IN THE SUPREME COURT OF FLORIDA

JASON DEATON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

CASE NO. ~~64,796~~ 65,437

ANSWER BRIEF OF APPELLEE

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PRELIMINARY STATEMENT

Appellant was the defendant and Appellee was the prosecution in the criminal division of the circuit court of the Seventeenth Judicial Circuit, in and for Broward County, Florida. The parties will be referred to as they appear before this court.

The following symbols will be used:

"R" Record on Appeal

"SR" Supplemental Record - Sentence Order

"AB" Appellant's Brief

"SB" Appellant's Supplemental Brief.

This Answer Brief will be in response to the Appellant's Initial Brief and his Supplemental Brief.

STATEMENT OF THE CASE AND FACTS

Appellee accepts Appellant's statement of the case and his statement of the facts to the extent that they present an accurate, non-argumentative recitation of proceedings in the trial court, with the following additions and/or clarifications:

The written Order of Sentence is now part of the record on appeal.

In May of 1983, the Appellant and his friend Dean Hall met and befriended three runaway girls, Tammy Lambert, Rita Callahan, and Margie Shannon along the beach area of Ft. Lauderdale (R 286-288, 444-445, 571-572). The Appellant, Dean, Tammy, Rita, and Margie, all moved in together at the Savannah Motel (R 334, 445). Evidence was adduced that both the Appellant, and Dean, were male prostitutes (R, 506, 558).

Between May 26 and May 27, 1983 (R 55, 66), Mr. Santi

P. Campanella, the executive vice president of the Campanella Company (R 48), arrived in Ft. Lauderdale from Rhode Island to conduct business interviews (R 55). While in Ft. Lauderdale Mr. Campanella stayed on the company yacht and in the Pier 66 hotel (R 66), and drove a leased 1982 maroon Chrysler New Yorker (R 61) Florida tag ZMC 175 (R 82). While in Ft. Lauderdale Mr. Campanella met, and was with, Dean Hall, on May 27 (R 509-510, 791).

Around May 27, 1983, the Appellant, in the presence of Rita, Tammy and Margie, expressed a desire to leave Ft. Lauderdale, but required a car and money to accomplish this (R 288, 446-7, 572-3). The Appellant, with the knowledge that Dean and Mr. Campanella had been together just previously (R 509), had Dean arrange to meet with Mr. Campanella again the next evening on May 28, 1983, so that the Appellant could then kill Mr. Campanella in order to get his car and money (R 292, 295, 448). On this evening of May 27, in the presence of Rita and Tammy, in their motel room, the Appellant discussed his plan to kill (strangle) Mr. Campanella the next evening in order to take Mr. Campanella's car and money (R 292, 448, 555). The Appellant stated that he was going to kill Mr. Campanella by strangling him with a lamp cord from a motel lamp (R 292, 448).

On the next evening of May 28, in the presence of Tammy, Rita, and Margie, and after Dean arranged to meet with Mr. Campanella that evening, the Appellant detailed his plan in which he was to kill Mr. Campanella (R 292-3, 448-9, 554-5, 573, 618-9, 621). The plan was that when Mr. Campanella picked up Dean (R

506), the Appellant would ask Mr. Capanella for a ride to Sears Town where the Appellant was to meet a "trick" (R 449, 574). The Appellant planned to enter the car and sit behind Mr. Campanella, and when they arrived at the Sears parking lot the Appellant would then put the lamp cord around Mr. Campanella's neck and strangle him until he died (R 293, 448-9, 574). After discussing his plan, the Appellant and Dean left to meet Mr. Campanella; Tammy, Rita, and Margie saw the Appellant with a black lamp cord in his hands, which the Appellant stuffed down his shirt before leaving (R 294, 449, 575). With the lamp cord in his hands, the Appellant previously stated "this ought to do it" (R 295, 448). Margie and Rita thereafter saw the Appellant, Dean, and Mr. Campanella drive away from the area of their motel; as planned, the Appellant was seated directly behind Mr. Campanella who was driving his car (R 295-6, 576).

Mr. Campanella was last heard from by his business associates on the afternoon of May 28 (R 76), and was reported to the police as missing on May 30 (R 79).

Later in that evening of May 28, the Appellant and Dean returned to the motel, with Mr. Campanella's car, and the Appellant, who was giving the orders, told Tammy to get a wet towel so that they could wipe blood from the car (R 297, 451-3, 577-580). Blood spots were visible on various locations of the car interior, including the ceiling, and blood was on the Appellant (R 297-8, 577-9). Rita and Margie then wanted to get out of the car and leave, and the Appellant told them that if they left or told anyone what had happened, the Appellant would kill

them and they would end up "like the stiff in the trunk" (R 298A, 337, 453-4, 580-1). The Appellant, Dean, Tammy, Rita and Margie, then began driving, in Mr. Campanella's car, north towards Tennessee where Dean had family and knew of a place to dispose of Mr. Campanella's body (R 298A, 303, 454).

During this drive towards Tennessee, within one hour after leaving Ft. Lauderdale (R 628-9), the Appellant graphically described to Tammy, Rita, and Margie how he strangled Mr. Campanella to death in the car (R 298A, 347, 454, 582, 629, 646), and that the body was in the trunk (R 628). The Appellant told the three girls that when he, Dean, and Mr. Campanella arrived at the Sears parking lot, the Appellant, sitting in the back seat, put the cord around Mr. Campanella's neck, pulled it tight, and had Campanella move from the driver's side to passenger side of the front seat (R 299, 454-5, 582-3). Dean then got in the driver's seat, and drove to a remote area (R 775-8). Mr. Campanella was begging for his life, saying "Please don't kill me. I will give you anything", to which the Appellant replied "... shut up, mother fucker. It's going to be harder on you" (R 455, 299-300, 583). As the Appellant was strangling Mr. Campanella with the cord, the Appellant related to the girls that Campanella was moaning and groaning (R 456). The Appellant said that "the son-of-a-bitch wouldn't die" (R 300, 456), and as Mr. Campanella was pleading for his life, the Appellant began beating Campanella's heart (to make it stop beating) and throat, and Campanella then began gushing blood from his mouth which spattered on the car ceiling and other areas (R 300, 456, 583-4). The three

girls testified that as the Appellant was relating this story to them, he was happy, smiling, laughing and joking about it, particularly the way in which Mr. Campanella was moaning and groaning (R 300, 456-7, 585). Dean hit Mr. Campanella a couple of times, as well, in the face (R 583-4). The struggle to kill Mr. Campanella lasted five to ten minutes, and Campanella then died by choking on his blood (R 456, 584). Rita Callahan quoted the Appellant as having said that it took Mr. Campanella 15 minutes to die (R 300). After Mr. Campanella had died, the Appellant kneed Campanella in the gonads (R 586) and the Appellant and Dean threw Campanella into the trunk (R 585). The Appellant told the girls that he took $80.00, an American Express card, and a watch from Mr. Campanella, and while in the car relating his story the Appellant was wearing Campanella's watch (R 301, 457-8, 586).

Upon arrival in the Knoxville, Tennessee area, on May 29, the Appellant, Dean, Rita, Tammy and Margie first drove to Dean's grandmother's house (R 343, 459) and then to two wells or cisterns where Dean knew the body could be dumped (R 303, 460, 588). Once at the second well, the Appellant asked the girls if they wanted to see Mr. Campanella's body (R 588); Tammy and Margie viewed the body when the Appellant opened the trunk (R 303), but Rita did not want to (R 303, 461). Tammy cried upon seeing the body (R 461). Once the body was taken from the trunk, Rita then first observed the body, which still had the cord around its neck and its face was purple (R 304). The Appellant and Dean then carried the body to the well and dumped it in (R

462-3, 590). The group then drove to a little river or lake (R 464, 591) where the Appellant and Dean washed blood from their arms and wiped out blood from the trunk with a pair of the Appellant's shorts (R 465, 591). At that site criminal investigator Sirmans testified that he found a floor mat, Chrysler lug tool, and swim trunks which were tested and found to contain the blood and fibers of Mr. Campanella (R 272). The group then went to a truck stop to sell Mr. Campanella's watch (R 593) and then to a motel room for the night (R 466).

On the next day, Memorial Day, May 30, the group went to a shopping mall and entered the Foxmoor Store (R 85, 97, 306, 466, 594) in order to purchase clothes on Mr. Campanella's American Express card. Salespersons testified and described that two males and three females were at the store, wherein Dean attempted to use the American Express card (R 90-2, 102). When a salesperson requested identification, the group left, but the store kept possession of the credit card (R 92-3, 101, 467, 595). The Appellant was present at Foxmoor's for a short while, and told the group that he was going to a nearby arcade (R 89-90, 307, 467). From there, the Appellant, Dean, Tammy, Rita, and Margie headed for Arkansas (R 307, 469, 596). At an Arkansas truck shop, Tammy, Rita, and Margie were picked up by the police for trespassing and loitering and were sent home (R 307, 469, 596-7). The Appellant and Dean left the scene when the girls were picked up (R 307, 596-7). Rita, Tammy, and Margie each positively identified the Appellant as the person who planned the killing of Mr. Campanella, obtained the electrical cord, and

thereafter said that he actually did kill Mr. Campanella (R 308-9, 470, 597-8). Margie was the only one of the three girls who testified that she had ever prostituted herself (R 609) when in Ft. Lauderdale. The three girls testified that they did not seek help from authorities after learning about the killing because they were scared of the Appellant and Dean, and thought that no one would believe them (R 339, 342, 520-1, 630, 642).

Thereafter, on June 8, 1983, the Appellant and Dean reappeared in Tennessee at an Oak Ridge shopping center camera store (R 141-2, 152) attempting to sell a camera. Salespersons were able to identify both persons in a subsequent photo array (R 146, 159-160). Police Officer Foust was dispatched to that Oak Ridge shopping center upon a report that a suspicious vehicle, Mr. Campanella's Chrysler, was seen in the parking lot (R 386-7). Foust responded with Officer Duckett and several other officers and thereafter observed the maroon Chrysler New Yorker with Florida tag ZMC 175 (R 113). The Appellant, who had previously exited the camera store and left Dean inside, was observed inside the maroon Chrysler (R 113, 149). Dean left the camera store after receiving $100.00 for the camera, entered the maroon Chrysler, and began to drive away (R 117-8, 144, 158, 388). The automobile was then stopped, and the occupants ordered out of the vehicle (R 118, 388). The camera store salespersons observed the arrest (R 145, 158). The occupants identified themselves as Jason Deaton (the Appellant), and "Jeffrey Lynn Spradlin" who was subsequently identified as Dean Hall (R 388, 653-5).

Once the Appellant and Dean were out of the vehicle,

they were given their Miranda Rights by Officer Mowell (R 170-1, 682-3, 720), and the Appellant answered that he understood his rights (R 172, 683). The Appellant and Dean were then taken to the Oak Ridge Police Station (R 120, 172, 683).

Once at the police station, Officers Foust and Duckett interviewed the Appellant (R 173, 683) at approximately 4:30 P.M. (R 175); before this interview the Appellant was again Mirandized, by Officer Duckett (R 173, 683), wherein the rights were read and fully explained to the Appellant (R 174). The Appellant indicated that he understood his rights (R 684), that no promises or threats were made, and the Appellant then indicated that he would talk with Officers Duckett and Foust (R 175, 685). The Appellant signed a rights form (R 175, 391). The Appellant never told the officers that he wanted to telephone anyone (R 182). In this discussion, the Appellant denied knowledge of the source of the car, and of Mr. Santi P. Campanella (R 176, 182), stating that Dean picked him up in Ft. Lauderdale to drive Appellant to a job in Texas (R 685).

Later that evening, at 8:17 P.M., Officers Duckett and Foust again went to talk to the Appellant (R 177, 686), and the Appellant was again Mirandized, by Officer Foust (R 177, 394), beforehand. The Appellant signed a rights form (R 177, 395). The Appellant told Officer Foust that he understood his rights, and was willing to talk (R 178). The Appellant's version of events was pretty much the same as his earlier statement, that he denied knowing Mr. Campanella and denied any involvement in anything that might have happened (R 395, 687). Again, the Appellant never in-

dicated a desire to telephone anyone (R 184).

Officer Duckett then called Detective Rice of the Ft. Lauderdale Police, and advised Rice that they had the automobile of Campanella, which Rice had displayed on a nationwide computer, and two subjects in custody (R 689). Ft. Lauderdale Officers Rice and Patterson then flew to Knoxville, Tennessee, and were taken to the Oak Ridge Police Station by Officers Duckett and Foust (R 178-9, 396, 690). Later that evening, Officers Duckett, Foust, Rice, and Patterson, went to very briefly meet the Appellant and Dean, in order for Officers Rice and Patterson to introduce themselves, inform them of the purpose of their arrival, and that they would return the following morning to talk with them (R 179, 186, 201, 208, 397, 691-2, 754, 761). During this very brief, five minute (R 759), encounter, the four officers present, Foust, Duckett, Rice, and Patterson, testified that Officers Rice and Patterson neither explicitly nor implicitly threatened the Appellant in any manner (R 188-9, 209-210, 214, 397, 407-9, 432, 434, 725, 732, 741, 759) regarding alleged Mafia ties of the victim's family. The only mention by the Appellant of his curiosity regarding alleged Mafia ties of Mr. Campanella occurred three or four days subsequent to his confessions (R 189, 213, 726, 740-1), and the officers had no idea how the Appellant heard of that unsubstantiated and unfounded belief, nor had any beliefs themselves that such Mafia ties ever existed (R 191-3, 210-11, 213, 727). The Appellant's apprehensions at that time were based upon his belief that the victim's family was wealthy (R 417-8). Officer Rice was not aware of such alleged ties until after he had returned to Ft.

Lauderdale (R 210, 812-3). As well, during this brief encounter, the Appellant, who was upset at being awaken (R 692, 724-5), became belligerent and profane towards Officer Patterson (R 755), probably in response to Patterson's gruff and deep authoritative voice (R 187, 433-4, 725). Officer Patterson, after introducing himself, told the Appellant that they would return the next morning to talk with him (R 209-10, 397, 693, 756), and upon being asked if he was willing to talk with the officers the next day, the Appellant said, yes (R 407-9).

On the following morning of June 9, 1983, the officers spoke with Dean for two to three hours (R 193, 202), making no progress, and at approximately 12:30 P.M. Officers Rice and Foust then left to see the Appellant (R 202-3). Upon entering the Appellant's cell, the Appellant stated to the officers, "I will talk to you" (R 763). Officer Rice referred the Appellant to one of the rights forms which Officer Foust filled out the day before, and asked Appellant if he was willing to talk with the officers without an attorney, to which Appellant responded, yes (R 203, 764). Upon being asked if he understood his rights, the Appellant responded, "I have been told my rights or advised of my rights several times" (R 203, 764). Then, the Appellant blurted out, "do you want me to take you to the body?" (R 203, 764), "I will try to take you there" (R 204), "it is up in the mountains, near Dean's grandmother's house" (R 764). At that point Officer Rice excused himself to get a tape recorder, and went to tell Officer Patterson who, along with Officer Duckett, was with Dean, that the Appellant was going to take them to Mr.

Campanella's body (R 194-5, 204, 764-5). When Dean heard that statement from Officer Rice, Dean told the officers that he would show them where the body was, because the Appellant did not know exactly where the well was (R 194-5, 694-6, 757). Officer Rice then returned to the Appellant with his tape recorder and a Ft. Lauderdale Miranda rights form (R 204-5, 766). Officer Rice read and explained each right to the Appellant (R 205, 767), asked the Appellant to read them himself and to sign the rights form (R 767), and the Appellant was then willing to give a statement (R 767). The Appellant stated that he knew his rights well (R 1125). No promises or threats were made to Appellant (R 767). Then, between 1:04 and 1:24 P.M. a tape recorded statement was taken from the Appellant (R 206), in the presence of both Officers Rice and Foust (not Officer Patterson, as alleged in Appellant's Brief at page 11)(R 767). At the beginning of said recorded statement, the Appellant was again asked if he understood his rights (R 207, 774), and was reinformed that he had just been read his rights from a form (R 206-7, 773); the Appellant acknowledged that he had also been advised of his rights at least three times by the Tennessee Police Department (R 773)(R 181), and the Appellant stated that he did understand his rights and was willing to give a statement without an attorney present (R 774). In his taped statement, the Appellant's sworn version of events was that Dean desired to obtain Mr. Campanella's car in Ft. Lauderdale, and that while the Appellant admittedly put the electrical cord around the victim's throat, he was only holding Campanella still while Dean hit Campanella's throat (R 774-8). The Appellant

stated that Mr. Campanella's head fell back, he was placed in the trunk, and the Appellant was not aware that Campanella was dead until Dean told the girls in the car as they left Ft. Lauderdale (R 778-784). Once in Tennessee the Appellant stated that Dean threw Mr. Campanella in the well (R 788).

After the Appellant's taped statement, the officers went with Dean to the well wherein Mr. Campanella's body (R 254) was located (R 404, 757-8, 696). Mr. Campanella's floating body (R 244) was removed from the well/cisern, and was found with the electrical cord tied tightly around his neck (R 243, 667).

An autopsy was performed the following day on June 10, 1983, by Dr. Kintner (R 242). Dr. Kintner testified that Mr. Campanella had an eye hemorrhage, swollen tongue and other bloated facial features, all associated with the ligature around the neck (R 246). Aside from the electrial cord around the victim's neck, tied "...about as tight as you could get it" (R 249), there was also a shoe lace type string tied tightly around the left wrist (R 243). Dr. Kintner determined that the cause of death was "... asphyxia due to the strangulation from the ligature around the neck" (R 249), and that any blows or trauma to the victim's head or chest would not have caused death (R 248-9). He determined as well that in such a murder, death would generally occur in five to less than thirty minutes (R 249). The time of death was determined to be "... at least several days and probably not more than a couple weeks," prior to autopsy (R 251). Dr. Kintner testified that if a body were floating in cold water, it would retard the rate of body decomposition (R 258). Evidence

was adduced that between May and June 1983 the weather conditions in the area were low temperatures in the 60's, and thunderstorms (R 1206); the well was in dense woods and shaded (R 1205). The water temperature of the well, taken one year later on May 2, 1984, was 40 or 48 degrees (R 1205, 1210).

Also, on June 10th, Officer Foust overheard the Appellant's side of a telephone conversation between the Appellant and his mother, wherein Officer Foust heard the Appellant state, "... but you don't understand, mother, you ought to see this beautiful car we were driving" (R 405-6).

At trial, two letters were introduced into evidence, which were determined to have been written by the Appellant (R 899-900). The first letter, "Q-4", stated, "...to whom it may concern, I, Jason Thomas Deaton, do knowingly and willfully confess to the murder of Santi Campanella of Fort Lauderdale, Florida. Sincerely, Jason Deaton" (R 898, 1106). The second document, "Q-3", stated, "... I, Jason T. Deaton, do acknowledge that Kerry Dean Hall, had nothing to do with the death or disposal of Santi Campanella. And that he knew nothing of the death until the day before we were arrested. And he was threatened not to leave or do anything until he helped me get the money to leave the State of Tennessee. Jason T. Deaton" (R 899, 1105). The Appellant admitted signing both letters (R 1107, 1154), and writing them "out of guilt" (R 1106-7).

The Appellant's defense at trial was that he killed Mr. Campanella in self-defense, while in Tennessee, while Campanella was driving Appellant, Dean, and the three girls to Arkansas so

Tammy could get her clothes (R 1084-5). Defense witness James Ongley, an associate Broward County medical examiner, who did not attend the Tennessee autopsy and never personally observed Campanella's body (R 948-9), opined that Mr. Campanella had been dead approximately "three to four days" at the time the body was recovered on June 9, based upon the extent of body decompositions, making the approximate date of death June 6 (R 944). Ongley did testify that a cold water temperature would retard decomposition, though he did not know what the well water termperature was (R 947, 955-6). The Appellant himself, in his version of facts, stated that he personally put Mr. Campanella's body in the well on Monday afternoon, May 30th, which made the body at least 9 days old at the time recovered on June 9, and the Appellant stated the body was in the well "[a]bout 10 days" (R 1132). Salespersons Schukner and Bower at Foxmoor's Store testified that the Appellant was at the store on Memorial Day, Monday May 30th (R 87, 99). The Appellant testified that they did not go to Foxmoor's on that date, but went on the next day, Tuesday (R 1154). The Appellant testified that he lied to protect the girls, albeit the girls never did anything (R 1136).

Defense witness Helen Harmon, aunt of Dean Hall, alleged that she saw Mr. Campanella in his car with the Appellant, Dean, and the three girls, on May 29 (R 1000-1), which she termed the day before "Labor Day". Harmon testified that she saw the car between 6:30 PM and 7:00 PM, as it was getting dark (R 1003). The Appellant testified that they saw Harmon between 10:00 PM and 10:30 PM (R 1097). Harmon testified that she was 20-30 feet from

the car, and viewed only the car occupant's profile for about 10 seconds (R 1004, 1012, 1027). Harmon testified that she was not one hundred percent sure that the person she saw in the car was Santi Campanella (R 1030-1). She testified that she sent cash to Dean at a time she was aware there was a warrant out on him (R 1013). Harmon testified that she did not know, during Appellant's trial, that her nephew Dean was also charged with first degree murder (R 1009). State rebuttal witness Officer Rice testified that he spoke with Harmon on June 8, 1983 (R 1212-3) regarding when she saw the Campanella car in Tennessee, and she told him that she saw only two persons in the car, Dean and a guy with long hair, never indicating that she saw any girls (R 1213-4, 1218, 1222).

Defense witness Rose Hall, Deans mother, testified that she saw Mr. Campanella's car on the day before "Labor Day", May 29, at 4:00 PM, at Dean's grandmother's house (R 1038-42). She allegedly observed, from a distance of 25 feet (R 1043), Mr. Campanella in the front seat of the car, and four persons in the back seat, while Dean was with Rose Hall on the front porch of the house (R 1040-3). Rose Hall testified that Helen Harmon did know, at Appellant's trial, that Dean was charged with first degree murder because Rose Hall told her, and, Harmon had already read about it in the newspaper (R 1052). Rose Hall testified, as well, that she realized that the other person in the Campanella car was Mr. Campanella when she saw Mr. Campanella's photograph on the television screen on the Friday prior to the date she testified (R 1044, 1046, 1057). State rebuttal witness Lisa McNeal,

employee of Knoxville T.V. Station WATE, testified that on that last Friday, and the last Thursday, none of the three Knoxville television stations ever showed a picture of Mr. Campanella (R 1197-1198).

POINTS ON APPEAL

POINT I

WHETHER THE EVIDENTIARY RULINGS OF THE TRIAL COURT WERE PROPER, AND A NEW TRIAL THEREBY NOT REQUIRED?

POINT II

WHETHER THERE EXISTED SUBSTANTIAL, COMPETENT, EVIDENCE TO SUPPORT THE CONVICTION AND SUSTAIN THE DETERMINATION OF GUILT?

POINT III

WHETHER THE TRIAL COURT ERRED BY IMPOSING THE DEATH PENALTY?

ARGUMENT

POINT I

THE EVIDENTIARY RULINGS OF THE TRIAL COURT WERE PROPER, AND A NEW TRIAL IS THEREBY NOT REQUIRED. (Restated)

The Appellant first contends that the trial court erred in denying his Motion to Suppress the taped statement of the Appellant to Police Officers Rice and Foust on June 9, in that the Appellant was coerced or threatened by Officer Patterson, during their meeting on the evening of June 8, 1983, regarding Mr. Campanella's alleged Mafia connections; and, that the Appellant had cut off all further questioning subsequent to that meeting. Appellee maintains that the facts as presented in the record belie this contention.

During the very brief, five minute (R 759), encounter

with the Appellant on evening of June 8, 1983, for the sole purpose of introducing Officers Rice and Patterson to Appellant, the four police officers who were present, Foust, Duckett, Rice, and Patterson, each testified that Officers Rice and Patterson neither explicitly nor implicitly threatened the Appellant in any manner regarding alleged Mafia ties of the victim's family (R 188-9, 209-10, 214, 397, 407-9, 432, 434, 725-6, 732, 741, 759). This was the sole encounter between the Appellant and Officer Patterson; the subsequent taped statement of June 9 was taken by Officers Rice and Foust alone (R 767). In the Motion to Suppress hearing, Officer Duckett testified:

> Q Did Mr. Patterson or Mr. Rice for that matter, Detective Patterson or Rice, did either one of these two detectives, did they indicate to Mr. Deaton that Mr. Campanella's family was very powerful and he would be safer in jail talking to them than if he were released?
>
> A I never heard that, no, sir.
>
> * * *
>
> Q (By Mr. Rich) Let's go to Deaton then, Keith. Did Patterson or Rice ever indicate in your presence to Deaton that Campanella's family was very powerful and was connected with organized crime?
>
> A No, sir. (R 188-9)

Officer Rice testified:

> Q Did Detective Patterson or you indicate at that particular time that the Campanella family was a very powerful, wealthy and influential family and had some connections with organized crime?
>
> A No, sir.

Q Was that ever discussed?

A No, sir. The only time I ever heard that is when I got back to Fort Lauderdale ... (R 210).

* * *

Q (By Mr. Rich) And certainly neither you or Dave Patterson never indicated that to Mr. Deaton?

A I never and it was never mentioned in my presence.

Q And you don't know if it was mentioned by any of the others? Didn't Keith Ducket ever inquire of you about the fact that the Campanellas may be connected with organized crime or make an inquiry with you when you were up in Tennessee or are they or any questions like that? Keith Duckett didn't ask you that?

A Never when I was up there as, as I said to you. (R 214)

Subsequent testimony, during trial, by Officer Foust revealed that he heard the entire conversation between the Appellant and Officer Patterson, and only recalled that the Appellant was asked whether he was willing to talk to the officers the next day, to which the Appellant said, yes (R 407-9).

Q Did Detective Patterson in your presence do anything to intimidate or frighten or coerce Mr. Deaton into giving a statement?

A No, sir. (R 432).

* * *

Q But, you never heard Sergeant Patterson threaten or coerce him in any way; did you that evening?

A No, sir.

Q And, in fact, they were only together for

how long?

A Probably five minutes.

Q And you were the whole time; correct?

A Yes, sir. (R 434)

Subsequent testimony, during trial, by Officer Duckett revealed as well that Officer Patterson never, in Duckett's presence, advised the Appellant that Mr. Campanella was involved with organized crime (R 725-6).

Q Did he at any time in your presence advise Mr. Deaton that Mr. Campanella was involved with organized crime or Mafia or anything like that?

A No, sir. (R 725-6)

Officer Patterson then testified that although the Appellant spit at him, it upset Patterson, but he "...didn't retaliate in any way" (R 759).

Therefore, based upon the testimony of Officers Duckett and Rice, during the Motion to Suppress hearing, it is clear that neither Officer Patterson nor Officer Rice threatened the Appellant in any manner regarding Mafia ties or retaliation, as alleged, during the brief June 8 meeting. It was three or four days <u>after</u> the confession statement that the Appellant <u>first</u> expressed his curiosity regarding the victim's ties to organized crime (R 189, 213, 726, 740-1), and the officers had no idea how the Appellant heard of that unsubstantiated belief, nor had any beliefs themselves that such Mafia ties actually ever existed (R 191-3). Officer Rice, who was with Officer Patterson during the June 8 evening visit with the Appellant, was not even aware of

such alleged ties until after he had returned to Ft. Lauderdale (R 210, 812-3). The Appellant's apprehensions were actually based upon his belief that the victim's family was "wealthy" (R 417-8). Thus, there is no lack of substantial competent evidence to support the trial court's findings, and the trial court, therefore, properly denied the Appellant's Motion to Suppress, finding that the Appellant's statement was knowingly, freely and voluntarily given without threats, inducements or promises (R 233-4). Officer Patterson, and Rice, said nothing to the Appellant during their meeting on June 8 which acted as a threat to coerce the Appellant into giving his statement on June 9.

The ruling of a trial judge that a confession or statement was freely and voluntarily made, comes to this Honorable Court clothed with a presumption of correctness, and this Court should interpret the evidence and reasonable inferences and deductions derived therefrom in a manner most favorable to sustaining the trial court's ruling; this Court is not at liberty to substitute its view of the credibility or weight of conflicting evidence for that of the trial judge, and his ruling should not lightly be set aside. Johnson v. State, 438 So.2d 774 (Fla. 1983); DeConingh v. State, 433 So.2d 501 (Fla. 1983); Stone v. State, 378 So.2d 765 (Fla. 1979) cert.denied, 449 U.S. 986; McNamara v. State, 357 So.2d 410 (Fla. 1978). Through the testimony of Officers Duckett and Rice in the Motion to Suppress hearing, the trial court was presented with competent evidence to support its ruling that the Appellant was not coerced or threatened by Officer Patterson on June 8 into giving the taped statement on June 9.

See Smith v. State, 378 So.2d 281 (Fla. 1979). Albeit the Appellant's version of events surrounding the brief June 8 meeting differed from that of the four police officers present, the determination of issues of fact based on conflicting evidence is the prerogative of the trier of fact, and where such determination is supported by substantial competent evidence, may not be reversed on appeal. Boykin v. State, 309 So.2d 211 (Fla. 1st DCA 1975). The trial judge, through this testimony of Officers Duckett and Rice, correctly determined that no seeds of fear were planted in the Appellant's mind by Officer Patterson which would have in any manner coerced the Appellant into giving his taped statement.

It is important to note that the Appellant knew his Miranda Rights well at the time he gave his taped statement (R 203, 224, 764, 1125), having been read his Rights three times prior to that statement (R 181). His Rights were referred to prior to the actual taping (R 763), and his Rights were fully discussed, again, at the time of the recording (R 767).

The Appellant alleges further that he was denied his right to cut off questioning, in that, following the brief June 8 evening introductory meeting, Officers Rice and Foust returned uninvited to see the Appellant the next afternoon. The facts again belie this contention. Officer Foust, who was present and heard the entire, brief, conversation between the Appellant and Officer Patterson (R 408) on June 8, testified that "[t]he only thing I recall is they asked him if he would be willing to talk to them the next day and he said, yes" (R 407). As well,

A The only thing that I can recall

is that I sensed there wasn't a very compatable relationship there. The only thing that I do recall is that he had asked them or they had asked him if he would talk to them that next morning and he said, yes. (R409).

The Appellant did not invoke his right to remain silent such as to necessitate the termination of further questioning. As had been previously noted, Appellant had already been advised of his Miranda Rights on three separate occasions prior to being introduced to Officers Rice and Patterson, and waived the same in writing twice (R 170-1, 682-3, 720; 173, 175, 391, 683; 177, 394-5). Officer Rice testified:

> Q What did Detective Patterson say to Jason Deaton and what did Jason Deaton say to Detective Patterson if you can recall?
>
> A Just that we were police officers from Fort Lauderdale and we would be speaking with him in the morning and he just commenced to say that he doesn't know anything, he didn't know why he was in jail and was just quite upset. (R 209-210).

The Appellant did not say that he did not want to answer any more questions, nor did he ever refuse to converse with the officers. Officer Duckett testified:

> A He told Detective Patterson that he wanted to go back to bed and he didn't understand - this is not verbatim - didn't understand why we were bothering him. He didn't know anything about it. He told us all that he knew. (R 692).

The Appellant's remarks herein were quite equivocal, and not subject to an interpretation that he wished to rely upon his right to remain silent. See United States v. Klein, 592 F.2d 909 (5th

Cir. 1979). Appellant never indicated, or asserted in any manner, that he wished to remain silent, and therefore pursuant to Michigan v. Mosley, 423 U.S. 96, 96 S.Ct 321, 46 L.Ed.2d 313 (1975), the Appellant never exercised his "right to cut off questioning". To the contrary, as testified to by Officer Foust, the Appellant clearly indicated that he was willing to talk with the police officers the next day (R 407-9).

The Appellant contends, further, that the trial court erred in introducing into evidence photographs of the deceased, and a videotape of the recovery of Mr. Campanella's body from the well, where there was no controversy, and where the defense had stipulated, as to the cause of death and identity of victim. The trial court determined that the photographs taken at autopsy, and at the scene where the body was recovered, were of probative value (R 278), and that the videotape would as well be admitted into evidence (R 701). The prosecutor argued that the photographs were relevant to show identity (R 278). As stated by this Court in Foster v. State, 369 So.2d 928, 930 (Fla. 1979), cert.denied, 447 U.S. 885, 100 S.Ct 178, 62 L.Ed.2d 116 (1979), "a defendant cannot, by stipulating as to the identity of a victim and the cause of death, relieve the State of its burden of proof beyond a reasonable doubt." See Engle v. State, 438 So.2d 803 (Fla. 1983); Nettles v. Wainwright, 677 F.2d 410 (5th Cir. 1982). As held by this Court in Engle, supra, at 809:

> The test for the admissibility of photographic evidence is relevance; a relevant photograph is admissible. The photographs were used to corroborate and aid in the description of the testimony of certain wit-

nesses and, as such, were relevant.

In the case sub judice, the photographs and videotape were used to corroborate and aid in the description of the testimony of Darryl Sirmans and Keith Duckett, and were therefore properly admissible. It is axiomatic that it is within the trial court's discretion to rule on the admissible nature of photographs offered into evidence, and that such discretion will not be disturbed, absent a showing that same was abused. Booker v. State, 397 So.2d 910 (Fla. 1981). The trial court did not abuse this broad discretion herein by allowing the photographs, of the crime scene and at autopsy, into evidence. See Courtney v. State, 358 So.2d 1107 (Fla. 3rd DCA 1978). Regarding the admission of the photographs of a murder victim, this Court has stated that "[t]hose who create crimes of violence often must face the record of their deeds in court". Halliwell v. State, 323 So.2d 557, 560 (Fla. 1975).

The Appellant contends that the trial court erred by allowing evidence to come before the jury regarding unrelated criminal activity of the Appellant. Appellee maintains that no such error occurred. Regarding testimony that the Appellant had possession of and helped sell a "stolen camera" in Tennessee, it is clear that the defense elicited such evidence on his cross-examination of camera store employee Pendleton (R 162). The prosecution did not reveal any evidence that the camera was stolen during its direct examination, only that a computer check was attempted to determine whether or not it was stolen, but that the computers were not operating (R 153-154, 167). In fact, the jury could have

determined, prior to this cross-examination, that the camera was not stolen since the camera shop gave them $100.00 for the camera (R 144, 157). The prosecution properly maintained that the testimony regarding the camera was probative to show the surrounding circumstances of arrest, and scheme, and in any event the prosecution never elicited evidence that the camera was actually stolen (R 168). Regarding testimony that the Appellant participated in a robbery to get gas money, again this evidence was adduced by the defense during its cross-examination of Rita Callahan (R 330). The defense never moved to strike that testimony. In these situations, the evidence was brought out on cross-examination by counsel for the defense, and but for the insistence of the Appellant himself, the facts would not have come before the jury; the Appellant cannot initiate alleged error and then seek reversal based on that error. Jackson v. State, 359 So.2d 1190 (Fla. 1978), cert.denied, 439 U.S. 1102, 99 S.Ct 881, 59 L.Ed.2d 63 (1979); La Rocca v. State, 401 So.2d 866 (Fla. 3rd DCA 1981); United States v. Trujillo, 714 F.2d 102 (11th Cir. 1983).

The Appellant contends that the trial court erred in preventing cross-examination of Marjorie Shannon regarding the reputation for truth and veracity of Rita Callahan (R 603). Appellee maintains that no such error occurred. The prosecution argued that such inquiry was outside the scope of direct-examination, and the trial court then sustained the prosecution's objection to such defense inquiry (R 603). By, during the cross-examination of State witness Marjorie Shannon, inquiring as to the reputation for truth and veracity of another State witness, the Appellant impro-

perly attempted to make Marjorie Shannon his own witness for purposes of attacking the credibility of another witness. The Appellant should have, and could have, called Marjorie Shannon as his own witness for that purpose, but did not do so (R 603).

> Q Do you know her reputation and her character, where she resides for truth and veracity?
>
> MR. HANCOCK: Judge, I am going to object to that.
>
> MR. RICH: If she can answer.
>
> MR. HANCOCK: Judge, it is outside the scope, number one. I never brought that out. If he wants to recall her, he might be able to ask the question.
>
> THE COURT: Sustained.
>
> MR. RICH: I will make her my witness then if you want to.
>
> THE COURT: The objection is sustained. (R 603).

Rita Callahan's reputation for truth and veracity was not brought out on direct examination of Marjorie Shannon, making discussion thereof on cross-examination improper, and the Appellant, to achieve his purpose, should properly have called Marjorie Shannon as his character witness for the purpose of impeaching the character of Rita Callahan. The case relied upon by Appellant, Chavers v. State, 380 So.2d 1180 (Fla. 5th DCA 1980), discusses the testimony of the defense witness as to the truth and veracity of another, while in the case sub judice the witness Shannon was a state witness at the time the Appellant attempted his cross-examination concerning another. If it is desired to impeach the rep-

utation of a witness for truth and veracity (such as Callahan), inquiry must be made of witnesses for that purpose; the Appellant should have properly called Marjorie Shannon as his own witness for that purpose. See Nelson v. State, 99 Fla. 1032, 128 So. 1 (Fla. 1930). As held by this Court in Steinhorst v. State, 412 So.2d 332, 337 (Fla. 1982):

> The proper purposes of cross-examination are: 1) to weaken, test, or demonstrate the impossibility of the testimony of the witness on direct examination and, 2) to impeach the credibility of the witness, which may involve, among other things, showing his possible interest in the outcome of the case. ... Therefore it is held that questions on cross-examination must either relate to credibility or be germane to the matters brought out on direct examination. ... If the defendant seeks to elicit testimony from an adverse witness which goes beyond the scope encompassed by the testimony of the witness on direct examination, other than matters going to credibility, he must make the witness his own. Stated more succinctly, this rule posits that the defendant may not use cross-examination as a vehicle for presenting defensive evidence.

The Appellant knew that he could have called Marjorie Shannon as his own witness, but never did. See Jones v. State, 440 So.2d 570 (Fla. 1983). The control and scope of cross-examination lies with the trial judge and is not subject to review except for clear abuse of discretion. Oviatt v. State, 440 So.2d 646 (Fla. 5th DCA 1983). In the case sub judice, the trial judge acted within his broad range of discretion in limiting cross-examination to the subject matter addressed on direct. See Maggard v. State, 399 So.

2d 973 (Fla.), cert. denied, 454 U.S. 1059, 102 S.Ct 610, 70 L.Ed. 2d 598 (1981).

The Appellant contends that the trial court erred in failing to conduct an in camera hearing regarding the State's failure to supply a tape recorded statement of Tammy Lambert which was taped by Officer Rice. Appellee maintains that no such error occurred. Upon the Appellant's motion to be given the results of that taped statement, during trial, the prosecution related to the trial court:

> MR HANCOCK: Judge, in reference to that, I am sure I told Mr. Rich and this might refresh his recollection in reference to that, he knew we went out there. There was a taped statement taken from her and Detective Rice will testify that, in fact, something was wrong with his tape recorder. It never recorded. He also took a taped statement at that time with Margie Shannon and we provided what the Defense has after we flew from Arkansas, we flew to Illinois. It is the other way around because the last one we took was Tammy and Detective Rice will testify that his recorder --
>
> MR. RICH: I'd like whatever they have, Your Honor.
>
> THE COURT: The motion is denied. (R 566-7).

The subsequent testimony of Officer Rice, concerning the tape recording of Tammy Lambert, reveals that while Lambert gave a twenty to thirty minute tape recorded statement to Officer Rice, and prosecutor Hancock, in Arkansas (R 561, 808)(after a taped statement was taken from Marjorie Shannon in Illinois (R 806-7)), the taped statement as given by Lambert was totally inaudible, and

not transcribable, because the tape recorder failed to function properly (R 566-7, 808-9).

Q And what happened to that statement?

A When I got back to Fort Lauderdale, Florida, I was attempting to have all the tapes transcribed and we are talking a lot of statements, several statements and her statement would not come out. I took it to two different secretaries and two different machines and they both said and I listened to it myself. I was going to do it myself, feeling that I was there and heard it once, the original and it was totally inaudible.

Q And is that the same tape recorder that you had taped for the statement of Mr. Deaton?

A Yes, it was.

Q Okay. And at the beginning you said, you testified there was some problem with the tape recorder?

A Yes. We are issued tape recorders. That is issued strictly to me. I am the only one that uses it.

Q As a result, did you get a new tape recorder?

A No. I had to send it out and get it serviced. We have a special company on Oakland Park that we take them to.

Q And that was the problem with the tape of Tammy Lambert; is that right, the tape recorder wasn't working?

A The best I could tell. Certainly no one could transcribe it.

Q As a result of what you heard, you went and got your tape recorder fixed; is that correct?

A That's correct.

Q And that was the last statement you took on that trip; correct?

A Yes.

Q Okay.

A Yes, the very last.

Q And, in fact, Margie, her taped statement came across; is that correct?

A Yes, it did, with some difficulty, but I managed to get it transcribed. (R 808-9).

The Appellant thereafter did not cross-examine Officer Rice regarding this issue. Pursuant to this Court's holding in State v. Sobel, 363 So.2d 324 (Fla. 1978), the Appellant was not denied due process because Officer Rice's tape recorder malfunctioned, in that the State met its burden of showing that there was no prejudice to the Appellant, given the prosecutor's statements to the court, and Officer Rice's testimony, that the tape was unintelligible and would not have been beneficial to the Appellant. Tammy Lambert had previously testified that the content of the tape recorded interview statement was the same as that given in court during her testimony (R 557-8). The State made an adequate and uncontroverted explanation (R 566-7) that the tape recorder never properly recorded the statement of Lambert, and the State therefore did not violate the rules of discovery by failing to produce said recording. See Demps v. State, 395 So.2d 501 (Fla. 1981). In denying the Appellant's motion, the trial court found no discovery violation, and thus no Richardson hearing or inquiry was required. Richardson v. State, 246 So.2d 771 (Fla. 1971). And, if inquiry was required, the record appears to reflect all

of the available information on the subject which could have been developed (R 566-7). See Baker v. State, 438 So.2d 905 (Fla. 2nd DCA 1983). Finally, the trial court did not err in failing to conduct an in camera hearing, particularly where the Appellant never requested such hearing. As stated in Fla.R.Crim.P. 3.220(i):

> (i) In Camera Proceedings. Upon request of any person, the court may permit any showing of cause for denial or regulation of disclosures, or any portion of such showing to be made in camera. A record shall be made of such proceedings. If the court enters an order granting the relief following a showing in camera, the entire record of such showing shall be sealed and preserved in the records of the court, to be made available to the appellate court in the event of an appeal.

The Appellant herein failed to file a sworn motion to invoke an in camera hearing, and therefore, the trial court did not err in not conducting such hearing. See State v. Acosta, 439 So.2d 1024 (Fla. 3rd DCA 1983); Beasley v. State, 354 So.2d 934 (Fla. 2nd DCA 1978).

The Appellant further contends that the trial court erred in allowing testimony from the clerks at the Foxmoor store, regarding the attempted use of Mr. Campanella's American Express card, without testimony regarding the identity of those persons using such card. Appellee maintains that no error occurred, because great latitude is allowed in the reception of indirect or circumstantial evidence. See Astrachan v. State, 28 So.2d 874 (Fla. 1947). Both witnesses testified that they observed two young men with three girls, described both males, and testified

that it was the American Express card of Santi P. Campanella that was attempted to be used in that Knoxville Store on Monday, Memorial Day, May 30 (R 87-103). Subsequent testimony of the three girls (R 306, 466, 595) positively identified the Appellant as one of the two males present at that store (R 307, 467). Witness Schukner testified that one of the two males told the rest of the group to meet him at the Play Palace Arcade after they finished shopping (R 90-91), and the subsequent testimony of Rita Callahan (R 307) and Tammy Lambert (R 467) revealed that male to have been the Appellant. Witness Schukner described both males (R 89-90) in her testimony. The Appellant himself subsequently testified that he was present at the Foxmoor store (R 1112-3, 1154) with Dean and the three girls, and that Dean was in possession of Mr. Campanella's credit card at that time (R 1113). Therefore, the trial court did not err in admitting the testimony of the Foxmoor clerks, regarding the actions of the, then, unidentified two males and three females who were in the store that day, in that it was relevant to the actions and location of the group subsequent to the killing of Mr. Campanella, including the Appellant, and corroborates other testimony. Evidence of circumstances tending to connect the accused with the commission of the alleged crime, even though inconclusive, is properly admitted. Schley v. State, 48 Fla. 53, 37 So. 518 (Fla. 1904); Elliott v. State, 77 Fla. 611, 82 So. 139 (Fla. 1919). The trial court herein did not abuse its wide discretion concerning the admission of evidence. See Welty v. State, 402 So.2d 1159 (Fla. 1981).

POINT II

THERE EXISTED SUBSTANTIAL, COMPETENT, EVIDENCE TO SUPPORT THE CONVICTION AND SUSTAIN THE DETERMINATION OF GUILT. (Restated).

When it is shown that the jurors have performed their duty faithfully and honestly and have reached a reasonable conclusion, more than a mere difference of opinion as to what the evidence shows is required for this Court to reverse. Hitchcock v. State, 413 So.2d 741 (Fla. 1982). On appeal from conviction, this Court will review the record for the purpose of determining whether it contains substantial, competent evidence, which, if believed, will support the finding of guilt by the trier of fact; the weight of the evidence is ordinarily a matter which falls within the exclusive province of the jury to decide, and this Court will not reverse a judgement based upon a jury verdict when there is competent evidence which is also substantial in nature to support the jury's verdict. Rose v. State, 425 So.2d 521 (Fla. 1982), cert.denied, 1035 S.Ct 1883 ( ); Welty v. State, 402 So.2d 1159 (Fla. 1981).

There existed in this case clear, substantial, and competent evidence to support the verdict and judgement. There was substantial evidence given by the State's witnesses to lead the jury to believe that the Appellant both planned the killing of Santi P. Campanella, and actually did personally kill Mr. Campanella. Although three of the key State witnesses were teenage runaway girls, not "pillars of the community", the reviewing Court is not to reweigh the evidence to determine its sufficiency to support the conviction, because the determination of the credibil-

ity of witnesses is within the province of the jury; it is the jury's duty to resolve factual conflicts, and, absent a clear showing of error, its findings will not be disturbed. Jent v. State, 408 So.2d 1024 (Fla. 1981), cert.denied, 102 S.Ct 2916 ( ). It is, therefore, well settled that the credibility of witnesses, and the weight to be given testimony, is for the jury to decide. Hitchcock, supra; Coco v. State, 80 So.2d 346 (Fla. 1955), cert.denied, 76 S.Ct 57 (1955); United States v.Molinares, 700 F.2d 647 (11th Cir. 1983).

In the case at bar, the testimony of the three girls, Rita Callahan, Tammy Lambert, and Marjorie Shannon, was competent, substantial in nature, corroborated, consistant, and clearly revealed that the Appellant both planned (R 288, 292-5, 446-450, 515, 554-5, 573-6), and carried out (R 298A-301, 308-9, 347, 454-7, 470, 582-6, 597-8, 628-9, 646), the killing of Mr. Campanella in Ft. Lauderdale, on May 28, 1983. Marjorie Shannon testified that she never discussed the case, nor her testimony, with either Rita or Tammy prior to trial (R 601-2). All three girls, consistently, testified that the planning and actual killing occurred in Ft. Lauderdale, that they then drove to Tennessee where Dean knew of a well in which to dump the body of Mr. Campanella (R 303, 459-60, 587-8), that Mr. Campanella was actually dumped into the second well that they went to (R 303-4, 463, 589), that they sold Mr. Campanella's watch at a truck stop (R 305, 458, 593-4), that they went to an isolated river area so the Appellant and Dean could clean the blood from themselves and the trunk of the car, with a pair of shorts (R 303, 465, 591)(corroborated by the tes-

timony of Darryl Sirmans), that they went to Foxmoor store wherein they attempted to purchase clothes with Mr. Campanella's American Express card (R 306, 466, 595) and where Appellant told the group that he'd be at the games arcade (R 307, 467)(corroborated by witnesses Schukner and Bower), and then that the three went to Arkansas with the Appellant and Dean, and there the girls were picked up by police for loitering (R 307, 366, 469, 596). The three girls' testimony was clearly consistent, corroborated, credible, and not impeachable; and the jury properly believed such testimony. This consistant nature of the three girls' testimony and version of events is in stark contrast with the Appellant's several different versions of events. The Appellant's own taped statement reveals that the killing occurred in Ft. Lauderdale (R 775).

The defense witnesses presented at trial were severely impeached by the prosecution, and properly disbelieved by the jury. Medical examiner Ongley testified that Mr. Campanella had been dead three to four days at the time the body was recovered (R 944), based upon decomposition, while the Appellant himself testified that it was about ten days (R 1132). Ongley, who did not perform the autopsy, and never personally saw Mr. Campanella's body, admitted that he never inquired into several important factual areas which had bearing on the body decomposition rate (R 933-6, 951-2, 956, 958, 965, 967). The Appellant testified that he killed and personally put Mr. Campanella's body in the Tennessee well on Monday, Memorial Day, May 30, and did not go to Foxmoor's on that day but went on the next day (R 1099-1104, 1131,

1154); but the salespersons at Foxmoor testified that the Appellant was at their store on Monday, Memorial Day, May 30 (R 87,99). Defense witness Helen Harmon, Dean's aunt, alleged that she saw Mr. Campanella, with the group of Appellant, Dean, and three girls, alive on May 29, which she termed the day before "Labor Day" (R 1000-1), in Tennessee, in Mr. Campanella's car between 6:30 PM and 7:00 PM (R 1003); the Appellant himself testified that they saw Harmon between 10:00 PM and 10:30 PM (R 1097). Harmon testified that she had at one time sent cash to Dean at a time she was aware there was a warrant out on him (R 1013), and that she viewed the car occupant's profile for about ten seconds, from 20-30 feet, as it was getting dark out (R 1003-4, 1012, 1027). State rebuttal witness Office Rice testified that he spoke with Harmon on June 8, 1983 (R 1212-3) and at that time she told him that she only saw two persons in the car - Dean and another guy with long hair (R 1213-4, 1218, 1222). Harmon testified as well that, during Appellant's trial, she did not know that nephew Dean was also charged with first degree murder (R 1009); but, Dean's mother, Rose Hall, testified that Harmon did know, and was aware at Appellant's trial, that Dean was also being charged with first degree murder (R 1052). Rose Hall testified, as well, that she, too, observed Mr. Campanella alive in his car on May 29, at day which she also termed the day before "Labor Day" (R 1038-42), from a distance of 25 feet (R 1043). Rose Hall testified that she realized that the "other person" in the car was Mr. Campanella when she saw a Campanella photograph on television on the Friday prior to the date she testified (R

1044, 1046, 1057); but State rebuttal witness Lisa McNeal testified that on that last Friday, and last Thursday, none of the three Knoxville television stations ever showed a picture of Mr. Campanella (R 1197-8).

The tape recorded statement given by the Appellant, to police officers after his arrest, was never "coerced" due to alleged "threats" by Officer Patterson on the prior evening, and this contention is discussed and fully resolved within Point I of this brief. The Appellant's properly obtained taped statement clearly states that the murder of Mr. Campanella occurred in Ft. Lauderdale, while the Appellant placed a cord around Mr. Campanella's neck from a back seat (R 775-8). This statement, while laying the blame on Dean, completely contradicts the Appellant's alleged defense at trial - that he killed Mr. Campanella in Tennessee, in self-defense.

Also, at trial, the prosecution introduced two written letters of the Appellant (R 898-900, 1105-7), which the Appellant admitted writing (R 1107, 1154) out of guilt (R 1106-7). In one letter the Appellant knowingly and willfully confesses to the murder of Mr. Campanella (R 898, 1106), and in the other letter attempts to exculpate Dean in the murder of Mr. Campanella (R 899, 1105).

Therefore, there existed substantial, competent evidence by the State to support the verdict and judgement herein. Rita Callahan, Tammy Lambert, and Marjorie Shannon, all uniformly and consistently witnessed the Appellant plan the killing of Mr. Campanella, to obtain Campanella's car and money in order to leave

Ft. Lauderdale, and as well heard the Appellant thereafter graphically describe and laugh about how he actually did kill Mr. Campanella. The Appellant, in this case, is far from the "in the interest of justice" relief exception set forth in Tibbs v. State, 397 So.2d 1120 (Fla. 1981), as no fundamental injustice can be shown.

POINT III

(Encompassing Point III of Appellant's Initial Brief, and Point IV of Appellant's Supplement to Initial Brief)

THE TRIAL COURT DID NOT ERR BY IMPOSING THE DEATH PENALTY.

The jury herein was instructed by the trial court as to five aggravating circumstances and five mitigating circumstances (R 1400-1406), and thereafter, a majority of the jury by a vote of 8 to 4 advised and recommended to the court that it impose the death penalty on Appellant (R 1408).

Subsequently, in its Sentencing Order, the trial court determined three aggravating circumstances to be applicable, 1) that the capital felony was committed while the Appellant was engaged in the commission of a Robbery, 2) that the capital felony was especially heinous, atrocious or cruel, and 3) that the capital felony was a homicide committed in a cold, calculated, and premeditated manner (SR). The sole mitigating circumstance found to be applicable was that the Appellant had no significant history of prior criminal activity (SR).

The Appellant first alleges that it was erroneous for the prosecutor to have argued to the jury that a fourth aggravat-

ing circumstance applied, that the crime was committed for financial gain (R 1393). Appellee submits that this argument is totally without merit and can be seen as such by the Appellant's failure to cite any case in which this Court reversed a sentence of death where the prosecutor or jury had improperly doubled up aggravating circumstances, while the trial court did not. The trial court's subsequent Order held that while such circumstance did apply, the court acknowledged that it would be improper doubling up of the Robbery circumstance, and therefore should be considered along with the aggravating circumstance that the felony was committed during the course of a Robbery, pursuant to White v. State, 403 So.2d 331 (1981)(SR). The Appellant concedes that the aggravating circumstance pertaining to Robbery was proper (SB).

Regarding the appropriateness of the aggravating circumstance of heinous, atrocious and cruel, the trial court's Order properly determined that:

> This aggravating circumstance does apply. The evidence is that an electric cord was put around the victim's neck while he was driving the car. Then he was transported to another section of Fort Lauderdale where he was strangled to death. Witnesses testified that the episode of killing Santi P. Campanella took 15 minutes and that the victim begged and pleaded for his life and that he said he would give them anything they wanted if they would let him live. Witnesses also testified that afterwards the Defendant, Jason Thomas Deaton, said that while the victim begged for his life, he tightened the cord until the victim started spitting up blood. The evidence shows that the

> Defendant laughed and joked about how long it took the victim to die. The Defendant enjoyed unmercifully the pain and suffering the victim was forced to endure. Therefore, this crime was especially conscienceless, pitiless and unnecessarily torturous. (SR)

This conclusion is clearly supported by the record. And, contrary to Appellant's assertion, the death herein was not a "quick death".

The Appellant told Tammy, Rita, and Margie, that when he, Dean, and Mr. Campanella arrived at the Sears parking lot, the Appellant, sitting behind the driver Mr. Campanella, placed an electrical cord around Campanella's neck and shifted Campanella to the front passenger seat (R 298A-299, 454-5, 582). Dean then moved to the driver's seat as the Appellant held Campanella secure with the cord (R 455, 583). Dean then drove the car to a remote area, where the Appellant then commenced strangulation of Mr. Campanella (R 778, 780). Mr. Campanella was begging for his life, saying "Please don't kill me. I will give you anything", to which the Appellant replied "... shut up, motherfucker. It's going to be harder on you" (R 299-300, 455, 583). As the Appellant was jerking down on the cord (R 456) while strangling Mr. Campanella, the Appellant told the girls that Campanella was moaning and groaning (R 456). The Appellant told the girls "The son-of-a-bitch wouldn't die. It must have took him 15 minutes to croak because he just wouldn't die" (R 300, 456), and as Mr. Campanella was pleading for his life, the Appellant began beating on Campanella's heart, to make it stop beating, and throat, and blood

then gushed from Campanella's mouth onto the car ceiling (R 300, 456, 583-4). Dean, as well, hit Mr. Campanella a couple of times (R 456, 583). The three girls testified that as the Appellant was relating this story to them, he was happy, smiling, laughing, and joking about it, particularly the way in which Mr. Campanella was moaning and groaning (R 300, 456-7, 585). The struggle to kill Mr. Campanella lasted five to ten minutes (R 456), and as long as fifteen minutes (R 300), with Mr. Campanella dying by choking on his blood (R 584). The Appellant's own taped statement related that he alone put the black electrial cord around Mr. Campanella's neck and pulled his head backwards (R 777-8), and the medical examiner Dr. Kintner testified that the cause of Mr. Campanella's death was "... asphyxia due to the strangulation from the ligature around the neck" (R 249), and that any blows or trauma to the victim's head or chest area would not have caused death (R 248-9). Dr. Kintner testified that upon his autopsy examination, the cord was tied around Campanella's neck "...about as tight as you could get it" (R 249), and that <u>without</u> a struggle such person would lose consciousness in 15 to 60 seconds (R 249, 259-260), with death resulting in 5 to 30 minutes (R 249, 260). Witnesses testified, that the Appellant related to them, that a struggle <u>did</u> occur (R 300, 456, 583-4), lasting 5 to 15 minutes. Unconsciousness was certainly not nearly instantaneous.

This Court recently held, in <u>Doyle v. State</u>, 9 FLW 453 (Fla. October 26, 1984), that:

> In particular, the finding that the murder was heinous, atrocious and cruel was based on the evidence that the vic-

> tim died of strangulation which occurred over a period of up to five minutes and that prior to losing consciousness the victim was aware of the nature of the attack and had time to anticipate her death. Murder by strangulation has consistently been found to be heinous, atrosious and cruel because of the nature of the suffering imposed and the victim's awareness of impending death. Adams v. State, 412 So.2d 850 (Fla.), cert.denied, 459 U.S. 882 (1982); Alvord v. State, 322 So.2d 533 (Fla. 1975), cert.denied, 428 U.S. 923 (1976).

After the electrial cord was placed around Mr. Campanella's neck, he was aware of his impending death, as is evident by his plea "please don't kill me" (R 300, 455, 583), and struggle which ensued from 5 to 15 minutes (R 300, 456), as Campanella was moaning and groaning - much to the amusement of the Appellant (R 456-7) - and spitting up blood (R 300, 584). Therefore, in this case, there was sufficient competent evidence in the record from which the trial judge could determine that such homicide committed through strangulation was especially heinous, atrocious, and cruel. See Adams v. State, 412 So.2d 850 (Fla. 1982). Such murder by strangulation evinces a cold, calculated design to kill. Alvord v. State, 322 So.2d 533 (Fla. 1975). And, regardless of the precise length of time in which it took for Mr. Campanella to die, the victim herein was subjected to agony over the prospect that death was soon to occur, and this terror and fear that Campanella felt from the time the cord was tightly wrapped around his neck at the Sears parking lot, until the time he succumbed while actively being strangled in a nearby neighborhood, supports the conclusion that the killing was heinous, atrocious, and cruel.

See Jenkins v. State, 444 So.2d 947 (Fla. 1984); Routly v. State, 440 So.2d 1257 (Fla. 1983). Further, as held by this Court in Smith v. State, 407 So.2d 894, 903 (Fla. 1981):

> ... we are of the opinion that the more heinous, atrocious, and cruel aspect of the killings was the manner in which he strangled his victims. Appellant described how both women struggled, shook spasmodically and looked into his eyes as he choked them. Both strangulations were prime examples of the "conscienceless or pitiless crime which is unnecessarily torturous to the victim" which we have established as heinous, atrocious, and cruel.

Regarding the finding that the murder was committed in a cold, calculated, and premeditated manner, the trial court properly determined that:

> This aggravating circumstance does exist. The evidence is the day before the Defendant discussed how he would kill the victim by strangulation and even chose his weapon, the electric cord. This crime was a vicious scheme in its origin, operation and execution and was a cold calculated plan to kill. There was no moral or legal justification whatsoever for the killing. (SR).

It is clear from the record that the Appellant planned to kill the victim in order to obtain his car and money. The Appellant fully contemplated effecting Mr. Campanella's death. See Hardwick v. State, 9 FLW 484 (Fla. November 23, 1984). On the day prior to the killing, on May 27, 1983, the Appellant had Dean arrange to meet Mr. Campanella on the following evening of May 28 so they could "...kill him for his car and money" (R 292). Further, Tammy Lambert testified:

A He told Dean to go out with this guy

and make plans for the next night so that they could get the car and possibly kill him.

Q Did Jason say he was going to kill the guy?

A Yes.

Q Did he indicate at that point how they would kill the guy?

A Yes.

Q Okay. And what did he say?

A He picked up this cord from a lamp in the motel room and he wrapped it around his hands and said, this should do the trick.

Q Do the trick for what?

A To kill the man.

Q Now, that was the night before?

A Yes. (R 448).

On the next evening of May 28, 1983, the evening of the killing, the Appellant detailed his plan in which he was to kill Mr. Campanella. Rita Callahan testified:

A They sort of planned it out. Jason said that he'd sit behind him in the car, behind this Campanella, I think, dude and Dean was going to sit on his right and they were going to say that Jason was getting a ride to Sears and he was - when they got in the parking lot, he would put the lamp cord around his neck and strangle him.

Q Now, who was this talking?

A Jason.

Q He was going to strangle him until what?

A Until he died.

Q So this is the second time that Jason had talked about killing this man; is that correct?

A Yes, yes.

Q The first time was the night before?

A Yes. (R 293).

This conversation was overheard by Tammy Lambert (R 449-450), who testified as well that it was the Appellant who told her they were going to kill Mr. Campanella even before they left (R 554-5). Marjorie Shannon heard also, a couple of hours before the killing, that the Appellant said they were going to meet a man and kill him (R 573), "they said they were just going to take his car and kill him" (R 619). The Appellant was then observed by the three girls with a black lamp cord in his hands, which he stuffed down his shirt before leaving (R 294, 449, 575), and the Appellant had commented that "this ought to do it" (R 295) or "this should do the trick" (R 448) - to kill the man (R 448). Thereafter, the Appellant and Dean left to meet with Mr. Campanella, and then kill him.

The trial court was thus presented with evidence of a murder which exhibited a heightened premeditation, proved beyond a reasonable doubt. See Gorham v. State, 454 So.2d 556 (Fla. 1984). This murder was essentially an execution of Mr. Campanella, which was planned well in advance, in great detail, and was therefore properly determined to be cold, calculated, and premeditated. Cannady v. State, 427 So.2d 723 (Fla. 1983). This meticulous planning of the murder was cold-blooded and calculated, which went beyond mere premeditation, and was without any pre-

tense of moral or legal justification. Middleton v. State, 426 So.2d 548 (Fla. 1982).

Regarding mitigating circumstances, the trial court determined only one to be applicable, that being that the Appellant had no significant history of prior criminal activity (SR). Appellant contends that the trial court erred in failing to find Appellant's age at the time of offense a mitigating factor. Appellee maintains that the trial court properly determined:

> This mitigating circumstance does not apply. The Defendant's date of birth is July 26, 1964 which makes him 18 years and 10 months at the time of the offense. Jason Thomas Deaton had been living on his own for several years. His background indicates he is not of tender age but was an adult at the time and capable of understanding his act. (SR).

It is within the province of the trial court to decide whether a particular mitigating circumstance in sentencing has been proven and the weight to be given it in determining whether to impose the death penalty. Daugherty v. State, 419 So.2d 1067 (Fla. 1982). Since there is no per se rule which pinpoints a particular age as an automatic factor in mitigation, the record in this case supports the trial judge's decision not to consider the Appellant's age as a mitigating circumstance. Fitzpatrick v. State, 437 So.2d 1072 (Fla. 1983). In Fitzpatrick, supra, the Appellant was twenty years of age. As held by this Court, today one is considered an adult, responsible for one's own conduct, at the age of 18 years. Songer v. State, 322 So.2d 481 (Fla. 1975); Washington v. State, 362 So.2d 658 (Fla. 1978). In the case sub

judice, the Appellant was nearly nineteen years old, and an adult, at the time he killed Mr. Campanella. The Appellant was a street-wise man, and not of a tender age (R 1161-2), as evidenced by his written letter wherein he said "... I fucked up big this time, but that's the way of the streets...". The Appellant testified that he had been living and working on his own since he was 16 years old (R 1073-4), and participated in labor pools to earn an income (R 1135). Evidence was adduced as well that the Appellant earned an income in Ft. Lauderdale as a male prostitute (R 506, 558), which as well evinces a hardened, street-wise man, capable of understanding his act.

Assuming arguendo that the trial court should have found Appellant's age a mitigating circumstance, such error, if any, was harmless, in view of the overwhelming weight of the three aggravating circumstances presented by the Record. Barclay v. Florida, ___U.S.___, 103 So.Ct 3418, 77 L.Ed.2d 1134 (1983); Zant v. Stephens, ___U.S.___103 S.Ct___, 77 L.Ed.2d 235 (1983); Vaught v. State, 410 So.2d 147 (Fla. 1982); Hargrave v. State, 366 So.2d 1 (Fla. 1978), cert.denied, 444 U.S. 919, 100 S.Ct 239, 62 L.Ed.2d 176 (Fla. 1979); Brown v. State, 381 So.2d 690 (Fla. 1980). The aggravating circumstances in this case purely outweigh the mitigating circumstance.

The Appellant further alleges that the sentencing disparity between the Appellant (sentenced to death), and Dean (sentenced to life in prison), is unconstitutional. Appellee maintains that the sentences were proper pursuant to the evidence. The testimony of Tammy, Rita, and Margie clearly reveal that the

Appellant alone both planned the killing scenario and then actually killed Mr. Campanella by strangulation. It was the Appellant who initially expressed a desire to leave Ft. Lauderdale (R 288, 446, 573), and it was the Appellant who orchestrated the rendezvous between Dean and Mr. Campanella (R 446-448) and planned to be present at that time so he, Appellant, could then kill Campanella (R 448) by strangulation (R 292). As well, it was the Appellant alone who placed the cord around Mr. Campanella's neck (R 775), kept jerking down on the cord (R 456), and strangled Mr. Campanella to death (R 298A-301, 308-9, 347, 454-7, 470, 582-6, 597-8, 628-9, 646); Dean's participation, at most, was hitting Mr. Campanella a couple of times (R 456, 583-4). Dr. Kintner, who performed the autopsy, testified that the death resulted solely from the ligature around Mr. Campanella's neck, and not from the blows or trauma to the head or chest area (R 248-9). To correct Appellant's statements in his brief: it was solely the Appellant who ordered Tammy to get a wet towel in order to wipe off blood in the car (R 297, 451, 578-9)(AB at 12); and, it was the Appellant who initially suggested killing Mr. Campanella for his car and money (R 292, 448)(AB at 11).

Therefore, the evidence revealed that the Appellant formulated the plan to kill Mr. Campanella, and was the actual perpetrator of the crime, with a role vastly different from that of Dean, who was a mere conduit between the Appellant and Campanella's car and money, and who at most acted as the driver and struck Campanella a couple of times. See Salvatore v. State, 366 So.2d 745 (Fla. 1978). Herein, there were not equally guilty co-

defendants, and the participation of Dean and Appellant was not nearly identical. See Jackson v. State, 366 So.2d 752 (Fla. 1978). In this case the Appellant alone caused the death of Mr. Campanella, and was considered the leader of the group as the person giving orders (the dominating factor) (R 297, 453), and as such the Appellant's death sentence was valid in light of Dean's life sentence. Tafero v. State, 403 So.2d 355 (Fla. 1981); Jackson v. State, 366 So.2d 752 (Fla. 1978). The Appellant was the executioner, and his sentence was therefore warranted. White v. State, 415 So.2d 719 (Fla. 1982). There was, thus, a reasonable basis for the trial court to impose the different sentences.

The Appellant finally contends that proportionality review reveals that the death penalty is not appropriate herein. Appellee maintains that in similar heinous killings by strangulation, this Court has determined a sentence of death to be proper. Doyle, supra; Adams, supra; Alvord, supra; Jackson, supra; Smith, supra; Peek v. State, 395 So.2d 492 (Fla. 1980).

CONCLUSION

Based on the foregoing argument, Appellee submits that no error was committed by the trial court and respectfully requests that the judgment and sentence of the trial court be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer Brief of Appellee has been mailed to MICHAEL D. GELETY, ESQUIRE, 1700 E. Las Olas Blvd., Suite 300, Fort Lauderdale, Florida 33301, this 21st day of December, 1984.

Of Counsel