

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC08-792

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ROBERT TREASE,

Petitioner

v.

WALTER A. MCNEIL,

Secretary, Florida Department of Corrections,

Respondent.

PETITION FOR WRIT OF HABEAS CORPUS

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INTRODUCTION

Citations to the direct appeal record of Mr. Trease's trial shall be as "R. [page number]." Citations to the record of Mr. Trease's Rule 3.850 proceedings will be as "PC ____ . [page number]." All other citations shall be self-explanatory.

JURISDICTION

A writ of habeas corpus is an original proceeding in this Court governed by Fla. R. App. P. 9.100. This Court has original jurisdiction under Fla. R. App. P. 9.030(a)(3) and Article V, § 3(b)(9), Fla. Const. The Constitution of the State of Florida guarantees that "[t]he writ of habeas corpus shall be grantable of right, freely and without cost." Art. I, § 13, Fla. Const.

REQUEST FOR ORAL ARGUMENT

Mr. Trease requests oral argument on this petition.

1. The Circuit Court of the Twelfth Judicial Circuit, Sarasota County, Florida, entered the judgments of convictions and sentences under consideration.

2. On September 25, 1995, a Sarasota County grand jury indicted Mr. Trease for First Degree Murder. (R. 31-32.) On February 14, 1996, Mr. Trease was charged by information with armed burglary and robbery with a firearm. (R. 137-38.)

3. After a jury trial, Mr. Trease was found guilty on December 11, 1996.

(R. 1846-47.)

4. On December 19, 1996, the jury recommended a sentence of death. (R. 1884-85.)

5. On January 22, 1997, the trial court imposed a sentence of death. (R. 2235.)

6. On direct appeal, this Court affirmed Mr. Trease's convictions and sentences. *Trease v. State*, 768 So.2d 1050 (Fla. 2000).

7. On May 22, 2001, Capital Collateral Counsel-Middle Region (CCC-MR) filed a Motion to Vacate Judgment of Conviction and Sentence on behalf of Mr. Trease. Mr. Trease filed a motion to dismiss counsel and on May 30, 2001, following hearing on the matter, this Court entered an order dismissing CCC-MR as counsel of record and dismissing the Motion to Vacate filed on his behalf. Governor Bush subsequently signed a death warrant setting Mr. Trease's execution for February 6, 2002. During ensuing litigation the Florida Supreme Court held that CCC-MR had no obligation or authority to file pleadings on Mr. Trease's behalf. The Governor stayed Mr. Trease's execution *sua sponte* on February 5, 2002, in light of the United States Supreme Court's grant of certiorari in *Ring v. Arizona*.

8. On June 18, 2002, Mr. Trease filed a Motion to Reinstate Previously

Filed Motion to Vacate Judgment of Conviction and Sentence with Special Request for Leave to Amend.

9. This Court reinstated Mr. Trease's previously filed Motion to Vacate on October 1, 2002.

10. This Court entered an Order appointing undersigned counsel as registry counsel for Mr. Trease for the purposes of costs on December 8, 2005.

11. An amended Rule 3.850 motion was filed March 21, 2006. The lower court held a *Huff*¹ hearing on October 5, 2006. Thereafter, on October 11, 2006, the trial court denied an evidentiary hearing on all claims raised in the amended motion except for the claim of ineffective assistance of counsel at sentencing. PC. 887-912.

12. An evidentiary hearing was held on the single sentencing claim December 12, 2006. The lower court denied relief in an order entered May 11, 2007. PC 2836-62. A motion for rehearing was denied June 6, 2007. A notice of appeal was filed July 5, 2007.

13. This petition is being filed simultaneously with the Brief of Appellant in Case No. SC07-1353, the appeal from the denial of post-conviction relief..

¹*Huff v. State* , 622 So. 2d 982 (Fla. 1993).

STATEMENT OF THE FACTS

The facts relevant to Mr. Trease's claims for habeas corpus relief are set forth in the individual claims below.

GROUND FOR HABEAS CORPUS RELIEF

CLAIM I

APPELLATE COUNSEL INEFFECTIVELY FAILED TO PRESENT A MERITORIOUS CLAIM OF JUROR EXPOSURE TO EXTRANEOUS INFLUENCES IN VIOLATION OF THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS

A. Mr. Trease Was Entitled to Effective Assistance of Counsel

Mr. Trease had the constitutional right to the effective assistance of counsel for purposes of presenting his direct appeal to this Court. *Strickland v. Washington*, 466 U.S. 668 (1984). "A first appeal as of right [] is not adjudicated in accord with due process of law if the appellant does not have the effective assistance of an attorney." *Evitts v. Lucey*, 469 U.S. 387, 396 (1985). The *Strickland* test applies equally to ineffectiveness allegations of trial counsel and appellate counsel. *See Orazio v. Dugger*, 876 F.2d 1508 (11th Cir. 1989). Serious constitutional deprivations which occurred at trial were not raised in Mr. Trease's direct appeal. Because these constitutional violations were "obvious on the record" and "leaped out upon even a casual reading of transcript," it cannot be said that the

“adversarial testing process worked in [Mr. Trease’s] direct appeal.” *Matire v. Wainwright*, 811 F.2d 1430, 1438 (11th Cir. 1987). *See also Wilson v. Wainwright*, 474 So.2d 1162 (Fla. 1985). Appellate counsel’s failure to present the meritorious issues discussed in this petition demonstrates ineffectiveness.

B. Appellate Counsel Unreasonably and Prejudicially Failed to Raise the Meritorious Claim that Petitioner’s Jurors Were Bombarded with Extraneous Prejudicial Comments and Information – “they don’t know what that faggot’s capable of”

Mr. Trease’s right to a fair and impartial jury was violated. Jurors were repeatedly exposed to inflammatory and prejudicial extraneous influences, leading counsel to seek a mistrial. As will be shown, this prejudicial information, some of it quite vile and offensive, helps to explain why the jurors found Mr. Trease guilty and decided to sentence Mr. Trease to death *upon finding him guilty, without regard to the law or what might be presented at sentencing*. *See* Argument VI, Brief of Appellant on Appeal from Denial of Rule 3.850 motion. Because of the extreme prejudice to Mr. Trease from the jurors exposure to extraneous information, and because the record reflected trial counsel’s concerns, it was unreasonable of appellate counsel not to raise this claim

1. Extraneous Influences

a. Newspapers: The jury in Mr. Trease’s trial was bombarded by

extraneous influences, from the media, the victim's family, and other individuals.

b. The Court repeatedly admonished jurors and potential jurors that they were not to watch or listen to the local news or read the local newspapers during Mr. Trease's trial. (R. 450; 505; 539; 570; 602; 625; 733; 777; 819; 872; 927; 970; 989; 1023; 1072; 1106; 1402; 1428; 1576; 1686; 1840; 1963; 1988; 2066; 2124; 2167; 2236; 2328; 2373; 2458; 2564; 2685; 2742; 2809; 2814; 2943; 3013.)

However, early in the trial defense counsel informed the bailiff that a juror was holding the local newspaper. The bailiff investigated and said that the section of the newspaper carrying an article about the defendant was not in that copy of the paper. This incident does not appear at all in the record. There is no indication that defense counsel ever reported the newspaper to the court, nor is there any identification or inquiry of the juror on the record. Short of juror interviews which the lower court would not allow, there is no way to determine what communications passed between the bailiff and juror, how the offending section was removed from the newspaper, and whether the other jurors saw the newspaper or were privy to the communication with the bailiff.

c. Victim's Relative: During Medical Examiner Dr. Wilson's testimony for the State, the Court interrupted the witness to direct an individual in the audience to have a seat. (R. 1535.) Although not identified at the time, defense counsel's

comments in court the next morning, December 3, 1996, show that the victim's brother was the individual:

Mr. Mercurio: There's one other thing that I just want to kind of let the record reflect. Mr. Edenson's brother, I believe, has [sic] been in the courtroom through most of the day yesterday, and *during some of the opening statements he was making noises and comments*. And then I noticed during the afternoon *the Court had to admonish him about where he attempted to place himself with respect to the courtroom visibility* to see some of the photographs that were placed on the view screen. And I know the victim has a right to be here and the family does, too. I would just ask the Court that if anything else happens to possibly address the members of the audience. And I know Mr. Lee—I discussed this with Mr. Lee and they were going to discuss it. So hopefully it will resolve itself.

Mr. Lee: The only thing is I don't see him in the courtroom. He's not here today.

The Court: Well, he got here late yesterday. I did not know at the time that he was a member of the victim's family. After a while Cecil found out and told me. What he was doing is standing there—you all are concentrating on what's going on up here, *but this end juror down there, he was behind the bar but it looked like he was up inside the bar next to the jury box*. The truth is, I don't want anybody standing over in that corner other than the media. There's plenty of room over here for him.

Mr. Mercurio: Okay. Thank you, sir.

(R. 1580-81, emphasis added.) Apparently the Court found this person's behavior so disruptive that the Court asked his bailiff to discover the man's identity. Yet, despite his disruption of and contact with the jury, Mr. Edenson's brother was not admonished by the Court, and there is no indication in the record that the state attorney's office ever had the promised discussion with him. Neither was there any instruction to or inquiry of the jurors to determine whether the man had further contact with them or whether his actions would influence their deliberations.

d. Members of the Press: Relatives were not the only disruptive force during Mr. Trease's trial. The Court made the following announcement when returning for the afternoon session on December 3, 1996:

This is a public courtroom. Some of you here I know as family members and friends of the decedent. Others of you may be here as family members and friends of Mr. Trease. There are some things, however, that have come to my attention this afternoon that I find distressing and disturbing.

I will not tolerate telephones, beepers, tape recorders in this courtroom except by professional media.²

I will not tolerate commentary by anybody in the audience of this courtroom during the trial of this case or in the presence of my jury as they're exiting and entering the courtroom.

Part of my responsibility is to make certain that the verdict of

²There is no explanation in the record of the reason for this particular admonition.

this jury, whatever it may be, had integrity. And just like I asked them not to read newspaper articles or watch televised news reports or listen to radio broadcast news reports of the trial and the events that lead to this trial, and just like the attorneys and the defendant are instructed not to have contact with them and they are instructed not to have contact with the attorneys or the defendant, I'm instructing each and every one of you to have no contact with any of my jury. *You're not to make any comments about this case when they are anywhere around you.*

I'm going to instruct them specifically to identify any person who does or attempts to do that very thing. I'll remove you from the courtroom; I'll remove you from the grounds of this courthouse.

(R. 1686-87, emphasis added.) Defense counsel asked for an inquiry, and the court confirmed its intent to conduct one. The jury was brought in and the Court said it had come to his attention that the jurors may have been exposed to media coverage. The Court never explained how this information came to his attention. Jurors Hoefle, Fink, Heroux, Stilber, and White raised their hands to indicate that they had been exposed. Juror Hoefle described it as happening in the courtyard outside.

The news company had their camera and I guess it was a newscaster out there and I was—I went up to the hot dog stand got my hot dog, came up to the—there was only one table there and there they were. They started talking and I went up and told them, Would you mind not saying anything more? something like that, and I finally got a bailiff that was not in this courtroom but another court to ask him not to say anything more.

They asked me to leave. There was another group of ladies [jurors], which you know, were in another table adjacent from me.

(R. 1690.) Mr. Hoefle was waiting for an unidentified male juror to get his lunch

from the hot dog stand and join him when this interaction occurred. The unidentified man, who was by the hot dog stand at the time, did not raise his hand to indicate exposure, and thus was not questioned. (R. 1693.) Mr. Heroux was also at the hot dog stand, saw Mr. Hoefle trying to deal with the reporters, and left. Ms. Fink, Ms. Stilber, and Ms. White were the ladies seated in the courtyard, and while they saw Mr. Hoefle interacting with the reporters, the women told the court that they heard nothing. (R. 1693-1701.)

e. Comments in the Hallway: Following the media inquiry, jurors were questioned about other extraneous influences that occurred over the lunch hour.

The Court: All right, folks, the second thing that I wanted to speak with you about was that Bailiff Harper informed me that some of you had complained that you were being exposed to commentary by people outside of this courtroom as you're either leaving or reentering the courtroom, as some of you have complained about that or have been exposed to that sort of commentary.

(R. 1701.) This time Jurors Hoefle, Heroux, Stilber, Fink, and Healy were questioned individually. Mr. Hoefle pointed out a man and woman in the audience who had been speaking about the case while he waited for the elevator.

Only this is, Isn't it a shame. This is about--this is about all I heard. I thought it reflected--they were in here. I thought they was talking about--I thought they were referring to the witness [Hope Siegel]. That's my own--own thought, though, you know. You can ask them what they were talking about. I don't know for sure.

(R. 1703.) The individuals were never asked what or whom they were talking about. In fact, although pointed out by Mr. Hoefle, they were never identified for the record.

f. Mr. Heroux described a different incident.

Juror Heroux: We were breaking for the lunch recess and I turned left and I was on my way up the steps to go towards the waiting room. As I was going up the steps some people were coming out this door over here and I heard someone make a comment while I was going out. And I didn't see who it was, all—I could just hear them behind me, I just moved on my way.

The Court: What was the comment that you heard?

Juror Heroux: ***They said they don't know what that faggot's capable of.***

Mr. Mercurio: I'm sorry, Judge, I could not hear what he said.

Juror Heroux: Shall I repeat?

The Court: Yes.

Juror Heroux: ***They said they don't know what that faggot is capable of. And I don't know who they were talking about. I just heard that statement and I went on my way.***

(R. 1706-7, emphasis added.) Upon further questioning by defense counsel:

Mr. Mercurio: Mr. Heroux, did you draw any conclusions or opinions about who that reference of a faggot was

made to?

Juror Heroux: The—I could say that it was probably talking about the defendant, but I can't say that it was or it isn't because it was a general comment and my opinion is just that it could be talking about anyone. *And based on some of the testimony we've heard, I'm sure someone was pretty disgusted.*

Mr. Mercurio: I'm sorry, I couldn't hear the last part.

Juror Heroux: *Based on some of the testimony this morning, I'm sure there was someone distressed about things and they needed to release or something.*

Mr. Mercurio: **Okay. But you came to the conclusion or opinion that *that comment about a faggot was directed at the defendant Mr. Trease?***

Juror Heroux: *Yeah, I think so.*

Mr. Mercurio: And you know that comment about a faggot—a faggot is a slang term for a homosexual?

Juror Heroux: Yes, sir.

Mr. Mercurio: You also, at least, felt that someone was distressed by the virtue of the testimony that was presented here in court this morning; is that right?

Juror Heroux: Right, by the tone of the voice. That is another assumption that I made.

(R. 1708-9, emphasis added.). This comment was particularly prejudicial when considered in light of, a) the disgust Mr. Heroux seems to have shared with the

unidentified speaker (later said to be female) over Hope Siegel's morning testimony,³ and b) the way the State capitalized on the jurors' fears. The idea that the world at large, including the jury, does not know how bad Mr. Trease is, specifically **"what that faggot is capable of,"** became a feature of the State's case. Heather Tomlinson testified that when Hope Siegel broke down in her kitchen, Siegel told Tomlinson she did not know what Robert Trease was capable of. (R. 2086.) On the tape of Siegel's statement played to the jury, Siegel says, **"I didn't know what he was capable of, I didn't, I didn't know."** (R. 2178).

g. Ms. Stilber apparently heard the same speaker, although not as clearly as

Mr. Heroux:

Juror Stilber: I heard one word. *Maggot*.

The Court: Maggot. Are you able to tell us who it was that uttered that word?

Juror Stilber: No, sir, I didn't look around. I was trying to get away from anyone talking.

(R. 1712, emphasis added.) Both Mr. Heroux and Ms. Stilber reported the

³Hope Siegel was Mr. Trease's co-defendant. As this Court noted on direct appeal, "Siegel's testimony was crucial at trial." *Trease v. State*, 768 So.2d 1050, 1052 (Fla. 2000); *id.* at 1054, n. 5 (evidence for conviction sufficient based "especially [upon] Siegel's testimony).

comments to the Bailiff Harper. Ms. Fink did not report what she heard, and it's unclear whether she was exposed to the same comments or to additional ones, perhaps by another individual.

Juror Fink: Okay. Just when we were leaving to go to lunch, as we—as I was exiting the door, there was some commotion out in the hallway. And I think what I heard basically was something to the effect of, um—there was a derogatory comment.

The Court: Can you recall specifically what that was?

Juror Fink: It was like—

The Court: Was it faggot or maggot or something like that?

Juror Fink: No, I just thought it was saying, like, you know, *they could really tell some good stuff on this person*, it was something to that effect. But I also did not know which—who they were talking about.

(R. 1715-16, emphasis added.)

h. Mr Healy also heard something, but was not sure what was said or by whom.

Mr. Mercurio: Mr. Healy, you don't have any specific knowledge of what was said or recollection?

Juror Healy: No, no.

Mr. Mercurio: Was it said in any type of derogatory manner?

Juror Healy: It was more the tone of voice, perhaps more the

tone of voice or perhaps the derogatory manner.

Mr. Mercurio: Did you draw any conclusion or feelings about who that comment was directed toward?

Juror Healy: *I assumed it was directed toward the defendant.*

(R. 1720-21, emphasis added.) Juror Healy also did not report the comments to the court. He “didn’t think it was serious enough to bring to the attention of anyone.”

(R. 1722.)

i. After the jury inquiry, defense counsel immediately moved for a mistrial:

Mr. Mercurio: Judge, I would move for a mistrial. And I know that after the questioning of the jurors they’ve all said that they didn’t feel it would influence their verdict, however, several of them drew conclusions that the comments were directed toward Mr. Trease. So obviously they’ve come to some feelings or some decision about what those comments were and who they were. I think that will unfairly influence their verdict, despite their comments to the contrary.

It also concerns me some that two of the jurors never reported the events to the bailiff. I know that you’ve given them specific instructions about that and I’m not sure that these comments may have fallen within there, but I would also ask the Court, if you deny the motion for mistrial, to direct the jurors to report any type of comments in the future directly to the bailiff.

The Court: I’m going to deny the motion at this time.
Obviously any repeat of this kind of thing I’ll have

to seriously consider mistrying the case.

*And anybody that—let me emphasize again.
Anyone who is guilty of this kind of conduct will be
barred from the courthouse for the duration of this
trial.*

(R. 1722-23, emphasis added.).

j. Victim's Relative Again: The Court failed to control the courtroom, even after these incidents. Because the Court, state attorney's office, and defense counsel failed to deal with the victim's brother's behavior on December 2nd and 3rd, the man continued to be disruptive. At the close of testimony on December 3rd, the same day as the juror inquiries and the court's promise to remove people from his courthouse, the following exchange took place:

Mr. Mercurio: Judge, I would just like to point out that while the jurors are [sic] still filing out *a relative of Mr. Edenson's came across the bar and approached me and attempted to speak with me. And I think that's highly improper to do in the presence of the jury in light of everything that has gone on today.* And I would—and I know Mr. Roberts and Mr. Lee have address [sic] this, but *this is the same gentleman who during opening statements was making noises and was admonished by the Court with respect to where he attempted to locate himself when viewing exhibits from the view box that the state was using.*

The Court: All right. Sir, it is inappropriate for you to

come inside the bar while court's in session.

Unidentified Speaker: I was under the impression it was out.

The Court: I'm sure you meant nothing by it, but it is inappropriate for anyone other than authorized court personnel to come inside that bar while court's in session. All right, anything else?

(R. 1840-41, emphasis added.) Defense counsel did not relate the substance of the man's attempted communications. Once again, neither defense counsel nor the court made any effort to have this individual identify himself for the record. And once again, the person was not admonished for his conduct, and there was no inquiry of the jury the following day to discover what effect his and possibly other unreported behaviors by the individual had on the jury.

k. Hot Dog Vendor: After lunch on Wednesday, December 4, 1996, there was another report by defense counsel of possible extraneous influence:

Mr. Mercurio: Judge, there's one other issue, in light of the things that happened yesterday with respect to jury contact, I thought I would bring it to the Court's attention, Ms. Pettry who's been seated at the table with counsel and Ms. Pepper who's her assistant went and got a hot dog from the hot dog vendor outside and when he was out there dishing out their food made a comment that *the Trease jury must have went out and that he wished he was sitting on the jury and he'd pull the switch on the electric chair.*

And the thing that concerns me about that is that's the same hot dog vendor I believe that Mr. Hoefle and one of the other people purchased food from yesterday.

Now they—none of the jurors had mentioned anything like that but I just felt I would bring that to the Court's attention in case something else came up.

The Court: Cecil, will you do me a favor and *speak to the hot dog vendor tomorrow?*

The Bailiff: Yes.

The Court: I think with this jury, with their—they've been quick so far most of them to point out to the bailiffs when there have been—many things occur, even the most insignificant thing, so we'll, *we'll talk to him about that.*

I know that some of them eat in the courtyard and what have you. We'll speak to him about that and explain the consequences of doing that sort of thing. Anything else?

Mr. Mercurio: That was it.

(R. 1989-90.) There was no inquiry of the jury to see if they had been exposed to similar comments either on that day or on previous days before the importance of reporting such things was impressed upon them. The record is silent as to whether the bailiff actually spoke with the hot dog vendor the next day and what, if anything, was said. The vendor was never identified, nor was his relationship to

the defendant or any reason he may have had to harbor personal animosity against the defendant.

1. The Court's assertion that the jurors had been quick to bring even the most insignificant things to the court's attention is belied by the record. It is true that Mr. Heroux and Ms. Stilber reported hearing comments in the vicinity of the courtroom.⁴ However, Ms. Fink did not report until asked that she had heard derogatory comments. Mr. Healey likewise "didn't think that it was serious enough to bring to the attention of anyone." (R. 1722.) Further, Mr. Hoefle is the only juror who complained about the news crew in the courtyard. Mr. Heroux, who bought a hot dog the previous day, did not report the media incident. Another unidentified male juror who bought a hot dog on the previous day did not even raise his hand to admit that he had been present for the media difficulties.

m. Victim's Relative Again: The next day, Thursday, December 5th, the victim's relative was back. When court reconvened on the morning of Friday, December 6th, defense counsel made the following statement at the bench:

Mr. Mercurio: I don't want to do this in open court because I'm sensitive about the victim's family and everything. I was told yesterday that during a series of the questions and objections regarding Rebecca Bishop that was called as a witness, whenever

⁴It is unclear whether Mr. Hoefle reported the comments he heard.

there were objections made or court rulings, that *there were noticeable sounds coming from the area surrounding where the victim's family is seated, sighs and groans and things like that.* And I was advised of it coming from the audience from Miss Pepper, who was seated at the table. *I know we've discussed this before, but I would simply ask the Court to reiterate that instruction to the audience before we get started so we don't have a problem.* I didn't hear it, but my attention was devoted to what I'm doing so—

Mr. Lee: Judge, I was sitting directly in front of those people and I didn't hear it either.

The Court: *Well, I've been trying since for the past few days to keep a close eye on what's going on out there on both sides of the aisle.* I didn't see anything. Of course, I may be too far away to hear, to be honest with you. *But I'll go ahead and just make a general statement to the audience.*

Mr. Mercurio: That's fine.

(R. 2243-44, emphasis added.) The Court announced:

Once again, for those of you who are spectators, I will ask that while witnesses are testifying, being examined and cross-examined by the lawyers, and while objections are being made by the Judge, that you not comment on those things and not make gestures or sounds or statements that could possibly be overheard by the jurors.

I am continually receiving reports from the lawyers that there are things of that nature happening. I'm sure all of you can appreciate that it's absolutely essential that the jury's verdict in this case not be contaminated, particularly in a case of this nature. *That could very well be the kind of thing that could result in the case being ordered sent back for a new trial by the Florida Supreme Court if that's the*

direction the case takes. I can't imagine that anyone would have an interest in that.

(R. 2252.) Defense counsel did not request a mistrial, nor did he request an inquiry of or curative instructions to the jury. He did not ask that any action be taken against the victim's relative, who at this point has had disruptive behavior noted by defense counsel and the court *on four occasions in five days of testimony*. Defense counsel did not even request that the state speak with the family, as the prosecutor had promised to do earlier in the week.

2. Appellate Counsel Acted Unreasonably/Prejudicially

It violated Petitioner's right to be tried by a fair and impartial jury under the Sixth, Eighth and Fourteenth Amendments when the jurors were exposed to extraneous influences. *See Remmer v. United States*, 347 U.S. 227, 229, 74 S.Ct. 450, 98 L.Ed.2d 654 (1954)("[i]n a criminal case, any private communication, contact, or tampering, directly or indirectly, with a juror during a trial about the matter pending before the jury is, for obvious reasons, deemed presumptively prejudicial"); *Stockton v. Commonwealth of Virginia*, 852 F.2d 740, 743-44 (4th Cir. 1988), *cert. denied*, 109 S.Ct. 1354 (1989)("[t]he rules of evidence make it difficult for either party to offer direct proof of the impact that an improper contact may have had on the deliberations of the jury."); *Tanner v. United States*, 483 U.S.

107 (1987). The Sixth Amendment provides that “in all criminal prosecutions, the accused shall enjoy the right to a trial, by an impartial jury.” In *Remmer v. United States*, 347 U.S. 227, 229 (1994)(*Remmer I*), the Supreme Court held that “[i]n a criminal case, any private communication , contact, or tampering, directly or indirectly, with a juror during a trial about the matter pending before the jury is presumptively prejudicial.” Given the outrageous facts presented here, the trial court should have granted a mistrial. Had appellate counsel raised these arguments on appeal, there is a reasonable probability the result would have been different.

CONCLUSION AND RELIEF REQUESTED

Mr. Trease, through counsel, respectfully urges that the Court issue its Writ of Habeas Corpus, vacate his unconstitutional conviction and sentence of death, and/or order a new direct appeal.

Respectfully submitted,

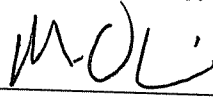


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CERTIFICATE OF COMPLIANCE


I HEREBY CERTIFY that this brief complies with the font requirements of rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.



Mark E. Olive

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing is being furnished via email and U.S. Mail, first class postage prepaid, to all counsel of record, this 25th day of April, 2008.



MARK E. OLIVE