

IN THE SUPREME COURT OF FLORIDA

RYAN THOMAS GREEN,

Appellant,

v.

CASE NO. SC06-211

STATE OF FLORIDA,

Appellee.

-----/

ON APPEAL FROM THE CIRCUIT COURT  
OF THE FIRST JUDICIAL CIRCUIT  
IN AND FOR ESCAMBIA COUNTY, STATE OF FLORIDA

ANSWER BRIEF OF THE APPELLEE

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## I. PRELIMINARY STATEMENT

Appellant, RYAN THOMAS GREEN raises four issues in this direct appeal of his sentence to death and convictions for first degree murder, attempted first degree murder, and armed robbery. References to the appellant will be to "Green" or "Appellant". References to the appellee will be to the "State" or "Appellee".

The three-volume record on appeal will be referenced as "R" followed by the appropriate volume and page number. The one-volume supplemental record on appeal will be referenced as "SR" followed by the appropriate page number. The nine-volume transcript of the proceedings will be referenced as "TR" followed by the appropriate volume number and page number. References to Green's initial brief will be to "IB" followed by the appropriate page number.

## II. STATEMENT OF THE CASE AND FACTS

On February 23, 2003, Ryan Thomas Green, murdered James Hallman, a retired Pensacola police officer. Earlier that same day, Green robbed 26-year-old Christopher Phipps at gunpoint. Green shot Mr. Phipps in the head before fleeing with a gun stolen from Phipps' home and Phipps' white Ford Thunderbird. Mr. Phipps survived the attack. Both shootings occurred in or near Pensacola in Escambia County, Florida. (R Vol. I 1-3, 4-7).

Green does not deny he killed Mr. Hallman by firing a single gunshot into Mr. Hallman's head. Green does not deny he robbed Mr. Phipps and attempted to kill him by firing a single gunshot into Mr. Phipps' head. Instead, Green defended on grounds he was insane at the time of the murder.

At the time of the murder, Green lived with his mother, Cindy Green, and his brother, Aaron Green. (TR Vol. V 852). On February 23, 2003, the day of the murder, Green left his home early in the morning. (TR Vol. V 858). He traveled on foot to the home of Henry Cecil and Christopher Phipps (hereinafter "the Cecil home"). (TR Vol. VII 1245).<sup>1</sup> Mr.

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<sup>1</sup> Green gave varying accounts as to how he traveled to the Cecil home. At trial, Green testified he walked. In the hours after the murder, Green told Brian Lockwood that J.D. Bailey picked him up from his home and took him to the Cecil home. Moments later he told his brother that Henry Cecil had picked him up and taken him to the Cecil home.

Cecil is Christopher Phipps' uncle.

Green testified at trial he went to the Cecil home to get a gun he had seen and admired in the home a few days earlier. (TR Vol. VII 1250). Green told the jury he wanted to get the gun to commit suicide. (TR Vol. VII 1250).

The gun, a .40 caliber Beretta, belonged to Henry Cecil. Mr. Cecil kept the pistol in the bedroom, on the nightstand. (TR Vol. V 884). Mr. Cecil also kept bullets to the gun in his home. (TR Vol. V 886).

When Green arrived, Christopher Phipps was home alone. Phipps invited Green in. (TR Vol. VII 1245). Green asked Phipps whether he had any weed. Mr. Phipps told Green his uncle had gone to the store. (TR Vol. VII 1246). Green then asked Mr. Phipps for a glass of water and Mr. Phipps invited Green to help himself in the kitchen. (TR Vol. VII 1246). Green noticed the gun he wanted lying on the bedroom floor. He also saw a briefcase. (TR Vol. VII 1246-1247). The briefcase belonged to Mr. Cecil.

Green stepped into the bedroom and picked up the gun. He checked the chamber and found it was loaded. (TR Vol. VII 1249). Green picked up the briefcase, a red bandana, and the gun. He decided to leave the house and walk out as if no



one was there. (TR Vol. VII 1250). On the way out, Mr. Phipps saw Green with the gun. Green told the jury that he just kind of "snapped" and said to Mr. Phipps, "Motherfucker, what's this for?" Green told Mr. Phipps to get up. (TR Vol. VII 1250).

Mr. Phipps complied and when he either backed up or leaned forward, Green shot him. (TR Vol. VII 1250-1251). Green testified he picked up the keys off the dining room table and ran out the door. He took Phipps' white Ford Thunderbird and drove off. Green told the jury he did not know why he shot Mr. Phipps. (TR Vol. VII 1251).

Moments after Green fled the Cecil home in Mr. Phipps' car, Henry Cecil saw his nephew's white Thunderbird coupe go by. (TR Vol. V 877). Cecil was on the way home from a nearby convenience store where he had gone for coffee and cigarettes. He had been gone from his home only for 5-10 minutes. (TR Vol. V 878).

Christopher was not driving the Thunderbird. (TR Vol. V 879). Mr. Cecil caught a glimpse of the driver. He was a white male with red hair. (TR Vol. V 879). Mr. Cecil drove home and noticed that Christopher's car was not at the house. Mr. Cecil turned around and followed the car.

Mr. Cecil caught up with Christopher's car and followed

it for about 20-25 minutes. (TR Vol. V 884). Green noticed he was being followed. (TR Vol. VII 1253). Mr. Cecil eventually lost the pursuit and drove back home. (TR Vol. V 882). He thought Christopher had likely already called the police to report his car stolen. (TR Vol. V 882).

When he got home, he went inside and found his nephew lying on the floor. Christopher was not conscious. He had a massive head wound and there was blood everywhere. (TR Vol. V 883). Mr. Cecil ran outside to call for help.

Mr. Cecil noticed his handgun was missing from the house. (TR Vol. V 888).<sup>2</sup> A briefcase was also missing. (TR Vol. V 892). There was also money and drugs in the home. (TR Vol. V 894). They were not taken. (TR Vol. V 895). A crime scene technician found one empty .40 caliber shell casing in the living room of the Cecil home. (TR Vol. V 907-908).

After losing Mr. Cecil's tail, Green drove around and eventually made his way to the vicinity of Kingsfield Road. According to Green, he was just riding. (TR Vol. VII 1254). Green saw a man walking down the Road. The man was James Hallman.

Green testified at trial he intended to ask Mr. Hallman

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<sup>2</sup> A police officer who responded to the Cecil home in response to the shooting attempted to locate the gun. Deputy Martin told the jury he attempted to locate the gun but was unable to find a weapon in the house. (TR Vol. V 906).

for directions but saw Mr. Hallman pointing down the road. Green believed Mr. Hallman saw him slow down to speak with him and wanted Green to turn around so he could speak to Green through the driver's window instead of the passenger window. (TR Vol. VII 1270). Green told the jury he drove down the road and turned around.

Green testified he intended to kill himself at the end of the road. (TR Vol. VII 1255). He saw a bull standing in the field. Green rolled down the window and shot the bull. (TR Vol.

VII 1255). He rolled down the window because he did not want to damage the car. (TR Vol. VII 1282).

The bull belonged to John Boles. After the shooting, Mr. Boles and his neighbor examined the bull. The bull sustained a gunshot wound to the upper portion of its neck. (TR Vol. V 929). It lived.

Green testified that after shooting the bull, he drove back down the road to Mr. Hallman to ask for directions to Palafox Road. Green told the jury that when Mr. Hallman bent his head down (apparently to speak with Green), he closed his eyes and shot him. (TR Vol. VII 1257). Green then floored it and drove off. (TR Vol. VII 1258). According to one witness, only 15-20 seconds elapsed between the time Green shot the

bull and the time Green shot Mr. Hallman. (TR Vol. V 925).

Two witnesses actually heard the gunshot(s). Both witness observed a white car in the area, driving fast. (TR Vol. V 924-925). One witness, Timothy Stephens, was able to identify the car as a white Thunderbird. (TR Vol. V 936). Another witness, Dennis Carlson, told the jury that after he heard the first shot, the white car took off down Kingsfield road squealing its tires. (TR Vol. V 925).

Dawn Welch found Mr. Hallman lying in the road. (TR Vol. V 940). No one else was around. Mr. Hallman was bleeding from his head. (TR Vol. V 941). She saw a golf club lying nearby. A Walkman was on his head and the music was still playing. (TR Vol. V 941-942).

Mr. Hallman was still alive. Dawn's mother knelt down and held his hand. Dawn ran to a couple of different houses to try to find a towel to stop the bleeding. (TR Vol. V 942). After she got the towel and her Dad called 911, she saw a bullet casing on the ground. She did not touch it. (TR Vol. V 942). A crime scene investigator later collected the casing. It was an expended .40 caliber shell. (TR Vol. V 945, 955).

Miss Welch and her family remained at the scene till the police and ambulances arrived. (TR Vol. V 942). Mr. Hallman was taken by Life-Flight to Sacred Heart Hospital. He died a

week later on March 2, 2003. He never regained consciousness. (TR Vol. V 922). He was 59 years old. (TR Vol. V 922).

After shooting Mr. Hallman, Green went home. He shot some hoops with his neighbor, T.J., and at some point went to lay by the pool. Green talked to Brian Lockwood, Aaron Green and Sarah McCrevy about the murder.

Green asked Brian Lockwood to go downstairs with him to get some cigarettes. He and Green went downstairs to an older model White Thunderbird. Green told Mr. Lockwood it was his car. (TR Vol. VI 1005).

When they got downstairs, Green grabbed Mr. Lockwood's head and said "what I'm about to tell you, you can't tell anybody. I killed two people today." (TR Vol. VI 1005). Mr. Lockwood did not know whether to believe him or not. (TR Vol. VI 1005).

Green showed him a briefcase. A gun was inside the briefcase. (TR Vol. VI 1006). The gun was wrapped in a red bandana. (TR Vol. VI 1006). Green told him the gun was the one he used to kill two people.

Mr. Lockwood testified that Green told him that J.D. Bailey had taken him over to Christopher Phipps' house that morning. Green told Lockwood that they all sat down and

played some video games for a while and then J.D. left. (TR Vol. VI 1008).<sup>3</sup> Green told him that after J.D. left, he pulled out a gun, pointed at the guy and shot him. (TR Vol. VI 1008). Green told him that he pointed the gun at the man's face, and said "You see this, you see this," demanded the car keys and pulled the trigger. (TR Vol. VI 1009).

Green told Mr. Lockwood that he ran out to the car, got in the car and went for a ride. (TR Vol. VI 1010). Green told him he went out to some country road and shot an ox. (TR Vol. VI 1010). Green told him he shot the ox out the passenger window. (TR Vol. VI 1010).

Green told Mr. Lockwood that he went around a corner and encountered an old man. He pulled over and asked the man for directions. (TR Vol. VI 1010). Green told Mr. Lockwood he shot the man in the head. (TR Vol. VI 1012).

Green told Brian Lockwood that he did not want any witnesses to him firing the shot at the animal. (TR Vol. VI 1011). Green said "I had to shoot him because I didn't want any witnesses." (TR Vol. VI 1012).

After their conversation at the car, Green and Lockwood came back upstairs. Green had Mr. Cecil's brown briefcase

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<sup>3</sup> Mr. Phipps uncle, Henry Cecil, testified that to the best of his knowledge his nephew did not own any video games. (TR Vol. V 895).

with him. He opened the briefcase and showed his brother, Aaron, a gun. The gun was wrapped in a red bandana. Aaron also saw some papers and some sort of pill bottle in the briefcase. (TR Vol. VI 977).

Green asked Aaron to hold the gun. He demurred. Green told Aaron the gun was his. (TR Vol. VI 978). Green asked Aaron "do you see my new nine?" (TR Vol. VI 979).<sup>4</sup>

Green told his brother he had to do a favor for J.D. Bailey to get the gun. (TR Vol. VI 979). He told Aaron he had to shoot Chris Phipps. (TR Vol. VI 980). Green reported that J.D. had called him that morning. (TR Vol. VI 987). Green told Aaron that Phipps was supposedly taking drugs and drug money from J.D. and Henry Cecil. (TR Vol. V 980). Green told his brother that

both J.D. and Henry Cecil wanted Christopher Phipps shot. (TR Vol. VI 980).

Green told Aaron that Henry Cecil picked him up the morning of the murder. (TR Vol. VI 981). Green told his brother that Cecil took him to his house and then walked outside. (TR Vol. VI 981).

Green told Aaron he grabbed the gun, put it up to Phipps'

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<sup>4</sup> A firearms examiner testified that a .40 caliber pistol and a 9mm pistol are similar in appearance. (TR Vol. 1020).

head and asked for the car keys. (TR Vol. VI 982-983). Green told his brother he shot Phipps. (TR Vol. VI 983).

Green told his brother that he left the house in Phipps' car. Green told Aaron that Henry Cecil followed him down the road. Green saw some wild animals in a field. He called them oxen. (TR Vol. VI 984).

Green told Aaron that he shot an ox. (TR Vol. VI 984). Afterwards, he drove down the road and saw a man standing there. He described the man as an older man with a cane. (TR Vol. VI 984). Green told Aaron the man was wearing a ball cap. (TR Vol. VI 984).

Green told his brother he drove up to the man and asked him how to get to Palafox. (TR Vol. VI 985). Green told Aaron the man was looking inside his car and was looking suspicious. (TR Vol. VI 985). Green told Aaron that as the man was looking in his car, he looked up and he shot him. (TR Vol. VI 985). He told Aaron he shot the man because the man saw him driving the car and shooting the gun. (TR Vol. VI 986). Aaron said Green thought the man had seen him shoot the oxen. (TR Vol. VI 986). He told Aaron he did not want anyone to see him with the gun. (TR Vol. VI 986). Green told him he did not want "no witnesses to see him shooting the gun." (TR Vol. VI 986).



Green told Aaron that after he shot the man, he peeled out. (TR Vol. VI 987). He told Aaron he felt a rush from both of the shootings that day. (TR Vol. VI 987). Green told his brother he never thought the gun would sound the way it did. It was not like he had seen in the movie Scarface. (TR Vol. VI 988).

Sarah Mcrevy testified that Aaron Green is her fiancé. (TR Vol. VI 997). On February 23, 2003, she heard the shower come on early in the morning. When she got up, Green was not at the apartment. She saw him later, in the middle of the day. (TR Vol. VI 998).

She saw Green and Brian Lockwood go downstairs. When they came back up, Green was carrying a briefcase. Green showed her a gun. Green told her that he killed two people with the gun. (TR Vol. VI 999). Green asked Ms. Mcrevy not to tell anyone. (TR Vol. VI 1000). Green told her he killed the people for the gun. (TR Vol. VI 1000). He said J.D. asked him to do him a favor. (TR Vol. VI 1000).

Green told Ms. Mcrevy he took the first man's car keys as well as the car. The car was downstairs. (TR Vol. VI 1001).

Green told her the car was a white Thunderbird. (TR Vol. VI 1002).

In the meantime, based on information developed from the Phipps' and Hallman shootings, the Pensacola police put out a "BOLO" for Christopher Phipps' white Thunderbird. The car was found in front of Ryan Green's apartment building. Green was arrested at about 7:00 p.m on February 23, 2003. (TR Vol. VI 1024). Sometime after his arrest, a police officer observed blood on the front of his white tank top and on the right front pocket of his pants. (TR Vol. V 911).

A search of Christopher Phipps' white Thunderbird revealed one expended .40 caliber shell casing. The casing was found in the backseat behind the driver's seat. (TR Vol. V 912). All three shell casings recovered; one from the Phipps' living room, one on Kingsfield Road, and one in the backseat of Phipps' white Thunderbird, were of the same brand - Smith and Wesson. All three were fired from Henry Cecil's stolen .40 caliber Beretta. (TR Vol. VI 1018-1020).

After Green's arrest, Investigator Sanderson questioned Green about the shootings. Investigator Sanderson read Green his Miranda rights. Green waived his rights and talked to the police about the shootings.

Initially, Green denied either leaving his apartment on the day of the murder or driving the white Thunderbird. (TR

Vol. VI 1024). Green told Investigator Sanderson he had not driven a car in months. (TR Vol. VI 1024). Green told Investigator Sanderson that a man named Henry came over to Green's home and asked Green to clean the car out. Henry offered Green some Xanax in return for cleaning his car. (TR Vol. VI 1025). Green told Investigator Sanderson that he took a briefcase from the car. (TR Vol. VI 1025). Green told Investigator Sanderson he put the briefcase behind the dresser in his bedroom.

Green also told Investigator Sanderson that Henry and J.D. had shown him a pistol a few days before the murder. (TR Vol. VI 1025). Green told Investigator Sanderson the gun was hidden in a vent above the bathroom door in his apartment. (TR Vol. VI 1026). Investigator Sanderson testified that Green told him different things about whether he had fired the pistol that day. Initially, he denied it, and then said he could not remember. (TR Vol. VI 1026).

In addition to interviewing Green, the police searched the Green home. Deputy Remus found Cecil's brown briefcase tucked behind a wooden dresser in the bedroom. Inside the briefcase was an envelope addressed to Christopher Phipps and a .40 caliber bullet. (TR Vol. V 959).

Deputy Remus also found Henry Cecil's missing .40 caliber Beretta pistol. (TR Vol. V 956). Deputy Remus found the pistol inside an air conditioner output vent above the door in the bathroom. (TR Vol. V 956). The vent facing was screwed into the wall with a couple of screws. (TR vol. V 956). Deputy Remus removed the cover and found the handgun wrapped in a bandana. He also found a magazine. (TR Vol. V 956). There were six rounds in the magazine. (TR Vol. V 956). The pistol was in good working order. (TR Vol. VI 1018).

Green defended against the indictment on the grounds he was insane at the time of the murder. In support of his insanity defense, Green first called his mother, Cynthia Green to testify. She testified that Green was diagnosed with clinical depression when he was thirteen years old. (TR Vol. VI 1044). He also threatened suicide. (TR Vol. VI 1044). Green would not cooperate with efforts to refer him to a school psychologist. (TR Vol. VI 1044).

Green was given Prozac when he was 13 years old. (TR Vol. VI 1044). He took it for 3-6 months, started feeling better, and stopped taking it. (TR Vol. VI 1044).

Green started smoking marijuana when he was 15 or 16 years old. Ms. Green did not notice any change in his behavior. He was active in school sports. When Green was 15-

17 years old, Ms. Green noticed personality problems in her son. (TR Vol. VI 1045). He was diagnosed with an impulse control disorder. (TR Vol. VI 1045).

She told the jury there were weeks at a time that she could not get Green out of bed. He would not speak and would not go to school. Green fought a lot with her and with his brother. (TR Vol. VI 1046). He seemed anguished and angry a lot. (TR Vol. VI 1046). Ms. Green told the jury her son was depressed. (TR Vol. VI 1046). Though she wanted him to go see a psychologist or psychiatrist, Green would not go. (TR Vol. VI).

When he was 16 years old, Green went to live with his father in Gulfport, Mississippi. (TR Vol. VI 1047). He did well there initially but went through a bad depression trying to adjust to the changes precipitated by the move. (TR Vol. VI 1047).

While living with his father, Green got a girlfriend and graduated from high school. He also volunteered at a church to build a recreational ranch. Green worked with his dad at a restaurant and was employee of the month at least three times. (TR Vol. VI 1047). In her opinion, Green did well while living with his father. (TR Vol. VI 1047).

During the Christmas holidays in 2001, Green came to

visit her and her parents. He was very quiet and moody. Ms. Green described him as trembling all the time. (TR Vol. VI 1048). Green left to return to his father's home on New Year's Day. Green returned to his mother and reported that his father would not let him into the house. Green's father apparently did not like how Green was treating his little brother. (TR Vol. VI 1049).

Green and his brother Aaron moved back to Pensacola to live with their mother. Green could not go to school because he was not "mentally able". He tried to hold down a job but could not do so because of his "bad spells". (TR Vol. VI 1050).

She described the bad spells. According to Ms. Green, her son was angry, hearing voices, and locking himself in his room. She described an occasion where Green took a bag of potting soil and her jewelry. He planted some of her jewelry and a statute of the Virgin Mary in order to grow crystals. (TR Vol. VI 1050). Ms. Green said she discovered her earrings all over his lamp shade and her necklaces all over her ceiling fan. (TR Vol. VI 1050). She also told the jury that Green would not respond to his name and told his mother that Ryan was not his "God given name". (TR Vol. VI 1051). Ms. Green testified that Green began speaking to a goddess he called

"Mother Nature". (TR Vol. VI 1052).

According to Ms. Green, Green would stay up for days on end and was up all night for several nights. (TR Vol. VI 1055). He could hear voices and read her mind. (TR Vol. VI 1055). Ms. Green told the jury her son would enclose himself in his room and

pray on his knees to entities she could not see. (TR Vol. VI 1055).

Green disappeared for three days. He was found by the Baldwin County Police. He had no ID. (TR Vol. VI 1052).

Ms. Green told the jury she tried to get her son professional help in 2002. She went to Lakeview but the only way to get him in was forcibly. (TR Vol. VI 1051).

She eventually had Green committed pursuant to Florida's Baker Act. (TR Vol. VI 1051). Prior to his commitment to Lakeview, he was not taking any medication. (TR Vol. VI 1051).

After he was released from Lakeview in November 2002, he was given Risperdal. (TR Vol. VI 1053). Green took his medicine initially, but when he was supposed to go back to the doctor in December to get a refill, he refused to go. (TR Vol. VI 1053).

Green became violent after he got out of Lakeview. He threw things at his mother and tore up her dining room set. (TR Vol. VI 1053). He would never let her into his room. Once when she went in to get the laundry, Green spat in her face.

Ms. Green told the jury that Green carved a picture of a brain on the seat of one of the dining room chairs and set a table on fire. (TR Vol. VI 1053). She described the brain as having weird labeling and equations that made no sense. (TR Vol. VI 1054). In the center of the brain was the word "love". (TR Vol. VI 1054). The carving was taken from a picture in Sports Illustrated that showed the typical male brain. (TR Vol. VI 1061-1062).

Her son told her that he had lost the ability to feel love. (TR Vol. VI 1054). She was scared of her son. (TR Vol. VI 1054). Green's brother, Aaron, was also afraid of him. (TR Vol. VI 1054).

In the days leading up to the murder, Green had been up for days. She described him as manic. Ms. Green had to hide the car keys, the house keys, her wallet, and all her jewelry. She told the jury that if he got a car, he would take off driving, go to a gas pump and steal gas. The gas stations would call her and she would have to go down and pay for it.



(TR Vol. VI 1056). When she confronted Green about this, he would tell her that he did not have to pay for gas. Green told her that "you don't understand who I am. I don't have to pay for anything. Someone else handles all that for me." (TR Vol. VI 1056). Green told his mother he had wings on his back and had a name that God called him that no one knew. (TR Vol. VI 1056).

Green never told her what happened on the morning of February 23, 2003. The Friday before the murder, Green became upset when his uncle would not co-sign a loan for him to buy a car. Ms. Green told the jury her son sat in the kitchen banging his head against the wall. Green ranted and raved, screamed and

cursed, and cried that he had done everything for everybody but nobody would do anything for him. (TR Vol. VI 1059).

Ms. Green told the jury, during cross-examination, that Green seemed in good spirits on the weekend of the murder once Sarah Mcrevy and Brian Lockwood arrived. On Sunday, the day of the murder, Green was in good spirits as well. (TR Vol. VI 1061).

Aaron Green testified for the defense during the guilt phase of Green's capital trial. When he and his brother were

living with their father in Gulfport, Mississippi, Green was just a normal school kid. (TR Vol. VI 1064). He did not take any illegal drugs. (TR Vol. VI 1064).

During Christmas 2001, the brothers went back to live with their mother. For the first couple of weeks, Green seemed the same as he did in Gulfport. (TR Vol. VI 1065). In the spring of 2002, Green pulled Aaron to the side and asked Aaron why he was thinking "that" about him. Aaron asked him what he meant and Green told him to stop thinking "that" because he could read his mind. Green also claimed he could read all their friends' minds as well. (TR Vol. VI 1066).

Aaron described Green's behavior as "strange" after that incident. He would space out when they were talking. (TR Vol. VI 1067). Aaron testified that Green once asked him to feel his hand and told Aaron it was the devil's hand. (TR Vol. VI 1068). Green also talked to birds and would stay up for days on end. (TR Vol. VI 1069).

Green used marijuana and Ecstasy. (TR Vol. VI 1069). He got drugs from J.D. Bailey. (TR Vol. VI 1069). Aaron told the jury that Green had difficulty at work and got shook up when he had to speak to people. He would come home after work and talk to himself. (TR Vol. VI 1070). Aaron testified Green was angry when his uncle would not co-sign a loan for

him to buy a \$30,000 car. (TR Vol. VI 1073).

Dr. Larson testified for the defense at trial. Dr. Larson is a forensic psychologist. (TR Vol. VI 1083). Dr. Larson could not testify that Green was insane at the time of the murder. (TR Vol. VI 1116). Dr. Larson did opine, however, that at the time of the murder, Green was mentally ill. (TR Vol. VI 1117). He believed Green was suffering from hallucinations and delusions during the timeframe of the murder.

During cross-examination, Dr. Larson testified he could not say whether Green was legally insane at the time of the murder. Dr. Larson said that most of the time he could opine whether a defendant was or was not insane at the time of the offense. In Green's case, however, there are too many inconsistencies about his history and the versions of events he reported to others. (TR Vol. VI 1116,1120).

Dr. Larson told the jury that despite his mental illness, there is an absolute possibility that Green knew the difference between right and wrong on the day of the murder. (TR Vol. VI 1124). There is also a possibility he understood the consequences of his actions. (TR Vol. VI 1124).

In Dr. Larson's opinion, Green understood, on the day of the murder, that shooting somebody in the head with a gun would probably kill them. (TR Vol. VI 1125). Dr. Larson also believed that Green lied purposefully to the police when he denied, in two separate statements, any involvement in the shootings. (TR Vol. VI 1133).

Dr. Brett Turner also testified for the defense at trial. Dr. Turner is a clinical psychologist and neuropsychologist. (TR Vol. VI 1135). Dr. Turner testified that Green told him that he noticed Mr. Hallman walking along the road. Green stopped and asked for directions. Green told Dr. Turner that Mr. Hallman became agitated or irritated with him and reached into the white Thunderbird. Green told Dr. Turner that he felt threatened, closed his eyes, and pulled the trigger. (TR Vol. VI 1140). Dr. Turner acknowledged Green's explanation was different from versions that Green had told others. (TR Vol. VI 1140).

Dr. Turner opined that on February 23, 2003, Green was suffering from a severe chronic psychiatric problem or psychiatric disease. (TR Vol. VI 1140). Dr. Turner testified that Green was sane at the time he shot Christopher Phipps. He could not determine whether Green was sane at the time he shot Mr. Hallman. (TR Vol. VI 1143).

Dr. Turner told the jury he could not determine whether Green was insane at the time of the Hallman murder because there were inconsistencies in the information upon which he relied in evaluating Green. Dr. Turner noted that some of the information indicates he knew what he was doing and hid the gun. (TR Vol. VI 1143). Dr. Turner told the jury that on February 23, 2003, there was an issue of Green having hallucinations and delusions. (TR Vol. VI 1144).

During cross-examination, Dr. Turner reiterated his opinion that Green was legally sane at the time he shot Christopher Phipps. He could simply not say for certain whether he was sane or not when he shot James Hallman. (TR Vol. VI 1145). Dr. Turner testified that on the day of the murder, Green knew right from wrong. (TR Vol. VI 1149).

Dr. Turner testified that Green told him he shot the bull after he shot Christopher Phipps because he wanted to hear the sound of the gunshot again. (TR Vol. VI 1146). He told Dr. Turner that immediately after he shot the bull he saw a man walking down the road. Green told Dr. Turner that he asked the man for directions and the man had an attitude. (TR Vol. VI 1147).

Green told Dr. Turner that he had been previously watching the Godfather series on video. He told Dr. Turner he

felt drawn to the videos and felt, after seeing them, that he needed to be part of the family or be in the mafia. (TR Vol. VI 1148). Green told Dr. Turner he wanted to be a mafia hit man. (TR Vol. VI 1148).

Green has an IQ of 97. (TR Vol. VI 1149). Dr. Turner found no evidence of a learning disability, organic brain damage or organic brain dysfunction. (TR Vol. VI 1149). The defense rested after Dr. Turner's testimony. (TR Vol. VI 1157).

In rebuttal, the state called Dr. Lawrence Gilgun. Dr. Gilgun is a licensed psychologist in practice for thirty-two years. (TR Vol. VII 1161). He met with Green on six occasions. (TR Vol. VII 1162).

He discussed the shootings with Green. Green did not report any hallucinations or delusions on the day of the murder. In Dr. Gilgun's opinion, Green was sane when he shot Christopher Phipps and sane when he killed James Hallman. (TR Vol. VII 1163).

Green told Dr. Gilgun two different versions of the Christopher Phipps shooting. In 2003, when Green met with Dr. Gilgun, he said he did Mr. Phipps a favor by shooting him because Mr. Phipps was suicidal. (TR Vol. VII 1165). In 2005, when Dr. Gilgun met with Green again, Green reported

that he may have shot

Mr. Phipps because Mr. Phipps was going to prevent Green from committing suicide. (TR Vol. VII 1165).

Dr. Turner agreed that Green had significant psychiatric difficulties. (TR Vol. VII 1166). He testified that while someone would have an adrenaline rush from shooting someone, it would not affect someone's ability to understand what one is doing at the moment. (TR Vol. VII 1168).

Ryan Thomas Green testified on his own behalf. He testified that he takes Risperdil. Green told the jury Risperdil is an antipsychotic drug. He also takes Vistaril for anxiety, Prozac for depression and Synthroid for his thyroid. (TR Vol. VII 1223).

Green told the jury that he has been suicidal since he was 13 years old. He attempted to commit suicide on the day of the murder. (TR Vol. VII 1224). He also attempted suicide when he was growing up. He would break windows and take a knife to try to kill himself. (TR Vol. VII 1224).

Green testified that he hears voices. He feels as if people express their thoughts to him. (TR Vol. VII 1224). He does not know if it is people's thoughts or a delusion. (TR Vol. VII 1224). He has heard voices since he first took

Ecstasy. (TR Vol. VII 1225). The first time he used Ecstasy was in December 2001. (TR Vol. VII 1226). It was easy for him to get drugs in

Pensacola. (TR Vol. VII 1228). He took drugs just to relax. (TR Vol. VII 1229).

Green testified he felt God was talking to him. He would pray and he felt free. (TR Vol. VII 1231). He felt God could keep him from anything. (TR Vol. VII 1231). As such, he felt like he had no troubles or worries. (TR Vol. VII 1231). He felt as he had wings. He said that he could not see the wings but if he died he would see them in the sky. He thought if he died, those wings could be the ones he earned from doing what God wanted him to do. (TR Vol. VII 1231). He had no idea what God wanted him to do though. (TR Vol. VII 1231).

Green told the jury that when he smoked marijuana, he would have positive thoughts. He testified that once he pulled into a gas station and as soon as he got to the pump, the car died. He had no money but he pumped gas into his car. (TR Vol. VII 1232). He saw the clerk and felt that the clerk either wanted him to take the gas or would have no problem with him taking it. The clerk came out of the store and Green told him that he was going to get some money and would be



back. (TR Vol. VII 1232). He did not think the gas was owed to him. (TR Vol. VII 1232).

Green told the jury he thought he could hear people's thoughts. (TR Vol. VII 1233). He said that he was not really hearing their thoughts but people would express their feelings for him in their body language. He felt his mother and brother did not love him anymore. (TR Vol. VII 1233).

Green testified about the events leading up to the murder. He told the jury that on the Wednesday before February 23, 2003, he was at Henry Cecil and Christopher Phipps' home. While at the home, he noticed a gun lying in a briefcase. He told Mr. Cecil "that's a nice gun." Green asked whether he could see it. (TR Vol. VII 1238).

Mr. Cecil let him hold it. Green handed the gun back and Mr. Cecil said something about it not being a toy. Afterward, they went into the dining room and Mr. Cecil and Mr. Phipps offered him a shot of bourbon, which he accepted. Green offered them a hit of his marijuana cigar but they turned him down. They told him they did not want to smoke with him. He took it as an insult. (TR Vol. VII 1238).

Green told the jury that on the Friday before the murder, he had a breakdown. He said it was caused by a combination of

his uncle refusing to co-sign a loan so he could buy a new car, he couldn't get into school, and he lost his job. Green told the jury these events all happened at once and he could not take it. (TR Vol. VII 1242).

Green decided to take his life with the gun he saw at the Cecil home. (TR Vol. VII 1242). Green told the jury that he decided February 23 was the day he was going to kill himself. He testified he got the number 23 from a Sports Illustrated magazine. (TR Vol. VII 1243). Green told the jury he had not taken Ecstasy on the Friday or Saturday before the murder.

Green testified that on the morning of February 23, 2003, he took a shower. He thought he heard a honk outside. No one was waiting for him outside, though. Green told the jury he took the honk as a symbol from God to leave. He left his apartment and walked down to the Cecil home. The front door was open but the storm door was closed. (TR Vol. VII 1245).

Green told the jury he knocked on the door. Mr. Phipps answered the door and he thinks he shook Mr. Phipps' hand. (TR Vol. VII 1245). He saw the white Thunderbird on the lawn but it wasn't his type of car. (TR Vol. VII 1246).

Mr. Phipps asked him into the house. Green asked Mr. Phipps if he had any weed. Mr. Phipps told him that Mr. Cecil was at the store. Green then asked for a glass of water and

Mr. Phipps told him to help himself. (TR Vol. VII 1246).

Green walked to the kitchen and got himself a glass of icewater. Mr. Phipps was in the living room watching the NASCAR races. (TR Vol. VII 1246). Green walked into the bedroom and saw a gun lying on the floor. He also looked in a briefcase. There were a couple of bottles of pills. He looked at one of the pills and it said Ethex. Another pill was hydrocodone. He took

the pills. He picked up the gun and handled it. He checked the chamber. He knew how to do this from TV. (TR Vol. VII 1247).

He heard voices that kept telling him to go. (TR Vol. VII 1248). He came to think of them as demonic voices. (TR Vol. VII 1248). Green told the jury he turned the radio on. He hears subliminal messages through the radio and TV. They help him. (TR Vol. VII 1248).

He wanted to shoot himself but he could not bring himself to do it in someone else's house. (TR Vol. VII 1249). He picked up the briefcase and the gun. He decided to just walk out the door with them. He walked past Mr. Phipps and all of a sudden he just "snapped."

Green said to Mr. Phipps, "Mother Fucker, what's this

for?" Mr. Phipps got up. Green did not know whether Mr. Phipps was backing up or leaning forward but "all of a sudden, I fired the gun." (TR Vol. VII 1250). He got body language from Mr. Phipps. Green told the jury that Phipps smiled at him right before he shot him. (TR Vol. VII 1250). Green also saw a red bandana inside the bedroom where he got the gun. (TR Vol. VII 1250). Green took it as a symbol that "they" wanted to kill him. (TR Vol. VII 1251). He does not know why he shot Mr. Phipps. (TR Vol. VII 1252).

He said that after he shot Mr. Phipps he took the car keys off the dining room table and rushed out the door. (TR Vol. VII 1251). He drove off, driving in circles. He felt someone was following him. (TR Vol. VII 1253). He wanted to try to find somewhere to kill himself. (TR Vol. VII 1253). No one was telling him to try to kill himself, he just wanted to. Green thought he was the devil. (TR Vol. VII 1253).

He found himself on Kingsfield Road. He noticed a gentleman walking down the road. Green thinks he had a cane. (TR Vol. VII 1254). He noticed that the man's clothes were red. He was wearing red just like the devil and had an "Alabama" hat on. The "A" was for Antichrist. (TR Vol. VII 1254).

Green started to slow down and he intended to ask for

directions. Before he could ask him, Mr. Hallman pointed down the road. (TR Vol. VII 1254). Green went down the road. He intended to kill himself right there at the end of the road. He saw a cow. He rolled down the passenger window. He rolled down the window because he didn't want to damage the car. (T Vol. VII 1282). Green told the jury he intended to shoot the cow to see how bad it would hurt before he could turn the gun on himself. (TR Vol. VII 1255). He felt that if a cow could take a bullet, he could too. (TR Vol. VII 1255).

Green shot the cow. (TR Vol. VII 1255). He could no longer see Mr. Hallman and there was no one else around. (TR Vol. VII 1256). After he shot the cow, it stood up and said "I love you."

(TR Vol. VII 1256). He mocked the cow by saying "I love you" back to it.

After Green shot the cow, he put his foot to the pedal and drove around the corner. He saw Mr. Hallman again. (TR Vol. VII 1256).

Green stopped and asked Mr. Hallman for directions. According to Green, Mr. Hallman gave him a funny look. Green told the jury he felt God had put him there. He noticed Mr. Hallman's cane matched the color of the gun and his clothes

were the color of the bandana he had seen at Henry Cecil's house. Green thought Mr. Hallman was the Antichrist and that he was the devil. (TR Vol. VII 1257).

Green told the jury he asked God whether Mr. Hallman wanted to die. (TR Vol. VII 1257). He asked himself as well and relied on whether his right or left shoulder jumped to tell him whether it's the right thing to do or it's a lie. (TR Vol. VII 1257).

Green testified Mr. Hallman gave him a body language, and also a voice that he wanted to die. Green testified that as soon as Mr. Hallman bent his head down, he picked up the gun, closed his eyes, and shot him. (TR Vol. VII 1257). Green then drove off. (TR Vol. VII 1257).

After he shot Mr. Hallman, he went to Albertsons. He felt paranoid. He asked to use a phone book as an excuse to leave. (TR Vol. VII 1259). He drove back to his apartment. (TR Vol. VII 1259). He went and shot some hoops with one of his neighbors he saw shooting baskets. He went back to his apartment and saw Aaron and his girlfriend, Sara, talking in the bedroom. He did not want to disturb them.

He saw Brian Lockwood and asked him if he wanted to go out to the car and get a cigarette. Green told the jury he grabbed Lockwood by the neck and told him "I've got to tell

you something, man." Green testified he asked Lockwood what he thought of the car. Lockwood just nodded but didn't say much. (TR Vol. VII 1260).

Green told Lockwood to get in the car. Green looked in the backseat and saw the gun. It had the hammer cocked back. (TR Vol. VII 1260). He said he had never handled a gun till he shot Christopher Phipps and James Hallman. (TR Vol. VII 1260).

Green testified that he told Lockwood, his brother, and Sara that he can't have no witnesses. He said he showed them the gun and told them what he had done. Green told the jury he told them he wanted to commit suicide but he couldn't have any witnesses. (TR Vol. VII 1261). Green testified he believes they misinterpreted that statement to mean that he shot Mr. Hallman because he could not have any witnesses. (TR Vol. VII 1261). He did not deny making the statement, only that each of the three misinterpreted what he meant. (TR Vol. VII 1261).

Green told the jury that what he meant was that he did not want any witnesses to his own suicide. (TR Vol. VII 1262).

Green said he hid the gun because he wanted it out of his reach. (TR Vol. VII 1264). He said that when he got ready to

kill himself, he could go in there, unscrew the--, take it out, load it, and shoot myself. (TR Vol. VII 1264). Green told the jury he wanted the gun out of his reach because he did not "want nothing else to happen." (TR Vol. VII 1264). Green put the briefcase behind the dresser. (TR Vol. VII 1264). Green said he was hearing voices the day of the murder. He hears voices all the time. (TR Vol. VII 1264).

During cross-examination, Green said that though he had all day to kill himself, he did not feel he was ready to kill himself. He thought he would go to hell if he did. (TR Vol. VII 1266).

Green told the jury he felt a rush from shooting Mr. Phipps. (TR Vol. VII 1271). He felt sick after he shot Mr. Hallman. (TR Vol. VII 1272). Green admitted that he told Erin Casey before the murder that he was going to get a gun and a car. (TR Vol. VII 1280).<sup>5</sup>

The jury was instructed on the insanity defense. The jury rejected Green's claim he was not guilty by reason of insanity and found Green guilty of first degree murder. (TR Vol. VIII 1413). The jury also found Green guilty of attempted first degree murder and guilty of robbery with a firearm. (TR Vol. VIII 1414).

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<sup>5</sup> Erin Casey testified at trial that shortly before the murder, Green told her that he was getting a car and a gun and



Prior to the penalty phase, trial counsel filed a motion to preclude the introduction of victim impact evidence. (TR Vol. VIII 1417). The trial court denied the motion but agreed to monitor it closely to ensure the offered testimony did not exceed permissible victim impact evidence. (TR Vol. VIII 1419).

The jury was instructed that victim impact evidence may be "considered by you to determine the victim's uniqueness as an individual human being and the resultant loss by James Hallman's death." (TR Vol. VIII 1450). The trial court instructed the jury that it was not permitted to weigh the evidence as an aggravating circumstance and that its recommendation must be based on the aggravating circumstances and mitigating circumstances upon which it would be instructed." (TR Vol. VIII 1450).

After the instruction was given, the State called four victim impact witnesses. Each read a prepared statement.<sup>6</sup>

In mitigation, the defense presented four witnesses. Gloria Davis testified that she is a guidance counselor at the Workman School. She knew Green in 1995 or 1996. He was in the sixth grade. (TR Vol. IX 1487). She met Green when he

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that he wanted to drive to Mexico. (TR Vol. V 853).

<sup>6</sup> Green raised an issue in this appeal regarding the victim impact testimony offered by the state. The witnesses'

started to have trouble in school. She recalled that she came to him as a sad and distracted child. (TR Vol. IX 1488).

Upon review of his school records, she came to the conclusion Green had attention deficit disorder. When undiagnosed, students can become depressed and sad. She believed that is what Green was going through. (TR Vol. VIII 1489).

She told the jury that standard protocol is to contact the parents and have a conference. If it is more than a school issue, the school will refer a child to counseling services through the county. These services are free. (TR Vol. IX 1489). She feels sure they followed the standard protocol in Green's case although there was no paperwork in his folder that verified that. (TR Vol. IX 1489-1490).

Ms. Davis testified she had no further contact with Green after he left middle school. (TR Vol. IX 1490). She did not think the school's attempts at intervention were successful. (TR Vol. IX 1490). She believes the mother was not very cooperative. (TR Vol. IX 1491). Green did not improve. (TR Vol. IX 1491). Both his grades and his attendance got worse. Green had to go to summer school to pass from the 8<sup>th</sup> to the 9<sup>th</sup> grade. (TR Vol. IX 1492).

Dr. Brett Turner returned to the stand for the defense

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testimony is summarized in the 3<sup>rd</sup> State's answer to that issue.

during the penalty phase of the trial. In his opinion, Green suffers from a schizoaffective disorder. Dr. Turner opined that Green's particular syndrome includes a number of delusions that he was operating as a different person. He opined that at the time of the murder, Green was acting under the influence of extreme mental or emotional disturbance. (TR Vol. IX 1494). He also believed that at the time of the murder, Green's capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was substantially impaired. (TR Vol. IX 1495). Dr. Turner agreed as well that at the time of the murder, Green was under extreme duress or under the substantial domination of another person. (TR Vol. IX 1495). Green was someone, in Dr. Turner's view, that could be taken advantage of because of his mental illness. (TR Vol. IX 1496).

During cross-examination, Dr. Turner identified the person who dominated Green as Henry Cecil. Dr. Turner agreed this influence was only applicable to Green's attempted murder of Christopher Phipps and that Cecil had not told Green to murder Mr. Hallman. (TR Vol. IX 1496-1497).

Dr. Turner however believed there was a significant connection between the shooting of Mr. Phipps and the murder of James Hallman. In Dr. Turner's opinion, one could not

separate the two incidents. (TR Vol. IX 1497).

Dr. Lawrence Gilgun testified for the defense during the penalty phase. (TR Vol. IX 1498 *et seq*). He agreed with Dr. Turner that Green has schizoaffective disorder. Dr. Gilgun testified the affective disorder results in mood swings. Green goes from grandiose and feeling elated to inappropriate depths of depression. (TR Vol. IX 1503).

The schizophrenic part of the disorder means that he is not in contact with reality. He believes things to be true which are not. (TR Vol. IX 1503). Dr. Gilgun pointed to Green's belief he is the devil. He suffers from delusions and hallucinations. (TR Vol. IX 1503). According to Dr. Gilgun, Green does not have a big grasp on reality. (TR Vol. IX 1503).

Dr. Gilgun believed that both statutory mitigators applied at the time of the murder. (TR Vol. IX 1505-1506). He did not opine that Green would be subject to being substantially dominated by another person. (TR Vol. IX 1505-1506). Dr. Gilgun testified that some mentally ill persons would be just the opposite, very antagonistic and paranoid. These mentally ill persons don't get dominated easily at all. (TR Vol. IX 1506). Dr. Gilgun opined that shooting Mr. Hallman was something that Green "did on his own." (TR Vol.

IX 1507).

Dr. James Larson testified. He saw Green seven times beginning in February 2003. In his opinion, Green was not competent to proceed at that point because he was grossly psychotic. (TR Vol. IX 1508-1509). He was greatly improved when he returned from Florida State Hospital. Dr. Larson attributed this to the medications Green was prescribed. (TR Vol. IX 1510). Dr. Larson also noted the fact that Green has not been a disciplinary problem is attributable to the medication. (TR Vol. IX 1512). Dr. Larson opined that both statutory mental mitigators were present at the time of the murder. (TR Vol. IX 1513-1514).

The jury recommended death by a vote of 10-2. On December 22, 2005, the trial court held a Spencer hearing at which counsel for the State and counsel for the defense were permitted to present any additional matters for the trial court's consideration.

In his sentencing order, the trial court found two aggravating factors had been established beyond a reasonable doubt: (1) Green had been convicted of another felony involving the use or threat of violence, and (2) the murder was committed to avoid arrest. The court afforded these two aggravators great weight. (R. Vol. III 337-339).

In mitigation, the trial court found that four statutory mitigators had been established: (1) Green had no significant criminal history, (2) Green committed the murder while he was under the influence of extreme emotional disturbance, (3) Green's capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was substantially impaired, and (4) Green acted under extreme duress or under the substantial domination of another person. The court gave the two statutory mental mitigators substantial weight and the other two statutory mitigators moderate weight.<sup>7</sup> (R. Vol. III 340-346).

In addition to four statutory mitigators, the trial court also found three non-statutory mitigators: (1) Green's mental illness was untreated, (2) Green had significant problems with drug abuse which were probably a result of his mental illness, and (3) since his arrest, Green has not been a disciplinary problem and has not engaged in any violent acts.<sup>8</sup> The trial court found the aggravating circumstances outweighed the mitigating circumstances. The court followed the jury

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<sup>7</sup> The trial court rejected all other statutory mitigators as not established, including Green's age. (R Vol. III 343-344).

<sup>8</sup> The trial court rejected Green's suggestion that he should find in mitigation that the entire criminal event encompassed only one hour in Green's life. (R. Vol. III 345).

recommendation and sentenced Green to death. (R. Vol. III 347-348).

### III. SUMMARY OF THE ARGUMENT

Green's sentence to death is proportional. The jury recommended death by a vote of 10-2. The trial judge assigned great weight to each of the two aggravating circumstances found to exist beyond a reasonable doubt. The trial court applied the correct rule of law in making its findings, assigning weight, and weighing the aggravating factors against the mitigating factors. The court found the aggravating circumstances outweighed the mitigating circumstances and sentenced Green to death. The totality of the circumstances supports a finding that Green's sentence is proportional.

There is also competent substantial evidence to support the avoid arrest aggravator. Shortly after the murder, Green told his younger brother and a friend of the family he killed Mr. Hallman to eliminate him as a witness.

In addition to this direct evidence of his intent, the circumstances of the murder support the avoid arrest aggravator. After shooting Christopher Phipps in the head with a gun stolen from a bedroom in the Cecil home, Green fled in Mr. Phipps' white Thunderbird. Mr. Phipps' uncle, Henry Cecil, saw Green in his nephew's car and gave chase. Green

lost Mr. Cecil and eventually drove onto West Kingsfield Road.

Green shot a bull from the passenger window from the road. Green saw a man walking on the same road. Within 15-20 seconds of shooting the bull, Green shot Mr. Hallman in the head and fled the scene. Green did not know Mr. Hallman and Mr. Hallman offered no resistance to Green's attempt to flag him down. At trial, Green denied needing money and Green took nothing from Mr. Hallman. Mr. Hallman was on foot and Green was driving a car. As such, Mr. Hallman was in no position to pursue Green for shooting the bull. The trial judge properly found the sole motive or dominant motive for the murder was to eliminate Mr. Hallman as a witness.

The trial judge properly denied Green's motion for a mistrial after two victim impact witnesses testified during the penalty phase of Green's capital trial. Victim impact evidence, while limited, is admissible during the penalty phase of a capital trial.

This claim should be denied because Green waived any claim on direct appeal because he failed to pose a contemporaneous objection to any of the victim impact testimony at trial. Moreover, with the exception of two brief comments describing the murder as senselessness, none of the testimony crossed the line into areas prohibited by Florida's



victim impact statute. The trial judge properly instructed the jury on victim impact evidence and the prosecutor did not repeat or emphasize the victim impact testimony during his closing argument. Green has failed to show any of the comments rose to the level of fundamental error or that the trial judge abused his discretion in denying the motion for mistrial.

Finally, Green's Ring claim is without merit. This Court has consistently found Florida's capital sentencing constitutional in light of Ring. Even assuming, *arguendo*, that Ring has any impact on Florida's capital sentencing scheme, one of the aggravating factors found to exist was that Green had previously been convicted of two other violent felonies. These felonies; the attempted murder and armed robbery of Christopher Phipps, were charged by indictment and a jury unanimously found Green guilty of both. This Court has determined on many occasions that the prior violent felony aggravator alone satisfies the mandates of the United States and Florida Constitutions.

#### **IV. ARGUMENT**

##### **ISSUE ONE**

##### **WHETHER THE DEATH SENTENCE IS PROPORTIONATE**

Green alleges his sentence to death is disproportionate.

Green argues that because the shootings of Christopher Phipps and James Hallman were products of his severe mental illness, this Court should set aside the death sentence and impose a sentence of life without the possibility of parole. (IB 31).

In each case in which the death penalty is imposed, this Court reviews the proportionality of the sentence. Proportionality review ensures the death penalty is imposed only in the most aggravated and least mitigated circumstances. Kramer v. State, 619 So.2d 274, 278 (Fla. 1993). In deciding whether death is a proportionate penalty, this Court considers the totality of the circumstances of the case and compares the case with other similar capital cases. Schoenwetter v. State, 931

So.2d 857 (Fla. 2006). See also Urbin v. State, 714 So.2d 411, 417 (Fla. 1998).<sup>9</sup>

Green's jury recommended death by a vote of 10-2. The trial court found two aggravating factors and assigned great weight to each: (1) Green had been convicted of another felony involving the use or threat of violence, and (2) the murder was committed to avoid arrest. (R. Vol. III 337-339).

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<sup>9</sup> The absence of a finding that the murder was cold, calculated and premeditated or heinous, atrocious, or cruel does not dictate a conclusion that Green's death sentence was disproportionate. Taylor v. State, 937 So.2d 590,601 (Fla.

The trial court also found seven mitigating factors, four statutory and three non-statutory: (1) Green had no significant criminal history, (2) Green committed the murder while he was under the influence of extreme emotional disturbance, (3) Green's capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was substantially impaired, (4) Green acted under extreme duress or under the substantial domination of another person, (5) Green's mental illness was untreated, (6) Green had significant problems with drug abuse which were probably a result of his mental illness, and (7) since his arrest, Green has not been a disciplinary problem and has not engaged in any violent acts. (R. Vol. III 340-346).

The trial judge gave substantial weight to the two statutory mental mitigators and moderate weight to the remaining statutory mitigators. (R. Vol. III 340-343). The trial court also gave substantial weight to his conclusion that Green's mental illness remained untreated and that Green had significant problems with drug abuse that was probably a result of his mental illness. The court gave moderate weight to his finding that Green had not been a disciplinary problem or engaged in any violent acts since his arrest. (R. Vol. III 345-346).

The trial court found death was an appropriate sentence after considering all the evidence and properly weighing the aggravators against the mitigators. Green makes no allegation the trial court improperly weighted or weighed the aggravating factors or mitigating factors. Likewise, Green makes no claim the trial court improperly failed to consider any of the mitigation offered during the penalty phase.

In the instant case, the totality of the circumstances supports a finding that the death penalty was proportionate. In claiming otherwise, Green relies almost solely on his assertion that three mental health experts agreed that, at the time of the murder, Green was severely mentally ill, psychotic, and suffering from delusions and hallucinations. (IB 32) <sup>10</sup> This is actually not the case, however.

Though all three experts did agree that Green suffers from a mental disease or defect; bipolar disorder or schizoaffective disorder, not all agreed that Green was hallucinating and delusional at the time of the murder. While Drs. Larson and Turner testified that Green was hallucinating

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<sup>10</sup> Green also claims the trial court improperly found the avoid arrest aggravator. As discussed more fully in the State's response to Green's second issue on appeal, the State respectfully disagrees. There was competent substantial evidence to support the avoid arrest aggravator.

and delusional on the day of the murder, Dr. Gilgun testified he was not. (TR Vol. VI 1117,1144)(TR Vol. VII 1162-1163). Additionally, none of the experts opined that, as a result of his mental illness, Green did not know right from wrong, was incapable of premeditating the murder of James Hallman, was insane at the time of the murders, did not know that shooting someone in the head would likely result in his death, or was incapable of taking deliberate measures to avoid arrest or detection.<sup>11</sup>

Moreover, while Green told the police, and all three mental health experts, varied versions of the shootings, Green demonstrated no such inconsistency in the hours following the murder. Green told both his brother and Brian Lockwood he killed Mr. Hallman because he did not want to leave a witness to his shooting of the stolen gun. Green deliberately concealed the murder weapon in a vent above his bathroom door and lied purposefully to the police after his arrest, denying any involvement in the shooting. (TR Vol. VI 1149). Green's actions in the hours following the murder belie any notion he was so psychotic or delusional he did not intentionally, and

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<sup>11</sup> Dr. Larson opined that Green lied purposefully to the police when he denied any involvement in the shootings after the murder. (TR Vol. VI 1133). Dr. Turner, a defense witness, opined that Green knew right from wrong on the day of the murder. (TR Vol. VI 1149).

with premeditation, murder James Hallman to eliminate him as a witness to his possession of a stolen car and the shooting of a stolen gun.

Even though the evidence supports a conclusion that Green does suffer from a major mental illness, this Court has never articulated the proposition that simply because a defendant suffers from a major mental illness, a death sentence is disproportionate. Wickham v. State, 593 So.2d 191, 195 (Fla. 1991) (death sentence was proportionate despite record evidence that Wickham abused alcohol; could not hold a steady job; did not make sense when he talked; had acted irrationally his entire life, was brain damaged, and was a mentally, deficient, socially maladjusted individual who had been institutionalized for almost his entire life); Johnston v. State, 863 So.2d 271 (Fla. 2003)(upholding death sentence despite Johnston's long history of mental health problems, his dissociative disorder, and the fact Johnston did not plan the murder in advance).

While Green cites to several cases he claims are comparable to the one at bar, each of the cases to which he cites are distinguishable. In all but two of the cases, this Court found one or more of the aggravating factors found by the trial court to be invalid, leaving the death sentence

supported by only one aggravator. It was this finding, and not the defendants' mental illness, that was the linchpin of this Court's determination a death sentence was disproportionate.<sup>12</sup> Knowles v. State, 632 So.2d 62 (Fla. 1993) (finding Knowles' death sentence was disproportionate because two of the three aggravating circumstances were found to be invalid)<sup>13</sup>; McKinney v. State, 579 So.2d 80 (Fla. 1991) (finding death penalty disproportionate when there was insufficient evidence to support the CCP and HAC aggravators and, as such, death sentence was supported by just one aggravating circumstance - the murder was committed during the course of a violent felony)<sup>14</sup>; Besbara v. State, 656 So.2d 441

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<sup>12</sup> This Court has often observed that the death penalty will be upheld in one aggravator cases only where there is little or no mitigation.

<sup>13</sup> Knowles also had significant neurological deficiencies resulting from extended abuse of alcohol and solvents and was intoxicated at the time of the murders. This Court also pointed to evidence that both mental health experts who testified at trial agreed that Knowles' ability to premeditate was either non-existent or impaired.

In this case, none of the mental health experts testified that Green was incapable of premeditating the murder of James Hallman and there is no evidence that Green was intoxicated. Further, Green has an IQ of 97 and does not suffer from any brain damage. (TR Vol. VI 1149).

<sup>14</sup> McKinney offered testimony he had mental impairments, including brain damage, a learning disability, borderline intelligence, and drug and alcohol abuse. Green does not suffer from brain damage. Neither does he suffer from a learning disability or borderline intelligence. (TR Vol. VI

(Fla. 1995) (finding death sentence disproportionate when evidence did not support CCP aggravator leaving only the contemporaneous violent felony aggravator remaining to be weighed against substantial mitigation); Santos v. State, 629 So.2d 838, 840 (Fla. 1994) (reducing Santos' death sentence to life in prison because two (HAC and CCP) of the three aggravators were not supported by the evidence and the lone remaining factor - contemporaneous violent felony convictions - did not outweigh weighty mitigators); White v. State, 616 So.2d 21 (Fla. 1993) (setting aside the CCP aggravator and finding death sentence disproportionate when there was substantial mitigation presented and only one valid aggravator - prior violent felony - remained); DeAngelo v. State, 616 So.2d 440 (Fla. 1993) (finding death sentence disproportionate when death sentence was supported by only one aggravator (CCP) and there was significant mental mitigation evidence).

In this case, the trial court found two aggravators, both of which are supported by the evidence. The trial court afforded each of these aggravators great weight. Contrary to Green's suggestion, this Court should not look to these six cases as comparable cases.

Moreover, the two remaining cases to which Green cites as "comparable cases," are also distinguishable from the case at



bar. In Farinas v. State, 569 So.2d 425 (Fla. 1990), the evidence introduced at trial demonstrated the murder was committed as a result of Farinas' jealousy and obsession with the victim, whom he suspected was becoming romantically involved with another man.<sup>15</sup> In reducing Farinas' sentence to life in prison without the possibility of parole for 25 years, this Court found it significant the murder was the result of a heated, domestic confrontation. Farinas, 569 So.2d at 431.

Here, there was no evidence the murder was committed as a result of a confrontation, heated or otherwise, between Green and Mr. Hallman. Rather, the evidence, most especially the defendant's own confession, establishes Green killed Mr. Hallman for no other reason than he did not want any witnesses to his possession and discharge of a stolen handgun.

Additionally, the trial court had before it evidence supporting the prior violent felony aggravator. The morning of the murder, Green attempted to kill Christopher Phipps who, like Mr. Hallman, had offered no resistance to Green's unprovoked attack on him. This Court should reject any notion that Farinas is a "comparable case."

Finally, in Kramer v. State, 619 So.2d 274 (Fla. 1993), this Court found Kramer's death sentence disproportionate despite evidence supporting two statutory aggravators - HAC

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<sup>15</sup> The victim was the mother of ~~Farinas~~ Farinas' child.

and prior violent felony. The victim was found by the side of Interstate 4 in Orlando, Florida. The victim's blood alcohol level at the time of this death was .23. Kramer told the police he and the victim had gotten into an argument and the victim had pulled a knife. Kramer admitted hitting him with a "good-sized" rock and knocking him to the ground. Kramer told the police when the victim tried to get up, he hit him again. Kramer v. State, 619 So.2d at 275-276. During the penalty phase, Kramer introduced evidence of his history of substance abuse and mental problems.

This Court found Kramer's sentence to be disproportionate. This Court concluded the murder was the result of "a spontaneous fight, occurring for no discernible reason, between a disturbed alcoholic and a man who was legally drunk." Kramer v. State, 619 So.2d at 278.

This case, like the others Green suggests are comparators, is distinguishable from the case at bar. In Kramer, this Court found the murder was the result of a drunken brawl erupting spontaneously for no apparent reason. In this case, Green approached Mr. Hallman for the express purpose of eliminating him as a witness. Using a request for directions as a ruse, Green shot Mr. Hallman in the head without provocation for the sole purpose of concealing his

crimes against Christopher Phipps and John Boles' bull. This Court should reject any notion that Kramer forms the basis to reduce Green's sentence to life.

While it is clear that Green presented significant evidence in support of the two mental mitigators, it is equally clear this was an especially aggravated murder committed without even a pretense of moral justification. Before Green killed James Hallman, he shot Christopher Phipps in the head with the specific intent to kill him. Green stole Phipps' white Thunderbird and the gun he used to shoot Christopher Phipps. Green was neither intoxicated or under the influence of illegal drugs at the time of either shooting.

When Green found himself on the same country road as James Hallman after firing a shot into the neck of John Boles' bull, he could have simply driven away in the direction from which he came. Instead, as he reported to his brother and to Brian Lockwood, he approached James Hallman and killed him.

Mr. Hallman did not know Ryan Green nor was he in any position to pursue or confront Green.<sup>16</sup> In accord with his own words, Green killed Mr. Hallman solely to eliminate any witness to his possession and shooting of a gun, stolen from a

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<sup>16</sup> While Mr. Hallman was a 34-year veteran of the Pensacola Police Department who would have likely been better able to observe and report details of Green shooting the bull than would the average citizen, Green did not know this at the time

victim he left for dead on the floor of his own home. This Court should affirm. See Pope v. State, 679 So.2d 710 (Fla. 1996) (finding the death sentence to be proportionate where aggravators were a previous violent felony and that the murder was committed for pecuniary gain; where the statutory mitigators were extreme mental or emotional disturbance and impaired capacity to appreciate the criminality of his conduct; and where nonstatutory mitigation included intoxication at the time of the offense and the violence occurred subsequent to a boyfriend/girlfriend dispute).

#### ISSUE TWO

#### **WHETHER THE TRIAL COURT ERRED IN FINDING THE MURDER WAS COMMITTED TO AVOID ARREST**

"[T]o establish the avoid arrest aggravating factor where the victim is not a law enforcement officer, the State must show beyond a reasonable doubt that the sole or dominant motive for the murder was the elimination of a witness." Connor v. State, 803 So.2d 598, 610 (Fla. 2001), *cert. denied*, 535 U.S. 1103, 122 S.Ct. 2308, 152 L.Ed.2d 1063 (2002). Though the victim was a retired police officer, the State did not proceed under a "law enforcement" theory in support of the avoid arrest aggravator. Instead, the State proceeded on a theory that Green's sole or dominant motive was to eliminate

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he shot Mr. Hallman one time in the head.

Mr. Hallman as a witness to Green's unauthorized possession of Christopher Phipps' white Thunderbird and to Green's shooting John Boles' bull with the gun he took from Christopher Phipps.

The standard of review this Court employs in determining whether the trial judge erred in finding the murder was committed to avoid arrest is whether there is competent substantial evidence to support the trial court's finding that Green murdered Mr. Hallman in order to eliminate him as a witness. Buzia v. State, 926 So.2d 1203, 1209 (Fla. 2005).<sup>17</sup> Direct evidence of intent is not required. Instead, the avoid arrest aggravator may be proven by circumstantial evidence from which the motivation for the murder may be inferred. Parker v. State, 873 So.2d 270, 289 (Fla. 2004).

In determining whether the avoid arrest aggravator is supported by the evidence, this Court has looked, in other cases, to such matters as whether the victim knew and could

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<sup>17</sup> In its sentencing order, the trial court found that, after the murder, Green confided in Aaron Green and Brian Lockwood he killed Mr. Hallman to eliminate him as a witness to the discharge of a firearm and shooting of a bull. (R Vol. III 338). The court concluded that Green's admissions showed that Green's dominant, if not sole, motive was to eliminate Mr. Hallman as a witness to the firing of a firearm and shooting of the bull. (R. Vol. III 338).

In reviewing this aggravator, this Court must also determine whether the trial court applied the right rule of law in finding this aggravator. Green does not suggest the trial judge misapplied the law. Instead, Green suggests only that the evidence was insufficient to support the aggravator.

identify their killer, whether the defendant used gloves or wore a mask, or whether the defendant made any incriminating statements about witness elimination. This Court has also looked to whether the victim offered any resistance or was in a position to pose a threat to the defendant. Id. In the instant case, both direct and circumstantial evidence supports the trial judge's conclusion that Green's sole or dominant motive to kill Mr. Hallman was to eliminate him as a witness.

The evidence introduced at trial demonstrated that Green admitted to at least two people, Aaron Green and Brian Lockwood, that he killed Mr. Hallman to eliminate him as a witness. This Court has recognized that a confession is direct evidence supporting the avoid arrest aggravator. Philmore v. State, 820 So.2d 919, 935 (Fla. 2002) (ruling that a confession that witness elimination was the motive for the murder is direct evidence of the avoid arrest aggravating circumstance).

Shortly after the murder, Green told his younger brother, Aaron, he shot Mr. Hallman.<sup>18</sup> Green also told him why. Green

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<sup>18</sup> Green referred to Mr. Hallman as "the man", presumably because he did not know his name. Green also confessed to those same two people, and to Sara McCrevey that he had shot Christopher Phipps and taken a gun and Phipps' car from the Phipps home.

told Aaron that he after he shot Christopher Phipps, he left in Phipps' car. Green told his brother that when he was driving he saw some oxen. (TR Vol. VI 984). Green told Aaron he shot at an ox. (TR Vol. VI 984). Afterwards, he drove down the road and saw a man standing there. Green described Mr. Hallman as an older man with a cane, wearing a ball cap. (TR Vol. VI 984). Green told his brother he stopped and asked the man how to get to Palafox. (TR Vol. VI 985). Green told Aaron the man was looking inside his car and was looking suspicious. (TR Vol. VI 985). Green told Aaron that as the man was looking in his car, he looked up and he [Green] shot him. (TR Vol. VI 985).

Green told Aaron he shot the man because the man saw him driving the car and shooting the gun. (TR Vol. VI 986). Aaron said Green thought the man had seen him shoot the ox. (TR Vol. VI 986). Green told Aaron he did not want "no witnesses to see him shooting the gun." (TR Vol. VI 986).

Green also confessed to Brian Lockwood. Green told Mr. Lockwood that after he shot Mr. Phipps, he ran out to Mr. Phipps' car, got in, and went for a ride. (TR Vol. VI 1010).

Green told Mr. Lockwood that he drove out to some country

road and shot an ox from the passenger window. (TR Vol. VI 1010). Green stated that he went around a corner and encountered an old man. He pulled over and asked the man for directions. (TR Vol. VI 1010).

Green told Mr. Lockwood he shot the man because he did not want any witnesses to him shooting the animal. (TR Vol. VI 1011). Green said "I had to shoot him because I didn't want any witnesses." (TR Vol. VI 1012).

Green's confession, standing alone, is competent substantial evidence to support the avoid arrest aggravator. However, Green's confession of his motive was not the only evidence supporting the aggravator. The facts of the crime itself lead rationally to a conclusion that witness elimination, and no other motive, was the sole reason Green murdered James Hallman.

Nothing was taken from Mr. Hallman. Green did not need money. (TR Vol. VII 1252). Green was found in possession only of the proceeds of the Phipps' robbery. Police found Mr. Hallman's ball cap and Walkman radio at the murder scene. (TR Vol. V 941-942).



Mr. Hallman was in the area of Kingsfield Road close to where Green shot Mr. Boles' bull. Green thought Mr. Hallman had seen him shoot the gun. (TR Vol. VI 986).

Mr. Hallman neither resisted nor was even in a position to cause harm to Green. Mr. Hallman was on foot and Green in a car. Mr. Hallman was 59 years old and Green was 19. Mr. Hallman was "armed" with a headless golf club, Green was armed with a .40 caliber loaded Beretta pistol. Green told James Lockwood the only thing Mr. Hallman did was look into his car. When he bent his head down, apparently to give the requested directions, Green shot Mr. Hallman without warning or provocation from inside the car.<sup>19</sup> The attack was so sudden, Mr. Hallman's Walkman was still on his head and the music was still playing. (TR Vol. V 941-942).

This was not a robbery gone bad, there was no argument or animosity between Mr. Hallman and Ryan Green, and Mr. Hallman offered no resistance or opposition to Green. Moreover, Mr. Hallman was not armed and was on foot, while Green was in a

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<sup>19</sup> There is no requirement that the State show that Green killed Mr. Hallman to eliminate him as a witness to Green's unprovoked attack on Mr. Hallman. It is sufficient that Green wanted to eliminate Mr. Hallman as a witness to an antecedent crime. Anderson v. State, 841 So.2d 390,405 (Fla. 2003) (a motive to eliminate a potential witness to an antecedent crime can provide the basis for the avoid arrest aggravating circumstance); Consalvo v. State, 697 So.2d 805 (Fla. 1996)

white Thunderbird with the engine running. Mr. Hallman posed no immediate threat to Green. Even if Mr. Hallman had looked at Green suspiciously or become agitated at Green's request for directions, Green, absent any motive to eliminate Mr. Hallman as a witness, could have simply driven away.

There was no reason to kill Mr. Hallman except, as admitted by the defendant, to eliminate him as a witness. The trial court applied the correct rule of law and there is competent substantial evidence to support its finding. This Court should affirm.

### ISSUE THREE

#### **WHETHER THE TRIAL COURT ERRED IN DENYING GREEN'S MOTION FOR MISTRIAL AFTER VICTIM IMPACT WITNESSES TESTIFIED DURING THE PENALTY PHASE OF GREEN'S CAPITAL TRIAL**

Green alleges the trial judge erred in denying Green's motion for mistrial after four victim impact witnesses testified for the state during the penalty phase of Green's capital trial. Green complains about portions of only two of them; the penalty phase testimony of Greg Sievers and James Hallman. Green alleges these witnesses improperly provided opinions about the crime, the defendant, and the appropriate sentence. (IB 46).

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(same).

The record shows that prior to the penalty phase, trial counsel filed a motion to preclude the introduction of any victim impact evidence. (TR Vol. VIII 1417). The trial court denied the motion but agreed to monitor it closely to ensure the offered testimony did not exceed permissible victim impact evidence. (TR Vol. VIII 1419).

Prior to the presentation of the victim impact evidence, the jury was instructed that victim impact evidence may be "considered by you to determine the victim's uniqueness as an individual human being and the resultant loss by James Hallman's death." (TR Vol. VIII 1450). The trial court instructed the jury it was not permitted to weigh the evidence as an aggravating circumstance and that its recommendation must be based on the aggravating circumstances and mitigating circumstances upon which it would be instructed." (TR Vol. VIII 1450).

Mr. Greg Sievers testified that Mr. Hallman took him into his family like a son when he was 16 years old. Mr. Sievers read a statement to the jury. Mr. Sievers told the jury that Mr. Hallman positively influenced his life. He testified Mr. Hallman had been a police officer for 34 years until he retired shortly before he was murdered. (TR Vol. VIII 1453).

Mr. Sievers described Mr. Hallman as the friendliest,

most helpful man one would ever want to meet. (TR Vol. VIII 1453). Mr. Hallman was well known in the community and all the kids would recognize him and approach him. They knew Mr. Hallman always had a smile, a kind word, and a piece of candy for them. (TR Vol. VIII 1453).

According to Mr. Sievers, Mr. Hallman was the kind of policeman everybody loved. He made a positive impression on Mr. Sievers. Mr. Sievers followed Mr. Hallman into law enforcement and worked with him for several years. (TR Vol. VIII 1454).

Mr. Sievers told the jury he never met anyone who disliked Mr. Hallman and Mr. Hallman was the type of person who would give you the shirt off his back even if the person who needed it was a complete stranger. (TR Vol. VIII 1454).

Mr. Sievers testified that Mr. Hallman was 59 years old and had looked forward to spending his retirement with his wife. (TR Vol. VIII 1454).

Mr. Sievers told the jury that he and his wife have a six year old daughter who loved her "Paw Paw". She wishes, when she blows the birthday candles out on her cake or sees the first star, that she could grow wings and fly up to heaven to see her "Paw Paw" one more time. (TR Vol. VIII 1455). His daughter also wants to go see Ms. Hallman because Ms. Hallman

is sad and it always makes her happy to see his daughter. (TR Vol. VIII 1455).

Finally, Mr. Sievers thanked the prosecutor for his hard work and dedication. Mr. Sievers said that Mr. Hallman would be

proud that the system that he had devoted his career to had worked for him in the end. (TR Vol. VIII 1455-1456).

Trial counsel raised no contemporaneous objection to any of Mr. Sievers' testimony. At the conclusion of Mr. Sievers' testimony, however, trial counsel moved for a mistrial. Trial counsel noted that at the end of Mr. Sievers' testimony, the "characterization of my client and the circumstances of this case" were exactly what is prohibited. Trial counsel did not identify any particular characterization of his client or the circumstances of this case about which he took issue. (TR Vol. VIII 1456).

Trial counsel did, however, raise a specific complaint about the witness's praise of Mr. Rimmer. (TR Vol. VIII 1456). The trial judge took the motion for mistrial under advisement. Trial counsel then requested the trial judge to ensure that "this" did not happen with other witnesses. Though he did not specify what "this" was, it is logical to

conclude trial counsel was referring to praise for the prosecutor. No other witness commented on the prosecutor's duty performance. (TR Vol. VIII 1473).

The prosecution next called Jamie Steyne, Mr. Hallman's daughter and Diane Hallman, Mr. Hallman's wife. (TR Vol. VIII 1457-1466). Trial counsel posed no objection to any of the victim impact testimony offered by these two witnesses.

Finally, James Hallman III took the witness stand.<sup>20</sup> James Hallman is Mr. Hallman's son. (TR Vol. VIII 1467). James told the jury he was affected by looking at his father's planner which his mother carried around. He told the jury that the pages once full of plans were now empty as were the days and months since his father was torn from their lives. (TR Vol. VIII 1468).

James testified he hardly recognized his father in the hospital. James described how his father had just retired from the police force and had looked forward to spending it with his mother. (TR Vol. VIII 1468). He testified those dreams were shattered because of this senseless act of crime. (TR Vol. VIII 1469).

James told the jury his father was a kind and caring

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<sup>20</sup> The State will refer to the witness, James Hallman III, as "James" to prevent any possible confusion between the witness

person who made a positive impact on the community and touched many lives. (TR Vol. VIII 1469). James explained the damage done by the bullet wound to Mr. Hallman's head. (TR Vol. VIII 1470). He also described how Mr. Hallman suffered in the last hours of his life and how the funeral was a terrible experience for the family. (TR Vol. VIII 1471). He described how so many members of the community turned out to pay their respects to his father. (TR Vol. VIII 1471-1472). Until then, James was unaware how many lives his father had touched. (TR Vol. VIII 1472).

James told the jury he had witnessed some of what the jury had gone through and that it had only seen a fraction of the grief and sorrow that has filled his family for the past two years, seven months, and seventeen days. (TR Vol. VIII 1472). He understood that none of the jurors wanted to be in the position of ultimate responsibility. (TR Vol. VIII 1472).

Finally, he asked the jury to give weight to the senselessness of the crime knowing his father had spent 34 years on the force, had made a career out of defending the people and the laws the jury must consider and never shot anyone because he was aware of the consequences. (TR Vol. VIII 1472). James closed by noting that while he was so proud

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and the victim.

of his Dad, it did not make it any easier to lose him. (TR Vol. VIII 1472).

During James' testimony, trial counsel made no contemporaneous objection. At the conclusion of James' testimony, however, trial counsel moved for a mistrial. (TR Vol. VIII 1473).

Only then did trial counsel point to the particular points of the victim impact testimony about which he took issue. Trial counsel offered that it was impermissible for Mr. Sievers to tell the jury that Mr. Hallman's murder stole the heart from the Hallman family. Trial counsel also complained, once again, that the witness complimented the prosecutor. Finally, trial counsel noted that the final witness, James Hallman III, went beyond the bounds of permissible victim impact testimony when he described his father's injuries, his suffering, his ultimate death, and attempted to put the jurors in his own situation. (TR Vol. VIII 1474).

The State responded that the witnesses' testimony was classic victim impact evidence in which the witnesses described the impact of Mr. Hallman's death on their family and the community, as well as Mr. Hallman's uniqueness as a human being. (TR Vol. VIII 1475). The trial judge ruled it



would take the motion for mistrial under advisement. (TR Vol. VIII 1475).<sup>21</sup> During closing argument, the State did not repeat any of the victim impact testimony nor did he ask jurors to consider it in making their recommendation. (TR Vol. IX 1517). During final jury instructions, the trial court, once again, instructed the jury the victim impact evidence they heard from Mr. Hallman's family could be considered only as to the victim's uniqueness as an individual human being and the resultant loss by Mr. Hallman's death and could not be weighed as an aggravating circumstance. (TR Vol. VIII 1540). The Court also reminded the jury that only aggravating circumstances on which it was instructed may be weighed against mitigating circumstances. (TR Vol. VIII 1540). The trial court instructed only on the prior violent felony

aggravator (contemporaneous attempted murder of Christopher Phipps) and the avoid arrest aggravator. (TR Vol. VIII 1538).

In Payne v. Tennessee, 501 U.S. 808, 827, 111 S.Ct. 2597, 115 L.Ed.2d 720 (1991), the United States Supreme Court held that the Eighth Amendment to the United States Constitution did not prevent the State from presenting evidence about the

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<sup>21</sup>After a post-trial hearing, the trial judge ultimately denied the motion. (R. Volume II 1473-1475).

victim, evidence of the impact of the murder on the victim's family, and prosecutorial argument on these subjects, if permitted to do so by state law.<sup>22</sup> Subsequently, the Florida legislature enacted legislation which permits the prosecution to introduce and argue victim impact evidence.

Section 921.141(7), Florida Statutes provides that once the prosecution has provided evidence of the existence of one or more statutory aggravating circumstances, the prosecution may introduce, and subsequently argue, victim impact evidence. The statute provides that such evidence shall be designed to demonstrate the victim's uniqueness as an individual human being and the resultant loss to the community's members by the victim's death. Characterizations and opinions about the crime, the defendant, and the appropriate sentence are not permitted as a part of victim impact evidence.

The standard of review for this third issue on appeal is an abuse of discretion. England v. State, 940 So.2d 389, 401-402 (Fla. 2006). A motion for a mistrial should only be granted when an error is so prejudicial as to vitiate the entire trial. Id.

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<sup>22</sup> In Payne, the United States Supreme Court found no constitutional error in the admission of testimony from the victims' mother and grandmother that her surviving grandchild cries for, and misses his mom and his sister. Payne v. Tennessee, 501 U.S. at 814.

This Court should deny this claim for two reasons. First, Green waived any claim that the trial court erroneously admitted Mr. Sievers' and Mr. Hallman's testimony when he offered no contemporaneous objection to those portions of the testimony about which he now complains.<sup>23</sup> This Court has ruled that in order to preserve this issue for direct appeal, a contemporaneous objection must be raised. Sexton v. State, 775 So.2d 923, 932 (Fla. 2000). See also Card v. State, 803 So.2d 613 (Fla. 2001). Green's motion for mistrial at the end of the testimony was not sufficient to preserve the issue. Norton v. State, 709 So.2d 87, 94 (Fla. 1997).

This Court may also deny this claim because, with the exception of two brief comments during the testimony of James Hallman III, none of the testimony about which Green complains crossed the line into impermissible victim impact testimony. As such, Green cannot show the victim impact evidence was so prejudicial as to vitiate the entire trial.

All of the testimony offered by the State centered around the loss suffered by Mr. Hallman's family and community as a result of the murder and the grief his family suffered as a

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<sup>23</sup> While Green raises this issue as a claim the trial court erred in denying his motion for mistrial, Green seems also to frame the issue as a substantive claim the trial judge erred in admitting victim impact testimony. (IB 53). This latter claim is procedurally barred because Green offered no contemporaneous objection.

result of his death.

On several occasions, this Court has ruled that testimony from family members constitutes both relevant and proper victim impact evidence. Bonifay v. State, 680 So.2d 413, 419-20 (Fla. 1996) (testimony from family members constitutes both relevant and proper victim impact evidence. Family members are unique to each other by reason of the relationship and the role each has in the family. A loss to the family is a loss to both the community of the family and to the larger community outside the family). See also Mansfield v. State, 758 So.2d 636,649 (Fla. 2000); Windom v. State, 656 So.2d 432 (Fla. 1995).

Moreover, this Court has permitted testimony similar to that offered by the Hallman family. In Mansfield v. State, 758 So.2d 636, 649 (Fla. 2000), this Court ruled that the testimony of the victim's mother-in-law about the effect of the victim's death on her surviving children was permissible victim impact evidence. This Court also found no error in the admission of two photographs of the victim, one of her pictured with her family and the other of her and her children engaged in church activities. Id.

In Davis v. State, 703 So.2d 1055 (Fla. 1997), this Court

rebuffed Davis' challenge to the trial court's ruling permitting the victim's mother to read a statement she prepared concerning the impact of the child victim's death on her friends and family. This Court noted the statement discussed the victim's importance to her brother, sister, mother, family, and friends, testimony this court characterized as "clearly the type of evidence contemplated by the decisions of this Court and the United States Supreme Court." Id. at 1060.

Likewise, in Burns v. State, 699 So.2d 646, 652 (Fla. 1997), a case in which the victim was an active duty police officer, this Court found no error in the admission of testimony from both the victim's father and a fellow officer outlining the victim's background, training, and character, as well as his family's grief. See also Kormondy v. State, 845 So.2d 41, 54 (Fla. 2003) (concluding that family members' testimony the victim was an outstanding member of the community, a devoted husband, and a loving son was within statutory guidelines); Bonifay v. State, 680 So.2d 413, 419-420 (Fla. 1996) (testimony from the victim's wife about the impact of her husband's death on her was permissible victim impact testimony).

In the instant case, while Mr. Sievers did briefly thank

the prosecutor for his efforts in prosecuting the case, Mr. Sievers offered no characterization or opinion about the crime, the defendant, or the appropriate sentence. As such, none of his comments fell within the prohibitions of Section 921.141(7), Florida Statutes. Green has failed to show this one brief comment was so prejudicial as to vitiate the entire trial. James Hallman III, as well, offered no characterization or opinion about the defendant or the appropriate sentence. Contrary to Green's assertions, the record does not support Green's claim that James violated the "Golden Rule". Even presuming a witness can violate the "Golden Rule", James never requested the jury to imagine the pain of his father as he lay dying from a gunshot wound to the head nor did he ask jurors to even imagine the family's own pain and grief. See generally Garron v. State, 528 So.2d 353, 358-359 (Fla. 1988) (holding that such comments such as "you can just imagine the pain of the victim" are improper Golden Rule comments). Instead, in context, it is clear James was simply attempting to explain to the jury that, prior to the penalty phase, it had not been privy to the complete picture of Mr. Hallman's uniqueness as a human being and the resultant loss suffered by his family and friends. (TR Vol. VIII 1472).

Finally, while James did briefly characterize the crime

as "senseless", Green cannot show these fairly innocuous comments were so prejudicial as to vitiate the entire trial. First, the trial judge properly instructed the jury, both before and after the testimony, that victim impact evidence could not be considered in aggravation nor could it be a part of the weighing process. Kearse v. State, 770 So.2d 1119, 1133 (Fla. 2000) (approving the trial court's instruction to the jury that they could not consider victim impact testimony to establish an aggravating circumstance). The prosecutor did not emphasize or even point to any part of the victim impact testimony during his closing argument.

Additionally, the evidence presented during the guilt phase demonstrated, without question, the murder was both senseless and random. During the guilt phase, the jury heard evidence that Mr. Hallman died simply because he was taking his daily walk on the same country road from which Ryan Thomas Green decided to shoot a bull from a stolen car with a stolen gun.

In Sexton v. State, 775 So.2d 923, 933 (Fla. 2000), this Court considered Sexton's claim that the trial judge erred in admitting the testimony of the victim's aunt. In particular, Sexton claimed her testimony, which characterized the victim's murder as a senseless act of violence and made reference to

the victim's son who died under mysterious circumstances, should not have been put before the jury. This Court agreed and ruled the witness' testimony exceeded the scope of permissible impact evidence. This Court held, however, that any error in allowing the testimony was harmless because the jury was already familiar with the circumstances of the victim's death. Sexton v. State, 775 So.2d at 933.

Because Green's jury was familiar with the circumstances of the murder at the time Mr. Hallman's son offered his opinion the crime was "senseless," Green cannot show the testimony was so prejudicial as to vitiate the entire trial. Accordingly, Green cannot show the trial judge erred in denying his motion for mistrial and this Court should deny this claim.

#### ISSUE FOUR

#### **WHETHER FLORIDA'S CAPITAL SENTENCING PROCEDURES ARE UNCONSTITUTIONAL PURSUANT TO RING v. ARIZONA**

On July 8, 2003, Green filed a motion to bar imposition of a death sentence on the basis that Florida's capital sentencing procedure is unconstitutional under Ring v. Arizona. (R Vol. I 28). The trial court denied the motion. (R. Vol. I 79-81).

Green alleges the trial court should have granted the



motion because Florida's death penalty is unconstitutional under the principles announced in Ring v. Arizona, 536 U.S. 584 (2002). This Court should deny this claim for two reasons.

First, this Court has consistently rejected claims, on direct appeal, that Florida's capital sentencing scheme is unconstitutional after Ring. Taylor v. State, 937 So.2d 590, 601 (Fla. 2006); Simmons v. State, 934 So.2d 1100, 1120 (Fla. 2006); Jones v. State, 845 So.2d 55, 74 (Fla. 2003); Butler v. State, 842 So.2d 817,834 (Fla. 2003). While Green asks this Court to reconsider its position in these cases, Green presents no compelling reason to do so.

Second, the trial judge found, in aggravation, that Green had previously been convicted of a violent felony, namely the contemporaneous attempted first degree murder and armed robbery of Christopher Phipps. These felonies were charged by indictment and a jury unanimously found Green guilty of them. As this court has determined on many occasions, the prior violent felony aggravator alone satisfies the mandates of the United States and Florida Constitutions. Doorbal v. State, 837 So.2d 940, 963 (Fla. 2003). See also Seibert v. State, 923 So.2d 460, 474 (Fla. 2006). This claim should be denied.

#### **CONCLUSION**

Based upon the foregoing, the State requests respectfully this Court affirm Green's convictions and sentence to death.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to W.C. McClain, Office of the Public Defender, Leon County Courthouse, Suite 401, Tallahassee, Florida 32301 this 22d day of January 2007.

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MEREDITH CHARBULA  
Assistant Attorney General

**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that the instant brief has been prepared with 12 point Courier New type, a font that is not spaced proportionately.

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MEREDITH CHARBULA  
Assistant Attorney General