

IN THE SUPREME COURT OF FLORIDA

RYAN THOMAS GREEN,

Appellant,

v.

CASE NO. SC06-211

L.T. No. 03-81-CF

STATE OF FLORIDA,

Appellee.

_____ /

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

REPLY BRIEF OF APPELLANT

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REPLY BRIEF OF APPELLANT

PRELIMINARY STATEMENT

References to the trial transcript will be designated the the prefix AT.@ The Initial Brief will be referenced with the prefix AIB@ and the Answer Brief references will use AAB.@ Appellant relies on the Initial Brief to reply to the States Answer Brief with the following additions:

ARGUMENT

ISSUE I

ARGUMENT IN REPLY TO THE STATE AND IN SUPPORT OF THE PROPOSITION THAT THE DEATH SENTENCE IMPOSED IN THIS CASE IS DISPROPORTIONATE.

Initially, the State agrees that the evidence established that Ryan Green suffers from a major mental illness. (AB at 45) The State asserts, Although 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.@ (AB at 43-44) The State acknowledges that Drs. Larson and Turner testified Green was hallucinating and delusional on the day of the murder. (AB at 44) Then, the State claims that Dr. Gilgun testified that Green was not. (AB at 44) The State's brief references Gilgun's trial testimony in which he concluded that Green was not legally insane at the time of the crimes. (AB at 44) (T7:1162-1163) The prosecutor asked Gilgun his opinion on whether Green **A**was experiencing hallucinations or delusions.@ (R7:1162-1163) Gilgun responded, **A**He was not experiencing hallucinations.@ (T7:1163) His testimony is silent on the question on whether Green was delusional. (T7:1163) During the penalty phase, Dr. Gilgun testified that Ryan Green's mental illness caused him to suffer hallucinations and delusions. (9:1498-1503) Gilgun also agreed with the other experts that Green qualified for the statutory mitigating circumstances dealing with extreme mental or emotional disturbance and substantially impaired capacity at the time of the crime. (T9:1505-1506)

The State notes that this Court has never adopted the position that a defendant's major mental illness, alone, renders

a death sentence disproportionate. (AB at 45) Green has never asserted this standard for his disproportionate sentence claim. (IB, Issue I) However, the American Bar Association has recently adopted a resolution and recommendations that a major mental illness should constitute a bar to imposition of a death sentence. See, ABA Report with Recommendations No. 122A, adopted August 5, 2006 [attached to this brief as an appendix]; see, also, State v. Ketterer, 111 Ohio St. 3d 70, 855 N.E. 2d 48 (Ohio 2006), *Justice Stratton, concurring (calling for an examination of the question of imposing the death penalty on those with serious mental illness)*.

In an attempt to distinguish the comparable cases Green offered in the initial brief, the State has invited this Court to engage in a counting of aggravating circumstances review. (AB at 45-47) The State asserts a number of the comparable cases Green offered are distinguishable because they involved only one aggravating circumstance where the trial court in Green's case found two. (AB at 45-47) First, the State's argument fails because only one of the two aggravating circumstances the trial court found is valid. (IB, Issue II) Second, this Court performs a proportionality review to insure the death sentence does not rest on facts similar to cases where a death sentence has been disapproved. See, e.g., Urbin v. State, 714 So.2d 411 (Fla.

1998); Terry v. State, 668 So.2d 954 (Fla. 1996); Tillman v. State, 591 So.2d 167 (Fla. 1991). The process requires an evaluation of the totality of the facts of the case under review to the circumstances of the comparable cases. *Ibid.* Such an evaluation involves more than a mere counting of aggravating and mitigating circumstances; a qualitative review of the facts is involved. *Ibid.*

Finally, the State claims that the decision in Pope v. State, 679 So.2d 710 (Fla. 1996), requires the sentence to be affirmed. (AB 50-51) Pope and the victim, Alice Mahaffey, both alcoholics, were drinking beer in the kitchen of the house where Pope's eighteen-year-old niece, Marsha, and her parents lived. Marsha's parents were not home. Pope told Marsha he was going to kill Alice and take her car and money. Marsha dismissed the remarks because Pope was drunk. Later, Pope forced Marsha into the bathroom to watch while Pope brutally beat and stabbed Alice. Pope threatened to kill Marsha if she left. He left Alice for dead because Marsha lied to him, saying Alice was dead in order to prevent his continued attack. He took Marsha with him in the car. He dropped Marsha at a friend's house, and she called the police. When the police arrived, Pope said, "I hope I killed the bitch@ I hope I didn't go through all that for nothing. I hope she's dead as a doornail.@ Alice died eight

days later from her wounds. The defense asserted that this was a homicide which was based on a domestic fight. No mental health professionals evaluated Pope. The trial court found the statutory mental mitigators based on Pope's alcoholism and intoxication at the time of the murder.

Pope is distinguishable. Pope committed a beating and stabbing death for a car and money. His mitigation was based on alcoholism and intoxication. This contrasts with Green's case where he committed a random shooting homicide, after shooting a cow. In contrast to Pope, Green suffered from a psychotic mental illness diagnosed by three mental health professionals and corroborated by family members.

Green's death sentence is disproportionate. He asks this Court to reverse the death sentence for imposition of a sentence of life.

CONCLUSION

For the reasons presented in this Reply Brief and the Initial Brief, Ryan Thomas Green asks this Court to reverse his death sentence.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by mail to Meredith Charbula, Assistant Attorney General, Criminal Appeals Division, The Capitol, PL-01, Tallahassee, Florida, 32399-1050, and to Appellant, Ryan T. Green, #127545, F.S.P., 7819 N.W. 228th St., Raiford, FL 32026, on this _____ day of February, 2007.

CERTIFICATE OF COMPLIANCE

Undersigned counsel certifies that this brief has been prepared using 12 point Courier New, a font that is not proportionately spaced.

Respectfully submitted,

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