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PRELIMINARY STATEMENT

Appellant, EDDIE LEE SEXTON, was the Defendant in the trial court and will be referred to in this brief as Appellant or by name. The witnesses and victim will be referred to **by** name. The Appellee, the State of Florida, was the prosecuting authority below and will be referred to as the State. The original record on appeal consists of 32 volumes and two supplemental volumes, one of which contains a video cassette tape. In the brief, the record will be referred to as "R", and the tape by its name.

STATEMENT OF THE CASE

Appellant, EDDIE LEE SEXTON, was indicted for the murder of Joel Good by the Grand Jury of Hillsborough County on February 16, 1994. (CR 34-35) The Indictment alleged that Mr. Good was killed between November 17, 1993 and January 14, 1994. Willie Sexton, Appellant's son, was also named in the indictment as a codefendant. (CR34-36)

Conflict counsel was appointed and a second attorney for penalty phase was appointed as well. (CR37-39,54-55,78-80)

Numerous pretrial motions were filed by Appellant. These included motions to Relinquish Jurisdiction to the Allegheny Tribal Counsel (CR61-64); to sever his case from the codefendant's (CR65-69); and to compel blood samples. (CR70-71) Standard motions attacking the constitutionality of the death penalty were filed. (CR88-91,111, 113,119-120,276-296,335-345) Counsel filed several specific motions relating to the venire and jury selection. Among these was a motion for the appointment of an expert to assist in jury selection. (CR135-139) Counsel also moved to sequester the jury, for individual voir dire, and a request to prevent jury contamination. (CR224-226,233-243)

Sexton sought to limit the access of the media to information about this case. Initially, emergency motions for gag orders were requested.(CR52-53,56-59) Counsel also sought to prevent the media from photographing or televising members of the venire or from releasing the names, addresses, or businesses of the jurors. (CR201-208)

Motions were also filed which pertained specifically to the penalty phase of the trial. Counsel attacked the constitutionality of the Standard Jury Instruction regarding the aggravating circumstance of Heinous, Atrocious and Cruel. (CR99-110) Numerous motions attacked the constitutionality of the penalty phase proceedings. (CR270-301, 331-334, 335-345)

The State moved to require Sexton to provide reciprocal discovery to matters pertinent to penalty phase. (CR131-134) Following the court's ruling, the record indicates that Sexton filed a writ of Habeas Corpus in the Second District Court of Appeal on September 16, 1994. (CR493-509) The Second District has no record of receiving a Petition. (SR28)

The State filed notice of their intent to admit prior statements and prior bad acts of Sexton. These included a video tape made by Sexton months before the alleged offense, instances of sexual abuse and incest, the murder of Sexton's grandson, acts of child abuse, and Satanism, (CR351-366) Sexton filed numerous Motions in Limine seeking to exclude any evidence relating to collateral matters, incidents and crimes. (CR85-87, 215-223, 258-259, 262-263, 302-303)

Sexton was tried by jury from October 3 through October 6, 1994. (R329-1803) The Honorable Bob Mitcham, Circuit Judge, presided over the trial. The jury returned a verdict of Guilty as charged on October 6, 1994. (CR413) Penalty phase was conducted on October 7, 1994. (R1825-1963) The jury returned an advisory recom-

mendation for the death penalty by a vote of 7 to 5 on October 7, 1994. (CR444)

Sexton filed motions requesting a new trial or a JNOV on October 17, 1994.(CR448-452) These were denied following a hearing on November 2, 1994.(R1990) At this same hearing, following argument from both the State and Defense, the Court sentenced Sexton to death.(CR458-468, R2032) Written findings in support of the sentence were filed on November 2, 1994. The court found four aggravating circumstances: that Appellant was previously convicted of a prior violent felony; that the capital felony was committed to avoid or prevent a lawful arrest; that the murder was cold, calculated and premeditated; and that the murder was especially heinous, atrocious, or cruel. (CR465-468) The court found in mitigation that Sexton was under emotional stress; at times acted in a peculiar fashion; demonstrated some human qualities; acted as Santa Claus; and some non-statutory mitigating factors contained in letters from family members. (CR466-468) The court found that the aggravating factors outweighed the mitigating factors. (CR468)

A timely Notice of Appeal was filed on November 8, 1994. (CR473-474)

STATEMENT OF THE FACTS

Pretrial Hearings

On April 22, 1994, defense counsel sought to keep a video tape from the press. (R2038-2039) The tape was one which Sexton had produced several months before the murder allegedly occurred. (R2038) Counsel requested the court view the tape, determine it's relevancy, and then prevent the tape from being disseminated through the media if the court found the tape to have no relevance. (R2044-2046) The court denied the motion. (R2054)

Sexton claimed that he was a Native American and a member of the Allegheny tribal council. At a hearing on June 28, 1994 Sexton requested that jurisdiction be relinquished from the State Courts to the Tribal council. (R61-62) The State objected, disputing that Sexton was a Native American, that the Tribal council did not exist, and that there was no immunity from prosecution. (R65-67) The State presented the testimony from Sheritan Murphy, who is affiliated with the American Indian Movement. Through this association, Mr. Murphy was familiar with the Indian Nations that inhabit North America. The East Alleghenian nation which Sexton claimed membership in did not exist. (R68-70) The court denied the motion.

At this same hearing Sexton moved to sever his case from that of his son's, the codefendant. (R74) The motion was joined by counsel for the codefendant. (R75) The State did not oppose the motion and it was granted by the court. (R76-78)

Sexton moved that the jury be required to state on the verdict form used during the penalty phase which aggravating factors they found. (R124) The court denied that request and several others relating to the penalty phase. (R124,132-142) The court specifically denied counsel's request to declare the standard instruction on HAC unconstitutional. (R131-132)

On September 21, 1994, the court found Willie Sexton, the codefendant, incompetent to stand trial. (R2061-2070)

Motions in Limine and for Experts

On September 21, 1994 the court considered defense counsel's request that he have the assistance of an expert during jury selection. (R2076) Counsel requested a jury consultant due to the sensitive nature of many of the bad acts the State intended to bring out during the trial and because of the extensive pre-trial publicity. (R2080-2081) Counsel noted that the County Commissioner's policy was that it would not pay for experts which did not testify. (R2084) The Public Defender's Office had paid for the retention of jury consultants out of their budgets in some cases. (R2085-2086) The County opposed the hiring of the expert. (R2090-2092) The court denied the motion. (R2092)

Counsel then requested an in-camera hearing on the Motions in Limine which dealt with collateral crimes on the part of Sexton. (R2100) The specific evidentiary issues were presented by the State to the court in a 15 page written memorandum. (CR351-366,

R2103) The court granted the request for an in-camera hearing.
(R2107)

The court granted counsel's request that the media not televise or photograph the venire or publicize their names, addresses, or place of business. (R2109)

A motion was also made concerning photographs of the body.
(R2117) The court limited the State to two photographs of the decomposed body. (R2124-2125)

On September 23, 1994, the court conducted an in-camera hearing on the Motions in Limine. (R2130-2220) The closed hearing was opposed by the press. (R2133-2192) The court denied the media's request to be present during the hearing. (R2192)

Defense counsel's first request in the written motion in limine was that the State would not be able to bring evidence into the trial relating to incest between Sexton and his daughters.
(CR218) Defense counsel pointed out the difficulties relating to such evidence, especially how far back in time the State should be allowed to go. (R2199) Defense counsel objected that the collateral bad acts were going to become a feature of the trial. (R2204)

Defense counsel moved to exclude any evidence relating to the death of Skipper Good, Sexton's grandson, who was killed by his mother, Pixie. (CR218-219,258-259;R2204) Pixie is Sexton's daughter.

The court chose not to determine the relevancy of the collateral offenses pretrial, and declined to rule as to the extent to which the State would be permitted to present evidence to the jury

in these areas. The court stated that it would deal with objections during the trial as they arose. (R2207-2212) The court stated that he generally would let these matters be heard. (R2212) The court then ruled that the subject matter contained in the written motions, memorandums, and responses would be released to the press. (R2213-2214)

Trial

Sexton's trial began on September 26, 1994, with the Honorable Bob Mitcham, Circuit Judge, presiding. Voir Dire commenced on the 26th and a jury was empaneled on September 29, 1994. (R329-926) Testimony began on October 3, 1994 and is summarized as follows:

Yale Hubbard is a ranger with the Little Manatee River State Recreation Area. (R961) Little Manatee River State Park contains a campground which was open in November and December of 1993 and January of 1994. (R962) Mr. Hubbard's duties included the registering of campers in the campground and collecting fees for the campsites. (R963) The Sexton family began to rent a campsite on November 16, 1993. (R964) Pixie Sexton registered the family. They remained in the campground until mid-January when the mother and father were arrested. (R964)

There is only one road which leads to the campsites. (R965) The distance between the campground and the ranger station is roughly 2 miles. (R965) The Sextons were camping in a motor home on site number 16. (R966) A public pay phone was 100 yards away. (R973) Hubbard checked on the campsites daily, however the Sexton

motorhome was parked in such a fashion as to prevent him from seeing the tags. (R968) This was not a normal way to park in the sites. (R969)

On his routine checks Hubbard would see various members of the Sexton family. They did not always stay as a group. (R970-971) Hubbard would have casual conversation with them, including Willie Sexton. (R971) Willie and Pixie were the friendliest of the children. Pixie would come to pay the rent, first with her husband and then with Willie. (R971)

During the time the Sexton's were at the campground a disabled man by the name of Raymond Hesser was camping next to them in a recreational vehicle. (R982)

Estella "Pixie" Sexton Good testified that she is the daughter of Eddie Lee Sexton and sister to Willie Sexton. (R989) She was 24 at the time of trial. (R988) She is the third of 12 children. (R989) On February 12, 1992, Pixie married Joel Good in Massalin, Ohio. (R997) Sexton performed the ceremony. (R998)

Pixie claimed that she loved her husband and had a good marriage. (R1227) She did admit to once asking him for a divorce. (1228) A letter she had written to Joel was admitted during CROSS-examination where she told Joel that what she wanted for Christmas was for him to leave. (R1231) Pixie denied ever abusing Joel or of ever accusing him of molesting her daughters. (R1233-1237) Pixie claimed that Joel and Sexton did not get along. (R1237)

Pixie stated that her brother Willie murdered her husband, Joel Good, about a month after they began living at the Little Manatee

River State Park. (R998) According to Pixie, Sexton had Willie do this. (R998)

Fourteen of the family were staying at the campground. This included Sexton and his wife; Pixie's brothers- Willie, Skipper, Christopher, and Matthew; her sisters- Sherry and Kim; Sherry's baby; Pixie's two daughters; and Joel Good. (R1001)

According to Pixie, on the morning of the murder the family ate breakfast together. (R1001) After breakfast Pixie saw her father and Willie leave the camp site together. They returned a half an hour later or so. (R1002) Sexton then left the camp with his wife and the younger children for a picnic. (R1002-1004) Sherry, Pixie, the babies, Joel, and Willie stayed behind. (R1004)

About a half hour after Sexton left, Willie and Joel left. After awhile, Pixie went to look for them. (R1005) Pixie went off down a path that led to the woods and found Willie and Joel smoking by a fallen tree. (R1007) Pixie smoked with them, then went back to the camper. (R1008) A little later Sherry said she heard Joel yelling "Ed". (R1008) Sherry and Pixie went down the trail and found Willie and Joel further in the woods. (R1009) Willie had Joel on the ground and was choking him with a rope that was tied around his neck. (R1009) Joel was yelling for Ed. (R1009) Willie saw Pixie and told her to go back to the camper. (R1010) Pixie went back and found that her father and the others had returned from the picnic. (R1010) Pixie told her father that she thought Willie was hurting Joel and Sexton asked her to take him there. (R1010)

Pixie and Sexton went into the woods. (R1010) They ran to where Willie and Joel were. (R1010) They found Joel laying over Willie's lap, the rope around his neck. (R1011) Sexton got up to Joel's face, then kicked his leg. (R1011) Joel's leg moved. (R1011) Pixie believed Joel was alive. (R1012) Sexton told Willie to "finish him off". (R1012) Sexton told Pixie to return to the camper. (R1012)

Pixie denied on cross that she coaxed Joel into the woods so Willie could strangle him. (R1248) Pixie admitted she never tried to get Willie to stop nor did Joel call to her for help. (R1248-1251) Pixie denied telling her brother Skipper on the morning that Joel was killed that she wished he was dead. (R1252) She further denied telling Skipper later that she was glad it was done and to bury the body deep. (R1252) She denied bragging to her sister Sherry that she had cut Joel's wrist. (R1252)

Sexton returned to the camper and told Pixie if she had anything to say about what happened, she'd be next. (R1012) Sexton then told Pixie and Skipper to go buy a shovel to bury the body with. (R1013)

Pixie and Skipper went to Wal-Mart, bought a shovel, and returned to the camp. (R1013) Sexton told everyone to collect Joel's clothes and to get rid of them. (R1014) One of the boys discarded them. (R1014) Sexton took the shovel back to where Willie was and did not return until after dark. (R1015)

Sexton came into the camper where everyone was watching T.V. (R1017) He told them that Joel was supposed to have run off.

(R1017) Pixie claimed that later that night she heard Sexton tell his wife that he "had Willie do it." (R1017) Pixie was about six steps away from them when she heard this. (R1018)

Pixie claimed that she heard her father say Joel had to be gotten rid of on two other occasions. (R1018) Once was on a trip to Ohio with Willie. Defense counsel objected, claiming that this claim had not been made before by Pixie and it had not been provided in discovery. (R1022) The State claimed her statements were a surprise to them. (R1021) The court found no willful violation of the discovery rules by the State and told defense that they would be permitted wide latitude on cross. (R1023-1024) Defense counsel still requested a mistrial, claiming they would have to reevaluate the entire defense strategy. (R1024-1025) The court denied the motion. (R1025)

Pixie then resumed testifying. She claimed that she accompanied her father on trips to Ohio for the purpose of picking up his check. (R1029) It was on one of these biweekly trips that Sexton said he wanted to get rid of Joel because he had too much on him. (R1030) This statement was allegedly made 2 weeks before the murder. (R1030)

Roughly a week later Pixie heard Sexton repeat the same statement. (R1030-1031) At the time he was sitting at a picnic table with Willie and Skipper. (R1030)

Pixie had lived in Ohio with Joel in her parents' home. (R1031) In 1992 she was aware of problems her father was having with the Department of Human Services in Ohio. (R1031) Sexton left Ohio to

prevent that state from taking the rest of his children from him. (R1032) At that point in time, Sexton had custody of Christopher, Kim, and Skipper. The other children were in foster care. (R1032) Pixie left Ohio because Sexton told her there was a warrant out for her arrest. (R1032) Pixie and Joel went with the rest of the family to Indiana. (R1033)

Over objection Pixie began to describe life in the Sexton home. (R1035-1041) A standing objection to this testimony was granted. (R1042)

Pixie claimed that her father made all the decisions in the household and if the children questioned them or failed to carry out his wishes, they were beaten. (R1034-1035) Prior to age 18 beatings were done with a belt, after age 18, with a fist. (R1035) This method of discipline applied to everyone in the household and continued in Florida. (R1043) Pixie observed her father beat Willie, who was 23, on almost a daily basis in Florida. (R1044)

Another family rule was that the children were not permitted to talk to anyone outside the family about family matters. (R1044) If you did and were caught, you were whipped. (R1044) Each of the school-age children carried a quarter and if you heard anyone talking about family matters, you were supposed to call home and report the incident. (R1044) If you failed to call, you would be whipped also. (R1045)

The children were not allowed to have friends to the house, (R1045)

Sexton made the decision to go on the run. (R1045) Sexton claimed he was wanted by the FBI and that he would have a standoff with them. (R1045) Sexton trained the boys in what to do in case of a stand-off. (R1046) Pixie observed the boys being trained in the Little Manatee State Park. (R1049) He taught the boys how to kill by teaching them to use a gun and telling them when to shoot. (R1046) He also showed them how to strangle by using a rope with handles. (R1047) Sexton told the boys to put the rope around the person's neck and to twist it with the handles. (R1049) Pixie stated this **was** how she **saw** Willie strangling Joel. (R1049) Pixie identified Exhibit 18 as an example of such a rope. (R1047)

Sexton also talked of the Ohio Department of Human Services while on the run. (R1048) Sexton claimed that if they tried to take his children, he would kill them. (R1048)

While in Indiana, Pixie gave birth to a boy named Skipper Lee Good on January 17, 1993. (R1050) Shortly thereafter, the family all left for Tampa, Florida. (R1050) An aunt and an uncle lived in Tampa. (R1050) The family was coming to Florida to retrieve Sherry, who had been sent by Sexton to Florida so she could avoid being subjected to a blood test. (R1051)

The family stayed with the relatives for several weeks, then rented a trailer in New Port Richey. (R1051) The family stayed in the trailer several weeks, then returned to their aunt and uncle's. (R1052) They remained there a month, then relocated to the Hillsborough River State Park. (R1052) Sexton made all the decisions on when and where they would all move. (R1053)

While at the Hillsborough River State Park, Skipper (Pixie's baby), became ill. (R1053) Pixie claimed the baby had been ill for three weeks, but that Sexton would not let her take him to the doctor. (R1054) The baby would not quit crying. (R1054) One night when the baby wouldn't stop Pixie was holding him in the back of the camper. (R1054) Sexton told her to get the baby quiet or he would come back there and do it. (R1055) Pixie had already given the baby Tylenol and adult Nyquil. (R1055) She put her hand over his mouth and held it there until he stopped crying. (R1055) Then she laid him on the bed and went to sleep. (R1055-1056) In the morning he was dead. (R1056) Pixie denied that she ever abused the baby. (R1239)

Sexton would not let the baby be taken to a hospital. (R1056) He kept saying that the baby died from crib death. (R1069) He told Pixie to keep the baby in the back of the camper that day. (R1056) Several days later Sexton had Joel and Willie bury the baby. (R1059) After Pixie's arrest the baby was later re-buried in a cemetery.

Joel was distraught after the death of his child. (R1059) He wanted to take Pixie and her daughters and go back to Ohio. (R1059) Over objection Pixie testified that she then told Joel that her father, Sexton, was the father of her two daughters. (R1059-1067) Pixie claimed her father began having sex with her when she was 13. (1208) When Joel confronted Sexton about this, Sexton told him that he (Joel) still had to raise the girls as though they were his. (R1068)

Joel told Sexton that he wanted to return to Ohio. (R1068) Sexton told Joel he couldn't go back and that he wouldn't make it if he tried. (R1068) Sexton told Joel that if anyone turned him in, he'd have him taken out. (R1068) Pixie understood this to mean that the person would be killed. (R1069) Sexton also told Pixie that if she left, he would tell the authorities that she had killed the baby. (R1070)

Pixie wanted to find out what crib death **was**, so Sexton took her, Willie, and Joel to the library. (R1070,1241) Once there, he did most of the talking. (R1070) Pixie denied arguing or fighting in the library, (R1244,1246) She denied talking to the librarian about the baby. (R1245) Pixie knew there was an airport close to the library, (R1243) Willie and Joel spent most of the time smoking, outside the library. (R1246)

As a result of those events, Pixie was charged with manslaughter. (R1056) She entered into a plea agreement with the State which provided that she would not be charged in the death of her husband and that she would receive a sentence of anywhere from community control to 12 years prison if she testified against Sexton. (R1058,1214-1217) Pixie hoped to get house arrest. (R1217)

While in Indiana, Pixie appeared in a video tape made by her father. (R1071) Pixie said her father made the tape to send to the President and to the lady that works for him to threaten them. (R1072) Pixie and the others were told how to act and what to say before the tape was made. (R1072) They were told to say there was no sexual abuse and no physical abuse. (R1072) If they didn't say

this, they would be beat. (R1072) Pixie identified State's Exhibit 9 as being that tape. (R1073)

Defense counsel objected to the relevance of the tape. (R1078) The State wished to play only those portions of the tape made by Sexton. (R1078) The court previewed the tape before ruling. (R1078-1080) The court reporter was asked to transcribe the tape as it was being played for the court. (R1089) This transcription appears as Vol.XIII, pages 1089-1122. Defense counsel continued to object that the tape was not relevant. (R1122) The State claimed it was relevant because it showed the extremes to which Sexton would go. (R1124-1126) The court ruled the first portion that it had previewed was admissible. (R1128)

The remaining portions of the tape were previewed the following day. (R1139) The transcript of these portions appears in Vol. XIV, pages 1139-1151. Objections were renewed and overruled. (R1152-1153) The jury was returned to the courtroom and the tape was played. (R1158-1159) A second transcript was recorded and is contained in the record at Vol. XIV, pages 1159-1207. A brief summary is as follows:

Sexton addressed his remarks to various government officials, claiming that his civil and constitutional rights had been violated by the Stark County, Ohio Social Services agencies. (R1159-1160) Sexton gave some brief biographical information, then related his experiences with Social Services. (R1160-1161)

Sexton related that in the summer of 1991 his daughter, Michelle, had been behaving badly at home. (R1161) Michelle left

home and **was** gone six days. (R1162) The police were called and Michelle was found at a friends. (R1162) Michelle returned home, but continued to cause problems within the family. (R1163) A fight eventually broke out between Michelle and her brother, which left a scratch on Michelle's face. (R1163)

The next day the school called and told Sexton that Michelle claimed that she had been abused. Social Services was coming to get her clothes. (R1164) Michelle also claimed to be pregnant. (R1164-1165) Michelle was taken into the custody Social Services. (R1165) This occurred in February of 1992. (R1165)

During Easter of 1992, Mrs. Sexton went to school to pick up some of the other children. (R1165) When she arrived, she was told that they had been picked up by Social Services. (R1165-1166) Sexton was then accused by Michelle of sexual abuse. (R1166)

Sexton made several attempts to get his children back. (R1168-1172) Sexton eventually left the home and three of the children were allowed to return. (R1172) Sexton continued to have problems visiting his children and with their placement. (R1172-1177,1179-1180) Sexton denied that he had abused his children in any way. (R1177,1189-1190) He maintained that he was a good provider for them. (R1177)

At some point, Social Services decided to remove the children again. (R1181) Sexton decided that he would not permit it. (R1181) He barricaded himself in his home with his family. He contacted the news media and refused to leave. (R1182) The police came and

talked to Sexton, as did Social Services. (R1183-1184) Sexton gave up after he was promised he would not be arrested. (~1183)

Several days later, however, he **was** arrested. (R1184) While in jail, Sexton found out that his wife was also going to be arrested, so he called her and told her to take the remaining family and flee. (R1186) When Sexton got out of jail, he joined them. (R1189)

Sexton wanted his children back. (R1192) He stated he was being pushed "to the edge of the cliff". (R1192) Sexton felt that all the Social Services people were lying. (R1196-99) He felt his children were being held so the State could get money for them. (R1199) He felt his children were being abused by the system. (R1203-1207)

Pixie resumed testifying. (R1205) Pixie stated that her father was arrested in the Little Manatee River State Park by the FBI after Joel was killed. (R1205-1206)

Christopher Sexton, age 15, testified that he is the third youngest child. (R1267-1268) Christopher grew up in the Sexton home. (R1269) He then testified as to his experiences in that home:

Christopher was removed from the home in 1992 and placed in foster care. (R1270) While he was in foster care Sexton would come to see him at school and follow his bus. (R1270) Christopher was afraid of Sexton, his father. (R1271)

Christopher stated that Sexton made all the decisions in the family. (R1269) Discipline was done by beating. (R1269) Younger

children were beaten with a belt, older ones with a fist. (R1269-1270) Christopher observed Sexton beat Willie with his fists in, Florida. (R1270) Willie would do whatever Sexton told him to. (R1270)

Over defense counsel's renewed objection (R1276-1280), Christopher testified that while he was growing up Sexton would tell the children that "he [Sexton] had brought them [the children] into this world, and he could take them out of it." (R1281) This would be said several times a week. It was said to Willie as well. (R1281) These incidents occurred while the family lived on Caroline Street in Ohio. (R1281)

During this same period Sexton would order the children to stare into his eyes. (R1281) Sexton would tell them that they could see the devil there. (R1281, 1300-1301) Christopher believed that Willie practiced Satanism. (R1282) Sexton was an ordained minister and did not approve of Satanism. When Willie would talk about it, Sexton would get angry. (R1302)

While the children were in the household they were not allowed to have friends over. They were not allowed to talk to anyone outside of the family about what was going on inside the family. If they did, they were beaten. (R1282-1283)

Sexton would tell the children that a "good snitch was a dead snitch". (R1283) Christopher believed that Sexton thought that Joel was a snitch. (R1283) Christopher thought that Sexton said this about Joel either the night or day after he **was** killed. (R1283)

Christopher was taught how to kill a policeman by his father. (R1284) He **was** taught to do this using a gun, knife, or ropes. (R1285) He was told to shoot below the face mask because the police didn't have bullet-proof vests there. (R1285) He was taught to strangle with a rope attached to two wooden handles. (R1285) Christopher was told to wrap the rope around the neck and use the handles to twist. (R1286) The children were also taught to hide in trees and to throw knives. (R1286-87) The plan was that if the FBI came and surrounded the RV that Sexton would drive and the children would shoot from out of the back window. (R1287) Christopher was taught these things in Oklahoma and Florida. This was done in case the FBI came in force. (R1284) Christopher knew his father had outstanding warrants against him. (R1285) While the family was living in New Port Richey Sexton would sit on the front porch with his shotgun, on the lookout for the FBI. (R1289) Christopher was also told to use an alias in the campgrounds. (R1290)

Christopher recalled the day Joel was killed. (R1290) He had gone on a picnic with his father and mother. (R1290) When they returned to the RV, Pixie came walking out, saying Joel had run off and Willie had gone after him. (R1291,1308) Sherry was with Pixie. (R1309) Pixie was scared and nervous. (R1291) Sexton got out of the car, said "Goddammit" and went into the woods with Pixie. (R1292,1309) Sexton sounded mad. (R1309) Christopher was made to stay in the RV for an hour and a half. (R1292)

Christopher heard Sexton tell Charles and Pixie to go buy a shovel to be used to bury Joel. (R1292)

Sexton was glad Joel was gone according to Christopher. (R1293) After Joel was dead, Sexton remarked that he was a snitch. (R1293) Christopher never heard of any plan to kill Joel. (R1311) Sexton told them once that Joel had been picked up by a heavysset woman in a red Nissan. (R1300)

On cross Christopher testified as to his observations on Pixie and Joel's relationship, (R1304) Pixie and Joel did not get along. They argued and Pixie accused him of molesting her daughters. (R1305)

Christopher observed Pixie beat Joel, hitting him on the head with frying pans and other things. (R1305) He observed Pixie burn Joel with a cigarette while the other brothers held him down. (R1306)

Christopher saw Joel argue with Sexton, but Sexton did not physically abuse him. (R1306) Sexton would try to iron things out between Pixie and Joel. (R1307)

Matthew Sexton, age 17, testified that he is the child of Sexton. (R1321) He lived with his parents in Ohio, but was placed in foster care at age 14. (R1322) Sexton came and got him one day, taking him to Indiana. (R1326) Matthew then described life in the Sexton home:

Sexton made the decisions in the home. (R1322) He controlled the family. Matthew stated that his father said that he was more powerful than Satan because he was a warlock. (R1323) To prove

this he would tell the children to look into his eyes to see the devil. He would claim that his hands had only two lines on them, a sign of the devil. (R1323)

Sexton also claimed to be a minister. (R1324) He would perform marriages between himself and his daughters. (R1324) He would use a little black bible with a star on it. (R1324) After the ceremony Sexton and the girls would go into the bedroom. (R1324)

Sexton would discipline the children by beating them. (R1325) Willie would be beaten every few days. (R1325) These beatings continued in Florida. (R1325)

Matthew observed Sexton having sex with Pixie in the living room of the house in Ohio. (R1325) His mother was holding Pixie down and Skipper was watching. (R1326)

Matthew was trained by Sexton to kill law enforcement officers. (R1328) He was told to shoot them or use his fist in case they "made a stand." (R1328) Sexton owned a shotgun, which he was going to use to protect his family from the FBI. (R1330)

Matthew stated that the children used drugs while in Florida. (R1330) They would use pot, alcohol, and sniff gas. (R1330)

Matthew **was** picnicking when Joel was killed. (R1332) He learned about it from Pixie when they returned. (R1332) Matthew **was** told to hunt for a shovel to bury Joel with, but one was bought instead. (R1333) Matthew **was** also told to gather up Joel's clothes. (R1334) When Matthew learned that Joel was dead, he

discussed it with Sexton. Sexton told him not to say anything or he and Willie would go to the electric chair. (R1334)

Matthew had overheard Willie say that he would like to get rid of Joel. (R1335) On cross, Matthew admitted that he had stated in deposition that Pixie had told him that she was part of the killing. (R1343) Pixie said she had egged Joel into the woods. (R1344) This conversation took place the night that Joel died. (R1344)

Matthew described Pixie and Joel's relationship as bad. (R1345) Pixie was cruel to him. She beat him with a sweeper cord and pots and pans because she believed that he molested her children. (R1346,1348-51) Joel **was** afraid to leave and never fought back. (R1350-51) Joel was also told by Sexton not to hit anyone or he would get taken care of. (R1351)

Once, while staying at Uncle Dave's in Florida, Matthew ate a "feeder" fish. (R1352) He told Joel to try it, and he did. Skipper told Joel to eat another one, and when Joel refused, Skipper and Joel held his mouth open and forced him to eat more. (R1353)

The boys on another occasion hit Joel with a fly swatter intending to cause pain until Pixie told them to stop. (R1357) Skipper also tried to insert a broom stick into Joel's rectum, which Pixie also stopped. (R1358)

Joel had a good relationship with Sexton. (R1346) Sexton warned the others not to beat or hit Joel because if they did, they would have to answer to him because he didn't want Joel running

away. (R1346,1356) Sexton never told Matthew that he wanted to get rid of Joel. (R1348)

Pixie treated her baby, Skipper, badly. (R1347) she would slap him to the point of causing bruises on his face. (R1347) She would do this on her own. (R1347) Pixie, not Sexton, gave the baby Nyquil. (R1348)

Judy Genetin is the director of Legal Services for the Stark County, Ohio Department of Human Services. (R1364) In 1992 she became involved with a complaint concerning the Sexton family. (R1364)

A complaint was received and a follow-up investigation **was** performed. (~1365-66) Michelle Sexton was interviewed and as a result, a complaint was filed alleging dependency in April. (R1366-1367) A pick-up order was issued and the six youngest children were removed from the home. (R1367) The children were originally placed with a paternal uncle, Otis. (R1367) Later, the children were placed in agency foster care. (R1367)

In late 1992, Christopher, who was on the run from his placement, and Kimberly were returned to Mrs. Sexton. (R1368) A "no contact" order was placed on Sexton. (R1368)

A hearing was held in November, at which time some other concerns were brought out. (R1369) This led to Ms. Genetin becoming involved with negotiations with Sexton and the police. (R1370) These negotiations included the promise that the social worker would be changed and the children would not be removed from Mrs. Sexton at that time. (R1371) After this agreement **was** reduced

to writing, Sexton turned himself in to the police. (R1371) A hearing was to have taken place the next Monday, but the Sextons failed to appear. (R1372)

Michelle Sexton Croto, age 21, testified that she is Sexton's child. (R1373) She is the sixth of the twelve children. (R1373) She lived with her parents until age 17. (R1374)

Michelle described life in the Sexton home:

Her father made all the family decisions. He enforced the discipline by whipping and beating her and the other children. (R1374-1375) At least one child was beaten every day. (R1375) A switch was used until age 16, then fists were used. (R1375) Michelle was also placed in a closet and deprived of food as forms of discipline. (R1375-76)

The boys were disciplined in the nude. (R1376) For example, Willie was made to stand naked in living room and Sexton would say things about how small his penis was. (R1377) Sexton would tell Willie that no girls would like him because he was small. (R1377) Another time all the boys were made to go into the bathroom and measure their penis's to see whose was the biggest. (R1378)

Sexton would tell the children that he was Satan. (R1381) Sexton would **say** that Lana[one of the younger children who was also called "Angel"] was a witch. (R1382) Sexton performed rituals at the Ohio home. (R1383) The family would sit around a table holding hands in the dark and Sexton would tell them people were coming through their bodies. (R1383) Sexton would use the Bible and dress in black, (R1383)

Michelle visited a cemetery with her father on Thanksgiving and Halloween. Sexton would make the children stay in a grave for over a half hour. (R1383)

Michelle feared her father. Growing up she was not allowed to have friends or to have people to her house. (R1384) The children were not allowed to talk about the family, if they did, they were beaten, (R1384) All the children carried a quarter that they could call home with to report anyone who talked. (R1384)

In the spring of 1992 Michelle filed a complaint of abuse perpetrated by Sexton. (R1385) She told her school counselor that she might be pregnant and that her father was the father of the child. (~1385) Michelle later recanted this complaint at the request of her mother. Her mother promised Michelle she was going to divorce Sexton, but that Michelle needed to take back what she said. Michelle came home. A few days later Sexton was there and made Michelle copy a statement, telling her that if she refused, that "girls disappear everyday". (R1386,1392-1393)

Michelle stated that sexual activity among the siblings was encouraged by Sexton. (R1387) Michelle was also told to view her sister Sherry having sex with her uncle so she could see how it was done. (R1387) When Michelle was 13 years old she was "married" to her father. (R1387) Michelle was dressed up in white and a ceremony was performed by Sexton in the bedroom. (R1388) Sexton told Michelle it was something all daughters and fathers did and then they were supposed to love each other. He then fondled her and told her to keep it a secret. (R1387-1388) Once when Michelle

refused to perform oral sex on Sexton, he chipped her tooth. (R1389) Michelle also claimed that Sexton had her file false rape charges against Uncle Otis to get back at him. (R1396-1398,1402)

Sexton had Michelle date a Jeff Partridge in order to cover up a suspected pregnancy attributable to him. (R1403) Michelle denied having sex with Mr. Partridge. (R1403) Michelle stated her father would encourage each of the girls to date if they became pregnant from him to hide it. (R1403-04)

Steven Zurbey is a captain with the Jackson County Township Police Department in Stark County, Ohio. (R1417) Capt. Zurbey knew Sexton from high school and was his barber before he became a policeman. (R1416) In November of 1992 Zurbey was involved with the negotiation process with Sexton during the stand-off. (R1416)

Zurbey received a call on a Saturday morning which caused him to go to the Sexton residence. (R1419) The Sexton family was barricaded within the house. (R1419) Zurbey was able to make phone contact with Sexton and talked with him for almost eleven hours.

(R1420) Sexton told Zurbey that no one was going to take his children and that if anyone tried he would hurt them. Sexton said he was armed and would not come out. (R1420) Sexton mistakenly believed there was a pick-up order for his children. (R1420) Sexton later said he would kill anyone who tried to take his children. (R1421)

About 8 o'clock that evening, Zurbey was able to talk Sexton out of his house. (R1422) Sexton was taken to a Crisis Center and then the jail. (R1422) A .357 magnum handgun, a 20-gauge shotgun,

and 70 rounds of ammunition were found in the house. (R1422) Food appeared to stockpiled, there was chicken wire over the windows, and a lighting system was set up under the table. (R1423)

Zurbey knew of no plan to kill Joel Good. (R1424) He had nothing to do with that case. (R1424)

Stephen Raady is assigned to the Federal Fugitive Task Force for violent criminals with the Stark County Sheriff's Office in Canton, Ohio. (R1425) Prior to that he **was a** sex crimes investigator for the Stark County Department of Human Services. (R1426) It **was** in his former capacity that he was involved with the Sexton family. (R1426)

Based on reports obtained from Eddie Sexton Jr. arrest warrants were issued for Sexton in October 1993. (R1427) The Sexton family had fled Ohio around December 29, 1992. (R1427) The investigation did not stop when the Sextons fled. (R1428)

Raady was again contacted by Eddie Jr. after the family was arrested in Florida in February 1994. (R1429) Raady met with several of the children at the uncle's house in Canton. (R1429) Based on these interviews, Raady contacted the Hillsborough County Sheriff's Office. (R1429-1430) Raady believed that two homicides had occurred in Florida. (R1430)

Raady went to Florida. (R1431) He went to the state parks with Sexton. (R1432) The body of Skipper Lee Good was located in the Hillsborough River State Park, (R1432)

Lee Baker is employed with the Hillsborough County Sheriff's Department. (R1433) He assisted the FBI in arresting Sexton on

January 14, 1994 in the Little Manatee River State Park. (R1434) Baker was contacted by Steve Raady sometime later, and pursuant to that call he went to the Hillsborough River State Park to attempt to locate the body of a child. (R1435) A body was recovered on January 27, 1994. (R1435)

Baker next went to the Manatee River State Park just off 301. (R1435) He was attempting to locate the body of Joel Good. (R1436) The body was located the second day of searching, (R1436) The Sarasota K-9 unit located the grave site with their dogs. (R1437) A video was made of the search and excavation. (R1442) The video was shown to the jury but the removal of the body was not shown. (R1443-1445)

Charles McDaniel is employed with the University of South Florida Police Department, Sarasota campus. (R1447) McDaniel is in charge of campus security and is familiar with the physical campus and the surrounding area. (R1449) Using an aerial photograph, McDaniel pointed out the campus and the Sarasota Bradenton Airport. (R1450) The two are approximately 1/4 mile apart. (R1451)

Doctor Marie Herrmann is the associate medical examiner for Hillsborough County. (R1454) She went to the Little Manatee River State Park on January 27th and 28th. (R1457) A burial site was found on the 28th. (R1457) The site was excavated and human remains were removed. (R1457) A stipulation was read to the jury that the remains that were recovered was the body of Joel Good. (R1458)

Herrmann photographed the body at the site and as it was being removed. (R1459) The body was then taken to the Medical Examiners Office. (R1460)

The body was clothed. A ligature was around the neck. The ligature was a rope and attached to the rope were medium sized tree branches about 6" in length. (R1461)

An autopsy was performed on the body. (R1461) The body was in an advanced state of decay. (R1465) It was very dirty. (R1465) The skin and hair were almost all gone. (R1465) When the ligature **was** removed the skin under it was darkened and torn. (R1465)

The **torso and extremities had slit marks all over them which** Herrmann attributed to decomposition. (R1465) The right hand had some puncture marks and a clear chop wound defect which penetrated the skin and into the bone of the hand. (R1466) It was caused by a heavy bladed knife or ax. (R1473) **Herrmann** felt it was **inflicted after** death. (R1480)

Despite the decomposition Herrmann was able to distinguish **discoloration** around the neck tissue which she defined as hemorrhage. (R1467) The carotid arteries were hemorrhaged. (R1467) Herrmann opined that Joel Good died of asphyxia due to ligature strangulation. (R1467) Generally, the victim will become unconscious in six seconds. (R1480) **Six** to ten seconds of continued pressure on the neck will ultimately lead to death which may occur within minutes. (R1480) The autopsy did not indicate that he had **been beaten.** (R1479)

Herrmann felt the other wounds on the body were not the result of stab wounds. (R1470) They were not deep enough and lacked any discoloration. (R1470) Herrmann admitted they might be incised wounds, but really felt it was caused by decomposition. (R1472) Herrmann did not examine the clothing for cuts. (R1476)

Michael Willette of the Hillsborough County Sheriff's office examined the clothes removed from Mr. Good. (R1563) He found no holes in any of the clothing. (R1564)

At this juncture in the trial defense counsel moved to obtain a psychological examination of the next witness, Gail Novak. (R1488) Defense counsel felt the woman suffered from delusional thinking and when questioned about psychiatric treatment she was very vague. (R1488-1495) The court brought Ms. Novak in and questioned her about her employment. (R1498) The court then denied counsel's motion for examination. (R1499)

Ms. Novak testified that she is employed by the University of South Florida as a librarian on the Sarasota campus. An airport is adjacent to the campus. (R1501)

In the fall of 1993 Sexton came into the library just before lunch and asked for some books on Native Americans. (R1503) Sexton said he wanted a new name, so Ms. Novak showed him where the books were. (R1504)

Novak noticed that Sexton appeared to be with three other people that had come in about a half hour before. (R1505) She heard Sexton call one of these people "Pixie". (R1505) Sexton

referred to the other ones as Joel and the third as Billie or Willie. (R1506)

Novak described Pixie as small and withdrawn, she had dark circles under her eyes and mumbled. (R1507) Novak had a conversation with her and Joel. (R1507) They wanted books on crib death. (R1508) Ms. Novak tried to help them find some using the computer, but Pixie would not pay attention. (R1508)

Sexton came in the library and "Billie"¹ approached him. (R1508) According to Novak, Sexton asked why they had come here and Willie responded that he had not passed a funeral parlor yet. (R1504) Sexton then grabbed Willie by the neck and pushed him into some book shelves. (R1508) Sexton then dragged Willie across the room to where the men's bathroom was located and knocked him into a alcove that was adjacent to it. (R1508-1509)

All together the Sexton's were at the library three or four hours. They would come in and out, going to the courtyard to smoke. (R1509)

Novak described Joel as having a speech impediment. He was "sweet" in that he talked about having a funeral, but he didn't seem to know what one was. (R1509) Joel kept saying that he wanted to go back to Ohio and that he "got" his reservation on a plane. (R1509) Willie told Sexton that Joel wanted to go back to Ohio. (R1510)

¹ Novak refers to Willie Sexton as Billie in the record. In this brief Willie will be substituted for Billie.)

The court gave a limiting instruction to the jury with regards to the statements Willie attributed to Joel. The jury was to use them only as a means of context for Sexton's statements. (R1515) Sexton then told Willie that the "only way that boy's going back to Ohio is in a body locker." (R1516) Novak was about four feet away from the two when she heard this statement. (R1526)

Novak also stated that she observed Sexton push Pixie into a table edge. (R1521) This happened when Novak was trying to give Pixie the number for the women's center. (R1521) He told her to get her story straight. (R1521)

Novak stated on cross that shortly after her encounter with the Sextons, she made notes on it. (R1528) Later she made a second set, and eventually made a report of one set of notes. (R1529) The last set was made in August 1994. (R1529)

According to the notes, the Sexton's came in two different cars, one of which was a black Cadillac. (R1531) The other vehicle was a truck with a camper on the back. (R1531)

When the children came in they were looking for a migrant clinic so they could have a doctor look at the baby. (R1532) According to the notes, they claimed to have the dead baby with them in the car. (R1532) The kids also tried to get Novak to come to the car to see the body, but she refused. (R1535) The notes also stated that upon learning this, Novak called the campus police. (R1533) Security told her to quit playing jokes. (R1534) Novak also called 5911, who told her to get off the line because they only deal with life-saving matters. (R1534)

When the police failed to come, Novak offered to call the hospital, but the children refused, saying they had no money. (R1535) Novak used the phone book to call a local funeral home. (R1536) At this point Sexton **came** in, very angry. (R1536) He was angry that they had left him with the "back-breaking" work of digging a grave. (R1536)

The Sextons had very disjointed conversations, they would be talking of one thing and something else entirely different. (R1538) For example, Sexton asked about campgrounds, but said he couldn't go to Arcadia because he had some run-ins with the locals about satanic rituals. (R1539) He said he had the girls stick pins in dolls to get welfare workers to believe him about abuse charges. (R1539)

Novak stated on cross that she took a break close to noon and left to go to **McDonalds**. (R1540) She only had 15 minutes, so she was bringing her food back to the library when she saw Sexton outside the library. (R1542) He was bent over using a thick stick to strike something, (R1542-1543) He was shielded by the science center and his car, so Novak could not tell what he was hitting. (R1542) Novak also saw Sexton take a machete and cut two fronds off a palm tree. (R1544) Novak became afraid, so she returned to the library. (~1546)

Novak bought a cold drink from the machine outside the library and was drinking it to calm down when Sexton appeared. (R1547) He **was** sweaty and had dirt on his hands and nails. (R1547) He then got into an argument with Pixie and Willie about them wanting to

put a little cross on the grave. (R1548) Sexton told them he had just finished the burial by the fence and no one bothered him because he pretended to be the cable man. (R1548) The kids asked for a marker, but Sexton said he couldn't afford one and that the grave could be located because it was just by the fence. (R1549) Sexton told the kids to pretend they had taken the body to a funeral parlor. (R1551)

Sexton then went into the library to wash up. The librarian stopped him because he was carrying a drink. (R1551) Novak went back into the library, trying to avoid Sexton. (R1553)

In the library Novak then observed Sexton do some type of Indian ritual. (R1554) He stamped his feet on the ground and slapped his leg. (R1554) He did this to the north, east, south, and west. (R1554) Novak jumped back from him. (R1555) Novak then stated that Sexton told her that he had filled in the grave himself. (R1555)

Novak first talked to the police in July 1994. (R1556) She had seen things about the family on T.V. and in the papers, but she tried to ignore it.. (R1556)

The State's last witness was Charles Sexton. (R1572) Charles had been served with a subpoena from the state. He initially refused to testify, exerting 5th Amendment privilege. (R1572-1574) The State asserted Charles had no privilege, as he **was** being granted use immunity. (R1574) Independent counsel was appointed to Charles to advise him. (R1575-1584) After consulting with counsel, Charles agreed to testify. (R1598)

Charles, **age** 19, testified that he is the child of Sexton and his wife, (R1600) Charles lived with his parents in Ohio. (R1600) Charles was, at the time of this trial, in Ohio awaiting sentencing on charges of aggravate burglary. (R1600) Charles had no agreement with Ohio concerning his sentence if testified in Florida. (R1601)

Charles was with the family in the Little Manatee River State Park. (R1601) On the day of Joel's death Charles was with Sexton and some other family members on a picnic. (R1602) He learned of Joel's death when they returned to the campsite. (R1602) Pixie and Sherry **came** out of the woods and Pixie came up to Sexton and told him that Joel **was** dead. (R1603) Charles thought they were joking, but he went into the woods and **saw** Joel's body lying on the ground with Willie standing off to the side. (R1603) Joel had **a** rope around his neck. (R1604) Charles saw no stab wounds on the body. (R1608) He couldn't remember about blood because he had been too scared. (R1608) Sexton told Willie he was glad it was done. (R1605) Willie had asked Sexton "**What do I do**" and Sexton had responded to kill him. Sexton also told Willie "good son".

Charles was aware of "little conversations, here and **there**" about getting rid of Joel. (R1604) Charles, Willie, Pixie, and Sexton had sat around and talked about it. (R1604) Charles stated that it was Pixie and Sexton's idea to kill Joel. (R1604) They wanted to do it because Joel knew too much about the baby. (R1605) Charles couldn't count the number of times it was talked about because it was quite a bit. (R1609)

Charles did not know if Sexton was involved in a plan with anyone to kill Joel. (R1605) Charles admitted that he had previously made statements to the effect that Sexton was involved in an actual plan to kill Joel, but testified that he was lying. (R1605)

Charles and Willie buried Joel. (R1606) Sexton had told Charles and Pixie to buy a shovel. (R1607) Sexton said he had to be buried deep enough so no one would find the body. (R1608) Sexton told them not to talk about Joel or they would be erased. (R1608) Erased meant killed. (R1608) Charles took it seriously. (R1608)

Charles then described his life with the family in Ohio. (R1610) Charles participated in rituals involving animals with Matthew and Willie. (R1611) He couldn't remember if he told a detective that he saw Pixie and his father having sex. (R1612) Charles did see Pixie and Willie having sex. (R1623)

On cross Charles admitted to telling alot of stories to the Ohio police because he was mad at his father. (R1614) He told different stories in deposition. (R1614) Charles described his stories as half truth, half lie. (R1615)

Charles also gave a set of statements that he described as being "For Himself". (R1616) In this statement he testified that every time killing Joel was mentioned it was brought up by Pixie or Willie. (R1616) It **was** brought up only three times. Sexton's response was that they were crazy or it was bullshit. (R1616) Sexton called Willie "a fucking idiot" for thinking of it. (R1617)

On the morning Joel **was** killed, Pixie asked Charles to kill him. (R1617) She said she'd give anybody a million dollars to do it. (R1617) Pixie had talked about killing Joel while they were in Indiana, long before the baby died. (R1618)

Charles stated that Sexton's response when told that Joel had been killed was "You're crazy". (R1618) Sexton was shocked and mad. (R1618) He was mad when he made the "good son" comment to Willie. (R1618-1619) Sexton did tell Willie to "finish" Joel off after his leg moved. (R1619,1623)

Pixie and Joel had a bad relationship according to Charles. (R1619) Pixie beat Joel. (R1619) Pixie would say Joel was an asshole and she wished he was dead. (R1623) Pixie said she was glad Joel was dead, at which time Charles called her a "sick bitch". (R1620)

While Charles was in Ohio he received letters from Sexton. (R1624) Over objection, Charles testified that Sexton told him he would put money in his name that was received from talk shows. (R1624)

Following the testimony of Charles Sexton, the State rested their case. (R1645) The following testimony was presented by the defense:

Sherry Sexton, Sexton's daughter, testified about Pixie and Joel's relationship. Sherry had known Joel since high school. (R1653) She and Pixie were sisters, but did not get along well. (R1653)

According to Sherry, Pixie always argued and fought with Joel. (R1654) She beat him with pots and pans and her fist. (R1654) During their stay in New Port Richey Pixie put a funnel in Joel's rectum and poured hot sauce and stuff into the funnel. (R1655) Pixie laughed about it. (R1655) Willie helped Pixie do this by holding Joel down. (1655-1656)

On the morning of Joel's death Sherry, Willie, Pixie, and Joel remained at the camper while the rest of the family went on a picnic. (R1656) Willie and Pixie went into the woods, then returned and asked Joel if he wanted to go help them get wood. (R1657) When Joel said no, Pixie forced him into the woods. (R1657) While they were in the woods Sherry heard Joel yell for Eddie to help him. (R1658) Sherry tried to go in the woods, but Pixie and Willie stopped her, telling her they would kill her if she went in. (R1658)

A short time later when her father returned to camp, Sherry told him that she thought Pixie and Willie had killed Joel. (R1659) Sexton said "Oh shit" and got out of the car. Pixie ran up to the car and went into the woods with Sexton. (R1660) Sexton **was** mad and upset with Willie. (R1661) Sexton kept asking Willie why he had done it. (R1662) Willie said he killed Joel because he was afraid that Joel would tell about the baby's death. (R1667)

Sherry had heard Sexton say he was afraid that Joel would "narc". (R1683) Sherry knew Joel wanted to leave, but she didn't know if Joel had told Sexton this. (R1684)

That night in the camper Pixie told Sherry that she had sliced Joel's wrist. (R1661) She was happy about it and said she was glad he was dead. (R1661)

Sherry testified that Joel and Sexton got along good. (R1660) He tried to help Pixie and Joel's marriage. (R1660) When they fought, he tried to get them back together. (R1660)

Sherry had observed Pixie and Willie having sex together frequently. (R1662) She saw them in the camper, in Treaty, and in Ohio. (R1663)

Sherry also observed Pixie treating her baby violently. (R1663) Pixie beat the baby and hit him with her shoe. (R1663) She hit the baby all the time and gave him Nyquil to knock him out. (R1664)

When Pixie killed the baby, she took him to her father. (R1664) Sexton tried to do mouth-to-mouth on the baby. (R1664) Sexton wanted to take the baby to the hospital. (R1664-1665) Sexton performed a funeral for the baby in the back of the camper. (R1665)

Sherry came to Florida in February of 1993. (R1669) She did not want to come, but did so to avoid having a blood test performed on her son. (R1671) Over objection by the defense, Sherry testified that Sexton is her son's father. (R1671-1672) Petitioner asked her to come to Florida. (R1671)

While in Florida the children did a lot of drugs and inhaled gas. (R1673-1674) They drank a lot of alcohol. (R1673) The children often played "pranks" on each other. Joel was a frequent

target. (R1675) Joel never fought back because he loved Pixie. (R1675) Joel had also been told by Sexton not to hit the kids or he would get beat. (R1675)

Using Nyquil in the Sexton family **was** not unusual. (R1676) The children were given it almost every night. (R1676) Sexton told Pixie not to give it to the baby because he vomited it up. (R1676) Sherry didn't hear Sexton tell Pixie to quiet the baby down. (R1677) Pixie, Willie, and Joel left at some point with the baby's body. (R1678) They had the baby in the car and there was talk of crib death. (R1678)

Sherry **was** afraid of her father growing up. (R1679) The children were made to participate in rituals. (R1679)

While growing up the Sexton children often engaged in sexual relations with each other. (R1679) Sherry, Charles, Michelle, and everyone had sex with each other. (R1680) Sherry didn't think Sexton knew about it. (R1680)

Sexton didn't like "snitches". (R1685) He would often say that "a good snitch is a dead snitch". (R1685) After Joel's death Sexton referred to him as a snitch. (R1685)

Wilma Gene Sexton is married to Sexton's brother. (R1689) She and her husband live in New Port Richey, Florida. (R1690) They have several lots with mobile homes on them. (R1690)

In late 1993 Sexton and his family stayed at this property. (R1690) Pixie, Joel, Willie, and their children were going to rent one of the mobile homes. (R1691) They signed a lease. (R1691) Shortly after they moved in, Wilma Sexton had to evict them.

(R1692) She did this because they observed bruises and cigarette burns covering Joel's back. (R1693) Joel said the kids did it. (R1693) Wilma wouldn't put up with the fighting, so she made them leave. (R1693) This happened while Sexton was gone to Ohio. (R1694)

Mr. Sexton chose not to testify. (R1697-1700)

The jury was instructed on October 6, 1994. (R1777-1791) No objections were made to the instructions as given. (R1791) Later that day the jury returned a verdict of Guilty of First Degree Murder. (R1801-1803)

Penalty Phase

Defense counsel moved for special instructions to be given during penalty phase. (R1825) Defense counsel requested that the jury be informed that it is only under rare circumstances that a sentence imposed is different from that recommended by the jury. (R1825) The motion was granted. (R1827) Sexton's fourth requested instruction, one relating to the idea that a conviction of murder alone is insufficient for the imposition of a death sentence was also granted. (R1829-1830) The fifth requested instruction on the burden of proof was granted. (R1831) Defense counsel was also granted the right to argue that it was unfair to sentence Sexton to death when Willie might never be tried. An instruction to this effect was also approved. (R1834-1842)

The court agreed to hear victim impact testimony outside of the presence of the jury. (R1849-1851)

The court denied defense counsel's requests for jury instructions relating to procedure of how the jury evaluates mitigating and aggravating circumstances; to require the jury to put aside feelings of **rage** or sympathy; to amplify the "diverse frailties of humankind"; and to emphasize that each juror has and individual vote. (R1829,1832,1833-1834)

The State presented the following testimony:

Otis Sexton testified that he is Sexton's older brother. (R1857) Otis knew that Sexton had been convicted of a robbery in 1963. (R1857) Sexton blamed it on another man, yet both were convicted. (R1858-1859) Sexton told Otis that a car dealership/gas station was robbed and a man **was** hurt pretty bad. (R1858)

Otis admitted that he had never really gotten along with Sexton. (R1860) Otis testified that there were two sides to Sexton. (R1860) One side would give you the shirt off his back. (R1860)

The State moved to have all guilt phase evidence admitted into penalty phase. (R1862) The motion was granted. (R1862)

Sexton presented the following evidence:

Caroline Royer is Sexton's niece. (R1864) Ms. Royer would visit Sexton in his home in Ohio. (R1865) She allowed her daughter to play with the Sexton children. Ms. Royer never saw any evidence of physical or sexual abuse among the Sexton children. (R1865) The children were well behaved and did not seem afraid of Sexton. (R1868)

Sexton would do favors for Ms. Royer. Sexton had his sons paint her home. The children did other handyman jobs. (R1866) Sexton could not do this work because he was disabled from a bad back. (R1866)

Sexton would also do favors for other family members. (R1866) He provided a home for some of his nephews. (R1866) Sexton took care of his mother after she suffered a stroke. (R1867) Sexton helped to control an Aunt Maggie who was mentally infirm. (R1870) Sexton often babysat for Ms. Royer when she was a child. (R1867)

Ms. Royer believed Sexton was a religious man. (R1869) As a child she had heard that he was a preacher. He could always quote scripture. (R1869)

Sherry Sexton, Sexton's daughter, testified that she had a good childhood with her father. (R1872) Her father laughed often. (R1872) The children were allowed friends, to have them over and to date. (R1872) Most of the children graduated from high school. (R1874) The children were allowed to participate in extracurricular activities like football and horticulture. (R1876)

Sherry believed her father was a good father and she loved him. (R1877) The family would all get together for family reunions. They celebrated holidays together. (R1877)

Sherry claimed that Sexton never beat her, although he would spank the boys. (R1872) He did not beat the children every day. (R1873)

Sherry admitted that she had sex with her father. (R1873) Sexton did not rape her. (R1873) Sherry was 17 or 18 the first time it occurred and it happened at her instigation. (R1874,1880)

Sherry believed her father changed when the children were taken from him. (R1877) He became nervous and upset. (R1878) In Florida his nerves were bad. His hands would shake. (R1878-1879)

Sherry admitted that she had been in a mental institution, but denied that it was due to Sexton. (R1880)

Nellie Hanft is Sexton's older sister. (R1883) The Sexton family grew up in West Virginia. (R1883) She and Sexton's father was rumored to be Indian. (R1884)

Ms. Hanft would visit Petitioner in Ohio. (R1884) She never saw evidence of abuse. (R1884) She did see Sexton spank Patrick once for stealing a walkie-talkie. (R1885)

Sexton cared for his mother after she had a stroke. (R1885) Sexton had her live with them. (R1886) He was a very devoted son. (R1886)

Ms. Hanft's husband is disabled from a stroke. (R1887) Sexton would come to their home and fix things and cut her husband's hair. (R1887)

Sexton was a minister about 10 or 15 years before. (R1889) Ms. Hanft visited his church which was comprised of mostly poor people. (R1889) Sexton also did premarital counseling for her daughter and son. (R1889)

Sexton would always bring presents to their sister who was "slow". (R1889) At Christmas he would play Santa. (R1890)

The jury was then instructed and retired to deliberate.
(R1940)

Outside of the presence of the jury and over defense counsel's objection (R1959), the State presented the following testimony to the court:

Theresa Boron testified that she was Joel Good's aunt. (R1943) She described Joel as "a sweet, kind and gentle young man who loved his family." (R1943) Joel's parents passed away when he was a child and he was raised by various family members, including the Boron's. (R1943) Joel was not aggressive. He wanted to be a carpenter. (R1944)

Joel had a learning disability, but with special tutoring was able to graduate from high school. (R1944) Joel was active in the youth group. (R1944)

Asby Berrick was Joel's uncle. Joel did not reside with him. (R1947) Mr. Berrick described Joel as a good kid all his life. He was a little slow, having a learning disability, but he was good hearted. (R1947) Joel trusted everyone. (R1947) He was happy and friendly. (R1948)

Joel was good with Pixie's two daughters. He treated them like they were his own children. (R1948)

Mr. Berrick knew that Joel had been in a fight with one of the Sexton's. (R1949) Joel would not talk about it. (R1949) Mr. Berrick was unaware of Joel being arrested, he believed that Joel had gone to the hospital as a result of it. (R1949)

Daniel Good **was** Joel's brother. (R1951) He described Joel as a kind person who was good to everyone. (R1951) Joel had always wanted a good job, a wife, and a baby. (R1952) Joel was very proud of Skipper Lee, his son. (R1953) He treated Pixie's children just like his own. (R1953)

Sherry Sexton testified that Joel had gotten into a fight with Frankie Sexton at the Caroline house. (R1955) Joel stabbed him in the leg. (R1956)

Sherry testified that he was a sweet kid who took care of the children more than Pixie. (R1958)

The jury returned with a recommendation of death by a vote of 7 to 5 on October 7, 1994. (R1963-1965)

Post-trial hearings and Sentencing

On October 17, 1994 the court requested that each side submit written memorandum regarding sentencing to the court prior to the hearing. (R1977)

On November 2, 1994 Sexton appeared for sentencing. (R1988) Defense counsel first requested the court to rule on the motion for new trial. (R1989) No additional grounds or argument were presented beyond that contained in the written motion. (R1989) The motion was denied. (R1990)

The court then acknowledged that it had received and read the written memorandum submitted by both sides. (R1990) The court **also** noted that it had received some letters from defense counsel regarding sentencing. (R1990) The court stated it would take a

recess to read the letters, then each side would have an opportunity to argue to the court. (R1991)

The court heard the testimony of Raymond Hesser. Mr. Hesser is the victim in case number 94-7915, which was also scheduled for sentencing at the same time. (R1992) Mr. Hesser testified that he is disabled and confined to a motorized scooter. (R1995) He suffers from Friedreich's Ataxia and did so while he was living next to the Sexton's at Little Manatee River State Park. (R1995) Because of his condition Mr. Hesser would have been unable to fend off any attack in January of 1994. (R1996) The conspiracy to attack him which Sexton had pled guilty to had affected Mr. Hesser's social life. He was afraid to make friends. (R1997)

Hesser testified that he had a casual acquaintance with Pixie. (R1998) He had met Sexton and Willie. (R1999) Hesser never had any problems with Willie. Willie spoke slow. (R1999) Willie offered to assist Hesser. (R1999) Willie helped him to reinstall a motor and to test a motor. (R2000-2001) Willie would go to the store with Hesser and purchase the needed parts. (R2001) Willie appeared to be of average manual dexterity and could work with his hands. (R2002)

Following the arguments of counsel, the court stood in recess to review the case law and comments of counsel. (R2026) Court then reconvened and sentence **was** imposed. (R2026)

The court found four aggravating circumstances. (R2028-2030) The court found numerous mitigating circumstances. (R2031-2032)

The court found the aggravators outweighed the mitigators and sentenced Sexton to death. (R2032)

SUMMARY OF THE ARGUMENT

The trial court committed reversible error by allowing the State to introduce collateral crime evidence into the guilt phase. The evidence included testimony from Appellant's children that he had raped them, fathered children from them, that he practiced Satanism and engaged in other bizarre conduct, that he trained his children to kill FBI agents, that he ordered the murder of his grandchild, and that he had engaged in a standoff with police in the State of Ohio in the years and months preceding the instant homicide. The testimony was irrelevant, highly prejudicial, and of no probative value. The admission of this evidence did not prove a material fact in issue and served only to show propensity. The jury was undoubtedly misled by the horrific testimony, which overshadowed the testimony relating to the homicide, and followed the prosecutor's urging to use it as a basis for conviction.

The collateral crime evidence **was** also made into a feature of the trial. It overshadowed the testimony regarding the homicide in both qualitative and quantitative measure. The ultimate result was that its admission deprived Appellant of a fair trial and of due process of law.

The trial court erred in finding that the aggravator of heinous, atrocious, and cruel applied in this case when the facts established that Appellant was not the actual killer and there was no testimony that Appellant intended for death to occur in the manner in which it did.

The sentence of death is disproportionate in this case when compared to the sentences received by the codefendants. The evidence at trial reflected that Appellant did not actually commit the murder and that the other participants were equally or even more culpable in the crime.

Florida's death penalty statute which allows a death recommendation to be returned by a bare majority is unconstitutional.

ARGUMENT

ISSUE I

THE TRIAL COURT ERRED BY ADMITTING IRRELEVANT AND PREJUDICIAL COLLATERAL CRIME EVIDENCE WHICH SPANNED SEXTON'S ENTIRE LIFE WHERE SUCH EVIDENCE SHOWED ONLY CRIMINAL PROPENSITY, WAS HIGHLY INFLAMMATORY, AND BECAME AN OVER-WHELMING FEATURE OF THE CASE.

The main feature of Sexton's trial was the detailed testimony of Sexton's children concerning abusive acts committed by Sexton against them throughout their entire lives. These acts included incest, his directive concerning the murder of Skipper Good, testimony from various law enforcement personnel, Social service workers, and lawyers from Ohio concerning the State of Ohio's prosecution of Sexton for these crimes, and Satanism. This evidence was admitted over defense counsel's repeated objections, as Williams Rule evidence. This evidence should have been excluded because it was of questionable relevancy, its probative value **was** far outweighed by its tremendous prepuccial impact, and because it became the overwhelming feature of the trial. This evidence must certainly have confused and misled the jury as to the issues properly before them. As a result of this error, a new trial is required because Sexton was denied a fair trial and due process of law as guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States and Article I, Sections 9 and 16 of the Florida Constitution.

On September 23, 1994, the State filed notice that it intended to introduce testimony of other bad acts of Sexton. (CR351-366) Pursuant to defense counsel's request for an in-camera hearing, on September 23, 1994, the court considered defense counsel's request to have specific testimony excluded. The trial court refused to rule on the admissibility prior to trial, stating he would rule as evidence was presented. During trial, defense counsel repeatedly objected to the collateral crimes evidence being admitted.

The best way to set forth the Williams Rule evidence is to outline it on a session by session basis:

September 30, 1994, Vol. XII: Pixie Good is called to the stand as the State's key witness. After testifying about the day of the murder, Pixie testified to her general upbringing. (R1031-1051,1205-1206) Pixie stated she left Ohio in 1992 after learning her father had problems with the Department of Human Services. Her sister Sherry had also come with her two children to avoid the children being subjected to a paternity test. The family left so the rest of the children would not be placed in protective custody. Pixie did not question her father's actions because of the force he used to rule the family with. Pixie testified that all the children were beaten with a belt until **age** 18, then with fists by Sexton. While growing up the children were not allowed to **speak** about the family to outsiders or they would be beat. Each child had a quarter to call home with if they discovered another child breaking the family rules. If you failed to call home and report, you were beaten also, Pixie heard Sexton talk of being wanted by

the FBI and that he would engage them in a stand-off. Sexton trained the boys how to kill government agents. Sexton stated if anyone tried to take his children, he would kill them. Pixie testified that she and Joel Good had a child named Skipper. At some point while they were in Florida, the baby wouldn't stop crying. Sexton would not allow medical attention to be sought for the baby. Sexton ordered Pixie to quiet the child or he would do it. Pixie then smothered her child to death. Sexton refused to permit the child to be taken to a hospital or to a funeral home for burial, instead the child was buried in the woods. Pixie testified that Sexton **was** the father of her two older children. Pixie testified that she was on a videotape made by her father. Sexton told her what to say on the tape, to disavow any sexual or physical abuse or she would be beaten. Pixie identified Exhibit 9 as the tape she was on.

October 3, 1994, Vol. XIV and XV- Exhibit 9 (a video tape that lasts approximately 60 minutes) is played to the jury. In it Sexton gives his version of the difficulties that he and the family have had with the Stark County Ohio Human Services Office, the removal of his children from his home, his stand-off with police, and his eventual flight from Ohio authorities. Pixie then resumes testifying that she was 13 years old the first time Sexton had sex with her. Pixie states that she continued to be sexually abused by Sexton after her marriage to Joel Good. Pixie testified that, in Ohio, Sexton **had barricaded himself in the house**. Christopher Sexton, age 15, testified that Sexton is his father. Sexton

disciplined his children by beating them with a belt until age 18, then beating them with his fists, Christopher was removed from his father's custody in 1992 by the Department of Human Services in Ohio. While he was in foster care Sexton would follow him. Christopher was afraid of his father while growing up. Christopher stated Sexton told him that he, Sexton, had brought Christopher into this world and he could take him out (i.e., kill him). Sexton said he was a warlock and had power. Sexton told Christopher that he could see demons or the devil in Sexton's eyes. The children were not allowed to talk to others outside the family. If they did, they were whipped. People who talked were snitches, and Sexton said the only good snitch was a dead snitch. Sexton taught Christopher how to kill policemen or FBI men in case they came for Sexton. Christopher was taught to kill using a gun, rope, or knife. Sexton told Christopher to aim for below the face mask to avoid the bullet proof vests. Sexton had the children practice fighting and hiding in the woods to avoid the FBI. Matthew Sexton, age 17, testified that Sexton is his father. Matthew lived with his father for 14 years. During that time Sexton told Matthew and some of the kids that he was a warlock and more powerful than Satan. Sexton said the devil could be seen in his eyes and on the palms of his hands. Matthew watched Sexton perform marriages between his daughters Kimberly, Lana, Estella, and Sherry. A little black Bible with a star on it was used by Sexton during the ceremony. According to Matthew the girls would accompany Sexton into his bedroom after the ceremony. Matthew observed Sexton have

sex with Pixie in the living room in Ohio. Mrs. Sexton held Pixie down while it occurred. Sexton beat the children, Willie included. The children were beat if they talked about the family. Sexton would say that a good snitch was a dead snitch. Matthew went to Florida with the family when his father was trying to avoid arrest. Sexton trained Matthew to kill law enforcement officers. This was done in case they had to make a stand. Matthew also testified extensively about abuse that Pixie committed against her child and the victim, including that Pixie stated that she had lured Joel into the woods on the day he was killed. Judy Genetin, an attorney with the Department of Human Services in Ohio, testified that after receiving a report from Michelle Sexton, a complaint was filed and the Sexton children were removed from the home in 1992. Sexton was not permitted contact. Genetin testified that Sexton, in November barricaded himself in the family home and engaged in a stand-off with police. Sexton was trying to prevent them from taking his children again. Sexton was eventually talked out of the house, then arrested. Sexton was released from jail, then failed to appear for his next court hearing. Michelle Sexton testified that she was Sexton's daughter. While living in Ohio Sexton disciplined the children through beatings. Michelle was also locked in a closet with roach spray, was made to sleep there, and was deprived of food as discipline. The boys were also made to stand in the living room naked and Sexton would tease them about the size of their penis. Sexton would also have the boys compare size of their genitals. The children were constantly belittled. Sexton often

said he was Satan. Sexton claimed to be a warlock and stated that one of the children was a witch. In Ohio Sexton would conduct rituals with the children involving a Bible and claim that people would come through their bodies. Sexton took Michelle to the cemetery and made them stay inside graves. Sexton didn't permit the children to have friends. The children had a quarter that they were to call home with and report any child who spoke about the family. In 1992 Michelle reported to the school that she suspected that she was pregnant and that Sexton was the father. Sexton threatened to kill Michelle if she refused to later recant her allegations. Sexton also encouraged the children to have sex among themselves. Sexton married Michelle when she was thirteen while they lived in Canton. Michelle wore a wedding dress and Sexton married them in his bedroom, He told her to keep it a secret. Sexton would punish Michelle if she refused his sexual advances. He once chipped her tooth when she refused to perform oral sex.

October 4, 1994, Vol. XVI- Captain Steve Zerbey of Stark County testified about his contacts with Sexton in the stand-off in November of 1992. Zerbey described it as a hostage situation where Sexton barricaded himself in the house with his wife and children. The house had been fortified. Sexton was armed and alluded to killing himself if they tried to capture him. Sexton threatened to kill anyone who tried to take the children. Sexton eventually turned himself in. Steve Raady of the Federal Fugitive Task Force for violent criminals investigated Sexton for child sex charges. After Sexton fled Ohio Raady continued to work on the case. Later,

Raady found the body of Skipper Lee Good buried in the Hillsborough State Park.

October 5, 1994, vol. XVII- Charles Sexton is Sexton's son. He came with the family to Florida in 1992. Charles testified that growing up if he disobeyed his father he was beat. The State impeached Charles with a deposition where he had stated that he had seen Pixie have sex with their father. Sherry Sexton was called as a defense witness. On cross, the State elicited from her that Sexton had fathered her child.

The first bridge that must be crossed is relevancy. Williams Rule or similar fact evidence is only a special application of a general rule that relevant evidence is admissible unless excluded by a rule of evidence. To be relevant, similar fact evidence of other crimes must be of such a nature that it would tend to prove a material fact in issue. It must not be used to show bad character or propensity. Here, the prosecutor argued that the evidence was necessary to show that Sexton could dominate Willie to the point of causing him to commit murder because of the abusive way Sexton had treated Willie. The trial court agreed, and the evidence was admitted. However, much of the testimony should have been excluded because it was irrelevant and did not tend to prove a material fact in issue. The collateral crime evidence showed nothing more than propensity and bad character. It added nothing toward the development of facts pertinent to the issue of Sexton's guilt of a premeditated murder occurring at his direction.

Collateral crime evidence is often used to establish specific facts in a trial, such as identity. See, e.g., Garron v. State, 528 So. 2d 353 (Fla. 1988); Keen v. State, 504 So. 2d 396 (Fla. 1987).

When identity is at issue a high degree of similarity is necessary between the two crimes in order to establish a unique pattern of criminal activity. In this case identity was not an issue. It was conceded by the State that Willie committed the homicide. Neither side claimed that someone unknown had influenced Willie to commit the murder. Even if identity had been an issue, the collateral crime evidence was in no **way** similar to the homicide.

Motive can also be a material fact in issue that **may** be proven by the use of collateral crime evidence. The evidence of sexual abuse of the daughters, the paternity of the grandchildren, punishments to children other than Willie, and Sexton's alleged instructions to Pixie to kill the baby were not relevant to the issue of motive in this case. The State's theory was that the motive for the killing was to prevent Joel from returning to Ohio and divulging the family's location to the police. The **motive** for the murder was to avoid arrest or detection by Sexton or Pixie. The State certainly did not need to go into the graphic and lurid testimony from the children to establish this. A brief amount of testimony concerning Joel's wish to return because of his child's death was sufficient to establish motive.

Collateral **crime** evidence can also be used to show the context in which a crime occurred and can then be relevant to proving motive. For example, in Christopher v. State, 407 So. 2d

198 (Fla. 1981), the State introduced testimony concerning the defendant's sexual relations with his fourteen year old daughter during his trial for the murder of the daughter's adoptive parents. This Court upheld the admission of the evidence because incest was one of the motives for the murder. The state's theory was that the defendant had killed the adoptive father because the defendant was jealous of the adoptive father's own sexual advances to the child. A second theory was that the murders occurred when the adoptive parents tried to interfere with the defendant's attempt to flee with the child by calling the police. In the instant case, the motive for the murder was not incest. The state did not advance the argument that Sexton had Joel killed because Joel objected to or desired to stop a sexual relationship between Sexton and his daughters. From the testimony, the various sexual relationships between the children and their parents and the siblings themselves was not cause for concern to Joel. The prosecutor's sole argument as to motive was that Joel was killed to prevent him from returning to Ohio and telling the police about the death of the baby, Skipper Good. The evidence of all the horrendous things which occurred in the Sexton home years before the murder and before Joel Good was even known to the family did not prove the state's theory as to motive.

The collateral evidence did nothing to establish the context of the crime. Most of the collateral crime evidence occurred in Ohio. Most of it occurred years before the family arrived in Florida. None of it related to Sexton's treatment of Joel. Very

little of the testimony of the children concerning the treatment in the home was applied to Willie. Certainly none of the evidence relating to the incestuous relationships and rape of the daughters was applicable to Willie. Evidence which is relevant to the context of the crime is illustrated by the Christopher case and cases such as Craig v. State, 510 So. 2d 857 (Fla. 1987). The fact that Sexton had sex with his daughters, beat his children, engaged in a stand-off with police, or practiced Satanism did not tend to show that he ordered Willie to kill Joel Good.

Even if some evidence were necessary in order to explain why Sexton did not want Joel to go to the police about the baby's death other than the obvious concern that Pixie or he would be arrested, a minimal reference to that event occurring was all that was necessary. For example, in Henry v. State, 574 So. 2d 73, 75 (Fla. 1985) and Long v. State, 610 So. 2d 1276, 1280 (Fla. 1992), this Court allowed minimal reference to other collateral crimes in order to establish context and to describe the investigation that led to the arrest of the defendants. The detailed and harrowing descriptions of the years in Ohio was not necessary to describe the investigation and not necessary to give an adequate context to the murder.

There were no material facts in issue concerning absence of mistake or accident. No one claimed Joel was accidentally killed. Neither did the testimony concerning the Satanism, incest, beatings, and training to kill show guilty knowledge.

While the testimony which related specifically to Sexton's relationship with Willie might have had some relevance, the majority of the collateral crimes evidence did not. Its admission into evidence undoubtedly impacted negatively upon the jury. It misdirected the jury's attention from the crime charged, emphasized criminal propensity, and became a main feature of the trial. Sexton was portrayed as a sexually and physically abusive parent, a Satanist who was able to have his own grandchild killed, and a man who would train his children to kill.

Even if the evidence was of some marginal relevance, the limited probative value of the testimony was far outweighed by the prejudicial impact it had. §90.403, Fla. Stat. (1995).

In Henry v. State, 574 So. 2d at 75, this Court recognized the danger in the admission of collateral crime evidence when it stated:

There remains the question of whether the evidence of the killing of Eugene Christian was admissible as being part of a prolonged criminal episode. (Citation omitted). Some reference to the boy's killing may have been necessary to place the events in context, to describe adequately the investigation leading up to Henry's arrest and subsequent statements, and to account for the boy's absence as a witness. However, it was totally unnecessary to admit the abundant testimony concerning the search for the boy's body, the details from the confession with respect to how he was killed, and the medical examiner's photograph of the body. Even if the state had been able to show some relevance, this evidence should have been excluded because the danger of unfair prejudice substantially outweighed its probative value. Sect. 90.403, Fla.Stat. (1985)

It would be hard, if not impossible, to imagine that any more prejudicial and inflammatory evidence could have been presented to the jury than that which concerned Sexton's sexual abuse of his daughters or the alleged killing of his grandchild. The jury heard as collateral crime evidence that Sexton raped his daughters and during one such incident his wife held the child (Pixie) down. The jury was told that Sexton performed "marriage" ceremonies between himself and his daughters when they reached the age of thirteen and afterwards would have intercourse with them , When one child, Michelle, refused to perform oral sex on him she was beaten. The jury was told that Sexton fathered at least four children from his daughters. It defies reason to believe that the jury was not appalled by this testimony. And, of course, the icing on the cake was Pixie's testimony that when her baby would not stop crying, Sexton ordered her to do something or he would. Pixie then killed her baby, testifying that she believed that that was what Sexton meant.

The jury was told by some children that they were involved in Satanic rituals with Sexton. A bible with a star on it was referred to. The children were taken to the cemetery and stood in graves. Seances were conducted. The jury was told that Sexton claimed to some of his children that he was a warlock and had great powers. His eyes held Satan. No one could state with a straight face that such testimony is not inflammatory and grossly prejudicial. Yet the jury heard more.

The jury heard how the children were beaten and humiliated. The jury heard one child, Michelle, was locked in a closet and sprayed with roach killer, and deprived of food for refusing to have sex with Sexton.

The jury was told that Sexton engaged in a stand-off with police in Ohio. Lawyers and police officers testified about his disregard for the law in Ohio. Sexton's children told of his plans to kill law enforcement officers and how they were trained to kill the FBI agents who might find them in their cross-country flight. All this was heard by the jury who was then asked to decide if Sexton had ordered Willie to kill.

On the tape, the jury observed Sexton talk about these events. They saw no remorse, only justification. The jury heard Sexton lie about the abuse of his children, claim it had never occurred.

The prosecutor also relied on the collateral crime evidence in his summation. During closing he referred to Sexton as a person who "tilled the fertile fields of his family and harvested the benefits of his labors", a direct reference to the sexual abuse the daughters. He referred to the daughters as Sexton's wives. (R1726) The prosecutor argued that Sexton's stand-off with the Ohio police who were removing his children from his home could be used by the jury as evidence that Sexton wanted Joel killed. (R1727,1730) The prosecutor reminded the jury that they should look to all the collateral crimes evidence to determine whether or not Sexton had ordered a family member killed. (R1747-1748)

The collateral crimes evidence in this case was not only irrelevant and highly prejudicial, but it also became an impermissible feature of the case. For nearly as long as the Williams Rule has been called that,' this Court and the District Courts of Appeal have recognized that an important corollary to this rule that the "...prosecution should not be allowed to go too far in introducing evidence of other crimes. The state should not be allowed to go so far as to make the collateral crime[s] a feature instead of an incident." Randolph v. State, 463 So. 2d 186,189 (Fla. 1984), citing Williams v. State, 117 so. 2d 473 (Fla. 1960). When the prosecution violates this caveat, the defendant is deprived of a fair trial and reversible error occurs. A new trial is the appropriate

² The Williams Rule comes from Williams v. State, 110 So2d 654 (Fla. 1959). The principle that Williams rule evidence cannot be allowed to become a feature of the trial was established less than a year later in Williams v. State, 117 So.2d 473 (Fla. 1960).

remedy.³

In the instant case, the Williams Rule evidence became the overwhelming feature of the trial. The evidence which related to the murder of Joel Good was dwarfed in comparison, both in quantity and in quality. The State's whole approach was to paint Sexton **as** a terrible person to whom no act was below him and then to persuade the jury that if Sexton could do all those other bad things, it **was** certain that he had had a hand in the murder as well. This was

³ Sexton's position that a new trial should be granted is further supported by decisions of Florida district courts of appeal, which show the prejudicial impact of collateral crimes evidence when it becomes a feature of the trial. See, e.g., Singer v. State, 647 So. 2d 1021 (Fla. 4th DCA 1994), review denied, State v. Singer, 654 So. 2d 920 (1995) (in trial of resisting without violence, probative value of defendant's postarrest threat against violence, probative value of defendant's postarrest threat against arresting officer outweighed by prejudice); Shorter v. State, 532 So. 2d 1110 (Fla. 3d DCA 1988) (improper suggestion that defendant put three officers in the hospital when arrested created prejudice far outweighing any relevance to consciousness of guilt); Mattera v. State, 409 So. 2d 257 (Fla. 4th DCA 1982) (evidence of collateral robbery irrelevant, prejudicial, and a feature); Zeisler v. State, 404 So. 2d 861 (Fla. 1st DCA 1981), cert. denied, State v. Zeigler, 412 So. 2d 471 (1982) (collateral second-degree murder conviction not relevant except to show propensity and, if relevant, became feature); Matthews v. State, 366 So. 2d 170 (Fla. 3d DCA 1979) (extensive use of collateral offense only showed propensity and became feature); Drayton v. State, 292 So. 2d 395 (Fla. 3d DCA), cert. denied, 300 So. 2d 900 (1974) (collateral crime evidence not relevant, used to show propensity, and resulted in overkill); Davis v. State, 276 So. 2d 846 (Fla. 2d DCA 1973, affirmed sub nom, State v. Davis, 290 So. 2d 30 (1974) (collateral crime evidence irrelevant and became feature); Simmons v. Wainwright, 271 So. 2d 464 (Fla. 1st DCA 1973) (defendant entitled to fair trial based upon the charged offense; should not be tried on irrelevant, immaterial, and inflammatory collateral crime evidence); Green v. State, 228 So. 2d 397 (Fla. 2d DCA 1969), cert. denied, 237 So. 2d 540 (1970) (conviction on charge of assault with intent to commit murder tainted by detailed evidence of collateral crime of manslaughter, which became feature).

especially critical for the state considering the credibility of their star witness, Pixie.

In this case fourteen witnesses were called by the state. Of those fourteen, four (Hubbard, Baker, McDaniel, and Willette) were strictly chain of custody witnesses. A fifth witness, Herrmann, performed the autopsy.

Of the remaining nine witnesses, Zurbey and Genetin knew nothing about the murder. They were called only to testify about the stand-off Sexton held in Ohio and about the child abuse investigations there. One other witness, Steve Raady, testified about the Ohio incident and as a background investigative witness.

Of the remaining six witnesses, five were Sexton's children. Pixie's testimony covered approximately 136 pages, of which 47 were devoted to testimony of collateral matters.⁴ Christopher's testimony covers 46 pages, of which 31 concerned collateral matters. Matthew's testimony is 37 pages, of which the first 11 pages were devoted to Williams Rule evidence. None of Michelle Sexton's testimony, which covered 31 pages concerned what occurred in Florida. Michelle was not even in Florida when the murder occurred. Charles's testimony of 14 pages was roughly equal in terms of evidence of the murder and of the collateral crimes. The transcript of the video covers 48 pages. In terms of sheer quantity, the testimony relating to the collateral crimes consumed

⁴ The total pages covered by testimony includes argument of counsel occurring while the witness was on the stand.

over one half of the trial. Even more damaging than the quantity of this evidence however, was its quality.

Relatively little evidence was presented about the actual murder. Only one witness, Pixie, claimed to be present at the time of the killing. Although other children testified about the actions of Sexton after the murder or shortly before, none of this testimony was particularly gruesome or horrifying. In contrast, however, was the collateral crimes evidence. Here, the victims of the abuse took the stand and testified as to the macabre childhoods they endured. The daughters, who were the victims, testified as to how they were raped by Sexton. The child victims testified about how they personally were abused, frightened and tortured during their time in Ohio. The jury was given lurid details as to the "weddings" between Sexton and his children. And they were told that he all but ordered the death of his grandchild. The testimony on the collateral crime evidence was emotional and heartbreaking, in stark contrast with the rather unemotional testimony concerning the murder.

In allowing the state to make collateral crimes the overwhelming feature of the trial, the trial court committed reversible error, and appellant was deprived of due process of law as guaranteed by the Fourteenth Amendment of the U.S. Constitution and Article I, Sections 9 and 16 of the Florida Constitution. See, Matthews v. State, 366 So. 2d 170 (Fla. 3rd DCA 1979); Davis v. State, 276 So. 2d 846 (Fla. 2d DCA 1973); affirmed sub nom State v. Davis, 290 so. 2d 30 (Fla. 1974).

There is no question that the introduction of the collateral crimes evidence was harmful. In Keen v. State, 504 So. 2d. 396, 410 (Fla. 1987) this Court noted:

When such irrelevant evidence is admitted it is "presumed harmful error because of the danger that a jury will take the bad character or propensity to crime thus demonstrated as evidence of guilt of the crime charged." Straight v. State, 397 So.2d 903, 908 (Fla.), cert. denied, 454 U.S. 1022, 102 S.Ct.556, 70 L.Ed.2d 418 (1981).

There is no doubt that the jury took *all* that it heard about Sexton and concluded that anyone who had done such horrible things to their children probably did this crime as well. That is exactly what the state wanted the jury to believe. Without the collateral crime evidence there was a distinct probability that the jury would have believed the defense's theory that Pixie had masterminded the murder.

Pixie's credibility **was** certainly in question. She had received a promise of an extremely minimal sentence for the murder of her child and immunity from prosecution in this case. Two children testified that Pixie wished to see Joel killed, that she participated in discussions about killing him, and on the morning of the murder solicited Charles to kill Joel. All the witnesses, save Pixie, testified that she lured Joel into the woods with Willie. Pixie and Willie were engaged in a sexual relationship, giving rise to motive to kill Pixie's husband. All the witnesses, again save Pixie, testified that Pixie had abused Joel, that they had a bad marriage, and Pixie did not wish to be married to him. She had asked him to leave before the baby's death. The State had

real problems with Pixie and the only way to save credibility **was** her was to cast Sexton in an even more disgusting light, to portray him as a hideous abuser of his own children, a liar, **and** the accomplice to the murder of his grandchild.

Not only was the collateral crime evidence harmful in the guilt phase, it also very likely had an improper impact in the penalty phase as well. In numerous cases this Court has limited the penalty phase testimony by victims of prior violent felonies when they are unnecessary to prove the offense occurred because such testimony is highly prejudicial. See, Finney v. State, 660 So. 2d 674 (Fla. 1995); Duncan v. State, 619 So. 2d 279 (Fla. 1993); Rhodes v. State, 547 So. 2d 1201 (Fla.1989). In Finney, this Court cautioned that such a practice has the potential to cause the jury to unduly focus on the underlying facts and to cause the jury to feel overly sympathetic to the victim. Although the collateral crime testimony was presented primarily in the guilt phase, the jury was instructed that it was to consider the guilt phase testimony in the penalty phase as well.

In this case it is debatable whether or not the collateral crime evidence even would have been admissible in penalty phase. That, however, was not determined since it **was** allowed in during guilt phase. What Finney cautions against more than likely occurred here. There was no way the jury was going to forget the guilt phase testimony or that of Sherry Sexton during penalty phase. The jury may well have felt that Sexton did not deserve to die for the murder, but did deserve the death penalty for what he

had done to his children and voted accordingly. Had the jury not considered the children's emotional and horrifying testimony, its seven to five death recommendation might have instead been a life recommendation. Sexton's conviction and death sentence must be reversed and the case remanded for a new trial.

ISSUE II

THE TRIAL COURT ERRED IN FINDING
THAT THE AGGRAVATING FACTOR OF HEI-
NOUS, ATROCIOUS, AND CRUEL APPLIED
IN THE INSTANT CASE.

The trial court in his sentencing order stated that:

3. This capital felony was committed in a cold, calculated, and premeditated manner, without any pretense of moral or legal justification. It was especially atrocious.

It was undisputed that Willie Sexton committed the murder. According to the testimony of Pixie, the State's key witness, Sexton was on a picnic when she and Willie went into the woods with the victim. Sexton did not return until Willie had already strangled Joel Good. Pixie could not testify as to the content of any conversations between Willie and Sexton. She stated she saw them talking on the day of the murder, but had no idea what was said. No other witness was able to testify about any conversations between Willie and Sexton regarding the murder or how it was to take place.

This Court, in the case of Omelus v. State, 584 So. 2d 563 (Fla. 1991), addressed the issue of whether or not the aggravating factor of heinous, atrocious, and cruel may be applied to one who is not the actual murderer. The evidence in Omelus was that the defendant had hired a person named Jones to kill the victim. Jones testified that Omelus wanted to collect the benefits of an insurance policy. Omelus and Jones met and discussed the murder. Jones obtained a knife and stabbed the victim to death. The jury

was instructed on the aggravating factor of heinous, atrocious, and cruel before retiring to deliberate in Omelus's case.

This Court found that the aggravating factor of heinous, atrocious, and cruel cannot apply vicariously where there is no evidence of knowledge or intent as to how the murder would be accomplished. This Court reversed for a new sentencing hearing.

In Williams v. State, 622 So. 2d 456, rehearing denied, cert. denied, 114 S.Ct. 570, 126 L.Ed.2d 470 (1993), this Court again affirmed that the HAC aggravator should not be applied vicariously. In Williams, the defendant ran a drug trafficking ring across Florida. The defendant sent several people to Pensacola to recover some drugs and money which were reported to be missing. While involved in the recovery of these items, four people who were suspected of stealing the drugs and money were murdered. They were stabbed and shot to death. At the trial testimony was introduced that Williams had ordered the people killed.

This Court found that although the manner in which the victims were killed was heinous, atrocious, and cruel, the State failed to prove beyond a reasonable doubt that Williams knew or ordered the particular manner in which the victims were killed. Thus, HAC could not be applied as an aggravating factor.

The State failed to prove beyond a reasonable doubt that Sexton knew or ordered Willie to kill Joel in the particular manner that Willie used. Not a single witness testified that they had heard Sexton direct Willie to kill Joel, let alone tell Willie how to do it.

While there **was** evidence that Sexton had told his male children how to strangle someone using a rope and handles, there was also evidence that the children were taught how to shoot to kill and fight hand-to-hand. There is no evidence which indicates that Willie's decision to strangle Joel as opposed to shooting him with the gun in the camper was anyone's other than Willie's.

Because there is no evidence to indicate that strangulation was chosen or ordered, or intended by Sexton, the aggravating factor of heinous, atrocious, and cruel cannot be applied to him and used to support **a** sentence of death. This aggravator must be stricken.

ISSUE III

THE SENTENCE OF DEATH IS DISPROPORTIONATE BECAUSE THIS IS NOT ONE OF THE MOST AGGRAVATED AND LEAST MITIGATED OF MURDERS.

This Court has always adhered to the proposition that a sentence of death is reserved for only the most aggravated and least mitigated of first degree murders. In State v. Dixon, 283 So. 2d 1,7 (Fla. 1973), this Court stated that, because death is a unique punishment in its finality and total rejection of the possibility of rehabilitation, it is proper that the legislature has "chosen to reserve its application to only the most aggravated and unmitigated of most serious crimes." This Court has continued to hold firm to this principle. Kramer v. State, 619 So. 2d 274 (Fla. 1993) ; DeAngelo v. State, 616 So. 2d 440 (Fla. 1993); Songer v. State, 544 so. 2d 1010 (Fla.1989).

The trial court found four aggravating factors: (1) Sexton was previously convicted of a prior violent felony, a robbery 30 years before; (2) the crime was committed to avoid arrest; (3) the crime **was** cold, calculated, and premeditated; and (4) the crime was heinous, atrocious, and cruel. (R465-466) In mitigation, the court found that Sexton was under emotional strain and distraught at the time of the murder, that Sexton acted in a peculiar and delusional fashion exhibited by his claims to be an Indian and his contradictory and strange religious practices, that Sexton demonstrated human qualities by caring for his mother when she was ill, educating his children, and helping his sister repair her home, and that he played Santa Claus. The court also considered several non-

statutory mitigating factors including that Sexton was generous and kind to his relatives children, that he helped poor people, and that he was a kind and respectful person. The court mentioned that Sexton was disabled, but it is not clear in the record whether he found this established as a mitigating circumstance. (~466-468) The trial court then found that the aggravating factors outweighed the mitigating factors to such an extent that a death sentence was appropriate.

Even though the aggravating factors are ones which are given great weight, the aggravating factors found by the trial court are not of such a weight that no amount of mitigation would overcome them. As argued previously, the trial court should not have found the HAC factor because the State presented no direct evidence that Sexton ordered the particular method of killing.

Although prior violent felonies carry significant weight, Sexton's prior felony was not a murder. It had occurred 30 years before. The acts which were the subject of the Williams Rule evidence cannot be applied to this aggravator because Sexton was not convicted of any crime relating to them.

The mitigation presented by Sexton was substantial. It included the judge's finding that Sexton was under severe emotional strain and was distraught at the time of the crimes. Mental mitigation has been given significant weight by the Court determination of the appropriateness of a death sentence. For example, in DeAngelo v. State, 616 so. 2d 440 (Fla. 1993), the trial court failed to find the statutory mental mitigators, but found that

DeAngelo suffered from mental health disorders. This Court reversed, finding that the one aggravator of CCP was outweighed by the mitigation and that a death sentence was disproportionate.

The court found much non-statutory mitigation. Sexton cared for his siblings and his mother. He helped poor people. He educated his children. He was kind and respectful.

What the trial court failed to consider in this case is the intra-case proportionality of the punishments received by the parties involved in this homicide -- Willie, Pixie, and Sexton. It is certainly appropriate to consider the sentences received by others who participated in the crime. Sexton's sentence of death is disproportionate when compared to the sentences received by Pixie and Willie Sexton.

In Slater v. State, 316 So. 2d 539, 542 (Fla. 1975), this Court addressed the principle of equal punishment for equal culpability in capital cases as follows:

We pride ourselves in a system of justice that requires equality before the law. Defendants should not be treated differently upon the same or similar facts. When the facts are the same, the law should be the same. The imposition of the death sentence in this **case** is clearly not equal justice under the law.

In Slater, the defendant was the accomplice, the codefendant and triggerman had pled no contest in exchange for a life sentence. Slater's sentence was reduced to life.

Again in Craig v. State, 510 So. 2d 857, 870 (Fla. 1987), cert. denied, 484 U.S. 1020, 108 S.Ct. 732, 98 L.Ed.2d 680 (1988), the Court explained:

the degree of participation and relative culpability of an accomplice or joint perpetrator, together with any disparity of the treatment received by such accomplice as compared with that of the capital offender being sentenced, are proper factors to be taken into consideration in the sentencing decision.

There, because the defendant was the sole instigator and planner of the murders, disparate treatment was allowed.

Since Slater, this Court has on numerous occasions reversed death sentences where an equally culpable codefendant received lesser punishment. E.g., Pentecost v. State, 545 So. 2d 861, 863 (Fla. 1989); Spivey v. State, 529 So. 2d 1088, 1095 (Fla. 1988); Harmon v. State, 527 So. 2d 182, 189 (Fla. 1988); Caillier v. State, 523 So. 2d 158 (Fla. 1988); DuBoise v. State, 520 So. 2d 26, 266 (Fla. 1988); Brookings v. State, 495 So. 2d 135, 142-143 (Fla. 1986); Malloy v. State, 382 So. 2d 1190 (Fla. 1979).

The principles expressed in Slater and subsequent opinions of this Court are also consistent with the requirements of the United States Constitution. The Eighth and Fourteenth Amendments require the capital sentencer to focus upon individual culpability; punishment must be based upon what role the defendant played in the crime in comparison with the roles played by his cohorts. See Enmund v. Florida, 458 U.S. 782, 102 S. Ct. 3368, 73 L. Ed. 2d 1140 (1982).

In this case, Pixie Sexton, was offered immunity from prosecution by the State in exchange for her testimony. In addition to receiving no punishment, she was offered a sweetheart deal in the case charging her with manslaughter of her infant son. By cutting

a deal with the State, Pixie was able to avoid at least one death sentence and a very lengthy prison term. This deal called for Pixie to receive a sentence ranging from community control to 12 years prison. Although it does not appear in the record, undersigned counsel has been informed by the Hillsborough County Clerk's Office that Pixie received a sentence of 6 years prison followed by 6 years probation. Pixie will be on the streets after committing one murder and participating equally in a second while Sexton remains on death row awaiting society's ultimate penalty.

The testimony at trial, exempting that of Pixie herself of course, showed that she was at least as culpable, and possibly more so, than Sexton. Each member of the family who testified stated unequivocally that Pixie hated Joel, that she tortured him, and that the marriage was awful. (R1304-1306,1345-1358,1619-1620,1673-1675)

According to Charles Sexton, Pixie, Willie, and Sexton discussed killing Joel. The idea was equally Pixie's. In fact, Pixie had discussed killing Joel in Indiana, long before the baby's death. (R1618) On the morning of Joel's murder, Pixie tried to get Charles to kill Joel. (R1617)

Sherry Sexton testified that on the morning of the murder she saw Pixie and Willie go into to the woods. Later, Pixie returned alone and forced Joel into the woods with her where Willie was waiting. (R1657) Matthew Sexton testified that Pixie told him that she had "egged" Joel into the woods so Willie could kill him. (R1344)

Matthew also testified that Pixie told him that she was part of the killing. (R1343) Sherry Sexton stated that Pixie told her that she had sliced Joel's wrist. This statement is confirmed by the medical examiner's testimony that the right hand had a clear chop defect caused by an ax or knife. (R1466)

Pixie Sexton bragged to her siblings that she was glad Joel was dead and glad that she had helped to do it. (R1620,1661) Pixie admitted on cross that she was present while Joel was killed and did not try to stop Willie or obtain help in stopping him. (R1248-1251)

The record also establishes that Pixie had the ability to influence Willie. She was observed talking to him and walking into the woods with him immediately prior to the murder. Several witnesses testified that Willie and Pixie had a sexual relationship which continued in Florida during their stay at the campground. Willie would come with Pixie to pay the camp rent. (R971)

Pixie's testimony, was of course, self-serving and designed to make her appear less culpable than Sexton. She essentially tried to portray herself as a mere witness to the murder of a beloved husband. Of course, Pixie's guilt was never tested in the context of a jury trial. The jury also never knew what a minimal sentence Pixie ultimately received.

Willie Sexton was the actual killer. He waited in the woods for Joel Good and strangled him to death. During the pretrial period, Willie was found incompetent to proceed to trial and com-

mitted to a mental institution. He has not stood trial as of this date.

Although it was alleged by the State in pretrial hearings that Willie was retarded, the evidence at this trial did not establish this. The most which was established concerning Willie's mental abilities came through the testimony of a Mr. Hesser at sentencing. Hesser gave victim impact testimony in an unrelated case Sexton was being sentenced for during the same sentencing hearing as this case. Hesser testified that Willie appeared "slow", but that he appeared to be of average manual dexterity and could work with his hands and repair motors. There is simply not enough evidence in the record for the conclusion to be made that Willie's mental capacities are of such a degree as to reduce his culpability in this case. The fact remains that the actual killer may never stand trial.

While recognizing that this Court has held that disparate treatment between codefendant's is appropriate where they are not equally culpable, those cases are distinguishable from this one. For example, in Mordenti v. State, 630 So. 2d 1080 (Fla. 1994), this Court upheld the defendant's death sentence where the codefendant received life because the defendant **was** the trigger man. The reverse is true in Sexton's case. In Hannon v. State, 638 So. 2d 39 (Fla. 1994), the death sentence was not disproportionate where the defendant killed two people and the next culpable codefendant participated in one of the murders and received a life sentence, Similar cases include Colina v. State, 634 So. 2d 1077

(Fla.1994); Steinhorst v. Singletary, 638 So. 2d 33 (Fla.1994); and Haves v. State, 581 So. 2d 121 (Fla.1991), cert. denied, 502 U.S. 972, 112 S.Ct. 450, 116 L.Ed.2d 468(1991).

Recently, this Court upheld a sentence of death where the defendant was not the actual killer. Sexton's case is distinguishable from this case also. In Larzelere v. State, 21 FLW S147 (Fla. April 5, 1996), reh. denied, 21 FLW S 33 (July 19, 1996), the defendant conspired with her son to kill her husband so that she could obtain over \$3 million dollars in life insurance and assets. The evidence established that for a period of six years leading up to the murder the defendant obtained life insurance policies on her husband and doubled the value on the policies within six months of the murder. Two of the defendant's lovers testified that she had tried to get them to kill her husband, and other witnesses testified that they disposed of the murder weapon at her direction, that the defendant reenacted the murder in the days following the killing, and made statements about her son (the purported killer) receiving payment. The defendant was present when the murder occurred in the victim's dental office. The trial court specifically examined the culpability of the defendant in relation to her son, who was acquitted, and of two other accomplices who were not prosecuted. The court found that the defendant **was** present for the murder and actively participated in carrying out the murder she had planned. Her participation was not minor, she was instigator and mastermind and the dominant force behind the planning and execution

of the murder. Further, the motive, financial gain, was in her full control. This case differs substantially from Larzelere.

Sexton was not the primary planner of the murder. Pixie participated equally. Willie also participated to an unknown extent. Pixie was an equally dominant force behind the murder. She lured Joel into the woods and physically participated in the killing. Pixie shared the same motive, to avoid detection, which the State theorized Sexton possessed. Sexton wished to avoid prosecution for the abuse of his children and Pixie for the murder of her child. There is no less culpability on the part of Pixie in the murder of Joel Good.

This case is similar to Caillier v. State, 523 So. 2d 158 (Fla. 1988). In Caillier the defendant solicited her lover to kill her husband. She wanted him murdered because she was afraid she would lose custody of her son if she divorced him. The defendant had unsuccessfully attempted to have him killed before; but, the hit man ran off with the money. The defendant (her lover) planned to kill the husband, collect some \$125,000.00 dollars in life insurance, and get married. Caillier helped purchase the murder weapon, helped to test fire it, and paid for the codefendant's transportation to Tampa where the victim was. Caillier also provided a picture of the victim to insure her lover would recognize the victim. The lover flew to Tampa, killed the victim, and returned to Caillier using a ticket she had paid for. The lover pled for a life sentence in exchange for his testimony against Caillier. Caillier was sentenced to death. This Court

reversed, finding that Caillier and the codefendant should not receive disparate sentences based upon the relative culpability of each. Likewise, Sexton should not be put to death when an equally culpable participant is given immunity and a six year sentence.

The trial court in this case failed to examine the relative culpability of the parties involved in the sentencing proceeding despite counsel's urging. Even though Pixie **was** not sentenced until after Sexton, it is appropriate for this court to consider, as part of its review function, "the propriety of disparate sentences in order to determine whether a death sentence is appropriate given the conduct of all participants in committing the crime. [Citation omitted]" Scott v. Dugger, 604 So. 2d 465, 468 (Fla. 1992). This Court can and should examine this case very carefully to determine whether or not Sexton's actions in the homicide alone justify the imposition of the ultimate penalty. If the Court will do this, the only conclusion that can be reached is that Sexton is no more culpable than Pixie or Willie. Pursuant to Slater, his death sentence must be reversed. Any other result will deprive Sexton of the due process of law to which he is entitled and subject him to cruel and unusual punishment, in violation of the Eighth and Fourteenth Amendments to the United States Constitution, and Article I, Sections 9 and 17 of the Florida Constitution.

ISSUE IV

THE PROVISION OF FLORIDA'S DEATH PENALTY STATUTE WHICH ALLOWS A DEATH RECOMMENDATION TO BE RETURNED BY A BARE MAJORITY VOTE VIOLATES THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

The United States Supreme Court has repeatedly recognized that the Eighth and Fourteenth Amendments require a heightened degree of reliability when a death sentence is imposed. Lockett v. Ohio, 438 U.S. 586, 604 (1978); see also Caldwell v. Mississippi, 472 U.S. 320, 329-30 (1985); Zant v. Stephens, 462 U.S. 862, 884-85 (1983). The jury's recommendation of life or death is a crucial element in the sentencing process and must be given great weight. Grossman v. State, 525 So. 2d 833, 839 n.1, 845 (Fla. 1988). When a penalty jury reasonably chooses not to recommend a death sentence, it amounts to an acquittal of the death penalty within the meaning of the state's double jeopardy clause. Wright v. State, 586 So. 2d 1024, 1032 (Fla. 1991). In the overwhelming majority of capital cases in Florida, the jury's recommendation determines the sentence ultimately imposed. See Sochor v. Florida, 504 U.S. 527 (1992) (Stevens, J., joined by Blackmun, J., concurring in part and dissenting in part). To the extent that Florida's death penalty scheme allows a death recommendation to be returned by a bare

majority vote of the jury, it violates the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution.'

Sexton recognizes that this Court has previously rejected arguments challenging the imposition of death sentences based on bare majority jury recommendations. See, e.g., Jones v. State, 569 So. 2d 1234, 1238 (Fla. 1990); Brown v. State, 565 So. 2d 304, 308 (Fla. 1990). Whether the Sixth, Eighth, and Fourteenth Amendments require jury unanimity (or at least a substantial majority) in this state's death penalty proceedings is ripe for re-evaluation now, however, because it has become clear that a Florida penalty jury's role is not merely advisory. Under Florida's capital sentencing scheme, the penalty phase jury is recognized as a co-sentencer. Johnson v. Singletary, 612 So. 2d 575 (Fla. 1993); see also Espinosa, 505 U.S. 1079. "If the jury's recommendation, upon which the judge must rely, results from an unconstitutional procedure, then the entire sentencing process necessarily is tainted by that procedure." Riley v. Wainwright, 517 So. 2d 656, 657 (Fla. 1987).

In Williams v. Florida, 399 U.S. 78 (1970), the Court held that a statute providing for a jury of fewer than twelve in non-capital cases does not violate the Sixth and Fourteenth Amendments. The Court noted that no state provided for fewer than twelve jurors

⁵ To the extent that § 921.141 allows a death recommendation to be made by a bare majority of the jurors, it is inconsistent with Rule 3.440's requirement that no verdict may be returned unless all of the jurors concur in it. The rule controls and the statute is unconstitutional to the extent of the conflict. See Haven Federal Savings and Loan Assoc. v. Kirian, 579 So. 2d 730 (Fla. 1991); Bernhardt v. State, 288 So. 2d 490, 491 (Fla. 1974); State v. Garcia, 229 So. 2d 236 (Fla. 1969).

in capital cases, "a fact that suggests implicit recognition of the value of the larger body as a means of legitimating society's decision to impose the death penalty." 399 U.S. at 103. Two years later, in Johnson v. Louisiana, 406 U.S. 356 (1972), the Court concluded that a Louisiana Statute which allowed a substantial majority (nine to three) verdict in non-capital **cases** did not violate the due process clause for failure to satisfy the reasonable doubt standard. Justice Blackmun noted, however, that a seven to five standard, or less than 75%, would cause him great difficulty- 406 U.S. at 366 (Blackmun, J., concurring).

Florida's sentencing scheme further violates constitutional guarantees because of its failure to require unanimity or even a substantial majority in order to find that a particular aggravating circumstance exists, or that any aggravating circumstance exists. Under the law of this state, aggravating circumstances substantively define those capital felonies for which the death penalty may be imposed. Vaught v. State, 410 So. 2d 147, 149 (Fla. 1982); State v. Dixon, 283 So. 2d 1,9 (Fla. 1973). An aggravating factor "must be proven beyond a reasonable doubt before being considered by judge or jury." State v. Dixon, 283 So. 2d at 9. A death sentence is not legally permissible where the State has not proved beyond a reasonable doubt at least one aggravator. Thompson v. State, 565 So. 2d 1311, 1318 (Fla. 1990). Accordingly, aggravating circumstances function as essential elements, in the absence of which a death recommendation cannot lawfully be made.

Because neither unanimity nor a substantial majority is required to find an aggravating circumstance or recommend the death penalty, the Florida procedure allows a death recommendation even if five of the twelve jurors find that no aggravating factors were proved beyond a reasonable doubt, as long as the other seven jurors find one or more aggravators and conclude that these are not outweighed by mitigating circumstances. The seven jurors voting for death could each find a different aggravating factor, while five jurors found no aggravators at all, as long as each of the seven determined that his or her aggravator was not outweighed by mitigators. Thus, a death recommendation would be possible under Florida's procedure even if each aggravator submitted were rejected by eleven out of the twelve jurors.

When the State convinces only a bare majority of jurors that death is the appropriate sentence, a sole juror could effectively make the difference between whether the defendant lives or dies. Such a result makes Florida's death penalty scheme arbitrary in capricious, in violation of Furman v. Georgia, 428 U.S. 238 (1972). Because Sexton's death sentence was based on a seven to five jury death recommendation, this Court should find the requirement for only a bare majority verdict unconstitutional, vacate Sexton's death sentence, and remand for imposition of a life sentence.

CONCLUSION

The erroneous admission of the collateral crime evidence denied Appellant a fair trial and due process of law. Under the aforementioned legal authorities, he is entitled to a new trial.

The trial court's failure to consider the culpability of the codefendants and the improper finding of one aggravating factor requires that the sentence of death be set aside and a life sentence imposed.


The unconstitutionality of Florida's death penalty scheme requires a life sentence be imposed.

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Robert Butterworth, Suite 700, 2002 N. Lois Ave., Tampa, FL 33607, (813) 873-4730, on this 9th day of September, 1996.

Respectfully submitted,

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