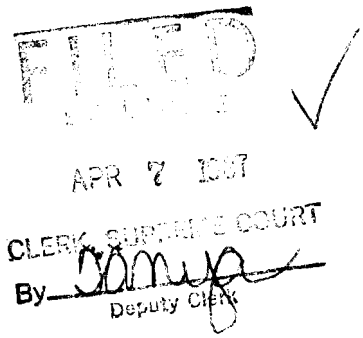
IN THE SUPREME COURT OF FLORIDA



ETHERIA VERDEL JACKSON,

Appellant,

v. CASE NO. 69,197

STATE OF FLORIDA,

Appellee.

_____/

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

ANSWER BRIEF OF APPELLEE

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ETHERIA VERDEL JACKSON,

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ANSWER BRIEF OF APPELLEE

PRELIMINARY STATEMENT

Appellant was the defendant in the Circuit Court of Duval County. The State of Florida was the prosecuting authority in this circuit court and is the appellee on appeal. Citations to the record will be referred to by the use of the symbols "R" and "T" respectivly followed by the appropriate page number in parentheses.

STATEMENT OF THE CASE

The appellant's statement of the case is acceptable to the appellee.

STATEMENT OF THE FACTS

To present its case to the jury the State first called as a witness Wendell Moody, the victim's brother. Wendell Moody testified that he and his brother operated a retail furniture business in Jacksonville for approximately forty-one years. (R 493). The witness's testimony revealed that in order to assist customers in making their monthly installment payments, Linton Moody would cash a bank check every month and then cash customers government checks to facilitate the collection of their monthly installment payments. (R 494).

Linton Moody cashed a check for $4000 on November 29, 1985. On December 2nd, Linton Moody went to his store at 10:30 a.m. and stayed until 1 or 2 p.m. The following day Linton Moody did not report for work as usual and his brother Wendell Moody filed a missing person report. (R 501-504).

Linton Moody's body was discovered by Officer Raymond Godbee on December 5, 1985. Officer Godbee discovered the victim's body rolled up in a carpet in the back of a 1983 Chevrolet station wagon which belonged to Mr. Moody. (R 505-512).

Following the discovery of the body, the vehicle was impounded and taken to the F.D.L.E. State Crime Lab. (T 550). At that location the automobile was processed and several items of evidence were preserved, including the victim's brown brief

case and a red calling card box upon which appellant's latent fingerprints were discovered. (T 553-554, 952-963).

The next witness called by the State was Linda Riley, who lived with the appellant at the time of the murder and was the State's main witness. Ms. Riley's testimony revealed that she purchased a washing machine from Linton Moody on the installment plan. Under this agreement, Ms. Riley was to make a monthly payment of $39.95. (T 568). The witness's testimony revealed that Mr. Moody collected this monthly payment personally by coming to Ms. Riley's home. Mr. Moody would cash Ms. Riley's AFDC check deducting the amount of her monthly payment. (T 569). The appellant was sometimes present when Mr. Moody made his collections. Ms. Riley testified that on December 3, 1985, between 8:30 and 9:00 a.m. Mr. Moody came to her home to collect the monthly payment. (T 570-571). On this particular occasion the witness's two children and the appellant were present when Mr. Moody came to the house. (T 571).

In order to pay Mr. Moody, the witness had to retrieve her check from her mail box. After doing this Ms. Riley endorsed the check and gave it to Mr. Moody. Mr. Moody gave her a receipt and the remainder of the money from the check, approximately $200. The witness testified that Mr. Moody had a large wod of money on him which he returned to his pocket after he cashed her check. (T 572-574). The witness testified that following this

transaction the appellant walked up behind Mr. Moody, grabbed him and put a knife to his neck. (T 574). The witness testified that the appellant forced Mr. Moody to the floor and told him to get on his stomach. She testified that Mr. Moody was having trouble breathing and asked if he could be permitted to sit up since he had emphysema. (T 575). The appellant ignored Mr. Moody's request and continued to require him to lay on his stomach. At the appellant's request, the witness went through the victim's pockets and found his wallet and keys. Mr. Moody offered no resistence to the robbery. (T 575-576). The witness testified that the appellant got all of the money that Mr. Moody had with him. She further testified that she took back her AFDC check. (T 576).

The witness testified that at the appellant's instructions she tied Mr. Moody's hands. After Mr. Moody's hands were tied he asked for mercy telling the appellant that he owned a furniture store and he could get anything he wanted but just not to hurt him. (T 576-577). Ms. Riley testified that she left the room for a few minutes to see to her children. She testified that when she returned the appellant had a belt around Mr. Moody's neck and was choking him out. She testified that Mr. Moody was kicking out, had urinated over himself and that little trickles of blood were coming out of his nose. (T 578). Ms. Riley testified that when the appellant stopped, Mr. Moody was unconscious, incoherent and when he started to come to was

moaning and scooting on his back. (T 578). Mr. Moody had turned himself over on his back as he began to regain consciousness. (T 578). As Mr. Moody came to he began to moan real loud and the appellant began beating him in the face with his cast. Ms. Riley testified that the appellant's cast had a little blood on it and later that night she observed him wash it off. (T 579). Linda Riley testified that she then went to the kitchen to prepare something for her children. While she was in the kitchen she heard thumping sounds and looked around the corner to see the appellant straddled across the victim. She saw his arm going up and down and the knife break on the outside of his chest. (T 579). She testified that the appellant then got another knife and started doing it again and that the last time he stabbed the victim he left the knife in and started twirling it around in his chest. Mr. Moody was lying on his back at the time. She testified that the appellant stabbed Mr. Moody approximately seven times. The witness testified that there wasn't a lot of blood on the carpet, just pieces of meat and cloth that seemed to be ground up by the knife. (T 581).

The appellant and Ms. Riley disposed of the body by rolling it up in the carpet and depositing it in the back of the victim's car. The car was then driven to another location by the appellant and abandoned. (T 587-588).

Ms. Riley testified that the defendant got out of prison on

December 4, 1984, approximately one year before the murder of Mr. Moody. She further testified that she never had an affair or a sexual relationship with Mr. Moody during the time the appellant was in prison or afte he was released. She also stated that Mr. Moody approached her only for the purpose of selling her a washing machine. (T 588, 592).

Ms. Riley testified that when the appellant left the house with the body he was gone approximately forty-five minutes and that he returned with two men. She testified that the appellant and the two men were in the kitchen and she was asked to come into the kitchen and inject some drugs into the appellant's arm (T 596-597). The witness testified that later that day she cashed her AFDC check at Surfside Furniture Store and paid a monthly bill of $83. The witness also used $40 of her AFDC money to pay a babysitter. She and the appellant purchased a replacement rug for the living room from Davis Furniture Company. The cost of the rug was $300. (T 597-601).

On December 5th, Linda Riley reported the murder to the police department. The State called Edward Doldron as a witness. Mr. Doldron testified that he and a friend, David Thomas, were driving South on David Street just past the railroad tracks when they were flagged down by a friend of David's who had a cast on his arm. The man with the cast on his arm came up to the car and asked if he knew where they could find cocaine.

Doldron identified the appellant as the man who requested the cocaine. (T 711-712). Doldron also testified that the appellant offered to purchase a tank of gas for the car stating "I'll fill your tank I have money all over, I just hit a sweet lick." (T 712). The witness testified that the appellant pulled four or five stacks of folded twenty dollar bills out of his pocket. The witness also testified that when they went to the plaza to purchase the cocaine, the appellant started pulling stacks of fifty dollar bills from his back pocket. The witness estimated that the appellant had between three and four thousand dollars in fifty and twenty dollar bills. (T 713-715). The witness testified that after they purchased cocaine they went to the appellant's house where his girlfriend injected him with cocaine. (T 716).

Freddie Johnson testified that he met with the appellant and the appellant's brother in his front yard the week-end after Mr. Moody was murdered. The appellant's brother asked Johnson to tell the police that the appellant was at Johnson's home the previous Monday night watching a football game and that he stayed all night. Johnson testified in court that the appellant had not stayed with him that night and had never been to his house to watch television. (T 763-764).

Jerosa Jackson, the appellant's mother testified that on December 8th, the appellant told her three versions of how Mr.

Moody was killed. Mrs. Jackson related that the appellant told her that he was talking to Mr. Moody about the cast on his arm when Linda Riley and Lee hit Mr. Moody in the head and killed him. Lee and Linda rolled the body up in the carpet, Linda drove the car to the back door and the appellant drove off with the body in the car. The three of them were going to split the money. The appellant asked his mother how the story sounded and then revised the story, telling her that he was up-stairs, Linda called him and when he came down stairs Mr. Moody was dead. Linda and Mr. Moody were having an affair, and one of them wanted out of the relationship; they got into a fight and she killed him. Linda took the money and gave some to the appellant to pay some bills. The appellant then told his mother that the murder was committed before he got home and that Linda rolled up the body in the carpet. He stated that Linda got the money from Mr. Moody and gave it to him. He claimed that he paid bills, they went shopping and that Linda rented a car. (T 773-783, 789-794, 799-800).

In an interview with J. D. Warren at the police station on December 9, 1985, the appellant stated that the murder had been committed by Linda Riley and that he had not been present when it took place. He also told Detective Warren that when he arrived at Linda's apartment the body was already rolled up in the carpet and that she had a large sum of money in her pocket and that she admitted killing Mr. Moody. He claimed that Linda told him that

she stood behind Mr. Moody and stabbed him in the chest with a knife. He related to Detective Warren how Mr. Moody and Linda Riley had had an affair while the appellant had been in prison. (R 814, 825-828).

The appellant related how he and Linda Riley with the help of a young man placed the carpet and the body in the rear of the car. Appellant first related that Linda drove off with the body but later changed the story and said that he and Linda both took the car to the Brentwood project. The appellant then related to the Detective the various ways in which he and Linda spent the money, such as purchasing a new carpet, paying the babysitter and renting an automobile. (T 829-832).

After obtaining a search warrant for the appellant's cast, Detective Warren took the appellant to University Hospital. While at the hospital the appellant stated to Detective Warren that after the case was over they would be friends that Warren had him "like a hawk" and "I had the opportunity." Warren said he still did have the opportunity to tell the truth to which the appellant responded, "not really, I have to go with what I told you, I can't change my story now." (T 833-835).

The autopsy was performed by Dr. Peter Lipkovic. The autopsy revealed that Mr. Moody was sixty-four years old, suffered from a moderate amount of heart disease and emphysema at the time of his death. The doctor testified that Mr. Moody's

body displayed numerous bruises on the head, face and neck, a shallow slash wound on the neck, a rug burn on the left elbow and bruises on both knee caps. There were also seven deep stab wounds in the upper left chest area, causing massive internal bleeding and death. The absence of blood in the lower extremities indicated that the victim was prone at the time the knife wounds were inflicted. The doctor testified that bruises on the victim's neck were consistent with strangulation by a broad belt, forearm or cast. (T 877-900, 904-913). The angle and direction of the stab wounds were described by Dr. Lipkovic as being inflicted by someone using the left hand while straddling or standing behind the victim. The stab wounds being placed in a relatively small area parallel to each other indicated that they were inflicted within a relatively short period of time and without any significant change in position between the victim and the assailant. (T 918-924).

The State presented testimony from John Wilson a fingerprint expert with the Florida Department of Law Enforcement Crime Laboratory in Jacksonville. Mr. Wilson testified that he was able to match a latent fingerprint found on the victim's calling card box with the appellant's fingerprints. (T 941, 963). Following the presentation of this evidence the State rested. (T 964).

Lethenia Meadows, a crime lab analyst at the Florida

Department of Law Enforcement testified that she could find no blood on the appellant's cast. (T 969-973).

The defense presented testimony from Leon Campbell that the term "sweet lick" means easy money. (T 982-983). According to Mr. Campbell the phrase does not refer to a crime of violence. (T 983-984).

Officer G. J. Gallon was called as a defense witness and testified that he stated in his deposition on an earlier date that Linda Riley said appellant was choking Mr. Moody when she returned to the room after getting her check. (T 1003-1005). The defense also presented testimony from Detective J. D. Warren which indicated that the witness Linda Riley had previously told the officer that the appellant took a loaded gun out of Mr. Moody's glove compartment. The Detective also related that Ms. Riley told him that Mr. Jackson put the gag in Mr. Moody's mouth and threw the knife and belt in a trash dumpster. (R 1011-1014).

On rebuttal the State presented testimony from Detective Ralph Moneyhun who testified that the term "sweet lick" is usually referred to by someone involved in a robbery who has made a big robbery or a big hit benefiting them in money, drugs or whatever. (T 1030-1032). Mr. Moneyhun also testified that a hypothetical presented by the State which contained facts identical to those presented in the instant case would idealistically constitute a "sweet lick." (T 1034).

During the penalty phase of the trial, the State presented four witnesses. First the State presented records identified by Marion Wright, the records custodian of the circuit court, as being judgments and sentences in which the appellant was convicted of armed robbery and escape. (T 1244-1249, 1253). John Wilson, the fingerprint examiner also testified that the appellant was the defendant in both cases. (T 1259-1262).

The State also introduced documents from the Department of Corrections through Bobbie Glover the Admission and Release Administrator. Ms. Glover identified documents from the Department of Corrections which indicated that appellant had been committed to the Department and had been placed on parole. An affadavit from Ms. Glover indicated that the appellant had been sentenced to a term of fifteen years for armed robbery in case no. 79-7229; and that the appellant had been placed on parole after serving four years. Documents also established that the appellant had escaped from the Duval County Community Correctional Center in 1982 and was sentenced to three years to run consecutive to the sentence in case no 79-7229. The documents indicated that appellant was placed on parole on December 4, 1984. (T 1263-1274).

Charleston Lee Holt testified that he was a Correctional/Probation Officer I. He testified that the appellant was under his supervision while on parole. (T 1280)

The defendant presented evidence from his former attorney that the appellant pled guilty to his armed robbery charge in exchange for his sentence and agreement to be a witness against his co-defendant. (T 1291-1293). Mr. McCaulie also testified that during the commission of the offense the appellant carried a .32 caliber revolver. (T 1297). Mr. McCaulie also testified that based upon his investigation of the case the appellant and the co-defendant in the armed robbery conviction entered a pool hall and forced everyone to the floor with firearms. (T 1304).

The defense called upon the appellant's sister Ersel Loraine Collier to speak on his behalf. She testified that she and the appellant were part of a family which included five children. She testified that of her three brothers she was closest to the appellant. She believed that the appellant got along well with children, was talented, intelligent and had always been a good student. She testified that she would visit her brother in prison. (T 1310-1314).

Vanessa Jackson, the mother of two of appellant's children testified next. She testified that although the appellant resided with Linda Riley they continued to have a close relationship like brother and sister. She testified that the appellant visited his children before his arrest and that while in jail he would request information from her about his children. She testified that he wrote to his children,

remembered their birthdays, holidays and special occasions with cards he made. (T 1315-1321, 1330-1332).

The appellant's mother Jerosa Jackson testified that her son was always a good child, respectful and helpful. She testified that he was helpful to his older sister who was disabled as a result of polio, and his father who suffered from arthritis and a heart condition. She testified that the appellant assisted in taking care of his father even while he was in the hospital. (T 1334-1340). She testified that he helped take care of his children, played with them, took them to the park and bought them things. (T 1339). Appellant's mother testified that she noticed a change in her son. Mrs. Jackson felt that this change in her son was due to drug use. (T 1341-1342). The defense called Eva Davis, a family friend who offered favorable testimony concerning the appellant. She stated that she knew the appellant all of her life and that he had always been kind to her and her aged mother. The appellant's wheelchair confined sister, Toyeta Jackson testified that the appellant was a good brother to her and never complained about bathing or caring for her. (T 1366). He would take the children to the park, the zoo and beaches. (T 1367).

The appellant took the stand and testified that he loved his parents and wanted to live. (T 1372-1373). He also testified that he had been convicted of three felonies. (T 1373-1374).

Following the testimony, instructions and arguments of counsel, the jury retired to consider their verdict in the penalty phase. The jury recommended seven to five that the appellant be put to death for the murder of Mr. Moody. (T 1482-1483). The trial court followed the jury's recommendation and sentenced the appellant to death. The court cited five aggravating factors that were present in the case. One, the murder was committed while the defendant was under the sentence of imprisonment; two, the defendant was previously convicted of a violent felony; three, the murder was committed for financial gain; four, the murder was especially wicked, evil, atrocious or cruel; and five, the murder was committed in a cold, calculated and premeditated manner. The court found no statutory or non-statutory mitigating circumstances. (T 1531-1534, R 733-738).

SUMMARY OF ARGUMENT

ISSUE I

(a) The scope and limitation of cross examination lies within the sound discretion of the trial judge. The court's ruling is not subject to review unless there is an abuse of discretion. The appellee submits that the testimony proffered by the appellant would not have demonstrated bias and in any event was totally irrelevant to the matters brought out on direct examination.

(b) The admission of Linda Riley's testimony indicating that the appellant had been in prison was introduced to rebut the appellant's defense story that the victim and Ms. Riley had an affair while the appellant was in prison.

(c) The statements made by the appellant to Detective Warren while they were in the hospital were admissible pursuant to Fla.Stat. 90.803(3)(a) and Fla.Stat. 90.803(18).

ISSUE II

The testimony that the parole commission was of the opinion that a life sentence for first degree murder was a life sentence without parole is totally irrelevant to any mitigating circumstance since the opinion is incorrect.

ISSUE III

Evidence that the appellant had been convicted for escape was admissible to prove the aggravating circumstance pursuant to

Fla.Stat. 921.141(a)(5).

ISSUE IV

The State's cross examination of the appellant during the penalty phase was admissible. The State's cross examination tended to rebut the appellant's assertion that he was a person that would assert a good influence on his children.

ISSUE V

The trial court correctly used the standard jury instruction on mitigating circumstance. The Standard jury instruction is adequate since it tracks Fla.Stat. 921.141.

ISSUE VI

The trial court's finding of the aggravating factors of Fla.Stat. 921.141(5)(h) and 921.141(5)(i) was correct since each was based on separate and distinct evidentiary facts.

ISSUE I

WHETHER THE TRIAL COURT UNDULY RESTRICTED THE APPELLANT'S CROSS EXAMINATION OF A STATE WITNESS SO AS TO DEPRIVE HIM OF A FAIR TRIAL GUARANTEED BY THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION. (RESTATED).

A. WHETHER THE TRIAL COURT ERRED IN RESTRICTING DEFENSE COUNSEL'S CROSS EXAMINATION OF LINDA RILEY REGARDING HER BIAS. (RESTATED).

ARGUMENT

It is well established in Florida Law that the scope and limitation of cross examination lies within the sound discretion of the trial judge. Hernandez v. State, 360 So.2d 39 (Fla. 3rd DCA 1978); Powe v. State, 413 So.2d 1272 (Fla. 1st DCA 1982); Duncan v. State, 450 So.2d 242 (Fla. 1st DCA 1984). Furthermore, the trial court's ruling as to the scope of cross examination is not subject to review unless there is an abuse of discretion. Dennis v. State, 214 So.2d 661, (Fla. 3rd DCA 1968), cert denied, 89 S.Ct. 900, 393 U.S. 1101, 21 L.Ed.2d 794; Sireci v. State, 399 So.2d 964 (Fla. 1981); Gelabert v. State, 407 So.2d 1007 (Fla. 5th DCA 1981); U.S. v. Ruben, 733 F.2d 837 (11th Cir. 1984). Moreover, before an appellant can prevail he must show that the abuse of discretion was clearly prejudicial. U.S. v. Alonzo, 740 F.2d 862 (11th Cir. 1984).

In the instant case the appellant contends that the trial court's restriction of his cross examination of Linda Riley restricted his ability to develop the issue of bias on the part of the witness. The appellee submits that there was no abuse of discretion on the part of the trial judge. The appellant vigorously protested that he wanted to cross examine the witness to show bias, however, when given the opportunity to proffer his cross examination he asked the witness only if she had been seeing someone else while the appellant was in jail. (T 668-669). The appellee submits that even if the trial court had allowed the appellant to ask his question it is certainly doubtful that it would have led the jury to believe that the witness was acting out of bias. The question and answer were totally irrelevant to the matters brought out on direct examination. Defense counsel at trial clearly stated that he wanted to ask the question to refute the evidence brought out by the State indicating that the witness still saw the appellant in jail, took him money and still maintained a relationship with him. The proffered question was totally irrelevant and would have had little or no impact upon the credibility of the witness's testimony concerning the events which resulted in Mr. Moody's murder. Moreover, the appellant was given the opportunity to develop the issue of bias through the very competent and thorough cross examination of the witness concerning the possibility that her bias arose from the

suggestion that if she didn't testify she could be charged as an accessory to the murder and kidnapping based upon the story she told the detective. (T 674-675, 679-680, 681). It is clear from those pages of the transcript that the trial court gave the defense every latitude in developing cross examination which would show bias as a result of the witness's fear of prosecution.

The state attorney's line of questioning concerning the witness's telephone calls, visits and gifts of money to the appellant while he was in jail were merely to demonstrate that she continued to maintain contact with him. (R 666). The trial court gave defense counsel every opportunity and even pointed out the proper way to cross examine the witness concerning these phone calls, visits and gifts. (T 669). Obviously, for strategic reasons defense counsel declined to pursue the trial court's suggested line of cross examination. In any event, even if relevant the prejudicial effect of the proffered testimony clearly outweighed the probative value and was therefore inadmissible pursuant to Fla.Stat 90.03. Consequently, the appellant's judgment and sentence should be affirmed.

B. WHETHER THE TRIAL COURT ERRED IN ALLOWING THE STATE TO INTRODUCE EVIDENCE THAT APPELLANT HAD BEEN IN PRISON. (RESTATED).

The appellant next contends that he was denied a fair trial by the admission of Linda Riley's testimony indicating that he

had previously been in prison. The appellant argues that the evidence was irrelevant and was merely introduced to constitute an attack on his character.

The appellant is correct in his assertion that Florida Courts have severely limited the admissibility of evidence that a criminal defendant had committed other crimes. Williams v. State, 110 So.2d 654 (Fla. 1959). The Florida Supreme Court in Williams determined that evidence of collateral offenses is inadmissiable if its sole relevancy is to establish bad character or the accused's propensity to commit crimes.

In the instant case the State's question and Ms. Riley's answer which contained the evidence of appellant's prior imprisonment was not introduced merely to show his bad character or his propensity to commit crimes. The evidence was introduced to rebut appellant's assertion to Detective Warren that Linda Riley killed Mr. Moody because of an affair which took place while the appellant was in prison. The evidence was admissible to disprove the appellant's defense by showing that the victim and Ms. Riley did not meet until after the appellant was out of prison. The appellant's statements came into evidence during Detective Warren's testimony later in the trial. Since the evidence was relevant to matters other than the appellant's character it was admissible. Ruffin v. State, 397 So.2d 277 (Fla. 1981); Drake v. State, 441 So.2d 1079, cert. denied 104

S.Ct. 2361 (Fla. 1981).

Even if the admission of the evidence of appellant's prior prison stay was error, the error was corrected or rendered harmless by the admission into evidence of his statement to Detective Warren wherein he disclosed that he had been in prison. Peak v. State, 363 So.2d 1166 (1st DCA 1978). In Peak the appellant contended that the trial court erred in denying his motion for a mistrial on the grounds that evidence introduced showed that he had a prior criminal record. The Court affirmed the judgment and sentence stating:

> As the defendant himself admitted on cross examination at trial that he did in fact have a prior criminal record, we regard the inadvertent reference to the defendant's prior conviction as harmless.

Dominquez v. State, 403 So.2d 609 (Fla. appellate 1981); State v. Woodson, 330 So.2d 152 (Fla. appellate 1976).

Admittedly, unlike the defendant in Peak, the appellant did not testify at trial, however, his statement to Detective Warren which indicated that he had been in prison was none the less admitted into evidence without objection. The evidence was admitted into evidence after the question concerning his prison release was asked of Linda Riley, however, the State could have just as easily introduced the appellant's statement that while he was in prison Mr. Moody and Ms. Riley had an affair, by placing Detective Warren on the witness stand first. In any event, it

seems clear that it was inevitable that the jury would receive the information that the appellant had been in prison, the State surely would have introduced his statement even if it had been prohibited from asking the question of Linda Riley. The appellant's conviction and sentence should be affirmed.

C. WHETHER THE TRIAL COURT ERRED IN ADMITTING APPELLANT'S STATEMENTS TO DETECTIVE WARREN AT THE HOSPITAL. (RESTATED).

The appellant contends that the court below erred by admitting statements made by him at the hospital to Detective Warren. The appellant's contention that his statement was irrelevant is totally unfounded.

Relevant evidence is evidence tending to prove a material fact and is admissible except as provided by law. Fla.Stat. 90.401; 90.402. A trial court has wide discretion concerning the admission of evidence and absence an abuse of discretion its ruling should not be disturbed. Welty v. State, 402 So.2d 1159 (Fla. 1981); Booker v. State, 397 So.2d 910 (Fla. 1981). The appellee submits that the trial court did not abuse its discretion by admitting the statements the appellant made at the hospital. The statements are clearly relevant when viewed in context with statements that the appellant had made to his mother the day before. The State introduced evidence which indicated that the appellant went to his mother and told her three

different versions of how the murder took place. While relating these stories to his mother he repeatedly asked her how the story sounded. (T 768-801). A few days before relating these tales to his mother he went to someone else asking them to cover for him. When the statements at the hospital are linked with the statements made to his mother and his request of her of how they sounded, the statements are relevant to demonstrate the appellant's then existing state of mind. Fla.Stat. 90.803(3)(a). His state of mind was that of guilt, guilt complied with elation that he had fabricated a story which, in his mind, would make it possible for him to avoid conviction. The appellant's state of mind, at the time he made statements to the police, is relevant for purposes of determining guilt. Palmes v. State, 397 So.2d 648 (Fla. 1981).

The appellant argued that the statements were hearsay and did not fit within one of the exceptions to the hearsay rule. The appellee submits that the statements come within Fla.Stat. 90.803 (18).

As correctly pointed out by the appellant in his brief, even if it was error for the trial court to admit his statements, the error was harmless. The judgment should not be reversed unless the error was prejudicial to the substantial rights of the appellant. Palmes v. State, 397 So.2d 648 (Fla. 1981). Padgett v. State, 84 Fla. 590, 94 So. 865 (Fla. 1922); Kirby v. State, 44 Fla. 81, 32 So. 836 (Fla. 1902). In Palmes v. State, the Florida Supreme Court set-forth the criteria that should be used in

making a determination as to whether an erroneous ruling has caused harm to the substantial rights of the defendant. The court stated:

> In determining whether an erroneous ruling below caused harm to the substantial rights of the defendant, an appellate court considers all of the relevant circumstances, including any curative ruling or event and the general weight and quality of evidence. In other words the court inquires generally whether, but for the erroneous ruling it is likely that the result below would have been different.

The court went on to conclude that if an error affected the constitutional rights of the defendant, the reviewing court could not find it harmless if there was a reasonable possibility that error may have contributed to the accused's conviction. However, the court did not state that even constitutional error could be treated as harmless in situations where the evidence of guilt is overwhelming. See also Roman v. State, 475 So.2d 1228 (Fla. 1985). In the instant case Linda Riley's testimony, coupled with the appellant's possession of a large a ount of money, the fingerprint evidence, his attempt to fabricate a perjured alibi constitutes overwhelming evidence of guilt which would cure any error which may have occured. See Schneble v. Florida, 405 U.S 427 31 L.Ed.2d 340, 92 S.Ct. 1056 (1972). Since the appellant has failed to demonstrate an abuse of the trial court's discretion which resulted in unfair prejudice his conviction and sentence should be affirmed.

ISSUE II

WHETHER THE TESTIMONY OF HARRY DODD THAT A LIFE SENTENCE IS REGARDED BY THE PAROLE COMMISSION AS A LIFE SENTENCE WITHOUT POSSIBLITY OF PAROLE IS RELEVANT MITIGATING EVIDENCE FOR THE JURY TO CONSIDER IN MAKING IT'S SENTENCING RECOMMENDATION. (RESTATED).

ARGUMENT

Next the appellant contends that it was error for the trial court to deny his motion in limine wherein he sought to preclude the State from advising the jury that, if given a life sentence, the appellant would be eligible for parole in twenty-five years. The appellant contended that advising the jury that the appellant would be eligible for parole after twenty-five years was misleading since the parole commission was of the opinion that since, the inactment of sentencing guidelines, a person that was sentenced to life was no longer eligible for parole.

The trial court was correct in denying the motion since the basis for the motion was totally incorrect. Fla.Stat. 921.001(4)(a) specifically states that the sentencing guidelines do not apply to capital felonies. See also Brosz v. State, 466 So.2d 256 (5th DCA 1985); Coleman v. State, 483 So.2d 539 (2d DCA 1986). On the other hand, the court was correct in allowing the state to advise the jury that if a life sentence were imposed on the appellant that he would be eligible for parole after twenty-five years incarceration. Fla.Stat. 775.082 provides that a person convicted of a capital felony shall be punished by life

imprisonment and shall be required to serve no less than twenty-five years before becoming eligible for parole unless they were sentenced to death pursuant to Fla.Stat. 921.141. Obviously, in light of the wording of the statute it would not be misleading, as contended by the appellant, to inform a jury that a person sentenced to life would be eligible for parole after twenty-five years.

In the trial court below, as an alternative to his motion in limine, the appellant sought to have the court advise the jury as to the opinion of the parole commission concerning a life sentence without parole by introducing Mr. Dodd's affidavit or permitting him to present Mr. Dodd's testimony during the penalty phase. The court correctly denied the motion. In support of his argument that the trial court should have allowed him to introduce Mr. Dodd's affidavit or testimony the appellant cites Lockett v. Ohio, 438 U.S 586, 601 (1978) and Eddings v. Okaloma, 455 U.S. 104, 114 (1982), as establishing the principle that a sentencer may not refuse to consider or be precluded from considering "any relevant mitigating evidence." The appellant does this by citing language from Skipper v. South Carolina, 476 U.S. ____, 106 S.Ct., 90 L.Ed.2d 1, 6 (1986) wherein they cited language from Eddings v. Okaloma, supra. The key of course, to the principle eluded to by the appellant is the phrase "relevant mitigating evidence." Certainly the parole commission's incorrect opinion as to the status of the law in Florida is not

the type of information which the court envisioned as mitigating factors admissible in a death sentence hearing. In fact, what the United States Supreme Court in Eddings, actually said was "the sentencer . . . not be precluded from considering, as a mitigating factor, any aspect of a defendant's character or record or any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death." Mr. Dodd's affidavit may in fact accurately reflect the position of the parole commission, however, the fact remains that it is not evidence of the defendant's character, his record or any of the circumstances of the offense which the United States Supreme Court finds admissible in a sentencing hearing. The petitioner's reliance on Skipper v. South Carolina, supra is also misplaced since the evidence which was excluded in that case dealt with the appellant's behavior in jail while he was awaiting trial. Obviously, the evidence in Skipper fit within the court's decision in Eddings since it reflected upon the defendant's character and may have indicated an individual worth salvaging and thus deserving of mercy.

The appellant's reliance on California v. Ramos, 463 U.S. 992 (1982), is likewise misplaced since the facts in that case are distinguishable from the facts presently before the court. In California v. Ramos, the United States Supreme Court was dealing with a jury instruction rather than proffered evidence. A jury instruction which was based upon statutory authority.

Moreover, California law does in fact provide for a life sentence without the possibility of parole. The Governor's power to commute a life sentence without parole to a lesser sentence is a fact established as a matter of law. The appellant's line of reasoning is totally unfounded because of this aspect of the California law which provides for a life sentence without parole. Appellant argues that if the the Supreme Court allows admission of evidence concerning the possibility that the defendant will be released on parole then the fact that he won't be released on parole should also be admissible, but again the appellant loses sight of the fact that the law in California provides for a sentence without parole. In Florida, there is no such sentence. The parole commission's opinion is merely that, an opinion without any force of law which if introduced would be misleading to the jury. The parole commission's position is apparently based upon a Florida Attorney General's opinion which was propagated by a question from the parole commission which had absolutely nothing to do with death penalty defendant's. It's a wonderment as to how they reached their conclusion based upon that opinion. Additionally, the appellant contends that the trial court's refusal to allow appellant to present the testimony of the parole director violated the princple established in Eddings v. Okaloma, supra, that a jury must be permitted to consider any and all possible mitigating factors. The appellant has misread the United States Supreme Court's decision in

Eddings, for nowhere in Eddings does the Supreme Court say that a jury must be allowed to consider any and all possible mitigating factors. The Supreme Court in Eddings, supra, Lockett, supra, and Skipper, supra, states that a jury or sentencer should be permitted to consider all relevant mitigating factors. It is well established in Florida law that the trial court is the determiner of relevancy and absent an abuse of discretion the trial court's decision should not be overturned. Welty v. State, 402 So.2d 1159 (Fla. 1981).

The appellant is quite correct when he asserts that this Court has consistently condemned prosecutorial arguments which infer that if a death sentence is not imposed the defendant may escape or be paroled and kill again. Piffeteller v. State, 439 So.2d 840 (Fla. 1983); Grant v. State, 194 So.2d 612 (Fla. 1967); Singer v. State, 109 So.2d 7 (Fla. 1959). If the Court adopted the appellant's argument in this case and ruled that the parole commission's opinion should be admitted as a mitigating factor then it would open a door to allow the prosecutor to argue precisely what this Court has condemned. Moreover, it would also permit the State to introduce expert opinion evidence as to whether appellant might kill again if he were released on parole. Or, permit introduction of opinions regarding the death penalty in general, the deterrent effect of the death penalty, death penalties value to society, etc. Clearly all of this type of evidence would be irrelevant and undesirable.

Next the appellant contends that the court violated his eighth and fourteenth amendment rights by prohibiting him from informing the jury that he may never again be on parole. The appellant contends that this evidence would have rebutted a possible jury inference that they should return a death sentence because of his prior escape and parole status. The appellant's contention that if given a life sentence, he may never again be on parole is not a correct statement of the law in Florida. Consequently, since it isn't a correct statement of the law it is irrelevant and should not be presented to the jury for their consideration.

The trial court was correct in excluding the parole commission's opinion since it was erroneous, irrelevant and did not constitute a valid constitutionally permissible mitigating factor. Consequently, the judgment and sentence should be affirmed.

ISSUE III

WHETHER EVIDENCE OF APPELLANT'S CONVICTION FOR ESCAPE WAS NECESSARY TO PROVE AN AGGRAVATING CIRCUMSTANCE OR CONSTITUTED NON-STATUTORY AGGRAVATION.

ARGUMENT

The appellant next contends that the trial court erred by denying his motion in limine wherein he sought to prohibit the State from revealing to the jury during the penalty phase, that the appellant was on parole for escape. This evidence was essiential to prove that the capital offense was committed while the appellant was under sentence of imprisonment pursuant to s. 921.141(a)(5) Fla.Stat.

Fla.Stat. 921.141(1) provides that upon conviction or adjudication of guilt, of a person for a capital felony the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment. The statute reads in pertinent part as follows:

> . . . In the proceeding, evidence may be presented as to any matter that the court deems relevant to the nature of the crime and the character of the defendant and shall include matters relating to any of the agravating or mitigating circumstances enumerated in sub-sections (5), (6). Any such evidence which the court deems to have probative value may be received, regardless of it's admissibility under the exclusionary rules of evidence, provided the defendant is accorded a fair opportunity to rebut any hearsay statements. . . .

The provisions of this statute are clearly within the United States Supreme Court's decision in Williams v. New York, 337 U.S. 241, 93 L.Ed 1337 (1949). In Williams the United States Supreme Court determined that a sentencing judge in a capital case could exercise a wide discretion in the sources and types of evidence he used to assist him in determining the kind and extent of punishment to be imposed upon a defendant. The court concluded that our system of justice permits a trial court to accept evidence which might be inadmissible during the guilt phase of a trial provided the defendant has the opportunity to rebut the information. See also Gardner v. Florida, 430 U.S. 349, 51 L.Ed.2d 893, 97 S.Ct. 1197 (1977).

The trial court's decision to deny the appellant's motion in limine and admit the evidence of the appellant's conviction for escape was correct pursuant to Fla.Stat. 921.141(1). The evidence was relevant to prove the aggravating circumstance that the murder was committed by a person under sentence of imprisonment. The trial court has wide discretion concerning the admission of evidence and absence an abuse of discretion it's ruling should not be disturbed. Welty v. State, 402 So.2d 1159 (Fla. 1981); Booker v. State, 397 So.2d 910 (Fla. 1981). The trial court's discretion in evidentiary matters also extends to determining what evidence is relevant at a sentencing hearing. Just as during the trial phase, a court's finding should not be disturbed unless an abuse of discretion is shown. Stano v.

State, 473 So.2d 1282 (Fla. 1985).

The appellant's position that evidence of his conviction for escape was prejudicial and was not necessary to prove the aggravating factor is totally unsupported by law. This court has already determined that in a sentencing proceeding the State may introduce testimony as to the circumstances of a prior conviction, rather than just the bare fact of that conviction. Mann v. State, 453 So.2d 784 (Fla. 1984), cert. denied 469 U.S. 1181, 105 S.Ct. 940, 83 L.Ed.2d 953 (1985); Elledge v. State, 346 So.2d 998 (Fla. 1977); Stano v. State, supra.

Similary this Court, in Bundy v. State, 471 So.2d 9 (Fla. 1985) allowed testimony concerning the nature of an offense to establish an aggravating circumstance pursuant to Fla.Stat. 921.141(5)(a). In Bundy the State established the existence of a statutory aggravating circumstance, through testimony of an investigator from the district attorney's office of Vail, Colorado, that Bundy had escaped from jail in that state. The appellee submits that if evidence concerning the nature of a prior offense were unduly prejudicial the court would not have allowed the State to establish the aggravating circumstances by use of such evidence.

The appellant contends that the State could have established the aggravating circumstances under Fla.Stat. 921.141(5)(a) and 921.141(5)(b) by use of the evidence of his conviction for armed

robbery. The appellee submits, however, that had the State done so the appellant would then advance the argument that the State cannot use one conviction to establish two aggravating circumstances. It may very well be permissible for the State to do so, however, nothing in the law requires the State to establish both aggravating circumstances by use of one conviction.

The appellant advances the argument that the State has a duty to minimize the prejudicial affect of its proof. The appellant supports that argument with the Federal Circuit Court's opinion in U.S. v. Cook, 538 F.2d 1000, 1005 (3rd Cir. 1976). A third circuit's opinion in a Delaware case, of course, does not apply to Florida, however, even if it did the appellee submits that the court did not rule that the State had a duty and obligation to minimize the prejudicial affect of it's proof. The appellee contends that virtually all of the evidence introduced at trial, by the State, is prejudicial to the defendant. If it were otherwise it wouldn't be State evidence but rather defense evidence. The appellee submits that what courts are concerned with is not evidence which is prejudicial to a defendant but rather evidence which presents a danger of unfair prejudice to a defendant. This is precisely what the court was referring to in Parker v. State, 408 So.2d 1037 (Fla. 1982), when it determined that the State was not required to accept a stipulation in regard to a prior felony conviction when prosecuting the defendant for

possession of a firearm by a convicted felon. The court wasn't determining whether that evidence would be prejudicial but rather whether it was unfairly prejudicial. The appellee submits that the court's decision in Parker also applies to the sentencing phase of a trial, therefore, the State was not required to accept a stipulation. See also Williams v. State, 492 So.2d 1051 (Fla. 1986).

The appellant cites State v. Williams, 444 So.2d 13 (Fla. 1984) and State v. Vasquez, 419 So.2d 1088 (Fla. 1982). These cases address issues involved in the presentation of evidence during the guilt phase of the trial. Therefore, the decisions in these cases do not apply to the instant case. This is also true of the First District Court of Appeals decision in Westly v. State, 416 So.2d 18 (1st DCA 1982), another case relied on by the appellant.

The appellee contends that the evidence that the appellant was on parole for escape properly established the aggravating circumstance permitted by Fla.Stat. 921.141(5)(a). The evidence was not, as suggested by the appellant, evidence of a non-statutory aggravating factor so as to taint the jury's death sentence reccommendation. This court must therefore, affirm the appellant's conviction and sentence.

ISSUE IV

WHETHER THE TRIAL COURT ERRED IN ALLOWING THE STATE TO CROSS EXAMINE THE APPELLANT DURING THE PENALTY PHASE, ABOUT PRIOR CONVICTIONS. (RESTATED)

ARGUMENT

Fla.Stat. 921.141(1) provides that when a defendant is adjudicated guilty of a capital felony, the trial court shall conduct a hearing to determine sentence. In regard to the matters which the court is to consider in this hearing the statute provides as follows:

> . . . Evidence may be presented as to any matter that the court deems relevant to the nature of the crime and the character of the defendant and shall include matters relating to any of the aggravating circumstances enumerated in sub-sections (5) and (6). Any such evidence which the court deems to have probative value may be received, regardless of its admissibility under the exclusionary rules of evidence, provided the defendant is accorded the fair opportunity to rebut any hearsay statements.

The provisions of this statute, which permit the trial court to consider any aspect of a defendant's character or record and any of the circumstances of the offense,are in accord with the United States Supreme Court's decision in Lockett v. Ohio, 438 U.S. 586, 57 L.Ed.2d 973 98 S.Ct. 29 54 (1978).

Florida's capital sentencing scheme is a unique legal process which requires the sentencer to consider aggravating and

mitigating circumstances in order to analyze the character of the defendant for the purpose of determining whether the death penalty is appropriate in their particular case. Dragovich v. State, 492 So.2d 350 (Fla. 1986).

In the instant case the appellant's testimony which was offered in mitigation went to the issue of his good character. This is exemplified by the trial counsel's question to the appellant concerning whether he would be a positive influence in the lives of his children if he were in prison. To this question the appellant responded "yes, I will, I always have been." (T 1372-1373). This response opened the door to the State and permitted them to cross examine the appellant for the purpose of demonstrating to the jury that he couldn't have been much of a positive influence on his children because of his prior felony convictions.

As properly pointed out by the appellant in his brief, once he took the stand as a witness in his own behalf, he occupied the same position as any other witness and was therefore subject to cross examination. Randolph v. State, 463 So.2d 186 (Fla. 1984); Booker v. State, 397 So.2d 910 (Fla. 1981).

In support of his argument the appellant cites Maggard v. State, 339 So.2d 973 (Fla. 1981). The appellant correctly states that this court's decision in Maggard restricted the prosecutor's cross examination of the defendant concerning a mitigating

circumstance which he has expressly waived. The problem is that the decision in Maggard does not apply to the facts in the instant case. The appellant in this case did waive the mitigating circumstance of "no significant history of prior criminal activity." The prosecutor's cross examination was not directed to any waived mitigating circumstances but rather directed to the appellant's assertion, in mitigation, that he would be a good influence on his children. The prosecutor was merely trying to show that in the past the appellant had no concern about the influence he exerted on his children since he had committed three felonies. As pointed out by the appellant, this Court in State v. Dickson, 283 So.2d 1 (Fla. 1973), recognized the state could cross examine the defendant on matters which the defendant had raised to get to the truth of the alleged mitigating factor. The appellee submits that the state's cross examination did just that, it went directly to the truth of the mitigating factor which the appellant sought to place in the minds of the jury, that is that he would be and always had been a positive influence on the lives of his children.

Next the appellant relies upon this court's decisions in Dragovich, supra, Odom, supra, and Maggard, supra to support his statement that a defendant's prior criminal activity is not admissible in a penalty phase to show a defendant's bad character. The appellant has misapplied this court's decisions in Dragovich, Odom and Maggard. This Court in Dragovich

determined that mere information about arrest or reputation evidence as to criminal activity was inadmissible to rebut the mitigating circumstance of "no significant history of criminal activity." The court determined that the state could only use actual convictions. That was also the issue determined in Odom v. State, supra. In Maggard v State, supra the court ruled that the State could not use the defendant's prior criminal record of non-violent offenses to rebut a mitigating factor upon which the defendant had expressly stated he would not rely. In Maggard, the State had introduced evidence to rebut a mitigating factor of no significant prior criminal history even though Maggard had waived that factor. Maggard does not apply to the instant case since the evidence was not introduced to rebut a mitigating factor which the appellant had waived. The appellant's sentence should be affirmed.

ISSUE V

WHETHER THE TRIAL COURT ERRED IN REFUSING TO GIVE THE JURY SPECIFIC INSTRUCTIONS AS TO THE NON-STATUTORY MITIGATING CIRCUMSTANCES IT SHOULD CONSIDER.

ARGUMENT

The trial court correctly and adequately instructed the jury as to mitigating circumstances. The court followed the standard jury instruction which tracks Fla.Stat. 921.141. This instruction informs the jury that in addition to the statutory mitigating factors it may also consider, as mitigating any other aspect of the defendant's character or record and any other circumstance of the offense. This instruction is in compliance with the United States Supreme Court's decision in Lockett v. Ohio, 438 U.S 586, 57 L.Ed.2d 973, 98 S.Ct. 2954 (1978). Furthermore, it was determined by the United States Supreme Court in Proffit v. Florida, 428 U.S. 242, 49 L.Ed.2d 913 96 S.Ct. 2960 (1976), that Florida's death penalty statute, Fla.Stat. 921.141 was sufficient to provide a jury with guidance as to the proper cases in which a death penalty should be imposed. Consequently, since the jury instructions track Fla.Stat. 921.141 they clearly are adequate to inform the jury as to what mitigating circumstances they can consider in making their determination as to sentence.

The Florida Supreme Court determined in Delapp v. State, 440

So.2d 1242 (Fla. 1983), that the standard jury instructions adequately covered the instructions for mitigating circumstances. See also Buford v. State, 403 So.2d 943 (Fla. 1981, cert. denied 454 U.S. 1164, 102 S.Ct. 1039, 71 L.Ed.2d 320 (1982).

The appellant has cited no Florida case in support of his position, consequently, the appellant's conviction and sentence should be affirmed.

ISSUE VI

WHETHER APPELLANT'S DEATH SENTENCE IS UNCONSTITUTIONALLY BASED UPON IMPROPER DOUBLING OF AGGRAVATING CIRCUMSTANCES.

ARGUMENT

The appellant contends that the trial court improperly doubled the aggravating factor of 921.141(5)(h) Fla.Stat., heinous, atrocious, and cruel, with the aggravating factor of 921.141(5)(i) Fla.Stat. cold, calculated and premeditated manner without any pretense of moral or legal justification.

In Stano v. State, supra, this court clarified the distinction between the two aggravating factors objected to by the appellant:

> . . . heinous, atrocious or cruel pertains more to the nature of the killing and the surrounding circumstances, cold, calculated, and premeditated pertains more to state of mind, intent and motivation.

The appellee submits that a so called doubling-up of aggravating circumstances only occurs improperly where the two circumstances are based upon the same facts. Such was the result in Oates v. State, 446 So.2d 90 (Fla. 1984), where the trial court considered individually the aggravating factors of a commission of a murder during a robbery and a murder for pecuniary gain. This court determined that the two aggravating factors could not be considered individually because the only evidence that the crime was committed for pecuniary gain was the same evidence of robbery

underlying the capital crime. In the instant case there was no such improper "doubling-up" of aggravating circumstances. The trial court based it's finding that the homicide was heinous, atrocious and cruel on the evidence that the victim was an elderly man, begged the defendant to spare his life, freely gave up his money to the defendant, offered to get more money or furniture from his store if he was spared. The judge also based his finding upon the fact that the victim was beaten with a plaster cast, strangled with a belt, and then stabbed several times with a knife including at least one occasion when the defendant twisted the knife while it was in the victim's chest. (R 737-738).

It is beyond argument that all of the facts set forth above, and contained in the trial court's order, support the finding, that the murder was especially wicked, evil, atrocious or cruel. The court also in paragraph four of it's order, cited facts that the defendant had emphezema, difficulty breathing while lying on his stomach, that his hands were tied behind his back and he was forced to lie on his stomach, to support his finding that the murder was atrocious or cruel. While there can be no argument that these facts do support his finding, these facts would also support a finding that the murder was committed in a cold, calculated and premeditated manner. The facts are evidence that the defendant was planning the victim's murder as he rendered him helpless by tying him up and laying him on the

floor. Perhaps the trial court could have better divided these facts and used them to support his finding for cold, calculated and premeditated, however, it was unnecessary to do so since he adequately supported that finding by citing the fact that the appellant while he was in the process of his murderous onslaught broke one knife and retrieved a second knife to continue his butchery. Moreover, the court correctly supported his finding by citing the facts indicating that following the vicious murder of Mr. Moody, the appellant disposed of the body, searched for drugs, celebrated his success by getting high and bragged about how he just hit a "sweet lick." (R 738).

The trial court's finding that the murder was committed in a cold calculated and premeditated manner, without any pretense of moral or legal justification was based upon evidence which went to the state of mind of the appellant rather than the methods used to commit the offense. The appellee submits that the trial court's finding was proper since its finding contained separate distinct proof as to each factor. Stano, supra, and Mason v. State, 438 So.2d 374 (Fla. 1983). Since the appellant's sentence was not based upon an improper doubling-up of aggravating circumstances, his sentence should be affirmed.

CONCLUSION

WHEREFORE, the appellee, the State of Florida respectfully submits that this Honorable Court must affirm the judgment and sentence appealed from.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

Kurt L Barch

KURT L. BARCH
ASSISTANT ATTORNEY GENERAL

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Paula S. Saunders, Assistant Public Defender, Post Office Box 671, Tallahassee, Florida 32302 by U.S. Mail on this 7th day of April, 1987.

Kurt L Barch

KURT L. BARCH
ASSISTANT ATTORNEY GENERAL