IN THE SUPREME COURT OF FLORIDA

THOMAS D. WOODEL, :

Appellant, :

vs. : Case No. SC05-1336

STATE OF FLORIDA, :

Appellee. :

_____:

APPEAL FROM THE CIRCUIT COURT
IN AND FOR POLK COUNTY
STATE OF FLORIDA

INITIAL BRIEF OF THE APPELLANT

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

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PRELIMINARY STATEMENT

The record on appeal herein consists of 23 total volumes: the original 17-volume record, plus a one-volume "Addendum to Record," a three-volume "Evidence Report," a one-volume "Addendum to Evidence Report," and a one-volume supplemental record.

Appellant, Thomas D. Woodel, will be referred to in this brief by name or as "Appellant."

STATEMENT OF THE CASE

On January 16, 1997, a Polk County Grand Jury returned an indictment charging Appellant, Thomas Davis Woodel, with two counts of murder in the first degree, one count of armed robbery, and one count of armed burglary. (Vol. I, pp. 129-132) The indictment alleged that Mr. Woodel killed Clifford and Bernice Moody on or about December 31, 1996 by cutting or stabbing them with a knife or other sharp instrument. (Vol. I, pp. 129-130)

Mr. Woodel was tried by a jury on November 16-20, 24, 30 and December 1-4, and 7, 1998, with the Honorable Robert E. Pyle presiding. (Vol. I, pp. 32-43) On December 4, 1998, the jury returned verdicts finding Mr. Woodel guilty as charged on all four counts of the indictment. (Vol. I, pp. 40-42; Vol. II, pp. 250-253) The penalty phase was held on December 7, 1998. (Vol. I, pp. 42-43) Mr. Woodel's jury returned recommendations that he be sentenced to death for both homicides. (Vol. I, pp. 42-43; Vol II, pp. 257-258) The vote as to Bernice Moody was 12-0. (Vol. I, p. 43; Vol. II, p. 258) The vote as to Clifford Moody was 9-3. (Vol. I, p. 42; Vol. II, p. 257)

On January 26, 1999, Judge Pyle sentenced Thomas Woodel to death for both killings. (Vol. I, pp. 48-52; Vol. II, pp. 265-277) Judge Pyle sentenced Mr. Woodel to concurrent life

sentences for the robbery and the burglary. (Vol., pp. 48-52; Vol. II, pp. 273-277)[1]

In his written order imposing the two sentences of death upon Mr. Woodel, the court found four aggravating circumstances: (1) Mr. Woodel had previously been found guilty of another capital offense (based upon the two contemporaneous killings); (2) the killings were perpetrated while Mr. Woodel was engaged in the crime of burglary; (3) the killings were especially heinous, atrocious or cruel; and (4) the victims were especially vulnerable due to advanced age or disability. (Vol. II, pp. 266-268) The court considered and specifically rejected as not supported by the evidence a fifth aggravator proposed by the prosecution: "that the death of the [sic] Clifford Moody occurred as a result of Woodel's effort to escape and avoid being arrested." (Vol. II, p. 268) The court briefly discussed the mitigating circumstances before concluding that they were "far outweigh[ed]" by the aggravating circumstances and that sentences of death therefore were appropriate. (Vol. II, pp. 268-269)

Thomas Woodel appealed to this Court (Vol. II, p. 280), which issued its opinion on December 20, 2001. (Vol. II, pp.

[1] The sentencing guidelines scoresheet filed herein called for a maximum prison sentence of 104.75 months for the two non-capital offenses. (Vol. II, p. 279) As justification for imposing an upward departure sentence, Judge Pyle wrote: "unscoreable capital convictions." (Vol. II, p. 279)

304-326)[2] The Court affirmed Mr. Woodel's convictions, but vacated the two death sentences and remanded "with instructions that there be a new sentencing proceeding before the trial court in accord with the procedures set forth in Jackson v. State, 767 So.2d 1156, 1160-61 (Fla.2000)." (Vol. II, p. 304) The Court ascertained that the sentencing court's treatment of Mr. Woodel's mitigation did not conform to legal requirements. The trial court "summarily dispose[d] of mitigation," thus rendering this Court "unable... to provide meaningful review of the imposition of the death sentence or undertake [its] proportionality review. [Citation omitted.]" (Vol. II, p. 325)

Upon remand to Polk County, the Honorable Susan W. Roberts, Circuit Judge, entered an order on October 4, 2002 that "a new penalty phase as to both the aggravators and the mitigators" be held "before a twelve (12) member jury." (Vol. II, p. 327) Judge Roberts' order noted that "the trial judge who authored the sentencing order [was] no longer available to respond to the mandate as he ha[d] retired and [was] not a senior judge available to sit on the trial bench." (Vol. II, p. 327)

The new penalty trial was held on July 6-20, 2004, with Judge Roberts presiding. (Vol. III, p. 1-Vol. XVII, p. 2652) On July 20, 2004, after hearing evidence presented by both the State and the defense, Thomas Woodel's jury returned a

[2] The opinion is reported at 804 So.2d 316.

recommendation that he be sentenced to life imprisonment for the murder of Clifford Moody. (Vol. III, p. 363; Vol. XVII, pp. 2648-2649) The jury recommended that Mr. Woodel be sentenced to death for the murder of Bernice Moody, by a vote of seven to five. (Vol. III, p. 364; Vol. XVII, p. 2649)

A Spencer[3] hearing was held before Judge Roberts on March 17, 2005. (Vol. II, pp. 334-362)

On July 1, 2005, Judge Roberts sentenced Thomas Woodel to life in prison for the murder of Clifford Moody, and sentenced him to death for the murder of Bernice Moody. (Vol. III, pp. 376-403) In her written sentencing order, Judge Roberts found four aggravating circumstances to exist (Vol. III, pp. 394-396): (1) Mr. Woodel was previously convicted of another capital felony (the contemporaneous murder of Clifford Moody); (2) the killing of Bernice Moody was committed while Mr. Woodel was engaged in the commission of or an attempt to commit or flight after committing or attempting to commit a burglary; (3) the capital felony was especially heinous, atrocious, or cruel; (4) the victim of the capital felony was particularly vulnerable due to advanced age or disability. The court gave "great weight" to the first three aggravating factors and "moderate weight" to the last aggravator. (Vol. III, pp. 394-396) In mitigation, the court found four "statutory" mitigators to exist, as well as 10

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

“non-statutory” factors, giving some “moderate weight,” and others “little weight.” (Vol. III, pp. 397-402) The statutory mitigators found by Judge Roberts were: (1) Thomas Woodel has no significant history of prior criminal activity (moderate weight); (2) Mr. Woodel’s age of 26 years at the time of the offense (little weight); (3) Mr. Woodel’s capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired due to his consumption of alcohol (little weight); and (4) the capital felony was committed while Mr. Woodel was under the influence of extreme mental or emotional disturbance (little weight). (Vol. III, pp. 397-398) Non-statutory mitigators found by Judge Roberts were: (1) Thomas Woodel was physically abused as a child (moderate weight); (2) Mr. Woodel was neglected and rejected by his mother and others (moderate weight); (3) there was instability in the location of Mr. Woodel’s homes as a child (moderate weight); (4) both of Mr. Woodel’s parents are deaf and mute (moderate weight); (5) Mr. Woodel’s abuse of alcohol and drugs (little weight); (6) Mr. Woodel’s willingness to meet with the daughter of Clifford and Bernice Moody (little weight); (7) Mr. Woodel’s willingness to be treated for possible bone marrow donation for his daughter who had leukemia (little weight); (8) Mr. Woodel has come to believe in God and that he is forgiven for these offenses (little weight); (9) Mr. Woodel voluntarily

confessed to the murders (little weight); (10) Mr. Woodel has shown compassion for others (little weight). (Vol. III, pp. 398-402)

Thomas Woodel timely filed his notice of appeal to this Court on July 27, 2005. (Vol. III, p. 404)

STATEMENT OF THE FACTS

State's Case[4]

In December, 1996, Appellant, Thomas Woodel, was working at a Pizza Hut on Highway 192 in Polk County. (Vol. XI, pp. 1523-1525) He had worked there for five or six months. (Vol. XI, p. 1525) He worked mostly as a dishwasher, but he sometimes cut the pizzas, and he was learning to cook. (Vol. XI, p. 1526) Mr. Woodel's sister, Bobbie, also worked at the Pizza Hut, as a cashier. (Vol. XI, pp. 1526-1528) She and her brother lived in a trailer belonging to another Pizza Hut employee, Leola Kilbourn, located in Outdoor Resorts of America. (Vol. XI, pp. 1528, 1530) Thomas Woodel would sometimes ride his bike to work, and sometimes he would walk. (Vol. XI, p. 1529) Pat Mueller, who supervised the 4:00 to closing shift, gave him rides home between 20 and 25 times, and sometimes sent a driver to pick him up so that he could make it to work. (Vol. XI, pp. 1522-1523, 1526, 1540)

About a week before the instant homicides, Bobbie Woodel took a vacation and went out of the State. (Vol. XI, p. 1527)

[4] In addition to presenting the testimony of "live" witnesses, the State presented the testimony of the following witnesses by having transcripts of their testimony from Thomas Woodel's first trial read into the record: Rena Dupuis (Vol. XII, pp. 1666-1672), Thomas Collick (Vol. XII, pp. 1672-1709), Kathryn Collick (Vol. XI, pp. 1709-1723), Lavern O'Connell (Vol. XII, pp. 1724-1734), Elmer Schultz (Vol. XII, pp. 1734-1752), Stewart Moody (Vol. XIV, pp. 2036-2038), and Joann Scanlon (Vol. XIV, pp. 2038-2041).

On December 30, 1996, Thomas Woodel worked the 4:00 to 11:00 shift. (Vol. XI, p. 1531) His cleaning duties would have kept him at the restaurant past the 11:00 closing time. (Vol. XI, p. 1531)

Mr. Woodel worked the same shift on New Year's Eve. (Vol. XI, p. 1534-1535) Pat Mueller did not notice anything different about him when he was working. (Vol. XI, p. 1535) After work, the Pizza Hut employees, including Thomas Woodel, went to Leola Kilbourn's house in Outdoor Resorts of America for a short New Year's Eve celebration. (Vol. XI, pp. 1535-1537)

Mr. Woodel would have worked at Pizza Hut after the New Year's Eve celebration and prior to his arrest shortly thereafter. (Vol. XI, p. 1530) He did not appear to Pat Mueller to be acting unusual or different from the way he normally acted. (Vol. XI, p. 1538)

Thomas Woodel was a very hard-working employee who always volunteered to do the dirty work. (Vol. XI, pp. 1541-1542) He was friendly and somewhat like a peacemaker, and Mueller never encountered any problems with him. (Vol. XI, pp. 1540, 1542)

Clifford and Bernice Moody were residents of Illinois, but spent the winters at Outdoor Resorts of America. (Vol. X, pp. 1320-1321) Clifford Moody wore a hearing aid and glasses, but he could see well. (Vol. X, pp. 1327, 1699) He had had open-heart surgery in August or September of 1996, but was doing

extremely well. (Vol. X, pp. 1327-1328) According to Maryann Richard, the Moodys' oldest child, "[H]e wasn't doing cartwheels, but he felt really, really good." (Vol. X, p. 1327) Bernice Moody also wore glasses, but had perfect hearing. (Vol. X, p. 1328) She was a very hard worker. (Vol. X, p. 1328) In March or April before her death, Bernice Moody had slipped and fallen and broken her arm. (Vol. X, pp. 1328-1329) She did exercises and "was back to normal other than the fact that she lost a lot of strength in that arm." (Vol. X, p. 1329)

The Moodys owned two units that were side-by-side at Outdoor Resorts. (Vol. X, pp. 1321-1322) Prior to their deaths, the Moodys were preparing the second unit to rent out to Lavern O'Connell. (Vol. X, pp. 1326-1327)

Thomas Collick knew the Moodys very well and, like them, was a seasonal resident at Outdoor Resorts. (Vol. XII, pp. 1673-1674, 1676) He power-washed both the units the Moodys owned, finishing the driveway of the unit they occupied on the morning of December 31, 1996. (Vol. XII, pp. 1678, 1680-1682, 1711, 1714-1715) When he arrived at the Moodys around 8:30 a.m., Collick knocked on the door and rang the doorbell, but there was no answer. (Vol. XII, pp. 1681-1682) He and his wife, Kathryn, power-washed all they could, everything except underneath the Moodys' car, which was parked in the driveway, and went home. (Vol. XII, pp. 1682-1683)

Elmer Schultz was working security at the guardhouse of Outdoor Resorts from late night December 30 to early morning December 31, 1996. (Vol. XII, pp. 1735-1736) His shift would have begun around 11:40 p.m. and ended around 5:30 or 5:40 a.m. (Vol. XII, p. 1736, 1740) Nobody walked through the gate that night while Schultz was on duty. (Vol. XII, pp. 1738, 1752) The only other way someone could have gotten into the park was to climb an eight-foot fence with barbed wire on top that surrounded the entire park. (Vol. XII, pp. 1738-1739)

Mr. Schultz saw Clifford Moody arrive at the laundromat at Outdoor Resorts around 5:00 that morning. (Vol. XII, pp. 1741-1742) He was driving his car and was alone. (Vol. XII, pp. 1741-1742) Clifford Moody was still at the laundromat when Mr. Schultz left to go home. (Vol. XII, p. 1742)

Lavern O'Connel, from Illinois, had made arrangements with the Moodys to rent the second unit they owned for three months after seeing an ad in a newspaper. (Vol. XII, pp. 1724-1725) He and his wife arrived at Outdoor Resorts at approximately 12:45 p.m. and stopped at the security gate, as Mrs. Moody had told Mr. O'Connel that she would leave the key and instructions there. (Vol. XII, p. 1726) There was no key and no instructions, but the guard gave Mr. O'Connel a pass so that he could go to where the unit was. (Vol. XII, p. 1726) When he and his wife arrived at the unit they were going to rent, there was

a car next door, which Mr. O'Connel assumed belonged to the Moodys. (Vol. XII, pp. 1726-1727) Mr. O'Connel pounded on the door of the unit where the car was, but received no answer. (Vol. XII, p. 1727) He went next door to the unit he was going to rent and tried the screen door; it was open and he went inside. (Vol. XII, p. 1727) He found a man he assumed was Mr. Moody lying on his back. (Vol. XII, p. 1730) Mr. O'Connel thought he had had a heart attack, and went to find a phone to call 911, when he found Mrs. Moody in the bedroom with blood all over her. (Vol. XII, p. 1730) He went outside, saw a man mowing his lawn, and borrowed his phone to call 911. (Vol. XII, pp. 1732-1733) Afterwards, he encountered Thomas Collick and told him there were two bodies in the trailer. (Vol. XII, pp. 1687, 1733) Mr. Collick went into the trailer, saw Bernice and Cliff Moody, then went to get his wife, who was a critical care registered nurse. (Vol. XII, pp. 1687-1688, 1716) Kathryn Collick found Clifford Moody on the living room floor and checked for vital signs, but found no pulse. (Vol. XII, p. 1716) Bernice was on the bed in the bedroom, nude except for tennis shoes. (Vol. XII, p. 1717)[5] Kathryn Collick touched her leg, and knew from her experience that there was nothing she could do for her. (Vol. XII, p. 1717)

[5] Crime scene technician Laura Sheffield testified that when she observed Mrs. Moody at the scene on December 31, 1996, she had socks on, but no shoes. (Vol. XI, p. 1435)

When Alan Cloud of the Polk County Sheriff's Office arrived at the scene, he first observed the body of Mr. Moody. (Vol. XIII, pp. 1818-1819) His pants had been pulled down, and one could see several stab wounds to him. (Vol. XIII, pp. 1819-1820) Mrs. Moody was in another room, lying on a bed. (Vol. XIII, p. 1820) She was not clothed, except for two nylon socks. (Vol. XIII, pp. 1820-1821) There was "an extensive amount of blood on the mattress and on the wall behind her and also on the ceiling." (Vol. XIII, p. 1820) When her body was turned over, law enforcement personnel found pieces of what appeared to be a toilet tank lid. (Vol. XIII, pp. 1821-1822)

Laura Sheffield, a crime scene technician with the Polk County Sheriff's Office, responded to the scene on the afternoon of December 31, 1996. (Vol. X, pp. 1347-1349) She took photographs of the exterior of unit 532 at Outdoor Resorts as well as the interior, including areas of suspected blood. (Vol. X, pp. 1355-1371, 1388, 1399-1425; Vol. XI, pp. 1434-1436) Ms. Sheffield subsequently collected various blood samples within the residence, as well as other items, such as a towel, a butcher block, five knives that were in the butcher block, two nightgowns, panties with apparent blood on them that had been tied into a knot, two shoes, one of which had apparent blood on it, pieces of porcelain found underneath Mrs. Moody's body, a piece of toilet paper with apparent blood on it, and a shirt

belonging to Mr. Moody. (Vol. X, pp. 1297, 1362, 1375-1380, 1384; Vol. XI, pp. 1436-1444) Another crime scene technician, Laurie Ward, took a videotape of the scene, which was admitted into evidence as State's Exhibit Number 1 and published to the jury over defense objections. (Vol. X, pp. 1420-1421; Vol. XI, pp. 1427-1434, 1452-1453)

Ms. Sheffield also attended the autopsies of Mr. and Mrs. Moody, which were conducted on January 2 [1997]. (Vol. XI, p. 1446) She took photographs, and received blood samples taken from both Mr. and Mrs. Moody. (Vol. XI, pp. 1447-1450)

Dr. Alexander Melamud went to the scene on the day the bodies were discovered and performed the autopsies on Clifford and Bernice Moody. (Vol. XII, p. 1779) However, Dr. Melamud had retired prior to Thomas Woodel's new penalty trial, and so Dr. Stephen Nelson, Chief Medical Examiner for the Tenth Circuit, testified regarding the results of the autopsies. (Vol. XII, p. 1774-Vol. XIII, p. 1815) Dr. Melamud's assessment was that death occurred during the early morning hours on the same day the bodies were found, and Dr. Nelson did not disagree. (Vol. XII, pp. 1782-1784) Bernice Moody incurred a total of 56 stab wounds, some of which were defensive wounds, as well as abrasions, and bruising on her neck and around her eye. (Vol. XII, pp. 1790-1795) The stab wounds resulted in internal injuries to her lung, liver, kidney, jugular vein on the right

side of her neck, neck organs, and voice box. (Vol. XIII, p. 1798) As a result, there was internal and external hemorrhage. (Vol. XIII, p. 1798) Her injuries included fractures to her voice box and some of her nasal bones. (Vol. XIII, p. 1799) The stab wounds were inflicted while Mrs. Moody was still alive and would have been painful. (Vol. XIII, pp. 796, 1799-1800)

The toxicological screen showed that Bernice Moody had Tylenol, Benadryl, and caffeine in her system. (Vol. XIII, pp. 1802-1803)

Mrs. Moody was five feet, four and one-half inches tall, and weighed 158 pounds. (Vol. XIII, p. 1803)

The mechanism of Bernice Moody's death was that she bled to death because of her injuries. (Vol. XIII, p. 1804) The cause of death was multiple stab wounds. (Vol. XIII, p. 1804) And the manner of death was homicide. (Vol. XIII, p. 1804)

Clifford Moody was stabbed eight times: five to his torso and three to his buttocks. (Vol. XIII, pp. 1809-1811) The stabs injured his right lung, diaphragm, spleen, and small bowel. (Vol. XIII, pp. 1811-1812)

The toxicology report for Mr. Moody showed that he had nothing in his system. (Vol. XIII, p. 1814)

Clifford Moody was five feet, seven inches tall, and weighed 158 pounds. (Vol. XIII, p. 1814)

The mechanism of death for Mr. Moody was blood loss; the cause of death was multiple stab wounds and homicide. (Vol. XIII, p. 1815)

On January 3, 1997, sheriff's office personnel recovered evidence from the dumpsters at Outdoor Resorts of America that included a black wallet containing credit cards with Clifford Moody's name on them, two driver's licenses with his name on them (one from Illinois and one from Florida), a key ring with five keys on it that said "Cliff's set," two pieces of a toilet tank lid with apparent blood on them, a letter addressed to Christina Stogner (who was Thomas Woodel's girlfriend), a paper with the name of Christopher Woodel on it that also contained a social security number and some other information. (Vol. XI, pp. 1460-1464, 1469-1471, 1505-1506, 1539; Vol. XIII, p. 1825) These items were inside a corn flakes box that was inside a white plastic garbage bag. (Vol. XI, p. 1464; Vol. XIII, p. 1825) In the bag, or at least in the same area, there was also a pair of white socks with apparent blood stains on them, and an Orlando Sentinel newspaper dated Monday, December 30, 1996. (Vol. XI, pp. 1465-1466)

Also on January 3, 1997, Mark Taylor of the sheriff's department obtained written consents to search the mobile home located on lot 301 from Thomas and Bobbie Woodel, both of whom were very cooperative when the deputies spoke with them. (Vol.

XI, pp. 1553-1555, 1561-1562) Items seized from the residence pursuant to the search included a knife that was wedged between the back of a desk and the wall in a bedroom, a towel with stains on it, a bucket that was in a bathroom. (Vol. XI, pp. 1483-1486, 1557-1558, 1560-1561)

Laurie Ward, a supervisor in the crime scene section at the sheriff's office, took photographs of Thomas Woodel at the sheriff's office substation on the same day. (Vol. XI, pp. 1486-1490) The pictures showed some injuries to Mr. Woodel's hands and right lower arm. (Vol. XI, pp. 1487-1489) Mr. Woodel commented that he received the injury to his right thumb during the offense, but the others were from his job. (Vol. XI, p. 1490)

Still on January 3, Alan Cloud and Detective Ann Cash interviewed Thomas Woodel at the Bartow Air Base substation. (Vol. XIII, pp. 1832) Mr. Woodel initially claimed that he did not have any involvement in the murders of the Moodys, but then gave an inculpatory written statement and submitted to a taped interview. (Vol. XIII, pp. 1833-1834) Mr. Woodel said that, after working at Pizza Hut on the night in question, he sat outside drinking beer and talking with a girl named Jessica and two young men. (Vol. XIII, pp. 1836, 1847-1848) Mr. Woodel drank seven or eight bottles of beer. (Vol. XIII, pp. 1836, 1848) It was about three o'clock when he walked back to Outdoor

Resorts. (Vol. XIII, pp. 1836, 1848) He sat outside the park for 20 minutes and may have thrown up in a flower garden outside the entrance. (Vol. XIII, pp. 1836, 1848) After entering the park, he saw a woman cleaning the sliding glass door of a trailer. (Vol. XIII, pp. 1836, 1848-1849) He approached to ask what time it was. (Vol. XIII, pp. 1836, 1849) He tried to get her attention, but, apparently, she could not see him. (Vol. XIII, 1850) The woman went inside the trailer, possibly to rinse off her towel. (Vol. XIII, p. 1851) She came back and closed the sliding glass door to wash the inside. (Vol. XIII, p. 1851) Mr. Woodel knocked on the door to ask her what time it was, but she could not hear him and still could not see him. (Vol. XIII, p. 1851) The woman left the living room again, going toward the back. (Vol. XIII, p. 1851) Mr. Woodel decided to open the door, when he noticed that the back door to the trailer was open. (Vol. XIII, p. 1851) He went to that door and stood on the porch. (Vol. XIII, p. 1851) The woman finally saw him and "panicked;" she began saying very loudly, "'Get out of my trailer, get out, what do you want, get out.'" (Vol. XIII, p. 1852) Mr. Woodel attempted to explain to the woman that he only wanted to know what time it was. (Vol. XIII, p. 1852) She went to the sink and got a long thin knife with a serrated edge and came at him with it, swinging it two or three times. (Vol. XIII, pp. 1837, 1852-1853) On the last swing, he blocked it and

pushed her backward; she hit her head on a drawer handle and Mr. Woodel somehow obtained possession of the knife. (Vol. XIII, pp. 1853-1855) The woman got up off the floor and came to Mr. Woodel, pushing him to force him to leave. (Vol. XIII, p. 1856) He was telling her to calm down, all he wanted was to know what time it was. (Vol. XIII, p. 1856) On the second or third shove, the woman got "poked" (a word which Mr. Woodel chose to use instead of "stabbed"). (Vol. XIII, p. 1856) He pushed her down on the bed and hit her on the head with the toilet tank lid from the bathroom, but it did not achieve the desired effect of knocking her out. (Vol. XIII, pp. 1857-1859) She got off the bed and came at Mr. Woodel again and he slashed her with the knife. (Vol. XIII, p. 1867) She was attacking and "fighting scared." (Vol. XIII, p. 1867) Mr. Woodel had poked her and pushed her back onto the bed, where her arms were swinging at Mr. Woodel, and he was using the knife to protect his arms. (Vol. XIII, pp. 1867-1868) She was repeatedly hitting her arms against the knife. (Vol. XIII, p. 1868) Mr. Woodel put the point of the knife to her face and told her to stop swinging, calm down, but she was moving her head back and forth and flailing her arms. (Vol. XIII, p. 1870) The knife came across her neck, but did not seem to hurt her. (Vol. XIII, p. 1870) When Mr. Woodel began to leave, she was still "swinging her arms and stuff." (Vol. XIII, pp. 1870-1871) There was blood coming

out of her mouth and blood on her neck and arms. (Vol. XIII, p. 1871) Mr. Woodel covered her with a sheet so he would not have to look at it, as he was about to throw up. (Vol. XIII, p. 1871) At some point during the altercation, Mr. Woodel was cut on the thumb. (Vol. XIII, p. 1857)

During the struggle, Mr. Woodel tried to pull the woman's "robe off her shoulders to control her arms to keep them from hitting so much[,]}" and remembered "taking her robe off of her after," although he did not know why. (Vol. XIII, p. 1872) Mr. Woodel also remembered cutting off the woman's panties, but did not know why he did it, and did not think he tied them in a knot. (Vol. XIII, pp. 1872-1873)

Mr. Woodel went down the hallway on his way to leave when the woman's husband came in. (Vol. XIII, p. 1874) He said, "'What are you doing in here?" (Vol. XIII, p. 1875) Mr. Woodel poked him the stomach, then grabbed his wrist and tried twirling him around to get him out of the way. (Vol. XIII, pp. 1874-1877) He then poked him in the back, and man fell and hit his head on the TV or TV stand. (Vol. XIII, p. 1877) Mr. Woodel rinsed off the knife and began to leave when it occurred to him that the man might have some money. (Vol. XIII, p. 1877) He tried to get the man's wallet, but it would not come out, and so Mr. Woodel loosened his pants and pulled them down to have easier access to his back pocket. (Vol. XIII, p. 1877) Mr. Woodel took the pail

the woman had been using to clean with and put the knife, the wallet, and the biggest pieces of the toilet tank lid (which had blood on them) into it and walked to his trailer. (Vol. XIII, pp. 1877-1880) However, instead of going inside immediately, he walked to a nearby "canal channel," into which he threw the bigger chunks of the toilet tank lid and the woman's glasses. (Vol. XIII, pp. 1880-1881, 1886) He returned home with the wallet, the knife, and the pail. (Vol. XIII, pp. 1882-1883) He opened the wallet and removed the money that was in it, two twenties or a twenty and a ten. (Vol. XIII, p. 1883) He took off his Pizza Hut uniform and changed clothes. (Vol. XIII, p. 1884) He threw the wallet and his socks, which had blood on them, into the trash. (Vol. XIII, p. 1884) He put the knife behind the dresser. (Vol. XIII, p. 1888)

Mr. Woodel denied having sex with the woman. (Vol. XIII, p. 1879)

Mr. Woodel stated near the end of the interview that he was intoxicated when this happened as a result of having too many beers in too short of a time. (Vol. XIII, p. 1892) Nothing was going in his "mind or life to provoke a situation like that[,]" and the episode was "just something totally out of [his] character." (Vol. XIII, pp. 1892-1893) He said he was sorry that this happened. (Vol. XIII, pp. 1914, 1931-1932) He also

was concerned about his family and being seen as a “monster” for what had happened. (Vol. XIII, pp. 1925, 1932-1933)

The day after the interview with Mr. Woodel, divers recovered a pair of eyeglasses and three pieces of porcelain from the canal at Outdoor Resorts. (Vol. XIII, pp. 1904-1905)

Deputy Cloud recounted an incident that occurred when he and Detective Ann Cash transported Thomas Woodel to the hospital in order for a sample of his blood to be drawn. (Vol. XIII, pp. 1915-1916) A deputy with the Winter Haven Police Department had been killed in the line of duty a couple of days before, and Mr. Woodel asked if Detective Cash and Deputy Cloud were involved in that investigation, which they were. (Vol. XIII, p. 1915) When the deputies left, Mr. Woodel told them to be careful, and Deputy Cloud believed that he was legitimately concerned about his safety. (Vol. XIII, pp. 1915-1916)

Detective Cash noted that she and Deputy Cloud were with Thomas Woodel for quite some time—10 to 12 hours—and “there was nothing in his personality that would, would indicate he was capable of this level of violence.” (Vol. XIII, p. 1934) He was “like the guy next door” to whom you would “loan your garden hose” or from whom you would “borrow a loaf of bread.” (Vol. XIII, p. 1934)

DNA obtained from blood on the peach towel taken from the Moodys’ trailer by law enforcement matched the DNA profile of

Thomas Woodel, using the RFLP method of testing. (Vol. XI, pp. 1591-1594) One would expect to find the same DNA profile in the Caucasian population group one out of every 118 million; in the African-American population group one out of every 450 million; and in the southeastern Hispanic population group one out of every 115 million. (Vol. XI, pp. 1594-1596) There was also a match between DNA from blood on one of the curtains in the living room area of the trailer and Thomas Woodel's DNA, and a match between DNA from blood on the wallet found in the dumpster and Mr. Woodel's DNA. (Vol. XI, pp. 1596-1599) When DNA from blood on the socks found in the dumpster was analyzed, one DNA profile matched that of Bernice Moody at five locations, while a second profile matched that of Thomas Woodel at one location. (Vol. XI, pp. 1599-1601) One would expect to find the specific DNA profile of Bernice Moody, matching at five locations, in one out of 8,375 million in the Caucasian population; one out of 25 billion in the African-American population; and one out of one billion in the Hispanic population group. (Vol. XI, p. 1601)

Using the PCR Polymarker DQA type of DNA analysis, it was determined that Thomas Woodel was a possible contributor of DNA found in blood on the following items law enforcement collected from the Moodys' rental trailer: the peach towel, a knife that came from the butcher block in the kitchen, a piece of toilet tissue found in the bedroom area. (Vol. XI, pp. 1607-1609) Mr.

Woodel was also a possible contributor of the DNA found in blood samples collected from the kitchen floor area, the bathroom counter area, living room curtains, and north porch area. (Vol. XI, p. 1610-Vol. XII, p. 1611)

Bernice Moody was a possible contributor of DNA found in blood collected from the bathroom cupboard area and the air conditioning unit within the trailer, as well as two pieces of porcelain toilet tank lid recovered from the dumpster. (Vol. XII, pp. 1611-1613) Clifford Moody was a possible source of DNA found in an apparent blood sample collected from the dining table area and he and Thomas Woodel were possible contributors on DNA from the wallet recovered from the dumpster. (Vol. XII, pp. 1611-1613)

Bernice Moody was a possible contributor of DNA from a cutting from a sock recovered from the dumpster, and she and Thomas Woodel were possible contributors to DNA from another cutting from one of the socks found in the dumpster. (Vol. XII, pp. 1615-1616)

Thomas Woodel was a possible contributor of DNA found on a towel and plastic bucket recovered from his residence. (Vol. XII, pp. 1616-1617) He and Bernice Moody were possible contributors of DNA found on the knife that was recovered from behind the desk in Mr. Woodel’s residence. (Vol. XII, pp. 1617-1619)

The population frequency statistics using the PCR Polymarker DQA type of DNA analysis showed that one would expect to find the same DNA as that of Thomas Woodel's one time in approximately every 4,470 Caucasian individuals; the DNA profile matching that of Bernice Moody would occurred once in approximately every 808 Caucasian individuals; the DNA profile matching that of Clifford Moody would occur once in approximately every 6,160 Caucasians, (Vol. XII, pp. 1633-1634)

Following a proffer, Arthur White, who was a prisoner at the time of Thomas Woodel's new penalty trial, and who had been convicted of a felony "about five times," testified regarding statements Mr. Woodel made to him when they were in the same dorm together at the Polk County Jail in 1997. (Vol. XII, pp. 1635-1665) White initiated the conversation in an attempt to curry favor with the state attorney's office or the court system; he was "being an opportunist at that time to try to help [himself] in a situation that [he] was in." (Vol. XII, pp. 1663-1664) According to White, Mr. Woodel said that he was drunk when he approached a woman and "asked her about the time or something of that nature[.]" (Vol. XII, p. 1657) Mr. Woodel described how the woman panicked and grabbed a knife, how there was a struggle, how he pushed her down and "got cut a couple of times." (Vol. XII, p. 1657) The woman was in nightclothes, and when Mr. Woodel knocked her down he ripped her nightgown, then

“drug her in the bedroom and he fondled her.” (Vol. XII, p. 1658) He did not go into detail as to what he meant by “fondling” her. (Vol. XII, pp. 1658-1659) Afterward, he ran to the bathroom and washed up, then had a confrontation with the male who lived here, during which he “threw the guy down or knocked him on top of the TV or whatever was there. . .” and “out of panic or whatever. . .he stabbed the man up[.]” (Vol. XII, p. 1660) White was uncertain what Mr. Woodel did with the knife; he thought he “threw it, a bed or something, right off where he was staying at, or put it in a dumpster or something like that there.” (Vol. XII, p. 1661)

Mr. Woodel did not tell White why he had killed the man or the woman. (Vol. XII, p. 1660)

White did not believe Mr. Woodel’s intention was to kill the woman, and “he seemed like he really regretted” that he had done that. (Vol. XII, pp. 1658, 1660) White did not “believe Mr. Woodel was in the right state of mind at the time;” he thought he “freaked.” (Vol. XII, p. 1660)

The State presented “victim impact” testimony from Maryann Richard (the Moodys’ oldest child) (Vol. X, pp. 1320-1341), George Richard (Maryann’s husband) (Vol. X, pp. 1341-1346), Donald Moody (the Moodys’ second oldest child) (Vol. XI, pp. 1563-1566), Joseph Larson (a friend of the Moodys) (Vol. XIV, pp. 1981-1983), Robert James (a friend of the Moodys) (Vol. XIV,

pp. 1984-1986), Rebecca Yowell (the Moodys' third oldest child) (Vol. XIV, pp. 1987-1993), Scott Richard (George and Maryann's son) (Vol. XIV, pp. 1994-2011), Michelle Clark (Scott's sister, who apparently began crying during her testimony) (Vol. XIV, pp. 2012-2018, 2030-2035), Stewart Moody (Clifford's brother) (Vol. XIV, pp. 2036-2038), and Joann Scanlon (one of Bernice Moody's sisters) (Vol. XIV, pp. 2038-2041).

Defense Case

Tommy Woodel and his sister, Bobbie, were born in Fayetteville, North Carolina to deaf parents. (Vol. XIII, pp. 1939-1940; Vol. XIV, p. 2102)[6] Tommy was born in 1970. (Vol. XIV, p. 2127) According to his Aunt Becky (Margaret Louise Russell), his mother "wasn't really into motherhood." (Vol. XIII, p. 1940) Most of her time was spent "selfishly on her own self and what she could do to make life easier for herself and she would hand the kids out to anybody who would take them." (Vol. XIII, p. 1940) Tommy Woodel's father, Albert Woodel (who testified via American Sign Language interpreters at his son's penalty trial), described his first wife, Jackie, as a neglectful mother who really did not take care of the children and usually ignored them. (Vol. XIV, pp. 2102-2103, 2126) "They

[6] His mother may have had some limited ability to hear. (Vol. XIV, pp. 2102-2103; Vol. XVI, p. 2441)

were pretty much on their own after they were potty-trained." (Vol. XIV, pp. 2102-2103) Many times when Albert came home from work, the children had not eaten. (Vol. XIV, pp. 2104-2105) Their mother drank every evening, sometimes with the neighbors, and sometimes staying at the bar until it closed. (Vol. XIV, p. 2105) When the children were a little older, around six, their mother would sometimes disappear for the weekend, coming back two or three days later. (Vol. XIV, p. 2105) Her drinking caused arguments with Albert, which sometimes turned physical; every once in awhile the children would see these fights. (Vol. XIV, p. 2106) The children did not have anything because their mother threw everything in the garbage. (Vol. XIV, p. 2120)

There was a period of time when the children moved back and forth between their father, their mother, and their Aunt Becky many times. (Vol. XIV, pp. 2107-2108) At one point the children were staying with their grandmother and were put in a children's home near where she lived; they stayed in the home for between 10 months and two years, according to Albert Woodel, who would visit them there. (Vol. XIV, pp. 2109-2110) They seemed happy there. (Vol. XIV, p. 2113) When Tommy and Bobbie were around seven or eight years old, their mother ended up taking them out of the children's home without their father's knowledge; he learned that the children were in Michigan, but did not know where in Michigan they were. (Vol. XIV, pp. 2114-2115) Albert

did not see the children for about eight years after that. (Vol. XIV, p. 2116) When they were reunited, when Tommy was 15, Tommy went to live with his father for about a year, but then went back to live with his mother because he did not like the small town in North Carolina where his father was living, and he may have had a girlfriend in Michigan. (Vol. XIV, pp. 2119-2120, 2129)

When Albert and Tommy were together, they would do normal father-son things, such as go fishing and make model cars. (Vol. XIV, pp. 2117-2118) Tommy was a “good kid” who “always obeyed all the time.” (Vol. XIV, p. 2118) However, Tommy and his mother did not get along. (Vol. XIV, p. 2118)

Aunt Becky described Tommy as a young child as a “really sweet, sweet little boy.” (Vol. XIII, p. 1947) He was quiet, withdrawn, and kept things to himself. (Vol. XIII, p. 1948) He continued to be reserved and quiet and to himself even as a teenager. (Vol. XIII, pp. 1958-1959)

Aunt Becky thought of Tommy as “a little lost lamb who had no direction in his life. . .” (Vol. XIII, p. 1963)

Albert Woodel never saw his son drink. (Vol. XIV, p. 2123)

When he heard of these murders, he was “shocked” and “couldn’t believe it.” (Vol. XIV, p. 2124)

Bobbie Woodel’s earliest memory was of living with her Grandmother Elda and her father and Tommy at the age of five or

six; she could not remember living with her mother before that time. (Vol. XIV, pp. 2144-2145) She and Tommy ended up in the children's home because great-grandmother became ill and their father was working and could not take care of them. (Vol. XIV, p. 2145) He drove them to the home and said he would be right back. (Vol. XIV, p. 2146) The home was a dormitory-style brick building where the boys stayed on the right and the girls on the left and the two groups were not allowed any contact. (Vol. XIV, p. 2146) If they were found talking to each other, they would be punished, usually spanked. (Vol. XIV, p 2146) The home was very strict, and if the children did not do their chores, such as making the bed and cleaning the bathroom, they would be spanked with a big wooden paddle. (Vol. XIV, p. 2148) Tommy got spanked a lot; Bobbie could hear him at night. (Vol. XIV, p. 2148)

Bobbie and Tommy were always very close, and they would find a way to see each other in the children's home, even though they were not supposed to. (Vol. XIV, pp. 2147-2148)

Bobbie could not remember any visits from their mother while they were in the home; she remembered two visits from their father, one at Easter and one at Christmas. (Vol. XIV, p. 2150)

After two years in the children's home, when Bobbie was seven and Tommy was eight, their mother pulled them out of the

home and took them to live in a two-bedroom rental trailer, where Tommy and their half-brother, Scott, slept in bunkbeds in one bedroom, and Bobbie and her mother slept in the other. (Vol. XIV, pp. 2148, 2150-2151)

Their mother drank and did drugs. (Vol. XIV, pp. 2152, 2164) She would cook for the children when it was convenient, but, if she had something else to do, they were on their own. (Vol. XIV, p. 2153) She would drop the children off at the roller skating rink and leave them there all night and would be drunk and high when she picked them up. (Vol. XIV, pp. 2152-2153)

The children were not allowed to be in the house unless their mother was there, and she would lock them out when she had to go somewhere, sometimes for long periods of time. (Vol. XIV, p. 2153)

Their mother was on welfare. (Vol. XIV, p. 2154) When they lived in Michigan, and Scott’s SSSI check and the children’s child support check would come in, she would leave for anywhere from a few hours to three or four days. (Vol. XIV, p. 2154)

When they lived in Michigan, the children would sometimes take food from the car trunks of neighbors who had just been grocery shopping so they would have something to eat when their mother was not there. (Vol. XIV, p. 2155)

The children were only allowed to have one pair of shoes and one season's worth of clothing at a time; when summer was over, she would get rid of all the summer clothing, even if it was in good condition. (Vol. XIV, pp. 2156-2157) Most of the children's clothing came from Aunt Becky. (Vol. XIV, p. 2156)

One year when the children returned from their yearly summer visit with their aunt in Pennsylvania, they found that their mother had removed all the doors from the house except her own bedroom door and the front and back doors, and was in the process of removing the wall that divided the kitchen from the dining room. (Vol. XIV, pp. 2156-2157) She did this so that "she could make sure nobody was talking about her." (Vol. XIV, pp. 2156-2157)

Their mother only hugged and kissed Tommy and Bobby when she was drunk, not when she was sober. (Vol. XIV, p. 2157; Vol. XV, pp. 2236-2237)

Bobbie recalled an incident when her mom and dad were arguing. (Vol. XIV, pp. 2157-2158) Her mother "had a way about continuing to get in your face[,]" and when she would not stop, her father hit her mother several times. (Vol. XIV, pp. 2157-2158)

There was another incident she and Tommy witnessed where her mom and dad got into an argument and some "cast iron frying pans come flying through the living room." (Vol. XIV, p. 2158)

Their father had a temper, and Bobbie saw him pick Tommy up one time and throw him across the room. (Vol. XIV, pp. 2158-2159)

On another occasion, their mom and dad had gotten into an argument, and the father took a crowbar and "[t]otally destroyed" the mother's yellow station wagon, smashing the windshield and the lights, and told their mom he was going to kill her. (Vol. XIV, pp. 2159-2160) Bobbie could not say how this incident affected Tommy, because he was "like a flat line all the time" except when he was putting up a front; then he would be "laughing and singing and joking and having a good time." (Vol. XIV, p. 2160)

One of her mother's boyfriend's sexually abused Bobbie periodically for a year when Bobbie was eight and Tommy was nine. (Vol. XIV, p. 2161; Vol. XV, pp. 2196-2197) She believed Tommy was aware of it, although they did not discuss it. (Vol. XIV, p. 2161; Vol. XV, pp. 2198-2199) Bobbie believed that the man was doing the same thing to her brothers. (Vol. XIV, pp. 2161-2162) After the abuse, everything changed; Bobbie became quieter than normal, and Tommy "just went inside himself" and "never came back out." (Vol. XIV, pp. 2162-2163) Bobbie attempted suicide when she was 13 or 14 and ended up going to court-mandated counseling. (Vol. XIV, p. 2165-Vol. XV, pp. 2166, 2199)

Their mother kept Scott with her all the time "[b{ecause he didn't have a daddy." (Vol. XIV, p. 2163) Bobbie and Tommy perceived that she favored Scott over them. (Vol. XIV, p. 2162)

Although both Bobbie and Tommy could speak, they signed to one another to communicate. (Vol. XIV, p. 2163) They did not "exactly think like hearing people[,]" their "thought process [was[different." (Vol. XIV, p. 2164) They did not struggle with the words when they were signing; talking was harder. (Vol. XIV, p. 2164) There was no way to express emotions and feelings when signing other than through facial expressions and "body expressions." (Vol. XIV, p. 2164)

For Bobbie's 13th birthday, her mother gave her a case of beer, but she and Tommy had started drinking long before that. (Vol. XV, pp. 2167-2168)

Shortly after Tommy got out of the navy, when he was 18 or 19, he had a son named Christopher and married his girlfriend, Gail. (Vol. XV, p. 2199) Tommy was happy and excited when he had his first child. (Vol. XV, p. 2199) He made a sincere effort to treat his son differently than the way he had been treated by his mom and dad; he wanted to do better. (Vol. XV, pp. 2213-2214)

Tommy became involved with Christine Stogner in Michigan, and they moved to Florida together. (Vol. XV, pp. 2200-2203)

What happened on the morning of December 31, 1996 made no sense to Bobbie; there was nothing about Tommy that, in her mind could explain it, and she had a hard time accepting that he did this. (Vol. XV, p. 2193)

Bobbie summarized her brother's personality this way (Vol. XV, p. 2194):

> He's a good-hearted person. He'd do anything for anybody. He'd give his last dollar. He'd go without food just so that somebody else could eat. If he saw that you were hurting or in pain, he would try to make you laugh to make you forget about it. He always put everybody else before himself, and he never thought that he deserved to put himself before anybody else.

In December, 1996, Jessica Wallace, who was 15 years old at the time, had known Thomas Woodel for four to six months. (Vol. XIV, pp. 2046-2048) Her mother, Pat Mueller, was the manager of the Pizza Hut where he worked. (Vol. XIV, pp. 2047-2048) Ms. Wallace described Mr. Woodel as, "Friendly, outgoing, talkative, kind person[,]" who was "very easy to get along with." (Vol. XIV, pp. 2047, 2063) She never saw him get violent or angry towards anyone. (Vol. XIV, p. 2047)

On the night of the murders, after Mr. Woodel got off work around 9:30 or 10:00, he and Ms. Wallace walked to a 7-11 across the street and bought some beer, probably a quart of Old English Malt Liquor. (Vol. XIV, pp. 2048-2049) When they were walking back, they met three other young people who had alcohol in their

bookbags. (Vol. XIV, pp. 2049-2050) The five of them sat around talking, smoking cigarettes, and drinking beer. (Vol. XIV, p. 2050)

After the quart was done, Mr. Woodel consumed about four or five more beers. (Vol. XIV, p. 2051) It normally took about a 12-pack for Mr. Woodel to get "belligerent," which Ms. Wallace defined as "[l]oss of balance, slurring of the words, singing." (Vol. XIV, p. 2052) On the night in question, when Ms. Wallace left him around 1:00 or 1:30, he was slurring his words, "overly joyed," and singing "Green Acres, however he was not "fully intoxicated." (Vol. XIV, pp. 2051-2053, 2060)

When Ms. Wallace heard that Mr. Woodel had confessed to the instant murders, "it was a big shock." (Vol. XIV, p. 2054) She found it "unbelievable," because he was "not that kind of person." (Vol. XIV, p. 2054)

Leola Kilbourn worked with Tommy and Bobbie Woodel at Pizza Hut. (Vol. XIV, pp. 2067-2069) Tommy was "a very conscientious dependable worker" who was always very kind to Kilbourn and "just a real gentleman." (Vol. XIV, pp. 2069-2070) She described him as "quiet. . .soft-spoken and very intelligent." (Vol. XIV, p. 2076) She never saw him get angry with anyone. (Vol. XIV, p. 2076) The Woodels rented a trailer from Ms. Kilbourn and were very good renters. (Vol. XIV, pp. 2070-2071)

Tommy was really good with Bobbie's little baby girl; "he was always very gentle with her." (Vol. XIV, p. 2071)

Leola Kilbourn's daughter, Lisa Marie Kilbourn, described Tommy Woodel as a "very friendly" person who was "always wanting to help." (Vol. XIV, pp. 2086-2087) She never noticed anything violent or wrong with him. (Vol. XIV, p. 2087) He was very close to his sister, Bobbie, and very helpful with her baby. (Vol. XIV, pp. 2087-2088) When she went to visit Tommy in jail, he spent the whole visit trying to make her life so that she was not crying; he was always worried about other people's feelings. (Vol. XIV, pp. 2088-2089)

Thomas Woodel was 34 years old at the time of his new penalty trial. (Vol. XV, p. 2216) His earliest memory was of living with his great grandmother, Ella, when he was four or five. (Vol. XV, pp. 2216-2217) He did not have any memories of his mother up to that age. (Vol. XV, p. 2218) He remembered being dropped off at the children's home at age five by his dad, Aunt Becky, and great grandma and waiting for them to come back. (Vol. XV, pp. 2217-2219) He cried at first, and wet the bed for the first three or four months. (Vol. XV, pp. 2218-2219) He was punished frequently with the wooden paddle Bobbie had mentioned. (Vol. XV, p. 2219) When the children left the home, they went to live with their mother in a trailer in Charlotte, North Carolina, but were back and forth between her and their father

and their aunt. (Vol. XV, pp. 2225-2226) There were always people staying for a few days or weeks at their mom's house (possibly her boyfriends) or their dad's house (their mother said their father was harboring illegals from Texas and Mexico). (Vol. XV, pp. 2225-226)

There were arguments between Tommy's parents that resulted in the police being called and his dad being taken away. (Vol. XV, p. 2227) He witnessed his father smack (but not punch) his mother. (Vol. XV, pp. 2227-2228) He saw his father in handcuffs more than once. (Vol. XV, p. 2231)

The incident Bobbie described where Tommy was tossed around by his father happened when he was eight or nine and he dropped and broke a mirror belonging to someone else that his father was helping to move. (Vol. XV, p. 2229) On another occasion, his dad destroyed his bike with a sledgehammer and "tossed [him] around a little bit." (Vol. XV, pp. 2229-2230)

Their mother would drink frequently; she kept whiskey in her purse, which Tommy and Scott would find and pour out because they did not like it when she drank. (Vol. XV, pp. 2231-2232) She would drop them off at places such as the library, the park, the mall so that she could go and drink. (Vol. XV, 2234-2236) Sometimes Tommy had to sit next to her in the front seat of the car and hold the steering wheel to keep the car in the lane. (Vol. XV, p. 2236)

When Bobbie was being molested sexually molested at the trailer in Charlotte, Tommy did not know it at the time. (Vol. XV, pp. 2241-2242) Tommy did not believe that he himself was molested. (Vol. XV, p. 2242)

When Tommy was living with his father and Aunt Becky in Pennsylvania, he borrowed his cousin's car and got into an accident in which his girlfriend was injured. (Vol. XV, pp. 2245-2246) He was "booted out" of the house and sent to Michigan, but his mother was in the early stages of a new relationship, and sent him back, where he spent the first several nights on the street. (Vol. XV, p. 2246)

Shortly thereafter, Tommy joined the navy at age 17, but received a general discharge just short of graduating from basic training in San Diego after he went to a store and bought cigarettes and playing cards. (Vol. XV, pp. 2247-2250) He did not want to be kicked out, and tried to convince them to let him start over, to no avail. (Vol. XV, pp. 2249-2250) He returned to Michigan. (Vol. XV, p. 2250)

There he met Gail, who became pregnant. (Vol. XV, p. 2251) Christopher was born and, prodded by his mother, Tommy married Gail in 1989 when he was 19, even though he did not love her. (Vol. XV, pp. 2251-2252) One of the reasons Tommy and Gail broke up was that he found out she was telling other people the baby was not his; she trapped him into marriage in order to get

out of foster care. (Vol. XV, p. 2278) However, Tommy always considered himself to be Christopher's father, if not biologically. (Vol. XV, p. 2279)

Tommy began to see Christina around the summer of 1992, and the two of them eventually moved to Florida. (Vol. XV, pp. 2267-2270)

Tommy began drinking at the age of 11, and continued to drink in Florida, frequently drinking to get drunk. (Vol. XV, p. 2275) He was normally a quiet and reserved person, but liked to talk when he drank. (Vol. XV, p. 2276)

Besides working at Pizza Hut after he came to Florida, Mr. Woodel worked at Publix for two weeks or so, as a stock boy from 5:00 a.m. to 3:00 p.m. (Vol. XV, p. 2282) However, he had to leave that job several days before the instant homicides because his hands had an allergic reaction to the cardboard. (Vol. XV, pp. 2282, 2339)

After working at Pizza Hut on December 30, 1996, Mr. Woodel went with Jessica to a 7-11 and bought a quart or 40-ounce bottle of Old English 800. (Vol. XV, pp. 2287-2288) They encountered three young men sitting at a table near Pizza Hut, and sat talking and drinking beer with them. (Vol. XV, pp. 2288-2294, 2342) After Mr. Woodel and Jessica finished the Old English, one of the other people, a "Canadian dude," offered Mr. Woodel a beer and he accepted. (Vol. XV, p. 2289) Jessica left,

but Mr. Woodel stayed and continued to drink with his new acquaintances. (Vol. XV, pp. 2289-2294) When the beer they had was gone, Mr. Woodel and the man from Canada went to 7-11 and bought a case, then went back later and bought another case. (Vol. XV, pp. 2291-2292) Mr. Woodel was drinking the most of the four people that remained. (Vol. XV, pp. 2292-2293) He may have stopped counting after he drank seven or eight beers after the Old English; he lost count, but assumed he probably drank a case. (Vol. XV, pp. 2310-2311)[7] There was some beer left from the second case. (Vol. XV, p. 2293) Eventually, the party broke up. (Vol. XV, pp. 2293-2294) Mr. Woodel imagined he was still feeling in the "Green Acres" mood. (Vol. XV, p. 2294) He did not have the slightest idea what time it was when he began walking home. (Vol. XV, p. 2294) He sat down outside the gate at Outdoor Resorts and threw up. (Vol. XV, pp. 2294-2295) The man at the gate asked him why he was coming in so late, and he said he was at a "preNew [sic] Year's Eve party." (Vol. XV, pp. 2295-2296) Once he was inside Outdoor Resorts, Mr. Woodel saw Mrs. Moody washing the sliding glass door and approached her; for some reason he "just had to talk to her, find out what time it was." (Vol. XV, pp. 2297-2299) When she approached with the

[7] He told the deputies he only had seven or eight beers because he did not want them to think he was drunk; he had always had a problem admitting his alcohol consumption. (Vol. XV, pp. 2346-2347)

knife, he was surprised and pushed her back and “it was like a whole other side of [him] took over. Feeling upset, feeling angry, being ignored, wanting attention.” (Vol. XV, pp. 2300-2301) He “just lashed out.” (Vol. XV, p. 2301) He hit Mrs. Moody with the toilet tank lid in order to subdue her and prevent her from attacking him. (Vol. XV, pp. 2301-2302) When he hit her the second time with part of the lid, he “was mad by then[;]” mad at being alone. (Vol. XV, p. 2303) A lot of feelings came out that he had been suppressing, “angry at symbolized family members, take it out on her.” (Vol. XV, pp. 2303-2304) When Mrs. Moody was on the bed, she was rolling back and forth, and Mr. Woodel was standing there, frozen, wobbling back and forth, with the knife out in front of him. (Vol. XV, pp. 2305-2306; Vol. XVI, p. 2366-2367) That is when many of the defensive wounds occurred. (Vol. XV, p. 2306) Mr. Woodel remembered taking off Mrs. Moody’s nightgown and cutting off her panties, but did not know why he did that; he did not remember tying the panties in a knot. (Vol. XV, p. 2312) He remembered pulling the sheet or mattress cover over her for “warmth, cover the indecency. (Vol. XV, p. 2312) He also remembered dousing her with the water and /or cleaning solution that was in her pail, because that was how you wake up someone who has passed out. (Vol. XV, pp. 2311-2312)

When he encountered Mr. Moody as he was leaving and thrust with the knife several times, it was “instant reflex, gut instinct.” (Vol. XV, p. 2307) Mr. Woodel exited the trailer, then came back in through the front door and prodded Mr. Moody with the knife, “in case he. . . jumped up at” Mr. Woodel. (Vol. XV, p. 2308) That is how the wounds occurred to Mr. Moody’s “derriere.” (Vol. XV, p. 2308) Mr. Woodel unbuckled Mr. Moody’s belt and pulled down his pants in order to remove his wallet. (Vol. XV, p. 2309) He took the wallet because he noticed it, but Mr. Woodel had money, cash and two paychecks he had not cashed, totaling close to $1,000. (Vol. XV, pp. 2309-2310)

Mr. Woodel eventually placed the murder weapon behind a writing desk in the bedroom because his son was coming to visit, and he was concerned that Christopher might find it and hurt himself. (Vol. XV, pp. 3216-2318)

For awhile after the homicides, Mr. Woodel blocked out what had happened; it was “a shock to [his] system.” (Vol. XV, p. 2320) But, as more attention was given to it, he realized he had done it, he had “screwed up again.” (Vol. XV, p. 2320)

Mr. Woodel felt guilt, remorse, “shame, pity, hatred loathing” over what happened. (Vol. XV, p. 2324) He used to tell himself that, if he could only get a second chance, he “could possibly prove that this was a once-in-a-lifetime thing.” (Vol. XV, pp. 2324-2325)

Mr. Woodel agreed to talk with the victims' family; he thought he could explain, and tried to tell them that the Moodys were not targeted, and there was not any revenge or any special reason why this happened. (Vol. XV, pp. 2325-2326; Vol. XVI, p. 2388)

During his seven and one-half years of incarceration, Mr. Woodel had received only one DR, or Disciplinary Report, for having contraband (too many stamps and a popsicle stick). (Vol. XV, pp. 2326-2328, 2334-2335)

Mr. Woodel believed in God and asked God to forgive him for what he did. (Vol. XV, p. 2326) He wore a cross as a symbol of God's love and forgiveness. (Vol. XV, p. 2326)

Dr. Henry Dee was a clinical psychologist and clinical neuropsychologist who examined various information pertaining to Tommy Woodel's case and interviewed several of his relatives and coworkers, and met with Tommy himself on at least seven occasions, the first one being on September 1, 1998. (Vol. XVI, pp. 2389, 2392-2393, 2427-2428) Dr. Dee explained how hearing children of deaf parents grow up in a unique situation where "they don't fully belong to either the hearing culture of the deaf culture." (Vol. XVI, pp. 2395-2399) When young, such children generally are around deaf people, because their parents are, but must eventually venture out into the hearing world, which can be quite a cultural shock. (Vol. XVI, pp. 2395-2399)

When Dr. Dee asked Tommy Woodel to interpret for him what he had been signing, Dee “discovered that there was a richness of communication and depth of feeling that he was expressing there that he couldn’t express verbally. His verbalizations [were] often incomplete and almost bear [sic] in content.” (Vol. XVI, p. 2399)

The fact that the children were shuttled back and forth between mother, father and various relatives so often, and the fact that their mother often left them on their own, led to the conviction on the part of the children that they were not loved, and to chronic depression and low self-esteem. (Vol. XVI, pp. 2408-2409)

Scott, who was older than Tommy, was the favorite child, which “certainly accentuated {Tommy’s} feeling of not being loved and not being wanted by his parents.” (Vol. XVI, pp. 2416-2418) Scott was frequently in trouble for shoplifting, petit theft, retail theft, and he “instructed his younger brother in the fine skills of shoplifting, theft and so forth.” (Vol. XVI, p. 2417)

Tommy was happy while he was in the navy; he seemed to have found a place where he could belong. (Vol. XVI, pp. 2447-2448)

The complete neuropsychological test battery that Dee administered did not show any compelling evidence of brain

damage. (Vol. XVI, p. 2412) His IQ was “103 or the 58th percentile.” (Vol. XVI, p. 2434)

One of the personality tests Dee administered did not show any diagnosable mental illness, but did indicate guilt proneness and certain emotional instability. (Vol. XVI, pp. 2412-2413) He was not a psychopath, nor was he psychotic or schizophrenic. (Vol. XVI, pp. 2426, 2432-2433)

Nothing in Dee’s testing, examination of Tommy, or discussions with Tommy would indicate that he had a violent nature. (Vol. XVI, p. 2414)

Dee had testified many times in Department of Children and Family hearings, and he found Tommy Woodel’s childhood to have been “[f]illed with some of the most spectacular neglect and abuse” that he had ever experienced. (Vol. XVI, p. 2414) And yet Tommy consistently defended his mother because she was the only mother he had and he loved her, despite the abuse. (Vol. XVI, pp. 2415-2416, 2418)

Dr. Dee could not provide a rational explanation for what happened the morning of December 31, 1996; he was “just bewildered as well as everybody else.” (Vol. XVI, pp. 2421-2422) These murders seemed “really out of character” for Tommy Woodel, who did not “have a history of violence.” (Vol. XVI, p. 2422) Usually when someone murders one or two people “there have been lots of violent incidents in the past. . . towards inanimate

objects, towards loved ones and so forth[,]" but Dr. Dee "[j]ust didn't get anything like that" in this case. (Vol. XVI, p. 2422) Nor did he get "the kind of glibness and self-serving stories." (Vol. XVI, p. 2423)

Dr. Dee was of the opinion that Tommy had guilt, had remorse about what happened, but could not bring it out because of his "grave difficulties in expressing any feelings." (Vol. XVI, pp. 2423-2424)

SUMMARY OF THE ARGUMENT

Two potential jurors should not have been excused for cause from serving on Thomas Woodel's jury because they were not fluent in the English language. An interpreter could have been provided for them, just as interpreters are provided for hearing-impaired jurors. Their excusal violated not only the jurors' right to an opportunity to serve on the jury, but also Mr. Woodel's constitutional right to a jury drawn from a fair cross-section of the community.

Thomas Woodel's jury should not have been permitted to consider testimony from five-time convicted felon Arthur White that Mr. Woodel supposedly admitted to Mr. White that he had "fondled" Bernice Moody. This testimony was irrelevant; Mr. Woodel was not charged with any sexual offense in this case, and it was not pertinent to any of the aggravating circumstances relied on by the State in this matter. Mr. White's testimony could only have served improperly to further cast Mr. Woodel in a bad light and prejudice him in the eyes of his jurors. Although defense counsel failed to object, this Court should consider the erroneous admission of Mr. White's testimony as fundamental error, or the failure to object as ineffective assistance of trial counsel on the face of the record.

The aggravating circumstance of "particularly vulnerable due to advanced age or disability" did not apply to Bernice

Moody, and the jury should not have been instructed on this factor, nor should it have been found to exist by the trial court. While Mrs. Moody may have been 74, she was very active and energetic, and had mostly recovered from a fracture she had sustained to her arm several months before her death, except for some loss of strength in the arm.

A sentence of death for Thomas Woodel is not proportionally warranted. One of the aggravating circumstances found by the trial court should be stricken, and the remaining three aggravators are counterbalanced by the four statutory and 10 non-statutory mitigating factors cited by the trial judge. In light of Mr. Woodel's abusive and neglected childhood, his background as a hearing child of deaf parents, and his lack of any violent history, his life should be spared, as five of his jurors recommended. The killing of Bernice Moody was a complete aberration, totally inconsistent with Mr. Woodel's character, and he is highly unlikely ever to reoffend.

Pursuant to Ring v. Arizona, 122 S.Ct. 2428 (2002), Florida's scheme of capital punishment violates principles of due process of law and the right to trial by jury, and Mr. Woodel's sentence of death imposed under such a scheme cannot be permitted to stand.

Execution by lethal injection constitutes cruel and unusual punishment in violation of the Eighth Amendment to the United

States Constitution under the current protocols established by the State of Florida and through the use of the three-chemical sequence used by the State.

ARGUMENT

ISSUE I

THE COURT BELOW ERRED IN EXCUSING FOR CAUSE TWO JURORS WHO WERE NOT SUFFICIENTLY FLUENT IN THE ENGLISH LANGUAGE TO PARTICIPATE IN THOMAS WOODEL'S NEW PENALTY TRIAL WITHOUT THE AID OF AN INTERPRETER, IN VIOLATION OF THE SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES AND ARTICLE I, SECTIONS 2, 9, 16, AND 22 OF THE CONSTITUTION OF THE STATE OF FLORIDA.

At least two potential jurors for Thomas Woodel's new penalty trial, Raphael Castillo and Modesto Casanova, were excused by the court for cause due to their inability to speak and understand the English language sufficiently to serve as jurors without the assistance of an interpreter; both potential jurors spoke Spanish as their primary language. (Vol. V, pp. 320-325, 332-335; Vol. VIII, pp. 989-994) When Casanova was excused, defense counsel lodged a "constitutional objection," noting that Modesto was the second potential juror of Hispanic descent that had been lost, and arguing that Woodel was "being deprived of a cross-section of his community. . ." (Vol. VIII, pp. 993-994) The trial court seemed to understand that these jurors had the right to serve but, as a practical matter, could not be permitted to serve, because allowing an interpreter into the jury room when it became time to deliberate was prohibited.

Prior to the jury being sworn, defense counsel renewed his objection to the elimination of the Hispanic jurors, noting that a "constitutional issue" was involved because his client could not "have a full cross-section of the community because a person doesn't speak the language." (Vol. IX, pp. 1158-1159)

The court's ruling implicated both the right of the dismissed jurors to serve on a jury and Thomas Woodel's right to have a jury comprised of people representing a fair cross-section of the community.

One must begin with a look at the Florida Statutes which govern the qualifications of jurors and which persons are disqualified or may excused from jury service. Section 40.01 of the Florida Statutes provides for the qualifications of jurors as follows:

> Jurors shall be taken from the male and female persons at least 18 years of age who are citizens of the United States and legal residents of this state and their respective counties and who possess a driver's license or identification card issued by the Department of Highway Safety and Motor Vehicles pursuant to chapter 322 or who have executed the affidavit prescribed in s. 40.011.

Section 40.01 does not set forth any requirement of proficiency in the English language in order for one to be qualified to sit as a juror.

Section 40.013 of the Florida Statutes sets forth certain categories of persons who are not permitted to serve as jurors (such as persons under prosecution for a crime or who have been convicted of felonies without restoration of civil rights, certain government officials, and persons interested in an issue to be tried) and other categories of persons who may be excused (such as an expectant mother or a parent who is not employed full-time and has custody of a child under 6 years of age, a practicing attorney or physician, etc.). Section 913.03 of the Florida Statutes lists the only grounds for which a potential juror may be excused for cause, as follows:

> **913.03 Grounds for challenge to individual jurors for cause.—**A challenge for cause to an individual juror may be made only on the following grounds:
>
> (1) The juror does not have the qualifications required by law;
>
> (2) The juror is of unsound mind or has a bodily defect that renders him or her incapable of performing the duties of a juror, except that, in a civil action, deafness or hearing impairment shall not be the sole basis of a challenge for cause of an individual juror;
>
> (3) The juror has conscientious beliefs that would preclude him or her from finding the defendant guilty;
>
> (4) The juror served on the grand jury that found the indictment or on a coroner's jury that inquired into the death of a person whose death is the subject of the indictment or information;
>
> (5) The juror served on a jury formerly sworn to try the defendant for the same offense;

(6) The juror served on a jury that tried another person for the offense charged in the indictment, information, or affidavit;

(7) The juror served as a juror in a civil action brought against the defendant for the act charged as an offense;

(8) The juror is an adverse party to the defendant in a civil action, or has complained against or been accused by the defendant in a criminal prosecution;

(9) The juror is related by blood or marriage within the third degree to the defendant, the attorneys of either party; the person alleged to be injured by the offense charged, or the person on whose complaint the prosecution was instituted;

(10) The juror has a state of mind regarding the defendant, the case, the person alleged to have been injured by the offense charged, or the person on whose complaint the prosecution was instituted that will prevent the juror from acting with impartiality, but the formation of an opinion or impression regarding the guilt or innocence of the defendant shall not be a sufficient ground for challenge to a juror if he or she declares and the court determines that he or she can render an impartial verdict according to the evidence;

(11) The juror was a witness for the state or the defendant at the preliminary hearing or before the grand jury or is to be a witness for eight party at the trial;

(12) The juror is a surety on defendant's bail bond is the case.

In Porter v. State, 160 So.2d 104, 109 (Fla. 1964), this Court wrote that ". . .every citizen, not exempt or disqualified, has the right not to be denied the opportunity of jury service arbitrarily or without sound basis." Neither

section 40.013 nor section 913.03 provides that prospective jurors who are not fluent in English are either disqualified or exempt, or otherwise subject to excusal.

In Morales v. State, 768 So.2d 475 (Fla. 2d DCA 2000), the appellate court found no error in the circuit court clerk's excusal of prospective jurors who asked to be excused on the grounds that they could not understand English. In Mr. Woodel's case, Prospective Juror Rafael Castillo did not ask to be excused; he expressed a willingness to return the following day if an interpreter could be provided. (Vol. V, pp. 320-325) However, when the court learned that no interpreter was available, she then excused Mr. Castillo. (Vol. V, pp. 333-334) Prospective Juror Modesto Casanova did ask to be excused, after saying that it would be difficult for him to understand without an interpreter. (Vol. VIII, p. 992) His responses to the court's questioning suggest that he may have been willing to serve if an interpreter was available to assist him.

In Dilorenzo v. State, 711 So.2d 1362 (Fla. 4th DCA 1998), the appellate court found reversible error in the trial court having permitted an interpreter to be present in the jury room during deliberations in order to accommodate a Spanish-speaking juror, over defense objections. The Dilorenzo court did note that there is one exception to the prohibition against having non-jurors present in the jury room during deliberations: "In

1993, section 90.6063(2), Florida Statutes (1993)[footnote omitted] was amended to afford to a deaf person called to jury service the assistance of an interpreter in the jury room during deliberations." Id. at 1363.

This dichotomy in allowing interpreters into the jury deliberation room to assist deaf jurors, but not allowing interpreters for Spanish-speaking jurors, was discussed at some length in Using Interpreters to Assist Jurors: A Plea for Consistency by Colin A. Kisor, USNR, 22 Chicano-Latino L. Rev. 37 (Spring 2001). The author noted that at least

> [o]ne court has applied a Batson[8] equal protection analysis [footnote omitted] to prevent a peremptory challenge of a deaf juror solely based on her inability to hear. [Footnote omitted.] In People v. Green,[9] a New York trial court ruled that a prosecutor's use of a peremptory challenge to strike a deaf juror because of her disability "was not rational and violated the juror's right to equal protection under New York State's Constitution."[10] [Footnote omitted.] The court in Green decided the case under an equal protection analysis, and noted that the recently enacted ADA would also prohibit exclusion of deaf jurors once it became effective. [Footnote omitted.]

The author wrote in his conclusion:

> If failing to provide an interpreter for a deaf juror violates his or her constitutional right to equal protection under the law, it seems logical that providing an interpreter for a

[8] Batson v. Kentucky, 476 U.S. 79 (1986).
[9] 561 N.Y.S.2d 130, 131 (Westchester Co. Ct. 1990).
[10] People v. Green, 561 N.Y.S.2d 130, 133 (Westchester Co. Ct. 1990).

> Spanish speaker would also be required, especially if one views deaf culture as a linguistic minority rather than a handicap. Given that interpreters are already allowed in some instances, any equal protection analysis which precludes the exclusion of one type of citizen dependent upon an interpreter, but permits the exclusion of another citizen who requires a different interpreter is neither equal nor protective.

Colin A. Kisor, USNR, Using Interpreters to Assist Jurors: A Plea for Consistency, 22 Chicano-Latino L. Rev. 37, 53 (Spring 2001).

In Hernandez v. New York, 500 U.S. 352 (1991), the Supreme Court of the United States upheld the petitioner's convictions against a Batson[11] challenge where two Latinos were struck from the jury panel due to their inability to follow the court interpreter's version of what was being said by the witnesses. Hernandez does not hold that prospective jurors may be struck based on their language skills alone. Rather, Hernandez signals an extension of Batson and Powers v. Ohio, 499 U.S. 400 (1991) by indicating that it would prohibit exclusion from a petit jury on the basis of national origin, in addition to race. See Alen v. State, 596 So.2d 1083, 1085 (Fla. 3d DCA 1992) (In Hernandez, the Supreme Court "held that under the Equal Protection Clause, Hispanics cannot be peremptorily challenged on the basis of their race or ethnicity." Significantly, the Hernandez Court wrote that "a policy of striking all who speak a given language

[11] Batson v. Kentucky, 476 U.S. 79 (1986).

without regard to the particular circumstances of the trial or the individual responses of the jurors, may be found by the trial judge to be a pretext for racial discrimination." Hernandez, 500 U.S. at 371-372.

Hispanics who are not fluent in English may be viewed as a subgroup of all Hispanics. Both groups should be accorded equal constitutional protections.

In Gibson v. Zant, 705 F.2d 1543, 1546 (11th Cir. 1983), the court observed that "[t]he importance of non-discriminatory jury composition is magnified in capital cases[.]"

In Taylor v. Louisiana, 419 U.S. 522, 527 (1975), the Supreme Court of the United States stressed that "the American concept of a jury trial contemplates a jury drawn from a fair cross section of the community." Indeed, the fair cross section requirement is "fundamental to the jury trial guaranteed by the Sixth Amendment[.]" Id. at 697-698. Exclusion from Thomas Woodel's trial of jurors who were not fluent in English, when interpreters could have been provided for these jurors to overcome any language barriers to their service, deprived Mr. Woodel of the fair cross section of the community for the selection of his jury, in violation of his constitutional rights. Particularly in a state such as Florida, with its large Hispanic population, it is vital to the fair cross section requirement that those who speak primarily Spanish be included

in the jurors available to serve. Because such jurors were excluded from Mr. Woodel's penalty trial, he must be granted a new one.

As Mr. Woodel's issue involves matters of law, the standard of review is de novo. State v. Glatzmayer, 789 So.2d 297 (Fla. 2001); State v. Dempsey, 916 So.2d 856 (Fla. 2d DCA 2005); Knarich v. State, 932 So.2d 257 (Fla. 2d DCA 2005).

ISSUE II

APPELLANT'S JURY SHOULD NOT HAVE BEEN PERMITTED TO HEAR AND CONSIDER IRRELEVANT AND PREJUDICIAL TESTIMONY FROM STATE WITNESS ARTHUR WHITE.

Before State Prisoner Arthur White testified in front of the jury, the State made a proffer, not to determine the admissibility of the testimony, but because the prosecutor had concerns about whether Mr. White was willing to testify at all. (Vol. XII, pp. 1635-1653) Apparently, Mr. White was concerned about losing gain time while he was in Polk County to testify, and did not want to testify because he felt the prosecutor had not followed through on a promise he made regarding gain time after Mr. White had testified previously in this case. However, the matter was ironed out to Mr. White's satisfaction, and he testified to Thomas Woodel's jury regarding statements Mr. Woodel made to him about this case when they were in the same dorm together in the Pinellas County Jail in 1997. (Vol. XII, pp. 1653-1665)

Much of Mr. White's testimony regarding what Thomas Woodel told him about this case was essentially cumulative and added little, if anything to the jury's understanding of this matter; one wonders why the State bothered to put Arthur White on the stand. A portion of his testimony, however, was irrelevant and highly inflammatory, namely Mr. Woodel's statements to Mr. White

that he had “drug” Bernice Moody into the bedroom and “fondled” her. “Relevant evidence is evidence tending to prove or disprove a material fact.” §90.401, Fla. Stat. (2006). Mr. White’s testimony did not tend to prove or disprove any material fact that was at issue during Thomas Woodel’s penalty trial. Mr. Woodel was not charged with having committed any sexual offense against Bernice Moody, nor did Mr. White’s testimony relate to any of the aggravating circumstances the State was relying upon in support of a sentence of death. Adducing this testimony was tantamount to injecting a non-statutory aggravating circumstance into the proceedings. See Johnson v. State, 438 So.2d 774, 779 (Fla. 1983) (“The list of statutory aggravating circumstances is exclusive. . .”) The only purpose that could have been served by the introduction of this evidence of sexual misconduct was to improperly inflame the jury and prejudice it against Thomas Woodel. It also may have negatively affected the way the jury viewed Mr. Woodel’s own testimony in support of a life sentence. As the vote for death for Bernice Moody’s killing was very close, 7-5, the recommendation cannot be considered reliable. If only one additional person had voted for life, the vote would have been a 6-6 tie, a life recommendation. Rose v. State, 787 So.2d 786 (Fla. 2001) There is a danger that that one person may have been swayed by the improper testimony, skewing the vote.

"Trial court rulings on the admissibility of evidence are generally reviewable for abuse of discretion. [Citation omitted.]" Hildwin v. State, ____ So.2d ____, 2006 WL 3629859 (Fla. 2006). Unfortunately, the court below was not given an opportunity to rule on the admissibility of the evidence in question, as defense counsel failed to lodge an objection. However, under all the facts and circumstances of this case, Mr. Woodel urges this court to find the admission of Mr. White's testimony to constitute fundamental error, which is error that is "basic to the judicial decision under review and equivalent to a denial of due process. [Citations omitted.]" State v. Johnson, 616 So.2d 1, 3 (Fla. 1993). In the alternative, counsel's failure to object should be considered ineffective assistance of trial counsel on the face of the record. See Lambert v. State, 811 So.2d 805, 807 (Fla. 2d DCA 2002) (While ineffective assistance of trial counsel generally may not be raised on direct appeal, the appellate court will consider such a claim where, as here, the ineffectiveness is obvious on the face of the appellate record, the prejudice caused by the conduct is indisputable, and the tactical explanation for the conduct is inconceivable.")

Thomas Woodel must be granted a new penalty trial before a new jury.

ISSUE III

THE EVIDENCE PRESENTED BELOW WAS INSUFFICIENT TO PROVE THAT BERNICE MOODY WAS PARTICULARLY VULNERABLE DUE TO ADVANCED AGE OR DISABILITY.

The court below instructed Thomas Woodel's new penalty phase jurors that they could consider in aggravation that "the victim of the capital felony was particularly vulnerable due to advanced age or disability" (Vol. XVII, p. 2639) and found this factor to exist as the fourth and final aggravating circumstance in her order sentencing Thomas Woodel to death for killing Bernice Moody, where she wrote (Vol. III, p. 396):

> 4. **The victim of the capital felony was particularly vulnerable due to advanced age or disability.**
>
> Bernice Moody was 74 years of age when she died.
> She wore glasses, had limited range of motion of her left arm due to a shoulder injury in the spring of the year resulting in loss of arm strength.
> Dr. Steve Nelson, the Medical Examiner, testified that the toxicology screen indicated that the drugs she had ingested were not prescription drugs and may have been for arthritis, general pain and allergies.
>
> Based on the evidence the court finds that this aggravator was proved beyond a reasonable doubt and gives it moderate weight.

The aggravating circumstance in question, found in section 921.141(5)(m) of the Florida Statutes, is relatively new, having been enacted into law only a few months before the instant

homicides. See State v. Hootman, 709 So.2d 1357 (Fla. 1998). As defense counsel argued below at the jury charge conference, the evidence was insufficient to justify using this aggravator against Thomas Woodel (Vol. XVI, pp. 2465-2466):

> MR. COLON [defense counsel]: Addressing number four, the victim of the capital felony was particularly vulnerable due to advanced age or disability. Even though they were of advanced age, it appears that based on the testimony of relatives through their victim impact statements as well as neighbors and as pertaining to their abilities and activities, it doesn't appear that they were vulnerable.
>
> They may have been of advanced age and they may have had some disabilities, but apparently none of these, the age or disability, made them vulnerable at all. Quite the contrary. As someone indicated in testimony, they were pretty active, used to run circles around them, that kind of thing. Hard time keeping up with Mrs. Moody at Disney. She was way ahead of them.
>
> Other testimony in that nature that seemed to indicate that for their age they were not acting their age, they were acting a lot younger.

Appellant would also note that the injury to Mrs. Moody's arm had occurred months before her death, and, by that time, according to her daughter, she was "back to normal other than the fact that she lost a lot of strength in that arm." (Vol. X, p. 1329) And good friends of the Moodys, Thomas and Kathryn Collick, who knew them very well, were not aware of Bernice Moody having any physical disabilities. She was able to walk in a normal fashion. (Vol. XII, pp. 1706-1707) Thomas Collick did not know of any difficulty Mrs. Moody had in terms of climbing

things or moving around, using her hands or legs, anything at all that would cause her any difficulty in moving. (Vol. XII, p. 1707) Similarly, Kathryn Collick testified that Bernice Moody did not have any disabilities in terms of hearing or ability to walk around or move her arms or things of that nature. (Vol. XII, p. 1723)

For these reasons, this aggravating circumstance should not have been submitted to the jury or found by the sentencing judge to have been proven. Thomas Woodel must receive a new penalty trial. See Bonifay v. State, 626 So.2d 1310 (Fla. 1993) and Omelus v. State, 584 So.2d 563 (Fla. 1991).

Although in Woodel's previous appeal this Court upheld the finding of this aggravating circumstance (Vol. II, pp. 319-321), the Court should consider this issue anew in this appeal because of the "clean slate" rule, Preston v. State, 607 So.2d 404 (Fla. 1992), and because some of the evidence was different at Woodel's new penalty trial than it was at his first penalty phase.

As this issue presents matters of law, a de novo standard of review should be applied. State v. Dempsey, 916 So.2d 856 (Fla. 2d DCA 2005); Knarich v. State, 932 So.2d 257 (Fla. 2d DCA 2005). But see Willacy v. State, 696 So.2d 693, 695 (Fla. 1997) (this Court's "task on appeal is to review the record to determine whether the trial court applied the right rule of law

for each aggravating circumstance and, if so, whether competent substantial evidence supports its finding. [Footnote omitted.]”

ISSUE IV

A SENTENCE OF DEATH FOR THOMAS WOODEL IS NOT PROPORTIONALLY WARRANTED.

Mr. Woodel's issue presents a question of law, and so the standard of review is de novo. State v. Glatzmayer, 789 So.2d 297 (Fla. 2001); State v. Dempsey, 916 So.2d 856 (Fla. 2d DCA 2005); Knarich v. State, 932 So.2d 257 (Fla. 2d DCA 2005).

This Court conducts a proportionality review of all death sentences. Tillman v. State, 591 So.2d 167 (Fla. 1991). The ultimate punishment—a sentence of death—is reserved for only the most aggravated and least mitigated of first degree murders. Cox v. State, 819 So.2d 705 (Fla. 2002) Mr. Woodel's is not such a case.

Thomas Woodel would first note that, although the court below found four aggravating circumstances as to the murder of Bernice Moody, the fourth aggravator, that the victim was particularly vulnerable due to age or disability, was not supported by the evidence and should be stricken. (Please see Issue III above.) The remaining three aggravating circumstances are counterbalanced by four statutory and 10 non-statutory mitigating circumstances as found by the trial court.

Perhaps the most compelling mitigation concerned Mr. Woodel's childhood, with its neglect and abuse, shuttling of the children back and forth between parents and relatives with the

resulting extreme instability of Tommy Woodel's homelife as a youngster, and his placement in a children's home even though he had parents. Testimony of Mr. Woodel's lay witnesses was enhanced by Dr. Dee's expert explanation as to what Mr. Woodel went through growing up in a nether region between the hearing and the deaf, and the cultural shock that occurred when he finally had to venture out into the hearing world. Dr. Dee also found Mr. Woodel's childhood to have been "[f]illed with some of the most spectacular neglect and abuse" that the doctor had ever experienced. (Vol. XVI, p. 2414)

Mr. Woodel has absolutely no history of violence in his past. All the witnesses who testified agreed that the senseless murder of the Moodys was an act totally out of character for Mr. Woodel. Even the sheriff's deputies who investigated this matter seemed to agree with this assessment. Detective Ann Cash did not detect anything in Mr. Woodel's personality that would indicate that he was capable of such violent acts. There was not of the "anger or hatred" that murder suspects would often express. (Vol. XIII, p. 1934) Perhaps, as Mr. Woodel's own testimony suggested, all the years of frustration at the way he was treated by his parents, and his feeling that he did not belong or fit in anywhere, led to an explosion, a lashing out at Bernice Moody in place of a lashing out at his parents. There really does not seem to be a rational explanation for what

happened in that trailer at Outdoor Resorts of America. At any rate, the evidence concerning Mr. Woodel's background, personality, and temperament does show that he is highly unlikely ever to commit such an act again.

When it engages in proportionality review, this Court accepts the jury's recommendation. Duest v. State, 855 So.2d 33, 47 (Fla. 2003). In this case, however, the jury's verdict recommending that Thomas Woodel be put to death for the murder of Bernice Moody was by the barest of majorities, 7-5. And the jury returned a life recommendation as to the killing of Clifford Moody. Thus, even as to the killing of Mrs. Moody, five jurors found something in Thomas Woodel that makes his life worth saving. When this Court considers all the facts and circumstances of this case, it should reach the same conclusion as those five jurors.

ISSUE V

THOMAS WOODEL IS ENTITLED TO A LIFE SENTENCE BECAUSE THE FLORIDA DEATH PENALTY STATUTE VIOLATED HIS DUE PROCESS RIGHT AND HIS RIGHT TO A JURY TRIAL WHICH REQUIRE THAT A DEATH-QUALIFYING AGGRAVATING CIR-CUMSTANCE BE FOUND BY THE JURY BEYOND A REASONABLE DOUBT.

Mr. Woodel's issue presents a question of law, and so the standard of review is de novo. State v. Glatzmayer, 789 So.2d 297 (Fla. 2001); State v. Dempsey, 916 So.2d 856 (Fla. 2d DCA 2005); Knarich v. State, 932 So.2d 257 (Fla. 2d DCA 2005).

In Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348, 2355 (2000) and Jones v. United States, 526 So.2d 227, 243 n. 6 (1999), the United States Supreme Court held that any fact (other than prior conviction) that increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt. Basing its decision both on the traditional role of the jury under the Sixth Amendment and principles of due process, the Apprendi Court observed:

> If a defendant faces punishment beyond that provided by statute when an offense is committed under certain circumstances but not others, it is obvious that both the loss of liberty and the stigma attaching to the offense are heightened, it necessarily follows that the defendant should not-at the moment the state is put to proof of those circumstances-be deprived of protections that have until that point unquestionably attached.

530 S.Ct. at 2359. The Apprendi Court held that the same rule applies to state proceedings pursuant to the Fourteenth Amendment. 530 S.Ct. at 2355. These essential protections include (1) notice of the State's intent to establish facts that will enhance the defendant's sentence; and (2) a jury's determination that the State has established these facts beyond a reasonable doubt.

In Jones, 526 U.S. at 250-251, the Court distinguished capital cases arising from Florida.[12] In Apprendi, 530 S.Ct. at 2366, the Court noted that it had previously

> rejected the argument that the principles guiding our decision today render invalid state capital sentencing schemes requiring judges, after a jury verdict holding a defendant guilty of a capital crime, to find specific aggravating factors before imposing a sentence of death. Walton v. Arizona, 497 U.S. 639, 647-649. . .(1990)[.]

Thus, it appeared that the principles of Jones and Apprendi did not apply to state capital sentencing procedures. See Mills v. Moore, 786 So.2d 532,536-38 (Fla.), cert. denied, 532 U.S. 1015 (2001). In Ring v. Arizona, 536 U.S. 584, 122 S.Ct. 2428 (2002), however, the United States Supreme Court overruled Walton v. Arizona, and held that the Sixth and Fourteenth Amendments to the United States Constitution require the jury to

[12] Those cases were Spaziano v. Florida, 468 U.S. 447 (1984) and Hildwin v. Florida, 490 U.S. 638 (1989).

decide whether a death qualifying aggravating factor has been proven beyond a reasonable doubt.

A defendant convicted of first-degree murder may not be sentenced to death without an additional finding. At least one aggravator must be found as a sentencing factor. Like the hate crimes statute in Apprendi, Florida's capital sentencing scheme exposes a defendant to enhanced punishment—death rather than life in prison—when a murder is committed "under certain circumstances but not others." Apprendi, 120 S.Ct. at 2359. This Court has emphasized that "[t]he aggravating circumstances in Florida law 'actually define those crimes. . .to which the death penalty is applicable. . ." State v. Dixon, 283 So.2d 1, 8 (Fla. 1973), cert. denied sub nom. Hunter v. Florida, 416 U.S. 943 (1974).

Thomas Woodel was sentenced to death pursuant to section 921.141, Florida Statutes (2004), which does not require a jury finding that any specific aggravating factor exists. Section 921.141(2) governs the advisory sentence rendered by the jury in this case and provides as follows:

> (2) ADVISORY SENTENCE BY THE JURY.—After hearing all the evidence, the jury shall deliberate and render an advisory sentence to the court, based on the following matters:
> (a) Whether sufficient aggravating circumstances exist as enumerated in subsection (5);
> (b) Whether sufficient mitigating circumstances exist which outweigh the mitigating circumstances found to exist; and

> (c) Based on these considerations whether the defendant should be sentenced to life imprisonment or death.

On its face, this statute does not require any express finding by the jury that a death qualifying aggravating circumstance has been proven. Moreover, this Court has never interpreted this statute to require the jury to make findings that specific aggravating circumstances have been proven. See Randolph v. State, 562 So.2d 331, 339 (Fla.), cert. denied, 498 U.S. 992 (1990); Hildwin v. Florida, 490 U.S. 638, 639 (1989). Consequently, the statute plainly violates the Sixth and Fourteenth Amendment requirements of Jones, Apprendi, and Ring, and is unconstitutional on its face.

Mr. Woodel's case illustrates how section 921.141 violates the requirement that the jury must find a death qualifying aggravating circumstance. Pursuant to section 921.141, the jury was instructed to consider four aggravating circumstances as to Bernice Moody's death (Vol. XVII, pp. 2637-2639): 1) prior conviction of a capital felony; 2) the homicide was commited while Mr. Woodel was engaged in the commission of or flight after committing the crime of burglary; 3) the crime was especially heinous, atrocious, or cruel; 4) the victim was particularly vulnerable due to advanced age or disability.[13]

[13] The jury was permitted to also consider a fifth aggravator—that the crime was committed for the purpose of avoiding or

The judge instructed the jury that it was their duty to render to the court an advisory sentence based upon their determination as to whether sufficient aggravating circumstances existed to justify imposition of the death penalty, and whether sufficient mitigating circumstances existed to outweigh any aggravating circumstances found to exist. (Vol. XVII, pp. 2636-2637) The jurors were further instructed that, if they found sufficient aggravating circumstances existed, it would then be their duty to determine whether mitigating circumstances existed that outweighed the aggravating circumstances (Vol. XVII, p. 2639), and that, if one or more aggravating circumstances was established, the jury

> should consider all the evidence tending to establish one or more mitigating circumstances and give that evidence such weight as you feel it should receive in reaching your conclusion as to the sentence that should be imposed.

(Vol. XVII, pp. 2641-2642)

The jurors were instructed that it was not necessary that the advisory sentence of the jury be unanimous. (Vol. XVII, p. 2642) They were never instructed that all must agree that at least one specific death-qualifying aggravating circumstance existed—and that it must be the same circumstance. Thus, the sentencing jury was not required to make any specific findings

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preventing a lawful arrest—as to Clifford Moody only. (Vol. XVII, p. 2639)

regarding the existence of particular aggravators, but only to make a recommendation as to the ultimate question of punishment.[14]

The jury ultimately returned an advisory sentence recommending by a vote of seven to five that the court impose the death penalty for the murder of Bernice Moody. The advisory sentence did not contain a finding as to which specific aggravating circumstance(s) was (were) found to exist. (Vol. III, p. 364; Vol. XVII, p. 2649)

It is likely in any case that some of the jurors will find certain aggravators which other jurors reject. What this means is that a Florida judge is free to find and weigh aggravating circumstances that were rejected by a majority, or even all of the jurors. The sole limitation on the judge's ability to find and weigh aggravating circumstances is appellate review under the standard that the finding must be supported by competent substantial evidence. Willacy v. State, 696 So.2d 693, 695 (Fla. 1997).

An additional problem with the absence of any jury findings with respect to the aggravating circumstances is the potential for skewing this Court's proportionality analysis in favor of

[14] Through counsel, Mr. Woodel filed a Motion for Special Verdict Form with Specific Findings which, if granted, would have required the jury to note the circumstances relied upon in reaching its penalty verdict. (Vol. I, pp. 150-154)

death. An integral part of this Court's review of all death sentences is proportionality review. Tillman v. State, 591 So.2d 167 (Fla. 1991). This Court knows which aggravators were found by the judge, but does not know which aggravators and mitigators were found by the jury. Therefore, the Court could allow aggravating factors rejected by the jury to influence proportionality review. Such a possibility cannot be reconciled with the Eighth and Fourteenth Amendment requirement of reliability in capital sentencing.

The flaws in Florida's capital sentencing scheme discussed above constitute fundamental error which may be raised for the first time on appeal. In Trushin v. State, 425 So.2d 1126, 1129-30 (Fla. 1983), this Court ruled that the facial constitutional validity of the statute under which the defendant was convicted can be raised for the first time on appeal because the arguments surrounding the statute's validity raised fundamental error. In State v. Johnson, 616 So.2d 1, 3-4 (Fla. 1993), this Court ruled that the facial constitutional validity of amendments to the habitual offender statute was a matter of fundamental error which could be raised for the first time on appeal because the amendments involved fundamental liberty due process.

In Maddox v. State, 760 So.2d 89, 95-98 (Fla. 2000), this Court ruled that defendants who did not have the benefit of

Florida Rule of Criminal Procedure 3.800(b), as amended in 1999 to allow defendants to raise sentencing errors in the trial court after their notices of appeal were filed, were entitled to argue fundamental sentencing errors for the first time on appeal. To qualify as fundamental error, the sentencing error must be apparent from the record, and the error must be serious; such as a sentencing error which affected the length of the sentence. Id. at 99-100. Defendants appealing death sentences do not have the benefit of Rule 3.800(b) to correct sentencing errors because capital cases are excluded from the rule. Amendments to Florida Rules of Criminal Procedure 3.111(e) & 3.800 & Florida Rules of Appellate Procedure 9.020(h), 9.140, & 9.600, 761 So.2d 1015, 1026 (1999).

The facial constitutionality of the death penalty statute, section 921.141, Florida Statutes, is a matter of fundamental error. The error is apparent from the record, and it is certainly serious because it concerns the due process and right to jury trial requirements for the imposition of the death penalty. Imposition of the death penalty goes far beyond the liberty interests involved in sentencing enhancement statutes.

Moreover, the use of a facially invalid death penalty statute to impose a death sentence could never be harmless error. A death sentence is always and necessarily adversely affected by reliance upon an unconstitutional death penalty

statute, especially when the statute violates the defendant's right to have a jury decide essential facts. See Sullivan v. Louisiana, 508 U.S. 275, 279-282 (1993) (violation of right to jury trial on essential facts is always harmful structural error).

Thus, Florida's death penalty statute is unconstitutional on its face because it violates the due process and right to jury trial requirements that all facts necessary to enhance a sentence be found by the jury to have been proven beyond a reasonable doubt, as set forth in Jones, Apprendi, and Ring. This issue constitutes fundamental error, and can never be harmless. This Court must reverse Mr. Woodel's death sentence and remand for a life sentence.

Mr. Woodel recognizes that in King v. Moore, 831 So.2d 143 (Fla. 2002) and Bottoson v. Moore, 833 So.2d 693 (Fla. 2002) and subsequent cases this Court rejected arguments similar to those raised herein, but asks the Court to revisit these important issues, and raises them here to preserve them for possible further review in another forum.

ISSUE VI

EXECUTION BY LETHAL INJECTION CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT.

The protocols for Florida's system of execution by lethal injection have been presented to this Court by the State as an attachment to the pleadings most recently in Rutherford v. Crist, ____ So.2d ____, 2006 WL 2959297 (Fla. October 17, 2006), and have been previously published by this Court in Sims v. State, 754 So.2d 657 (Fla. 2000). The combination of chemical agents as reported by these sources which are used in Florida's lethal injection process causes undue pain and suffering in violation of the Eighth and Fourteenth Amendments to the Constitution of the United States.

The Eighth Amendment prohibits the "unnecessary and wanton infliction of pain." Gregg v. Georgia, 428 U.S. 153, 173 (1976) [citing Furman v. Georgia, 408 U.S. 238, 392 (1972)]. The United States Supreme Court has long held that the Eighth Amendment protects prisoners from "the gratuitous infliction of suffering." Gregg, 428 U.S. at 183 [citing Wilkerson v. Utah, 99 U.S. 130, 135-36 (1878) and In Re: Kemmler, 136 U.S. 436, 437 (1890)]. In the capital punishment context, when the suffering inflicted in executing a condemned prisoner is caused by procedures involving "something more than the mere extinguishment of life," the Eighth Amendment's prohibition

against cruel and unusual punishment is implicated." See Furman v. Georgia, 408 U.S. 238, 265 (1972) (quoting Kemmler, 136 U.S. at 447).

The method of execution by lethal injection as set forth by the filings of the Attorney General and as set forth in Sims and the operating manuals of the Florida Department of Corrections violates these constitutional principles. Florida's method of execution by lethal injection as described in Sims is similar to procedures that two district courts have recently found to raise serious concerns under the Eighth Amendment. See Morales v. Hickman, 415 F.Supp.2d 1037, 1046-1047 (N.D. Cal. 2006), aff'd., 438 F.3d 926 (9th Cir. 2006), cert. denied, 126 S.Ct. 1314 (2006) (finding that the three chemical substance sequence raises "substantial questions" that the condemned would be subjected to "an undue risk of extreme pain") and Anderson v. Evans, No. Civ. -05-8-0825-F, 2006 WL 38903 (W.D. Okla. Jan. 11, 2006)) accepting in its entirety a Magistrate Judge's report holding that death-sentenced inmates stated a valid claim that Oklahoma's administration of the same three-chemical sequence for lethal injection "creates an excessive risk of substantial injury and pain" under the Eighth Amendment).

Mr. Woodel recognizes that this Court recently rejected arguments similar to those made here in Rutherford v. Crist, supra. However, in light of the serious problems that occurred

during the execution of Angel Diaz on December 13, 2006, Florida's method of lethal injection warrants further scrutiny by this Court. Although the Governor of Florida has imposed a moratorium on executions by lethal injection pending review of this method of execution by the Governor's Commission on Administration of Lethal Injection (Executive Order Number 06-260), this Court cannot be confident that the Commission will be able to remedy the many flaws that exist such that future executions will be able to pass constitutional muster, and should act now to invalidate this method of killing condemned prisoners.

This issue presents a question of law, and so the standard of review is de novo. State v. Glatzmayer, 789 So.2d 297 (Fla. 2001); State v. Dempsey, 916 So.2d 856 (Fla. 2d DCA 2005); Knarich v. State, 932 So.2d 257 (Fla. 2d DCA 2005).

CONCLUSION

Based upon the foregoing facts, arguments, and citations of authority, your Appellant, Thomas D. Woodel, prays this Honorable Court to vacate his sentence of death and reduce it to a life sentence. In the alternative, Mr. Woodel asks that his death sentence be vacated and this cause remanded to the lower court for a new penalty trial before a new jury. Mr. Woodel also requests such other and further relief as this Honorable Court deems appropriate.

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Carol Dittmar, Concourse Center #4, 3507 E. Frontage Rd.—Suite 200, Tampa, FL 33607-7013, (813) 287-7900, on this 4th day of January, 2007.

CERTIFICATION OF FONT SIZE

I hereby certify that this document was generated by computer using Microsoft Word with Courier New 12-point font in compliance with Fla. R. App. P. 9.210(a)(2).

Respectfully submitted,

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