ATTACHMENTS

A. Order dated October 16, 1991

B. Psychological Evaluation by dr. Brad Fisher, Ph.D. March 28, 1990

C. Report by Dr. Sidney J. Merin, Ph.D.

D. Affidavit of Charles Robert Brewer

ATTACHMENT A

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CRIMINAL DIVISION

STATE OF FLORIDA,
Plaintiff

v. CASE NO. CRC 84-11698 CFANO

MARTIN GROSSMAN,
Defendant
_____/

ORDER

THIS CAUSE having come before the Court on the Defendant's Motion To Vacate Judgment Of Conviction and Sentence, And Consolidated Request That Leave To Amend Be Allowed, filed August 13, 1990, along with the State's Response to Motion to Vacate Judgment of Conviction and Sentence, filed May 17, 1991, and the Court having fully considered each of the ten claims stated in the Defendant's Motion, along with the State's Response, and the files and records, finds that:

I. The Defendant's first claim alleges: 1) that the "State withheld material, exculpatory evidence regarding [a)] deals with State witnesses [Charles] Brewer and [Brian] Hancock, [b)] the use of Brewer as a police agent, and [c)] an ongoing criminal investigation of State witness [Brian] Allan, and 2) that the State knowingly allowed certain of its witnesses to testify untruthfully in violation of" the Defendant's constitutional rights.

A. In this claim, Defendant provides the Court with an overview of the line of cases centering on Brady v. Maryland, 373 U.S. 83 (1967), and argues that by "withholding evidence" the State has violated Defendant's due process, sixth and fourteenth amendment rights.

1. As a foundation for these claims, Defendant avers that prior to trial, defense counsel had made specific requests for information from the State, and that the State did not respond to any of the Defendant's motions. The Defendant alleges that evidence of exculpatory and credibility-challenging information of the type specifically requested in Defendant's pre-trial motions has recently been discovered.

2. Defendant's newly found evidence consists of unspecified facts which allegedly "will be proven at an evidentiary hearing," along with recent affidavits from former State witnesses, Charles Brewer and Brian Hancock. In their affidavits, these two witnesses recant various aspects of their prior testimony. As such, these affidavits, in conjunction with the recent affidavit of Don Smith, are alleged to form the evidentiary basis for Defendant's claim of withheld evidence under 1) a) and b), supra. As alleged, this evidence, both directly and by inference, forms the basis for Defendant's claim of the use of false testimony under Defendant's claim 2), supra, as well. Additionally, Defendant, in claim 1) c),

offers evidence in support thereof derived from recently obtained investigative files that credibility-challenging evidence of criminal activity by State's witness Brian Allen was also withheld.

3. The State, in its Response, asserts that there never were any deals, under-the-table or not, with either Charles Brewer or Brian Hancock. In support thereof, the State also tenders affidavits intended to controvert the recanted testimony supplied by Defendant's affiants, and to corroborate the State's witnesses' original testimony given either at trial or deposition.

4. Defendant further alleges in claim 1) b), supra, that Brewer was induced to and did act as an "agent" of the State, and that Brewer had been told to ask specific questions of the Defendant while they both were incarcerated in exchange for the State's intervention on Brewer's behalf at his subsequent sentencing on unrelated matters. Again, the State refutes the Defendant's claim and allegations with affidavits of those persons who were supposedly Brewer's contacts with the police and the State Attorney's Office.

B. Defendant alleges facts sufficient to establish a prima facie showing of an entitlement to relief pursuant to Fla. R. Crim. Proc. 3.850. Furthermore, Defendant's Motion alleges such facts that this Court can not, through the attachment of portions of the record and files alone, conclusively show that the movant is entitled to no relief. Therefore, Defendant's request for relief in the form of an evidentiary hearing shall be granted on those issues raised in Claim One. See, Lightbourne v. Dugger, 549 So.2d 1364, 1365 (Fla. 1989)(Lightbourne III)("accepting the [defendant's] allegations . . . at face value . . . they are sufficient to require an evidentiary hearing with respect to whether there was a Brady violation."); and Porterfield v. State, 442 So.2d 1062 (Fla. 1st DCA 1983).

II. Defendant's Claim II alleges that after Defendant's Sixth Amendment right to counsel had attached on January 18, 1985, via a one count murder indictment, the State "knowingly exploited an opportunity to confront [Defendant] without the presence of counsel and thereby obtained incriminating statements from him," and "deliberately elicited" such statements without a knowing and voluntary waiver by Defendant when they allegedly instructed Charles Brewer to obtain the "incriminating statements" from him.

A. Defendant's claim is based upon facts similar to those alleged in Claim I, 1) b), supra, i.e., that State's witness Charles Brewer, a detainee/trusty with routine contact with Defendant for a period of time while both were held at Pinellas County Jail prior to Defendant's trial, acted as an agent of the police and/or State Attorney.

1. Relying again upon the recanted testimony set forth in Brewer's recent affidavit, the Defendant further asserts: that the incriminating statements testified to at trial were specifically sought by the police when they told Brewer to continue talking to the Defendant and directed Brewer to ask Grossman specific questions, that Brewer was promised assistance by the police if he assisted them, and that Brewer was a prior state informant.

2. Defendant again asserts that the State's affirmative concealment of these facts precluded the Defendant from having raised these issues previously, and as a result, the present allegations should be considered timely.

3. As with his first claim, Defendant provides this Court with an overview of the law on the issues raised, focusing on Massiah v. United States, 377 U.S. 201, 98 S.Ct. 1199 (1964), and United States v. Henry, 474 U.S. 173, 106 S.Ct. 477 (1985).

4. Defendant has not previously raised the issues set forth in this claim in either a motion in limine, a motion to suppress, or on direct appeal.

B. The State's Response discounts the value of Brewer's recantation affidavit based on its assertion that there never was any agreement with him. As evidence thereof the State attaches a copy of the transcript from Brewer's sentencing hearing on separate, unrelated charges wherein the State asserts that any agreement of Brewer's with the State would have been brought out by Brewer to offset the impact of his being sentenced as an habitual felony offender. Significantly, the State again relies on recent affidavits of participants from the State Attorney's Office and various police agencies.

C. Similar to the circumstances found in I. B., supra, Defendant's allegations and attachments have set forth prima facie legal grounds. The records in the file alone are not sufficient to conclusively show that Defendant is not entitled to any relief. Moreover, the State's attachments in its Response are, at best, only capable of creating a factual question ripe for an adversarial hearing. Consequently, Defendant is entitled to an evidentiary hearing on the issues raised in Claim II.

III. Claim III alleges a constitutional violation of Defendant's right to a fair trial. Defendant's claim is based upon the subsequent representation of co-defendant Taylor by counsel from the public defender's office after first representing both defendants. Defendant asserts that during the course of this multiple representation his former counsel obtained confidential information from Defendant. The Defendant contends that his former counsel's knowledge of the alleged confidential information presented a "flagrant and absolutely fundamental conflict of interest" which obliterated Defendant's right to a fair trial.

HC

A. Defendant's claim is procedurally barred because he could have and should have raised it in his plenary appeal, Grossman v. State, 525 So.2d 833 (Fla. 1988). Correll v. Dugger, 558 So.2d 422, 426 n.6 (Claim VI) (1990). Defendant was on notice of the alleged conflict of interest he now complains of both well before and at trial, as well as thereafter, prior to filing a Notice of Appeal. The extent of any prejudice suffered by the Defendant was as visible then as it is now. The fact that the basis of Defendant's collateral attack is one of constitutional magnitude or dimension does not preclude this Court from holding that this claim is procedurally barred, as Defendant has waived the argument that he was denied a fair trial on this issue. See, Triola v. State, 464 So.2d 1312 (Fla. 2d DCA 1985), accord, Roth v. State, 385 So.2d 114 (Fla. 3d DCA 1980).

B. Assuming arguendo that Defendant's constitutional claim was not procedurally barred for failure to bring this issue on direct appeal, see, for e.g., Young v. State, 177 So.2d (Fla. 2d DCA 1965), Defendant still would not be entitled to a hearing or other further relief, as Defendant's claim fails on its merits as well.

1. Factually, the public defender's office began its "multiple representation" of the co-defendants on Saturday, December 28, 1984, when counsel from the Public Defender's Office was appointed to represent them. Representation of Defendant was terminated less than a week later on Thursday, January 3, 1985, when Defendant was appointed private counsel following the Public Defender's filing of a Motion to Withdraw on the previous day. During this brief span of time, which obviously included the New Year holiday, Defendant avers that he was interviewed by an investigator from the public defender's office who formalized the investigation in an eight page memorandum which contained "highly sensitive and personal material." Interestingly, despite Defendant's voluminous motion, attachments, and exhibits, this document was not provided for review by this Court. Regardless, Defendant contends that thereafter a meeting was held between the investigator and the chief assistant public defender. Defendant infers that this meeting provided a conduit for the transfer of unspecified "confidences gained when Taylor's counsel represented [the Defendant]." Defendant's Motion, paragraph 14, page 57. Lastly, unspecified, "confidential information" is alleged to have been obtained from Defendant such that his right to a fair trial was obliterated. Defendant's Motion, paragraph 16, page 59.

2. In contrast to the numerous cases cited in his first two claims, Defendant here, cites Holloway v. Arkansas, 435 U.S. 475, 98 S.Ct. 1173 (1978), as the sole authority in his 16 paragraph, nine page claim that Defendant's trial was not fair.

a. In Holloway, three criminal co-defendants represented by the same attorney claimed that they were denied the constitutional right to effective assistance of counsel. The Supreme Court held that the trial court's denial of sole counsel's

pre-trial motion for appointment of separate counsel required automatic reversal of defendants' convictions and remand for a grant of the right to separate counsel because potential conflicts of interest between the defendants were timely brought to the court's attention as part of their motion.

b. Holloway is factually and procedurally distinguishable in as much as Defendant here failed to timely raise the issue now complained of. Moreover, unlike the attorney in Holloway who sought a pre-trial solution to a potential conflict of interest, and then was denied that relief, here, Defendant's former counsel immediately upon realizing that the potential for conflict existed, filed a motion to withdraw, which was granted the very next day. As evidenced by this motion, former counsel was aware that although Grossman and Taylor were co-defendants, each defendant's interests were sufficiently adverse to require separate counsel in order to obtain a fair trial in light of Holloway. Thus, on both legal and factual grounds, Holloway is inapposite to Defendant's claim.

c. Most significantly, however, Defendant here misapplies the relevant legal principles. Defendant makes much of former counsel's motion to withdraw, implying that the public defenders' office, by stating therein that "the interests of these clients [Grossman and Taylor] are adverse," has admitted to an actual conflict sufficient to grant relief. Defendant's attempt to bootstrap the public defender's recognition of a potential conflict of adverse interests into an actual conflict of interest sufficient to state a collateral attack on Defendant's judgment and sentence is flawed. Defendant's claim arises from legal principles designed to protect the adverse interests of co-defendants by affording them separate counsel. This is the exact situation which Defendant's former counsel protected both co-defendant's from. The determinative issue is whether, during the time it took former counsel to recognize the potential for conflict between the co-defendants, Defendant revealed any confidential information which subsequently created an actual conflict of interest for former counsel, such that Defendant's trial was not constitutionally fair.

3. The State's citation of Smith v. White, 815 F.2d 1401 (11th Cir. 1987), in its Response is instructive on this issue. In Smith, the test for an actual conflict requires a showing of "inconsistent interests." Id. at 1405 (emphasis added). Analogizing Smith to our facts, mere proof that a criminal defendant's counsel previously represented a co-defendant would be insufficient to establish "inconsistent interests" absent a showing that counsel actually learned particular confidential information during the prior representation that was relevant to defendant's later case. Id. (emphasis added).

a. Defendant's allegations fail to set forth with any particularity the confidential information allegedly gleaned by his

former counsel while representing the Defendant. Defendant's vague and conclusory statements of "highly sensitive and personal material" (Defendant's Motion page 52, paragraph 4) and "significant confidential information" (page 52, paragraph 5) are legally insufficient to establish collateral relief under the Smith test.

i. The distinction between an actual and potential conflict sufficient to entitle a defendant to an evidentiary hearing was illuminated in Porter v. Wainwright, 805 F.2d 930 (11th Cir. 1986). Porter is a federal habeas corpus case where the state did not raise the procedural default bar which previously had been affirmed by the Florida Supreme Court, see, n. 11, 805 F.2d at 940. The Porter court stated that to prevail the defendant must demonstrate that his former counsel actively represented conflicting interests and that an actual conflict of interest adversely affected former counsel's performance. Id. at 939 (emphasis added). Because the defendant had asserted facts which, if true, would have sufficed to demonstrate an actual conflict and that such conflict adversely affected his counsel's performance, the court held that defendant was entitled to an evidentiary hearing. Id. at 939-40.

ii. In the instant case, without considering the distinguishable alignment of movant and his former counsel from the facts of Porter, Defendant has failed to allege such facts as to establish an actual conflict.

b. Assuming Defendant's allegations were to pass the first component of the Smith test, Defendant's claims are still legally insufficient as Defendant has not shown what relevance the alleged particular confidential information played throughout Defendant's later case. At best, Defendant's allegations of former counsel's "duplicitous assault," "character assassination," "full blown antagonism during the trial," loosing "another round of salvos," "betrayal," "final bombardment of [his] former client," and "convolution of roles" are rhetorical, and, along with the Defendant's repeated references to this Court's denial at trial of his severance motions, fail to reveal the requisite relevancy to meet the test for actual conflict. See, Smith, supra, 815 F.2d at 1405, Porter, supra, 805 F.2d at 940, and the concluding text in Paragraph III. B. 3. a. i., supra.

4. Accordingly, Defendant's third claim is legally insufficient for the foregoing reasons. Notwithstanding the aforementioned procedural bar, absent a prima facie claim, Defendant is entitled to no further relief on this claim.

IV. Defendant's fourth and fifth claims state a denial of effective assistance of counsel at the guilt and penalty phases of trial, respectively, in violation of the federal and state constitutions. As the State in each of these claims concedes that "an evidentiary hearing is needed" or "warranted," State's Response, pages 33 & 34, this Court shall permit evidence of the allegations made in

Defendant's Motion in each of these claims, and corresponding refuting evidence by the State, to be considered at an evidentiary hearing.

V. The sixth claim presented by the Defendant is that he was denied a competent mental health examination and that counsel was ineffective for failing to investigate and arrange for such an examination in violation of Defendant's constitutional rights under the federal and state constitutions.

A. Defendant's claims here are procedurally barred as a Fla. R. Crim. Proc. 3.850 motion can not be used as a second appeal, or to use a different argument to relitigate the same issue, or to circumvent the rule against second appeals. Medina v. State, 573 So.2d 293. 295 (Fla. 1990)(summary denial of similar claims of whether counsel was ineffective for failure to investigate defendant's mental health, whether the mental health exam was competently performed, and defendant's competency at sentencing, proper by trial court).

B. Assuming arguendo that the aformentioned procedural bar is unavailing, To the extent that Defendant's claim involves his constitutional right to have the State provide a competent mental health examination, due to his indigency, as part of the guilt/innocence phase of his trial, this Court's Order of June 6, 1985 (attached as Exhibit I), filed June 13, 1985, granting Defendant's Motion to Provide Funds and/or Authority to Hire Confidential Expert Psychiatrist or Psychologist fulfills the mandate of Ake v. Oklahoma, 470 U.S. 68, 105 S.Ct. 1087 (1985), as well as the requirements of Fla. R. Crim. Proc. 3.216, assuming for the moment, the "competency" of Defendant's examination. Accordingly, the Defendant's claim is also without merit.

1. Defendant further contends that Defense counsel was ineffective for failing to investigate and arrange for such an examination. Defendant's claim here is based upon defense counsel's alleged failure to provide appointed confidential expert psychiatrist, Dr. Sidney Merin, Ph.D. with an "independent history" of "the relevant and crucial facts regarding Defendant's mental, emotional, psychological or developmental background."

a. In Card v. Dugger, 911 F.2d 1494, 1511-12 (11th Cir. 1990), the court held that absent an indication that defendant's mental health experts felt incapable of basing their conclusions on the information they obtained through their own testing and examinations, counsel was not ineffective under the test in Strickland v. Washington, 466 U.S. 668, 690-91, 104 S.Ct. 2052, 2066 (1984). The court's rationale was based on the fact that counsel was not on notice that further investigation was warranted, and the court stated once the experts' reports were received, counsel was not obligated to track down every record that might possibly relate to defendant's mental health and could affect a

diagnosis. Id. at 1512. See also, Funchess v. Wainwright, 772 F.2d 683, 689 (11th Cir. 1985)(no notice to defense counsel where defendant found competent prior to trial after psychological evaluation).

b. With the exception of Defendant's own allegations that background materials were "needed to perform a competent mental health evaluation," the record here fails to conclusively establish whether or not Defendant's counsel was put on notice of the need for such additional information from Dr. Merin or that Dr. Merin himself had ever concluded that he would be incapable of making the requisite determination without additional information on Defendant's background. Notwithstanding the absence of such record evidence, however, Defendant's claim is without merit as it fails the second prong of Strickland, supra, as there has been no showing that but for such claimed ineffectiveness, the outcome probably would have been different. Furthermore, this Court concludes the jury would not have been persuaded to arrive at a different result, nor would this Court have been persuaded to reach a different result, assuming the substance of Defendant's allegations had been introduced into evidence. See, Correll v. Dugger, 558 So.2d 422, 425-26 (Fla. 1990)(denial of post-conviction relief, without evidentiary hearing, affirmed where allegations of ineffective assistance of counsel at penalty phase failed to meet second prong of Strickland).

2. Defendant's allegations, to the extent they claim Defendant was unconstitutionally denied a competent mental health examination for use at the penalty phase in his capital case, are without merit. Defendant here did not request psychiatric assistance to aid in presenting mitigating circumstances. Absent a timely request, there is no constitutional right to appointment of psychiatric assistance under Ake. Thompson v. Wainwright, 787 F.2d 1447, 1459 (11th Cir. 1986). Moreover, Defendant's associated claim of ineffective assistance of counsel in this regard is also without merit for the reasons stated immediately above.

3. Nor can counsel be considered ineffective for failing to obtain a "competent" mental health examination for Defendant at trial where the expert retained is duly licensed and recognized. See, Silagy v. Peters, 905 F.2d 986, 1013 n.22 (7th Cir. 1990)(indigent defendant's right to competent mental health examination did not protect defendant from negligence of mental health care provider). Moreover, Defendant's reliance on State v. Sireci, 502 So.2d 122 (Fla. 1987), and Mason v. State, 489 So.2d 734 (Fla. 1986), is misplaced. See Correll v. Dugger, 558 So.2d 422, 426 (Fla. 1990).

C. Thus, contrary to Defendant's contentions, there is no entitlement to an evidentiary hearing or further relief as Defendant has failed to state a legally sufficient claim for which such relief can be granted.

VI. In his seventh claim Defendant asserts that critical stages of the proceedings were conducted in his absence, in violation of Fla. R. Crim. Proc. 3.180 and his federal and state constitutional rights.

A. Defendant's claim is procedurally barred from consideration under Fla. R. Crim. Proc. 3.850, as Defendant could and should have raised this claim as part of his direct appeal. Medina, supra, 573 So.2d at 295; Henderson v. Dugger, 522 So.2d 835, 836 (Fla. 1988); and Blanco v. Wainwright, 507 So.2d 1377, 1380 (Fla. 1987). Defendant's citation to state authorities, where accurate (see Defendant's Motion, page 280, paragraph 2, citation for Francis v. State), is inapposite with respect to the applicability of the procedural default bar, as each of these cases was decided on appeal and not as part of a subsequent Fla. R. Crim. Proc. 3.850 motion, as in the instant case.

B. Notwithstanding the aforementioned procedural bar, the record reflects that Defendant's waiver by counsel was both voluntary and knowing as evidenced by his counsel's statement in Defendant's presence in open court that his client also did not "desire to be there." See Exhibit II, attached, Appellate Record, p. 2348. See, Amazon v. State, 487 So.2d 8, 11 (Fla. 1986)(defense counsel's waiver of defendant's appearance permitted where defendant acquiesces with actual knowledge).

VII. In summary, Defendant's eighth claim contends that the State's illegal conduct and "prosecutorial improprieties" rendered the Defendant's trial fundamentally unfair. As noted in VI., supra, Defendant's claim is procedurally barred from consideration under Fla. R. Crim. Proc. 3.850, as Defendant could and should have raised this claim as part of his direct appeal. Medina, supra, 573 So.2d at 295; Atkins v. Dugger, 541 So.2d 1165, 1166, n.1 (Fla. 1989); and Blanco v. Wainwright, 507 So.2d 1377, 1380 (Fla. 1987).

VIII. Claim IX states that Defendant's death sentence was violative of the federal and state constitutions because it was "based on a verdict of death from a sentencing jury that was instructed only in bare terms of Florida's facially vague 'especially heinous, atrocious or cruel' aggravating circumstance."

A. Procedurally, Defendant here is barred from raising his claim collaterally under Fla. R. Crim. Proc. 3.850, as Defendant could and should have raised this claim as part of his direct appeal. This conclusion is bolstered where as here, the Defendant has previously raised the issue of jury instructions with respect to this aggravating factor, and had the issue decided unfavorably on appeal. See, Grossman v. State, 525 So.2d 833, 840-41 (Fla. 1988).

B. Assuming arguendo that Defendant's claim is not procedurally barred, the claim fails on its merits. Defendant contends that his claim is supported by the subsequent decision of

the United States Supreme Court in Maynard v. Cartwright, 486 U.S. 356, 108 S.Ct. 1853 (1988), where the language of Oklahoma's jury instruction for "heinous, atrocious or cruel" aggravating circumstances was held to be facially unconstitutional.

1. Defendant concludes that because Oklahoma's instruction was more explicit than Florida's statutory jury instruction for the same aggravating circumstance, Defendant's death sentence based on the jury verdict must also be unconstitutional on its face. Defendant argues this is especially true where, as here, the instruction was given without any of the clarification previously requested by Defendant's counsel.

2. The State, in its Response, correctly asserts that the Florida Supreme Court has declined to apply Maynard to Florida's structurally distinct and substantially different death sentence procedure, citing Smalley v. State, 546 So.2d 720, 722 (Fla. 1989). In Smalley, the court held that Maynard was inapposite to Florida's heinous, atrocious or cruel aggravating factor in death penalty sentences. Id. See also, Proffitt v. Florida, 428 U.S. 242, 96 S.Ct. 2960 (1976).

C. Consequently, Defendant's claim is legally insufficient on both procedural and substantive grounds, and thus, Defendant is entitled to none of the relief requested.

IX. Defendant's tenth and final claim alleges that the sentencing court failed to expressly evaluate all mitigating factors proposed by Defendant, failed to find each proposed mitigating factor that was reasonably established by the evidence and was mitigating in nature, and failed to weigh those mitigating factors against the aggravating circumstances, such that Defendant was deprived of his rights to a sentence arrived at by reliable procedures and subject to meaningful appellate review, in violation of the federal and state constitutions.

A. Assuming the validity of Defendant's claim for the moment, Defendant requests the retroactive application of subsequent Florida decisions delineating procedures for trial courts to use when weighing a defendant's proposed mitigating factors in death sentence cases. The Defendant specifically refers to Campbell v. State, 571 So.2d 415 (Fla. 1990), and Nibert v. State, 574 So.2d 1059 (Fla. 1990), as examples of applicable caselaw which, from Defendant's view, define "a sea of change" in Florida's capital sentencing law (see Defendant's Motion, pg. 300, paragraph 5). Defendant, however, apparently fails to apprehend that the remedy provided by Nibert is a direct appeal. Clearly the Defendant has already tested these waters without success.

1. In Defendant's appellate case the Florida Supreme Court held that on the issue of weighing and balancing mitigating factors, "[n]either the jury nor the judge was sufficiently impressed by th[e] [mitigation] evidence to find that it outweighed the aggravating circumstances. We see no error." Grossman, supra, 525 So.2d at 841.

2. Thus, Defendant has no entitlement to further review of this issue as part of his collateral attack, as his claim is procedurally barred as one which was brought on Defendant's plenary appeal.

B. Assuming arguendo the continued vitality of Defendant's claim (nothwithstanding the aforementioned procedural bar), Defendant further alleges that due process and equal protection require relief. The rule of law to be applied to the instant case was set forth in Teague v. Lane, 489 U.S. 288, 109 S.Ct. 1060 (1989), and restated in Sawyer v. Smith, ___ U.S. ___, 110 S.Ct. 2822, 2826 (1990). There, the Court held, that for the purpose of determining federal habeas corpus relief, a rule of constitutional law established after a conviction has become final may not be used to attack a defendant's conviction unless the rule applies a new watershed rule of criminal procedure that enhances accuracy and is necessary to the fundamental fairness of the criminal proceeding (emphasis added). Id.

1. The Teague principle, applied in Sawyer, serves to ensure that gradual developments in the law over which reasonable jurists may disagree are not later used to upset the finality of state convictions valid when entered, and thereby, preclude the unwarranted continuing reexamination of final judgments based on later emerging legal doctrine. Sawyer, supra, 110 S.Ct. at 2827.

2. Clearly, although the accuracy of determining mitigating factors may be affected by the subsequent decisions of Campbell and Nibert, there is no showing that the fundamental fairness of Defendant's proceedings would be so affected. This conclusion is buttressed by the court's analysis in Campbell itself. There the court cited and applied binding precedent in effect at the time of Defendant's conviction and sentence, Brown v. Wainwright, 392 So.2d 1327, 1331 (Fla. 1981), and stated that for the weighing and balancing of aggravating and mitigating circumstances found by a trial court in death sentence cases to be sustained, the trial court's final decision in the weighing process must be supported by sufficient competent evidence in the record. Campbell, supra, 571 So.2d at 420. Given that the Florida Supreme Court was bound by the same precedent in both Grossman, supra, and Campbell, supra, the fundamental fairness of Defendant's conviction was not affected so as to activate the Teague exception. See also, Henderson v. Dugger, 522 So.2d 835 (Fla. 1988)(no retroactive application of subsequent United States Supreme Court decision to convicted murderer's post-conviction relief motion absent a major constitutional change).

C. Additionally, the allegations set forth by Defendant in this claim, even if accepted as true, are insufficient to alter the outcome of the previous balancing of aggravating and mitigating circumstances reached by either the jury or this Court.

D. Lastly, to the extent that the Defendant's request for retroactive application of rules from "favorable" caselaw can be analogized to the retroactive application of subsequently enacted statutes which might ameliorate or mitigate a punishment or penalty, Article X, section 9 of the Florida Constitution would act to preclude the application of such "rules" so as to effect a final judgment or sentence. Lacey v. State, 553 So.2d 778 (Fla. 4th DCA 1989); and State v. Ussery, 543 So.2d 457 (Fla. 5th DCA 1989).

E. Thus, Defendant's claim is legally insufficient to entitle him to further relief.

WHEREFORE, IT IS ORDERED AND ADJUDGED that Defendant's Motion be, and the same is hereby, GRANTED, to the extent that an EVIDENTIARY HEARING is to be set for as soon as practicable for all parties concerned only for the express purposes set forth above, AND that Defendant's Motion otherwise shall be, and hereby is, DENIED.

The Defendant is hereby notified of his right to appeal the partial denial of his motion within thirty (30) days from the date of this Order.

DONE AND ORDERED in Chambers at Clearwater, Pinellas County, Florida this 16 day of October 1991.

L. Farnell
CIRCUIT JUDGE

cc: State Attorney

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ATTACHMENT B

fisher associates

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PSYCHOLOGICAL EVALUATION

Name: Martin Grossman
Date of Birth: 1/19/1965
Age: 25
Client Status: Death Row
Examiner: Brad Fisher, PhD
Place of Examination: Florida State Prison
Date of Examination: March 28, 1990

Referral and Identifying Information

This 25-year-old white male was referred for evaluation in connection with proceedings related to his Death Row Status. The evaluation comprised a standard battery of intellectual, projective, and personality tests, together with initial screening for the possibility of organic brain dysfunction.

Background of Evaluator

Dr. Fisher is a graduate of Harvard University (cum laude, 1972) and one of the two programs in the country specializing in forensic psychology (University of Alabama, PhD, 1976). For the past 15 years he has worked exclusively in the area of forensic evaluations, including applications of evaluation methods through grants from the Federal Justice Department (National Institute of Corrections) and participation in the largest study of Death Row units in the country (National Institute of Justice). He has testified concerning forensic evaluations on both individual-and-system-wide bases in approximately thirty states, including several cases in Florida. He is currently working private practice and teaching at Duke University. Details of his background are enclosed in the attached vitae.

Materials Reviewed and Tests Administered

The following materials were reviewed and play a part in the opinions expressed in this report:

1. Affidavit of Ben Green

2. Affidavit of Richard Fox

3. Affidavit of Bea Briklod

4. Affidavit of Jules Briklod

5. Affidavit of Sissy Feldman

6. Affidavit of Larry Lighty

7. Affidavit of Peter Pappalardo

8. Affidavit of Edward Del Toro

9. Affidavit of Marion Gustafson

10. Affidavit of Maryjane Molloy

11. Affidavit of Brian Hancock

12. Affidavit of Karen Stough

13. Affidavit of Patricia P. Metheney

14. Affidavit of Harry Stough

15. Affidavit of Polly Potter

16. Affidavit of Odeal Millovan

17. Affidavit of Michael Perricone

18. Affidavit of Rabbi Nathan Zolondek

19. Affidavit of Barry Morton

20. Affidavit of Ida Eisenman

21. Affidavit of Ruth Nield

22. Affidavit of Joyce White

23. Affidavit of Barbara Powers

24. Affidavit of Gus Manticos

25. Affidavit of Eileen Simmons

26. Affidavit of Ellen Martindale

27. Affidavit of Joseph Hart

28. Affidavit of Brian Allan

29. Affidavit of Charles Brewer

30. Affidavit of Thayne (Tom) Taylor

31. Affidavit of Rosol Melton

32. Affidavit of Reverend Bonnie Guess

33. Affidavit of Oscar Murov

34. Affidavit of Florence Murov

35. Affidavit of Luoise Levine

36. Affidavit of Shirley Hanshaw

37. Affidavit of Tom McCoun

38. Affidavit of Don Smith

39. Affidavit of Paul J. Rittenhouse

40. Affidavit of Sally Karioth

41. Affidavit of Ronald H. Sunderland

42. Affidavit of Myra Grossman

43. Affidavit of Peter A. Proly

44. Affidavit of Paul Melton

45. Attorney intake interview notes

46. Gulf High School records

47. Pasco County School District records

48. Hialeah Junior High School records

49. Dade County public school records

50. Wilford Hall Hospital records (father)--May, 1965

51. Florida State Prison records

52. Court records

53. Records relating to previous criminal history

54. Human Development Center of Pasco County on Martin Edward Grossman

55. Veterinary records on pets of Myra Grossman

56. Ira Liss, M.D., Records on Martin E. Grossman

57. Human Development Center of Pasco County on Rosol Melton

58. New Port Richey Hospital records of Rosol Melton

59. Riverside Hospital records on Rosol Melton

60. Florida Department of Law Enforcement Records on Paul Melton

61. Pasco County Court records on Martin E. Grossman

62. Pinellas County Sheriff's Office records on Martin E. Grossman

63. Childhood and School Materials of Martin Edward Grossman Retained by Myra Grossman

64. Deposition of James D. Yuna

65. Direct Appeal Opinion

66. Clemency File

67. Military Records on Richard Alan Grossman

68. Military Records on Martin E. Grossman

69. Hialeah Juvenile Records on Martin E. Grossman

70. PSI on Martin E. Grossman

71. Records of Sidney Merin, PhD

In addition to the above-noted materials, the following tests were administered and play a role in the opinions offered in this report:

I. Intellectual testing
   The Wechsler Adult Intelligence Scale (partial)

II. Projective testing
   The Sentence Completion Test
   The House-Tree-Person Test
   The Thematic Aperception Test (partial)

III. Organic Screening
   The Bender Visual Motor Gestalt Test
   The Neurological Screening Examination

IV. Other
   Mental Status Interview
   Mental Status Checklist
   Personal History Checklist

Behavioral Observations

Mr. Grossman was cooperative, attentive, and straightforward during the testing session. There was some evidence of a high level of paranoia based on the observed behavior of an inability to keep eye contact with the examiner, rather, darting his eyes to anyone who would be entering or leaving the examination area. In addition, this was noted through the behavior he exhibited of fearful concern toward any type of psychological testing. This was stated through a long series of questions before any tests could be administered concerning what might possibly be found out from the tests. It is not clear to this examiner the extent of the threat perceived by testing, other than it is obviously at a high level.

Results of Testing

Mental status examination revealed the client to be oriented in all three spheres.

Organic screening testing (i.e., the Bender Visual Motor Gestalt Test) revealed soft signs of organic impairment. These included figure rotations, problems in angulation of figures, problems in figure closure, and overall difficulty in drawing any of the more

complicated figures. This possibility of organic dysfunction appears to be further supported by a history of chronic and extensive drug and alcohol dependence. Further testing would be required to determine the nature and extent of this probable mental disability.

Projective and personality testing, as well as interview impressions, revealed some level of paranoid ideation. While this did not appear to be at the level of a psychotic condition, it was noted through high levels of suspicion in behavior, as well as questions about nearly all the types of testing and fear of testing because of what it might tell about him.

There were no signs in any of the testing components of either a current psychotic condition or of any major affective disorder.

Developmental Overview

Martin Edward Grossman is an only child born on January 19, 1965 on a military base near San Antonio, Texas. By the time Martin was four months old, Richard Grossman, Martin's father, a career military man, had been diagnosed with myotonic dystrophy, first degree heart block and chronic brain syndrome. He was retired on 80% disability in June of 1965. These diagnoses were made four years after a serious car accident, described by family members as a suicide attempt. Mr. Grossman suffered multiple injuries to his head and face during the accident. Military records reflect one civilian criminal case against Richard--a voyeurism charge in Valdosta, Georgia in 1963.

In Martin's sixth month, the Grossman family moved to Hialeah, Florida, where Martin's maternal grandparents and aunt lived and where they could take advantage of military medical treatment for Richard at Homestead Air Force Base. When Martin was four years old, he was admitted to the hospital with pneumonia, and a fever above 104 degrees. Shortly after admission, he began experiencing grand mal seizures, termed "tonic clonic" by hospital staff. He was given phenobarbital, which controlled the seizures, and placed in an enclosed, cage-like crib for several days.

By the age of three, Martin was left alone with his father and had been trained to take care of his basic needs as well as to perform in emergency situations. Martin still reports a high level of anxiety and fear attendant to his childhood nursemaid

duties. Both interview and review of background material reveal that Martin felt responsible for the life of his father, and that he was placed in the position at a very young age of being directly responsive to this central concern. Because his father would slip into unconsciousness and need reviving, Martin had to monitor Richard carefully, when necessary breaking an ammonia capsule and placing it under his father's nostril. There are many accounts in the background materials of Martin's mother, Myra, being unable or unwilling to perform many of the unpleasant tasks associated with the care of her husband. Even when she was present in the home, she relegated to her small son the job of ensuring that Richard was asleep rather than comatose. This was necessary because Richard slept with his eyes open, and his medical history included instances of lapsing into coma without warning. Martin was directed to shake his father until some sign of life was elicited, and to administer medication should life signs be absent following arousal. In addition to these life or death decisions and responsibilities, Martin was expected to assist his father in all areas, including the use of the toilet.

Elementary school records reflect Martin's markedly below average mental abilities. While he was not a discipline problem, he did present cause for concern in several areas. Teachers noted Martin's poor muscular coordination, inability to sustain attention for lengths of time expected of his age group, and a lack of ability to achieve academic levels appropriate to his age group. His grades were almost uniformly below average, as were the results of standardized testing. He performed especially poorly in mathematics, in some tests achieving scores in the lowest measurable category. A number of Martin's elementary school teachers confirm what the school records show, noting Martin's slowness, concentration difficulties, and inability to grasp the basic principles involved in an elementary education despite earnest effort. One teacher recalls that Myra Grossman expected her son to become a doctor or a lawyer, but that such goals were clearly unattainable for Martin. The teachers also note Martin's cooperative and gentle nature, and his shyness.

Following the normal school day, Martin attended Hebrew school. The rabbi who taught Martin reports Martin's sincere belief in God, his interest in the Jewish faith, and his caring nature, which was especially evident in Martin's relationship with Richard. The rabbi recalls that Martin had tremendous difficulty relating to and interacting with the other children in his charge, and that great effort was needed to enable Martin to socialize with them.

Until Martin was ten years of age, his great uncle, Meyer Levine, resided in the Grossman home. Mr. Levine was elderly, physically ill with diabetes, which he refused to treat, and is described as mentally ill and abusive as well. Mr. Levine died in 1975. Numerous deaths in the Grossman/Levine family occurred in relatively short order thereafter.

Those who knew Martin well in his childhood report that his life revolved around caring for his father to the exclusion of most typical childhood activities. Even scouting, which Martin enjoyed and which could have provided a respite from the burdens of his young life, was dominated by Richard and Martin's continued care-giving responsibilities. There are many descriptions of Martin refraining from active participation in scouting events due to the fact that Richard was present and Martin felt obligated to stay behind with him to ensure his safety.

It should be highlighted that Richard was not only physically disabled, but, consistent with his chronic brain syndrome diagnosis, was mentally and emotionally impaired as well. His behavior was, by all accounts, childish and demanding, and Martin was directed by Myra to yield to Richard's demands and to appease him whenever necessary. According to records and reports, Myra was herself emotionally disturbed, chronically depressed, medicated with tranquilizers for "nerves," and an incompetent and ineffectual parent.

There is mention in some of the background material of the importance of Phil Levine, Martin's maternal grandfather, in Martin's childhood and adolescence. Mr. Levine apparently attempted to provide the essentially orphaned Martin with some guidance and attention, and Martin was devoted to him. Mr. Levine, however, is described in very negative terms by many who knew him. It appears that he was demanding, arrogant, over-controlling, and "ruled with an iron fist." Myra's sister, Rosol, was another family member of great importance in Martin's young life. Rosol's history of mental illness, drug dependence (which also is seen on the part of Rosol's daughter, Rachel), and abuse towards her own children is well documented. This documentation includes an instance of voluntary hospitalization under the Baker Act.

In 1978, the Grossman family moved to New Port Richey, Florida. The impetus for this move was the construction of a subdivision in that city designed specifically for disabled and retired

veterans. This community, called Veterans Village, was occupied by many disabled, wheelchair-bound men, and was, by all accounts, a depressing and unusual neighborhood. Martin continued to spend after school hours caring for Richard, and began performing chores and favors for other invalids in the area.

Martin's grandfather died in November of 1979, shortly after he was diagnosed with cancer. Although Martin objected, the Grossman family placed Mr. Levine in a nursing home following his diagnosis. Many people noticed that Martin was quite withdrawn, distant, and profoundly depressed after Mr. Levine died, but it appears that none focused on his grief or otherwise sought any help for him. Family members report that the survivors among them all experienced tremendous grief and were at a loss as to how to survive without Mr. Levine. Myra was reportedly especially affected by the death of her father, and there are reports that her emotional problems and reality contact worsened at this time.

Richard died of a heart attack on January 25, 1981, following a period of marked degeneration of both physical and mental functioning. Background materials reflect that towards the end of his life, Richard could no longer even pretend to follow a conversation and was interested mainly in toys and children's games. Martin had to divide his time with Richard between performing caretaking duties and being his playmate. Because Richard died in the hospital without warning, Martin could not anticipate the finality of the situation or prepare himself in any way for the loss of his father. As was true following the death of Phil Levine, Martin's distress, confusion and profound grief were noted but essentially ignored. There are reports that Myra became even more dysfunctional at this time, and, rather than provide any support for her son, needed a great deal of support and attention herself. She relied on Martin for support and companionship rather than provide nurturance for him.

Eight months after Richard's death and after failing the ninth grade, Martin withdrew from school. Despite placement in a program designed for students with learning disabilities, Martin's academic performance in junior high school was extremely poor. He was promoted to ninth grade only after completing a basic summer program. School counselors and social workers began being concerned about Martin due to his excessive absenteeism. Records reflect that somatic complaints were the source of Martin's frequent absences from school, but that a medical doctor ruled out physical problems and attributed Martin's complaints to depression.

Due primarily to his poor school attendance, Martin was referred to a community mental health center. Myra attended sessions with her son, and counselors focused on her dependence on Martin and the abnormal, symbiotic relationship between mother and son. Records reflect the counselor's belief that Myra "sabotaged" Martin's development, encouraging and fostering his absence from school due to her need for companionship. She is described in these records as an "hysteric" presenting a "motherly exterior," but possessing none of the abilities of an adequate parent. Martin is described as "easily led and shy," and there are notations reflecting his pediatrician's belief that Martin's frequent somatic complaints were caused by depression rather than physical illness. Martin received a diagnosis of conversion disorder during this time, a reflection of his unintentional production of physical illness due to psychosocial stressors related to a psychological conflict. Martin's treatment was discontinued because Myra felt that her behavior and parenting abilities were being scrutinized; she refused to continue the counseling sessions.

Following Richard's death, family and others began noticing Martin's use of alcohol, marijuana, tranquilizers, sedatives, and other street drugs. Martin reports extensive and chronic dependence on alcohol, marijuana, cocaine, PCP, valium, darvon and phenobarbital, the latter three being readily available in his mother's medicine cabinet. Martin's use of alcohol and drugs appears to have been constant and indiscriminate; he would drink or ingest anything available to him. He reports instances of blackout following alcohol use. He reports no conscious suicide attempt involving his drug use, but notes that he ingested amounts of narcotics that he knew could cause death.

In the latter part of 1982, Martin's girlfriend, Bernadette Center, became pregnant. By all accounts, Martin very much wanted to marry her and raise the baby. Ms. Center's parents and Myra refused to allow this, and refused to allow Martin and Bernadette to have any contact whatsoever. The baby girl was ultimately placed with an adoption agency, and Martin has never seen his daughter.

In February of 1983, Martin, then seventeen years old, was arrested with others for the burglary of his girlfriend's house. He plead guilty and was sent to a youthful offender facility following sentencing to two years incarceration and two years of community control. Psychological testing from this incarceration revealed Martin's IQ to be 77, in the borderline range of mental

functioning. Counselors noted that he was in need of AA, treatment for his chronic drug dependence, and life skills, human relations, and communication and socialization education. Records from this incarceration are almost uniformly laudatory. Martin received numerous grants of gain time for outstanding work performance, conduct, dormitory evaluations and class participation. He was chosen for and participated in a program designed to discourage juveniles who had come into contact with the criminal justice system from further criminal behavior, and was commended for same. He volunteered to perform chores such as cleaning the dining room, and was considered a positive influence on the other inmates. While at the facility, Martin studied for the GED exam, but was ultimately unable to achieve a passing grade. He was transferred to a work release center near his home in January of 1984, and secured a job at a restaurant. The general manager reports that Martin was an excellent worker, polite and helpful, and that he routinely stayed until closing time and walked her home due to his concern for her safety. or her safety. He was furloughs during this time, and always reported back to the facility on time.

Martin was released from the facility in July, 1984. He worked at a variety of odd jobs, and resumed living at his mother's house in New Port Richey. His previous dependence on drugs and alcohol reportedly resumed as well, and became increasingly pronounced and debilitating.

Martin was arrested on Christmas Day, 1984, for the murder of a wildlife officer which occurred December 13 of the same year. He was nineteen years old. Pretrial detention records from the Pinellas County jail reflect Martin's emotional distress at that time, perceived at one point as severe enough to warrant the administration of the psychotropic drug Trilafon, and the antidepressant Elavil.

Florida State Prison records reflect Martin's excellent adaptation to the death row environment. In his five years at the facility, Martin has received no disciplinary reports whatsoever.

<u>Mental Status at the Time of the Offense and Information Relevant to Sentencing Considerations</u>

Martin Grossman has long suffered the effects of compromised intellectual functioning, probable brain dysfunction, a

developmental history characterized by profound and untreated complicated bereavement, psychosocial stressors severe enough to cause conversion disorder, a high level of fear and depression, and parental neglect, abandonment and mistreatment. He has reacted to these events and disabilities with passivity, and has been described by many as kind, easily led, helpful, and eager to please. Each of these factors is relevant to sentencing considerations. However, Martin's mental state at the time of the offense was disorganized, chaotic and devoid of reality contact due primarily to the effects of brief reactive psychosis (298.80)

A review of background materials, especially descriptions of the offense present in police reports and depositions of potential state witnesses, and my own interview with Martin Grossman make brief reactive psychosis the most appropriate diagnosis for the time of the offense. What is clear from all of these sources is that Martin was in a disorganized and disoriented state devoid of reality contact. Brief reactive psychosis is often precipitated by a major stressor such as combat. It appears that what could be perceived as a combat-like situation ensued following the wildlife officer's firing at Martin's friend and codefendant, Thayne Taylor. Perplexity, confusion, delusions, and marked loosing of associations were present by description in Martin's behavior at this time. Accounts of Martin pointing a gun at his friend and ultimately "snapping out of it" after much cajoling and reassurance are consistent in the materials. One report states that co-defendant Taylor was "pleading with Martin to come back to his senses." A further complicating factor is the use of drugs (PCP) and alcohol described by some prior to the offense. The statutory mitigating factors described in Section 921.141 (6)(b) and (f) clearly speak to Martin's mental and emotional state, judgment, reality contact, and cognition during and immediately following the murder of Peggy Park.

Given the facts and diagnosis described above, it would be inconsistent and highly illogical to characterize Martin's actions during the murder as rationally directed toward the goals of avoiding arrest or hindering law enforcement. No such goal-oriented behavior or cognition was possible given the severely altered mental state in which Martin was functioning at this time. Because he was in a psychotic state, he was likewise unable to form the premeditation for the underlying felonies present in this case (robbery, burglary and escape). Premeditation, reality-based behavior and assessment played no part in the events leading to and following the murder.

In addition to the above, there are many other personality, mental make-up and life circumstances of Martin Grossman that should be considered as further mitigation. These are discussed at length elsewhere in this report.

Summary and Conclusions

Martin Grossman was born to a mentally and physically disabled father and a dysfunctional mother. He was used as a nursemaid from the age of three, and his world was largely defined by the presence of chronically ill and dependent adults. His needs were ignored and neglected, and he was forced to perform as an adult caretaker for his father and a companion for his mentally ill mother. Even with one emotionally healthy parent, the psychological and behavioral effects on children of living with a dying and disabled parent can be debilitating and life-long, especially when the child is forced to care for the invalid and is denied information about the illness and other crucial forms of support and outlet for stress and grief. In Martin's case, no support was forthcoming, and the presence of his physically healthy but mentally disturbed mother markedly exacerbated the demands placed on him and the lack of focus on even his most basic needs. In essence, there was a complete reversal of the normal roles, duties and responsibilities between parents and child, with the ill-equipped, frightened child being forced to perform as an adult under circumstances which would be stressful and difficult for even a mature and healthy adult. In addition to living each day with and caring for his dying father, Martin ultimately suffered the loss of numerous relatives, of greatest importance being the death of his maternal grandfather. This loss was profoundly debilitating to him, but his own needs for comfort and reassurance were ignored by his disorganized and dysfunctional family unit. Martin's pain and bereavement following his father's death were similarly ignored and untreated, and his mother's dependence on Martin heightened at this point.

Martin simply could not cope alone with the confusion, isolation and pain caused by the myriad lifelong realities and responsibilities described above. He developed conversion disorder, a psychiatric disorder presenting as somatic complaints for which no physical etiology can be found. This disorder is not volitional, but is caused by the relationship between a psychosocial stressor related to a psychological conflict or need that is unrecognized, unresolved, or unmet. It usually develops in an atmosphere of extreme psychological stress, as was true in Martin's case.

School records and other background materials reveal that Martin has always been intellectually compromised, and was never able to learn as normal children do. He was placed in special classes for learning disabled students, but was still unable to achieve passing grades. The department of corrections testing reveals Martin's IQ to be 77, in the borderline range of intellectual functioning. On further testing, Martin performed poorly in those areas designed to detect the presence of organic brain damage, giving rise to the probability that such damage exists.

In part as a coping mechanism for the confusion, harshness and pain in his life, and in part because of what appears to be a genetic predisposition to addiction (Myra's narcotic and tranquilizer use, Rosol's drug addiction, and cousin Rachel's dependence on drugs), Martin became dependent on alcohol and drugs at an early age. These dependencies were chronic and of long duration, and are the likely cause of neurological dysfunction displayed on testing.

Martin's first incarceration appears to have been the most stable, productive period in his life. He received outstanding evaluations in all areas, was given many gain time grants, and was trusted to participate in the furlough program. He was considered a positive influence on other inmates, and volunteered to perform tasks beyond his job assignments. Although he was able to pass an electronics course with much effort, he was unable to attain his GED diploma due to his intellectual deficits.

By all accounts, Martin was a shy, easily lead youth, who was eager to please others. He performed numerous acts of kindness and generosity, and was trusted by many (e.g. taking care of a pregnant woman whose husband was away; walking his female employer home late at night, etc.). Although physically large, he did not take advantage of his size and avoided physical confrontations. He was always slow and lacked the maturity of others in his age group. These personality characteristics are well documented in the background materials.

The murder for which Martin is death sentenced occurred without planning, premeditation, or design. It was the product of Martin's brief reactive psychosis, coupled with his life-long intellectual and neurological deficits. As is clear from background materials, especially police reports of Martin's chaotic thought processes and lack of reality contact during and following the offense, Martin's violent behavior that night was not goal-directed or the result of rational thought, cognition or

judgment. It was an aberrational event caused by a psychotic process which rendered him unable to understand or assess reality and to respond to the situation with any degree of reality-based thought or judgment. With the waning of this psychotic process, Martin became guilt-ridden and remorseful. This remorse is documented in much of the background materials and was a feature of my own interview and assessment of his current functioning.

Pretrial Evaluation

I have reviewed the file of Sidney Merin, Ph.D. This file includes no background material on Martin Grossman and no offense-related reports or statements. It is clear that Dr. Merin's assessment of Martin was based predominantly on self-report. Reliance on self-report falls below the standard of care in the psychological community for a competent forensic evaluation, and in this case undermined Dr. Merin's ability to understand the emotional and mental disabilities suffered by Martin Grossman, the manner in which his life experiences affected his psychology, and his mental functioning at the time of the offense.

Very truly yours,

R. Brad Fisher, Ph.D

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EDUCATION:

B.A. Psychology, Harvard University, Cum Laude,
Cambridge, Massachusetts
Thesis: Juvenile Community Corrections in Massachusetts

M.S. Psychology (Clinical Program), Southern Illinois University,
Edwardsville, Illinois, 1973
Thesis: Differences in motivational factors among two classifications of delinquents

Ph.D. Psychology (APA Approved Correctional-Clinical Program)
University of Alabama, 1976
Predictions of dangerousness for delinquents in relation to quantity of data, authoritarianism, and dogmatism (Stan Brodsky, chairman)

Internship Ohio State University Hospitals and Ohio Department of Corrections - APA Program (Adolescent specialization)

PROFESSIONAL EXPERIENCE:

Director of Criminal Justice Resource Center, Chapel Hill, North Carolina. Administration of grants and contracts for training and research primarily in areas interfacing psychology and criminal justice. Examples of sponsors include U.S. Department of Justice, North Carolina Administrative Office of the Courts, the National Institute of Corrections, and the Edna McConnell Clark Foundation. 1979 - present.

Adjunct Instructional Staff, Duke University, 1982 - present.

Director of Clinical Services, to Acting Director and Consultant, Dillon Youth Center, Butner, North Carolina. Research and clinical services for unit with 100 residents, including both emotional and behavioral disturbances. Fall, 1977 - present.

Adjunct Assistant Professor of Psychology, University of North Carolina, 1977 - 1981.

Assistant Professor of Psychology, University of Alabama, 1976 - 1977.

Assistant Director, Prison Classification Project. Research and psychological assessment of Alabama's prison population directed by the University of Alabama Psychology Department, 1976 - 1977.

Associate Editor, Law and Psychology Review, University of Alabama, November 1973 - August, 1975.

EXAMPLES OF TEACHING EXPERIENCE:

Adolescent Psychology, University of North Carolina.

Personality, University of North Carolina.

Law and Psychology, with Stan Brodsky, University of Alabama.

Introductory Helping Skills, University of Alabama (a course emphasizing videotape feedback for skill development).

Audio-Visual Media in Psychology Research and Instruction, University of Alabama.

Introductory Psychology, University of Alabama.

Audio-Visual Media in Psychology Research and Instruction, University of Alabama.

Introductory Psychology, University of Alabama.

Group Processes, Southern Illinois University.

Treatment issues for the violent adolescent. Two-day workshop series for accreditation to North Carolina juvenile judges. Asheville, Greensboro, and Durham, NC, 1981 - present.

Serious juvenile offenders. Three-day workshop series to North Carolina court counselors. Asheville, Greensboro, Durham, Greenville, NC, 1980 - present.

Classification models. Training seminar at the National Academy of Corrections Annual

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Fisher, B. Mental health placement and treatment for NGRI (not guilty by reason of insanity) in Louisiana. Report for the United States Department of Justice. 1985.

Fisher, B. Prisoner Classification and mental health services progress in New Mexico - 1980-86. Report sponsored by U.S. Justice Department resulting from grant to develop classification model (Fisher instrument) for this state in 1980.

Fisher, B. Classification issues: variations in juvenile typologies. Invited presentation to the Brookings Institute, Washington, D.C. 12/5/86

Fisher, B. Expert psychological testimony in capital cases involving youthful offenders: invited address to the Association of Public Defenders - 8/5/86, Los Angeles, California.

Fisher, B. and Ney, S. Approaches for classification revisions based on computer analysis. Presentation to the South Carolina Deaprtment of Corrections. 9/14/85.

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Fisher, B. Interview techniques with adolescents. Panel at Division of Youth Services convention at the Mckimmon Center in Raleigh, 1/12/84

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Fidler, D., Fisher, B., and Alexander, S. Dobro - A case study of visual memory loss in an adolescent. A videotape presented to the Association for Academic Psychiatry, Charleston. March, 1979.

Fisher, B. and Kearney, G. Divergent concepts of death in violent and nonviolent youth. A paper presented to the symposium "The Child and Death" (NIMH), New York (Columbia University). January, 1979.

Fisher, B. Treatment of the multi-handicapped child in residential settings. A paper presented to the North Carolina Educational Association, Boone, NC. October, 1978.

Fisher, B. Developing a clinical interview for the adolescent in mental health settings. Paper and videotape presentation at the CPI Conference on Adolescence, Raleigh. September, 1978.

Fisher, B. Program considerations for children in residential centers with developmental disabilities. A paper presented to the annual convention of the North Carolina Disabilities Council, Wilmington, N.C. April, 1978.

Fisher, B. The community as a resource for the development of residential settings for adolescents. Presentation to the Community Mental Health Law Project, Newardk, N.J. January, 1978.

Fisher, B. Program considerations for children in residential centers with developmental disabilities. A paper presented to the annual convention of the North Carolina Disabilities Council, Wilmington. April, 1978.

Fisher, B. Making your client more human. A paper presented to the Association of Criminal Defense Lawyers, St. Simon's Island. March, 1978.

Isky, S. and Fisher, B. Psychology at the interface of law and corrections. Paper presented at the meeting of the American Sociological Convention, Atlanta. November, 1977.

Fisher, B. Some problems in the prediction of dangerous behavior. Paper presented to the Prison Crisis Mobilization Network, Columbus. October, 1977.

Fowler, R.D., and Fisher, B. Academia in community application. A videotape and slide presentation at the Psychology Speaker Series, University, Alabama. March, 1977.

Brodsky, A. and Fisher, B. Sex-bias in therapy: Seven scenes. Paper and videotape presented at the meeting of the American Psychological Association, Division 29, Orlando. February, 1977.

Prentice-Dunn, S., and Fisher, B. Graduated guidance with retarded children. A videotape presented at the Partlow State School, February, 1977. Library catalog J-67-71.

Fisher, B. The applications of the MMPI to an adolescent population. Paper presented to the Ohio State University Department of Psychiatry-Grand Rounds, Columbus, Ohio. December, 1975.

Fisher, B. Art therapy utilization with an in-patient child population. Paper and slide presentation delivered to the Department of Child Psychiatry, Ohio State University Hospitals, Columbus, Ohio. October, 1975.

RESEARCH AND TRAINING VIDEOTAPES:

The following is a list of videotapes used for training in the North Carolina Department of Psychiatry under the overall direction of Dr. Donald Fidler. Although developed primarily for training at the University of North Carolina School of Medicine, they have been distributed for training elsewhere by the Health Science Consortium and are produced by the Medical Sciences Teaching Laboratories in Chapel Hill.

Gretel: Issues for Psychotherapy: Training and description of critical stages and components of psychotherapy. One hour, color, 3/4" cassette. 1981.

Moonstones: Dramatic presentation of issues encountered by the psychiatric resident in dealing with a serious adolescent offender. One hour and thirty minutes, color, 3/4" cassette. 1981.

luation and commitment: For training in cases involving involuntary commitment. 20 minutes, color, 3/4" cassette. 1980.

Hypnosis: Training tape in issues for hypnosis in psychiatric training, including historical perspective. 30 minutes, color, 3/4" cassette. 1980.

The Mental Status Interview: Presentation of actual cases carrying different DSM III diagnoses. Adult patients from Dorothea Dix Hospital, adolescent patients from Dillon School. Each case approximately 20 minutes, color, 3/4" cassette. 1980.

Minotaur: Training tape for issues related to the violent patient. 33 minutes, color, 3/4" cassette, 1979.

Dobro: Presentation of case involving neurological impairment in an adolescent. 22 minutes, color, 3/4" cassette, 1979.

PROFESSIONAL AND JOURNAL AFFILIATIONS:

American Psychological Association (member) - Division 12 (clinical)
Division 41 (law and psychology)
American Association of Correctional Psychologists (member)
Center for Early Adolescence, Chapel Hill, NC (fellow) 1978-present
Capitol Health System's Advisory Council: Task Force on Juvenile Justice (member) 1978-80
N.C. Council of Child Psychiatry, Task Force on the Aggressive Adolescent (member)
Adolescent Day Treatment Program: Community Guidance Clinic, Duke University (advisory board member)
Orange County Youth Task Force (member)
Article Review Editor, Criminal Justice and Behavior, 1976-present.
Southeastern Psychological Association (member)
North Carolina Psychological Association (member)
American Association for Educational Media Specialists (member)

EXAMPLES OF EXPERT TESTIMONY AND EVALUATION

1987

CA. v Charles First. (A-092979). Court testimony regarding research connecting parental physical abuse and violence potential

GA. v Holloway - C.A. 83-126 - M.D. Ga. Testimony concerning effects of retardation level on voluntary confession.

N.C. v Upshur 86 CRS 338 Court testimony regarding issues in adolescent developmental disturbance and competency as adult in a capital case.

Fl. v Fitzpatrick 80-1281-E. Insanity possibly due to incarceration effects as clemency factor in capital case.

Shapley v. NV. (CU-R-79-162-ECR Evaluation of State Correctional and Mental Health Classification issues including juvenile applications.

Baker v. Idaho (84-1256). Evaluation of effects of misdiagnosis and misclassification in case involving community violence from released prisoner.

Brown v Maine (CU-R-87). Overview evaluation of prisoner and patient release practices in the state of Maine.

1986

N.C. v Mancuso. Testimony concerning adolescent developmental disturbances in connection with capital crime and insanity plea.

Carter v. Marks. Statewide evaluation (Pennsylvania) of all institutionalized adults claiming insufficient treatment and diagnosis for Post Traumatic Stress Disorder.

N.C. v. Rook. Evaluation of effects of juvenile incarceration and parental abuse on later criminal violence and drug abuse potential.

Bobby K. v. Florida. Statewide evaluation of all programs for adjudicated youth. Two year analysis by panel of three experts with Dr. Fisher as member.

CA. v Tholmer (A396284). Evaluation and testimony concerning effects of abandonment and juvenile incarceration on adult mental status.

Ruiz v. Procunier. Evaluation and report for U. S. Justice Department concerning single celling needs for the state of Texas.

N.C. v. Alexander. Court-ordered (Amicus) evaluation and testimony concerning special placement needs for aggressive/retarded youth.

N.C. v. Amberson (86CRS-85252-85262) Evaluation and report concerning effects of learning disabilities on behavior of adolescent in a capital case.

1985

N.C. v. Todd (85CRS-8228). Evaluation and testimony concerning effects of juvenile incarceration and treatment for deposition questions in capital case with waiver.

EXAMPLES OF EXPERT TESTIMONY AND EVALUATION:

1984:

Ruiz v. Estelle, H-78-987-CA (S.D. Tex.). Study of Mental Health needs for Texas prison system. U.S. Department of Justice.

Abraham v. Washoe County CV-R82-0079BRTT Evaluation and report on Mental Health and classification services in Reno County, Nevada jail.

1983:

Ruiz v. Estelle, H-78-987-CA (S.D. Tex.). Evaluation of single celling needs in Texas prison system. U.S. Department of Justice.

Stewart v. Rhodes, CA C2 - 78 - 220 SD . Reevaluation and testimony concerning Mental Health Services and overcrowding in the Ohio Department of Corrections. U.S. Department of Justice.

[illegible] v. Johnson, USCS EDMSO-7358 (Mich.). Evaluation of Mental Health Services in the Michigan Department of Corrections. (1983-1984)

1982:

U.S. v. Elrod, C.A. 76-C-4768 (N.D. Ill.). Evaluation for the U.S. Department of Justice of classification and overcrowding issues in the Cook County D.O.C.

Vonish v. Garza. SA-73-CA-59. Evaluation for the U.S. Department of Justice of classification and overcrowding of the San Antonio Jail.

Shapley v. Housewright, 77-0221 HEC (Nev.). Evaluation of prison conditions and classification in the Nevada State Prison.

Guthrie v. Evans Evaluation of protective custody issues for the Georgia State Prison.

Windes v. Boosalis (Neb.) Evaluation of Lincoln County Jail.

[illegible] v. [illegible] Soto (Ga.) Testimony concerning effects of child abuse and prison adjustment in capital case.

N.C. v. Amin Abdullah (N.C.) Testimony concerning prison adjustment potential.

Hadix v. Johnson. USDC EDM 80 73581 (Mich.) Evaluation of classification and mental health services in the State Prison at Jackson, Michigan.

Witke v. Crowl (Id.) Evaluation of conditions and classification in Idaho's women's prison system.

York v. Jarvis. C81-1694A (Ga.) Evaluation of mental health services and classification in the DeKalb County Jail.

1981:

Canterino v. Wilson. C.A. C80-0545-L(J) (W.D. Ky.) Evaluation concerning effects of classification and overcrowding in Kentucky women's prison system.

Chapman v. Clark, C.A. 79-3192 (D.C.N.J.) Evaluation concerning classification and effects of overcrowding in Jersey City Jail.

Duran v. Apodaca. Ongoing evaluation for the U.S. Department of Justice, National Institute of Corrections, and revision of state classification processes pursuant to consent decree entered 8/1/80. (1980-present)

Florida v. Morgan. Evaluation and court testimony concerning prison adjustment and violence potential, Miami.

Florida v. Valle. Evaluation and testimony concerning prison adjustment and violence potential, Miami.

Grigsby v. Arkansas, PB-C-78-32 (E.D. Ark.) Court testimony and report concerning possible jury selection bias in capital case process, Little Rock (1979-81).

Grubbs v. Bradley. C.A. 80-3404 (M.D. Tenn.) Evaluation and testimony concerning classification for the Tennessee Department of Corrections.

Kendrick v. Carroll. Evaluation of classification processes and prison conditions for the U.S. Department of Justice (1979-81).

Louisiana v. Clark. Testimony concerning mental competency, New Orleans.

Lovell v. Brennan, C.A. 79-76 (S.D. Me.) Evaluation and testimony concerning classification practices in Maine State Prison, Portland (1980-81).

Maginnis v. O'Callaghan. C.A. 77-0221 (D. Nev.) Initial evaluation of classification and prison conditions (1979) with 1981 follow-up in Nevada State Penitentiary.

Mississippi v. Gilliard. Evaluation and testimony concerning prison adjustment and the potential for dangerous behavior, Laurel, Mississippi.

Ruiz v. Estelle. H-78-987-CA (S.D. Tex.) Evaluation and testimony concerning overcrowding and classification in Texas for U.S. Department of Justice (1979-81).

1980:

Daniels v. Zant. C.A. 79-110-MAC (M.D. Ga.) Evaluation of classification concerns for Death Row inmates in Georgia, U.S. Department of Justice.

Georgia v. Anderson. Evaluation and testimony concerning prison adjustment.

North Carolina v. Cherry. Evaluation and testimony concerning prison adjustment.

North Carolina v. McDougal. Evaluation and testimony concerning prison adjustment.

Trigg v. Alexander. C.A. 73-714-CA (M.D. Tenn.) Evaluation of state classification process through the U.S. Department of Justice, National Institute of Corrections.

[illegible] v. Hunt. Testimony in juvenile class action suit concerning treatment, conditions of confinement, and due process issues.

1979:

Arkansas v. Little. PB-C-78-32 (E.D. Ark.) Report concerning competency and danger potential of juvenile.

Florida v. Dougan. Testimony provided concerning prison adjustment potential and custody recommendations.

Florida v. Harris. Report (psychological and classification evaluation) provided to court at its request.

Florida v. Knight. Testimony and report concerning prison adjustment potential for clemency hearing.

Georgia v. Jordan. Evaluation report of effects of prison conditions as mitigating circumstance in this capital case involving prisoners' rights.

Georgia v. Lemley. Testimony concerning classification recommendations and future prison adjustment potential.

Laaman v. Helgemoe, 437 F. Supp. 269 (D.N.H., 1977). Report after investigation of classification processes at the New Hampshire State Prison.

North Carolina v. Clark. Report provided to defense counsel concerning potential for future prison adjustment.

North Carolina v. Taylor. Testimony about violence potential and prison adjustment recommendations.

Oklahoma v. Hamilton. Testimony concerning classification recommendation and prison adjustment potential.

Stewart v. Rhodes. C.A. C2-78-220 (S.D. Ohio, 1979). Consultant to U.S. Department of Justice concerning classification processes and conditions at the Ohio Reformatory.

1978:

Bundy v. Kaesaris et al., T.C.A. 78-0931 (N.D. Fla.) Effects of specific prison conditions testimony (lighting).

Georgia v. Hayes. Provided psychological profile for juvenile in capital case.

Georgia v. Riles. Prisoner adjustment potential testimony.

North Carolina v. Avery. Prisoner adjustment potential testimony.

North Carolina v. Barber. Prison adjustment potential testimony.

Palmariano v. Carrahy, 7432 (R.I.) Effects of prison conditions report and testimony as consultant to U.S. Department of Justice.

North Carolina v. Simpson. Competency evaluation.

1977:

Donaldson v. Maryland. Consultant to court providing information on right to treatment suit within Maryland's prison system.

Georgia v. Flemming. Testimony concerning jury selection processes for this trial.

Georgia v. Willis. Predictions concerning prisoner violence potential.

North Carolina v. Carter. Testimony concerning predictions of danger potential.

1976:

Newman v. Alabama, 559 F.2d 283 (5th Cir. 1977), cert. denied, 98 S. Ct. 3057 (1978); receiver appt'd, 446 F. Supp. 628 (M.D. Ala.) Testimony concerning prisoner adjustment in class action right to treatment litigation.

EXAMPLES OF GRANT ADMINISTRATION:

Author and project director for grant from the National Institute of Corrections, U.S. Department of Justice, to develop classification principles and national model. Initial writing, with training and technical assistance follow-up. 1979-1981. $80,000/annum.

Analyst for National Institute of Justice grant (1986-87) to study Death Row units throughout the United States, including national survey.

Project director and author for grant to establish Developmental Disabilities Program within the Division of Youth Services. 1979-80. NIMH. $161,000 (continued).

Project director and author of grant to create Bibliotherapy Program at Dillon School. 1978-79. Title I. $42,000 (continued).

RESEARCH AND PROFESSIONAL INTERESTS

Adolescent Psy. and Forensic Juvenile Issues
Classification and Mental Health Issues in Corrections
Law / Psychology Interface Issues

REFERENCES

Ray Fowler, Ph.D.
President Elect
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September 17, 1985

Tom McCoun, Esquire
1 Plaza Place, N.E. - Suite 1009
St. Petersburg, Florida 33701

RE: State of Florida vs. Martin Edward Grossman

Dear Mr. McCoun:

I have had the opportunity to examine, interview and observe your client, Mr. Martin Grossman. I have spent many hours with the young man, and in addition, administered and interpreted a battery of psychological tests.

In view of what Mr. Grossman tells me, how he says it, his emotional reactions, his mental status and the results of the psychological examinations, it would be my opinion my findings would not be helpful to your defense position in either the guilt or innocense phase or, if it is held, the sentencing phase of Mr. Grossman's trial. I would be happy to confer with you and go into detail with regard to my findings. As I indicated to you at our conference on August 27, 1985, I was obtaining examination results which did not appear to be helpful initially. I had proposed to return to the jail for more consultations with Martin, and did so for a number of hours on September 11, 1985. Following those last consultations with him, and combining that with all of my other findings, it would be unlikely the material I have available would be helpful. Nevertheless, you may be aware of some elements which I am not privy to or have not considered, and

perhaps would prefer to discuss all that is known about Mr. Grossman.

I have taken the liberty of attaching this letter to the history Martin Grossman presented to me. Note, there is nothing typed which involves any of my psychological testing, my conclusions, or opinions. What has been typed is virtually, word for word, material he had presented to me.

I would be happy to talk with you if you feel it advantageous to do so.

Thank you very much for the opportunity to examine Martin Grossman. I regret not being able to help you as I have in other cases.

With best wishes, I am,

Sincerely yours,

Sidney J. Merin, Ph.D.

SJM/sm

PRESENTED HISTORY BY MARTIN GROSSMAN

Mr. Grossman was asked to describe, in the best manner he could, what had occurred at the time of the shooting incident, beginning with the day and date. He reports on Thursday, December 13, 1984, he arose from sleep at about 11 a.m. to 12 noon. At 2 to 3 p.m., he drove to his friend's home, co-defendant Thome Taylor, who lived approximately one mile away. The two men then drove around New Port Richey looking for something to do seeking either girls or any friends they might meet. At about 5 p.m. the two went to the defendant's home. He was to drive his mother to work. While he did so, sometime between 5:30 and 5:45 p.m., Thome and Brian Hancock, a friend of the family, remained at the defendant's home. Brian had apparently run afoul of his own parents and was invited to live with the defendant. Brian apparently paid $30 to $35 per week for room and board living with Martin. Brian apparently came to live with Martin some two months earlier. However, Brian lost his job and simply stayed around Martin's home for about two weeks. He eventually went to work for the defendant's uncle.

Upon Martin's return home at about 5:45, he found Brian and Thome working on a car they were all repairing. At approximately 6:20 p.m. Brian showered while Martin and Thome sat about watching television. At 7 p.m. Brian informed them he was to meet someone later at 10 p.m. for the purpose of selling the 9 milimeter gun which allegedly belonged to Brian's father. Brian was discussing this and the price on the telephone with an unknown party. At that point, the defendant went out into the field behind the house where he had secreted that gun by wrapping it in about three plastic bags and burying it at a depth of approximately two to three feet. He brought the gun into the

fired a 9 milimeter gun and wanted to test its power. He could not answer why he did not fire it at the nearby field, other than to note he did not want anymore hassles with his neighbors.

Martin and Thome drove around for 25 minutes and found themselves on Highway 584. It was fairly desolate at that time. They drove on to Perrine Rand Road, a paved county road. They planned to stop at a river bank and fire the weapon, but found too much traffic around them. They continued on toward Oldsmar, passing the area of the shooting and going on to Boy Scout Road in Oldsmar. There were still too many cars around for them to stop and fire the weapon. They started back and came upon Covered Bridge Estates, an undeveloped subdivision.

Martin Grossman defines the following as being the most important part of his narration, yet the "stupidest" part of the entire drive. Just off the main road were signs warning against trespassing. Those signs were observed by Martin and Thome when he turned on the spotlight of his vehicle. He notes he stopped, hesitated and considered he had some sort of "sixth sense--something told me not to go in and the other side of me said go ahead". The defendant continued on, driving some two to three miles back on the road, coming to a dead end and an improved road. There was an old refrigerator nearby and Martin shined the spotlight on it. He handed the light to Thome and took the gun out from under the driver's seat. He had it in his hand and asked Thome if he were prepared to see what the gun would do to the refrigerator.

At that point in the events, Martin observed a light somewhere on the road in the distance. He quickly put out the headlights of his vehicle and Thome turned off the spotlight. The defendant had observed brakelights in the distance. A moment later he decided to drive away and turned on his high beams. He did not like the idea of any other car being around. He did not want the muzzle flash or the noise to concern anyone when the gun was fired. Some ten yards on, he observed bright lights coming at him very rapidly. He thought it might be a hunter or someone with a girl or someone "smoking a joint". He then saw the spotlight turn on by the on-coming vehicle and saw the blue flashing police light. Martin states he "stopped and froze". He was startled by the spotlight and the blue lights. The oncoming vehicle stopped some ten yards in front of them. Martin replaced the gun beneath the seat and had the clip of bullets in his pockets. He told Thome "to be cool and not to worry".

A figure emerged from the truck which had approached them. The

He answered they were sitting there listening to their stereo. She asked if he had any guns in the vehicle and the defendant answered in the negative. He calculated if he simply showed her his driver's license and she ran a check on him, he would then be permitted to go on. She asked for his license which he handed to her. She asked Thome if he had a driver's license, which he did not have. The officer then allegedly asked the defendant to exit the van and to turn off the engine, which the two then did. The defendant was ordered to stand between the two vehicles and Thome was told to move to the van's passenger side. The officer then flashed her light about the inside of the van to determine if anyone else were there, in Martin's opinion. Martin stated the officer continued around the vehicle doing the same thing.

It was at that point the defendant considered Thome was becoming "nervous" and allegedly came up behind the officer and looked over her shoulder. The defendant believes the officer became aroused with concern and ordered Thome back. Thome did not retreat. The officer allegedly looked inside the cab section of the driver's side and found the weapon Martin had placed under the seat. Whereupon, according to Martin, she is alleged to have said, "ahah!". She began to walk back to her vehicle. Each of the youths looked at each other with surprise that she had found the gun. The defendant followed her as she went to the driver's side of her vehicle. She sat in her truck and looked at the defendant, when the defendant asked her to wait a moment to explain that the weapon was not his. She answered in a manner suggesting she did not believe him. The defendant asked him to give him a break since he was on probation. He attempted to again explain the ownership of the gun, but at that point she announced that he was under arrest and that she did not wish to hear what he had to say.

Martin argued with the officer concerning her having arrested him, stating he had done nothing. She picked up her radio, apparently to report him. At that point she had the defendant's gun, his van keys and his license. Martin states he was about to say something to Thome, but was asked to stay where he was. The officer allegedly told him if he continued in his behavior, she would put handcuffs on him. Martin states he ignored her. She reached for a different radio. It was then the defendant leaned into her truck, grabbed her in a bear hug, pulling her away from the radio so that she could not say anything. She dropped the radio microphone and said, "what the hell you doing", and began to struggle in an attempt to force Martin to let go. The two fought some 15 to 20 seconds when the defendant called to Thome who quickly came over. Thome allegedly said, "what

retrieving his gun. He apparently grabbed at the wrong side of the officer's service belt and came up without the gun. The physical fight continued with increased intensity and Martin struck her several times with his fists. He does not know where his blows struck. Thome tried to get her gun again, but she kicked Thome in the groin.

Martin continues by stating the fight intensified further when he then grabbed her flashlight. She was still in her truck as this went on. He struck her several blows to the head with her flashlight, in an effort to "knock her out". By doing so, could then gather his belongings and leave. The fight continued and he continued to strike her with the flashlight, probably he believes, "six or eight times total, maybe more--I don't remember". He stated to Thome, "she won't go down".

It was at that point in the melee' Martin observed the reflection of the officer's chrome gun. He also observed Thome attempting to hold her hand down, in which hand she held her gun. Martin thought to himself he had to stop that gun from moving about before it discharged. The barrel of the gun continued to move in a direction pointing toward him and he knew he had to stop it. He could not believe her strength. Both Thome and the defendant were attempting to hold down her hand, yet it continued to move. The gun then discharged in "a deafening sound". The officer continued to fight even though Martin stated he could no longer hear because of the dulling effect of the gun blast.

The defendant went on to state, "suddenly, it was a weird and different world---no sound at all". He states he struck the officer on the side of her head with his fists two or three times. The gun discharged again. He had the feeling none of this was happening, because suddenly "she quit--she stopped the fight--everyone stopped".

The defendant recalls being positioned over the top of the officer, but he could not see anything, "as though my mind refused to see what was going on". Thome was not there. He had already returned to the van and called to the defendant to get out of there.

Martin states he did not know what happened to the officer. He did not know if she had been hit by a bullet or he had knocked her out with blows to her head. The defendant ran back to the van. Neither he nor Thome tried to determine what happened to the officer. He knew he had to retrieve his license and the van keys. When he returned to the officer's truck, he found her partially lying outside the truck. He searched frantically for

While at the truck, Martin looked down at the officer. He knew she was there, but found it hard to believe she went from being inside her vehicle to the outside of the truck. He could not see her face initially. He began to "shake" and then looked at her again and observed her looking directly at him, "like she was trying to look right through me".

Martin states he then ran to the van where Thome had both guns, the 9 milimeter and the officer's gun. The defendant started the engine of the van and left. He had the officer's gun on his lap as they sped away. Upon returning to his home, the two ran into the house. There he was struck by the enormity of what had occurred. He was blood on him and told Brian a story of being in a fight and that the gun discharged.

DEVELOPMENTAL HISTORY:

Martin states he was born in San Antonio, Texas, moving to Florida while an infant. He moved later from Miami to New Port Richey some seven years ago.

The defendant's father, Richard Alan Grossman, died at age 52 some four years ago. The defendant's father was retired Navy and Air Force man who was 100% disabled following an automobile accident. That accident took place when the defendant was two years old. His father had difficulty ambulating. Father and son had a good relationship. His father was not a strict man but the two could differ. Because of the father's disability, he could not engage in many physical requirements and activities with the defendant. Martin perceived his father as having taught him about cars, fishing, sports and other activities.

The defendant's mother is 53 years of age and is a secretary at a dance studio. He describes her as being a very religious woman who saw to it that he attended religious services and after school religious classes. She is a sensitive woman, a worrier who was always concerned in his associations and in his school work. Martin states he rebelled against anyone telling him what he should do in life. He was of the opinion no one listened to what he wanted, but rather were inclined to impose their ideas on him. He describes his mother as being a loving and protective person. Apparently, the maternal grandfather also played a role in Martin's life. The grandfather was a welterweight world boxing champion and wanted Martin to go into boxing or into the military service. Many othet members of the family had been in the military. The grandfather

Martin is an only child. The immediate and extended family were very close. They always vacationed together and enjoyed similar recreational activities.

EDUCATIONAL HISTORY:

Martin completed grade 9. It was during that year his father died and the subject immediately quit school. He had been told by a school counsellor that he could, with parental permission quit school legally. He obtained that permission from his mother. The defendant later returned to grade 9, having only to complete one half year and then was told he would immediately go into grade 10 half way through that year. During the year when he should have started grade 10, the subject states he attended probably no more than 20 days of the whole school year.

SOCIAL DEVELOPMENT:

The defendant states that by the time he was in the 9th grade he was already involved in the use of drugs and alcohol. He was drinking a fifth of whiskey in a night or two. He obtained money, along with his friends, through doing lawns and stealing money from his mother. With that money, he would buy marijuana and with his group they would have "pot parties". By that time he had already obtained a TransAm automobile at age 15, given to him by his parents. He and his friends would engage in numerous burglaries wherein he could obtain either drugs directly from the burglaries or he could steal tools, cameras and other items he could quickly convert to a few dollars in order to buy drugs and alchohol. He estimates he had engaged in some 25 burglaries. He would commit the burglaries by breaking the window, prying a window open or cutting a screen.

By the time Martin returned to grade 10, he was already deeply involved in the increased use of drugs. He decided not to attend that first day of classes in grade 10. It was his opinion the first day was a "natural skip day" and it was generally expected that students would not show up for class on that first day. The defendant traded his TransAm for a new Datsun 280ZX. That "fancy" car impressed others and drew many girls to him and seemed to impress others who were also using drugs. Martin states "I was overwhelmed with the attention--something I always wanted when I was little".

In telling his story, Martin states he was always competing to achieve "respect". He thought he could gain respect by having the nicest car, jewelry, clothes and money. He wanted

and be the center of attention. He recalled his first day in grade 10 when he drove into the school parking area with four of the prettiest girls in his new car. When others saw him he was so taken by the attention of all that drew from friends and other student, he decided not to go on to school since this was more exciting than attending classes. "I like to show off a lot". He would drive by the school just to have people stop and look at him and his car. As he drove by his stereo was always turned up loud, his windows down and he would speed into the school parking lot, often spinning his car around and "doing 360's".

The subject states he went to all football games. On two occasions, in two different games, Martin drove his automobile onto the playing field at half time while the band and others were performing, stating he would "spin around and tear up the field until they chased me". He states he was known as a person who used drugs and alcohol and was "crazy to do something like that". He was never arrested for any of that type of mischief nor any of the 25 or so burglaries in which he had engaged. He states "I was a juvenile Burt Reynolds--always wanted to show off".

Approximately one month after school started, the defendant did return to the 10th grade sporadically, but again attended quite minimally throughout the entire year. He states he had no problems with reading. In retrospect, he became bored by the fifth grade when it was his opinion the State of Florida had no adequate school curriculum and he discovered he was being taught the same material year after year. It was then he began to "slack off".

Martin states he and his family moved to New Port Richey when he was in grade 8. There he found the atmosphere much more inviting for school and his teachers seemed to have more time for their students, in contrast to what he observed in the Miami school area. His interests were in history and science. He would find himself in conflict with his peers regarding classroom assignments, seating arrangements and which student could perform best.

By the end of the 10th grade year, Martin began to engage in more criminal activity. He became involved with a more "rowdy bunch". Burglaries, grand thefts, vandalism, such as lawn jobs where he and his friends would tear up lawns with their cars, were engaged in. They would steal road signs, entire soft drink machines and newspaper dispensers. There was mutual harrassment of and by the Clearwater Beach Patrol. He then began to receive speeding

The subject remained home from school during his 10th grade year, often sleeping in late. His mother, still in mourning over the loss of her husband, did not press him to attend school or have any conflicts with him regarding discipline. He began to go to bars. Because of his size and his mustache he states he appeared older. He would wander about all night from county to county, looking for places to listen to music. He would do this with groups of other boys and girls in a caravan of up to five cars. They would be out "just looking for fun". By this time, he was using some heavy drugs, such as PCP, Heroine, LSD, Cocaine, and and variety of barbituates and amphetamines. "I was looking for anything to make me feel different, to hide from my deep inner thoughts". He relates those inner thoughts to his loss of his father. He wanted to do the right thing, but "I had already tasted life in the fast lane". It had a tenacious hold on him which he was ambivolent about letting go.

Martin states he had eight to twelve different girl friends, all of whom he "tried to play at the same time--a Don Juan". He was most sexually active while on Cocaine and would have sexual relations with a variety of girls as often as 12 times a week.

At age 17, the defendant was acting as a security guard for a Tarpon Springs movie theater. He would bring in three to four car loads of friends through the back door without paying. One evening, several of his male friends arrived with two girls. The girls seemed quite impressed with his car, his uniform and the power he had to allow these people into the theater free. At about 9 p.m., he met a girl who had just had a pass made at her by her date. She came to Martin's Datsun which was temporarily marked as a security patrol vehicle. He offered her and her female friend a ride home later after he got off work. It was the first girl whose house he was supposed to have burglarized some six months later.

Martin states he eventually quit his job and became even more deeply involved in drugs. He obtained money by dealing in drugs. He found himself buying those substances from a number of Pasco County Sheriff's Deputies who allegedly obtained the drugs by confiscating them from known drug users or dealers.

The subject states at times he and three to four other security guards would drive around flashing blue lights which they had purchased at Radio Shack. They would stop people, particularly girls and impersonate police officers in uniform. He notes he never identified himself as an officer, but knew his uniform.

official. The stops were made on false reasons, the purpose being to learn the names and telephone numbers of the girls, whom he would later call.

In June, 1982, Martin left his mother's home and moved in with several friends whom he had met at a party. His part of the room payment was to assure the others he would find them good drug deals. He continued to use drugs and also use his mother's credit card to buy gasoline. He often purchased up to $300 worth of beer at one time with that credit card. On one occasion, he purchased $600 worth of beer without being asked to prove his identity.

Wild parties were developed. Friends and neighbors would give him $1,000 to $5,000 to purchase Cocaine. For that, he was given in return some of the drugs as payment. He would travel to Tampa, Fort Myers and Miami to purchase drugs. His largest purchase was some 25 pounds of 89% Peruvian Cocaine. The purchases were made for a number of different individuals including business people, police officers, school teachers and particularly Vietnam veterans.

The subject notes the December 31, 1982 New Year's Eve party lasted for several days. He had smoked some 10 marijuana cigarrettes and snorted two lines of PCP while drinking whiskey with beer chasers. He passed out. Prior to that, his roommate asked to use his car to get some girls. His last memory was telling the friend where his keys and wallet were. He then fell asleep, awakening on Jan. 3, 1983 with a severe migrain and a number of people from the party still present. Everyone continued to party. On January 5, 1983, he was told a detective was at his door asking for him. The detective was known to him and the two went to the sheriff's deputy's office in Pasco County. There, Martin states he was questioned about something of which he knew nothing. Apparently, someone burglarized Lisa's family's home. Lisa was the girl who had come to his car at the theater when he was a security guard. The subject told the deputies he had no idea what the accusations were all about. He denied any involvement, recalling his friend had used his car. He states he was questioned for many hours. Later, questioning of his two roommates suggested that he was involved in the burglary and the grand theft. Eventually, he and the authorities had a plea bargain, ending in two years in prison and two years on probation.

WORK HISTORY:

The subject [illegible]

HEALTH FACTORS:

The subject states he had pneumonia as a child. He fractured his right leg when he fell out of a tree at age 10. He had experienced no head trauma nor were there any evidences of epilepsy in himself or his family.

ATTACHMENT D

COUNTY OF LEON)
)
STATE OF FLORIDA)

Affidavit of Charles Robert Brewer

CHARLES ROBERT BREWER, after being duly sworn and deposed, states:

1. My name is Charles Robert Brewer. I live in Knoxville, Tennessee. I will be 56 years old in September of this year.

2. I grew up in Knoxville among bootleggers and thieves. When I was in grammar school I stole tires and sold them to some of the most prominent citizens in town. When I was seventeen, I was sent to Brushy Mountain penitentiary, the toughest prison in Tennessee. I have spent 35 years of my life in and out of prison.

3. I got out of prison in Florida in 1987 and since that time I have turned my life around. I have been driving a truck for three years and I am proud to say I am now a law-abiding citizen. I have done some things in my life that I am not particularly proud of and now I am trying to straighten some of it out.

4. I met Martin Grossman back in the summer of 1985 when I was a trustee in the Pinellas County Jail. Martin was awaiting trial for the murder of the wildlife officer and I used to serve him his meals. I spent about three hours a day on G-wing where he was being held.

5. Martin was only 19 or so, and he was extremely nervous. To cover up how scared he was, being in jail and facing the

charge he had, he used to brag quite a bit. I knew a lot of what he said was just to appear tough inside the jail and to hide how scared he really was inside. I did not believe a lot of what he told me, including things about the offense. I told the police I thought he was exaggerating a lot of it so I would think he was a tough guy.

6. Martin was upset about an article about his case that had appeared in a detective magazine and we talked about it. I had my brother contact a detective who I knew and who I had worked with before.

7. Within a week or so, Pinellas homicide detectives visited me in an office at the jail. I told them about my conversations with Martin and they told me to continue talking to him and they gave me some questions they wanted me to ask him. The detectives told me they would try to help me out on my cases. They said they would tell the court that I had helped in this case. I knew they could help me and believed they would, which is why I assisted them. My lawyer also advised me to cooperate and said it would help me on my cases. I also knew that once I had started working for them, I could not back out or they would come down harder on me in my cases. They said they would get back with me. I was still feeding Martin and I continued to talk to him and gather information as I had been asked to. After talking to Martin some more and asking him the questions they wanted me to ask him, I met with the detectives again and they taped a statement from me. I continued questioning Martin about his case until I was transferred from my job of serving food on

his wing, about a month before his trial.

8. I had also been assisting law enforcement on several other cases at the time I met Martin. One was an auto theft case in Clearwater that I was providing information on. I was also helping Hillsborough authorities on a Tampa case. I believe Pinellas law enforcement on the Clearwater case had told them they should talk to me.

9. I met with detectives and assistant state attorneys before my deposition and my trial testimony to go over my testimony. A major point of focus was my testimony concerning a statement attributed to Martin that he "did not want to be arrested by a female officer." I do not remember where I got that statement from. It might as easily have come from the police or another inmate as from Martin. I cannot say Martin told me that. I believe Martin shot the woman in a state of panic after she fired the first shot, if he even shot her at all. Martin never said he shot her and I have often wondered whether she may have fired the fatal shot herself during the struggle.

10. I told the police that a young jail inmate named Don Smith was on the wing serving food during my conversations with Martin. I know for a fact they talked to Don Smith and I remember a prosecutor saying, "no, we don't want him." I suspect that is why they were not helpful in furnishing his name and whereabouts to Martin's lawyer until the last minute. It was obvious they knew where he was.

11. When the state attorneys coached me for my deposition and testimony, the issues came up about my prior felony

convictions. I could not for the life of me remember how many I had and all I could tell them was "there's quite a few." They told me I had seven so I testified I had seven. If I had to guess I would have said twelve or fifteen.

12. The state attorneys were keen on this "female officer" thing and made sure I appreciated that when they were preparing me to testify. I remember during cross examination at trial, Martin's lawyer honed in on this point. I have testified quite a few times but that is the only time a lawyer ever really got my goat on the witness stand. He got me mad and I guess I kind of took it out on Martin by exaggerating and emphasizing the negative points during cross examination.

13. My own case got sent back on appeal for a re-sentencing. The assistant state attorney handling the re-sentencing was Doug Crow, Martin's prosecutor. Some other charges had come up in the meantime and Mr. Crow tried to get me to take a plea on them, but I refused. The charges were dropped and I am sure Mr. Crow had a hand in giving me a break on those. He also informed the court at re-sentencing that I had provided helpful testimony for the state in Martin's trial.

FURTHER AFFIANT SAYS NAUGHT.

Charles Robert Brewer

Charles Robert Brewer

Sworn to and subscribed before me

this 21 day of July, 1990.

Stephen J. Lustig

NOTARY PUBLIC

My commission expires:

Notary Public, State of Florida at Large
My Commission Expires Jan. 13, 1991