IN THE SUPREME COURT OF FLORIDA

RODERICK MICHAEL ORME,

Appellant,

v. **CASE NO. SC08-182**

STATE OF FLORIDA,

Appellee.
_____/

ON APPEAL FROM THE CIRCUIT COURT
OF THE FOURTEENTH JUDICIAL CIRCUIT,
IN AND FOR BAY COUNTY, FLORIDA

REPLY BRIEF OF APPELLANT

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ISSUE I:

THE COURT ERRED IN REFUSING TO 1) ALLOW ORME TO CHALLENGE FOR CAUSE PROSPECTIVE JURORS WHO COULD NOT CONSIDER REMORSE AS MITIGATING A DEATH SENTENCE, AND 2) CONSIDER IT IN ITS SENTENCING ORDER AS A MITIGATING FACTOR.

The State's argument on this issue focuses largely on procedural or preservation problems it perceives arose. Admittedly, this issue is a mess, but if fault must be laid at anyone's feet, it is the trial court's. Orme tried to inquire about the issue of remorse, but the court said he could not do so (47 R 4443). It later retreated but only to the extent that it allowed voir dire for purposes of using a peremptory challenge (47 R 4476). The court erred in precluding any questioning about remorse, and its later limitation of inquiry only for purposes of peremptory challenges failed to correct its fundamental mistake: it would grant no challenges for cause for any prospective juror who rejected the idea of remorse as a mitigator. That is the problem, and this Court should not penalize Orme because he did not somehow minimize the court's error. That he may not have exhausted his peremptory challenges has no significance because this issue focuses on the limitations of voir dire as it relates to cause challenges. Even at the very end the court continued to reject remorse, or the inability to consider it as mitigation, as justifying a cause challenge (47 R 4474-75). That ruling is the error, and this

Court should not be sidetracked by arguments that Orme should have screamed, stamped his feet, and held his breath as ways to point out or even minimize the court's mistake. He argued, reargued, and forcefully let the court know that it was wrong. That is more than the law requires, and more specifically when the issue focuses on limiting cause challenges, he did not have to exhaust his peremptories, request more, and then say who he would have used them on. Trotter v. State, 576 So.2d 691, 693 (Fla. 1990). Because his objection raised a broad, systemic issue, he did not have to object to the jury that actually sat. Carratelli v State, 961 So.2d 312 (Fla. 2007). Orme has preserved this issue for appeal.

More specifically, on page 23 of its brief, the State claims Orme has not preserved this issue for review, and it cites this Court's opinion in Carratelli v. State. By way of a footnote it acknowledges that that case may not have much direct significance to this issue but argues that its rationale should apply anyway. In Carratelli, this Court held that when a party objects to a particular prospective juror, the court denies that challenge, and the juror eventually sits, he or she must renew that objection at the end of voir dire to preserve it for appellate review. Id. at 318. Obviously, that holding has no significance here. Unlike Carratelli, Orme objected not so much to a particular juror but to the trial court's refusal to acknowledge that failure or refusal to consider remorse as legitimate mitigation was grounds for a cause challenge. Thus, this Court cannot presume that because

Orme did not renew his objection to the court's order denying his request for cause challenges on those who refused to consider it mercy as mitigation, he somehow was thereby satisfied with his jury.

On pages 23 and 24, the State argues that Orme should nonetheless lose because he "has not cited to a single cause that required the trial judge to allow a challenge for cause because a prospective juror could not, or would not, consider Orme's remorse as a mitigator." Well, no he hasn't, but so what? Members of the venire who cannot consider remorse as mitigating are not fair and impartial, which is required of all jurors. Williams v. State, 638 S.2d 976 (Fla. 4th DCA 1994). Prospective jurors whose minds cannot consider remorse are "not free of all interest, bias, or prejudice." Ferreiro v. State, 936 So.2d 1140, 1142 (Fla. 3d DCA 2006). If they reject remorse as mitigation there is a reasonable doubt about their ability to render a fair and impartial verdict. Singleton v. State, 783 So. 2d 970, 973 (Fla. 2001). So, yes, Orme never cited a case directly on point, but the law, without exception, supports his argument on this specific, narrow point.

The State, on pages 25 and 26 of its brief continues its argument and appears to blend the law regarding peremptory challenges with that on cause challenges. It must be remembered that the court here refused to let Orme question jurors on the issue of remorse so as to justify a cause challenge. She let him ask questions about on it but only to the extent that Orme could use their answers in deciding whether

to use a peremptory challenge on them or not. But, that was error. The court should not have forced Orme to use one of his 10 peremptory challenges on a member of the venire who should have been excused for cause.

Thus, that he may have not asked other jurors about remorse, or even that he had peremptory challenges remaining should not bar relief. The trial court's ruling created a systemic or pervasive problem that further questioning or exhausting peremptories would not have necessarily resolved, and it is unfair to expect him to use his peremptory challenges to correct or minimize an error the trial judge created.

ISSUE II.

THE COURT ERRED IN REFUSING TO LET ORME INQUIRE OF THE PROSPECTIVE JURORS WHETHER THEY COULD CONSIDER RECOMMENDING A LIFE SENTENCE AS A MATTER OF MERCY EVEN THOUGH THE AGGRAVATING FACTORS OUTWEIGHED THE MITIGATION, A VIOLATION OF HIS EIGHTH AND FOURTEENTH AMENDMENT RIGHTS

The State seems to be arguing that somehow the court allowed Orme to inquire about mercy, and in fact, not only did so, but "All fourteen agreed" that "mercy is a trait basic to all human beings." (Appellee's Brief at pp. 36) It cited to page 4487 of the record as support for that assertion, which is accurate. The

problem is not with the question on that page, but the lengthy discussion the State, Orme, and the court had immediately before that.

> MR. MEADOWS [The prosecutor]: Now, counsel, it's becoming a blur but maybe an hour or so ago asked about mercy. You know, could you have mercy and then there was some discussion about someone would require they would want to hear from the defendant in order to consider mercy. Let me ask you this. The instructions that you will be given at the end of this case will be in a written form. And on that form it will be verbatim what the Judge has read you, the law, the Judge has read you at the end of the case. And it will talk about what mitigating circumstances are. And that they have to be reasonably established before you can consider them. Will you confine your deliberations to what the law permits and what the law provides? Everybody?
>
> JURORS: Yes.
>
> MR. MEADOWS: Now, the Judge can't consider mercy, whether or not there's mercy. A governor in granting clemency or pardon can consider mercy, or computation, can't consider mercy. All provided for in the law. Because there's a place in the law where it talks about whether you should grant mercy. And the governor and the cabinet acting as a panel every month hear thousands of petitions for mercy. Does that, everybody understand that? But what I want to know about you is that can you follow the legal requirements as contained in those instructions? Everybody?
>
> JURORS: Yes.
>
> MR. MEADOWS: Okay. Not that you're not merciful people. But that there's a place for everything. Okay? What we're asking you is, does your, does the aggravation outweigh the mitigation? Or does the mitigation outweigh the aggravation? Can you confine your deliberations to those two questions?
>
> JURORS: Yes.
>
> MR. STONE [defense counsel]: Your Honor, I'm sorry, I have an objection. May we approach?
>
> THE COURT: You may.
>
> (Bench conference)

MR. STONE: Your Honor, I have to object to counsel's remarks on mercy. The reference to the governor, the reference to the mercy petitions, the reference to the Court considering mercy. I think this is entirely an improper argument. Moreover, the suggestion is now being made by counsel that mercy is not appropriate for the jury's consideration but is appropriate for those other officials that may come along later. Therefore, they don't, this jury need not worry about mercy. He has opposed the law on the one hand with mercy on the other by encouraging the jurors to think of the instructions as strictly the law and mercy is something else. I don't see how this suggestion can be curable at this point so I would move for a mistrial and argue that this violates my client's right to, rights under the Sixth, Eighth and Fourteenth Amendments and parallel provisions of the Florida Constitution.

MR. MEADOWS: If the Judge rules at the end of this case that mercy is a mitigating circumstance then that would be included within her instructions. The law as it particularly stands now is that the absence of that ruling from the Court there is no ruling that counsel has cited to where mercy is an appropriate mitigating circumstance that has to be reasonably established in order for a jury to consider it.

The sentencing scheme outlined within the capital punishment law in this country, state, provides specifically what is and is not appropriate mitigating circumstances. Specifically, there has been law on, Larry, do you have it there –

MR. BASFORD: Which one?

THE COURT: It's Ibar.

* * *

MR. MEADOWS: Again, Judge, I cite to Ibar, for the record, Supreme Court of Florida, case Ibar versus State, found at 938 So.2d 451 for the proposition just heard.

MR. STONE: And I would cite back to Poole and Thomas, Judge, cases that have never been overruled and have ruled our jurisprudence ever since they were decided. What has happened is that we've shifted now suddenly from saying that, you know, mercy is not a, an enumerated mitigating circumstance of which, of course, it isn't, now we've shifted to saying that the jury may not

> consider mercy. That's what has been applied by counsel's argument. And that is completely inappropriate. I mean, just logically if mercy is something that we all agree, I'm entitled to inquire into for the purpose of exercising preemptory challenges, it must be because I would hope that some jurors would be able to use their quality of mercy in consideration this evidence.
> Mr. Meadows is now telling the jury that that would violate their instructions of law from the Court. And I think that's the, a great danger in what the jury's now heard.
>
> THE COURT: The motion and the objection are denied.

(47 R 4482-86)

As the State noted on page 36 of its brief, after this discussion and ruling, Orme asked the venire if there was anyone that would not be able to consider mercy in this case, and none of them indicated said they could not consider mercy. The problem is, that immediately after this question, the parties resumed their argument about the role of mercy in a capital case (47 R 4489-93). The court, tired of hearing it, said that "Counsel, this argument needs to end." (47 R 4493) And it did with the court ruling:

> At this time the Court will rule that the State Attorney cannot bring up that issue. However, if it comes up on the issue by the defense I will allow the State to ask question again about mercy but then I'll also allow the defense the last opportunity on that issue

(47 R 4494)

Thus, if, as the State notes on page 36 of its brief, Orme questioned the last fourteen prospective jurors but never raised the mercy issue, it was clearly because

he did not want the State to talk about only the governor being able to exercise mercy by way of a clemency hearing.

Yet, the State's voir dire on this issue clearly was wrong. Mercy is an issue jurors can consider in deciding whether a defendant should live or die. Alvord v. State, 322 So.2d 533, 540 (Fla. 1975). For the court to allow the State to deny that law and tell the venire that they could consider only the law and the aggravation and mitigation was wrong. Orme, rather than allowing the State to continue to plant that bad seed, simply avoided discussing a legitimate issue, and the court erred by allowing the State to misstate the law. Not only was it error, it was reversible error because we simply have no idea if some of the prospective jurors may have sat who rejected any notion of mercy as a legitimate reason to recommend a life sentence.

ISSUE III.

THE COURT ERRED IN REFUSING TO DISMISS THE VENIRE WHEN AT LEAST ONE OF THE PROSPECTIVE JURORS INQUIRED ABOUT THE POSSIBILITY OF PAROLE FOR ORME WITHIN TWENTY-FIVE YEARS IN LIGHT OF THE FACT THAT HE HAD ALREADY SERVED ALMOST 15 YEARS IN PRISON, A VIOLATION OF HIS EIGHTH AND FOURTEENTH AMENDMENT RIGHTS

We have in this issue and Issue IV, the classic problem of the elephant in the living room that no one wants to notice. By the time of his resentencing Orme had spent 13 or 14 years on death row. The jury was told that the only punishment

they could consider was death or life in prison without the possibility of parole for twenty-five years. The problem was, obviously, how much time would Orme serve if the jury recommended life? 11 years? 12 years? Indeed, if the law says that is an irrelevant question, Bates v. State, 750 So.2d 6 (Fla. 1999), the prospective jurors did not consider it so because they were seeing and considering what the law has chosen to ignore. See, Booker v. State, 773 So. 1`079, 1097 (Fla. 2000)(Anstead, dissenting)("Jurors are naturally interested in how long a convicted murderer will actually be imprisoned in making a choice between life and death, and, logically, the jury would want to know any information that would impact on the life sentence alternative, including the existence of other sentences already imposed upon the defendant.")[1]

> JUROR BISHOP: I have difficulty considering the fact that parole is a possibility after twenty-five years considering this crime is already 15 years ago.

(47 R 4447).

Of course, the court tried to correct that clear view by telling the prospective jurors that the only sentence they could recommend was death or life in prison without the possibility of parole for twenty five years (47 R 4450). And we

[1] In addition to the death sentence, the court also imposed a 15-year sentence for the robbery, and a 22-year sentence for the sexual battery. The robbery and sexual battery sentences were to run consecutively to the death sentence but concurrently with each other (4 R 743-44).

presume that guidance solved the problem because, well, if it did not, would any instruction be of any value? But, if this guidance has presumptive curative effect, it has much less efficacy when read in the middle of voir dire. By then the "cat was out of the bag," the "horse was out of the barn," or whatever other relevant proverb may apply. The damage had been done, the idea planted, and the harvest was a tainted jury.

On page 45, the State quotes from Orme's Initial Brief that "no one had anticipated the problem," and by way of a footnote on the same page, it also says that the defendant was "on notice that this might be a potential issue." Orme also points out that he filed and the court denied three motions that dealt with aspects of his lengthy stay on death row issue (16 R 2838-40, 2841-42, 2881-83; 42 R 3681, 3686; 43 R 3752). So, if Orme, as the State claims, knew of the problem, the court and prosecution were also aware of it but did nothing to correct it.

If the guidance the court eventually gave was to have any effective value, it had to come at the beginning of voir dire when jurors were as clean and pure as possible. Thus, the State's complaint that Orme never asked for the instruction at the start of voir dire misses the point. The problem presented by this issue is so significant, so important that to cure it half way through voir is too late. This was a fundamental problem this case had, and it is one the court should have nipped, as much as one can be nipped, in the bud. (Appellee's brief at p. 45).

Finally, the State argues that Mr. Bishop's responses did not taint the jury because everyone knew the murder had occurred in 1992 and that the two possible sentences were death or life in prison without the possibility of parole for twenty-five years (Appellee's brief at p. 46). While true, so what? The crucial fact they did not know was whether Orme would be given credit for the 12 or 13 years he had already spent on death row. "Facts" did not taint this jury. A question of law did. Green v. State, 907 So.2d 489, 499 (Fla. 2005).

Relying on Green, the State also notes that in that case this Court found a similar instruction as given here "actually benefits the accused because any juror, concerned about the possibility the defendant will be out on the streets shortly after sentencing, is reminded that parole is not guaranteed." It also means that a juror might recommend death because, although parole is not guaranteed, it is also not precluded.

The United States Supreme Court, in an analogous situation, has also rejected the approach this Court took in Green. C.f, Beck v. Alabama, 447 U.S. 625 (1980). In Beck, the nation's high court declared the state was constitutionally prohibited from precluding the option of convicting for a lesser included offense in a capital case when, by doing so, that action enhanced the risk of not only an unwarranted conviction but increased the likelihood of a death sentence. "Such a risk cannot be tolerated in a case in which the defendant's life is at stake." Id. At

637. Supporting that conclusion the court quoted from Keeble v. United States, 412 U.S. 205, 208 (1973):

> Moreover, it is no answer to petitioner's demand for a jury instruction on a lesser offense to argue that a defendant may be better off without such an instruction. True, if the prosecution has not established beyond a reasonable doubt every element of the offense charged, and if no lesser offense instruction is offered, the jury must, as a theoretical matter, return a verdict of acquittal. But a defendant is entitled to a lesser offense instruction-in this context or any other-precisely because he should not be exposed to the substantial risk that the jury's practice will diverge from theory. Where one of the elements of the offense charged remains in doubt, but the defendant is plainly guilty of some offense, the jury is likely to resolve its doubts in favor of conviction.

(Emphasis in opinion.)

Similarly, in this case, without any quibbling the defendant deserves some extraordinarily harsh punishment. But Mr. Bishop's questions raised the speculative possibility Orme get out of prison in the forseeably short future. Because of that possibility, jurors may opt for death. Thus, the instruction, as good as it may have been, should have been read at the beginning of voir dire to preclude the speculation Mr. Bishop created, and which a belated instruction, much like the situation in Beck, could not eliminate when given in the middle of the voir dire.

ISSUE V:

THE COURT ERRED IN GIVING NO WEIGHT TO MITIGATION THIS COURT HAS CLEARLY HELD MITIGATED A DEATH SENTENCE, A VIOLATION OF ORME'S EIGHTH AND FOURTEENTH AMENDMENT RIGHTS.

If the trial court were correct in giving no weight to the mitigation, it, not the State by way of its Answer Brief, had to say why. The State extensively discussed the mitigation of Orme's "difficult childhood, " his being a model prisoner, and his potential for rehabilitation. The court did not. In fact, other than saying he had a difficult childhood, but a loving and caring stepmother, that he was a model prisoner with only a minor disciplinary record, and he had no demonstrated potential for rehabilitation, the court did nothing to justify why, in the face of abundant evidence refuting those conclusions, well-recognized mitigation somehow deserved not simply little or no weight, but was not mitigation at all.

While this Court has allowed trial courts to give no weight to mitigation, it has not said a court could , as it did here, simply recite a fact or two and let that justify giving it no weight. Instead, it must give "additional reasons or circumstances unique to that case," why mitigation this Court has recognized as mitigating a death sentence deserves no weight. Trease v. State, 768 So.2d 1050, 1055 (Fla. 2000). Contrary to the State's assertion on page 62 of its brief, the court did not "expressly evaluate" the mitigation at the heart of this issue. It did nothing

other than state a conclusion without any evident justification for rejecting Orme's mitigation.

Finally, regarding the mitigation that Orme tried to get help for Redd, the State said, "Orme did not try to get Lisa Redd help. . . . Orme sought 'help' only when his options about what to do with Ms Redd's body ran out when he locked himself out of the hotel room where Lisa Redd lay dead by his hand." (State's brief at p.66)

When Orme showed up at the C.A.R.E. Center, he was hallucinating and unable to speak (58 R 574 52 R 57, 60). Although in obvious trouble, he wrote something on a piece of paper. It did not say, "Help me, I have overdosed on cocaine." Instead, it referred to Lee's Motel, Room 15, the place where Lisa Redd's body lay. Why would he do that if not to help her? By then his options had not run out. He could have fled as so many defendants do. He could have taken her body out of the room, put it in his truck, and then buried it miles away, as other defendants have done. He did none of that. In his drug blitzed mind, he knew something was wrong with Ms. Redd, and he tried to get help for her. He probably thought she was still alive (53 R 167-71), but unresponsive to his efforts to revive her. They had been ineffective, but he had tried, and when he showed up with urine stained shorts at the rehab center, he tried in his feeble way to get her help, and it was that effort that led to his arrest.

ISSUE VI:

THE COURT ERRED IN FINDING THAT ORME COMMITTED THE MURDER FOR PECUNIARY GAIN.

For the pecuniary gain aggravator to apply, the taking of Lisa Redd's property must have been an integral part of the murder. Hardwick v. State, 521 So.2d 1071, 1076 (Fla. 1988); Finney v. State, 660 So.2d 674 (Fla. 1995). Nothing in the State's Answer Brief justifies that conclusion.[2]

The State cited four cases in its brief to support its argument. They are not only distinguishable but stand in contrast to the facts and inherent ambiguity of Orme's pecuniary motive to kill Lisa Redd. Franklin v. State, 965 So.2d 79, 100 (Fla. 2007); Bowles v. State, 804 So.2d 1173 (Fla. 2001); Lawrence v. State, 691 So.2d 1068 (Fla. 1997); Finney v. State, supra.

In Franklin, the defendant clearly murdered his victim because, as he admitted, "he was looking for someone to rob in order to obtain money and a new vehicle." Id. at 100. This Court also found he shot his victim in a cold, calculated, and premeditated manner. As it concluded, "The victim's shooting was not an

[2] In the State's brief it spends considerable space reiterating the facts it believed justified this aggravating factor. Orme objects to that. This Court is bound by the court's sentencing order, and specifically the facts it used to justify this aggravating factor. The "right for any reason" rationale, which may apply in non capital issues, has no relevance here. Sentencing discretion in capital cases is far more limited, State v. Dixon, 283 So.2d 1 (Fla. 1973). If this Court relies on facts not mentioned in the sentencing order it has nullified the statutory requirement that trial court's file written sentencing orders justifying a death sentence, Section 921.141(3) Fla. Stats. (2008), and this Court's requirement that such orders be of "unmistakable clarity." Mann v. State, 420 So.2d 578, 581 (Fla. 1982)

afterthought of the robbery; there was no apparent motivation for the murder other than taking the victim's property for pecuniary gain." Id.

Such cannot be said here. Orme had another motive, anger at Redd throwing away his cocaine, for killing her. Unlike Franklin, who had coolly plotted his robbery-murder, this defendant, with his cocaine-soaked brain, was in an emotional frenzy at the time of the murder. As the court found in its sentencing order, Orme called his former girlfriend to his motel room because he was sick and she was a nurse (17 R 3009-10). She was not a random victim, as was Franklin's, and she came out of concern for her boyfriend, not out of chance. If he needed money like Franklin did, many more sources were immediately available, such as the cab drivers, that had a sure source of cash. With Redd, there was a large degree of uncertainty of just what she had that could be readily used to buy cocaine. Maybe she had money, but Orme did not know that when he called her. Likewise, he may have known she wore jewelry, but that may not have had the liquidity he needed.

Unlike Franklin, Orme never plotted to kill Redd. He needed money, but he used his own resources, such as his passport, when he ran low. Likewise, he had brought his own car or truck to the motel, so he had no need to use Redd's car. Indeed, if he had killed her for her car why did he not sell it for $100 to buy cocaine? Franklin provides no support for the State's argument, and in fact it

demonstrates just how clear the State's evidence must be to support the pecuniary gain aggravator. In this case, this Court must do far more inferring than it did in Franklin in order to find this aggravator applies.

Finney stands in contrast to the inferences the trial court had to make. In that case, Finney took the victim's property and afterwards "pawned the victim's VCR shortly after the murder, along with the evidence that Ms. Sutherland's jewelry box was missing and the contents of her purse had been dumped on the floor." This Court also said that "there is no reasonable hypothesis other than that Finney killed Ms. Sutherland in order to take her property." Id. At 680.

In this case, the court, in its findings for this aggravator found that there was another, perhaps dominant motive for killing Ms. Redd. "When she threw the remainder of his unused cocaine in the toilet, he became angry and proceeded to brutally beat, rape and murder her." (17 R 3009-10). That was why he killed her. There is, moreover, no evidence what Orme did with the property he supposedly took from Ms. Redd. Maybe he pawned it,[3] like Finney; maybe he simply threw it away. The point is, neither the trial court nor this Court can say beyond a reasonable doubt Orme somehow converted whatever he supposedly took from her into cash so he could buy more cocaine.

[3] Since the murder occurred late at night and Orme turned up at the front door of the rehabilitation office in the early morning hours, it is doubtful any pawn shop was open while he was roaming the streets of Panama City looking for cocaine and prostitutes.

In Bowles, this Court said "there is no other apparent motivation for this murder other than as part of a taking of the victim's property for Bowles' pecuniary gain." Id. at 1180. Such is clearly not the case here, as the court's findings just quoted indicate. Indeed, in Bowles this Court seemed to adopt the approach that if the State cannot produce a theory for why the murder occurred, and some of the victim's property is missing, the defendant must have killed for pecuniary gain. If so, Bowles has no relevance here because other, more convincing reasons, exist for the homicide.

Lawrence is similar to Franklin in that the defendant specifically said that he entered a convenience store to rob it, which he did. Those facts clearly supported the pecuniary gain aggravator. Indeed, unlike in this case, it was the only and obviously dominant motive for the murder that occurred during the robbery. Such, as obviously, was not Orme's motive for calling Lisa Redd to his motel room. He was sick, needed help, and he called her because she was a nurse. There is absolutely no evidence he lured her to his room so he could steal her stethoscope and necklace to buy cocaine.

Thus, Orme took her property more as an "afterthought" to the murder rather than as an integral part of it. He killed her in a rage after she had swept his cocaine into a toilet, and then took what she had. While this evidence may have

supported a robbery conviction because of the broad definition of that crime, it is insufficient to include the more narrowly defined pecuniary gain aggravator.[4]

[4] Section 812.13(3)(b) Fla. Stat. (2008),provides that "An act shall be deemed 'in the course of committing the robbery' if it occurs either prior to, contemporaneous with, or subsequent to the taking of the property and if it and the act of taking constitute a continuous series of acts or events."

CONCLUSION

Based on the arguments presented here and in the Initial Brief, Roderick Orme respectfully requests this Honorable Court reverse the trial court's sentence of death and remand either for a new sentencing hearing with a jury or resentencing without a jury.

CERTIFICATES OF SERVICE AND FONT SIZE

I hereby certify that a copy of the foregoing has been furnished by U.S. Mail to , Assistant Attorney General, The Capitol, Tallahassee, FL 32399-1050, and **RODERICK MICHAEL ORME**, #126848, Union Correctional Institution, 7819 NW 228th Street, Raiford, FL 32026, on this ____ day of March, 2009. I hereby certify that this brief has been prepared using Times New Roman 14 point font in compliance with the Florida Rule of Appellate Procedure 9.210(a)(2).

Respectfully submitted,

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