IN THE SUPREME COURT OF FLORIDA

ANTHONY WELCH,	)	
	)	
Appellant,	)	
	)	
vs.	)	CASE NUMBER SC06-698
	)	
STATE OF FLORIDA,	)	
	)	
Appellee.	)	
_____	)	

APPEAL FROM THE CIRCUIT COURT
IN AND FOR BREVARD COUNTY, FLORIDA

REPLY BRIEF OF APPELLANT

JAMES S. PURDY
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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TABLE OF CONTENTS

TABLE OF CITATIONS

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ARGUMENTS

POINT I

IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT THE TRIAL COURT ERRED IN OVERRULING APPELLANT=S TIMELY OBJECTION AND ALLOWING THE STATE TO PRESENT IRRELEVANT EVIDENCE THAT WELCH HAD PREVIOUSLY DECLINED COCAINE WHEN OFFERED BY HIS ROOMMATES RESULTING IN AN UNWARRANTED DENIGRATION OF VALID MITIGATION THAT WELCH WAS HIGH ON COCAINE AT THE TIME OF THE MURDERS.

In their answer brief, the state expresses confusion about the essence of appellant=s argument. Undersigned counsel apologizes for any confusion caused by his apparent inartfully expressed argument. Counsel will attempt to clear up the confusion.

Appellant=s impairment from cocaine on the night of the murders is critical mitigation evidence. The trial prosecutor repeatedly contended that appellant was not impaired on the night of the murders. The prosecutor employed strategy to exclude any evidence that might suggest that appellant was impaired by his ingestion of cocaine that evening.

On appeal, appellant contends that the prosecutor unfairly and inappropriately adduced testimony that had no legal relevance to the issue. Specifically, the fact that appellant had declined previous offers of cocaine from his roommate had absolutely no relevance to the issue of whether or not appellant was under the influence of cocaine on the night of the murders. This unfair testimony undoubtedly swayed the jury on this factor. The logical appeal of this evidence is undeniable. The evidence is similar to propensity evidence which is appropriately excluded from Florida courtrooms.

Welch=s guilt was not an issue at the penalty phase. He pleaded guilty to the offenses as charged. The sole issue determined by this jury was whether Welch would be executed or die a natural death after spending the rest of his life in prison. Since

it related to his mental state at the time of the murders, appellant=s cocaine intoxication was of paramount importance at the penalty phase. The trial prosecutor successfully (and not always improperly) minimized Welch=s drug use. In doing so, the prosecutor lessened or eliminated this valid and important mitigating circumstance.

The prosecutor=s success on this issue is evidenced by the two questions propounded by the jury after five hours of deliberations on appellant=s ultimate fate. One question dealt with appellant=s dissociative symptoms, but the second question asked the trial court to explain Awas he impaired or was he not?@ (XXV 2382) Of course, the trial court could not answer this ultimate jury question. The jury was left to decide this critical issue based on unfairly irrelevant testimony from Welch=s roommate. Appellant=s act in declining offers of cocaine from his roommate on several occasions had no relevance to the issue of whether or not Welch was under the influence of cocaine on the night of the murders. As a result of the improper evidence, appellant=s death sentence is unfair and unconstitutional.

POINT II

IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT THE TRIAL COURT ABUSED ITS DISCRETION BY DENYING APPELLANT=S CAUSE CHALLENGE OF A JUROR WHO CLEARLY BELIEVED THAT DEATH WAS THE APPROPRIATE PENALTY.

Appellant relies on the argument set forth in his initial brief.

POINT III

IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT THE TRIAL COURT ERRED IN DENYING APPELLANT=S MOTION TO SUPPRESS HIS STATEMENT WHERE LAW ENFORCEMENT DID NOT SCRUPULOUSLY HONOR HIS RIGHT TO REMAIN SILENT.

In an attempt to refute appellant=s agreement, Appellee relies heavily on ***Oregon v. Bradshaw***, 462 U.S. 1039 (1983). At first blush, that particular case appears to be on point. Specifically, after stopping the interview by invoking his constitutional rights (to counsel rather than silence as in appellant=s case), Bradshaw asked what would Ahappen to me now?@ However, appellant=s case is clearly distinguishable from appellant=s.

When Bradshaw asked the pertinent questions, law enforcement=s response was to answer by saying AYou do not have to talk to me. You have requested an attorney and I don=t want you talking to me unless you so desire because anything you say - because - since you have requested an attorney, you know, it has to be at your own free will.@ ***Oregon v. Bradshaw***, 462 U.S. at 1042. Bradshaw expressed understanding. There followed a discussion between Bradshaw and the officer concerning where he was being taken and the offense with which he would be charged. The officer

then suggested that Bradshaw might help himself by taking a polygraph examination. Respondent agreed to do so, saying that he was willing to do whatever he could to clear up the matter. **The next day**, following another reading of ***Miranda*** rights, Bradshaw signed a written waiver and a polygraph was administered. ***Id.***

In contrast, Welch initially attempted to conclude his interview by stating that he did not wish to talk to the police anymore. Although the two officers tried to keep questioning Welch, he repeated his request to terminate the interview. At that point, the interview ceased and one of the officers handcuffed Welch and inventoried his personal effects. The police then left Welch alone in a small interview room. A third law enforcement officer, Agent Harrell, entered the room several minutes later and began to ask Welch personal information as he filled out paperwork. This went on for several minutes before Harrell ultimately left Welch alone for approximately forty-five minutes. When Welch eventually became thirsty and knocked on the door requesting water, Agent Harrell escorted him to the water cooler down the hall.

At the water cooler, out of sight and sound of the recording equipment, Welch asked Agent Harrell what would happen to him

next. Agent Harrell assured Welch that he would be transported to the jail eventually. When Welch asked what would happen after he was jailed, Agent Harrell explained that Welch faced trial on two first-degree murders where he was looking at life imprisonment or the death penalty. At that point, Agent Harrell gratuitously added that the police did not have Welch=s side of the story but, based on all of the other evidence, Welch could be found guilty. At that point, appellant said that he wanted to tell police his side of the story.

The fact pattern in the case at bar is very different from the Oregon police officer who reminded Bradshaw of his request for an attorney. The Oregon police did not continue the interview until the next day after ***Miranda*** warnings. He further reiterated Bradshaw=s constitutional right to remain silent. Instead of doing so in Welch=s case, Agent Harrell seized the opportunity to reinitiate interrogation. The statement that the police did not have Welch=s side of the story had the desired effect of eliciting a willingness on Welch=s part to confess. Agent Harrell=s behavior is a far cry from the actions taken by the Oregon police officer when Bradshaw asked about his fate. It is abundantly clear that the officer in ***Oregon v. Bradshaw*** went out of his way to scrupulously honor Bradshaw=s request for counsel.

In contrast, the police officers did not scrupulously honor Welch=s attempt end the interview. They even ignored his initial request, but he persisted. Even then, the police kept him at the station to fill out paperwork and to wait an unreasonable amount of time before transport to the jail. Instead, the police kept Welch incommunicado until his thirst got the better of him. When Welch asked an innocent question at the water cooler, Agent Harrell seized the opportunity to reinitiate interrogation. His statement that the police did not have Welch=s Aside of the story@ was a clear attempt to elicit admissions. The state=s failure scrupulously honor Welch=s invocation of his constitutional rights to remain silent mandates a new trial without the unconstitutionally obtained evidence.

POINT IV

IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT APPELLANT=S DEATH SENTENCE IS CONSTITUTIONALLY INFIRM, WHERE THE JURY=S RECOMMENDATION WAS TAINTED BY INFLAMMATORY EVIDENCE THAT ONE VICTIM WAS KILLED ON HER BIRTHDAY AND THE OTHER VICTIM WAS A CARDIAC PATIENT.

Appellant relies on the argument set forth in his initial brief.

POINT V

IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT THE TRIAL COURT ERRED IN REFUSING TO REQUIRE THE PROSECUTOR TO GIVE A GENDER-NEUTRAL REASON FOR THE STATE=S FIRST PEREMPTORY CHALLENGE OF A FEMALE JUROR.

Appellant relies on the argument set forth in his initial brief.

POINT VI

IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT THE TRIAL COURT ERRED IN OVERRULING APPELLANT=S TIMELY AND SPECIFIC OBJECTION WHEN THE PROSECUTOR IMPROPERLY ARGUED THAT JUSTICE REQUIRED THE IMPOSITION OF THE DEATH PENALTY.

Appellant relies on the argument set forth in his initial brief.

POINT VII

IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT THE TRIAL COURT ERRED IN INSTRUCTING THE JURY, OVER TIMELY AND SPECIFIC OBJECTION, ON THE HEIGHTENED PREMEDITATION AGGRAVATING CIRCUMSTANCE WHERE IT WAS NOT SUPPORTED BY ANY QUANTUM OF EVIDENCE AND WAS ULTIMATELY REJECTED BY THE TRIAL COURT.

Appellant relies on the argument set forth in his initial brief.

POINT VIII

IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT THE TRIAL COURT ERRED BY ADMITTING INFLAMMATORY PHOTOGRAPHS WHICH WERE OVERLY GRUESOME AND NOT RELEVANT TO ANY CONTESTED ISSUE.

Appellant relies on the argument set forth in his initial brief.

POINT IX

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

Appellant relies on the argument set forth in his initial brief.

POINT X

IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT FLORIDA=S DEATH SENTENCING SCHEME IS UNCONSTITUTIONAL UNDER THE SIXTH AMENDMENT PURSUANT TO ***RING V. ARIZONA***.

Appellant relies on the argument set forth in his initial brief.

CONCLUSION

Based upon the foregoing cases, authorities, policies, and arguments, Appellant respectfully requests this Honorable Court to vacate appellant=s death sentences and remand for a new penalty phase. Alternatively, appellant asks this Court to remand for the imposition of two life sentences or to simply declare Florida=s death sentencing scheme to be unconstitutional.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand-delivered to the Honorable Bill McCollum, Attorney General, 444 Seabreeze Boulevard, Fifth Floor, Daytona Beach, Florida 32118, via his basket at the Fifth District Court of Appeal and mailed to Anthony Welch, #E02957, Florida State Prison, 7819 NW 228th St., Raiford, FL 32026, this 13th day of April, 2007.

_____
CHRISTOPHER S. QUARLES
ASSISTANT PUBLIC DEFENDER

CERTIFICATE OF FONT

I hereby certify that the size and style of type used in this brief is point proportionally spaced Times New Roman, 14 pt.

_____
CHRISTOPHER S. QUARLES
ASSISTANT PUBLIC DEFENDER