IN THE SUPREME COURT OF FLORIDA

CLARENCE JONES,

Appellant,

v. CASE NO. 74,866

STATE OF FLORIDA,

Appellee.

_____/

ON APPEAL FROM THE CIRCUIT COURT
OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE

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STATEMENT OF THE CASE

On July 28, 1988, Clarence Jones, Irvin Griffin and Henry Joseph Goins, were indicted by the grand jury for the first degree capital murder of Tallahassee police officer, Ernest Ponce de Leon (TR 1). They were additionally charged in Count II with attempted murder of Tallahassee police officer Greg Armstrong; Count III, the robbery of Officer Ponce de Leon by the taking of his pistol, and in Counts IV and V, Clarence Jones and Irvin Griffin were charged with burglary of a dwelling and aggravated assault (TR 2). Prior to trial, the State charged Clarence Jones by information with aggravated assault with a firearm on September 5, 1989 (RA 214). Count V of the indictment was **nolle prossed** (RA 160). Following a jury trial, Clarence Jones and his codefendant, Irvin Griffin, were found guilty as charged of murder in the first degree (RA 129). Jones was convicted of attempted murder, robbery, burglary of a dwelling, and aggravated assault with a firearm (RA 129-133).

Following the penalty phase of Jones' trial, the jury returned a death recommendation by a 11-1 vote (RA 161), and on September 26, 1989, Jones was sentenced to death as to Count I, life imprisonment as to Count II, life imprisonment as to Count III, life imprisonment as to Count IV, and five years imprisonment on Count I of the information charging aggravated assault (RA 205-209). The trial court, in its written findings imposing the death sentence, found the following statutory aggravating circumstances to be proven beyond a reasonable doubt:

(1) Clarence Jones was under a sentence of imprisonment at the time of the commission of the capital felony in this case.

(2) Clarence Jones has been convicted of other felonies involving the use or threat of violence to a person.

(3) The capital felony was committed while the defendant was engaged in the commission of a robbery with a deadly weapon.

(4) The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting a continuing escape from custody.

(5) The evidence establishes the victim of the capital felony was a law enforcement officer engaged in the performance of his official duties, Fla.Stat. §921.141(5)(j). (RA 225-226).

The court found, with regard to the aggravating factor that the capital felony was committed while the defendant was engaged in the commission of a robbery with a deadly weapon, that:

> The murder of Officer Ernest Ponce de Leon occurred while the defendant was robbing the officer of his own service revolver. This is evident from the verdict of the jury finding the defendant guilty of armed robbery. (cites omitted). By the jury verdict alone, it can be said that this aggravating circumstance as set forth in Fla.Stat. §921.141(5)(d) was proven beyond a reasonable doubt. While this aggravating circumstance is technically applicable from a legal standpoint (stealing the revolver occurred contemporaneously with the murder) the court does not find that it has nearly as much force as any of the others. Aggravating circumstance is not determinative; the sentence of death would be imposed even if were not applied.

(RA 225-226).

Additionally, the court found, with regard to the aggravating factors that the capital felony was committed for the

purpose of avoiding or preventing a lawful arrest, and the evidence establishes that the victim of the capital felony was a law enforcement officer, that:

> Officer Ponce de Leon was on duty, and he was responding to an official call from the police dispatcher when the capital felony was committed. Although this aggravating circumstance would not always overlap with the §921.141(5)(e) aggravating circumstance outlined in the preceding paragraph, the two circumstances do tend to overlap to some degree under the facts of this case. To this extent, the court has treated these aggravating circumstances collectively and not separately.

(RA 226).

With regard to mitigation, the trial court found no statutory mitigating factors applicable. The court opined, in its order, that (1) the defendant does has a significant criminal history; (2) that although the defendant contended that the capital felony was committed while he was under the influence of extreme mental or emotional disturbance, it was not established by the evidence; (3) the victim was not a participant in this offense; (4) Clarence Jones' participation in this crime was not relatively minor; (5) Clarence Jones was not acting under extreme duress or under the substantial domination of another person; (6) there was no evidence to question whether Jones' capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired, and (7) the defendant's age was not a factor with regard to the capital crime. (R 227-228).

With regard to non-statutory mitigating circumstances, the court found the following:

> The court has carefully examined all other circumstances of the offense and all other aspects of the defendant's background to determine whether there are any non-statutory mitigating circumstances. During the penalty phase, the defendant contended that his actions were predetermined in part by his poor environment, upbringing and family life. The defendant's father died when he was twelve years of age and his mother remarried a man who was reportedly a child abuser. His brother died when he was fourteen and his mother died later in 1978. With little guidance of affection, the defendant became involved in drugs and experienced what the psychologist described as feelings of helplessness. In general, these arguments can be said to fall in the category of alleged cultural deprivation.
>
> The court has carefully considered these facts, but the defendant's deprived childhood, given its remoteness to the event in question, is hereby rejected as a non-statutory mitigating circumstance. **Johnson v. State**, 497 So.2d 863, 872 (Fla. 1986) (history of child abuse rejected as mitigating circumstance), and **Knight v. State**, 512 So.2d 922, 932-933 (Fla. 1987) (mental retardation and deprived childhood need not be found to constitute mitigating circumstances).
>
> The facts relating to the defendant's upbringing and family life are relevant in that they provide some explanation for the defendant's conduct in light of his background. However, the court does not find that these factors rise to the level of a non-statutory mitigating circumstance.

(RA 228-229).

STATEMENT OF THE FACTS

Appellee accepts Appellant's statement of the facts with the following additions. On July 8, 1988, at approximately 8:16 a.m., Betty Miller, a dispatcher for the Tallahassee Police Department, received a call from Officer Greg Armstrong that an

officer needed assistance at 1918 Lake Bradford Road. (TR 1441, 1482-1483). A tape recording of the transmissions that day were played to the jury. (TR 1451-1469). Officer Armstrong was sent to the scene of the Lake Bradford Road laundromat in response to a call that a green, late-modeled car was parked behind the laundromat and a number of people were behind there. The caller advised that there were both black and white males present. (TR 1453). Tallahassee police officer Ernest Ponce de Leon volunteered as backup to officer Armstrong on the call. (TR 1482).

Tallahassee police officer Greg Armstrong testified that on July 8, 1988, he was working Zone 6-B, the southwest corner of Tallahassee when he received a call to go to 1918 Lake Bradford Road at the laundromat a little after 8:00 a.m. (TR 1494). He heard Officer Ponce de Leon say that he was en route as a backup and was about to arrive at the Express Lane store at Lake Bradford Road and Levy Street in Leon County, Florida. (TR 1495). Although Officer Armstrong pulled into the driveway first, Officer Ponce de Leon arrived almost immediately thereafter. (TR 1496). When they pulled up, Officer Armstrong testified he saw a green car parked behind the laundromat and that he and Officer Ponce de Leon approached the car. Officer Ponce de Leon went on the passenger's side and Armstrong approached the driver's side of what appeared to be a fairly new green Chevrolet Caprice four door sedan. (TR 1499). He observed that there were no other cars around and as he approached the car he saw four people in the green Chevrolet. A white male was

behind the driver's seat, a black female was directly behind the driver's seat in the backseat, a black male in green hospital scrubs was on the passenger's side in the front seat and a black male was sitting next to the black female in the backseat. (TR 1500-1501). Officer Ponce de Leon, at that point, called in a tag check on the car. (TR 1502).

Officer Armstrong testified that he walked up and asked the group what they were doing, they indicated that they had stayed at the Travelodge and were just drinking coffee and resting up before they started back to Mississippi. (TR 1504). Officer Armstrong asked for identification and after fumbling around a bit, the white male, Goins, got out of the car, went back to the trunk and proceeded to look through a red dufflebag for some identification. When he couldn't find any, he returned to the trunk, retrieved a green cosmetic case and a small suitcase and gave it to the black female, Beverly Harris, to look through for the identification papers. (TR 1507). Officer Armstrong testified that although his attention was focused on the white male and black female looking for identification, he suddenly looked up and saw a black male fire two shots towards the location where Officer Ponce de Leon had been standing. (TR 1508-1510). Armstrong testified he saw the man from his chest up and he remembered looking at a 6" barrel, blue steel revolver. (TR 1510). Officer Armstrong was able to draw his weapon after he heard the two shots and fired twice. When he fired the man disappeared from view. (TR 1515). A gun battle ensued at which time Armstrong fired at the white male in the car because he

believed he had a weapon and fired at a black male who dove into the passengers side of the car. Officer Armstrong couldn't tell at that point who was firing at him but shots were being exchanged. (TR 1517-1518). The car started to move and as a result, Armstrong moved away from the car towards the laundromat where he secured cover behind a yellow car parked on the south side of the laundromat. He reloaded his gun and again an exchange of gunfire took place. (TR 1521-1524). He saw a muzzle blast from the rear seat and saw a weapon sticking out from the front seat of the green car. (TR 1524). In the exchange of gunfire, Officer Armstrong believed he hit the white male and observed that the car stopped moving and wrecked into a brown Chevrolet Citation in the parking lot. (TR 1525). After the wreck, Officer Armstrong saw a black male with a greyish shirt with stripes run from the passenger's side of the vehicle toward the Express Lane convenience store and then travel along a pathway up a small embankment behind the store. Officer Armstrong fired two shots at him as the man fled. (TR 1529). At this point, Officer Armstrong testified that he did not know whether he shot the man. He did not know where the black female was located although he thought the white male was still in the car. (TR 1530). He moved from the building to see where Ponce de Leon was located. Officer Armstrong testified that he had not heard or seen Officer Ponce de Leon since the beginning of the gun battle and that when he got to where the green car was originally located, he saw Officer Ponce de Leon on his back on the ground. (TR 1533). Officer Armstrong opened Officer Ponce

de Leon's shirt and saw two bullet wounds in the officer's chest. The officer had no vest on and he observed that Ponce de Leon's holster was empty and his gun was missing. (TR 1534). Armstrong testified that Officer Ponce de Leon carried a Baretta .9 mm semi-automatic weapon (TR 1535), and that he, Armstrong, during the altercation, had used his Smith&Wesson Model 586 revolver. (TR 1519).

Officer Armstrong stayed with Officer Ponce de Leon until Sgt. Dozier arrived as a result of Officer Armstrong's call for help. (TR 1536). Other units started arriving and Officer Armstrong observed Officer McCrory secure the white male from the green car. (TR 1537). Officer Armstrong secured a firearm from the front seat of the car, a nickel plated revolver, with a six inch barrel and also a Baretta .380 automatic pistol. (TR 1539-1540). He testified that he thought he hit the man because after he shot the black male, Griffin, stumbled near the embankment before he went up the hill. (TR 1540).

Officer Armstrong testified that when he went to assist Officer Ponce de Leon, it appeared to him that the officer was dead. (TR 1546). On cross examination by Griffin's counsel, Officer Armstrong testified he didn't think Officer Ponce de Leon made any statements to the individuals. (TR 1565). He observed that they did not see any weapons in the car until after the shooting commenced and that he had been distracted when he was talking to Goins and Beverly Harris, in his efforts to secure their I.D.'s. (TR 1567).

On re-direct, he testified that Ponce de Leon was checking out the car to ascertain whether it was stolen and that Officer Ponce de Leon was shot before he could receive that information. (TR 1575-1577).

Sgt. Wilton Dozier testified that at approximately 8:05 a.m., on July 8, 1988, he heard the call that an officer was down and was the first to arrive on the scene. (TR 1619-1622). When he approached he saw a green car damaged and two patrol cars in the parking lot of the laundromat and convenience store. (TR 1623). He could not see Officer Armstrong when he approached but he did see a white male with blood all over his face in the green car and a black female under one of the police units with blood on her. (TR 1623). As he approached he heard Officer Armstrong yell for help and went in that direction. As he approached he saw Officer Ponce de Leon on the ground next to Officer Armstrong. He observed that the officer's shirt was undone and saw two bullet wounds. He indicated that there was no signs of a pulse nor vital signs and he commenced compression CPR at that point without success. (TR 1626-1633). In securing the crime scene, he located a chrome-plated, long barrel .357 Magnum revolver near the embankment and also found at the corner of the store, a Baretta in a cocked position. (TR 1634-1636). He recalled that Officer Ponce de Leon's service revolver was a Baretta semi-automatic revolver and that when he viewed the scene surrounding Officer Ponce de Leon's body, he found no service revolver. (TR 1638-1639).

Ms. Linda Jones, the store manager for the Express Lane convenience store at Lake Bradford Road, testified that in the early morning hours of July 8, 1988, she heard noises from the side of her convenience store. (TR 1678). When she walked outside she saw two police officers standing near a car and heard shooting commence. (TR 1679). She returned to the store and told her clerk to call the police and at that point, the clerk went and hid in the cooler. (TR 1681). She returned outside and saw only one officer shooting. When she looked out again, she saw a black male with a green hospital shirt near her car. (TR 1682-1683). When she returned again to the front door, she saw the black male squatting down near the door and he had a gun in his hand. The gun was a big, automatic, dark-colored weapon. (TR 1687). Ms. Jones last observed the man run up the side of the street toward Levy St. (TR 1688). Ms. Jones was able to postively identify the man in the green scrub shirt as Clarence Jones. (TR 1706).

Mr. Sammie Lee McGriff, on the morning of July 8, 1988, was driving down Lake Bradford Road at approximately 8:15 a.m., with a coworker James Knight, when he saw two black males come from behind the mini-mart and run in front of his truck. They crossed the street and ran towards the houses on the next street. Mr. McGriff testified that one of the black men was dressed in a green smock - like a hospital shirt - and there was blood on it (TR 1738-1739), he had a handgun and appeared injured. Mr. McGriff also saw blood on the second black man and in his mind they appeared to be traveling together. (TR 1741).

James Knight, who was with Mr. McGriff, testified that he also saw two men running across the street, one had a pistol and he saw them come from behind the convenience store on the corner. (TR 1752). He observed that one black man was wearing a green hospital garment and that as Mr. McGriff turned his car on Warwick St., he saw the men again traveling along that street. (TR 1754).

Ten year old Lin Black, Jr., was next called to the stand and testified that on July 8, 1988, he lived at 2017 Warwick St., with his family. (TR 1759-1760). He was in the family room that morning with a friend when he heard a knock on the window. His parents were at work and he was home alone with his friend, LaDuane. (TR 1761). Two black men came to his house, one wearing a green suit and carrying a gun. (TR 1761). The men entered the house without permission and Clarence Jones asked Lin where his mother was. (TR 1762). Lin testified he said nothing. At this point, Jones took the gun into the bedroom and hid it. The other man went into the kitchen. (TR 1763). Lin then bolted out the front door and went to his next door neighbor's house. (TR 1763). On cross examination, Lin testified that he knows Sindy Earle who lives up the street. He testified that he did not see Sindy Earle all that day. (TR 1766).

Stephanie Williams was next called to the stand by the State. She testified that she lives at 2009 Warwick St. and that on July 8, 1988, she lived there with her children and Sindy Earle. (TR 1774). On that morning, while in bed, she heard noises like firecrackers and got up to see what was going on.

She saw Sindy Earle and one of her sons lying on the couch in the den and saw nothing outside. (TR 1775). She returned to bed and within a few minutes she heard a noise at her door. When she got up and got to the door, she saw blood on the porch. (TR 1776). She testified that she was two doors down from the Black's residence. (TR 1779). When she got up the second time, she saw Sindy and her son walking toward the Black's house but she did not see Sindy go into the house. When she got closer, she observed that Sindy was washing blood off the porch at the Black's house and at that point asked him what he was doing. He told her just take the kids and go home. (TR 1781-1782).

Margaret Johnson testified that on July 8, 1988, she lived at 2013 Warwick Street, next door to Stephanie Williams to her right and Lin Black, Jr., to her left. (TR 1790). She also testified she heard a firecracker noise while she was standing in her kitchen and approximately five minutes after the noise she heard someone rattling at her back door. (TR 1791). Her daughter went to the door and said that someone was there. Ms. Johnson testified she saw a shadow of a person with a green top outside her house and when she went outside a little later, observed that there was blood outside the door where the man was seen. (TR 1792-1793). She saw Sindy Earle and his son walk by, walking towards Lin Black's house and then she observed Stephanie pass towards Lin's house. (TR 1794). She observed that there was alot of blood on her doorstep and it was still wet. When she looked at it more closely, she saw the word "Troop" imprinted in the blood. (TR 1797-1798). Sindy Earle, Jr., testified that on

July 8, 1988, he lived with his girlfriend and their three children on 2009 Warwick St. (TR 1811-1812). He was asleep on the sofa around 8:00 a.m., when he was awakened by what he though to be gun shot sounds. He testified that he didn't get up at first because he thought he was dreaming but then moments later someone knocked on the door then started banging on the door. (TR 1813). When he got up and went to the door, no one was at the door but he saw blood on the door handle and on the front porch. (TR 1814). He went outside and saw a trail of blood headed towards the Black's residence and observed in the fresh blood, the word "Troop". (TR 1814-1815). As he approached the Black's residence, he saw Lin Black, Jr., run out of the house in the other direction. Apparently, Lin did not see him. (TR 1816-1817). He told his son, Javaris, to go home and at this point he saw someone in the Black's house. (TR 1817). The man, later identified as Clarence Jones (TR 1825), stuck a gun in his face and told him to get in the house and help him take his, Clarence Jones' clothes off. (TR 1817-1819). Mr. Earle testified that he saw blood on Clarence Jones and saw another black male, who also was shot, laying on the sofa in the parlor. (TR 1821). Clarence Jones told him that if he didn't help them he would kill him. Earle had a silver 9 mm gun pointed at him. (TR 1820). After he assisted Clarence Jones in taking off his clothes, Jones told him to go outside and wash the blood off the porch. (TR 1822). Mr. Earle testified his girlfriend came up and asked him what he was doing. He told her to go home. (TR 1823-1824).

Mr. Earle was able to identify Clarence Jones as the man in the green smock in the Black's house and Irvin Griffin as the other man who was on the sofa. (TR 1825-1826). On cross examination, Sindy Earle was asked whether he had had difficulty identifying the individuals the day of the murder. Mr. Earle testified that the black and white paper like computer print out picture did look like the defendants but that when he saw them he was able to identify them. (TR 1827). Sindy Earle testified that he got away and as he returned to his own house, he saw police officers coming up the street. He stopped them and told them what he had seen, that there were two "dudes" in the Black's house. (TR 1828-1832).

Clarence Jones' counsel proffered his next questions concerning whether Sindy Earle was involved in drug trafficking; whether Sindy Earle was present at the laundromat when the police arrived at approximately 8:00 a.m., July 8, 1988, and whether Sindy Earle was a crack cocaine dealer. (TR 1835, 1854-1855). The State indicated that it had no objection to questions regarding whether Earle knew Beverly Harris but did object to questions as whether Sindy Earle had done a drug deal earlier the morning of the murder at approximately 3:00 a.m. (TR 1855). Following extensive discussion, the court ruled (TR 1867), that since counsel Davis could ask Sindy Earle (1) if he knew Beverly Harris; (2) if he planned to meet her anytime around the day of the murder; (3) did he meet her for a crack deal on or about July 8, 1988. The court ruled that he could not ask Earle whether he was a crack dealer or if he had been convicted of that crime.

(TR 1867). When cross examination continued, Sindy Earle testified that he did not know Beverly Harris or anybody by Beverly Harris' aliases and he was not at the Travelodge on July 7, 1988. He testified further that he did not know Carolyn Roberts nor did he go to the Black's house thirty or forty minutes prior his trip with his son. He testified that he was not up earlier that morning and did not meet anyone at the Express Lane convenience store earlier that morning. Mr. Earle testified that he did not negotiate any crack deals. (TR 1873-1876). Defense counsel again sought to ask Mr. Earle whether he was a crack dealer and whether he did or has ever dealt in crack. (TR 1877). The court denied said request but indicated that the matter could be revisited if evidence developed that tied Mr. Earle to any drug dealings. (TR 1878). When cross examination continued, Mr. Earle testified that on July 7, 1988, he was not Frenchtown nor at Crump's Tavern. (TR 1879).

The State next called Lin Black, Sr., who testified that he lived at 2017 Warwick Drive with his wife and three sons on July 8, 1988. At approximately 8:15 a.m. that day, he was at work and his wife was also at work. They had left their son, Lin, Jr., at home. While at work he received a call that there had been an accident at his house. (TR 1884-1885). When he arrived, he observed two black men coming out of his house. On direct examination he testified that he never gave either Clarence Jones or Irvin Griffin permission to enter his house that day and that he had never seen these men before. (TR 1892).

The plethora of witnesses testified concerning the arrest of Clarence Jones and Irvin Griffin, as well as presentation of testimony concerning the crime scene. William Harvey testified that he was called to the Black's house on Warwick St. and testified to the circumstances surrounding Clarence Jones' and Irvin Griffin's arrest. When they finally came out of the house, the first black man out had black pants and was suffering from a leg injury. The second man had facial injury. (TR 1900). Inside the house, there was blood all over the parlor and a trail of blood which led from the house back toward the north toward the convenience store at Levy and Lake Bradford. The trail of blood seemed to become more pronounced as the trail moved further and further from the convenience store and there was blood on each of the doorsteps before the Black's house. (TR 1901-1903).

Jay Etheridge next testified that he had occasion to search the Black's house and found a handgun in the back bedroom. He testified that the gun was cocked and ready to be fired and that there was blood throughout the house. (TR 1920-1922, 1926). The gun that was found was a 9 mm weapon. (TR 1930). Mark Peavy testified that he also searched the house and found in the dining area of the house a brown paper sack which contained a bloody two-piece green scrubsuit and found a shirt stuffed in the kitchen underneath one of the shelves. (TR 1935-1936). Mr. Peavy testified that he used dogs to track and follow the blood trail that led from the convenience store to the Black's house. (TR 1935, 1943-1944). Randall Beauchamp testified that when he entered the house at 2017 Warwick and searched it. He found the

couch out of place and blood stains all over. On the air conditioning unit he found the face of the air conditioning unit ajar and inside found plastic I.D. cards folded in half. Names on the cards were Michael D. Harris and Antwan Smith. (TR 1948-1949).

Doyle Woods testified that he was supervisor of the crime scene that morning and that he collected the evidence found in the house. Officer Ponce de Leon's service weapon was found in the house in one of the back bedrooms, I.D. cards were found and bloody clothing were collected from the house. He testified that he recognized the weapon because he carried the same type of weapon as Officer Ponce de Leon and that they had purchased it at the same time. In fact, the serial numbers on the weapons were only one digit off. (TR 1952-1953).

Selena Porter, a crime scene investigator, testified that she accompanied Clarence Jones to the hospital and collected his clothing. She collected his black tennis shoes which had the name "Troop" imprinted on the bottom of the shoe. (TR 1996). A number of other witnesses were called by the State to testify regarding collection of physical evidence such as fingerprints, bullet casings, and fragments. Drs. Flora Danisi and Greg Alexander testified as to the medical treatment given both Clarence Jones and his codefendant Irvin Griffin. (TR 2046-2049, 2051-2065).

Berkley Clayton, a member of the homicide assault unit, did a follow up investigation and detailed what was secured from the crime scene. (TR 2068-2069). He testified that he found a six

inch blue steel revolver in some bushes approximately four to five feet from where Officer Ponce De Leon's body fell. He also secured a Ruger Model Security Six .357 Magnum near the corner of the convenience store and a cocked Baretta semi-automatic handgun nearby. (TR 2069). He testified as part of his investigation, he was in contact with Sgt. Pat Drum, an investigator from Maryland, who provided information that Jones, Griffin and Henry Goins had escaped from the Maryland State Prison with two other inmates. They stole a Chevrolet and, based on the fliers regarding the escape, these individuals were presumed armed and dangerous. (TR 2076-2077). Officer Clayton had an inventory of items found in the car and, contained therein, were other weapons specifically, a Taurus .38 caliber revolver located in a black purse in the backseat of the car; a sawed-off shotgun .410 bolt action with an inscription of the stock "Born to Die" on the backseat under a towel, and a Smith&Wesson .38 caliber revolver in the front seat. (TR 2079-2081). During the inventory he also found in a dufflebag seventeen Polaroid photographs depicting Griffin, Goins and Clarence Jones with weapons. The weapons that were seized were similar to the weapons held by the men in the pictures. (TR 2082-2083). On cross examination, Mr. Clayton indicated that he had received information that Jones, Goins and Griffin had escaped from Maryland on June 25, 1988. (TR 2117).

Jeffery May testified that he collected physical evidence from the crime scene as well as the two rooms from the Travelodge where the defendants spent the previous night. On cross examination, May was asked whether any of the latent fingerprints

found matched those of Sindy Earle. He testified that none of the fingerprints matched Mr. Earle's. (TR 2244). The State then followed with the testimony of David Coffman, who testified regarding the blood samples and the body fluids found at the crime scene and the standards taken from the defendants (TR 2272-2279); and the testimony of David Williams, a firearm expert who matched the bullets and the fragments with the several guns found at the crime scene in the green Chevrolet and at the Black's house. (TR 2284-2321). Cassandra Collins and Novella McKinney both testified for the State that on July 10, 1988, they went to Leon County Jail to visit friends. While there, they managed to get on the second floor considered the "slammer". They saw Clarence Jones alone in one slammer cell. Cassandra Collins asked him where he got shot and Clarence Jones showed her. Clarence Jones said to her that he was the one that shot the police officer. (TR 2328). Novella McKinney stated that she also heard Clarence Jones say he was the one who killed the officer. (TR 2348).

Beverly Harris was next called and testified that she resided at Lowell Correctional Institute and was incarcerated for violation of parole. She testified that she had been previously convicted on four occasions. (TR 2382). She remembered July 8, 1988, because that was the morning she got shot. She testified that she and Clarence Jones, Henry Goins and Irvin Griffin were parked outside the laundromat on Lake Bradford Road that morning. (TR 2383). Goins' drove there. Jones was in the front seat next to him. She was seated in the backseat behind the driver and

Irvin Griffin was sitting next to her in the backseat. (TR 2384). She testified that they went there to wash some clothes before starting out to New Orleans. They were sitting there drinking coffee and reading the newspaper. (TR 2385). Clarence and Irvin Griffin had opened their car doors. She heard someone say, "here comes the police" and she lowered her newspaper. (TR 2386). She testified that she saw two officers approach the car, one came to the driver's side and other went to the passenger's side, presumably to check the tag. (TR 2387-2388). Officer Armstrong, who came to the driver's side, was very nice, said good morning and asked them how they were doing. Everyone in the car replied okay and he told them that he had a call and just came out to check and see what was going on. (TR 2389). Harris recalls the other officer said nothing. Neither officer acted in a threatening manner and they were very pleasant. (TR 2389). Officer Armstrong talked to Goins and asked him for his identification. At that point, Officer Ponce de Leon asked them where in Mississippi they were from. (TR 2390). Goins got out of the car and went to the trunk to check for his identification. Officer Armstrong followed. After looking in the bag, Ms. Harris testified that Goins asked her where did she pack the I.D.'s. She said she didn't know and got out of the car to see. She testified that she turned and opened the door and went to the trunk. She brought a bag back from the trunk. While kneeling on one knee outside the car, she unzipped the bag and looked for the I.D. (TR 2391-2392). She saw Officer Ponce de Leon standing near the back of the vehicle with his right foot on the bumper,

talking into his mike. (TR 2393). Suddenly, she saw Clarence Jones point a gun at the officer towards the rear of the car and heard gunshots. She testified that Clarence was wearing his green hospital smock. (TR 2394-2395). She saw Ponce de Leon fall to the ground and when she tried to get back into the car she got shot. (TR 2395). When she tried to get back in the car, Griffin shoved her and pointed the gun in her face, she grabbed her head, turned it, and felt a burning sensation. She testified she fell out of the car and heard more gunfire. Scared, she crawled from the green car on the ground until she reached one of the police cars and then crawled and hid under it. (TR 2397).

Beverly Harris identified Clarence Jones as the man who shot Officer Ponce de Leon. She identified Irvin Griffin as the man that shot her in the face. (TR 2399).

She first met Irvin Griffin and Clarence Jones two days earlier in St. Augustine, Florida. (TR 2401). She and Griffin struck up a conversation at Ripley's Believe It Or Not and discovered that they both were from Detroit and both knew people there. (TR 2402). Later, she met Henry Goins and Clarence Jones. She indicated that she went with them and saw the local tourist attractions, had lunch and had a good time. They had a Polaroid camera and took pictures while in St. Augustine. (TR 2404). After being in their company for a few hours, she agreed to travel with them to New Orleans. (TR 2406). She indicated that she was not threatened by any of the men and had not seen any weapons. (TR 2407). She returned to Jacksonville with Griffin, Jones and Goins and went to the hotel where they were

staying. (TR 2408). When she went into Jones' and Goins' room, she saw four or five guns on one of the twin beds and realized that they were not tourists. (TR 2408). She testified that after Griffin realized she saw the guns, he told her that they had all escaped from a Maryland prison and were not going back alive. (TR 2412). Griffin further instructed her that if anything happened he would kill her first. (TR 2413). Ms. Harris testified that she spent the night with Griffin and the next morning all four headed towards Tallahassee. They arrived at approximately noon on Thursday, and stopped at the Governor's Square Mall where they went shopping. (TR 2415). They ate dinner and then she and Griffin checked in for the whole party at the Travelodge on West Tennessee St. Using an identification given to her by Griffin, they checked in as Mr. and Mrs. Michael Harris, living at 1927 Washington Street, New Orleans, Louisianna. (TR 2416-2417).

Ms. Harris testified that the next morning they all got up early and packed and left the Travelodge at approximately 7:00 a.m. (TR 2418). They went over to West Pensacola Street to a deli and got doughnuts and coffee and headed for a laundromat on Lake Bradford Road. (TR 2418). Ms. Harris testified that they needed to wash clothes and since she had lived here two years earlier, she knew there was a laundromat on Lake Bradford Road. (TR 2418).

The morning of the murder she saw Griffin carrying a gun in his waistband. (TR 2426). She further testified that she did not know Sindy Earle and that when she arrived in Tallahassee on

July 7, 1988, she knew she had an outstanding capias pending for parole violation and would be sent back to prison if she were caught. (TR 2429).

On cross examination, defense counsel asked Ms. Harris if she was a prostitute at which point the State objected and the objection was sustained. (TR 2433). She indicated that in 1984, she had lived at the Park House Work Release Center on Coleman Street, near Lake Bradford Road. She never met Sindy Earle and at the time she lived in Tallahassee in 1984-1986, she worked as a senior counselor at ECHO. (TR 2435-2436). Her responsibility was to screen clients and listen to their problems and try to get them help. (TR 2436). Ms. Harris testified that she left her job when she absconded supervision and skipped out on her parole. (TR 2437). Ms. Harris testified that she knew alot of her clients lived in Frenchtown but testified she never knew any drug dealers. (TR 2444).

The State objected to the inquiry with regard to whether Ms. Harris knew drug dealers. After a lengthy discussion, the court ruled that no predicate had been set out to introduce whether Ms. Harris had prior use of drugs or whether she knew drug dealers in 1984. The court did permit questions regarding any drug dealings the night before or the day of the crime. (TR 2453-2454). Defense counsel asserted that a mistrial might be necessary because of the court's ruling since he was not able to effectively represent his client. (TR 2457).

Cross examination continued at which time Ms. Harris testified that she was familiar with Frenchtown and that on July

7, 1988, she took Griffin, Jones and Goins to Frenchtown because they wanted to buy drugs. She indicated that although they wanted to buy drugs, they were unable to do so because there were a number of undercover police standing around. (TR 2459). They then went to Crump's Tavern in the Bond area to buy drugs. (TR 2460). Ms. Harris testified that no one would sell them drugs because they thought Jones, Griffin, Goins and she were cops. (TR 2462).

While in the Bond area, Ms. Harris met Carolyn Roberts, an acquaintance from Harris' counseling days, and Harris introduced Carolyn to the group. (TR 2465). Carolyn Roberts said that she knew where they could get drugs and as a result Carolyn rode back with them to the motel. (TR 2466). They were able to secure some marijuana, powder cocaine and crack cocaine. Harris testified that she smoked some marijuana that evening. (TR 2468). On cross examination, Ms. Harris again recalled the events surrounding the shooting of Officer Ponce de Leon (TR 2472-2481), and testified that after Griffin shot her in the face, and she crawled away from the car, she saw Ponce de Leon laying face down behind the Chevrolet. (TR 2481).

On re-direct, Ms. Harris testified that she did not know Sindy Earle nor was she covering up for Sindy Earle. (TR 2504). Moreover, she indicated that she heard Griffin, Jones and Goins state that they were not going back to prison and they made a pact not to go back to prison. (TR 2506). She testified that Jones, Griffin and Goins wore or "toted" guns everywhere they went. (TR 2509).

Defense counsel moved for severance based on the nature of Griffin's defense counsel's cross examination of Ms. Harris. He argued that antagonistic defenses were evident and that a severance was mandated. The court took the motion under advisement. (TR 2510, 2511-2512).

Antoine Garrett was called by the State and testified that he was a correctional officer at the Maryland House of Corrections in Jessup, Maryland, in June 1988. (TR 2524). On June 25, 1988, he worked the 8 to 4 shift. (TR 2527). Defense counsel objected to evidence regarding the escape from Maryland arguing that it was totally irrelevant with regard to Clarence Jones. (TR 2527). Following a lengthy discussion, and a proffer of the circumstances surrounding the escape, the court overruled Davis' objection (TR 2545, 2546), and Mr. Garrett was allowed to testify regarding the circumstances of the Maryland escape. (TR 2553-2560).

Dr. Greg Alexander, who was present during the autopsy of Officer Ponce de Leon, testified that two entry wounds, one to the left anterior chest and the second twelve inches from the top of the chest, were present. (TR 2563-2564). The fatal wound to the chest area was the second shot which went through Ponce de Leon's heart. Dr. Alexander testified that as a result of said shot, massive disruption of the heart function occurred. Ponce de Leon's blood pressure automatically fell to zero and he immediately lost consciousness. (TR 2565-2567). The cause of death was the second gunshot that went through Ponce de Leon's heart.

Queen Esther Stoop, a classification supervisor for the Maryland House of Corrections, testified that Clarence Jones was under commitment in Maryland on June 25, 1988, when he escaped. (TR 2587). The record shows that a number of people escaped that day of which Clarence was one. Pat Drum, an officer with the Maryland State Police, testified that he came to Tallahassee on July 19, 1988, and identified the green Chevrolet used by Jones, Goins and Griffin as the vehicle stolen from Maryland on June 26, 1988. (TR 2590-2591).

Following a detailed discussion regarding the testimony of Lt. Larry Bennett regarding the defendant Irvin Griffin, the court denied Jones' counsel's second motion for mistrial. (TR 2762). The State rested its case. (TR 2780).

Clarence Jones' motion for judgment on acquittal was denied as to all counts (TR 2795), and the trial court entertained defense counsel's assertion that a severance should have been granted. The court found no basis for severance. (TR 2800, 2804).

The defense submitted portions of the depositions of Cassandra Collins and Margaret Johnson. (TR 2834). The court admitted into evidence the statement Berkley Clayton took of Beverly Harris a/k/a Brenda Thomas. (TR 2836).

The defense called Berkley Clayton who testified on July 9, 1988, he took the statement of Brenda Thomas/Beverly Harris (TR 2837), during her hospitalization to hours after she was shot. (TR 2838). Ms. Harris was told she was not a target of the investigation. (TR 2838-2839). She made inconsistent statements

which defense counsel sought to emphasize. (TR 2841-2843). The State objected, arguing that Ms. Harris admitted inconsistent statements during her direct testimony for the State and no provision of §809.02(a), Fla.Stat., permitted defense counsel's challenge. The trial court sustained the State's objection. (TR 2842-2843).

The defense then introduced the depositions of Cassandra Collins and Margaret Johnson. (TR 2850).

Blake Kennedy was called by the defense and testified that on July 8, 1988, he was driving back from the airport on Lake Bradford Road. (TR 2851). He heard popping sounds and saw a police officer running behind the laundromat. (TR 2852). He heard more sounds and pulled over across the street from the laundromat. (TR 2852). He observed a green car rolling out from behind the laundromat and saw one black man in front and one in back. A person was also crawling away from the car and hid under a patrol car. (TR 2853). He could not identify the sex of the individuals but testified they were black. (TR 2854). He saw a black male dressed in a greenish outfit run along the store and up an embankment. (TR 2854). He saw another man dressed in a whitish outfit with orange on, walk around the store to the back. (TR 2855).

Although Mr. Kennedy left after he saw more police cars arrive, he did not recall seeing a white man in the greenish colored car. (TR 2856).

On cross by the State, Mr. Kennedy testified that he could not see any blood on any clothing because he was too far away. (TR 2862).

Willie Dupree next testified for the defense. Mr. Dupree was transporting plants that morning when he approached the red light on Lake Bradford Road and heard what he described as a car backfire. (TR 2867). He observed a gun battle and saw an officer retreating and try to reload his gun near the corner of the convenience store. (TR 2868). He then saw a car come from behind the laundromat and strike another vehicle on the lot. (TR 2869). He testified four people were near the car, two black males, a black female and a white male driving the car. (TR 2869). He testified he thought he saw a third black male; but did not identify the male. (TR 2869). Mr. Dupree testified he thought the third black male exited from the back seat of the car. (TR 2873). One male had a green outfit and departed the car on the passengers side and another male exited from the same side. Both came out firing. (TR 2872). He saw the two black males run up the embankment - one stumbled and turned and fired. (TR 2875). One male was dressed in green, the other was dressed in a loud shirt. (TR 2876).

James Alphonso also was present on July 8, 1988. (TR 2882). He started to pull into driveway when he saw the gun fire exchange. (TR 2883-2885). Although he never departed his vehicle, he saw two black males, one in green and the other in a bright colored, Hawaiian colored shirt. (TR 2886). On cross he testified that he saw four people near the car. One crawled out and hid under a patrol car; one white guy was in the car,; and two black males who walked in front of the convenience store and walked down toward Levy St. (TR 2889). In an earlier

deposition, Mr. Alphonso stated that the two males started walking down towards Levy Street, turned, and then headed back toward Lake Bradford Road. (TR 2890).

Willie Davis stated he was taking children to school with his daughter when, on July 8, 1988, he heard someone yell "back up" at the traffic light. (TR 2903-2905). A white car near his, backed up and he observed a man run up and jump into it. (TR 2906). He then saw two men running from the area, one taller than the other. One was carrying a gun. (TR 2908). One of the men was bleeding as he passed behind Mr. Davis' car. (TR 2909). When he arrived at the corner, he saw the police with two people, a white male and a black female. (TR 2912).

Nell Hill, called by defendant Griffin, told of what he saw that day. He observed a car drive behind the laundromat and called the police. (TR 2918-2924). He saw two officers drive up and detailed what he observed about the shooting. (TR 2924-2927). Mr. Hill believed he observed six people in the green car behind the laundromat. (TR 2928). On cross, he stated he really did not know how many people were in the car (TR 2932), stating it could have been six people. (TR 2935).

Clarence Jones then called Carolyn Roberts. (TR 2936). She testified she knew Beverly Harris from Beverly's counselor days with ECHO. (TR 2936). She saw her on July 8, 1988, with two other people, Irvin and Clarence. (TR 2937). After she met up with them, she rode around with them and finally returned to their motel. (TR 2939). She met Goins at the motel. (TR 2940). They all drank and talked. She later had Clarence and Goins take

her to Whataburger on Lake Bradford Road so she could pick up her granddaughter. (TR 2941). She testified she never used drugs nor did she buy drugs for any of them that night. (TR 2941-2942).

On cross examination, Ms. Roberts testified that when they got gas at the Spur station the evening before, she saw Griffin pull out a gun from the glove box. (TR 2959).

Clarence Jones took the stand in his own behalf. He stated he was thirty four years old, and had been convicted on three occasions. (TR 2965). In June 1988, he was housed at the Maryland Correction facility and managed to escape. He ultimately met Beverly Harris in Jacksonville after Griffin brought her to their hotel. (TR 2966-2967). They all planned to go to New Orleans and Beverly joined them. (TR 2968). Jones stated that Beverly purchased drugs in Jacksonville and that Henry Goins drove them to Tallahassee a day or two before the murder. (TR 2970-2971). Beverly also purchased drugs in Tallahassee and he and Griffin accompanied her to Frenchtown to buy drugs. (TR 2973). They met Carolyn Roberts there. Jones testified they all drank and, with the exception of Griffin, they all used drugs. (TR 2974-2980). The evening before the murder, they made several trips to go get drugs, and Griffin and Harris argued because Griffin had had sex with Roberts. (TR 2981-2985). They all planned to go to New Orleans the next day. (TR 2987).

The next morning, they packed the car around 7:40 a.m., putting guns in the car, some under the seats. (TR 3000-3002). Goins drove to a deli where they got coffee and parked the car

behind a laundromat. (TR 3004). Beverly left the car to go see a guy about some drugs. (TR 3005). The reason they went there was to wash clothes. (TR 3005). Within five minutes, Beverly returned with a black male. (TR 3006).

Jones testified that he was in the back seat with Griffin when the man showed up and the man got into the front passenger side of the car. Beverly got in back. (TR 3006-3007). This new person was a man he had met at a pool hall the night before on one of their drug runs. (TR 3007). Beverly told them to let this guy "see that", and they proceeded to let him handle one of the guns under the front seat. (TR 3007). Jones contended that they planned to sell guns in exchange for drugs. (TR 3008). The man had a gun in his hand when someone said "here comes the police, what's this a setup?" (TR 3009).

Jones testified that as the two officers approached the green Chevrolet, Beverly said "everything is cool, be calm". (TR 3009). Officer Armstrong started talking to Goins who was in the driver's seat and asked Goins for some identification. Goins could not find any, so he exited the car and went to the trunk to look in the bags. (TR 3010). Jones testified that he, Griffin and Harris were in the back seat at the time and that Beverly got out of the car to help look for identification. Jones heard the other officer call in their tag on a tag check. (TR 3011). As Harris and Goins returned to the car with Armstrong by their side, Jones saw the man that Beverly Harris had brought to the car get up and shoot Office Ponce dd Leon. (TR 3013). Jones testified that he was still in the back seat and at this point he

hit Griffin and said, "Come on, let's go." Griffin had been asleep throughout this exchange between the police officer and Goins and Harris. Jones stated the next thing that happened was that the man turned and shot him. He hollered he was shot and he jumped up, got out of the car and ran towards the back of the car. (TR 3013-3014). He saw a gun lying on the pavement, got it and started running away from the car. Jones testified that he though Harris and the man she brought were trying to rob them. (TR 3014). Clarence observed that the man Beverly brought to the car then turned the gun towards Beverly and shot her. Jones jumped into the front seat of the car and the car started moving. When the car crashed into the car in the driveway, he again jumped out. (TR 3015).

Jones testified that he picked up the gun that was on the ground next to the police officer's body. He further stated he wanted to give up but before he could do so, shooting broke out. (TR 3016). As they left the parking lot area, he crossed the street with Griffin. (TR 3019). He stated he had never shot a gun before and that he did not fire the gun he ended up with when he was arrested in the Black's house. (TR 3019). Clarence Jones hid the gun in the house after he made sure no one else was there and returned to a chair in the living room to wait for the police. (TR 3021).

A man came to the door, asked what was going on and asked if anyone needed help. Clarence Jones testified the gentlemen came in and helped him take off his clothing. Clarence Jones identified the man as the same man who was at the murder scene.

Jones claimed he never threatened him nor held a gun on him. (TR 3021-3022). Within ten to fifteen minutes later the police arrived. Jones was weak and losing a lot of blood. He told the police that he and Griffin wanted help. (TR 3023-3024).

On direct examination by Griffin's attorney, Clarence Jones testified that Griffin never used cocaine although he drank and did smoke a little marijuana. (TR 3025). Griffin had threatened to leave the group if they did not stop using drugs and Griffin had joined up with Harris because Harris was supposed to find some gambling action for him. (TR 3026). Jones denied ever making a pact with anyone that the group was not going back to prison. (TR 3027).

On cross examination, Jones testified that he had been convicted of ten prior convictions and had escaped from Maryland's correctional institution with Griffin, Goins and others. (TR 3044). They had stolen a car from Jessup, Maryland, and traveled around after their escape ending up in Florida. (TR 3046-3047). They had managed in various ways to secure guns and intended to rob drug dealers to get money. Jones testified that they never had a chance to rob anyone prior to meeting Beverly Harris in Jacksonville Beach. (TR 3049-3051). Clarence Jones was unclear as to how many days they spent in Tallahassee prior to the murder but admitted that along the way prior to coming to Florida, he had purchased a sawed-off shotgun and a .380 Baretta revolver. (TR 3064, 3078). He admitted that there were only four people in the car the morning they pulled up behind the laundromat and that he was the one wearing a green scrub outfit.

(TR 3085). He admitted that guns had been placed under the front seat because "they were going to sell them". (TR 3091).

When asked specifically why they allowed this third man, who showed up with Beverly Harris, to see the guns; all Clarence Jones could say was that he thought there was a rip-off but, "he told the dude where loaded guns were under the seat". (TR 3110-3111). Jones said that the drug dealer ran off after he shot Officer Ponce de Leon and took a .350 Magnum with him. (TR 3113). He further testified that he picked up the officers gun because he thought he was in danger and he had already been shot. (TR 3116). He testified he never fired the .9 mm Baretta in the car and was unaware how five casings from that gun ended up in the car. (TR 3119). When he and Griffin arrived on Warwick Street, they were merely trying to get help and went from house to house seeking help. (TR 3125). Jones stated that he was wearing a pair of black "Troop" tennis shoes and that when he arrived at the Black's house, the two children therein fled. (TR 3125). He testified he hid the gun and got rid of the clothing he was wearing by hiding them. (TR 3127). He took the I.D. cards that they were carrying and hid them in the air conditioning unit. (TR 3128). Jones testified the man that came into the house, Sindy Earle, was the man he had met in Frenchtown earlier but he did not remember pointing a gun at him nor ordering him in the house. (TR 3131-3132). On re-direct, Clarence Jones admitted that he was an escapee and testified that he did not remember everything that happened after he was shot. (TR 3132-3133).

Following the jury instruction conference, closing arguments and the charge to the jury, the jury returned verdicts of guilty as charged. (TR 3384-3386).

Jones' counsel sought a continuance until Monday before moving forward with the penalty phase of this capital trial in order to obtain family members and other information. (TR 3390-3391). Jones personally was asked whether he had any problems with a continuance until Monday and also asked whether he had any problems with letting the jury go home for the weekend. (TR 3400-3401). On both counts, Jones had no objection.

On September 25, 1989, the penalty phase of Jones' trial commenced. The State introduced certified copies of Clarence Jones' previous convictions (TR 3431, 3438), and rested its case without putting on any further testimonial evidence. (TR 3437).

Jones first called to the stand Dr. Lawrence Anis, a psychologist employed by Florida State Prison. (TR 3438). Dr. Anis interviewed Jones and had available a number of documents from Maryland's correctional institution, prison files, a 1983 pre-sentence investigation report, intake summaries, performance evaluations from 1986-1987, and a certificate of Jones' GED. (TR 3439-3440). Dr. Anis also had copies of awards and other items from the prison and received a family and personal history from Jones during the interview. (TR 3440). Dr. Anis observed that Jones was born in Maryland and lived there all his life. His parents separated when he was six years old and he went to live with his father. Jones apparently had a happy life with his father, however, when his father died in a house fire when Jones

was twelve years old, it was very traumatic to him. (TR 3440). Jones then went to live with his mother and her boyfriend. The boyfriend was a jealous man and Jones and his mother's common-law stepfather did not get along. His stepfather was emotionally abusive and seemed jealous of Jones' mother's attention to Clarence and his brother. The step-father was a dominant figure, alcoholic and abusive. (TR 3441). Jones told the doctor that he used drugs to escape from this new environment and increased his alcohol usage. Jones tried to escape by using marijuana and LSD and injecting heroin. Later he progressed to barbituates and cocaine, spending most of his time using or trying to obtain more drugs. As a result of his drug habit, his criminal history commenced and his juvenile problems increased with his arrest for theft. (TR 3442). Jones told Dr. Anis that he suffered losses when his father died when Clarence was twelve years old; when his brother was stabbed to death in 1969 in a gambling argument; when another brother died in 1978 from a heart attack, and when his mother died in 1975. Dr. Anis testified that Jones was fearful of the heart problems in his family and informed him that Jones' daughter died of crib death in 1984. (TR 3443). Jones had been incarcerated since 1983 and suffered from a feeling of helplessness. Jones felt hopelessness about many things in his life and believed that the people he loved would abandon him by dying. Dr. Anis testified that Jones suffers from low self-esteem and expects to fail at things because of his feelings of inadequacy and his inability to make decisions. (TR 3444). Jones wants people to like him but was hesitant to talk about his

relationship with Henry Goins who Clarence acknowledged he had a relationship with. Clarence did admit that they were lovers. (TR 3445).

Dr. Anis testified that Jones has Aids and is HIV positive. Jones received his GED from Maryland and based on the reports, appears to be fairly adept at math. He is at a sixth grade level in arithmetic although his writing and reading skills are at a third grade level. (TR 3446). Although the PSI report indicates his IQ level is a 67, which is moderately retarded, the test given to Jones by Dr. Anis revealed that his IQ is higher than that, somewhere between 70 and 75, borderline intelligence in the dull-normal range. (TR 3447). Jones was very cooperative and expressed anxiety and remorse over the incident. (TR 3449).

On cross examination, Dr. Anis testified that he met with Clarence Jones for approximately four hours on the Friday and Saturday before the penalty phase proceedings. (TR 3449). The conclusions drawn by Dr. Anis were based on what records which were provided him and the interview of Clarence Jones wherein Dr. Anis obtained information with regard to Clarence's life history. Dr. Anis never spoke to any family members. (TR 3450). On cross examination, Dr. Anis admitted that obtaining one's GED was evidence that an individual could set goals and make an effort to improve himself. His cooperation evidenced an attempt to help himself and the awards and certificates also reflected an individual with a purpose and an effort for self improve. (TR 3451). With regard to whether Clarence Jones was dominated by others, the only evidence Dr. Anis had come from Clarence Jones' statements to him. (TR 3452, 3453).

No further testimonial evidence was introduced, however, Jones introduced a certificate of an award from the PTL Ministry; a certificate of completion of an introductory Bible course; a certificate evidencing the awarding of a GED certificate in Maryland; a continuing education certificate for completion of woodworking from Ft. Meade Military School and the Vita of Dr. Anis. (TR 3454-3455). Defense counsel rested. (TR 3458).

The trial court severed the penalty phase proceedings of Jones and Griffin at this juncture. (TR 3468). Henry Goins' testimony was proffered (TR 3479-3493), and following that proffer, defense counsel for Jones affirmatively decided that the jury should not hear any of Henry Goins' testimony regarding Clarence Jones. (TR 3497).

Defense counsel objected to the jury instructions to be given with regard the instruction that the murder caused great risk to many people, that the murder occurred during the course of a robbery and that murder was to interrupt law enforcement. (TR 3500-3502). Jury instructions were provided the jury. (TR 3537-3543). No objections were raised with regard to said instructions. Following deliberations, the jury returned with a death recommendation by an 11-1 vote.

On September 26, 1989, sentencing commenced. No additional evidence was presented and Mr. Davis stated that he had had ample opportunity to prepare for sentencing. (TR 3609). Jones was permitted to address the court and indicated that he was sorry that the jury thought that he had killed the officer but he had not. He further observed that he did not know he had the

officer's pistol. (TR 3609-3610). The trial court orally pronounced sentence imposing death, finding five (5) statutory aggravating factors and no mitigation.

SUMMARY OF ARGUMENT

The trial court did not err in sustaining the State's challenges for cause as to those prospective jurors who, under no circumstances, could recommend a sentence of death for this capital murder.

The trial court was correct in concluding the "restrictions" to cross examination were warranted because the evidence sought to be questioned was irrelevant and inadmissible. Moreover, the trial court restriction as to "reverse" **Williams** Rule evidence did not violate Jones' right to a fair trial.

The admission of **Williams** Rule evidence against co-defendant Griffin did not cause an impermissible spillover to Jones resulting in prejudice, especially where the jury was instructed that said evidence must not be considered against Jones.

The trial court properly followed the jury's recommendation of death and supported said decision in his written order finding five statutory aggravating factors and no mitigating that would outweigh the aggravation. Jones dull-normal IQ level was not a sufficient basis to override the jury's recommendation of death where said evidence of low IQ was **de minimus** and refuted by other defense evidence.

ARGUMENT

ISSUE I

WHETHER THE TRIAL COURT ERRED IN EXCLUDING AS JURORS THOSE WHO ARE OPPOSED TO THE DEATH PENALTY, BUT COULD REACH A VERDICT OF GUILT?

Without specific citations to the record, Jones argues that the trial court erred in excluding jurors who, albeit opposed to the death penalty, could return a verdict as to guilt or innocence but were unable to, under any circumstances, impose the death sentence. Jones contends the trial court erred, citing footnote 21 of **Witherspoon v. Illinois**, 391 U.S. 510 (1968); **Adams v. Texas**, 448 U.S. 38 (1980), and **Wainwright v. Witt**, 469 U.S. 412 (1985). Appellee would disagree with Jones' assertion and would submit summary dismissal of this point is in order.

Jones lists, in his statement of the facts, record citations, presumably those prospective jurors who he now asserts were incorrectly excused for cause. In his statement of the facts, he provides:

> Another group of jurors stated that they were opposed to the death penalty, but could consider the evidence and return a verdict of guilty. In this category, some stated they could vote to impose the death penalty and some stated that they would have difficulty or could not vote to impose death.
>
> In the last two categories, the defense posed objections to challenges for cause. Jurors in these two categories were systematically excluded by the court. (R-891, R-900, R-950, R-966, R-974, R-988).

Appellant's Brief, page 3, 4.

A review of the record beyond these citations provided by Jones, reflects that each of the jurors questioned were properly

excluded pursuant to **Wainwright v. Witt, supra.** As observed in **Mitchell v. State,** 527 So.2d 179, 180-181 (Fla. 1988):

> Mitchell raises nine points on this appeal. His first contends the trial court erred in excusing four prospective jurors for cause because each of them was not sufficiently questioned concerning whether his feelings on the death penalty 'would prevent or substantially impair the performance of his duties as a juror' as required by **Wainwright v. Witt** (cite omitted). Admittedly, the prosecutor's questioning of the prospective jurors was brief. However, a review of the voir dire record supports the conclusion that the jurors view toward the death penalty would have substantially impaired, if not totally prevented, the proper performance of their duties as jurors. We held previously in **Laura v. State,** 464 So.2d 1173, 1178-79 (Fla. 1985), quoting **Herring v. State,** 446 So.2d 1049, 1055-56 (Fla.), **cert. denied,** 469 U.S. 989, 105 S.Ct. 396, 83 L.Ed. 330 (1984):
>
> > It would make a mockery of the jury selection process to . . . allow persons with fixed opinions to sit on juries. To permit a person to sit as a juror after he has honestly advised the this court that he does not believe he can set aside his opinion is unfair to the other jurors who are willing to maintain open minds and make their decision based solely upon the testimony, the evidence, and the law presented to them.
>
> Defense counsel must have believed that the jurors had adequately expressed their views because he made no request to further interrogate them. The trial court did not abuse its discretion in granting the State's motion to excuse these jurors for cause.

As observed in **Wainwright v. Witt,** 469 U.S. 412, 424 (1985):

> We therefore take this opportunity to clarify our decision in **Witherspoon,** and to reaffirm the above-quoted standard from **Adams** as the proper standard for determining when a prospective juror may be excluded for cause because of his or her views on capital

> punishment. That standard is whether the jurors views would 'prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath.' We note that, in addition to dispensing with **Witherspoon's** reference to 'automatic' decision making, this standard likewise does not require that a jurors bias be proved with 'unmmistakeable clarity.' This is because determinations of juror bias cannot be reduced to question-and-answer sessions which obtain results in the manner of a catechism. What common sense should have realized experience has proved: many venireman simply cannot be asked enough questions to reach the point where their bias has been made 'unmistakably clear'; these venireman may not know how they will react when faced with imposing the death sentence, or may be unable to articulate, or may wish to hide their true feelings. Despite this lack of clarity in the printed record, however, there will be situations where, the trial judge is left with the definite impression that a prospective juror would be unable to faithfully and impartially apply the law. For reasons that will be developed more fully **infra**, this is why deference must be paid to the trial judge who sees and hears the juror.

469 U.S. 424-426.

Faced with this standard, Appellee would submit that none of the "complained of" jurors removed for cause were improperly excused. Herman White was called as a prospective juror (TR 890), and stated in his jury questionnaire, as to the death penalty, that his feelings concerning the imposition of the death penalty would prevent him from considering recommending death as a possible penalty, even if the jury were to return a verdict of guilty. (TR 891). No further questions were asked of Mr. White and when the State attempted to challenge him for cause, based on his answer as to the death penalty, defense counsel objected. (TR 895). The court, in sustaining said objection, concluded:

> The way I take his answer from 1(b), and 2(b), and 3(b), are that his religious beliefs about the death penalty would prevent or impair him from making a recommendation of death, and I think that under **Wainwright v. Witt** that does disqualify him as a juror because it substantially impairs or prevents his duty as a juror.
>
> MR. KIRWIN: So he could not even consider the possibility of a death sentence is what it says.
>
> THE COURT: That's the way I interpret it, and I am going to sustain the State's challenge on it over the defense objection.

(TR 896).

Eunice Burgess (TR 898), was called as a prospective juror and stated:

> MR. POITINGER: Ms. Burgess, in relation to some questions about the death penalty, you indicated that you do have some religious, moral or conscientious scruples against the death penalty, right?
>
> MS. BURGESS: Yes.
>
> MR. POITINGER: You also said that you could not return a verdict of guilty because a person may be subject to the death penalty: is that correct?
>
> MS. BURGESS: Yes.

(TR 900).

Without asking further inquiry of Ms. Burgess with regard to her beliefs as to the death penalty, defense counsel objected to the State's challenge of Ms. Burgess. (TR 904-905).

> MR. POITINGER: Yes, Your Honor, challenge for cause based on her response to the death penalty question that she could not return a verdict of guilty if it meant the imposition of the death penalty.
>
> THE COURT: Any objection to that by the defense?

MR. DAVIS: We don't join it.

THE COURT: I understand that. I understand that but I realize it's something you are not able to argue either, and I guess that is all I am trying to identify. So the State's challenge to Ms. Burgess will be granted.

(TR 905).

Michael Cozzocrea (TR 949-950), was also called as a prospective juror.

MR. POITINGER: In response to the question regarding the death penalty, (§§3), question number (1), it indicates that you do have a religious, moral or consciencious scruples against the death penalty. Is that correct?

JUROR COZZOCREA: Yes, sir.

MR. POITINGER: Under 1(b), you also marked that your personal views will prevent you from considering the death penalty as a possible sentence even though the State proved the aggravating circumstances would outweigh the mitigating. Is that right, that you could not impose it under any circumstances?

JUROR COZZOCREA: I don't believe in imposing the death penalty.

(TR 950-951).

Defense counsel then inquired of Mr. Cozzocrea:

MR. DAVIS: Mr. Cozzocrea: are you saying in this questionnaire that there are no circumstances under which you would not consider the death penalty appropriate?

JUROR COZZOCREA: Yes, I am against the death penalty.

(TR 952).

Without further discussion or questioning by defense counsel, the State then challenged for cause Michael Cozzocrea.

> THE COURT: Does the defense -- I realize you don't join in the challenge but --
>
> MR. DAVIS: We would object to this challenge. He has indicated that he could reach a verdict of guilty and he didn't think he could consider the death penalty. On each of the three circumstances, felony murder, premeditated murder, and principle, he indicated that he could find a person guilty despite his opposition to the death penalty.
>
> THE COURT: I think he did but I think if he cannot under any circumstances impose the death penalty, then he would be substantially impaired or prevented from performing his duty or could be, given a certain set of facts. I don't know. So I'm going to grant the State's challenge on Mr. Cozzocrea.

(TR 954-955).

The next "objectionable" excusal for cause was Mary Thompson. (TR 965). Mr. Poitinger asked of Juror Thompson:

> MR. POITINGER: Regarding this issue of the death penalty, you have marked basically every box, that you have a religious, moral, or conscientious scruples against the imposition of the death penalty but you would also not be able to impose a verdict of guilty if it could lead to the imposition of the death penalty. Is that correct?
>
> JUROR THOMPSON: That's right.
>
> MR. POITINGER: And you would not under any circumstances impose the death penalty?
>
> JUROR THOMPSON: No.

(TR 966).

No inquiry was made of Juror Thompson as to her views by defense counsel. The State challenged Mary Thompson for cause (TR 969), and co-defendant's counsel, Mr. Taylor, objected to the challenge. (TR 969). No specific objection was made by defense counsel Davis.

THE COURT: Alright. Let's look at her questionnaire for a minute.

I think she said that her views about the death penalty would prevent her or substantially impair her duty as a juror in all three of the situations that we have presented to her in the questionnaire. So I think the State's challenge is well taken and will be granted.

Did she change her view on that? Mr. Poitinger, if you could refresh my memory.

MR. POITINGER: No, Your Honor. She was consistent.

THE COURT: Alright. Let's bring these jurors back in.

(TR 970).

Prospective Juror Judy Showalter (TR 972), was also challenged:

Mrs. Showalter, I noted on your questionnaire that you do have religious, moral, or conscientious scruples against the imposition of the death penalty. Is that correct?

JUROR SHOWALTER: That's right.

MR. KIRWIN: And on your answer to the second question -- and again the question is, 'Would your personal views, or are they such that they would prevent or substantially interfere with your ability to return a verdict of guilty even though the State proved the case beyond a reasonable doubt?' You answered 'No', but you penned in their, I think, 'As long as I am not deciding on the penalty itself.'

JUROR SHOWALTER: I feel I could make a decision on guilty or not guilty. I do not feel I could decide what the penalty would be.

MR. KIRWIN: The second part of that question is, when were talking about guilty or not guilty, you realize that if a decision of guilty is made, then the question about whether or not the death penalty can be

imposed is basically a majority vote of twelve people on the panel, you know, in the second phase of the trial.

JUROR SHOWALTER: Yes.

MR. KIRWIN: Would the knowledge that basically it would be out of your hands, you would be one vote in twelve at that point, it would no longer have to be a majority and that the panel, even if you choose not to recommend the death penalty, the panel itself could recommend the death penalty, would that have any effect on your ability to return a verdict of guilty in the first phase of the trial?

JUROR SHOWALTER: No.

MR. KIRWIN: Could you even consider the death penalty as an appropriate penalty if in the second phase you found the aggravating circumstances outweighed the mitigating circumstances?

JUROR SHOWALTER: A lot of big words. It would be the same answer I gave before.

MR. KIRWIN: Okay. That's no, you could not do that?

JUROR SHOWALTER: That's right.

MR. KIRWIN: Thank you.

THE COURT: Well, now, make sure we understand. I'm not sure whether she means that she could not make the decision or she could not make a recommendation.

JUROR SHOWALTER: I could not make a recommendation. I could make a decision.

THE COURT: You could make the decision but not the recommendation? Now, I'm a little confused.

MR. KIRWIN: I think she's talking about the decision of guilty but not the recommendation for the death penalty. Is that correct?

JUROR SHOWALTER: That's right.

THE COURT: But on the question that you were asking where you penned in 'As long as I am not the person deciding on the penalty itself,' I took that to mean that you could not actually make a decision to impose the death penalty. But the question is, would your views about it prevent you from making a recommendation that the death penalty be imposed?

JUROR SHOWALTER: I could not make any --

THE COURT: Because you won't make the final decision in any case, but your recommendation will be given great weight and consideration by the court. And your recommendation might ultimately lead to the imposition of the death penalty but you won't ever actually have to decide that yourself. Now, have I confused you even more?

MR. KIRWIN: The question, I guess were all -- and you've already answered here on the questionnaire -- let me give it to you again --

JUROR SHOWALTER: Let me say something that might clear it up.

As long as I am not directly imposing the death penalty on any person, I can make any other decision. Does that clarify?

THE COURT: Well, it does, but in this kind of case we have possibly two phases, the first of which will be to determine whether defendants are guilty. And if they are determined to be guilty, and only then, will we proceed to a second phase in which the jury will make an advisory verdict or a recommendation to the court on what sentence to impose.

Now, if your views are such -- about the death penalty, are such that you could not recommend to the court that the death penalty be imposed under any circumstances, then we need to know that. But if you are saying you would have the ability to make that recommendation as long as your not the one who actually has to decide in the end, then that a whole other issue, I think.

MR. POITINGER: Judge, may I approach the bench just a moment?

THE COURT: Sure.

(Thereupon a conference was held at the bench between counsel and the court).

MR. KIRWIN: Okay, ma'am, I think we'll let you off the hook for moment.

(TR 974-977).

Following further inquiry by Mr. Davis of Juror Showalter, she indicated that she had read recent media accounts about the case the day before in the newspaper. (TR 978). Following further inquiry of other jurors, the State moved to excuse for cause Judy Showalter. (TR 982). Defense counsel objected, stating:

> She indicated she would have no trouble reaching the verdict in the case. She would have no trouble with a verdict of guilty. That she would not vote to recommend death, but that would not substantially impair her ability to reach a verdict in the case.
>
> THE COURT: Well, I think under **Wainwright v. Witt**, the test is whether it would substantially impair or prevent the juror from performing his or her obligations as a juror, which in some cases may include returning a recommendation of death. And if you can never do that, even though you can find a verdict of guilty, then your still disqualified. I believe that was where we ended up with her and she even, I believe, jeopardized sort of downplaying the role of the jury even at that, which I would like to try to clear up a little bit with anyone else in the panel here who is accepted, just to remind them that -- I will -- I'll tell you what. I will see if I can't clear that up a little bit and then if there is any problems, we'll address it. For right now, Judge Showalter will be excused. The State's

challenge will be granted over the defense's objection.

(TR 982-983).

Terminally, Jones complains about the excusal for cause of prospective juror Lurell Sherman. (TR 986). The State inquired of Mr. Sherman as follows:

> . . . You also indicate, sir, that you have religious beliefs, morals, or consciencious scruples against the imposition of the death penalty. Is that correct?
>
> JUROR SHERMAN: Yes.
>
> MR. POITINGER: And you further indicated that your views are such that you could not consider recommending the death penalty even though the aggravating circumstances would say the death penalty would be a proper penalty, would outweigh the mitigation, which would say the death penalty would not be a proper penalty.
>
> JUROR SHERMAN: Yes.
>
> MR. POITINGER: And that's the way you have answered throughout your questionnaire. Correct, sir?
>
> JUROR SHERMAN: That's right.

(TR 988).

Co-defendant's defense counsel ultimately inquired of Mr. Sherman, with regard to his views:

> MR. TAYLOR: You indicated that you had religious, moral, or consciencious scruples against the imposition of the death penalty. Is that correct?
>
> JUROR SHERMAN: Yes.
>
> MR. TAYLOR: And would those be a combination of all three or any one in particular? Religious, moral, or consciencious scruples?
>
> JUROR SHERMAN: It would be more religious.

MR. TAYLOR: But you did indicated that your personal views are such that -- 'if yes, are your personal views such that they would prevent or substantially interfere with your ability to return a verdict of guilty even though the State proved guilt beyond a reasonable doubt?' And you indicated 'no'; that is that you could return a guilty verdict in this case as to either or both of the defendants if the State proved its case?

JUROR SHERMAN: If they prove the case.

MR. TAYLOR: Then you indicated that if the State did prove its case, while you could return a guilty verdict, that you have problems returning a verdict or voting on a recommendation for death?

JUROR SHERMAN: Yes.

MR. TAYLOR: And is that also based upon your religious beliefs?

JUROR SHERMAN: Yes, it is.

MR. TAYLOR: Do you think these religious beliefs would interfere with your ability to judge the evidence in this case and then make a decision as to the guilt or the innocence of either one of these individuals on trial?

JUROR SHERMAN: No, it wouldn't.

MR. TAYLOR: That's all I've got, Judge. Thank you.

THE COURT: Alright. Mr. Davis, do you have any additional questions?

MR. DAVIS: No, sir.

THE COURT: Any more from the State?

MR. POITINGER: No, sir.

(TR 995-996).

The State challenge for cause Mr. Sherman. Mr. Taylor objected, stating:

Yes, sir, Judge. We would object. Again, we have been making this record. We understand

> the court's interpretation of the case previously cited. Our concern is that that may be an overemphasis and in this particular case, the man clearly indicated that notwithstanding a religious only, not a moral or consciencious objection to the death penalty, that he could, in fact, evaluate the evidence in this case and could, in fact, return a guilty verdict and that his religious feelings would not in any way impact upon his ability to judge the evidence or return a guilty verdict. We think that he should not be excluded at this time and the motion is not well taken.
>
> THE COURT: Well, I think that **Witherspoon, Adams**, and **Witt**, go a little bit beyond that. In fact, in **Witherspoon**, there was a two-part test that dealt first with the ability to return a verdict of guilty and the second part dealing with the jurors ability under any circumstance to recommend death. And I think if we have a situation where we have a juror who says I could return a verdict of guilty but my religious scruples are such that -- let me see if I've got the right one here. This is Mr. Sherman.
>
> One question 1(b), he said, 'Are your personal views such that you could not consider recommending a death sentence even you found the aggravating circumstances outweighed the mitigating circumstances?' .
>
> I think if you have a juror who is saying that his views are so strong that he could not under any circumstance even consider recommending death, then he does qualify for exclusion for cause by the State. So the State's challenge on Mr. Sherman will be granted.

(TR 997-998).

Beyond per adventure, none of the jurors heretofore noted as being excused for cause were done so in error. **See Buchanan v. Kentucky**, 483 U.S. 402 (1987); **Darden v. Wainwright**, 477 U.S. 168 (1986); **Lockhart v. McCree**, 476 U.S. 162 (1986); **Randolph v. State**, 562 So.2d 331 (Fla. 1990); **Hamilton v. State**, 547 So.2d

630 (Fla. 1989), and **Hill v. State**, 477 So.2d 556 (Fla. 1985), wherein the court held:

> When any reasonable doubt exists as to whether a juror possesses a state of mind necessary to render an impartial recommendation as to punishment, the juror must be excused for cause.

Pursuant to **Wainwright v. Witt, supra**, the trial court applied the applicable standard and made correct determinations based on his viewing of the prospective jurors and the inquiries made. **See Floyd v. State**, ____ So.2d ____ (Fla. September 13, 1990), at slip opinion, page 7. Jones has demonstrated no basis upon which relief should be granted on this point.

ISSUE II

WHETHER THE TRIAL COURT ERRED IN RESTRICTING CROSS EXAMINATION OF SINDY EARLE AND BEVERLY HARRIS?

Appellant next takes issue with what he perceives to be a limitation on the cross examination of two State witnesses, in particular, Sindy Earle and Beverly Harris. Appellant argues that the limitation of cross examination impacted greatly on the what the defense presented and as such, prevented him from fully developing a defense. (Appellant's Brief, page 23). In particular, Appellant argues that: "the questions related to prior relationship between the parties, whether either were drug dealers and whether or not the two arranged drug transactions which led to the drama on Lake Bradford Road", were essential to Clarence Jones' case. Appellee would disagree and submits the record belies such an allegation.

On cross examination of Sindy Earle, defense counsel sought to inquire as to whether Earle had previously met Beverly Harris; if Earle was a crack dealer; if Earle had been involved in a crack deal at 3:00 a.m., July 8, 1988; if Earle had been present at the Express Lane the morning of the murder when the police arrived; whether Earle had gone to the Black's house thirty minutes before he testified he went there. (TR 1835-1854). The State had no objection as to inquiries on cross as to whether Earle knew Beverly Harris or any facts and circumstances surrounding possible drug deals at the time of the murder. However, they did object to whether Earle did a crack deal at 3:00 a.m., July 8, 1988, without putting it into context. (TR 1855). The court, after hearing extensive argument, ruled that defense counsel could inquire of Sindy Earle as to whether he knew Beverly Harris; whether he planned to meet her anytime contemporaneous to the day of the murder; whether he had met her to do a crack deal contemporaneous to the day of the murder but could not ask Earle whether he was a crack dealer or convicted of being a drug dealer. (TR 1867). When cross examination continued, defense counsel inquired of Earle whether he knew Beverly Harris, to which Mr. Earle said he did not. Defense counsel asked whether he knew Beverly Harris under any other name, Earle said he did not. (TR 1873-1874). Earle denied being at the Travelodge on July 7, 1988, and stated that he did not know Carolyn Roberts. (TR 1874). He said he did not go to the Black's home thirty or forty minutes before Clarence Jones and Griffin showed up. He only made one trip to the Black's house

with his son that morning. (TR 1875). Earle testified that he did not meet anyone at the Express Lane earlier the morning of the murder and that he did not negotiate any crack deals. (TR 1875-1876).

Defense counsel again sought to inquire of Mr. Earle of whether he was a crack dealer or had he ever dealt in crack cocaine. (TR 1877). The court, after hearing further oral argument, denied defense counsel's request but noted that defense counsel may revisit this issue if facts and circumstances developed through other defense witnesses that contradicted Earle's testimony with regard to his drug dealings and his connection with Beverly Harris the morning just prior to the murder. (TR 1878). Indeed, the State stipulated that if evidence came out that would bear on the relevance of asking whether Earle was a crack dealer, the State would have no objections to the question being asked at that time. (TR 1878).

When cross examination continued, defense counsel asked whether, on July 7, 1988, during the late hours of that evening, Earle was in Frenchtown or at Crump's Tavern, to which he said no. (TR 1879). On re-direct by the State, Earle testified the first time he went to the Black's house the morning of July 8, 1988, was when he followed a trail of blood after someone had knocked on his door. When he got there he told his son to go home to his mother. (TR 1882). When he returned later that day, it was only after he had gone downtown to the police department and given a statement. When he returned, Mr. and Mrs. Black were home and neither defendant was present. (TR 1883).

With regard to the cross examination of Beverly Harris, defense counsel sought to inquire of Ms. Harris whether she was a prostitute to which the State objected and said objection was sustained. (TR 2433). Defense counsel sought to elicit through cross examination whether Beverly Harris knew any drug dealers in 1984-1986, when she lived in Tallahassee, Florida. (TR 2445). Additionally, defense counsel sought to inquire as to whether she used drugs or had drug dealings during that period of time. (TR 2445-2448). The court concluded that no predicate had been properly presented to introduce whether Beverly Harris had prior use of drugs or whether she knew drug dealers in 1984. The court reasoned that any knowledge of drug dealers in 1984 had little or no impact and was totally inadmissible with regard to the facts and circumstances surrounding the murder of Officer Ponce de Leon on July 8, 1988. (TR 2453).

The court did indicate that it would permit questions regarding any drug dealings about the night before and the use of drugs that had a direct bearing on the murder or the facts and circumstances leading to the murder. (TR 2454-2458). When cross examination commenced, Harris testified that she was familiar with Frenchtown and that she took Griffin, Jones and Goins there on July 7, 1988. She testified that they wanted to buy drugs and so she took them down there because she knew that is where drugs were sold. When they saw police standing around, they just rode through, thwarted in their efforts. (TR 2459). They next went to Crump's Tavern in the Bond area because she again testified she knew drugs were sold there. (TR 2460). No one would sell

them drugs in the area because they believed that Beverly Harris and the group she was with were cops. (TR 2462). Ms. Harris testified she did not know Sindy Earle (TR 2462), and she did introduce Jones, Griffin and Goins to Carolyn Roberts and told them that Carolyn Roberts knew where to get drugs. (TR 2465-2466). Ms. Harris admitted to smoking marijuana on July 7, 1988, and drinking J&B Scotch that evening. Although they found cocaine on her person when she was arrested, she did not have an explanation as to why it was there or how it got there. She testified that she did not go out and score drugs that evening but it was Carolyn Roberts who went out with them to buy drugs. She further testified that Carolyn Roberts was not her buddy. (TR 2493-2494). On re-direct examination, Ms. Harris testified that she was not covering up for Sindy Earle because she did not know Sindy Earle. (TR 2504). She admitted that she had dated George Glover six to seven months while she was living in Tallahassee but no further inquiries were made of her regarding Mr. Glover. (TR 2507).

No further objections were made regarding any restrictions with regard to closing arguments on no re-cross was offered by defense counsel Davis with regard to Ms. Harris.

Beyond per adventure, the limitation as to cross examination in the instant case was well founded based on the discussions presented in this trial transcript. The restrictions with regard to cross examination fell within the permissible latitude given the trial court in ascertaining the admissibility of evidence presented at trial. Contrary to Appellant's contention, **Coxwell**

v. State, 361 So.2d 149 (Fla. 1978), does not mandate reversal **sub judice**. As noted in **Coxwell v. State, supra:**

> Our conclusion here should not be construed to suggest that the scope of cross examination is wholly without bounds, nor that a discretionary detailment of the inquiry before exceeds those limits can never be harmless error if no prejudice can be demonstrated. We only hold that where a criminal defendant in a capital case, while exercising his Sixth Amendment right to confront and cross examine the witnesses against him, inquires of a key prosecution witness regarding matters which are both germane to that witnesses testimony on direct examination and plausibly relevant to the defense, and abuse of discretion by the trial court in curtailing that inquiry may easily constitute reversible error. In the present case, it clearly did.

361 So.2d at 152.

In **Maggard v. State**, 399 So.2d 973 (Fla. 1981), the court observed:

> Maggard challenges his conviction on several grounds. He first contends that the trial court erred in sustaining the State's objection to certain questions asked of two State witnesses on cross examination. We reject this contention and hold that he was not prejudicially and improperly restricted in his cross examination of these witnesses and that the court acted properly within its broad range of discretion sustaining the State's objections. In the absence of a showing of abuse of discretion, we will not disturb the trial court's evidentiary ruling. **Mikenas v. State**, 367 So.2d 606 (Fla. 1978); **Hoy v. State**, 353 So.2d 826 (Fla. 1977), **cert. denied**, 439 U.S. 920, 99 S.Ct. 293, 58 L.Ed.2d 265 (1978).

399 So.2d at 975. **See also Scott v. State**, 411 So.2d 866 (Fla. 1982); **Jackson v. State**, 530 So.2d 269, 271-272 (Fla. 1988); **Sireci v. State**, 399 So.2d 964 (Fla. 1981).

Moreover, even assuming for the moment the trial court erred in restricting cross examination **sub judice**, the error is beyond any question of a doubt, harmless error. **See State v. DiGuilio**, 491 So.2d 1129 (Fla. 1986); **Fuente v. State**, 549 So.2d 652 (Fla. 1989); **Houston v. State**, 540 So.2d 943 (Fla. 4th DCA 1989); **Hill v. State**, 501 So.2d 164 (Fla. 3rd DCA 1987), and **Livingston v. State**, ____ So.2d ____ (Fla. March 10, 1988), **rehearing denied** (September 6, 1990); **Delaware v. Van Arsdall**, 425 U.S. 673 (1986). Based on the foregoing, no relief should be forthcoming as to this claim.

ISSUE III

WHETHER THE TRIAL COURT ERRED IN ADMITTING WILLIAMS RULE EVIDENCE AGAINST THE CO-DEFENDANT?

Appellant next argues that the trial court erred in admitting evidence of co-defendant Griffin regarding his earlier conviction for shooting a police officer in Maryland. He acknowledges that the trial court was properly instructed that the evidence did not relate to him but argues that the trial court should have granted his motion for mistrial and motion to severe.

The record reflects the State proffered the testimony of Lt. Larry Bennett as a result of defense counsel Taylor's motion in limine filed in behalf of co-defendant Griffin. (TR 2720). During the course of the proffer, Lt. Bennett testified that he was a victim of a gunshot wound while making a routine car stop in Baltimore, Maryland. (TR 2722). He testified that as a uniformed police officer, he pulled a car over because of erratic

driving, and the driver presented to him his driver's license. The officer returned to his vehicle to do a routine check. (TR 2723). While sitting in the patrol car, Lt. Bennett saw the driver and the passenger moving around in the car and made a conscious decision to return to the vehicle. (TR 2724). When he approached, the passenger began to fire at him. (TR 2725). Three shots were fired each hit him in the upper left portion of his back. (TR 2726). He heard voices discussing whether he should be finished off (TR 2727), and saw the individuals running off. (TR 2728). The search of the car revealed that the car had been stolen and that the owner had been shot and locked in the trunk. (TR 2728). He positively identified the person who shot him in 1978 as Irvin Griffin. (TR 2729). At the close of the proffer, Griffin's counsel, Taylor, asserted that it was improper **Williams** Rule to admit said evidence. Clarence Jones' counsel, Davis, objected as to the relevancy to his client, arguing that the spill-over would be extremely prejudicial. (TR 2748). Although Jones was not mentioned by Bennett, the court ultimately ruled that:

> . . . The bear bone scenario of the facts of the defendant Griffin having fired a shot at a police officer who was checking his I.D. when he knew he was in a stolen car is something that I think has a bearing on the question of motive, intent or identity.
>
> I am going to allow that to be presented to the jury with a cautionary instruction that he's not on trial for that. And with a cautionary instruction that the evidence is not to be taken against the defendant Jones.
>
> It is offered solely against the defendant Griffin and should not be considered against the defendant Jones. So, I guess what I'm

> saying is I agree with part of your argument about Taylor that some of this evidence is irrelevant and some of it, even if it is relevant, or logically relevant, if not legally relevant because the prejudicial effect of it outweighs the probative value.
>
> So, I'm going to do what you say you want to do; that is, to permit the witness to give testimony that has a bearing on the question of motive without effecting the trial with a good deal of other information that I feel will certainly cause problems later on.

2754-2755.

Following this discussion, defense counsel moved for a mistrial and a motion for obtaining a severance based upon the ruling. (TR 2762).

The State ultimately called Lt. Bennett who testified that in March of 1978, he was a uniformed police officer in Baltimore, Maryland. (TR 2767). On March 23, 1978, while on duty, he was shot during a routine car stop while checking a license tag. (TR 2768). When he returned to the car he saw a passenger aim a gun at him and shoot three times. He was shot three times in the upper left portion of his back. (TR 2771-2772). He positively identified Irvin Griffin as the man who shot him. (TR 2773).

Prior to this testimony, the court instructed the jury regarding the limited purpose of Lt. Bennett's testimony regarding Irvin Griffin. (TR 2765). The court specifically informed the jury that they were not to consider any of this evidence with regard to Clarence Jones. (TR 2766).

Clearly no prejudice accured to Clarence Jones. The jury was specifically instructed that said testimony had nothing to do with Clarence Jones. Moreover, the testimony of Lt. Bennett in

no way involved Clarence Jones with regard to the 1978 shooting incident of Lieutenant Bennett by Griffin. In every joint trial spillover occurs. **Note: Duckett v. State,** ____ So.2d ____ (Fla. September 6, 1990). Even assuming for the moment the trial court erred in allowing said testimony as it relates to Clarence Jones, said error was harmless error beyond a reasonable doubt in light of the overwhelming evidence regarding Clarence Jones' guilt in the murder of Officer Ponce De Leon. **State v. DiGuilio,** 491 So.2d 1129 (Fla. 1986). Moreover, Appellant has cited no authority in which mandates reversal **sub judice. See Haliburton v. State,** 561 So.2d 248 (Fla. 1990).

ISSUE IV

WHETHER THE TRIAL COURT ERRED IN DENYING APPELLANT'S USE OF WILLIAMS RULE EVIDENCE INVOLVING STATE WITNESSES SINDY EARLE AND BEVERLY HARRIS?

Appellant next argues that the trial court erred in allowing defense counsel to introduce evidence regarding the existence of "prior convictions against Beverly Harris and Sindy Earle for various charges involving violence against a police officer and for drug related offense. (R 2458)." (Appellant's Brief, page 26).

The record reflects that defense counsel sought to question Beverly Harris with regard to whether she knew any drug dealers. (TR 2445). The State objected, arguing that it was not relevant to the facts and circumstances leading up to the murders whether Beverly Harris knew drug dealers in 1984-1986, when she lived in Tallahassee, Florida. Specifically, the State argued:

> Judge, if the relevant question is 'did you go down there to try and help them buy drugs,' what's the relevance of, you know, 'how did you know where to go?' I mean, she's admitted she took them down there to buy drugs. That's the one thing.
>
> The second part of that is, Judge, that what that question that he asked was designed to do was to hit what she did back in 1984 to 1986. I know it. The court knows it. Mr. Davis knows it. That's where the objection is.
>
> As I said, the State has no objection to July 7 and July 8, 1988. Did you buy drugs for them? Did you try to buy drugs for them? Did smoke drugs with them? Did you get them drugs? Were you on drugs?
>
> I think that's admissible. But going back, I think secondly -- firstly, I think its inadmissible under this court's ruling. And secondly, I think it would be a collateral matter.

(TR 2457-2458).

The court, relying on **Edwards v. State**, 548 So.2d 656 (Fla. 1989), held:

> . . . There is in my view, no predicate for the introduction of prior use of drugs. She may have been a drug user. She may have known drug dealers, but there is no evidence in the proffer that her use of drugs so effected her mind that it effected her ability to recall and testify about the events which she has testified to.
>
> By that test, which is the one I believe I'm required to follow sent down by the Supreme Court, I think the other evidence regarding drug dealers, who she knew was a drug dealer, when she knew them and whether she knew them in 1984, is inadmissible.
>
> I'm going to sustain the State's objection on that point. You will be permitted to ask her questions regarding whether she was trying to buy drugs that night, whether she did ultimately succeed in buying drugs that night, whether she did ultimately use drugs.

> Those things, in my view, do bear directly on the witnesses ability. If she was under the influence of drugs during the time of the events that she's testifying about, I think that is a matter of proper cross examination.
>
> All of the other evidence that tends to corroborate that -- for instance, as you say that she had drugs on her when she was taken into custody, I think that's admissible, too, because it tends to corroborate the fact that she was using drugs right then. Not just that she was a person that had a status as a drug user.

(TR 2453-2454).

In **Edwards v. State**, 548 So.2d 656 (Fla. 1989), this Court held that:

> We find that the view expressed by this Court in **Eldridge** and **Nelson** should continue to prevail. This view excludes the introduction of evidence of drug use for the purpose of impeachment unless: (a) it can be shown that the witness has been using drugs at or about the time of the incident which is the subject of the witnesses testimony; (b) it can be shown that the witness' using drugs at or about the time of the testimony itself; or (c) it is expressly shown by other relevant evidence that the prior drug use effects the witnesses ability to observe, remember, and recount. None of the petitioner's arguments have convinced us that we should change our previous ruling, and we do not find the Illinois decisions cited by the petitioner to be persuasive. (cites omitted). We note that in **Crump**, the earliest of these Illinois cases, the witness was actually using drugs on the day of the offense about which she was testifying. We also note that the Illinois court has adopted the view that 'habitual users of opium, or other like narcotics, become notorious liars.' (cite omitted). We are not willing to adopt that generalization without supporting medical evidence.

548 So.2d at 658.

With regard to the testimony of Sindy Earle, the record does not evidence an occasion when defense counsel sought to introduce any specific crime records concerning Earle's prior criminal convictions. During the course of his testimony, Mr. Earle stated that he was presently residing with the Department of Corrections in Lawdey, Florida, and had been convicted seven times. (TR 1811). Defense counsel then sought to elicit from Earle whether he was a crack dealer. The court ruled that, on cross examination, defense counsel could ask whether Earle knew Beverly Harris, whether he planned to meet her, whether he had a drug deal with her, **but** he could not ask whether Earle was a crack dealer or whether he had ever been convicted of selling crack or drugs. (TR 1867).

Beverly Harris testified under oath that she did not know Sindy Earle. Sindy Earle testified under oath that he did not know Beverly Harris. Clarence Jones testified he met Sindy Earle in Frenchtown on July 7, 1988, and saw him the next morning when they parked the green Chevrolet behind the laundromat on Lake Bradford Road. Clarence Jones testified that it was Sindy Earle who shot Officer Ponce de Leon. The record reflects that there was no evidence connecting Sindy Earle to the murder of Ponce de Leon and in fact, all the physical evidence, as well as the eye-witness evidence, places Clarence Jones in the front seat of the green Chevrolet and Clarence Jones as the person who shot twice and killed Officer Ponce de Leon.

Appellant has presented no case authority supporting his position nor has he demonstrated any evidence that would support

his conclusion error occurred with regard to this claim. **See Rivera v. State**, 561 So.2d 536, 539 (Fla. 1990), and **Banda v. State**, 536 So.2d 221 (Fla. 1988).

ISSUE V

WHETHER THE TRIAL COURT ERRED IN DENYING APPELLANT'S PROFFER OF PRIOR SWORN TESTIMONY OF BEVERLY HARRIS?

Appellant's next point raises the spectre as to whether Beverly Harris actually saw a silver-plated gun or a dark colored gun in the hands of the murderer. Defense counsel called Berkley Clayton to the stand. He testified that he took a statement approximately two hours after the murder from Brenda Thomas a/k/a Beverly Harris, at Tallahassee Community Hospital. (TR 2838). During the course of said statement, Beverly Harris identified the weapon as a "silver" handgun. (TR 2490). At trial, she testified that she was mistaken with regard to the color of the weapon and explained that at the time she gave her testimony to Mr. Clayton, she was in a state of shock. (TR 2488). Although she gave an alias with regard to her name, she testified that she knew what she was doing but was not that familiar with weapons. (TR 2491).

The trial court sustained the State's objection to the admission of the "sworn" statement given to Officer Clayton, finding that there was no basis for impeachment since Beverly Harris, during her testimony, admitted prior inconsistent statements. The court held:

> Well, let me ask you this. I mean, without knowing what parts of it that you want to introduce, even without knowing that, I can't

determine the question of whether it is a statement given in other proceedings.

As I said, I tend to agree with the State at that point, but the other part of it, whether it's admissible as impeachment because -- well, let me see if I can articulate this to you. Whether it is admissible as impeachment as opposed to under the hearsay rule depends upon whether she admitted or did not admit that she made prior inconsistent statements.

Without me knowing each passage you want to present, I can't really rule on that. Are you pretty much conceding that these are things that she did admit?

MR. DAVIS: Yes, sir.

THE COURT: So, in other words, your argument is really more under 98.12(a)?

MR. DAVIS: Yes, sir.

THE COURT: It doesn't really matter to me what passage we're talking about.

MR. DAVIS: This is the matter we're talking about. There are two or three passages where she says the gun is silver.

THE COURT: She says its silver, and now she says its black.

I distinctly recall she admitted that in her testimony. I don't think its admissible as impeachment. I don't think its admissible as an exception to the hearsay rule because the statement was not given at a trial, hearing or other proceeding or at a deposition.

It doesn't meet any of the criteria of §809.02(a) or (e). So, its not admissible for that reason either. So, I'm going to sustain the objection to the introduction of the passage of the tape recorded statement.

(TR 2841-2842).

Appellant argues:

> Exclusion of Beverly Harris' prior inconsistent sworn testimony was, therfore, improper and prejudicial to the defendant.

> The prejudice was particularly acute for Appellant due to other rulings of the court restricting cross examination of Beverly Harris and Sindy Earle, and the failure of the court to permit evidence of prior convictions of Beverly Harris and Sindy Earle. These convictions were relevant to show that they were perpertrators of a drug deal and murder as testified about by Appellant.
>
> Since Beverly Harris was one of the only two witnesses who claim to be present at the scene where the murder occurred, her early totally inconsistent testimony as to the description of the weapon was vital to Appellant's defense. Thus, it is difficult to imagine how this error could be considered harmless.

(Appellant's Brief, page 32).

It is difficult for Appellee to understand how it was harmful to Appellant. The record reflects, as cited above, that Beverly Harris admitted prior inconsistent statements. She was cross examined with regard to her inconsistent statements and she readily admitted same. Admission of a sworn passage from a taped statement reflecting exactly what was already testified to at trial, was within the trial court's discretion to admit. There was no abuse of discretion and the trial court did not commit reversible error in finding that the sworn statements were inadmissible. **See State v. Delgado-Santos,** 497 So.2d 1199 (Fla. 1986), and **Rivera v. State, supra.**

Based on the foregoing, no relief should be forthcoming as to this claim.

ISSUE VI

WHETHER THE TRIAL COURT ERRED IN PERMITTING EVIDENCE OF AGGRAVATING FACTORS AND INSTRUCTING THE JURY AS TO THOSE IMPROPER AGGRAVATING FACTORS?

Appellant next takes issue with the trial court's findings regarding statutory aggravating factors. The trial court, in his written order (TR 224-229), found the following statutory aggravating factors applicable: (1) Clarence Jones was under the sentence of imprisonment at the time of the commission of the capital felony; (2) Clarence Jones has been convicted of other felonies involving the use or threat of violence to a person; (3) the capital felony was committed while the defendant was engaged in the commission of a robbery with a deadly weapon; (4) the capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting a continuing from custody; (5) the evidence establishes that the victim of the capital felony was a law enforcement officer engaged in the performance of his official duties pursuant to Fla.Stat. §921.141(5)(j).

The court, in explaining these findings in his written order, found that as to aggravating circumstance (1) Jones was under the sentence of imprisonment at the time of the commission of the capital felony, the record reflects that on June 25, 1988, Jones was incarcerated in the Maryland House of Corrections and escaped. He was incarcerated on a twenty-five year sentence for the offense of robbery with a deadly weapon and attempted robbery with a deadly weapon. Pursuant to **Bundy v. State**, 471 So.2d 9 (Fla. 1985), this aggravating factor was a valid statutory aggravating factor in Jones' case.

The court also found that Jones had been convicted of other felonies involving the use or threat of violence to a person. Indeed, the record reflects that on November 24, 1975, Jones was convicted of the offense of attempted robbery with a deadly weapon and on May 21, 1979, was convicted for the offense of attempted robbery with a deadly weapon. Said crimes involved the use of violence to a person and thus, this statutory aggravating factor was proven.

Third, the capital felony was committed while the defendant was engaged in the commission of a robbery with a deadly weapon. The trial court found that while technically this statutory aggravating had been proven beyond a reasonable doubt:

> . . . The court does not find that it has nearly as much force as any of the others. This aggravating circumstance is not determinative; the sentence of death would be imposed even if it were not applied.

(TR 225-226).

With regard to the fourth factor, the capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting a continuing escape from custody, the trial court found:

> Ample evidence was introduced to establish that the defendant, Clarence Jones, had escaped from the Maryland House of Corrections, that he intended to use deadly force to prevent his return to prison, and that he actually did use deadly force in an effort to prevent his return. It is significant that the victim in this case, Ernest Ponce De Leon, was a police officer and that he was on duty at the time of the capital felony. Officer Ponce De Leon was checking the license tag on a motor vehicle which the defendant knew had been stolen in Maryland. Just as the officer transmitted

> the tag number over the radio, he was shot by the defendant Jones. There can be little question that the dominant motive behind the capital felony was to facilitate the defendant's ongoing escape from custody in Maryland. For these reasons, the court finds that the aggravating circumstance set forth in §921.141(5)(e), was established beyond a reasonable doubt. **Herzog v. State**, 439 So.2d 1372, 1379 (Fla. 1983).

(TR 226).

Terminally, the court found that the victim in this case was a law enforcement officer engaged in the performance of his official duties. The court also found, however, that this aggravating factor tended to overlap with §921.141(5)(e), and as such, it was considered collectively and not separately from the aforenoted aggravating circumstance. There was no improper doubling with regard to this issue.

With regard to mitigation, the trial court found, after reviewing all the statutory mitigating circumstances and the argument of counsel as well as testimony presented, that there were no statutory mitigating factors nor non-statutory mitigating circumstances sufficient persuasive to overcome the jury's recommendation of death. The trial court found, with regard to non-statutory mitigating circumstances, that:

> This court has carefully examined all other circumstances of the offense and all other aspects of the defendant's background to determine whether there are any non-statutory mitigating circumstances. During the penalty phase, the defendant contended that his actions were predetermined in part by his poor environment, upbringing and family life. The defendant's father died when he was twelve years of age and his mother remarried a man who was reportedly a child abuser. His brother died when he was fourteen and his mother later died in 1978. With little

> guidance or affection, the defendant became involved in drugs and experienced what the psychologists described as feelings of helplessness. In general these arguments can be said to fall in the category of alleged cultural deprivation.
>
> The court has carefully considered these facts but the defendant's deprived childhood, given in remoteness to the event in question, is hereby rejected as non-statutory mitigating circumstances. **Johnson v. State**, 497 So.2d 863, 872 (Fla. 1986) (history of child abuse rejected as mitigating), and **Knight v. State**, 512 So.2d 922, 932-933 (Fla. 1987) (mental retardation and deprived childhood may not be found to constitute mitigating circumstances).
>
> The facts relating to the defendant's upbringing and family life are relevant in that they provide some explanation for the defendant's conduct in light of his background. However, the court does not find that these factors rise to the level of a non-statutory mitigating circumstance.

(TR 228-229).

The trial court was correct in concluding that the statutory aggravating factors found were proven beyond a reasonable doubt and that those factors outweighed any possible mitigation that was submitted by defendant. **Cook v. State**, 542 So.2d 964 (Fla. 1989); **Kight v. State**, 512 So.2d 922 (Fla. 1987).

Based on the foregoing, death was the appropriate sentence **sub judice.**

ISSUE VII

WHETHER THE TRIAL COURT ERRED IN SENTENCING APPELLANT WHO IS BORDERLINE RETARDED OR DULL-NORMAL TO DEATH?

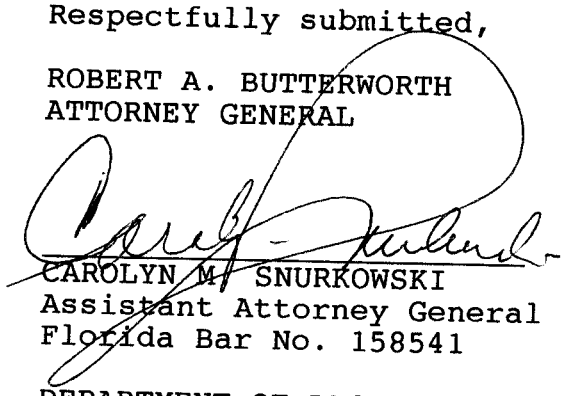
Citing simply **Penry v. Lynaugh**, 109 S.Ct. 2934 (1989), Jones asserts that the death penalty should not have been imposed due to his low IQ and inability to function in society. The record reflects that although Dr. Lawrence Anis testified that the PSI report he received indicated Jones had an IQ of 67, after testing, the record reflects that Jones' IQ was somewhere between 70 and 75, in the dull-normal range. (TR 3447). Although Dr. Anis testified that Jones was less bright than 97% of the people his age, the record reflects that while incarcerated in Maryland, Jones was able to acquire his GED (TR 3446), had a sixth grade level and a third grade reading level (TR 3446), had received an award from the PTL Ministry (TR 3454), had received a certificate of completion of an introductory bible course (TR 3455), and had received a continuing education certificate for completion of woodworking from Ft. Meade Military Institute. (TR 3455). Based on this record, the trial court did not err in imposing death simply because Clarence Jones was of dull-normal intelligence. **Carter v. State**, ____ So.2d ____ (Fla. October 20, 1989); **Harvey v. State**, 529 So.2d 1083, 1088 (Fla. 1988). Based on the foregoing, Appellee would submit death was the appropriate and only sentence in the instant case.

CONCLUSION

Based on the foregoing, Appellant's conviction of first degree murder and sentence of death should be affirmed in all respects.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL



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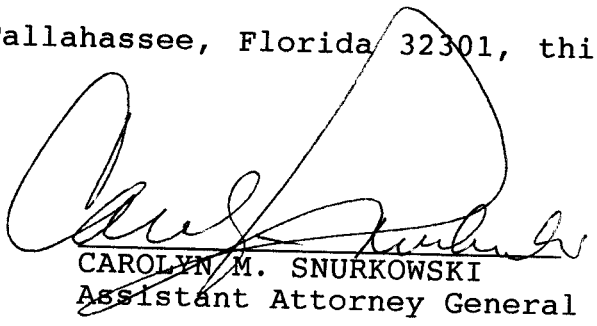
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Mr. Clifford L. Davis, Esq., 1105 Hays Street, Tallahassee, Florida 32301, this 14th day of September, 1990.



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