IN THE SUPREME COURT OF FLORIDA

DONNY LEE CROOK,

Appellant,

vs. **CASE NO. SC03-455**
Lower Tribunal No. CF96-0188A-XX

STATE OF FLORIDA,

Appellee.
_____/

ON APPEAL FROM THE CIRCUIT COURT
OF THE TENTH JUDICIAL CIRCUIT,
IN AND FOR HIGHLANDS COUNTY, FLORIDA

ANSWER BRIEF OF THE APPELLEE

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TABLE OF CONTENTS

TABLE OF CITATIONS

FEDERAL CASES

STATE STATUTES

STATEMENT OF THE CASE AND FACTS

The appellant, DONNY LEE CROOK, was tried from August 10, 1998, through August 27, 1998, for the crimes of First Degree Murder, Robbery With a Deadly Weapon and Sexual Battery - Great Force. (RS1/29; TT12/7-TT29/3336)[1] The appellant was convicted by the jury as charged on all three counts on August 27, 1998. (RS1/9; TT27/2928)

On September 15, 1998, the same jury, by a vote of seven (7) to five (5), recommended that the court sentence the appellant to death for the crime of First Degree Murder. (RS1/8-9; TT29/3326) Sentencing was held on November 24, 1998. The trial court imposed the death penalty for the offense of First Degree Murder. (RS1/9-34; TT11/2077)

On direct appeal, this Court affirmed the convictions for all three offenses and the sentences imposed for the Robbery With a Deadly Weapon and Sexual Battery - Great Force. Crook v. State, 813 So. 2d 68 (Fla. 2002). The death penalty for First Degree Murder was reversed, however, and the case remanded to

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[1] Citations to the records on appeal will be referred to as follows:
Original trial transcript (TT with appropriate volume number/page numbers)
Original trial record (TR with appropriate volume number/page numbers)
Resentencing record (RS with appropriate volume number/page numbers)
Supplemental resentencing record (SRS with appropriate volume number/page numbers)

the trial court "to reconsider and reweigh all available mitigating evidence against the aggravating factors, and to determine the proper penalty in accordance with Florida Law". (Id. at page 78)

Upon return to the circuit court and prior to the court's reconsideration of the mitigating circumstances, the defense filed a Notice of Intent to Rely on Mental Retardation, pursuant to Florida Statute 921.137 (2001). (RS1/132)

A status hearing was held on May 6, 2002. At that hearing the court appointed the two experts required by the statute to evaluate the appellant prior to the final sentencing hearing. (RS1/132-139) A Spencer[2] hearing was subsequently held on November 25, 2002 where the court allowed additional argument and heard from Dr. McMahon and Dr. Kremper. (RS2/205-358) At the beginning of the hearing the appellant withdrew his Notice of Intent to Rely on Mental Retardation because the appellant did not meet the criteria to be found to have mental retardation. (RS2/205) At the conclusion of the hearing, counsel for the state and defense were given an opportunity to submit sentencing memoranda. These memoranda were submitted timely by the deadline of December 23, 2002. (SRS1/6-16, 21-28)

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

On February 18, 2003, the court entered a thorough and well-reasoned, twenty-two page written order imposing a sentence of death. (RS1/98-120)(attached as Exhibit 1) In support of the sentence the court found three aggravating factors: 1) during the course of a sexual battery; 2) pecuniary gain and; 3) heinous, atrocious, or cruel. He also found the following statutory mitigating factors: 1) The age of the defendant at the time of the crime (slight weight); 2) extreme mental or emotional disturbance (significant weight); and 3) capacity to conform his conduct to the requirements of the law was substantially impaired (significant weight). With regard to the "any other factors" mitigator, the court found the following: 1) psychological and emotional age (moderate weight); 2) loving family (slight weight); 3) I.Q. within the low average range of intelligence (moderate weight); 4) learning disabilities (slight weight); 5) defendant's parents were abysmal failures as parents (moderate weight); 6) poverty (slight weight); 7) home life unstable (moderate weight); 8) no role model in his life (previously considered); 9) emotionally and physically abused by his parents and others (previously been considered and weights assigned); 10) by age five, the defendant exhibited severe symptoms of brain damage and psychological dysfunction (previously considered and weighed); 11) educational attempts frustrated (slight weight); 12) the defendant began abusing

drugs at age eight and his drug use proliferated to virtually every substance available (slight weight); 13) the defendant was subjected to trauma involving death early in his life (slight weight); 14) frequently left in the care of his two older brothers, both of whom had their own social and physical difficulties, while his mother prostituted herself in Mexican bars (moderate weight); and 15) prior criminal history reflects petty criminal activity and is devoid of any significant violent behavior (slight weight). Under nonstatutory mitigating circumstances, the court found: 1) The defendant did not flee Highlands County or the State of Florida after the offense was committed (slight weight); 2) The defendant did not resist the police (slight weight); 3) At least one of the defendant's taped confessions reflected true remorse for his actions (slight weight); 4) Despite serious emotional and impulse control problems, the defendant displayed good courtroom behavior (slight weight); and 5) Mercy and compassion may be extended to the defendant (slight weight). (RS1/98-120)

After reconsidering the aggravating circumstances and all mitigating circumstances in this case, the court determined that the mitigating factors do not outweigh the three aggravating factors that have been proven beyond a reasonable doubt. The court noted that the "aggravating circumstances in this case are appalling and agree[d] with the jury that in weighing the

aggravating circumstances against the mitigating circumstances, the scales of justice tilt unquestionably to the side of death." (RS1/119-120)

FACTS

A concise statement of the relevant facts were presented in this Court's prior opinion, affirming the conviction:

> The victim was the co-owner and operator of the Bull Penn Bar ("bar"). Her body was discovered lying behind the bar by the bar's other co-owner at 8:45 p.m. The bar's cash drawer was missing from the cash register. Spurlock suffered multiple stab wounds and significant head injuries. The medical examiner testified that a pool cue had been inserted into the victim's vagina, but he stated that Spurlock likely was unconscious at that time.
>
> Crook was seen in the bar both in the early afternoon and in the evening of the day of the murder. In the evening, a witness saw Crook sitting on his bicycle in front of the bar with a case of beer. Crook was last seen in the bar at approximately 8:15 p.m. sitting on a bar stool in front of Spurlock.
>
> Authorities arrested Crook the next day on suspicion that he was involved in the murder. Subsequent DNA analysis determined that blood found on Crook's T-shirt was consistent with Spurlock's blood. During his time in police custody, Crook also admitted that he was present at the bar.
>
> Although Crook did not confess to killing Spurlock or taking the money from the cash register, Crook admitted that he had been drinking alcohol and using cocaine on the day of the murder and "wanted rock." Crook stated that he had "seen [Spurlock] counting money. And I turned around and everything went black." Crook informed the detectives that after seeing Spurlock lying on the floor naked with blood everywhere, he "got scared," ran out the front door of the bar, and rode his bicycle to his cousin's house where he changed his clothes. Also, a correctional officer testified he overheard Crook telling his

brother, James Crook, who was visiting Crook in jail, that he “hit her in the head. . . . The money wouldn’t come out. I was banging it on concrete but it wouldn’t open. I got pissed off and hit her in the face.”

At the conclusion of the guilt phase, the jury convicted Crook of first-degree murder, sexual battery with great force, and robbery with a deadly weapon. [n1]

> [n1] The first-degree murder conviction was predicated on alternative theories of premeditated murder and felony-murder with the underlying offenses of robbery and sexual battery. The jury returned a general verdict of guilty of first-degree murder, as well as guilty verdicts on the separate charges of robbery and sexual battery. We find that there is competent substantial evidence to support the jury’s verdict in this case.

PENALTY PHASE

During the penalty phase, Crook’s mother and three expert witnesses testified on Crook’s behalf. Because of the significance of the mental mitigation to the claims on appeal, we set forth the testimony of Crook’s mother and the experts in further detail.

Crook’s mother testified that Crook had a difficult childhood. She stated that her first husband abused her and her children. In addition, as a migrant worker, Crook’s mother explained that she was forced to move her family frequently. As a result, her children “didn’t make it to school very often” and were left to care for themselves for long periods of time. She stated that at age four, Crook was severely beaten with a pipe and that he sustained additional head injuries as a child. She stated that by age twelve Crook began using alcohol and drugs and sniffing paint. She further explained that Crook also had problems in school: he failed kindergarten; could not sit still in class; was placed on Ritalin; frequently fought with other children; and was “thrown out” of several schools. According to his mother, Crook had attended ten different schools by the time

he reached sixth grade and finally dropped out of school in eighth grade.

Further, expert witnesses testified that Crook suffered from frontal lobe brain damage and characterized Crook's intellectual abilities as falling within the "borderline mentally retarded" range. According to the experts, Crook had a history of sustained brain trauma, learning disabilities, severe behavioral problems, alcohol and drug abuse, parental neglect, and socioeconomic deprivation. The experts based their opinions on a battery of neuropsychological, psychological, and personality tests administered to Crook, clinical evaluations of Crook, interviews with Crook's mother, a review of Crook's life history, school records, medical records, and an examination of the evidence in this case.

In particular, Dr. McCraney, a board-certified neurologist with substantial experience in diagnosing brain injuries, stated that Crook suffered from an impulse control disorder or organic brain syndrome affecting Crook's frontal lobe. Dr. McCraney's examination consisted of a review of Crook's life history, a neurological examination, and testing to determine how Crook's brain was functioning. Dr. McCraney concluded that Crook was paranoid and impulsive, and that his difficulty arose as a result of organic brain dysfunction rather than any character disorder. He testified that his testing revealed abnormalities regarding the frontal lobe. Dr. McCraney characterized Crook's brain in layman's terms as "broken" and concluded that Crook's ability to process data was slower than normal. Dr. McCraney also found evidence in Crook's records dating back to his early school years that Crook was mildly mentally retarded, had a learning disability, and suffered from impulsivity from a very early age.

In addition to testimony concerning Crook's borderline intellectual abilities and explanations of the causes and origins of Crook's frontal lobe brain damage, Dr. McCraney testified that the circumstances of the crime were consistent with the experts' diagnoses of frontal lobe brain damage. For example, Dr. McCraney testified that people with frontal lobe brain damage often lose control over their own behavior and are prone to certain types of "rage" attacks as the frontal lobe

works as a “braking mechanism for human behavior.” According to Dr. McCraney, one of the major characteristics of a “rage” attack is that “the intensity of violence appears to have no relationship with the inciting event.” Dr. McCraney, who testified that he was not aware of the details of the homicide at the time of his evaluation and diagnosis of Crook, further explained that people with frontal lobe brain damage will fly into rage at the drop of hat. They may be provoked, although the provocation may be so minor that it’s difficult for an observer to establish a relationship.

Observers report that these people are almost animalistic in the way they look. They get this fire in their eyes. They start frothing at the mouth and they just go nuts. I mean, they tear up the house. They whip up on whoever is in the immediate vicinity. Afterwards, when they calm down, they typically claim they don’t remember anything about what happened. And the patient’s claim of lack of memory often seems real credible.

Dr. McCraney testified that Crook was under the influence of an extreme mental or emotional disturbance at the time he committed the crime, and that his brain damage was responsible for this. Dr. McCraney concluded that the circumstances surrounding the homicide were consistent with his diagnosis of frontal lobe brain damage, stating, “The events do appear to conform to this blind animalistic rage that’s described with the orbital frontal syndrome.”

Similarly, Dr. Dolente, a licensed clinical psychologist with substantial experience in neuropsychology and brain injury rehabilitation, also testified that Crook suffered from frontal lobe brain damage. Dr. Dolente reached this conclusion after conducting diagnostic testing, including standard neuropsychological testing, and reviewing Crook’s medical records. Dr. Dolente explained that, although there were various documented accidents in the records that could have accounted for Crook’s brain damage, the most significant accident appeared to have been a well-documented head injury at age five when he was hit in the head with a pipe. After that time, the records document that Crook switched from being right-handed to left-handed, he was found not to be

tracking visually, he was clumsy, and he was lethargic--all signs of a significant neurological impairment following brain injury.

Dr. Dolente stated that due to Crook's frontal lobe brain damage, Crook had difficulty in controlling his behavior and was prone to impulsive and aggressive behavior, including "rage." Dr. Dolente stated that Crook's brain damage would cause him to become excited easily, overreact, and, in certain situations, Crook would be unable "to control himself to a degree that a person with an intact brain would be able to." Dr. Dolente diagnosed Crook as suffering from a personality change disorder, secondary to a recurrent traumatic brain injury with antisocial features, polysubstance abuse, and attention deficit hyperactivity disorder. Dr. Dolente stated that Crook's "personality and attention deficit disorders were secondary to his brain damage with aggressive and impulsive features."

Dr. McClain, a general and forensic psychiatrist, testified that Crook suffered from frontal lobe brain damage arising from a combination of causative factors. After examining Crook and reviewing Crook's prior medical records, psychological evaluations, hospital records, and school records, Dr. McClain concluded that the following five factors in Crook's life history contributed to cause Crook's brain damage: (1) genetic factors; (2) socioeconomic deprivation; (3) head trauma; (4) substance abuse; and (5) and birth trauma. Dr. McClain explained that all of these factors interacted with each other, resulting in Crook's brain damage. Dr. McClain diagnosed Crook as having a severe antisocial personality disorder, secondary to a combination of brain damage, severe socioeconomic circumstances, head trauma, and substance abuse. Dr. McClain concluded that Crook's brain damage would "render him hypersensitive to the usual negative effects of alcohol and other drugs."

Regarding the statutory mental mitigating circumstances, Dr. McClain concluded that Crook was under extreme mental or emotional distress at the time of the offense:

His ability to think clearly and appreciate these things, in my opinion was substantially impaired not

only by his intoxication but by his increased sensitivity to intoxication, and all of the factors that I mentioned earlier that have made him what he is today, namely his brain damage problem.

Dr. McClain further assessed that Crook suffered from borderline intellectual functioning, "on the border between the low limits of normal and mental retardation." Dr. McClain stated that Crook's prior IQ tests from his childhood revealed scores "as low as 62 or 69 and as high as the low 70s."

The experts' testimony regarding both Crook's intellectual functioning and his brain damage was consistent with the opinion of Dr. Kremper, a clinical and forensic psychologist who examined Crook as part of Crook's social security disability determination in 1994 and who prepared a psychological evaluation of Crook. [n2] In his report, Dr. Kremper also concluded that Crook's verbal comprehension and expression and composite intellectual abilities fell within the mild range of mental retardation. After administering the Wechsler Adult Intelligence Scale, Dr. Kremper determined that Crook had a verbal IQ of 62, a performance IQ of 73, and a full scale IQ of 66. [n3] Dr. Kremper also found Crook to have "severely limited frustration tolerance" and concluded that due to Crook's "severe cognitive, emotional, and behavioral deficits," with "minor frustration [Crook] was likely to become physically aggressive." Dr. Kremper found that Crook was disabled and "not considered capable of maintaining employment within a competitive work setting due to his severe cognitive, emotional and behavioral deficits. He was unable to tolerate routines, had severe verbal memory difficulties and was not considered able to follow simple instructions on a consistent basis." Dr. Kremper also opined that Cook "experienced auditory and visual hallucinations which appeared to result from extensive substance abuse and head injuries." This report and its conclusions as to Crook's intellectual functioning and behavioral abnormalities also are significant in that the report was not prepared for the defense at trial, but it predated the crime in question by two years.

> [n2] Dr. Kremper did not testify during trial. By agreement between Crook and the State, Crook's medical records and school

> records were submitted to the trial court for its review. Dr. Kremper's psychological evaluation of Crook was a part of those records.
>
> [n3] The sentencing order reflects that the trial court also considered the psychological evaluations of Crook performed by Dr. Haskovec and Dr. Mercer. Dr. Haskovec examined Crook when Crook was five years old and found that Crook had an IQ of 76, which according to Dr. Haskovec, placed Crook "within the Borderline range of functioning." Dr. Mercer examined Crook in 1995 when Crook was nineteen years old. According to Dr. Mercer's report, Crook had a full scale IQ of 75, which "placed his current level of overall intellectual functioning in the Border line Range."
>
> Crook v. State, 813 So. 2d 68, 70-73 (Fla. 2002)

In addition to the foregoing, the defense presented the testimony of Dr. Elizabeth McMahon at the Spencer hearing. Dr. McMahon is a forensic neuropsychologist and forensic psychologist in private practice. (RS2/215) Dr. McMahon testified that she did a "a full neuropsychology battery, a full psychological battery" and an interview of Crook. Her evaluation consisted of a total of eight to nine hours over two visits. (RS2/218-222) She noted that because of the wealth of background information on Crook, she did not conduct a detailed interview and that Crook did not try faking his test because "Frankly, [he] isn't bright enough to figure" out how to fake it. He was "very, very consistent, internally consistent, externally consistent." (RS2/224-26) Dr. McMahon also stated

that: “In my clinical opinions [Crook] is not retarded. He obtained a verbal IQ within borderline range . . . there isn’t anything called borderline retardation.” She described his “verbal skills within borderline range. Performance skills within average range.” But there is a 22-point difference between these skills. This means that “something is wrong with the brain. . . .[it] is not functioning in concert.” Typically, there should be only a difference of three to four points between the two. (RS2/232-33)

On the Stroop Color Word Test (yields four scores) Crook had two scores within the impaired range, indicating left-sided brain damage. On the third part, he scored normal, but when Crook explained how he came to his conclusion he said he had devised a means to get around the task. (RS2/234) Dr. McMahon opined that Crook’s ability to get around a task he doesn’t know how to do is normal, a survival skill. “He’s never done well in school. His deficits are in the areas that are stressed in school.” (RS2/235) Her opinion was that Crook has frontal lobe damage. She says she can only “hypothesize” where the damage came from: a very difficult labor that led to a Cesarean, and “that there might well have been some oxygen deprivation.” Subsequent to being struck on the head with a pipe by several children Crook began using his left hand to write, but uses his right hand for all other fine motor skills. Dr. McMahon: “This

young man has frontal lobe damage. . . We have records from age 5 that are consistent with frontal lobe damage." (RS2/248-250) She described Crook as looking "frontal." He's distractible, restless, feels dependent; "like a 2-year-old picking everything up . . . and playing with it." Crook "invades personal space . . . particularly in a male/female situation . . . is sexual inappropriate with his questions. He is socially inappropriate. . . He's labile. . . Very labile." Crook also displays "anti-social behavior," overlapping with brain damage. "He has an extreme amount of anger and hostility and, basically, rage within him. With extremely poor impulse control." (RS2/251-253) The "intense emotions" are triggered by the "fight or flight" response, be it (real or perceived) physical or psychological threats. Through personality tests ("projectives"), Crook shows "a great deal of anger, a great deal of rage." (RS2/258-259) "When [Crook] gets very upset . . . he doesn't have what it takes then to modulate them. And we see that in things like his Rorschach and Hand Test and things like that." Crook "in terms of psychological maturation, he operates at about the level of three or four years old. . ." (RS2/259-260) At their second evaluation, Crook wore a cast because he got in a fight at prison after being called "a faggot." "He doesn't differentiate between a feeling and a behavior." (RS2/261) She says the crime scene showed evidence

of energy far exceeding what would have been necessary for Crook to take the money, even if on drugs. Crook's self-described motives don't add up to such a horrific act. (RS2/261) Upon completing her second day's evaluations, Crook said "Well, I never told anybody what happened." She said Crook told her that he and Betty Spurlock were talking about his family and she insulted his family member. As he was going to hit her she again insulted his family. Then "he just lost it." The next thing he remembered was one stomping "his foot and looking down and saying 'Oh, my God, what have I done?'" Crook "has an inordinate attachment to some members of his family. . . And if you endanger that . . . [his] world is going to disappear." For Crook, this is the kind of psychological threat that can activate the limbic system. She hypothesized that Crook's taking the cash register and throwing it in the bushes to make it look like somebody else did it must have been when "he was getting his thoughts back together." (RS2/265-268) Crook stated to her "I'm not a murderer I'm a thief." He expressed remorse to her about what he had done. (RS2/269) Dr. McMahon testified that she believed that on the day of the crime Crook is supposed to have consumed a multifarious cocktail of drugs: 19-21 beers, smoked crack (40 minutes prior to crime), smoked 4 joints (some laced with heroin) and noted that "Alcohol . . . starts at the frontal lobes and starts effecting those very

controls that [Crook] has so few of." Nevertheless, she admitted, "Not that he doesn't have [impulse control], he just has a very reduced degree." (RS2/270-72)

On cross-examination by Assistant State Attorney Hughes, Dr. McMahon admitted that she was unaware of the victim's attempt to telephone for help, and that Crook made at least two attacks on the victim. (RS2/273-275) She also noted that Crook gave conflicting explanations for the large knot on his head. (RS2/275-276) She also concedes that Crook's claim that after he stomped on the victim's head he then realized what he had done and attempted to cover it up was inconsistent with the crime scene because it was after the victim's head had been stomped that she was moved, partially de-robed, and the pool cue thrust from vagina to brain - the actual cause of death. Dr. McMahon thought his claim that he inserted the pool cue to make it look like the Mexicans did the crime did not make sense. (RS2/277-79) To her surprise doing research about Crook, she found that he had exposure to the Mexican culture and, in fact, the use of pool cues in this manner is not inconsistent with some aspects of his culture. There were reports of Mexicans being in the bar earlier that day. (RS2/309) She concluded by saying that covering up for his crime is not inconsistent with the existence of brain dysfunction. (RS2/310)

In response, the state put on Dr. William Kremper, a

clinical psychologist in private practice. (RS2/313) Dr. Kremper testified that he did not find Crook to be mentally retarded. (RS2/315) In 1994, he evaluated Crook for the Disability Office. In 1998 (for this case's original trial), he administered the Wechsler Adult Intel Scale (3rd Ed.), the Wide Range Achievement Test (3rd Ed. - reading only), the Wechsler Memory Scale, Logical Memories I & II, the Bender Visual Motor Gestalt Test, the Booklet Category Test, the Stroop Color Word Test, the Minnesota Multiphasic Personality Inventory (2nd Ed.), the Million Clinical Multiaxial Inventory (2nd Ed.), the Emotional Problem Scale, and the Carlson Psychological Survey. He spent about 2 hours on interviews with Crook. In 1998, Crook told the doctor that "he did not commit the offenses, that there was a Mexican in the bar who was involved in the offense." Crook's Wechsler Adult Intel Scale scores were 69 verbal, 80 performance, and 72 full scale. (RS2/317-318) He, too, finds the disparity between scores significant, but notes the 11-point difference occurs in 32% of the population. (RS2/319) He notes that individuals that come from impoverished developmental backgrounds routinely have "much poor verbal than performance skills." Brain dysfunction or children who grow up with dual language can also create this disparity. (RS2/321) Dr. Kremper also relates that Crook was beaten on the head with a pipe before age 5, and landed in the hospital several times due to

car accidents. He thinks Crook's exposure to domestic violence (seeing his mother beaten) hindered his development of language. He stated that, "The development of verbal skills would be severely negatively impacted by individuals who as young children are physically abused and/or subjected to such things as parental abuse, as well as things of neglect. . . Those kinds of factors can significantly impair development of language." (RS2/322-325) "Frontal lobes are related to direction and control of behavior." Since age 5, there are multiple medical records showing Crook's "attention, emotional, and behavioral regulation." (RS2/326)

With regard to Crook's test scores the doctor related: 1) On the Booklet Category Test Crook's score fell "within normal limits," 2) On the Stroop Color Word Test, only one score (the word score) fell outside normal limits and, 3) The Wisconsin Card Sort and the Trails A&B fell within normal limits. Dr. Kremper testified that his diagnostic impression of Crook of an "attention deficit hyperactivity disorder is essentially a descriptive term. It does not get into why an individual displays these characteristics." He seems to agree with many experts that attention dysfunctions and executive dysfunction "typically rests within the area of the frontal lobes." The executive functioning tests used by he and Dr. Dolente focusing on Crook's executive functioning were within normal limits.

(RS2/327-331) He notes Crook has a “reading disorder” and a history of alcohol and substance abuse. “. . . repeated exposure to inhalants . . . huffing paint on a daily basis for many years . . . have a major impact on executive functioning, functioning of the frontal lobes.” He knows of no physiological defects in Crook. “None of my tests clearly indicated any kind of frontal lobe dysfunction.” (RS2/332-334) He says education (or lack thereof) can impact the tests. He examined Crook in 1994 for disability based solely on the history provided by Crook, Crook’s mother and Crook’s presentation in his office. (RS2/335) His diagnosis of Crook in 1994 as “mild mental retardation” was not accurate because this subsequent evaluation provided a much broader range of information and testing. (RS2/336) In talking with Dr. Dolente, Crook malingered and tried to magnify cognitive deficits. (RS2/337) His 1994 tests of Crook resulted in a 62 verbal, 73 performance and 66 full scale IQ. (RS2/341) Based on the 1994 information, he noted Crook at that time as having “organic hallucinosis.” (RS2/342) His belief in Crook’s brain dysfunction was due to the head injury, substance abuse and, particularly, his comments about seeing and hearing things. (RS2/344) Defense argues that the records he received in 1998 only further supported the conclusion of a brain dysfunction in Crook, not dispelled it. (RS2/345) He agrees with defense possibilities of when and how

brain damage may have occurred (prenatal lack of oxygen, poor prenatal care, pipe to head injury). (RS2/346) He doesn't think the 1994 evaluation is valid, however, it may have been valid for that day due to Crook's agitated state and inability to focus his attention. (RS2/352)

SUMMARY OF THE ARGUMENT

Issue One:

Appellant's first claim is that his sentence is disproportionate. After the remand, the trial court once again imposed the death sentence. In support of the sentence he found three aggravating circumstances: 1) during the commission of a sexual battery; 2) pecuniary gain; 3) heinous, atrocious, or cruel (HAC). Appellant does not dispute the existence of these three aggravating factors, but urges that when considered in light of the trial court's finding of the two mental mitigators, as well as a number of other factors under the "catchall" factor and several nonstatutory factors, the sentence is disproportionate. A review of similar cases, however, shows that the sentence imposed in the instant case was proportionate and should be affirmed.

Issue Two:

Appellant's claim of relief based on Ring v. Arizona, 536 U.S. 584 (2002) is without merit because this Court has repeatedly held that Ring does not apply to Florida's death penalty statute. Furthermore, as the jury convicted the defendant of both sexual battery and robbery in addition to first degree murder, there can be no Ring error.

ARGUMENT

ISSUE I

WHETHER APPELLANT'S DEATH SENTENCE IS PROPORTIONATE.

On appeal from the resentencing, appellant once again asserts that his sentence is not proportionate.[3] And, once again, the state urges this Court to find that the sentence of death imposed in the instant case is proportionate.

A. Standard of Review

This Court has described the "proportionality review" conducted by this Court in every death case as follows:

> Because death is a unique punishment, it is necessary in each case to engage in a thoughtful, deliberate proportionality review to consider the totality of circumstances in a case, and to compare it with other capital cases. It is not a comparison between the number of aggravating and mitigating circumstances.

Porter v. State, 564 So. 2d 1060, 1064 (Fla. 1990), cert. denied, 498 U.S. 1110 (1991)(citation omitted)(emphasis added); see also Terry v. State, 668 So. 2d 954, 965 (Fla. 1996);

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[3] This claim was presented in the prior appeal and this Court declined to address same stating, in pertinent part:

> "Because we are remanding this case to the trial court, we do not reach the issue pertaining to the proportionality of Crook's death sentence in this case."

Crook v. State, 813 So. 2d at 78 n.8.

Tillman v. State, 591 So. 2d 167, 169 (Fla. 1991). While the existence and number of aggravating or mitigating factors do not prohibit or require a finding that death is disproportionate, this Court nevertheless is "required to weigh the nature and quality of those factors as compared with other similar reported death appeals." Kramer v. State, 619 So. 2d 274, 277 (Fla. 1993). The purpose of the proportionality review is to compare the case to similar defendants, facts and sentences. Tillman, 591 So. 2d at 169.

B. Appellant's Death Sentence, Supported By Three Weighty Aggravating Factors, Is Proportional Despite The Existence Of Statutory And Non-Statutory Mitigation

Crook was convicted of the brutal slaying and robbery of 59-year-old Betty Spurlock. The evidence presented during the prior proceeding showed that Crook entered the victim's place of business. Business was slow and the establishment was empty except for the victim and Crook. Mrs. Spurlock was counting money and Crook decided to rob her. In pursuit of that intent, Crook first locked the front door of the establishment and then beat, stabbed, kicked, and stomped Betty Spurlock until she lapsed into unconsciousness. Appellant then took a pool cue and inserted same into the vagina of the victim. The pool cue ripped through the vaginal wall, the pelvic diaphragm, ran parallel with the spine as it perforated the liver, diaphragm, the lung, the neck, the oral cavity and the base of the victim's

skull with such force as to shatter the base of the skull and to cause massive injury to the brain of the victim. The Medical Examiner testified that although mortally wounded by earlier violence directed toward the victim, and undoubtedly unconscious when the pool cue was inserted, Mrs. Spurlock was alive at the time she was penetrated by the pool cue. In fact, the Medical Examiner opined that the direct cause of death was the shattering of the basal skull by the pool cue.

In addition to the evidence produced at trial, Dr. Elizabeth McMahon testified for the defense at the resentencing Spencer hearing regarding information she gleaned during an interview with appellant. By her testimony, Dr. McMahon memorializes appellant's accounting of his behavior which is chilling in its premeditated nature. Appellant detailed his actions to her which were allegedly motivated by his desire to achieve a cover-up of his crimes. Appellant claimed to have deliberately pushed a pool cue through the body of the victim, allegedly in order to "make it look like a Mexican had done it." Whatever the motivating factor, Crook's actions displayed an unquestionably premeditated intent to rob, murder and torture the hapless victim.

After the remand, the trial court once again imposed the death sentence. In support of the sentence he found three aggravating circumstances: 1) during the commission of a sexual

battery; 2) pecuniary gain; and 3) heinous, atrocious, or cruel (HAC). Appellant does not dispute the existence of these three aggravating factors, but urges that when considered in light of the trial court's finding of the two mental mitigators, as well as a number of other factors under the "catchall" factor and several nonstatutory factors, the sentence is disproportionate. A review of similar cases, however, shows that the sentence imposed in the instant case was proportionate and should be affirmed.

In Orme v. State, 677 So. 2d 258, 263 (Fla. 1996), this Court found the death sentence was proportional for the sexual battery, beating, and strangulation of Orme's former girlfriend. In that case, as here, there were three statutory aggravators -- HAC, pecuniary gain, and sexual battery and, as in the instant case, both statutory mental mitigators were found as well as a number of nonstatutory factors.

The instant case is also similar to Johnston v. State, 841 So. 2d 349 (Fla. 2002). Johnston was convicted of first-degree murder, kidnapping, robbery, sexual battery, and burglary of a conveyance with assault or battery. In aggravation the court found HAC; during the commission of a sexual battery and a kidnapping; pecuniary gain; and prior violent felony. In mitigation the court found one of the mental mitigators, capacity to appreciate the criminality of his conduct or to

conform his conduct to the requirements of law was substantially impaired and gave it moderate weight and the following nonstatutory mitigation: "(1) the time passing between the decision to cause the victim's death and the time of the killing itself was insufficient under the circumstances to allow cool and thoughtful consideration of his conduct (no weight); (2) the defendant will not be a danger to others while serving a sentence of life in prison (no weight); (3) the defendant has shown remorse (slight weight); (4) the defendant did not plan to commit the offense in advance (no weight); (5) the defendant has a long history of mental illness (slight weight); (6) the defendant suffers from a dissociative disorder (no weight); (7) the defendant suffers from a seizure disorder and blackouts, but there is no evidence that any such disorder contributed to this crime (no weight); (8) the murder was the result of impulsivity and irritability (no weight); (9) the defendant is capable of strong, loving relationships (slight weight); (10) the defendant is a man who excels in a prison environment (slight weight); (11) the defendant could work and contribute while in prison (slight weight); (12) the defendant has "extraordinary musical skills and is a gifted musician" (no weight); (13) the defendant has obtained additional education from the University of Florida (no weight); (14) the defendant served in the U.S. Air Force (slight weight); (15) the defendant refused worker's

compensation despite constant headaches and seizures (no weight); (16) during the time the defendant was on parole, he excelled and was recommended for early termination (slight weight); (17) the defendant was a productive member of society after his release from prison (slight weight); (18) when notified that the police were looking for him, he did not flee but turned himself in (slight weight); (19) the defendant demonstrated appropriate courtroom behavior during trial (slight weight); (20) the defendant tried to conform his behavior to normal, but has been thwarted by his mental illness and brain dysfunction (slight weight); (21) the defendant has a special bond with children (no weight); (22) the defendant has the support of his mother and sister (slight weight); (23) since the defendant can be sentenced to multiple consecutive life sentences based on the other crimes, he will die in prison and the death penalty is not necessary to protect society (no weight); (24) the totality of circumstances do not set this murder apart from the norm of other murders (no weight); (25) the defendant might be subject to Jimmy Ryce Act involuntary commitment (no weight); and (26) the defendant offered to be a kidney donor for his ex-wife (slight weight).” Id. at 360. Upon review, this Court found that the circumstances of this case are similar to other cases where the death penalty has been upheld.

Appellant’s case is also similar to Spencer v State, 691 So.

2d 1062, 1063 (Fla. 1996), cert. denied, 522 U.S. 884 (1997) where "the defendant was sentenced to death for the first degree murder of his wife Karen Spencer, as well as aggravated assault, aggravated battery, and attempted second degree murder." As aggravating circumstances, the trial court found: "1) Spencer was previously convicted of a violent felony, based upon his contemporaneous convictions for aggravated assault, aggravated battery, and attempted second degree murder; and 2) the murder was especially heinous, atrocious, or cruel." The judge found three mitigating circumstances: "1) the murder was committed while Spencer was under the influence of extreme mental or emotional disturbance; 2) Spencer's capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired; and 3) the existence of a number of non-statutory mitigating factors in Spencer's background, including drug and alcohol abuse, paranoid personality disorder, sexual abuse by his father, honorable military record, and ability to function in a structured environment that does not contain women." Spencer, 691 So. 2d at 1063. The trial court found that the mitigating circumstances did not outweigh the aggravators and this Court affirmed after conducting a proportionality review. See also Guzman v. State, 721 So. 2d 1155 (Fla. 1998)(affirming sentence where victim received nineteen stab wounds to face, skull, back,

and chest, and a defensive wound to a finger on his left hand); Schwab v. State, 636 So. 2d 3, 7 (Fla. 1994)(holding the death sentence proportional for kidnapping, murder, and sexual battery of a boy, where prior conviction of violent felony, murder in the course of a felony, and HAC were proven); Pope v. State, 679 So. 2d 710 (Fla. 1996)(death sentence proportional for murder of defendant's former girlfriend with aggravating circumstances of prior violent felony convictions and murder committed for pecuniary gain while mitigation included extreme mental or emotional disturbance and the defendant's capacity to conform conduct to the requirements of the law was substantially impaired); Brown v. State, 565 So. 2d 304 (Fla. 1990)(death sentence for murder committed during the course of burglary was proportionate where there were two aggravating factors balanced against the mental mitigators); Lemon v. State, 456 So. 2d 885 (Fla. 1984)(death penalty proportionate where HAC and prior violent felony convictions for attempted murder (stabbing female victim) balanced against serious emotional disturbance at the time of the offense).

In his effort to show the sentence is not proportional, appellant relies upon this Court's prior opinions in Larkins v. State, 739 So. 2d 90, 92-96 (Fla. 1999); Hawk v. State, 718 So. 2d 159, 163-64 (Fla. 1998); Cooper v. State, 739 So. 2d 82 (Fla. 1999); and Terry v. State, 668 So. 2d 954 (Fla. 1996). In none

of those cases was there the presence of the incredibly heinous attack as was present in the instant case.[4] Consequently, in none of the those cases was the heinous atrocious or cruel factor found. This Court has placed the HAC statutory aggravator at the apex in the pyramid of the capital aggravating jurisprudence. See Maxwell v. State, 603 So. 2d 490, 493 (Fla. 1992)("By any standards, the factors of heinous, atrocious, or cruel, and cold, calculated premeditation are of the most serious order"); Larkins, at 95 (noting "that neither the heinous, atrocious, or cruel nor the cold, calculated, and premeditated aggravators are present in this case. These, of course, are two of the most serious aggravators set out in the statutory sentencing scheme, and, while their absence is not controlling, it is also not without some relevance to a proportionality analysis.") Indeed, this Court has approved death sentences supported only by an HAC aggravator where it was balanced against several mitigating circumstances, including under extreme mental or emotional disturbance. Butler v. State, 842 So. 2d 817 (Fla. 2003).

Admittedly, the presence of the HAC factor alone is not

[4] Larkins (two aggravators present were a substantially mitigated prior felony and pecuniary gain); Hawk (aggravators found were the contemporaneous assault on the victim's husband and pecuniary gain); Cooper, (shooting death committed during pawnshop robbery - three aggravators, prior violent felony; during course of a robbery; and (CCP)); Terry, (robbery and prior violent felony.)

controlling, but when the brutal facts surrounding the murder of Mrs. Spurlock are considered in relation to those in Larkins, Hawk, Cooper, and Terry, it is apparent that the murder in the instant case is more aggravated. For example, in Cooper, this Court found that Cooper robbed a pawnshop and shot the owner to death. During the penalty phase of the trial, the defense presented testimony of two mental health experts who testified that Cooper is brain-damaged, has a history of seizures, and suffers from frontal lobe dysfunction, which causes him to have impaired judgment and poor impulse control. The experts further stated that at the time of the crime Cooper was under the influence of extreme mental or emotional disturbance and was under extreme duress or under substantial dominion of another person. They also testified that Cooper scored high on tests for both paranoia and schizophrenia and is borderline retarded. Id. at 84-85. Although the two cases have very similar mitigating circumstances, the instant is clearly more aggravated. The extremely heinous attack that was committed on Mrs. Spurlock is of a more aggravated nature than the shooting death of the pawnshop owner. As the trial court found below in support of the HAC factor:

> The evidence is abundantly clear that Betty Spurlock was beaten, stabbed, kicked, and stomped until she could resist her assailant no further and eventually, mercifully lapsed into unconsciousness. The evidence further demonstrated that such vicious attack was unnecessary to the accomplishment of the

taking of money by force or violence from Mrs. Spurlock's custody. Crime scene photos clearly demonstrate that Mrs. Spurlock was immediately incapacitated for a period of time sufficient for Crook to take the money and run.

The Medical Examiner, Dr. Melamud, testified that Mrs. Spurlock was stabbed four times in the neck; she suffered multiple bone fractures of the face including the fracture of both orbits of the eyes and fractures of the mandible-both right and left. Mrs. Spurlock's face, imprinted with multiple patterns of a tennis shoe sole, testified to the stomping actions directed toward the victim.

The blood spatter expert, Leroy Parker, testified that the crime scene demonstrated multiple areas of violence directed toward Mrs. Spurlock. These areas were separate from the location where Mrs. Spurlock fell upon initial knockdown. Parker testified that Mrs. Spurlock regained her feet and attempted to defend herself from attack.

Photographs taken of Mrs. Spurlock's feet revealed that one of the mocassin type shoes she was wearing had come off and when she regained her feet she was standing in her own blood as is evidenced by the blood found on the bottom of her bare foot. Blood patterns on the shirt of Mrs. Spurlock show that the stab wounds occurred after the initial blow and while Mrs. Spurlock was in an upright position. Blood spatter evidence demonstrated that multiple blows were inflicted when Mrs. Spurlock was a target located near floor level in multiple locations with her blood forcefully propelled against the nearby cabinets or freezer.

During interviews with investigators, Crook advised that Mrs. Spurlock was conscious and crying for help.

The facts of this case demonstrate clearly that Mrs. Spurlock was a conscious victim who had a foreknowledge of her death, with extreme anxiety and fear. Sochor v. State, 580 So. 2d 595 (Fla. 1991). The Courts of Florida have consistently held that circumstances involving multiple stab wounds which a conscious victim at the time of stabbing meet the definition of HAC. Davis v. State, 620 So. 2d 152, (Fla. 1993); Pittman v. State, 646 So. 2d 167, (Fla. 1994). Beating deaths also qualify as circumstances properly considered as heinous, atrocious and cruel. Whitton v. State, 649 So. 2d 861 (Fla. 1994); Lawrence

> v. State, 698 So. 2d 1219 (Fla. 1997). Stomping deaths surely cannot be less atrocious. The Florida Supreme Court has said that the HAC circumstance applies only in cases that evince extreme and outrageous depravity as exemplified by either the desire to inflict a high degree of pain or utter indifference to or enjoyment of the suffering of another. Cheshire v. State, 568 So.2d 908,912 (Fla. 1990). The court finds that the defendant's actions in this case demonstrate he was conscienceless, pitiless, and unnecessarily torturous to his victim. Richardson v. State, 604 So.2d 1107 (Fla. 1992).
>
> This aggravating factor has been proven beyond a reasonable doubt and has been given great weight by the court.
>
> (RS1/102-04)

As the foregoing establishes, the circumstances of this crime are so beyond what this Court has held as a threshold to support the HAC aggravator, that even though both mental mitigators were found, the evidence in support of same pales in comparison to the facts and circumstances surrounding this murder. The unprovoked horrendous attack on the victim clearly puts it on par with other cases where the sentence has been upheld.

Notwithstanding the foregoing, Crook suggests that because the sexual battery, pecuniary gain and HAC aggravators were all based on a single episode that arose in a matter of minutes and were possibly the product of the mitigators that the sentence of death should be reduced. This was not a simple "robbery gone bad" as this Court found in Terry at 965. In Terry this Court

found the sentence disproportionate for the shooting death of a gas station owner where evidence in the record supported the theory that the crime was a "robbery gone bad." Compare Mendoza v. State, 700 So. 2d 670 (Fla. 1997); Carter v. State, 576 So. 2d 1291, 1293 (Fla. 1989)(rejecting proportionality argument based on a "robbery gone bad" theory where the trial court found multiple aggravating circumstances which far outweighed the nonstatutory mitigation.) Again, as the trial court noted, the evidence shows planning and intentional acts on the part of Crook during the robbery, sexual assault and homicide. The record shows that Crook not only locked the door to allow him the uninterrupted opportunity to complete this horrendous crime, but also that during the attack, the victim made every attempt to save her own life. This type of attack does not equate to the relatively quick shooting deaths occurring in Terry, Larkins and Cooper.

Appellant concludes by asserting that while his actions in penetrating the length of Mrs. Spurlock's body with a pool cue were admittedly appalling this Court "*must consider the totality of circumstances, including the mental state of both the victim and the defendant when it took place.*" (Initial Brief of Appellant, pg. 57) Crook suggests that since the victim was unconscious when the pool cue was inserted, she was no longer capable of experiencing pain or fear, and, therefore, his

culpability is reduced. This argument may have more merit if inserting the pool cue was the *only* injury to the victim. In this case, however, Crook's attack on Mrs. Spurlock was so vicious, that even prior to any loss of consciousness she was beaten beyond recognition. The photographs and the description of her injuries refute any contention that his culpability is reduced because his torture of this victim finally reduced her to unconsciousness before he committed the final assault on her already mangled body. As the trial court found, Mrs. Spurlock was stabbed four times in the neck; she suffered multiple bone fractures of the face including the fracture of both orbits of the eyes and fractures of the mandible - both right and left; her face was imprinted with multiple patterns of a tennis shoe sole; the crime scene demonstrated multiple areas of violence directed toward Mrs. Spurlock; blood patterns on the shirt of Mrs. Spurlock show that the stab wounds occurred after the initial blow and while Mrs. Spurlock was in an upright position and multiple blows were inflicted when Mrs. Spurlock was a target located near floor level in multiple locations with her blood forcefully propelled against the nearby cabinets or freezer; Crook admitted that Mrs. Spurlock was conscious and crying for help. (RS1/102-03) Nothing about this horrendous murder would support a contention that Mrs. Spurlock did not suffer greatly and needlessly at the hands of Crook or that her

only suffering was a result of the final death blow with the cue stick.

Notwithstanding the foregoing, Crook also argues that since his frontal lobe damage produces rage attacks his sentence is not proportionate. Crook did not testify at trial. During the penalty phase, Crook did not claim that the killing was the result of an uncontrollable rage. Rather, he told the court that he "didn't kill nobody. [He] just watched her get killed." (TT11/2049) The only evidence remotely supporting this hypothesis came from statements Crook made to his brother to the effect that, "The money wouldn't come out. I was banging it on the concrete but it wouldn't open. I got pissed off and hit her in the face." (TT22/1870-1871) He did not claim that it was an uncontrollable rage; he did not claim that it was an accident; he did not claim that he did not intend to kill her.

To the contrary, the evidence shows that Crook went to the bar with the intent to "do a job." (TT15/633) He took the time to close and lock the front door in order and turn off the outside lights to commit the robbery and murder. (TT15/685, 687, 698-703) The evidence also shows that despite having succeeded in obtaining the cash drawer, Crook beat, stabbed, kicked, and stomped Betty Spurlock until she lapsed into unconsciousness. Despite the fact that Ms. Spurlock was incapacitated for a period of time sufficient for Crook to take

the money and run, he then took the additional time to remove portions of Ms. Spurlock's clothing and insert the pool cue through her vagina with such force and purpose that it ripped through the vaginal wall, the pelvic diaphragm, ran parallel with the spine perforating the liver, diaphragm, the lung, the neck, the oral cavity and the base of the victim's skull with such force to shatter the base of the skull, cause massive injury to the brain of the victim and push the tip of the pool cue through Betty Spurlock's forehead. (TT18/1123-1124, 1128-1138, 1141) Prior to the resentencing, Crook told Dr. McMahon that he deliberately pushed a pool cue through the body of the victim, allegedly in order to "make it look like a Mexican had done it." (RS2/278-81) This, coupled with the deliberate action of locking the door, shows the actions of a person who can appreciate the consequences of those actions.

Just as this Court has made it clear in cases where a death sentenced defendant has alleged that a murder was the result of a "domestic dispute," the possibility that a murder may have been the result of a rage simply negates the cold, calculated and premeditated aggravator.[5] Pooler v. State, 704 So. 2d 1375, 1381 (Fla. 1997). It does not serve to remove this crime from the category of the most aggravated.

In sum, the appellant's sentence is supported by three very

[5] CCP was not found in the instant case.

strong aggravating factors. Balanced against this heinous crime is a laundry list of character traits and aspects of the crime which appellant urged as mitigating evidence. Based upon the foregoing, this Court must find that appellant's sentence is proportionate.

ISSUE II

WHETHER FLORIDA'S DEATH PENALTY STATUTE, AND THE PROCEDURE BY WHICH APPELLANT WAS SENTENCED TO DEATH, ARE CONSTITUTIONALLY INVALID.

This appeal challenges the trial court's denial of Crook's challenge to Florida's death penalty statute under Ring v. Arizona, 536 U.S. 584 (2002) because the statute only requires the finding of aggravators by the judge and not the jury. As this is a purely legal issue, appellate review is de novo. Trotter v. State, 825 So. 2d 362, 365 (Fla. 2002).

Prior to trial, defense counsel filed several motions challenging the statute. One of those motions asserted that the aggravators must be alleged in the indictment because they are elements of the offense, another requested special verdict forms requiring the advisory sentencing jury to specifically report those circumstances relied on in reaching its advisory verdict recommending either life or death. (TR2/200-202, 213) The special verdict form request was originally granted but was subsequently reversed by the circuit court.[6] (TR3/375; TT5/913-915; TT6/1099) Upon remand for reconsideration of the sentencing order, Crook filed a motion objecting to the sentencing procedure raising Ring. (RS1/84-90)

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[6] The State's Petition for Writ of Certiorari seeking review of this original order was denied by the Second District Court of Appeals in Case No. 96-05089 on June 20, 1997.

This Court has repeatedly rejected the claim that Ring invalidated Florida's capital sentencing procedures. See Duest v. State, 855 So. 2d 33, 49 (Fla. 2003); Kormondy v. State, 845 So. 2d 41, 54 (Fla. 2003)(Ring does not encompass Florida procedures or require either notice of the aggravating factors that the State will present at sentencing or a special verdict form indicating the aggravating factors found by the jury); Butler v. State, 842 So. 2d 817, 834 (Fla. 2003)(rejecting Ring claim in a single aggravator (HAC) case); Porter v. Crosby, 840 So. 2d 981, 986 (Fla. 2003); Bottoson v. Moore, 833 So. 2d 693 (Fla.), cert. denied, 537 U.S. 1070 (2002); King v. Moore, 831 So. 2d 143 (Fla.), cert. denied, 537 U.S. 657 (2002).

Crook claims that the overruling of Walton v. Arizona, 497 U.S. 639 (1990), by the Ring opinion casts serious doubt on the constitutional viability of four other states' capital murder statutes. While that may be true in *other* states, this Court has consistently maintained that, unlike the situation in other states, the statutory maximum sentence for first degree murder in Florida is death. See Mills v. Moore, 786 So. 2d 532, 536-538 (Fla. 2001); Mann v. Moore, 794 So. 2d 595, 599 (Fla. 2001); Porter, 840 So. 2d at 986; Shere v. Moore, 830 So. 2d 56, 62 (Fla. 2003)("This Court has defined a capital felony to be one where the maximum possible punishment is death"). Because Ring holds that any fact which increases the penalty beyond the

statutory maximum must be found by the jury, and because death is the statutory maximum for first degree murder in Florida, Ring does not establish Sixth Amendment error under Florida's statutory scheme. As Crook's argument has been consistently rejected, there is no error presented in the trial court's denial of his motion to declare Florida's capital sentencing statute to be unconstitutional.

Even if some deficiency in the statute could be discerned, Crook has no legitimate claim of any Sixth Amendment error on the facts of this case. Crook was additionally convicted of Robbery With a Deadly Weapon and Sexual Battery - Great Force. (RS1/37-40) As this Court found in Kormondy, supra, there is no Ring error where there are contemporaneous convictions of other violent felonies, including robbery and sexual battery. Thus, just as Kormondy's sentence of death could be imposed based on these additional convictions by the same jury, so can Crook's. These additional felony convictions support Crook's sentence because the jury found same beyond a reasonable doubt. As such, Ring does not apply to the instant case. The Sixth Amendment, as interpreted in Ring, provides no basis for condemning Florida's capital sentencing statute or disturbing the convictions and sentences obtained against Crook. This Court must affirm the death sentence imposed in this case.

CONCLUSION

Based on the foregoing arguments and authorities, the judgment and sentence should be affirmed.

Respectfully submitted,

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_____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Regular Mail to Steven L. Bolotin, Assistant Public Defender, P.O. Box 9000-Drawer PD, Bartow, Florida 33831-9000, this _____ day of April, 2004.

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

_____

COUNSEL FOR APPELLEE

IN THE SUPREME COURT OF FLORIDA

DONNY LEE CROOK,

Appellant,

vs. **CASE NO. SC03-455**
Lower Tribunal No. CF96-0188A-XX

STATE OF FLORIDA,

Appellee.
_____/

INDEX TO APPENDIX