

IN THE SUPREME COURT OF FLORIDA

CASE NO. 73,648

ROLANDO GARCIA,

Appellant,

vs.

THE STATE OF FLORIDA,

Appellee,

FILED

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

CORRECTED BRIEF OF APPELLEE

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INTRODUCTION

Appellee, the **State of Florida**, was the prosecution in the trial court and Appellant, **Rolando Garcia**, was the defendant. The parties will be referred to as they stood in the lower court. The symbol "R" will be used to refer to the 4,308 page record on appeal. All emphasis is as in original unless otherwise specified.

STATEMENT OF THE CASE

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

STATEMENT OF THE FACTS

Although the defendant's Statement of the Facts is fair and accurate, it is not sufficiently comprehensive in its scope, and the State must therefore reject the defendant's Statement of the Facts and substitute instead the following factual summation:

The State presented dozens of witnesses, the most important of whom was Carlos Ribera, whose testimony read as follows:

Carlos Ribera

Ribera worked at Rainbow Video, where many of the customers were drug dealers. Ribera needed money badly and was attempting to obtain a job off-loading drugs. (R.2185). Ribera met the defendant at Rainbow Video. The defendant repeatedly bragged to Ribera about his drug deals and bigtime connections. (R.2187, 2188). The defendant told Ribera that the defendant and Sergio Godoy had just made a big drug deal together. Ribera quit working at the store in November of 1985, because the owner, his cousin, had failed to get him a job in the drug business. (R.2189).

In December 1985 or January 1986, Ribera approached the defendant about a possible job in the defendant's drug business. Ribera met the defendant at a restaurant and asked about a job

off-loading drugs. (R.2190, 2191). The defendant bragged about working in drug labs producing cocaine since he was 14 years old. (R.2191). The defendant told Ribera about his "uncle", Manuel Pardo, whom the defendant described as a federal drug agent who participated in the defendant's drug business. (R.2193).

In January and February of 1986, Ribera saw the defendant almost every day, acting as the defendant's chauffeur because the defendant had no driver's license. The defendant kept promising to get Ribera involved in his next deal. (R.2194-2197).

Sometime in February 1986, the defendant told Ribera they were going to his uncle's (Manuel Pardo) to discuss an upcoming drug deal. Before leaving for Pardo's apartment, the defendant showed Ribera newspaper clippings about drug murders, and the defendant stated that the defendant and Pardo had killed these people. The defendant referred to one of the victims as Mario, and said that he and Pardo had ripped Mario off for two kilos and then murdered him. (R.2205). The defendant also said they ripped off Luis Robledo for two or three kilos and then murdered him as well. (R.2205).

The defendant and Ribera then drove to Pardo's apartment. This was the first time Ribera had been to Pardo's home. When they arrived Pardo was cleaning a Mac 11 machine gun, which Pardo called his violin. Pardo was also cleaning the ammunition, which Pardo stated was done to remove any fingerprints. (R.2215).

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While in Pardo's bedroom, Pardo took out more newspaper clippings, which were inside a plastic folder. The defendant and Pardo then took turns explaining the details of how they had ripped off and killed Mario Amador.

A. Well, they started referring to Mario.

Rolando said that was his drug deal because he knew Mario and that they got there and they waited until it was dark and that they had two Motorola police radios and they were listening to the calls to see -- just to make sure that there was no police officer around there.

And then they went inside and Rolando started laughing and he referred to the briefcase, the brown briefcase that he showed me, that he was referring to how funny it was because Pardo was walking in like if it was full of money and they walked in and Mario opened the door and Manuel Pardo said he sat down with Mario, went and got the drugs in a tray, the cocaine, and Pardo started laughing.

He says, "Yeah, that's when I opened the briefcase and I took out my .22," and then he referred to the .22 Ruger that they had on top of the -- on top of Pardo's dresser or desk.

And that's when Rolando Garcia says, "Yeah, that's when the other guy started running upstairs and I got him and I brought him down and we handcuffed him and we put him face down and we executed him. We emptied -- we emptied our guns, our clips inside these two guys."

Q. When the defendant laughed about what was in the brief case, did he explain why he thought it was funny?

A. Yes, because there was no money. What was in there was the gun, one of the guns that they were going to use to kill these guys.

(R.2217, 2218).

In Pardo's apartment were two motorola handheld police radios, which the defendant said they monitored during murders to ensure that neighbors had not called the police. (R.2219). Ribera was shown a book with the dates and names of the murders and how much cocaine was stolen. The defendant and Pardo called it their diary, and there were newspaper articles on the murders inside it. (R.2220,2221). Ribera was shown articles on both the Mario Amador and Luis Robledo murders. (R.2222). Pardo told Ribera that Pardo had had several deals with Robledo prior to the murder. (R.2225). The defendant and Pardo described the murder of Luis Robledo as follows:

A. Yes, Luis Robledo.

Q. What were you told by the defendant about that murder victim, Luis Robledo at that time, the first visit about which you have been telling us?

A. That was -- Manuel Pardo said that was his drug deal, that he knew Luis Robledo through a long relationship, that that was his boss, not his boss, that was his connection.

And that's when they went in depth, that they got there and they both were upstairs and they knocked on the door and the guy dressed in white told him that Luis Robledo wasn't there, so Manny says, "We went back in the car and we waited

for about, I think it was 15 minutes," and they go upstairs.

Rolando says, "Yeah, that's when I noticed the guy dressed in white was looking at us from the balcony."

So they went upstairs, same briefcase they referred to, and when they went upstairs they went inside.

Rolando said he sat down by the guy dressed in white because the guy dressed in white had a gun under -- not a gun -- had his hand under one of those little pillows on top of the couch and then Manny -- Manny says, "Yeah, that's when I went to the back with Luis Robledo to get the drugs,!" and that's when Manny starts laughing and he goes, "Yeah, because I used permission to use the bathroom," and that's when he told me that how they put the .22 Ruger together and that he came barging out of the bathroom and he shot Luis Robledo and that's when Rolando says, "Yeah, because, I was -- can I put it in his terms, that he was --"

MS. WEINTRAUB: Permission from the court.

THE COURT: Whatever he said.

A. -- that he was scared shitless and that he threw himself on the floor as Pardo was shooting because shots were being -- flying everywhere.

Q. Now, you just said how the gun was put together.

What were you told?

A. Well, Pardo went to his closet and took out Marine Corps fatigues that they used and he showed me where he put the silencers and the clips and where the gun was when they came inside and when they walked in with the briefcase to pretend it was full of money.

He told me when he went to the bathroom he put it together. He put the clip in and how he rolled the silencer on.

(R.2225, 2226).

While inside Pardo's apartment, Ribera was shown a .22 caliber Ruger and two silencers, one of which was attached to the barrel of the Ruger. (R.2227). The defendant said they used silenced Rugers to do the murders, which were done for the purpose of stealing the victim's drugs. (R.2228). On a later occasion at the defendant's trailer home, the defendant showed Ribera a .25 caliber Baretta which the defendant stated was taken from Robledo's apartment. (R.2229).

During a second visit to Pardo's apartment with the defendant, Ribera was shown numerous credit cards and a driver's license in the name of Luis Robledo, as well as identification in the name of Mario Amador. (R.2231). At that time, the defendant told Ribera about a big two kilogram deal that was in the works, in which Ribera might be allowed to participate.

(R.2232). While in Pardo's bedroom the defendant told Pardo to show Ribera the pictures. Pardo then retrieved polaroid pictures from his bedroom closet, pictures of the dead bodies of Mario Amador and Luis Robledo, which Pardo took after each murder. (R.2234). Also during this visit to Pardo's apartment, Pardo gave the defendant Luis Robledo's Visa card and told the defendant to buy VCRs with it. Ribera was with the defendant

when he brought two VCRs at Kaufman & Roberts with Robledo's Visa card. The defendant placed his own picture on Robledo's driver's license, which he used as identification during the purchase. (R.2235, 2236). Ribera was also with the defendant when he used Robledo's credit cards at Eagle Overhauling Co. and the Chesapeake Hotel. (R.2237, 2238).

On his final visit to Pardo's apartment with the defendant, Ribera told them that he did not think they were going to get him any job, and that he might as well try and get one somewhere else. Pardo told him to hang on, that they had a big deal in Chicago lined up. (R.2240).

On one occasion when Ribera was driving both the defendant and Pardo, they told him to drive by the house of Sergio Godoy, whom Ribera knew to be a drug dealer from his days at Rainbow Video. The defendant said Godoy owed them both money. After driving by slowly, they turned around and passed by again. This time Pardo fired numerous rounds into the house with a silenced .22 caliber Ruger pistol. (R.2241). Ribera later found a spent .22 caliber casing in his car, which he turned over to the Hialeah police. (R.2245). The defendant also left three magazines from Luis Robledo's .25 caliber Baretta in Ribera's glove box, which Ribera also turned over to the police. (R.2246).

Sometime in March or April 1986, Ribera drove the defendant and Pardo to a meeting with their drug boss, who they referred to as "El Negro" (Ramon Alvaro). They were supposed to discuss the big upcoming Ohio drug deal. (R.2247). They rendezvoused with a black Oldsmobile, and the defendant and Pardo were inside the Oldsmobile for 45 minutes. When they returned both the defendant and Pardo were angry with El Negro (R.2249). Pardo said the Ohio deal had fallen through, and he was furious with El Negro because of all the things Pardo had done for him in the past. (R.2250). The defendant told Pardo to calm down, the deal would work out, and Pardo stated that if El Negro did not deliver, they would kill him. (R.2250).

While still in Ribera's vehicle, the defendant got a beep from Fara Quintero (one of the two female victims in the fourth double murder, evidence of whose murders were admitted as "other crimes" evidence under Fla.R.Evid. §90.404(2),). The defendant became enraged when beeped by Fara, screaming that he could not believe what these chicks were doing over the \$50.00 he owed Fara, and that the girls were ruining his reputation in the drug world. (R.2251).

Also during their drive, the defendant told Ribera that El Negro was upset because they ripped off and murdered two of his customers, and that this was why El Negro did not want them to participate in any more of his drug deals. (R.2251).

During his relationship with the defendant, Ribera and the defendant would visit the C & R Marina almost every day. On one occasion Pardo was also present, and while in a rear office Pardo took out a silenced .22 caliber Ruger and shot into the office wall, stating, "This is how I did Luis (Robledo)", (R.2252).

On another trip to the Marina the defendant introduced Ribera to Fara Quintero, and later the defendant stated "This is a stupid dike," ... a bitch that I know". (R.2253). Ribera subsequently went with the defendant to Fara Quintero's apartment, where the defendant gave Fara Luis Robledo's Visa, American Express and Amoco credit cards, and told her to purchase VCRs because the defendant needed the money. (R.2255). Later Fara called the defendant and said she needed to talk to him about the credit cards. Ribera and the defendant returned to Fara's apartment, which she shared with a girl named Sara Musa. The defendant referred to them as "dikes". (R.2256).

Once at the girls' apartment, Fara told the defendant that she tried to purchase the VCRs but that the store wanted proof that she was Luis Robledo's wife. She showed them a telephone and china setting she had bought, and stated that she would try to purchase VCRs again the next day. The defendant stressed to Fara how much he needed the VCRs to obtain cash. (R.2257).

After Ribera and the defendant left, the defendant was angry with the girls because he did not believe they really tried to buy the VCRs. (R.2258).

During the above visit, Fara gave the defendant a wedding band, which the defendant gave to Ribera to sell. Ribera sold it at a jewelry store on Flagler Street, in exchange for \$50.00. Ribera gave the \$50.00 to the defendant, who used it to buy a gram of cocaine. The defendant said he would give Fara the \$50.00 when she came up with the VCRs. (R.2558-2260).

Shortly thereafter, Ribera drove the defendant and Pardo to El Negro's condominium on Fontainebleu Boulevard. They could not get past the guard, because El Negro would not answer the phone, nor would he answer their persistent attempts to beep him. (R.2261). Both the defendant and Pardo were extremely angry with El Negro, and they began discussing ways to murder him. (R.2262). Ribera drove the defendant and Pardo to El Negro's complex a second time, and again he refused to answer the phone or respond to their beeps. (R.2263).

After this second failure to contact El Negro, the defendant and Pardo stated it was time to "take care of business," because they had become the laughing stock of the drug business. They were going to kill El Negro for not coming through on the proposed big drug deal. (R.2264). It was during

this same time period that Fara Quintero began incessantly beeping the defendant about the \$50.00 the defendant owed her for the ring. The defendant and Pardo stated that they were going to kill her as well, because she had not delivered on the VCRs, and was bad-mouthing the defendant to all his drug dealer friends. (R.2264, 2265).

Shortly thereafter, Pardo called Ribera and told him they needed Ribera to drive them to El Negro's house. Ribera told Pardo he was busy and could not do it. Later that day the defendant called Ribera and asked if Ribera could meet them on Fontainebleu Boulevard and pick up Pardo's six year old daughter. The defendant said they were going to find El Negro that night one way or the other. Ribera agreed, and picked up Pardo's daughter at the agreed location and drove her home. (R.2266, 2267).

During the same time period, the defendant called and asked Ribera if he could drive the defendant and Pardo to Fara Quintero's apartment, so the defendant could "payback" the \$50.00 he owed Fara. Ribera refused, because he knew what the defendant meant, and did not want to be involved. (R.2267).

Pardo called Ribera a final time, and again asked Ribera to drive Pardo and the defendant to El Negro's house. Ribera told Pardo he knew what was going to happen, and did not want any

part of it. Pardo then threatened to kill Ribera as well as Ribera's family because Ribera knew too much already. Ribera told Pardo that if he wanted to kill him, to meet him at Babcock Park. (R.2269). Ribera then drove to the Park, and Pardo arrived in his burgundy civic. Ribera walked over to Pardo's vehicle, and told Pardo there was nothing to worry about, that Ribera would not tell anyone what he knew. Pardo said "You know too much, I'm going to kill your family, I'm going to kill you," and he reached under his jacket and began to remove a handgun. By that time Ribera had already pulled his own handgun (.380 automatic). Ribera again stated this was all ridiculous, he would tell no one. Pardo repeated his threat to kill Ribera and his family, and then sped away. (R.2270-2272).

Sometime thereafter Ribera got another call from Pardo, who stated that he was going to kill Ribera just like he killed El Negro and the girls. Later that same day the defendant came to Ribera's house, with his clothes a mess and acting very nervous. The defendant said they had taken care of the "bitches" and El Negro, and the defendant showed Ribera polaroid pictures of Fara's and El Negro's bodies. (R.2273-2275). The defendant begged Ribera to drive the defendant and Pardo out of town, to Washington, D.C., but Ribera refused. The defendant then stated that paybacks are a bitch, and that the defendant would payback Ribera just like he payed back Fara and El Negro. (R.2276).

During this conversation at Ribera's house, the defendant said they beat the "crap (sic)" out of the fat one, Sara. They used the same bathroom ruse as at Luis Robledo's. After throwing the girls on the floor and beating up the fat one, they emptied their guns into them. (R.2276).

During their relationship, the defendant had Ribera drive to a canal, where the defendant smashed the .25 caliber Baretta he took from Robledo's apartment **on the** concrete, **then** threw it in the canal, along with Luis Robledo's picture, which the defendant had removed **from Robledo's** driver's license. (R.2277, 2278).

After the Babcock Park confrontation with Pardo, Ribera moved his family out of town, contacted a Hialeah police detective whom he knew (R.2279), and proceeded to tell the police everything he knew.

Sgt. Theodore MacArthur

After Carlos Ribera began providing information to the Hialeah police, Sergeant MacArthur was placed in charge of all nine murder investigations. (R.1943). Ribera related numerous details of the Amador/Alphonso, Robledo/Ledo, and Ramon Alvaro murders (Ribera referred to Alvaro only as El Negro), which Sgt. MacArthur knew to be accurate. (R.1946-1959). MacArthur

obtained the credit card records for Luis Robledo, because Ribera stated the defendant had used Robledo's credit cards in Ribera's presence. (R.1962). Two VCRs had been purchased at Kaufman & Roberts on April 2, 1986 and April 3, 1986, using Robledo's Visa card and driver's license. (R.1965). MacArthur had these records processed for fingerprints. He did the same for documents from a purchase at Eagle Overhauling, in which Robledo's American Express card and driver's license were used to purchase stereo equipment. (R.1966). Sgt. MacArthur received Robledo's Visa card from the Hialeah police, which had been discovered in the apartment of Fara Quintero/Sara Musa after their murder. (R.1971). There were no deals or promises made to Ribera in exchange for his statements. (R.1922).

Based on the above, Sgt. MacArthur obtained a search warrant for Pardo's apartment. (R.1973). An open briefcase in Pardo's bedroom contained a plastic folder, and in that folder was Luis Robledo's Shell credit card. (1976). The folder also contained English and Spanish newspaper clippings concerning the discovery of the bodies of Amador/Alphonso and Robledo/Ledo, and it contained Mario Amador's Immigration papers and documents from a New York hospital, and a New York City Police Department police report concerning Pardo's foot injury, supposedly received in a random driveby shooting in that city. (R.1975-1983). Sgt. MacArthur discovered Sweetwater Police Department identification in Pardo's name, and Pardo's address book, which

contained the name and telephone number of Luis Robledo. (R.1988-1990). Sgt. MacArthur confiscated Pardo's diary, the contents of which are described in detail below. (R.1991-1997).

Sgt. MacArthur recovered a motorola police walkie-talkie with Metro-Dade police frequencies inscribed thereon, which had formally been the property of the Sweetwater Police Department. (R.2016-2019). He located a half-constructed safe in the floor of the bedroom closet. Ribera had told Sgt. MacArthur that the defendant had said he used Luis Robledo's credit card to rent a jackhammer to work on building the safe. (R.2023). Flattened projectiles were recovered from the closet floor. Ribera had told Sgt. MacArthur that Pardo test fired silencer equipped weapons in this manner. (.2025). A .22 caliber casing was also recovered.

Pardo was at home when the search was conducted. His leg was in a cast, and Pardo stated he hurt his leg falling down stairs. A set of crutches was confiscated. (R.2028). A small amount of cocaine was found in the bedroom. (R.3030).

Sgt. MacArthur told Ribera that if Ribera was involved in the murders, he would be charged and that Ribera would get no deals from the State. (2037).

Sgt. MacArthur impounded records from Firearms International. The series of numbers in Pardo's diary correspond to the serial numbers of five .22 caliber Rugers purchased at that store on January 24, 1986, two days after the Amador/Alphonso murders. (R.2046, 2047). The guns were purchased by Pardo and a man who claimed to be Mario Amador. The sales clerk picked out the defendant's photo as the man who signed the purchase forms as Mario Amador. (R.2053). The forms were processed for fingerprints. (R.2055). The clerk did not recognize a picture of Carlos Ribera. (R.2053).

Sgt. MacArthur went to the scene of the Robledo/Ledo murders on February 27, 1986. There were quantities of cocaine and marijuana and drug paraphernalia. The apartment was ransacked, and there were no signs of forced entry. (R.2058, 2059). Luis Robledo's wallet could not be located. There was a gun case for a .25 caliber Baretta, but no Baretta. (R.2060).

The defendant's fingerprint was found on the trunk of Ramon Alvaro's car, inside of which Alvaro's body was found. (R.2162). Luis Robledo's address book contained the name and phone number of Manuel Pardo. (R.2163). The defendant's fingerprints were also found on the plastic folder found in a briefcase at Pardo's residence. (R.2174).

Louis Leiter

Leiter is a sales clerk at Firearms International. On January 24, 1986 he sold five .22 caliber Rugers to a man claiming to be Mario Amador, and who possessed a driver's license in that name. He picked out the defendant's picture as the man who claimed to be Mario Amador, and made an in-court identification of the Defendant. Pardo was with the defendant during the purchase, as he knew Pardo from previous firearms purchases at the store. (R.2088-2099).

Officer Willie Marshall

struggle, and the only blood was directly under the bodies. (R.2388). None of the neighbors heard any gunshots. (R.2396).

Technician Gerald Reichardt

Reichardt was the crime scene supervisor at the Amador/Alphonso murder scene. There were no signs of forced entry or a

struggle. (R.2410, 2411). The bodies were found face down on the floor 15 feet apart, and appeared to have been shot in the back of the head while in that position. (R.2414). He recovered a spent projectile and numerous spent casings. He discovered a bag of marijuana and a packet of white powder, along with a triple beam scale. (R.2419, 2420).

John I

Hegerty was a friend of the defendant's. He also knew Mario Amador, and knew that Amador sold cocaine. (R.2449, 2450). Hegerty introduced Mario Amador to the defendant. (R.2456). Hegerty had purchased a kilogram of cocaine from Amador on a prior occasion, and when Hegerty told the defendant about this prior purchase, the defendant stated that he would also like to purchase a kilogram from Amador. However Hegerty was suspicious of the defendant, so Hegerty attempted to warn Amador of his suspicions by leaving a message on Amador's phone recorder. The message informed Amador to be very careful in dealing with the defendant, because the defendant might try to rip him off. (R.2485-2487). Amador subsequently called Hegerty and stated that the defendant wanted to purchase a kilogram from Amador, and Hegerty replied "You got my message, its up to you" (R.2488).

George Girling

Girling was a friend of Hegerty's, and had participated in Amador's prior sale of a kilogram to Hegerty. (R.2461). Girling knew the defendant as a drug dealer, and had sold the defendant drugs in the past. (R.2482).

Alan Lopez

Lopez worked with Amador and knew Amador was a drug dealer. (R.2490). Amador told him that the defendant wanted to buy a kilogram of cocaine from Amador. Amador further told Lopez that he was afraid of selling it to the defendant alone because he did not trust the defendant, and Amador asked Lopez if Lopez would be present as a back-up when he sold the coke to the defendant. (R.2494, 2495).

Mel Leichtman

Leichtman lived in the apartment next to Luis Robledo. He was at home when the murders occurred but did not hear any gunfire. A bullet had come through the wall, just missing his head, and imbedded in the opposite wall. He pointed out the location to the officers, one of whom removed the bullet. (R.2562, 2563).

Technician Bernie Brewer

Brewer is a Metro-Dade fingerprint analyst. He processed a Miami Herald Newspaper article (concerning the discovery of the Amador/Alphonso bodies) confiscated from Pardo's briefcase. It contained the fingerprints of the defendant. (R.2573-2576). He also examined the firearms purchase forms which "Mario Amador" had filled out to purchase five .22 caliber Rugers on January 24, 1986, two days after Amador's death. The forms contained 25 prints of the defendant. (R.2578-2584).

Technician David Kidd

Kidd was the crime scene supervisor at the Robledo/Ledo murder scene. There was no sign of forced entry. (R.2598). There were two dead males in the living room. Luis Robledo was laying across an overturned liquor cart. (R.2600). There were numerous overturned items in the living room and signs of a struggle in the bedroom as well. A spent casing and the torn collar of Luis Robledo's shirt were located in the bedroom. (R.2601). It appeared from the plaster on Robledo's body that he had hit the living room wall at a high rate of speed. There was blood, flesh and hair imbedded in the wall, as well as a ricochet mark. (R.2602). Ulpiano Ledo's body was found strewn over the couch amongst overturned cushions, with his outstretched hands clutching the cord for the telephone.

(R.2603, 2604). There was a spent projectile in Ledo's shirt and numerous gunshot wounds all over his body. (R.2603-2605).

There were bags containing cocaine and marijuana in the kitchen, as well as considerable drug paraphernalia. (R.2608). Numerous casings were recovered, as well as a projectile imbedded in the wall of the adjacent apartment. (R.2609). A shotgun was found under the bed, and a case for a .25 cal. Baretta was also located in the bedroom. (R.2610).

The torn shirt collar in the bedroom, and the spent casing on the bedroom floor, suggested that a struggle commenced in the bedroom, with Robledo fleeing into the living room wall. (R.2645, 2646). It also appeared that Ledo had been attempting to jump over the couch when shot, based on the position of his body, the cushions, and the bullet holes in the wall behind the couch. (R.2654, 2655).

 i **F**

Flor is the custodian of records for Kaufman & Roberts. He supplied credit card records from the purchase of two VCRs. One was purchased with the visa card of Luis Robledo, the other with Robledo's Mastercard. Both slips had Luis Robledo's driver's license number written on them. (R.2624-2630).

Carlos Acosta

Acosta is the owner of Eagle Overhauling. He knew the defendant by his nickname, Roly. On April 9, 1986, the defendant purchased a radio and two speakers using the American Express card of Luis Robledo. The defendant told Acosta that Luis Robledo was his uncle, and on the basis of that representation Acosta approved the sale. (R.2748-2756).

Dr. Roger Mittleman, M.E.

Both Amador and Alphonso were shot while lying face down on the floor. (R.2775-2778). Amador was shot six times in the head, twice in the lower neck, and once in the leg. There were no drugs in his system. (R.2782-2795). Alphonso was shot four times in the head, and had a by-product of cocaine in his system. (R.2797-2801).

Detective John Butchko

He assisted Sergeant MacArthur in the Robledo/Ledo investigation. He impounded Robledo's address book, which contained Pardo's name and phone number. (R.2823). He conducted a search of Ulpiano Ledo's house, and found \$4,680.00 in cash, 220 grams of cocaine, marijuana, drug paraphernalia, and a Taurus model handgun. (R.2826-2836).

Alejandro Remendies

He was a desk clerk at the Chesapeake Hotel on Miami Beach. The Defendant was a regular customer, who had always used cash, and who had always identified himself as Rolando Garcia. On 4/3/86, the Defendant paid with a Visa card in the name of Luis Robledo. The Defendant said Robledo was his real name, and he signed the name Luis Robledo. (R.2848-2851).

Technician Bernie Brewer

Fingerprint Technician Brewer was recalled, and stated that the Defendant's prints were on the Chesapeake Hotel credit card slip, and also on the two credit card slips from Kaufman & Roberts, where the Defendant used Robledo's Visa and Mastercard to purchase VCRs. (R.2853-2857).

Dr. James Lauridson, M.E.

Went to the scene of the murders of Fara Quintero and Sara Musa, and performed their autopsies. Sara had 5 shots to the head and neck, all from behind. (R. 2871-2873). She had a .05 blood alcohol level, and no other drugs. (R. 2874). Fara had eleven gunshot wounds and two blunt traumas to the head which caused two long lacerations to the scalp. Several of the gunshot

wounds were to the arms and hands, and were indicative of defensive wounds. She had cocaine and valium in her bloodstream. (R. 2876-2880).

Detective Joseph Ubeda

He responded to the Quintero/Musa murder scene at Quintero's apartment. He discovered a sawed-off shotgun under the sofa, and numerous .22 cal. spent casings. (R.2892, 2893). He found a small amount of marijuana. He further discovered a Visa credit card in the name of Luis Robledo, which was located inside a package of cigarettes. (R.2895, 2896). The lock of the door had been taped back, and there was considerable damage along the frame of the door, although he could not determine when the damage occurred. The bedrooms had been ransacked, with items thrown everywhere. There did not appear to have been a struggle in the living room where the bodies were located. (R.2897-2899). The telephone jack had been pulled from the wall. (R.2898).

Detective Albert Nabut

He visited several pawnshops in search of Sara Musa's jewelry, which was missing from her body. At the Lafay Jewelry store in Hialeah he impounded a pawn slip, a gold chain, two charms and a ring which were listed on that pawn slip. (R.2912-2919). He then showed the jewelry to Zini Ulpiz, a friend of the murdered girls.

Hortensia De La Fay

She testified that the girls were lesbians (Ribera testified the Defendant called them "dikes," and on the date of their murder, Pardo wrote "Dikes 2" in his diary book, as is set forth below). (R.2924).

Zini Ulpiz

She testified that the jewelry shown her by Albert Nabut belonged to Sara Musa, and that Sara wore it constantly. (R.2925-2927).

Technician John Lazzeretto

The Defendant's print was on the pawn slip described immediately above. (R.2935). The pawn slip bears the name Rolando Garcia. (R.2941).

Detective Carlos Fojo

Detective Fojo responded to the scene where Daisy Ricard's body was located, on April 23, 1986 at 6:04 p.m. Her body was located in bushes on the side of a little used dirt road. She appeared to have been beaten in the face and head

area. Her body was found several hundred yards from the Lago Del Rey Condominiums (the residence of Manuel Pardo), (R.2958-2963).

Detective Jerry Freeman

He also responded to the location of Daisy's body, a short distance from Pardo's condo in Lago Del Rey. (R.2970-2975). Her body was still warm and the blood had not yet dried. There was no identification on her person. The body of her boyfriend, Ramon Alvaro (El Negro), was located two miles away. There was a watch next to her body, one shoe was missing, and a spent casing was found under her head. (R.2981-2985). Her purse and other belongings, as well as property and identification belonging to Ramon Alvaro, were found in a canal several miles away. (R.3001).

Hedy Edwards

Edwards is a Pan Am flight attendant. On the evening of April 23, 1986, the day that Daisy's body was discovered, two men boarded Pan **Am's** 10:30 p.m. flight to New York at the last minute. One was on crutches and had his leg wrapped in a bandage. Both were dirty and haggard looking. The injured man was in considerable pain. (R.3010-3014).

Technician Larry Stamper

Technician Stamper lifted a fingerprint from the watch found next to Daisy's body. (R.3020-3025). The print belonged to Manuel Pardo. (R.3034).

Zenaida Rojena

Ms. Rojena was a medical technician at the laboratory operated by Daisy Ricard. Ramon Alvaro also worked at the lab, and his nickname was "Negro." On April 23, 1986, the day her still-warm body was discovered at 6:04 p.m., Daisy left the lab between 4:30 and 5:00 p.m. (R.3036-3038).

William Ricard

Mr. Ricard is Daisy's estranged husband, and he also worked at the lab, as did Daisy's boyfriend, Ramon Alvaro. On April 23, 1986, Daisy was driving Alvaro's black Oldsmobile, and she departed the lab between 4:30-5:00 p.m. (R.3041-3045).

Lourdes Aguilera

After Daisy's murder, Ms. Aguilera discovered a baseball program in Daisy's room with Manuel Pardo's address written on it. (R.3091).

Officer James Darby

On April 24, 1986 at approximately 10:00 a.m., he received a call to investigate a suspicious vehicle at a landfill area at N.W. 140 St. and 87th Ave. He located a late model black Oldsmobile with blood in the interior, on the ground outside, and dripping from the trunk. He roped off the area and notified homicide. (R.3095-3101).

Detective **Raymond** Mayhew

Detective Mayhew dusted the trunk of Alvaro's car for prints. He then popped the trunk and found Alvaro's body, in full rigor mortis. (R.3105-3113). Alvaro had multiple gunshot wounds to the head, and a woman's shoe was found under his body. The trunk also contained several baseball bats. (R.3114-3116). He located casings both inside and outside the vehicle.

It appeared as though a struggle had occurred in the front seat due the copious amounts of blood splattered about the front interior area. It appeared that the victim had been shot in the front seat and dragged to the trunk and tossed in. (R.3121-3138). The victim appeared to have defensive gunshot wounds to the palm, arm and shoulder. (R.3142, 3143). He was able to lift one print of value off the trunk. (R.3145). There was a blunt trauma injury to the right side of Alvaro's head. (R.3156).

Technician James Hinds

Technician Hinds processed the plastic folder, and the contents thereof, which had been found in the briefcase in Pardo's bedroom. He obtained three prints of value, all belongings to the defendant. The print lifted from the trunk of Alvaro's car belonged to the defendant as well. (R.3166-3180).

Detective Joseph Geschwind

Detective Geschwind is a New York City Police Detective. At 3:20 a.m. on April 24, 1986, he responded to Columbian Presbyterian Hospital in Manhattan reference a man having been shot. (R. 3204, 3205). He spoke with Pardo, who said he was shot in a random driveby shooting outside a Broadway theater. (R.3206). Pardo displayed credentials as a Sweetwater Police Officer. Detective Geschwind also talked to the defendant at the hospital. The defendant stated his real name, and related the identical story of a random driveby shooting. (R. 3208-3212).

Detective Jose Rosario

Also a New York cop, he likewise interviewed the defendant. The defendant was extremely evasive. He could not remember when he arrived in New York the previous day, or what airline they flew on.

Officer Terrance Bouie

Officer Bouie investigated the shooting at the home of Sergio Godoy. There were numerous small calibre bullet holes in the house, including 7 or 8 in the children's bedroom wall. (R.3247-3249).

Dr. Charles Wetli, M.E.

Dr. Wetli testified as to autopsy findings of Dr. Grey, who was unavailable. (R.3257, 3258).

Daisy Ricard had lacerations and abrasions to the right side of her head, breast area, and ankles. She suffered 5 gunshot wounds. Wound A was to the front of the head, and was neither fatal nor incapacitating, but would have been extremely painful. (R.3261). Gunshot wound B was to the left rear of the head. It would have been fatal due to brain swelling, but would probably not have been immediately fatal. Dr. Wetli was not asked if it would have been immediately incapacitating. (R. 3262, 3263). Gunshot wound C was to the left side of the middle back, perforating the stomach. If left untreated, it could eventually be fatal. (R. 3263). Gunshot wound D was in the left buttocks, which was not incapacitating. (R.3264, 3265). Wound E was an in and out wound high on the right hip. (R.3265).

Daisy also suffered massive blunt trauma to the right side of her head which caused a depressed skull fracture. She lived at least a short time after this blow, due to massive hemorrhaging under her right ear, which was torn off by the blow. (R.3266-3269). A huge force was necessary for this blow. The gunshot wounds were probably inflicted first. The blow to the head was more consistent with being run over by a car than a blow from a baseball bat. (R.3266-3270). There were no drugs in her system. (R.3282).

Dr. Wetli performed the autopsies of Luis Robledo and Ulpiano Ledo. Robledo had blunt force injury to the left side of his mouth. (R.3287). He was shot in the left side of the back, twice in the right temple, and once in the top of the head. Robledo's body was moving when shot. (R.3287-3296).

Ulpiano **Ledo** was shot in the right elbow, in the back of the neck, above the right ear, and on the right forehead, (R.3299-3310), and there was cocaine in his system.

Det. Douglas Faulk

Detective Faulk was given a .22 cal. casing by Carlos Ribera, which Ribera said he found in his car, after the Sergio Godoy shooting. He was also given a .25 cal. magazine by Ribera,

which the Defendant had told Ribera came from the drug rip-off double murder they committed in the southwest section (Robledo/Ledo). Ribera stated that the magazine was from the gun the defendant tossed into a canal. (R.3344-3352).

Dr. Kenneth Warner, M.E.

Dr. Warner performed the autopsy on Ramon Alvaro. Alvaro had been shot 10 times, in the right ear, right chin, below the chin, front neck (severed spinal cord), upper right back (internal bleeding), heart (severe internal bleeding), and Alvaro was shot three times in the arms, which Dr. Warner testified were defensive type wounds. There was a by-product of cocaine in his blood. (T.3373-3387).

Dr. Warner also examined the x-rays of the bullet wound in Pardo's right ankle. The injury would have made it impossible to put weight on the injured leg. (R. 3395).

Specialist Robert Hart

Hart is a firearms identification specialist, who made the following findings as to the ballistics evidence in this case:

As to the Amador/Alphonso murders, which occurred on January 22, 1986, all the casings and projectiles were .22 cal.,

and consistent with having been fired from a .22 cal. Ruger pistol. There were two guns used, with five projectiles removed from Amador fired from one gun, and three projectiles from Alphonso fired from the other gun. The other projectiles from their bodies were too damaged to permit matching with a particular gun. (R.3456, 3461). There were 13 casings found at the scene, 9 fired from one gun and 4 from the other. (R.3463). There were two different types of ammunition used, the common Remington brand and a rare Yugoslavian brand, valor. (R.3464). There were no silencer marks on the projectiles, indicating that if silencers were used on the two guns, the silencers were properly aligned with the barrel. (R.3457). One of the guns used in the Amador/Alphonso murders was the sole gun used to kill Fara Quintero and Sara Musa. (R.3468).

As to the Robledo/Ledo murders, committed February 27, 1986, the projectiles which were intact enough to be matched were all fired from one gun, which definitely had a silencer attached. It was a different gun than was used in any of the other murders. The ammunition was the same Remington and valor ammunition used in the Amador/Alphonso murders. (R.3458, 3464, 3465).

As to the Quintero/Musa murders, committed on April 22, 1986, all thirteen rounds were fired in the same silencer equipped gun, and it was one of the two guns used in the Amador/Alphonso murders. The ammunition was of three types:

Winchester and Remington, which are very common, and an Italian brand, Fiatchi, which is very rare. (R.3459, 3466).

As to the Alvaro/Ricard murders, committed during the afternoon of April 23, 1986, each victim was shot with the same two guns, one of which was silenced. (R.3460). One of these guns was the source of the bullet removed from Manuel Pardo's foot. (R.3460). The two guns used on both Alvaro and Ricard were different than any of those used in the prior six murders. (R.3466, 3467). One of the casings found in Pardo's apartment matched one of the guns used on both Alvaro and Ricard. (R.2469).

The casing which Carlos Ribera told the Hialeah police he found in his car after the shoot-up of Sergio Godoy's house, was the same rare Fiatchi ammunition found at the Quintero/Musa murder scene, and it was fired from one of the guns used on both Alvaro and Ricard. (R.3470).

All the projectiles and casings came from the same make and model of 22. cal. pistol, of which Ruger is the most common. (R.3470).

Sergeant Theodore MacArthur

Detective MacArthur investigated the Pan Am flight which the defendant and Pardo took to New York after the Alvaro/Ricard

murders. There was one passenger who requested a wheelchair, and he gave his name as Manuel Cruz. His companion gave his name as Orlando Cruz. Cruz is the defendant's mother's maiden name. (R.3528-3535).

STATE RESTS

DEFENDANT'S TESTIMONY

The defendant met Carlos Ribera in December of 1985 at Rainbow Video. He was just friends with Ribera, and did not have any drug dealings with either Ribera or Pardo. (R.3554). He did not show Ribera any articles about the murder victims, and he was not present at the shoot-up of Sergio Godoy's house, although he did know Godoy as a drug user and part-time dealer. (R.3556).

The defendant introduced Ribera to Pardo. He also introduced Ribera to Mario Amador and Ramon Alvaro. He and Ribera met Sara Musa at the C & R Marina, and Ribera sold her ring for her. (R. 3608, 3609).

The defendant had known Pardo for 10 years. The defendant introduced Ribera to various drug dealers because Ribera wanted a job as an off-loader. (R.3610). The defendant met Ramon Alvaro at the La Caretta Restaurant the day before his murder, for the purpose of collecting \$25.00 Ramon owed the

defendant for washing his car. Pardo was also present at that meeting. (R.3611). Ramon Alvaro had a lady with him.

The defendant again denied showing any articles, and does not know how his prints got on the article and plastic folder in Pardo's briefcase, although his prints could have been anywhere in Pardo's home. (R.3613). He was a good friend of Pardo's, and considered him a good person and good cop. The defendant did not know Pardo was a killer until Pardo showed him Alvaro's body stuffed in the trunk of Alvaro's car. (R.3614, 3615). Pardo had remained with Alvaro at the Restaurant after the defendant left. Later, the defendant received a call from Pardo stating that he had been shot and needed help. (R.3616). He went to Pardo's apartment, and Pardo walked out to meet him, his pants a bloody mess. Pardo got into Ramon Alvaro's car and told the defendant to follow him, which the defendant did. (R.3617). The defendant explained further on that he was driving Pardo's wife's car, which she had given him to clean earlier on. (R.3691-3694).

Pardo drove Alvaro's car to a deserted landfill. Pardo got out and opened the trunk, revealing Alvaro's body. The defendant shut the trunk and tossed away the keys. (R.3618, 3619). During this period Pardo was limping slightly. (R.3620). They drove back to Pardo's house and then to a local doctor's office. He wanted to help Pardo get treatment for his foot. (R.3620-3623).

The defendant admitted using Mario Amador's driver's license to buy the five Rugers for Pardo. Ribera had given him the license at Pardo's apartment. He used that driver's license because his own was suspended. (R.3624, 3625). It was suspended for 15 years for hitting an airplane on LeJuene Road: "I'm not pretty good at driving." (R. 3627).

The defendant admitted using the credit cards of Luis Robledo. (R.3625).

He visited Pardo's apartment numerous times with Ribera. He and Ribera used pot and cocaine together. He denied ever receiving \$10,000 from Pardo after the Amador/Alphonso murders, as was indicated in Pardo's diary (see below). (R.3629, 3630). The defendant washed cars and boats for a living, and had worked in an autobody shop. He denied receiving \$50.00 from Ribera for Sara's ring. (R.3633).

The defendant admitted pawning Sara Musa's jewelry after her murder, but claims he got the jewelry from Ribera. (R.3634-3637). He did know Mario, but had no drug dealings with Mario, nor with John Hegerty or George Girling. (R.3638). He introduced Mario to Ribera.

It was all Pardo's idea to go to New York, he was just trying to help his good friend. He lied to the New York police because Pardo told him to, and he wanted to keep Pardo from getting arrested. (R.3940-3942). He admitted lying to Miami Police when he stated he had no knowledge of any murders. (R.3945).

The defendant stated that when he used Mario Amador's driver's license to purchase the guns, he did not know Amador was dead. Pardo got him to put his picture on the license. (R.3646, 3647). He did not realize the license belonged to the Mario Amador he had known, because he had never known Mario's last name, and when Pardo gave him the license, Mario's picture had already been removed. (R. 3648).

The defendant again admitted using the credit card and driver's license of Luis Robledo. He stated he got nothing out of it except a night at the Chesapeake Hotel, that he did it all at Pardo's behest and for Pardo's benefit. (R.3649). The defendant knew that Ramon Alvaro was a drug dealer. The defendant never worked as a drug dealer. (R.3650-3652). It was Ribera who smashed the .25 cal. Baretta (taken from Robledo's apartment) and threw it in a canal, not the defendant. (R.3654). The defendant never showed Ribera pictures of dead bodies, and the defendant has never owned or fired a gun. (R.3656). The defendant lied to Detective MacArthur because he was afraid. (R.3662). He never

saw Pardo's diary. He carried Pardo's briefcase to New York, and might have gotten his prints on the contents at the hospital. (R.3663-3665).

CROSS EXAMIN OF DEFENDANT

George Hegerty was only a user of drugs not a dealer. He lived at Hegerty's ranch and took care of the horses there. (R. 3670). He never "cooked" cocaine for a living, and he denied telling Detective MacArthur that he did a kilogram cocaine deal with George Girling for \$22,000.00, and denied telling MacArthur he did another cocaine deal with Luis Mesa. (R.3671-3673). The defendant does not remember telling MacArthur that he had owned and fired weapons in the past. (R.3685).

The evening that Pardo showed him the body of Ramon Alvaro, the defendant's sister had to drive the defendant and Pardo to the airport because the defendant was too nervous to drive. (R.3698).

The defendant had seen silencers and numerous weapons at Pardo's apartment. (R.3698). He lied to Detective MacArthur about everything when questioned initially in New York. (R.3704, 3705). The defendant did not like Fara Quintero and Sara Musa because they were lesbians (R.3711). The defendant denied telling MacArthur that he knew Sergio Godoy never payed his drug

debts on time, and that the defendant knew this because Godoy had failed to pay the defendant for drugs in the past. (R.3714). The defendant denied telling MacArthur that he was present during the shoot-up of Sergio Godoy's house (R.3716), and the defendant did not remember telling MacArthur that he and Pardo had bought drugs together in the past.

The defendant denied that he could read and write, and denied reading the rights waiver form for Detective MacArthur. (R.3719). He also denied that he and Pardo were in a dirty and disheveled condition when they boarded the flight to New York, as testified by the flight attendant. (R.3735). The defendant admitted that he repeatedly lied to numerous persons during the police investigation. (R.3735). He also admitted discussing the case with Pardo while in jail prior to trial.

STATE'S REBUTTAL; CASE SERGEANT MACARTHUR

Sergeant MacArthur

The defendant told him he had gone target-shooting with Pardo. (R.3756). In New York, the defendant had denied being present at the Godoy shooting. Back in Miami, the Defendant said he had been present, and that Ribera had done the shooting. (R.3757). The defendant told him that he and Pardo bought and sold drugs together, and that the defendant also stated that he

sold a kilogram of cocaine to George Girling for \$22,000. (R.3758). The defendant told him that Godoy had owed money to Ribera for a drug deal, and that Godoy had failed to pay the defendant for drugs on a prior occasion as well. (R.3759). The defendant told him that he had gone through the ninth grade and that he could read and write, and the defendant read MacArthur his Miranda rights from the form. (R.3760-3763).

Carlos Ribera

Ribera never gave the defendant any credit cards. (R.3769). Ribera never met or knew Mario Amador or Luis Robledo, and he did not give the defendant Sara Musa's jewelry to pawn nor did he give him Mario Amador's driver's license. (R.3770). It was the defendant, not Ribera, who broke the .25 cal. Baretta and tossed it in a canal, along with Luis Robledo's picture from his driver's license. The .25 cal. magazine in his glove box was put there by the defendant, who said it was from the .25 cal. Baretta he took from Luis Robledo's apartment. (R.3771, 3772). Ribera stated he was not present nor did he participate in any of these murders. (R.3772).

PARDO'S DIARY

State's Exhibit #8 is the diary book of Manuel Pardo, which Sergeant MacArthur seized from a briefcase in Pardo's

bedroom. Sergeant MacArthur discussed various entries in the diary and newspaper articles attached thereto. (R. 1992-1998). For unknown reasons the clerk did not put copies of exhibit #8 in the record, and the State will be supplementing the record with the omitted exhibit. For the Court's convenience, the identical diary pages are contained in the record on appeal in Pardo v. State, case no. 72,463, at pages R. 237-247, although in the instant trial the entries relating to the murder of Michael Millot, found at R. 239-241, were presumably deleted, since no evidence of Millot's murder was presented herein.

The entries which are of particular interest to the instant case are explained by Sgt. MacArthur. (R. 1997). The entry for January 21st, 1986, is "Mario \$23,000." The entry for January 22nd, 1986, the day of the Amador/Alphonso murders, is "Rueben, paid \$20,000 (for block), \$10,000 to Roly, \$12,000 to year." Attached to that same diary page are two newspaper articles on the discovery of the bodies of Amador/Alphonso.

PENALTY PHASE

Neither side presented evidence at the penalty phase. The defendant told the court that he did not want to put on any mitigating evidence (R.4067-4069), and that although his relatives were present, he would not allow them to testify on his behalf because they had already been through enough. (R.4248).

ISSUES PRESENTED

I.

WHETHER THE TRIAL COURT ERRED IN REFUSING TO SEVER THE THREE DOUBLE HOMICIDES AND PERMITTING THE DEFENDANT TO BE TRIED JOINTLY ON ALL SIX HOMICIDES.

II.

WHETHER THE TRIAL COURT ERRED IN PERMITTING THE STATE TO PRESENT EVIDENCE, PURSUANT TO FLA.R.EVID. 404(2), OF A FOURTH DOUBLE HOMICIDE.

III.

WHETHER THE TRIAL COURT ERRED IN ALLOWING THE STATE TO ELICIT TESTIMONY RELATING TO THE DEFENDANT'S INVOLVEMENT IN THE DRUG TRADE AND HIS INVOLVEMENT IN THE SERGIO GODOY SHOOTING, AND IN REFUSING TO GRANT A MISTRIAL WHEN STATE WITNESS CARLOS RIBERA ALLEGEDLY LINKED THE DEFENDANT TO OTHER HOMICIDE INVESTIGATIONS.

IV.

WHETHER THE TRIAL COURT PROPERLY REFUSED TO GRANT A MISTRIAL BASED ON THE PROSECUTIONS QUESTIONING OF THE DEFENDANT AS TO THE ABSENCE OF HIS SISTER'S TESTIMONY.

V.

WHETHER THE TRIAL COURT ERRED IN OVERRIDING THE JURY'S LIFE RECOMMENDATION AND IN IMPOSING THE DEATH SENTENCE FOR THE MURDER OF MARIO AMADOR.

VI.

WHETHER THE TRIAL COURT ERRED IN IMPOSING THE DEATH SENTENCE FOR THE MURDERS OF ROBERTO ALPHONSO, RAMON ALVARO AND DAISY RICARD.

SUMMARY OF THE ARGUMENT

The three double murders at issue were definitely based on "two or more connected acts or transactions," as that phrase is used in Fla.R.Crim.P. 3.150. The first two double murders, Amador/Alphonso and Robledo/Ledo, were very similar drug rip-off murders committed upon customers of drug dealer Ramon Alvaro, a.k.a. El Negro. The defendant and Pardo, as representatives of Alvaro, were supposed to execute the purchase of cocaine from Amador and Robledo. Instead, they increased their profit margin by executing the pair and their two companions. Alvaro, miffed at this reduction of his clientele, and the resultant loss in customer good will, refused to come through with the next deal, one on which the defendant and Pardo (and presumably the morticians of Dade County) were banking. For this refusal Alvaro, and his unfortunate companion Daisy Ricard, were murdered. In the State's book, these murders were connected, and indeed intimately so.

The prosecution was properly permitted to introduce evidence as to the double murder of Fara Quintero/Sara Musa, pursuant to Fla.R.Evid. 404(2). In truth, the girls' murders were so closely connected that they should never have been severed. Under 404(2), similar fact evidence of other crimes is admissible as long as it is relevant to prove a fact in issue, it is not offered solely to prove bad character or propensity,

and its probative value is not substantially outweighed by its prejudicial effect. It need not be "signature crimes" evidence, as the defendant seems to imply. In the instant case Fara and Sara were killed because they were unable to purchase VCRs with the visa credit card of murder victim Luis Robledo, as ordered to by the defendant, and this credit card was found in a cigarette package in the girls' ransacked apartment. The defendant used this same card to purchase a VCR at Kaufman & Roberts. The girls were shot with one of the two guns used in the Amador/Ricard murders. Just prior to their collective demise the defendant told Carlos Ribera that it was time to "payback" the girls and Alvaro, and after their murders the defendant told Ribera they (the defendant and Pardo) had taken care of "the bitches" and El Negro (Alvaro). The defendant showed Ribera pictures of Alvaro's and Quintero's bodies, just as he had done with photos of the bodies of Amador and Robledo. There are numerous other connections between the eight murders. Finally, the evidence of the girls' murders, including the testimony of Carlos Ribera relating thereto, served to bolster the credibility of Ribera's testimony as to the six charged murders.

The evidence of the defendant's drug dealings and the evidence relating to the Sergio Godoy shooting were all intimately bound up with and a part of the evidence of the six homicides charged herein. As for Carlos Ribera's statement,

that he was asked by the Detectives about other homicide investigations in which the defendant's "name had come up," the State again notes that no objection was made to the prosecutor's question, to which Ribera's answer was directly responsive. Secondly, the trial court sustained the tardy objection and offered to deliver whatever curative instruction the defendant desired. The trial court was well within its discretion in denying a mistrial based on this single isolated comment.

As to the prosecutor's questions to the defendant concerning his failure to call his sister as a witness, the first question was not objected to at all, and the second was not objected to until after the defendant answered the question. At that point the defendant did not request a mistrial or a curative instruction, and indeed he never even obtained a ruling on his objection. The issue was thus waived. Even had the issue been preserved, it would not have constituted grounds for a mistrial.

The jury override and death sentence for the Mario Amador murder were proper. It was a cold, calculated and greed induced execution, and at the time of sentencing the defendant stood previously convicted of three other execution style murders. There were no mitigating factors present, statutory or otherwise, and there was absolutely no reasonable basis for the jury's life recommendation.

The death sentence for the murder of Roberto Alphonso, pursuant to the jury's 10 to 2 recommendation of death, was committed during the robbery of Mario Amador, and at the time of sentencing the defendant stood convicted of three other execution style murders. The trial court found a third aggravating factor, witness elimination (instead of cold, calculated and premeditated, the perhaps more logical choice given the facts). Although it is absolutely clear, given the pattern of the defendant's murders, that he and Pardo do not leave witnesses, and that Alphonso was killed for this reason, even if this court disagrees, this court should nevertheless conclude that, absent this factor, the trial court would still have imposed death, and rightly so.

As to the death sentence for the Ramon Alvaro murder, following the jury's eight to four death recommendation, the murder was a cold, calculated execution style murder, and at the time of sentencing the defendant stood convicted of three prior execution murders. Even if this Court finds the State's evidence of heinous, atrocious and cruel to be legally insufficient, resentencing is unnecessary, as there is no doubt that absent this factor, the trial court would nevertheless have impose death.

Finally, the death sentence for the murder of Daisy Ricard, imposed following the jury's ten to two recommendation for death, was likewise proper. This was an execution style murder, and unlike Roberto Alphonso, who could conceivably have been murdered to eliminate a source of future retribution, the only explanation for Daisy's murder was to eliminate her as a witness to the murder of Ramon Alvaro. Again, a more logical approach would have been a finding of cold, calculated and premeditated, proof of which herein does not rely on logical inference. Irregardless, even if this Court strikes witness elimination and heinous, atrocious and cruel, (though the State believes this latter factor to have been properly found, as set forth below), the death sentence should still be upheld, given the three prior convictions and total absence of mitigating factors of any sort.

ARGUMENT

I.

THE TRIAL COURT PROPERLY REFUSED TO SEVER THE THREE DOUBLE HOMICIDES, THUS PERMITTING THE DEFENDANT TO BE TRIED JOINTLY ON ALL SIX HOMICIDES.

Carlos Ribera testified the defendant told him that the defendant and Pardo worked for a drug dealer named El Negro (whose real name was Ramon Alvaro). The drug rip-off murders of Amador/Alphonso and Robledo/Ledo occurred while the defendant and Pardo were supposed to be purchasing drugs for their boss, El Negro. When the defendant and Pardo met with El Negro to arrange a big drug deal in Ohio, El Negro refused to put the deal together because the defendant and Pardo kept murdering El Negro's customers. This refusal by El Negro was the motive for his murder at the hands of the defendant and Pardo. There thus exists a clear relationship and casual connection between all three double murders.

In Paul v. State, 385 So.2d 1371 (Fla. 1980), this Court held that mere similarities between offenses is insufficient to justify joinder, and that there must exist a tangible relationship between the offenses. Fla.R.Crim. 3.150 refers to "...two or more connected acts or transactions." In beginning this analysis, it must be stressed that there is a "... great measure of discretion accorded trial judges on the question of

severance . . .," Clark v. State, 379 So.2d 97 at 103 (Fla. 1979), see also Johnson v. State, 438 So.2d 774 (Fla. 1983 .

In King v. State, 390 So.2d 315 (Fla. 1980), the defendant left a work release center and proceeded to rape and murder a woman in her nearby residence. A bedcheck revealed the defendant was absent that same evening, and a prison counselor searched for the defendant and found him outside the dormitory, with blood on his pants. The defendant attacked the counselor and attempted to murder him. This Court held the consolidation of the murder and attempted murder charges did not require reversal given the relationship between the offenses.

In Zeigler v. State, 402 So.2d 365 (Fla. 1981), the defendant had murdered three people, left the scene and met a fourth victim who he tricked into handling the murder weapon. He then convinced the fourth victim to accompany him to the original scene, where the defendant murdered him as well, in an attempt to convince the authorities that the fourth victim committed the first three murders. This Court held the joinder of all four murders proper, as the first three provided a motive for the fourth. Similar reasoning was applied by the Third District in Davis v. State, 431 So.2d 325 (Fla. 3d DCA 1983), where the defendant murdered a witness to an earlier aggravated assault, and both offenses were held to have been properly joined.

The First District's opinion in Brown v. State, 502 So.2d 979 (Fla. 1st DCA 1987), is directly on target as to this issue:

First, Brown contends we misconstrued and misapplied Paul v. **State**, 385 So.2d 1371 (Fla. 1980). We recognize that Paul is factually distinguishable from this case, and only cited it as authority for the correct test to be applied in passing on a motion for severance of offenses. That test essentially requires that severance be granted unless the offenses are connected acts or transactions in an episodic sense.

* * * * *

Perhaps we should clarify the reasoning underlying our view of this case as involving a single episode such that severance was not mandated. While the temporal connection of charged criminal acts is always relevant to the question in severance, it is not conclusive in and of itself. Two criminal acts by the defendant may occur within minutes of each other and yet constitute separate episodes; on the other hand, two or more criminal acts by defendant may occur on separate days and still be part of a single episode if sufficiently connected in terms of the victim and connected related acts. Here, the two crimes charged against the defendant meet this test because the act surrounding the burglary on Monday were directly connected by the evidence to the murder committed sometime during the following two days. Because the killing occurred shortly after the victim telephoned appellant and discussed his presence at the victim's house on the day of the burglary, it can be inferred that the burglary led directly to commission of the murder and was the motive. These facts are sufficient to show that, even though the acts occurred over a span of

two days, the two offenses charged in this case involved connected acts or transactions in an episodic sense; therefore, there was no error permitting joinder of the offenses and denial of the motion for severance. See Warren v. State, 475 So.2d 1027 (Fla. 1st DCA 1985); Brown v. State, 468 So.2d 325 (Fla. 2d DCA), pet. for rev. denied, 476 So.2d 672 (Fla. 1985); Hamilton v. State, 458 So.2d 863 (Fla. 4th DCA 1984).

(emphasis added) Id. at 980, 981.

In the instant case there was a direct causal relationship between the first two drug rip-off double murders, and the murder of Ramon Alvaro and his unfortunate companion, Daisy Ricard. The defendant's motion for severance of counts was thus properly denied.

II.

THE TRIAL COURT PROPERLY PERMITTED THE STATE TO PRESENT EVIDENCE, PURSUANT TO FLA.R.EVID. 404(2), OF A FOURTH DOUBLE HOMICIDE.

The evidence of the murders of Fara Quintero and Sara Musa was totally intertwined with the evidence of the six charged murders, and was highly relevant to establish the defendant's guilt as to all six charged murders. Fara Quintero and her unfortunate roommate, Sara Musa, were murdered because Fara refused to purchase VCRs with the Visa credit card of Luis Robledo, as ordered by the defendant. The defendant himself had used this same card to purchase a VCR at Kaufman & Roberts, and the card itself was located in the girls' ransacked apartment, hidden in a package of cigarettes. Thus, Carlos Ribera's testimony concerning why the girls were killed, along with discovery of the credit card, helped establish the defendant's participation in the Luis Robledo murder. The girls were murdered with one of the two guns used to kill Amador/Alphonso, thus helping to establish the defendant's guilt as to that double murder.

The girls were killed the day before the Alvaro/Ricard murders. Just prior to these two double murders, the defendant told Carlos Ribera it was time to "payback" the girls and Alvaro, and the defendant attempted to solicit Ribera's

assistance as "wheelman" for both the Quintero/Musa and Alvaro/Ricard murders. After these two double murders the defendant came to Ribera's house and said they (the defendant and Pardo) had taken care of the "bitches" and "El Negro" (Alvaro), and the defendant showed Ribera pictures of the dead bodies of Fara Quintero and Ramon Alvaro (as he had done with pictures of Mario Amador and Luis Robledo). Thus Ribera's testimony concerning the girls' murders was highly relevant to the defendant's guilt in the Alvaro/Ricard murders. Additionally, the defendant's pawning of Sara Musa's jewelry after her murder was consistent with his use of Amador's driver's license (to purchase five additional .22 cal. Rugers) and Robledo's driver's license and credit cards. In sum, the evidence concerning the girls' murders was exceedingly relevant to the crimes charged.

Relevant evidence is not excludable merely because it points to the commission of other uncharged crimes. Smith v. State, 365 So.2d 704 (Fla. 1978). This is not a case where the other crimes are "signature crimes," where the crimes are done in such a similar manner that the similarities themselves point to the defendant's guilt. Rather, this is a case wherein the facts are so interrelated that proof of the uncharged crimes (Quintero/Musa) points directly to the defendant's guilt in the charged crimes. Where evidence of other crimes or acts is "inextricably intertwined" with the charged offense, it is not

considered "other crimes" evidence. See United States v. Leichtman, 742 F.2d 598, 604 (11th Cir. 1984), United States v. McCrary, 699 F.2d 1308 (11th Cir. 1983), United States v. Soliman, 813 F.2d 277 (9th Cir. 1987), and see especially Austin v. State, 500 So.2d 262 (Fla. 1st DCA 1986). As the court in Austin stated, it really makes little difference whether or not the evidence is labeled "other crimes" evidence within the framework of §90.404(2), where such evidence is "... so inextricably intertwined with the crimes charged that an intelligent account could not have been given ...", Id. at 265. The State is entitled to demonstrate the entire context out of which a criminal episode arose. Smith v. State, 365 So.2d 704 (Fla. 1978), Jacobson v. State, 375 So.2d 1133 (Fla. 3d DCA 1979), Jones v. State, 418 So.2d 430 (Fla. 3d DCA 1982), Horner v. State, 149 So.2d 863 (Fla. 3d DCA 1963) and Jameson v. Wainwright, 719 F.2d 1125 (11th Cir. 1983). See also United States v. Richardson, 764 F.2d 1514 (11th Cir. 1985), (evidence of prior bad acts admissible where necessary to provide complete account of crimes charged).

This Court recognized in Gorham v. State, 454 So.2d 556 (Fla. 1984), that the bottom line in dealing with other crimes evidence is relevance, and as **the** Fourth District emphasized in Tumulty v. State, it does not matter how the other crimes evidence is labeled, either as "Williams Rule," 404(2), or collateral crimes; rather, the issue is whether the evidence is

relevant, and if so, whether the probative value is substantially outweighed by the prejudicial impact of the evidence. In the instant case, although the evidence of the Quintero/Musa murders was certainly prejudicial, it was also keenly relevant, and it simply cannot be reasonably said that the its probative value was substantially outweighed by the prejudicial impact. It must be remembered that the defendant was already charged with six murders which he denied committing, and he likewise denied murdering the girls. Although evidence of an uncharged double murder sounds impressive, when compared to the severity of the charged crimes in this case, the potential for prejudice is sharply reduced. The level of proof of all four double murders was roughly the same; the defendant's admissions to Carlos Ribera, plus a wealth of circumstantial evidence. Viewed in this context the evidence of the girls' murders, with the critical pieces it provided to the overall picture of the six charged murders, was both relevant and essential. It was therefore properly admitted.

III.

THE TRIAL COURT PROPERLY ALLOWED THE STATE TO ELICIT TESTIMONY RELATING TO THE DEFENDANT'S INVOLVEMENT IN THE DRUG TRADE AND HIS INVOLVEMENT IN THE SERGIO GODOY SHOOTING, AND PROPERLY REFUSED TO GRANT A MISTRIAL WHEN STATE WITNESS CARLOS RIBERA ALLEGEDLY LINKED THE DEFENDANT TO OTHER HOMICIDE INVESTIGATIONS.

The first point raised under issue III relates to the following exchange during the prosecutor's direct examination of Carlos Ribera:

A: They were asking about different -- different cases that I didn't know about that they thought had relationship with these people.

And then they would go in depth of what I knew.

Q: Were they asking you about other Hialeah cases to see if you could help them with anything else?

A: Yes, because their name had come up in several investigations of other homicides and I didn't know anything about them. . . [R.2283]

MR. SUROWIEC: Objection. Let's go sidebar please.

(R.2282, 2283).

Defense counsel then requested a mistrial, and although the trial court stated it would give any curative instruction defense counsel desired (R.2285), counsel declined.

The first noteworthy point is that although, as the defendant notes in his brief (page 35), Ribera's answer was directly responsive to the prosecutor's question, defense counsel waited until after Ribera's response to object. Thus defense counsel passed up the opportunity to head Ribera's response off at the pass, so to speak. More importantly, a curative instruction is a prerequisite to a motion for mistrial. Ferguson v. State, 417 So.2d 639 (Fla. 1982), Smith v. State, 365 So.2d 405 (Fla. 3d DCA 1978), Palmer v. State, 486 So.2d 22 (Fla. 1st DCA 1986), and Comer v. State, 318 So.2d 419 (Fla. 3d DCA 1975). The reason is obvious: although some comments are so prejudicial they cannot be cured, such cases are few and far between, and it is for the appellate court, not trial counsel, to determine that a curative instruction would be insufficient. Trial counsel must take all reasonable steps to cure the potential prejudice, i.e. seek a curative instruction, and where he elects not to do so, he cannot later seek reversal on the claim. Here counsel stated he did not want to "highlight" the testimony with a curative instruction. That is certainly counsel's strategic prerogative, but he does so at the cost of his client's right to argue the denial of his motion for mistrial on appeal.

Additionally, motions for mistrial are addressed to the sound discretion of the court, 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), (witness' 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), (witness' comment that defendant had been in jail for another offense cured by instruction), Johnson v. State, 497 So.2d 863 (Fla. 1986), (witness' comment about uncharged marijuana offense cured by instruction), Palmer v. State, 486 So.2d 22 (Fla. 1st DCA 1986), (witness' comment that he thought defendant had pled guilty to crime charged could have been cured by instruction), Irizarry v. State, 496 So.2d 822 (Fla. 1986), (witness' reference to his own polygraph test cured by instruction), and Davis v. State, 461 So.2d 67 (Fla. 1984), (same).

In the instant case this single comment by Ribera was a perfect candidate for a curative instruction, and in no event did the trial court abuse its discretion in denying the defendant's motion for mistrial. Under this first subheading, the defendant also claims error in a response given by Detective Foulk during cross-examination. Defense counsel asked when Foulk had last seen certain ballistic evidence, and Foulk replied "at the other murder trial" (R.3347). To begin with,

this answer was totally responsive to defense counsel's question. If you ask a person "when did you last see John", the answer is unlikely to be "December 21st, 1989, 4:00 p.m.," but it is very likely to be "At the office Christmas party". Additionally, the logical inference is that "other murder trial" meant Pardo's trial. Finally, the defendant declined a curative instruction, which would have clearly sufficed in this situation, and in any event this response could not possibly have effected the verdict in this case.

The second point the defendant raises under claim III is the State's presentation of testimony relating to the defendant's activities as a drug dealer. The State notes at the outset that the evidence of the defendant's drug dealing was totally interwoven with the motive for all six of the charged murders. The second noteworthy point is that most of the testimony concerning the defendant's drug dealings was received without objection.

Turning to each comment to which an objection was made, it is abundantly clear that none provide any basis for a reversal in this cause.

A). John Hegerty's testimony that the defendant had been involved in the "cooking" of cocaine. (R.2451). As to this comment, the bottom line is that Carlos Ribera had already

testified, without objection, that the defendant bragged to him about cooking cocaine since he was 14 years old. (R.2191, 2193). Additionally, after Hagerty's comment defense counsel did not ask for a curative instruction.

B). The only other testimony referred to in the defendant's brief, to which an objection was made, occurred during Carlos Ribera's direct examination by the prosecutor. Ribera testified, without objection, that the defendant showed him hidden compartments in boats at the C & F Marina. The following exchange then occurred:

He would show me boats in the C & F Marina that had hidden compartments. He would just go on and on.

Q: What did he tell you about the compartments?

A: That that's where they stored the coke and they were hidden compartments, so if they were stopped or anything, they just couldn't see the coke or drugs that they were bringing in.

MR. SUROWIEC: Objection. I have a motion if I could, please.

(R.2197).

The objection was sustained, the motion for mistrial was denied, and a curative instruction given. Given all the evidence in this case, this relatively innocuous testimony from Carlos Ribera is definitely not the stuff of which an abuse of discretion is made.

The final point raised concerns the testimony of Carlos Ribera and Officer Bouie concerning the shoot-up of Sergio Godoy's home on April 2, 1986. The evidence of the defendant's participation in this shooting was relevant to proving the defendant's participation in the murders of Ramon Alvaro and Daisy Ricard, as the weapon fired at the Godoy home was one of the two weapons used to kill both Alvaro and Ricard. According to Ribera, the defendant and Pardo were owed money by Sergio Godoy from a prior drug deal, and hence the shooting is also relevant to show the drug dealing partnership between the defendant and Pardo, a partnership which was at the core of all six charged murders.

IV.

THE TRIAL COURT PROPERLY REFUSED TO GRANT
A MISTRIAL BASED ON THE PROSECUTION'S
QUESTIONING OF THE DEFENDANT AS TO THE
ABSENCE OF HER SISTER'S TESTIMONY.

The defendant points to two separate instances wherein the prosecutor, during cross-examination, asked the defendant if his sister was available to verify certain aspects of his testimony. The first instance (R.3685, 3686) involved the prosecutor asking the defendant if his sister could have testified that she drove the defendant to Pardo's apartment the day of the Alvaro/Ricard murders, as the defendant testified. The defendant responded that it would be ridiculous to go through the hassle of having a family member testify to such a trivial matter. There was never an objection, probably because it was indeed an inconsequential point, but whatever the reason, the issue was not preserved for appellate review.

The second instance involved the prosecutor asking the defendant if his sister could have verified that she had always helped him fill out his job applications because he could not read and write:

Q. And when you have held those jobs, you have had to fill out employment applications, haven't you?

A. No.

Q. You never fill --

A. In American/Foreign Auto Part I did, Frank Collision, I did. But once I --

Q. So you can read and write enough to fill out the applications?

A. I used to take them home.

Q. That, I just reminded you of, is that correct?

A. I used to take them home with my sister, where she would help me fill them out. I would take them home one day and they would help me fill them out.

I never had a job where reading or writing was necessary.

I worked in the American/Foreign Auto Part as a delivery driver.

I worked in Frank Collision as a paint and body person.

I worked in Finest Paint and Body as a body person.

When I worked at Rusty Pelican, I worked as a cook, Ms. Weintraub.

Q. You are asking this jury to believe you about that?

A. I am asking them to believe me about that.

Q. Your sister could have testified, couldn't she?

A. Yes. She could have and so could a lot of people in my family, but I am not going to make them go through that.

MS. WEINTRAUB: One moment, Your Honor.

MR. SUROWIEC: I object to the inference that the sister can't testify.

State could have subpoenaed her if they wanted to.

Q. (By Ms. Weintraub) Mr. Garcia, you never told Sergeant MacArthur that you couldn't read and write, did you?

A. Yes, I did. As a matter of fact, ...

The first obvious point is that defense counsel did not object to the prosecutor's question, and the issue was thus not preserved. The second obvious point is that the defendant never obtained a ruling on his objection, which is his responsibility as moving party, nor did he request a mistrial, curative instruction, or any other form of relief. The issue was thus not preserved on that basis as well.

As to the merits of this unpreserved claim, the State submits that the prosecutor's line of inquiry was proper. On direct examination, the defendant testified that he did not know the contents of Pardo's diary, nor could he, because he did not learn to read and write until he arrived at the Dade County Jail upon his arrest in this case. (R.3663, 3664). Thus the defendant injected the issue of his literacy into the case. The "strawman" cases relied upon by the defendant are thus totally inopposite. Where the defendant creates an issue on direct examination, and testifies that a particular witness can corroborate his testimony on that issue, the prosecution is permitted to question the defendant as to the absence of that witness' testimony. Pena v. State, 432 So.2d 715 (Fla. 3d DCA 1983). That is precisely what occurred herein.

Finally, even if the prosecutor's question was improper, there is absolutely no way that such impropriety constituted reversible error under the facts of this case, especially where the "error" was not even preserved for appellate review.

V.

THE TRIAL COURT PROPERLY OVERRODE THE JURY'S LIFE RECOMMENDATION AND IMPOSED THE DEATH PENALTY FOR THE MURDER OF MARIO AMADOR.

An override is proper where there is no reasonable basis in the record to support the jury's life recommendation. Tedder v. State, 322 So.2d 908 (Fla. 1975). Even where valid mitigating evidence exists, which definitely is not the case herein, an override may be proper depending on the relative weight of the aggravating and mitigating factors. As this Court stated in Thomas v. State, 456 So.2d 454 (Fla. 1984):

We conclude that the sentencing judge could properly determine that these factors outweighed the mitigating circumstances found even in view of the jury's recommendation of a life sentence. The sentence of death represents a reasoned judgment based on the circumstances of the capital felony and the character of the offender after giving due consideration to the recommendation of the jury.

(Emphasis added), Id. at 460, 461.

~~See also~~ Pentecost v. State, So.2d ___, 14 F.L.W. 319 at 320, n.3 (Fla. June 29, 1989) ("We recede from any implication in Fead v. State, 512 So.2d 176, 178 (Fla. 1987), that an override is never warranted when valid mitigating evidence exists"), Harmon v. State, 527 So.2d 182 at 189 (Fla. 1988) (evidence that defendant was a good father and model

prisoner who helped keep the peace in prison insufficient, under facts of case, to provide reasonable basis for jury's life recommendation), Demps v. Dugger, 514 So.2d 1092 at 1094 (Fla. 1987), and Echols v. State, 484 So.2d 568 (Fla. 1986). In Torres-Arboledo v. State, 524 So.2d 403 (Fla. 1988) this Court again upheld the override despite the statutory mitigating factor of no prior significant history. In Echols v. State, supra, this Court held that the aggravating factors so outweighed the mitigating factor (no prior criminal history) that the override was proper. ~~See also~~ Hoy v. State, 353 So.2d 826 (Fla. 1977) and McCrae v. State, 395 So.2d 1145 (Fla. 1981).

In the instant case there was no statutory mitigating factors present. The mitigating factor of no significant prior criminal history was properly rejected by the trial court because the defendant had participated in a kilogram sale of cocaine with George Girling prior to the Amador murder, a sale which the defendant himself admitted to Detective MacArthur. The defendant did not permit his attorney to present mitigating evidence at the penalty phase. The defendant argues in his brief that the jury might have believed the defendant was only an accomplice, and that Pardo did the actual killing. However, it was the defendant who arranged the "deal" with Amador, and who told Ribera:

And that's when Rolando Garcia says,
"Yeah, that's when the other guy started
running upstairs and I got him and I

brought him down and we handcuffed him and we put him face down and we executed him. We emptied -- we emptied our guns, our clips inside these two guys."

Q. When the defendant laughed about what was in the brief case, did he explain why he thought it was funny?

A. Yes, because there was no money. What was in there was the gun, one of the guns that they were going to use to kill these guys.

(R.2217, 2218).

The ballistics evidence confirmed that two guns were used in the Amador/Alphonso murders, with nine bullets from one gun pumped into Amador, and four from the other gun plugged into Alphonso, the "other guy". It would surely be something for the above evidence to be considered a reasonable basis for a life recommendation.

As to the aggravating factors, the defendant stood convicted at sentencing of three other execution style murders. The murder was cold, calculated and premeditated in spades. The trial court found both "pecuniary gain" and "in the course of a robbery", which of course can only be considered as one factor. The State agrees that, because the order does not merge the two, the order is deficient in this regard. However, there is absolutely no reason to remand for resentencing because the bottom line is that regardless of whether there is three or four aggravating factors, there is no reasonable basis for the jury's

life recommendation, and the override was thus proper. As for the fact that Amador was a drug dealer, the State maintains, and the trial court found, that this is not a reasonable basis for the jury override. See Bolander v. State, 422 So.2d 833 (Fla. 1982), see also Francis v. State, 473 So.2d 672 (Fla. 1985).

VI .

THE TRIAL COURT PROPERLY IMPOSED THE DEATH SENTENCE FOR THE MURDERS OF ROBERTO ALFONSO, RAMON ALVARO AND DAISY RICARD.

Roberto Alfonso

The jury recommended death, by a ten to two vote, for this homicide. At the time of sentencing, the defendant stood convicted of three other execution style murders. Alfonso's murder occurred during the robbery of Mario Amador. As discussed above, there were no mitigating factors present, and as to Alfonso, there is no evidence that he was a drug dealer, and thus whatever mitigating effect that factor might have is not present as to his murder. In imposing death for this murder, the trial court stated:

The Court considered all possible mitigating circumstances discussed in Part A of this order and finds that none apply, except lack of conviction record.

(R.901).

Since the trial court had already explained at length in Part A (Mario Amador) why the statutory mitigating factor of no significant criminal history did not apply, the above "lack of conviction record" phrase is simply a recognition that the jury could find his lack of prior convictions to be mitigating evidence (even though the defendant had been heavily involved in

the cocaine trade, and simply had never been caught). The State submits that the above two aggravating factors, taken together with the jury ten to two death recommendation, so far outweigh any conceivable mitigating factors present herein, that the trial court would have sentenced the defendant to death absent the third aggravating factor, witness elimination, found by the trial court.

As to this third factor, the trial court's election to employ witness elimination rather than cold, calculated and premeditated is perplexing, given that the latter was proven beyond any doubt whatsoever. That is, of course, water under the jurisprudential bridge at this juncture. The issue is whether the State proved beyond a reasonable doubt that the sole or dominant motive was to eliminate Roberto Alfonso as a witness to the murder of Mario Amador.

The defendant argues in his brief that this Court has never upheld this factor where the defendant has not expressly stated that the victim was killed to eliminate him or her as a witness. That assertion is wholly inaccurate, as this Court has upheld this factor on numerous occasions based solely on circumstantial evidence. See Swofford v. State, 533 So.2d 270 (Fla. 1988), Correll v. State, 523 So.2d 562 (Fla. 1988), and Hooper v. State, 474 So.2d 777 (Fla. 1985). The most crucial case in this area is Oats v. State, 446 So.2d 90 (Fla. 1984). In Oats, the

defendant had shot another convenience store clerk in the head on the evening before the charged murder, which also involved shooting a convenience store clerk in the head. This Court held that the prior shooting, evidence of which was admitted under Fla.R.Evid. 404(2), helped establish witness elimination as to the charged murder.

In the instant case the murders of Daisy Ricard and Sara Musa, who like Alfonso were in the wrong place at the wrong time, established a pattern of witness elimination which cannot be ignored. When the defendant and Pardo set out to "take care of business" they left no stone unturned. As for the defendant's argument that Alfonso was shot as an "afterthought", the State would point out that the defendant told Ribera that the victims were handcuffed before being deposited on the floor and executed, as per their prearranged plan.

The State must concede that there may have been an additional motive to kill Alfonso, in that the defendant may have wished to forestall future retribution should Alfonso decide that, instead of going to the police, he would contact Amador's associates and partake of a little street justice. However, the State submits that when viewed in the context of the murders of Daisy Ricard and Sara Musa, both of whom would definitely have reported the murders of their boyfriend/roommate to the police, the dominant motive for the murder of Roberto

Alphonso was to eliminate him as a witness. As stated above, even if this Court disagrees, the death sentence should nevertheless be affirmed.

Ramon Alvaro

The jury recommended death by an eight to four vote. At the time of sentencing the defendant stood convicted of three other execution murders. The murder of Alvaro was cold, calculated and premeditated, and indeed the defendant and Pardo had been attempting to find and "payback" El Negro for several days prior to the murder. The State submits that even if the third factor found by the trial court, heinous, atrocious and cruel, is stricken by this Court, the two above factors, taken together with the total lack of mitigating circumstances, demonstrate beyond any doubt that the trial court would have imposed death even absent its finding of heinous, atrocious and cruel.

As to this third factor, Dr. Warner testified that Alvaro was shot ten times, and three shots caused defensive wounds to his arms. (R.3373-3387). Detective Mayhew also testified that the defendant had defensive wounds to his palm and arms, and that based on the numerous blood splattering throughout the front seat interior, it appeared that a struggle had occurred in the front seat, and that Alvaro was then dragged (based on the

blood outside the car) and tossed into the trunk, where his body was located. (R.3114-3116, 3121-3143). The State established through Carlos Ribera that Alvaro knew about the Amador/Alfonso, Robledo/Ledo murders, and that Alvaro had been refusing to answer the defendant's repeated beeper messages. In sum, the State established that Alvaro "saw it coming", and took desperate though futile actions to avoid being shot. This aggravating factor was thus established. See Huff v. State, 495 So.2d 145 (Fla. 1986), (victim was looking at defendant and raised his arms in an attempt to protect himself from being shot). ~~See also~~ Phillips v. State, 476 So.2d 194 (Fla. 1985), (victim shot twice in chest while attempting to flee, then finished off with numerous additional shots as he lay defenseless on ground.

As stated above, if this Court disagrees, the death sentence should nevertheless be affirmed.

Daisy Ricard

The jury voted ten to two for the death penalty. At the time of sentencing the defendant stood convicted of three other execution murders. The trial court also found the aggravating factors of witness elimination and heinous, atrocious and cruel. As to the former, the State will rely on its argument above as to Roberto Alphonso. If there ever was a case in which the

State proved witness elimination through circumstantial evidence, including the murders of Alfonso and Sara Musa, this is definitely it. There simply was no other motive, and in this regard, it must be noted that amongst Daisy's belongings in her apartment was a baseball program with Pardo's name and address. She knew who Ramon Alvaro's killers were, and she died because of that knowledge, and for no other reason.

As for heinous, atrocious and cruel, Dr. Welti testified she was shot five times, that she survived these shots only to be either bludgeoned by a bat or more likely run over by an automobile, and that even then she survived for a period of time, as she suffered massive internal cranial hemorrhaging after receiving this crushing blow (R.3261-3282), which tore her right ear completely off. The State respectfully submits this was a sufficient basis to support this aggravating factor.

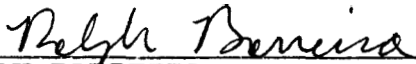
Again, even if this Court strikes one or both of these latter two factors, given the absence of mitigating factors and overwhelming weight to which three prior murder convictions are entitled, the death penalty for Daisy Ricard's murder should nevertheless be affirmed.

CONCLUSION

The convictions and death sentences are proper, and should thus be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing BRIEF OF APPELLEE was furnished by mail to GEOFFREY FLECK, Friend, Fleck & Gettis, Sunset Station Plaza, 5975 Sunset Drive, Suite 106, South Miami, Florida. 33142 on this 19 day of March, 1990.


RALPH BARREIRA
Assistant Attorney General

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