

**IN THE SUPREME COURT OF FLORIDA**

**CASE NO.: SC07-1652**

**JEREMIAH MARTEL RODGERS,**

**Appellant,**

**vs.**

**STATE OF FLORIDA,**

**Appellee.**

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**APPELLANT'S INITIAL BRIEF**

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**On direct review from a decision of the Circuit Court of the  
First Judicial Circuit imposing a sentence of death**

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## **PREFACE**

This is an appeal from a judgment and sentence imposing the death penalty from the Circuit Court of the First Judicial Circuit in and for Santa Rosa County, Florida, the Honorable Paul A. Rasmussen presiding. Jeremiah Martel Rodgers was the defendant in the trial court and will be referred to as “defendant” in this brief.

The State of Florida was the plaintiff in the trial court and will be referred to as “State” in this brief. The defendant is appealing his sentence of death. The record and transcripts from the first penalty phase will be cited as [Vol. (number), (page number)]. The second penalty phase transcripts will be cited as [Tr2. (page number)], and the record as [R. (page number)].

## **STATEMENT OF THE CASE AND FACTS**

This is the second time that this court has reviewed this case. In Rodgers v. State, 934 So.2d 1207 (Fla. 2006), this court affirmed the defendant's convictions and reversed the case for a new penalty proceeding. The court's opinion is hereby incorporated by reference and is in the appendix, along with other pertinent documents.

The defendant plead guilty to being a principal in the death of Jennifer Robinson. Co-perpetrator Jonathan Huey Lawrence was the actual shooter. On May 7, 1998, eighteen-year-old Robinson went on a date with the defendant. The date was part of the plan that the defendant hatched with Lawrence to get Robinson alone in the woods.

The defendant knew Lawrence when they were both being held in a state mental hospital. The defendant and Robinson drove to Lawrence's house to pick Lawrence up and use his truck. They drove into the woods and pretended to wait for Lawrence's girlfriend. While pretending to wait they mixed and drank Everclear grain alcohol with soft drinks.

The defendant eventually convinced Robinson to go with him to look at a marijuana field, which did not exist. As they walked back to the truck, Robinson

was shot in the back of the head. The defendant made conflicting confessions as to whether he or Lawrence pulled the trigger.

The defendant and the State entered into an agreement whereas in exchange for a plea of guilty, the State would not argue that the defendant was the shooter, but that Lawrence was. Rodgers at 1210.

This court reversed the defendant's death sentence and remanded this case for a new penalty phase because the trial court improperly excluded various items of evidence that would have supported the defense's theory that the defendant was under the substantial domination of another and that he was so less culpable than his codefendant that he should not be sentenced to death. Rodgers at 1219-20.

This court held that this was not harmless error, "[g]iven the extensive mitigation which was presented in the case, including Rodgers' significant mental health history." Rodgers at 1219-20. This appeal is the byproduct of the new penalty phase ordered by this court.

Jury selection was to take place on May 7, 2007. The defendant instructed his trial counsel not to put on any evidence of mitigation. Tr2. 7-8. The trial court then questioned the defendant about this decision. The defendant said that he wanted to speak on his own behalf instead of having witnesses and experts who did not know him do it. Tr2. 10.



The defendant said he understood that he had a right to present mitigation, but that he does not want to do it this time. The defendant said his bad childhood did not make him do what he did. Tr2. 11-12. The defendant also said that death is his only escape and that he is only 30 years-old and living for 50 years or so in prison is worse than death. Death will give him peace. Tr2. 12-13.

The defendant's trial counsel said that he has investigated the case for mitigation and that he is prepared to present such evidence in this case, but for the wishes of the defendant. Tr2. 8-9, 15. The defendant reiterated that this was his own decision, not his attorney's, and that no one has forced, threatened or coerced him into making this decision. Tr2. 15-16.

The prosecutor noted that trial counsel should address whether he thinks the defendant has any competency issues. Tr2. 17-18. Trial counsel said he has reviewed the entire record of the case, including the various psychological and psychiatric testing that was done, and that he does not have any concerns about the defendant's competency. Tr2. 18-19.

Jury selection for the new penalty phase began. The defendant then decided during a recess that he wanted to waive his right to a jury trial. Tr2. 74. The defendant testified that he wants to waive his right to a jury because he trusts the court's judgment better than people. The defendant told the court, "I can count on

a death sentence with you.” Tr2. 75. The defendant said that he discussed this strategy with his attorney and he wants to waive his right to a jury. Tr2. 76-78, 80-81.

The defendant said that if he could sign a paper right now and get a death sentence, and go back to death row, he would do it. Tr2. 81. The trial court found that the defendant has freely, voluntarily, and intelligently, after advice of counsel, waived his right to a jury recommendation. Tr2. 81-82.

The trial court stated that since the jury was waived, the court itself would look at the mitigating evidence that was presented at the first penalty phase. The State implicitly agreed. Tr2. 78. As noted in the sentencing order under review, the trial court did in fact consider the transcripts and the defendant’s sentencing memorandum from the first penalty phase [R. 58].

### THE FIRST PENALTY PHASE

The trial court found that the defendant, who was 21 years old at the time of the offense:

- a.) was remorseful and sorrowful for the offense (Vol. V, p. 932);

b.) suffered from life-long, crippling mental illness (Vol. V, pp. 921, 931) [“long and extensive history of his mental illness;” “the record is replete;” “It is uncontroverted”]); and

c.) had been relentlessly sexually and physical abused as a child, in an “abhorrent” environment (Vol. V, pp. 927 - 930) (“substantial evidence before the court regarding Defendant’s background that would mitigate against imposition of the death penalty”).

However, the court found that two statutory aggravating factors outweighed this mitigation. The defendant and his co-defendant, Jonathan Lawrence, had been convicted of two other crimes of violence. One involved the attempted murder of Leighton Smitherman, a crime for which the defendant was found guilty in a trial in Santa Rosa County conducted shortly before the trial herein.

The other involved the murder of Lawrence’s cousin, Justin Livingston, a crime to which the defendant had pled guilty. Vol. V, pp. 915-917. The crimes happened days apart, and shortly before the crime in this case. These prior convictions were found by the judge in support of the statutory aggravating factor under Section 921.141(5)(b), Fla. Stat. (1997) (conviction of prior violent felony). The second aggravating circumstance found was that the crime was committed in a cold, calculated, and premeditated manner. *Id.*, (5)(i).

## I. Jeremiah Rodgers' Short, Tortured, Perverse "Upbringing"

### A. 5 years old – "there is something pretty obviously wrong because he is so young"

A confidential psychological evaluation was conducted on the defendant when he was **five** years old and in *kindergarten*. V. 11, p. 1922. Kindergarten was the first time that "anyone outside the home got a good look at him," *id.*, and it is "really unusual" for a kindergarten teacher to refer a child of that age for serious psychological evaluation: "it means there is something pretty obviously wrong because he is so young." *Id.* (Angela Mason, licensed social worker).  
What was wrong was how the defendant was being treated.

Jeanelle Spoon Rodgers became pregnant by Steven Rodgers at age **14**.<sup>1</sup> They married, and their daughter, the defendant's older sister Tamica, was born in January 1976. Steven and Jeanelle intermittently lived together, and Jeanelle became pregnant again. Jeremiah was born in April, 1977, in Orlando, Florida.

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<sup>1</sup>As will be shown, by the time the defendant was fourteen, Jeanelle, his mother, had coerced him into being her full-time "lover" by plying him with alcohol and other substances (like marijuana laced with **formaldehyde**, Vol. 11, p. 1960). One of the defendant's first memories is being sexually abused by his mother at the age of **3**.

Jeanelle “moved”<sup>2</sup> to Pensacola with Tamica and the defendant. She wrote Steven’s mother, Mary Pruitt, and told Pruitt to come and get the children or she would “give them away.” Pruitt testified that she drove to Pensacola and picked up Tamica and the defendant. Vol. 10, at 1753. When Pruitt arrived, *Jeanelle had no diapers, baby bottles, formula, or baby blanket—nothing to take care of the children, and no baby toys.* *Id.* at 1754. The defendant was six weeks old. *Id.* at 1753.

Thereafter, Jeanelle would occasionally pick-up Tamica and the defendant and take them wherever she happened to be going, and then, if they were lucky, she would return the babies to Pruitt. *Id.* at 1755. On at least one of these perilous treks, Jeanelle attempted to hitchhike to Orlando to leave the defendant and Tamica for adoption—just drop them off on the doorstep (literally) of children’s services.<sup>3</sup> When Pruitt learned of this planned, total, abandonment, she sought and

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<sup>2</sup>This was not a “move” in the traditional sense. Jeanelle simply always traveled, staying short periods of time with friends or relatives, and did not really live anywhere. Tamica testified that “we never really had our own place except for the last place we lived before I moved to my dad’s” at age 10. Vol. 11, p. 1848.

<sup>3</sup>One of Pruitt’s relatives picked Jeanelle, Steve, Tamica, and Jeremiah up at the side of the road, learned of the abandonment, convinced Jeanelle and Steven to “give her the kids,” and took them to Pruitt. Vol. 10, p. 1759.

obtained legal custody of the children. *Id.* at 1759. She continued to let Jeanelle take them away, however.

Despite their inability to care for any children, Steven and Jeanelle had another child, Elijah, in 1979. Jeanelle was 17 or 18 years old. Things just got worse. Steven would show up for a few days and then leave for months at a time, providing no support, even during all three pregnancies. Vol. 10, p. 1629.

When Jeanelle and Steven were together, they drank alcohol and smoked marijuana all the time in front of the children. *Id.* at 1630.<sup>4</sup> Steven would get drunk and beat Jeanelle with the children in the room, watching, *id.* at 1631, leaving bruises “quite often.” *Id.* at 1728, 1740.

David Waldrup and his wife Faye knew Jeanelle and witnessed first hand the chaotic, life-threatening, and criminal environment her infants endured. For instance, Jeanelle came over to the Waldrup’s home and asked for a ride to the welfare office in Orlando “to take Elijah down there and drop him off on the doorstep.” Vol. 10, p. 1632.

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<sup>4</sup>Tamica testified at sentencing that Jeanelle smoked pot and got drunk all the time. Zack, the defendant’s step-brother born a little later, testified that his first memory of Jeanelle was her smoking marijuana from a “bong” in the living room, which he did not know was illegal until he started going to school. *See* section B, *infra*.

Diane told Jeanelle not to do that, and Jeanelle said “well, you just take him then.” *Id.* at 1638. The Waldrups agreed to adopt Elijah, who was three months old, *id.* at 1728, so long as Jeanelle and Steve would leave them all alone. Jeanelle agreed, and Steven, who was not to be found, “didn’t give a damn.” *Id.* at 1637. The Waldrups raised Elijah as their son from then on, *id.* at 1638,<sup>5</sup> and his life was markedly different from the defendant’s.

Thereafter, Jeanelle was constantly back and forth between Pensacola, Orlando, and other places unknown, and her occasional visits with Tamica and the defendant were very disruptive. When she would take them from Pruitt, they might stay anywhere.<sup>6</sup> Jeanelle could not care for them, i.e., once when the defendant was a toddler Pruitt got him from Jeanelle and he was very sick. Pruitt took him to a doctor, and the doctor immediately admitted him to the hospital with pneumonia. Vol. 10, p. 1762.

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<sup>5</sup>The Waldrups moved with Elijah to California, and received a letter from Jeanelle saying that she wanted to give Tamica and Jeremiah up for adoption also. Vol. 10, p. 1643. They did not respond to this. They later moved back to the Pensacola area with Elijah.

<sup>6</sup>Tamica testified that during these infant years she and Jeremiah were simply nomadic: “there was no one person that I was living with for a long period of time.” Vol. 11, p. 1847. They never knew where they might sleep. “On the floor ...[O]n the couch ...Just, you know, depending on where we were at.” Vol. 11, p. 1849 (Tamica’s testimony). Letters written by Jeanelle during this time document this rootless existence. Vol. 10, pp 1733-34.

On one occasion Jeanelle weakly tried to get custody back from Pruitt by saying she was married to a man whose name Pruitt could not remember. Pruitt refused, because she “didn’t like the looks of the person.” Vol. 10, p. 1760.<sup>7</sup> Jeanelle then married a man named Ronnie Walker. Pruitt allowed Jeanelle to have custody at that point,<sup>8</sup> but the defendant and Tamica continued to live for long stretches of time with Pruitt. *Id.* at 1764. Jeanelle and Walker then had a son, Zack.

**B. Age 5 - 9: “something is very deeply wrong”**

The defendant was promoted from the second and third grades of school, but he did not pass them. “He wasn’t able to focus and concentrate in school, and they moved him up, even though he was not academically ready.” Vol. 11, p. 1925 (Angela Mason). Then he was placed in a severely emotionally disturbed class, “[a] classification that is most profound.” *Id.* at 1928.

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<sup>7</sup>According to Mr. Waldrup who adopted Elijah, the suitor’s name was Carlson. Jeanelle married him for the sole purpose of using his money and she only stayed with him for two or three days and then left him. Vol. 10, p. 1748.

<sup>8</sup>Walker was supposed to be Zack’s father, but Pruitt doubted that he was. Jeanelle constantly told Zack that Walker was not his father. Vol. 10, 1761, 1824.



“Sometimes a child will be placed in Emotionally Handicapped; if that’s not sufficient, that’s sort of the end of the line. They might [as here] be placed in a special school for severely and emotionally disturbed.” *Id.* at 1928. This means “they have tried everything else.”

This is not about behavior—this is way beyond behavior ... this means *something is very deeply wrong*. He just couldn’t function in the classroom. He didn’t respond to even a small class setting with a lot of attention. *Id.* at 1929 (Angela Mason).

The defendant’s home life between the age of five and nine was hellish. He lived with his older sister, Tamica, and his younger step-brother, Zack.<sup>9</sup> Jeanelle stayed drunk and stoned, beat the kids,<sup>10</sup> and openly engaged in sex acts with various people the children did not know.<sup>11</sup> They never stayed in one place for

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<sup>9</sup>Zack lived with Jeanelle and Ronnie Walker until he was about two years old, and then Ronnie Walker left. After Zack was two, Jeremiah and Tamica lived with Zack and Jeanelle “sometimes,” until Zack was dropped off on Walker’s doorstep by Jeanelle when Zack was five or six years old. Vol 11, p. 1821. Like Jeremiah’s brother Elijah, Zack thus escaped from Jeanelle; sadly, Jeremiah did not.

<sup>10</sup>Jeanelle had other forms of torture for the children also. For example, she made them wear soiled underwear around on their heads as punishment for soiling them. Vol. 11, p. 1843; *see also id* at 1829.

<sup>11</sup>Jeanelle would have sex with men while eight year old Tamica was in the bed. Vol. 11, p 1857.

long--“every time it came time to pay the bills, that’s when we moved .... at least once a month, it felt like.” Vol 11, p. 1827 (Zack’s testimony).

They never had money, Jeanelle never kept a job, and they never owned a reliable car. Vol 11, p. 1849 (Tamica’s testimony). Whatever child care-taking occurred fell to Tamica, beginning at about age 8. *Id.* at 1850. When she failed at child raising—cooking, cleaning, getting the boys to school—she would be “smacked in the face” and beaten with a belt. *Id.* at 1852.

Jeanelle was much worse to the defendant. When Jeanelle beat him she “couldn’t stop” and the defendant “would have belt bruise marks, like, on his back, on his butt, and on his legs, and it would bruise.” *Id.* (Tamica’s testimony)<sup>12</sup> “I didn’t get it like that,” Tamica said. *Id.*<sup>13</sup>

Jeanelle “drank and smoked a lot of reefer, definitely,” Tamica testified. Vol. 11, p. 1857. “She was drunk all the time.” *Id.* Zack’s earliest memory of his mother is her “smoking out of a bong in the living room in an old trailer with a

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<sup>12</sup>Jeanelle would stay sober until 10:00 a.m., and then she would get drunk, beat the children, and yell angrily at everyone. Vol. 11, at 1828 - 1825.

<sup>13</sup>Tamica did not get beaten like Jeremiah, did not get raped repeatedly by her parent, had a positive experience at school, where she got good grades, and was doted over and loved by Pruitt. Elijah left the environment when he was an infant, as did Zack. Jeremiah is different from his sister and his brothers because they “didn’t get it” the way Jeremiah did.

bunch of people partying.” *Id.* at 1822. She smoked marijuana “quite frequently,” and Zack “didn’t even know it was illegal until I went to school.” *Id.*

Jeanelle was constantly (“lots”) doing drugs and partying with different men (“a lot of different ones”) in the presence of the children. *Id.* at 1823, 1830-31.<sup>14</sup> She went to bars and took the children with her, or she just left them at home alone unsupervised. The kids often awakened in the middle of the night with no adults in the house—they were at a bar. Vol. 11, pp. 1859-60. Tamica remembers her mom being arrested for alcohol related offenses on some of the evenings when the children were left at home alone. *Id.*

At age nine, the defendant went to live with his father Steve. One year later Tamica did the same. Before that she had seen her father Steven once, and he was drunk. *Id.* at 1854.<sup>15</sup>

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<sup>14</sup>Zack testified that Jeanelle’s boyfriends “beat her, and called her names” in front of him. Vol. 11, p. 1829. Numerous police reports document that Jeanelle was beaten by different men in the home when the children were there. Vol. 11, p. 1955, 1958.

<sup>15</sup>When she lived for the next year with Steve, he “would come home extremely drunk—falling over drunk. Couldn’t stand up hardly, and my step-mom would have to help him eat, take a shower, whatever. For the whole complete year, that’s all I knew of my dad, pretty much.” Vol. 11, p. 1882.

**C. Ages 9 - 13: Self-mutilation, predator mother, Prozac, and hospitalization: “he needs more mental health care than jail time”**

Tamica reports that when the defendant was 10 years old he was in deep psychological turmoil and was “hurting himself.” Vol 11, p. 1888. “He put tacks in his arms. He would take, like, a knife and make marks on his arms, just – just make lines – cuts on his arms.” *Id.* “And then shortly after that, everything just kind of led – you, know – he started leaving the house, going out the window leaving. Things like that.” *Id.* p. 1889.

The defendant was drinking alcohol and “huffing gasoline.” *Id.* at 1889. He would try to flee whenever he could, sometimes taking his father’s car. He committed petty crimes and would get locked up in the detention facility. *Id.* at 1883.

When the defendant was 11 or twelve years old, he was hospitalized at Laurel Oaks for depression and prescribed Prozac, which Steven did “not fill . . . continuously.” Defense Exhibit 54; *see also* Vol. 11, pp. 1947 (testimony of Angela Mason).

Testing at school indicated that the defendant was in the “clinical range for internalized behavior,”<sup>16</sup> and he was designated for “severely emotionally disturbed” placement. Defense Exhibit 30D.<sup>17</sup> He deteriorated. West Lake Hospital in Longwood, Florida, is a psychiatric hospital. The defendant was admitted on October 2, 1990, at **age 13**, with an admitting diagnosis of **major depression**. He was suicidal. Defense Exhibit 31. “Patient appears to have a **longstanding problem** of about 4-5 years that was **not treated** at any point.” *Id.* (emphasis added).<sup>18</sup>

He was kept at this psychiatric facility for 2 ½ weeks. He “discussed his **history** of being **physically/sexually/emotionally abused** by his biological mother as well as her husbands and boyfriends,” Defense Ex. 31A, and described “**severe parental abuse** by mother ... severe beatings and her wanting him to take drugs.” *Id.* (emphasis added).

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<sup>16</sup>According to David Foy, a defense psychologist and expert in such tests, this testing revealed that “he is ill.” Vol. 12, p. 2059.

<sup>17</sup>School records from when Jeremiah was **eleven** years old document that he had admitted to suicidal ideas.

<sup>18</sup>“[A] significant stressor occurred 3 months ago in which the patient’s uncle committed suicide by shooting himself in the head with a gun, after he killed someone else.” Defense Exhibit 31.

“He had made a police report on his mother due to the mother selling marijuana and cocaine.” *Id.* His father confirmed that “there was possible physical abuse by mother when he was living with mother.” *Id.*<sup>19</sup> Psychiatric staff diagnosed the *13 year old* with Post-traumatic stress disorder, and other ailments. The staff medicated him and *placed him in four point restraints* because he was so traumatized. Staff again prescribed **Prozac** for depression, and also Ativan for trauma. *Id.*

The defendant was discharged in October, 1990. Within a few weeks he was placed in a juvenile facility after fleeing his parents and going into the residence of one of his mom’s male friend’s, resulting in a charge of burglary. It was refuge, however, not property, that the defendant had sought (nothing was stolen)—he was afraid of “home.”

The staff prepared a social history that detailed the corruption, sexual abuse, and betrayal the defendant faced on a daily basis, and from which he had fled. The staff reported that the defendant’s “mother gave him *beer* when he was *2 years old*” and that: “Jeremiah states that his mother started *sexually abusing him at age 3*. Client reports that he never told anyone because his mother would threaten

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<sup>19</sup>Jeremiah reported to Angela Mason that “his mother sexually abused him until age nine when he went to live with his dad.” Vol. 11, p. 1940-41.

him.” “*His father* has threatened to shoot him and he *put an unloaded gun to the client’s head.*” “Jeremiah reports that **he runs away to avoid beatings.**”

While the defendant was depressed about being in JDC ... he said he would rather be there than with his father. Client said he is afraid of his father.”

“Jeremiah said he attempted suicide 5 times (on different occasions) and has the marks on his wrist where he cut with a razor. Client said he *is not allowed to talk at home.* His father decides when the defendant can talk. According to the defendant, when he was 5 years old, he stopped talking for several months. At age 8, he did the same thing.<sup>20</sup> He would communicate in school by writing letters to his teachers.”

The report recited that the defendant was supposed to be being treated with prescribed medications for mental illness, but that the prescriptions were not getting filled. Defense Exhibit 54.

On December 5, 1990, personnel at the Children’s Home Society of Florida recommended to the juvenile court that the defendant receive psychological counseling at an in-house facility, the Grove. They reported that the defendant was severely emotionally disturbed, that he had been diagnosed with Dysthymia

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<sup>20</sup>Alexithymia is the loss of words and symbols to communicate with others and is seen when children are so overwhelmed by trauma that they lose semantic construct for feelings and emotion.

(chronic depression), that “both of his parents are polysubstance abusers,” and that “his mother is a severe and chronic alcoholic who is currently serving a five year sentence for repeated DUI offenses.” Defense Exhibit 51. Because the defendant clearly “**needs** inpatient treatment,” *id.* (emphasis added), the Court sent him to the Grove.

Soon -- on December 20<sup>th</sup>, 1990 -- the defendant knocked a hole in the wall of a bathroom at the Grove. He had locked himself in the bathroom. When he came out *he stated that it was better to kick the wall than to kick a person.* He was charged with criminal mischief, but the arresting police officer opted for a diversion-type program, observing that “I believe the subject has made a mistake. **He needs more mental health care than jail time.**” Defense Exhibit 53 (emphasis added).

Over the next several months, the defendant continued to free-fall. Social service agencies closed his file in September, 1991, when he was 14 years old. A discharge summary noted that outpatient individual and family therapy, as well as medication monitoring at Florida Psychiatric Services, had been funded. But “these services were not utilized by the family after the 2<sup>nd</sup> or 3<sup>rd</sup> visit.” Defense Ex. 50. “Thus, little progress was realized in this family,” Defense Exhibit 50, even though the defendant kept telling people that his mother was molesting him.



The conclusion of the social services agencies in 1991 was that: **“Jeremiah has been abused, physically and sexually....His current relationship with his mother is pathological.”** Defense Exhibit 50.

**D. Age 14: Continuous Rape by mom; re-offending to stay away from home**

This pathology was not addressed by anyone.<sup>21</sup> And it inevitably and predictably worsened. As the defendant told many, many, people his mother repeatedly (at least ten times) had full sexual relations with him when he was fourteen years old, i.e., raped him. At that time he was living with his father and he would travel to visit his mother.

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<sup>21</sup>Jeremiah reported to a children’s services caseworker in December 1990 that “his mother abused him until age 9 when he went to live with his dad.” Defense Exhibit 51. This was “reported to the Abuse Registry, as is required by law,” Vol. 11, p. 1941, but there was no follow-up: “I saw indication of reports, but they said they had called and made a report, but I couldn’t find anything on, you know, the actual investigation, but there were various reports.” *Id.* at 1942 (Angela Mason, licensed social worker). While Florida Child Protection “was definitely called” about this sex abuse, “[o]ften the Child Protection is overwhelmed and not at all organized about their reports.” Vol. 11, p. 1942. This sort of neglect has recently seen the light of day. Tallahassee Democrat. 7-14-02 B8. & TD. 8-14-02 A1; Orlando Sentinel, 7-30-02, A10; Tallahassee Democrat. 5-6-02, A1. & TD. 5-12-02. A1; NPR: Weekend Edition of All Things Considered. 5-11-02; Tallahassee Democrat. 5-17-02. B7.

She always pressured him to have sex with her; he could not do that unless he was intoxicated from drugs. So she supplied him drugs, he ingested them, and they had oral sex and full sexual intercourse. Vol. 11, p. 1959; *see also* Defense Exhibit 1 (Section III, B, 2, *infra*). When he told his father that his mother had sex with him, his father simply asked: “Oh, did you like it?” Vol. 11, pp. 1959-1961.

By committing petty, non-violent, crimes, the defendant could stay at juvenile facilities, which was far safer than being with either Jeanelle or Steve. If he was not placed in a facility long enough, he would do something to be able to stay longer:

He walked out of the facility shortly before he was released to go home because he didn't want to go home, and he says this to people. So he's attempting to avoid home because either place, either his mother's or father's, was an abusive place and so he really had to have some place to go.

Vol. 12, p. 2183 (Dr. DeLand, psychiatrist).

As a consequence of walking away, “the Court would sentence him to remain in that group home or special school would be extended and that there – and so he could avoid going home.” *Id.*

The defendant was placed in Dozier School for Boys, a state institution long recognized for its inadequacy. Dozier records indicate that Jeremiah had a history

of being prescribed psychotropic medications (Tegretol and Prozac), and that he required individual therapy. He attempted to re-enter a regular program of living away from Dozier, but was unable to do so.

In 1993 when the defendant was 15, he was still in the seriously emotionally disturbed classes at school.<sup>22</sup> At age 15 the defendant took a car and was promoted to adult court. He was sentenced to prison rather than juvenile detention. Prison was also safer than home.

## **II. Defense Exhibit 38: Color Coded Disabilities and “The Crazy-Making Environment”**

### **A. Exhibit 38: Jeremiah’s Multi-Colored, Multi-Dysfunctional, Lineage**

Angela Mason, a licensed social worker, testified as an expert that “this is not a typical family.....This family had everything under the sun. I really couldn’t believe how many problems one family could have.” Vol. 11, p. 1967. Multi-generational: incest; crippling mental illness, suicides, sex/physical/emotional

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<sup>22</sup>In June 1992, Jeremiah was administratively placed in the 9<sup>th</sup>, his last, grade because of “age-appropriateness.” In August he was placed in a full-time special education class for the “Severely Emotionally Disturbed/Varying Exceptionalities.”

abuse, chaos, abandonment, chronic neglect—the defendant’s family presents “some of **the most profound and severe** family disabilities.” *Id.* at 1979 (emphasis added). These actions/conditions significantly shaped the defendant. *Id.* at 1974.

Defense Exhibit 38 is a color coded family tree that reflects this profoundly crippled family. Colors and patterns are assigned for discrete conditions (i.e., a color and pattern is assigned for “incest victim,” a different color and/or pattern for mental illness, etc.). If a family member has or had that condition, then they get that color and/or pattern. The more colors or patterns a person receives, the more likely they are to suffer from some form of mental disease or defect, or to be unable to endure a pre-existing disease.

Jeanelle is the fifth of six children, all of whom have severe disabilities.<sup>23</sup> Renae, the oldest, is bipolar and suffers depression. She is an alcoholic and drug dependent, but is in recovery. The next oldest, Colleen, is an active alcoholic who drinks every day to the point of incontinence and is unable to refrain from alcohol for even short periods.

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<sup>23</sup>The father in this “family” was a chronic alcoholic who physically and emotionally beat his wife and children and drowned due to alcohol when Jeanelle was 9 years old. He was imprisoned for manslaughter in the death of his first wife who was killed by his drunk driving. This family was very poor.

Next in age were twins David and Paul; David was a drug user and alcoholic who died of alcohol induced liver disease in 1994; his fraternal twin, Paul, the only non-alcoholic, weighed 660 pounds before undergoing a stomach-stapling procedure. The youngest, Tony, was a drug abuser and alcoholic who killed himself with a shotgun, after killing someone else, in 1990. Vol. 11, pp. 1965-1969; Defense Exhibit 38, admitted at 1964.

Jeanelle was sexually abused as a child by her uncle. Throughout her life she had sudden and inexplicable mood swings and shifts in personality. She began using drugs in her early teens, and, as discussed above, first became pregnant at age 14. Her addiction to drugs and alcohol persisted for the rest of her life, and she was repeatedly imprisoned for alcohol-related offenses. *Id.* She killed herself with a gun in 1996.

Steven Rodgers, the defendant's father, was ill-equipped for raising children. He was born on September 18, 1957, and was the oldest child of his mother Mary, who was 17 when he was born. She had two more children, Debbie and Tony, before divorcing their father, Martel Rodgers, and marrying Jim Pruitt, when Steve was 7. Martel Rodgers is an alcoholic who is now demented. All three of his children with Mary – Steve, Debbie, and Tony --- are or have been addicted to drugs and alcohol. *Id.* at 1969 - 1972; Defense Exhibit 38.

Jim Pruitt, Steven's stepfather, physically abused his wife and her children. He and Mary Pruitt were also heavy drinkers. The children sometimes stayed with their maternal grandparents. This grandfather, too, was an alcoholic. This grandfather's brother, "Uncle Bud," sexually abused Steve's sister Debbie over a period of years, beginning when she was four years old. He eventually drank himself to death, after losing his leg in a fire when he was drunk. When Steven was 15, he left home to live with his maternal grandparents after a confrontation with Jim Pruitt, his stepfather, about Jim's physical abuse of Debbie. *Id.*

#### **B. "A crazy-making environment"**

Dr. David Foy, a professor of psychology and a practicing clinical psychologist for over twenty years, is a nationally recognized expert, teacher, and consultant in trauma and mental illness caused by trauma. Vol. 12, p. 2016; Exhibit 150 (resume, admitted at 2079). He learned Jeremiah Rodgers' history, and testified, without objection, to why the defendant was mentally ill. There are risk factors for developing mental illness, based upon environment. *Id.*, at 2020.

These factors include: poverty, the mother's mental illness, chronic marital discord or abuse, the child living out of the home, overcrowding in living space,

and parental criminality. *Id.*, at 2021-23. The defendant is six out of six<sup>24</sup> and was at extremely high risk for suffering from a significant mental illness, *id.*, at 2027, through no fault of his own.<sup>25</sup> In the defendant’s case, there was added the devastating effect of “severe discipline and abuse .... sexually abusive experiences,” *id.* at 2048, *by a caretaker* – “a double whammy.” *Id.* at 2049.<sup>26</sup>

Dr. Foy testified from this “crazy-making environment,” *id.* at 2076, Jeremiah was almost *certain to* develop major mental illnesses such as post-traumatic stress disorder, *and* to have his brain damaged irreparably. Trauma causes “brain changes ... in terms of how the brain functions and the neurotransmitters that are involved in brain functioning, as well as the size and health of the brain.” *Id.* at 2055.<sup>27</sup>

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<sup>24</sup>Other significant stressors for Jeremiah included the suicides of his mother and uncle. Vol. 12, p. 2050

<sup>25</sup>Jeremiah had no control over “childhood physical abuse, childhood sexual abuse, continuing domestic violence.” Vol. 12, pp. 2049-50.

<sup>26</sup>According to Dr. Foy, while all sexual abuse is horrible and results in marked damage to the victim, Jeremiah suffered “the worst category of sexual abuse,” i.e., sexual abuse by a parent or primary caretaker. Vol. 12, at 2051.

<sup>27</sup>While Jeremiah was in the Santa Rosa County jail awaiting trial, he was medicated by jail physicians with prescriptions drugs that treated the damaged neurotransmitters in his brain. *See* section XV, *infra*.

Long term, trauma victims suffer from dissociation (losing touch with what is actually occurring at the moment) and psychosis (disorganized thinking, delusions). *Id.* at 2073.<sup>28</sup> They also come to believe “I am not going to have a full life,” and they go about living “not as a spontaneous person, who has full life expectations ahead, but as someone who knows their life can be cut short today or tomorrow.” *Id.* at 2041. They suffer “a sense of foreshortened future.” *Id.*

### **III. Jeremiah’s Diagnoses and Long Documented Suffering**

Dr. Sarah DeLand is a board certified psychiatrist. Vol. 12, p. 2089. She has extensive experience in the psychiatric treatment of inmates. She completed a forensic psychiatry fellowship at the University of Florida, Gainesville, providing services, including consultations, for the North Florida Treatment Center, one of the biggest forensic hospital facilities in the state. Vol. 12, p. 2093.

Today she is relied upon by courts throughout Louisiana to determine competency, sanity, and release recommendations. Most relevant for Jeremiah, Dr. DeLand, as Medical Director of Community Forensic Services for the State of

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<sup>28</sup>Trauma victims “get temporary relief by using alcohol or other drugs to make [him] feel better in the short term.” Vol. 12, p. 2074. This then leads to its own set of troubles.



Louisiana, “helps to monitor individuals” who have been “committed to the hospital and then later on down the road released with special supervision.” Vol. 12, p. 2090.

While the defendant was in prison, he was regularly committed to the state forensic psychiatric facility. His treatment there, and his release with no special supervision of psychiatric aftercare, were pertinent to many issues at his capital sentencing. Dr. DeLand addressed them.

#### **A. Jeremiah Rodgers’ mental illnesses are tied to familial trauma**

Dr. DeLand extensively interviewed Jeremiah--six times. Vol. 12, p. 2118. She reviewed all of the records documenting Jeremiah’s social history,<sup>29</sup> including eleven volumes of psychiatric records amassed in 4 ½ years by the psychiatric services providers for the State of Florida, admitted below as Defense Exhibit 1. Vol. 12, p. 2096.<sup>30</sup> She diagnosed Jeremiah as suffering from dissociative

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<sup>29</sup>“I mean, when you have, I’ll call it the luxury, I guess, of having this incredible amount of documentation of history, it’s invaluable in examining a person like Jeremiah Rodgers who has a reason to not be truthful.” Vol. 12, p. 2140.

<sup>30</sup>These mental health treatment records take up eleven volumes, stand over three feet tall, and fill a large banker’s box. Dr. DeLand is an expert in such institutional records and stated that “[i]t’s a very large record for somebody to

disorder, post-traumatic stress disorder, borderline personality disorder, and substance abuse in remission. Vol. 12, p. 2120.

*Dissociative disorder* “describes problems that people have when several areas of mental functioning are not all integrated and working together as they should be.” Vol. 12, p. 2120. The sufferer may spontaneously not “know where they are and what situation they are in, *id.* at 2120, and may fail to perceive reality correctly and believe that “what’s going on around them and the things around them and even themselves may not be real.” *Id.* at 2123.

This illness almost always follows childhood sexual abuse, and “it begins as a protective mechanism so that somebody can endure what is happening to them.” *Id.* at 2125. “But as time goes on, it can get more and more severe to where they can’t do that [dissociate] just when they want to because something bad is happening. It can just happen to them spontaneously.” *Id.*

*Borderline personality disorder* can also manifest in losing touch with reality. Mental illnesses were at one time roughly divided into 2 categories, neurosis and psychosis. “Neurotic meaning sort of anxiety, depression, and

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amass” in 4 ½ years. She also noted that the people creating the records recognized that they were remarkable, Vol. 13, p. 2265, as reflected in an entry on 11/14/96: “Long history of self-injurious behaviors-more than 100 scars. Multiple admissions to CSU’s-TCU’s and 3 admissions to DCMHI. 4 and ½ sentence--1 year remaining-Inmate has accumulated 10 medical charts.” Defense Exhibit 1.

psychotic meaning the more severe, losing touch with reality, hearing voices, and [people] were called borderline because they were felt to be right on the border line between being in touch with reality and not in touch with reality.” Vol. 12, p. 2129.

“People with this disorder frequently have a history of childhood sexual abuse. The self-injury and cutting that people engage in is frequently – happens in borderline personality disorder, too, as I said before, they want to make sure they’re real.” Vol. 12, p. 2128. This disability can cause a person to lose touch with reality, to experience delusional thinking, and to hallucinate. Vol. 12, p. 2130.

*Post-traumatic stress disorder* also afflicts abuse survivors. When a person suffers a traumatic event or events,<sup>31</sup> the aftershocks of that physical or emotional injury may be long-term debilitating. If the sufferer has any of the following, then they have PTSD:

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<sup>31</sup>Dr. DeLand found Jeremiah had suffered trauma--“there are just so many abusive traumatic events in his past and in his childhood.” Vol. 12, p 2122, 2132:

There were a number of abusive incidents; physical abuse by his mother, physical abuse by his father as severe as holding a gun to his head, and, of course, I think one of the major events was the incest perpetrated on him by his mother .... incest is the outstanding event, but I believe that there were problems long before that.

(1) **avoidance or numbing**, as shown in Jeremiah's case ("throughout his history," Vol. 12, p. 2133) by his not wanting to talk about the abuse he endured (Vol. 12, pp. 2133-34), and by efforts to avoid the activities, places or people that arouse recollection of the trauma (Vol. 12, p. 2135);

(2) **inability to recall** an important aspect of the trauma, as shown in Jeremiah's case where "[w]e have a lot of corroboration for a lot of the abusive incidents that happened, other family members, other times he told mental health professionals, long ago about this happening, and yet he, both in the past and in the here and now, minimizes his history of abuse." Some things we know happened but "he does not remember." Vol. 12, p. 2136;

(3) feeling of **detachment or estrangement** from others, as shown in Jeremiah's case in that, other than with his sister Tamica, "he has a great deal of trouble trusting people and forming any attachments to people." Vol. 12, p. 2136;

(4) **restricted range of affect**, as with the defendant whose "affect is flat, meaning, just no expression in his face, both in his records, that's just a common thing that comes up over and over again, that his affect is flat." Vol. 12, p. 2137. "The overwhelming record by the mental health professionals is that his affect is flat, his affect is flat, his affect is flat." *Id*;

(5) a sense of **foreshortened future**, as in the defendant's case where he has had no expectation of a family life but **has had to live and survive day to day** **"focused upon escaping from his home ...[,] the main goal of his life."** Vol. 12, p. 2138 (emphasis added);

(6) **re-experiencing the traumatic event**, as in the defendant's case where, as is documented throughout Exhibit 1, he has intrusive, distressing recollections of the abuse he suffered, and has acted or felt like the traumatic events were recurring. Vol. 12, p. 2140-41;

(7) **intense psychological distress**, as with the defendant, who actively cuts his body up to relieve his stress and distress. Vol. 12, pp. 2143-44;

(8) **increased arousal or arousal symptoms**, as with Jeremiah, who has had chronic problems sleeping, and who, throughout all of his records, has had arousal symptoms of increased irritability. Vol. 12, p. 2145; and

(9) **hypervigilance**, as with the defendant who always turns around and checks every noise around him, "constantly scanning." Vol. 12, p. 2149;

Dr. DeLand concluded that as a result of these conditions the defendant had been unable to stay out of an institution, had had difficulty in functioning day to day, had been psychotic and out of touch with reality, and had had difficulty

maintaining relationships. Thus, Dr. DeLand confirmed that he has PTSD.

## **B. Defense Exhibit 1: State Documented Mental Illness**

Many of the criteria necessary for the diagnoses of severe mental illness are documented in Defense Exhibit 1.

1. “[I]nmate’s body looks like a cutting board” (Exhibit 1, 2/26/96)

Dr. DeLand reviewed Defense Exhibit 1, which documents Jeremiah’s “*very deep [self-inflicted cuts], injuring nerves, cutting through major arteries or major blood vessels [which] some of the time required well over a hundred, hundred and seventy, stitches* in order to close the wounds. And several of these lacerations if gone unchecked without medical treatment, would have resulted in his bleeding out and dying.” Vol. 12, p. 2111 (emphasis added).

There were at least six episodes where over 85 stitches were required. *Id.* Frequently he would pull the stitches out requiring further medical attention and re-suturing. Vol. 12, p. 2112.

Dr. DeLand testified that persons like the defendant who suffer from borderline personality disorder or from dissociative disorder often cut themselves to make certain that they are real, and people with PTSD cut or otherwise injure

themselves to relieve stress, to avoid hurting others, and to forget about what is torturing them.<sup>32</sup>

But, with the defendant, “[s]ome of them, I believe, were genuine suicide attempts,” said Dr. DeLand. Vol. 12, p. 2122.<sup>33</sup> Indeed, State and, later, Santa

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<sup>32</sup>“And certainly in the DOC records there are lots of instances where he has either cut himself or he’s screaming or banging his head against the wall, and having memories of his mother, in particular, the incest episodes that he can’t get out of his head.” Vol. 12, p. 2141 (Dr. DeLand testimony). Some of the self-mutilation was over (unwarranted) shame from this forced incest, Vol. 13, p. 2216, and some was because Jeremiah “states that he feels stress, feels nervous, feels anxious, and that cutting himself relieves the tension, and that is one thing that – that some people with this type of illness repeat also, that’s not just something that Jeremiah says. That’s something that I heard a lot from these people.” Vol. 13, p. 2216.

<sup>33</sup>Dr. DeLand testified that some of the self-injury was manipulative, Vol. 13, p. 2216, and that “[p]eople with mental illness are capable of being manipulative and especially so in correctional settings.” Vol. 13, p. 2252. But “I just don’t believe that -- that cutting oneself to the point of near death is a totally manipulative gesture.” Vol. 13, p. 2243.

As someone that’s worked as a mental health professional in the correctional system, I can tell you that you do not have to go anywhere near close to cutting yourself to require over a hundred stitches to get moved. That’s just way over the top. You don’t have to cut yourself to the point where you have to be life-flighted to the hospital in order to get moved, and you certainly don’t have to cut your penis in order to get moved within the correctional system.

Vol. 13, p. 2225.

Rosa County) officials repeatedly kept Jeremiah in four point restrains to keep him from killing himself.<sup>34</sup>

2. *Documentation of sexual abuse--mother “sexually forced herself on him”*

See Exhibit 1, entries on 6/10/94 (“a **dysfunctional family with sexual abuse**”); 7/18/94 (mother “sexually forced herself on him.”); 1/15/94 (“during his early teens (14) **his mother sexually molested him**”); 2/3/95 (“History of Sexual and/or Physical Abuse; **his mother began sexually abusing him** when he got out of Dozier School for Boys in Marianna. Reports that **he has been physically abused by both his mother and father.**”); 3/6/95 (“was physical abused by his

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<sup>34</sup>Jeremiah’s suicidality was also evident in the Santa Rosa County jail after his arrest. As Dr. DeLand describes it:

There’s one incident in which he had to be life-flighted to the hospital because he had lost so much blood by the time he was found, and then another occasion in which he also required emergency care because he had lost so much blood he was already losing consciousness at the time he was found.

Vol. 12, p. 2115-16. “If I saw one episode of requiring over a hundred and seventy stitches, that would really have made me sit up and notice, and with his having multiple episodes of requiring over a hundred stitches, having to be life-flighted by helicopter out, that’s a serious, a very serious situation.” Vol. 12, p. 2211. See also section XV, *infra*.



mother since age 7 and at age 14 **he was a victim of sexual abuse at the hands of his mother;**” “**sexual abuse suffered** at the hands of his mother at a great developmental age of about 14 years old for a period of two years. The patient was an active sexual partner of his mother. ... **continues to plague** the patient... Patient does present a danger to himself and possible others although *there is no incidence here where he has been physically aggressive toward other people.*”); 8/1/95 (“reports being **physically abused by both parents and his mother sexually abused him**...He had sex with his mother because she gave him drugs”); 11/7/95 (childhood “**filled with physical abuse** inflicted by both parents. ... He also reported that he was a **victim of sexual abuse**”); 2/23/96 (“inmate was **sexually abused by his mother** throughout childhood. He has a history of behavior problems and depression since age 11. His first suicidal gesture was at age 14.”); 7/9/96 (“**his mother began to initiate sexual intercourse with him**”).

### *3. Mutilation/Hallucinations and Jeremiah’s Mother’s “Spirit”*

The defendant’s anguish over his victimization manifested in two particularly

pathetic types of episodes. **First:** he attempted self-castration.<sup>35</sup> Dr. DeLand explained:

For a period of time when he was in DOC before the incident, he is having a lot of problems, a lot of instability. There's lots of mental health notes at that time about the incest, about the sexual abuse by his mother, and he talks about wanting to be a different person. And at some point I think he begins thinking that if he were not a man, if he were not male that—that he would be a different person and then something like that would never happen again, and he does refer to that both at that time and then later when I spoke with him about those incidents when he lacerated his penis with a desire to cut it off.

Vol. 13, p. 2220.

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<sup>35</sup>See Exhibit 1 entries: 5/23/95 (Nursing Note: "...Thinking: confused, delusional; Mood: inappropriate; states, 'I've got to hurt myself. **I'm going to pull my penis off.**' ...Referred to psychiatrist"); 6/15/95 (Jeremiah was found "holding a **razor blade...with large amounts of blood on pubic area** and dried blood on skin and floor". "Self inflicted laceration in left forearm and penis."); 7/27/95 ("Reason for Admission: ...Inmate caused multiple self-inflicted lacerations on himself. He stated, 'I wish I could kill myself in an easier way, I am angry because I did not have time to cut off my penis. I want to cut it off because I had sex with my mom when I was 14" ...He expressed feelings of **hopelessness, helplessness** and very low self-esteem).

**Second:** he often smeared his own feces all over himself and his cell.<sup>36</sup> Dr. DeLand explained that when Jeremiah was very young he got food poisoning which resulted in vomiting and uncontrollable diarrhea. His mother was disgusted by that, and “not only did she not take care of him, but she actively yelled at him and stayed away from him and would not touch him because she was so repulsed by it.” Vol. 12, p. 2142.

This account was confirmed by the defendant’s sister Tamica. *Id.* “Since feces was something that kept her away from him when he has these events where he believes that his [dead] mother is coming back and trying to do something to him, he uses his own feces in an effort to repel his mother.” *Id.*<sup>37</sup>

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<sup>36</sup>*See, e.g.,* Defense Exhibit 1, entry on 10/30/95 (“He has painted his entire body and walls of the cell with feces. At this time he is standing naked in the center of his room with a smile on his face.” Jeremiah is placed back in 4-point restraints.)

<sup>37</sup>Dr. DeLand considers this a psychotic episode: “he has this belief that she still has this power to come and, well, essentially torture him, as he put it, and that somehow the smearing of feces will keep her spirit or whatever it is away.” Vol. 12, p. 2143. This episode occurred some years after his mother’s suicide. He also described smells that “he associates with his mother’s house and where he endured the sexual abuse,” all of which are “psychotic symptoms.” *Id.* He has been psychotic when cutting himself also, as the records show: “5/28/94 Progress-- “I’m hearing voices telling me to go off and kill myself.” “I need to talk to someone before I do it this time.” Defense Exhibit 1.

#### 4. State Doctors' Diagnoses—All Sorts of Psychotic Disorders

State doctors provided various diagnoses for Jeremiah, all of which manifested with psychotic symptoms. See Defense Exhibit 1 (5/16/94, Needs further psychiatric evaluation.... discharge diagnosis of **Psychotic Disorder**; 6/21/94, Dr. Nguyen writes **Psychotic Disorder**, 6/24/94 ... **Patient requires intensive, long term mental health treatment ... Diagnosis of Bipolar Disorder and Post traumatic stress disorder**; 7/6/94 **His profile is most associated with a schizophrenic diagnosis**; 3/1/95 Admits to experiencing **auditory hallucinations** in the past. ...**Axis I: Schizophrenia, paranoid type**, continuous... .Expresses persecutory delusions, believing he is being poisoned by everyone; 3/6/95 **Depressive Disorder NOS; Borderline Personality Disorder**; 3/8/95 Admitting diagnosis is **Depressive Disorder, NOS**; 7/27/95 **Depressive Disorder, NOS, Post Traumatic Stress Disorder**; 12/26/95 History of severe abuse by family...Realizes he needs further treatment. Final Diagnosis: **Axis I Mood Disorder, NOS**; 2/15/96 **Precautions: Acute psychosis - suicidal**; 2/21/96 **Diagnosis: Dysthymic Disorder**; 3/5/96 **Dysthymic disorder**).<sup>38</sup>

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<sup>38</sup>Dr. DeLand observed that “in their opinion, **he has a psychotic illness**, but they can’t pin down one of the exact categories at that time.” Vol. 13, p. 2205.

## 5. *State Doctors' Prescriptions—All Sorts of Anti-psychotics*

State physicians prescribed medications for the defendant. Lots of medication. Dr. DeLand said that “the first medication that I noted was when he was thirteen years old and admitted to West Lake Hospital and he was treated with Prozac which is an antidepressant.” Vol. 13, p. 2225. When he was being treated by the State,

there's a whole host. There's several antidepressants. One is Desyrel, which he finds very useful and which I have found to be very useful medication in post traumatic stress disorder. There's a mood stabilizer including **Lithium** which a lot of people with bipolar or manic depression use. Its also used to help with impulse control. There's also a mention of Tegretol in there which is an antiseizure or anticonvulsant, but is also used to treat *bipolar* or major depression and also used to help with impulse control. The same goes for a medication called Depakote or valporic acid. Its also an anticonvulsant that is used to stabilize mood and impulse control. There's also **antipsychotic medications. He's placed on Trilafon which is an antipsychotic. He's also placed on a medication, one called Asendin which is an antidepressant, but when it metabolizes, one of its metabolites acts as an antipsychotic** so its sort of a combination of an antidepressant and an antipsychotic. He

at one time received Sinequan which is an antidepressant medication. He also receives medications aimed at anxiety, such as Vistaril, Benadryl. Also temezepam which is a drug which is in the Valium family. Vol. 13, p. 2225.<sup>39</sup>

#### **IV. Jeremiah is Released With No Aftercare—A tragic “Oversight”**

The State medicated, restrained, sutured, re-sutured, and isolated the defendant for 4 ½ years, and then

*He was released.* There is no evidence that there was any kind of mental health appointment provided for him when he left which is pretty much standard procedure when somebody’s had mental health treatment, *they usually set them up with an appointment to continue their care.* I didn’t see anything in the records that that had been set up so **it must have been an oversight.** So he does not have his medication.

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<sup>39</sup>To attempt to rebut the extensive and compelling expert testimony of Angela Mason, Dr. Foy, and Dr. DeLand, the state presented the very brief testimony of Dr. Greer who stated that Jeremiah was simply anti-social. He had to concede, however, that scores of state physicians had long disagreed with his recent (and prosecution obtained) “opinion,” and had consistently diagnosed Jeremiah with severe mental illnesses. Dr. Greer confessed that the state had relentlessly prescribed primarily antidepressants, antipsychotics, and antianxiety drugs, Vol. 13, p. 2327, which are not used for persons who are anti-social. Recognizing how lame Dr. Geer’s testimony was, the State conceded during oral argument to the jury, and in its sentencing memo to the judge, that Jeremiah is seriously mentally ill.

Vol. 12, p. 2162 (Dr. DeLand).<sup>40</sup>

When Dr. DeLand was asked whether the defendant should have had a mental health evaluation when he was about to leave prison, given his “threats, suicidality and threats to himself and others, particularly his parents,” *id.*, she said:

Yes, my experience in the correctional system, both in Florida and in Louisiana, we frequently, when we have somebody that is that worrisome that has almost killed themselves while in the institution, has threatened to harm themselves and others when they leave, *will usually be referred for an evaluation prior to their release*, like the day of or the day before they are released as, basically, as a protection for the institution as well as the protection for the individual and the community at large ....Or you may get people who say, this person should go straight from the prison here over to an inpatient facility for further evaluation and treatment whether they want to go or not because of the risk to themselves and to the community.

Vol. 13, p. 2228. “**It should have happened.**” Vol. 13, p. 2266.

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<sup>40</sup>*See also* Vol. 13, p. 2227 (Dr. DeLand)(“Yes, and as I say, **it must have been an oversight** because it’s pretty standard procedure for that when someone has had mental health treatment in the prison .... generally a mental health appointment is given.”)

Dr. Harry McClaren also testified (at the *two* competency hearings that were necessary before this case could proceed) that the defendant should not have been released from prison without some sort of transitional medical care:

When I worked there if, **at the end of the sentence, I made it a practice to commit them to Florida State Hospital. If they was bad off enough to be at CNHI, I made it a practice to give them a period of adjustment at Florida State Hospital** when I was doing the work.

Vol 7, at 1017. Indeed, Defense Exhibit 1 contains the following entry on 8/1/97:

**“need for follow-up in the community.”**

## **V. Jeremiah Tries To Make It**

### **A. Staying with Elijah and the Waldrups – “nice as could be”**

Jeanelle committed suicide.<sup>41</sup> This was devastating to the defendant. When he got the sad news he attempted suicide twice.<sup>42</sup> Elijah, the defendant’s brother

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<sup>41</sup>Tamica testified about Jeanelle’s death. Jeanelle had been in bad shape for a very long time, drinking all the time, doing crack cocaine, and not eating. In October of 1997–Jeanelle killed herself with a gun. Vol. 11, p. 1877.

<sup>42</sup>First, he slit his throat. Tamica went to tell Jeremiah about their mom but he had already heard and “he had tried to cut his throat ... because it was still, like, open ...[and] he was on some kind of medication because he mentally wasn’t



who had been adopted by the Waldrup's as an infant, was told about his mother's death and was also profoundly affected. He decided to find his birth family. Vol. 10, p. 1644. He located his brother, the defendant, in prison, and met him at the prison gate upon the defendant's release at age 20. Vol. 10, p. 1662.

In pursuit of family, they went to their natural father's (Steven's) house in Pittman, Florida, about a thirty minute drive from Orlando. *Id.* at 1665. It was a pipe dream and was over in a few days. Steve was still a mean drunk: he was running a bar and drank every day to drunkenness; and he cruelly bragged that Elijah was his good son and the defendant was his bad son. They fled. *Id.* at 1667.

They retreated to Elijah's adoptive parents' (the Waldrups') home in Pace, Florida, near Pensacola.<sup>43</sup> The defendant stayed there for two or three months, and worked for a family member at a salvage yard. According to Mr. Waldrup, the defendant "was a real good worker" ("he supported hisself, you know, I didn't support him") and "he was as nice as anybody could be." Vol. 10, p. 1649. Mrs. Waldup testified that "he worked really hard," "he did real good at the house," and "I didn't have any problems." *Id.* at 1740.

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there." Vol. 11, 1878. Second, Jeremiah tried to hang himself, saying "if she can do it I can do it." Exhibit 1, page 3080.

<sup>43</sup>When they first had adopted Elijah they had moved to California, but they later had moved back to Florida.

While at the Waldrup's, Elijah taught the defendant how to socialize locally. Elijah said that "in the ways of young men in the world ...[Jeremiah] didn't really know how everything worked." *Id.* at 1667.<sup>44</sup> Elijah taught the defendant to go out into the woods with other young people and socialize or date and drink alcohol at night, what many young folks do in some rural areas in the Panhandle of Florida. *Id.* at 1668.

**B. Jeremiah started to need medication, contacted several agencies, "but no one would help him"**

Mr. and Mrs. Waldrup testified that the defendant started to have some problems and asked for help getting some medication for "depression or something." Vol. 10, p. 1652. According to Mr. Waldrup, Mrs. Waldrup "told him to go down to the county to the health department and they would probably give it to him; but he went up there, and they didn't give him – **they didn't help him.**" *Id.* at 1653 (emphasis added). According to Mrs. Waldrup, the defendant went to *several* agencies and "he said no one would help him." *Id.* at 1739; 1744.

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<sup>44</sup>Elijah said that Jeremiah had a lot of scars on his body and "I think he wanted to keep them hid. He felt bad for them," Vol. 10, p. 1667, which affected his socializing. Jeremiah also had trouble adjusting to life in the free world, "a big change from going from one extreme to another. He was used to cells closing behind him. I told him that that would eventually go away." Vol. 10, p. 1669.

**C. Living with Patti Perritt: Jeremiah had never experienced a real Christmas, “ain’t nobody ever come” to visit him in the hospital**

The defendant started dating Patti Perritt. Elijah and the defendant had a falling out (“I can’t remember what we argued about.” *Id.* at 1670 (Elijah)), and the defendant started to live with Patti. Patti and the defendant spent Christmas, 1998, together: “We shopped for Christmas gifts for my kids. Me and Jeremiah stayed up Christmas Eve, and put the toys together, and wrapped presents, and listened to Christmas music.

**“Jeremiah had never done that before.”** Vol. 10, p. 1681 (Christmas pictures admitted). The defendant was “great, really nice,” *id.* at 1682, with Patti’s children, and they were fond of him and he was fond of them.” *Id.*

During this period, the defendant went to a hospital with the Waldrups to visit a family member. There were lots of people there to see the sick relative, which the defendant could not understand. He told Mr. Waldrup: **“I’ve been in the hospital a bunch of times” and “ain’t nobody ever come.”** Vol. 10, p. 1650. He spoke to Patti Pruitt over the telephone from the hospital and told her the same thing. She told him “that’s what families do.” Vol. 10, p. 1679.

#### **D. Jonathan Lawrence Begins to Dominate – “Unease”**

After the defendant moved into Patti’s place, he spent less time with his brother Elijah and started spending time with Jonathan Lawrence. Patti was not comfortable with that relationship, and she had a fight with the defendant about it. *Id.* at 1685. She thought it was not “good for our relationship. I just felt un-- at unease with it.” *Id.* at 1687.<sup>45</sup>

The defendant started gravitating to Lawrence because he started falling apart. Dr. DeLand explained. The defendant “was in a very high-risk period of time. The first six months after being released from prison is a high-risk period of time for people to have problems adjusting,” and “more so for him because he has a mental illness on top of it.”

The defendant had **“been treated off and on with medication the whole – the little over four years that he was in the prison, seemed to have problems every time he got off the medication.”** Since there was no mental health follow-up upon release from prison, and because no-one would help Jeremiah get any

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<sup>45</sup>Elijah knows Jonathan Lawrence, but he was not a friend and Lawrence did not socialize with the young people with whom Elijah and Jeremiah socialized. Mr. Waldrup stated that he also knew Jonathan Lawrence, who had not visited or been a welcome guest in his home, but who lived about a block away. Vol. 10, p. 1652.

medication, he was “basically been getting through each day the best way he knew how, having symptoms, especially when you get closer and closer to the crime.

The defendant was drinking every day. Every evening when he got off he was drinking alcohol and smoking marijuana until he got to the point where he felt like he could go to sleep.” In this condition,

**He had very little contact with anyone other than Jonathan, his co-defendant.** He displayed very poor social skills and poor social judgment, a poor choice of people that he spent his time around. Vol. 12, 2162-63 (emphasis added).<sup>46</sup>

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<sup>46</sup>When Jeremiah was arrested, he told officers that he met Lawrence in prison and said “I didn’t really hang with [Lawrence] at all, maybe I’d see him, maybe, once a week, two weeks. And then, I started having problems, you know, with my brother and my girlfriend so I started going over there every day, drinking, and just hanging out in his yard.” Vol. 8, p. 1247.

## **VI. What Others Say About The Night of, and the Day After, Jennifer's Death**

### **A. The Night of: Jennifer's Mother Met Jeremiah and Knew How to Reach Him**

The defendant and 18 year old Jennifer Robinson had been talking to each other and planning a date for a couple of weeks, and Jennifer's mother, Ms Robinson, knew all about it, including Jeremiah's name, how to contact him, and other identifying information. Vol. 7, pp. 1168-69. On May 7, 1998, Jeremiah came to Jennifer's house to pick her up for the date. *Id.* at 1164. He met Jennifer's mother and spent about ten minutes in the home talking with her. *Id.* at 1170.

Jennifer's mother started trying to locate Jennifer on May 8, 1998, after Jennifer apparently had not come home from the date. Vol. 7, p. 1165. After placing a couple of calls (including a call to Patti Perritt's house, where Jeremiah actually was) and failing to locate Jennifer, Ms. Robinson called the Sheriff's Department and spoke to Leonard Thomas. She told him that her daughter was missing and that she had gone out with Jeremiah Rodgers the previous night. *Id.* at 1166.

### **B. The Day After: Jeremiah tells Patti that Lawrence Killed Jennifer**

On May 8, 1998, Patti heard about Diane Robinson's call to her house, believed that Jeremiah had been unfaithful to her the previous evening, and she "came home to confront him." She "found out it was worse than that." Vol. 10, p. 1688. **"Jeremiah told me ...that she had been killed, that Jon had killed her."**

The defendant showed her some Polaroid photographs of the victim. Patti and Jeremiah went riding in her car because they did not know what to do: **"Both of us were crying real hard."** Jeremiah asked Patti "to take the pictures and turn it all in. And I told him I didn't want the pictures I didn't want to do that."

Jeremiah "kept telling me he was going to kill himself." *Id.*

### **C. The Day After: Jeremiah Tells Elijah that Lawrence Killed Jennifer**

On May 8, 2002, Jeremiah went to Elijah's house. Jeremiah "was shaking, real nervous." Vol. 10, p. 1671. He told Jeremiah, "I'm in trouble. I don't know what I should do." Elijah asked Jeremiah what he had done, and it took a few minutes before Jeremiah responded. Then Jeremiah "showed me some pictures

and I kind of hesitated a minute. I didn't really know what to think. I was scared.”

*Id.* at 1672. The pictures were of Jennifer, and it was clear that she was dead.

Jeremiah then said “I know that I can't run. I want to do the right thing.”

Elijah agreed and said “he should call the law or something.”<sup>47</sup> Jeremiah then told

Elijah what had happened: “**He said Jon Lawrence shot her....** I paused. I had to try to breathe. I told him that – to turn himself in would be the best thing to do, that it was wrong. He was just as scared as I was.” Vol. 10, p. 1673.

#### **D. Patti and Elijah Tell the Police; Crime Solved**

Jeremiah left. Elijah contacted the Sheriff's department and advised the police that “his brother, Jeremiah Rodgers had told him about a murder of a female that occurred on May the 7<sup>th</sup> 1998.” Vol I, p. 016. Elijah stated that Jeremiah had been associating with Jonathan Lawrence and that Jeremiah told Elijah that Lawrence shot Jennifer. Jeremiah told Elijah, and Elijah told Leonard Thomas, that Jeremiah “walked down this hill-like area to go take a bathroom break, and

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<sup>47</sup>Jeremiah said that he was afraid of law enforcement, and Elijah told him the name of a police officer who was trustworthy—Officer Leonard Thomas. Coincidentally, Officer Thomas drove up and asked Jeremiah where the victim was, and Jeremiah said he did not know and that he had left her in Pensacola at 1:00 or 2:00 a.m. the previous morning. Vol. 10, p. 1674; Vol. 23, p. 2117.



after that he heard a gunshot, and he ran back up the hill to where the vehicle was, the truck was parked, and he found Jennifer lying on the ground.” Vol. 7, p. 1178.<sup>48</sup>

Based upon the information provided by Jeremiah to Elijah and Patti, Vol. I, p. 026, Investigator Hand went to Jonathan Lawrence’s residence, searched it, and arrested Mr. Lawrence on the 8th.<sup>49</sup> Investigator Hand agreed that “it was the information that Mr. Rodgers gave on May the 8<sup>th</sup> that led you to Mr. Lawrence.” *Id.* at 1187.

## **VII. Some Physical Evidence Seized from Lawrence’s Residence**

The State took photographs of Lawrence’s residence (State’s Ex. 5A) and his truck (State’s Exhibit 5B), and introduced them into evidence. Vol. 7, p. 1189 (State’s Exhibit 5). The State also took a photograph of the contents of Lawrence’s pick-up truck (State’s Exhibit 5B), and introduced the photograph into evidence. *Id.* at 1191.

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<sup>48</sup>Jeremiah also told Elijah that “he was with John Lawrence when Justin was killed – Justin was stabbed multiple times in the chest **by Lawrence** on the helicopter field.” Vol. 7, p. 1179.

<sup>49</sup>Lawrence “confessed” and blamed Jeremiah for the killing. Vol. I, p. 026.

The state searched Lawrence's residence, and found and introduced a Polaroid photograph of a person with a laceration to the scalp (State's Exhibit 6A),<sup>50</sup> a box for a Lorcin pistol (State's Exhibit 8), empty Polaroid film containers (State's Exhibit 9), and two notes written by Lawrence (State's Exhibit 7A and 7B). *Id.* at 1196.

These items were obtained during the search on May 8, 1998. Other items were recovered in another search conducted by the FDLE on May 14<sup>th</sup> and 15<sup>th</sup>, 1998. Vol. I, p. 034. The state did not introduce the other evidence, and successfully objected to the defense introducing it.

### **VIII. Before his Arrest, Jeremiah Tells Tamica that Lawrence Shot Jennifer**

Tamica testified that Jeremiah called the day before he was arrested and told her he was coming to Lake County where she lived. "He told me that something had happened, and he knew he was going to be gone for a long time so he wanted to try and see me before—you know, before they came to get him. ...So I knew the next day to expect him sometime..."

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<sup>50</sup>Jonathan Lawrence's brother, Ricky Lawrence, gave the police a Polaroid camera. Vol. 9, p. 1596.

Jeremiah told Tamika what had happened: **“he told me that he did not shoot her. He pretty much told me that they were supposed to have, like, a double date, it didn’t work out, so it was Jon, Jeremiah, and this girl. And they went – they were kind of partying, whatever, having a good time, and they were out in, you know, the woods, and they had been drinking, you know, whatever, and he – they got out of the truck, they stopped, he was going to pee or something. He went to pee, and he heard a gunshot. And then when he came back, you know this girl was shot already.”** Vol. 11, pp. 1865-66.<sup>51</sup>

## **IX. Jeremiah’s Arrest and Failed Suicide**

Todd Luce of the Lake County Sheriff’s Office in Orlando testified that he was asked to surveil Steven Rodgers’ (Jeremiah’s fathers’) residence in central Florida on May 9, 1998, and to be on the lookout for Jeremiah. After a couple of cars approached the residence, Luce went there and spoke with Steven Rodgers. Steven told Luce that Jeremiah had called him and was at the Rodgers’ bar, and gave Luce a picture of Jeremiah. Vol. 8, p. 1209.

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<sup>51</sup>This is *precisely* what Jeremiah had told Patti and Elijah earlier, and what he told the police the next day, May 10, 1998.

Luce and other deputies left and headed for the bar, and a car passed Luce's car going in the opposite direction. The driver matched the photograph Luce had been given. *Id.* Luce made a u-turn, and a chase ensued. *Id.*

Luce radioed for help and other officers put spike strips of stop sticks in the road. These put holes in tires and cause a leak, stopping a vehicle. Jeremiah's car ran over these stop sticks approximately seven miles from where the chase started. His tires ran out of air, and he stopped his car. Vol. 8, pp. 1214-16.

At that point Jeremiah "came up with a weapon—black colored gun—to his head, indicating—and hollering for us to get back....A standoff ensued." Vol. 8, p. 1216 (Luce). Officers started building rapport and asking "what is this all about?" Jeremiah said he would tell them what it was about, and "threw to me [Luce] several Polaroid pictures." The pictures depicted dissection of a leg.

The standoff continued for six hours. Vol. 8, p. 1237. During that time Jeremiah did not threaten any officers, and did not point the gun at any officers. The gun was "either to his head, or to his chest, on his lap." Vol. 8, p. 1233-34. He asked to see his sister Tamica, and they brought her to the scene but did not let him see her until after he surrendered. Luce negotiated with Jeremiah for a

cigarette. Luce threw Jeremiah a cigarette, Jeremiah smoked it, and then “put the gun to his head” and “some on the scene say they heard the click.”*Id.* at 1238.<sup>52</sup>

## **X. The May 10<sup>th</sup> Confession: Jonathan Shot Jennifer**

An interrogation occurred around 1:00 a.m. on May 10, 1998. The State did not introduce into evidence what Jeremiah Rodgers said during this interrogation by these Lake County Sheriff’s Department officers because it was exculpatory. Thus, counsel for Mr. Rodgers had to bring this evidence out during cross-examination.

**Jeremiah told these officers that Jonathan Lawrence shot Jennifer.** Vol. 8, p. 1243-44. Lawrence, Jeremiah, and Jennifer had ended up out in the woods drinking that night. Lawrence had “made plans to meet his girlfriend, so I dropped off my car, ‘cause I didn’t have no tag on it. One headlight, you know, I just got

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<sup>52</sup>Upon Jeremiah’s arrest, Luce checked the gun and discovered that it was loaded but that it was “double fed and it couldn’t fire,” Vol. 8, p. 1238, it “had malfunctioned,” and “caused the weapon to jam.” *Id.* at 1219. None of the 30 officers on the scene saw Jeremiah do anything to make the weapon not fire. *Id.* at 1238. The gun had two bullets in it that had indentation marks showing that the firing pin had hit the rounds but they had not fired. Vol. 8, p. 1254. This was Jonathan Lawrence’s gun.

it. So we took his truck. We went out to the woods. He said his girlfriend lived way out there.” Vol. 8, p. 1242. But Lawrence’s girlfriend never showed up.<sup>53</sup>

Jeremiah stated that he had consensual sex with Jennifer twice. Vol. 8, p. 1243. Then Jeremiah decided that they should leave.<sup>54</sup> Vol. 8, p. 1243.

Lawrence started driving the truck to leave, and Jeremiah asked him to stop so that he could go to the bathroom. *Id.* Jeremiah got out of and walked away from the truck about 20 feet to use the bathroom. *Id.* at 1244.

Lawrence got out of the truck and told Jennifer that he had some pot plants he wanted to show her. Jeremiah said:

He gets her out of the truck and, uh, what turned me around was I heard the bang, you know, and I come running and I-I already knew he did it, you know.

Q. How did you know?

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<sup>53</sup>“She never came.” Supplemental Record, p. 2338. According to what Jeremiah told the Lake County deputies, they were planning to go to a club in Pensacola, but “we ended up drinking 153 proof Everclear and never made it to the club.” Supplemental record, p. 2334. John stayed sober while Jeremiah and Jennifer drank. Jennifer got “trashed” because “John took her Mountain Dew, she got a one liter Mountain dew, and poured like that much out and poured the whole bottle of Everclear....and she drank about half of that Mountain Dew, which means she drank about a half of bottle of Everclear.” *Id.* at 2338.

<sup>54</sup>Jeremiah knew Jennifer was drunk and kept asking her if she wanted to go home, and she would not say. He decided to take her home. Supplemental Record, 2338-39.

A. I saw her lying on the ground with both legs tucked up under her and a crazy look in [sic]. And, uh, I looked at her face and I got sick and then I started going off on him, you know, I told him to give me the gun and uh, I planned on taking it and shooting him with it. Supplemental Record, p. 2340; Volume 8, p. 1245.

Jeremiah said that Lawrence then took a scalpel and cut the victim's head.

Lawrence did other horrible things that left Jeremiah stunned and speechless. *Id.*

at 1245.<sup>55</sup> Officer Lucy testified that Jeremiah said he took the gun away from

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<sup>55</sup>Jeremiah said that Lawrence cut the victims head and leg, and put the flesh from the leg into a cooler. Supplemental record, p. 2344. "But, basically, all I did was I tried to get myself to thinking and, uh, I just kept looking up in the sky. I even prayed once, uh, just to figure out what in the hell I am supposed to do now?" *Id.* Jeremiah said that Lawrence had sex with the deceased victim twice after killing her, that Jeremiah had to walk away ("I wasn't really thinking. I was dazed.") and "I got sick and threw my guts up," and "I stood there and I pointed the gun at his head and I was fixin to shoot him, you know." Supplemental Record, p. 2340. Jeremiah said "so, you know, I'm just kind of, I don't [know] what to do, you know. I'm just kind of dazed here, cause I there's a dead girl here that I took out on a date." *Id.* at 2342.

Jeremiah said that he helped Lawrence move Jennifer's body off of the truck ("my mind just was not clicking, you know. ...I was just blank." Supplemental Record, p. 2349), and that after the truck would not start he walked with Lawrence to a place with a phone and called Patti Perritt and asked her to come pick them up, which she did. She asked him questions about what he had been doing, but he did not answer them. She took Lawrence and Jeremiah to Jeremiah's car, and then Jeremiah and Lawrence went back to the truck. Jeremiah did not know what they were going to do there other than get the truck started and leave, and Jeremiah's state of mind was that he wanted to kill Lawrence but "another part of me was lost, I have no idea." *Id.* at 2351.

Lawrence, that what Lawrence had done had “upset him terribly, and that he thought about killing Mr. Lawrence.” Vol. 8, p. 1246.

Rather than doing that he took a live round out of the chamber and dropped it. A live round was later recovered there by the police. Then Lawrence started taking Polaroid pictures of the victim, and Jeremiah yelled at him to stop what he was doing, “You’ve gone too far. Put the sh\*\* up, you need to get me out of here right now.” Vol. 8, p. 1248.<sup>56</sup>

Police asked Jeremiah whether Lawrence had done anything like this before, and **Jeremiah said that Lawrence was “always, you know, talked about it ... always talking some crazy stuff. Killing somebody, shooting somebody.”** Vol. 8, p. 1249; Supplemental Record, p. 2348 (emphasis added). When asked whether Lawrence had suggested harming Jennifer, Jeremiah said that he disabused Lawrence of any such notion.<sup>57</sup>

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<sup>56</sup>Jeremiah was asked whose scalpel and camera were used, and he responded that they were Lawrence’s—“Oh, everything out there is his, you know, I just brought me, myself and Jennifer”—*id.* at 2349, and that Lawrence had taken the Polaroid pictures.

<sup>57</sup>Jeremiah was also asked whether Lawrence had suggested kidnaping Jennifer before the date, and Jeremiah responded:

When I, when I told him, you know, I met her, she wants to go out on a date, he said well, you want to do anything to her. I said, by what do you mean. You want to take her out in the woods and rape her or



Jeremiah said that when he and Lawrence were at a store after leaving the scene and Lawrence went inside, Jeremiah got some of the Polaroid photographs from Lawrence's truck. Vol. 8, p. 1250.<sup>58</sup> He told the police that the next day he told Patti and Elijah what had happened, and showed them the Polaroids.<sup>59</sup> He also told them that he had driven to Central Florida to see his sister, and intended to go to the police.<sup>60</sup>

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something. I said, you got to be out of your f\*\*\*\*\* mind. I—You know, I met her mom and people, the girl she works with in the store, she knows me so they ain't no way anyway, I ain't a raper....

Supplemental Record, at 2349. It certainly made no sense for Jeremiah to “meet her mom” and then commit a crime against Jennifer. The way police focused at first on Jeremiah was that Jennifer's mom told Officer Leonard that Jennifer had gone on a date with him. Vol. 23, p. 2109.

<sup>58</sup>Jeremiah “wanted to take it to the cops or something,” *id.* at 2352, and thought that he had gotten all of the Polaroids. Lawrence then went to work, and Jeremiah went to Patti's to sleep.

<sup>59</sup>Throughout this statement Jeremiah expresses remorse and outrage over what happened (“I don't know, it just does something to you when you see a body, you know, weird s\*\*\* done to it. A good girl, you know, anyway...”, Supplemental Record, at p. 2359, and the police commend him for telling them what happened and promise to try and help him. *Id.* at 2359, 2354 (“we can help you”).

<sup>60</sup>According to Jeremiah's statement, the day after the offense Jennifer's mother called Patti's residence and spoke to Patti's mother, asking about Jennifer's whereabouts. Patti's mother called Patti, and Patti came home to ask what Jeremiah had been doing out with another girl. Supplemental record, p. 2352. Jeremiah “told her everything that happened.” *Id.* When Deputy Leonard had questioned Jeremiah about Jennifer's whereabouts, Jeremiah “told him a few lies

Jeremiah also discussed the Justin Livingston case with the Lake County investigators.<sup>61</sup> Some time after this statement and a statement given May 13<sup>th</sup>, Jeremiah took the officers to where Mr. Livingston's body was, and the police had not known that location beforehand.<sup>62</sup> He also took them to where Jennifer's body was; they already had that information and had been there, but Jeremiah was not told that. Vol. 10, pp. 1615-1617.

According to Officer Luce, Jeremiah was "completely forthcoming" about his involvement. Vol. 8, p. 1253. *There was no mention in this May 10<sup>th</sup> statement of any handwritten notes made by Lawrence that foretold any planning for the offense.* There was no indication that Jeremiah had any intent to hurt

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just so he wouldn't take me in right then. But I planned to turn myself in later on that night." Supplemental Record, p. 2355. Then he went and closed his bank account to get money, planning to "get, you know, tore up, [a]nd then go to the cops." *Id.* at 2351. *He said Lawrence, "[y]ou know, he's got, he's lost his mind completely." Id.*

<sup>61</sup>He said that they were all out in a field and Lawrence started stabbing Livingston with a knife. Jeremiah felt responsible because "I didn't stop him." Supplemental Record at 2362. Jeremiah said that after the stabbing began he ran to get the truck to rush Livingston to the hospital, but when he got back Livingston was dead. *Id.* At 2364. Jeremiah tried to save Livingston, but failed. He was sad and angry, and "I can't explain how I felt." *Id.* at 2368. Jeremiah then helped bury Livingston.

<sup>62</sup>The Livingston crime would not have been solved without Jeremiah's help. Vol. 7, p. 1113.

anyone, and **Jeremiah repeatedly stated that Lawrence was an insane killer who had acted in a manner that Jeremiah found shocking and disturbing. This is what he told Patti, Elijah, Tamica, and the Lake County investigators.**

## **XI. The May 13<sup>th</sup> Suicide Statement: Jeremiah Shot Jennifer**

Three days later, Jeremiah gave a different statement to Santa Rosa County investigators. They had obtained items from Lawrence's residence and truck, including the notes that Lawrence had written. They had arrested Lawrence, and he had given them a statement that blamed Jeremiah for the crimes. The Santa Rosa deputies pulled Jeremiah out of jail saying they were going to interrogate him about the Livingston case, and then he told them a different version of events from what he had told everyone before. He also explained why he was changing the story.

In this statement May 13, 1998, statement, Jeremiah took responsibility for shooting Jennifer, for cutting her forehead, and for taking all of the Polaroid photographs. Vol. 8, p. 1302-1321. He took responsibility, he said,

'Cause I feel like a piece of shit, you know, for what I've—what I did—I took her life. I ruined her life, her family's life, and after doing all of that, I don't seem worth as much, so I don't care what happens

to me in court. You know, I pray to God I get death row. I honestly do.

Q. (By Det. McCurdy) Would you like to say anything to Jennifer's family if you could?

A. Yeah, definitely. To Jennifer's mom, which is the only one that, you know, I spoke to face to face, I just want her to know that I regret so much the decision I made, and I'm sorry. I wish there was a way I could take it back, but there isn't. The only thing that I can do is tell the whole story and get my punishment. I can get my full punishment, and that is the only thing I can change.

*Id.* at 1318.<sup>63</sup>

Even in this new version, Jeremiah did not say that there was a plan to kill Jennifer, and did not mention any notes that had been written in preparation to commit a crime, until the officers prompted him.

The defendant told the officers at the outset that they would need to ask him questions as "to a certain extent, I can talk, you know, [but] I'm going to lose my way," and he spoke nonsense (i.e., what happened "was kind of impulsive, kind of premeditated, more premeditated. More premeditated than impulsive," *id.* at

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<sup>63</sup>Tamica testified that Jeremiah had told her from jail why he changed his statement: "He wanted to die, he wanted it done. At the time, I don't think he realized what he was saying, because he wanted to die. He just didn't want to be here anymore." Vol. 11, p. 1867. Tamica had received letters from Jeremiah over the years with descriptions of serious, but unsuccessful, suicide attempts. *Id.* at 1869. In his May 10<sup>th</sup> statement, Jeremiah stated that he believed he would do prison time—probably life in prison—for his part in what happened, and the officers did not disagree with that. By saying that he was the person who shot Jennifer, it was more likely that he would be sentenced to death and be killed.

1304). He said what was the most important thing to him at the time—that he shot Jennifer—but did not volunteer much else. So the officers asked whether getting Jennifer out of the truck with a story about pot plants was “just part of the plan,” and Jeremiah said yes. *Id.* at 1308.<sup>64</sup>

Then, after several more pages of confession,<sup>65</sup> Jeremiah said “Yeah, I forgot, [!?] before I took the last pictures, I took the scalpel and I made the cut that was on her forehead.” *Id.* at 1315. After he had finished his statement, it still did not say what the investigators wanted, so they brought it up themselves:

Q. (By Det. Hand) Jeremiah, did you and John plan this whole thing?

A. Yeah.

Q. Did the plan –

A. The plan was for him to shoot her, but however it ended up, I’m the one that did it. I can’t explain that part. He just didn’t do it, and I did it.

Q. (By Det. McCurdy) At any point in time, did you or John make a list of how you would do that?

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<sup>64</sup>If there was a plan to kill this person there did not need to be a trick to get her out of the truck. They were out in the middle of nowhere, and there was a gun there, in the middle of the night.

<sup>65</sup>Jeremiah told them that Lawrence had sex with the victim after she had been shot, and that Lawrence cut her leg and placed part of it in a cooler.

A. Yeah. John made a list of things he would bring, you know. He kind of planned it by himself when I was at home or wherever I was at, and he showed me the list before we even met up with Jennifer and took her out. And on the list, as far as I know, was the scalpel, you know, the ice, the – I think there was a rope. Don't remember everything that was on the list. The knife I think.

Q. (By Det Hand) Camera?

A. Camera. The film. *Id.* at 1318-19.

Jeremiah also told the officers that he shot Mr. Smitherman<sup>66</sup> and that he helped to kill Jonathan Livingston. In his May 10<sup>th</sup> statement he had said that Lawrence committed these crimes.

## **XII. Jeremiah Had Never Hurt Anyone but Himself**

Before the insanity that led to the sentencing hearing, Jeremiah had never hurt anyone, except himself. While being treated by the State as a 16 year old, he did *say* that he would hurt his mother and father, and, on occasion, one of the treating physicians, but he was in a mental hospital being treated for a mental illness which made him say such things.

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<sup>66</sup>He said that he shot Mr. Smitherman and the victim “bucked forward,” Vol. 7, p. 1056. That plainly was not true—Mr. Smitherman actually showed no reaction to being shot. *Id.* Defense counsel argued that Jeremiah simply made his story up, better to commit suicide.

While there are “lots and lots of references of both threats to hurt *himself* and actual incidents of hurting *himself*,” Vol. 13, p. 2211, Exhibit 1 and all the prior records show “**no incidents of ever having hurt anybody.**”<sup>67</sup> Vol. 12, p. 2196 (Dr. DeLand)(emphasis added). In fact, Jeremiah hurt himself rather than hurt anyone else:

We saw it at the one treatment center where he talked about where he got prosecuted for hitting the wall. There’s other times where he’s punched a wall and hurt his fists or banged his head, and he stated that he just felt so angry and he worried that he might hurt somebody else or he thought about hurting somebody else and so he hurt himself instead and then that would relieve the tension and he would feel better and not so angry.

Vol. 12, p. 2217.

He would ask to be put in restraints if he felt himself getting angry, Vol. 12, p. 2146, and ask to be placed in the “quiet room.” Defense Exhibit 1, entry dated 8/22/94 (Jeremiah requests to be placed in the Quiet Room “before I hurt someone or myself” and asks to stay there until he feels “less stressed.”). Defense Exhibit 1

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<sup>67</sup>Jeremiah’s crimes were to property--theft. He never attempted to escape from prison or any other secure facility. Vol. 12, p. 2184.

has an entry on 3/6/95 by a state actor saying the same thing: “*there is no incidence here where he has been physically aggressive toward other people.*”

### **XIII. Remorse, regret, sorrow**

Dr. Deland testified that when the crime occurred, Jeremiah “ was suffering from these mental illnesses that he has.” and “I do think that his mental illness has affected him, and I do think they had an impact on this crime and upon why it was committed.” Vol. 13, p. 2237.

Jeremiah was unable to describe for Dr. DeLand everything that had happened. This is accounted for by amnesia, which Dr. DeLand finds to be a direct result of Jeremiah’s mental illness:

Mr. Rodgers has frequently, not only when he is telling me about the crime, but also about other periods, would frequently say, you know, I am not sure, but I have a memory of this happening or I think this is what happened, but I have trouble fitting something else into it, and that is my opinion, in my opinion and my experience, and **I’ve interviewed hundreds and hundreds of defendants in criminal cases – and that in my opinion rings very true of genuine memory problems. I have seen a lot of defendants that I thought were malingering amnesia for an event....[but Mr. Rodgers] I found**



**very credible**<sup>68</sup> ... [and] I do believe that his mental illnesses do explain his problems that he has with his memory. Vol. 12, p. 2167-68.

Despite having no memory for some of the details of the crime, Jeremiah is “extremely sad and expressed remorse.” Vol. 13, p. 2231.

Mr. Rodgers is basically a sad person. He’s basically a sad depressed person. **He expressed the remorse and guilt and grief every time that I spoke with him.**

*Id.* (emphasis added).

This remorse and guilt, combined with his mental illnesses, led Jeremiah to feel that “it would be God’s wish for him to take responsibility even for things that—that he was not directly responsible for in order to come to some place or be forgiven.” Vol. 12, p. 2174. This led to inconsistent statements to the police,<sup>69</sup>

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<sup>68</sup>Jeremiah is not someone who by history lied about things. Generally children and teenagers who lie about themselves are documented throughout records for the lying. Jeremiah was not. Vol. 13, p. 2251. “This is just not the picture of somebody that is feigning or malingering or pretending. In other words, pretending to have a mental illness.” Vol. 12, p. 2176 (Dr. DeLand).

<sup>69</sup>On cross-examination regarding one of Jeremiah’s statements, Dr. DeLand continued to stress the guilt Jeremiah feels:

Q. And, doctor, isn’t it true that the only difference in those statements as far as what happened is in May 10<sup>th</sup>, the earlier statement, the defendant lays all the blame on Jonathan Lawrence for

statements which incorporated what other people said happened: “I think somebody with the kind of diagnosis that Mr. Rodgers has is more susceptible to suggestibility than the average person.” Vol. 12, p. 2171.

**XIV. The First Competency Hearing: Recommendation that “he be placed at the forensic unit at Florida State Hospital where he can receive inpatient psychiatric treatment and psychotropic medications deemed appropriate by his attending psychiatrist”**

Trial on the attempted murder case was set for December 13, 2000. On the morning of December 13, 2000, the State advised Judge Bell that there was a problem with respect to competency: “There is a disparity in the opinions on the part of the doctors.” Vol. 19, p. 1648. “And quite frankly they have disagreement. One indicates that Mr. Rodgers is competent to proceed.

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everything.

A. He implicates Jonathan Lawrence in all the major events. **I don’t know if I’d say lays all the blame because I think he feels quite guilty for being the least participant at all in it** so – but as far as the actual specific occurrence, yes.

Vol. 13, p. 2256 (emphasis added).

One indicates that Mr. Rodgers is not competent to proceed.” *Id.* at 1648. The judge appointed a third expert, and postponed trial until January 31, 2001. A competency hearing was scheduled for January 13, 2000.

The two experts reports to the Court documented that the defendant was experiencing in pre-trial detention many of the problems that had been documented at Florida State Hospital. He was cutting himself, being placed in restraints, including a straight-jacket, pulling out sutures, and again (*see* section I, B, 3, *supra*) trying to keep his mother’s spirit away. Dr. Lawrence Gilgun’s report documents the most serious suicide attempt in custody:

Of utmost importance to this examiner is his recent history since being incarcerated at the Santa Rosa County Jail. He made what, in my opinion, was a serious suicidal attempt on 10/30/98. Indeed the records reveal that he was found in a pool of blood. He was “Life-Flighted” to a hospital and indeed was kept overnight. Interestingly enough other entries indicate that he has gone to great lengths to injure himself, to include razor-blade fragments that were wrapped in a Band-Aid being found in his rectum. He has also opened up old wounds on several occasions. Has been cuffed and shackled on numerous occasions, some at his own request. At times he will be compliant with medication, and at other times refuses it. While I was reviewing the records after my interview with him he pulled out his

sutures this very evening, creating bleeding and necessitating transport to the hospital for treatment.

Supplemental Record, at 2273. He diagnosed Jeremiah as suffering from a major depressive disorder, recurrent and severe, and concluded:

I believe that a good bit of his behavior may be for the purpose of receiving psychiatric treatment and delaying his trial. However, it is clear that he has made very serious suicidal gestures, particularly the one on 10/30/98. He continues to make serious suicidal gestures, and I believe that he is genuinely suicidal at present...

Mr. Rodgers' severe psychiatric problems cause him to lack sufficient present ability to consult with his attorneys with a reasonable degree of rational understanding. In his present disturbed state, he is incapable of manifesting appropriate courtroom behavior or testifying relevantly in his own behalf...

It is my opinion that Mr. Rodgers' mental illness renders him incompetent to proceed, and **the appropriate treatment would be inpatient psychiatric care.** *Id.*<sup>70</sup>

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<sup>70</sup>Dr. Harry McClaren's description of the state of affairs in pre-trial detention was also grim:

At the time of the current evaluation, he was taking no psychotropic medication **though he was prescribed Mellaril at the time of the evaluation.** He also took Keflex to ward off infection of his self-inflicted cuts. He reportedly has been very sporadic in his taking psychotropic medications. He has been an extreme risk for suicide as evidenced by many attempts at self-mutilation involving self-inflicted cuts. ....

At the competency hearing conducted on January 7, 2000, Dr. Gilgun testified that Jeremiah was “**severely afflicted,**” Vol. 15, at 1010, and not competent:

**I think that he is a well entrenched borderline personality disorder, and probably has been very much a problem all his life and in very poor control of himself. Whether that would yield to psychiatric treatment or not I really can’t tell you. But I think that he at least deserves that opportunity.**

Q. What is your recommendation to the court, Doctor?

**A. That he be placed at the forensic unit at Florida State Hospital where he can receive inpatient psychiatric treatment and**

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At the time of the evaluation, it is noted that he was engaging in bizarre behavior at times in a suicide watch cell within the medical division of the Santa Rosa County Correctional Facility. His behavior involved his self-described “wearing sh##”, involving having feces on his body. Also, mentioned above, he has continued to engage in self-mutilation in the Santa Rosa County Correctional Facility up to the time of the evaluation. ...

According to available information he has been engaging in such behavior for the past approximate two weeks. **He said that he was engaging in this behavior to keep his mother away from him as mentioned above.**

Supplemental Record, pp. 2286, 2290. Dr. McClaren diagnosed Jeremiah with serious mental illnesses, but concluded that he was competent to proceed to trial. *Id.* at 2293.

**psychotropic medications deemed appropriate by his attending psychiatrist.** *Id.* at 994-95.<sup>71</sup>

He testified that Jeremiah suffers from “posttraumatic stress disorder that may have its antecedent in child abuse.” Vol. 15 at 1030. This was a “firm conclusion” that differed somewhat from his written report and resulted from having reviewed “the things that were described to have happened to him involving physical abuse and sexual abuse by his mother.” *Id.* at 1083.

*Dr. McClaren said that Jeremiah had been treated by “going on 100” mental health professionals in his life, and suffered from “depressive disorder. And some form of depression since an early age by so many different people.” Id.* at 1084 (emphases added). He believed that Jeremiah’s “dissociative symptoms

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<sup>71</sup>Jeremiah was in a straightjacket right before Dr. Gilgun saw him, and was in shackles during the evaluation. Jeremiah told him he did not trust his defense attorneys. Volume 15, pp. 984, 1006 **“In general his life has been a mess.”** *Id.* at 1006 (Gilgun). His behavior of cutting and smearing waste on himself was consistent with what he had been doing for 10 years. *Id.* at 998. “As early as 13, for instance, he was in an inpatient psych unit for self-injurious behavior.” *Id.* When asked whether the cutting was manipulative, Dr. Gilgun said: “Not necessarily. It was right after I saw him where I don’t know what was to gain exactly at that point, pulling sutures out of himself. And on October 28 a lot of people thought that he was going to die. And so **he made a bona fide, appears to be a bona fide suicidal attempt** at that point.” *Id.* at 1003.

Jeremiah told Gilgun that ““he (referring to **his co-defendant**) **killed her.**” “He was willing to tell me that he witnessed the murder and, ‘I saw everything,’” *id.* at 2272, but that Lawrence was more responsible.

may be present [today], but they don't appear severe to me," *id.* at 1092, so Jeremiah was nominally competent.

Dr. McClaren also testified that Jeremiah had memory loss,<sup>72</sup> prompting the Court to comment that "my assumption is that there are no drugs and there is no treatment that could ....if he is having and saying that he only remembers 75% that would turn on the light to the other 25%." *Id.* at 1092. Dr. McClaren agreed that it was unlikely that there was any treatment that would bring Jeremiah's memory back.<sup>73</sup>

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<sup>72</sup>"I want to say that he reports that he has only about a 70 to 75% memory for his behavior during that time period." Vol. 15, p. 1089 Furthermore, " he claimed that he had periods of amnesia for parts of his life, his early childhood. I had the opinion that this might be repression. Might be some kind of dissociative amnesia due to experiences trauma and these being very painful memories to bring back up." *Id.* at 1035.

<sup>73</sup>Dr. Benson, a psychiatrist, evaluated Jeremiah on December 27, 1999, because of the disagreement between the other two experts. He testified that on October 30, 1998, Jeremiah was near death from his self destructive cutting. He testified that when he saw Jeremiah "He certainly ha[d] numerous scars, lacerations, injuries in a variety of states of healing." Vol. 15, p. 1066. He said that Jeremiah "has been confined in a straight jacket for quite sometime at the jail." He agreed that he "saw records where Mr. Rodgers had three hospitalizations when he was 11 and twelve," *id.* at 1067, and that "the people who were treating him understood the behaviors to be a response to living with his mother." *Id.* While he concluded that Jeremiah was mentally ill, he testified that the cutting behavior was largely manipulative and that Jeremiah was competent.

## **XV. The Second Competency Hearing – “[h]e suffered, yes he did”**

On March 9, 2000, counsel for Mr. Rodgers requested a second competency hearing because the defendant’s condition in jail had deteriorated. Vol. IV, pp. 620-22. On March 10, 2000, the newly assigned judge in this case, Judge Rasmussen,<sup>74</sup> conducted a hearing on the motion to conduct a second competency hearing.

Counsel advised the Court that Jeremiah had resumed self-mutilating behavior to the point of near suicide, that the jail had prescribed anti-psychotic medicine, and that Jeremiah had been placed in restraints for days and weeks at a time. They advised the court that many photographs depicting a cell full of blood, feces on the wall of the cell, and a bloody Jeremiah had been taken on numerous occasions. Counsel also advised the Court that Jeremiah had become non-communicative. Vol. 18, pp. 1471 - 1512.

Judge Rasmussen commented that the facts presented “a complex – it’s a very complex situation,” *id.* at 1512, and ordered a re-evaluation of Jeremiah’s

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<sup>74</sup>Judge Rasmussen replaced Judge Bell whose recusal had been ordered by the First District Court of Appeal. *See* Argument VI, *infra*.



competency. *Id.* at 1529. Jeremiah was re-evaluated, reports were submitted to the court, and the second competency hearing occurred on April 3, 2000.

At that competency hearing, Dr. McLeod described some of Jeremiah's problems. Dr. McLeod is a physician with a family practice. He has a contract with Santa Rosa County jail, and provides almost of the medical services for the pre-trial detainees.

During his pre-trial detention, Jeremiah was kept in the hospital unit, and Dr. McLeod saw him every day. Vol. 21, p. 2007; 2018. Dr. McLeod concluded: that Jeremiah was severely mentally ill; that the conditions under which he was confined made him more ill; and *that Jeremiah should have been housed in a psychiatric treatment center, but no facility would accept him.*

Dr. McLeod is not a psychiatrist so he consulted with one, **Dr. Montes**, who came to the conclusion that Jeremiah's behaviors were "representing depression and **serious psychiatric illness.**" Vol. 21, p. 1979 (testimony of Dr. Benson). Dr. Montes "describes hopelessness, helplessness," Vol 21, p. 1901, and prescribed **psychotropic medication**, Remeran and Zyprexa. Remeran is "an

antidepressant drug” and Zyprexa is “for antipsychotic treatment.” Vol. 21, pp. 1891-92.<sup>75</sup>

Because of his mental condition, Jeremiah was kept completely isolated, and was frequently restrained, hand-cuffed, put in straight jackets, and kept in a rubber room—for his own safety. His self-mutilation and great loss of blood had made him anemic and he had been prescribed mega-vitamins. Vol. 21, p. 2019.

**“During the times of his psychotic behavior and self mutilation the adequacy of the medical department to take care of him was questioned by me on more than one occasion,” Dr. McLeod testified. “According to the head nurse, Debbie Sasse, because of his criminal charges none of the facilities that we use for Baker Acts and patients would accept him.”** *Id.* at p. 2023-24.

Thus, Jeremiah was kept at the jail, isolated, medicated, restrained, and suffering. Dr. McLeod sutured Jeremiah many times, re-sutured when Jeremiah pulled out fresh sutures, and sent Jeremiah to the hospital emergency room for life-threatening self-injury. *Id.* at 2008. Dr. McLeod would order restraints, solely

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<sup>75</sup>This medication “results in an increase in certain neurotransmitters that are normally in the brain and cause a connection, if you may, between two nerve cells of the brain.” Vol. 21, p. 2013. Severe trauma damages such neurotransmitters. Vol. 12, p. 2055. See note 29, and text accompanying, *supra*.

for medical reasons. *Id.* at 2015. And “[h]e suffered, yes he did--what you would expect from someone who was restrained for a long period of time ...up to 13 or 14 days.” *Id.* at 2016.

After such a fortnight, Dr. McLeod had to remove the restraints because the psychiatric benefit was outweighed by the medical unsoundness of tying a human down for weeks. *Id.* at 2017. This sort of incarceration had, according to Dr. McLeod, “resulted in my opinion in him having some psychotic episodes due to the sensory deprivation.” Vol. 22, p. 2023.<sup>76</sup>

Drs. McClaren, Benson, and Gilgun submitted reports to the court, all of which were very similar. They reported and testified that Jeremiah had had two serious cutting incidents in February,<sup>77</sup> that he had been placed in restraints and in

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<sup>76</sup>As the prosecutor accurately recognized while cross-examining this local jail doctor, “[i]t is my understanding that he has had more than one episode that could be considered psychotic.” Vol. 22, at 2037. Dr. McLeod witnessed one episode in which Jeremiah barked like a dog for hours and hours, Vol. 21, pp. 2020, 2040, and also witnessed Jeremiah’s delusional belief that McLeod and the nurses were conspiring to turn him into a zombie with the psychotropic medications Mellaril and Elavil. Vol. 21, p. 2011.

<sup>77</sup> It is noted that Mr. Rodgers reportedly has engaged in two additional episodes of self-mutilation since the time of his last evaluation. One of the episodes occurred on February 15, 2000. Indications are that he engaged in two separate incidents of self-mutilation on February 13. After the first incident, he was reported to be fading in and out of consciousness and was transported to the

a rubber room for long periods,<sup>78</sup> that he was being *forcibly* treated with anti-depressant and anti-psychotic medications,<sup>79</sup> and that he had serious, long-term psychiatric illnesses.<sup>80</sup>

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Santa Rosa Medical Center. After that behavior, he was evaluated by Dr. Montes for a consultation regarding possible psychotropic medication. As mentioned above, Dr. Montes prescribed Remeron and Zyprexa which the defendant has only intermittently taken in the jail setting.

Supplemental Record, p. 2309 (Dr. McClaren). *See also* Vol. 21, p. 1910 (Dr. McClaren); *id* at 2056 (Dr. Benson); *id* at 2059 (Dr. Gilgun). The record contains photographs of Jeremiah's cell covered in blood and feces, and pictures of Jeremiah after a cutting episode. *See* Defendant's Exhibit 5 to the April 3, 2000, competency hearing.

<sup>78</sup>*See* Vol. 21, p. 1985 (“[W]hile he was healing he would re-injure it and bleed more. He was in restraints during that time. These would be extended periods I think that he was in restraints.”)(Dr. Benson); *id* at 1997 (“when he has one of these medically dangerous self-mutilating episodes he’s in restraints in a rubber room with lots of limitations.”)(Dr. Benson); Vol 22, p. 2310(“He has been in an isolation cell during his incarceration.”) (Dr. McClaren); Vol. 21, p. 1912 (rubber room)(Dr. McClaren).

<sup>79</sup>*See* Vol. 21, p. 2074 (Dr. Gilgun); *id.* at 1942 (Dr. McClaren). Dr. Benson reported that the medication was forced: corrections officers said that “we’ll take the shackles and the belly chain off if you’ll take your medication.” Vol. 21, p. 1998.

<sup>80</sup>*See* Vol. 22, p. 2062 (“in my mind this man has had **genuine psychiatric problems for years**”)(Dr. Gilgun); Vol 21, p. 2080 (depressive disorder, which is recognized throughout years of reports)(Dr. Gilgun); Vol 22, p. 2313 (“**Diagnostically, he probably suffers from Post-traumatic Stress Disorder...He has been repeatedly placed while incarcerated in the Florida Department of Corrections at the Mental Health Unit.**”)(Dr. McClaren); Vol 21, p. 1899 (“Well, he has **psychological treatment records going back to childhood**, all

He had improved by the time of the evaluations and was then competent, but one hallmark of his multiple illnesses was “he experiences very wide mood swings,” Vol. 23, p. 2066, so he could later become incompetent during the course of the trial.<sup>81</sup> The doctors continued to remark upon Jeremiah’s delusional thinking about his mother’s “spirit.”<sup>82</sup>

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kinds of symptoms interspersed through them, whether he’s in a private hospital, a reform school, a prison, or a jail. So you get the same symptoms in different places.”)(Dr. McClaren); Vol 21, p. 1983 (“Mr. Rodgers has **a very long history of treatment in psychiatric facilities**”)(Dr. Benson); Vol. 21, p. 1939, 1947, 1952 (many individuals with this profile receive a diagnosis of **schizophrenic** disorder, are likely to become psychotic, and require pharmacotherapy and treatment in a mental health facility)(Dr. McClaren).

<sup>81</sup>See Supplemental Record, p. 2304 (“He is not currently likely to injure himself or others. I must hasten to add that it would not at all surprise me if this situation changes.”)(Dr. Gilgun); Vol. 21, p. 1995 (likely to become incompetent again)(Dr. Benson); Vol. 22, pp. 2083-84 (likely to become incompetent again)(Dr. Gilgun); Vol. 21, p. 1995 (likely to become distrustful of lawyers again)(Dr. Benson).

<sup>82</sup>Vol. 21, p. 1963 , 1930 (“he reports and I think it’s a strong likelihood that he may have had sexual relations with his mother.... [and] he uses his feces to **keep his mother’s spirit away**”)(Dr. McClaren); Vol. 22, p. 2064 (feces was “to **keep his mother from visiting him**, thought that she came by in some type of vision or something”)(Dr. Gilgun).

## THE SECOND PENALTY PHASE

After this Court remanded the case, the new penalty phase hearing was held on May 8, 2007. There was no jury. The trial court alone was the finder of fact. The trial court again told the defendant that he had a right to present evidence of mitigation and the defendant said that he did not want to do this, but rather only wanted to testify on his own behalf. Tr2. 97.

The trial court held in its sentencing order that no new evidence of mitigation was produced by the defense, except for the defendant's own testimony [R. 64]. The defendant testified that he was the one who actually shot Jennifer Robinson. Tr2. 279. He also said that he deserves a death sentence. Tr2. 285.

The defendant's trial attorney filed a sentencing memorandum in opposition of the death penalty [R. 49]. The trial court filed a sentencing memorandum with its justifications for imposing a sentence of death [R. 57]. The defendant timely filed his notice of appeal and his initial brief follows.

## **SUMMARY OF ARGUMENTS**

Given the undisputed fact that the defendant is mentally ill, the trial court erred when it failed to conduct a competency hearing with at least two experts before allowing the defendant to waive critically important penalty phase rights and to advocate for his own death.

Due to the fact that this is one of the most mitigated cases that this court will ever see, a sentence of life imprisonment is required. The defendant's very existence has been one of pure torture and he has been critically impaired by mental illness throughout his life. If this court agrees with the defense on this issue then the first issue is moot.

**ARGUMENT 1: THE TRIAL COURT ERRED WHEN IT FAILED TO REQUIRE A NEW COMPETENCY HEARING BEFORE THE DEFENDANT WAIVED HIS RIGHT TO A JURY RECOMMENDATION AND INSTRUCTED HIS TRIAL ATTORNEY NOT TO PRESENT ANY EVIDENCE OF MITIGATION**

The defendant's trial attorney or the trial court itself should have requested a competency hearing before the defendant was allowed to waive his right to a jury recommendation and waive his right to present evidence of mitigation. The failure to do so is reversible error.

When criminal proceedings are held against a mentally incompetent defendant, the defendant's constitutional right of due process is denied. Hill v. State, 473 So.2d 1253, 1259 (Fla. 1985); Molina v. State, 946 So.2d 1103, 1106 (Fla. 5<sup>th</sup> DCA 2006).

In this regard, the defendant's due process rights under the United States Constitution and the Florida Constitution have been violated. The defendant's trial attorney argued in his own sentencing memorandum that:

+ "It is apparent that the Defendant does in fact suffer from mental illness  
Mental illness does in fact impair his thought process, judgment, ability to



empathize with others, and understanding the concept of reality.” [R. 50].

+ “[T]he illness is real, has existed for most of his life, and does affect the Defendant’s abilities.” [R. 50].

+ “It is clear that Mr. Rodgers mental illness deprives him of the ability to think and consider his actions.” [R. 52].

+ “The evidence before this Court at the most recent hearing, and prior to this Court indicates that Mr. Rodgers’ mental illness affected his judgment and perception of reality.” [R. 54].

The trial court held in its sentencing order that:

+ “As previously found by this Court, there is no question that the Defendant suffers from mental illness. The record consists of volumes of pages of treatment for mental illness both prior to and during commitments to the Department of Corrections.” [R. 65].

+ The trial court found the defendant’s mental illness to be a “considerable and substantial” mitigating circumstance. Further, “[i]t is uncontroverted that the Defendant has a mental illness.” [R. 75].

This court even held in its prior opinion in this case that the defendant has a

“significant mental health history.” Rodgers v. State, 934 So.2d 1207, 1219-20 (Fla. 2006).

It is abundantly clear that both trial counsel and the trial court itself believed that the defendant was mentally ill. The fact that the trial court engaged in a standard colloquy as to the voluntariness of the defendant’s decisions to waive a jury and not present any mitigation is legally insufficient.

Under the circumstances of this case, where it was no surprise to anyone that the defendant had a lifelong history of mental illness, including the two previous rounds of competency evaluations in this very case, an updated competency evaluation should have been performed before the trial court allowed the defendant to waive these critically important rights.

Florida Rule of Criminal Procedure 3.851(i) requires a competency evaluation by at least two experts before a defendant is allowed to dismiss post-conviction proceedings and is allowed to die. Due process requires that this rule be imported to direct capital proceedings as well. It is the “public policy” of Florida to ensure a defendant’s competency before he is allowed to advocate for his own death.

Florida Rule of Criminal Procedure 3.210(b), states that the trial court shall

on its own motion set a hearing to determine the defendant's competency if the court has "reasonable ground to believe that the defendant is not mentally competent to proceed." The trial court certainly had more than a reasonable ground in this case. It was undisputed that the defendant suffered from mental illness.

The Fifth District recently summarized the applicable law on this issue in Maxwell v. State, 2008 WL 268757 (Fla. 5<sup>th</sup> DCA, February 1, 2008), where it held that:

Once the issue of a defendant's competency is raised, the question the trial court must consider is "whether there is a reasonable ground to believe the defendant *may* be incompetent, not whether he is incompetent." Tingle v. State, 536 So.2d 202, 203 (Fla. 1988), *quoting* Scott v. State, 420 So.2d 595, 597 (Fla. 1982).

If the trial court is presented with reasonable grounds to believe that the defendant may not have the sufficient present ability to consult with his attorney and aid in the preparation and presentation of his defense, the trial court must order a hearing and examination. Brockman v. State, 852 So.2d 330, 333 (Fla. 2d DCA 2003); *see* Carrion v. State, 859 So.2d 563, 565 (Fla. 5<sup>th</sup> DCA 2003) ("If the trial judge has reasonable grounds to believe

that a criminal defendant is not competent to proceed, then the court must conduct a competency hearing.”); *see also* Drope v. Missouri, 420 U.S. 162 (1975); Pate v. Robinson, 383 U.S. 375 (1966); Dusky, 362 U.S. 402.<sup>83</sup>

Even when a defendant has previously been found competent, the trial court must remain receptive to revisiting the issue if circumstances change.

Hunter v. State, 660 So.2d 244, 248 (Fla. 1995). “[A] prior determination of competency does not control when new evidence suggests the defendant is at the current time incompetent.” Nowitzke v. State, 572 So.2d 1346, 1349 (Fla. 1990).

This is a continuing obligation, which may require the trial court to revisit the issue after a defendant has been declared competent to proceed. Molina, 946 So.2d at 1106 (*citing* Nowitzke, 572 so.2d 1346; Culbreath v. State, 903 So.2d 338 (Fla. 2d DCA 2005).

Maxwell at \*4.

During the first round of competency hearings Dr. Lawrence Gilgun opined that the defendant was not competent to proceed. Vol. 15 at 1010; Supp. Record from first appeal at 2273. During the second round of competency hearings all of

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<sup>83</sup> Dusky v. United States, 362 U.S. 402 (1960).

the experts agreed that the defendant was competent, but warned that he could later become incompetent because one hallmark of his mental illness is very wide mood swings. Vol. 23 at 2066; Vol. 22 at 2083-84; Supp Record from first appeal at 2304.

The trial attorney's statement that he thought that the defendant was competent to proceed is legally insufficient and does not pass constitutional muster. Compare Warren v. State, 543 So.2d 315, 315 (Fla. 5<sup>th</sup> DCA 1989) (trial judge could not deny motion seeking competency hearing based on his own personal observation, such investigation was legally insufficient to insure that defendant was not deprived of his due process right of not being tried while mentally incompetent).

This holding applies with equal force to a trial attorney's personal observations. A trial attorney is also not a mental health expert.<sup>84</sup>

The court in Brockman v. State, 852 So.2d 330 (Fla. 2d DCA 2003), rejected that the State's argument that the trial court's colloquy with the defendant was sufficient and that the trial court was resolving disputed issues of fact and

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<sup>84</sup> There is also no indication as to how much personal contact the trial attorney had with the defendant. They could have been meeting for the very first time that day in court.

determining credibility.

The Brockman court held that since there were no expert competency reports or expert testimony before the trial court, there was no evidence on the issue and therefore no conflicts to resolve. Id. at 333. Furthermore, the prior expert reports were too old to be relevant. The question of competence is whether the defendant has a sufficient “present” ability to consult his attorney and understand the proceedings against him. Id. This is also the case herein.

It is also significant to point out that the trial court’s questions went to whether the defendant’s waivers were knowing, intelligent, and voluntary. The trial court nor anyone else asked the defendant a single question about his current mental health status. Tr2. 15-17; 74-82.

In Tate v. State, 864 So.2d 44 (Fla. 4<sup>th</sup> DCA 2003), the court held that the trial court erred in failing to *sua sponte* order a competency evaluation because, *inter alia*, the defendant was a juvenile. Even though the defendant in the case at bar is an adult, the provisions of Tate fully apply. For example, “[t]he record reflects that questions regarding Tate’s competency were not lurking subtly in the background, but were readily apparent . . .”. Id. at 50. They were also readily apparent herein.

In Pate v. Robinson, 383 U.S. 375 (1966), the court held that a competency

evaluation was constitutionally required because the defendant had a long history of mental health issues and this mandated an inquiry into his competence, even though his trial counsel failed to raise the issue.

This court held in Hill v. State, 473 So.2d 1253, 1255 (Fla. 1985), that the trial judge has an independent duty under Robinson and the Florida Rules of Criminal Procedure to determine the competency of a defendant to stand trial.

**The precise legal question for this court is whether the trial court had reasonable grounds to believe that the defendant might be incompetent. Any objective evaluation of the facts of this case requires the conclusion that a competency hearing should have been held. A man's life literally depended on it.**

The failure to ensure that the defendant was competent fatally infects the penalty phase. The defendant waived his right to a jury recommendation because he thought a sentence of death would be a sure thing with the judge alone.

Further, not only did the defendant prohibit his attorney from presenting evidence of mitigation, the defendant was allowed to only present evidence of aggravation. The defendant said his bad childhood did not make him do it and that he deserved to die. A defendant certainly has the right to take these positions, but only if he is deemed competent first (by at least two experts).

Given the entire record in this case, and the statements of trial counsel and the trial court, the defendant's due process rights were violated because there is no expert assurance that the defendant was competent when he waived his rights.

**ARGUMENT 2: GIVEN THE UNPARALLELED MITIGATION IN THIS CASE, AND THE FACT THAT THE DEFENDANT WAS ONLY AN ACCOMPLICE, THE TRIAL COURT CAME TO THE WRONG LEGAL CONCLUSION WHEN IT HELD THAT DEATH WAS THE APPROPRIATE SENTENCE**

If this court agrees with the defense on this issue, then Argument I is moot and this court should reverse for the imposition of a life sentence without the possibility of parole.

The trial court erred when it concluded that the aggravating factors outweighed the mitigating factors and that a sentence of death in this case was proportionate to other death sentences.

It is axiomatic that the death penalty is reserved for only the most aggravated and the least mitigated of first degree murders. Woods v. State, 733 So.2d 980, 990 (Fla. 1999). The death sentence in this case cannot stand because



this is one of the most mitigated cases this court will ever encounter. As a result, the Woods mandate cannot be complied with.

In reviewing a sentence of death this Court must consider the particular circumstances of the instant case in comparison to other capital cases and then decide if death is the appropriate penalty in light of those other decisions. Woods v. State, 733 So.2d 980, 990 (Fla. 1999).

This Court must consider the totality of the circumstances and compare it with other capital cases. Proportionality review is not a comparison between the number of aggravating and mitigating circumstances. Woods at 990. See also Anderson v. State, 841 So.2d 390, 407-08 (Fla. 2003).

The defense filed a sentencing memorandum, which is hereby incorporated by reference [R. 49]. Significantly, this court noted in the first appeal that there was harmful error because of the “extensive mitigation” presented, including the defendant’s “significant mental health history.” Rodgers v. State, 934 So.2d 1207, 1219-20 (Fla. 2006). This trial court itself also found that “substantial mitigation exists in this case.” [R. 77].

Indeed, this case involves tragedies on a epic scale. One struggles to avert the eyes from the chilling crime and from the defendant’s tortured being. A focused assessment of this difficult evidence forces the conclusion that the

defendant is one of the most mitigated cases to ever come before this court.

From the defendant's birth he was tortured and abused. He was repeatedly drugged and raped by his own mother, beaten, abandoned, medicated by state doctors with a broad range of drugs designed to treat only the most severely mentally ill, sexually abused while in prison when he was only 16, sliced-up like a cutting board, sutured, re-sutured, straight-jacketed, placed in four-point restraints, placed in rubber rooms, smeared all over with feces, committed over and over again to psychiatric wards without any benefit, repeatedly near death by virtue of his own hand, visited by spirits, and unceremoniously released from state custody without so much as an aspirin.

Subsequently, the defendant himself sought psychiatric services, to no avail. He then got involved with Jonathan Lawrence and tragedy followed. The defendant was only 21 at the time, and was crippled by mental illness. This court will not see a more mitigated case, and therefore a life sentence is required. See Besaraba v. State, 656 So.2d 441, 446 (Fla. 1995); Miller v. State, 373 So.2d 882 (Fla. 1979).

In addition, this case was not extraordinarily aggravated. The defendant was only an accomplice and not the triggerman. The defendant testified in the second penalty phase that he was the triggerman. However, he was likely not competent

when he did so. This also went against the terms of his plea agreement where all agreed that he was not the shooter.

Co-defendant Lawrence was the primary planner and actor and the defendant was less culpable than him. There is a difference between the culpability of the actual shooter and a mere accomplice (even where that person is a principal). It takes a different type of person to actually pull the trigger.

The relative culpability of the defendant and co-defendant Lawrence is pertinent. See Hertz v. State, 803 So.2d 629, 653 (Fla. 2001). The trial court failed to accord sufficient weight to the fact that the defendant had a lesser role than his co-defendant.

The murder was not heinous, atrocious or cruel. The victim was shot in the back of the head and did not even know it was coming. The victim did not suffer. The defendant voluntarily confessed, showed remorse, and plead guilty as proof of his sincerity.

This court held in Robertson v. State, 699 So.2d 1343 (Fla. 1997), that death was disproportionate even though the murder occurred during a burglary and it was heinous, atrocious or cruel, where the defendant was 19 at the time of the murder, he was impaired due to alcohol and drug use, he had a history of mental illness, and the murder was unplanned and senseless – the defendant murdered a

young woman who befriended him. “This clearly is not one of the most aggravated and least mitigated murders for which the ultimate penalty is reserved.” Id. at 1347.

This court held in Offord v. State, 959 So.2d 187, 191 (Fla. 2007), that the sentence of death was disproportionate even though the trial court found that the murder was heinous, atrocious or cruel, where the defendant suffered from two serious mental illnesses, schizophrenia and bipolar disorder, that defendant’s mental health significantly contributed to the murder, and that the murder was unaccompanied by any motivation such as pecuniary gain or avoiding arrest and without the aggravating circumstance of a prior violent felony.

This court held that death was disproportionate in Cooper v. State, 739 So.2d 82, 85-86 (Fla. 1999), where the defendant was 18, had a brutal childhood and suffered from brain damage, low intelligence, and mental illness. See also Hardy v. State, 716 So.2d 761, 766 (Fla. 1998) (death inappropriate where only aggravating factor was that victim was a law enforcement officer and defendant was 18 who has good behavior after he was arrested and had severe mental impairment from suicide attempt after the murder).

The defendant’s pre-trial incarceration was in a jail medical unit because no forensic psychiatric unit would take him. The defendant suffered there as well, and

was life-flighted out.

Lastly, and perhaps most significantly, a defendant who killed five people by dousing them with gasoline and lighting them on fire was given a life sentence because he was a paranoid schizophrenic and suffered from extreme mental illness. See Ferry v. State, 507 So.2d 1373 (Fla. 1987). In sum, the defendant's death sentence was disproportionate as compared to other cases.

The case at bar follows the dictates and concerns espoused in Coday v. State, 946 So.2d 988, 1000-1006 (Fla. 2006). The concurring opinions of Justices Quince, Bell, Anstead, and Pariente are hereby incorporated by reference. Id. at 1009-1026.

The defendant's case presents the starkest and most compelling mitigation imaginable. Compare Green v. State, 2008 WL 248555 (Fla., January 31, 2008) (and the cases cited therein at foot note 3) (reversal of death sentence for shooting death, attempted first degree murder and robbery while carrying a firearm because the defendant suffered from schizophrenic disorders).

The defendant should have been given a life sentence due to the extreme nature of the mitigation in this case, the fact that he was only an accomplice, and because the victim did not suffer. The trial court came to the wrong legal conclusion when it held that the aggravating factors outweighed the mitigating

factors.

Lastly, comparing the totality of the circumstances in this case to similar cases indicates that a sentence of death is disproportionate. Compare Strausser v. State, 682 So.2d 539, 542 (Fla. 1996); Livingston v. State, 565 So.2d 1288, 1292 (Fla. 1988).

The trial court relied on this court's decision in the co-defendant's case in holding that death was proportionate. See Lawrence v. State, 846 So.2d 440 (Fla. 2003) [R. 78]. However, the defendant had more mitigation and therefore this decision is not directly on point.

### **CONCLUSION**

For all the foregoing arguments and authorities set forth herein, the Appellant/Defendant, JEREMIAH MARTEL RODGERS, respectfully requests this Honorable Court to reverse his sentence of death and reduce his sentence to life imprisonment without the possibility of parole, or remand for a new competency hearing and penalty phase in this case.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to: THE OFFICE OF THE ATTORNEY GENERAL, Appeals Division, The Capital, PL-01, Tallahassee, Florida 32399-1050 on this 7<sup>th</sup> day of February 2008.

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**CERTIFICATE OF FONT COMPLIANCE**

I HEREBY CERTIFY that the instant brief has been prepared with Times New Roman 14-point font in compliance with Fla.R.App.P. 9.210(a)(2) on this 7<sup>th</sup> day of February 2008.

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