IN THE SUPREME COURT OF FLORIDA

MICHAEL ALAN LAWRENCE,

Appellant,

v. CASE NO. 76, 399

STATE OF FLORIDA,

Appellee.

ON APPEAL, FROM THE CIRCUIT COURT
OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR ESCAMBIA COUNTY, FLORIDA

# ANSWER BRIEF OF APPELLEE

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## STATEMENT OF THE CASE *AND FACTS*

Appellee accepts Lawrence's statement of the case and facts with the following additions pertaining to the facts as they relate to the six issues raised on appeal,

Pretrial a number of motions were filed regarding the appropriateness of the death penalty; motions in limine and a motion to suppress the confidential informant's testimony. A hearing was held on said motion March 30, 1990, at which point the following testimony was taken with regard to Lawrence's request to suppress Larry Sutton's testimony. First called was Gary Hullton an investigator for the Okaloosa Correction Institute. (TR 867). Mr. Hullton testified that he was contacted December 22, 1988 regarding Lawrence. And on January 3, 1989, Officers Franks and Knolls called and said they wanted information on Lawrence. (TR 868). Specifically, they sought information regarding Lawrence's personal contacts in prison, any visiting lists and other information kept by the institution. Officer Hullton testified that they periodically would call and ask if anyone had contacted Lawrence. (TR 869). On April 10, 1989, Mr. Hullton received a letter from the Pensacola Police Department indicating that they had heard rumors that Lawrence might try to escape with the assistance of Sonya Gardner. (TR 869-870). At that point Lawrence was placed in protective custody on or about April 12, 1989. (TR 870). On or about that same period, Larry Sutton was also placed in protective custody in the same cell with Lawrence. Sutton was placed in protective custody because of his problems at the Okaloosa Correction

Institute. (TR 871). Officer Hullton testified that Sutton never contacted him directly with any information Sutton had regarding Lawrence but rather went directly to Lt. Hollford. Apparently, Sutton told Lt. Hollford that he (Sutton) had overheard Lawrence talking about being placed in confinement because the Pensacola police were about to reopen the murder case in Pensacola. (TR 871). Sutton kept a diary with regard to what he overheard. (TR 872). The diary was ultimately turned over to Lt. Hollford after Sutton spoke with Franks and Knolls. (TR 873). On cross-examination, he testified that Lawrence told Georgia Crowell that he would escape. (TR 879).

Ray Hollford was next called by the defense. (TR 880). He testified that he had been contacted by Larry Sutton about Lawrence. Sutton observed that he was in the same cell with Lawrence in a confined unit and that Sutton had information in which the Pensacola police might be interested regarding Lawrence and a murder. Sutton showed Lt. Hollford the notes he took. (TR 881). Although Sutton would not allow his notes to be turned over and did not go into specific detail, Lt. Hollford did take this information to his immediate supervisor. (TR 882). Lt. Hollford stated that he had used Sutton in the past as an informant. The reason Sutton was in protective custody was because he did not get along well in general population. Sutton never asked for assistance in exchange for acting as a confidential informant although he had a prison job as a barber. (TR 883). Sutton did mention to Lt. Hollford that he was coming up for clemency consideration and said he needed help. (TR 884).

Although Lt. Hollford saw Sutton's notes prior to the police officers arriving, he was not privy to the final drafts. (TR 885).

Pensacola police officer Ken Franks testified that he never met with Sutton. (TR 886). Following further discussion on the motion to suppress, the trial Court ruled: that Sutton had not been placed in the cell as a listening post; nor was he ever a government agent. The Court denied the motion to suppress. (TR 892-893).

The state pretrial filed eight notices of intent to rely on statements and other evidence made by Lawrence. (TR 708-716). At a motion hearing held March 29, 1990, the Court went through each of the motions by the state. (TR 832-858). The Court granted the state's motion to introduce evidence that on another occasion Lawrence went into the same Majik Market and changed his mind about robbing the store (TR 833-837); granted the state's motion to produce evidence that Lawrence burglarized Fayron Harrison's car for weapons (TR 837-839, 858); granted the state's motion to admit evidence that Lawrence was addicted to cocaine (objected to by defense counsel stating that said evidence was relevant but too prejudicial) (TR 839-840); granted the state's request to produce evidence that Lawrence stole property of Georgia Crowell (TR 840-842); disallowed evidence that during 1986 Lawrence planned to rob another convenience store (TR 842-843); granted the state's request to introduce into evidence that Lawrence planned to escape based on *Harvey v. State*, 529 So.2d 1083 (Fla. 1988) (TR 843-846); granted the state's request to submit

evidence that Lawrence planned to kill other state witnesses based on *Street v. State*, 399 So.2d 964 (Fla. 1981) (TR 846-848); and granted the state's request to introduce evidence that at various times Lawrence had stolen various types of guns. (TR 848-858).

At trial, Anne Underwood, an employee of the Majik Market store on Scenic Highway on September 29, 1986, testified she had the shift preceding Paula Tyree's. Paula Tyree arrived at approximately 11:15 p.m. and Ms. Underwood left the store at approximately 11:30 p.m. (TR 146-147). Kyle Tennant testified that he was called to the scene of a murder on September 29, 1986, and arrived at approximately 12:10 a.m., September 30, 1986. (TR 151-152). In surveying the premises of the Majik Market he observed that he could not locate the clerk and he also noticed that the cash register was open and the cash drawer missing. He went into the back storeroom where he found the victim lying face-down, dead with wounds to the head. He observed that the lights were on in the storeroom. (TR 152-154). Pat Blackmon testified that she was a supervisor at the Majik Market where Paula Tyree worked. Eased on the receipts, $58 was

1986. He opined that the cause of death was two bullet wounds to the head causing trauma to the brain and hemorrhaging. He observed that there was gun powder near the wound on the head and that two projectiles were retrieved. (TR 190-195).

The state called Melvin Summerlain to testify that he met Lawrence in the Escambia County jail in April 1987 when they were both incarcerated. (TR 203-204). Lawrence talked to him about how he (Lawrence) had stolen guns from Georgia's "sugardaddy" off of Scenic Highway. (TR 204). Lawrence feared that the stolen guns could tie him with the Majik Market murder on Scenic Highway. Lawrence told Mr. Summerlain that he could not remember anything about the murder because he was strung out on cocaine. (TR 204). He observed that Lawrence said a woman named Sonya had his gun and that he needed to talk with her so she could get rid of the gun because he did not want the police to locate it. (TR 205). Sonya apparently told Lawrence that she had thrown the gun into the Blackwater River. Lawrence admitted that he had several guns. (TR 206). Lawrence told Mr. Summerlain that he did not know which gun he used in the murder. (TR 208). Summerlain gave a statement to police on May 29, 1987. (TR 207-208). On cross-examination, Mr. Summerlain testified that he overheard the conversation of Lawrence on Sunday and he gave the statement to the police the following Thursday. (TR 213). Mr. Summerlain testified that he did not receive any consideration for the testimony and that he knew Lawrence was in jail for the auto burglaries of Fayron Harrison's car. (TR 217). On redirect, Summerlain stated that he had no specific details of the murder and did not know anything more than what Lawrence told him about getting the gun and trying to tie the gun back to Lawrence for the murder at the Majik Market. (TR 220). Lawrence told him that he stole guns and that he (Lawrence) was worried that the

gun he gave Sonya could be traced back as the gun used during the murder. (TR 222). Lawrence told him that he feared the ballistics would trace the gun back to the murders. (TR 224).

Georgia Lee Crowell testified on behalf of the state that she knew Lawrence since 1985. She saw him on and off in September 1986 when she was living at the Spanish Bluff Apartments. The Majik Market what that was robbed was near the apartments. (TR 228). She observed that Lawrence was staying at the bluff's, living outside. Fayron Harrison was staying at her apartment. (TR 229). (Following precautionary instructions to the jury with regard to Williams Rule Evidence), Ms. Crowell testified that Lawrence told her he had broken into Harrison's car and taken a gun, money and a brief case. He further told her that he broke into the car a second time and took another gun, a derringer. (TR 230-231). Ms. Crowell saw Lawrence with a black revolver which was taken the first time **and** he mentioned to her that he had plans to commit a robbery. Lawrence told her that he needed money and needed a gun to get money. (TR 232). Some time late in September Lawrence told her that he was going to rob the Majik Market across the street. (TR 232). Within the first week in October, Lawrence told her that he went into the store with a gun with intent to rob the store, however when he looked the clerk in the eyes he could not pull the trigger and left. Lawrence told Ms. Crowell that "he could not shoot her looking into her face." (TR **233**). Ms. Crowell confirmed that that was the Majik Market on Scenic Highway. Lawrence admitted that he gave the gun to Sonya and that Sonya had gotten rid of it by throwing it into the river. (TR 233).

Ms. Crowell spoke with Lawrence after he was arrested and while he was in jail. At that time Lawrence told her not to talk to the police about what happened because the police were bound to talk to her. When she visited Lawrence at the Okaloosa Correctional Institute he told her that he could not be linked to the murder because the gun that was used was tossed in the river. (TR 234). Ms. Crowell said she saw what she thought was a beige electric garage door opener, hidden under the seat in Lawrence's mother's car. (TR 234).

On cross-examination, Ms. Crowell was not sure when exactly Lawrence told her that he pulled the gun on the store clerk but then left. (TR 236-237). Ms. Crowell kept a daily diary of events that occurred however there were no notations in her diary that Lawrence told her about attempting to rob the Majik Market or that she got mad at Lawrence on September 26 when he showed her the gun he had stolen from Harrison. (TR 239). Lawrence admitted to her that he had taken the gun from Harrison's car and she thought that he first showed her the gun on September 26. (TR 239-240). She recalled that Lawrence told her not to say anything to the police. At the Escambia County jail, she asked Lawrence if he had killed a woman and he said that he "didn't want to talk about it and didn't want her involved." (TR 248). Ms. Crowell saw Lawrence with a derringer and remembered that Lawrence had shown her the gun at the bluff's. (TR 260-261). On redirect, Ms. Crowell stated that it was on or about October 7 Lawrence actually pointed a gun at a clerk the Sunday after she got mad at Lawrence. (TR 261-262).

Fayron Harrison testified that in 1986 his car was broken into approximately three times. Two guns were stolen, a .32 caliber blue steel revolver and a .25 caliber nickel-plated derringer. (TR 266-267). Gerald Anweiler testified that he knew Deanna Atkins in 1986. And that he owned guns. **(TR 269).** Defense counsel objected to the testimony of Mr. Anweiler based on Williams Rule evidence. (The jury was given a Williams Rule instruction.) (TR 271). Mr. Anweiler testified that he owned a chrome plated Harrington & Richardson .22 caliber gun with white-bone grips. He gave his gun to his girlfriend Deanna who had the gun for a short period in September 1986. (TR 272). Lawrence and Steve Pendleton came over to visit Deanna Atkins and the gun disappeared. (TR 272-273). On cross-examination Mr. Anweiler testified that the gun was missing a few days late in September **1986.** (TR 273). **He** recalled that he and Deanna had an argument over the missing gun and she did not know what happened to it. (TR 274). Anweiler testified that the firing mechanism did not work correctly and the gun had to be cocked by hand. He said that the spring for the double-action was broken. (TR 274).

David Williams, a ballistics expert, testified that he received two bullets and some bullet fragments which were involved in the murder of Paula Tyree on October 3, 1986. (TR 282, **285).** He identified the bullets as .22 caliber and observed that **a .22** caliber revolver fired said bullets. (TR 286-288). Mr. Williams went through a list of guns that would use this kind of a bullet which included a Harrington & Richardson gun. (TR 289). He observed that a .25 caliber derringer could not have

fired the bullets. (TR 290). On cross-examination Mr. Williams testified that he had never identified the gun that actually fired the bullets. (TR 291).

Sonya Gardner next stated that she met Lawrence the summer of 1986 in Milton, Florida. She was pregnant and recalled that she gave birth on October 31, 1986. She met Lawrence when Lawrence was visiting his friend Deanna Atkins who was her neighbor and friend. She met Steve Pendleton who was introduced to her as "Snake." (TR 294). On September 29, 1986, Lawrence came over to her house in Milton at 10:00 p.m. and told her that he was doing cocaine and wanted someone to talk to. He asked her if she would ride with him to Pensacola to go get a bottle of liquor. (TR 294). They went on Scenic Highway and stopped at the Majik Market to get gas. (TR 294). Lawrence pumped the gas and then went into the store to pay for the gas Steve drove the car up to the front of the store. They left the Majik Market and drove about a half of block to the Knob Hill Liquors where they purchased a bottle. They then returned to an apartment parking lot caddy-corner to the Majik Market where they purchased the gas. (TR 295-296). Steve then got out of the car with a grocery bag and said he had some clothes in the bag that he needed to take to his girlfriend. He walked behind the car and was gone for a few minutes. When he returned he said that his girlfriend wasn't home. Lawrence and Steve Pendleton then walked over to the Majik Market while Sonya Gardner waited inside the car. Ms. Gardner, while waiting, got out of the car and sat on the hood of the automobile listening to the radio. (TR 296). She observed

that Steve Pendleton had the grocery bag in his hand when he walked over to the store and that Lawrence was wearing a dark blue cotton shirt with a short button area in front. (TR 297). When they got to the Majik Market, she noticed that Steve walked towards the coolers and Lawrence walked part way back. She saw the store clerk move that way also. (TR 297). She said that they were in the store for approximately thirty minutes. She could not tell what they were doing. When the two left the store they walked towards a dumpster and appeared to throw something away and then returned to the car. Both Lawrence and Steve Pendleton were carrying bags. (TR 298-299). She noticed when Lawrence returned to the car he was wearing a grayish colored shirt. When asked why Lawrence had changed his shirt, Lawrence didn't answer but seemed upset and shaking. Steve seemed emotionless. (TR 299). At that point they drove off and Lawrence drove them to Fort Pickens where they got out and walked along the beach. Lawrence said he wanted to talk to her. Lawrence said "I shot the redheaded bitch." (TR 300). Ms. Gardner testified that Lawrence seemed very nervous. He said he shot her because he got mad at her. (TR 300). Ms. Gardner said she did not believe what Lawrence was telling her because she thought he was "tripping since he said he was doing cocaine." (TR 301).

Ms. Gardner testified that she saw Lawrence with a nickel-plated derringer with pearl grips one night when Lawrence came over wanting to sell the gun. Lawrence finally sold it to her brother for $10. (TR 302). Sometime after September 29, 1986.

she was contacted by police who attempted to retrieve the derringer which she traded for gas and cigarettes to Beverly Barnes. Ms. Gardner received several calls from Lawrence while he was in jail asking her about the gun and told her to make sure she got rid of it. (TR 304). Ms. Gardner told him that she threw it into the river. Lawrence also made a reference to Snake and asked her to take a message to Pendleton something "about picking up a package and dropping it off." (TR 304).

Ms. Gardner testified that the police attempted to talk to her on a number of occasions and she initially denied knowledge of the crime or knowing anything about Lawrence or a gun. (TR 305-306). She said she lied because she was scared. Ms. Gardner observed that, when, they first went to the Majik Market to buy gas there were customers around the place. (TR 308).

On cross-examination, Ms. Gardner admitted that she was granted immunity except for perjury for testifying. (TR 311). She also admitted lying on a number of occasions in her previous statements because she didn't want anything to do with a trial. (TR 313). She indicated that she lied because she was afraid of Lawrence and Steve Pendleton. While admitting that Lawrence was in jail and couldn't do very much, she observed that Pendleton was not. (TR 317). Ms. Gardner stated Lawrence first asked her whether she still had the gun and if she did to get rid of it. She did not know why Lawrence was in jail nor did she know that the gun was stolen. She first found out that the derringer was not the murder weapon in 1989. She said Lawrence indicated "that the gun" could tie him to the murder. (TR 318-319).

On cross, she again detailed how on September 29, 1986, Lawrence came over to her house and said he wanted to talk. She remembered the date because she was giving a little party for her son who had won a football game that prior weekend. **(TR 323)**. Lawrence **said** he wanted to take a ride to Pensacola and wanted to get a bottle of liquor. He was driving a white four door automobile. (TR 323). She testified that they passed at least one liquor store before they pulled into the Majik Market for gas. (TR 325). She then detailed a similar accounting of getting gas and returning to the Majik Market after they bought a bottle. **(TR** 326-329). While sitting and waiting for Lawrence and Pendleton to return, she heard what she thought was a backfire, pow, pow, two noises. She heard the noise approximately 10 minutes after Lawrence and Pendleton left for the store. (TR 332). **She** observed that it was still awhile before they returned to the car. **(TR 333)**. When she finally saw them return to the car, she noticed that Lawrence had changed his shirt. **(TR 333)**. She saw Lawrence and Pendleton go to the trash dumpster and throw something away before they returned to the car. (TR 337). Lawrence was upset and said he wanted to go over to Fort Pickens. Lawrence told her that he killed the "redheaded bitch." (TR 338-339). On cross, Sonya Gardner again testified that she didn't really believe that Lawrence had killed anyone because she thought he was "tripping out on cocaine." (TR 340-341).

Ken Franks an investigator with the Pensacola Police Department testified that he investigated the murder on September

29, 1986 at the Majik Market. **(TR 373).** During the course of his investigation, he came into contact with Melvin Summerlain, an inmate at the county jail who gave him information about the murder. **(TR 373).** He testified that certain information **was** withheld from the public specifically that the victim had two gunshot wounds to the head. (TR 374). On cross-examination, Officer Franks testified that had never checked Pendleton's story about a girlfriend living at the apartment complex, (TR 385). On redirect he testified because he didn't know the girlfriend's name nor have an address. **(TR 386).** Officer Franks stated that Georgia Crowell and Melvin Summerlain collaborated Sonya Gardner's story. (TR **388).**

Henry Reeves testified that security equipment placed in the Majik Market store was missing. A transmitter which was placed on the bottom side of the cash drawer tray which "looks like a garage door opener" (beige in color), was missing. **(TR** 392, ***395).***

Larry Sutton was called on behalf of the state and testified that in April 1989 he was in the same cell with Lawrence. (TR 423). Lawrence had been interviewed by two detectives from Pensacola and Larry Sutton took 14 pages of notes. Lawrence told him that the police were trying to pin a first degree murder charge on him although they had no evidence. (TR 425). Lawrence also told Mr. Sutton that "on the street he used cocaine" and that he had lost his job and started to "jiggle women to get money." (TR **425).** Lawrence said it was like a dream, he didn't believe he actually did the murder because his mind was messed

up. (TR 425). Sutton also indicated that Lawrence made the statement about "Linda needed killing."

At this point defense counsel objected and requested a mistrial. (TR 428). The record reflects that pretrial defense counsel was told that Lawrence made a statement that after he was charged with this crime "that he was going to have two witnesses killed." (TR **429**). The trial court denied the motion for mistrial. (TR **431**).

Sutton further stated on direct, that Lawrence said he could picture in his mind doing the Majik Market murder; that the girl started getting angry and that he shot her with his .22 automatic (shooting down at the **clerk**). (TR 431). Lawrence observed that if you are going to do something you could get the chair for, leave no witnesses. (TR **432**). Lawrence further admitted that some "part of him" killed the girl. (TR 432). Sutton was a snitch in the prison system and was motivated to be a snitch for favorable prison treatment. He observed that he **was** filing for clemency and wanted evidence that he had testified in the instant trial to help his cause. (TR 434-436).

On cross-examination he opined that Lawrence never specifically admitted doing the murder and that his notes reflected that Lawrence "thought he didn't commit the crime." (TR **436**). Sutton desperately wanted out of jail and was trying to get aut. (TR 446-447) It was his impression that Lawrence killed the clerk but Lawrence never confessed to the murder. (TR 449). On redirect, Sutton observed that Lawrence said "maybe he shot her with a .22 caliber automatic." (TR 450). Following the

playing of the taped-statement, (not transcribed for the record) (TR 453), the state rested (TR 457).

The defense first called Shawn Melton who testified that the shirt in controversy was not his. (TR 461). On cross-examination he testified that he had beaten Sonya Gardner and had been arrested for said conduct. (TR 462). Sylvia Ryals testified that she purchased a 1972 Valiant from Homer Thomas Motors which had been repossessed by Homer Thomas Motors. (TR 463). Katherine Thomas testified that she sold a car to Sylvia Ryals. It was a four door white Valiant which she did not pay for and was ultimately repossessed on September 30, 1986. The car was then resold to J.B. Hartman or Hartman's Auto and Wrecking Company on or about October 7, 1986. (TR 465). Gene Hartman testified she purchased a 1972 Valiant from Homer Thomas Auto Sales and sold it to Lawrence and Linda Kirschner on December 1, 1986. (TR 466).

Hilda Jorda, a latent fingerprint examiner, testified that she compared a number of fingerprints lifted from the homicide scene on September 29, 1986. None of the fingerprints lifted matched Lawrence or Steve Pendleton. On cross-examination, she testified that none of the fingerprints lifted matched the victim. (TR 476-477).

Lt. Ray Hollford stated that Sutton was occasionally used by the prison as a confidential informant. (TR 479). On cross-examination by the state, Lt. Hollford noted Sutton was a good informant and that his information had been found to be valid and reliable in the past. In fact, Sutton risked his life coming

forward with said information and therefore Lt. Hollford believed the information was valid. (TR **480-481).** Garry Hulion testified that both Sutton and Lawrence were placed in the same cell in administrative confinement, Lawrence was placed there pursuant to a letter indicating that Lawrence was a possible escape risk. (TR **483-484).** Lee Jennings testified that as a crime scene analyst she examined certain hair particles received from different clothing. (TR **486).** The hairs examined did not match either Steve Pendleton or Lawrence. (TR 487). Hairs removed from the victim's chest were found to be animal hairs. (TR 488). Alfred Bollens testified on behalf of defendant that a number of receipts were recovered from the trash container found near the cash register. (TR 505). Terry Golson testified that he visited the Majik Market on September **29, 1986** arriving at approximately 11:30 p.m. When he arrived at the store he did not see the store clerk and waited until the clerk finally arrived from the back of the store. (TR 539). The clerk's demeanor seemed normal and he noticed nothing unusual. When he found out about the murder the next day, he contacted the police and told them. (TR 540). On cross-examination he testified that he was in the store approximately ten minutes but admitted that although he looked around the front of the store, he was looking for "munchies." **(TR 540-541).**

The defense rested. (TR **543).**

At the penalty phase held April 6, 1990, the state first called Lawrence Coffman, Jr., Sheriff of Santa Rosa County. (TR 662). Sheriff Coffman indicated that in 1976 he investigated the

murder on June 26, 1976 of a female found in a remote area of Milton. The body ultimately was identified as Susan Lawrence, Lawrence's wife. Lawrence admitted killing his wife telling Sheriff Coffman that he strangled her. (TR 663-664). A certified copy of the second degree murder conviction and sentence to life imprisonment was introduced by the state. (TR 666-667).

The state also called Phil Suggs who was a correctional probation officer in 1986. He testified that Lawrence was on life parole for a murder conviction and on September 29, 1986, Lawrence was on parole. (TR 668-669).

Larry Sutton was called by the state and testified Lawrence admitted to him in jail that nine years earlier he had killed his wife. He had pled guilty and he wanted to came clean. (TR 669-670). Lawrence told him that he was working for $3.35 an hour installing fire sprinkler systems and that he started to drink and use cocaine and began to jiggle women out of money. (TR 670). Sutton recalled that Lawrence told police it was like a dream strangling his wife bare handed and he did so because "she was messing around" and Lawrence saw it. (TR 671). Lawrence admitted to him that he took her out to the woods, strangled her and that the entire episode seemed like a dream. (TR 672). Lawrence also told the police that he wouldn't mess with women because he hated them and he further said that he enjoyed killing women. (TR 672-673).

On cross-examination by defense counsel, Sutton admitted that Lawrence said he didn't remember the details of the murder

because he said it was like a dream. Lawrence was using cocaine at the time of the murder. (TR 674). The state rested its portion of the penalty phase. (TR 674).

At the penalty phase, Lawrence called Dorothy Lawrence, his mother. **(TR 675).** She testified that Lawrence father was in the military and that her children were raised in a Christian home. Although Lawrence was at times disobedient, he never was disrespectful. Lawrence had three brothers and two sisters and that they had lived in Milton, Florida since 1961. She was not aware that Lawrence used drugs and what she heard about the trial she did not believe the state proved its case against her son. (TR 675-676). She sought leniency for her son and a sentence of life imprisonment. She discussed the murder of Lawrence's wife and said that she knew Lawrence'swife was running around on him. (TR 676). At this point, the state and the defense counsel stipulated to the introduction of Lawrence's high school records and PSI report prepared in 1976. Defense rested its case. (TR 677).

It its closing arguments, the state argued that in the 1976 PSI report two psychiatrist examined Lawrence and found nothing wrong with him. (TR 682-683). The state observed that Dr. Marshall believed his failure to remember certain portions of his wife's murder in 1976 was self-serving. (TR 683). The state argued that Lawrence was using the same excuse to explain away the instant murder. (TR 683). The state argued that Lawrence had been convicted of a prior violent crime (TR 685); was on parole (TR 686); killed Paula Tyree during a rabbery (TR 686);

killed her during a kidnapping (TR 687); committed the murder in a cold, calculated, premeditated manner specifically an execution-style murder when he actually positioned himself over her and shot her four times (TR 688); and that the murder was heinous, atrocious and cruel because he made her lie down, shot two bullets which missed and then shot two more bullets at a closer range and killed her. (TR 689). The state argued that there was little mitigation although there was evidence of a drug problem in 1976 and 1986. (TR 690).

Defense counsel argued that the murder of Lawrence's wife was much different than the instant murder because the murder of his wife was a crime of passion. (TR 692). Defense counsel argued that the PSI report reflected that Lawrence was addicted to cocaine and demonstrated that Lawrence had a drug problem. (TR 693). Defense counsel argued that there was a reasonable doubt or residual doubt since there was no physical evidence connecting Lawrence to the murder (TR 693); there were no fingerprints nor hairs that matched nor did the state produce the gun and failed to show that Lawrence even had a .22 caliber gun that killed the woman (TR 694); and only established that he had stolen other guns. Defense counsel argued that the window of opportunity to commit the murder did not demonstrate a spur of the moment killing but rather, that someone had planned to *go* in and rob and kill the witness, (TR 695); or that someone actually wanted to kill her and made it look like a robbery. (TR 696). Defense counsel reminded the jury that Lawrence told Sutton he could picture in his mind going into the store with Steve and

that the woman started getting angry and then he got mad and then he shot her with a .22 automatic, (TR 697). Defense counsel asked the jury to search for reasonable doubt and review the PSI report submitted to them. (TR 698).

The jury returned a recommendation of death by a seven to five vote. (TR 704). At sentencing on May 18, 1990, defense counsel argued before the Court that sentencing Lawrence to 25 years could protect the public since there was still serious questions unanswered regarding the facts of the crime. (TR 934-941). Defense counsel also argued that the vote was only "**7-5**" even though there was evidence that Lawrence had killed his wife. Defense counsel argued it would be a tragedy to put an innocent man to death when there was such "residual doubt." The state in response asserted that the crime occurred between 11:40 p.m. and 11:50 p.m., September **29, 1986,** and, residual doubt was not mitigation. (TR **944).** The state conceded that Lawrence had a drug problem but that did not outweigh the aggravation. (TR **945).** The Court ordered written submission prepared. (TR **947).**

On June 22, 1990 sentencing pronouncement day, the Court observed that Lawrence came from a stable, local family, had brothers and sisters; married, had no children and was in fair health in spite of some drug problems. He had had stable employment until recently and had been involved with the law between 1972 and **1986.** (TR **968).**

The Court concluded in his written findings dated that same day that:

1. Lawrence was on parole;
2. Lawrence had been previously convicted of a prior violent felony;
3. Lawrence committed the murder while engaged in robbery and kidnapping;
4. Lawrence committed the murder to avoid detection and avoid identification;
5. Lawrence committed the murder for pecuniary gain;
6. The murder was heinous, atrocious and cruel; and
7. The murder was cold, calculated and premeditated (TR 980-983).

Regarding statutory mitigation, the Court found Lawrence was not impaired, he drove to the scene, his actions were deliberate, and he did not appear to be substantially impaired. (TR 983). As to nonstatutory mitigation, the Court noted that he murdered his wife because she was running around on him; that he used drugs; but that the PSI did not show any drug related offenses. He considered Lawrence's argument regarding residual doubt.

The Court concluded:

> "IN SUMMARY the Court finds sufficient statutorily defined aggravating circumstances exist to justify the death penalty as advised by the jury in this cause. There are no statutorily defined or other mitigating circumstances to out weigh the aggravating circumstances found to exist." (TR 985).

## SUMMARY OF ARGUMENT

**POINT I:**

Viewed individually or collectively, the admission o statements by Lawrence did not result in reversible error. In some instances the matters were not preserved for appellate review because no timely objections were made at trial. Regarding other admissions, the record supports the trial court's determination pretrial that the evidence was admissible.

**POINT 11:**

Lawrence failed to preserve this issue for appeal since no objection at trial was made contemporaneous to the testimony of Larry Sutton, Moreover even assuming the issue is ripe for review, the trial court concluded that Larry Sutton's presence in the same cell as Lawrence in administrative confinement was not as a "listening post" nor was he an agent of the police when he spoke with Lawrence. See *Maqueira v. State,* ____ So.2d ____ (Fla. 1991) 16 F.L.W. S599.

**POINT** 111, IV, V:

The evidence demonstrates that the murder of Paula Tyree was committed specifically to avoid arrest and detection; that the murder was especially heinous, atrocious or cruel and that the murder **was** committed in a cold, calculated premeditated manner, specifically, execution-style.

Based on the number of unassailable aggravating circumstances; the presence of the three aforementioned aggravating circumstances and the lack of any mitigation, the death sentence is proportionate and was properly imposed. Even

the striking of one or more aggravating circumstances would justify the same result, to wit: that this court could find with confidence that the elimination of an aggravating factor would not change the outcome of the sentence.

POINT VI:

The trial court considered the nonstatutory mitigating evidence presented that Lawrence was addicted to cocaine. The court noted in its sentencing order that Lawrence had no drug related prior offenses and concluded the aggravating circumstances far outweighed any mitigation. *Carter v. State, 576* So.2d 1291 (Fla. 1989). Pursuant to *Gilliam v. State,* ____ So.2d ____, (Fla. 1991) 16 **F.L.W. S292,** this court's *Campbell* decision would not apply to the instant case.

## ARGUMENT

### POINT I

*WHETHER THE TRIAL COURT ERRED IN ADMITTING AS COLLATERAL CRIMES EVIDENCE, BURGLARIES COMMITTED BY LAWRENCE, WEAPONS HE HAD STOLEN, AND HIS USE OF COCAINE, AND OTHER COLLATERAL CRIMES.*

Lawrence takes issue with the admission of the following list of evidence admitted at trial, asserting that each violated *Williams v. State,* 110 So.2d 654 (Fla. 1857), codified in § 90.404(1), (Fla. Stat. 1989), because the evidence is "relevant solely to prove bad character or propensity." The list of alleged prior bad acts are:

1. He said that a girl identified only as Linda needed killing.
2. He may have stolen a .22 caliber gun from George Anweiler.
3. He had stolen a .25 caliber derringer and a .32 caliber black revolver.
4. He told Steven Pendleton to get rid of a package.
5. He tried to rob a clerk at the same store a week after the murder, but he lost his nerve.
6. He was heavily addicted to cocaine for which he needed money.
7. While on the streets, he had "jiggled old women" for money.

(Appellant's Brief page 13).

While acknowledging that each of the contested pieces of evidence individually was harmless error, Lawrence contends collectively they constitute harmful error. Appellee would disagree.

The test for admitting evidence of this nature is relevancy *Bryan v. State, 533* So.2d **744** (Fla. 1988), if it can be demonstrated that the admission of said evidence was for a purpose other than to show a defendant's bad character. Clearly, the aforementioned laundry list of evidence does not fall within Williams Rule evidence.

Indeed as Lawrence points out in *Amoros v. State,* **531** So.2d **1256** (Fla. **1988); *Shriner v. State, 386*** So.2d 524 (Fla. **1980) and** *Bryan v. State, supra,* evidence including prior bad acts by defendant are admissable if they tend to prove an essential element of the state's case. Moreover as noted in ***Castro v. State*** **547** So.2d **111,** 115 (Fla. 1989)

> ". . . We recognize that it is not enough to show that the evidence against the defendant was overwhelming. Error is harmless only 'if it can be said beyond a reasonable doubt that the verdict could not have been affected by the error." ***Ciccarelli v. State,*** **531** So.2d **129, 132** (Fla. **1988) . . ."**

*Castro v. State,* **547** So.2d **115.** In ***Castro,*** the court found

> "On this record, we are persuaded that as to Castro's convictions, the stringent test has been met as to the testimony of both Kohler and McKnight. The most incriminating evidence against Castro was his own confession. Castro gave an account of the murder on three different occasions admitting to having strangled and stabbed Mr. Scott. His theory of defense at trial was that one of McKnight's five stab wounds constituted the fatal blow. In light of the totality of the evidence, including Castro's own confession, we must conclude that the admission of McKnight's testimony could not have affected the outcome of the guilty phase. With or without the error, the jury could have reached no conclusion other than that Castro was guilty. Thus, the presumption of harmfulness that accompanies a Williams Rule error of this type has been

> rebutted by the state as it effects the guilty phase. . . ."
>
> *Castro v. State,* 541 So.2d at 115

See also *Swafford v. State, 533* So. 2d 270 (Fla. **1988); *Jackson v. State,*** **522** So.2d 802; ***Remsta v. State,* 522 So.2d 825** (Fla. **1988);** *Craig v.* ***State,* 510** So.2d **857** (Fla. **1987); *State v. Diguilio,* 491** So.2d **1129** (Fla. **1986)** and *Correll v.* ***State,* 523** So.2d **562, 566** (Fla. **1988)** wherein the Court further observed

> "Corell argues that this testimony violated § 90.404, Florida Statutes **1985,** which prohibits the introduction of similar fact evidence when it used solely to prove bad character or propensity. However, the point is not properly before this Court because of defense counsel's failure to object to the testimony at trial. Even when a prior motion in limine has been denied, the failure to object at the time collateral crime evidence is introduced waives the issue for appellate review. *Phillips v. State,* 476 So.2d **194** (Fla. 1985); ***German v. State,* 379** So.2d ***1013*** (Fla. 4th **DCA), *cert. denied,* 388 So.2d 1113** (Fla. **1980).** Moreover, even **if** an objection had been made, testimony was sufficient relevant to show that Corell had demonstrated hostility toward Susan on the night of the murders by slashing her boyfriends tires. Moreover, this evidence tended to prove that Corell was a killer because the keys to Mary **Beth** Jones's car which had been stolen on the night of the murders, were found on the trunk lid of the car with the slashed tires." 523 So.2d at **566.**

**1. THE THREAT** TO KILL LINDA

The first piece of evidence Lawrence asserts was the "most shocking bad character evidence the court admitted" was testimony elicited through Larry Sutton an informant who heard Lawrence call a woman named Linda and "told her don't be in court to testify against me on the burglary charges." (TR 427). Sutton then said "[Lawrence] said Linda needed killing because she was a

New York con artist, that she had him and all his friends fooled, even mama." (T 428). Lawrence objected to this testimony at trial and pretrial (T 832, 847) on relevancy grounds. At trial, he claimed that the Williams Rule noticed (R 714) had specifically stated that the statement was made after he had been charged with murder (T 428-429). The state said it did not make any difference when he made it, it was still relevant (T 429). The Court, apparently agreeing with the state, denied Lawrence's Motion for Mistrial (T 430). . . ." (Appellant's Brief, page 17.)

The trial court relying on *Sireci u. State,* 399 So.2d 964 (Fla. 1981), denied defense counsel's objection to the state's notice of use of Williams Rule evidence pretrial. (TR 846-848). At trial, when defense counsel objected to the statement by Larry Sutton as to what Lawrence said, the trial court observed that " . . . as the cases say, I don't see a manifest necessity here for a mistrial. I think you caught it. I appreciate your position, but I think we've caught it in time." (TR 430). The Court further observed ". . . Mr. Dees, your motion is denied. The jury will please disregard the last statements made by Mr. Sutton." (TR 431). At this point no further mention was ever made with regard to the aforenoted reference by Lawrence that he was going to eliminate other witnesses.

Appellee would submit the case is controlled by this Court's decision in *Sireci v. State,* 399 So.2d 964 (Fla. 1981); *Haliburton u. State,* 561 So.2d 248, 251 (Fla. 1990), and *Anderson v. State,* 574 So.2d 87, 93 (Fla. 1991).

**In** *Haliburton v. State, supra,* this Court found that ". . . this single inadvertent reference to the outcome of a prior trial, was harmless error as was the comment, "Well, there is a couple more people that I want to get." We are convinced beyond a reasonable doubt that neither comment affected the outcome of the trial." **561** So.2d at **251**. **A** similar result is warranted sub judice.

2. THE **ANWEILER GUN**

Lawrence next asserts that the trial court admitted over his objection the testimony of Gerald Anweiler that he once owned **a** chrome plated .22 caliber pistol with white bone grips. The state countered that said evidence did not go to bad acts but rather ". . . he's going to say he owned a Harrington & Richardson revolver with a pearl handle, that he gave it to Atkins in September **1986**; that Michael Lawrence and Steven Pendleton visited in September 1986, that sometime during September 1986 that gun disappeared. David Williams testified that the murder weapon was a **.22** and that it could have been fired from various guns including a Harrington & Richardson revolver. That makes it relevant because of the statement "I stole different guns from different places, a gun here, a gun there. He didn't remember what gun he used." (TR 271). Following said remarks, the trial court asked defense counsel if he wanted a Williams **Rule** instruction at which point defense counsel said yes, (TR 271). The court then instructed the jury that:

> "Ladies and gentlemen, the evidence you're about to receive concerning evidence of other crimes allegedly committed by Mr. Lawrence will be considered by you for the limited

> purpose of proofing motive, opportunity, intent, preparation, plan, knowledge, identity, the absence of mistake or accident on the part of Mr. Lawrence, and you shall consider it only as it relates to those issues. Mr. Lawrence is not on trial for a crime that is not included in the indictment that was read to you at the beginning of this trial. . . ." (TR 271-272)

Clearly, Mr. Anweiler's testimony was relevant and demonstrated how Lawrence may have secured the murder weapon. He was subject to extensive cross-examination with regard to his memory as to when his .22 caliber gun was missing. The circumstantial evidence clearly demonstrated that Lawrence had the opportunity to secure the gun. And, that gun could have been the murder weapon based on the ballistics expert's testimony that a Harrington & Richardson revolver could have fired the bullets that were retrieved from Paul Tyree's skull.

Lawrence reliance on *Huhn v. State,* 511 So.2d 583 (Fla. 4th DCA 1987) and *Manuel v. State,* 524 So.2d 734 (Fla. 1st DCA 1988) are misplaced. In *Huhn,* the charge was not first degree murder nor was there any evidence relating that the gun in Mr. Huhn's possession was the gun used in the armed kidnapping and aggravated assault case. Similarly in *Manuel v. State,* supra, there was no connection made with regard to the defendant and there was "only a bare suspicion that the caller was Manuel.'' (Appellant's Brief page 20.)

Clearly the information by Gerald Anweiler was relevant and admissable sub judice. See *Swafford v. State,* 533 So.2d 270 (Fla. 1988); *Amoros v. State,* 531 So.2d 1256 (Fla. 1988) and *Shriner v. State,* 386 So.2d 524 (1980).

3. THE .22 AND .32 CALIBER GUN

Lawrence argues that the state "continued its fascination with guns by producing evidence that Lawrence had broken into the car of Fayron Harrison and had stolen two guns from him: a .25 caliber derringer and a .32 caliber black revolver (T 266-267)." (Appellant's Brief, page 21). The record reflects that at no time in the cited transcript pages regarding any witnesses and these two guns, did defense counsel object to the testimony presented. Pursuant to *Correll v. State*, 523 So.2d at 566, this particular subpoint of Point I is not properly before the court because defense counsel failed to abject to the testimony at trial. "Even when a prior motion in limine has been denied, the failure to object at the time collateral crime evidence is introduced waives the issue for appellate review." *Correll*, 523 So.2d at 566.

The record reflects that the only objection raised by defense counsel (TR 230) was asserted when the state asked Georgia Crowell how many times Lawrence told her he, Lawrence, took some guns from Harrison's car. (TR 229). Defense counsel objected arguing that the murder weapon was a .22 caliber gun and the guns they were talking about had no relationship to the case. The Court denied the objection and instructed the jury that the evidence they were about to hear concerning other criminal activity by Mr. Lawrence could be considered only for the limited purposes asserted in the instruction. (TR 230-231). Appellee would submit that the instant objection was not sufficient to present this issue squarely before the court, since there was no

objection to Fayron Harrison's testimony that two guns were stolen from him nor objection when Sonya Gardner testified that Lawrence said he had stolen the derringer from Harrison and sold it to her brother.

The circumstances surround the guns, to wit: the .22 caliber derringer and the .32 caliber revolver were relevant to the state's case in that at the time Lawrence was incarcerated and specifically talking to Sonya Gardner and Summerlain, he did ~~not know~~ which gun was actually used to commit the murder. He told Sonya Gardner to get rid of the gun he gave her. He repeatedly asked Sonya Gardner whether she had done so. It was clear that Lawrence told Georgia Crowell that he needed money and he needed the gun to get money late in September. He also told her that he was going to rob a Majik Market across the street from where Ms. Crowell lived. After Lawrence was arrested he called her and told her not to talk to the police about what happened. When she visited Lawrence, he told her that he could not be linked to the murder because the gun that was used was in the river. (TR **231-234).**

Terminally, the events surrounding the theft of the two guns from Fayron Harrison never became a feature of the crime but rather was an incident that explained how Lawrence was in possession of a number of weapons. See *Rivera v. State,* 561 So.2d 536 (Fla. 1990), *Carter v. State,* **560 So.2d 1166, 1167-1168** (Fla. 1990) (harmless error to admit evidence of a knife and gun not used in the murder).

**4. THE PACKAGE**

Lawrence argues the trial court improperly admitted evidence that Sonya Gardner was told by Lawrence "to take a message to Pendleton to get rid of a package." (TR 304). No objection was raised by defense counsel at trial to this statement and as such pursuant to *Correll v. State, supra,* this issue has not been preserved for appellate review.

**5. THE ROBBERY**

Lawrence next argues that it was error for the trial court to allow Georgia Crowell to testify that a week or so after the murder, Lawrence returned to the same convenient store, "pulled the gun with intend to rob [the clerk] but after looking in her eyes, he couldn't pull the trigger, and he left the store." (T 233). (Appellant'sBrief, page 24).

Citing to trial record pages 233 and 262, Lawrence argues said testimony was admitted "over the objection of trial counsel." However, a review of the direct testimony of Georgia Crowell reflects that no objection was raised as to this point on either page 233 or 262 or for that matter any time during Georgia Crowell's direct or redirect trial testimony. In fact, defense counsel's objections during Georgia Crowell's direct and redirect reflect that on TR 228-defense counsel objected to the prosecutor pointing the defendant out; TR 229-defense counsel objected to the prosecution asking leading questions; TR 230, 231-defense counsel objected to Williams Rule evidence arguing that "basically this goes to the fact that the murder weapons was a .22 caliber, and these guns that she's talking about has no

relationship to this case, no relevancy, . . ." (As a result a Williams Rule instruction was given by the trial court); TR 231-defense counsel again objected to leading questions; direct examination ended at TR 235. Redirect commenced at TR 261 at which point defense counsel object to another leading question; TR 262-defense counsel asserted that prosecution was trying to put words into Ms. Crowell's mouth; redirect ended at TR **264,** without any further objections being made. Pursuant to ***Correll*** *v.* ***State,*** *523* **So.2d 566,** this issue **is** not properly before the court since no objection **was** raised at trial to the admission (of rather confusing testimony) regarding another attempt by Lawrence to rob a convenience store.

Additionally, even assuming for the moment this court may review this particular issue**,** the prejudice that "might" attach is at best de mininis in light of the hay made by defense counsel on cross-examination of Georgia Crowell. Defense counsel successfully "brought into confusion" Ms. Crowell's testimony regarding the gun and when Lawrence said he "robbed" another convenience store. Clearly under *Duckett v.* ***State,*** 568 So.2d 891, 895 **(Fla. 1990);** ***Jackson v. State,*** *522* So.2d 802 (Fla. 1988) and ***Correll v. State, supra,*** the admission of the another convenient store robbery if error, was harmless error.

Terminally, it is submitted that testimony regarding other convenience store robberies went to show evidence of planning and staking out of the Majik Markets **as** a means to obtain money. Lawrence told Georgia Crowell that he needed money and in order to get money he needed to have a gun, He talked about planning a

convenience store robbery and related to her an aborted attempt to rob the same Majik Market. This evidence was clearly admissable to show plan and motive and Lawrence's wherewithal in the commission of the instant murder.

*6*. LAWRENCE'S COCAINE ADDICTION

Lawrence complains about the admission of evidence regarding his addiction to cocaine. There was no objection to its admission at trial albeit, the subject matter of a pretrial motion in limine. ***Correll v. State, supra.*** The record reflects that on more than one occasion Lawrence told Sonya Gardner and Georgia Crowell as well as Melvin Summerlain and Larry Sutton that he **was** using cocaine at the time of the murder and in fact he was not sure whether he did commit the murder since it seemed like a dream. (TR 204, 294, 323, and 425). Ironically in most instances mention of Lawrence's drug usage preceded a remark by Lawrence that he did not know if he committed the murders because it seemed like it was a dream. Most of the statements made could reasonably have been used to support an argument that Lawrence did not intend the murder. defense counsel made a reasonable doubt argument. Second, practically all the evidence of Lawrence's drug addiction was presented during the guilt phase of Lawrence's trial. Lawrence's mother Dorothy Lawrence testified that she did not know her son used drug. (TR 675). Information that was introduced via the 1976 PSI report reflected that one of the doctors, a Dr. Marshall believed Lawrence's failure to remember certain portions of his 1976 murder of his wife were self-serving. (TR **683**). Consequently, but far the testimony of

the state's witnesses, Lawrence would not have had a mitigating factor to discuss. See: POINT VI. This Court in ***Craig v. State,*** ____ So.2d ____, (Fla. **1991)** 16 F.L.W. S604, S605, found similar evidence admitted harmless error. *State v. DiGuilio*, **493 So.2d 1129** (Fla. **1986).**

**7. JIGGLING OLD WOMEN**

Terminally, Lawrence argued that during the state's examination of Larry Sutton, Sutton told the jury that Lawrence had told him that "on the streets he began to do cocaine heavy and quit his job and began to jiggle old women out of their money." [T 425]. (Appellant'sBrief, page 27).

The record reflects that an objection was made by defense counsel but there was absolutely no explanation as to the nature of the objection and following thereafter the prosecution observed:

> "[By Mr. Rimmer] **Okay.** Let's focus strictly on what he told you about this murder case. Let me direct your attention to page **two** of your statement. I might be able to help you **--** give me a little leeway.
>
> Mr. Dees: That's fine.''

No further objection was articulated by defense counsel. Pursuant to *Correll v. State*, supra, this issue is not preserved for appellate review. Moreover even assuming for the moment the objection was specific enough, such an admission to the jury could not have possible effected the jury's deliberation regarding whether Lawrence committed the crime. See *Carter v. State,* 560 So.2d at 1167, **1168** and *Gunsby v. State*, **574** So.2d **1085, 1089** (Fla. **1990).**

Pursuant to *Straight v. State*, 397 So.2d 903, 908 (Fla. 1991) neither individually nor collectively the errors complained of sub judice were anything more than harmless error beyond a reasonable doubt. See also *Haliburton v. State, supra; Jackson v. State*, 522 So.2d at 806, 807; and *Remeta v. State*, 522 So.2d 825, 827, 828 (Fla. 1988). No relief should be forthcoming as to this point.

## *POINT II*

***WHETHER** THE COURT **ERRED** IN **ADMITTING** THE TESTIMONY OF THE "**PROFESSIONAL**" JAIL HOUSE INFORMANT, LARRY "**ROCKY**" SUTTON REGARDING WHAT LAWRENCE ALLEGEDLY TOLD HIM WHILE HE **WAS** IN THE OKALOOSA CORRECTIONAL INSTITUTE, IN VIOLATION OF THE FIFTH, SIXTH **AND** FOURTEENTH AMENDMENT RIGHTS **TO A** FAIR TRIAL AND EFFECTIVE REPRESENTATION OF **COUNSEL.***

At trial Lawrence sought to suppress the testimony of Larry Sutton based on the assertion that Sutton was an agent for the state and therefore Sutton's testimony should have been suppressed. Following an evidentiary hearing on said motion (TR 866-892) the Court concluded that Sutton had not been placed in the cell as a "listening post" and was never a government agent with regard to the instant case. As a result the court denied the motion to suppress. (TR 893). Relying on United *States v. Henry,* **447 U.S. 264** (1980), Lawrence now argues that the state denied Lawrence's right to effective assistance of counsel when it placed Sutton in the cell in order to deliberately eliciting incriminating statements from Lawrence. Such a conclusion cannot be drawn from any of the facts in the case. Indeed, the trial court was correct, see *Kuhlmann v. Wilson,* **477 U.S. 436** (1986), including no violation occurred. Moreover, just recently in this court held in a similarly circumstanced case that the trial court was responsible for deciding factual disputes if the record supported said conclusions, *Routly v. State,* 440 So.2d **1257** (Fla. 1983). In *Maqueira,* the Court held:

> "Further, the trial court's determination and Gonzalez was not acting as an agent of the state is supported by the record. The

> hearing testimony established that Maqueira was not a suspect in the Rodriguez murders prior to his confession. Detective Cadavid had not met or talked with Gonzalez before Maqueira confessed to Gonzalez. Gonzalez had assisted Metro-Dade Police Officer in approximately four other cases over the past four years. His job was to become friendly with other inmates and then inform the police after they revealed information to him. As a result of his assistance, police officers had written favorable letters to the parole commission on Gonzalez's behalf. However, Gonzalez was never asked for his cooperation, nor was he planted with the intent to gather evidence, His assistance was of his own volition. Maqueira admits that he knew that Gonzalez had police contacts and had assisted other inmates who cooperated with he police and was ultimately freed. He also knew that Gonzalez benefited from his cooperation with the police. Maqueira initiated his confession to Gonzalez in the hope that his cooperation would benefit him similarly. Under these facts, Gonzalez was not acting as an agent of the state. *Michael v. State,* 437 So.2d 138 (Fla. 1983) (inmate not government agent even though they had been used as informants previously where first contact with police officers about the instant investigation occurred after defendant confessed to inmates), *cert. denied,* **465 U.S. 1013 (1984);** *Barfield v. State,* 402. So.2d 377 (Fla. 1981) (cellmate not government informant where he was not paid or acting pursuant to government instruction and approached authorities on his own initiative after inculpatory statements were made to him).
>
> We find no merit in Maqueira's claim that Gonzalez circumvented his right to assistance of counsel by exploiting an opportunity to confront him without the presence of counsel. Aside from the fact that Maqueira had no counsel at the time, we have determined that Gonzalez was not acting at the state behest or with the states knowledge."

*Maqueira,* 16 F.L.W. at S600.

Beyond per adventure, testimony presented at the motion to suppress hearing demonstrated that Sutton was not placed in

administrative confinement for any other reason but to protect him from other inmates (TR 883); there was no effort to cover up that Sutton took copious notes of what Lawrence told him in order to get a favorable recommendation for clemency; and although Sutton had been used as a confidential informant in the past (TR 883) he never asked for assistance in exchange for acting as a confidential informant (TR 883). Moreover Ray Hollsford as a defense witness testified that Larry Sutton was a good informant and that the information he had given in the past had proved to be reliable and valid. (TR 480)

Moreover, this issue has not been properly preserved for appeal in that no objection was raised at trial when Larry Sutton was called to testify in behalf of the state on this specific point. See *Routly v. State*, 440 So.2d 1257 (Fla. 1983), *Steinhorst v. State*, 412 So.2d 332 (Fla. 1982); *Jones v. State*, 360 So.2d 1293 (Fla. 3rd DCA 1978) and *Wright v. State*, 572 So.2d 1041 (Fla. 4th DCA 1991) wherein the court observed

> ". . . While appellant moved to suppress evidence prior to trial, he failed to object to its submission on those same grounds when it was introduced at trial. Thus, he has waived his right of appellate review . . ."

Lawrence is entitled to no relief as to this claim, *Floyd v. State*, 569 So.2d 1225 (Fla. 1990) and *Muehlman v. State*, 503 So.2d 310 (Fla. 1987).

## *POINT III*

***WHETHER*** *THE TRIAL COURT ERRED IN* ***FINDING*** *LAWRENCE COMMITTED* ***THIS*** *MURDER TO* ***AVOID*** *OR PREVENT* **A** *LAWFUL* ***ARREST.***

Lawrence argues that the trial court's finding that the murder was committed to avoid or prevent a lawful arrest is not supported by the record, He points to the fact that this court has held that the murder of someone other than a law enforcement officer to avoid arrest, must be the "dominant motive for the killing," *Menendez v.* ***State,*** 368 So.2d 1278 (Fla. 1979) and ***Riley*** *v.* ***State,*** 366 So.2d 19 (Fla. 1979).

The evidence in this case clearly shows that one of the primary purposes for the murder was to eliminate the witness and avoid arrest. Contrary to Lawrence's asertion that the only basis to support this fact was that he was on parole, the record also demonstrates that Lawrence told Georgia Crowell that he planned to commit a robbery and that he needed money and he needed a gun to money (TR 232); he also made a number of calls to Sonya Gardner and Georgia Crowell telling them to get rid of the gun because without the gun the police could not link him to the murder; Lawrence also told Larry Sutton that "if you are going to do something you could get the chair for, leave no witnesses." (TR 432). The instant case is indistinguishable from that of ***Remeta*** *v.* ***State,*** 522 So.2d 825 (Fla. 1988) wherein this court held

> "*Remeta* raises three challenges to the penalty phase at his trial. He first contends that the trial court erred in finding the aggravated circumstance the

> murder was committed for the purpose of avoiding arrest. We reject this contention. Appellant's own statements established a basis for the trial court to properly conclude that *Remeta's* predominant motive for murdering the Ocala convenient store clerk was to eliminate him as a witness. In addition, other physical and circumstantial evidence was introduced which overwhelmingly support this aggravating circumstance, *Kokal v. State,* 492 So.2d 1317 (Fla. 1986); ***Johnson v. State,*** 442 So.2d 185 (Fla. 1983), ***cert. denied, 466 U.S.*** 963, 104 S.Ct., 2182, 80 L.Ed.2d 563 (1984); ***Pope v. State,*** 441 **So.2d** 1073 (Fla. 1983)."

522 So.2d 829. See also *Tafero v. State,* 403 So.2d *355* (Fla. 1981); ***Wright v. State,*** 473 So.2d 1277 (Fla. 1985); *Swafford v. State, 533* So.2d *270* (Fla. 1988), but see ***Jackson v. State, 575*** So.2d 181, 190 (Fla. 1991).

Based on the foregoing, the trial court's finding was correct that this aggravating factor existed because:

> ". . . the defendant was on probation/parole at the time of his offense in avoiding identification, apprehension **and** lawful arrest was major motivational factor." (TR 981)

## *POINT IV*

*WHETHER THE COURT ERRED IN FINDING LAWRENCE COMMITTED THIS MURDER IN AN ESPECIALLY HEINOUS, ATROCIOUS OR CRUEL MANNER.*

The trial court concluded that the murder was committed in an especially heinous, atrocious or cruel manner finding that:

> "The cruelty of the death of Paula Tyree sets her death apart from the "norm" of capital felonies. She was alone in the convenient store, the time was approaching midnight. She was confronted by the defendant who held a gun to her. She was forced to leave the highly visible front desk area of the store. She was forced into the isolation of the storeroom. She was forced at gunpoint to be facedown on the floor. The defendant then fired four shots at her head. Her apprehension cannot be doubted as she helplessly awaited physical pain and impending death. She had to have terror filled thoughts as the first bullet gouged into the floor beside her head. She could only smell the gun powder and feel the floor vibrate and splinter as the defendant prepared and fired a second bullet and missed. She knew that her tormentor was not through with her, that it wasn't over. Finally, she heard her assailant prepare to fire the third bullet and that bullet came crashing into her head. Hopefully, Paula Tyree felt little or no pain as the third bullet tore into her skull. It it not known if the third bullet was fatal or not. However, the defendant decided to fire a fourth bullet at the back of her head.
>
> To Paula Tyree, the moments between the first and the last bullet had to feel endless. She lay helplessly on the floor awaiting her fate and doom. Those precious moments of life waning away could only be filled with apprehension, torment and terror. The facts support the existence of the cruelness of this felony. The defendant, Michael Alan Lawrence, inflicted the suffering on the victim with utter indifference to the victim and likely, Michael Alan Lawrence may have felt the warm flush and excitement of enjoying Paula Tyree suffering as he stood over her body as an executioner firing four bullets at her head from very close range." (TR 982)

Albeit Lawrence now argues that "much of what the court found is speculation and the remaining facts do not support the court's conclusion that this aggravating factor applied," (Appellant's Brief, page 30, the record reflects that Paula Tyree was made to leave her cash register post and go back to the storeroom where she was forced to lay facedown on the floor and then four shots were fired. Two missed and the two that did enter her skull were at such close range that powder burns were found in the back of her skull at the point of entry. (TR 191-195).

The instant case is virtually identical to *Swafford v. State*, 533 So.2d 270, 277 (Fla. 1988), wherein the facts revealed that the victim who worked at a Fina gas station was shot nine times with two shots directly to the head. The Court observed

> "Aggravating circumstances must be proved beyond a reasonable doubt. *Johnson v. State*, 438 So.2d 774 (Fla. 1983), *Cert. denied*, 465 U.S. 1051 (104 Supreme Court 1329, 79 L.Ed.2d 724 1984); *Wiggins v. State*, 386 So.2d 538 (Fla. 1980). Evaluating the evidence and resolving factual conflicts in a particular case, however, are the responsibility of the trial court judge. When a trial court judge, mindful of the applicable standard of proof, finds that an aggravating circumstance has been established, the finding should not be overturned unless there is a lack of competent, substantial evidence to support it. See *Stano v. State, (cite omitted).* There is competent, substantial evidence in the record to support the trial courts finding that this murder was especially heinous, atrocious or cruel." 533 So.2d at 277. See also *Garcia v. State*, 492 So.2d 360, 367 (Fla. 1987) (convenience store type murder).

533 So.2d at 277.

Moreover, even assuming for the moment that any of the complained of statutory aggravating factors are found not to be proven by substantial competent evidence, the state would submit that based on the aggravating factors that remained and the lack of any "valid" nonstatutory mitigating evidence, the trial court's conclusion that the death penalty is appropriate must stand. See *Shere v. State,* 579 So.2d 89, 96 (Fla. 1991); (striking aggravating/little mitigation - affirmance warranted); *Young v. State,* 579 So.2d 721, 724 (Fla. 1991) (distinguishing *Rembert, Caruthers, Lloyd* and *Proffitt*); *Sochor v. State,* 574 So.2d 108 (Fla. 1991); *Holton v. State,* 73 So.2d 284 (Fla. 1991); *Francois v. State,* 407 So.2d 885 (Fla. 1981); *Jackson v. Wainwright,* 421 So.2d 1385 (Fla. 1982); *Capehart v. State,* ____ So.2d ____ (Fla. 1991), 16 F.L.W. S447, S450; *Reed v. State* 560 So.2d 203, 207 (Fla. 1990) (striking two statutory aggravating did not require remand/death penalty affirmed with confidence).

## *POINT V*

*WHETHER THE TRIAL COURT ERRED IN FINDING THAT LAWRENCE COMMITTED THIS MURDER IN A COLD, CALCULATED AND PREMEDITATED MANNER WITHOUT ANY MORAL OR LEGAL JUSTIFICATION.*

The trial court found that the murder was committed in a cold, calculated and premeditated manner without any pretense of moral or legal justification. Specifically he observed:

> "The facts established that the defendant forced the victim at gun point into the store room. The victim was forced to lie facedown on the floor. The defendant proceeded to fire four shots at the victim's head. Two shots entered the victim's head. Two shots hit the floor beside the victim's head. The defendant's action supported beyond a reasonable doubt that the actions were pre-planned and calculated. The defendant could have entered the store, flashed his gun, demanded the cash drawer and exited. He had been inside that particular store many times prior to the night of the murder of Paula Tyree. When this defendant entered the store, he already knew what he was going to do. He methodically set the fatal chain of events into motion." (TR 983)

Appellee would submit that the instant case is the typical execution type murder found in *Eutzy v. State*, 458 So.2d 755, 757 (Fla. 1984); *Lamb v. State*, 532 So.2d 1051 (Fla. 1988), *Huff v. State*, 495 So.2d 145 (Fla. 1986); *Burr v. State*, 466 So.2d 1051 (Fla. 1985); *Asay v. State*, 580 So.2d 610, 613 (Fla. 1991); *Parker v. State*, 458 So.2d 750 (Fla. 1984); and *Hargrave v. State*, 366 So.2d 1, 5 (Fla. 1979) (characterized as an execution style murder). In *Eutzy*, supra, for example, the court observed

> "Appellant disputes the finding that the murder was committed in a cold, calculated and premeditated manner. However, the

> evidence that Eutzy procured the gun in advance, that the victim was shot once in the head, execution style, and that there was no sign of struggle. . ."

458 So.2d at 757.

Herein, Lawrence took great pains to secure a weapon; he told Georgia Crowell that he was intending to rob a convenience store; the record reflects that a fair scenario of what happened September 29, 1986, is that when they first arrived at the Majik Market, "to buy gas" they cased the Majik Market, saw that there were customers there and left. Lawrence and Sonya and Steve Pendleton then drove a block and bought some liquor, and then returned to the apartment parking lot caddy-cornered to the Majik Market. Steve Pendleton then "probably" under the guise of taking some clothing to his girlfriend, recased the Majik Market and returned the car when he found the store was unoccupied. At that point, he and Lawrence returned to the Majik Market where they forced the clerk back into the storeroom and execution-style killed her. They robbed the cash drawer and returned to the automobile and drove off. Shortly thereafter walking along Fort Pickens' beach with Sonya Gardner, Lawrence admits that he killed the "redheaded bitch" because "she made him mad." The instant case was a cold, calculated and premeditated murder.

Appellee would further argue that the death penalty is proportionate to other cases similarly circumstanced. See *Randolph v. State,* 562 So.2d 331 (Fla. 1990) (convenience store clerk knifed and beaten to death); *Mendyk v. State,* 545 So.2d 846 (Fla. 1989) (convenience store clerk tortured and killed); *Remeta v. State,* 522 So.2d 825 (Fla. 1988) (Ocala convenience store clerk

was killed to eliminate him as a witness in a cold, calculated and premeditated manner); *Swafford v. State,* 533 So.2d 270 (Fla. 1988) (convenience store murder-gunshots); *Engle v. State,* 510 So.2d 881 (Fla. 1987) (convenience store clerk strangled and stabbed); *Garcia v. State,* 492 So.2d 360 (Fla. 1987) (small convenience-type store clerk); *Hargrave v. State,* 366 So.2d 1 (Fla. 1978) (convenience store clerk shot); *Shriner v. State,* 386 So.2d 525 (Fla. 1980) (convenience store clerk shot) and *Carter v. State,* 576 So.2d 1291 (Fla. 1989) (farm store clerk murdered). The record clearly reflects that Lawrence told Larry Sutton "if you are going to do something you could get the chair for, leave no witnesses." (TR 432) This aggravating factor applies and death is an appropriate sentence.

## *POINT VI*

*WHETHER THE TRIAL ERRED IN NOT FINDING MITIGATION, LAWRENCE'S UNCONTROVERTED COCAINE ADDICTION.*

The record reflects that the trial court did not fail to consider Lawrence's cocaine addiction. In fact, the trial court mentioned it under Whether Any Other Mitigating Circumstances Exist. (TR 985). The courts specifically observe:

> ". . . Defendant offers the suggestion that the defendant was addicted to cocaine and simply could not remember what happened. The defendant's presentence investigation reveals that the defendant may have had more than a passing interest in marijuana in the 1970's but no marijuana related offenses after 1976. There are no cocaine related offenses revealed on the presentence investigation . . .."
>
> " . . . IN SUMMARY the court finds sufficient statutorily defined aggravating circumstances exist to justify the death penalty as advised by the jury in this cause. There are no statutorily defined or other mitigating circumstances to outweigh the aggravating circumstances found to exist." (TR 985)

First and foremost, Lawrence's reliance on *Campbell v. State,* 571 So.2d 415 (Fla. 1990) is misplaced in that the record shows that sentence was actually pronounced June 22, 1990, approximately seven days after *Campbell* was decided on June 14, 1990. However, Campbell was not final until December 13, 1990, when this court granted rehearing and issued a modified opinion. Pursuant to *Gilliam v. State,* _____ So.2d ____ (Fla. 1991) 16 F.L.W. S292 and *Henry v. State,* ____ So.2d ____ (Fla. 1991) 16 F.L.W. S593, *Campbell* is inapplicable in ascertaining the correctness of the instant sentencing order.

In *Lucas v. State*, 568 So.2d 18, 23 (Fla. 1990) the court observed:

> "We have previously held that the trial court need not expressly address each nonstatutory mitigating factor in rejecting them (cite omitted) and '[t]hat the court's finding of fact did not specifically address Appellant's evidence and arguments does not mean that they were not considered. (cite omitted).
>
> Moreover, however, to assist trial courts in setting out their findings, we have formulated guidelines for findings in regard to mitigating evidence in *Rogers v. State*, 511 So.2d 526 (Fla. 1987), *cert. denied*, 484 U.S. 1020, 108 S.C. 733, 98 L.Ed.2d. 681 (1988), and *Campbell v. State*, 72, 622, ____ So.2d ____, (Fla. June 14, 1990). We have even noted broad categories of nonstatutory mitigating evidence which may be valid. *Campbell*, slip opinion at 9, note 6. However "[m]itigating circumstances must, in some way, ameliorate the enormity of the defendant's guilt." *Eutzy v. State*, (cite omitted). We, as a reviewing court, and not a fact-finding court, cannot make hard and fast rules about what must be found in mitigation in any particular case. (Cites omitted). Because each case is unique, in determining what evidence might mitigate each individual defendant's sentence it must remain in the trial court's discretion." 568 So.2d at 23.

In *Capehart v. State*, ____ So.2d ____ (Fla. 1991), 16 F.L.W. S447, S450, in considering mitigating circumstances the court observed:

> "We conclude that the judge's order reflects that he gave proper consideration to the testimony presented in mitigation and did not abuse his discretion in determining the amount of weight due the non-statutory mitigating evidence."

As observed in *King v. Dugger*, 555 So.2d 355 (Fla. 1990); *Scull v. State*, 533 So.2d 1137 (Fla. 1988), it is within the trial court's discretion to determine whether the evidence tendered of

family history and personal history establishes mitigating circumstances. No abuse occurs when the evidence does not rise to the level of mitigating circumstances. See *Sochor v. State,* 580 So.2d at 603, 604. See also *Rivera v. State,* 561 So.2d 536 (Fla. 1990) (rejection of mental health evidence tendered in support of mitigation); *Valle v. State,* 581 So.2d 40, 48-48 (Fla. 1991), *Cook v. State,* 542 So.2d 964 (Fla. 1989); *Kokal v. State,* 492 So.2d 1317 (Fla. 1986); *Maqueira v. State, supra,* (record supported rejection of extreme emotional stress) and *Holmes v. State,* 374 So.2d 944, 950 (Fla. 1979) (no prescribed form for sentencing order).

The trial court did not err in giving little weight to the fact that evidence existed at trial of Lawrence's cocaine addiction. The trial court in his sentencing order observed that in the 1976 PSI report, there were no drug related offenses to which Lawrence had been convicted. Additionally based on the evidence set forth there was no evidence that Lawrence was in any way impaired in the commission of this crime. It was thought out, deliberately executed and but for Lawrence's need to tell others about the crime -- likely unsolvable.

Moreover, with regard to whether death is the appropriate sentence, Appellee's proportionality argument has been previously set forth and need not be reargued here.

The trial court did not err in its sentencing order and as such Lawrence's death penalty should be affirmed.

## CONCLUSION

Based on the foregoing, it is respectfully submitted all claims should be denied.

Respectfully submitted,

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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 David A. Davis, Assistant Public Defender, Leon County Courthouse, Fourth Floor North, 301 South Monroe Street, Tallahassee, Florida 32301, this 12th day of September.

CAROLYN M. SNURKOWSKI
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