IN THE SUPREME COURT OF FLORIDA

CASE NO. 72,463

MANUEL PARDO, JR.

Appellant/Cross-Appellee,

vs.

THE STATE OF FLORIDA,

Appellee/Cross-Appellant

AN APPEAL FROM THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA CRIMINAL DIVISION

INITIAL BRIEF OF APPELLEE/CROSS-APPELLANT

ROBERT A. BUTTERWORTH
Attorney General
Tallahassee, Florida

RALPH BARREIRA
Florida Bar #0374490
Assistant Attorney General
Department of Legal Affairs
Ruth Bryan Owen Rhode Building
Florida Regional Service Center
401 N.W. 2nd Avenue, Suite N-921
Miami, Florida 33128
(305) 377-5441

TABLE OF CONTENTS

TABLE OF CONTENTS
Continued

TABLE OF CITATIONS

CASES

TABLE OF CITATIONS
Continued

CASES

INTRODUCTION

Appellee/Cross-Appellant, the State of Florida, was the prosecution in the trial court and Appellant/Cross-Appellee, Manuel Pardo, Jr., was the defendant. The parties will be referred to as they stood in the trial court. The letter "R" will designate the 4293 page record on appeal, which includes the trial court transcripts. All emphasis is original unless otherwise specified.

STATEMENT OF THE CASE

The State accepts the Defendant's Statement of the Case as accurate.

STATEMENT OF THE FACTS

Due to the sparse and incomplete factual recitation in the defendant's brief, it is necessary for the State to undertake a lengthy summary of the facts relating to the nine murders for which the defendant was convicted. The State will begin with a brief summary to acquaint the court with the "big picture,'' followed by a comprehensive factual review of the entire record.

BRIEF OVERVIEW

1. On January 22nd, **1986,** the defendant and co-defendant Rolando Garcia went to the residence of Mario Amador, obstensibly to purchase two kilograms of cocaine from Amador. The defendant and co-defendant were working for Ramon Alvero, known as "El Negro," who later became another of the defendant's murder victims. Rather than pay good American dollars for the two kilos, the defendant and co-defendant elected to murder Mario Amador and steal the cocaine. They arrived at his residence with the defendant carrying a briefcase containing not cash, but rather a .22 cal. semi-automatic, silencer equipped pistol. While Mario Amador was busy with the cocaine, the defendant pulled his pistol and shot both Amador and Amador's partner, Roberto Alfonso, numerous times in the head and torso.

2. On February 27th, **1986,** the defendant and co-defendant staged a virtual repeat performance. This time they were sent by their boss, Ramon Alvero ("El Negro"), to purchase three kilograms of cocaine from one Luis Robledo. After their arrival at Robledo's apartment, the defendant excused himself to go to the bathroom, where he produced a silencer equipped .22 cal. Ruger semi-automatic pistol, with which he then shot both Luis Robledo and Robledo's partner, Ulpiano Ledo, numerous times in the head and torso.

3. The defendant and co-defendant were not idle in the five weeks between the above two drug rip-off double murders. On January 28, 1986, the defendant and co-defendant arranged to meet one Michael Millot, a gunsmith who had provided the defendant with several silencers. It seems that the defendant, upon learning that Millot was a federal government informant, had become concerned that Millot might be setting the defendant up for a federal bust. The defendant and co-defendant lured Millot into the defendant's vehicle, and the defendant proceeded to blow his brains out with a .9 mm. Smith and Wesson. They then dumped his body in a rural area and drove his vehicle into a canal.

4. On April 22nd, 1986, the defendant and co-defendant visited the home of Fara Quintero and Sara Musa. The defendant and co-defendant were upset with the girls because they had failed to purchase VCRs with murder victim Luis Robledo's visa card, as they had been instructed to do by co-defendant (the girls had no knowledge of the prior murders). Additionally, the defendant and co-defendant were upset because the girls kept complaining and bothering them about **$50** which co-defendant owed Fara Quintero. The girls had also made the major mistake of bad-mouthing the co-defendant in conversations with third parties, in which the girls impugned the co-defendant's integrity for failing to repay the $50. Once in their apartment the defendant, as was his custom, proceeded to the bathroom and pulled out his Ruger. When he emerged he shot Sara Musa numerous times, but then his

gun jammed. He unjammed the gun on Fara Quintero's head, then shot her numerous times.

5. The following day, April 23rd, 1986, the defendant and co-defendant finally caught up with their boss, Ramon Alvero ("El Negro"). It seems that Alvero had not come through on two big cocaine deals that the defendant had been counting on. Alvero had been avoiding the defendant, a reasonable strategy all things considered, but on April 23rd Alvero's luck ran out, as did that of his girlfriend Daisy Ricard, who fulfilled the "wrong place at the wrong time" profile to a T. The defendant and co-defendant managed to find Alvero and Ricard and drove them to an isolated spot. The defendant then shot Alvero numerous times with his .22 Ruger and then shot Daisy Ricard once before his gun jammed again. He unjammed it by smashing it against her skull, and meanwhile managed to shoot himself in the foot. After finishing off Daisy with several more shots, they dumped her body in a secluded area and left Alvero's body in the trunk of Alvero's vehicle. They then immediately flew to New York where the defendant received medical treatment for his foot.

COMPREHENSIVE FACTUAL SUMMARY

The State's first witness, Carlos Ribera, was a friend of co-defendant Rolando ("Rollie") Garcia, and he came to know the defendant during the three month period that the nine murders occurred.

CARLOS RIBERA

Ribera spent considerable time with co-defendant Garcia, driving him around and partying (R. 2159). Ribera needed money and he wanted co-defendant to get him a job in his narcotics business. Co-defendant introduced Ribera to the defendant, and the defendant told Ribera he would try and help him get involved in narcotics trafficking (R. 2162). While at co-defendant's home, the co-defendant showed Ribera newspaper articles concerning murdered drug dealers, and co-defendant said that he and defendant had "ripped off" and killed these drug dealers in order to steal the victims' cocaine (R. 2162). As they drove to the defendant's home, co-defendant bragged about killing "Frenchy" (Michael Millot's nickname), a federal informant who co-defendant and defendant had killed because they feared Millot was setting them up to get busted (R. 2163).

Upon arriving at the defendant's house, he observed the defendant cleaning live ammunition rounds, which the defendant stated was done to remove fingerprints from the shell casings (R. 2165). The defendant then told Ribera how they had killed Frenchy, stating "That was a good job," and explaining how they had planned the murder and carried it out, including all the gory details (R. 2166-2169). The defendant also showed Ribera a newspaper article concerning Frenchy's murder. The defendant

said Frenchy was killed because he was a federal agent trying to set up the defendant and co-defendant (R. 2169).

The defendant then showed Ribera newspaper articles relating to the murder of Mario Amador and Roberto Alfonso (double murder number 1). The defendant said he went to Mario's with a briefcase, pretending it contained money, but when Mario was getting the cocaine the defendant pulled a .22 cal. Ruger, with rubber grip and silencer, with which he shot the victims. The defendant showed Ribera the murder weapon (R. 2171-2173). The defendant said they went to Mario's pretending to buy two kilos of cocaine, which they took after the murders.

At a later date Ribera returned to the defendant's home, and the defendant took out a diary calendar book (the relevant pages of the book are at p. 233-250 of the record), and pointed to an entry and said "This is the time we killed Luis Robledo" (double murder number 2). (R. 2178). In referring to the earlier murder of Mario Amador, the defendant stated there was another victim there who had tried to escape, but that the defendant had caught him, put him on the floor, and shot him along with Mario (R. 2181). The defendant then showed Ribera newspaper articles concerning the murder of Luis Robledo and Ulpiano Ledo. The defendant said he was let into Robledo's home by a man dressed all in white, and that they went into Robledo's bedroom, where the defendant went into the bathroom, took out his gun and came

out shooting (R. 2182-2186), after which defendant and co-defendant took the cocaine. The defendant showed Ribera Robledo's .25 cal. Baretta, Robledo's driver's license and several of his credit cards (R. 2187). The defendant then showed Ribera polaroid pictures of several dead bodies, including those of Mario Amador and Luis Robledo, as well as two motorola police radios that the defendant said he used to monitor the police frequencies during the murders (R. 2188-2190).

On one trip with co-defendant, Ribera was introduced to Fara Quintero (R. 2192). Ribera and co-defendant purchased VCRs at Kaufman & Roberts using Luis Robledo's credit cards and drivers license (R. 2193). He was present when co-defendant gave Fara Quintero the visa card of Luis Robledo, and instructed her to purchase VCRs with Robledo's credit card (R. 2194). At that time Fara Quintero gave co-defendant a gold ring to sell because she needed cash. Ribera took the ring and sold it for $50, which Ribera gave to co-defendant. Instead of giving the $50 to Fara Quintero as promised, co-defendant used it to purchase cocaine (R. 2197, 2198).

On another occasion Ribera drove the defendant to a meeting place where the defendant had set up a conference with "El Negro," (Ramon Alvero) his boss in the narcotics business. The meeting was held in El Negro's Oldsmobile. After 45 minutes the defendant and co-defendant returned to Ribera's vehicle, and the

defendant was very aggravated and upset with El Negro because of his failure to set up a proposed drug deal (R. 2199-2202). The defendant said El Negro owed him a great deal, and that the defendant intended to "pay him back" for his treachery. The defendant and co-defendant stated in profane language that it was time to take care of business, and the defendant said he would blow El Negro away if he failed to set up the proposed deal (R. 2202). The defendant had Ribera drive them to El Negro's home, but El Negro was not there (R. 2203, 2204). The defendant tried to contact El Negro by beeper, but El Negro would not respond, and the defendant then stated he was going to kill El Negro when he found him (R. 2205).

On another occasion the defendant had Ribera drive him by the house of Sergio Godoy, a drug dealer who owed the defendant $250.00 from a prior deal. The defendant shot into the house numerous times with a .22 cal. Ruger, and Ribera subsequently found one of the casings in his car, which he turned over to police (R. 2208).

Ribera drove co-defendant to a second meeting with Fara Quintero, at which Quintero told co-defendant she was unable to purchase any VCRs with the visa card (in the name of Luis Robledo) co-defendant had given her. Co-defendant did not believe her (R. 2210-2212). Fara Quintero complained repeatedly to co-defendant concerning the $50 co-defendant owed her, and she

kept calling him and beeping him in an unsuccessful attempt to collect her money (R. 2213-2214). Shortly thereafter the defendant called Ribera and told him to pick up the defendants and drive them to Fara Quintero's home. Ribera flatly refused to do so (R. 2214). The defendant called back later and threatened to kill Ribera and his family because of Ribera's refusal to drive them to Fara Quintero's house. Ribera became understandably upset and told the defendant to meet him immediately at Babcock Park (R. 2215, 2216). During this call the defendant stated he would "do" Ribera just like he did El Negro (Fara Quintero and Sara Musa were murdered on April 22nd, 1986, and Ramon Alvero, a/k/a El Negro, and Daisy Ricard were killed on April 23rd, 1986). (R. 2217).

Ribera drove directly to Babcock Park, armed with a pistol in his waistband (R. 2218). Ribera went to the defendant's vehicle, and asked the defendant what was going on. The defendant told Ribera he knew too much and thus had to die. The defendant reached under his jacket but Ribera pulled his gun first and pointed it at the defendant's head. The defendant then repeated his threat to kill Ribera and his family, and sped away (R. 2220-2221).

Several days later co-defendant came to Ribera's house, saying that the police and brother of one victim were after the defendants, and that they needed a ride out of town. Co-defen-

dant showed Ribera polaroids of the body of El Negro (Ramon Alvero) and a women Ribera did not recognize. Co-defendant explained how they had gone to Fara Quintero's house and the defendant had pulled his gun out in the bathroom, after which they beat and shot the two women (R. 2222-2225). Ribera refused to help the defendants, and co-defendant responded "paybacks are a bitch" (R. 2226). In referring to the murders of El Negro and Fara Quintero, co-defendant said they had "taken care of business" (R. 2227). Co-defendant stated that the defendants killed Fara Quintero and Sara Musa because Fara kept bothering co-defendant about the $50 he owed her, and because Fara was telling people that co-defendant ripped her off (R. 2233, 2234).

Ribera finally decided to go to the police on May 6th, 1986 (R. 2229, 2230).

SGT. MacARTHUR (LEAD DETECTIVE)

The investigation of all nine murders was under his overall control. He conducted an in-depth interview of Carlos Ribera, in which Sergeant MacArthur obtained numerous details which were corroborated by unreleased data they possessed on the homicides (R. 2280-2298). Based on Ribera's statement MacArthur obtained a search warrant for the defendant's house (R. 2302). The first important evidence recovered was the defendant's diary address book which the defendant had shown to Ribera (R. 2304).

The relevant pages are reproduced at p. 233-250 of the record.[1] A polaroid camera was found in the defendant's bedroom, and in the bedroom closet numerous bullet holes were located in the floor, where the defendant had told Carlos Ribera he test-fired various weapons (R. 2331-2335). The search also revealed a Shell credit card in the name of Luis Robledo, and a Motorola T500 hand held police radio (R. 2338, 2348). An empty shell casing was recovered from the bedroom closet (R. 2360). An 1-94 immigration document in the name of Mario Amador was found (R. 3433). The defendant had a small amount of cocaine hidden under his mattress (R. 3448).

---

[1] The entry for January 21st, 1986 is "Mario 23,000." (R. 237). The entry for January 22, 1986, the date of Mario Amador and Roberto Alfonso's murder, is "Rueben, Paid $20,000 (for block), $10,000 to Roly, $12,000 to year.'' (R. 238), and attached to the page are two articles on the discovery of the two bodies, and at the bottom right corner of that page is the number "2" (R. 239). For January 28th, 1986, the day Michael Millot was murdered, the defendant wrote "Michael exiled. See 4 Feb" (R. 239), and the entry for February 4, 1986, contains a newspaper article on the murder of Michael Millot, with a number "3" in the bottom right corner (R. 241). The entry for March 1 contains two articles on the murders of Luis Robledo and Ulpiano Ledo which occurred two days earlier, and the number "5" appears at the bottom right corner (R. 243). The entry for April 22, 1986 (the day Fara Quintero and Sara Musa, lesbian lovers, were murdered) is "Dikes 2," with the number 7" in the lower right corner (R. 245). The entries for April 23 (date of murders of Ramon "El Negro" Alvero and Daisy Richard) and April 24, 1986, describe the defendant's flight to New York and operation there on his "broken ankle" (R. 246). Finally, the entry for April 26, 1986, contain newspaper articles on the murders of Ramon Alvero and Daisy Richard, and the number "9" in the bottom right corner (R. 247)

Sergeant MacArthur's investigation revealed the following as to the defendant's victims. Mario Amador and Roberto Alfonso were both drug dealers (R. 3420, 3430), as were the combo of Luis Robledo and Ulpiano Ledo (R. 3422, 23). Ramon Alvero (El Negro) was running a major cocaine ring at the time of his death (R. 3427). The other four victims, Michael Millot (R. 3421), Fara Quintero and Sara Musa (R. 3425, 26), and Daisy Ricard (R. 3429), were not involved in dealing narcotics.

ROBERT HART (BALLISTIC EXPERT)

As to the casings and projectiles from the Mario Amador/Robert Alfonso murder, all were .22 cal., nine rounds were fired from one .22 cal. weapon and four were fired from a different .22 cal. weapon. Four of the casings were very rare valor brand bullets made in Yugoslavia (R. 3340-3344).

Michael Millot was killed with a .9 mm. Smith and Wesson, the only victim not killed with a .22 cal. weapon (R. 3345, 46).

As to the Luis Robledo/Ulpiano Ledo murders, one of the shell casings found at the scene was the same rare valor brand used in the Amador/Alfonso murders. All the rounds were fired from the same .22 cal. weapon, which was different from either of the two guns used in the Amador/Alfonso murders (R. 3345-3348). The projectiles all had marking indicating a silencer was used.

A well made silencer leaves no markings, and none were found on the Amador/Alfonso projectiles (R. **3349-3350).**

In the Fara Quintero/Sara Musa murders, all **10** projectiles from their bodies were fired by the same .22 cal. weapon, and were all fired by one of the two guns used in the Amador/Alfonso murders (R. **3351-3352).** One casing was the same rare valor ammunition, and several others were equally rare Italian made Fiocchi rounds. All the projectiles had silencer marks (R. **3353),** indicating a different silencer was used than in Amador/Alfonso murders, which silencer had left no markings.

Of the four projectiles from Daisy Ricard, two were from one gun and two from another, with at least one of the guns being equipped with a silencer (R. **3353).** There were eight projectiles recovered from Ramon Alvero's body, which were fired from the same two guns which killed Daisy Ricard (R. **3354, 55).**

Hart also examined the bullet removed from the defendant's foot in a New York hospital on April 23rd, **1986,** the day after the Alvero/Ricard murders. Hart first used the hospital x-rays to confirm that the projectile he received was the one embedded in the defendant's foot prior to surgery (R. **3356-3360).** He then concluded, with absolute certainty, that this projectile was fired from one of the two guns used on Ramon Alvero and Daisy Ricard (R. **3361-3362).** He also examined the spent casing in the

defendant's closet and a spent casing found under Ramon Alvero's body, and determined they were fired from the same gun (R. 3365).

Hart also examined the casing which Carlos Ribera found in his car after the defendant shot up the house of Sergio Godoy. It was the same rare Italian Fiocchi brand found at the Quintero/Musa murder scene, and it had been fired in the same gun which fired the casing found under Ramon Alvero's body, and in the same gun which fired a casing found next to the body of Daisy Ricard (R. 3366).

With the exception of Michael Millot, all the victims were killed with the same make and model of .22 cal. semi-automatic pistol, of which Ruger is the most common, as well as easily fitted for a silencer (R. 3368, 69).

OTHER EVIDENCE

The State produced dozens of other witnesses in its case in chief, which the State will now summarize as rapidly as possible, in the order that the evidence was presented at trial.

There was no sign of forced entry at the Amador/Alfonso murder scene, but small amounts of cocaine and marijuana, and drug paraphernalia, were located therein (R. 2446, 2456-2462).

Nicholas Jacobelas is a special agent with the U.S. Customs Service, and Michael Millot worked for him as an undercover agent (R. 2536-2551).

Enrique Fernandez-Silva testified that Michael Millot worked for him as a gunsmith at Firearms International, and that Millot had bragged about being a federal agent. (R. 2584-2586). The defendant was a regular customer at the store. The store records reveal that on January 24, 1986, someone purporting to be Mario Amador (who was killed on January 22nd, 1986) purchased six firearms, five .22 cal. Rugers, and one Baretta (R. 2595-2600). Records also indicated that the defendant purchased two .22 cal. Rugers in November of 1985 (R. 2601, 2602).

Lewis Leider is a salesman at Firearms International, and he knew the defendant as a customer, and thought him to be a Sweetwater police officer (R. 2611). On January 23, 1986, the day after the Mario Amador/Roberto Alfonso murders, the defendant and another man came to the store and purchased five .22 cal. Rugers. The defendant's companion, who identified himself as Mario Amador and produced a driver's license in that name, filled out the firearms purchase forms (R. 2613-2618). When shown a photographic display, he picked out the picture of co-defendant as the man who was with the defendant that day and who presented himself as Mario Amador (R. 2617-2622). On the following day, January 24, 1986, the defendant and "Mario Amador" (actually co-

defendant) returned and picked up the five .22 cal. Rugers and the Baretta. The defendant was an active participant in the sale (R. 2622, 2623). Finally, Mr. Leider observed the defendant talking with Michael Millot numerous times, and Mr. Millot loved to talk about himself and his past (R. 2628, 29).

Ernest Bazan is a private investigator who knew Michael Millot. Millot told him that two Latin males, one of whom was a Sweetwater police officer, wanted him to make six silencers for .22 cal. Rugers (R. 2645-2648). This conversation took place around Christmas, 1985.

Michael Millot's body was found in a very inaccessible rural area (R. 2657-2661, 2672-74). After Millot's death a search of his house revealed parts of silencers and a Mac-10, and the defendant appeared at the Miramar police station and claimed the Mac-10. There was no drug or drug paraphernalia in Millot's home (R. 2679-2685). Millot's car was found submerged in a canal (R. 2691), and his body had been shot prior to being dumped (R. 2693).

The day after the murder of Michael Millot, co-defendant brought the defendant's burgundy Honda Accord to an auto upholstery store, and the front passenger seat was covered with blood (R. 2698-2706).

In February of 1986, the defendant's wife brought this same burgundy Honda Accord to Braman Honda because the lights kept going out. The diagnosis? Two .9 mm. projectiles (Millot was killed with a .9 mm. weapon) in the fuse panel of the dashboard (the defendant had told Carlos Ribera that some of the bullets had gone through Michael Millot's neck into the dashboard of his car) (R. 2728-2739). The man who picked up the car said his cousin was playing with an Uzi in the car and it accidently went off (R. 2740).

Joseph Benitez is an undercover U.S. Treasury agent. In December of 1985 he met the defendant while posing as a drug dealer that needed "protective equipment" (R. 2774, 2775). The defendant appeared very respectful of Benitez' status as a professed big time drug dealer (R. 2793). The defendant showed him an Uzi, Mac-10, and silencers, and the defendant said he could get grenades (R. 2776, 2777). The defendant test-fired into a phone book to prove the muffling capacity of a silencer. The defendant had two .22 cal. Ruger semi-automatic pistols with silencers attached (R. 2778), and Benitez said he wanted one like that, which the defendant delivered to him on New Year's Eve, 1985/1986 (R. 2778-2784).

There was no forced entry at the Luis Robledo/Ulpiano murder site, although small quantities of cocaine and marijuana, and drug paraphernalia were discovered (R. 2810-2820).

Co-defendant used a credit card in the name of Luis Robledo at the Chesapeake Hotel in April, 1986 (R. 2936-2939).

Luis Robledo's notebook contained the defendant's name and phone number (R. 2955).

Luis Robledo's visa card and driver's license were used to purchase VCRs at Kaufman and Roberts (R. 2965-2970).

There were no signs of forced entry at the Fara Quintero/Sara Musa homicide (R. 2974), though the phone jacks had been ripped from the wall (R. 2983). Luis Robledo's visa card was found inside a package of cigarettes on a table in Fara Quintero's apartment (Carlos Ribera testified that co-defendant gave Quintero that card along with instructions to purchase VCRs with it). (R. 2986). Fara Quintero and Sara Musa were lesbian lovers (R. 3004), (the day of their deaths the defendant wrote "Dikes 2" in his diary, R. 245).

Hialeah Detective Albert Nabut retrieved the jewelry of Quintero/Musa from a pawnshop where it had been pawned by co-defendant the day of their murder (R. 3008-3015). The defense stipulated that co-defendant's print was on the pawn slip (R. 3015).

The body of Daisy Ricard was found on a dirt road, partially in the bushes, which branches off from a little used paved road (R. **3029**). Ricard had blunt trauma head injuries which caused skull fractures, as well as numerous scratches and abrasions, as well as numerous bullet wounds, and she was dead before being dumped by the roadside (R. **3044-3053**).

The autopsy of Fara Quintero revealed two deep blunt trauma injuries to her head, consistent with a gun barrel, and the bullet wounds to her arms suggested she was taking evasive action when shot (R. **3121-3125**). Both her and Sara Musa were riddled with numerous projectiles (R. **3096-3120**).

Daisy Ricard's black watch was found next to her wrist, and it was dusted for prints (R. **3138, 39**). Her purse was located in a canal (R. **3148**). The defendant's name and phone number were located on a piece of paper in her home (R. **3153**). The defense stipulated that the defendant's fingerprints were on Daisy's watch, found next to her body. (T. **3156-3159**).

The body of Ramon Alvero was found in the trunk of his Oldsmobile, but he was dead before being stuffed in the trunk (R. **3195, 96**). He appeared to have defensive bullet wounds on his arms (R. **3197**). Latent prints were lifted off the trunk (R. **3200**). These prints belonged to co-defendant. (R. **3217**).

A flight attendant from Pan Am testified that on April 23, 1986, two males listed on the manifest as "Manny Cruz" (the defendant's nickname is "Manny") and Orlando Castro were very late arrivals on the 10:15 p.m. flight to J.F.K., and that Cruz was on crutches and in considerable pain from an injury to his leg or foot (R. 3226-3230).

New York City Police Detective Joseph Geshwin interviewed the defendant at Columbian Presbyterian Hospital in N.Y.C. at 3:20 a.m., April 24th, 1986. The defendant gave his correct name, and co-defendant was with him and also gave his correct name (R. 3242-3244). The defendant said he was shot in a random drive-by shooting outside a Broadway Theater 3 hours earlier (R. 3245-3246). The defendant had a small caliber bullet hole in his foot, and claimed to be, and had I.D. indicating that he was a Sweetwater police officer (R. 3247).

The defendant stipulated that the diary in his house was written in his handwriting (R. 3264).

Co-defendant used Luis Robledo's credit card at Eagle Overhauling Co. (R. 3275).

The co-defendant's fingerprints were on the firearms purchase forms for the five .22 cal. Rugers and one Baretta, which forms he filled out in the name of Mario Amador (R. 3280).

As to the shoot-up of Sergio Godoy's home by the defendant (because Godoy owed him **$250** dollars), the bullets smashed the windows and penetrated the walls of the children's bedroom (R. **3281-3283).**

The autopsy of Ramon Alvero revealed blunt force trauma above one eye (R. **3294),** numerous gunshots to head and torso **(R. 3295-3308),** and four gunshot wounds to his arms, indicating he was taking evasive action when shot (R. **3309-3311).**

DEFENDANT'S CASE

The defendant presented the testimony of clinical psychologist Syvil Marquit, as to the issue of his sanity, and the defendant himself then testified (against the advice of defense counsel).

DR. SYVIL MARQUIT

Dr. Marquit examined the defendant on four occasions (R. **3469),** and administered the Rorshach test and his own Unconscious Association Probe and Verbal Thematic Productivity Test (R. **3470).** He also took a personal, health and family history from the defendant (R. **3479-3481).** He believed it very significant that when the defendant played noseguard in football, he believed

his mission was to kill the quarterback (R. **3484).** The defendant enjoys punishing people. He joined a gang but was kicked out because he was too mean (R. **3485).** The defendant told Dr. Marquit that he killed a man while growing up in N.Y.C., because the man had bothered his mother, and that no one ever found out (R. **3486).** The defendant had a good service record, and spent 5 years as a Sweetwater police officer (R. **3489).** The defendant's mean streak began to gain control during his years as a police officer. Killing people makes the defendant feel important, and as time passed the defendant developed a need to kill (R. **3490, 91).** His need and love for violence fits the pattern of insanity. The defendant is "impelled to kill" and has an "impelling need" to kill (R. **3493).**

The defendant idolizes Hitler, particularly the way he wiped out his opposition so they could offer no further trouble (R. **3494).** He admired Stalin because he was ruthless and did not hesitate to kill (R. **3495).** The defendant has "unconscious impulses to kill,'' and by killing he makes himself so important as to be unstoppable **(R. 3497).** The defendant makes up excuses to enable him to kill, and "to understand his insanity you have to know how he is impelled" (R. **3498).** The defendant singled out drug dealers and convinced himself he had to exterminate them (R. **3500).** He must kill any group he feels threatened by, before they get him (R. **3501).** The defendant feels that drug dealers are the scourge of society, that they do not deserve a fair

trial, and that they must be eliminated. The defendant didn't kill his victims, he "exterminated" them. The defendant knows fully well, from five years as a police officer, that what he did was against the law, but the defendant is *so* "crazy" that he still thinks killing drug dealers is the right thing to do (R. **3503).**

The defendant's responses to the Rorshach test indicate severe psychosis, which according to Dr. Marquit is the equivalent of being legally insane (R. **3504).** Psychosis equals "major insanity," and a person who is psychotic is "grossly insane" (R. **3505).** The defendant is a paranoid schizophrenic with grandiose delusions (R. **3506).** The defendant cannot get along in our society with his ideas and needs:

> A. He can't get along in our society with his ideas and with his needs. He is a threat. He is a danger.
>
> Q. Is that because of his psychosis?
>
> A. It's, yeah, because he is crazy.
>
> **(R. 3508)**

The defendant was insane prior to the murders and he is insane today, however the defendant is fully competent to stand trial, as he fully understands the trial process (R. **3509).**

On cross-examination Dr. Marquit acknowledged that the defendant had a masters degree (R. **3518).** He stated it would not change his opinion to learn that the defendant was himself a drug dealer (R. 3521), and that the fact that the defendant lied on numerous occasions would not affect his opinion, since "I don't expect an insane man to be truthful" (R. 3522), (which is a rather paradoxical statement, given that he relied solely on data collected from the defendant in arriving at his diagnosis).

Dr. Marquit stated that psychosis equals insanity under Florida law (R. **3523).** The defendant has a very unique type of insanity, he is not insane in the way that other people are insane (R. **3526).** He admits that the defendant wants to avoid a conviction (R. **3528).** It would not change his opinion to learn (apparently for the first time) that the defendant used silencers, or that he profited financially from several of the murders (R. **3529-3530).** His opinion is based on the interviews and tests, not the defendant's behavior prior, during and after the murders (R. **3530-3532).** It does not matter that some victims were not drug dealers: the defendant decides who is and is not a drug dealer (R. **3533).** The fact that the defendant killed a government informant to avoid being arrested would not affect his opinion (R. **3540).**

The defendant is very goal oriented and intelligent, but acts under the effect of delusions (R. **3541, 42).** The defendant

knows that killing people is against the law, and that when murderers get caught, they get punished (R. **3543, 44).** The defendant is totally competent to stand trial (R. **3546).** It does not matter that four of the murders were for financial gain, or that several victims were not drug dealers, or that the defendant knew he would be severely punished if cauqht and convicted of murder (R. **3547-3552).**

MANUEL PARDO, JR. (THE DEFENDANT)

The defendant testified against the advice of defense counsel (R. **3561-3565).**

These killings were not murder because the victims were not human, but rather drug dealing parasites (R. **3566).** Someone had to put their foot down and send a message (R. **3568).** His goal was absolute justice for the scum, and by the way the cocaine under my bed belongs to co-defendant (R. **3573).** Like the Kamikaze pilots, he crashed into the aircraft carrier and took nine dregs of society with him (R. **3574).** The system does not work against drug dealers, they only understand brute force (R. **3575).** His co-defendant had nothinq to do with any of the murders (R. **3580).**

The defendant said he used silencers *so* he would not be apprehended (R. **3580, 81).** He went to N.Y.C. for medical

treatment of his bullet wound because he knew if treated in Miami, he would be arrested within a few hours (R. 3582). The defendant was actually offended that defense counsel would ask such a stupid question as to why he went to N.Y.C. for treatment (R. 3583). He lied to the N.Y.C. police about the source of his wound because "I couldn't very well tell him, Yes, I just came from Miami from exterminating two drug dealers (R. 3589).

On cross-examination the defendant displayed a sense of "humor," stating "I have plenty of overhead. You know how much bullets cost" (R. 3608), and later when again speaking of his overhead in relation to the murders, he stated "You got to count the wear and tear on the gun" (R. 3621). When asked if our system is based on killing people you don't like, the defendant responded that it should work that way (R. 3625). When asked if he had shot Daisy Ricard and Ramon Alvero at his in-laws ranch, near where Daisy's body was found, the defendant stated that he did kill them there because his in-laws are "deadset against illegal activities" (R. 3631). When asked about dumping the bodies, the defendant opined that it did not make much sense to drive around with a dead body in the car (R. 3633). The defendant said he killed three other drug dealers while a Sweetwater police officer (R. 3634, 35). He denied ever using cocaine (R. 3638). The defendant states he is not guilty of unlawfully killing a human being, because his victims were the undesirable dregs of society (as of course were the victims of his hero, Adolf Hitler), (R. 3641).

STATE'S REBUTTAL

The State presented the testimony of three court appointed psychiatrists to rebut the defendant's "evidence" of insanity.

DR. LEONARD HABER

"Crazy" is a slang term that no knowledgeable psychiatric expert would ever use to describe a diagnosis (R. **3657**). The defendant is not legally insane and has no mental defects (R. **3667**). Even if defendant was attempting to rid society of drug dealers, because he felt the system was not up to the task, that would not indicate the defendant is legally insane (R. **3681, 82**). The Roschach test is virtually useless in a criminal setting because it is too subject to manipulation, too open-ended (R. **3693**). The defendant is not legally insane, and whatever his motives are, they are not the product of a mental defect (R. **3698, 3699**).

DR. SANFORD JACOBSON

The defendant claimed that his motive was to get rid of evil people, because the legal system was floundering and was incapable of ridding society of these parasites (R. **3785**). The

defendant was well aware of what he did and why he did it (R. 3786). The defendant told Dr. Jacobson that most people would support what he did, but Jacobson believes the defendant lied when he made that statement (R. 3789).

There is absolutely no evidence indicating that the defendant suffers from a significant mental disorder. The defendant clearly does not suffer from a psychotic disorder (R. 3790). The defendant was legally sane; he has no mental defect or infirmity, rather he is anti-social and self-centered, which constitutes a personality disorder, and he is perfectly aware of what constitutes unlawful behavior (R. 3798, 99). The following passage puts the defendant's entire "insanity defense" in proper perspective:

> I mean, there is no doubt that Mr. Pardo is fully aware what constitutes wrongful behavior. Mr. Pardo says that he didn't exercise the greatest care to avoid getting caught. He was a little careless about some of the things he did. Well, that, to me, suggests that he clearly knew that there were legal implications for what he was doing. He had an awareness what he was doing was against the law, that it was illegal. Not even to get into morality, but he certainly knew it was illegal and he certainly knew it was a violation of societal standards, what society generally considers is wrong conduct.
>
> I mean, Mr. Pardo clearly knew that. He clearly knew what he was doing in terms of the actual acts themselves. So there was no difficulty on his part in knowing right from wrong or

> understanding what he did. And in my view, he didn't have any disorder that would have made is possible for him to lack those, anyway, but even if he did have a disorder, he still knew what he was doing and he knew right from wrong.
>
> (R. **3799, 3800)**

Dr. Jacobson had also examined the defendant as to his present competency to stand trial, and he found the defendant to be "extremely competent" (R. **3800).** Finally, the defendant's actions evinced a total appreciation for the criminality of his conduct (R. **3810).**

DR. LLOYD MILLER

The defendant does not suffer from any mental illness (R. **3856, 57).** The defendant stated he was on a mission to kill drug dealers, and that he enjoyed it (R. **3860).** The defendant stated he was not doing anything wrong, however the defendant took extensive steps to avoid getting apprehended. Dr. Miller did not believe the defendant was telling the truth when the defendant said he did nothing wrong, and he also believed the defendant was trying to hide his real motive, personal gain (R. **3861-3862).** The defendant is very intelligent, with an excellent memory. He has a sound, well organized mind (R. **3862, 63).** The defendant suffers no delusions and has no brain damage (R. **3864, 65).** The defendant is competent to stand trial, and in fact "did very well" on the competency questions (R. **3864).**

The defendant was definitely sane during the murders (R. 3872, 73), and he did everything he could to avoid being arrested (R. 3876), and the defendant told him that he did not want to be arrested.

STATEMENT OF THE ISSUES

I

WHETHER THE TRIAL COURT ERRED IN FAILING TO CONDUCT, SUA SPONTE, A COMPETENCY HEARING

II

WHETHER THE STATE PRESENTED SUFFICIENT EVIDENCE TO ESTABLISH THE DEFENDANT'S SANITY BEYOND A REASONABLE DOUBT

III

WHETHER THE TRIAL COURT ERRED IN DENYING A MISTRIAL BASED UPON PROSECUTORIAL COMMENTS CONCERNING THE DEFENDANT'S INSANITY DEFENSE

IV

WHETHER THE TRIAL COURT ERRED IN SENTENCING THE DEFENDANT TO DEATH

CROSS-APPEAL

I

WHETHER THE COURT ERRED IN REFUSING TO FIND THE AGGRAVATING FACTOR OF "...PRIOR VIOLENT FELONY..." AS TO ANY OF THE NINE MURDERS

II

WHETHER THE TRIAL COURT ERRED IN FINDING THE MITIGATING FACTOR "...NO SIGNIFICANT PRIOR CRIMINAL HISTORY..." AS TO ALL NINE MURDERS COMMITTED OVER A THREE MONTH PERIOD

SUMMARY OF ARGUMENT

The defendant's claim that the trial court erred in not conducting a competency hearing is, in a word, absurd. Prior to trial the court asked defense counsel if he was requesting a competency hearing (the court indicated it would be happy to appoint experts and hold a competency hearing if counsel so desired), and defense counsel responded by stipulating to the defendant's competency. The defendant's own so-called expert, Dr. Marquit, testified that the defendant was competent, and the State's psychiatrists found the defendant to be very intelligent and thoroughly competent, as the defendant's articulate if heartily contrived testimony indicates. The fact that the defendant did not follow defense counsel's advice, and that counsel felt the defendant did not understand that he was damaging his case by testifying, does not in any way indicate incompetence. The defendant knew fully well he had no case to damage, and he decided to play his "I'm a soldier" charade to the fullest. Whatever else Manuel Pardo, Jr. may be, he is not incompetent.

The defendant's claim that the State did not rebut his insanity defense beyond a reasonable doubt is, in two words, utterly absurd. Firstly, the defendant presented no evidence that he was insane, as his own expert admitted that the defendant knew the killings were unlawful, as opposed to morally

justified. With all due respect to Dr. Marquit's 50 years of practice, he would not know the McNaughten test if it jumped up and bit him in the backside. The evidence of sanity in this case, involving nine execution style murders over a three month period, was not merely evidence beyond a reasonable doubt, it was evidence beyond any doubt whatsoever.

The comments by the prosecutor, to the effect that the defendant was seeking to escape criminal responsibility by relying on a totality bogus insanity defense, which were in response to defense counsel's statement that the defendant should not be held responsible for the murders, were not an attack upon or in derogation of the insanity defense in general, but rather were directed to the defendant's pathetic attempt to claim insanity under the facts of this case, an attack which was wholly justified under the evidence adduced at trial. Secondly, the objections to the comments were sustained and the jury was instructed to disregard them. Finally, even if the comments were improper, the evidence of sanity was so overwhelming, and the evidence of insanity so nonexistent, that the comments cannot possibly be said to have deprived the defendant of a fair trial.

The defendant claims that the State did not prove that the murder of Mario Amador was for pecuniary gain, as the defendant testified he killed Amador because he was a drug

dealer. The defendant forgets that Carlos Ribera testified that the defendant told him he killed Mario Amador in order to steal the two kilos of cocaine the defendant was supposed to buy from Amador. The defendant also forgets the notations in the defendant's diary in reference to the defendant receiving $20,000 from Reuben for "a block" the day Amador was killed, with $10,000 "to Roly." At least co-defendant got an equal share.

The defendant next claims that the State did not prove that the murder of Michael Millot was committed to disrupt or hinder the lawful exercise of any governmental function. The State presented proof that Millot was indeed an active federal informant, and Carlos Ribera testified that both the defendant and co-defendant told him they killed Millot because they discovered that he was a federal informant, and they believed he was trying to set them up for a bust.

The defendant next argues that the State failed to prove that the murders were "cold, calculated and premeditated." The defendant truly must be barking in jest. These nine cold-blooded, deliberately planned execution murders are classic examples of where this aggravating factor should apply. The fact that the defendant told the jury he committed the murders to save society, does not mean the jurors have to believe it, especially where the State has presented overwhelming evidence to the contrary.

As to the trial court's refusal to find the mitigating factor "that the capacity of the defendant to appreciate the criminality of his conduct, or to conform his conduct to the requirements of the law, was substantially impaired," there was absolutely no evidence to support this factor, and indeed the evidence demonstrated the defendant possessed a highly refined appreciation for the criminality of his conduct, as evidenced by the elaborate and sophisticated measures taken by the defendant to avoid apprehension.

On cross-appeal, the State contends that the trial court blatantly refused to follow the law as pronounced by this Court, when it: 1) refused to apply the aggravating factor of "prior violent felony" to any of the nine murders, even though as to each murder there existed eight contemporaneous murder convictions, and 2) found the mitigating factor of no significant prior criminal history as to all nine murders, which is incomprehensible given that at the time of the Alvero/Ricard murders, the defendant had committed seven prior murders, at the time of the Quintero/Musa murders he had committed five prior murders, etc., etc. Even as to the first murders of Amador/Alfonso, the defendant had previously sold a silencer equipped .22 cal. Ruger to an undercover agent posing as a drug dealer, and offered to sell the agent machine guns and grenades (not to mention the defendant's statement to Carlos Ribera that

he was dealing drugs for El Negro at the time of the first murders, or the defendant's trial testimony that he killed three "drug dealers" while a Sweetwater police officer). The point is that the trial court felt that the prior murders and other crimes could not be used to rebut this mitigating factor, because the convictions for those crimes came too late, after the defendant's murder spree had been quelled by his apprehension. That is not and never has been the law, which focuses on the date of the prior criminal acts, not on the date of the convictions stemming therefrom, and indeed a conviction is not even required.

ARGUMENT

I

THE TRIAL COURT DID NOT ERR IN FAILING, SUA SPONTE, TO CONDUCT A COMPETENCY HEARING

Prior to trial defense counsel sought the appointment of experts to evaluate the defendant's sanity at the time of the murders. Counsel specifically stated that he was not seeking to raise the issue of competency to stand trial: "No one is saying he is incompetent" (R. 1437). The trial court then stated that it would be happy to have the doctors examine the defendant for competency and hold a competency hearing, if that is what counsel desired (R. 1438). Counsel then stated that a hearing was unnecessary, because counsel and the defendant's expert stipulate that the defendant is competent to stand trial (R. 1439).

At trial, the defendant's own expert testified that the defendant was fully competent (R. 3509, 3546), as did the State's experts (R. 3800, 3864). The defendant gave extensive trial testimony, summarized above, which was articulate, rational, organized and indicative of someone who knows exactly what he is doing. There exists not a shred of evidence to indicate that the defendant was incompetent under the standards contained in Fla.R.Crim.P. 3.211, and Dusky v. United States, 362 U.S. 402, 80 S.Ct. 788, 4 L.Ed.2d 824 (1960).

The defendant refers to an incident during sentencing, when the defendant, against the advice of counsel, insisted on making a statement to the advisory jury (R. 4180-4183). The fact that the defendant wanted to press full speed ahead with his "I'm a soldier" Kamikaze routine, despite counsel's advice that it would damage his case, is not evidence of incompetency. Rather, it is indicative of a strong-willed individual who knows full well his goose is cooked, and who thus has nothing to lose by continuing with his grandstand charade.

II

THE STATE PRESENTED SUFFICIENT AND INDEED OVERWHELMING EVIDENCE ESTABLISHING THE DEFENDANT'S SANITY BEYOND A REASONABLE DOUBT

The State presented three experts who testified that the defendant was totally sane. The evidence indicated nine ruthless execution style murders over a three month period, combined with elaborate measures to avoid apprehension. The defendant testified repeatedly that he knew he would get arrested if caught, and that he took extensive steps to avoid detection, such as using silencers, dumping bodies in isolated areas, flying to New York for medical treatment and lying to the New York police about the source of his bullet wound, etc. However, the most noteworthy aspect of the insanity issue is that the defendant's own expert, Dr. Marquit, testified that the defendant knew full well that what he was doing was against the law, and that if caught he would be severely punished (R. **3503**, **3543**, **3544**). There was in fact no evidence presented that the defendant was insane under the McNaughten test, because Dr. Marquit, the sole source of the defendant's insanity evidence, did not apply the McNaughten test.

Dr. Marquit testified that if a person is psychotic, they are legally insane in Florida (R. **3504**, **3505**, **3523**). That is absolutely an incorrect statement of the law. Dr. Marquit also

relied on the fact that the defendant has a need to kill, that he is impelled from within to kill (R. 3491-93), which again does not relate to the central precept of the McNaughten test; that the defendant is unable to understand that his conduct is unlawful, i.e. against the law. Absolutely nothing in Dr. Marquit's testimony suggests that the defendant did not understand that his three month killing spree was against the law, and indeed, Dr. Marquit admitted just the opposite, as indicated above.

III

THE TRIAL COURT DID NOT ERR IN DENYING THE DEFENDANT'S MOTION FOR MISTRIAL BASED ON PROSECUTORIAL COMMENTS AS TO THE DEFENDANT'S INSANITY DEFENSE

The allegedly improper comments are fully set out in the defendant's brief at p. 8-9 and 26-27 (R. 3951-53). In opening statement defense counsel stated "...he was not responsible for the acts he committed.'' (R. 2146). In commencing her totally justified attack upon the defendant's bogus insanity defense, the prosecutor twice used the phrase "escape criminal responsibility,'' and each time defense counsel's objection was sustained, and the second time the jury was admonished to disregard the prosecutor's use of the word escape (R. 3953).

The first point which must be stressed is that the prosecutor was not attempting to denigrate or demean the insanity defense in general, as occurred in Garron v. State, 528 So.2d 353 (Fla. 1988) wherein this Court stated:

> In response to rebuttal of the insanity defense, the assistant state attorney made several comments during cross-examination of court appointed psychiatrists and during closing argument, which were intended to discredit the insanity defense as a legal defense to the charge of murder. We believe that once the legislature has made the policy decision to accept insanity as a complete defense to a

> crime, it is not the responsibility of the prosecutor to place that issue before the jury in the form of repeated criticism of the defense in general. Whether that criticism is in the form of cross-examination, closing argument, or any other remark to the jury, it is reversible error to place the issue of the validity of the insanity defense before the trier of fact. To do so could only helplessly confuse the jury. The insanity defense is a policy question that has plagued courts, legislatures, and governments for decades. It is unnecessary to similarly plague injuries.
>
> Id. at 357

The prosecutor herein correctly portrayed the elements of the insanity defense and the State's burden to prove sanity beyond a reasonable doubt (R. 3996, 4000, 4001, 4059, 4060, 4064, 4066, 4076, 4077), and in no way can it be said that the prosecutor was attacking the defense in general. The comments were directed toward the defendant's attempt to rely on insanity as a means of escaping criminal responsibility when, in fact, there was absolutely no evidence of insanity before the jury. Even if the use of the word "escape" was improper,[2] the objections were sustained and an admonishment given. Motions for mistrial are addressed to the sound discretion of the court,

---

[2] The State does not concede this by any means. Based on the evidence presented at trial, including the defendant's obviously contrived testimony, and Dr. Marquit's admission that the defendant wanted very much to "beat this case" (R. 3528), the State submits that the prosecutor had ample evidence from which to argue that in effect the defendant was attempting to "pull the wool over the jurors' eyes."

Dufour v. State, 495 So.2d 154 (Fla. 1986), Marek v. State, 492 So.2d 1055 (Fla. 1986), and should only be granted when absolutely necessary, where the prejudice is so great that it "vitiates the entire trial," Duest v. State, 462 So.2d 446 at 448 (Fla. 1985). Normally, a curative instruction is sufficient: Buenoano v. State, 527 So.2d 194 (Fla. 1988), (references to defendant having torched the victim's home to collect insurance money, a crime not charged in indictment, cured by instruction to strike and disregard), Staten v. State, 500 So.2d 297 (Fla. 2d DCA 1986), (comment that defendant had been in jail for another offense cured by instruction), Johnson v. State, 486 So.2d 22 (Fla. 1st DCA 1986), (comment that witness thought defendant had pled guilty to crime charged could have been cured by instruction), Irizarry v. State, 496 So.2d 822 (Fla. 1986), (reference to defendant's polygraph test cured by instruction), and Davis v. State, 461 So.2d 67 (Fla. 1984), (same).

It is well settled that improper prosecutorial comments do not require reversal unless they are so egregious as to deny the defendant a fair trial. State v. Murray, 443 So.2d 955 (Fla. 1984). Improper comments are subject to harmless error analysis. State v. DiGuilio, 491 So.2d 1129 (Fla. 1986). In the instant case any error in these two isolated comments, to which objections were sustained and an admonishment given, was harmless beyond *any* doubt given the completely overwhelming

nature of the evidence of sanity, and indeed there was no evidence that the defendant was insane under the McNaughten standard.

In Rosso v. State, 505 So.2d 611 (Fla. 3d DCA 1987), the defendant shot her lover and a 15 year old neighbor, and she presented a legitimate insanity defense such that the Third District concluded:

> The state may not excuse the prosecutor's misconduct as harmless where the evidence of Rosso's insanity was extremely equivocal and far from "overwhelming."

Id. at 613

In Rosso the prosecutor's comments included comments on the defendant's silence which were themselves reversible. More to the point, the vitriolic comments on the defendant's insanity defense totally misrepresented the close nature of the insanity issue in that case. The comments were repeated throughout the prosecutor's argument and were totally unjustified. That is certainly a far cry from the scenario presented herein.

In sum, even if the comments were improper, such error was harmless beyond any doubt whatsoever.

IV

THE TRIAL COURT PROPERLY IMPOSED NINE DEATH SENTENCES UPON THE DEFENDANT

The defendant raises various challenges to the trial court's findings on several aggravating and mitigating factors, each of which will be addressed in turn.

"PECUNIARY GAIN" AS TO MARIO AMADOR

State witness Carlos Ribera testified that the defendant told him that he killed Amador as part of a planned drug rip-off, in order to steal the two kilos of cocaine which the defendant was supposed to purchase from Amador (R. 2171-2173). The defendant also put notations in his diary the day of the murder (R. 238), indicating he had received $20,000 from Reuben for "a block," with $10,000 going to co-defendant. The fact that the defendant testified he committed the murder to cleanse society of Mr. Amador's presence, does not mean the jury was required to take him seriously.

"DISRUPT OR HINDER GOVERNMENTAL FUNCTION" AS TO MICHAEL MILLOT

The State presented evidence that Millot was an active federal informant (R. 2536-2551), and Carlos Ribera testified

that both the defendant and co-defendant told him they killed Millot because they discovered he was a federal informant, and they believed Millot was trying to set them up to be busted (R. 2163-2169). Again, the jury is perfectly free to disregard the defendant's self-serving statements as to why he killed his victims.

"COLD, CALCULATED, AND PREMEDITATED" AS TO ALL NINE VICTIMS

All nine murders were execution style, cold-blooded killings borne of a pre-designed plan or scheme, murders for which this aggravating factor was designed. Rogers v. State, 511 So.2d 526 (Fla. 1987).

TRIAL COURT'S REFUSAL TO FIND "DIMINISHED CAPACITY" MITIGATING FACTOR

The evidence relative to the crimes, the testimony of the State's three experts, and the defendant's own testimony show that, if anything, the defendant had a heightened appreciation for the criminality of his conduct and perfect ability to conform his conduct to the requirements of law, and the trial court was well within its discretion in rejecting this mitigating factor. Provenzano v. State, 497 So.2d 1177, 1184 (Fla. 1986).

CROSS-APPEAL

I

THE TRIAL COURT ERRED IN NOT FINDING THE "PRIOR VIOLENT FELONY" AGGRAVATING FACTOR AS TO ANY OF THE NINE MURDERS

The jury was instructed on this aggravating factor (R. 4152, 4243), and the prosecutor explained to the jury that, as to each murder, this factor was established by the eight contemporaneous murder convictions (R. 4207, 4208). In its sentencing order the trial court refused to find this factor as to *any* of the murders, the court stating it felt the legislature did not intend that contemporaneous convictions should qualify under this factor (R. 1010). In so doing the trial court ignored an unbroken line of cases from this Court, including LeCroy v. State, 533 So.2d 750, 755 (Fla. 1988), Correll v. State, 523 So.2d 562, 568 (Fla. 1988), Craig v. State, 510 So.2d 857, 868 (Fla. 1987), and a host of others, holding that such contemporaneous convictions do satisfy the requirements for this factor.

In Echols v. State, 484 So.2d 568 (Fla. 1985), the trial court had omitted this factor from its sentencing order even though the contemporaneous violent felonies upon the surviving victim established this factor as a matter of law. This Court rectified the omission on appeal by considering this factor in support of the trial court's override:

> We cannot determine whether the trial judge overlooked this fourth aaaravatina factor or was uncertain as to whether convictions for crimes committed concurrently with the capital crime could be used in aggravation. However. we note its presence in accordance with our responsibility to review the entire record in death penalty cases and the well-established appellate rule that all evidence and matters appearing in the record should be considered which support the trial court's decision. Fla.R.App.P. 9.140(f); §§59.04 and 924.33, Fla. Stat. (1981); *Cohen v. Mohawk, Inc.*, 137 So.2d 222 (Fla. 1962); *Congregation Temple De Hirsh v. Aronson*, 128 So.2d 585 (Fla. 1961); *In Re Wingo's Guardianship*, 57 So.2d 883 (Fla. 1952); *Perkins v. City of Coral Gables*, 57 So.2d 663 (Fla. 1952); *Wallace v. State*, 41 Fla. 547, 26 So. 713 (1899).
>
> (Emphasis added), Id. at 576, 577

The State respectfully submits that this factor, given the eight contemporaneous murder convictions, was the most compelling aggravating factor present, and surely this Court will recognize its validity and impact in its decision herein.

II

THE TRIAL COURT ERRED IN FINDING THE MITIGATING FACTOR OF "NO SIGNIFICANT PRIOR CRIMINAL HISTORY" AS TO EACH AND EVERY MURDER

At the time of the Ricard/Alvero murders, the defendant had already committed seven murders, at the time of the Quintero/Musa murders, he had committed five prior murders, etc., etc. Even as to the initial two murders of Amador/Alfonso, the State presented evidence that the defendant, in December 1985, sold a silencer equipped .22 cal. Ruger to a Federal agent posing as a drug dealer, not to mention the defendant's statements to Carlos Ribera that he was dealing drugs for Ramon Alvero at the time of the Amador/Alfonso murders (and of course the defendant's testimony that he committed perjury and killed 3 drug dealers while a Sweetwater police officer). The trial court obviously felt that the prior murders and other crimes could not be used to rebut this mitigating factor, because the convictions came too late, after the series of murders had ended. The trial court's position is contrary to Florida law, as the only requirement is that the criminal activity, not conviction for that activity, must occur prior to murder for which the defendant is being sentenced. Perry v. State, 522 So.2d 817 (Fla. 1988). It is absolutely absurd for the defendant to receive the benefit of this mitigating factor, especially as to the seven murders committed after the initial

Amador/Alfonso murders, and this Court will surely remedy this miscarriage as well.

CONCLUSION

The judgments and sentences of death are proper, and should be affirmed.

Respectfully submitted,

ROBERT A. BUTTERWORTH
Attorney General

RALPH BARREIRA
Florida Bar #0374490
Assistant Attorney General
Department of Legal Affairs
401 N. W. 2nd Avenue, Suite N921
Miami, Florida 33128
(305) 377-5441

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing INITIAL BRIEF OF APPELLEE/CROSS-APPELLANT was furnished by mail to CALIANNE LANTZ, 9100 South Dadeland Blvd., Suite 512, Miami, Florida 33156 on this 7 day of November, 1989.

RALPH BARREIRA

/bf