IN THE SUPREME COURT OF FLORIDA

RAYMOND BRIGHT,

Appellant,

v. **CASE NO.: SC09-2164**

STATE OF FLORIDA,

Appellee.
_____/

ON APPEAL FROM THE CIRCUIT COURT
OF THE FOURTH JUDICIAL CIRCUIT,
IN AND FOR DUVAL COUNTY, FLORIDA

INITIAL BRIEF OF APPELLANT

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INITIAL BRIEF OF APPELLANT

PRELIMINARY STATEMENT

The record on appeal consists of eleven volumes. Volumes 1 through 7 contain the lower court's records, pleadings and transcripts of court proceedings including the penalty phase, the Spencer hearing and the sentencing. References to these volumes will be with the prefix "R" followed by the volume and page numbers. Volumes 8 through 11 contain the transcript of the jury trial beginning with jury selection through the guilt phase. These volumes will be referenced with the prefix "T."

STATEMENT OF THE CASE AND FACTS

Procedural Progress Of The Case

A Duval County grand jury indicted Raymond Bright on two counts of first degree murder on April 24, 2008. (R1:19-20) The indictment replaced an information the State previously filed on March 7, 2008, charging two counts of second degree murder. (R1:8-9) Allegations in the indictment were that Bright killed Derrick King (Count I) and Randall Brown (Count II) between February 18 and 19, 2008, by hitting them with a hammer. (R1:19-20) Bright proceeded to a jury trial. (T8:1 – T11:795) The jury found Bright guilty as charged on both counts of the indictment on August 26, 2009. (R2:333-336; T11:788-789) On September 1, 2009, the penalty phase of the trial was held before the same jury. (R5:812-R6:1039) The jury recommended death sentences for each murder by a vote of 8 to 4. (R3: 520-521; R6:1032) Additional evidence was presented at a Spencer hearing held on October 6th (R5:743-811) and October 15, 2009.(R7:1179-1208) A pre-sentence investigation report was submitted to the court. (R4:2) The State and the Defense filed sentencing memoranda. (R4:578-609, 680-700) The courts accepted an affidavit of an additional defense witness offered on November 6, 2009. (R4:2, 701-703)

On November 19, 2009, Circuit Judge Charles W. Arnold adjudged Bright guilty and sentenced him to death on each of the two murder

counts. (R4:710-732; R6:1053-1059) The court entered a single sentencing order covering the findings for the two death sentences. (R4:710-732)(Appendix) As aggravating circumstances, the court found: (1) Bright had a previous conviction for a capital or felony involving violence pursuant to Section 921.141(5)(b) Florida Statutes based on a robbery conviction in 1990. (given great weight)(R4:714-715); (2) Bright had a previous conviction for a capital or felony involving violence pursuant to Section 921.141(5)(b) Florida Statutes based contemporaneous murder convictions in this case. (given great weight)(R4:715); and (3) each of the homicides was especially heinous, atrocious or cruel pursuant to Section 921.141(5)(h) Florida Statutes. (given great weight) (R4:715-717) In mitigation, the court found one statutory mitigating circumstance pursuant to Section 921.141 (6)(b) Florida Statute that the capital felony was committed while Bright was under the influence of extreme mental or emotional disturbance. (given some weight).(R4:718-719) As non-statutory mitigation, the court found as follows:

1. Bright has a long and well documented history of drug abuse (given some weight). (R4:720-721)

2. Bright repeatedly sought help for his problems (given some weight).(R4:721)

3. Bright's capacity to appreciate the criminality of his conduct, or to conform his conduct to the requirements of the law was substantially impaired (not proven, given no weight). (R4:721-722)

4. Bright is remorseful for his actions (little weight). (R4:722-723)

5. Bright provided information that helped the resolution of the case (not proven, given no weight). (R4:723)

6. Bright was afraid of the victims and took steps to get them out of his house (given little weight). (R4:723-724)

7. Bright served ten years in the United States Marine Corps(USMC) with two honorable discharges and a third discharge under honorable circumstances (given considerable weight). (R4:724)

8. Bright has skills as a mechanic and served as an aviation mechanic in the military (given some weight). (R4:724-725)

9. Bright's actions as a USMC aviation mechanic most likely saved lives (some weight). (R4:725)

10. Bright mentored young mechanics (some weight). (R4:725)

11. Bright was a good employee (some weight). (R4:725-726)

12. Bright was a loving, caring, and giving boyfriend (slight weight). (R4:726)

13. Bright is a good brother (some weight). (R4:726)

14. Bright is a good father and a sentence of death would have serious negative impact on others (slight weight). (R4:727)

15. Bright shares love and support with his family (slight weight). (R4:727)

16. Bright has attempted to have a positive influence on family members, despite his incarceration (not proven, given no weight). (R4:727-728)

17. Bright was a good friend (slight weight). (R4:728)

18. Bright has been an exceptional inmate (some weight).(R4:728)

19. Bright exhibited good and mannerly behavior throughout the court proceedings (slight weight). (R4:728-729)

20. Bright maintained gainful employment (considerable weight). (R4:729)

21. Bright is amenable to rehabilitation and a productive life in prison (slight weight). (R4:729)

22. Bright bonded with another inmate and taught him to read (slight weight). (R4:729)

Bright filed his notice of appeal to this Court on November 11, 2009. (R6:1040)

The Prosecution's Case

On Monday, February 18, 2008, Carrie Brown returned to her home in Jacksonville from a weekend trip. (T9:316317) She allowed her 16-year-old son, Randall Brown, to use the rental car that evening. (T9:318) He left between 9:00 and 9:30 p.m. (T9:318) Carrie Brown spoke with Randall by cell phone around 11:00 p.m.,

and he said he was coming home. (T9:319) Randall did not come home. (T9:319) Her efforts to find him were unsuccessful, and she called his best friend, Michael Majors, the next morning. (T9:320)

Michael Majors had been at Raymond Bright's house with Randall Brown and Derrick King during the evening of February 18, 2008. (T9:322-327) Majors usually went to the house to visit Lavelle Copeland, but he was in jail. (T9:327-328) Copeland and King lived at the house with Raymond Bright. (T9:326-327) When Majors arrived, King and Bright were sitting at the table playing chess. (T9:327) Majors made a trip to McDonald's, and when he returned, Randall Brown had arrived. (T9:328) Bright appeared to have been smoking crack since he had a stem in front of him. (T9:329) King was sitting on the couch. (T3:329) Although Majors had been to the house a few times to visit Copeland, this was the first time he had been there when Bright was also at home. (T9:329-330) Majors and Brown left the house around 8:00 p.m. (T9:330) Brown was dropped at his house. (T9:331) Majors usually called Brown every morning, but he could not reach him the next morning. (T9:331-332) Majors spoke to Brown's mother and learned that she was looking for him. (T9:332) Majors had his cousin drive him to Bright's house. (T9:332) The rental car was outside. (T3:333) When no one answered the door, Majors went inside the house through a bathroom window.

(T9:332-334) Inside, he picked up a candleholder to use as protection since he did not know what to expect. (T9:335) He went through the house, and found Brown and King dead in the living room. (T9:335-336) Majors called the police and Brown's mother. (T9:337-341)

Officer Christopher Robinson arrived at the house at about 1:50 p.m. (T9:346-347) He entered the residence through an open back door. (T9:348) There was blood on a wall, and he found one body on the floor and a second one in a chair. (T9:348-350) Rescue personnel arrived and determined that both individuals inside were dead. (T9:349-350)

Dr. Margarita Arruza performed an autopsy on Randall Brown. (T9:366, 368-385) She concluded Brown's death was a homicide and caused by blunt head trauma. (T9:368) Most of the injuries were to the top and side of the head. (T9:369) Arruza found fourteen injuries as well as brain injuries caused by skull fractures. (T9:370-377, 378-382) There were also abrasions and contusions to the arms and hands. (T9:370-377) The injuries to the head were consistent with the blows to the head with a hammer. (T9:382) The wounds to the arms and hands could have been defensive wounds, but they also could have been caused if the victim was the aggressor and he received them as his attack was repelled. (T9:381-382, 386-388) The wounds were consistent with a struggle. (T9:384, 386-388)

Drug and alcohol screening determined that Brown did not have alcohol or drugs in his system. (T9:384-385)

Dr. Eugene Scheuerman performed the autopsy on Derrick King. (T9:390, 393-T10:419) Scheuerman concluded King's death was homicide due to blunt head trauma.(T9:393) The examination revealed 38 wounds all over the head with most injuries to the front and left side. (T9:394-T10:406) The fatal wounds included fractures to the skull. (T10:410-411) These wounds could have been inflicted with a hammer. (T10:412-414) Additionally, there were 20 wounds to the hands and arms. (T10:406-409, 415) The hand and arm wounds were consistent with defensive wounds, but they could have occurred for different reasons. (T10:409) Scheuerman testified the wounds to the arms, hands and abrasions to the knees were consistent with a struggle. (T10:423-424) Toxicology testing showed no alcohol, but traces of cocaine and marijuana were present in King's system. (T10:415-416, 419-420) Because of the rate that cocaine metabolizes, Scheuerman concluded the cocaine use would have been recent to the time of death. (T10:416)

Crime scene investigators processed the house and yard including photographing and collecting various items as possible evidence. (T10:435-508) Among the items found in the yard were an AK-47 assault rifle and a Smith & Wesson 9mm pistol with a loaded magazine. (T10:443-446) These firearms were covered in the heavy

layer of leaves on the property. (T10:443-446) A hammer, a pair of mechanic's gloves, a candleholder and some rope were found in the yard. (T10:441-447,494-496) Inside the house, investigators photographed the bodies, the blood found around the bodies, on various items and on the wall. (T10: 448-457, 463-470) The area was processed for possible fingerprints and DNA evidence. (T10:448-457) No latent fingerprints suitable for comparison were recovered. (T509-514) The State and Defense stipulated that suspected blood on the hammer contained a DNA profile mixture consistent with the DNA of Brown and King. (R2:340; T109:508) A stipulation was also entered that the gloves did not have any blood on them. (R2:338; T11:639) Among items found in the house were a pair of shoes with some marijuana and money inside.(T10:457-458; T11:652) On a table were some money, a scale and a piece of a wire hanger typically used to pack drugs into a pipe or bong. (T10:460, 501) A bullet projectile was found in the lower-left front door frame 15 inches from the floor. (T10: 471-472, 502-503) On the carpet in the room was an area of suspected gunshot residue. (T10: 502) Additionally, there was a bullet hole through a chair 9 ½ inches from the floor. (T10:503) A possible bullet trajectory was established from the carpet area through the chair and into the door frame. (T10: 502-503) The trajectory would have the firearm

being fired from a location just inches above the floor. (T10:484, 502-503)

Bridget Bright was married to Raymond Bright for ten years, separating in December of 2005, and finally divorcing in January 2007. (T10:514- 516) During the two months preceding Raymond's arrest, the two of them spoke more frequently. (T10:530) The weekend before Raymond's arrest, Bridget had been to Raymond's house to move a washer and dryer. (T10:522) She saw a person she knew as Alexander King, and she said he looked "scary." (T10:522) On the morning of Tuesday, February 19, 2008, Raymond called Bridget and asked her pick him up at a church not far from his house. (T10:517) Meeting him at a location away from his house was not unusual. (T10:521) She met Raymond at 7:30 a.m. and drove him to her residence. (T10:518) Raymond had blood on his clothes, and Bridget threw the clothes away. (T10:518-519) Bridget drove Raymond to Asbell Truck Center where he used to work. (T10:519) At 1:45 a.m. the next morning, Wednesday, February 20th, the police came to Bridget's house and arrested Raymond. (T10:519-520, 574-577) Bridget stated that she and Raymond had already arranged to meet an attorney the next morning to go to the police. (T10:523-526) Detective Dan Janson participated in the arrest, and the next day, he made an unsuccessful effort to located the blood stained clothes. (T10:541-549)

Benjamin Lundy worked with Raymond Bright at Asbell Truck Center, a truck dealership. (T10:558-558) Lundy was the service writer and Bright was a mechanic and shop foreman. (T10:558-559, 566) They had been friends since Bright started working there in 2003. (T10:565-566) Bright was excellent at his job, and Lundy described him as an outstanding person who was always ready to help someone. (T10:566)

Bright stopped working at the dealership in January 2008. (T10:559) On February 19, 2008, Bright came to the dealership to talk to Lundy. (T10:559-560) His ex-wife, Bridget Bright, drove him there. (T10:560) Lundy related what he recalled of the conversation. (T10:561) Bright told Lundy that he had "screwed up," and he thought he had killed two individuals. (T10:561) Two men had been renting his house from him and they were doing some improper things in the house. (T10:561) Bright awoke in the middle of the night to get a drink, and he saw that the two were in the living room and the television was playing. (T10:561) They were asleep, one was on the couch and the other on a chair. (T10:562) Bright walked into the room, and one of them awoke and accused him of stealing their drugs. (T10:561-562) They argued, and the second person awoke, as someone pulled a gun. (T10:563) During the struggle, the gun discharged, and Bright ended up with the gun. (T10:563) He tried to use the gun, but it would not fire.

(T10:563) Bright tried to leave the house, but he tripped, and fell near a hammer that had been left out. (T10:563) When he stood up, one of the men managed to grab the gun back from Bright.(T10:563) Bright hit him with the hammer. (T10:563) He also hit the second man when he tried to get the gun. (T10:563) Bright was unclear what happened, but he knew he hit the men when they moved. (T10:563) Bright also realized that he was covered with blood. (T10:564) Bright asked Lundy for advice, and he said that he had made arrangements to see a lawyer the next day to turn himself in to law enforcement. (T10:567, 572) Apparently, Bright was arrested before he could see the lawyer. (T10:567) Since the whole event seemed out of character for Bright, Lundy was unsure about Bright's story. (T10:566-567) He later drove by Bright's house and saw the police cars. (T10:564-565, 571)

Mickey Graham was in jail on drug charges when Raymond Bright arrived at the jail after his arrest. (T10:580-581, 591) They already knew each other and resumed a friendship in jail. (T10:580-581) Before testifying in this case, Graham was also arrested on a robbery charge. (T10:590) During conversations over time, Bright told Graham about his charges and the events surrounding the homicides. (T10:581) Bright returned home from dinner and began drinking liquor. (T10:582) He got up for more ice for his drink

about 2:00 a.m. (T10:582) There were two young men staying at his house, and Bright referred to them as the younger one and the older one. (T10:582) The older one was on the couch sleeping and the younger one was sitting in the chair. (T10:582) The younger one frequently had the gun in his hand waving it around. (T10:583) The older one awoke, saw the younger one with the gun and took it away from him. (T10:583-584) He told the younger one not to wave the gun around. (T10:584) Bright had felt threatened because these young men had guns in the house. (T10:598) He also wanted them out of his house because they were cooking crack and selling it out of his house. (T10:599-600) As the older one took possession of the gun, Bright saw it as a chance to take the gun from the older one. (T10:584) As they struggled over the gun, Bright placed his hand over the slide of the pistol to keep the gun from being fired. (T10:585) However, the gun discharged. (T10:585) Apparently startled, the older one released the gun, and Bright took possession of the firearm. (T10:585) Bright tried to fire the pistol, but it did not fire. (T10:585) He dropped the gun and started to run out of the house. (T10:586) He tripped and fell. (T10:586) There was a hammer available and he picked it up. (T10:586) When he got up, Bright started swinging the hammer. (T10:586) He backed the older one back to the living room toward the couch. (T10:586) The younger one was trying to pick the gun

up from the floor. (T10:587) Bright hit the younger one with the hammer. (T10:587) Bright then noticed the older one, now on the couch, starting to reach under the couch where Bright knew there was an AK-47. (T10:587) He again struck the older one with the hammer. (T10:587) After this confrontation, Bright sat down because he thought he was having a heart attack. (T10:588) He remembered hearing the breathing sounds, and then silence. (T10:589) Bright said that he "lost it" when he began hitting the young men. (T10:589) Bright threw the pistol and rifle out through a bathroom window, and he buried the hammer in the backyard. (T10:589) Graham admitted that he went to his lawyer with this information to seek favorable treatment in his pending cases. (T10:593-596)

David Warniment, a firearms expert with FDLE, testified about his examination of the 9mm pistol recovered as evidence in this case. (T11:610- 630) Items submitted to him for evaluation included a 9mm Smith & Wesson semiautomatic pistol, a fired 9mm bullet, a fired 9mm cartridge case, 16 unfired 9mm cartridges and a piece of carpet. (T11:614-615) The firearm was in normal working condition, and the unfired cartridges were from the pistol's magazine. (T11:615-619) Although the pistol worked properly and did not misfire during testing, Warniment did state that a misfire could occur if someone held the pistol on the slide mechanism at

the time of a shot and thereby prevented the slide from operating to eject the fired casing and reload an unfired cartridge. (T11:628-629) The slide would have to be operated manually to clear the fired cartridge casing and reload a new cartridge before the pistol would again fire. (T11:629) A comparison of the fired cartridge casing submitted to a test fired casing resulted in Warniment's conclusion that the casing was fired from the 9mm pistol. (T11:620-621) After an examination of the fired bullet projectile submitted, Warniment concluded that the bullet was fired from the 9mm pistol. (T11:621-622) Warniment found gunshot residue on the section of carpet submitted. (T11:622-625) He also concluded, after testing the firearm, that the 9mm pistol would have been within three to six inches away from the carpet surface at the time fired in order to leave the gunshot residue. (T11:625-627) Additionally, he testified that the person shooting the firearm would not necessarily have gunshot residue his hands. (T11:627) The State and the Defense stipulated that gunshot residue was not found on the hands of Randall Brown or Derrick King. (T11:610-611)

The Defense Case

Janice Jones, Raymond Bright's younger sister, testified that Bright was 55 years-old at the time of trial. (T11:645) She was

also present when Bright enlisted in the United States Marine Corps. (T11:645)

Michael Bossen is an attorney in private practice in Jacksonville. (T11:649-650) He testified that Raymond and Bridget Bright contacted him on February 19, 2008. (T11:650)

Penalty Phase

At the penalty phase of the trial, the State presented Sergeant Robert Bell of the Pensacola Police Department who testified to observing a robbery in 1989, and arresting Bright for the offense. (R5:826-831) The defense stipulated that Bright was convicted of robbery on January 2, 1990, in Pensacola. (R5:831) A total of six victim impact witnesses testified. (R5:832-853) Randall Brown's mother, aunt and sister read prepared statements. (R5:832, 835, 839) Derrick King's grandmother, cousin and sister presented prepared statements. (R5:843, 847, 849) The prosecution presented no additional witnesses. (R5:853)

Several witnesses testified for the defense. (R5:854- R6:955) Employers, co-workers and friends testified about Bright's work history and character. Information about Bright's nine years of exemplary service in the Marines was presented. A former girlfriend and family members testified about his kind generous nature and his long battle with alcohol and drug addiction.

Lester Baker worked as the maintenance supervisor for a mattress manufacturer in Pensacola in the 1990's. (R5:857-859) He hired Raymond Bright as one of six mechanics on staff to work on diesel and gasoline powered trucks and equipment. (R5:859-862) At that time, the operation worked six and half days a week, typically fifty to sixty hours. (R5:862) Bright worked there about six months, he left, and he was rehired for another four months. (R5:861) Bright was not fired. (R5:862) Baker described Bright as an excellent employee and mechanic. (R5:861-862)

Benjamin Joseph Lundy had been a co-worker and friend of Bright's since Lundy began working at Abbell Truck Center in 2003. (R5:864-866) Lundy described Bright as a dedicated employee, and someone who was always ready to help others. (R5:867-868) Bright was an experienced, excellent mechanic who mentored the younger mechanics on staff. (R5: 867) The company promoted Bright to shop foreman. (R5:867) Due to time constraints, Lundy and Bright did not spend a lot of time together outside of work, but Lundy helped Bright move into the house he bought and visited there a few times. (T5:868-869) In November 2007, Lundy began to suspect Bright had an alcohol problem. (R5:869-870 Bright became more stressed at work, and he failed to come to work on a couple of days. (R5:87) Absence from work was completely out of character for Bright.(R5:87) Lundy talked to Bright, and he confided that he was

drinking. (R5:870) On one occasion, Lundy went to Bright's house to check on him, and when no one answered the door, Lundy called the police to check on Bright's welfare. (R5:870-871) Later, Bright assured Lundy that he was not in trouble. (R5:871) Bright never came to work under the influence of alcohol or drugs. (T5:871) Bright was terminated from his employment in January 2008. (R5:872)

Brian Williams was a diesel mechanic with Absell Truck Center at the time Bright came to work at the center. (R5:906-907) Bright was an excellent mechanic. (R5:908-909) When Williams left the center, Bright was promoted to shop foreman. (R5:909-910) Bright was particularly good at mentoring younger mechanics since he had great deal of patience and was a good leader. (R5:910-911) In addition to a work relationship, Williams and Bright were also friends. (R5:912) They went fishing together, Bright spent Christmas holidays at Williams' house, and Williams sought out advice from Bright on different matters. (R5:911-913) Although Bright never came to work under the influence of alcohol or drugs, Williams learned as a social friend that Bright had a substance abuse problem. (R5:913) This became apparent in November 2007. (R5:913) Bright's ex-wife called Williams asking him to check on Bright. (R5:913-914) Williams went to Bright's house and found him intoxicated. (R5:914-915) Bright was threatening to kill himself. (R5:915) Williams called Bridget Bright and Joe Lundy. (R5:915)

Williams then called the police, and the police came to the house to talk to Bright. (R5:916)

Maxine Singleton, Bright's former girlfriend, testified. (R5:918) She stated, "Oh boy, Ray was the best thing that ever happened to me." (T5:918-919) They met when they became neighbors in 2005. (R5:925) He was a kind, caring and generous man, not only to her, but also to others. (R5:919-925) Singleton described the wonderful relationship she had with Bright and presented some photographic memories of those times. (R5:919-925) These included family visits, Bright working on the house he had purchased, and different special times Singleton and Bright shared. (R5:919-925) Singleton described Bright's love for his work. (R5:925) During October and November of 2008, Singleton noticed a change in Bright's behavior. (R5:925) He became depressed, and Singleton thought he may have begun to drink. (R5:925-926) There were times he did not get out of bed. (R5;926) She knew he was a recovering alcoholic, and he had not had a drink for six years when they met. (R5:925) Later, she learned he was also using crack cocaine. (R5:926) Because she had a brother who was a crack addict, she knew the problems it can cause. (R5:926-927) Bright had reached out to her and wanted her to move into the house with him, but Singleton knew she could not. (R5:927) Singleton and Bright's ex-wife, Bridget Bright, were working together to get Bright to the VA clinic for

help. (R5:928-929) Bright told her he wanted help. (R5:930) Unfortunately, the day Bright was to go to the clinic, he failed to answer the phone calls from Singleton. (R5:929-930) She went to his house and found him unable to get out of bed. (R5:930)

Sharetta Faulk is Bright's niece who was 32 years-old at the time of trial. (R5:932-933) She did not have a father, and Bright and another uncle helped raise her. (R5:934) He provided for her financially and emotionally. (R5:933-934) Faulk has a daughter, and she intends to stay in contact with Bright while he is in prison. (R5:934-935, 936-937) He loves her, and she loves him. (R5:934) Faulk lives in Pensacola, but she saw Bright in Jacksonville at his house in November 2007. (R5:936) She sensed something was wrong with him at that time, and she knew he had problems with drug addiction. (R5:935-936)

Janice Jones is Bright's younger sister. (R5:940 – R6:941) She was 50 years-old at the time of trial and Bright was 55. (R6:941) An older brother, Willie, was 60. (R6:941) They grew up in a poor, hard-working family. (R6:941-942) Their father was a mechanic and ran a junk yard. (R6:942) The children got up every morning to work with their father. (R6:942) Raymond joined the Marines after high school graduation. (R6:942-943) He was proud to be a Marine. (R6:943-944) Their mother is deceased, and their father was elderly and unable to attend the trial. (R6:945)

Willie, the older brother, stayed to take care of their father. (R6:945) Janice and Raymond were close growing up and remained close. (R6:943) He was always ready to help her, including being a father figure to her daughters. (R6:945-946) Their father was not available to them, and he stepped into that role. (R6:946) As an example of Raymond's attention to Janice's needs, she told of his driving over to Pensacola after a hurricane destroyed her roof and re-roofing her house. (R6: 947-949)

James Hernandez, a lawyer practicing military law, testified about Bright's personnel records and his service history. (R5:873-904) Hernandez served as a Marine and went to law school while in the Marines. (R5:874) Before going to law school, he was trained in military records. (R5:875) He reviewed Bright's service records covering his years in the Marines.(R5:876) Initially, Bright completed boot camp in 1973, and received a meritorious promotion upon graduation. (R5:877-878) Only those completing training in the top two to five percent of the class receive meritorious promotions at graduation to private first class. (R5:877-878) Bright next completed training at the Naval Air Maintenance Training Group where he received training leading to a jet aircraft mechanic certification. (R5:879) At the end of three years of his frist enlistment, Bright received a good conduct medal. (R5:880) Bright also received a Meritorious Mast, a personal award for a

specific action. (R5:880) In Bright's case, he noticed something amiss when a jet took off, and he had the plane brought back down where a mechanical problem was found that would have caused the pilot trouble controlling he aircraft. (R5:880-881) His actions avoided a tragic mishap. (R5:881) Bright also received a second Good Conduct Medal for a second three years of meritorious service. (R5:883) He was promoted to Lance Coporal. (R5:883-885) He was promoted to sergeant, a significant leadership rank in the Marines. (R5:886) The service issues a discharge at the end of each enlistment period even if the person re-enlists. (R5: 876-877, 887) Bright received an Honorable Discharge at the end of each of his first two enlistments. (R5:887) During his third enlistment, Bright was discharged from the Marines with a General Discharge Under Honorable Conditions. (R5:887-888) The records indicated he had two alcohol related incidents, not including a criminal incident, and he had failed to complete an alcohol rehabilitation plan. (R5:889-890)

Charles Fisette of the Jacksonville Sheriff's Office testified as record custodian for the jail. (R5:854-857) Bright had no disciplinary or incident reports during his time incarcerated in the jail. (R5:854-857)

Spencer Hearing

The Spencer Hearing commenced on October 6, 2009, and the hearing was continued to present additional witnesses on October 15, 2009. (R7:1110-1178, 1179-1208) Dr. Ernest Miller, a psychiatrist, testified as the first witness. (R7:1116) Miller examined Bright in the jail and reviewed the arrest and booking report, the PSI and documents from the VA hospital in Biloxi, Mississippi. (R7:1118-1119) Bright suffers from substance abuse and dependency problems for both alcohol and cocaine. (R7:1119) Bright came from an alcoholic family, his father was a binge drinker suggesting alcohol problems and a genetic factor for substance abuse issues. (R7:1119) Miller found no evidence of major mental illness or anti-social personality. (R7:1120, 1131-1135) In Bright's medical records, Miller found references to anxiety disorder and bipolar disorder, but there was nothing to indicate that Bright ever had a full psychiatric work up. (R7:1120-1121) This was problematic because Bright was given substance abuse treatment without efforts to discern and treat underlying mental and emotional problems. (R7:1121 1135) Bright used alcohol and drugs as self-treatment for depression. (R7:1136) Miller viewed addiction treatment, alone, as merely treating half of the problem with a dual diagnosis individual. (R7:1121) All the records showed Bright was motivated to get better, had insights and actively participated in the treatment programs. (R7:1122)

However, Bright's pattern was to be dry for awhile, but then, he would relapse for a period of time. (R7:1121-1122) Miller noted that all of Bright's criminal arrest history appeared to be related to his need to support his drug and alcohol habit and the typical self-defeating behavior of an addict. (R7:1122, 1126-1131)

Bright was addicted to both alcohol and cocaine that turned his life into an up and down cycle. (R7:1122-1123) Miller noted that the long term impact on the physiology of the body is worse with the alcohol. (R7:1122-1123) Fourteen central nervous system diseases are associated with regular alcohol use. (R7:1122) Paranoid ideation is a personality change cause by alcohol abuse. (R7:1122-1123) Both the alcohol and the cocaine give a high followed by a let down crash. (R7:1123) This up and down cycle has characterized Bright's life since he started drinking at 18 years-old. (R7:1123) He would have sometimes long periods of being productive, but these were followed by the crash. (R7:1123) Although he had nine years of success in the military, he ultimately was discharged due to his addiction. (R7: 1123) He continued to have periods of productive civilian employment followed by the decline. (R7:1123) Miller noted that life successes as well as failures can trigger an alcoholic relapse. (R7:1124) Reviewing Bright's past attempts in rehabilitation programs, Miller concluded the programs he attended failed to

address his other emotional problems that can fuel relapse. (R7:1121-1122, 1125)

Bright acknowledge that he committed the homicides, and he expressed a great deal or regret and remorse for the circumstances. (R7:1134) Miller stated this indicates that Bright has a conscience and is not a psychopath. (R7:1134-1135) Although accepting responsibility, Bright maintained that he acted in self-defense. (R7:1134-1135, 1137) Miller did not pursue the details of the killing during his examination. (R7: 1134) However, Miller stated that it was possible, or even probable, that Bright suffered alcohol and cocaine produced paranoid ideations at the time, and he may have perceived an attack from the victims when none actually existed. (R7:1137)

James Hernandez, the attorney who also testified at the penalty phase, testified that he was appointed to represent Bright in this case for about three weeks. (R7:1140-1141) During his interview of Bright, Hernandez disclosed that he was a retired Marine officer, and they talked about the service. (R7:1142) Bright opened up to Hernandez, starting crying, and expressed remorse about what had happened. (R7:1142) Bright, in talking one Marine to another, felt ashamed and sorry for his actions. (R7:1142) At that time, Bright's emotions rendered him unable to

effectively communicate, and Hernandez thought he needed an evaluation. (R7:1142-1143)

Michael Bossen, the attorney Bright contacted prior to his arrest, testified. (R7:1143-1144) On the morning of February 19th, Bridgett Bright called him, seeking advice and providing some vague description of the situation. (R7:1144) Bossen then spoke to Raymond Bright who gave some additional information, gave an address and said the he believed two people were dead.(R7:1144) Bright spoke softly, and at times, he cried. (R7:1144-1145) He had to take breaks from the conversation.(R7:1145) The conversation lasted about two hours. (R7:1145) Although Bossen considered the discussion privileged, he was concerned that someone at the house might be alive and need rescue. (R7:1145) He made the ethical decision to alert the police to the address without disclosing other information. (R7:1145-1146) Someone had already called in the situation at the address. (R7:11466) Bright was arrested that evening and Bossen met with him the next morning.(R7:1146) Bright appeared extremely distraught, although reserved. (R7:1147)

Although Bright did not speak a great deal, he did relate some details to Bossen during the conversation on February 19th. (R7:1147) Bright rented a room of his house, and the persons who rented paid him in drugs and some money. (R7:1147) They were dealing drugs out of Bright's house. (R7:1147) These individuals

were supposed to leave his house, but they refused. (R7:1147) Several times, Bright called the police for help. (R7:1147) The narcotics division wanted Bright to become an informant. (R7:1148) All day before the homicides, the individuals threatened to kill Bright if he did not go along with them and the drug activity. (R7:1148) They had firearms including an automatic pistol, (R7:1148) Between 5:00 and 7:00 a.m., there was an altercation, and Bright used a hammer to defend himself. (R7:1148) Bright believed as a former Marine that he was acting to eliminate a threat to his life. (R7:1148)

Bright's sister, Janice Bright Jones, testified about her experience with Bright's addiction. (R7:1152) She first learned her brother had an alcohol problem when he was discharged from the Marines. (R7:1153) The Marines sent Bright to some type of rehabilitation, but she learned the program was not much more than a time isolated from alcohol with little real treatment. (R7:1154) He was given time to dry out, but there was no treatment of the underlying causes. (R7:1154) Alcoholism ran in the family – both Bright's father and older brother also struggled with the addiction. (R7:1155) Bright struggled with the addiction, and he hated himself when he relapsed. (R7:1156) He became a different person when he drank – to the point of growing his beard and not taking

care of himself physically. (R7:1156) After a time living in Pensacola, Bright moved to North Carolina where his estranged wife had moved with the children. (R7:1157) He always obtained good jobs, and his sister thought Bright wanted to reconcile with his family. (R7:1157) However, while in North Carolina, Bright started usig drugs. (R7:1157) Janice visited Bright in North Carolina, and at that time, Bright had lost weight and appeared like a zombie. (R7:1158) Janice and their mother convinced Bright to move back to Pensacola. (R7:1158-1159) They realized how bad Bright's condition had become. (R7:1159) He was depressed and his mind was affected. (R7:1159) Before treatment could be arranged, Bright robbed a convenience store for money to buy drugs. (R7:1159) He was convicted and placed on probation with rehabilitation. (R7:1160) Bright was compliant with treatment for a time, but he started drinking and getting into trouble drinking and driving. (R7:1160) Janice said her brother was an amazing person and a great brother when he was not drinking or using drugs. (R7:1160-1162)

The Spencer hearing was continued until October 15, 2009, for Bridget Bright to testify. (R7:1182) She is Raymond Bright's ex-wife, and she testified during the guilt phase of the trial. (R7:1183) She presented telephone records and she testified about the calls made to the sheriff's office seeking help to get the individuals who were selling drugs out of Bright's house. (R7:1183-

1187) Both she and Raymond made the calls using both a landline and a cell phone. (R7:1187-1188) At one point, they spoke to Sergeant Krieger in narcotics. (R7:1188-1189) He wanted Bright to personally go with the officers to indentify the individuals, but Bright feared retaliation if he could be connected to bringing in the officers. (R7:11879)

Bridget Bright also testified about a restraining order she had issued ten years ago while living in Pensacola. (R7:1189) Raymond was drinking at the time, and he would get out of control and trash the house. (R7:1190) He was not violent toward Bridget personally. (R7:1190) She just needed stability at the house where the children still resided at the time. (R7:1192-1193) Her concern was for Bright to get help for his addiction. (R7:1194)

Janice Bright Jones testified about her personal efforts to help her brother to get the individuals who had taken over his house out of the residence. (R7:1195-1202) She became aware that her brother was using drugs again in November 2007. (R7:1196) Bright's girlfriend, Maxine, told Janice that her brother wanted to talk to her. (R7:1196) In the past, Bright had always called her when he was in trouble using drugs. (R7:1196-1197) Janice learned that Bright had been arrested entering his place of employment during a holiday, taking his own tools and pawning them for money to buy drugs. (R7:1202) Bright was later released without charges

since he took his own tools after entering with a pass code. (R7:1202) While Bright was still in jail, Janice had Maxine lock up Bright's house. (R7:1199) The next day, Maxine called to say that the person who rented the room, Lavelle, was back with a number of others, and it appeared as if they were cooking crack cocaine at the house. (R7:1199) Janice called Lavelle and told him that she was coming with the police. (R7:1199) She hoped the threat would prompt Lavelle and the others to leave the house. (R7:1199-1200) Lavelle did not leave and told her that Bright owed him money. (R7:1200) Janice offered to pay any money Bright owed, but Lavelle declined the offer and told her the issue was between him and her brother.(R7:1200) She told Bright what she had done after his release from jail. (R7:1201) He was upset with what she had done, and he told her that he would now have to go home and face the issue. (R7:1201-1202)

SUMMARY OF ARGUMENT

1. In closing argument, the prosecutor essentially told the jury that Bright would not testify during the trial and admit guilt. A prosecutor is never permitted to comment on a defendant's right not to testify at trial as such a comment is a violation of the defendant's right to remain silent. See, Art. I Secs. 9, 16 Fla. Const.; Amends. V, VI, XIV U.S. Const.; Fla. R. Crim. P. 3.250. Any comment fairly susceptible to being interpreted as a comment on silence is improper. The trial court erred in ruling that the prosecutor's remarks did not constitute a comment on Bright's exercise of his right not to testify.

2. The court found and gave great weight to two aggravating circumstances under Section 921.141 (5)(b) Florida Statute. First, the court used a prior robbery conviction as proof of one aggravator. Second, the court used the contemporaneous murders to provide proof of a second, separately found and weighed aggravator. In treating the robbery conviction and the contemporaneous murder convictions as two separate aggravating circumstances, rather than cumulative proof of one aggravator, the trial court improperly doubled the aggravating circumstance. Bright's death sentence has been imposed in violation of his right to due process and right to be free from cruel and unusual punishment under the Florida and United States Constitutions. Art.

I, Sec. 9, 16, 17 Fla. Const.; Amends. V, VI, VIII and XIV, U.S. Const.

3. The court improperly gave the heinous, atrocious or cruel aggravating circumstance great weight without ever addressing the legal and factual point that the multiple wounds reflected the defendant's mental and emotional state and loss of control. Killings involving many wounds are indicative of a frenzied, panicked attack and reflect a causal relationship between the nature of the wounds and the mitigation regarding the defendant's loss of control at the time of the homicide. This Court has held that in such cases, the HAC factor is of diminished aggravating value since the manner of death is a product of the defendant's mental status.

4. The death sentences imposed in this case are not proportionate. Proportionality review requires this Court to evaluate the totality of the circumstances and compare the case to other capital cases to insure the death sentence does not rest on facts similar to cases where a death sentence has been disapproved. Such a review shows that Bright's death sentences are disproportionate and must be reversed.

5. Florida',s death penalty statute is unconstitutional in violation of the Sixth Amendment under the principles announced in Ring v. Arizona, 536 U.S. 584 (2002). Bright acknowledges that this

Court has adhered to the position that it is without authority to declare Section 921.141, Florida Statutes unconstitutional under the Sixth Amendment, even though Ring presents some constitutional questions about the statute's continued validity, because the United States Supreme Court previously upheld Florida's Statute on a Sixth Amendment challenge. See, e.g., Bottoson v. Moore, 833 So. 2d 693 (Fla. 2002), cert. denied, 123 S.Ct. 662 (2002) and King v. Moore, 831 So. 2d 143 (Fla. 2002), cert. denied, 123 S. Ct. 657 (2002). Bright now asks this Court to reconsider its position in Bottoson and King.

ARGUMENT

ISSUE I
THE TRIAL COURT ERRED IN RULING THAT THE PROSECUTOR'S COMMENTS DURING CLOSING ARGUMENT WERE NOT A COMMENT ON BRIGHT'S RIGHT TO REMAIN SILENT.

Standard of Review

A trial court's ruling regarding the issue of whether a prosecutor's closing argument constitutes a comment on the defendant's right to remain silent is a mixed question of law and fact reviewed in this Court under the de novo standard. The determination of whether the new trial is required for such error is under the harmless error test.

Discussion

In his closing argument to the jury, the prosecutor, in part, said:

> **The defendant cannot admit to you that it was planned. He can't admit to his friends and family members that it's planned, and yet he could not escape the crime.** It was in his home with his hammer. People knew that Derrick King was at his house. Michael Majors told you that he had been there that night and that Derrick King was there and that when Michael Majors left the home, Derrick King was still there. **The defendant couldn't escape his actions, and yet he couldn't admit the truth.**
>
> The brutal nature of this crime shows you the defendant's intent. He told you a story through his friend and the inmate from the Duval County Jail, but that doesn't mean that that's what happened. That just means that's what he said happened. It's completely absurd when taken in light of the physical evidence found at the scene.

(T9:692-693)(emphasis added) Defense counsel objected based on the prosecutor's improper comment on Bright's right to remain silent.

(T9:694) Counsel argued that the comments specifically referenced that the defendant could not admit the crime to "you", meaning the jurors. (T9:964) The trial court incorrectly ruled that no improper comment was made:

> THE COURT: Clearly, the argument was in the context of what the defendant said to other people, that she was just explaining those conversations and was clearly not a comment on his right to remain silent. So, I'll deny your motion.

(T9:695)

A prosecutor is never permitted to comment on a defendant's right not to testify at trial as such a comment is a violation of the defendant's right to remain silent. See, Art. I Secs. 9, 16, Fla. Const.; Amends. V, VI, XIV U.S. Const.; Fla. R. Crim. P. 3.250. Any comment fairly susceptible to being interpreted as a comment on silence is improper. See, e.g., State v. Smith, 573 So.2d 306, 317 (Fla. 1991); State v. DiGuilio, 491 So.2d 1129, 1135-1136 (Fla. 1986); State v. Kitchen, 490 So.2d 21, 22 (Fla. 1985). In this case, the prosecutor essentially told the jury that Bright would not testify during the trial and admit guilt. See, Brock v. State, 446 So.2d 1170 (Fla. 5th DCA 1984)(prosecutor improperly told the jury "Today is the day he has to stand up and 'fess to what happened and pay for what he did.") The prosecution's assertion and the trial court's conclusion that the comment was to explain Bright's statements to others does not change the inference

the comment conveyed to the jury. A prosecutor's intent is not the focus of the inquiry --- the implication of the comment to the jury is the key. See State v. Smith; State v. DiGuilio; State v. Kitchen. Bright's constitutional rights to remain silent, due process and fair trial have been violated.

The error cannot be deemed harmless. Use of Bright's failure to speak at trial and admit guilt to impeach his pre-arrest statements to others goes to the heart of the harm. Commenting that Bright could not come forward and admit to the jury the prosecution's version of the truth was an attack on the credibility of Bright's earlier statements about self-defense. Bright's exercise of his right to remain silent and not testify at trial was improperly used to impeach his previous statements. See, Doyle v. Ohio, 426 U.S. 610 (1976); State v. Hoggins, 718 So.2d 761 (Fla. 1998)(approving Hoggins v. State, 689 So.2d 383 (Fla. 4th DCA 1997)(defendant's silence may not be used in impeach); State v. Smith, 573 So.2d at 316-317, (error to admit evidence about what defendant did not say during spontaneous statement at the scene). Additionally, the fact that Bright never admitted he planned the homicides is not inconsistent with his prior statements that he was acting in self-defense and the comments did not constitute valid impeachment. See, Webb v. State, 347 So.2d 1054, 1056 (Fla. 4th DCA 1977)(defendant's silence not inconsistent with defendant's assertion of alibi).

The prosecutor's comments on Bright's failure to testify violated Bright's right to remain silent, due process and a fair trial. Art. I, Secs. 9, 16, Fla. Const.; Amends. V, VI, XIV, U.S. Const. A new trial is required.

ISSUE II
THE TRIAL COURT ERRED IN FINDING AND WEIGHING AS TWO SEPARATE AGGRAVATING CIRCUMSTANCES UNDER SECTION 921.141 (5)(b) FLORIDA STATUTES BRIGHT'S PRIOR 1990 CONVICTION FOR ROBBERY AND THE CONTEMPORANEOUS MURDERS IN THIS CASE.

Standard of Review

The question of whether an aggravating circumstance has been improperly doubled is a mixed question of law and fact reviewed under the de novo standard.

Discussion

The State presented evidence in support of the aggravating circumstance that Bright had a prior conviction for a capital felony or a felony involving violence. Bright stipulated that he had been convicted in Pensacola of robbery in 1990, and the State presented a police officer witness, Sergeant Robert Bell, who actually witnessed Bright use a knife to rob a convenience store clerk. (R5:818-820, 825-832) Additionally, the State asserted that the contemporaneous murder convictions in this case could each be evidence of the aggravating circumstance in the other. (R4:580-581; R6:975-977) Bright does not contest that these convictions provide proof of the aggravating circumstance of a prior capital or violent felony aggravator under Section 921.141 (5)(b) Florida Statutes. However, Bright does assert as error the trial court's finding and weighing these convictions as two separate aggravating circumstances. (R4:714-715)(App. A)

The court found and gave great weight to two aggravating circumstances under Section 921.141 (5)(b) Florida Statute based on these convictions. (R4:714-715)(App. A) First, the court used the robbery conviction as proof of one aggravator, and the court used the contemporaneous murders to provide proof of a second, separately found and weighed aggravator. In the sentencing order, the trial court wrote the sentencing findings as follows:

> 1. The Defendant was previously convicted of another capital felony or a felony involving the use or threat of violence to the person. Sec. 921.141(5)(b), Fla. Stat. (2008).
>
> The State and Defense stipulated that the Defendant was previously convicted of Armed Robbery on January 2, 1990. In further support of this aggravating circumstance, the State presented the testimony of Sergeant Robert Bell. Sergeant Bell testified that he witnessed an armed robbery at a Circle K convenience store, where the Defendant used a knife to obtain money from the victim, Carla Houghton. Sergeant Bell saw the Defendant standing at the store counter with a knife in his hand, leaning over the counter, and attempting to get money out of the register. The Defendant was apprehended underneath a house behind the convenience store, in possession of bait money from the store. The stipulation and the testimony of Sergeant Bell proves beyond all reasonable doubt the existence of this aggravating circumstance. <u>This aggravating circumstance has been given great weight in determining the appropriate sentence to be imposed in this case</u>.
>
> 2. The Defendant was previously convicted of another capital felony or a felony involving the use or threat of violence to the person. Sec. 921.141(5)(b), Fla. Stat. (2008).
>
> "[W]here a defendant is convicted of multiple murders, arising from the same criminal episode, the contemporaneous conviction as to one victim may support the finding of the prior violent felony aggravator as to

> the murder of another victim." Francis v. State, 808 So.2d 110, 136 (Fla. 2001)(citing Mahn v. State, 714 So.2d 391 (Fla. 1998) and Walker v. State, 707 So.2d 303, 317 (Fla. 1997). The Defendant contemporaneously killed both Derrick King and Randall Brown. The jury's verdicts in the guilt phase proves beyond all reasonable doubt the existence of this aggravating circumstance. This aggravating circumstance has been given great weight in determining the appropriate sentence to be imposed in this case.

(R4:714-715)(App. A)

In treating the robbery conviction and the contemporaneous murder convictions as two separate aggravating circumstances, rather than cumulative proof of one aggravator, the trial court improperly doubled the aggravating circumstance. See, e.g., Province v. State, 337 So.2d 783 (Fla. 1976) (doubling aggravators improper). Multiple previous or contemporaneous convictions for violent felonies support the finding of only one aggravator of a previous conviction for a capital or violent felony. See, e.g., Winkles v. State, 894 So.2d 842, 846-847 (Fla. 2005)(contemporaneous murder convictions, a prior robbery and a prior attempted robbery and aggravated assault); Almeida v. State, 748 So.2d 922, 925, 933 (Fla. 1999)(two prior murder convictions); San Martin v. State, 705 So.2d 1137, 1349 (Fla. 1997)(two prior convictions). Bright's death sentence has been imposed in violation of his right to due process and right to be free from cruel and unusual punishment under the Florida and United States

Constitutions. Art. I, Sec. 9, 16, 17 Fla. Const.; Amends. V, VI, VIII and XIV, U.S. Const.

The improper finding and weighing of an additional aggravating circumstance cannot be harmless in this case. In sentencing Bright to death, the trial judge stated that he imposed the death sentence solely because of the existence of the heinous, atrocious or cruel aggravating factor. (R4:21; R6:1057-1058) The sentencing order reads:

> As noted above, this Court gave great weight to the heinous, atrocious, or cruel aggravating circumstance. Had this aggravating circumstance not been present in this case, this Court may have found a life sentence to be appropriate. However, on balance, the aggravating circumstances in this case outweigh the mitigating circumstances.

(R4:730)(App.A) During the imposition of sentence, the judge said:

> And Mr. Bright, I don't mind telling you that I take no delight in imposing the sentence in this case. Quite frankly, but for the heinous and atrocious and cruel aggravator in this case, I would not be imposing this sentence that I am going to impose.

(R6:1057-1058) The HAC circumstance tipped the balance to death in the judge's decision-making. However, without one of the two other aggravators the judge found, there is no way to know whether the HAC circumstance would have been enough for the judge to impose death. This conclusion is also supported by the trial court's erroneous assessment of the HAC circumstance. See, Issue III,

infra. Notably, the judge gave great weight to each of the three circumstances he found. (R4: 714-717) At a minimum, this doubling sentencing error, alone, requires a remand for resentencing.

ISSUE III
THE TRIAL COURT ABUSED ITS DISCRETION IN GIVING GREAT WEIGHT TO THE HEINOUS, ATROCIOUS OR CRUEL AGGRAVATING CIRCUMSTANCE, SINCE THE CRIME WAS CONSISTENT WITH A PANICKED, FRENZIED ATTACK.

Standard of Review

A trial court's decision as to the weight afforded an aggravating circumstance is reviewed on appeal for abuse of discretion. See, e.g., Sexton v. State, 775 So.2d 923, 934 (Fla. 2000).

Discussion

The trial court found the aggravating circumstance that the homicides were especially heinous, atrocious or cruel (HAC) based on the number of blows administered to each victim and the presence of wounds to the arms, hands and knees that could be consistent with defensive wounds. (R4:715-717) The presence or absence of defensive wounds is evidence tending to establish whether or not the victim was conscious and aware of impending death at the time of the fatal wound and can be a critical fact determining the applicability of the HAC circumstance. See, e.g., Williams v. State, 37 So.3d 187, 198-201 (Fla. 2010); Zakrzewski v. State, 717 So.2d 488, 492-493 (Fla. 1998). However, HAC killings involving many wounds are also indicative of a frenzied, panicked attack and reflect a causal relationship between the nature of the wounds and the defendant's loss of control at the time of the homicide. This

Court has held that in such cases, the HAC factor, although properly found, is of diminished aggravating value since the manner of death is a product of the defendant's mental status. See, e.g., Penn v. State, 574 So.2d 1079 (Fla. 1991)(cocaine addicted defendant beat his sleeping mother with a hammer as he stole property from her house); Ross v. State, 474 So.2d 1170, 1174 (Fla. 1985)(victim brutally beaten when defendant who had drinking problems lost control of his anger in a domestic argument); Miller v. State, 373 So.2d 882, 886 (Fla. 1979)(defendant's stabbing a taxi driver seven times during a robbery deemed a product of defendant's mental illness); Jones v. State, 332 So.2d 615 (Fla. 1976)(mentally ill defendant stabbed victim multiple times).

In this case, the court gave the HAC circumstance great weight without ever addressing the legal and factual point that the multiple wounds indicated the defendant's mental and emotional state and loss of control. (R4:715-717) The evidence showed that a struggle occurred, and Bright consistently said he acted to defend himself from what he perceived as a threat on his life. Bright admitted to being angry, and he told a friend that he "lost it."(T10:589) Dr. Miller testified that Bright likely suffered neurological problems from his addictions and alcohol and drug abuse including paranoid ideations. (R7:1122-1123, 1137) Miller testified it was probable that Bright suffered a paranoid ideation

at the of the homicides and may have perceived a threat to his life even if none actually existed. (R7:1137) The trial court found the statutory mitigating circumstance that Bright suffered an extreme mental or emotion disturbance at the time of the crimes. (R4:718-719) While the trial court's finding of the HAC circumstance in this case may be sufficiently supported by the evidence, the weight afforded the aggravating circumstance is not supported.

The improper weighing of the HAC circumstance is not harmless in this case. As the trial court specifically stated, this factor was the reason the death sentences were imposed. The sentencing order reads:

> As noted above, this Court gave great weight to the heinous, atrocious, or cruel aggravating circumstance. Had this aggravating circumstance not been present in this case, this Court may have found a life sentence to be appropriate. However, on balance, the aggravating circumstances in this case outweigh the mitigating circumstances.

(R4:730)(App.A) At sentencing, the judge said:

> And Mr. Bright, I don't mind telling you that I take no delight in imposing the sentence in this case. Quite frankly, but for the heinous and atrocious and cruel aggravator in this case, I would not be imposing this sentence that I am going to impose.

(R6:1057-1058) See also, Issue II, supra. Raymond Bright's death sentences must be reversed.

ISSUE IV
THE DEATH SENTENCES IMPOSED IN THIS CASE ARE DISPROPORTIONATE.ISSUE IVTHE DEATH SENTENCE IMPOSED IN THIS CASE IS DISPROPORTIONATE.

Proportionality review of a death sentence requires this Court to evaluate the totality of the circumstances and compare the case to other capital cases to insure the death sentence does not rest on facts similar to cases where a death sentence has been disapproved. See, e.g., Offord v. State, 959 So.2d 187 (Fla. 2007); Urbin v. State, 714 So.2d 411, 417 (Fla. 1998); Terry v. State, 668 So.2d 954, 965 (Fla. 1996); Tillman v. State, 591 So.2d 167, 169 (Fla. 1996). Death sentences are reserved for the most aggravated and least mitigated of cases. Ibid. However, proportionality review is not a process of counting aggravating and mitigating circumstances, instead the review is a qualitative evaluation of the facts to insure uniformity in the application of the death penalty. Ibid. A review of this case shows that the death sentences are not proportionate and must be reversed. Art. I Secs. 9, 16, Fla. Const.

Discussion

There are two validly found aggravating circumstances in this case –- Bright had previous convictions for capital or violent felonies (sec. 921.141(5)(b) Fla. Stat.) and the homicides were especially heinous atrocious or cruel (sec. 921.141 (5)(h) Fla. Stat.) However, the trial court specifically stated that without

the HAC circumstance, the death sentences would not have been imposed. The sentencing order reads:

> As noted above, this Court gave great weight to the heinous, atrocious, or cruel aggravating circumstance. Had this aggravating circumstance not been present in this case, this Court may have found a life sentence to be appropriate. However, on balance, the aggravating circumstances in this case outweigh the mitigating circumstances.

(R4:730)(App.A) During the imposition of sentence, the judge said:

> And Mr. Bright, I don't mind telling you that I take no delight in imposing the sentence in this case. Quite frankly, but for the heinous and atrocious and cruel aggravator in this case, I would not be imposing this sentence that I am going to impose.

(R6:1057-1058) The trial court's sentencing determination was that the previous convictions for the contemporaneous capital felony and the prior robbery did not render this case to be one of the most aggravated and least mitigated of crimes. This Court's opinions in other cases support the trial court's decision. See, e.g., Almeida v. State, 748 So.2d 932 (Fla. 1999)(two prior murders a few weeks earlier); Jorgenson v. State, 714 So.2d 423 (Fla. 1998)(prior murder conviction); Knowles v. State, 632 So.2d 62 (Fla. 1994)(contemporaneous murder convictions). Significantly, the trial court reached this conclusion even though the previous conviction for a capital or violent felony aggravator had been improperly given double weight. See, Issue II, supra.

The heinous, atrocious or cruel circumstance balanced against the mitigation does not make this case one of the most aggravated and least mitigated of capital crimes. In fact, the manner of death reflects that Bright was acting out of emotional distress, panic, fear or anger at the time of the killing. This Court has frequently recognized that multiple bludgeoning or stabbing wounds indicate the perpetrator was in a emotional frenzy at the time of the attack. See, Issue III, supra. The trial court found the statutory mitigating circumstance that Bright was under the influence of an extreme mental or emotional disturbance at the time of the crime. (R4:718-719) Additionally, Dr. Miller testified that Bright likely suffered neurological problem from his long-term addictions alcohol and cocaine, and Bright probably suffered paranoid ideations that he was being threatened at the time of the offense. (R7:1134) Bright consistently said he felt threatened and believed he was defending himself from attack. (R7:1134-1135, 1137) He also told a friend that he "lost it." (T10:589)

This Court has reversed death sentences where similar attacks occurred, the HAC circumstance was found, and the defendant had drug or alcohol abuse problems and mental or emotional disturbances. See, Penn v. State, 574 So.2d 1079 (Fla. 1991)(defendant with emotional problems and addicted to using cocaine, attacked his sleeping mother with a hammer causing her

death from multiple blows); Ross v. State, 474 So.2d 1170 (Fla. 1985)(defendant, a drinking alcoholic, killed his wife in anger using his fist, feet and a blunt instrument); Nibert v. State, 574 So.2d 1059 (Fla. 1990)(defendant who had severe alcohol problems stabbed his drinking friend several times killing him); Kramer v. State, 619 So.2d 274 (Fla. 1993)(defendant suffering emotional problems and severe alcoholism beat a companion to death during an argument using multiple blows with a blunt instrument). Raymond Bright's crime is similar to the ones in the above cases, and this Court should reverse his death sentences.

This case is not one of the most aggravated and least mitigated of capital crimes. The death sentences are improperly imposed. Raymond Bright asks this Court to reverse his death sentences for imposition of sentences of life in prison.

ISSUE V
THE TRIAL COURT ERRED IN NOT DISMISSING THE DEATH PENALTY AS A POSSIBLE SENTENCE BECAUSE FLORIDA'S SENTENCING PROCEDURES ARE UNCONSTITUTIONAL UNDER THE SIXTH AMENDMENT PURSUANT TO RING V. ARIZONA.ISSUE V THE TRIAL COURT ERRED IN NOT DISMISSING THE DEATH PENALTY AS A POSSIBLE SENTENCE BECAUSE FLORIDAS SENTENCING PROCEDURES ARE UNCONSTITUTIONAL UNDER THE SIXTH AMENDMENT PURSUANT TO RING V. ARIZONA.

The trial court erroneously denied various motions dismiss, to modify jury instructions and to require jury findings of the factors used for imposition of the death penalty based on the Sixth Amendment principles announced in Ring v. Arizona, 536 U.S. 584 (2002). (R1:119-129; R2:239-254; R6:1065, 1073, 1076) Ring extended the requirement announced in Apprendi v. New Jersey, 530 U.S. 446 (2000), for a jury determination of facts relied upon to increase maximum sentences to the capital sentencing context. Florida's death penalty statute violates Ring in a number of areas including the following: the judge and the jury are co-decision-makers on the question of penalty and the jury's advisory sentence recommendation is not a jury verdict on penalty; the jury's advisory sentencing decision does not have to be unanimous; the jury is not required to make specific findings of fact on aggravating circumstances; the jury's decision on aggravating circumstances are not required to be unanimous; and the State in not required to plead the aggravating circumstance in the indictment.

Bright acknowledges that this Court has adhered to the position that it is without authority to declare Section 921.141, Florida Statutes unconstitutional under the Sixth Amendment, even though Ring presents some constitutional questions about the statute's continued validity, because the United States Supreme Court previously upheld Florida's Statute on a Sixth Amendment challenge. See, e.g., Bottoson v. Moore, 833 So. 2d 693 (Fla. 2002), cert. denied, 123 S.Ct. 662 (2002) and King v. Moore, 831 So. 2d 143 (Fla. 2002), cert. denied, 123 S. Ct. 657 (2002). Additionally, Bright is aware that this Court has held that it is without authority to correct constitutional flaws in the statute via judicial interpretation and that legislative action is required. See, e.g., State v. Steele, 921 So.2d 538 (Fla. 2005). However, this Court continues to grapple with the problems of attempting to reconcile Florida's death penalty statutes with the constitutional requirements of Ring. See, e.g., Miller v. State, 42 So.3d 204 (Fla. 2010); Marshall v. Crosby, 911 So.2d 1129, 1133-1135 (Fla. 2005)(including footnotes 4 & 5, and cases cited therein); State v. Steele, 921 So.2d 538. At this time, Bright asks this Court to reconsider its position in Bottoson and King because Ring represents a major change in constitutional jurisprudence which would allow this Court to rule on the constitutionality of Florida's statute.

This Court should re-examine its holding in Bottoson and King, consider the impact Ring has on Florida's death penalty scheme, and declare Section 921.141 Florida Statutes unconstitutional. Bright's death sentence should then be reversed and remanded for imposition of a life sentence.

CONCLUSION

For the reasons expressed in Issue I of this brief, Raymond Curtis Bright asks this Court to reverse his judgments and sentences with directions to afford him a new trial. Bright further asks, for the reasons in Issues II through V, that his death sentences be reversed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by mail to Carolyn Snurkowski, Assistant Attorney General, Criminal Appeals Division, The Capitol, PL-01, Tallahassee, FL, 32399-1050, and to Appellant, Raymond Bright, #200047, F.S.P., 7819 N.W. 228th St., Raiford, FL 32026, on this ____ day of January, 2011.

Respectfully submitted,

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