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IN THE SUPREME COURT OF FLORIDA

RONALD LEE WILLIAMS,

Appellant,

v. CASE NO. 78,249

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

The State would accept Williams' statement of the case and facts with the following additions.

The trial court in his order stating reasons far imposing the death sentence, provides a detailed summary of the offenses and the evidence which the State would commend those facts to the Court (TR 1306-1309).

Keith Rosner testified that he worked with Bruce Frazier selling drugs in Pensacola, Florida. He was one of eight people in a drug ring operating out of the Truman Arms Apartments. (TR 356). His job was to pick up money and deliver drugs with Bruce Frazier. (TR 356). Rosner testified that Ronald Williams was the head of the drug organization and that Timothy Robinson and Darrell Frazier were Ronald Williams' bodyguards. Their responsibilities were to walk around with guns and take care of any trouble and protect Ronald Williams. (TR 357-358). Trouble arose in the Pensacola operation when a money shortage occurred around August 13, 1988. Williams told him and Bruce Frazier that "we were letting the workers spend too much money", and Bruce Frazier was to figure out who was spending the money. (TR 361).

Sheldon Henry testified that he helped Rosner and other organization workers move Ronald Williams' safe from the Beauclerc apartment on September 2, 1988, because Bruce Frazier and his girlfriend, Renee Grandison, had an argument and Frazier was afraid that she was going to the police and expose the drug operation. (TR 376-377).

Bruce Frazier testified that he worked for Ronald Williams and moved with Ronald Williams to Pensacola, Florida, in 1988, to start the Pensacola operation. (TR 502-503). Because of some money problems in Pensacola (TR 504), and problems with his girlfriend, Renee Grandison (TR 510), the drug operation had to be maved. In the course of moving the drug operation, one of Ronald Williams' safes ended up missing. As a result of the missing safe, Michael McCormick ("Gas") came under suspicion because he owed Williams money. (TR 513-514). Ronald Williams was suspicious that "Gas" had taken his safe and decided to send his henchmen to Pensacola to find out what happened. The record reflects that Darrell Frazier, Michael Coleman and Timothy Robinson came to Pensacola to find out about the safe. (TR 523-524). Following the murders, Bruce Frazier and his brother returned with Timothy Robinson and Michael Coleman to Miami to tell Ronald Williams about what happened. Bruce Frazier testified that when they met at Gwen's house in Miami, they all were sitting around getting high and discussing the murders. At that point, Ronald Williams told Gwen that he, Ronald Williams, could get the most time because he ordered the murders. (TR 536). Ronald Williams paid Bruce Frazier three thousand dollars for the murders and made arrangements to help him leave town. (TR 538). Bruce Frazier, on cross-examination, testified that Ronald Williams never told him to kill these people, but just to investigate the theft of the safe. (TR 555-556). When they all returned to Miami, however, Ronald Williams said that everyone had "screwed up" and that he, Ronald Williams, would be taking

the heat. (TR 556). Bruce Frazier felt that the three thousand dollars he was paid was not enough money for the crimes they committed. (TR 557). On redirect examination, Bruce Frazier testified that the night of the murders he was not wearing gloves but that Timothy Robinson, Darrell Frazier and Michael Coleman were. (TR *568).* He further testified that there was no effort made to hide their faces and was told that they had messed up by letting a girl go and another live. (TR 569).

Darrell Frazier testified that he worked for Ronald Williams. (TR 601). A problem arose in Pensacola with the organization run by his brother, Bruce and Rosner regarding money. (TR 603). On September 18, 1988, he received word that money was missing from the Pensacola operation and immediately notified Ronald Williams. (TR 606). A three-way telephone call occurred between Darrell, his brother "Jit" (Bruce), and Ronald Williams. Bruce Frazier ("Jit"), told Ronald Williams that two safes had been stolen and that Michael McCormick ("Gas") said someone had broken into the house. (TR 606). Ronald Williams phoned "Gas" and told him that he wanted his stuff back. (TR 607). Bruce Frazier indicated that no one had broken into the house and that "Gas" and his girlfriend Mildred Baker were under suspicion. (TR 608). At that point, Ronald Williams told Darrell Frazier and Timothy Robinson that if "Gas" knew anything about the stolen drugs to drop him, [In other words, kill him.] A plan was hatched that Ronald Williams, Timothy Robinson and Darrell Frazier would drive to Pensacola to take care of the matter. (TR 610). Because Ronald Williams was due in court, he

was unable to go to Pensacola. (TR 611). Williams made arrangements for Michael Coleman, Timothy Robinson and Darrell Frazier to fly to Pensacola. (TR 612-614). On the way, the group talked about how "Gas" and the others would be "dropped". (TR 614-615). They planned to get guns from "Gas" and find aut what was going on. (TR 616). The record reflects that on the way to "Gas'" apartment, Timothy Robinson, Michael Coleman and Darrell Frazier stopped at a convenience store and purchased tape, gloves and electrical cording which they thought they might need when they got to "Gas'" house. (TR 617). Without detailing all of the facts of the murders, the record reflects that after the Frazier boys returned with the money and drugs found at Darlene Crenshaw's house, Timothy Robinson asked Darrell Frazier whether he had "dropped the whore." Darrell at first said yes and later recanted and said no he did not. Timothy Robinson got mad and Michael Coleman asked why he hadn't dropped her. Coleman said, "The nigger said we got to drop them, man." (TR 622). Darrell Frazier testified that Timothy Robinson said they had to drop them because Ronald Williams told them to drop them. (TR 623). Upon their return to Miami, the group met with Ronald Williams to discuss what happened. Darrell Frazier testified that when he located Williams he was with a guy named "Too Tall". Williams told them that they had "fucked up" because one got away, that Ronald Williams was very upset. (TR 627). Williams said that he and "Too Tall" would have to go back to Pensacola and take care of business. (TR 627, 630). Frazier testified that he was paid nine thousand dollars for the murders and that

it was Ronald Williams who paid him to leave town and paid for his lawyer. (TR 631-633). When asked on cross-examination when they decided to kill the victims, Darrell Frazier testified that the decisian to kill came in Miami when Ronald Williams told them to get rid of the people if they had anything to do with the stolen drugs. (TR 650).

At the penalty phase of Williams' trial, the State relied on the trial testimony for all aggravating circumstances. (TR 964). The defense called a number of witnesses, including Ertha Copeland, a seventy-year-old friend of Williams', who testified that she lived next door to Williams and she loved him. (TR 965). Williams did odd jobs for her when he was a boy, taking out the garbage and going to the store and doing errands. She observed he never gave her any trouble. (TR 966). It was her belief that Ronald Williams should not get the chair but deserved a life sentence. (TR 967). Alfred Lee Wright testified that he was Williams' cousin and that Williams grew up in Vidalia, Georgia. They went to school together from 1961 to 1974, which was when Williams moved away to Miami. Mr. Wright testified that he would come down and visit Williams in Miami and they would go fishing and camping and did all kinds of "fun things." (TR 969). Before Williams moved to Miami, he was never in trouble. (TR 969). Mr. Wright stated that he believed Ronald Williams should be spared from the death penalty because Williams was like a brother to him, (TR 970). Joseph Morris was also called as a friend of the family. He testified that he knew Williams' mother for seven and a half years and that they were nice people and

they never were in trouble. He opined that Williams always treated him nicely and he would recommend a life sentence for Williams. (TR 971-972). Shirley Williams testified that Ronald was her baby brother, one of five brothers. (TR 978). She testified that when they were young, her mother and father divorced. Her mother raised each of them and that they relied on one another. She observed that Williams was the kindest, most gentle mannered person and would not hurt anyone. (TR 978). She said her children thought he was their favorite uncle and that he was a loving brother. She reviewed and described pictures of the family when they were in Georgia in 1986 and another pictures of the brothers when they were in New York around Easter time. She made a plea for her brother's life. (TR 980-982). On cross-examination, she admitted that Michael McCormick ("Gas"), one of the victims, was the father of her children. (TR 985). On redirect, she observed she would not be begging for her brother's life if she thought Ronald in any way had anything to do with "Gas' death". (TR 985). Louise Williams, Williams' mother, was the last witness to testify. She said that she had six children and that Ronald was born in Vidalia, Georgia. Ronald's natural father left the family when Ronald was six. She worked in the fields to support her family. (TR 987). She reviewed a number of pictures that were shown to her depicting Ronald Williams when he was six years old; school pictures; family pictures and a picture of Ronald Williams holding a baby when he was about thirteen or fourteen years old. (TR 987-990). She stated that Ranald Williams had a normal childhood, that he loved dogs and he

would mind his manners. (TR 992). Ronald went to the tenth grade in school. The family moved to Miami in 1974. She testified that she loves her son. (TR 997). When Ronald was a boy he always helped the neighbors and was never in trouble. (TR 994). Ms. Williams testified that several people wanted to come but couldn't for a number of reasons and that she was begging to spare her son from the electric chair. (TR 995). On cross-examination, Ms. Williams was unable to recall any details about her involvement in the drug organization. (TR 996-999).

The record reflects that defense counsel noted for the record that he had the assistance of Dr. Larson, however, he and Ronald Williams elected not to use any of the medical information obtained. (TR 1000). Before sentencing, defense counsel introduced to the trial court letters and other recommendations from family members with regard to what sentence should be imposed. (TR 1287).

SUMMARY OF ARGUMENT

Williams raises three issues pertaining to the guilt portion of his capital trial. All are groundless. The record clearly reflects the trial court did not violate Williams' right to an impartial trial by insuring that defense counsel correctly impeach a witness. Additionally, the similar fact evidence presented was relevant and its value was not outweighed by any prejudice that might result. Lastly, the trial court did not err in concluding a race neutral reason tendered by the State when the prosecutor peremptorily excused Ms. Rankins.

As to the three penalty issues, the trial court properly found six statutory aggravating factors proven beyond a reasonable doubt. The fact that Williams procured the murders but was not physically present when they occurred did not automatically exclude the aggravating factor that the murder was committed in a heinous, atrocious or cruel manner. The jury's recommendation of life sentences for these four murders is unsound and based on no rational reasoning. Indeed, the only reason that the jury recommended life was the inappropriate and universally condemnable closing argument made by defense counsel.

As to the non-capital sentencing issue, the sentences of life imposed were lawful. The inclusion of a minimum-mandatory three-year sentence is contrary to caselaw but does not warrant remand and resentencing.

ARGUMENT

ISSUE I

WHETHER THE TRIAL COURT VIOLATED WILLIAMS' CONSTITUTIONAL RIGHT TO A TRIAL BEFORE AN IMPARTIAL TRIBUNAL BY INTERRUPTING, WITHOUT OBJECTION WAVING FIRST BEEN MADE BY THE PROSECUTOR, THE DEFENSE'S CROSS-EXAMINATION OF A KEY STATE WITNESS AND AFFIRMING THE WITNESS' CREDIBILITY

Williams' first point on appeal brings into question the propriety of the trial court's statements during the cross-examination of Darrell Frazier. Williams asserts that during said cross-examination, ''the judge became prosecutor". The record reflects to the contrary,

During cross-examination, defense counsel attempted to impeach Darrell Frazier with his prior deposition testimony. Defense counsel asked whether Ronald Williams had told him to **get** his stuff back at which point Mr. Frazier responded yes he did. The colloquy continues:

> Q: He never **told** you to kill anybody, did he?
>
> A: Yes, he did. He told us to drop them.
>
> **Q: Page** 57, lines 9 through 10, take that **and** see if that refreshes your memory about what he told you.
>
> A: Q: "What did Trick tell you?" "Before we got ready to go **--** before we got ready to go --"
>
> Q: Just this right here.
>
> **A:** Right there? He said, "Yoge, **make** sure you get my dope **back",**
>
> Q: Okay. That's the question I pose to you?
>
> THE COURT: No, it wasn't, Mr. Etheridge. That's not the question you posed. You **asked** him a follow-up question, too.

THE WITNESS: That's right.

MR. ETHERIDGE: What was my follow-up, Your Honor?

THE COURT: You asked him if Mr. Williams asked him to kill anybody, and he said -- and he answered --

MR. ETHERIDGE: That was the question, asked him to kill anybody, and he said no, Your Honor. That was the question I followed up on specifically to him.

MR. PATTERSON: Lines 12, 13 and 14, Your Honor.

MR. ETHERIDGE: That State may redirect if they want to, Your Honor. I asked whether he told him to kill anybody.

MR. PATTERSON: Your Honor, I think that's improper impeachment.

THE COURT: Well, you may proceed, pursue it further, Mr. Patterson. As a matter of fact, members of the jury, why don't you step out just for a minute and let me handle this outside the jury's presence.

(Jury out).

THE COURT: Brenda, find those two questions before he attempted to impeach him.

(Portions requested were read by the court reporter).

THE COURT: Those were your two questions, Mr. Etheridge?

MR. ETHERIDGE: Exactly as I pose them, Your Honor.

THE COURT: No, it's not. You show me in there where you pose them.

MR. ETHERIDGE: No, sir. No, sir. What I'm saying is this, Your Honor. I asked him did Ronald Williams ever ask you to kill anybody. I don't know how much plainer I can make it than how I asked him.

MR. PATTERSON: And he answered it, he said yes.

MR. ETHERIDGE: And then I showed him his different response, Your Honor.

THE COURT: You bring it up to me and you show me where there's a different response, please, sir. I've got a copy here. Give me the page and the line.

MR. ETHERIDGE: Page 57, lines 9 through 10. And then he said, "Yoge, make sure you get my dope back."

THE COURT: You didn't ask him in the deposition whether on page 57 -- you didn't ask him the specific question that you just asked him here, did you?

MR. ETHERIDGE: Your Honor, if I'm out of place, then we can strike the question, have a curative response to the jury and go forward.

THE COURT: Just be careful from here on, Mr. Etheridge. You're doing a very good job representing your client but, let's not distort what it is in the record. Ask the jury to come back in.

(Jury present).

THE COURT: You may continue, Mr. Etheridge.

MR. ETBERIDGE: Thank you,' Pour Honor.

(By Mr. Etheridge).

To clarify something, Mr. Frazier, if we may, let me ask you the question this way. I believe you testified in response to Mr. Patterson's question during direct that Ronald Williams never told you to kill anybody except for Gas, specifically told you the only way that he wanted you to kill anybody was if you didn't get your stuff back.

(TR 646-649).

The record further reflects that while no specific objection was raised by defense counsel during the colloquy heretofore

cited and in fact defense counsel implicitly admitted his error, he belatedly objected at the completion of Mr. Frazier's testimony. (TR **659-660).** The record reflects:

> **MR. ETHERIDGE:** Your Honor, before I make this, I would stress to the Court that this is nothing personal or anything else, but I feel I need to do this for my client, that is, to make a motion for mistrial based on the Court's commenting on the evidence earlier, but I want to stress it is nothing personal, I'm just doing it for the record.
>
> THE COURT: Well, your objection is rightfully noted.
>
> **MR. ETHERIDGE:** Could there be clarification by the Court, Your Honor, the reason the Court would -- to clarify the issue, what the Court would be relying on?
>
> THE COURT: 612.4 in Ehrhardt, that the Court may exercise judicial control over interrogation of the witnesses, and the Court feels that under that provision and the inherent authority of the Court, that where you have some matters that are subject to confusion or distortion, the Court has the inherent power to intervene, because the trial should be a search for the truth and the Caurt should vouchsafe the right of both the State and the defendant to have a fair trial. So your motion is rightfully noted, but accordingly overruled and denied.

(TR 659-660).

It is submitted that defense counsel's objection to preserve the record for appeal in fact was too late and did not preserve the claim for appellate review. At the time of the original colloquy, defense counsel acquiesced with regard to his confusing attempt to impeach the witness with a different question than that asked of Frazier during deposition. The trial court had a copy of the deposition in front of him and was reading along with defense counsel as well as the prosecutor, The fact that the

trial court noted that "that was not the question you posited,'' was neither a comment on the evidence nor a reflection on defense counsel other than to point out that the questions were not the same. In fact, the witness, in reading the deposition, so stated.

890.612, Fla.Stat., provides that a trial court may exercise "reasonable control over the mode and order of the interrogation of witnesses and the presentation of evidence so as to: a) facilitate through effective interrogation and presentation, the discovery of the truth." In the instant case, that is exactly what the trial court did, relying on Florida Evidence by Ehrhardt, 8612.4. Williams has failed to demonstrate that the trial court abused his discretion as to this point. See Farinas v. State, 569 So.2d 425, 428-429 (Fla. 1990).

To the extent that Williams argues that the trial court erred in intervening "without an objection having first been made by the prosecutor", citing James v. State, 388 So.2d 35 (Fla. 5th DCA 1980), Williams has failed to reflect the entire holding of that case. In James v. State, 388 So.2d at 36, the facts reflect therein that the trial judge interrupted defense counsel and stated to the prosecution "Mr. Prosecutor, are you going to object on the grounds of hearsay?". The Fifth District Court concluded:

> The trial court's interruption of the defendant's testimony without an objection having first been made by the prosecutor was error. Often one side will allow the opposition to introduce inadmissible testimony so as to attack it on cross-examination. A trial judge may interrogate a witness to clarify an issue. Andrews v. State, 172 So.2d 505 (Fla. 1st DCA 1965).

> The trial judge should avoid making any remarks directly to, or within the hearing of the jury, which conveys any intimation as to what view the judge takes of the case. . . . In this case, the judge conveyed his disbelief of the defendant's defense directly and clearly by his interruption of the testimony and his characterization of it as 'the rankest form of hearsay that there is.' It was clearly prejudicial to the Appellant.

388 So.2d at 36.

Likewise, Williams' reliance on Millett v. State, 460 So.2d 489 (Fla. 1st DCA 1984); Gordon v. State, 449 So.2d 1302 (Fla. 4th DCA 1984), and Robinson v. State, 161 So.2d 578 (Fla. 3rd DCA 1964), is equally unavailing. In Millett, the trial court, on "four occasions made statements in the presence of the jury relating to the responsiveness of defendant's answers, which may have caused the jury to question his credibility." 460 So.2d 492. Albeit, the court found that "the very existence of the judge's comments were of such character that they might potentially have affected the defendant's right to a fair trial," it concluded the trial judge's comments as to the defendant's answers were harmless error. 460 So.2d 493. See Provence v. State, 337 So.2d 783, 785-786 (Fla. 1976).

Likewise, in Gordon v. State, 449 So.2d 1302 (Fla. 4th DCA 1984), the court found the error harmless. In Robinson v. State, 161 So.2d 578 (Fla. 3rd DCA 1964), the court reversed, however, the court's remarks were as follows:

> The witness Thomas is an honest, poor man, who has had a very hard time getting an education. He is not as well educated as we are and for that reason his answers may not

> appear to be like those of an educated man. He is doing the best he can.

161 So.2d at 579.

The court reasoned that these remarks constituted a "comment by the court upon the veracity of the witness." 161 So.2d at 579. No such event occurred herein.

Williams is entitled to no relief as to this point.

ISSUE II

WHETHER THE TRIAL COURT ERRED IN ADMITTING EVIDENCE OF OTHER CRIMES OCCURRING IN A DIFFERENT LOCAL APPROXIMATELY FOUR MONTHS PRIOR TO THE CHARGED CRIMES AND ALLEGEDLY INVOLVING APPELLANT

Williams argues that the trial court erred in permitting the State to introduce evidence pertaining to the "two drive-by shootings that occurred in Jacksonville, Florida, several months prior to the killings in Pensacola. The targets of the drive-by shootings were a Vernon McClendon and a Honey Rose Hurley." (Appellant'sBrief, page 21). Williams is wrong.

In Bryan v. State, 533 So.2d 744, 746 (Fla. 1988), this Court observed:

> Evidence of 'other crimes' is not limited to other crimes with similar facts. So called similar fact crimes are merely a special application of the general rule that all relevant is admissible unless specifically excluded by a rule of evidence. The requirements that similar fact crimes contain similar facts to the charged crime is based on the requirement to show relevancy. This does not bar the introduction of evidence of other crimes which are factually dissimilar to the charged crime if the evidence of ather crimes is relevant. . . .

The court, citing to Williams v. State, 110 So.2d 654 (Fla. 1959), went on the hold:

> The only limitations to the rule of relevancy are that the State should not be permitted to make the evidence of other crimes the feature of the trial or to introduce the evidence *solely* for the purpose of showing bad character or propensity, in **which** event **it** would not be relevant, and such evidence, even if relevant, should not be admitted if its probative value is substantially outweighed by undue prejudice. . , .

533 So.2d at 746.

Given the fact that the true test is relevancy, it is submitted that the "drive-by shootings of Vernon McClendon and Honey Rose Hurley" in Jacksonville, Florida, were relevant to show identity motive and *modus operandi*. The facts adduced at trial reflect that Ronald Lee Williams was the ringleader of a major drug operation in Miami, Jacksonville and later in Pensacola, Florida. Vernon McClendon met Appellant in 1986 and started working for him, handling drug money and leased out his backyard so that drugs might be sold there. (TR 266-268). Mr. McClendon decided that he did not want to work for Mr. Williams anymore and decided to set up his own operation. (TR 270-271). As a result of Williams finding out about Mr. McClendon's decision, McClendon and his girlfriend, Honey Rose Hurley, were shot. (TR 271-273). Honey Rose Hurley testified that she was Vernon McClendon's girlfriend and that she had met Williams through McClendon, **(TR** 288). She became part of the drug operation and worked with her boyfriend. (TR 289-290). **She** detailed how one night, after attending a concert in Jacksonville, she was traveling around looking for Vernon

McClendon when she noticed a car tailing her with its bright lights on. She testified she could not see in the rearview mirror the lights were so bright and that she tried to avoid the car. When she approached a bridge toll plaza, the car pulled up alongside of her and someone in the car started shooting at her. She was not able to identify who shot her. (TR 288-296).

Bruce Frazier testified that he and Timothy Robinson were the ones who attempted to kill Honey Rose Hurley and Vernon McClendon. (TR 538-544). Frazier testified that it was Ronald Williams who ordered Vernon McClendon shot (TR 542), and it was Ronald Williams who was called after each shooting and told that the task had been done. (TR 541, 544). Rufus Williams testified that he was a lieutenant in Williams' drug operation and that Williams told him that "V-Mac" (Vernon McClendon) wanted to take over his spot in Jacksonville and that something had to be done to him. Williams said he had to be "dropped", killed. (TR 692). Rufus Williams further testified that he knew Honey Rose Hurley had been shot and that Ronald Williams told him that "Red" shot "V-Mac" (Vernon McClendon) eleven times but he survived. (TR 693-694).

Clearly, the aforenoted facts were relevant to demonstrate Ronald Williams' involvement in a similar circumstance in Pensacola. Ronald Williams was identified by every witness that was part of his organization, to being the head of this drug operation. The record reflects there were workers, lieutenants, enforcers and Ronald Williams. The record also reflects that when it became evident to Ronald Williams he was being ripped off

of his drugs, he sent his enforcers out to "drop" the people who were trying to steal from him. That was so in Jacksonville, when he was being ripped off by McClendon and that was also the reason why Williams sent his enforcers to Pensacola to do in Michael McCormick "Gas" who Williams believed had stolen drugs and money from him.

Williams argues that the "strict relevancy standard was not met" in this case because under a *modus operandi* theory, collateral and charged crimes were not so unusual that it is reasonable to conclude that the same person committed both crimes. Williams is wrong. The similarity of Ronald Williams' conduct does not extend to how the murders were actually going to take place but rather the fact that Ronald Williams, in order to protect his drug operation, sent out his henchmen or enforcers to kill those individuals who either stole or tried to move in on his operation. In that respect, both the Pensacola and Jacksonville hits were identical. The fact that Vernon McClendon and Honey Rose Hurley were shot in a drive-by shooting as opposed to the four victims in Pensacola being tortured, stabbed and shot, is not relevant to the similar fact evidence being admitted. Williams' reliance on State v. Ramos, 579 So.2d 360 (Fla. 4th DCA 1991), and Carr v. State, 578 So.2d 398 (Fla. 1st DCA 1991), is misplaced. Clearly, a review of both cases reflect no development of *modus operandi* therein.

Indeed, Williams further argues that even assuming that the collateral crime evidence was relevant, its probative value was outweighed by the prejudice generated. Williams is wrong an this

point also. The Jacksonville shootings never became a feature of the instant trial, rather they explained the tie-in of the actual perpetrators of the Pensacola murders with Williams and how Williams had control of this entire drug operation. The fact that similar fact evidence is always "harmful" does not mean that its probative value is outweighed by "any" prejudice resulting. See Bryan v. State, 533 So.2d at 747. The overriding motive behind these murders was to have people who were stealing from Williams "done in." See Jackson v. State, 522 So.2d 802, 805-806 (Fla. 1988) (prior assault on the victim McKay was relevant to support State's theory that the defendant's motive for killing McKay was his belief that McKay was stealing drugs and taking advantage of Jackson); Craig v. State, 510 So.2d 857 (Fla. 1987) (evidence that Craig had been stealing cattle from ranch was admissible to show Craig's motive in killing the ranch owner and employee who discovered the thefts); Phillips v. State, 476 So.2d 194 (Fla. 1985) (prior incident involving Phillips and his probation officer admissible to show motive and intent for the murder of his probation officer); Heiney v. State, 447 So.2d 210 (Fla. 1984); Cohen v. State, 581 So.2d 928 (Fla. 3rd DCA 1991), and Washington v. State, 432 So.2d 44 (Fla. 1983).

Based on the foregoing, the trial court did not err in permitting the State to introduce evidence concerning the drive-by shootings in Jacksonville, Florida.

ISSUE III

WHETHER THE TRIAL COURT ERRED IN PERMITTING THE STATE, OVER TIMELY OBJECTION, TO PEREMPTORILY CHALLENGE A JUROR SOLELY ON THE BASIS OF RACE

Williams next argues that, although under Florida law the defense must "make a prima facie showing that there has been a strong likelihood that the jurors have been challenged because of their race", (Appellant's Brief, page 29), in the instant case that showing was made because the trial court usurped his responsibility by asking the prosecutor to offer a nonracial reason for "the peremptory challenge used on Ms. Rankins." (TR 142-144). Williams then argues that "the totality of relevant facts show that the facially valid explanation was a mere pretext for purposeful discrimination." Williams is wrong.

First of all, under State v. Slappy, 522 So.2d 18 (Fla. 1988), a defendant must affirmatively object that the prosecution has used a peremptory challenge to exclude a black juror solely on race. 522 So.2d at 22. It is not enough for the trial court to circumvent the requirement that a given defendant object unless the court sua sponte is, satisfied that there is a need on the part of the party exercising a peremptory challenge to explain itself. Sub judice, the court, in an abundance of caution and without any objection by defense counsel, inquired of the prosecutor why he was excluding said juror. The prosecutor responded:

> MR. PATTERSON: I'm glad you did that, Your Honor, because I'm afraid the record might not adequately reflect her responses on the death penalty. As the court is aware, when I asked her that, about the death penalty,

> there was a long pause. She shook her head both ways, in my recollection, both no and up and down. I got the distinct impression that she had great trouble pertaining to the discussion about the death penalty, and for that reason I would strike her peremptorily.
>
> MR. ETHERIDGE: Your Honor, I would note for the record that she answered affirmatively when asked by the court whether she could follow the law and apply the law to the facts of this case and, therefore, I don't think its given a constitutional race neutral issue by the state, which is the second black challenge they've made in this particular case. Neither explanation to my satisfaction has met the recent Supreme Court, Florida Supreme Court ruling, and I don't think either one are going to be race neutral.
>
> THE COURT: Mr. Patterson is correct. The manner in which she responds was not only dilatory but equivocal. The responses that she ultimately did give were not sufficient under Witherspoon or any of the following cases to constitute sufficient reason to strike her for cause, but certainly her equivocation on the death penalty issue I feel would be sufficient reason for the court to want to strike her peremptorily, and I'll, therefore, sustain the strike. . . .

(TR 143-144).

Clearly, defense counsel had not made any attempt to assert a Neil/Slappy objection.

Moreover, even assuming for the moment the trial judge's observations were the functional equivalent of defense counsel's objection to the use of a peremptory challenge to Rankins, the record reflects a race neutral reason was given. The court, in State v. Slaw, 522 So.2d 22, further observed:

> , , . Part of the trial judge's rule is to evaluate both the credibility of the person offering the explanation as well as the credibility of the asserted reasons. These must be weighed in light of the circumstances of the case and a total course of the voir dire in question, as reflected in the record.

> We agree with the district court below that a judge cannot merely accept the reasons proffered at face value, but must evaluate those reasons as he or she would weigh any disputed fact. In order to permit the questioned challenge, the trial judge must conclude that the proffered reasons are, first, neutral and reasonable and, second, not a pretext. These two requirements are necessary to demonstrate 'clear and reasonable specific . , legitimate reasons.' (cite omitted). Moreover, they serve the goal of demonstrating a 'neutral explanation related to the particular case to be tried,' (cite omitted) and that 'the question challenges were not exercised solely because of the prospective jurors race.' Neil, 457 So.2d at 486-87 (footnote omitted).

522 So.2d at 22.

In **Reed** v. State, 560 So.2d 203 (Fla. 1990 , this Court terminally observed:

> In the limitations imposed by State v. Neil, the trial judge necessarily is vested with broad discretion in determining whether peremptory challenges are racially intended. State v. Slappy. Only one who is present at the trial can discern the nuances of the spoken word and the demeanor of those involved. Given the circumstances that both the defendant and the victim were white and that the two black jurors were already seated, we cannot say that the trial judge abused his discretion in concluding that the defense had failed to make a prima facie showing these was a strong likelihood that the jurors were challenged because of their race.
>
> Reed was not prejudiced by the prosecutor having given explanations for his challenges. In fact, if it appeared from the prosecutor's explanation that his challenges were racially motivated, the trial judge would have been warranted in granting a mistrial despite not yet having ruled that the defense had made a prima facie showing. Here, Reed does not question the prosecutor's motivation for five of his eight challenges, and the reasons for the other three had at least some facial

> legitimacy. In trying to achieve the delicate balance between eliminating racial prejudice and the right to exercise peremptory challenges, we must necessarily rely on the inherent fairness and color blindness of our trial judges who are on the scene and who themselves get a 'feel' for what is going on in a jury selection process.

560 So.2d at 206.

Sub judice just as in Reed, the trial court, after observing the witnesses made a determination that the peremptory challenge of Ms. Rankins' was based on her ambivalence about the death penalty and not because she was black.

The record reflects that after the recited calloquy, defense counsel was really not concerned about the racial composition of the jury or whether the State was improperly using its peremptory challenges, but rather sought to obtain more peremptory challenges for the defense. The record reflects:

> MR. ETHERIDGE: Your Honor, at this time I would renew my request for additional peremptory challenges specifically based on the fact that the State has exercised two peremptory challenges of two black potential black jurors as well as myself, defense counsel, having to peremptorily strike a former law partner of Mr. Patterson's, Mr. Robert Kievet, that would have been another challenge I would have had if the court would have granted my challenge for cause. So, I make another motion for more peremptory challenges based upon those reasons.
>
> THE COURT: Well, as I mentioned before, you have exercised consistently the strike of white males in all of your strikes, While the Court recognizes that all the cases have said that the fact that the other blacks remain on the panel is not a controlling factor, the Court still needs to state on the record, and I think you will agree, that there are at least three other blacks that have tentatively been seated and accepted by the State, but I hold under advisement the

> request for additional challenges. We'll call and have others seated right now.

(TR 144-145).

Based on the foregoing, especially Reed v. State, supra, Williams is entitled to no relief a3 to this third claim.

ISSUE IV

> WHETHER THE TRIAL COURT ERRED BY **WEIGHING** AGGRAVATING **CIRCUMSTANCES** NOT PROVEN IN SENTENCING **APPELLANT** TO **DEATH**

Williams' first sentencing issue questions whether four of the six statutory aggravating factors found were proven beyond a reasonable doubt. Williams does not challenge the applicability of §921.141(5)(b) or (d), Fla.Stat. to his case.

(A) Whether the Murder Were Committed to Avoid or Prevent a Lawful Arrest

The trial court concluded that this statutory aggravating factor was proven beyond a reasonable doubt providing:

> The four capital felonies were committed for the purpose of avoiding or preventing a lawful arrest. This Court finds that the killings of the four victims were without provocation and senseless since the stolen contraband had been recovered; therefore, it is concluded the killings.occurred to prevent arrest or detection. Correll v. State, supra, at 567; White v. State, 403 So.2d **331, 338 (Fla. 1981).**

(TR 1309).

While acknowledging that when a law enforcement is not the victim, the State must show that the elimination of a witness was the dominant or only motive for the murder, that evidence exists sub judice. **The** record reflects that this entire criminal episode started out with Bruce Frazier and his girlfriend, Renee

Grandison, arguing in September 1988, at the Truman Arms Apartments where drugs and money was kept in one of Williams' safes. Because Frazier was afraid that Renee was going to go to the police as she threatened and expose the drug ring, Michael McCormick ("Gas") was told to move the safe to Pleasant Grove, another drug house location. (TR 377-378, 510-511). When the safe was taken from that property and moved next door to Douglas' and Hill's apartment, Williams got mad and wanted to know who took his property. He dispatched Timothy Robinson, Michael Coleman and Bruce Frazier, his enforcers, to Pensacola, to retrieve Williams' property and to "drop" the people who took the drugs and money. After the property was returned, all witnesses were eliminated, ending the thievery and securing the drug operation.

A similar circumstance occurred in White v. State, 403 So.2d 331, 338 (Fla. 1981), wherein this Court upheld this identical aggravating factor, finding:

> . . . The trial judge in his findings recognized that the defendant was opposed to the killings but also pointed out that he, nonetheless, stood by armed and allowed the shootings to take place. In Riley v. State, 366 So.2d 19 (Fla. 1978), we held that although this aggravating circumstance was concerned primarily with the killing of law enforcement officers, it could validly be applied when the victim was not a law enforcement officer if the dominant motive for murder was the elimination of witnesses. (cite omitted). Here there was evidence presented that a 'contract' was placed for the murder of at least one of the victims. However, as noted by the trial court in its sentencing order, the presence of as many as seven of the victims was not anticipated. After the mask of one of the intruders fell from his face the three intruders discussed

> the need for killing the victims. Although the defendant was apposed to the killings, he had fully participated in the robberies and did nothing to prevent or otherwise disassociate himself from the murders which then took place. Following the murders, the defendant voluntarily returned to his hotel room with his co-felons and accepted his share of the proceeds taken during the robberies. One of the intruders informed the wheel man Archie that it was 'the St. Valentine's Day Massacre,' but told him not to worry because 'not one of them (the victims) should live,' We conclude there is sufficient evidence to sustain the trial judge's finding that the capital felonies in an effort to avoid arrest by eliminating witnesses to the crime. . . .

403 So.2d at 338.

In the instant case not only did Williams dispatch his enforcers to, at the very least drop "Gas", but after they killed everyone in the apartment, they left heading towards Jacksonville first, and then Miami. When they finally got to Miami the next day, they met with Williams who told them that they had screwed up because "one" had gotten away. (TR 536, 556, 627-631, 650). Williams paid Darrell Frazier nine thousand dollars for the drop (TR 631), and Bruce Frazier got three thousand dollars (TR 538). Darrell Frazier testified when he met with Ronald Williams and a man named "Too Tall" a day after the murders in Miami, Williams told them that they had screwed up because "one got away." Williams was very upset about it and said that he was going to have to go to Pensacola with "Too Tall" and take care of it himself. (TR 627, 630).

In Swafford v. State, 533 So.2d 270, 276 (Fla. 1988), this Court observed:

> Although some decisions ,have approved findings of motive to eliminate witnesses based on admissions of the defendant (cites omitted), in others the factor has been approved on the basis of circumstantial evidence without any such direct statement. Routly v. State, 440 So.2d **1257,** 1263 (Fla. **1983)** ('express statement' not required), cert. denied, 468 U.S. 1220, **104 S.Ct.** 3591, 82 L.Ed.2d 888 (1984). While Swafford's statement to Johnson did not contain any clear reference to his motive for the murder specifically, the circumstances of the murder were similar to those in many cases where the arrest avoidance factor has been approved. E.g., Cave v. State, **476 So.2d 180, 188** (Fla. **1985)** (evidence left **'no** reasonable inference but that the victim was kidnapped from the store and transported Same thirteen miles to a rural area in order to kill and thereby silence the sole witness to the robbery), cert. denied, 476 **U.S. 1178, 106** S.Ct. **2907, 90** L.Ed.2d **993 (1986);** Routly v. State, (cite omitted) ('no logical reason' for the victim's abduction and killing 'except for the purpose of murdering him to prevent detection'). Other **cases** have applied the same reasoning on similar facts. (cites omitted),

See also Harich v. State, **437** So.2d **1082, 1086** (Fla. **1983);** Menendez v. State, 419 **So.2d** 312 (Fla. **1987); Beltran-Lopez v. State, 583** So.2d 1030, 1032 (Fla. 1991), and Maqueira v. State, **588** So.2d **221** (Fla. **1991).**

The trial court was correct in concluding that this aggravating factor applied and was proven beyond a reasonable doubt.

Terminally, it should be noted that this particular aggravating factor was not argued by the prosecution nor instruction given to the jury. The trial court, after reviewing the facts and circumstances of this case, concluded that this aggravating factor had been proven beyond a reasonable doubt. In

Hoffman v. State, 474 So.2d 1178, 1182 (Fla. 1985), this Court concluded that it was not error for the trial court to find an aggravating factor which had not been argued to the jury.

(B) Pecuniary Gain

The trial court concluded that the murders were committed for pecuniary gain. Specifically, he found:

> Since there were both kidnapping and robbery present which were separable events in this criminal episode, such findings does not constitute an impermissible doubling of aggravating circumstances. Parker v. State, 476 So.2d 134 (Fla. 1985); Routly v. State, 440 So.2d 1257 (Fla. 1983).

(TR 1309-1310).

Williams argues that "proof of robbery per se does not establish a pecuniary motive; the State must prove that a primary motive for the killings was pecuniary gain." (Appellant's Brief, page 34). In the instant case, Williams dispatched his enforcers to retrieve the "drugs and money stolen from him." To suggest that this was not for pecuniary gain defies logic. The instant circumstance is no different from a murder to collect insurance proceeds, Byrd v. State, 481 So.2d 468 (Fla. 1986); Zeigler v. State, 402 So.2d 365 (Fla. 1981); Buenoano v. State, 527 So.2d 194 (Fla. 1988), or Thompson v. State, 553 So.2d 153 (Fla. 1989), wherein defendant killed the victim who stole from him and tortured him before shooting him in order to find out where the money was located. The Court observed:

> . . . There is no doubt that Thompson's conduct was motivated in part by revenge. However, it is clear that the purpose of the beatings inflicted in the boat was to prevail upon Savoy to divulge where the money was

> located. As Thompson told Savoy, 'You can die easy or you can die hard.' The evidence supports a conclusion that the crime was committed for pecuniary gain.

553 So.2d at 156.

The trial court was correct in finding this statutory aggravating factor proven beyond a reasonable doubt.

(C) **Heinous,** Atrocious and Cruel

Williams also argues that the statutory aggravating factor that the murder was committed in a heinous, atrocious and cruel manner cannot be applied to his circumstances because of this Court's recent decision in. Omelus v. State, 584 So.2d 563 (Fla. 1991). In Omelus, supra, the Court reasoned that the aggravating factor that the murder was especially heinous, atrocious or cruel should not have been considered by the sentencer because:

> Nowhere in this record is it established that Omelus knew how Jones would carry out the murder of Mitchell, and, in fact, the evidence indicates that Jones was supposed to use a gun. There is no evidence to show that Omelus directed Jones to kill Mitchell in the manner in which the murder was accomplished. Under these circumstances, where there is no evidence of knowledge of how the murder would be accomplished, we find that the heinous, atrocious, or cruel aggravating factor cannot be applied vicariously. . . .

584 So.2d at 566.

In the instant case, beyond a shadow of a doubt, the murders were heinous, atrocious and cruel. The question that remains however is whether there was any evidence to link Williams to how his henchmen were going to perfect these murders. The record reflects that Williams was in constant contact with his henchmen who were sent to first uncover who stole drugs and money from

Williams and then to eliminate them. Unlike Omelus who merely contracted with Jones to kill Mitchell, sub judice, Williams sent his "enforcers" to ferret out the thieves and then kill them. Clearly, in this instance Williams is as responsible as the perpetrators who tortured, stabbed and then shot the four deceased victims.

Moreover, even assuming for the moment that this Court continues to adhere to its decision in Omelus, supra, (see Justice Grimes' dissent) any error sub judice is harmless beyond a reasonable doubt. The trial court found five other valid aggravating factors and a paucity of non-statutory mitigating evidence, specifically, that "the evidence establishes that the defendant has been a loving son to his mother and a good family member to other relatives," (TR 1312). In light of the horrendousness of this multiple murder, any error is harmless beyond a seasonable doubt.

(D) Cold, Calculated and Premeditated

The trial court found that "these executions-style murders carried out in the manner already described, were clearly calculated acts done with premeditation. Rutherford v. State, 545 So.2d (sic)(Fla. 1989); Bolender v. State, 422 So.2d 833, 838 (Fla. 1982)." (TR 1310).

Williams argues that "implicit in the latter finding is that no one was to be killed if the stolen property was retrieved, which further suggests that Appellant did not give a categorical order to kill; it also implies that the decision to kill was made by the actual killers in Pensacola, who, as pointed out to them

by Darrell Frazier, had the choice of recognizing their mission was accomplished and leaving the apartment without committing further harm." (Appellant's Brief, page *36*). Citing **Rogers v. State**, 511 So.2d 526 (Fla. 1987), Williams argues that the State has failed to prove "heightened premeditation" beyond a reasonable doubt. Such a contention is totally without merit, The record reflects that the only reason Timothy Robinson, Michael Coleman and the Frazier boys were dispatched to Pensacola was to retrieve their drugs and "drop" Michael McCormick ("Gas"). The plan was clear, it was formulated in Miami, and but for the fact that Williams did not go to Pensacola at the last minute, the plan was formulated that Williams, Timothy Robinson ("Red"), **and** Darrell Frazier were going to drive to Pensacola and find out who is taking the drugs and money. (TR 610-612). Guns were secured before they went to the apartment and Darrell Frazier, Timothy Robinson and Michael Coleman stopped at a convenience store prior to reaching the apartment and bought tape, gloves and electrical cording. (TR 616-617). When Williams' henchmen returned to Miami, he paid them off and arranged for them to have transport so they could get out of town and later secured lawyers for their defense, (TR 538, 631-633). On cross-examination, Darrell Frazier testified that the decision to kill came from Miami when Williams told them to get rid of people if they **had** anything to do with the stolen drugs. (TR 650). Beyond question, the instant case reflects a careful plan or prearranged design for the death of **the** individuals in Pensacola, Florida. These were truly contract, execution/witness elimination murders.

See Rutherford v. State, 545 So.2d 855 (Fla. 1989), Stokes v. State, 548 So.2d 188, 197 (Fla. 1989), and Rautly v. State, 440 So.2d 1257 (Fla. 1983).

Based on the foregoing, the State would submit that this statutory aggravating factor was proven beyond a reasonable doubt.

Terminally, as previously noted, should any of the assailed statutory aggravating factors be found invalid, the death sentence would still be appropriate based on the remaining factors in light of the total insignificance af the non-statutory mitigating factors found, See Capehart v. State, 583 So.2d 1009 (Fla. 1991). Based on the foregoing, all relief should be denied as to this point.

ISSUE V

WHETHER THE TRIAL COURT ERRED IN OVERRIDING THE JURY'S LIFE RECOMMENDATION AND IMPOSING A DEATH SENTENCE UPON APPELLANT

Williams argues that the trial court erred in overriding the jury's life recommendation. The record reflects, however, that there was no rational basis for said recommendation. The trial court, in drafting his extensive order to comport with Campbell v. State, 571 So.2d 415 (Fla. 1990), reviewed: "assorted testimony relative to defendant's upbringing, family ties, health, intelligence, personality, education and emotional development. The Court has also considered the victims' backgrounds. . . ." (TR 1311), and as a result of meticulously reviewing same, concluded that only the fact that evidence "establishes the defendant has been a loving son to his mother

and a good family member to other relatives" was established by the greater weight of the evidence. (TR 1313).

In contrast, Williams points to his accomplices culpability, the disparate treatment among his accomplices and concludes: "Even if the jury found that the killings were premeditated, under the totality of the circumstances the jury could find that the relative culpability of the actual killers and the likely disparate treatment of the Frazier brothers, together with Appellant's being a good family person, outweighed any and all applicable statutory aggravating factors. Dolinsky v. State, 576 So.2d 271 (Fla. 1991)." (Appellant's **Brief,** page 45).

The record reflects that there was no rational basis for the jury's recommendation. The trial. court found:

> The jury's recommendation of life sentence could have been based only on minor, non-statutory mitigating circumstances or sympathy and was wholly without reason. 'In this case the evidence of mitigation is miniscule in comparison with the enormity of the crimes committed.
>
> * * *
>
> We agree that virtually no reasonable person could differ as to the appropriateness of the death sentence in this case.' Zeigler v. State, 16 F.L.W. S257, 258 (April 19, 1991). . . . In this case the sentence of death is so clear and convincing that virtually no reasonable person could differ, and a jury override in light of the standard pronounced in Tedder v. State, 322 So.2d 908 (Fla. 1975), would be warranted. Bolender v. State, supra, at 837. ***See*** also Zeiqler v. State, supra.

(TR 1313-1314).

Williams first argues that the jury could have discerned he was less culpable than the other participants. While it is true

that Williams was not in Pensacola, Florida, the day of the murder and in fact did not torture, stab or shoot anyone, the record is perfectly clear that he ordered these murders and sent his enforcers to carry out the murders. The cases cited by Williams that he was "not the triggerman" are inapplicable where, here, he was the ultimate triggerman. He set the plan into action and each enforcer acted in Williams' stead. Coleman and Robinson did the actual murders, but it was at Williams' beck and call that the murders were done. With regard to the Frazier boys, the record reflects that they did not actually take part in the murders, but rather were a part of the criminal episode. In fact, their culpability is less than Williams in that they allowed Tina Crenshaw to get away and initially lied on their return to the apartment when they told Timothy Robinson and Michael Coleman that they had dropped her. When Darrell Frazier then told Timothy Robinson that no he had not "dropped the whore", Timothy Robinson got mad and Coleman turned to him and said why hadn't he dropped her and then said, "The nigger (Ronald Williams) said we got to drop them, man." (TR 622).

The trial court concluded as to the culpability of the defendants that:

> The evidence establishes that while defendant was not present when the capital felonies were committed he without question masterminded and. directed that the capital felonies be carried out. This punishment should be equal to that of Timothy Robinson and Michael Coleman, the actual triggermen in these atrocities who were dispatched to Pensacola from Miami by defendant. See,

e.g., Steinhorst v. State, 574 So.2d 1075, 1077 (Fla. 1991).

(TR 1312).

With regard to disparate treatment of the accomplices, the record reflects that Timothy Robinson, Michael Coleman and Darrell Frazier all received the death penalty. The fact that Darrell Frazier was subsequently taken off death row because of his substantial assistance to the prosecution for the conviction of Ronald Williams has nothing to do with the appropriateness of the sentence imposed against Ronald Williams. Moreover, Bruce Frazier pled to four counts of second degree murder and was sentenced to fifty years to run concurrently for each count and agreed to testify against Ronald Williams. It cannot be seriously suggested that because an individual provides substantial assistance to the prosecution to convict a defendant that a rational juror would conclude that the sentence of death is not appropriate *sub judice*.

Lastly, Williams points to the reasonableness of the life recommendation. The *only* mitigating circumstance found by the trial court was that Ronald Williams was a good son and a nice person to his family. The instant case falls into one of those rarified cases where the jury's recommendation of life was properly judicially overridden, *See* Thompson v. State, 553 So.2d 153 (Fla. 1989), and Torres-Arboledo v. State, 524 So.2d 403 (Fla. 1988).

Terminally, the State would submit that the closing arguments made by defense counsel *sub judice* should be universally condemned. For example, defense counsel argued:

> Life means life. If you decide to impose a recommended life term, what does that mean for Ronald Williams? Well, it means Ronald Williams will never see a sunrise like most of us all this morning again. And he will never see the moon. He will never ga out to the beach again. He will never go fishing or camping with his cousin Alfred again. And he will never have children again. And he will never be able to hold his nephews and nieces in his arms. He'll never have to spend to Christmas with his family and Easter, birthdays and never smell flowers. Things that we all basically take for granted, he will never do. He will never drive a car again and never have another house again. And he will have to think about the consequences of his actions for the rest of his life every day.

(TR 1029).

In light of Taylor v. State, 583 So.2d 323, 329-330 (Fla. 1991), and Jackson v. State, 522 So.2d 802 (Fla. 1988), this argument was totally inappropriate for defense counsel to present to the jury. Equally inappropriate was defense counsel's "Golden Rule" argument to the jury that:

> . . . And remember when you make your decision that if you decide to ask for death, you are going to wake up four or five years down the road and you are going to look at yourself in the mirror and hear on the radio Ronald Williams is executed today and you will have had some part in doing that. Just do the right thing. Make sure before you make that vote that you will be able to live with what your decision is.

(TR 1035).

Overwhelmed with the defense's irrational, inappropriate and condemnable arguments, this case falls into the same category as Francis v. State, 473 So.2d 672 (Fla. 1985). Therein the court held:

> On the present record, we find no reasonable basis discernible from the record to support the jury's life recommendation. Perhaps, the jury's recommendation was a result of the highly emotional closing argument of defense counsel made on March 29, 1983, the Tuesday before Easter Sunday, which amounted to a non-legal sermon referencing several times to Easter, the Last Supper Of Jesus and his disciples and the covenant of God's love for humanity which must be passed along with the cup of forgiveness to the next generation of children.
>
> Moreover, we note that the statutory mitigating factors of no significant history of prior criminal activity found by the trial court was based on its belief that it could not consider the fact that Francis had been convicted of a felony because the conviction occurred subsequent to the murder in question. . . . Thus, the trial court was not precluded from determining that this was not a mitigating factor.
>
> Applying the test announced in Tedder, we conclude that the facts in this case suggesting a sentence of death are so clear and convincing that no reasonable person could differ.

473 So.2d at 676-677.

The trial court correctly overrade the jury's irrational life recommendation.

ISSUE VI

WHETHER THE SENTENCES IMPOSED UPON APPELLANT FOR THE NON-CAPITAL OFFENSES ARE LEGAL

Williams first asserts that the life sentence for attempted first-degree murder exceeds the legal maximum of thirty years, citing Viers v. State, 362 So.2d 472 (Fla. 3rd DCA 1978). The record reflects that Williams was indicted in Count V of the Indictment with "unlawful attempt to kill and murder Amanda Merrill, by shooting with a firearm and cutting Amanda Merrill

from a premeditated design to effect the death of Amanda Merrill or while engaged in the perpetration of or attempt to perpetrate a felony to-wit: kidnapping, in violation of 8777.04, 775.087(2) and 782.04, Fla.Stat." (TR 1048). §782.04(3)(f), specifically provides:

> When a person is killed in the perpetration of, or in the attempt to perpetrate, any: . . , kidnapping, . . . by a person other than the person engaged in the perpetration of or in an attempt to perpetrate such felony, the person perpetrating or attempting to perpetrate such felony is guilty of murder in the second degree, which constitutes a felony of the first degree, punishable by imprisonment for a term of years not exceeding **life**. . . .

See also (TR 1289, 1302).

With regard to the life sentences for kidnapping, 781.01(2), provides "a person who kidnaps a person is guilty of a felony of the first degree, punishable by imprisonment for a term of years not exceeding **life** . . ." The record reflects Williams was charged with six counts of kidnapping pursuant to **§787.01(a)**, and was convicted of same. The trial court sentenced Williams to a term of confinement of life imprisonment as to all kidnapping counts (TR 1289-1291), to run concurrent with other sentences previously imposed.

These sentences were lawful. To the extent that Williams is asserting that there is some problem with "reclassification as a life felony under §775.087(1), Fla.Stat. because he did not personally use a firearm in commission of the offenses," see State v. Rodriguez, 582 So.2d 1189 (Fla. 3rd DCA 1991), and Robins v. State, So.2d ___ (Fla. 1st DCA 1991), 16 F.L.W.

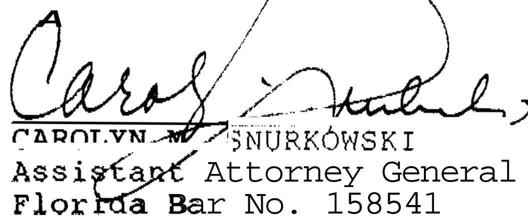
D2670, nothing in the record reflects that the instant sentences were "reclassified," Both State v. Rodriquez and Robins v. State, are presently pending before this Court for disposition. Presumably, resolution of those cases will not impact on the sentences imposed sub judice, since no reclassification was done. Finally, Williams argues that the three year minimum mandatory sentences imposed are illegal since he did not possess a firearm during the commission of the offense. To the extent that he was not physically present when the murders occurred, it is presumed that he could not have possessed a firearm during the commission of the offense. Any correction of the judgment and sentence does not mandate remand for resentencing.

CONCLUSION

Based on the foregoing, the State would submit that Williams' judgments and sentences should be affirmed.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL



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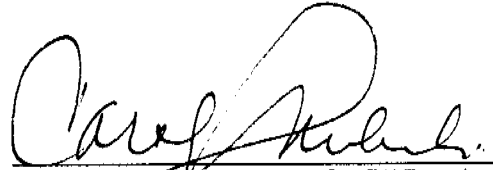
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Spiro T. Kypreos, Esq., 127 East Zaragoza Street, Suite 202-A, Pensacola, Florida 32501, this 18th day of June, 1992.



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