IN THE SUPREME COURT OF FLORIDA

PATRICK C. HANNON,

Appellant,

v. Case No. 78,678

STATE OF FLORIDA,

Appellee.

BRIEF OF THE APPELLEE

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SUMMARY OF THE ARGUMENT

The court found that under the circumstances there was an unequivocal statement by prospective jurors Ling and Troxler that they could not impose death. This is a matter that was within the trial court's discretion and appellant has shown no abuse of that discretion.

Appellant contends that the trial court below erred in permitting the state to question its own witness, Toni Acker, regarding whether she had spoken with her brother about the possibility that the defendant, Patrick Hannon, might have been involved in the murder of Robbie Carter and Brandon Snider. It is the state's contention that the questioning of Toni Acker does not constitute reversible error and that counsel has waived any claim of error with regard to the testimony of Detective Linton by failing to object to the admission of the testimony.

Appellant contends that the lower court should not have permitted the state to present evidence concerning the bloody clothing of stabbing victim Brandon Snider and the testimony of blood splatter expert Judith Bunker. The admission of this evidence was within the discretion of the trial court and, as Hannon has failed to show an abuse of discretion, the trial court's ruling on the admissibility of such evidence should not be disturbed on appeal.

Appellant contends that the wicked, evil, atrocious, or cruel aggravating circumstances is unconstitutionally vague and, as applied, does not genuinely limit the class of persons

eligible for the death penalty. It is the state's position that this claim is procedurally barred and without merit.

Appellant contends that the trial court's instruction on wicked, evil, atrocious, or cruel was unconstitutionally vague. As Hannon failed to object to the actual wording of the instruction, this claim is barred. Furthermore, even if this claim was not procedurally barred, the trial court's instruction to the jury in the instant case was clearly harmless.

Appellant also contends that the trial court erred in instructing the jury on and in finding the existence of the aggravating factor of wicked, evil, atrocious, or cruel with regards to both the murder of Carter and Snider. As there was substantial evidence to support a finding of wicked, evil, atrocious, or cruel, it was proper for the court to instruct the jury on this aggravating factor. A review of the evidence also shows that the trial court properly found the aggravating factor had been established for both homicides beyond a reasonable doubt.

It is beyond a reasonable doubt that the only reason that Robbie Carter was killed was because he was a witness to the incident. Therefore, the trial court correctly found the aggravating circumstance of 'to avoid or prevent arrest.'

Appellant contends that the trial court erroneously found the existence of a prior capital felony based upon the contemporaneous murder. It is the state's position that the trial court's finding of a prior violent felony was correct in that it was based on a separate homicide.

Where, as here, the trial court sets forth the findings of fact which contain the requisite analysis and the application of specific facts, and this Court is provided with sufficient information as to how the trial judge arrived at his decision to impose the death sentence, the order complies with this Court's guidelines.

As Richardson was essentially a bystander to the murder and as the evidence shows that Jim Acker did not commit either of the murders plus he had the other mitigating factor that he was in defense of his sister, it is reasonable under the circumstances for this Court to uphold the sentence of death in the instant case as proportionate.

ARGUMENT

ISSUE I

WHETHER THE TRIAL COURT ERRED BY STRIKING PROSPECTIVE JURORS LING AND TROXLER FOR CAUSE BASED UPON THEIR VIEWS ON THE DEATH PENALTY.

Appellant contends that the trial court erred in excusing two prospective jurors, Mr. Ling and Ms. Troxler, for cause. He claims that their answers during voir dire did not show that they were irrevocably committed to vote against the death penalty in all circumstances and that the questioning did not establish that they could not follow the law, or that their views on capital punishment would prevent or substantially impair the performance of their duties ass jurors. It is the state's position that the inquiry was sufficient to establish Ling and Troxler's views on capital punishment, the factual findings by the trial court are fairly supported by the record and the excusal for cause was within the trial court's discretion.

Recently, this Honorable Court in Johnson v. State, 608 So. 2d 4 (Fla. 1992), rejected a similar claim. Johnson contended that the trial court erred in excusing two prospective jurors for cause. Upon rejecting this claim, this Court stated:

> ". . . A prospective juror's inability to be impartial about the death penalty . . . need not be made 'unmistakably clear.' *Wainwright v. Witt*, 469 U.S. 412, 425, 105 S.Ct. 844, 852, 83 L.Ed.2d 841 (1985). It is the trial judge's duty to decide if a challenge for cause is proper, *id.* at 423, 105 S.Ct. at 853.
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> In the instant case neither Blakely nor Daniels indicated in any way that they could follow the law. The record does not show

> that they could set aside their beliefs and Johnson has shown no abuse of discretion in the trial judge's granting the motion to excuse them for cause." Id. at 8.

This Court has consistently noted that it would make a mockery of the jury selection process to allow persons with fixed opinions to sit on a jury. Laro v. State, 464 So. 2d 1173, 1178 - 1179 (Fla. 1985); Mitchell v. State, 527 So. 2d 179 (1988). "To permit a person to sit as a juror after he has honestly advised the court that he does not believe that he can set aside his opinion is unfair to the other jurors who are willing to maintain open minds and make a decision based solely upon the testimony, the evidence, and the law presented to them." Mitchell supra, at 180.

On appeal the question is not whether a reviewing court might disagree with the trial court's findings, but whether those findings are fairly supported by the record. Trotter v. State, 576 So. 2d 691, 694 (Fla. 1990). The record in the instant case clearly supports the trial court's findings. The prosecutor below thoroughly examined Ling and Troxler. Both prospective jurors clearly vacillated as to whether they could vote for death under any circumstances. (R. 47, 48-52, 125-7)

In Wainwright v. Witt, 469 U.S. 412 (1985) the United States Supreme Court noted that the Adams standard does not require that a jurors bias be proved with "unmistakable clarity". The Court held that this is because determinations of juror bias cannot be reduced to the question-and-answer sessions which obtain results

in the manner of a catechism. The Court noted that there will be situations where, despite lack of clarity in the printed record, the trial judge is left with a definite impression that a prospective juror would be unable to faithfully and impartially apply the law. The Court further noted that this is why deference must be paid to the trial judge who sees and hears the juror. Id. at 425 - 426. The court, in the instant case, found that under the circumstances there was an unequivocal statement by prospective jurors Ling and Troxler that they could not impose death. (T 451) This is a matter that was within the trial court's discretion and appellant has shown no abuse of that discretion. See also Randolph v. State, 562 So.2d 331, 337 (Fla. 1990).

Further, defense counsel must have believed that the jurors had adequately expressed their views because he made no request to further interrogate them. Defense counsel did not object to the procedure used by the prosecutor and did not attempt to further inquire of the prospective jurors. Moreover, after the state had moved to excuse these jurors for cause, defense counsel did not request the opportunity to further question the prospective jurors. Mitchell, supra; Gunsby v. State, 574 So.2d 1085, 1088 (Fla. 1991). In Gunsby, this Court found that Gunsby's failure to object to the procedure used by the trial judge and his failure to make further inquiries of the proposed jurors constituted a waiver of the right to challenge excusal of these potential jurors. Thus, while counsel objected to the

excusal of the prospective jurors Ling and Troxler, he waived appellate review by failing to explore their objections further.

Finally, even if the trial court erred in excusing the jurors, it was harmless in light of the fact that the state had only used four of it's peremptory challenges. Thus, if the court had refused to excuse the jurors for cause, the prosecutor could have stricken both Ling and Troxler. (R 185) Cf. Trotter v. State, 576 So.2d 691 (Fla. 1990) (Refusal to dismiss juror for cause when defendant has peremptory challenges left); Toole v. State, 479 So. 2d 731 (Fla. 1985) (State waived claim of error for failure to grant challenge for cause when it had not exhausted its peremptory challenges).

ISSUE II

WHETHER THE STATE WAS IMPROPERLY PERMITTED TO INVADE THE PROVINCE OF THE JURY ON THE ULTIMATE ISSUE IN THIS CASE BY SUGGESTING THAT STATE WITNESS TONI ACKER BELIEVED THAT APPELLANT MIGHT HAVE BEEN INVOLVED IN THE INSTANT HOMICIDES.

Appellant contends that the trial court below erred in permitting the state to question its own witness, Toni Acker, regarding whether she had spoken with her brother about the possibility that the defendant, Patrick Hannon, might have been involved in the murder of Robbie Carter and Brandon Snider. He further contends that this error by the court was exasperated by allowing the state to impeach Acker's negative response through the testimony of Detective Linton. He contends that it was an invasion of the province of the jury by adducing testimony that Acker had held an opinion on the ultimate issue of Patrick Hannon's guilt. It is the state's contention that the questioning of Toni Acker does not constitute reversible error and that counsel has waived any claim of error with regard to the testimony of Detective Linton by failing to object to the admission of the testimony.

During appellant's trial, the state presented the testimony of Jim Acker's sister, Toni Acker. Acker testified that on January 9, 1991, she came home from work about 3:30 p.m. and found that her house had been ransacked. All her drawers were pulled out and there were bullet holes in the walls. She found a letter on her bed and there was a message from Brandon Snider on

her answering machine. Toni Acker testified that her sister Rhonda and her brother Jim were both living in Tampa at that time. (R 747) On cross examination, defense counsel showed Toni Acker the composite drawing of Patrick Hannon made by the residents of the apartment complex where the murders took place. Defense counsel asked her if the composite looked like Patrick Hannon and she said "No, he never had a beard that long." (R 749) On redirect, she admitted that she had not seen Patrick Hannon since October of 1990. She denied telling Detective Linton that the composite resembled or looked like Patrick Hannon. The prosecutor then asked Ms. Acker if she told Detective Linton that she had contacted her brother, Jim Acker with reference to Hannon being involved in the murders. At that point, defense counsel objected that the statement by the prosecutor was highly prejudicial and made a motion for mistrial. (R 763, 765) He did not argue to the court, as he is arguing here, that it invaded the province of the jury or that it inferred Patrick Hannon's guilt and involvement in other crimes. The Court withheld ruling on the prejudice and overruled the objection subject to Detective Linton confirming Ms. Acker's statement. (R 746) Toni Acker denied speaking to her brother Jim Acker about the possibility of Hannon's involvement and she denied making the statement to Detective Linton. (R 766) On re-cross, defense counsel elicited from Toni Acker that she told Detective Linton that Mr. Hannon wouldn't have done something like that. (R 767) Subsequently, the state elicited from

Detective Linton that when Toni Acker was being questioned she identified the composite photograph as looking like a person known to her as Patrick Hannon that lived in Tampa. (R 969) She also told the detective that she had a conversation with Jim Acker over the phone and inquired if he thought Patrick Hannon had been involved in killing Brandon and Robbie. (R 970) At no time did defense counsel object to the questioning of the detective.

It is the state's position that not only was this testimony properly admitted as a witness' credibility is always at issue, it in no way indicated that Acker had other knowledge or that she thought Patrick Hannon had committed the murder. Her own statement was that she had inquired as to whether he could have been involved. Further, as defense counsel did not object to the testimony of Detective Linton at all, any claims with regard to the testimony of Detective Linton are barred. Similarly, the objection to the testimony of Toni Acker was merely that the statement by the prosecutor was prejudicial. Defense counsel did not argue that the statement implied his guilt or any of the other reasons now presented to this Court. Accordingly, this claim is also waived. Steinhorst v. State, 412 So. 2d 332 (Fla. 1992) (objections must be made with specificity).

Further, even if it was error for the court to admit this testimony, error was clearly harmless in the instant case. This testimony by Toni Acker was only a minimal part of the entire trial. It was not focused or relied upon by the state to prove

guilt. The state presented substantial evidence that Patrick Hannon committed the double homicide, including witnesses who saw him at the scene, witnesses who heard the crime being committed and a codefendant who was present during the entire murder. Accordingly, this extraneous, insignificant comment by Toni Acker is clearly harmless beyond a reasonable doubt.

ISSUE III

WHETHER THE COURT BELOW ERRED IN PERMITTING THE STATE TO INTRODUCE EVIDENCE REGARDING THE VICTIM'S BLOODY CLOTHING AND THE TESTIMONY OF BLOOD SPLATTER EXPERT.

Appellant contends that the lower court should not have permitted the state to present evidence concerning the bloody clothing of stabbing victim Brandon Snider and the testimony of blood splatter expert Judith Bunker. Appellant claims that this evidence had marginal probative value that was far outweighed by the danger of unfair prejudice and the needless presentation of cumulative evidence. This contention by appellant is erroneous in fact and the law. The admission of this evidence was within the discretion of the trial court and, as Hannon has failed to show an abuse of discretion, the trial court's ruling on the admissibility of such evidence should not be disturbed on appeal. See, generally, Blanco v. State, 452 So. 2d 520, 523 (Fla. 1984), cert. denied, 469 U.S. 1181 (1985).

In general, the evidence code provides that all relevant evidence is admissible and that if scientific, technical or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it in the form of an opinion. However, the opinion is admissible only if it can be applied to the evidence at trial. *Sections 90.403 and 90.702 Fla. Stat.* Judith Bunker was clearly qualified as an expert witness in

interpreting blood splatter evidence and the testimony that she provided assisted the jury in understanding the facts before it.

In the instant case, Judith Bunker was able to describe with an amazing degree of accuracy how the murders took place.[1] In order for Ms. Bunker to explain her testimony she necessarily used photographs of the scene as well as the victim's clothing. (R 1122) Ms. Bunker testified that the victim was at or near the sofa when the bloodshed originated and then moved across the room. (R 1101) She explained that initially the wounds were minor injuries and that the blood splatter then indicated the victim's movement away from the sofa while bleeding. (R 1182) With the aid of an overview photograph of the room showing an overturned chair, the sofa and an end table, Bunker explained that the bloodstaining on the chair showed that the chair was upright during some forceful bloodshed. It was then overturned and more bloodshed occurred. Bunker then testified that the evidence indicated that there was a transfer of blood onto the venetian blinds with an impact splatter indicating that blood forcefully came in contact with the venetian blinds. At this point there was a forceful impact splatter pattern indicating one to three injuries which occurred near the window. (R 1104) She

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[1] At the time that Ms. Bunker testified the state was unaware that codefendant Richardson was going to enter a plea agreement and testify against the defendant. The subsequent testimony of Richardson totally confirmed the scene as reconstructed by Ms. Bunker. (See pg. 17, infra.)

testified that the victim's back came in contact with the blinds and the impact produced the injury to the left shoulder or the left chest area. (R 1105) The photographs then showed the victim moving towards the stair area. There was another pattern of large blood volume being propelled toward the mirror on the stairwell. She explained that these types of patterns are associated with arterial gushing rather than mere spilling of blood (R 1106). The transference of blood along the stairwell with the flow showed that the victim was in direct contact with the post at the bottom of the stairs with blood flowing from the chest or abdominal wounds. (R 1109). Ms. Bunker also noted that there was a void in the pattern on the first step of the stairs which would indicate the presence of some other object at the moment that bloodshed was occurring. (R 1111) Ms. Bunker also examined the T-shirt the victim was wearing and indicated that the blood splatter patterns on the T-shirt itself indicated that the victim was being held by the arm at one point when he was being stabbed. She also noted that on the T-shirt the absence of blood around the collar area indicates that there was pressure applied to this area of the shirt by some object, an arm or a hand, because there were fingerprints there that kept the blood from flowing to that area. She testified that this was consistent with somebody grabbing the victim from behind with his left arm. (R 1115) She also described the blood found in the kitchen as blood indicating a washing or cleaning of the blood which would cause the blood to become diluted with water. (R

1118) Based upon an examination of the photographs of the crime scene, Ms. Bunker opined that the victim was at the post area by the staircase when the neck wounds were inflicted, causing the blood to spurt onto the mirror and onto the wall as well as onto the carpet at the foot of the stairs. Also, because of the height of the blood splatter, the evidence indicated that the victim was on his right knee at the time his throat was slit. (R 1121)

Codefendant Ron Richardson testified that when they got to the apartment that Jim Acker came between Richardson and appellant and started stabbing Snider who was just about to sit back down on the couch. (R 1180) Acker stabbed him several times, and slammed Snider into a window. (R 1181) Snider then walked to the bottom of the stairs and said to Robbie Carter, "Call 911. My guts are hanging out." (R 1181) Acker then went into the kitchen to wash his hands. (R 1181, 1208 - 1209) At that point, appellant went behind Snider and put his arm around his neck. (R 1181) Richardson looked up at Robbie Carter who was standing on the staircase. Carter said, "Jim, let me get out of here." (R 1181) When Richardson looked back down he saw Snider on the floor, not moving. (R 1181 - 1182) Richardson heard a funny, hasping noise, and saw that Snider's throat was cut. It had not been cut before appellant went over to him. (R 1182) This testimony was wholly consistent with the expert's testimony.

In Castro v. State, 547 So. 2d 111 (Fla. 1989), this Court reviewed an identical claim that admission of blood splatter evidence was irrelevant and prejudicial. This Court held where the splatter evidence was consistent and tied in with other evidence detailing the manner of crime that it was not an abuse of the trial court's discretion to admit the evidence. Id. at 114. Similarly, in the instant case, the testimony by the expert was wholly consistent with the other testimony and was properly admitted.

Further, the victim's clothing was proerly admitted as it was used by Ms. Bunker to explain how the murder occurred. Thus, the evidence was not only relevant and admissible, it's probative value clearly outweighed any possible prejudice.

ISSUE IV

WHETHER APPELLANT'S DEATH SENTENCES VIOLATE THE EIGHTH AND FOURTEENTH AMENDMENTS BECAUSE OF THE ESPECIALLY HEINOUS, ATROCIOUS, OR CRUEL AGGRAVATING CIRCUMSTANCE IS VAGUE, IS APPLIED ARBITRARILY AND CAPRICIOUSLY, AND DOES NOT GENERALLY NARROW THE CLASS OF PERSONS ELIGIBLE FOR THE DEATH PENALTY.

Appellant contends that the heinous, atrocious, or cruel aggravating circumstance is unconstitutionally vague and, as applied, does not genuinely limit the class of persons eligible for the death penalty. It is the state's position that this claim is procedurally barred and without merit.

Codefendant's counsel filed two motions which were adopted by Hannon, challenging the constitutionality of Florida's death penalty statute on grounds that included vagueness and arbitrary and capricious application. (R 2003 - 2011, 2038 - 2042) Neither of these motions, however, specifically challenged the aggravating factor of heinous, atrocious, or cruel, nor did the motions raise the contentions now raised by appellant. During the charge conference defense counsel objected to the Court giving the instruction without specifying a basis for the objection. (R 1605) Accordingly, it is the state's position that this issue is procedurally barred. Hodges, supra; Davis v. State, Case No. 70,551 (Fla., April 8, 1993).

Even if this claim was not procedurally barred, Hannon is not entitled to relief. This Honorable Court has repeatedly reaffirmed its holding in Smalley v. State, 546 So. 2d 720 (Fla. 1989), wherein this Honorable Court upheld the constitutionality

of the heinous, atrocious and cruel aggravating factor in §*921.141*. Hodges v. State, supra; Elledge v. State, 18 Fla. Law Weekly S70 (Jan. 14, 1993); Johnson v. Singletary, 18 Fla. Law Weekly S90 (Jan. 29, 1993); Lucas v. State, 18 Fla. Law Weekly S15 (Fla. Dec. 24, 1992). Accordingly, if this claim is without merit.

ISSUE V

WHETHER THE JURY INSTRUCTION ON HEINOUS, ATROCIOUS, OR CRUEL CONSTITUTES REVERSIBLE ERROR.

Appellant contends that the trial court's instruction on heinous, atrocious, or cruel constitutes reversible error under Espinosa v. Florida, 505 U.S. ___, 112 S.Ct. 2926, 120 L.Ed.2d 854 (1992). It should be noted, however, that while Hannon objected to the giving of the instruction (R 1605), he made no objection to the actual wording of the objection. This Court in Rose v. State, Case No. 76,377 (Fla. March 11, 1993), recently held that where Rose objected to the applicability of the aggravating factors but made no objection to the wording of the instruction that his claim was procedurally barred. As Hannon failed to object to the actual wording of the instruction, this claim is barred. See, also, Ponticelli v. State, 18 Fla. Law Weekly S133 (Fla. March 4, 1993). Davis, supra; Hodges, supra.

Furthermore, even if this claim was not procedurally barred, the trial court's instruction to the jury in the instant case was clearly harmless. (See Issue VI)

ISSUE VI

WHETHER THE TRIAL COURT ERRED IN INSTRUCTING THE JURY ON AND FINDING IN AGGRAVATION THAT THE INSTANT HOMICIDES WERE ESPECIALLY WICKED, EVIL, ATROCIOUS, OR CRUEL.

Appellant also contends that the trial court erred in instructing the jury on and in finding the existence of the aggravating factor of wicked, evil, atrocious, or cruel with regards to both the murder of Carter and Snider.. A review of the evidence shows that it was proper to instruct the jury on this aggravating factor and that the trial court properly found the aggravating factor had been established for both homicides beyond a reasonable doubt.

With regard to the murder of Snider, the evidence shows that Jim Acker attacked him with a knife, stabbing him several times as they struggled across the room. When Acker was finished with him, Snider told Carter to call 911, that his guts were hanging out. At that point Snider was grabbed by Patrick Hannon, who placed his arm around the victim's neck and slit Snider's throat as he knelt before Hannon. Snider screamed and his cries for help were heard throughout the apartment complex. Under these circumstances this Court has consistently upheld a finding of heinous, atrocious, or cruel. Trotter v. State, 476 So.2d 691 (Fla. 1991); Campbell v. State, 571 So.2d 415 (Fla. 1990).

With regard to Carter, the evidence shows that after having watched his friend being savagely beaten and stabbed, Carter then pled for his own life. When the Acker began to advance upon

Snider he ran upstairs and hid underneath a bed where he was found by Hannon and Acker. After kicking the bed over, Hannon put six bullets into the huddled body of Snider. Based on the foregoing, the trial court accurately found the existence of the heinous, atrocious, or cruel aggravating factor.

Appellant relies on several cases to support his contention that a shooting does not qualify for the heinous, atrocious, or cruel aggravating circumstance. The state would agree that this Court only rarely upholds the heinous, atrocious, or cruel aggravating factor where the victim is shot. But, where, as in the instant case, the victim is aware of his impending doom, begs for his life, is chased down and subsequently murdered, this Court has upheld the heinous, atrocious, or cruel aggravating factor. Preston v. State, 607 So. 2d 404 (Fla. 1992); Gaskin v. State, 591 So. 2d 917 (Fla. 1991); Douglas v. State, 575 So. 2d 691 (Fla. 1991). However, even if this Court should strike the heinous, atrocious, or cruel aggravating factor with regard to the murder of Carter, the existence of the three valid remaining aggravating factors renders this finding harmless beyond a reasonable doubt.[2]

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[2] For the Carter murder the aggravating circumstances were: (1) prior violent felony, (2) committed during the course of a felony; (3) heinous, atrocious, or cruel; and (4) avoid arrest. The mitigating factors were: (1) nonviolent person, and (2) plea agreement of codefendant. (R 1807, 1809)

ISSUE VII

WHETHER THE TRIAL COURT ERRED IN INSTRUCTING THE JURY ON AND IN FINDING THE EXISTENCE OF THE AGGRAVATING CIRCUMSTANCE THAT THE HOMICIDE OF ROBBIE CARTER WAS COMMITTED FOR THE PURPOSE OF AVOIDING OR PREVENTING A LAWFUL ARREST.

The facts of this case clearly show that Robbie Carter was only murdered because he was in the apartment during the killing of Brandon Snider. The record shows that the motive for the murder of Brandon Snider was his conflict with Jim Acker's sister. Robbie Carter was not a part of this conflict and if not for his presence at the scene of the murder, he would not have been involved. It is beyond a reasonable doubt that the only reason that Robbie Carter was killed was because he was a witness to the incident. This is supported by the statement made by the defendant to his cellmate that they should not have left any witnesses. The state of mind of the defendant in making these statements clearly shows that his intention at the time of the murder was to not leave witnesses. Accordingly, the trial court correctly found this aggravating factor. However, even if this Court finds that the court should not have found the aggravating factor of elimination of a witness, based upon the existence of two other valid aggravating factors, this Court can and should find that the trial court's finding, if erroneous, was, nevertheless, harmless.

ISSUE VIII

WHETHER THE TRIAL COURT ERRED IN INSTRUCTING THE JURY ON AND IN FINDING IN AGGRAVATION THAT APPELLANT WAS PREVIOUSLY CONVICTED OF ANOTHER CAPITAL FELONY BASED UPON HIS CONTEMPORANEOUS CONVICTIONS FOR OTHER HOMICIDES.

Appellant contends that the trial court erroneously found the existence of a prior capital felony based upon the contemporaneous murder. It is the state's position that based on the facts of this case, the trial court's finding of a prior violent felony was correct.

This Court has consistently held that contemporaneous convictions of two murders can be used to find the aggravating factor of previous conviction of violent felony where although only a single incident occurred multiple victims were involved. Kennedy v. State, 18 Fla. Law Weekly S67, S 69 (January 14, 1993); Zeigler v. State, 580 So. 2d 127 (Fla. 1991); Dolinsky v. State, 576 So. 2d 271 (Fla. 1991); Tafero v. Dugger, 561 So. 2d 557 (Fla. 1990); Duest v. Dugger, 555 So. 2d 849 (Fla. 1990).

The murders in the instant case, while occurring during a single incident, naturally encompassed separate victims. Accordingly, the trial court properly found the existence of the prior violent felony aggravating factor.

ISSUE IX

WHETHER THE TRIAL COURT'S SENTENCING ORDER CONTAINS SUFFICIENT FACTUAL BASIS AND ANALYSIS TO SUPPORT APPELLANT'S SENTENCE OF DEATH.

Appellant contends that the sentencing order entered by the trial court below is not sufficiently clear and specific to enable this Court to conduct a meaningful review of appellant's sentences of death. Appellant contends that the order is lacking in its development of facts and contains little or no analysis. It is the state's position that the trial court's order adequately comports with this Court's guideline for the preparation of written orders.

A review of the order indicates that the trial court found with regard to the murder of Brandon Snider, the existence of three aggravating factors.[3] As to each of these aggravating circumstances the trial court set forth the specific factual basis which supports each of the findings. (R 1806) The court then considered the mitigating circumstances and the factual basis for each offered by the defense. The judge even set forth his analysis for rejecting the residual lingering doubt argument of defense counsel. The order also includes consideration of the fact that codefendant Ronald Richardson, having agreed with the state to testify and plead guilty, was no longer facing a murder

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[3] (1) Prior violent felony; (2) wicked, evil, atrocious or cruel; (3) commited during the course of a burglary.

charge as an initial accomplice. The court then considered the aggravating circumstances with regard to the murder of Robbie Carter. (R 1808 - 1809) Again, the trial court thoroughly set forth the aggravating circumstances and facts that supported it. And again the court set forth the mitigating circumstances that were argued and the weight that was given to each. The court concluded by weighing the aggravating against the mitigating in reaching its conclusion as to the appropriate sentence. In both circumstances the court entered a sentence of death as was unanimously recommended by the jury. Where, as here, the trial court sets forth the findings of fact which contain the requisite analysis and the application of specific facts, and this Court is provided with sufficient information as to how the trial judge arrived at his decision to impose the death sentence, the order complies with this Court's guidelines. See Rhodes v. State, 547 So. 2d 1201, 1207 (Fla. 1989).

Further, even if this Honorable Court should find that the sentencing order is insufficient to provide this Court with the sufficient information to provide analysis, this Court can find that such error is harmless where the facts so completely support the finding of death. Cook v. State, 581 So. 2d 141 (Fla. 1991). The double homicide committed by Hannon so completely supports the jury recommendations and the sentence of death, error, if any, is harmless.

ISSUE X

WHETHER APPELLANT'S SENTENCE OF DEATH DENIED HIM EQUAL JUSTICE UNDER THE LAW, AS NEITHER OF THE OTHER PARTICIPANTS IN THE EVENTS AT THE CAMBRIDGE WOODS APARTMENTS WAS SENTENCED TO DEATH.

Appellant contends that Hannon's sentence of death is disproportionate because his codefendants did not receive death sentences.[1] As appellant concedes, however, a death sentence is not disproportionate when a less culpable codefendant receives a life sentence. Culman v. State, 18 Fla. Law Weekly S28 (Fla. Dec. 24, 1992).

The facts of this case showed that of the three parties involved that the defendant was truly the most culpable. Ron Richardson testified that on the day of the murder they were all at Richardson's house having a barbecue. During the barbecue, Acker and Hannon stayed out the in back talking for about 10 or 15 minutes. Some time later, Acker, Hannon and Richardson left in Acker's car. (R 1168 - 1175) Hannon got Richardson's .38 and put a clip in it. (R 1176) When they got to Carter's residence, Hannon knocked on the door and Snider answered. (R 1179) Richardson testified that he followed Hannon through the door and

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[1] Appellant argues that this actual sentences of the codefendants Ronald Richardson and Jim Acker show that this sentence is disproportionate. He bases this contention on his conversations with the trial attorney. In other words, the facts supporting this contention are not of record.

then Acker went between them and started stabbing Snider. (R 1180) Acker then slammed Snider into a window. At that point Snider said to Robbie Carter who was standing on the stairs, "My guts are hanging out, call 911". Jim Acker then went into the kitchen and washed his hands. At that point, Patrick Hannon put his arm around Snider's neck and slit his throat. (R 1182 - 1183) At that point Jim Acker had followed Robbie Carter up the stairs after Carter had said, "Jim let me out of here." Hannon then went up stairs with the gun in his hand. Hannon told Ronald Richardson that he shot Robbie Carter and cut Brandon Snider's throat. (R 1191) This testimony by Ronald Richardson was totally consistent with the other evidence that was presented. The neighborhood witnesses testified that they heard Brandon Snider scream in pain that his guts were hanging out. They also heard Carter plead for his life and run upstairs. (R 272, 274, 276, 289) The testimony of Ronald Richardson was also consistent with the physical evidence. Medical Examiner Charles Diggs testified that Snider was stabbed fourteen times in the chest, abdomen, back and neck. He also testified that the neck was sliced all the way through by a knife. Robbie Carter's body had six gunshots. (R 502) Also the testimony of blood splatter expert Judith Bunker was consistent with the testimony of Ron Richardson. Ms. Bunker testified, as Richardson had, that the blood showed the victim was at or near the sofa when the bloodshed originated and that he traveled across the room. (R 1102 - 1103) Also as Richardson had testified, the blood

splatter evidence showed that the victim hit the blinds then fell across the stair railing. (R 1109) She also testified that a void pattern on the stairs at the first step indicated that another person was standing on the steps when the bloodshed occurred. (R 1111) Her examination of the shirt worn by Brandon Snider showed blood on the collar indicating that an arm was being held across his neck and under his chin. Again this is consistent with the testimony of Ron Richardson. (R 1115)

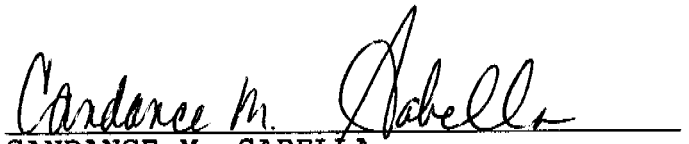
Based on the foregoing, the state urges that as Hannon killed both victims, he was therefore, the more culpable of the three and deserving of the death penalty. Although appellant contends that Richardson's testimony should not be believed because it was not tested in the crucible of a jury trial, at which witnesses other than Ron Richardson could be called to testify, this contention is wholly without basis. As previously noted, the witnesses who did testify confirmed Richardson's version of the events and no evidence was presented by either the state or the defense that conflicted with Richardson's version. Thus, as Richardson was essentially a bystander to the murder and as the evidence shows that Jim Acker did not commit either of the murders plus he had the other mitigating factor of a pretense of moral justification in that he was in defense of his sister, it is reasonable under the circumstances for this Court to uphold the sentence of death in the instant case as proportionate.

CONCLUSION

Based on the foregoing arguments and citations to authority, the state urges this Honorable Court to affirm the judgment and sentence of the lower court.

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. Regular Mail to Robert F. Moeller, Assistant Public Defender, Polk County Courthouse, P.O. Box 9000, Drawer PD, Bartow, Florida 33830, this 27 day of April, 1993.

OF COUNSEL FOR APPELLEE.