressant.” Vol. 13, p. 2225. When he was being treated by the State,

there's a whole host. There's several antidepressants. One is Desyrel, which he finds very useful and which I have found to be very useful medication in post traumatic stress disorder. There's a mood stabilizer including **Lithium** which a lot of people with bipolar or manic depression use. Its also used to help with impulse control. There's also a mention of Tegretol in there which is an antiseizure or anticonvulsant, but is also used to treat *bipolar* or major depression and also used to help with impulse control. The same goes for a medication called Depakote or valporic acid. Its also an anticonvulsant that is used to stabilize mood

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<sup>40</sup>Dr. DeLand observed that “in their opinion, **he has a psychotic illness,** but they can't pin down one of the exact categories at that time.” Vol. 13, p. 2205.



and impulse control. There's also **antipsychotic medications**. He's placed on Trilafon which is an antipsychotic. He's also placed on a medication, one called Asendin which is an antidepressant, but when it metabolizes, one of its metabolites acts as an antipsychotic so its sort of a combination of an antidepressant and an antipsychotic. He at one time received Sinequan which is an antidepressant medication. He also receives medications aimed at anxiety, such as Vistaril, Benadryl. Also temezepam which is a drug which is in the Valium family. Vol. 13, p. 2225.<sup>41</sup>

#### **IV. Jeremiah is Released With No Aftercare—A tragic “Oversight”**

The State medicated, restrained, sutured, re-sutured, and isolated Jeremiah for 4 ½ years, and then

*He was released.* There is no evidence that there was any kind of mental health appointment provided for him when he left which is pretty much standard procedure when somebody's had mental health treatment, *they usually set them up with an appointment to continue their care.* I didn't see anything in the records that that had been set up so **it must have been an oversight.** So he does not have his medication.

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<sup>41</sup>To attempt to rebut the extensive and compelling expert testimony of Angela Mason, Dr. Foy, and Dr. DeLand, the state presented the very brief testimony of Dr. Greer who stated that Jeremiah was simply anti-social. He had to concede, however, that scores of state physicians had long disagreed with his recent (and prosecution obtained) “opinion,” and had consistently diagnosed Jeremiah with severe mental illnesses. Dr. Greer confessed that the state had relentlessly prescribed primarily antidepressants, antipsychotics, and antianxiety drugs, Vol. 13, p. 2327, which are not used for persons who are anti-social. Recognizing how lame Dr. Geer's testimony was, the State conceded during oral argument to the jury, and in its sentencing memo to the judge, that Jeremiah is seriously mentally ill.

Vol. 12, p. 2162 (Dr. DeLand).<sup>42</sup> When Dr. DeLand was asked whether Jeremiah should have had a mental health evaluation when he was about to leave prison, given his “threats, suicidality and threats to himself and others, particularly his parents,” *id.*, she said:

Yes, my experience in the correctional system, both in Florida and in Louisiana, we frequently, when we have somebody that is that worrisome that has almost killed themselves while in the institution, has threatened to harm themselves and others when they leave, *will usually be referred for an evaluation prior to their release*, like the day of or the day before they are released as, basically, as a protection for the institution as well as the protection for the individual and the community at large ....Or you may get people who say, this person should go straight from the prison here over to an inpatient facility for further evaluation and treatment whether they want to go or not because of the risk to themselves and to the community.

Vol. 13, p. 2228. **“It should have happened.”** Vol. 13, p. 2266. Dr. Harry McClaren also testified (at the *two* competency hearings that were necessary before this case could proceed) that Jeremiah should not have been released from prison without some sort of transitional medical care:

When I worked there if, **at the end of the sentence, I made it a practice to commit them to Florida State Hospital. If they was bad off enough to be at CNHI, I made it a practice to give them a**

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<sup>42</sup>*See also* Vol. 13, p. 2227 (Dr. DeLand)(“Yes, and as I say, **it must have been an oversight** because it’s pretty standard procedure for that when someone has had mental health treatment in the prison .... generally a mental health appointment is given.”)

**period of adjustment at Florida State Hospital** when I was doing the work.

Vol 7, at 1017. Indeed, Defense Exhibit 1 contains the following entry on 8/1/97:

**“need for follow-up in the community.”**

## **V. Jeremiah Tries To Make It**

### **A. Staying with Elijah and the Waldrups—“nice as could be”**

Jeanelle committed suicide.<sup>43</sup> This was devastating to Jeremiah. When he got the sad news he attempted suicide twice.<sup>44</sup> Elijah, Jeremiah’s brother who had been adopted by the Waldrup’s as an infant, was told about his mother’s death and was also profoundly affected. He decided to find his birth family. Vol. 10, p. 1644. He located his brother Jeremiah in prison, and met him at the prison gate upon Jeremiah’s release at age 20. Vol. 10, p. 1662.

In pursuit of family, they went to their natural father’s (Steven’s) house in Pittman, Florida, about a thirty minute drive from Orlando. *Id.* at 1665. It was a pipe

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<sup>43</sup>Tamica testified about Jeanelle’s death. Jeanelle had been in bad shape for a very long time, drinking all the time, doing crack cocaine, and not eating. In October of 1997–Jeanelle killed herself with a gun. Vol. 11, p. 1877.

<sup>44</sup>First, he slit his throat. Tamica went to tell Jeremiah about their mom but he had already heard and “he had tried to cut his throat ... because it was still, like, open ...[and] he was on some kind of medication because he mentally wasn’t there.” Vol. 11, 1878. Second, Jeremiah tried to hang himself, saying “if she can do it I can do it.” Exhibit 1, page 3080.

dream and was over in a few days. Steve was still a mean drunk: he was running a bar and drank every day to drunkenness; and he cruelly bragged that Elijah was his good son and Jeremiah was his bad son. They fled. *Id.* at 1667.

They retreated to Elijah's adoptive parents' (the Waldrups') home in Pace, Florida, near Pensacola.<sup>45</sup> Jeremiah stayed there for two or three months, and worked for a family member at a salvage yard. According to Mr. Waldrup, Jeremiah "was a real good worker" ("he supported hisself, you know, I didn't support him") and "he was as nice as anybody could be." Vol. 10, p. 1649. Mrs. Waldup testified that "he worked really hard," "he did real good at the house," and "I didn't have any problems." *Id.* at 1740.

While at the Waldrup's, Elijah taught Jeremiah how to socialize locally. Elijah said that "in the ways of young men in the world ...[Jeremiah] didn't really know how everything worked." *Id.* at 1667.<sup>46</sup> Elijah taught Jeremiah to go out into the woods with other young people and socialize or date and drink alcohol at night, what many

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<sup>45</sup>When they first had adopted Elijah they had moved to California, but they later had moved back to Florida.

<sup>46</sup>Elijah said that Jeremiah had a lot of scars on his body and "I think he wanted to keep them hid. He felt bad for them," Vol. 10, p. 1667, which affected his socializing. Jeremiah also had trouble adjusting to life in the free world, "a big change from going from one extreme to another. He was used to cells closing behind him. I told him that that would eventually go away." Vol. 10, p. 1669.

young folks do in some rural areas in the Panhandle of Florida. *Id.* at 1668.

**B. Jeremiah started to need medication, contacted several agencies, “but no one would help him”**

Mr. and Mrs. Waldrup testified that Jeremiah started to have some problems and asked for help getting some medication for “depression or something.” Vol. 10, p. 1652. According to Mr. Waldrup, Mrs. Waldup “told him to go down to the county to the health department and they would probably give it to him; but he went up there, and they didn’t give him – **they didn’t help him.**” *Id.* at 1653 (emphasis added). According to Mrs. Waldrup, Jeremiah went to *several* agencies and “he said no one would help him.” *Id.* at 1739; 1744.

**C. Living with Patti Perritt: Jeremiah had never experienced a real Christmas, “ain’t nobody ever come” to visit him in the hospital**

Jeremiah started dating Patti Perritt. Elijah and Jeremiah had a falling out (“I can’t remember what we argued about.” *Id.* at 1670 (Elijah)), and Jeremiah started to live with Patti. Patti and Jeremiah spent Christmas, 1998, together: “We shopped for Christmas gifts for my kids. Me and Jeremiah stayed up Christmas Eve, and put the toys together, and wrapped presents, and listened to Christmas music. **Jeremiah had never done that before.**” Vol. 10, p. 1681 (Christmas pictures admitted). Jeremiah was “great, really nice,” *id.* at 1682, with Patti’s children, and they were fond of him

and he was fond of them.” *Id.*

During this period, Jeremiah went to a hospital with the Waldrups to visit a family member. There were lots of people there to see the sick relative, which Jeremiah could not understand. He told Mr. Waldrup: **“I’ve been in the hospital a bunch of times” and “ain’t nobody ever come.”** Vol. 10, p. 1650. He spoke to Patti Pruitt over the telephone from the hospital and told her the same thing. She told him “that’s what families do.” Vol. 10, p. 1679.

#### **D. Jonathan Lawrence Begins to Dominate–“Unease”**

After Jeremiah moved into Patti’s place, he spent less time with his brother Elijah and started spending time with Jonathan Lawrence. Patti was not comfortable with that relationship, and she had a fight with Jeremiah about it. *Id.* at 1685. She thought it was not “good for our relationship. I just felt un-- at unease with it.” *Id.* at 1687.<sup>47</sup>

Jeremiah started gravitating to Lawrence because he started falling apart. Dr. DeLand explained. Jeremiah “was in a very high-risk period of time. The first six months after being released from prison is a high-risk period of time for people to have

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<sup>47</sup>Elijah knows Jonathan Lawrence, but he was not a friend and Lawrence did not socialize with the young people with whom Elijah and Jeremiah socialized. Mr. Waldrup stated that he also knew Jonathan Lawrence, who had not visited or been a welcome guest in his home, but who lived about a block away. Vol. 10, p. 1652.

problems adjusting,” and “more so for him because he has a mental illness on top of it.” Jeremiah had **“been treated off and on with medication the whole – the little over four years that he was in the prison, seemed to have problems every time he got off the medication.”** Since there was no mental health follow-up upon release from prison, and because no-one would help Jeremiah get any medication, he was “basically been getting through each day the best way he knew how, having symptoms, especially when you get closer and closer to the crime. He was drinking every day. Every evening when he got off he was drinking alcohol and smoking marijuana until he got to the point where he felt like he could go to sleep.” In this condition,

**He had very little contact with anyone other than Jonathan, his co-defendant.** He displayed very poor social skills and poor social judgment, a poor choice of people that he spent his time around. Vol. 12, 2162-63 (emphasis added).<sup>48</sup>

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<sup>48</sup>When Jeremiah was arrested, he told officers that he met Lawrence in prison and said “I didn’t really hang with [Lawrence] at all, maybe I’d see him, maybe, once a week, two weeks. And then, I started having problems, you know, with my brother and my girlfriend so I started going over there every day, drinking, and just hanging out in his yard.” Vol. 8, p. 1247.

## **VI. What Others Say About The Night of, and the Day After, Jennifer's Death**

### **A. The Night of: Jennifer's Mother Met Jeremiah and Knew How to Reach Him**

Jeremiah and 18 year old Jennifer Robinson had been talking to each other and planning a date for a couple of weeks, and Jennifer's mother, Ms Robinson, knew all about it, including Jeremiah's name, how to contact him, and other identifying information. Vol. 7, pp. 1168-69. On May 7, 1998, Jeremiah came to Jennifer's house to pick her up for the date. *Id.* at 1164. He met Jennifer's mother and spent about ten minutes in the home talking with her. *Id.* at 1170.

Jennifer's mother started trying to locate Jennifer on May 8, 1998, after Jennifer apparently had not come home from the date. Vol. 7, p. 1165. After placing a couple of calls (including a call to Patti Perritt's house, where Jeremiah actually was) and failing to locate Jennifer, Ms. Robinson called the Sheriff's Department and spoke to Leonard Thomas. She told him that her daughter was missing and that she had gone out with Jeremiah Rodgers the previous night. *Id.* at 1166.

### **B. The Day After: Jeremiah tells Patti that Lawrence Killed Jennifer**

On May 8, 1998, Patti heard about Diane Robinson's call to her house, believed that Jeremiah had been unfaithful to her the pervious evening, and she "came home to confront him." She "found out it was worse than that." Vol. 10, p. 1688. "**Jeremiah**



**told me ...that she had been killed, that Jon had killed her.**” He showed her some Polaroid photographs of the victim. Patti and Jeremiah went riding in her car because they did not know what to do: **“Both of us were crying real hard.”** Jeremiah asked Patti “to take the pictures and turn it all in. And I told him I didn’t want the pictures I didn’t want to do that.” Jeremiah “kept telling me he was going to kill himself.” *Id.*

### **C. The Day After: Jeremiah Tells Elijah that Lawrence Killed Jennifer**

On May 8, 2002, Jeremiah went to Elijah’s house. Jeremiah “was shaking, real nervous.” Vol. 10, p. 1671. He told Jeremiah “I’m in trouble. I don’t know what I should do.” Elijah asked Jeremiah what he had done, and it took a few minutes before Jeremiah responded. Then Jeremiah “showed me some pictures And I kind of hesitated a minute. I didn’t really know what to think. I was scared.” *Id.* at 1672. The pictures were of Jennifer, and it was clear that she was dead.

Jeremiah then said “I know that I can’t run. I want to do the right thing.” Elijah agreed and said “he should call the law or something.”<sup>49</sup> Jeremiah then told Elijah what had happened: **“He said Jon Lawrence shot her....** I paused. I had to try to

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<sup>49</sup>Jeremiah said that he was afraid of law enforcement, and Elijah told him the name of a police officer who was trustworthy—Officer Leonard Thomas. Coincidentally, Officer Thomas drove up and asked Jeremiah where the victim was, and Jeremiah said he did not know and that he had left her in Pensacola at 1:00 or 2:00 a.m. the previous morning. Vol. 10, p. 1674; Vol. 23, p. 2117.

breathe. I told him that – to turn himself in would be the best thing to do, that it was wrong. He was just as scared as I was.” Vol. 10, p. 1673.

#### **D. Patti and Elijah Tell the Police; Crime Solved**

Jeremiah left. Elijah contacted the Sheriff’s department and advised the police that “his brother, Jeremiah Rodgers had told him about a murder of a female that occurred on May the 7<sup>th</sup> 1998.” Vol I, p. 016. Elijah stated that Jeremiah had been associating with Jonathan Lawrence and that Jeremiah told Elijah that Lawrence shot Jennifer. Jeremiah told Elijah, and Elijah told Leonard Thomas, that Jeremiah “walked down this hill-like area to go take a bathroom break, and after that he heard a gunshot, and he ran back up the hill to where the vehicle was, the truck was parked, and he found Jennifer lying on the ground.” Vol. 7, p. 1178.<sup>50</sup>

Based upon the information provided by Jeremiah to Elijah and Patti, Vol. I, p. 026, Investigator Hand went to Jonathan Lawrence’s residence, searched it, and arrested Mr. Lawrence on the 8<sup>th</sup>.<sup>51</sup> Investigator Hand agreed that “it was the information that Mr. Rodgers gave on May the 8<sup>th</sup> that led you to Mr. Lawrence.” *Id.* at 1187.

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<sup>50</sup>Jeremiah also told Elijah that “he was with John Lawrence when Justin was killed – Justin was stabbed multiple times in the chest **by Lawrence** on the helicopter field.” Vol. 7, p. 1179.

<sup>51</sup>Lawrence “confessed” and blamed Jeremiah for the killing. Vol. I, p. 026.

## **VII. Some Physical Evidence Seized from Lawrence's Residence**

The State took photographs of Lawrence's residence (State's Ex. 5A) and his truck (State's Exhibit 5B), and introduced them into evidence. Vol. 7, p. 1189 (State's Exhibit 5). The State also took a photograph of the contents of Lawrence's pick-up truck (State's Exhibit 5B), and introduced the photograph into evidence. *Id.* at 1191. The state searched Lawrence's residence, and found and introduced a Polaroid photograph of a person with a laceration to the scalp (State's Exhibit 6A),<sup>52</sup> a box for a Lorcin pistol (State's Exhibit 8), empty Polaroid film containers (State's Exhibit 9), and two notes written by Lawrence (State's Exhibit 7A and 7B). *Id.* at 1196; *see* Appendix hereto, Tab 3.

These items were obtained during the search on May 8, 1998. Other items were recovered in another search conducted by the FDLE on May 14<sup>th</sup> and 15<sup>th</sup>, 1998. Vol. I, p. 034. The state did not introduce the other evidence, and successfully objected to the defense introducing it. *See* Argument I, *infra*.

## **VIII. Before his Arrest, Jeremiah Tells Tamica that Lawrence Shot Jennifer**

Tamica testified that Jeremiah called the day before he was arrested and told her

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<sup>52</sup>Jonathan Lawrence's brother, Ricky Lawrence, gave the police a Polaroid camera. Vol. 9, p. 1596.

he was coming to Lake County where she lived. “He told me that something had happened, and he knew he was going to be gone for a long time so he wanted to try and see me before—you know, before they came to get him. ...So I knew the next day to expect him sometime...” Jeremiah told Tamika what had happened: **“he told me that he did not shoot her. He pretty much told me that they were supposed to have, like, a double date, it didn’t work out, so it was Jon, Jeremiah, and this girl. And they went – they were kind of partying, whatever, having a good time, and they were out in, you know, the woods, and they had been drinking, you know, whatever, and he – they got out of the truck, they stopped, he was going to pee or something. He went to pee, and he heard a gunshot. And then when he came back, you know this girl was shot already.”** Vol. 11, pp. 1865-66.<sup>53</sup>

### **IX. Jeremiah’s Arrest and Failed Suicide**

Todd Luce of the Lake County Sheriff’s Office in Orlando testified that he was asked to surveil Steven Rodgers’ (Jeremiah’s fathers’) residence in central Florida on May 9, 1998, and to be on the lookout for Jeremiah. After a couple of cars approached the residence, Luce went there and spoke with Steven Rodgers. Steven told Luce that Jeremiah had called him and was at the Rodgers’ bar, and gave Luce

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<sup>53</sup>This is *precisely* what Jeremiah had told Patti and Elijah earlier, and what he told the police the next day, May 10, 1998.

a picture of Jeremiah. Vol. 8, p. 1209. Luce and other deputies left and headed for the bar, and a car passed Luce's car going in the opposite direction. The driver matched the photograph Luce had been given. *Id.* Luce made a u-turn, and a chase ensued. *Id.*

Luce radioed for help and other officers put spike strips of stop sticks in the road. These put holes in tires and cause a leak, stopping a vehicle. Jeremiah's car ran over these stop sticks approximately seven miles from where the chase started. His tires ran out of air, and he stopped his car. Vol. 8, pp. 1214-16. At that point Jeremiah "came up with a weapon—black colored gun—to his head, indicating—and hollering for us to get back....A standoff ensued." Vol. 8, p. 1216 (Luce). Officers started building rapport and asking "what is this all about?" Jeremiah said he would tell them what it was about, and "threw to me [Luce] several Polaroid pictures." The pictures depicted dissection of a leg.

The standoff continued for six hours. Vol. 8, p. 1237. During that time Jeremiah did not threaten any officers, and did not point the gun at any officers. The gun was "either to his head, or to his chest, on his lap." Vol. 8, p. 1233-34. He asked to see his sister Tamica, and they brought her to the scene but did not let him see her until after he surrendered. Luce negotiated with Jeremiah for a cigarette. Luce threw Jeremiah a cigarette, Jeremiah smoked it, and then "put the gun to his head" and "some

on the scene say they heard the click.”*Id.* at 1238.<sup>54</sup>

### **X. The May 10<sup>th</sup> Confession: Jonathan Shot Jennifer**

An interrogation occurred around 1:00 a.m. on May 10, 1998. The State did not introduce into evidence what Jeremiah Rodgers said during this interrogation by these Lake County Sheriff’s Department officers because it was exculpatory. Thus, counsel for Mr. Rodgers had to bring this evidence out during cross-examination.

**Jeremiah told these officers that Jonathan Lawrence shot Jennifer.** Vol. 8, p. 1243-44. Lawrence, Jeremiah, and Jennifer had ended up out in the woods drinking that night. Lawrence had “made plans to meet his girlfriend, so I dropped off my car, ‘cause I didn’t have no tag on it. One headlight, you know, I just got it. So we took his truck. We went out to the woods. He said his girlfriend lived way out there.” Vol. 8, p. 1242. But Lawrence’s girlfriend never showed up.<sup>55</sup>

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<sup>54</sup>Upon Jeremiah’s arrest, Luce checked the gun and discovered that it was loaded but that it was “double fed and it couldn’t fire,” Vol. 8, p. 1238, it “had malfunctioned,” and “caused the weapon to jam.” *Id.* at 1219. None of the 30 officers on the scene saw Jeremiah do anything to make the weapon not fire. *Id.* at 1238. The gun had two bullets in it that had indentation marks showing that the firing pin had hit the rounds but they had not fired. Vol. 8, p. 1254. This was Jonathan Lawrence’s gun.

<sup>55</sup>“She never came.” Supplemental Record, p. 2338. According to what Jeremiah told the Lake County deputies, they were planning to go to a club in Pensacola, but “we ended up drinking 153 proof Everclear and never made it to the club.” Supplemental record, p. 2334. John stayed sober while Jeremiah and Jennifer drank. Jennifer got “trashed” because “John took her Mountain Dew, she

Jeremiah stated that he had consensual sex with Jennifer twice. Vol. 8, p. 1243. Then Jeremiah decided that they should leave.<sup>56</sup> Vol. 8, p. 1243. Lawrence started driving the truck to leave, and Jeremiah asked him to stop so that he could go to the bathroom. *Id.* Jeremiah got out of and walked away from the truck about 20 feet to use the bathroom. *Id.* at 1244.

Lawrence got out of the truck and told Jennifer that he had some pot plants he wanted to show her. Jeremiah said:

He gets her out of the truck and, uh, what turned me around was I heard the bang, you know, and I come running and I-I already knew he did it, you know.

Q. How did you know?

A. I saw her lying on the ground with both legs tucked up under her and a crazy look in [sic]. And, uh, I looked at her face and I got sick and then I started going off on him, you know, I told him to give me the gun and uh, I planned on taking it and shooting him with it. Supplemental Record, p. 2340; Volume 8, p. 1245.

Jeremiah said that Lawrence then took a scalpel and cut the victim's head. Lawrence did other horrible things that left Jeremiah stunned and speechless. *Id.* at

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got a one liter Mountain dew, and poured like that much out and poured the whole bottle of Everclear....and she drank about half of that Mountain Dew, which means she drank about a half of bottle of Everclear.” *Id.* at 2338.

<sup>56</sup>Jeremiah knew Jennifer was drunk and kept asking her if she wanted to go home, and she would not say. He decided to take her home. Supplemental Record, 2338-39.

1245.<sup>57</sup> Officer Lucy testified that Jeremiah said he took the gun away from Lawrence, that what Lawrence had done had “upset him terribly, and that he thought about killing Mr. Lawrence.” Vol. 8, p. 1246. Rather than doing that he took a live round out of the chamber and dropped it. A live round was later recovered there by the police. Then Lawrence started taking Polaroid pictures of the victim, and Jeremiah yelled at him to stop what he was doing, “You’ve gone too far. Put the sh\*\* up, you need to

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<sup>57</sup>Jeremiah said that Lawrence cut the victims head and leg, and put the flesh from the leg into a cooler. Supplemental record, p. 2344. “But, basically, all I did was I tried to get myself to thinking and, uh, I just kept looking up in the sky. I even prayed once, uh, just to figure out what in the hell I am supposed to do now?” *Id.* Jeremiah said that Lawrence had sex with the deceased victim twice after killing her, that Jeremiah had to walk away (“I wasn’t really thinking. I was dazed.”) and “I got sick and threw my guts up,” and “I stood there and I pointed the gun at his head and I was fixin to shoot him, you know.” Supplemental Record, p. 2340. Jeremiah said “so, you know, I’m just kind of, I don’t [know] what to do, you know. I’m just kind of dazed here, cause I there’s a dead girl here that I took out on a date.” *Id.* at 2342.

Jeremiah said that he helped Lawrence move Jennifer’s body off of the truck (“my mind just was not clicking, you know. ...I was just blank.” Supplemental Record, p. 2349), and that after the truck would not start he walked with Lawrence to a place with a phone and called Patti Perritt and asked her to come pick them up, which she did. She asked him questions about what he had been doing, but he did not answer them. She took Lawrence and Jeremiah to Jeremiah’s car, and then Jeremiah and Lawrence went back to the truck. Jeremiah did not know what they were going to do there other than get the truck started and leave, and Jeremiah’s state of mind was that he wanted to kill Lawrence but “another part of me was lost, I have no idea.” *Id.* at 2351.



get me out of here right now.” Vol. 8, p. 1248.<sup>58</sup>

Police asked Jeremiah whether Lawrence had done anything like this before, and **Jeremiah said that Lawrence was “always, you know, talked about it ... always talking some crazy stuff. Killing somebody, shooting somebody.”** Vol. 8, p. 1249; Supplemental Record, p. 2348 (emphasis added). When asked whether Lawrence had suggested harming Jennifer, Jeremiah said that he disabused Lawrence of any such notion.<sup>59</sup>

Jeremiah said that when he and Lawrence were at a store after leaving the scene and Lawrence went inside, Jeremiah got some of the Polaroid photographs from

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<sup>58</sup>Jeremiah was asked whose scalpel and camera were used, and he responded that they were Lawrence’s—“Oh, everything out there is his, you know, I just brought me, myself and Jennifer”—*id.* at 2349, and that Lawrence had taken the Polaroid pictures.

<sup>59</sup>Jeremiah was also asked whether Lawrence had suggested kidnaping Jennifer before the date, and Jeremiah responded:

When I, when I told him, you know, I met her, she wants to go out on a date, he said well, you want to do anything to her. I said, by what do you mean. You want to take her out in the woods and rape her or something. I said, you got to be out of your f\*\*\*\*\* mind. I—You know, I met her mom and people, the girl she works with in the store, she knows me so they ain’t no way anyway, I ain’t a raper....

Supplemental Record, at 2349. It certainly made no sense for Jeremiah to “meet her mom” and then commit a crime against Jennifer. They way police focused at first on Jeremiah was that Jennifer’s mom told Officer Leonard that Jennifer had gone on a date with him. Vol. 23, p. 2109.

Lawrence's truck. Vol. 8, p. 1250.<sup>60</sup> He told the police that the next day he told Patti and Elijah what had happened, and showed them the Polaroids.<sup>61</sup> He also told them that he had driven to Central Florida to see his sister, and intended to go to the police.<sup>62</sup>

Jeremiah also discussed the Justin Livingston case with the Lake County investigators.<sup>63</sup> Some time after this statement and a statement given May 13<sup>th</sup>,

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<sup>60</sup>Jeremiah "wanted to take it to the cops or something," *id.* at 2352, and thought that he had gotten all of the Polaroids. Lawrence then went to work, and Jeremiah went to Patti's to sleep.

<sup>61</sup>Throughout this statement Jeremiah expresses remorse and outrage over what happened ("I don't know, it just does something to you when you see a body, you know, weird s\*\*\* done to it. A good girl, you know, anyway...", Supplemental Record, at p. 2359, and the police commend him for telling them what happened and promise to try and help him. *Id.* at 2359, 2354 ("we can help you").

<sup>62</sup>According to Jeremiah's statement, the day after the offense Jennifer's mother called Patti's residence and spoke to Patti's mother, asking about Jennifer's whereabouts. Patti's mother called Patti, and Patti came home to ask what Jeremiah had been doing out with another girl. Supplemental record, p. 2352. Jeremiah "told her everything that happened." *Id.* When Deputy Leonard had questioned Jeremiah about Jennifer's whereabouts, Jeremiah "told him a few lies just so he wouldn't take me in right then. But I planned to turn myself in later on that night." Supplemental Record, p. 2355. Then he went and closed his bank account to get money, planning to "get, you know, tore up, [a]nd then go to the cops." *Id.* at 2351. *He said Lawrence, "[y]ou know, he's got, he's lost his mind completely." Id.*

<sup>63</sup>He said that they were all out in a field and Lawrence started stabbing Livingston with a knife. Jeremiah felt responsible because "I didn't stop him."

Jeremiah took the officers to where Mr. Livingston's body was, and the police had not known that location beforehand.<sup>64</sup> He also took them to where Jennifer's body was; they already had that information and had been there, but Jeremiah was not told that. Vol. 10, pp. 1615-1617.

According to Officer Luce, Jeremiah was "completely forthcoming" about his involvement. Vol. 8, p. 1253. *There was no mention in this May 10<sup>th</sup> statement of any handwritten notes made by Lawrence that foretold any planning for the offense.* There was no indication that Jeremiah had any intent to hurt anyone, and **Jeremiah repeatedly stated that Lawrence was an insane killer who had acted in a manner that Jeremiah found shocking and disturbing. This is what he told Patti, Elijah, Tamica, and the Lake County investigators.**

#### **XI. The May 13<sup>th</sup> Suicide Statement: Jeremiah Shot Jennifer**

Three days later, Jeremiah gave a different statement to Santa Rosa County investigators. They had obtained items from Lawrence's residence and truck,

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Supplemental Record at 2362. Jeremiah said that after the stabbing began he ran to get the truck to rush Livingston to the hospital, but when he got back Livingston was dead. *Id.* At 2364. Jeremiah tried to save Livingston, but failed. He was sad and angry, and "I can't explain how I felt." *Id.* at 2368. Jeremiah then helped bury Livingston.

<sup>64</sup>The Livingston crime would not have been solved without Jeremiah's help. Vol. 7, p. 1113.

including the notes that Lawrence had written. They had arrested Lawrence, and he had given them a statement that blamed Jeremiah for the crimes. The Santa Rosa deputies pulled Jeremiah out of jail saying they were going to interrogate him about the Livingston case, and then he told them a different version of events from what he had told everyone before. He also explained why he was changing the story.

In this statement May 13, 1998, statement, Jeremiah took responsibility for shooting Jennifer, for cutting her forehead, and for taking all of the Polaroid photographs. Vol. 8, p. 1302-1321. He took responsibility, he said,

‘Cause I feel like a piece of sh\*\*, you know, for what I’ve—what I did—I took her life. I ruined her life, her family’s life, and after doing all of that, I don’t seem worth as much, so I don’t care what happens to me in court. You know, I pray to God I get death row. I honestly do.

Q. (By Det. McCurdy) Would you like to say anything to Jennifer’s family if you could?

A. Yeah, definitely. To Jennifer’s mom, which is the only one that, you know, I spoke to face to face, I just want her to know that I regret so much the decision I made, and I’m sorry. I wish there was a way I could take it back, but there isn’t. The only thing that I can do is tell the whole story and get my punishment. I can get my full punishment, and that is the only thing I can change.

*Id.* at 1318.<sup>65</sup>

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<sup>65</sup>Tamica testified that Jeremiah had told her from jail why he changed his statement: “He wanted to die, he wanted it done. At the time, I don’t think he realized what he was saying, because he wanted to die. He just didn’t want to be here anymore.” Vol. 11, p. 1867. Tamica had received letters from Jeremiah over

Even in this new version, Jeremiah did not say that there was a plan to kill Jennifer, and did not mention any notes that had been written in preparation to commit a crime, until the officers prompted him. He told the officers at the outset that they would need to ask him questions as “to a certain extent, I can talk, you know, [but] I’m going to lose my way,” and he spoke nonsense (i.e., what happened “was kind of impulsive, kind of premeditated, more premeditated. More premeditated than impulsive,” *id.* at 1304). He said what was the most important thing to him at the time—that he shot Jennifer—but did not volunteer much else. So the officers asked whether getting Jennifer out of the truck with a story about pot plants was “just part of the plan,” and Jeremiah said yes. *Id.* at 1308.<sup>66</sup> Then, after several more pages of confession,<sup>67</sup> Jeremiah said “Yeah, I forgot, [!?] before I took the last pictures, I took the scalpel and I made the cut that was on her forehead.” *Id.* at 1315. After he had

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the years with descriptions of serious, but unsuccessful, suicide attempts. *Id.* at 1869. In his May 10<sup>th</sup> statement, Jeremiah stated that he believed he would do prison time—probably life in prison—for his part in what happened, and the officers did not disagree with that. By saying that he was the person who shot Jennifer, it was more likely that he would be sentenced to death and be killed.

<sup>66</sup>If there was a plan to kill this person there did not need to be a trick to get her out of the truck. They were out in the middle of nowhere, and there was a gun there, in the middle of the night.

<sup>67</sup>Jeremiah told them that Lawrence had sex with the victim after she had been shot, and that Lawrence cut her leg and placed part of it in a cooler.

finished his statement, it still did not say what the investigators wanted, so they brought it up themselves:

Q. (By Det. Hand) Jeremiah, did you and John plan this whole thing?

A. Yeah.

Q. Did the plan –

A. The plan was for him to shoot her, but however it ended up, I'm the one that did it. I can't explain that part. He just didn't do it, and I did it.

Q. (By Det. McCurdy) At any point in time, did you or John make a list of how you would do that?

A. Yeah. John made a list of things he would bring, you know. He kind of planned it by himself when I was at home or wherever I was at, and he showed me the list before we even met up with Jennifer and took her out. And on the list, as far as I know, was the scalpel, you know, the ice, the – I think there was a rope. Don't remember everything that was on the list. The knife I think.

Q. (By Det Hand) Camera?

A. Camera. The film. *Id.* at 1318-19.

Jeremiah also told the officers that he shot Mr. Smitherman<sup>68</sup> and that he helped to kill Jonathan Livingston. In his May 10<sup>th</sup> statement he had said that Lawrence

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<sup>68</sup>He said that he shot Mr. Smitherman and the victim “bucked forward,” Vol. 7, p. 1056. That plainly was not true—Mr. Smitherman actually showed no reaction to being shot. *Id.* Defense counsel argued that Jeremiah simply made his story up, better to commit suicide.

committed these crimes.

## **XII. Jeremiah Had Never Hurt Anyone but Himself**

Before the insanity that led to the sentencing hearing, Jeremiah had never hurt anyone, except himself. While being treated by the State as a 16 year old, he did *say* that he would hurt his mother and father, and, on occasion, one of the treating physicians, but he was in a mental hospital being treated for a mental illness which made him say such things. While there are “lots and lots of references of both threats to hurt *himself* and actual incidents of hurting *himself*,” Vol. 13, p. 2211, Exhibit 1 and all the prior records show **“no incidents of ever having hurt anybody.”**<sup>69</sup> Vol. 12, p. 2196 (Dr. DeLand)(emphasis added). In fact, Jeremiah hurt himself rather than hurt anyone else:

We saw it at the one treatment center where he talked about where he got prosecuted for hitting the wall. There’s other times where he’s punched a wall and hurt his fists or banged his head, and he stated that he just felt so angry and he worried that he might hurt somebody else or he thought about hurting somebody else and so he hurt himself instead and then that would relieve the tension and he would feel better and not so angry.

Vol. 12, p. 2217. He would ask to be put in restraints if he felt himself getting angry,

Vol. 12, p. 2146, and ask to be placed in the “quiet room.” Defense Exhibit 1, entry

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<sup>69</sup>Jeremiah’s crimes were to property--theft. He never attempted to escape from prison or any other secure facility. Vol. 12, p. 2184.

dated 8/22/94 (Jeremiah requests to be placed in the Quiet Room “before I hurt someone or myself” and asks to stay there until he feels “less stressed.”). Defense Exhibit 1 has an entry on 3/6/95 by a state actor saying the same thing: *“there is no incidence here where he has been physically aggressive toward other people.”*

### **XIII. Remorse, regret, sorrow**

Dr. DeLand testified that when the crime occurred, Jeremiah “ was suffering from these mental illnesses that he has.” and “I do think that his mental illness has affected him, and I do think they had an impact on this crime and upon why it was committed.” Vol. 13, p. 2237. Jeremiah was unable to describe for Dr. DeLand everything that had happened. This is accounted for by amnesia, which Dr. DeLand finds to be a direct result of Jeremiah’s mental illness:

Mr. Rodgers has frequently, not only when he is telling me about the crime, but also about other periods, would frequently say, you know, I am not sure, but I have a memory of this happening or I think this is what happened, but I have trouble fitting something else into it, and that is my opinion, in my opinion and my experience, and **I’ve interviewed hundreds and hundreds of defendants in criminal cases – and that in my opinion rings very true of genuine memory problems. I have seen a lot of defendants that I thought were malingering amnesia for an event....[but Mr. Rodgers] I found very credible<sup>70</sup> ... [and] I**

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<sup>70</sup>Jeremiah is not someone who by history lied about things. Generally children and teenagers who lie about themselves are documented throughout records for the lying. Jeremiah was not. Vol. 13, p. 2251. “This is just not the picture of somebody that is feigning or malingering or pretending. In other words,



do believe that his mental illnesses do explain his problems that he has with his memory. Vol. 12, p. 2167-68.

Despite having no memory for some of the details of the crime, Jeremiah is “extremely sad and expressed remorse.” Vol. 13, p. 2231.

Mr. Rodgers is basically a sad person. He’s basically a sad depressed person. **He expressed the remorse and guilt and grief every time that I spoke with him.**

*Id.* (emphasis added). This remorse and guilt, combined with his mental illnesses, led Jeremiah to feel that “it would be God’s wish for him to take responsibility even for things that—that he was not directly responsible for in order to come to some place or be forgiven.” Vol. 12, p. 2174. This led to inconsistent statements to the police,<sup>71</sup> statements which incorporated what other people said happened: “I think somebody \_\_\_\_\_ pretending to have a mental illness.” Vol. 12, p. 2176 (Dr. DeLand).

<sup>71</sup>On cross-examination regarding one of Jeremiah’s statements, Dr. DeLand continued to stress the guilt Jeremiah feels:

Q. And, doctor, isn’t it true that the only difference in those statements as far as what happened is in May 10<sup>th</sup>, the earlier statement, the defendant lays all the blame on Jonathan Lawrence for everything.

A. He implicates Jonathan Lawrence in all the major events. **I don’t know if I’d say lays all the blame because I think he feels quite guilty for being the least participant at all in it** so – but as far as the actual specific occurrence, yes.

Vol. 13, p. 2256 (emphasis added).

with the kind of diagnosis that Mr. Rodgers has is more susceptible to suggestibility than the average person.” Vol. 12, p. 2171.

**XIV. The First Competency Hearing: Recommendation that “he be placed at the forensic unit at Florida State Hospital where he can receive inpatient psychiatric treatment and psychotropic medications deemed appropriate by his attending psychiatrist”**

Trial on the attempted murder case was set for December 13, 2000. On the morning of December 13, 2000, the State advised Judge Bell that there was a problem with respect to competency: “There is a disparity in the opinions on the part of the doctors.” Vol. 19, p. 1648. “And quite frankly they have disagreement. One indicates that Mr. Rodgers is competent to proceed. One indicates that Mr. Rodgers is not competent to proceed.” *Id.* at 1648. The judge appointed a third expert, and postponed trial until January 31, 2001. A competency hearing was scheduled for January 13, 2000.

The two experts reports to the Court documented that Jeremiah was experiencing in pre-trial detention many of the problems that had been documented at Florida State Hospital. He was cutting himself, being placed in restraints, including a straight-jacket, pulling out sutures, and again (*see* section I, B, 3, *supra*) trying to keep his mother’s spirit away. Dr. Lawrence Gilgun’s report documents the most serious suicide attempt in custody:

Of utmost importance to this examiner is his recent history since being incarcerated at the Santa Rosa County Jail. He made what, in my opinion, was a serious suicidal attempt on 10/30/98. Indeed the records reveal that he was found in a pool of blood. He was “Life-Flighted” to a hospital and indeed was kept overnight. Interestingly enough other entries indicate that he has gone to great lengths to injure himself, to include razor-blade fragments that were wrapped in a Band-Aid being found in his rectum. He has also opened up old wounds on several occasions. Has been cuffed and shackled on numerous occasions, some at his own request. At times he will be compliant with medication, and at other times refuses it. While I was reviewing the records after my interview with him he pulled out his sutures this very evening, creating bleeding and necessitating transport to the hospital for treatment.

Supplemental Record, at 2273. He diagnosed Jeremiah as suffering from a major depressive disorder, recurrent and severe, and concluded:

I believe that a good bit of his behavior may be for the purpose of receiving psychiatric treatment and delaying his trial. However, it is clear that he has made very serious suicidal gestures, particularly the one on 10/30/98. He continues to make serious suicidal gestures, and I believe that he is genuinely suicidal at present...

Mr. Rodgers’ severe psychiatric problems cause him to lack sufficient present ability to consult with his attorneys with a reasonable degree of rational understanding. In his present disturbed state, he is incapable of manifesting appropriate courtroom behavior or testifying relevantly in his own behalf...

It is my opinion that Mr. Rodgers’ mental illness renders him incompetent to proceed, and **the appropriate treatment would be inpatient psychiatric care.** *Id.*<sup>72</sup>

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<sup>72</sup>Dr. Harry McClaren’s description of the state of affairs in pre-trial detention was also grim:

At the competency hearing conducted on January 7, 2000, Dr. Gilgun testified that Jeremiah was “**severely afflicted,**” Vol. 15, at 1010, and not competent:

**I think that he is a well entrenched borderline personality disorder, and probably has been very much a problem all his life and in very poor control of himself. Whether that would yield to psychiatric treatment or not I really can’t tell you. But I think that he at least deserves that opportunity.**

Q. What is your recommendation to the court, Doctor?

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At the time of the current evaluation, he was taking no psychotropic medication **though he was prescribed Mellaril at the time of the evaluation.** He also took Keflex to ward off infection of his self-inflicted cuts. He reportedly has been very sporadic in his taking psychotropic medications. He has been an extreme risk for suicide as evidenced by many attempts at self-mutilation involving self-inflicted cuts. ....

At the time of the evaluation, it is noted that he was engaging in bizarre behavior at times in a suicide watch cell within the medical division of the Santa Rosa County Correctional Facility. His behavior involved his self-described “wearing sh##”, involving having feces on his body. Also, mentioned above, he has continued to engage in self-mutilation in the Santa Rosa County Correctional Facility up to the time of the evaluation. ...

According to available information he has been engaging in such behavior for the past approximate two weeks. **He said that he was engaging in this behavior to keep his mother away from him as mentioned above.**

Supplemental Record, pp. 2286, 2290. Dr. McClaren diagnosed Jeremiah with serious mental illnesses, but concluded that he was competent to proceed to trial. *Id.* at 2293.

**A. That he be placed at the forensic unit at Florida State Hospital where he can receive inpatient psychiatric treatment and psychotropic medications deemed appropriate by his attending psychiatrist. *Id.* at 994-95.<sup>73</sup>**

He testified that Jeremiah suffers from “posttraumatic stress disorder that may have its antecedent in child abuse.” Vol. 15 at 1030. This was a “firm conclusion” that differed somewhat from his written report and resulted from having reviewed “the things that were described to have happened to him involving physical abuse and sexual abuse by his mother.” *Id.* at 1083. *Dr. McClaren said that Jeremiah had been treated by “going on 100” mental health professionals in his life, and suffered from “depressive disorder. And some form of depression since an early age by so many different people.” *Id.* at 1084 (emphases added). He believed that Jeremiah’s*

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<sup>73</sup>Jeremiah was in a straightjacket right before Dr. Gilgun saw him, and was in shackles during the evaluation. Jeremiah told him he did not trust his defense attorneys. Volume 15, pp. 984, 1006 **“In general his life has been a mess.”** *Id.* at 1006 (Gilgun). His behavior of cutting and smearing waste on himself was consistent with what he had been doing for 10 years. *Id.* at 998. “As early as 13, for instance, he was in an inpatient psych unit for self-injurious behavior.” *Id.* When asked whether the cutting was manipulative, Dr. Gilgun said: “Not necessarily. It was right after I saw him where I don’t know what was to gain exactly at that point, pulling sutures out of himself. And on October 28 a lot of people thought that he was going to die. And so **he made a bona fide, appears to be a bona fide suicidal attempt** at that point.” *Id.* at 1003.

Jeremiah told Gilgun that “he (referring to **his co-defendant**) **killed her.**” “He was willing to tell me that he witnessed the murder and, ‘I saw everything,’” *id.* at 2272, but that Lawrence was more responsible.

“dissociative symptoms may be present [today], but they don’t appear severe to me,” *id.* at 1092, so Jeremiah was nominally competent.

Dr. McClaren also testified that Jeremiah had memory loss,<sup>74</sup> prompting the Court to comment that “my assumption is that there are no drugs and there is no treatment that could ....if he is having and saying that he only remembers 75% that would turn on the light to the other 25%.” *Id.* at 1092. Dr. McClaren agreed that it was unlikely that there was any treatment that would bring Jeremiah’s memory back.<sup>75</sup>

#### **XV. The Second Competency Hearing—“[h]e suffered, yes he did”**

On March 9, 2000, counsel for Mr. Rodgers requested a second competency

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<sup>74</sup>“I want to say that he reports that he has only about a 70 to 75% memory for his behavior during that time period.” Vol. 15, p. 1089 Furthermore, “ he claimed that he had periods of amnesia for parts of his life, his early childhood. I had the opinion that this might be repression. Might be some kind of dissociative amnesia due to experiences trauma and these being very painful memories to bring back up.” *Id.* at 1035.

<sup>75</sup>Dr. Benson, a psychiatrist, evaluated Jeremiah on December 27, 1999, because of the disagreement between the other two experts. He testified that on October 30, 1998, Jeremiah was near death from his self destructive cutting. He testified that when he saw Jeremiah “He certainly ha[d] numerous scars, lacerations, injuries in a variety of states of healing.” Vol. 15, p. 1066. He said that Jeremiah “has been confined in a straight jacket for quite sometime at the jail.” He agreed that he “saw records where Mr. Rodgers had three hospitalizations when he was 11 and twelve,” *id.* at 1067, and that “the people who were treating him understood the behaviors to be a response to living with his mother.” *Id.* While he concluded that Jeremiah was mentally ill, he testified that the cutting behavior was largely manipulative and that Jeremiah was competent.

hearing because the defendant's condition in jail had deteriorated. Vol. IV, pp. 620-22. On March 10, 2000, the newly assigned judge in this case, Judge Rasmussen,<sup>76</sup> conducted a hearing on the motion to conduct a second competency hearing. Counsel advised the Court that Jeremiah had resumed self-mutilating behavior to the point of near suicide, that the jail had prescribed anti-psychotic medicine, and that Jeremiah had been placed in restraints for days and weeks at a time. They advised the court that many photographs depicting a cell full of blood, feces on the wall of the cell, and a bloody Jeremiah had been taken on numerous occasions. Counsel also advised the Court that Jeremiah had become non-communicative. Vol. 18, pp. 1471 - 1512.

Judge Rasmussen commented that the facts presented "a complex – it's a very complex situation," *id.* at 1512, and ordered a re-evaluation of Jeremiah's competency. *Id.* at 1529. Jeremiah was re-evaluated, reports were submitted to the court, and the second competency hearing occurred on April 3, 2000. At that competency hearing, Dr. McLeod described some of Jeremiah's problems. Dr. McLeod is a physician with a family practice. He has a contract with Santa Rosa County jail, and provides almost of the medical services for the pre-trial detainees. During his pre-trial detention, Jeremiah was kept in the hospital unit, and Dr. McLeod saw him every day. Vol. 21,

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<sup>76</sup>Judge Rasmussen replaced Judge Bell whose recusal had been ordered by the First District Court of Appeal. *See* Argument VI, *infra*.

p. 2007; 2018. Dr. McLeod concluded: that Jeremiah was severely mentally ill; that the conditions under which he was confined made him more ill; and *that Jeremiah should have been housed in a psychiatric treatment center, but no facility would accept him.*

Dr. McLeod is not a psychiatrist so he consulted with one, **Dr. Montes**, who came to the conclusion that Jeremiah's behaviors were "representing depression and **serious psychiatric illness.**" Vol. 21, p. 1979 (testimony of Dr. Benson). Dr. Montes "describes hopelessness, helplessness," Vol 21, p. 1901, and prescribed **psychotropic medication**, Remeran and Zyprexa. Remeran is "an antidepressant drug" and Zyprexa is "for antipsychotic treatment." Vol. 21, pp. 1891-92.<sup>77</sup>

Because of his mental condition, Jeremiah was kept completely isolated, and was frequently restrained, hand-cuffed, put in straight jackets, and kept in a rubber room—for his own safety. His self-mutilation and great loss of blood had made him anemic and he had been prescribed mega-vitamins. Vol. 21, p. 2019.

**"During the times of his psychotic behavior and self mutilation the adequacy of the medical department to take care of him was questioned by me**

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<sup>77</sup>This medication "results in an increase in certain neurotransmitters that are normally in the brain and cause a connection, if you may, between two nerve cells of the brain." Vol. 21, p. 2013. Severe trauma damages such neurotransmitters. Vol. 12, p. 2055. See note 29, and text accompanying, *supra*.



**on more than one occasion, ” Dr. McLeod testified. “According to the head nurse, Debbie Sasse, because of his criminal charges none of the facilities that we use for Baker Acts and patients would accept him.”** *Id.* at p. 2023-24.

Thus, Jeremiah was kept at the jail, isolated, medicated, restrained, and suffering. Dr. McLeod sutured Jeremiah many times, re-sutured when Jeremiah pulled out fresh sutures, and sent Jeremiah to the hospital emergency room for life-threatening self-injury. *Id.* at 2008. Dr. McLeod would order restraints, solely for medical reasons. *Id.* at 2015. And **“[h]e suffered, yes he did--what you would expect from someone who was restrained for a long period of time ...up to 13 or 14 days.”** *Id.* at 2016. After such a fortnight, Dr. McLeod had to remove the restraints because the psychiatric benefit was outweighed by the medical unsoundness of tying a human down for weeks. *Id.* at 2017. This sort of incarceration had, according to Dr. McLeod, “resulted in my opinion in him having some psychotic episodes due to the sensory deprivation.” Vol. 22, p. 2023.<sup>78</sup>

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<sup>78</sup>As the prosecutor accurately recognized while cross-examining this local jail doctor, “[i]t is my understanding that he has had more than one episode that could be considered psychotic.” Vol. 22, at 2037. Dr. McLeod witnessed one episode in which Jeremiah barked like a dog for hours and hours, Vol. 21, pp. 2020, 2040, and also witnessed Jeremiah’s delusional belief that McLeod and the nurses were conspiring to turn him into a zombie with the psychotropic medications Melaril and Elavil. Vol. 21, p. 2011.

Drs. McClaren, Benson, and Gilgun submitted reports to the court, all of which were very similar. They reported and testified that Jeremiah had had two serious cutting incidents in February,<sup>79</sup> that he had been placed in restraints and in a rubber room for long periods,<sup>80</sup> that he was being *forcibly* treated with anti-depressant and

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<sup>79</sup> It is noted that Mr. Rodgers reportedly has engaged in two additional episodes of self-mutilation since the time of his last evaluation. One of the episodes occurred on February 15, 2000. Indications are that he engaged in two separate incidents of self-mutilation on February 13. After the first incident, he was reported to be fading in and out of consciousness and was transported to the Santa Rosa Medical Center. After that behavior, he was evaluated by Dr. Montes for a consultation regarding possible psychotropic medication. As mentioned above, Dr. Montes prescribed Remeron and Zyprexa which the defendant has only intermittently taken in the jail setting.

Supplemental Record, p. 2309 (Dr. McClaren). *See also* Vol. 21, p. 1910 (Dr. McClaren); *id* at 2056 (Dr. Benson); *id* at 2059 (Dr. Gilgun). The record contains photographs of Jeremiah's cell covered in blood and feces, and pictures of Jeremiah after a cutting episode. *See* Defendant's Exhibit 5 to the April 3, 2000, competency hearing.

<sup>80</sup>*See* Vol. 21, p. 1985 (“[W]hile he was healing he would re-injure it and bleed more. He was in restraints during that time. These would be extended periods I think that he was in restraints.”)(Dr. Benson); *id* at 1997 (“when he has one of these medically dangerous self-mutilating episodes he’s in restraints in a rubber room with lots of limitations.”)(Dr. Benson); Vol 22, p. 2310(“He has been in an isolation cell during his incarceration.”) (Dr. McClaren); Vol. 21, p. 1912 (rubber room)(Dr. McClaren).

anti-psychotic medications,<sup>81</sup> and that he had serious, long-term psychiatric illnesses.<sup>82</sup>

He had improved by the time of the evaluations and was then competent, but one hallmark of his multiple illnesses was “he experiences very wide mood swings,” Vol. 23, p. 2066, so he could later become incompetent during the course of the trial.<sup>83</sup>

The doctors continued to remark upon Jeremiah’s delusional thinking about his

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<sup>81</sup>See Vol. 21, p. 2074 (Dr. Gilgun); *id.* at 1942 (Dr. McClaren). Dr. Benson reported that the medication was forced: corrections officers said that “we’ll take the shackles and the belly chain off if you’ll take your medication.” Vol. 21, p. 1998.

<sup>82</sup>See Vol. 22, p. 2062 (“in my mind this man has had **genuine psychiatric problems for years**”)(Dr. Gilgun); Vol 21, p. 2080 (depressive disorder, which is recognized throughout years of reports)(Dr. Gilgun); Vol 22, p. 2313 (“**Diagnostically, he probably suffers from Post-traumatic Stress Disorder...He has been repeatedly placed while incarcerated in the Florida Department of Corrections at the Mental Health Unit.**”)(Dr. McClaren); Vol 21, p. 1899 (“Well, he has **psychological treatment records going back to childhood**, all kinds of symptoms interspersed through them, whether he’s in a private hospital, a reform school, a prison, or a jail. So you get the same symptoms in different places.”)(Dr. McClaren); Vol 21, p. 1983 (“Mr. Rodgers has **a very long history of treatment in psychiatric facilities**”)(Dr. Benson); Vol. 21, p. 1939, 1947, 1952 (many individuals with this profile receive a diagnosis of **schizophrenic** disorder, are likely to become psychotic, and require pharmacotherapy and treatment in a mental health facility)(Dr. McClaren).

<sup>83</sup>See Supplemental Record, p. 2304 (“He is not currently likely to injure himself or others. I must hasten to add that it would not at all surprise me if this situation changes.”)(Dr. Gilgun); Vol. 21, p. 1995 (likely to become incompetent again)(Dr. Benson); Vol. 22, pp. 2083-84 (likely to become incompetent again)(Dr. Gilgun); Vol. 21, p. 1995 (likely to become distrustful of lawyers again)(Dr. Benson).

mother's "spirit."<sup>84</sup>

## SUMMARY OF ARGUMENT

**Argument I:** With a jury recommendation of death by a 9-3 vote, the exclusion of relevant evidence showing that co-defendant Lawrence was perversely obsessed with (and possessed caches of) macabre killing paraphernalia--and was thus the instigator, planner, and prime mover in the crime--violated the Eighth and Fourteenth Amendments. *Lockett v. Ohio*, 38 U.S. 586 (1978).

**Argument II:** Because Mr. Rodgers' case presents the starkest and most compelling mitigation imaginable, his death sentence is unconstitutional. *Besaraba v. State*, 656 So. 2d 441, 446 (Fla. 1995).

**Argument III:** The sentencing judge unconstitutionally ignored compelling mitigating evidence that Appellant did not kill the victim, told person after person that he did not kill the victim, and ultimately said he did kill the victim only because of his mental illness and desire to die. By not even mentioning this compelling evidence, the sentencing judge committed reversible error. *See James v. State*, 695 So. 2d 1229

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<sup>84</sup>Vol. 21, p. 1963 , 1930 ("he reports and I think it's a strong likelihood that he may have had sexual relations with his mother.... [and] he uses his feces to **keep his mother's spirit away**")(Dr. McClaren); Vol. 22, p. 2064 (feces was "to **keep his mother from visiting him**, thought that she came by in some type of vision or something")(Dr. Gilgun).

(Fla. 1997).

**Argument IV:** Co-defendant Lawrence wrote notes which appeared to reflect plans for a murder like the one committed. The state was allowed to introduce these notes as evidence against Appellant, evidence which Appellant could not confront, in violation of the rules of evidence and the Eighth and Fourteenth Amendments. Furthermore, the state introduced these notes found at Lawrence's residence but successfully excluded other things that were found there, *see* Argument I, *supra*, things that would have clearly shown that it was Lawrence who had the settled state of mind to write such a note and plan such a crime, not Jeremiah. This fundamental asymmetry in evidentiary rulings was unfair and inconsistent with the Eighth and Fourteenth Amendment demands of reliability in capital sentencing.

**Argument V:** Appellant was absent from a hearing at which his lawyers told the judge: (1) that as a result of the guilty plea they were unprepared to proceed at sentencing and were at odds with each other about who would do what; and (2) that Appellant was unstable and incapable of understanding what they were doing. No-one told Appellant that these things were said until after the jury recommendation, and when he learned he moved to withdraw his plea. His absence from the critical hearing at which the unpreparedness was revealed requires reversal. *Kentucky v. Stincer*, 482 U.S. 730, 745 (1987). Furthermore, if a defendant is not advised that his guilty plea

will result in his lawyers being unprepared, then it is not a knowing and intelligent plea, and must be set aside. *Boykin v. Alabama*, 395 U.S. 238 (1969).

**Argument VI:** The state introduced evidence of a conviction for a prior violent felony, the product of a trial presided over by a judge who should have recused himself. Sentencer consideration of this aggravating circumstance requires reversal. *Johnson v. Mississippi*, 486 U.S. 575 (1988).

**Argument VII:** Reversal is required under *Ring v. Arizona*, 122 S. Ct. 2428 (2002).

**Argument VIII:** Forcibly medicating Appellant so that he could be tried and sentenced violated the Eighth and Fourteenth Amendments. *Riggins v. Nevada*, 504 U.S. 127 (1992).

## ARGUMENTS

### **ARGUMENT I: THE CO-DEFENDANT'S HOUSE OF HORRORS**

Why did these crimes occur? Sentencing counsel offered relevant, probative, indeed *irrefutable* evidence that it was because of co-defendant Lawrence. “Relative culpability” evidence is always admissible at capital sentencing, *see Almeida v. State*, 748 So. 2d 922 (Fla. 1999), and the sentencing judge committed harmful constitutional error by excluding it. *De novo* review is required.

Jeremiah’s defense was that he did not kill the victim in this case, that pre-

Lawrence he had never participated in hurting anyone other than himself, and that Lawrence had a sick fascination with killing and killing instruments that made him more likely than not the dominant actor. All of the items used in the crime were Lawrence's— his gun, his bullets, his truck, his camera, his scalpel, his ice chest, his knife, his handwritten lists, etc. But there was much more to show that Lawrence, not Jeremiah, was obsessed with visiting violence upon other people. Evidence seized from Lawrence's residence included:

Small red notebook in Lawrence's handwriting, a throwing knife in a sheath, a knife with a black taped handle, a black hood, a pair of handcuffs, .410 Winchester shotgun shell, red plastic container with suspect gun powder, suspected pipe bomb, firearm cleaning record, folding buck knife, two throwing stars, two wooden stakes, one pair of S&W handcuffs, one pair of nunchaks, one Sears screwdriver with a sharp point, one black leather slapjack, one knife with a black handle, one sickle, one T-handle corkscrew, two unknown type weapons with blades, one wood-handled chisel, one fingerless black glove, two black knives with sheaths, one velcro wrist strap, one chrome spike wristband, one silver-sharpened piece of metal, one Assault Weapons book, one Silencer Sniper's and Assassin's book, one Ultimate Sniper book, one Trapper and Mountainmen book, one deer mom, a Sniper's Vietnam book, one Wild Food Field Guide Cookbook, one Sniper World of Combat Sniping book, one U.S.M.C Close Quarters Combat Manual, one U.S. Special Forces Conditioning Program book, one Marine Sniper book, one Undercover Official cookbook, one marksman BB pistol, one Wal-Mart receipt for a .270 caliber Remington Rifle, one Remington gun literature, 20 rounds of .270 caliber Hornaday live ammunition box, 19 rounds of .12 gauge live ammunition in a box with four live rounds, one gun cleaning kit, one receipt for the Lorcin .380 serial number 480849, one box Derringer percussion serial number 176962 JUKAR, one nipple-cap, one ramrod with powder measurer, daily work log of

Lawrence for May 7, 8, 9, 1998 (T. 1580-1582); *see also* proffer, Vol. 10, pp. 1696-1714; Appendix hereto, Tab 4.<sup>85</sup>

Counsel asked that these items be admitted to demonstrate: (a.) that it was very likely true, as Jeremiah had said in his May 10th statement, that (1) Lawrence “always talked about killing and such, talked about things like killing,” Vol. 10, p. 1695 (defense argument), and that (2) Lawrence *was* the person who killed the victim;<sup>86</sup> (b.) that the police, in seizing these items, obviously thought they had evidentiary value “in the death of Jennifer Robinson,” Vol. I, p. 034;<sup>87</sup> (c.) that *the State* believed that the items proved something bad about Lawrence, and **the State** had *introduced them against Lawrence at his sentencing* (and the Lawrence sentencing judge relied upon them) to prove bad things about Lawrence; and (d.) that the items showed Lawrence’s significant leadership and Jeremiah’s comparative lack of involvement with murder paraphernalia. Vol. 9, pp. 1582-1590.

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<sup>85</sup>This Court granted Appellant’s motion for the lower court to transfer the box containing the property seized from Lawrence to this Court.

<sup>86</sup>In Jeremiah’s statement on May 10<sup>th</sup> he said that Lawrence was responsible for the killing and the bizarre and unspeakable treatment of the victim’s body. He explained that Lawrence always talked about murder and that was why Lawrence did what he did. Lawrence’s possessions support Jeremiah’s statement.

<sup>87</sup>If this evidence had been admitted, the jurors could then have compared what was seized from Lawrence with what was seized from Jeremiah—Jeremiah gave the police Lawrence’s gun and some Polaroids.



The state objected: “[W]e view this as character evidence and view almost a character assassination of the witness of Mr. Lawrence.” *Id.* at 1583.<sup>88</sup> The lower court excluded all of this evidence (and would not allow questions about its seizure), other than for a few items relating to the murder weapon.<sup>89</sup>

It was patent, prejudicial, federal constitutional error to exclude (and for the judge not to consider) this probative evidence. It gutted the defense. First, Jeremiah told Patti, Elijah, Tamica, and Officer Luce that Lawrence had committed the crimes; he later told Tamica that in his May 13<sup>th</sup> statement he falsely took responsibility because he was trying to kill himself from guilt and remorse. The defense at sentencing was that these statements were true, and that Jeremiah, while clearly mentally ill, was unlikely to make plans to kill a person he had asked out on a date.

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<sup>88</sup>The state acknowledged below that a number of these items had been **offered by the State** and were admitted into evidence **at Lawrence’s *Spencer*** hearing: the Assault Weapons book; Silencers, Snipers and Assassins book; Trapper and Mountainmen book; Snipers Vietnam book; Wild Food Field Guide Cookbook; Sniper War Combat Sniping book; USMC Close Quarter Combat; Manual; U.S. Special Forces Conditioning Progress Book; Marine Sniper book; Steroid Undercover cookbook. Vol. 10, p. 1711.

<sup>89</sup>The judge admitted the Lorchin pistol, boxes of .380 ammunition, sales receipts for the pistol and ammunition, and two pistol cleaning rods. Vol. 9, pp. 1586-1587, 1590, 1702.

Lawrence **was** quite capable of initiating and carrying out such a plan.<sup>90</sup> Lawrence kept an exotic arsenal of maiming and killing instruments, sicko killer books and articles, instruction manuals for murder, sniper training kits, etc.<sup>91</sup> He had collected all these things on his own for years. Jeremiah had no interest in and did not possess killing apparatuses and primers-- the older Lawrence did.<sup>92</sup>

Were Appellant's non-May 13<sup>th</sup> statements (that Lawrence did the killings) true? The Lawrence house of horrors evidence was plainly relevant to that central issue and its exclusion violated the Eighth and Fourteenth Amendments. "Th[e] opportunity [to present a defense] would be an empty one if the State were permitted to exclude competent, reliable evidence bearing on the credibility of a confession when such evidence is central to the defendant's claim of innocence." *Crane v. Kentucky*, 476 U.S. 683, 690 (1986)(citations omitted). And even if the house of horrors evidence

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<sup>90</sup>Lawrence's defense attorney told the court below that "I have determined, after talking with Mr. Lawrence, that he does not have a problem with his competency." Vol. 20, p. 1835

<sup>91</sup>Lawrence kept skulls and animal bones in his residence. He sliced the victim's leg in this case and took a piece of her body which was recovered by the police in a deep freeze at his residence. Vol. I, p. 004.

<sup>92</sup>The state wished to make Jeremiah somewhat like Lawrence by tying Jeremiah to the notes Lawrence wrote. This was ineffectual, and was, itself, unconstitutional. See Argument III, *infra*.

could conceivably have been excluded at a trial,<sup>93</sup> its exclusion at sentencing violated the Eighth and Fourteenth Amendments. The defendant in a capital case has a constitutional right to present *all* relevant mitigation (and to rebut aggravation) related to the circumstances of the offense, *Lockett v. Ohio*, 38 U.S. 586, 604 (1978), including having sentencer consideration of the defendants' comparative roles. *Id.* at 607.<sup>94</sup> "The State cannot channel the sentencer's discretion" away from relevant evidence, "but must allow it to consider any relevant information offered by the defendant." *Romano v. Oklahoma*, 114 S.Ct. 2004, 2009 (1994) (quoting *McCleskey v. Kemp*, 481 U.S. 279, 306, (1987)); *see also Hess v. State*, 794 So.2d 1249, 1269 (Fla. 2001). A new sentencing proceeding is required.

## **ARGUMENT II: A MORE MITIGATED CASE CANNOT BE IMAGINED**

The death penalty is reserved for the least mitigated. *Besaraba v. State*, 656

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<sup>93</sup>During pre-trial hearings, the court ordered that none of the exculpatory statements could be introduced by the defendant during a guilt/innocence trial. Vol. IV, pp. 724-25. This violated due process, the right to present a defense, and the right to rebut confront and rebut the state's evidence. Because of this unconstitutional ruling, the defendant later agreed to plead guilty just so that the true facts could be presented. This coerced plea of guilty requires a new trial. *See* Argument V, B, *infra* (case law on involuntary guilty pleas).

<sup>94</sup>*See Stevens v. State*, 613 So.2d 402 (Fla. 1993) (jury could properly have relied upon defendant's lesser culpability for the crime in choosing a life sentence); *Cooper v. State*, 581 So.2d 49 (Fla. 1991) (conflicting evidence on the identity of the actual killer can form the basis for a life recommendation); *Hawkins v. State*, 436 So.2d 44 (Fla. 1983) (same).

So. 2d 441, 446 (Fla. 1995). This Court enforces this state and federal constitutional principle through *de novo* review. Such review reveals that by age 21, Mr. Rodgers had been raped over and over again by his own mother, who started using him when he was three (the only interest she ever showed in him), drugged by his own mother so she could abuse him, beaten by both parents, abandoned, medicated by state doctors with a broad spectrum of drugs designed to treat only the most severely mentally ill, sliced up like a cutting board, sutured, re-sutured, straight-jacketed, held in four-point restraints, placed in rubber-rooms, smeared all over with feces, committed over and over again to psychiatric wards, repeatedly near death at his own hand, visited by spirits, and unceremoniously released from state custody without so much as an aspirin, an “oversight.” What was likely to happen? He then sought psychiatric services to no avail, got involved with Jonathan Lawrence, and tragedy followed. His pre-trial incarceration was in a jail medical unit because no forensic psychiatric unit would take him. He suffered there, and was life-flighted out. He showed as much remorse as this Court has ever seen or ever will see, telling the family of the victim in a confession and in open court how genuinely aghast he was at what had happened, and wishing that he was dead instead of the victim.<sup>95</sup> The lower court

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<sup>95</sup>“If I could—without a doubt I would trade my life to change it – I wasn’t – shakes head negative – it wasn’t supposed to be this way – and I’m sorry.” Vol. 16, p. 1205.

“watched him put his hands over his ears, Mr. Rodgers rock back and forth, and cry as he did moments ago.” Vol. 16, p. 1208 (statement of defense counsel). He is so ill that it took two competency hearings even to get to a trial.<sup>96</sup> Three jurors, folks who do not see the cases this Court sees, said Jeremiah should not be executed.<sup>97</sup>

This Court will not see a more mitigated case, and a life sentence is required. *Miller v. State*, 373 So. 2d 882 (Fla. 1979). The death penalty for this person would violate the evolved standards of decency in this state and nation.<sup>98</sup>

### **ARGUMENT III: IGNORING MITIGATION**

In his sentencing order, the judge failed to consider evidence that had been admitted in mitigation and that rebutted aggravation. This violates the Eighth and Fourteenth Amendments, *see Hitchcock v. Dugger*, 481 U.S. 393 (1987); *Lockett v. Ohio*, 438 U.S. 586 (1978), and *de novo* review is required.

Jeremiah told Patti, Elijah, Tamica, and Officer Luce (in his May 10<sup>th</sup> statement)

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<sup>96</sup>As counsel for the state commented below: “These are very complicated, lengthy, psychiatric histories that are involved.” Vol. 19, p. 1610.

<sup>97</sup>In addition, before the jurors made a recommendation they asked the Court whether they could recommend a life sentence if the mitigating circumstances outweighed only one of the two aggravating circumstances.

<sup>98</sup>Jeremiah should have been committed to a hospital, not sentenced to death, and a sentence of death for someone this mentally ill violates the Eighth and Fourteenth Amendments. *Cf. Atkins v. Virginia*, 122 S.Ct. 2242 (2002)(execution of mentally retarded violates evolved standards of decency).

the exact same thing: that he did not kill Jennifer, that Lawrence did, and that Lawrence was also responsible for the things done to her body and for the Polaroid photographs. His recitation of what had happened was consistent in each of the four statements. He also told everyone that Lawrence was responsible for the Smitherman and the Livingston crimes.

Proof was introduced that Jeremiah's later, May 13th, statement, in which he said *he* was responsible, was the false product of his desire to kill himself and it was just made up so that he would get the death penalty. *Tamica testified that Jeremiah told her precisely that*, and Dr. DeLand testified that Jeremiah confessed to things in this case for which he was not responsible because of his guilt, sorrow, remorse, and desire to die. *See Statement of the Case, Section XIII, supra.*

Counsel for the defendant directed the sentencing judge to this mitigation and rebuttal to aggravation, specifically arguing for the Court to consider "all" the evidence, including the evidence that the May 13<sup>th</sup> statement was made up so that Jeremiah would die. Vol. V, p. 855-56; *see also* Vol. 16, p. 1208 - 09.<sup>99</sup> However, in his sentencing order the judge did not examine, or comment at all upon, the suicidal

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<sup>99</sup>Jeremiah could not even confess to correct facts. He got the manner of Justin Livingston's death wrong, Vol. 16, p. 1174, he got the placement of a knife inside Jennifer's vagina wrong (it did not happen), Vol. 8, p. 1294 - 96, and he got wrong whether or not Mr. Smitherman lurched forward when he was shot.

reasons for Jeremiah providing a false statement of responsibility. Instead, the court simply referred to the “facts” in the May 13<sup>th</sup> statement as if they true without any reference to the mitigating and rebutting evidence that they were not.<sup>100</sup>

For the death sentence to be even viable, the statement from the 13<sup>th</sup> must be unimpeachable. Every other statement contradicts it, and there is plausible, mitigating, and aggravation-rebutting evidence regarding why the statement from the 13<sup>th</sup> ought to be rejected as false. **To not even address** that evidence violates the Florida capital sentencing statute,<sup>101</sup> and *Lockett v. Ohio, supra*. While a sentencer can reject evidence as not being mitigating, the sentencer cannot refuse to consider whether something is or is not mitigating. Here, the sentencer gave no heed at all, not even a nod, to perfectly appropriate mitigation, and reversal is required. *See James v. State*, 695 So. 2d 1229, 1237 (Fla. 1997).

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<sup>100</sup>Worse, the lower court, while ignoring the exculpatory parts of the May 10<sup>th</sup> statement, and ignoring totally the Tamica testimony about why the statement from the 13<sup>th</sup> was false, actually used Jeremiah’s statement from the 10<sup>th</sup> that he took the gun away from Lawrence and wanted to shoot him as evidence that Jeremiah had not been dominated by Lawrence. Thus, the lower court found the statement from the 10<sup>th</sup> credible and relevant for some purposes, and not even worth mentioning for other purposes, with no apparent principle for which was which.

<sup>101</sup>The “specific findings of fact” that are the “mandatory statutory requirement” for a death sentence are the responsibility of the presiding judge. *Van Royal v. State*, 497 So.2d 625, 628 (Fla. 1986).

#### ARGUMENT IV: RIGHT OF CONFRONTATION

The State was allowed to introduce two notes that Lawrence had written. These two notes appeared in some parts to be real or facetious “to-do” lists for Lawrence to carry out a murder similar to the way Jennifer was ultimately killed by Lawrence. It is fact that Lawrence wrote the notes, *see* Appendix hereto, Tab 3, and there is no evidence that Jeremiah had anything to do with their writing. The state offered these notes into evidence against Jeremiah, and the defense objected. The entire discussion of the admission of these notes was:

MS. LEBOEUF: 7A and 7B are the State’s exhibits for these two notes. The state concedes that these are in Mr. Lawrence’s handwriting and that they were obtained from his home, and we object on the basis of hearsay. We also object on the basis of relevance.

MR. MOLCHAN: It’s admissible, Judge. It’s a statement of a co-conspirator made during the course of a conspiracy to show heightened premeditation. Mr. Rodgers, in his statement, indicates that he was aware of this note, knew about the note, the notes that were made, and specifically discussed those as far as planning,<sup>102</sup> and they are relevant to that particular portion.

MS. LEBOEUF: Your Honor, I think that’s a mis-characterization of what the evidence will show. The only reference to this list is Mr. Rogers’ brief statement that he was shown the note, “he showed me the note.”

Vol. 7, p. 1193. Jeremiah’s only reference to any note (not notes) came only *after* he

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<sup>102</sup>There was no evidence that Jeremiah “discussed those as far as planning.”



had finished his May 13<sup>th</sup> statement without mentioning a note (he also did not say *anything* about any note in his May 10<sup>th</sup> statement). The officer then brought the subject up:

Q. (By Det. McCurdy) At any point in time, did you or John make a list of how you would do that?

A. Yeah. John made a list of things he would bring, you know. **He kind of planned it by himself when I was at home or wherever I was at, and he showed me the list before we even met up with Jennifer and took her out.** And on the list, as far as I know, was the scalpel, you know, the ice, the – I think there was a rope. Don't remember everything that was on the list. The knife I think.

Q. (By Det Hand) Camera?

A. Camera. The film.

Vol. 8, at 1318-19. This statement shows that Lawrence wrote the list, it reflected a plan Lawrence had “by himself,” and the list had nothing to do with anyone but Lawrence. The trial court erred by admitting the hearsay list which Jeremiah could not cross-examine, in violation of Florida law and the Sixth and Fourteenth Amendments. This error is reviewed *de novo* to determine whether the predicate facts for the admission of the statement were shown by the state.

Under Section 90.803(18)(e) of the Florida Evidence Code, hearsay statements made by one member of a conspiracy are admissible against another member of the conspiracy when it is shown that (1) when the statement was made, there was a

conspiracy in existence, (2) the statement was made during the course of the conspiracy, and (3) the statement was made in furtherance of the conspiracy. The state did not show these elements, and the notes should not have been admitted. The lower court made no finding that the state had proven these foundation facts by a preponderance of the evidence through proof independent of the hearsay, and reversal is required. *Foster v. State*, 679 So. 2d 747, 753 (Fla. 1996); Ehrhardt, C., *Florida Evidence*, Section 803.18(f) (West 2002), p. 820-826.

When the note was written, was there a conspiracy in existence? The state failed to show that there was. Jeremiah simply said he saw the note, but he did not say that he and Lawrence were planning to kill anyone or had an agreement to kill anyone in a way that was suggested by the note. The fact that Lawrence ultimately did kill someone that way, and that Jeremiah had seen a note, does not show any conspiracy in existence at the time the note was written or seen.

But if this Court believes there was a conspiracy, the notes still are inadmissible. It is entirely possible (and the state could not prove otherwise, under any standard or proof) that Lawrence wrote the note and showed it to Jeremiah before the conspiracy existed. If Jeremiah later joined into a conspiracy, that does not mean that the

statement/note was made while the conspiracy was in existence.<sup>103</sup>

Furthermore, the notes are double hearsay. They are pieces of paper, which cannot be cross-examined, containing a “statement,” which cannot be cross-examined. While a person can be cross-examined with respect to what someone said and how they said it, a piece of paper cannot be. What was Lawrence’s demeanor when he made the statements? There is absolutely no way to cross-examine anyone to get that information to the jurors. Because it was not possible to subject these notes to adversarial testing, the proceedings were unreliable, and the penalty arbitrary, in violation of the state and federal constitutions.

Finally, allowing these notes to be introduced, but excluding other probative evidence, was blatantly unfair. The state introduced these things found at Lawrence’s residence but successfully excluded other things that were found there. **The other things (the contents of the “house of horrors,” Argument I, *supra*) would have clearly shown that it was Lawrence who had the settled state of mind to write such a note and plan such a crime, not Jeremiah.** This fundamental unfairness

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<sup>103</sup>It does not matter whether Jeremiah ever saw a note. If he never saw it but there was a conspiracy at the time it was written, and if the note is a statement, and if the statement is in furtherance of the conspiracy, then the note is admissible. And if Jeremiah saw the note, but he was not then a co-conspirator, the note is not admissible. The state was not required to prove that the note came into existence after some conspiracy came into existence, and that was error.

kept the sentencers from considering all of the available mitigation and rebuttal to aggravation, in violation of the Eighth and Fourteenth Amendment.

### **ARGUMENT V: ABSENCE/INVOLUNTARY PLEA**

This argument involves questions of state and federal constitutional law, and state Rules of Judicial Administration, which this Court must review *de novo*. Just before trial was to begin, a plea was discussed whereby (a.) the state would not argue that Jeremiah shot Jennifer if the defense would plead guilty to murder as a principle, and (b.) the defense would be allowed to introduce Jeremiah's statements that he did not kill Jennifer. Vol. 1, pp. 73-74. Jeremiah's lawyers "disagree[d] on whether Mr. Rodgers should take this plea," *id.*, so a recess was taken.

After the recess the guilty plea was entered, Jeremiah was not required to stipulate to the State's factual basis for the plea, and the standard questions for the taking of a guilty plea were asked. Over the next three days, the parties selected a jury to recommend sentence. The judge witnessed some odd behavior on Jeremiah's part,<sup>104</sup> and heard about other people thinking Jeremiah was a curiosity.<sup>105</sup> After jury

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<sup>104</sup> For example, during jury selection Jeremiah stood up and acted as if he was leaving. He said "I can't do this," and said to the guards "I need to leave now." Vol. 2, p. 272. The judge acknowledged that he had seen this, and was advised by counsel that the reason for it was emotion over what was being discussed in front of over 120 potential jurors. The judge said "I'm inclined at this point because of his background and his obvious show of emotion on this issue"

selection and opening statements, the state started introducing evidence about the Smitherman case. Vol. 7, p. 1037. An in-chambers conference then occurred.

It began with attorney LeBoeuf stating that “there is a conflict between Mr. White [co-counsel] and myself” which has “**affected preparation.**” Vol. 7, p. 1061. LeBoeuf said that she wanted to waive Jeremiah’s presence at this hearing (he was absent) because “**he’s very unstable at the moment.** He’s very attached to Mr. White as his lawyer, very attached to me as his lawyer, and **not capable of understanding** that reasonable disagreement occurs between reasonable people.” *Id.* at 1062 (emphasis added). White objected to Jeremiah’s absence, as did the state. A lunch recess was taken. All reconvened in chambers after lunch, and Jeremiah was present. The judge told Jeremiah that “an issue has come up and I quite frankly don’t know a lot about it other than what Ms. LeBoeuf and Mr. White told me right before we took a break for lunch. About all I know about it at this time is that there’s a conflict of sorts—and I don’t know what the conflict is—between Mr. White and Ms. LeBoeuf.” Vol. 7, p. 1064. He told Jeremiah that LeBoeuf had requested a hearing

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to moved to a closed voir dire.” *Id.* at 273.

<sup>105</sup>The judge was told on another occasion that during public tours of the jail conducted by correctional officers, the correctional officers would bring people to Jeremiah’s jail and exhibit him because of his self-mutilation. Vol. 4, p. 655.

in Jeremiah's absence, but that Mr. White had objected. Vol. 7, p. 1064. The judge then asked what Jeremiah wanted to do ("How do you feel about that") and Jeremiah said "I'm okay with that. I'll just wait in the back ....I'll just take the time out and, you know, just sit by myself." *Id.* at 1065. The defendant left.<sup>106</sup>

LeBoeuf told the Court that she and Mr. White disagreed on whether the defendant should have pled guilty, she thought he should have and Mr. White thought he should not have. Vol. 7, p. 1069. The attorneys had divided up responsibility for the trial and sentencing, with White being responsible for guilt/innocence issues and LeBoeuf responsible for sentencing issues. With guilt decided, White told LeBoeuf that *all* of the witnesses were now "yours," and she was unprepared. She told the judge that there had been "**difficult communications between us,**"<sup>107</sup> and that "I did not know until at the end of my opening statement that Mr. White was going to refuse to cross-examine witnesses." LeBoeuf said that "[t]hese are witnesses who were deposed over a year ago....I'm not able and not prepared to do that and I cannot defend Mr. Rodgers

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<sup>106</sup>The judge did not advise Jeremiah what a conflict was, did not tell him that his attorney had said in a hearing from which he had been excluded that the conflict had "**affected preparation,**" did not tell him that his lawyers believed he "**could not understand,**" and did not tell him that his attorneys had told the Court that he "**was very unstable at the moment.**"

<sup>107</sup>No-one told Jeremiah that his lawyers at the trial for his life were having trouble speaking to or understanding one another. If Jeremiah was unable to understand these things, then another competency hearing was required.

properly with these witnesses.” Vol. 7, pp. 1069-70.

Mr. White then revealed problems that the two lawyers had had over the course of the representation, culminating with the plea. Vol. 7, p. 1074. White said it was “not well thought out,” and that there had been communications between LeBoeuf and the state without his knowledge. *Id.* at 1075. White then said that, after the plea, he indeed did tell LeBoeuf that all the witnesses were her responsibility. *Id.* at 1079.

The state then expressed a “great deal” of concern about defense counsel not being prepared to proceed.<sup>108</sup> The judge told the lawyers to get along and work hard. LeBoeuf stated that “I am most uncomfortable. I have never been in a position remotely close to this.” She stated that “this is affecting the representation of Mr. Rodgers, and I have never had to go to a judge to find out what witnesses co-counsel is prepared to take.” *Id.* at 1084. She stated that the state was correct, and that the record was being made that defense counsel were unprepared. She asked for a recess “to attempt to resolve this. If we can’t do that then I’ll move for a mistrial.” *Id.* at 1084. The state “did not want to have people going forward with the record like this,” and commented that “cooling off may be appropriate.” *Id.* at 1085. The Court decided to recess for the day to see if the problems would work themselves out.

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<sup>108</sup>At this point the parties and the Court should have told the defendant that his attorneys were unprepared. No-one did until after the sentencing proceedings.

The next morning counsel and Jeremiah met in chambers with the Court. The conflict continued unabated. The Court asked “where are we at on the issue,” and he received two dramatically different responses, one after the other: “ We’re ready to go, Judge” (White); “Your Honor, we move for a mistrial based on the conflict placed on the record yesterday.” (LeBoeuf) *Id.* at 1103. The Court denied the motion for mistrial; no-one told Jeremiah what had happened the day before, no-one explained that his attorneys had told the state and the Court that they were unprepared, and no-one asked if he was satisfied with what the defense lawyers had worked out to be “ready to go.”

Jury sentencing proceedings went forward, resulting in a 9-3 recommendation of death. On September 11, 2000, the morning of the scheduled *Spencer* hearing, Tim Schardl, Esq., entered a limited appearance notifying the Court that Mr. Rodgers had retained him to challenge the manner in which he had been advised about the plea, and the manner in which he had been kept in the dark about his lawyers’ conflicts and unpreparedness. Vol. V, p. 870-71. Schardl asked to stay or continue the proceedings so that he could more fully explore these issues. He was only just learning the facts, but he advised the Court that “Mr. Rodgers wasn’t advised of the extent of the conflict [his counsel had], [its] scope, and how far back it went.” The conflict “influenced th[e] advice that he received prior to entering his plea,” Vol. 16, p. 1173, and the Court had been made aware of the nature and scope of the conflict, while Jeremiah had not.



The Court then recited some of what had occurred earlier, and denied the motion to stay or continue the proceedings. *Id.* at 1173-1176. The *Spencer* hearing was then conducted. Thereafter, the court reconsidered and *sua sponte* entered an order scheduling the issues raised by Schardl for a hearing on October 2, 2000. At that hearing, the court first directed questions to Jeremiah, without warnings of any kind, and without telling him what the judge himself had heard in-chambers. Mr. Rodgers stated that on September 11 he learned “that the problem between these two [attorneys] was a little more than I knew—a lot more than I knew.” Vol 21, p. 1849. “*They didn’t tell me what was going on before. I was clueless until September 11<sup>th</sup> when I came in here and Mr. Schardl came in. Just brought more things to light.*” He learned that “they disagreed on – My two attorneys disagreed on a lot of things about how to represent me. Ms. LeBoeuf wasn’t prepared, and, as far as I know, Mr. White wasn’t prepared.”<sup>109</sup> Mr. Rodgers stated that he had learned that his attorneys “were at odds all the way through, that I learned now.”

The judge then told this mentally ill man that he had the “burden to explain,” without interruption by counsel, his legal position. Mr. Rodgers stated that he did not

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<sup>109</sup> The judge, who had (in the defendant’s absence) sat and **heard** the lawyers **say** they were not prepared, actually asked the defendant why **he** had come to think that.

know “[a]nything about the plea. I didn’t know the good to taking it, the bad to taking the plea. I didn’t know anything about it.” Counsel Schardl then advised the Court regarding how Mr. Rodgers came to request to withdraw his plea. Schardl had spoken to LeBoeuf two weeks before the September 11<sup>th</sup> hearing, LeBoeuf described how the conflict between counsel had arisen, and Schardl “came to realize that the conflict affected how she prepared or didn’t prepare.” Schardl also realized that Ms. LeBoeuf “failed to advise her client that a conflict between her and her co-counsel was coloring her approach to the case, and, I believe, colored the advice that she gave Mr. Rodgers with respect to the plea.” When Schardl told Rodgers about this, Rodgers “advised me that he wished to withdraw his plea based on what he learned about this conflict and how it tainted the advice he received prior to - - prior to entering his plea.” *Id.* at 1856.

The judge then addressed Ms. LeBoeuf, who stated: “Mr. Rodgers’ allegation is that I did not fully inform him of the nature, the scope, and the effects of the conflict between me and Mr. White. As to that allegation, **he is absolutely correct.**” *Id.* at 1858. “I simply didn’t open my mouth and tell him about the conflict, Your Honor.” Mr. Schardl then moved to allow the defendant to withdraw his guilty plea, and, thereafter, a formal motion to withdraw the guilty plea was filed. Vol. V, p. 879. The trial judge entered an order October 30, 2000, denying the motion. Vol. V, p. 890.

#### **A. Absence from critical stage**

Right after the sentencing proceeding started, defense counsel went to the judge without Appellant. The judge was advised that counsel had a conflict, and that it resulted in them being unprepared. One counsel also stated that Jeremiah was very emotional, he could not understand what was going on, and that he should be excluded from the hearing. Court recessed, reconvened in Jeremiah's presence, and the Judge told Jeremiah that he knew very little about what was happening but it appeared that there was a conflict between his attorneys. Jeremiah was told that it was up to him whether he stayed, but that one of his lawyers wanted him to leave. He left. **The lawyers then told the judge they were not prepared to go forward, that they had been in disagreement about voir dire and whether a plea should be entered. The prosecutor expressed grave concerns that counsel were not ready.** The judge asked the lawyers to try to work it out, and recessed for the day. The next day one lawyer stated "ready," while the other moved for a mistrial. Re-sentencing continued, and no-one told Jeremiah what had happened in chambers.

Plainly what happened in chambers, both before and after Jeremiah was excluded, constituted a critical stage in the proceeding. Jeremiah was not voluntarily absent from the first in-chambers conference, and his absence from the second was not a knowingly, voluntary, and intelligent absence—he was not fully told what had occurred at the first closed hearing, and, according to the Judge, one of Jeremiah's counsel (who was about

to tell the judge she was unprepared)—advised Jeremiah to leave the second hearing!<sup>110</sup>

After everything was said, no-one told Jeremiah what had happened.

Jeremiah had a right to be present while his attorneys explained their failings and lack of preparation. He was entitled to the assistance of an attorney who could have questioned White and LeBoeuf about their admitted failings, and he was entitled to hear the judge tell them just to patch things up and get on with it. His absence from these hearings is a structural error requiring relief. "[A] defendant is guaranteed the right to be present at any stage of the criminal proceeding that is critical to its outcome if his presence would contribute to the fairness of the procedure." *Kentucky v. Stincer*, 482 U.S. 730, 745 (1987). When a defendant is denied his constitutional right to be present during a critical stage of criminal proceedings, Supreme Court precedent requires reversal if the defendant's absence constitutes a "structural error," that is, an error that permeates "[t]he entire conduct of the trial from beginning to end," or "affect[s] the framework within which the trial proceeds." *Arizona v. Fulminante*, 499 U.S. 279, 309-10 (1991). Jeremiah's absence affected the framework within which the trial proceeded.

As Jeremiah told the judge when he learned of the problems independent from the Court and his attorneys, "*they didn't tell me what was going on before. I was clueless*

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<sup>110</sup>Every person at the closed conference knew—indeed **conceded**—that Jeremiah was a seriously mentally ill man who would often misunderstand or misperceive his environment.

*until September 11<sup>th</sup> when I came in here and Mr. Schardl came in. Just brought more things to light. That they disagreed on – my two attorneys disagreed on a lot of things about how to represent me. Ms. LeBoeuf wasn't prepared, and, as far as I know, Mr. White wasn't prepared. ... [and] They were at odds all the way through, that I learned now.*” And when Jeremiah learned, he moved to withdraw his guilty plea. Had he known at the very beginning of sentencing that his lawyers were telling the Court that they were unprepared, then there is every reason to believe that he, or someone else appointed by the Court to protect him, could have said or done things that "would [have] contribute[d] to the fairness of the procedure," *Stincer*, 482 U.S. at 745, and changed the entire framework of the proceedings.

## **B. Withdrawal of Guilty Plea**

The sentencing judge denied the motion to withdraw the guilty plea because Jeremiah knew that his lawyers disagreed on whether he should take a plea and he was not entitled to know the degree of the disagreement. “The degree to which counsel disagreed is not material. The fact that the defendant was aware of the disagreement between counsel as to whether or not he should enter his plea is significant.” Vol. V, p. 896. This is not the law.

*Of course* the defendant is entitled to know if the defense is **splintered** as opposed to having a polite but inconsequential disagreement about trivialities. And it

is not just the degree of the disagreement about the prudence of entering a guilty plea that was the problem. **Jeremiah was not told by anyone what the biggest consequence of his plea would be—that his lawyers would not be prepared to proceed. And they would be behind closed doors saying so.** No-one—not the Judge, not defense counsel—told Jeremiah about that.

**When he learned, he asked to withdraw his plea.** The motion should have been granted.<sup>111</sup> Jeremiah was also constitutionally entitled to make a knowing and intelligent decision whether to accept or reject the plea offer tendered by the State on July 24, 2000. *See Boykin v. Alabama*, 395 U.S. 238, 243 & n.5 (1969). It is the right to be informed that Mr. Rodgers sought to enforce through this request to withdraw his plea. He asked the lower court to hold him harmless and place him in the position he would have been had his counsel and the Court properly and fully advised him, including **advising him that if he accepted the plea they would be unprepared to**

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<sup>111</sup> Under Florida Rule of Criminal Procedure 3.170(f), the court may, and upon good cause shall, accept withdrawal of a plea if that withdrawal is made prior to sentencing. *Yesnes v. State*, 440 So.2d 628, 634 (Fla. 1st DCA 1983). "This rule should be liberally construed in favor of the defendant." *Sanders v. State*, 662 So.2d 1372, 1374 (Fla. 1st DCA 1995)(internal quotation marks and citation omitted). "A defendant should be permitted to withdraw his plea 'if he files a proper motion and proves that the plea was entered under *mental weakness, mistake*, surprise, misapprehension, fear, promise or *other circumstances affecting his rights*' (emphasis supplied)." *Ibid.*, quoting *Yesnes, supra*, in turn quoting *Baker v. State*, 408 So.2d 686, 687 (Fla. 2d DCA 1982).

**go forward.** This uninformed guilty plea violated the Fifth, Sixth, and Fourteenth Amendments.

### **ARGUMENT VI: INVALID AGGRAVATION**

This argument presents questions of state and federal constitutional law which this Court reviews *de novo*. One of the two statutory aggravating circumstances presented to the jurors<sup>112</sup> and found by the sentencing judge was that the defendant had previously been convicted of another capital felony or of a felony involving the use or threat of violence to the person. This finding was supported by the defendant's conviction "of the attempted murder of Leighton Smitherman." Sentencing Order herein, Vol. V, p. 916.<sup>113</sup>

The judge who presided over the attempted murder (aggravator) trial was originally the presiding judge in this, the capital case. But on the eve of the aggravator

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<sup>112</sup>After the jurors retired to deliberate they returned and asked the judge whether they could recommend a life sentence if they found that the mitigation outweighed one but not both statutory aggravating circumstances. Vol. V, p. 842. Any error in the submission of an aggravating circumstance to this jury clearly would have been harmful, given this juror question.

<sup>113</sup>This statutory aggravator was also supported by a separate conviction in the Justin Livingston case in which Appellant had pled guilty in exchange for a life sentence.

trial, counsel moved to recuse this judge in both cases. Vol III, p. 562.<sup>114</sup> The judge denied the recusal request and went forward with the aggravator trial. Vol. III, p. 598. A writ of prohibition was then sought from the District Court of Appeal for the First District, seeking the judge's removal from the aggravator case and the capital case. Vol. III, p. 560; 514 (supplemental petition). The writ was granted as to the murder case, but because the aggravator trial had already ended with a conviction by the time the writ was granted, the writ was dismissed as moot as to the aggravator. Vol. IV, p. 616.

A new judge was assigned to the capital case. Defense counsel then moved to exclude the introduction of the aggravator into evidence at the capital trial because it was the law of the case that the judge who had presided over it should not have. Vol. IV, p. 650. The state responded that, while the aggravator might be set aside on appeal, it could still be relied upon while the appeal was pending. But *the state also "acknowledge[d] that the overturning of the [attempted murder] case may lead to a new penalty phase and a new trial of the underlying conviction."* Vol. IV, p. 686 (record herein). The new judge denied the motion.

#### **A. Bias was transplanted into the capital sentencing proceeding**

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<sup>114</sup>The request was made pursuant to Rule 2.610 (d)(1), Judicial Administration Rules, and the Sixth, Eighth and Fourteenth Amendments. The rule requires recusal if there is a facially sufficient allegation "that the party fears that he or she will not receive a fair trial or hearing because of specifically described prejudice or bias of the judge."



The recused judge was disqualified from being involved with Appellant's capital trial and sentencing. He could have nothing at all to do with it. But with the state's introduction of the conviction from the aggravator trial, the recused judge became a prejudicial presence in the capital case.

Given the DCA's action, as a matter of law the presiding judge should have recused himself in the aggravator case, and that conviction is void. *See Cave v. State*, 660 So. 2d 705, 708 (Fla. 1995) ("Accordingly, we v find that [the judge's] conduct failed to follow the procedural process outlined in rule 2.160 and his error requires us to vacate Cave's sentence."). With this aggravator out of the sentencing equation, it cannot be said that the death sentence would have resulted in this case, and re-sentencing is required. *Johnson v. Mississippi*, 486 U.S. 575, 578 (1988).

#### **B. The Basis for the Removal**

The aggravator trial was scheduled to begin on Monday, January 31, 2000. The preceding Friday the 28th, defense counsel White filed a motion to continue the Monday trial and to compel deposition testimony, alleging that a deposition conducted the previous day (the 27<sup>th</sup>) had been improperly terminated by counsel for the deponent and the State. The presiding judge conducted a hearing on these motions on the day they were filed. Mr. Rodgers was present, the State was represented, and the deponent was represented, but *no counsel was present for Mr. Rodgers*. The presiding judge stated

that he had attempted to contact Mr. White without success, so he was going ahead with the hearing without defense counsel being present. The judge did conduct the hearing, and entered an order denying the motion for continuance. Upon learning what had happened, defense counsel described the hearing in the following way:

[A]n unrepresented man with an I.Q. of 83 and a history of serious mental illness was forced to attend a hearing without his lawyer, after his lawyer had assured him that could never happen; he heard testimony that the lawyer for his co-defendant and the prosecutor believed that both his lawyers had made mistakes at best and at worst were bad lawyers; he heard the judge say that one of his lawyers had chosen not to attend the hearing; he was asked to consent to resolution of a disputed motion that arguably involved a waiver of his rights. All of this occurred *with the sanction of the presiding judge in his case, who had appointed his counsel in his defense.* **Worst of all, that same judge commented on the evidence to be adduced at trial, expressed his belief that Mr. Rodgers' lawyer should not call his co-defendant at trial because his co-defendant's statements inculpated him; he was thus told implicitly that the judge had made a credibility determination about the co-defendant's version of events.** Vol. III, p. 569-70 (writ of prohibition).

Counsel filed an appropriate motion for the judge's recusal containing these allegations, Vol. III, p. 562, allegations that plainly showed "fears that [Mr. Rodgers] will not receive a fair trial or hearing." The recusal motion was denied, Vol. III, p. 598, and the aggravator trial proceeded.<sup>115</sup>

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<sup>115</sup>At the beginning of the aggravator trial the presiding judge openly chastised counsel White for the manner in which he had filed a motion the previous week, questioned his ethics, and argued with him about court rules, in Jeremiah's presence. Vol. III, pp. 516-530 (supplemental petition).

These allegations required recusal and now reversal. *Suarez v. Dugger*, 577 So. 2d 190, 191 (Fla.1988). Bias such as that demonstrated by the presiding judge violated Jeremiah's constitutional right to a fair trial and reversal ought to be automatic. *See Porter v. Singletary*, 49 F.3d 1483, 1489 (11th Cir. 1995)(evidence that "the judge had a fixed predisposition to sentence this particular defendant to death if he were convicted" warrants relief); *see also Johnson v. United States*, 117 S.Ct. 1544, 1550 (1997); *Arizona v. Fulminante*, 499 U.S. 279, 309-310 (1991).

#### **ARGUMENT VII: RING V. ARIZONA**

In *Ring v. Arizona*, 122 S. Ct. 2428 (2002), the Supreme Court held that any and all facts upon which state law conditions a death sentence must be found by the jury beyond a reasonable doubt.<sup>116</sup> *Ring* applies to Florida's capital sentencing scheme. Florida law provides that a person convicted of first degree murder shall be sentenced to life imprisonment unless a judge makes specific written findings of aggravating circumstances. Fla. Stat. § 775.082 (2000). Death is not a possible sentence unless aggravating circumstances exist, and both statutory and case law require that the existence *vel non* of aggravating circumstances be determined by the judge wholly independent of the jury's sentencing recommendation. Fla. Stat. § 921.141(3);

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<sup>116</sup>Counsel below did not preserve this issue but it is fundamental constitutional error which this Court should address *de novo*.

*Grossman v. State*, 525 So.2d 833, 840 (Fla. 1988). *Ring* was violated in Appellant's case, and resentencing is required.

### **ARGUMENT VIII: FORCED MEDICATION<sup>117</sup>**

In pre-trial detention, State actors strapped Jeremiah down until he agreed to take psychotropic medications. Dr. Benson reported that the medication was forced: corrections officers said that “we’ll take the shackles and the belly chain off if you’ll take your medication.” Vol. 21, p. 1998. There was no judicial authority for strapping Jeremiah down for days at a time and then letting him up only if he took medicine, and, without a court’s imprimatur, this state action violated the Eighth and Fourteenth Amendments. *See Riggins v. Nevada*, 504 U.S. 127 (1992).

### **CONCLUSION**

For the reasons stated above, this Court should vacate the death sentence and remand for imposition of a sentence of life imprisonment, or alternatively, for new sentencing proceedings.

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<sup>117</sup>Counsel below did not preserve this issue but it is fundamental constitutional error which this Court should address *de novo*.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing brief has been furnished by hand delivery to Mr. Curtis French, Esq., Office of the Attorney General, The Capitol Tallahassee, FL 32399-1050, and a copy has been furnished by mail to appellant Jeremiah Martel Rodgers, DOC # 123101, Florida State Prison, 7819 N.W. 228<sup>th</sup> Street, Raiford, FL, 32026-1160, this 10th day of February, 2003.

CERTIFICATE OF COMPLIANCE

I certify that this brief was prepared using Times New Roman 14 point font.

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Mark E. Olive