IN THE SUPREME COURT OF FLORIDA

OSCAR RAY BOLIN, JR.,

Appellant,

v.

STATE OF FLORIDA,

Appellee.
_____/

CASE NO. SC08-2148
L.T. No. 90-CF-11833
DEATH PENALTY CASE

ON APPEAL FROM THE CIRCUIT COURT
OF THE THIRTEENTH JUDICIAL CIRCUIT,
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

# ANSWER BRIEF OF APPELLEE

PAMELA JO BONDI
ATTORNEY GENERAL

STEPHEN D. AKE
ASSISTANT ATTORNEY GENERAL
Florida Bar No. 14087
Concourse Center 4
3507 East Frontage Road, Suite 200
Tampa, Florida 33607-7013
Telephone: (813) 287-7910
Facsimile: (813) 281-5501
Stephen.Ake@myfloridalegal.com

COUNSEL FOR APPELLEE

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Federal Cases**



**State Cases**

**Other Authorities**

## STATEMENT OF THE CASE AND FACTS

Oscar Ray Bolin appeals his conviction and sentence of death for the 1986 murder of seventeen-year-old Stephanie Collins. Bolin has previously been convicted and sentenced to death for this murder on two occasions, but this Court reversed the convictions and remanded for new trials. See Bolin v. State, 650 So. 2d 21 (Fla. 1995) (Bolin I); Bolin v. State, 793 So. 2d 894 (Fla. 2001) (Bolin II). The instant trial occurred in 2006, and the Honorable Judge Barbara Fleischer sentenced Bolin to death on November 30, 2007.

At trial, the victim's mother, Donna Witmer, testified that she last saw her daughter on November 5, 1986, in the morning as her daughter was getting ready for school. (V16:340-43). When Ms. Witmer returned home from work around 5:30 p.m., she noticed that her daughter's school books were on the kitchen table, but there was no sign of her daughter or her vehicle at the house. The next morning, Ms. Witmer went to the nearby Eckerd Drugs' store where the victim worked as a part-time employee and discovered her car in the parking lot with the doors unlocked. (V16:340-44). The keys to the car were found on the floor. (V16:385).

Stephanie Collins' friend, Kathryn Cumpstone, testified that she left Chamberlain High School with the victim in the

afternoon on November 5, 1986, and they went to Collins' home. (V16:345-46). After briefly going inside Collins' home, the victim drove Ms. Cumpstone to her house. Ms. Cumpstone recalled that Stephanie Collins was wearing a white sweater with a tank top underneath, pink and white striped leggings, slouch socks, white Keds sneakers, and gold chains. (V16:347-48). After dropping off Ms. Cumpstone, the victim was planning on going to the Eckerd Drugs' store so she could ask about the possibility of working more hours during the holiday season, and then she planned to go home and take a shower, and then to choir practice later that evening. (V16:348).

Keith Copeland, the assistant manager at Eckerd Drugs on November 5, 1986, testified that Stephanie Collins came to the store around four o'clock in the afternoon and asked him about the possibility of obtaining more work hours. (V16:350-51). Mr. Copeland asked Collins if she wanted to work that evening, but she could not because she had choir practice. (V16:351-52).

Jerry Cooley, a friend of Stephanie Collins, testified that he saw the victim's car parked in the shopping plaza parking lot containing the Eckerd Drugs' store at about 9:00 o'clock at night on November 5, 1986. Mr. Cooley wanted to stop in the store and visit Stephanie Collins, but he did not find her in the store. (V16:353-55).

Hennie Moss, a neighbor of Stephanie Collins, testified that she and her friend, David Fessler, were driving near Ehrlich Road on November 5, 1986, at around 4:00 in the afternoon when she observed Stephanie Collins in the passenger seat of an older, white commercial van.[1] (V18:657-64). Ms. Moss testified that Collins frantically waived both her arms at Ms. Moss trying to get her attention. (V18:667). Ms. Moss could not see the face of the driver of the white van, but testified that the male driver had brown hair. (V18:665).

David Fessler testified that he was driving Hennie Moss to a jewelry store that afternoon when Ms. Moss pointed out the white van and yelled, “Look, there’s Stephanie.” (V18:675). Mr. Fessler saw Collins in the passenger seat and got a quick glimpse of the driver of the van. Mr. Fessler testified that the driver was a white male, probably in his late 20s, with a slender build and darkish black hair. (V18:676-79).

On the morning of December 5, 1986, one month after the victim was last seen alive, her body was discovered dumped in a ditch off Morris Bridge Road in Tampa, Florida. (V16:356-60). The first law enforcement officers to arrive noted that the upper portion of the badly decomposed body was wrapped in

[1] The intersection was “right around the corner” from the Eckerd Drugs’ store where the victim worked. (V18:668).

blankets, and the lower extremities exposed pink and white striped stretch pants, socks, and white sneakers. (V16:362-65; 375). A silver purse was found on the victim's torso as though it had just been placed down on top of her back.[2] (V16:375, 395).

Once the body had been removed from the scene and taken to the medical examiner's office, law enforcement personnel removed the items wrapped around the victim. Underneath the blanket, were two sheets, a pink one and a pink and white one, along with a towel marked "Hospital Property." (V16:377). These items, as well as the victim's purse and clothing, were all sent to the FBI for analysis. (V16:384).

The medical examiner, Dr. Peter Lardizabal, testified that due to the substantial level of decomposition, his examination of the victim's body took 10 or 11 days. (V16:423-25, 439). Dr. Lardizabal testified that the back of the victim's sweater had six stab wounds and one stab wound to the left breast cup of her brassiere. Dr. Lardizabal could not speculate about the depths of the stab wounds due to the decomposed nature of the body. (V16:425-27). An examination of the victim's skull indicated that she had suffered about nine fatal blows to the head with a

[2] The prosecutor subsequently introduced the purse and its contents into evidence and, rather than recalling the victim's mother, defense counsel stipulated that the purse and its contents belonged to Stephanie Collins. (V18:695-97).

blunt object, probably metallic in nature, causing fragmentation of the skull into about 28 pieces. (V16:428-35).

In July, 1990, the investigation into Collins' unsolved murder was substantially aided by a telephone call to Crime Stoppers from an individual in Indiana, Danny Coby. (V16:460). At the time of the phone call to Crime Stoppers, Danny Coby was married to, but separated from, Cheryl Coby. Cheryl Coby had previously been married to Oscar "Ray" Bolin from 1983-1989.[3] (V16:441-42).

After the phone call to Crime Stoppers, detectives from Tampa immediately flew to Indiana and interviewed Danny Coby, and then Cheryl Coby. (V17:489-90). Cheryl Coby, who passed away in 1992, had her testimony from a prior proceeding read to the jury at the instant trial and testified that, prior to marrying Danny Coby, she insisted that he know the circumstances surrounding the instant murder. (V16:458-60). When the detectives arrived in Indiana to interview Cheryl Coby, she initially was uncooperative, but after a brief break where she spoke with her parents, she returned to the police station and gave a detailed statement regarding her observations on November 5, 1986. (V16:460-61; V17:490, 497-98).

[3] Appellant's wife and friends testified that Appellant went by the name "Ray." (V16:441; V17:504; V18:681).

Cheryl Coby testified that she suffered from numerous health issues requiring hospitalizations in 1986 while married to Appellant. (V16:442-43). Coby testified that she would often bring hospital items such as blankets, sheets, and towels home with her when discharged from the hospital. (V16:443). In the spring of 1986, Coby and Appellant bought a 1986 Ford pickup truck with a camper on top and left the Tampa area, hauling a travel trailer behind the truck, while they worked for a carnival. (V16:444). The couple returned to Tampa in the latter part of October, 1986, and Appellant parked the travel trailer on a lot at the Frontier Trailer Park on Nebraska Avenue in Tampa. (V16:444-47). Coby testified that when they returned to Tampa, she began living with her friends Paula and Duane Cameron, and she believed that Appellant lived in the trailer. (V16:449-50).

On November 5, 1986, Cheryl Coby went to a walk-in clinic with a friend, Paula Cameron, and confirmed that she was pregnant with Appellant's child. (V16:448; V17:506-07). Later that evening, Coby and her friends were eating dinner at a nearby Waffle House when Appellant arrived at the restaurant around seven or eight o'clock in the evening. (V16:448-50; V17:506-08). Appellant wanted Coby to leave with him immediately and "he acted like something was bothering him," but Coby needed

to eat because of her low blood sugar. (V16:450-51; V17:506-07).

When Coby and Appellant left the Waffle House, Appellant drove to his travel trailer and backed his truck up to the door of the trailer. (V16:451-52). Appellant exited the truck and went inside the trailer for about 10-15 minutes while Coby waited inside the truck. When Coby heard the trailer door shut, she turned around and looked into the truck's camper and saw Appellant pick up something wrapped in Coby's quilt and throw it on the bed in the back of the truck's camper. (V16:452-53). Appellant went back inside the trailer for about 10 minutes and returned to the truck and they drove to Morris Bridge Road. Appellant backed the truck up, took the body out of the truck and threw it in a ditch. (V16:455). Appellant then backed the truck up and shined the headlights on the area to make sure no one could see the body, and they drove back the to travel trailer. (V16:455). Coby went inside the trailer to obtain some clothes and papers for a doctor's appointment she had the next day, and observed the interior of the trailer. Coby testified that everything was wet: the floors, the ceiling, the cabinets, and the doors. (V16:455-56). She also noticed blood on the blinds of the windows, as well as a blood stain on the carpet at the foot of the bed. (V16:456). Coby testified that her butcher knife, which was usually stored in the bottom drawer, was beside

the sink and the wooden handle was all wet. (V16:456-57).

The prosecutor showed Cheryl Coby items of evidence recovered from the victim's body and she identified the pink and white striped sheet, and the pink sheet as coming from the travel trailer. (V16:457-58). The towel marked "Hospital" was also identified as one that she would have brought home after her hospital stay. (V16:457-58). Coby further testified that after this evening, she never lived with Appellant again and never told anyone about the incident until shortly before agreeing to marry Danny Coby. (V16:458). After Danny Coby contacted Crime Stoppers and Coby spoke with detectives in Indiana, she returned to Tampa and assisted law enforcement by showing them where Appellant dumped the body on Morris Bridge Road. (V16:461; V17:541-43).

On cross examination, Ms. Coby testified that she never saw Appellant drive a white van in November, 1986. (V16:466). Coby also testified that she had been inside the travel trailer on November 5, 1986, at around 1:00 p.m. to take a shower and she did not notice a white van at that time, nor was there a white van at the trailer later that evening when Appellant drove her there after they left the Waffle House. (V16:470-71). Coby further denied assisting Appellant in the disposal of Collins' body. (V16:473-74).

In July, 1990, after speaking with Cheryl Coby, detectives obtained a search warrant for hair and blood samples from Appellant. (V17:532). These samples were subsequently sent to the FBI for analysis and comparison to a hair found on the towel wrapped around Collins' body. (V17:532; 535-39). FBI Agent Robert Fram testified that in 1987 he received hairs in the Collins' case which were taken from the towel, and after receiving Appellant's known hair samples in 1990, FBI agent Fram conducted a microscopic analysis of the hair samples and concluded that the brown Caucasian hair found on the towel exhibited the same characteristics as the known hair sample of Appellant and was consistent with having originated from Appellant. (V18:575-81). The brown head hair found on the towel was a naturally shed hair as opposed to a forcibly removed hair. (V18:581-82). The FBI also conducted mitochondrial DNA (mtDNA) on the hair and determined that there was no difference between the mtDNA profile from the hair sample and Appellant's known DNA profile from his blood sample. (V18:633-36). The mtDNA expert testified that, based on his examination, he could not exclude Appellant as the source of the hair found on the towel. (V16:635-36). A population genetics expert testified that it was 916 times more likely that the brown Caucasian hair on the towel came from Appellant than a random Caucasian person in the

population. (V16:642-46).

On June 22, 1991, after Appellant's arrest, and while incarcerated in the Hillsborough County Jail, Appellant attempted suicide and left a stamped letter addressed to Tampa Police Department Colonel Gary Terry in his cell. (V17:543-44). In the letter, Appellant apologized for "checking out in this manner," and wrote to Colonel Terry that "if there's ever anything else that you really want to know about then you'll have to ask Cheryl Jo [Coby] because she knew just about everything that I was ever a part of" and "she knew about this homicide which I'm charged with because it was her idea on how to dump the body out." (V12:2210; V17:546-47).

Lastly, the State presented evidence from Appellant's friend in 1986, Michael Long. Long testified that in November, 1986, he and his brother often socialized with Appellant and Appellant's wife, Cheryl Coby. Michael Long testified that sometime after November 5, 1986, but before Stephanie Collins' body was located, he was at his brother's apartment with Appellant and Coby getting ready for a cookout when they saw a news story on television regarding the disappearance of Collins. After seeing the news story, Long commented, "If they find out somebody had done something to that girl or hurt her, whoever did it should be castrated with a dull razor." (V18:680-83).

Appellant got upset and red-faced, and stood up and told Long that "he didn't know what he was talking about, he didn't know the circumstances." (V18:683). Appellant was so irate with Long after the comment that he took Cheryl and left. (V18:683). Long also testified that Appellant drove a Ford F-150 pickup truck, but he recalled on one occasion seeing Bolin drive a white commercial van that the witness thought belonged to a painter that lived in the same apartment complex. (V18:684-85).

After the State rested its case, defense counsel unsuccessfully moved for a judgment of acquittal. (V18:697-99). Thereafter, Appellant knowingly and voluntarily waived his right to testify at the guilt phase and the defense rested its case. (V18:700-07). During the State's closing argument, the prosecutor summarized the evidence against Appellant and showed the jury that the victim's purse contained a piece of paper, perhaps school notes, and written on the back of the paper was "724-BYL, Ray;" the license plate number on Appellant's Ford F-150 truck. (V17:522). After hearing the arguments from counsel, the jury returned a verdict finding Appellant guilty of first degree murder. (V19:847-48).

During the jury's deliberations at the guilt phase, counsel informed the trial court that, if convicted as charged, Appellant intended to waive the presentation of mitigating

evidence and waive the jury's participation at the penalty phase; as he had previously done in the Pasco County case involving victim Teri Lynn Matthews. (V19:832-34; 838-45); see also Bolin v. State, 869 So. 2d 1196 (Fla. 2004). After the jury's verdict finding Appellant guilty, the court conducted a colloquy with Appellant and he indicated that he was knowingly and voluntarily waving the jury's recommendation at the penalty phase. (V19:854-60).

At the penalty phase, defense counsel informed the trial court of the mitigation he had developed and presented the court with a voluminous "Mitigation Notebook" for the court's consideration. (V20:867-69). Additionally, the prosecutor provided the court with potential mitigating evidence including: a transcript of Appellant's current wife's (Rosalie Bolin) testimony from a prior sentencing hearing, a deposition from Rosalie Bolin, and a deposition of Appellant's prior mental health expert, Dr. Berland. (V20:873, 899). The court conducted a colloquy with Appellant regarding his decision to waive the presentation of mitigating evidence, and found his wavier knowing and voluntary. (V20:869-72).

The State introduced evidence at the penalty phase regarding Bolin's prior violent felony convictions. Rick Luman, a corrections officer in Ohio, testified that in January, 1988,

Bolin planned an escape attempt from the jail, and Bolin and another inmate attacked him while attempting to escape. (V20:878-87). Bolin subsequently pled guilty to felonious assault and escape. (V12:2232-38). The State introduced testimony that Bolin also pled guilty to a November, 1987, rape and kidnapping of a woman he abducted at gunpoint from a truck stop in Ohio. (V12:2240-45; V20:888-90). Lastly, the State introduced evidence in the factually similar murder of Teri Lynn Matthews in Pasco County, Florida. In that case, the victim was abducted from a post office and her body was subsequently found dumped off a dirt road. Similar to Stephanie Collins, Matthews' key ring was placed on top of her body, and the cause of her death was blunt trauma to the head with approximately 12 strikes. Again, like Stephanie Collins, Matthews was stabbed six times in the throat and chest area. (V20:891-95). Appellant was convicted and sentenced to death for the first degree murder of Teri Lynn Matthews. (V12:2247-54; V20:894-95). At the conclusion of the penalty phase, the trial court ordered the presentation of a presentence investigation report (PSI). (V20:897-901).

On October 29, 2007, the trial court conducted a Spencer hearing. Defense counsel again reiterated that Appellant did not want to present any mitigating evidence or argument, and Appellant declined to make any statement. Defense counsel

provided the court with copies of reports issued by Dr. Frank Wood and Dr. Burdette regarding Bolin's PET and CT scans conducted in 2007. (SV9:1577; SV10:1703; SV53:1181-87).

On November 30, 2007, the trial court sentenced Appellant to death. (V10:1947-56; V21:904-25). The trial court found the aggravating circumstance that Appellant had previously been convicted of another capital felony or of a felony involving the use or threat of violence, but rejected the aggravating circumstances of HAC, CCP, and during the course of a kidnapping. In mitigation, the court found the statutory mitigator of Appellant's age, and found numerous other nonstatutory mitigators including: Defendant had some mental or emotional disturbances (some weight); the defendant suffered from the effects of his mother's alcoholism and his own substance abuse (little weight); the defendant was abused as a child (some weight); poor and unstable childhood (little weight); sporadic and minimal education, obtained a GED while incarcerated, developed machinery skills, saved the life of another person, gainfully employed at time of murder, appropriate courtroom behavior, adopted to incarceration, maintains relationship with wife, and physical and mental medical health history indicates several problems (little weight). The trial court noted that "[a]lthough there is only

one aggravating factor, both the nature of the Defendant's crimes and the underlying facts of those crimes are so egregious that the one aggravating factor far outweighs the mitigating factors in this case." (V10:1956). This appeal follows.

## SUMMARY OF THE ARGUMENT

The trial court acted within its sound discretion in denying Bolin's motion to exclude the 1991 trial testimony of his deceased ex-wife, Cheryl Coby. Contrary to Bolin's assertions, the admission of Coby's testimony did not violate his constitutional rights to confrontation and due process. In the instant trial, the State utilized Coby's 1991 trial testimony wherein she was extensively cross-examined by Bolin's defense counsel. Because Bolin had the prior opportunity to cross-examine Coby, his constitutional claim regarding his alleged denial of his right to confrontation is without merit. Likewise, his due process claim is without merit as it has already been rejected by this Court. In prior rulings reversing Bolin's convictions and remanding for a new trial based on Coby's testimony regarding her privileged spousal communications with Bolin, this Court held that Coby's testimony regarding her *observations* on the date of the murder would be admissible at Bolin's new trial. See Bolin v. State, 650 So. 2d 21 (Fla. 1995); Bolin v. State, 793 So. 2d 894 (Fla. 2001).

Appellant's claim that the trial court erred in denying his motion to suppress a suicide letter found in his jail cell is procedurally barred and without merit. This exact issue was previously raised and rejected by the Second District Court of

Appeal, State v. Bolin, 693 So. 2d 583 (Fla. 2d DCA), review denied, 697 So. 2d 1215 (Fla. 1997), and this Court subsequently stated that it agreed with the district court of appeal's decision and noted that the letter was admissible at Bolin's trial in the instant case. Bolin v. State, 793 So. 2d 894, 898 (Fla. 2001). Accordingly, the law of the case doctrine precludes further review of this issue. Even if this Court were to address the merits of Appellant's claim, the State submits that the Second District Court of Appeal properly rejected Bolin's argument. At the instant trial, defense counsel did not attempt to relitigate this claim, but rather, relied on arguments made in Bolin's separate proceedings. As such, this Court is limited to reviewing the factual discussion contained in the district court of appeal's decision. Based on this review, Bolin is unable to meet his burden of showing that the trial court abused its discretion in admitting the evidence from Bolin's suicide note. Finally, even if the trial court erred, the error was harmless.

Appellant waived the presentation of any mitigating evidence at the penalty phase, and thus, cannot now complain on appeal that the trial court erred in rejecting the proposed mitigator that his ability to conform his conduct to the requirements of the law was substantially impaired. Even if this

Court were to address the trial judge's rejection of this mitigator, the State submits that the facts of the instant case support the court's conclusion that this mitigator was not established. Finally, Bolin's death sentence is proportionate and should be upheld by this Court.

## ARGUMENT

## ISSUE I

THE TRIAL COURT PROPERLY DENIED APPELLANT'S MOTION TO EXCLUDE CHERYL COBY'S REDACTED 1991 TRIAL TESTIMONY.

In 1995 and 2001, this Court reversed Bolin's convictions and remanded for a new trial because the State had utilized Cheryl Coby's testimony in violation of the marital privilege. See Bolin v. State, 650 So. 2d 21 (Fla. 1995) (hereafter "Bolin I"); Bolin v. State, 793 So. 2d 894 (Fla. 2001) (hereafter "Bolin II"). In Bolin I, this Court found that Bolin's wife, Cheryl Coby, had improperly testified at his 1991 trial to statements he made regarding the crime, including confessing to the murder of Stephanie Collins, but noted that Coby could testify "regarding her observations of Bolin's alleged criminal activity" at the new trial.[4] Bolin I, 650 So. 2d at 23. The State argued on appeal that Bolin had waived the spousal privilege by conducting a discovery deposition with Coby and by writing a letter to the investigating detective urging the detective to speak to Coby about the crime. This Court rejected the argument that the deposition waived the privilege, but because the issue of Bolin's letter constituting a waiver was not addressed by the

[4] Because Coby was terminally ill, her trial testimony was videotaped to perpetuate the testimony. Bolin II, 793 So. 2d at 896.

lower court, this Court remanded the case for a new trial and directed the trial court to determine whether Bolin had waived his privilege by consenting to detectives to question his wife about the crime. Id. at 23-24.

At Bolin's second trial, the trial court determined that Bolin had waived his spousal privilege by writing the letter to Colonel Gary Terry and the State utilized Coby's 1991 videotaped trial testimony over defense counsel's objection. Bolin II, 793 So. 2d at 896-97. On appeal, this Court found that the trial court erred in concluding that Bolin's letter to Colonel Terry constituted a waiver of the spousal privilege and reversed his conviction for a new trial. Id. at 897-98. This Court again noted that the "spousal privilege only applies to confidential communications. . . . [t]herefore, **while Coby's testimony regarding Bolin's confidential statements to her is privileged, Coby's testimony regarding what she witnessed is not privileged**." Id. at 897 n.3 (emphasis added).

Prior to the trial in the instant case, defense counsel filed a motion to exclude Cheryl Coby's videotaped 1991 testimony and argued that her redacted testimony should be excluded because it violated Bolin's constitutional rights to confrontation and due process. (SV1:73-86). The motion was filed in Bolin's two separate pending capital cases, the instant case

involving victim Stephanie Collins (Case No. 90-CF-11833) and another Hillsborough County murder case involving victim Natalie Holley[5] (Case No. 90-CF-11822). After hearing argument on the motion, the trial judge denied Bolin's request to exclude the evidence. (V13:6-17; V16:300-03; SV1:87-92, 158-93).

The State submits that the trial judge acted within its sound discretion in denying Bolin's motion to exclude the testimony of Cheryl Coby. The law is well established that a ruling on the admissibility of evidence is within the discretion of the trial court, and the trial court's ruling will not be reversed unless there has been a clear abuse of that discretion. White v. State, 817 So. 2d 799 (Fla. 2002); Ray v. State, 755 So. 2d 604, 610 (Fla. 2000); Zack v. State, 753 So. 2d 9, 25 (Fla. 2000).

Bolin argues on appeal that the trial court erred in denying his motion to exclude Coby's testimony and claims that

[5] This Court had reversed Bolin's first degree murder conviction and death sentence in the Natalie Holley case, see Bolin v. State, 796 So. 2d 511 (Fla. 2001); Bolin v. State, 642 So. 2d 540 (Fla. 1994), and he was about to face his third trial in the Holley case at the time. Bolin was subsequently convicted of second degree murder at his third trial in the Holley case and the Second District Court reversed his conviction and remanded for a new trial based on an error in the jury instructions. Bolin v. State, 8 So. 3d 428 (Fla. 2d DCA 2009). On April 19, 2012, a Hillsborough County jury again convicted Bolin for the second degree murder of Natalie Holley. See *Jury finds Oscar Ray Bolin Jr. guilty of murdering Natalie Holley*, Tampa Bay Times, Apr. 20, 2012, at 3B.

the admission of her testimony violated his constitutional rights to confrontation and due process. Specifically, Bolin claims that he was not given a meaningful opportunity to cross-examine Coby at her 1991 trial because the State's evidence at that time included privileged spousal communications and Bolin's trial counsel focused on this aspect of her testimony during cross-examination rather than on her observations. Bolin further asserts that Coby should not have been allowed to testify regarding her observations pursuant to the spousal privilege contained in Florida Statutes, section 90.504 because her observations were intertwined with the privileged communications. Both of these arguments are without merit.

The Sixth Amendment to the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S. Const. amend. VI. In Crawford v. Washington, 541 U.S. 36 (2004), the United States Supreme Court held that the Sixth Amendment's Confrontation Clause prohibited the admission of out-of-court statements by witnesses that are testimonial in nature, unless the witnesses are unavailable and the defendant had a prior opportunity to cross-examine the witnesses. The Crawford Court emphasized that if "testimonial" evidence is at issue, "the Sixth Amendment demands what the

common law required: unavailability and a prior opportunity for cross-examination." Id. at 68. The Court further noted that its previous caselaw was consistent with these two principles. See Mattox v. United States, 156 U.S. 237 (1895) (deceased witness's prior trial testimony was admissible because defendant had opportunity to cross-examine witness at prior trial); Mancusi v. Stubbs, 408 U.S. 204 (1972) (unavailable witness's prior testimony at a jury trial was admissible as defendant's trial counsel effectively cross-examined witness at prior trial).

In the instant case, the State introduced Cheryl Coby's 1991 trial testimony pursuant to Florida Statutes, section 90.804(2)(a). This section permits the introduction of former trial testimony of an unavailable witness's testimony if the defendant "had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination." § 90.804(2)(a), Fla. Stat. (2005). Appellant does not contest Coby's unavailability as she passed away in 1992, but claims that his confrontation rights were violated because he was not given a "meaningful" opportunity to cross-examine Coby in 1991. This claim is factually and legally without merit. Appellant's attempt to extend the holding in Crawford is unsupported by caselaw from the United States Supreme Court or from this Court. Additionally, trial counsel was not only given a "meaningful"

opportunity to cross-examine Coby at Bolin's 1991 trial for the murder of Stephanie Collins, but a review of the record establishes that Bolin's defense counsel seized this opportunity and extensively cross-examined Coby regarding her observations and attacked her credibility.

When cross-examining Coby, Bolin's trial counsel elicited the following:

- Cheryl Coby divorced Bolin (her third husband), and married Danny Coby one month later (V16:462);
- that Coby stopped living with Bolin on November 3, 1986, only days before the murder of Stephanie Collins and they had a strained marital relationship at the time (V16:463, 467-70);
- that at the time police spoke with Coby in July, 1990, Coby had substantial outstanding medical bills, was unemployed, and had financial difficulties (V16:464-65);
- Coby and Bolin owned a Ford F-150 truck and she never saw him driving a white van (V16:465-66);
- due to her health issues and pregnancy, Coby had poor vision and was legally blind (V16:467-73);
- questioned Coby on her statement to detectives in

July 1990, including her failure to mention seeing a wet butcher knife in the trailer after the murder and failing to see any heavy object that could have potentially been used to fracture the victim's skull (V16:472);

- questioned Coby extensively on her ability to see the colors of the sheets wrapping the body given her poor vision and questioned Coby on whether she assisted Bolin in disposing of the victim's body (V16:473-74);
- that Coby never told anyone about the murder for years until telling Danny Coby prior to their marriage (V16:474);
- Coby initially lied to detectives in 1990 when first questioned about the murder (V16:477);
- That Danny Coby received $1,000 for calling Crime Stoppers and that Cheryl Coby was aware that there was potentially a large amount of reward money if a suspect was convicted of the murder; that the potential reward money was an issue in her divorce proceedings with Danny Coby (V16:477-83); and

- Coby had asked Bolin to give up his parental rights to their young son (V16:481).

As the record of the cross-examination establishes, Bolin had, and utilized, his opportunity to cross-examine the unavailable witness at his 1991 trial.

Bolin's argument that he was not given a "meaningful" opportunity to cross-examine Coby because her testimony had been redacted is simply without merit. Comparing the 1991 cross-examination of Coby's unredacted testimony to the 2006 redacted cross-examination demonstrates that defense counsel was not "so focused on the privileged communications" that he may have failed to develop other areas of cross-examination as alleged by Bolin. (V8-9:1584-1617; V16:462-85). The vast majority of the redactions to the cross-examination were 5½ pages dealing with the three different versions of the murder Bolin told his wife (V8:1594-1600), and one other page dealing with Bolin's statements to Coby. (V9:1603). After these redactions were removed, defense counsel's cross-examination focused on Coby's ability to observe Bolin's acts of placing the victim's body into their truck and dumping it off Morris Bridge Road, Coby's observations inside the trailer of blood on the carpet and blinds and everything in the bathroom being wet, including the floor, ceiling, and doors. Trial counsel also attacked Coby's

credibility given her marital discord with Bolin and her financial motive to report the crime in light of the reward money and her strained financial situation. Thus, contrary to Bolin's assertions, the redacted cross-examination was "meaningful" and satisfied Bolin's constitutional rights to confrontation. See Davis v. Alaska, 415 U.S. 308 (1974) (noting that the primary interest secured by confrontation is the right of cross examination).

Similarly, Bolin's claim that the admission of Coby's 1991 testimony violated his due process rights because her testimony was "frozen in time" is without merit. Bolin argues that, given the passage of time, Coby's testimony should be excluded in its entirety. Bolin does not offer any legal argument in support of this theory and simply claims that the fifteen-year-old cross-examination "does not allow for an adversarial testing of the witness and her credibility." Initial Brief at 27-28. As has been demonstrated, Bolin's defense counsel thoroughly examined Coby's observations and credibility during the cross-examination of Coby at Bolin's 1991 trial for the same murder.

Bolin further alleges that the trial court abused its discretion in admitting Coby's testimony regarding her observations in violation of the spousal privilege contained in Florida Statutes, section 90.504(1). As this Court has already

decided this issue adversely to Bolin in his two prior appeals, the law of the case doctrine precludes relief on the instant claim. See Bolin I, 650 So. 2d at 23 ("The testimony of Bolin's former spouse regarding her observations of Bolin's alleged criminal activity was admissible and may be admitted in the new trial."); Bolin II, 793 So. 2d at 897 n.3 ("The spousal privilege only applies to confidential communications. See § 90.504(1), Fla. Stat. (1985). Therefore, while Coby's testimony regarding Bolin's confidential statements to her is privileged, Coby's testimony regarding what she witnessed is not privileged."); see also Florida Dep't of Transp. v. Juliano, 801 So. 2d 101, 106 (Fla. 2001) ("[u]nder the law of the case doctrine, a trial court is bound to follow prior rulings of the appellate court as long as the facts on which such decision are based continue to be the facts of the case.").

Although Bolin recognizes that Florida statutory law and this Court's prior decisions do not support his position, he urges this Court to reconsider its prior decisions holding that the spousal privilege only applies to communication between spouses. See Kerlin v. State, 352 So. 2d 45 (Fla. 1977) (holding that the privilege for communications between husband and wife does not extend to observations of criminal conduct); Bolin I, supra; Bolin II, supra. Clearly, the statutory language of

section 90.504(1) allows a spouse to testify to the observations of acts of another spouse. See § 90.504(1), Fla. Stat. (2005) (stating that a spouse has a privilege to prevent another spouse from disclosing "communications which were intended to be made in confidence between the spouses"). Appellant's attempt to have this Court rewrite section 90.504 to include the exclusion of "acts" rather than "communication" is unavailing and should be rejected by this Court. See Kasischke v. State, 991 So. 2d 803, 810 (Fla. 2008) ("The Legislature did not include such language, and we cannot add it on our own.") (citing State v. City of Fort Pierce, 88 So. 2d 135, 137 (Fla. 1956) ("It is not the province of this Court to rewrite the acts of the Legislature.")). Because the trial court acted within its discretion and properly admitted Coby's 1991 redacted testimony at Bolin's trial, this Court should deny the instant claim.

## ISSUE II

THE TRIAL COURT ACTED WITHIN ITS DISCRETION IN ADMITTING A PORTION OF APPELLANT'S SUICIDE LETTER INTO EVIDENCE.

In his second issue, Bolin repeats the same exact arguments presented and rejected in the interlocutory appeal before the Second District Court of Appeal in State v. Bolin, 693 So. 2d 583 (Fla. 2d DCA), review denied, 697 So. 2d 1215 (Fla. 1997), which occurred prior to Bolin's second trial in this case. Now, after his third trial, Bolin claims that the lower court erroneously denied his motion to suppress any testimony regarding a suicide note found in Bolin's jail cell after his attempted suicide.[6]

Bolin had filed a motion to suppress the suicide note prior to his second trial in 1995, and after the court conducted a hearing on the motion on August 3, 1995, the trial court granted the motion to suppress. The State filed an interlocutory appeal,

[6] As will be set forth in more detail infra, Appellant did not timely file a motion to suppress in this case until *after* the guilt phase. Prior to trial, the State filed a motion to admit the evidence from the suicide letter and the trial court granted the motion after defense counsel indicated that he had no objection. At the beginning of the trial, defense counsel briefly mentioned getting copies of the court's orders for his client from the previous hearings where counsel had "renewed some of the previous motions." (V14:3-4). When the State introduced the testimony regarding the letter during Colonel Terry's testimony, defense counsel "renewed" his objection. (V17:545-48).

and the Second District Court of Appeal reversed and found that the seizure of the suicide note was not improper. Bolin, 693 So. 2d at 583-85. After Bolin's second trial, this Court reversed Bolin's conviction in Bolin II and remanded for the instant trial. In remanding for a new trial, this Court specifically stated that it agreed with the Second District Court of Appeal "that the letter did not have to be suppressed." Bolin II, 793 So. 2d at 898. Appellant now seeks a new trial based on an alleged error by the trial court in following the district court of appeal's, and this Court's, finding that the letter was admissible.

On February 8, 2006, prior to the instant trial, the State filed a motion to admit evidence that Bolin had attempted suicide while incarcerated at the Hillsborough County Jail, as well as a portion of his suicide note found in his cell. (V8:1538-48). Specifically, the State sought to introduce the following two sentences of the suicide letter addressed to Colonel Gary Terry:

> If there's ever anything else that you really want to know about then you'll have to ask Cheryl Jo [Coby] because she knew just about everything that I was ever a part of. She knew about this homicide which I'm charged with because it was her idea on how to dump the body out.

(V8:1538). On May 8, 2006, when the trial court addressed the State's motion to admit the evidence in the instant case, defense counsel did not object, and the trial judge granted the motion "by stipulation." (V8:1551; V13:17-18).[7]

At trial, when the State called Colonel Gary Terry to testify regarding the circumstances of finding Bolin's suicide letter addressed to him and to the two sentences contained in the letter, defense counsel stated that he was "renew[ing] the objection that was previously made in regards to the admission of the letter. There was a motion [to] suppress involved in the matter and it was denied." (V17:545-48). Defense counsel may have been referring to a motion to suppress he filed (before the same trial judge) in Bolin's separate homicide case involving victim Natalie Holley (Case No. 90-CF-11822), which was heard on September 28, 2005. (SV32:275-92). However, in the instant case, defense counsel had not filed a motion to suppress at the time of Colonel Terry's testimony and his "renewed objection."[8]

---

[7] The trial judge in the instant case, who also presided over Bolin's other Hillsborough County murder case involving victim Natalie Holley (Case No. 90-CF-11822), heard brief argument on a motion to suppress Bolin had apparently filed in the Holley case on September 28, 2005. (SV32:275-92).

[8] On November 6, 2006, *after* the jury had convicted Bolin in the instant case and prior to the start of the penalty phase, defense counsel re-filed the exact same motion to suppress which had been filed in this case prior to Bolin's second trial in

Nevertheless, the trial judge overruled defense counsel's objection given the "same rulings" and allowed Colonel Terry to testify that he found the suicide letter in Bolin's cell after his attempted suicide and the State introduced into evidence the stamped envelope addressed to Colonel Terry and the two-sentence excerpt of the letter indicating that Terry should talk to Cheryl Coby about the homicide because she knew about it as it was her idea on how to dump the body. (V17:543-48; V12:2144, 2210).

Bolin now asserts on appeal that the trial court erred in admitting this evidence, and as a preliminary matter, contends that the "law of the case" doctrine does not preclude review of this claim despite the fact that the Second District Court of Appeal rejected the exact arguments contained in Appellant's brief in an interlocutory appeal, and this Court expressed agreement with that ruling. In State v. Bolin, 693 So. 2d 583 (Fla. 2d DCA), review denied, 697 So. 2d 1215 (Fla. 1997), the Second District Court of Appeal reversed the trial court's ruling suppressing the evidence from the letter and found that Bolin did not have a reasonable expectation of privacy in his

---

1995. (V9:1692-99; SV1:1-5). The motion to suppress contained in Volume 9 at 1692-99 is an incorrect version of the motion. The complete motion to suppress is contained in Supplemental Volume 1 at 1-5.

cell and therefore the letter should not have been suppressed. In Bolin II, this Court addressed the issue of whether Bolin had voluntarily waived his spousal privilege in the suicide letter when he instructed Colonel Terry to talk to his wife Cheryl Coby about the murder. This Court found that the letter did not constitute a valid waiver of the spousal privilege and reversed Bolin's conviction and remanded for a new trial because Coby had testified to privileged spousal communications when she discussed Bolin's confession. In remanding for a new trial, this Court specifically noted that the Second District Court of Appeal correctly ruled that the letter did not have to be suppressed, Bolin II, 793 So. 2d at 898, and thus, the State could introduce this evidence from the letter at the instant trial, but could not introduce Coby's privileged spousal communications.

Because this issue has already been fully litigated in the Second District Court of Appeal, and this Court has agreed with the district court's ruling, the State submits that the "law of the case" doctrine precludes further review of this issue. See Florida Dep't of Transp. v. Juliano, 801 So. 2d 101, 106 (Fla. 2001) (recognizing that "[u]nder the law of the case doctrine, a trial court is bound to follow prior rulings of the appellate court as long as the facts on which such decision are based

continue to be the facts of the case"). Relying on Preston v. State, 444 So. 2d 939 (Fla. 1984), Appellant asserts that the "'law of the case' doctrine does not bar reconsideration in a capital case of a suppression issue already decided by a district court of appeal." Initial Brief of Appellant at 42. This Court in Preston stated that reconsideration of a district court of appeal's decision is warranted "only in exceptional circumstances and where reliance on the previous decision would result in manifest injustice." Id. at 942. In Henry v. State, 649 So. 2d 1361 (Fla. 1994), the defendant, on appeal from a retrial, attempted to relitigate a suppression issue which a majority of this Court had previously addressed in his first appeal. Applying the "law of the case" doctrine, this Court rejected his claim and noted that "all points of law which have been previously adjudicated by a majority of this Court may be reconsidered *only where a subsequent hearing or trial develops material changes in the evidence, or where exceptional circumstances exist whereby reliance upon the previous decision would result in manifest injustice*." Id. at 1364 (emphasis added).

Similar to the situation in Henry, a majority of this Court has already analyzed the circumstances surrounding the suicide letter and expressed agreement with the Second District Court of

Appeal's decision admitting the letter. As there were no additional facts developed on this issue at the present trial and no manifest injustice in admitting the letter, the trial court was bound by the "law of the case" doctrine to follow the district court of appeal's ruling and this Court's subsequent pronouncement finding the letter admissible at Bolin's trial.

Although this Court should not revisit the trial court's discretionary ruling on the admissibility of this evidence given the "law of the case" doctrine, the State submits Bolin has failed to establish any abuse of the court's discretion in admitting the two sentences from his suicide letter.[9] Appellant speculates in his brief that "[p]erhaps because this was the third trial and because the Second District Court of Appeal had already rejected the issue, there was no suppression hearing – just a summation of the facts by the defense trial counsel (not disputed by the prosecutor) and argument." Initial Brief of Appellant at 43. Contrary to this statement, there was never any "summation" of the facts by defense counsel in the instant case. As previously noted, the only time the trial court addressed this issue in the instant case prior to Bolin's trial was when

[9] A ruling on the admissibility of evidence is within the discretion of the trial court, and the trial court's ruling will not be reversed unless there has been a clear abuse of that discretion. White v. State, 817 So. 2d 799 (Fla. 2002).

defense counsel stated that he had no objection to the State's motion to admit the evidence.[10] The trial court ruled that the State's motion would be granted "by stipulation." (V13:17-18). Defense counsel never requested that the court take judicial notice of any prior proceedings and never introduced a copy of any transcripts from the suppression hearings conducted in Bolin's prior trials in this case or from any other proceedings. Now, Appellant attempts to rely on the "summary" of the evidence provided by defense counsel when he argued a motion to suppress filed in a separate case – Bolin's other Hillsborough County murder case involving victim Natalie Holley. (SV32:275-92). Rather than relying on a defense attorney's summary of a prior proceeding of which he was not even counsel, this Court should rely on the unbiased statement of facts set forth in State v. Bolin, 693 So. 2d 583 (Fla. 2d DCA 1997):

> At the suppression hearing, the following evidence was adduced. In June 1991, Bolin was awaiting trial in the Hillsborough County Jail for these two homicides. Major Terry of the Hillsborough County Sheriff's Office was the chief investigator on both homicides and was assisted by Corporal Baker. Part of the investigations took place in Ohio where Bolin was imprisoned. During the course of these investigations, Major Terry had personal contact with Bolin. Bolin was

[10] Although counsel indicated that he was not objecting to the State's motion, when Colonel Terry testified at trial, defense counsel "renewed" his objection and indicated that there was a motion to suppress involved in this matter (in the Holley case) which was denied. (V17:545-48).

not hostile toward law enforcement officers and accepted their role in the investigations. At one point, Bolin sent a request through the jail to see Major Terry. The public defender advised Major Terry that Bolin would not be permitted to speak with him.

While Bolin was in the Hillsborough County Jail in 1991, he was classified as a severe escape risk and danger to himself and others. Bolin was classified as a severe escape risk because he had been charged with murder, and because he had attempted to escape while incarcerated in Ohio. During this attempted escape, Bolin hit a detention correctional officer with a piece of metal. Additionally, during Bolin's detention in the Hillsborough County Jail, there was evidence that Bolin plotted with his girlfriend and another inmate to kidnap members of Major Terry's family, Corporal Baker's family, the sheriff's family, and a judge's family. The alleged plan was to take the family members out-of-state and hold them for ransom in exchange for Bolin's release. After discovery of the plan, Bolin was placed in a one-man cell with an officer located outside of the cell door watching Bolin twenty-four hours a day.

Whenever Bolin was removed from his cell, he was shackled, handcuffed, and his activities severely restricted. **To identify possible escape contraband, at least once or twice every eight-hour shift, jail personnel searched Bolin's cell. During the search, Bolin was removed from his cell, and an officer searched the cell, replaced Bolin's linens and bed materials, and searched all of the materials in the cell.**

At 7:00 a.m. on June 22, 1991, Lieutenant Rivers of the sheriff's office was notified that Bolin was observed in physical distress. The nurses and jail personnel continued to constantly monitor Bolin's condition. At 11:20 a.m., Lieutenant Rivers entered Bolin's cell and found Bolin lying on the floor and found a cardboard box on the commode. Bolin usually kept this box on the floor next to the bed. Lieutenant Rivers had the jail personnel take Bolin to the infirmary to receive medical attention. **While in**

> **Bolin's cell, Lieutenant Rivers observed an envelope lying on top of the box on the commode. It was face-up and addressed to Major Terry. When he picked up the envelope, a paper inside the envelope fell out. Lieutenant Rivers read the first sentence or paragraph, and, believing the letter to be a suicide note, he placed the letter back into the envelope and laid it back on the box.**
>
> **In 1991, Major Terry was a Bureau Commander in criminal investigations and, in that capacity, routinely investigated suicides or attempted suicides in the jail. Major Terry would conduct an investigation at the jail if the suicide was successful or if an attempted suicide resulted in major injuries. On June 22, 1991, in response to a notification that Bolin had attempted suicide, Major Terry went to the jail. Corporal Baker met Major Terry at the jail. The officers went to Bolin's cell. By this time Bolin had been transported to the hospital, where it had been determined that he had attempted suicide.**
>
> As soon as Major Terry was notified of the attempted suicide, he gave instructions for Bolin's cell to be sealed. When Major Terry and Corporal Baker entered Bolin's cell, they observed a cardboard box on Bolin's commode, with an envelope on top of the box. After the cell was photographed, Major Terry picked up the envelope and opened it in the presence of Corporal Baker. **The envelope had a stamp on it and it was addressed to Major Terry. At the time Major Terry picked up the letter, he believed that it might be a suicide note. In Major Terry's opinion, the contents of the letter added significant information to the homicide investigations. After reading the letter, Major Terry handed the letter to Corporal Baker for proper disposition.**

Bolin, 693 So. 2d at 584-85 (emphasis added). After setting forth these facts, the district court of appeal addressed the merits of the State's appeal and noted:

We agree with the state's argument that the trial court erred in suppressing the suicide note found in plain view in Bolin's jail cell after the attempted suicide. We conclude that the trial court erred in relying upon McCoy v. State, 639 So. 2d 163 (Fla. 1st DCA 1994), to support its position that there was no "legitimate" need to search Bolin's jail cell and that the only reason the search took place was to help bolster the state's case against him.

In McCoy, the assistant state attorney assigned to the case directed the police to perform a search of McCoy's cell at a local pretrial detention facility for the sole purpose of finding any writings by McCoy which would be incriminating. McCoy moved to suppress some writings based on his right to be free of unreasonable searches and seizures and his right to the assistance of counsel. The state responded that he was not entitled to the protections of the Fourth Amendment based on Hudson v. Palmer, 468 U.S. 517, 104 S. Ct. 3194, 82 L. Ed. 2d 393 (1984). Further, the state argued that McCoy failed to carry his burden of showing that the documents contained any privileged attorney-client information. The First District agreed that McCoy failed to carry his burden as to his Sixth Amendment right to assistance of counsel; however, the court found that Hudson did not apply because the search was not done in furtherance of any concern for institutional security and that the search was done solely to bolster the state's case. McCoy, 639 So. 2d at 167.

In Hudson, the Supreme Court held that a prison inmate did not have a reasonable expectation of privacy in his prison cell entitling him to the protection of the Fourth Amendment against unreasonable search and seizures. Hudson, 468 U.S. at 536, 104 S. Ct. at 3205. The First District in McCoy did not believe that the Hudson rule applied to pretrial detainees even though it noted that jurisdictions are in conflict on this issue.

We conclude that there is nothing in Hudson that would support the First District's determination that Hudson does not apply to pretrial detainees. See Bell

> v. Wolfish, 441 U.S. 520, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979) (court upheld a room search rule against a Fourth Amendment challenge by pretrial detainees). Florida case law supports the fact that a reasonable person in custody would not have an expectation of privacy. See State v. Smith, 641 So. 2d 849, 851 (Fla. 1994).
>
> **Further, this case can be distinguished from McCoy because the officer was called to the jail to investigate an attempted suicide by Bolin. The officer did not come to the cell simply to find evidence that would bolster its case as the assistant state attorney did in McCoy. The letter, which was addressed to Major Terry, was in plain view and was evidence of the attempted suicide. Additionally, the letter does not contain any attorney-client information which would implicate the Sixth Amendment.**
>
> . . . . We reverse the trial court's order granting Bolin's motion to suppress.

Id. at 585 (emphasis added).

As the Second District Court of Appeal noted, Bolin did not have an expectation of privacy in his jail cell entitling him to the protection of the Fourth Amendment against an unreasonable search and seizure. In Hudson v. Palmer, 468 U.S. 517, 526 (1984), the United States Supreme Court held "that society is not prepared to recognize as legitimate any subjective expectation of privacy that a prisoner might have in his prison cell and that, accordingly, the Fourth Amendment proscription against unreasonable searches does not apply within the confines of the prison cell. The recognition of privacy rights for prisoners in their individual cells simply cannot be reconciled

with the concept of incarceration and the needs and objectives of penal institutions." See also Stroud v. United States, 251 U.S. 15 (1919) (finding that prison officials' seizure of inmate's letters under established practices designed to promote the discipline of the institution did not violate defendant's constitutional rights).

The Second District Court of Appeal's decision noted that the evidence from the suppression hearing established that Bolin was classified as a severe escape risk given his prior violent escape attempt while incarcerated in Ohio. Additionally, the Hillsborough County Sheriff's Office had discovered evidence that Bolin was conspiring with other inmates and his girlfriend to kidnap family members of the law enforcement officers involved in his case. Because of his classification, jail officials constantly monitored Bolin's cell and searched all the material in his cell once or twice every eight-hour shift. When Bolin subsequently attempted suicide shortly before his first two Hillsborough County murder trials, Colonel Gary Terry, who was responsible for investigating suicides and attempted suicides at the jail, responded to Bolin's cell and observed the stamped envelope on top of a box addressed to him in plain view. Terry looked at the note because he thought it was a suicide note. As the district court of appeal correctly determined,

Bolin did not have a reasonable expectation of privacy to prevent Terry from looking at the letter addressed to him while investigating Bolin's attempted suicide.[11]

On appeal to this Court, Bolin disputes the Second District Court of Appeal's factual findings and asserts, without any support or factual development below, that the officers were not investigating a suicide attempt, but were actually seizing Bolin's letters in order to find evidence to bolster the State's case against Bolin. In making this unsubstantiated argument, Bolin inaccurately compares the instant case to Rogers v. State, 783 So. 2d 980 (Fla. 2001). In Rogers, the State Attorney's Office ordered its investigators to search a defendant's cell and seized his personal property. The trial court rejected the State's argument that Hudson v. Palmer, 468 U.S. 517 (1984), and State v. Bolin, 693 So. 2d 583 (Fla. 2d DCA 1997), allowed such a seizure and suppressed any evidence obtained from the search. Rogers, 783 So. 2d at 991. On appeal to this Court, the issue was whether the State Attorney's Office should have been

[11] Bolin contends that the Second District Court of Appeal erred in applying the "plain view" doctrine, but a review of the court's analysis establishes that, although the court utilized the terms "plain view" in describing the location of the letter, the legal basis of their decision reversing the suppression of the letter was a finding that pursuant to the Supreme Court's decision in Hudson, Bolin did not have any Fourth Amendment protection in his cell given the facts of this case.

disqualified. This Court noted that the prosecutor's actions in Rogers' case were improper and contrasted those actions to the "shakedown" search and destruction of non-contraband property in Hudson and the legitimate search and seizure of Bolin's letter when conducting an investigation into his attempted suicide. Id. at 991—92 (emphasizing that Rogers' case was *not* a case "where the search was justified by prison security concerns and where the prison official themselves deemed it necessary to search Rogers' cell").

Contrary to Bolin's unsupported attack of the district court of appeal's factual findings, the evidence clearly established that Colonel Terry was investigating Bolin's suicide attempt when he read the suicide letter in the stamped envelope addressed to him. In this letter, Bolin apologized for "checking out like this" and told Terry:

> If there's ever anything else that you really want to know about then you'll have to ask Cheryl Jo [Coby] because she knew just about everything that I was ever a part of. She knew about this homicide which I'm charged with because it was her idea on how to dump the body out.

(V12:2210; V17:546-47). Obviously, Colonel Terry had a legitimate institutional security interest in investigating Bolin's attempted suicide which resulted in his hospitalization and Colonel Terry's seizure of the suicide letter was not an

"unreasonable" seizure in violation of the Fourth Amendment given his duty to investigate attempted suicides at the jail. As the Hudson Court noted, penal officials must be free to take measures to ensure the safety of staff, prisoners, and visitors to the penal institution, and such measures would be impossible if prisoners had an expectation of privacy in their cells. Hudson, 468 U.S. at 526-28; see also State v. Smith, 641 So. 2d 849, 851 (Fla. 1994) (stating that a prisoner's Fourth Amendment proscription against unreasonable searches does not apply within the confines of the prison cell because the area of confinement "shares none of the attributes of privacy of a home, an automobile, an office, or a hotel room") (quoting Lanza v. New York, 370 U.S. 139, 143 (1962)); Florence v. Board of Chosen Freeholders of County of Burlington et al, ___ U.S. ___, 132 S. Ct. 1510 (2012) (holding that Fourth Amendment does not preclude strip searches of persons arrested for minor offenses at detention center because the searches served penal interest of discovering and deterring the smuggling of contraband).

Appellant also claims that the Second District Court of Appeal erred in finding that "the letter does not contain any attorney-client information which would implicate the Sixth Amendment." Bolin, 693 So. 2d at 585. As previously noted, however, defense counsel never objected or filed any motion to

suppress claiming a Sixth Amendment violation prior to Colonel Terry's testimony or the introduction of the evidence from the letter.[12] Defense counsel did "renew" his "objection" prior to Colonel Terry's testimony regarding the letter, but counsel was not actually renewing any objection in this case, and certainly was not clearly asserting any alleged Sixth Amendment violation. See Steinhorst v. State, 412 So. 2d 332 (Fla. 1982) (holding that "in order for an argument to be cognizable on appeal, it must be the specific contention asserted as legal ground for the objection, exception, or motion below").

Even assuming that this claim is preserved based on defense counsel's generic objection prior to Colonel Terry's testimony regarding the letter, the record supports the Second District Court of Appeal's decision that the letter does not contain any attorney-client information. The suicide letter was placed in a stamped envelope addressed to the lead investigator who had established a rapport with Bolin during the investigation. The State only introduced two sentences from the suicide letter which directed Colonel Terry to speak with Cheryl Coby regarding the homicide. Bolin clearly initiated this contact with Colonel Terry by addressing a suicide letter to him and leaving it

[12] Bolin re-filed the 1995 motion to suppress after the guilt phase. (V9:1692-99; SV1:1-5).

behind in plain view after he attempted to kill himself. Because it was Colonel Terry's responsibility and duty to investigate attempted suicides at the jail, he had a legitimate interest in seizing Bolin's suicide letter and this was not a "knowing exploitation by the State" to gain incriminating evidence as alleged by Bolin.

Finally, even if this Court were to reverse its earlier position and find that the trial court erred in admitting the evidence from the letter, any error is harmless in this case. See State v. DiGuillio, 491 So. 2d 1129 (Fla. 1986). The contents of the letter merely told Colonel Terry to speak with Cheryl Coby about the homicide because it was her idea on how to dump the body. At trial, Coby testified that she accompanied Bolin to Morris Bridge Road and observed him dumping the victim's body in a ditch, but she denied assisting Bolin in any fashion. Given the overwhelming evidence in this case linking Bolin to the murder, there is no reasonable possibility that the contents of the suicide letter contributed to the jury's verdict. As the trial judge summarized when sentencing Bolin to death:

> On November 5, 1986, Stephanie Collins was a 17 year old high school student. After school she went to Eckerd's Drug in north Tampa to speak with the assistant manager about working more hours. She was on her way to choir practice so she declined an offer to

work that night. No one saw her alive after that day.

On December 5, 1986, Stephanie Collins' decomposed body was found in a ditch off of Morris Bridge Road in Tampa. Her body was wrapped in a quilt. Inside the quilt there were sheets and a towel with a hair on it. DNA analysis revealed that the DNA on the hair matched the DNA of the Defendant, Oscar Ray Bolin.

Law enforcement also found the victim's purse near her body. The purse contained a piece of paper on which "724-BYL, 'Ray" was written. Oscar Ray Bolin was usually called "Ray." 724- BYL was the tag number of the Defendant's pickup truck.

In July 1990, detectives from the Hillsborough County Sheriff's Office located the Defendant's ex-wife, Cheryl Colby, in Indiana. Before Cheryl Colby died in 1992 she provided a videotaped statement. She testified that in November of 1986 the Defendant, her husband at the time, came to a restaurant where she had gone with friends. He was nervous and insisted on returning to their travel trailer. When they arrived at the trailer, the Defendant left her in the truck and went inside, where he remained for ten to fifteen minutes. Cheryl Colby heard the trailer door open and saw the Defendant pick up something that was wrapped in a quilt. He put the quilt into the back of the truck. She identified the quilt, sheets, and towel found with the victim's body as having been hers and the Defendant's. Cheryl Colby and the Defendant then drove to Morris Bridge Road. She saw the Defendant dump a body in a ditch. They then returned to the trailer. Ms. Colby, who was not staying in the trailer with the Defendant at that time, went into the trailer to retrieve some of her clothes. She testified that she saw blood on the curtains, the wall, the carpets, and the blinds. The floor, ceiling, cabinets and doors were wet. A butcher knife, normally kept in a drawer, was beside the sink. The wooden handle of the knife was wet.

At trial the medical examiner testified that Stephanie Collins' killer had used a "heavy blunt

> object, most probably metallic." The victim's skull was struck several times so hard that parts of her skull were reduced to powder. There were twenty-eight fragments of the victim's skull. The victim was also stabbed at least six times.

(V10:1947-48). Accordingly, even if this Court were to find that the trial court abused its discretion in admitting the two sentences from Bolin's suicide letter, this Court should find that any error was harmless and deny the instant claim.

## ISSUE III

THE TRIAL COURT PROPERLY REJECTED THE STATUTORY MITIGATOR THAT BOLIN'S ABILITY TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF THE LAW WAS SUBSTANTIALLY IMPAIRED AND HIS DEATH SENTENCE IS PROPORTIONATE.

In his third issue, Bolin claims that the trial court erred in rejecting the statutory mitigating circumstance that his ability to conform his conduct to the requirements of the law was substantially impaired and also asserts that his death sentence is disproportionate because the mitigation outweighs the single aggravating factor. Contrary to Appellant's assertions, his death sentence is proportionate and competent, substantial evidence supports the trial court's rejection of the statutory mental mitigator given Bolin's waiver of the presentation of any mitigating evidence.

Appellant repeatedly asserts that the "uncontroverted" testimony from Dr. Berland establishes the basis for this statutory mental mitigator, but fails to acknowledge that Bolin waived the presentation of *any* evidence at the penalty phase, and thus, the State did not have an opportunity to introduce evidence rebutting Dr. Berland's opinion. As this Court stated in LaMarca v. State, 785 So. 2d 1209, 1216 (Fla. 2001), "[b]ecause appellant waived the presentation of mitigating evidence, he cannot subsequently complain on appeal that the

trial court erred in declining to find mitigating circumstances that might otherwise have been found." See also Russ v. State, 73 So. 3d 178 (Fla. 2011) (noting that if a defendant elects not to submit proof of mitigating circumstances, the trial court is not required to accept potential mitigating circumstances as proven based on defense counsel's proffer of evidence). Accordingly, because Bolin knowingly and voluntarily waived the presentation of any mitigating evidence, he is now precluded from complaining that the lower court erred in rejecting his proposed statutory mental mitigating circumstance.

During the jury's deliberations at the guilt phase, defense counsel informed the trial court that, if convicted as charged, Appellant intended to waive the presentation of mitigating evidence and waive the jury's participation at the penalty phase; as he had previously done in the Pasco County case involving victim Teri Lynn Matthews. (V19:832-34; 838-45); see Bolin v. State, 869 So. 2d 1196 (Fla. 2004). After the jury's verdict finding Appellant guilty, the court conducted a colloquy with Appellant and he indicated that he was knowingly and voluntarily waving the jury's recommendation at the penalty phase. (V19:854-60).

Subsequently, at the penalty phase, defense counsel informed the trial court of the mitigation he had developed and

presented the court with a "Mitigation Notebook" for the court's consideration. (V20:867-69). Additionally, the prosecutor provided the court with potential mitigating evidence from prior proceedings. The court then conducted a colloquy with Appellant regarding his decision to waive the presentation of mitigating evidence, and found his wavier knowing and voluntary. (V20:869-72).

In rejecting the statutory mitigating circumstance that Bolin's ability to conform his conduct to the requirements of the law was substantially impaired, the trial court stated:

> The Court has reviewed the following in attempting to retrieve all information that would suggest any mitigation including: the July 12, 1991 trial transcript in case 90-11832, specifically the testimony of defense witnesses, including Defendant's mother, Mary Baughman, Defendants sister, Sherry Jauregui, and Robert M. Berland, PhD.; Defendant's Sentencing Memorandum from the Pasco Co. case, dated December 4, 2001; Sentencing Order rendered on December 28, 2001 in the Pasco County case; Pre-Sentence Investigation Reports dated November 2001 (Pasco) and January 2007 (Hillsborough), and objections thereto prepared by Rosalie Bolin Investigations on December 11, 2001; deposition of Rosalie Bolin, Defendant's wife, dated August 30, 2001; deposition of Robert M. Berland, Ph.D. dated October 6, 1992; October 11, 1991 penalty phase transcript, specifically the testimony of Robert M. Berland, Ph.D.; and Dr. Berland's notes, outlines and other data. The Court also considered the reports submitted by Jonathan Burdette, M.D. and Frank Wood, Ph.D., the additional information presented at the Spencer hearing conducted on October 29, 2007, and what the defense submitted on November 20, 2007 as the "Mitigation Notebook Medical Records."

STATUTORY MITIGATING FACTORS

The Court has considered all statutory mitigators. After a thorough examination of the records submitted on behalf of the Defendant and further review of all background information the Court could locate regarding any possible mitigation, the Court has found the following . . .:

. . .

> 2) The capacity of the Defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.

Dr. Berland previously testified, "[H]e did appear to appreciate the criminality of his conduct at the time. . . . [T]here was a substantial impairment in his ability to conform his conduct to the requirements of law even though he might appreciate the criminality of what he was doing." (October 11, 1991 transcript, pp. 998, 999). Dr. Berland further testified as follows:

> [THE STATE]: And you can't really state the degree of impairment, whether it be a significant or diminished?
>
> [DR. BERLAND]: No, I really have no way of doing that unfortunately.

(October 6, 1992 transcript, p. 62).

. . .

> In terms of it being a direct causative factor, the evidence that I have suggests that it was not a direct causal factor in the sense of hearing a voice that told him to do it or anything like that.

(October 11, 1991 transcript, pp. 998, 999).

> [THE STATE]: And he knew what he was doing?
>
> [DR. BERLAND]: The evidence that I have suggests that he did.

(October 11, 1991 transcript, p. 1003).

> The Defendant never admitted any involvement in the murder; he simply acknowledged "disposing of the body."
>
> On the day he murdered Stephanie Collins, the Defendant was careful not to use his own truck to drive Ms. Collins from Eckerd's. He deliberately involved his wife in disposing of the victim. He washed down the interior of his trailer and dumped the victim's body in an area where it was not easily seen.
>
> The Defendant is intelligent. He has an IQ of 99. He clearly disliked and distrusted women. He was involved in brutal attacks on women at least three times in 1986 and 1987.
>
> The Court is not reasonably convinced that this factor exists and therefore has given it no weight.

(V10:1951-54).

Even if this Court were to address the merits of Appellant's claim despite his waiver, the State submits that the trial court acted within its discretion in rejecting the statutory mental mitigator based on the evidence in this case. The test on appeal for a trial court's rejection of a mitigator is whether the record contains competent, substantial evidence to support the trial court's rejection of the mitigating circumstance. Reynolds v. State, 934 So. 2d 1128, 1159 (Fla. 2006). A trial court's findings on mitigating factors are

reviewed for an abuse of discretion. Foster v. State, 679 So. 2d 747, 755 (Fla. 1996). As such, the question presented in the instant issue is whether the trial court abused its discretion in rejecting the statutory mental mitigator that Bolin's ability to conform his conduct to the requirements of the law was substantially impaired. In the instant case, the record supports the trial court's rejection of this mitigator.

At Bolin's October 11, 1991, sentencing hearing in this case after his first trial, Dr. Berland opined that both statutory mental mitigating factors applied in this case. He noted that Bolin had a psychotic disorder including hallucinations and delusion with mood disturbance; organic personality syndrome and organic affective syndrome caused by brain damage; and antisocial personality disorder. (SV4:787-96). Dr. Berland testified that Bolin's capacity to appreciate the criminality of his conduct was not substantially impaired, but opined that he had a substantial impairment in his ability to conform his conduct to the requirements of the law. (SV4:795-96). Dr. Berland acknowledged on cross-examination that Bolin would not discuss the details of the murder (other than admitting to "disposing of the victim's body"), and agreed that such a discussion would be the best way to determine whether any of his mental illnesses were affecting him at the time of the

crime. (SV4:806-11). Additionally, as the trial court noted, the evidence from the 2007 PET/CT scans testing established that there was no significant brain dysfunction. (SV9:1577; SV10:1703).

In addressing the statutory mitigating factors proffered by defense counsel, the trial court extensively discussed Dr. Berland's prior testimony in addressing the proposed statutory mental mitigators. The trial judge utilized Dr. Berland's opinions to find that Bolin suffered from mental or emotional disturbances at the time of the offense and gave this nonstatutory mitigator "some weight." (V10:1952-53). In rejecting the proposed "ability to conform" mental mitigator, the court noted that the facts of this case refuted the existence of this mitigator:

> The Defendant never admitted any involvement in the murder; he simply acknowledged "disposing of the body."
>
> On the day he murdered Stephanie Collins, the Defendant was careful not to use his own truck to drive Ms. Collins from Eckerd's. He deliberately involved his wife in disposing of the victim. He washed down the interior of his trailer and dumped the victim's body in an area where it was not easily seen.
>
> The Defendant is intelligent. He has an IQ of 99. He clearly disliked and distrusted women. He was involved in brutal attacks on women at least three times in 1986 and 1987.

(V10:1954). As this Court noted in Ault v. State, 53 So. 3d 175,

188 (Fla. 2010), a trial court's rejection of this mitigating circumstance will be upheld when a defendant's actions during and after the crime indicate that he was aware of the criminality of his conduct and could conform his conduct if so desired. See also Nelson v. State, 850 So. 2d 514, 531 (Fla. 2003) (upholding the trial court's ruling rejecting the "ability to conform" mitigator where the defendant's actions of removing the victim from her home after sexually assaulting her, driving to two separate orange groves before killing her, and lying to police about the crime are purposeful actions "indicative of someone who knew those acts were wrong and who could conform his conduct to the law if he so desired"); Provenzano v. State, 497 So. 2d 1177, 1184 (Fla. 1986) (stating that Provenzano's actions on the day of the murder did not support the mitigator that the defendant's capacity to conform his conduct to the requirements of the law was substantially impaired because he concealed the weapons he carried, he put change in the parking meter, and took his knapsack out to his car instead of allowing it to be searched because it would have exposed his illegal possession of weapons).

As the trial judge noted when rejecting this mitigator, Bolin was careful to use a different vehicle when he took the victim from the Eckerd's parking lot. He took her to his trailer

and violently murdered her and washed down the interior of the trailer. Bolin then deliberately involved his wife in disposing of the victim's body in an area where it would not be readily discovered. Bolin had a severe dislike of women and his murder of Stephanie Collins was just one of a number of violent attacks on women in the period of time between 1986-1987. Intelligence testing indicated that Bolin had a 99 IQ and the evidence from the 2007 PET/CT scans did not establish any significant brain dysfunction. Because the evidence from the trial refuted Dr. Berland's opinion that Bolin's ability to conform his conduct to the requirements of the law was substantially impaired, the trial court properly rejected this mitigator. See Foster v. State, 679 So. 2d 747, 755 (Fla. 1996) (finding that even uncontroverted expert opinion testimony may be rejected if that testimony cannot be squared with the other evidence in the case).

Finally, even if the trial court erred in rejecting this mitigator, the error is harmless and would not have affected the judge's sentence. The court thoroughly considered all the proffered mitigation in this case, including Dr. Berland's opinions, and found numerous mitigating factors: (1) Bolin was under the influence of mental or emotional disturbances (some weight); the defendant's age (24) at the time of the murder

(little weight); the defendant suffered from the effects of his mother's alcoholism and his own substance abuse (little weight); the defendant was abused as a child (some weight); poor and unstable childhood (little weight); sporadic and minimal education, obtained a GED while incarcerated, developed machinery skills, saved the life of another person, gainfully employed at time of murder, appropriate courtroom behavior, adopted to incarceration, maintains relationship with wife, and physical and mental medical health history indicates several problems (little weight). (V10:1951-56). Despite finding these mitigating factors, the court found that the nature of Bolin's prior capital felony conviction and convictions for violent felonies were so egregious that it "far outweighed" the mitigation.[13] Thus, even if this Court determines that the trial court erred in rejecting the "ability to conform" mitigator, it would not have affected the trial judge's sentence given the egregiousness of the single aggravating factor and the circumstances of this murder when weighed against the

[13] The State introduced evidence at the penalty phase surrounding Bolin's conviction and sentence of death for the murder of Teri Lynn Matthews, see Bolin v. State, 869 So. 2d 1196 (Fla. 2004), kidnapping and rape in Ohio, and felonious assault and escape while incarcerated in Ohio.

mitigation.[14]

Additionally, contrary to Appellant's assertion that his death sentence is disproportionate, the State submits that his sentence in this single aggravator case is proportionate when considering the significance of this aggravating circumstance and the slight mitigation found by the trial court. This Court has previously stated that its proportionality review does not involve a recounting of aggravating factors versus mitigating circumstances but, rather, compares the case to similar defendants, facts and sentences. Tillman v. State, 591 So. 2d 167 (Fla. 1991). In conducting the proportionality review, this Court compares the case under review to others to determine if the crime falls within the category of both (1) the most aggravated, and (2) the least mitigated of murders. Almeida v. State, 748 So. 2d 922, 933 (Fla. 1999). This Court's function is not to reweigh the aggravators and mitigators, but to accept the judge's weighing of the evidence. Bates v. State, 750 So. 2d 6 (Fla. 1999).

While it is true this Court has required there to be little

[14] The trial judge in this case rejected the HAC aggravator despite the fact that the victim was stabbed numerous times and her skull crushed with a blunt object, rejected the CCP aggravator, and rejected the aggravator that the murder occurred during the course of or attempt to commit kidnapping. (V10:1949-51).

or no mitigation for a case to withstand proportionality review with a single aggravator, it also has stressed that it is the weight of the aggravation and mitigation that is of critical importance. See Windom v. State, 656 So. 2d 432, 440 (Fla. 1995) (finding in single aggravator case, the number of aggravating and mitigating circumstances is not critical, but rather the weight given them). In the instant case, the trial judge noted that "[a]lthough there is only one aggravating factor, both the nature of the Defendant's crimes and the underlying facts of those crimes are so egregious that the one aggravating factor far outweighs the mitigating factors in this case." (V10:1956).

This Court has previously stated that the prior violent felony aggravator is one of the "most weighty" aggravating circumstances set forth in Florida's statutory sentencing scheme. See Bevel v. State, 983 So. 2d 505, 524 (Fla. 2008); Sireci v. Moore, 825 So. 2d 882, 887 (Fla. 2002). This aggravator, when compared to the slight mitigation noted above, establishes that Appellant's death sentence is proportionate. See also Bolin v. State, 869 So. 2d 1196, 1204 (Fla. 2004) (affirming Bolin's death sentence for the murder of Teri Lynn Matthews, an extremely factually similar murder, on proportionality grounds). Although the trial court found the statutory mitigating circumstance of Appellant's age and other

nonstatutory mitigators, a review of the substance of the court's findings supports the conclusion that this was very weak mitigation.

In LaMarca v. State, 785 So. 2d 1209, 1216-17 (Fla. 2001), this Court discussed single aggravator cases and noted that it has vacated death sentences in single aggravator cases where there is substantial mitigation or when the single aggravating circumstance is weak. As in LaMarca, the instant case does not fall into either of these categories. Here, the single aggravator of Bolin's prior violent felony convictions is very weighty. Bolin's prior convictions included convictions for the first degree murder of Teri Lynn Matthews; rape and kidnapping while armed with a handgun in Ohio; and an assault and escape attempt while incarcerated in Ohio. Furthermore, like LaMarca, the mitigation in this case is very weak. See also Songer v. State, 544 So. 2d 1010, 1011 (Fla. 1989) ("We have in the past affirmed death sentences that were supported by one aggravating factor, but those cases involved either nothing or very little in mitigation."); Burns v. State, 699 So. 2d 646, 648-49 (Fla. 1997) (one aggravator, comprised of three merged factors, supported death sentence when compared to two statutory mitigators of reduced weight and three nonstatutory mitigators); Ferrell v. State, 680 So. 2d 390 (Fla. 1996) (upholding death

sentence in single aggravator case where prior violent felony was weighty and mitigation was assigned little weight by trial court); Cardona v. State, 641 So. 2d 361 (Fla. 1994) (death sentence upheld on proportionality grounds where single aggravator of HAC given "enormous" weight versus two statutory mental mitigators), reversed on other grounds, 826 So. 2d 968 (Fla. 2002). As Appellant's case falls into the category of cases where there is a single weighty aggravator versus very little in mitigation, this Court should affirm his death sentence on proportionality grounds.

## CONCLUSION

In conclusion, Appellee respectfully requests that this Honorable Court affirm Appellant's judgment and conviction.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Deborah K. Brueckheimer, Assistant Public Defender, Public Defender's Office, P.O. Box 9000 – Drawer PD, Bartow, Florida 33831-9000, on this 24th day of April, 2012.

## CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

Respectfully submitted,

PAMELA JO BONDI
ATTORNEY GENERAL

_____

STEPHEN D. AKE
ASSISTANT ATTORNEY GENERAL
Florida Bar No. 14087
Concourse Center 4
3507 East Frontage Road, Suite 200
Tampa, Florida 33607-7013
Telephone: (813) 287-7910
Facsimile: (813) 281-5501
Stephen.Ake@myfloridalegal.com

COUNSEL FOR APPELLEE