IN THE SUPREME COURT OF FLORIDA

JOHN C. BARRETT,

Appellant,

v. CASE NO. 78,743

STATE OF FLORIDA,

Appellee.
_____/

ON APPEAL FROM THE CIRCUIT COURT
OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR CITRUS COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE
INITIAL BRIEF OF CROSS-APPELLANT

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SUMMARY OF ARGUMENT

I. The state properly elicited testimony from Barrett, without objection, on cross-examination that when he spoke to the police he did not tell them that another person had committed the murders. Barrett fully explained the reason for this fact, that he was afraid that the killer, who was still at large, would harm his family if he implicated him in the murders. His actual statement to the police was self-serving hearsay, see, Watkins v. State, 342 So.2d 1057 (Fla. 1st DCA 1977) and not admissible. The statement did not even explain this lapse and the circumstances surrounding the statement were not relevant to the issue.

II. Barrett did not timely object or request a recess or continuance to have an expert examine fingerprints and has waived the right to complain of a Richardson v. State, 246 So.2d 771 (Fla. 1971), violation by the discovery that a mid-trial comparison had been made of the prints at the scene and the alleged "real" killer's prints and they were found not to match. The trial judge did conduct a Richardson inquiry and no possible prejudice was even hypothesized.

III. The jury recommended life sentences based on mere sympathy. Evidence in mitigation was minuscule and hardly outweighed the enormity of the marathon killing of four men pursuant to a contract-for-hire to kill a woman so the contractor would not have to give her property under a divorce settlement. Aggravation was overwhelming. The trial judge properly performed his function under the death penalty statute and overrode the jury's spurious recommendations.

IV. Barrett single-handedly killed four men. He bragged to a friend that he was a "Golden Boy," committed the murders himself and had more possessions than he had ever had. He knew that John Withers had backed out of the murder-for-hire scheme without consequence. The record reflects that Barrett willingly committed the murders for money and knew he could have backed out of the contract without consequence. There was no pretense of moral justification for the murders to preclude application of the cold, calculated and premeditated aggravating factor.

V. The "murder committed to prevent a lawful arrest" statutory aggravating factor was proven beyond a reasonable doubt. Barrett's contract was to kill JoAnn Sanders. He could have done that with his .38. He knew, however, she was in the constant company of Clark and Wilson, so he bought a multi-round assault pistol that would take care of Clark, Wilson and whoever else showed up so that he would not be arrested for the murder of JoAnn.

VI. The jury could hardly have found that Barrett's motivation for participating in the crimes was to protect himself and his family when he bragged about how he had profited by the deeds he had done alone. Barrett contracted to kill JoAnn Sanders so that the terms of the equitable distribution of marital assets would not become operative under the dictates of final judgment. It became necessary to kill the others too to stop the judicially mandated transfer of monies. The finding that the murders were committed to disrupt or hinder the lawful exercise of a governmental function or enforcement of laws is supported by substantial, competent evidence.

VII. The argument that the statutory aggravating factors are overbroad and that this court cannot apply a narrowing construction as it would usurp legislative power was never presented to the court below and is waived. The death penalty statute itself provides sufficient notice of aggravating circumstances. The argument that the burden is shifted to the defendant to prove that mitigation outweighs aggravation is waived for failure to object to the instruction.

CROSS-APPEAL

I. The trial court should have found that the murders were heinous, atrocious or cruel. If error is found this court should forego a harmless error analysis and actually re-weigh and include this factor in the balancing process. The trial court found that Larry Johnson's defensive wounds indicated he did not become immediately unconscious after the first blow. Thus, he surely had a realization of his impending fate and fought back. It would not be necessary to pound the other victim's faces into the carpet to kill them when Barrett had a knife. Logic dictates that Barrett did what he had to do to subdue the other three men who were alive and moving and that the knife was not used to ensure death until the men were incapacitated. Not only is the nature of the killings brutal and heinous but the victims must have experienced considerable terror.

STATEMENT OF THE CASE AND FACTS

Appellee has taken the initiative of restating and making additions to the statement of the case and facts. There are several reasons for this. First, a large part of the case involves inferences drawn from circumstantial evidence which have not been fully discussed in the initial brief. Second, appellee believes that any additions to the statement of the case and facts would have no impact unless placed within the entire factual scenario. Third, a large part of the statement to follow involves statements made by Barrett that were not fully discussed by appellant but which need to be viewed and understood by the court within the context of all the facts.

On August 3, 1990, Bob Hemingway, Larry Johnson, Jerry Lee Clark, the fiance of JoAnn Sanders, and Roger Wilson, a carpenter, were found murdered in JoAnn's residence, which she and Jerry Lee were remodeling, at 12805 South Florida Avenue, south of Floral City, in Citrus County (R 409; 506; 495-499).

Prior to the murders, on June 8, 1990, JoAnn Sanders won a battle in the courtroom against her former husband Dorsey (Doc) A. Sanders, Jr., a veterinarian (R 901). She was awarded, as part of the equitable distribution of marital assets, four hundred and eighty thousand dollars, plus what she was supposed to have received before, one hundred and fourteen thousand dollars (R 905-907). On that date, a sixty-day clock began to

run. The final order indicated that the money had to be paid by August 8, 1990.[1]

John C. Barrett did work at a car lot owned by the Sanders' son, Dorsey, III, and his business associate, Scott Burnside. On June 25, 1990, Barrett started working at the VA Hospital, a job that a relative by marraige, John Withers, had gotten him (R 939-940). Around July 4, 1990, Barrett called Withers up and said he had a business proposition. Withers went over to the trailer and met with Barrett. Barrett told him they could make six thousand dollars each if they killed JoAnn. The Sanders were going

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[1] The Sanders' divorce was long and drawn out. The first trial was in January, 1985. Under the February 25, 1985, judgment she was awarded $250,000 while her husband received $750,000. She had been married for twenty-seven years. She appealed. The First District Court of Appeal found that the division of marital assets was not fair. It was retried and additional witnesses were called to give appraisals of the real property. The biggest asset was the Big Bend Ranch and airfield, comprising 380 acres. There was a forty-two acre tract across the street. Dr. Sanders sold Radio Telephone of Gainesville for one million dollars. The proceeds were $700,000 or $800,000. He was to be paid a consulting fee of $300,000 over twenty-four months. At the end of the second trial she received fifty percent but inflation and appreciation in marital labor and improvements made to the farm and the proceeds from the sale of Radio Telephone were not in the pie. She received the same thing. She appealed successfully again and the case was sent back to the trial court. By this time the trial judge had retired and the case was reassigned. In the third judgment the proceeds from the sale of Radio Telephone and the consulting fee were put back in the pie. Inflation, enhancement and appreciation of marital assets as they related to the farm and land across the street were put back in the pie and the pie was divided in half. She was still owed $114,000 under the second judgment. Under the new supplemental judgment $480,000 was to be paid to her. The forty-two acre plot was to be deeded to her; a mortgage of $219,000 from the sale of the animal hospital was to be assigned to her. There was a balance of $175,000. An order dated June 8, 1990, indicated payments were to be made within sixty days, which ended August 8, 1990. The third judgment was appealed by Dr. Sanders and relief was denied. The judgment is now final (R 900-907).

through a divorce settlement and JoAnn stood to take everything that Doc owned and he wanted Barrett to kill her (R 940-942).

Withers then went to the Sanders' farm and asked Doc if what Barrett told him was true. Doc then asked if Withers knew anyone else who could do it because he didn't want to get his friends involved (R 943-944).

There was a meeting after that, at the Sanders' farm, with Scott Burnside.[2] Withers and Barrett were told the murder had to look like a burglary and were reminded about the approaching court date (R 944-945).

Barrett and Withers then drove down toward Floral City. There was no one at JoAnn's home. They drove into Hernando County to look for her cottage in Weeki Wachee but they couldn't find it and came back (R 945-947).

On July 11, 1990, they met at the Sanders' ranch. They each had their own jobs: Withers and Barrett were to do the killing; the Sanders, Doc, Dorsey III, John and his girlfriend, and Scott Burnside and his wife were to create an alibi by going to a restaurant and making noise in the bar (R 947). Obviously, the Sanders would be the first persons suspected if anything happened to JoAnn, particularly after June 8, 1990.

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[2] Sergeant Jerry Thompson testified that Burnside's motive for becoming involved in the murder scheme would be his partnership with Dorsey, III. Burnside had a prior history for drugs. A cable device was stretched across the grass air-strip at the ranch which would stop any incoming plane that was not aware of it (R 1056-1057).

Barrett and Withers drove to Floral City again.[3] This time someone was at JoAnn's home. They drove south past the house, then turned around and parked on the east side of Highway 41, facing north, south of the home. The car was visible from the yard. They walked up and claimed the car had overheated. Jerry Lee had come home and found them in the front yard (R 415). They got water then went back to the car and poured it on the ground (R 950-951). Barrett said: "We should do it now" -- with Jerry Lee Clark, Roger Wilson, and JoAnn Sanders there. Withers responded "No, you're crazy." Rather than doing it without cooperation from Withers, Barrett walked back to the house and told them "thank you for the water" and indicated that he would stop by and bring a six-pack the next time he was in the area (R 952-953).

A few days later Barrett returned to JoAnn's home, alone, with a twelve pack of Bud Dry. He drove the same car (R 414-415). JoAnn testified that he was in an old T-Bird type car, cream-colored with maroon trim (R 741-742). Barrett talked to them and left. It was the first time JoAnn saw Barrett (R 414). It was also the first time Barrett had been inside the house and saw what it looked like.

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[3] Deputy Steve Willis pulled them over at 7:55 p.m., in a red and white Cougar (with a temporary tag that JoAnn Sanders later saw on the back of Barrett's Blazer the night of the murder. The tail light was out (R 947-948). A verbal warning was issued (R 912-917).

Sometime in June or July, 1990, Barrett asked his former teacher, John Pregony, how to make a silencer.[4] He claimed that three or four men had raped his wife. Her vehicle supposedly broke down on the side of the road and they pretended to help her but instead raped her. Barrett said he was going to get even (R 1021-1028) and expressed an intention to hurt *three* or *four* individuals (R 1033).

On July 19, 1990, Paula Barrett, John Barrett's wife, bought a .9 mm eight-shot handgun from Mary Gunn, of Gunn's Gun and Pawn, in Keystone Heights (R 1008). Later that day Barrett came in and exchanged it for an assault pistol, an AP-9, and a box of ammunition (R 1009-1010). The pistol was threaded or grooved so that a barrel extension or flash suppressor could be attached to the end (R 1011).

Barrett was observed by Raymond Miller fashioning a silencer in the back part of the garage at the Sanders' farm in July. Miller watched Barrett do it, through a couple of different stages: cutting the pipe; drilling the holes, which were between 1/8 to 1/4 of an inch; and packing it with steel wool. Barrett told Miller he was making a "nigger-knocker." (R

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[4] Pregony teaches a security specialist program at Career City College. Students receive a diploma as a security specialist and seek employment as security officers. Barrett completed the course and was a very good student. Pregony taught investigations, crime scene preservation, defensive tactics, firearms and a variety of courses. Instruction on the PR24 baton was given in the defensive tactics course. The students were taught the twenty-three vital parts of the body and what areas to strike to cause fatal injury. In the video, Guns and Ammo, there was a segment on weapon suppressors that Barrett viewed. The film showed weapons being fired with and without suppressors so the students could get an idea of the difference in sound levels (R 1021-1028).

1035-1039; 1045). Electric welders, pliers, tap and die sets, electric drills, bits, and a piece of pipe, already cut with torches, were later found in the tool shop on the Sanders' farm (R 1069-1072). An FBI expert testified that a tap and die were used to make the silencer (R 1097). A pipe with holes drilled down the sides, stuffed with steel wool, is typical of a home-made silencer. It would lower the noise of a semi-automatic weapon (R 1098-1099).

In July, 1990, Barrett test-fired the gun with the silencer in the presence of young Charles Burnside, Scott's son. It made about half as much noise as a regular gun. When Barrett was through shooting he, Scott and Dorsey III picked up the shells (R 1078-1082).

On August 1, 1990, Barrett left work at the VA hospital in Gainesville at 9:00 a.m. and never came back. John Withers, however, worked that day and the day of the murder, until 4:30 p.m. (R 973-980).

On the morning on Friday, August 3, 1990, JoAnn went to Brooksville to get supplies (R 412; 438). She returned around noon and found Barrett there: the same "John" she saw at her house before with car trouble now claiming that he had trouble with another vehicle, in an area where he didn't live (R 412-414). Barrett told them his truck broke down and he thought he would just "walk down and say hello to Jerry Lee and them" (R 444).

JoAnn's neighbor, Tim Cashdollar came home from lunch around noon, and saw a Blazer on the side of the road. It was

green and white, with a wide white stripe down the middle of it and had some body work done on it. It had a temporary tag in the window. It was parked about three hundred to three hundred and fifty feet south of JoAnn's house on the east or right side of Highway 41, facing north, toward her house (R 647-650).

From noon until some time around 3:30 p.m. Barrett, evidently, socialized with Jerry Lee, Roger, and JoAnn, helping them with construction (R 419; 441). He was drinking Bud Dry, the same beer he brought the first time JoAnn saw him (R 416; 441). The atmosphere was casual until Barrett kept adjusting a large knife that he had in his jacket. He told a few jokes but they fell flat (R 442).

At approximately 3:30 p.m. something unexpected occurred. JoAnn went to just check on her sick mother but ended up following her to the hospital (R 417-419). Paramedic, Duanna Dripps, was called there at 3:39 p.m. (R 485-488). A few minutes later JoAnn followed the ambulance to the hospital in Inverness. She decided to stop by her house first. She ran in the entry and called out to Roger to "tell Jerry Lee she was taking Mom to the hospital." She started out of the house, and heard a voice, which said: "Oh, wait!" She thought it was Roger. She came back into the house, again, up to the steps and saw Barrett with his back to her, standing at the wall where the kitchen and dining area run together, where the body of Roger Wilson was later discovered. She heard a voice again say: "Ah, that's okay, we'll catch you later." She ran out, and caught up to the ambulance (R 419-422). When she had pulled in she noticed that

Jerry Lee's truck was gone. She testified that he had loaded it with some trash to take to the dump, and was also going to rent a floor sander to refinish the floors that night (R 426).

When JoAnn first left for her mother's house she saw the Blazer, the same truck that Tim Cashdollar saw at lunch and again on his way back to work (R 650; 424). It made her uncomfortable. It was parked under trees one hundred to two hundred feet down from the house. It could be seen from the road but not from the front door (R 422). Barrett had used car trouble as an excuse the first time he was there. She thought that if Barrett could maneuver his truck within a couple of hundred feet of the driveway then he could have made it to the front yard and there was no reason for him to park down the hill and walk up (R 423). She felt Barrett had no reason to keep returning and was probably spying for Doc (R 423). She pulled her car around, got out, and bent down a metal tag on the back of the truck and wrote down the number, as well as the temporary tag number on the back of the window. She went around the truck and wrote down every word that was on it, K-5, Cheyenne, Blazer, on a pizza flyer (R 424; 432; 4500-4503). Then she went to take care of her mother (R 425).

About 5:10 p.m., Tim Cashdollar came home from work, and again saw the Blazer parked in the same place (R 652). He went back out and saw it again (R 652).

Around 6:10 p.m. Connie Cashdollar came home from work. She saw Larry Johnson and Bob Hemingway alive at a dumpster, close to Hemingway's house, north of JoAnn Sanders' property (R 658-659). Larry Johnson owned a business north of JoAnn's house

and Bob Hemingway lived in a little house behind it (R 657). Connie was in her house between five to seven minutes, then left, heading south on Highway 41 (R 659). She saw the Blazer parked on the east side of Highway 41 heading north. Ten minutes later she returned, coming north from behind the Blazer, and saw the temporary tag in the window (R 661). When she pulled into her driveway she saw what looked like Jerry Lee Clark's truck pulling into the Sanders' yard (R 662-663). She did not recognize the person behind the wheel. He was wearing a hat and seemed angry or upset (R 664).

At 9:30 p.m. that night, JoAnn called home from a restaurant in Inverness but didn't get an answer (R 425). Just before 11:00 p.m. Tim Cashdollar returned home. He testified that he didn't think the Blazer was there at that time (R 653). At exactly 11 o'clock, JoAnn returned home and found the bodies of her neighbors, Larry and Bob, her fiance, Jerry Lee, and Roger, the carpenter that worked for her (R 428-431).

To the left of the kitchen is a small breakfast room. Off of it is a bathroom. To the left of the bathroom is a closet without doors. Roger was found in that small closet, in a kneeling position, with his head slumped against the wall (R 496-497). There was a large quantity of blood about his head. Towels were found in the area (R 510). Human blood was found on the towel consistent with his 1+ PGM type (R 1196). His hair was also found on the towel (R 1223). He died of a gunshot wound to the back of the head. He had fallen into the wall and had paint on his hair (R 460). To the right, in the bedroom, lie the

bodies of Jerry Lee and Bob. Jerry Lee was found on the floor closest to the bed (R 497). Bob was found near the closet entrance (R 497). Larry was found inside the closet in the bedroom, lying on his right side (R 471). There were blood streaks on the carpet which suggested he had been moved there (R 484). All three died of blunt trauma as a result of multiple blows to the head (R 465; 470; 475). Bob's nose was bruised as a result of being beaten on the back of the head, while lying face down on the carpet (R 468). Their throats had been cut as well (R 460; 466; 472).

Beer cans were found outside the front northwest corner of the house (R 537; 606). There were eleven Bud Dry cans in a plastic bag (R 610). An industrial-sized floor sander was located inside the front door of the house (R 555). Bloody shoe prints were found on the floor near the kitchen. The beer cans were tested for fingerprints, and the police were successful in locating four latents (R 787-789). On one of those cans they found a usable fingerprint that was identified as belonging to John Barrett (R 887-897).[5] In the wall above Roger's head they found two copper coated, round nosed 9 mm. projectiles (R 556; 565-572). FBI agent, John Lewoczko, testified that the two bullets were grooved with six screws and a right twist or "six

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[5] At the time of trial they did not compare Scott Burnside's prints with the prints on the can. They did not have the known prints of Dorsey Sanders, III. They made a comparison with John Withers (R 899). In rebuttal testimony the state recalled its fingerprint expert and he testified that after his earlier testimony the state gave him Burnside's prints and he compared those prints with those recovered at the crime scene and that none of Burnside's prints matched (R 1450-52).

right" rifling characteristics from passing through the barrel of the gun (R 1091-1093). A .9 mm cartridge case was found in the bathtub (R 572-573). As previously noted, Barrett bought a gun two weeks before the murders. Not just an ordinary gun, but an assault pistol: a gun that had a magazine that held fifteen to thirty rounds and had grooves or threads on the end of the barrel to accept a flash suppressor (R 1010-1011). That type of gun, according to Agent Lewoczko, is manufactured with a six-right twist to use .9 mm bullets and is in the class of firearms that would leave such marks on a bullet (R 1093). Barrett also bought .9 mm copper coated, round nosed bullets made by Winchester. The cartridge case that was found in the home was of the same manufacture, Winchester (R 1101). There was steel wool found around the bullet hole over Roger's head (R 564). There were clumps of steel wool found around the bodies in the bedroom and outside the closet door where Larry Johnson was found (R 605-612; 575-576). It was different than the steel wool found around the bullet hole. The wool found around the bullet hole and a little clump found on the floor next to Roger's head consisted of small particles. Twisted chunks of steel wool were found in the bedroom (R 576). Agent Lewoczko testified that seeing small bits of steel wool around a bullet hole is consistent with a weapon having been fired with a homemade silencer (R 1100).

Three people in that house were beaten to death with a blunt object that left very peculiar marks on the side of Bob's head. There were circular abrasions or three patterned injuries, round to oval (R 466-469). This is consistent with being beaten

with a cylinder or an instrument with a rounded edge (R 481). Dr. Schutze testified that the wounds could have been made by a piece of pipe eight to eighteen inches long, that had holes drilled in it. The hole in the pipe would allow the skin to go up inside the hole. The edge of the hole would produce the pattern-type injury or circular abrasion of the skin. The outside diameter of the hole would be 1/2". The diameter of the instrument causing the wound would be 1 1/4" to 1 1/2" in diameter (R 1121). The jury could well have concluded that Barrett beat Jerry Lee, Bob and Larry to death with the silencer that he used to shoot Roger Wilson. As he pounded their heads into the carpet the steel wool came out of the silencer in twisted chunks.

Roger Wilson was shot in the back of the head as he painted, with a gun equipped with a silencer, execution style. When JoAnn walked back into her house and stuck her head in, it was very likely that Barrett had just shot Roger since he was standing where the body was found and JoAnn did not distinctly recognize Roger's voice as the voice responding to her request. Barrett didn't wheel around and shoot JoAnn because he had fired the gun twice and, more than likely, the steel wool was blown out of the silencer. The FBI agent testified that as one fires that type of crudely made silencer the effect of it diminishes and one begins to hear the gun, especially if a light filler such as steel wool is used. The interior is eroded away and the steel wool is blown out the end of the gun behind the bullet (R 1099-1100). If two bullets were fired and only one cartridge casing

left at the scene, it would be an indication that the next time the gun fired it failed to extract the cartridge out of the weapon (R 1095).

The circumstances reflect that Barrett likely took the pipe off the gun, and waited. There was no one else in the house. There was no frenzy. He got some towels and shoved them around Roger's head to keep the blood from flowing into the hallway where it could be seen (R 557).

Larry Johnson and Bob Hemingway were observed alive at ten minutes after six that evening by Connie Cashdollar, over two hours after JoAnn had left. Jerry Lee Clark was alive at around 6:45 p.m., because that's when he pulled back into his yard. Mrs. Cashdollar testified that the person she saw in the truck had a hat on. If one looks in the various phtographs of the scene one can see two boxes at the end of the hallway, stacked up against the wall with various odds and ends in them, and on the left side there is a brown hat with a brim around it, laying on the side of those boxes -- where it was apparently knocked from Jerry Lee's head by Barrett (Composite Exhibit 3A).

From the evidence one can see what events transpired in that house. Roger Wilson was killed early in the afternoon, around 4 o'clock. Around 6:45 p.m. Jerry Lee Clark came home with an industrial-size floor sander (Composite Exhibit 3A; Middle photo; R 555). The jury could reasonably have concluded that when Jerry Lee pulled up to the house he called into the house for Roger to help him with the sander, but Roger didn't answer. Bob Hemingway, and Larry Johnson were outside. It's

reasonable to conclude that one of them helped him carry the floor sander into the house. There was Barrett with a gun that, perhaps, didn't have a silencer on it anymore. The jury could well have inferred that he walked them into the bedroom and knocked them to the floor.

Bloodstain expert Charles Edel testified that he couldn't tell the position of any of the battered victims when the first blow was struck, because the first blow does not cast any blood (R 638). He testified, however, that the blood stains indicated that the source of the blows to Jerry Lee Clark and Bob Hemingway was twelve to fourteen inches off the floor (R 641). The majority of the trauma was inflicted on these victims to the rear of the head (R 642). Larry Johnson was not bludgeoned in the closet but dragged there from the bedroom (R 641). The blood stain evidence at the scene was consistent with the victims having been beaten while they were in a down posture (R 642). Dr. Shutze testified that Bob Hemingway had a bruise on his nose. In Dr. Shutze' opinion that bruise occurred as his head was pounded into the carpet by a metal pipe, or whatever other object Barrett used. Larry Johnson had defensive wounds: contusions on the hands and knuckles of both hands (R 476). Barrett still wasn't done. He still hadn't killed JoAnn Sanders. She hadn't come home yet. He apparently tried to clean up the mess, but he certainly couldn't wait all night with four bodies in the house. Barrett never did kill JoAnn, the actual target of the contract.

The Sheriff's Department found shoe tracks in blood in the kitchen and tracks south of the house left by a shoe with a very

rectangular pattern (R 499; 525; 528-530; 556; 562; 578; 584; 4481). The killer had stepped in blood. Blood stains were later found on the door panel and the back of the seat on the driver's side and on the carpet next to the gas pedal in Barrett's Blazer (R 784-789).

The Sheriff's Department found tire tracks on the east side of Highway 41 about three hundred feet south of the house (R 499) where the vehicle had been parked (R 593). They cast the tracks with Densestone and sent it to the FBI (R 531). Those tire tracks were consistent in general size and design with the tires on Barrett's truck when it was found hidden in the woods.[6] Barrett admitted it was his truck.

A dog followed from the shoe track in the road to the tire tracks left by the truck. It went right to where the truck had been parked and lost the track. This track was different, because it had the blood of the people killed in the house. Deputy Buddenbohm testified that if a track had blood the dog would track it if it matched all of the other scents that he had, the colognes, the perfumes the deodorant, the adrenaline, the

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[6] Special FBI Agent James Gerhart analyzed the cast impressions and the tires on Barrett's Blazer (R 988-990). He testified that he looked at the pattern of noise treatment. The back tires could not have made the cast impression. The front tires both had an area which corresponded with the cast in terms of size combinations. The driver's side had more wear than the cast. The front passenger tire was consistent with the cast impression but did not correspond with individual identifying characteristics such as cuts, chunks or tears in the rubber so he could not reach a definite conclusion (R 996-1000).

fear. The dog groups the smells together to follow a track. The track led to the Blazer (R 666-684).

Barrett and JoAnn both testified that he was in that house for hours. Despite that fact the police were able to find only one fingerprint that belonged to Barrett in the bag of beer cans. Barrett had special training in crime scenes and evidence. Only one cartridge case was found at the scene although two bullets were fired. According to the testimony of Charles Burnside, Barrett picks up cartridge cases after he uses his gun. But Barrett apparently couldn't find the one that careened off and landed in the bathtub. Four adult men were killed in that house. Roger was shot in the back of the head as he was on his knees painting the wall. Barrett is clearly knowledgable about guns. Jerry Lee Clark, Bob Hemingway and Larry Johnson were beaten to death with a piece of pipe and their throats were cut. Barrett had some special training in that area as well. The PR-24 is a club and he was trained where and how to hit someone in order to kill them (R 1024). Logic dictates that it takes someone with some measure of skill to deal with more than one person. JoAnn also saw Barrett adjusting a knife in his shirt. At the time of trial no shoes were found that matched the pattern that was found in the house and on the road; Barrett's gun had not been found (R 762); no pipe had been found. Roger Wilson had brought a combination drywall hammer and hatchet into the house (R 1128-1129). It had not been found (R 1136). When Barrett got his truck home he changed the color. He had four tires in the back to change the shoes on the truck (R 777-778; 800-801). From his

training he could well know that truck tires leave tracks, just like shoes leave tracks.

On the afternoon of Saturday, August 4, 1990, Tammi Freeman saw Barrett with the Blazer in Melrose (R 810-814). Barrett later began painting the Blazer, changing it from green to flat black (R 749), then it was time to go to the beach, so he pushed it down the hill, cut branches, and hid it so no one would see it (R 745-752). When the Blazer was found it did not have either of the tag numbers JoAnn Sanders had written down (R 806). At about 4 o'clock the Citrus County Sheriff's Office got two very important pieces of information. One is that the temporary tag on the Blazer that JoAnn Sanders had written down on the back of the pizza flyer had been traced to a place called "International Auto Sales" in Melrose (R 689-692; 698). The metal tag also came back with the name "Thompson" or "Tomkins" on Prince Ranch Road, which is in the same area (R 707-708). On that afternoon they found out from JoAnn that International Auto Sales was the car lot owned by her son, Dorsey Sanders, III. It was her understanding that that car lot was located on the ranch property near Melrose (R 699-705). Later that afternoon the Barretts took Tammi Freeman, who was the manager of the Suwanee Swifty store where Paula worked, and the five Barrett children to the beach, not in the more spacious Blazer, but in Barrett's Firebird (R 810-811; 815). Between 6:00 and 6:30 p.m., the Citrus County Sheriff's Department helicopter began flying over the Sanders' ranch, looking for the Blazer (R 708-709). It was past 9:30 p.m. when Barrett came back from Crescent Beach and dropped Freeman

off at home (R 816). After 11 o'clock, Barrett called Freeman and said that Paula would not be in to work the next morning because she had a family emergency (R 817-818).

On August 5, 1990, Citrus County Sheriff's Office detectives interviewed Dorsey Sanders, III, and Scott Burnside (R 710-711). They then set up a surveillance of the Barrett trailer to see if Barrett would come back (R 712-713). At 2:43 p.m. that afternoon -- which time was on the receipt that the Butler County Sheriff's Office found in the Firebird from Wal-Mart, the Barretts were in Starke buying clothes and groceries (R 824-825; 4493). Aleese Fisher saw them Sunday at Wal-Mart and testified that all of them were in their swim suits, the same thing they had on to go to the beach the day before (R 824). From such set of circumstances it is reasonable for the jury to have concluded that the Barretts were somehow alerted, perhaps by the hilicopter, and never went home that Saturday. Instead, the next afternoon, they went to Wal-Mart to buy clothes to get out of town.

On Monday, August the 6th, 1990, the Sheriff's Office conducted a search of International Auto Sales (R 713-714). In a folder marked "1977 Blazer" and crossed out to read "GMC" there were documents, including a temporary tag receipt issued to John Barrett for the month of July; July 1 to July 21, 1990. It had Barrett's address on it, but it wasn't signed (R 721-726).

On August 6, 1990, the Sheriff's Office conducted their first interview with John Withers and they learned of the plan to kill JoAnn Sanders (R 715-716).

On August 6, 1990, JoAnn identified a photograph of Barrett as the person that she saw in her house when she left to take her mother to the hospital (R 735-737; 742-743).

On the afternoon of August 6, 1990, Barrett and his family arrived in Ohio (R 866-867).

On August 7, 1990, the Sheriff's Office served a search warrant on Barrett's trailer. They found a towel at the foot of the bed in the master bedroom (R 761-762). They began a search in Starke, based on the information they had received from Aleese Fisher and Tammi Freeman.

On August 8, 1990, in the early morning, the Sheriff's Office began to receive phone calls from Hamilton, Ohio. The Citrus County Sheriff's Office called the Butler County Sheriff's Office in Hamilton, Ohio, and asked them to check on Barrett's car, and they subsequently learned that the car was there (R 830-833). Detectives from the Citrus County Sheriff's Office went to Ohio in search of John Barrett. They went to the residence of his parents, Joseph and Eula Mae Barrett and conducted a search but failed to find Barrett (R 833-836; 859). About 4 o'clock, however, as the Sheriff's Office personnel were leaving the Barrett residence, Joe Barrett, Jr., John Barrett's brother, told someone that he had taken his brother to hide in a corn field in Warren County the day before (R 867). His father had asked him to drive John away from the house (R 867-868). He took them to where he left Barrett. He sat in the car while the deputies unsuccessfully searched through the corn field (R 838-840; 843-844).

Around 6 o'clock that evening John Barrett showed up on his friend Donald Campbell's porch. On "vacation" (R 1107). About 4 o'clock the next morning on August 9, 1990, Barrett was located in Campbell's house, drunk on the couch, and he was arrested (R 852-857).

Donald Campbell testified that Barret had gone fishing and then to a bar with Campbell and his friends. They were drinking beer when Barrett said, "Well, I've got more now than I've ever had. I've got the trailer, property, cars. I've got caught up in something down here I can't get out of." He called it a "whirlwind." Barrett continued: "They call me the golden boy. I've killed four people in Citrus County, Florida." When Campbell asked why he killed them Barrett responded "I was contracted to go do this one, I went there to do one, the other ones come in and I had to do those, too." Barrett appeared to be very serious. Campbell asked "How did you kill them, John, did you shoot them?" Barrett responded "No, I hit 'em in the head with a hammer and a pipe." (R 1107-1110). Barrett also said his "kids were wearing British Nike (sic) shoes and his old lady was wearing diamond rings and he had more stuff now than he ever had in his life, trailer and some property, Firebird, Bronco, and a few firearms." Barrett had quite a bit of money in his pocket (R 1117). Barrett did not tell Campbell that anyone helped him kill the four people. He said he did it himself (R 1119).

On August 9, 1990, at 5:51 p.m. Barrett was interviewed in the training room at the Butler County Sheriff's Department in Ohio by investigators Jerry Thompson and Marvin Padgett with the

Citrus County Sheriff's Department. Barrett was told that he had been charged with four homicides and was advised of his rights when he was arrested. He talked with an Ohio attorney, Clayton Napier, who advised him of his right to counsel. Investigator Thompson informed Barrett that he had the right to talk about the homicides even though the attorney had advised him not to speak to the investigators. Barrett was asked if he would be willing to talk without his attorney present and he responded "I have to listen to my attorney." (R 3219-3220).

The investigators, nevertheless, informed Barrett of the evidence that had been gathered against him: identification by photo pack; fingerprints at the crime scene; steel wool that blew out of the silencer he made; bullets; the ejected cartridge from the shot that killed Wilson; the truck that he tried to spray paint and put in the woods behind his house; statements from Withers, indicating that Barrett told him about having been hired to kill the woman; statements from his wife, Paula, about how he killed them one at a time; the temporary tag number which was written down when he parked near the house and the boat trailer tag on the back of the truck (R 3221). Investigator Padgett told Barrett "We're going to convict you with everything... Do you want to go by yourself? He indicated that they were going to give Barrett an opportunity to put behind bars the person who had ruined his life and was responsible for his babies growing up without their daddy and for his never sleeping with Paula again. Barrett responded "I'll have to wait till I get to Florida." (R 3222). Barrett was informed that he would never be a free man

and would die in prison (R 3223). He was encouraged to talk because something might happen to his family. The investigators indicated that they only wanted to know who had hired Barrett and would not use the statements against him (R 3226). They exhorted Barrett not to give those people a month to do something to his family to shut his mouth (R 3027). Barrett was again asked to reveal who had hired him. Barrett responded, "I appreciate that you gentlemen are doing your job... that you're not assholes... I think you're both good men, but if I, if I were to make any kind of statement on any subject, without my attorney present, then I'd be going against what a trusted man, Mr. Napier, who is trusted by our family, has advised me to do, he's an attorney, I, I can't make any statement, about anything until I sit and speak with my attorney, I have to talk to him, I have, I have to talk to my attorney, so that's what I need sir." Investigator Padgett responded that he wanted to make sure that Barrett understood that he was putting his family in jeopardy of being killed. "I just want to make sure... It will be all right with you when I walk in your cell, three days from now and I tell you, John, Paula was just found with her head cut off." (R 3229). Barrett again indicated that he did not want to speak without his attorney. Investigator Padgett responded: "Whenever she's dead I will be coming to congratulate you on her death... You haven't screwed up enough yet, you're going to go ahead and make sure something happens to that kid." (R 3230). He then introduced the prosecutor to Barrett (R 3231). Assistant State Attorney Anthony Tatti then told Barrett:

> The people that were responsible for starting this, are the people that may be responsible for hurting your wife and your children, are out there. Our job is to put them away, and we're going to do it, if you let them stay out there, you know what they are capable of, you know what they put you up to doing, I'm the one that's going to be responsible for what happens to you in courtroom, in Florida do you understand that? And I'm telling you, and I'm on the tape now, that I'm not going to use this tape right now, so it cannot be used against you, the jury's never gonna hear it. Nobody's never gonna hear it and we'll turn all the tapes off so you can tell us and nobody will know other than what we say about what you told us. This isn't about you anymore. It's about these people, it's not about you."

(R 3232). Investigator Thompson told Barrett he would not be asked how he did it because they already knew that but they wanted to know what transpired between Barrett and the people that had hired him to commit the murders (R 3233). The state subsequently stipulated that Barrett's statement should be suppressed (R 4454).

At 6:25 p.m. Barrett gave a statement, as a *witness*. He said that Scott Burnside made him an offer approximately six months ago (R 3234). He told him that Doc's ex-wife was taking everything they owned. She wanted the entire farm to hack up into pieces and sell so she could live the wild life of a drunk and buy a bar so she wouldn't have to pay for drinks. Scott asked if he knew anyone who would kill a person, since Barrett was from Detroit, knew a lot of people around Gainesville, was an armed security officer, had participated in Ride Share programs with deputies, and knew a lot of crooked people. He said that he

didn't know such a person. Scott said they would give someone some lake front property or sell it and give the person the money. He declined. Approximately two months later Scott offered twenty thousand dollars, in separate payments (R 3235; 3249). Dorsey III, said that getting the money would not be a problem. Dorsey told him that he should have killed her, himself, when he was a teenager. Dorsey was thinking of doing it, himself, now because it was killing his father (R 3236). Doc gave her all kinds of money and she went out and blew it in bars buying everyone drinks. JoAnn and a boyfriend were bragging about how they were going to take everything and buy a bar. They never really had anything against Jerry, though (R 3238). He went drinking with Scott and they drove to Floral City and Scott showed him the bar JoAnn wanted to buy across the street from where she lived. He also pointed out her house (R 3239-3240).

While refusing to admit to having committed the four murders, Barrett admitted that he spoke with them after that Friday (R 3241). On Saturday he saw Scott and Dorsey in Gainesville (R 3242). It was not a prearranged meeting. He and Paula were taking the children to Crescent Beach and he stopped at a Suwannee Swifty Store on 26 going into Gainesville and bought some beer (R 3243). They saw the Firebird and pulled along side of him and told him that four people in Floral City had been killed and the police were looking for Barrett's green and white Blazer (R 3145). Dorsey told Barrett that he would be blamed for the murders. They said "that old bitch probably said that somebody from, it was probably comes from the, the truck was

probably theirs, and that's how they traced it back." (R 3291). They did not give him any money except what they owed him for working on cars, which was approximately three hundred dollars. They told him never to say anything about them contracting him to kill those people. They were upset because JoAnn wasn't killed and said "It's a shame other people died instead of that bitch." They indicated that now she couldn't be killed for a couple of months (R 3248-3271). The tape was temporarily turned off for a coffee break. When questioning resumed Barrett indicated that there was never any predetermined place to leave the money. Dorsey said that if he killed her he would go to Mexico. They made it clear they would make arrangements for the killer to get out of the country (R 3250). The killer would immediately receive five thousand dollars and the rest would be paid in cash (R 3251). They said that when it was completed to come and get the money. They would also provide money to purchase a gun or any kind of weapon and any expense would be covered (R 3252; 3254-56). They never expressed any manner in which they wanted her killed (R 3253). Six months before they had wanted her to disappear and be dumped in the Gulf of Mexico. They indicated they were appealing a settlement and felt that if JoAnn disappeared they would win. The kidnapper wouldn't have to kill her unless it became necessary. She was to be tied up, and brought to the farm, where she would be loaded on a boat and killed. The weapon was to be welded into a ball and disposed of in the Gulf. Barrett felt that any evidence would probably already be melted into a ball and thrown in the ocean (R 3264).

He emphasized that he was not admitting anything (R 3265). He stated that "if" they received a weapon they would have disposed of it immediately (R 3266). He admitted that he went to Scott's house on the night of the murders and gave Scott his gun and the pipe in a bag. There was also a roofing type hatchet in the bag with a hammer side on it with a wide head (R 3268). It was at the scene (R 3283). Scott told him that the evidence "would be gone that night to the ocean" (R 3269). Barrett thought they had a welder at the shop. They had two boats on trailers at the ranch (R 3270). They would have burned the bag (R 3288). Talking in the third person Barrett described the killings.

> People would get nervous and you just sort of I guess you just sort of go blank. You would sort of, it, it would be like watching TV. It, it wouldn't be like you. Yeah, it would be like you weren't doing it (R 3272). You were, you would be thinking of a movie you'd watched or you'd be thinking about something else and you would look around you and you wouldn't even know really exactly what happened or really exactly what was going on. You'd just look around you and this, this would be happening. And you'd probably get sick. You'd probably get down and cry. Yuh, and if you were like me, you would just sit there and pray and if you were like me you would just beg God to forgive you and you wouldn't be able to look into the mirror for too long and and you wouldn't, you wouldn't understand, how something like that could happen. You'd sit and you'd shake and you wouldn't be able to even retrace your steps, the only thing that would keep flashing back in your mind would be looking around at this mess and, and thinking who did this. Your mind would be completely gone, you'd probably get a cooler full of beer and try to, try to just get yourself so drunk and hope that you got

> alcohol poisoning or something. (R 3273). You would probably not care at that point, if she came back, you would be sitting there in mental torment. It would take a really cold person to come back to reality and look around at all that mess and then think about waiting around for another person. I think that person wouldn't know what that person's doing, they just wouldn't know what they were doing. They would just, they would be in a complete daze.

Barrett further indicated that Scott knew the night before that Barrett was going to Floral City and gave him a .9 mm and regular ball-type ammunition in a clip (R 3274-3275; 3279). The barrel of the gun was made to take a flash suppressor and a silencer was screwed in (R 3281) It had been freshly cut from another piece of pipe (R 3280). It was two and one half feet long and was threaded (R 3282). The Sanders have a tap and die shop and it would have been threaded there. Doc was not present when the silencer was made but he arrived later that night and saw it laying on a table ready to use along with the steel wool (R 3285). They put everything in a green laundry-type bag with a drawstring at the top to hide it (R 3286). Barrett stated that he was going to do body work on his truck anyway and claimed that he didn't know that the authorities were looking for it until after he had painted it. He found out from Dorsey that they were looking for a green and white blazer as he was painting it in front of his house (R 3288). Dorsey said that he knew people had died but didn't know if everyone had died. This conversation occurred between 10:00 a.m. and noon (R 3289). Dorsey advised him to paint the Blazer and Barrett got some paint and sprayed it

(R 3290). Everyone knew that Barrett drove a green and white blazer (R 3291). Dorsey did not tell him that the police had talked to them nor did Scott. Barrett didn't paint one small area of the Blazer because Paula wanted to go to Crescent Beach. He drove the truck back over so they wouldn't take it because he hadn't made payments on it. He was worried that Scott would come and take the truck because Scott told him that he should bury it becasue he was going to be blamed (R 3292). Barrett had a dealer tag because he drove a couple of the lot cars (R 3293). It was the one that was on the truck when it was recovered. The bent-up tag belonged to someone in Bradford County. It was on the truck when Barrett got it. Scott did not give it to him (R 3294). Barrett realized that he would be stopped for having two tags on the truck so he took it off and doesn't know what happened to it. He went to Crescent Beach with his wife, her manager and the kids (R 3295). He never touched the bullets or cartridge in the gun and assumes that Scott or Dorsey loaded the clip (R 3296). He had seen Scott's gun nine months before and that is where he got the idea to buy one because he knew that they were not going to be selling those anymore. He admitted that he had fired his gun on the farm (R 3299).

After CID Sergeant Jerry Thompson finished talking to Barrett at 7:00 p.m. on August 9, 1990, he did not intend to have any further contact with him. He intended to proceed with what they had, finish up in Ohio and return to Florida. He knew that Barrett would not make a statement and they were going to move on to other things (R 4747). He was informed, however, by one of

the jail personnel in Ohio that Barrett wished to speak with him and Investigator Padgett. They instructed the person at the jail to get the request in writing and to bring Barrett down. Barrett was then brought down from the jail area into a conference room. They advised him of his rights from a card before speaking with him (R 4748). The conversation was videotaped (R 4749).

Barrett wanted the investigators to give Paula a note expressing how he felt about her (R 4752-4753). He indicated that she was not responsible for anything that had happened and that he had acted on his own (R 4754). When things were bad and he was drinking Paula had encouraged him to read the Bible. She loved him and stuck with him through everything. When the offer was made Paula tried to convince him that it wasn't the thing to do and told him that he was not a murderer. He indicated that "she is the best thing that ever happened to my miserable life." (R 4755). Paula thought it would be best to turn himself in but he had to think about it because he did not know if he was strong enough mentally to do it. He ultimately took the coward's way out and got drunk and left Paula at his parents' house. He told her that he was going to find work. He left his bags at his aunt's house. All he had were cigarettes, a jacket, a shirt and a hunting knife in a black sheaf with a snap on the top that he purchased when he was in the service (R 4757). He stated "I'm not telling you that I killed anybody or that I got any money. I didn't get any money." (R 4578). He was encouraged to be honest about Paula. He indicated that Paula was never upset because he never got any money. An investigator told him that one of his

problems is that he has been unable to face what has been going on inside of him. Barrett stated "It's a tornado in there." They said that if he wanted to help Paula it was time to act like a man instead of skirting the issues, so Paula would not be prosecuted as a principal in the first degree to four counts of murder. Barrett responded that Paula was not with him that evening (R 4761-4762). Barrett was asked if he wanted the jury to know that he was hired or to just let them think that he was insane or a crazed killer who just walked in and randomly killed four people. He was asked about his childhood. Barrett indicated that he had everything his parents could give him; that they did not abuse him; that his father never sexually abused him; and that his mother only used a switch whenever he was wrong (R 4764-4765). He was asked if he could be honest enough to admit to his parents that he had made a mistake. He responded that he had not yet had a chance to see them. An investigator told him that he had seen his father that morning in the courtroom and he held one of the investigator's hands, was shaking and said "If my son did this, I'm so sorry for those peoples' family." (R 4765). They also told him that his mother was tormented by this (R 4766). They told him that when a family finds out what really happened they can work it out and get on with their lives (R 4766). Barrett responded: "I wanted to come down here because I know you're good men and I want (inaudible) give that letter to Paula and kind of look out for her and to make sure that she don't get hurt." (R 4767). He was told that when it was all out in the open he would feel much better and the

tornado inside would break up and gently go away (R 4768). He was asked to convince them that Paula was not there. Barrett reiterated that Paula had no part in illegal activity. The investigators suggested that he should start out from the time he left home that night.

Barrett stated that he left home that morning at 9:30 a.m. and bought beer at a Jiffy store across from the car lot (R 4769). Paula was not with him. He stopped at a bar by Crystal River. He continued to Floral City. He then stopped at a bar down there to get a pack of cigarettes (R 4770). It was across from the house. He drank a couple more beers. He helped them trim around the wall by the window ledges. They were drinking beer and JoAnn was drinking Vodka. JoAnn went to get some paint in the afternoon. They stopped and sat around the table. Jerry Lee had gone to MacDonald's. He then hauled off all the trash (R 4771). That left Roger, JoAnn and Barrett there alone. She had another vodka or gin. He had a couple of beers along with Roger. They put the last couple of pieces of trim up and JoAnn left. She came back and said that her mother was ill and she had to take her to the hospital and she didn't know when she would be back (R 4769-4773). Barrett was then asked if that was when he shot Roger. Barrett responded "That's all. I was -- I've admitted to being at the house and helping those people work on the place. I don't have the heart to say I kill people. I can't -- I can't -- I can't in my mind say that I kill people." (R 4772). He knew he was accused of killing four people. An investigator suggested that it was like a dream and Barrett

agreed that "the whole thing was like a dream." An investigator suggested that it was "like he was sitting behind someone else's eyes" and Barrett responded that "the whole day sitting there drinking, and it's like I wasn't even there. It's like I couldn't feel my entire body." He said that he did not go there with the intent to kill. He always kept a .38 derringer in his truck (R 4773). The investigators indicated that it was not just Barrett who was involved but Paula, his father and the children and that his mother also had problems. Barrett then stated "I myself, John C. Barrett, as a sane and mental person, am not guilty of murder. Not as --." One of the investigators asked "If its not you, then who is it?" Barrett responded "It's not me." (R 4774). An investigator then asked "Who is inside your body doing this?" Barrett responded, "It's not me. It's not me. I'm telling you, it's not me." He stated that he was not a murderer. He took four years of karate but never hurt anyone in his life. He was not that kind of person (R 4775). Barrett was asked what was inside him and what set it off. Barrett insisted that he was not a murderer (R 4776). The officers then stated that his hand was the hand that did it and Barrett responded "That's not my hand. It can't be. It just can't be." (R 4777). The officers suggested that the man that pulled the trigger was still inside Barrett and that if he wanted to put him to rest he had better do it because he destroyed Barrett's life and could destroy his family (R 4778). Barrett insisted that it was not him and that he only drank beer and joked with them while they were working on the house. He said that he could have killed the

lady when she was sitting there and if he had gone down there to kill her he would have done it (R 4779). He was urged to face up to it and not destroy the rest of his family (R 4781-4782). He was told that he could go back to Florida whenever he told his attorney that he wanted to go and was encouraged to "get it off himself and let the other people get it over with." They suggested that he had a troubled heart. Barrett responded that he needed help (R 4782). They indicated that the first thing he should do to help himself was to face it. They prayed (R 4783). He stated that he had a black shirt on (R 4784). The truck never worked right and he tried to repair the wires. The positive cable was busted and a bungee strap was holding it. He went back to the house. He brought a bag with beer in it. He didn't hurt anyone (R 4785). One of the officers responded "You did hurt them, John. You killed them. Face it, John. You brought the bag (inaudible). When the man that was inside you brought the bag in there, was the gun in it?" Barrett insisted "It wasn't me." The officers told Barrett that he was lying to himself (R 4787). Barrett responded "Somebody else must have done it." He liked Roger (R 4788). An investigator told him that saying someone else did it was not going to work (R 4788). Barrett indicated that "my mind is telling me that I did not --." The investigators insisted that Barrett's finger was the one that pulled the trigger and he should face it like a man. Barrett responded "I can't kill nobody. There's not no killer in me. I don't have no killer in me." (R 4787; 4790). An investigator asked him if he wanted people to label him as a sociopath (R

4790). Barrett responded that was not true. He said that he had a beer in the bag but did not have a gun and did not kill anyone. An investigator suggested that he was a man without a conscience, who kills without a reason, and was a vile murderer. Barrett denied it (R 4791). An investigator suggested that he would even kill children. Barrett responded that he would never do that. He was told that he was a dangerous man and should be electrocuted because he would not face what he had done and if he were ever allowed to walk the streets he would do it again (R 4793). He still refused to admit to having murdered Wilson, Clark, Hemingway and Johnson and the questioning ceased.

The trial court denied Barrett's motion to suppress the August 10th statement finding that Barrett reinitiated contact with the investigators by asking to meet with them, knowing that they would question him about his involvement in the offense. Barrett was reinformed of his rights and waived those rights by conversing with the investigators. The court noted that while Barrett made several admissions to the investigators, he never confessed to the crimes and, in fact, specifically denied that he committed the crime (R 4455). Despite the court's ruling, the statement was not introduced into evidence by the state.

An indictment was returned by the Grand Jury in and for Citrus County, Florida on September 5, 1990, charging Barrett with the first degree murder of Roger Wilson by shooting him with a firearm; the first degree murders of Jerry Lee Clark, Robert Hemingway, and Larry Johnson by beating them with a blunt object or objects or by cutting their throat with an unknown sharp

instrument and conspiring with Dorsey A. Sanders, III or Scott A. Burnside to cause the death of JoAnn Sanders (R 1838-1839).

In the guilt/innocence phase Barrett took the stand and testified in his own defense. He stated that they moved to Florida two and a half years ago and resided in Melrose and Hawthorne (R 1235). He acknowledged that he had attended Career City College in Gainesville and that John Pregony was his instructor (R 1236). He claimed to have met Doc in the beginning of 1990 when his truck broke down. Doc told him that his son and a distant relative, Scott Burnside, had a car lot and would probably work a trade on his truck (R 1238). He traded the truck even for a 1980 Pontiac Bonneville. After six months it began to break down. He financed a 1980 white Camaro for Paula. He was told that he could work it off. Both cars continuously broke down. He took the motor from the Bonneville and put it in the Camero. He financed a Firebird with two hundred dollars down, in May. He worked as an auto mechanic for Scott at International Auto Sales and his work was to be deducted from what he owed (R 1238-1241). He went through three engines in his Camero and they charged him for each one. His work there increased in May, 1990 with the purchase of the Firebird. Scott told him he was into him for a lot of money and had to get things taken care of. At one time they told him he owed six thousand dollars. It didn't seem right to him. He worked for them every day but the bill increased. Paula worked at the Suwanee Swifty Food Store (R 1247-1248). After he finished the courses at Career City College they inquired about them. Scott and Doc agreed that instead of

hiring a private investigator they would use Barrett to get information on JoAnn and prove that she was running around with married men and drunk in bars all the time. She was not happy with the amount of money Doc had given her and was trying to drag him through court in an effort to take everything he owned. Doc wanted to prove she was of low moral character (R 1250-1251). The idea of being a private investigator was very appealing to him as his long range goal was to be a U.S. Marshall. He discussed it with Paula and she said that if they were willing to pay him to go for it as it was along the lines of what he wanted to do anyway (R 1251-1252). Dorsey, III, showed him JoAnn's house in Floral City. He said that she would be there or at the bar. She also had a home in Weeki Wachee. The idea of driving to Weeki Wachee didn't appeal to him so he only watched her in Floral City and took notes. He was supposed to find out how many married men she was seeing. He observed her mostly at Mac's across the street and a couple of other bars in April, 1990 (R 1253). He went to Floral City thirteen or fourteen times (R 1255). The price was not agreed upon and depended on how many hours he spent. They were to pay expenses and knock off his tab, depending on what he came up with, and he would be paid for the time he spent away from home. From what he could tell he was not paid, as he seemed to owe them even more money and his bill eventually progressed to six thousand dollars. He had no idea what the actual amount owed was as Paula always handled the money (R 1253-1254). Near the end of April Scott approached him and asked him if he knew anyone that could "pull a trigger." He

responded "What do you mean?" Scott said "Well, we've got to get rid of JoAnn Sanders." What they had in mind was kidnapping her, driving her to a wooded area with ski masks on, and telling her to lay off Doc or next time she wouldn't be so lucky. Scott said there was a court date coming up and they had to get her to drop her case or Doc would lose almost everything. In May, Scott asked him to tell them when she would come and go so they could do it (R 1256-1257). Two days later Scott said that something had to be done. He wanted him to drive up there and be part of it. He didn't have to take a role in the kidnapping but had to drive and be present or he couldn't be trusted and something would have to be done. He told Scott that he couldn't just walk in and snatch someone but they had his notes and all they had to do was to turn them over to the police and tell them he asked for more money. He told them "no way were they going to get anything on her to get her to drop her suit." He was getting worried about Scott. He told his wife (R 257-259). Toward the end of April and the beginning of May, he was not going to school. He briefly took a job at the Suwanee Swifty Store in Starke and did home improvement work for a few subcontractors. He put in an application at the VA Hospital, police departments and correctional facilities (R 1259). Scott talked to him again and was becoming serious. Scott told him something had to be done because Doc was losing his mind and was eventually going to go down there himself with a shotgun and kill JoAnn and turn the gun on himself because it was tearing him apart. He asked "Well, can't he do anything in court?" Scott said "No, he was going to

lose, he doesn't have a chance in court, he knows he's going to lose." He told Scott to show him where JoAnn Sanders lived and he did. On a Saturday night in May he drove to Inverness, stopped at a store and Scott took over the wheel and directed him. He was not worried because he knew that JoAnn wouldn't be there on a Saturday night. Scott had a long barreled .44 magnum in a shoulder holster and another handgun in the back, a shotgun and a hunting knife. He didn't see the weapons until they actually got to Floral City (R 1260-1262). Scott pulled down to a road past JoAnn's house and said he wanted to take a look at her house. He asked why they couldn't just park at Mac's Bar or by the road instead of way down there if he wasn't going to do anything. Scott told him to "shut up, he didn't want to be seen." They went to the house then turned around and went back to the car. He then saw the weapons in the back seat. As they pulled off, Scott took out the knife and was playing with it on the seat. They were in Dorsey, III's black and white Chevelle. Scott said that he and Doc were serious and were not playing games. "Doc has his way of dealing with people who messed him around." But Scott indicated that "he had his own way." He intimated that if he shot someone in the head with the .44 magnum it would explode like a watermelon. When they got back to Melrose Scott told him they would kill him if he ever said anything to anyone (R 1263). He still owed money to the car lot and worked for them so he saw Scott frequently. Scott would bring up the subject of JoAnn. He was told that he had to go along and be present while she was abducted but that he would not

see anything. He had to be present because he knew of the plan and Scott and Doc were sure that his presence there would keep him quiet (R 1264-1265). He kept Paula informed but didn't go into detail about the threats (R 1266). He was afraid of Scott but still didn't believe they would do anything to JoAnn. He was concerned that if the Firebird and Camaro were repossessed he wouldn't have any way of getting around (R 1267). In May it became a life and death matter to Scott. He heard Doc tell Scott a few times "I am trusting you, I'm depending on you to get this done." Doc told Scott that he couldn't have a part in it because he would be the first one they would look for (R 1268). Scott became nervous and agitated and appeared to be angry with him. He constantly told him "This is going to have to be done and you're going to have to keep your mouth shut or you know what will happen to you." He tried to get Barrett to go to Floral City. John and Sherry Withers lived with the Barretts during the month of May. In June, Barrett started work at the VA Hospital. It was only a temporary position but he was hoping to get on their private police force. He was pulling weeds and pushing a mower (R 1268-1269). In June, Scott included Barrett's family in his threats. He told him to call Withers up, as he was going to be in on it. He called Withers and asked him if Scott had talked to him about making some money. Withers said, "Maybe." Withers came over to his house. He asked how much Scott had offered him. He said he had not talked to Scott about it and did not plan on taking any physical role in the murder. Withers said, "Okay, just don't say anything to anybody because these people are

serious." Withers left and went to the farm to talk to Doc. He testified that he never made any statement to Withers about a specific amount of money. He told him he was trying to stay as far away from it as he could and Withers would have to talk to Scott and Doc himself about money (R 1270-1272). He further testified that Withers had left him in a bad financial situation after living with him in the trailer and money was very tight at that time. His wife said that they couldn't afford to lose their cars but they couldn't afford to pay them off so they should just be quiet and make it through and it would all pass over (R 1273). He and Withers first drove to Floral City in early June. He went to a telephone to supposedly call and see if anyone was in JoAnn's house. Instead, he went to the telephone, waited for a few minutes and then told Withers that no one was there and that it would make no sense to go all the way to Floral City. They drove back to their home. He and Withers made ten trips in the direction of Floral City. They actually made it to Floral City only three times. They went to Weeki Wachee but not to JoAnn's home. The remaining times, except for one, Barrett would just pretend to call. On one occasion Withers took the phone number and came back and said no one was there. He doesn't believe Withers actually called either (R 1273-1274). The second time they went to Floral City Scott had told them that JoAnn was there. Withers drove. It was his understanding that he was supposed to stay in the car but Withers thought that they were supposed to go inside. He said, "Well, let's just check the house out." They went up to the yard. Two men were there and

they told them the car had overheated and the men gave them water. They went back to the car. Withers asked him what he thought. He said, "She's not there." He was carrying a .38 only because Scott had threatened his family. Withers didn't have any weapons. Neither of them intended to do anything (R 1275). If Scott had not called he and Withers would not have gone down (R 1276). They also went down to Floral City on a Saturday night. He knew JoAnn wouldn't be home, so they sat in Mac's and had a few beers then left (R 1276). After the Fourth of July, Scott came to the garage and told him that they had to repossess a car but instead headed for Floral City. Scott said that "they had to get this crap taken care of as he was tired of messing around." Scott seemed prepared to take action and had a long barrel .44 magnum, another revolver and a hunting knife in the car. He had his .38. Scott told him that he had sold marijuana and put good marijuana on top of rotten marijuana, took the money from the sale, and bought cocaine. The man who bought the marijuana was displeased and took a lot of money from him. He wasn't able to pay for the drugs. He then had more drugs fronted to him and did something with the money. He was into those people for twenty-five thousand plus and Doc was his only way out. All Barrett had to worry about was getting killed but Scott had to worry about getting his bones broken for the rest of his life. They stopped, Scott made a telephone call and then told him, "Not tonight." Scott told him that he would kill him but first make him suffer by getting his kids first (R 277-280). On the Fourth of July, he had bought fireworks to set off at the beach at the lake. He was

setting them off with Scott. Withers went to relieve himself or be sick. Scott, evidently referring to Withers, then told him that "some people were messing him around and he might as well get his shotgun and take care of it now, since no one would hear it because of the fireworks." He responded "My God, he hasn't done anything to you." Scott said, "A lot of people have done things to me and I don't like it." He said, "Yeah, his wife and kids." Scott said, "Wife and kids don't mean nothing to me." Barrett talked Withers into leaving (R 1280). He was working at the VA in July and side jobs were not running steady. His beer drinking started to increase in June and became horrible in July. If there was no work on a Saturday he would start drinking when he got up. He couldn't make up his mind what to do. He didn't know whether he could risk his family in order to try to stop Scott. Scott constantly told him that the court date was coming up and it would be too late. He figured that if nothing happened before the court date everything would be alright. He heard Doc say at one point "We've got to kill that bitch, before the court date, its almost here." This was in late July at the farm (R 1282-1283). He was making car payments in addition to work, in an attempt to pay the two cars off as fast as possible so he could get away from them. They borrowed money from Paula's grandfather to pay for the cars but that didn't seem to get him out of debt with them. They told him he was involved because he had knowledge of what they were going to do to JoAnn and they weren't letting him out of it. Doc told him "It would look like you did everything, you just came to me and told me that you had

a way to get rid of my wife and wanted more money and when I told you to get lost you got mad at me, and that's why you ran to the police." Sometimes Doc would say that any loose ends would have to be tied up -- like Barrett, Withers and Paula. At one point Paula worked at the car lot. She heard Dorsey and Scott talking about kidnapping JoAnn. She told them that Barrett would help them. He would tell them when to go get her, how to do it and would drive for them (R 1286-1287). In July he made a silencer at the farm. Dorsey, Paula, Scott, Tanya and Charlie were there. Paula told them that he had learned how to make one in school. They said it would never work. He made one from a piece of pipe and put some steel wool in it. It didn't work. The steel wool stopped the bullet. A second one was put together by Dorsey, who figured out how to do it. Dorsey drilled bigger holes and welded a bolt on the end that would mount to a gun that Scott had and would screw onto a flash suppressor. He took a rod and stuck it down the barrel and put steel wool in it. He never had possession of the silencer that Dorsey made. He tore his own silencer apart and left it, along with the steel wool, on a table in the barn (R 1288-1290). In July he purchased a A9-1 from Gunn's Gun and Pawn. Paula worked at night sometimes and he wanted a weapon that would fire a lot of rounds. He told her that a .9 mm. would probably hold fifteen shots. She purchased one but it was not what he wanted. Scott had an older model .9 mm. he got from a drug dealer in Ocala, which had a screw-type flash suppresser at the end of the barrel. Nothing could be threaded or screwed on the end of Barrett's barrel as there were

no threads (R 1291-1294). On August 3, he did not have his A-9 pistol with him but his .38, which he carried ever since Scott had threatened his life (R 1294-95). During July he avoided Scott as much as he could. When Scott realized that he was not going to do it he told him that all he had to do was to go with him. At first he had told him that he had to drive (R 1295). At this point in time they were in bad shape financially. They owed a lot of money and their payments were late. Paula told him that they were broke and if he had been sober for the last two months he would have known. He was not making much money on side jobs in July. She was upset. He doesn't know exactly what was made as Paula handled the money. Copies of checks and deposits from the account with Paula's signature were introduced into evidence (R 1295-1300). In July, Paula changed her hair color from black to blonde (R 1302). He figured that if he went to the police with the plan he would be killed, as they couldn't protect him (R 1302). During the last week of July or the first part of August Scott told him that he was in trouble and Doc wouldn't give him a penny until he took care of this. He told Barrett that he was going to be part of it and had no choice. The bills had piled up and he and Paula were arguing. Paula was trying to convince him to go along with Scott (R 1304-1305). He made trips to Floral City in July. He would stay long enough so that they would think he made a fair attempt and then go somewhere and drink and try to think of what to do. He told Paula, after a fight, that he had not gone all the way to Floral City. Scott then told him that he knew he had been messing around with him and hadn't been going to

Floral City and was stalling and that he was not going to put up with it anymore. He never told him how he learned this (R 1305-1306). On August 1, 1990, he left work sick. Paula told him that Scott had called the Swifty Store and needed to see him after he got off from work. He met Scott at the car lot. Scott said the kidding around was done with and he wasn't going to play any more games. He told him that he was to go down there the next evening, make sure they were there, and let him know. When Scott arrived he could then leave (R 1306-1307). Barrett did not go. He pulled in a Jiffy Store to get beer and saw Scott. Scott asked him what his problem was and he told him that he just couldn't make it. Scott told him that it had to be done now. "You will be there tomorrow, that's it, you know what will happen." He was to go to Floral City, ensure that they were there, leave his truck parked out in the front, close to the road, and prop the hood up, so Scott would know he was in the house and that JoAnn was home (R 1308). He admitted that he was at JoAnn's house on the morning of August 3rd. She wasn't there when he arrived at 10:00 a.m. but Roger and Jerry were there. He got up around 5:00 a.m. and told Paula that he was leaving, then went to a Jiffy Store. He bought a cold twelve-pack of Bud Dry and started drinking it before he got to JoAnn's house. He finished it during the day and consumed their beer, as well. He helped with trim work on the house. He was hoping they would leave and worked hard to help them finish. He knew from watching on Friday and Saturday nights that they were always at bars. JoAnn came back to the house around 11:00 a.m. She later left to

go to her mother's house and Jerry Lee went to the dump. Roger was sitting at the table. On a couple of occasions when he was alone with JoAnn he had wanted to tell her to leave. JoAnn came back and said her mother had a stroke and she had to go to the hospital and wouldn't be back until late, to tell Jerry Lee (R 1309-1313). His understanding with Scott was that if JoAnn wasn't there nothing would happen. He wasn't expecting Scott to show up after JoAnn left. Scott was originally expected to arrive around 5:30 or 6:00 p.m. They didn't work after JoAnn left. He was having a conversation with Roger who told him that Jerry Lee was with JoAnn because she was coming into money. Scott then walked in from the back and he didn't hear him. He put his hands up but Scott pushed past him. He shot Roger twice. He left. Scott asked him where he thought he was going and wanted to know where the old lady was. He said "My God man, she left. Don't you see her car is not here." Scott came to the door and said "Look you m--f-er, straighten up, tell me what's going on." He had his .9 mm. with the steel pipe screwed to the end of it in his hand. Scott went back in the house. He heard him talking to someone by the back door. Jerry Lee had pulled up and Scott said something like "get out of here, somebody is here." Jerry Lee got out of his truck. Two men walked over to him and they stood there talking. Jerry Lee asked him "Where is Roger?" He told him "he's in the bathroom." They talked for a few minutes then Jerry Lee said something about looking at the bedroom and they walked into the house. He was at the front door but couldn't do anything because he was afraid Scott would kill

him. Doc had money and he couldn't win against him and the police could not help him. When he heard Scott talking to someone inside the house he never saw anyone else. It was a high voice so he thought it was female, but he couldn't make the voice out (R 1313-1318). He didn't see what happened to the others. He wouldn't go into the house. He started sawing more trim boards. He didn't know what to do. He got the sander out of Jerry Lee's truck and put it inside the front door. He heard Scott say something as he stepped away from the house. Scott had his gun in his hand and told him that the silencer was no good. Scott said he was waiting for JoAnn. He insisted "No man, this is over." Scott cussed at him and told him it wasn't. He left, heading toward Inverness but he didn't want anyone else to show up with Scott still there, so he went back to tell Scott to leave. He went back to the house but no one was there. He cut across the field (R 320-322). Scott had told him to meet him at his house when it was over. Scott was already there. He gave the Blazer to Scott. Scott told him that he shouldn't have run off and he was going to have to keep his mouth shut. Scott drove him home. He advised him to act normal and go about his business. He told him to be there to pick the truck up to change the tires, as he would have Dorsey bring tires out (R 1322-1324). He saw Scott the next morning. He picked up the Blazer. Dorsey had brought tires which were in the front yard. They burned identification cards and what looked like a Florida driver's license and a credit card. They had a wallet and a blue bag with a tag on it that said "Jerry Lee Clark." They had a hatchet, a

bundle of clothes and a pipe that was bent in the back of Dorsey, III's truck. They loaded the tires into the back of the Blazer. He couldn't change the tires because they had locking lug nuts and he didn't have time to cut them off with a torch. He called Scott and told him that he couldn't do it. Scott then told him to sand the green portions of the truck, primer it black and bring the truck back to his house and they would take care of the rest. He went to see Paula twice that day in the Blazer before he took it back to Scott's house, where he thought Dorsey picked it up (R 1325-1327). After Paula got off work they went to the beach. Before that, Dorsey came by and said for him to stay calm, but a policeman that Doc knew called and told him they were looking for a truck that had been on their lot. Despite this, he didn't finish painting the Blazer and went to the beach. When he returned he saw Dorsey who warned him that there were helicopters flying around and told him that Scott wanted him to come to his house. He was going to take Paula home but she said "No, we'll drive out there." No one was there. He walked around and heard someone coming down a path. He told Paula to leave and she left. He went to a motel room and stayed the night. She suggested that they should just leave and go to Ohio. He said "No." It was Paula, Dorsey and Scott's idea to go to Ohio. When he got to Ohio it was Paula and his father's idea for him to hide in the cornfield. He saw no need to leave Florida because he hadn't done anything, none of his weapons were used in the murders, and he wasn't present when it happened. He didn't want to run and make himself look bad (R 1330-1332). He implicated Paula in the

plan, testifying that she told him to go along them but not to take a physical role in the actual crime. He told her that he couldn't kill anyone. She replied that he wouldn't have to, that "she would do it for him." She told him that the police wouldn't help them and would probably lock him up (R 1332-1333). Scott was supposed to be dropped off by some woman on a road and no one was supposed to see him. He was going to come across the field down the tree line. There was a time during the month of July that he suspected Paula was not where she said she was. She carried a derringer in her purse. He was surprised to learn that deposits were made in his account on eleven out of fifteen days in July ranging from seventy-five dollars to five hundred and thirteen dollars (R 1335).

On cross examination, he admitted that he had learned about defense tactics from Mr. Pregony, including how to use a PR-24 police baton. He knew where potentially fatal areas of the body were located and how to handle more than person at a time (R 1340-1342). He also admitted that a small portion of a film he had seen dealt with silencers. He admitted that he had asked Pregony how to make a silencer, but that when Pregony told him he didn't want to know, he didn't persist. He did not tell Pregony that four men had raped his wife but that two men had only attempted to rape his wife. He didn't want to build a silencer to get even with them. The silencer just came up in conversation. He told Pregony that he would need a silencer before he could do anything of that nature. Pregony also taught him about crime scenes and how evidence was collected and he knew

about things like shoe prints and tire tracks (R 1342-1344). Scott and Dorsey, III saw the certificates that he had and were impressed with what he had learned. It came out in conversation that he knew how to make a silencer. He just wanted to see if he could do it. He packed a big loose clump of steel wool down inside the pipe and that's why it didn't work. He never saw the pipe that beat the four people to death. The silencer he made had small holes of one-eighth of an inch and it wouldn't work. He test-fired it and that is what Charlie Burnside saw (R 1344-1346). He saw nothing wrong with following JoAnn around as he wanted to be a police officer and it was along those lines. It rapidly progressed into a kidnapping plot and he could not find a way out. They didn't threaten his children at the time they were discussing kidnapping JoAnn but did later. He didn't tell them "No." He didn't call the police. He didn't call JoAnn and tell her her ex-husband was looking to do her harm and that someone was following her. When he was at her house he tried to tell her but ended up saying "Can I have another beer?" (R 1346-1350). Scott threatened to blackmail him with his private detective notes if he didn't keep his mouth shut. He knew blackmail was illegal but he thought if he went to the Putnam County Sheriff's Department they would believe Doc. He didn't trust the police to protect him and he had to look out for his children (R 1351). Scott couldn't do the killing because he would be one of the first persons suspected and it would go right back to Doc. Doc was living with Scott's wife's mother and they spent a lot of time at the farm. They wanted Barrett to do it because he had no

connection to these people (R 1353). He has no idea how his bill with International Auto reached the sum of six thousand dollars. He did not go along with the plan because of the debt, however, but to "save his behind and keep his children alive." He watched the conspiracy to commit murder go on around him (R 1354-1358). He denied having told Withers "we can do it now" when they drove down in the red and white Cougar to Floral City. He told Withers that JoAnn was not home when she was actually there. His guess was that they drove towards Floral City a total of ten times. He went there a total of thirteen times during the time he was watching JoAnn. It began in April. He denied being angry with Withers because he wouldn't go along with his plan to kill JoAnn that night (R 1359-1361). He did not know about the deposits to his checking account as he never handled it (R 1364). He stopped by JoAnn's house after he had been there with Withers and drank beer with her. The first time he went they gave him water and told them he would bring them a beer one day and they indicated that would be nice. On the occasion JoAnn saw him in the white and maroon car, John Withers was not present. JoAnn could have been correct about him bringing Bud Dry that time, but it could just as easily have been Busch. He admitted that on August 3rd, he had Bud Dry and that the cans found in the truck and in the bag outside the house were his. He was the one that drank all the Bud Dry. He didn't see Scott drinking beer while he was in the house. Withers backed out of the plan and never wanted to do it the first place. He has children and a wife. He never went back with him again. After late July, he never heard or saw

Withers participate in anymore conversations about killing JoAnn. As far as he knows Withers was able to get out of the plan (R 1367-1369). He never heard anyone say that they were going to create an alibi and never saw the Sanders or Scott go out that night (R 1372). He went to JoAnn's house around 10:00 a.m. on August 3rd. Jerry Lee and Roger were in the yard but he did not tell them that Scott was on his way from Melrose to kill JoAnn because he was afraid of Scott. When JoAnn came back from getting the supplies he didn't say anything to her for the same reason. He helped them trim the house and never said a word (R 1372-1374). Their plan was to change the Blazer's appearance completely. He painted a lot of the Blazer and taped the trim up. The green areas were painted black. He had no tires put on the truck. Scott put a dealer tag on it. When he drove the Blazer on August 3rd, it had a paper tag on the window and a bent metal tag on the box. The temporary tag was the same one he had on the Cougar when he went down with Withers. It was Scott's tag. It had his name on it but it wasn't his receipt and he had no idea how it got in his console. He didn't drive the Blazer down into the woods and put branches on top of it (R 1375-1378). He bought the AP-9 because his wife needed twenty rounds to protect herself and their home (R 1380). He admitted that he was warned that the police were looking for his truck. He knew that Doc and Dorsey had been arrested. He just did what his father told him to do without question. He did not recall telling Donny Campbell that he killed four people in Floral City. Instead, he told him that some people were killed in Floral City and that he

was going to be blamed and that someone was going to try to kill him. He claimed that Donny was very drunk. He did admit that he said he was caught up in a whirlwind. He denied saying that people called him "the golden boy." He told Campbell that he was their "do-boy" -- they had him financially and he couldn't get out of it. He denied telling Campbell that "one came in and he had to do the others." He testified that Donny is confused (R 1382-1385). He admitted that he did not tell the investigators that Scott Burnside killed them when he was interviewed on August 10, 1990 (R 1386). It was his understanding that Scott was to be arrested along with Dorsey, III and Doc. He figured if they caught Scott he would be able to tell everything but they were unable to apprehend him. He did not want to read in the paper that his children were murdered (R 1386).

On redirect, he testified that it was not his idea to go to Ohio and he went because his wife and everyone told him to go there and see what was happening; perhaps his parents could help him or get a lawyer to find out what was going on. They told him to hide until they could find out what was going on. He just got sick of sitting around. It wasn't until he got away from everyone else that he could quit hiding (R 1396).

Barrett's mother, Eula Mae Barrett testified that her son wanted to go to the police but Paula did not want him to. Paula scared her as they did not know what was going on. Eula Mae suggested taking him somewhere for a few days until they found out what was going on. Her son was just doing what they told him to do. Joey put the knife in his bag for protection against wild

animals (R 1405-1407). Paula was the boss. She controlled the money. Paula didn't want him out of her sight. He was primarily responsible for caring for the children. Paula lifted weights, was very strong and had broad shoulders. She could lift more than him (R 1408-1409). She admitted on cross examination that when the police arrived at her home in Ohio she told them he wasn't there and didn't know where he was (R 1413).

Barrett's sister, Tina Barrett testified that Paula took the name "Barrett" even though there was no church ceremony. Paula was the dominant figure and Barrett did everything he could to please her. He never had any money and if he wanted something he had to ask her for it. Paula controlled the money and kept the checkbook (R 1415-1416). When Paula arrived in Ohio she was extremely anxious to dye her hair and changed it from partially bleached blonde to black (R 1417-1418). She admitted on cross examination that she lied to the police about the fact that she had not seen her brother (R 1421).

Alesse Fisher testified that Paula and John were holding themselves out as husband and wife. Paula was the strong one and handled the money (R 1423). Paula was very fond of Scott Burnside and worked at International Auto Sales in Melrose without pay because she enjoyed being there. On one occasion all of them went to a big get-together. Paula complained about her sister flirting with Scott. She felt that Paula wouldn't care unless she was flirting with Scott herself (R 1425).

Richard Mitchell lives in Fleming Court in Floral City. His driveway goes by JoAnn's house. On August 3rd, he went by

her house at about 3:00 or 4:00 p.m., headed for Inverness. He didn't notice anything as he was pulling onto 41. He returned between 7:00 and 7:15 p.m. and didn't see anyone around her home. As he was pulling into the road to his house he saw a Chevy Blazer, south of his driveway coming east on 41. He didn't notice any people. He went out again to Brooksville, made a left hand turn and saw the Blazer. He saw someone and it looked like the person was on 41. When he first spotted him he was just coming onto their driveway, walking away from the JoAnn's home. When he got closer to 41 he observed the man in the field. He had something on his back like a back-pack. He turned around and looked at his truck. He had almost black hair; shoulder length; weighed between one hundred seventy-five and one hundred and eighty pounds; and was five feet ten inches to five feet eleven inches tall. He spoke to law enforcement about it. He was shown photos of Barrett and the person he saw in the field did not look like the photos. On cross examination, however, he admitted that the photos made Barrett's hair look blonde. He would describe Barrett's hair as being ash brown (R 1426-1437).

Marvin Padgett testified for the state in rebuttal that Scott Burnside is five feet eight inches to five feet nine inches tall; a little on the thin side, with a medium build, and weighs between one hundred forty-eight to one hundred fifty pounds. His hair is blonde with a reddish tint and he had a Fu Manchu style moustache (R 1443-1444). He testified that when he saw Barrett at Donny Campbell's house on August 9, 1990, his hair was about the same color it now was, only longer over the ears and down the

collar. He had kind of a scruffy beard and a little bit of a paunch. He was quite a bit heavier than he is now. He is about five feet ten inches tall and weighed about one hundred seventy pounds in August (R 1444-1445). He further testified that Paula Barrett was arrested in Ohio for being an accessory after-the-fact to murder. She assisted Barrett in flight and then lied to Investigator Thompson about his whereabouts (R 1447).

Investigator George Simpson testified that they found shoe tracks on the road by JoAnn's house but they found no tracks around the house that indicated that someone had been walking in a northerly direction (R 1448-1449).

Lieutenant David Strickland testified that none of the latent fingerprints found in JoAnn Sanders home belonged to Scott Burnside (R 1451).

JoAnn Sanders testified that in the month of April, 1990, she wasn't in Floral City at all and didn't start working on her house until May 1st. It would have been hard for someone to follow her around in Floral City in April since she wasn't even in Florida for half of the month. She bought a van in the middle of March. She was in Sarasota for two weeks, Orlando for a week, back in Brooksville and Weeki Wachee for several days, North Carolina for two weeks and then back to Weeki Wachee (R 1454-1455).

The jury returned a verdict finding Barrett guilty on Counts One through Four of First Degree Murder and Count Five of Conspiracy to Murder JoAnn Sanders (R 1606-1607).

Corrections Officer, John Tucker, of the Citrus County Jail, testified in the penalty phase that Barrett was an above average inmate and was polite. He never had any problems with him and never had occasion to write a DR. Barrett attended Bible study. There were problems in the block and he felt that if he needed information he could get it from Barrett (R 1665-1666).

Gerald Wayne Fowler had a prison ministery for the last nine or ten years. He has known Barrett for about a year. The first time he met Barrett he was calm and collected and seemed to have it together. Barrett asked him to pray for people that he was associated with in the prison, not for himself. Bible studies were not available in the jail and Barrett was instrumental in getting them established. Barrett gets together with inmates and they read the Bible. He was a real student. While most inmates are manipulaters Barrett was always asking for other people, not anything personal for himself. If they had time they would pray for a half hour or forty-five minutes for the guards, inmates and the captain. In his opinion, Barrett's chances for rehabilitation were excellent. From the beginning, he had a positive outlook. When Barrett met him he said "Jerry, one day my goal is to do what you are doing, to go in and help other people that have been in trouble." He feels that Barrett can contribute in prison since there are now more educational opportunities in the system and an inmate can obtain a college education and help teach. He indicated on cross examination that simply because someone has accepted Christ as their savior does not in any way absolve them for the actions they took and would not remove the hurt from someone else (R 1669-1677).

Douglas Alexander was previously a corrections officer and came in contact with Barrett when he was arrested. He testified that Barrett is a model inmate. He was always pleasant and did what he was told to do. He could rely on him to help calm difficult situations or assist in better serving other inmates. Barrett is a peace maker. Ever since he has known Barrett, Barrett seemed to be a Christian person. He shared scriptures and prayed with him a couple of times. He indicated that Barrett displayed a positive attitude and was the best inmate in cellblock A, which is a maximum security block (R 1680-1682).

Barrett's father, Joseph Martin Barrett, Sr. testified that Barrett was his second oldest child and the oldest boy in the family. He made his living as a truck driver and was gone, coast-to-coast, until 1986, when he was injured. He was away from home a week to two months at a time, which created many hardships for the family. Barrett always showed a tendency to help the family, without considering himself first. As Barrett grew older he helped in his absence and stepped into his shoes. His son was a very hard worker. He never had trouble getting him to help out as a teenager. Barrett left home with Paula, who was his common-law wife. They had two children of their own. She previously had three children. When Barrett met her the children had no clothes or food. Barrett brought them to his house daily and fed and bathed them. He took care of them even when his wife was around. He was employed constantly, except for a short time after he was discharged from the army. When he moved to Florida he maintained ties with the family. He got an extra job with a

car company doing mechanical work so he could buy a car. He sometimes called three or four times a day to ask how to fix a car when he didn't know what was wrong with it. He never hesitated to come to him for advice or assistance. On cross examination he testified that Barrett knew right from wrong as he was growing because his mother made it very clear. She told him that if he ever did anything to hurt anyone she would call the police herself. He knows that if you do something wrong you get punished for it (R 1685-1691).

Pamela Sue Barrett testified that Barrett is her older brother and has always been there when she needed him. When she was upset he would come to her, put his arm around her and tickle her. He is good hearted and would do anything for anybody. While crying, she testified that he contributed everything to her life as a big brother and she "loves him so much and he loves her." She testified that his best friend, Pudgy committed suicide and it had a bad impact on him. He changed a little after that and was a little quieter, a little more drawn (R 1692-1693).

Tina Barrett, his older sister, testified that she and Barrett did everything together. She considers herself close to him and she knows him better than he thinks she knows him. She testified that he went into the Army and although privates did not make much money, he sent her half of it so that she could stay in college, without anyone asking him to do so. He never asked for the money back. She testified that he is totally unselfish (R 1696-1699).

Eula Mae Barrett, John Barrett's mother, testified that he had always been a good son but he was a follower and people would get him to do things for which he would be spanked. Even when he didn't have money he would bring a little something on Mother's Day or a birthday. He would bring the three children over early in the morning and stay all day until dinner time. They did not have food and he would give them breakfast, lunch and dinner. They smelled so he would give them a bath, but they didn't have anymore clothes. They had been sleeping on rags on the floor. He became a good father to them. He had just been discharged from the army and found a job. He did the best he could for them. They helped get clothes (R 1700-1701). She began crying, stating, "Please, please. Please don't. Please help my son. Don't take my baby's life. He is good, he never (inaudible). He's no threat to anybody. Please help my baby. Please help my baby, he's no threat to anybody. Let me go for him. Please." (R 1701).

Margaret Reed was a chaplain at the jail in Inverness. Every Saturday there was Bible study and a discussion group in the jail. Barrett was able to come every Saturday because he never got in trouble or lost his privilege to come. The other inmates respected him. They called him "the preacher" sometimes. She never had enough material and the others would rush up to get magazines and bibles but Barrett would always stand back and let other people choose what they wanted. Some of the other people would ask her to do things for them but Barrett never tried to take advantage. He stood out as an especially sincere person.

His sincerity about Bible study was very noticeable. He showed a great indepth understanding of the meaning of the Bible and was one of those special students that comes along once in a while (R 1702-1707).

John Barrett took the stand, himself, in the penalty phase and testified that he was in the Army almost three years. In the early part of 1980, he accepted an early discharge which was a general discharge under honorable conditions. During his stint in the Army he became subject to nonjudicial punishment because of a positive urinalysis screen for marijuana. The captain's office restricted him to base, gave him a fine and filled out legal paperwork to go in his 201 file and told him that it should not happen again. He admitted that at the end of his military career he did have a bit of trouble with drinking. He admitted that there was a warrant for his arrest in Ohio because items rented by him and his family were not returned. He was charged with theft. He claimed that the charges were dropped. He testified that he was never convicted of a felony. On cross examination, he elaborated that when you are on a special weapons site you can be called for duty at any time. They were called up and he appeared at the alert intoxicated and got into an argument with the captain. He was at a special weapons site. A court martial was never discussed by Commander Lieutenant Colonel Spearbauer but the captain was extremely upset. The commander recommended that he go ahead and take a discharge under honorable conditions -- which is less than an honorable discharge. He indicated that he was not arrested on the warrants in Ohio until he was also arrested for the murders (R 1708-1712).

In view of Eula Mae Barrett's impassioned penalty phase testimony the state attempted to put on evidence of the impact the murders had upon the families of the victims. The court would not allow such evidence before the jury because this court had not ruled on the issue of victim impact evidence (R 1717). The jury was sent out and the impact evidence proffered (R 1719).

Milton V. Johnson, Jr. was the brother of victim Larry Johnson. He testified that Larry was his only brother and they were close. He saw him on a regular basis. His children had a good relationship with Larry. When Larry moved to Citrus County he would come back to St. Petersburg once a week and take his older boy back up with him. He also took him on business trips -- he made them into camping trips. They had just gone to Minnesota about two weeks before this happened. He testified that the murder affected his life and made him think about things. It immediately had a bad effect upon his oldest son, but then he seemed to get over it, or hid it well. The younger one acted like he couldn't believe it had happened for several days but accepted it before the funeral. He said that it wasn't fair because he wouldn't get to do the things his older brother had done and he was looking forward to doing them (R 1720-1723).

Nadine Johnson, Milton's wife, testified that she knew Larry for seventeen years. Larry never married. They wanted Larry to take the children if something happened to them as he had a good relationship with them. She was counting on Larry to raise them (R 1723-1725).

Peggy Warner was the sister of Robert Hemingway. They were the only two children in the family. They had a close relationship and he was there to support her when she went through two divorces. He took her into his home when she didn't have a job. He was in an automobile accident and was crippled and unable to work and came to live with her for several months until he got his life back together. At the time of his murder, their parents were seventy-five years old. The father does not believe his son was murdered. He freelanced as a tool and die designer until he was told of the killing. He has a heart condition and is now on prozac and staggers around the house. The mother not only lost her son, she also lost her husband. She lost the support of her brother. Part of her retirement has gone to medical bills and burial expenses and the parents are now living with her. The murder emotionally and physically drained her. She testified that Barrett's life should be taken because he took her brother's life and tore the family apart. Her parents' lives have virtually ended and hers went down the drain with them. There is no family to help her and she still has to work (R 1724-1731).

The defense decided not to put their expert Dr. Dee on the stand in the penalty phase. The state expressed a desire to call him in rebuttal as to Barrett's mental state and faculties, his above average IQ, and the fact that there was no brain damage and that he understood the difference between right and wrong. Barrett had indicated to Dr. Dee that he had committed the crime using a dry wall hammer but two months later came up with a story

about Scott Burnside having done it and he indicated that all the victims were there at the same time. The court would not allow the testimony (R 1730-31). The state then proffered the testimony of Dr. Dee.

Dr. Dee testified that he was a doctor of clinical psychology and neuropsychology. He evaluated Barrett. He first spoke with Barrett on May 3, 1991, and later spoke to him a second time on July 25, 1991. On both occasions, Barrett related the circumstances of the offense. In the first interview Barrett told him that he been promised payment by Scott and Dorsey III, to kill JoAnn. His wife was continually urging him to do it and even offered to do it for him because they needed the money. He went to Floral City on August 3, 1990, to kill JoAnn. They were working on the house and he helped. Between the five of them they consumed two cases of beer. He smoked marijuana and drank some vodka. Jerry Lee left to go to the dump and then came back. While he was gone he drank and smoked some more marijuana. He kept getting drunker and drunker. JoAnn had to go to the hospital because her mother had a stroke. Jerry Lee then confided that he was going to ride the gravy train after he conned JoAnn out of the money she was to receive. Roger joked about how he was taking her on materials and labor for the remodeling. Barrett felt that he was under great pressure. He couldn't go back home and tell his wife again that he hadn't committed the crime. He suddenly found that he just shot one. The others arrived and he proceeded to kill them with the dry wall hammer. There was a lot of striking. He left because it

was getting late and he couldn't wait for JoAnn. He came back later, in a state of advanced intoxication, retrieved the murder weapons and disposed of them. The gun belonged to Dorsey. It was A-9. Roger Wilson was the first victim. He beat the other three to death with the dry wall hammer. He couldn't have killed JoAnn, in any event, because he liked her and he just couldn't help it (R 1733-1737).

In the second interview his story changed markedly. He claimed that his job was simply to watch JoAnn and the others. He told Scott and Dorsey, III that he could not actually commit the crime. His involvement was limited to going to the house and if JoAnn Sanders was home, he was to leave the back door open as a signal to Burnside to come in. When JoAnn's mother became ill, he was sufficiently intoxicated so that he forgot to close the door and left it open. He tried to get John Withers to help him in the kidnapping but Withers declined. Withers felt that if they kidnapped her they would have to kidnap someone else and it was too serious and involved. At that time the plan was only to kidnap and not to kill her. Scott offered him a high powered rifle to act as a sniper. He and Withers found various excuses not to use it, either they didn't have the opportunity or it was too dark, because they just couldn't do it. JoAnn had a court hearing coming up and they were beginning to put a great deal of pressure on him. Once again he told them that he could not do it. All he would do was open the back door. When he got there he began drinking. JoAnn left. He forgot to close the door. He had a A-9. Burnside had a A9-1, a more advanced model, which he

had gotten from a drug dealer. Scott came in and immediately shot Roger. Barrett said he picked up all the shell casings but there was one found at the scene. He caught one of the shell casings coming out of the weapon. Jerry arrived, as did two people from next door. Scott was in the corner. One man reached for something in self-defense. Barrett stopped him and told him to kneel. Scott unscrewed the silencer because it wasn't working properly and made too much noise. Barrett implied the silencer was a pipe. Barrett left the room because he couldn't stand to be there and used a skill saw to muffle the sounds but he could still hear Burnside striking the people in the other room. Burnside came out. He took his large bladed utility knife, went in and slit their throats because they were moaning and groaning and he couldn't stand the noise -- they were still alive. From looking at the autopsy, Dr. Dee indicated that he did not think that this description of the crime was very accurate (R 1737-1741).

Dr. Dee further testified that he found no indication of brain damage in Barrett and that he had an IQ of 107, above average, within the average range. He found him competent to stand trial and sane at the time of the offense. Barrett understood the legal and moral difference between right and wrong (R 1742).

The state argued that Dr. Dee's testimony went to the aggravating factors of cold, calculated, premeditated and heinous, atrocious or cruel as it demonstrated that the victims were alive after the beatings and the last act was the cutting of

their throats. The court refused to allow the testimony (R 1743-1744).

The jury recommended life on all murder counts (R 1788). The sentencing judge overrode the jury's decision and sentenced Barrett to death. In a sentencing order the court indicated that it considered all that had preceded in the guilt phase, the penalty phase and the sentencing hearing. The court had not received or considered any confidential reports. The judge found that the murders of Roger Wilson, Jerry Lee Clark, Robert Hemingway and Larry Johnson were committed for pencuniary gain under the plan to kill JoAnn Sanders for hire. All four murders were for the purpose of avoiding a lawful arrest, which was demonstrated by Barrett's statement to Withers and the purchase of an assault-type pistol. The court also found that Barrett had previously been convicted of another capital felony, based on the four contemporaneous murders, as to Wilson, Clark, Hemingway and Johnson. As to Wilson and Clark, the court found that Barrett's actions were cold, calculated and premeditated without any pretense of moral or legal justification as the deaths were the result of a planned killing for hire. The court found that even though the deceased were not the intended victims, their demise was contemplated. Barrett purchased a weapon to accomplish multiple killings and built a silencer as part of this plan. The court found that the capital felonies were also committed to disrupt or hinder the lawful exercise of governmental function and enforcement of laws and the deaths occurred because the equitable distribution portion of the final judgment of the

Eighth Judicial Circuit was about to be effectuated. It was a condition of Barrett's contract to kill JoAnn Sanders by August 8, 1990. Barrett knew the reason for the importance of that date and it motivated his actions. The court did not find as to any victims the aggravating factor of heinous, atrocious or cruel. While Johnson's body had defensive wounds the court felt that the amount of time he suffered had not been shown and the wounds could have been inflicted instantaneously in four or five rapid blows before unconsciousness, which would leave little, if any time, to contemplate death or impending pain. The defensive wounds could have been no more than an instinctive reaction. The court found the statutory mitigating factor that Barrett had no significant history of prior criminal activity. It found that the mitigating circumstance of acting under extreme duress or under substantial domination of another had not been established. There was little evidence to support this other than Barrett's testimony and the testimony of his family that his wife kept the check book. The court felt that the testimony of John Withers and Donald Campbell expressly refuted such a conclusion. The court found that based upon the testimony of two corrections officers, two ministers, and other evidence, that Barrett had a positive potential for rehabilitation and was adaptable to structured life; he has been a model inmate; and a co-defendant received four consecutive life terms for his involvement in these crimes. The court also found that Barrett was a good parent, son and brother; served his country in the military; converted to Christianity and demonstrated a sincere dedication to Christian

principles since his arrest. The court had a problem with the offered mitigating circumstance that he was under the influence of alcohol at the time of the offense. The court noted that while it was undisputed that he was consuming alcohol at the time of the killing, it was also quite clear that this escapade was over a month in planning and there were certainly times in which Barrett was sober and could reflect upon his actions and that the voluntary consumption of alcohol on the date in question may have been to fortify his resolve to complete the despicable act he was hired to do or to bathe his conscience, which was not an excuse for the deeds and was not a mitigating circumstance. The court expressly noted that it placed no reliance on the victim impact evidence proffered outside the presence of the jury and that, likewise, the decision of the court was not based upon anything presented through the proffered testimony of Dr. Dee. The court noted that the jury had been death qualified and it was with that understanding that the court received the jury's advisory opinion. The court noted that it was not its function to be the thirteenth vote of the jury in weighing the aggravating factors against the mitigating circumstances nor to substitute its judgment for that of juries. The court determined, however, that the enormity of the crimes dwarfed everything offered in mitigation. There were four people dead and each one was deliberately killed by John Barrett: one was shot in the back of the head; three others had their heads beat in, two with their faces smashed into the floor; their throats were slashed; and Barrett clearly intended for them to die. Barrett did it for

money and to thwart the court system and carried out his plan over a lengthy period of time and after numerous trips to Floral City. The court found that these men died because Barrett wanted to eliminate witnesses and to avoid arrest. The court found that while it was true Barrett had no prior criminal record, that fact was eclipsed by this endeavor, as was his Christian beliefs. Likewise, the court found that his good character of providing for his family and having served his country could not offset the vileness of the deeds and that his good jail record was miniscule compared to the evil he had unleased in this episode. The court noted that his conduct was by far much more involved in the deaths of these four people than his co-defendant and that Barrett's hand was the hand that held the gun and instrument that smashed their heads and the knife that slit their throats and that his co-defendant's sentence should not lessen the severity of Barrett's sentence. It was the court's clear opinion that the aggravating factors outweighed the mitigating circumstances. The court noted that Barrett's situation was quite analogous to that of William Thomas Zeigler, Jr. Zeigler's sentence of death was upheld, see, Zeigler v. State, 580 So.2d 127 (Fla. 1991), and he was convicted of the murders of four people just like Barrett: the murders were cold, calculated and premedited, for pecuniary gain, committed to avoid lawful arrest, and there was a previous conviction of another capital felony. The court noted that the Zeigler court did additionally find the factor of heinous, atrocious and cruel. The judge indicated that he had found, instead, that the murders were committed to hinder governmental

function. He found Zeigler and Barrett's cases to be quite similar in mitigating circumstances as far as no prior criminal record, a good compassionate character and good prison record but noted that this court affirmed that the evidence in mitigation was miniscule in comparison with the enormity of the crimes committed. The judge indicated that Barrett's crimes were at least as serious as those of Zeigler's and the reasons offered for living no greater. The judge noted that this court had found in the Zeigler case that virtually no reasonable person could differ with the sentence of death and that such a decision should also apply in Barrett's case. The court, therefore, overrode the jury's recommendation of life in prison and imposed a sentence of death upon Barrett, finding that the facts supporting a sentence of death were so clear and convincing that no reasonable people could differ (R 4922-4928).

I. THE TRIAL COURT DID NOT COMMIT REVERSIBLE ERROR BY PREVENTING BARRETT FROM INTRODUCING TAPES OF HIS INTERROGATION INTO EVIDENCE.

Barrett testified that he was present at Mrs. Sanders' house when Scott Burnside and another unidentified person committed the murders. On cross examination the state brought out the fact that he did not state that Burnside had committed these murders in his prior statements to the police. He thereafter sought to introduce the videotaped statement. The judge sustained the state's objection and excluded the evidence as hearsay (R 1438-39).

Barrett argues that the ruling was reversible error and a violation of Article I, Sections 9, 16, and 22 of the Florida Constitution and the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution. Barrett's position is that the state's cross examination implied that his trial testimony was recently fabricated which entitled him to introduce the statements so the jury could determine whether the prior statements were, in fact, inconsistent and, if so, to enable them to determine what weight should be afforded any inconsistency found to exist. He further argues that by cross examining a witness about a prior statement, the adverse party opens the door for presentation of the entire statement. He further claims that he repeatedly and unsuccessfully sought to invoke his right to counsel and to not give any statement at all. His conduct can reasonably be viewed as an unsuccessful assertion of his right to remain silent, or to stop answering questions at any time during

an interrogation, and no adverse inference may be drawn from the exercise of that right. He alleges that the only reason he reinitiated contact with the police on the 10th was because of the unfulfilled promise by the prosecutor and police on the 9th that he would be allowed to communicate with his wife, Paula. He maintains that he told the police that he was present at Mrs. Sanders' house on the day of the murders and clearly contended that someone other than he committed the murders, although he stopped short of naming Burnside as the person who committed the murders. To the extent that his conduct was an invocation of his right to stop answering questions and/or to decline to reveal early-on Burnside's commission of the murders, he contends that fairness dictates that the jury be exposed to the context in which he made the prior statements. He concludes that he was entitled to introduce the video tapes of the interrogation to accurately place the statement before the jury so that they could decide whether an inference of guilt should be drawn from his exercise of his right to cease answering.

The record reflects that the defense did not object when the prosecutor asked Barrett whether he had told Jerry Thompson and Marvin Padgett that Scott Burnside had killed the victims on August 10, 1990 (R 1385). If a question is propounded to a witness that tends to elicit improper testimony, it is the duty of the opposite party to object to and obtain a ruling on his objection. Kersey v. State, 73 Fla. 832, 74 So. 983 (1917). Objections must be made when the testimony is offered, and a party who fails to object timely may not thereafter complain.

Lineberger v. Domino Canning Company, 68 So.2d 357 (Fla. 1953). If improper testimony is given in response to an improper question to which no objection is made, a motion to strike is the recognized mode of removing it. Failure to move to strike an answer results in an abandonment of the objection. Ward v. State, 75 Fla. 756, 79 So. 699 (1918). Any argument that Barrett should not have been made to answer such question because he had exercised his right to remain silent is waived. Such argument would be without persuasive authority in any event. It is well settled that a defendant who takes the stand as a witness on his own behalf occupies the same status as any other witness and all rules applicable to other witnesses are likewise applicable to him. Booker v. State, 397 So.2d 910 (Fla. 1981). It is also well settled that a prosecutor may use illegally obtained evidence to impeach a defendant's trial testimony given on direct examination. Michigan v. Harvey, 110 S.Ct. 1177-78 (1990). The privilege to testify in one's own defense does not include the right to commit perjury. Harris v. New York, 401 U.S. 222, 224-26 (1971). The right to remain silent or to stop answering questions is not implicated. Barrett never told the investigators he wanted the questioning to cease or that he would not talk further. He simply refused to admit to the murders.

The defense later sought to introduce only the video tape of the August 10th statement (R 1438). The trial court properly ruled that such evidence would be hearsay. A trial court should not permit testimony by a defendant as to statements made by him to police officers after a crime relating to his knowledge,

intent and state of mind at the time of the crime when they are self-serving and not part of the res gestae. Watkins v. State, 342 So.2d 1057 (Fla. 1st DCA 1977). In this case the defendant was available to testify as to the circumstances of the August 10th statement and defense counsel was more than happy to have him do so as no objection or motion to strike was made. Barrett fully testified as to reason for his failure to inform the police on August 10th that Scott Burnside had committed the murder. He testified that he knew the police wanted to arrest Burnside for hiring him to kill four people but they were unable to apprehend him and Barrett was, essentially, afraid that harm would be done to his children if he implicated Burnside while he was still at large (R 1386-1387). As the statement of the facts reveals, on August 10th the police suggested that Barrett would not face what he had done and implied that some other person inside of Barrett that he would not recognize had committed the crime. Barrett only agreed that someone else must have done it because it couldn't have been him, as he was not a killer (R 4772-4775). Barrett did not name Burnside as the actual killer in his statement although he had every opportunity to do so. This self-serving statement would not have explained Barrett's prior refusal to implicate Burnside and would not even have been consistent with his trial testimony that he was afraid of Burnside. This statement reveals that Barrett did not know who did it if, indeed, someone else had done it. Since Barrett had no right to commit perjury had he introduced the August 10th statement the state should have been permitted to further

question him about the August 9th statement in which he implicated himself in the crime, although he refused to admit to the actual murders except speaking through a third person, and implicated Burnside as only one of the contractors and the person who had destroyed the evidence after the crime had been committed.

If there was error it was harmless under State v. Diguilio, 491 So.2d 1129 (Fla. 1986), since Barrett fully explained the reason why he had not identified Burnside as the killer prior to the time of trial and his August 10th statement would only have demonstrated to the jury that Barrett probably conceived of the idea to name someone else as the killer as a result of actual police questioning.

II. BARRETT WAS NOT DENIED A FAIR TRIAL AND DUE PROCESS IN VIOLATION OF ARTICLE 1, SECTIONS 2, 9, 16 AND 22 OF THE FLORIDA CONSTITUTION AND THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION BY VIRTUE OF ANY DISCOVERY VIOLATION.

Barrett testified that Scott Burnside killed Roger Wilson, and with the help of another unidentified person, most likely killed the other three people who entered the house while he remained outside. Earlier, a fingerprint expert presented by the state testified on cross-examination that he had not compared Burnside's fingerprints to the prints found at the scene (R 898). After the defense rested, the state recalled the first fingerprint expert. He testified that after his earlier testimony the state gave him Burnside's prints, that he had compared those prints with those recovered at the crime scene, and that none of Burnside's prints matched (R 1450-52). The court ruled that the discovery objection was untimely (R 1461). Barrett argues that the ruling was erroneous and that the court's failure to conduct an adequate Richardson v. State, 246 So.2d 771 (Fla. 1971), inquiry constitutes per se reversible error.

The defense did not request a Richardson inquiry until another witness, JoAnn Sanders, had testified (R 1456). It is clear that where an objection is made to the testimony of a witness offered on direct examination and the complaining party, afterward, on cross examination of such witness, causes such evidence to be repeated, and develops it by bringing out further details of the transaction, the original objection is considered abandoned. Killingsworth v. State, 90 Fla. 299, 105 So. 834

(1925). A failure to object at trial contemporaneously with the admission of contested evidence is a waiver of right of appellate review of that issue. DeLuca v. State, 384 So.2d 212 (Fla. 4th DCA 1980). At the time of the testimony, the defense did not object, but inquired as to the circumstances of the fingerprint comparison on cross examination. After, defense counsel only moved for mistrial which was denied (R 1453). It was not until after the entire testimony of a subsequent witness had been completed that the idea of asking for a Richardson inquiry occurred to defense counsel (R 1456). Clearly this issue has been waived for appeal.

Although appellant claims that per se reversible error has occurred because the trial court did not conduct an adequate Richardson hearing, the record reflects otherwise. The court specifically took a fifteen minute break in order to take care of matters outside the presence of the jury (R 1456). When the defense belatedly requested such a hearing, the court did entertain argument. Although the judge indicated that he thought the request was untimely he listened to the arguments of counsel stating, "...let's get to the point of the material, as far as -- their alleging..." (R 1458). The judge then made full inquiry (R 1458-1461). That the judge ultimately determined that his initial position that the request was untimely was correct does not mean that he failed to hold a Richardson hearing. This is a case where the trial judge did hold a Richardson hearing and found no discovery violation requiring further inquiry, even though he did not incant those words. Cf. Heath v. State, 594 So.2d 332 (Fla. 4th DCA 1992).

The defense did not ask for a recess to examine the prints or present them to an expert even though such would have been unopposed by the state (R 1459-1461). Defense counsel also failed to take the opportunity to demonstrate possible prejudice to the defendant and cannot now complain of a Richardson violation. Henry v. State, 519 So.2d 84, 86 (Fla. 4th DCA 1988). Burnside's presence at the house was not at all an issue in the case until Barrett made it so by his testimony. The state could not timely have presented the defense with an opportunity to look at the prints since Lieutenant Strickland had only received them the night before for examination and the state did not have the evidence prior to the time of the witness testimony (R 1458). Thus, it was not the withholding of the information, but the discovery of it, which could possibly have created a problem for defense counsel. The defense presented absolutely no evidence that its preparation would have been different had the undisclosed evidence been available before trial. Lack of prejudice is clearly apparent on the record. See, Smith v. State, 499 So.2d 912 (Fla. 1st DCA 1986). It is clear that counsel would not have changed from a defense of innocence to some other defense in the face of a client's claim of innocence and where, as here, such defense was not diminished. Testimony wss only elicited as to the comparison with prints found on the beer cans. Barrett, himself, testified that he drank the Bud Dry and while Scott was in the house he did not drink beer (R 1367-1369). There was no reason for the jury to believe that Scott's prints would have been found in the house any more than Barrett's even if they believed that Scott was the murderer.

III. THE TRIAL COURT PROPERLY OVERRODE THE JURY'S RECOMMENDATION OF SENTENCES OF LIFE IMPRISONMENT AND SENTENCED BARRETT TO DEATH.

Barrett contends that Judge Thurman erroneously overrode the jury recommendation because: 1) pursuant to Tedder v. State, 322 So.2d 908 (Fla. 1975), the evidence must be reviewed in a light most favorable to the recommendation to determine which aggravating factors were proved to exist beyond a reasonable doubt and which mitigating considerations could reasonably have been found to exist by the jury and the aggravating and mitigating considerations must be weighed to determine whether the life recommendation was reasonable 2) the jury could have reasonably concluded that the state failed to prove beyond a reasonable doubt that several of those factors applied to Barrett 3) several of the aggravating factors overlapped and the jury would not assess weight to those factors that pertain to the same aspect of the crime; murder for pecuniary gain, a cold, calculated and premeditated murder without pretense of moral or legal justification, a murder to disrupt or hinder the lawful exercise of a governmental function or enforcement of laws, and a murder committed to avoid lawful arrest 4) co-defendant Dorsey Sanders' life sentences for the same crimes were entitled to weight in mitigation because the jury could reasonably have concluded that Barrett was not the person who did the actual killings and that, instead, Burnside committed the killings with the help of someone other than Barrett 5) the trial court's unauthorized factual determination that Barrett was the actual

killer is a deviation from its role under Tedder 6) the fact that the jury could reasonably have concluded that Barrett was not the actual murderer constitutes a compelling distinction between this case and Zeigler v. State, 580 So.2d 127 (Fla. 1991), upon which the trial court relied 7) intoxication was not a mitigating factor in Zeigler 8) the rejection of intoxication as a mitigating factor in this case was arbitrary and erroneous based on idle speculation that Barrett's drinking was to fortify his resolve to commit the murders or bathe his conscience and the evidence reflects he drank at least a twelve-pack of beers before the murder; his drinking was a result of pressure being put on him to commit the murders and escalated in June and became horrible in July; and that when Barrett attended classes he was a good student and sober but when he asked how to construct a silencer he was upset and had been drinking; the jury could have reasonably concluded that Barrett had been drinking all day, did not think anything would happen because Mrs. Sanders had left and because of his intoxication did not know what to do when Burnside and another person showed up at Sanders' house and began killing people 9) the jury could have concluded that Burnside was the triggerman and dominant figure and that Barrett and the others involved were far less culpable 10) the jury could have reasonably convicted Barrett of the first-degree murders based on a principal theory and in doing so considered his lack of intent that four people be killed 11) the trial judge found that Barrett had no significant history of prior criminal activity and such was a reasonable basis for the jury to recommend life sentences

and such factor suggests that the criminal conduct was not in true character for Barrett and also indicates that he has real potential to adapt to prison life and/or to be rehabilitated 12) the jury could have based its life recommendation on the fact that Barrett was a good father and provider and had a history of being gainfully employed 13) though the judge may be at liberty to disregard such evidence as a mitigating consideration if the jury recommends the death penalty, the jury here could have found mitigating worth in Barrett's patriotism, service, and his explanation of why he received a general discharge and his continuing allegiance to his country by declining to elaborate on what type of duties he performed while stationed overseas because such information was classified.

In reviewing a trial court's override of a jury's recommendation of a sentence of life imprisonment, this court must decide, after considering the totality of the circumstances, that the life recommendation is reasonable; if it is not, the death sentence should be vacated but, if it is not, the death sentence should be affirmed. Cooper v. State, 581 So.2d 49 (1991). The jury's recommendation of life imprisonment in the present case was unreasonable.

The sentencing order reflects that the judge analyzed each aggravating circumstance and determined which ones were applicable and proven beyond a reasonable doubt (R 4923-4924). The judge also looked at the offered mitigation to determine which mitigating considerations were proven and could reasonably have been found to exist by the jury (R 4924-4925). Contrary to

Barrett's assertion, the aggravating and mitigating circumstances should not have been weighed to determine if the life recommendation was reasonable. The issue, rather, is whether no reasonable person could differ on what penalty should be imposed. See, Ferry v. State, 507 So.2d 1373, 1377 (Fla. 1987). No reasonable person could be said to differ where, as here, evidence of mitigation is minuscule in comparison to the enormity of the crimes committed. See, Zeigler v. State, 580 So.2d 127 (Fla. 1991).

Appellee has argued elsewhere in this brief the applicability of the aggravating factors and since appellant has not specifically attacked any new aggravating factors appellee will not rehash arguments made in other points.

The aggravating factors do not overlap. The sentencing court's findings, as aggravating circumstances, that the murders of Wilson and Clark were cold, calculated and premeditated and that the murders of Wilson, Clark, Hemingway and Johnson were committed for pecuniary gain were not based on the same essential feature of the contract killings with which Barrett was charged or of Barrett's character, and did not improperly double up aggravating circumstances based on the same facts, since Barrett was motivated by a desire for pecuniary gain and the murders of Wilson and Clark were planned and carried out in a premeditated manner without any pretense of moral or legal justification. See, Echols v. State, 484 So.2d 568 (Fla. 1985). Striking the pecuniary gain factor as to Wilson and Clark would still leave this factor present as to Hemingway and Johnson, in any event,

and would make no appreciable difference in sentencing. The pecuniary gain factor is not in conflict with any other factor. The CCP factor is not in conflict with the factor of disrupting or hindering the lawful exercise of a governmental function or the factor that the murder was committed to avoid lawful arrest as evidence or comments intended to show a calculated plan to execute all witnesses could also support the aggravating factors of heinous, atrocious and cruel and cold, calculated and premeditated. Garcia v. State, 492 So.2d 360 (Fla. 1986). The finding of the aggravating factors that Barrett committed the crimes for both the purposes of avoiding a lawful arrest and to disrupt or hinder law enforcement did not constitute an impermissible doubling in that both factors were not based on the same essential feature of the crimes. The instant case fits within the ambit of Provenzano v. State, 497 So.2d 1177 (Fla. 1986), as far as the validity of the aggravating factors of disrupt and hinder lawful exercise of government function and to avoid lawful arrest. Provenzano was arrested on a disorderly conduct charge and it became an obsession with him. He followed and threatened to kill the arresting officer. On the day of his trial he shot Bailiff Dalton in the face as he attempted to search him and also wounded Bailiff Parker. Provenzano killed Bailiff Wilkerson in the hallway and barricaded himself in a room until he was apprehended. This court determined that the aggravating circumstance that the murder was committed to disrupt or hinder the lawful exercise of a governmental function was appropriate. Provenzano had heavily armed himself and expressed

an intent to harm the two policemen. This court held that he intended to disrupt his trial, thus hindering one of the most basic government functions. The court found that this factor was not improperly doubled with the finding that the murder was committed to avoid lawful arrest because separate factual circumstances supported each finding. The fact that Provenzano murdered Wilkerson to avoid his lawful arrest for the attempted murder of Dalton supported the finding that the murder was committed to avoid lawful arrest. 497 So.2d at 1184. Similarly, Barrett clearly intended to hinder the execution of a final judgment by accepting a contract which, it was believed, would stop the transfer of money as part of an equitable distribution, by eliminating JoAnn Sanders as a payee. To execute this plan it became necessary to kill others first. Thus, Barrett clearly sought to hinder a basic government function. It is not necessary to transfer his intent toward JoAnn to the four actual victims for Barrett had the same intent toward them. The goal was to stop the transfer of Doc Sanders' money and they stood in the way as much as JoAnn since they were her constant companions to the extent that she could not be killed without killing them also. This factor was not improperly doubled with the finding that the murder was committed to avoid lawful arrest. Clark, Wilson, Hemingway and Johnson were murdered to avoid a lawful arrest for the subsequent murder of JoAnn. That she was ultimately not killed does not obliterate Barrett's clear intent not to be executed or languish in jail for her contemplated murder. All that need be examined in regard to "doubling" is

Barrett's actual intent. A body count should not be undertaken. An additional victim as in Provenzano is not necessary.

If it could be said that there was an improper doubling, any such error is clearly harmless. Under the rationale of Provenzano, Barrett could clearly be said to have planned the murders of Wilson and Clark to hinder the lawful exercise of a governmental function by stopping the effectuation of the terms of a final judgment. He knew they would be with JoAnn and bought a multi-round pistol for the clear purpose of killing more than one person. Wilson and Clark were as much impediments to Barrett's plan as Bailiff Dalton was to Provenzano's plan to disrupt his trial. Bailiff Dalton was not a legal party to Provenzano's trial. It was not necessary for Provenzano to shoot the judge or prosecutor to find this factor. Thus, it was not necessary for Barrett to shoot JoAnn herself. All that is required is the victim be a pawn in the plan to disrupt or hinder a governmental function. The disrupt/hinder factor was clearly applicable to the murders of Wilson and Clark. Again, using Provenzano as guidance, it could be said that the murders of Johnson and Hemingway were committed to avoid lawful arrest for the murders of Wilson and Clark since they were not contemplated in the original plan. Thus, the disrupt/hinder and avoid arrest factors were still proper even if they shouldn't have been applied across the board to all four victims. The sentencing outcome would be no different upon reweighing or applying a harmless error analysis. "While there may well be some overlap of these two factors it is not a complete doubling and, in any

event, the sentencing process is not a mere mathematical exercise of counting up aggravating circumstances. Sufficient distinct facts support and make relevant both these aggravating circumstances." Suarez v. State, 481 So.2d 1201, 1209 (Fla. 1985).

The jury could hardly have concluded that Burnside committed the killings with the help of someone other than Barrett. Barrett would then have been placed in the same position as John Withers and the jury would not have convicted him in the first place. By his own admission to Donald Campbell, Barrett committed the murders. No physical evidence placed Burnside at the scene. It is permissible to impose different sentences on capital codefendants whose various degrees of participation and culpability are different from one another. E.g. Salvatore v. State, 366 So.2d 745 (Fla. 1979). There is no prohibition on imposing a death sentence even when a codefendant who procured the murders and an accomplice in carrying them out receive life sentences. Cf. Hoffman v. State, 474 So.2d 1178 (Fla. 1985). The sentencing court found that Barrett was, by far, much more involved in the deaths of the four people than his codefendant, stating "Yours was the hand that held the gun and instrument that smashed the heads and knife that slit their throats. Your co-defendant's sentence should not lessen the severity of your sentence." (R 4926). Dorsey Sanders never even bargained for the deaths of these four men. These facts cannot have escaped the jury. There simply was no basis to accord the fact that Dorsey Sanders received a life sentence any weight in mitigation.

Barrett argues that he was not the actual killer but under his theory neither the sentencing court nor this court can decide the question or there will be a deviation from the role of the courts under Tedder. Tedder hardly mandates that this court accept as true a fact not established or proven below. There was no unauthorized factual determination. The sentencing court had every right to examine Barrett's actions to determine whether his sentence should be mitigated in view of the sentence imposed on Sanders. How else could the issue be decided? Barrett simply quarrels with the result.

The trial court did not err in refusing to find intoxication as a mitigating circumstance. Although Barrett did bring a twelve-pack to JoAnn's house, he put it in the refrigerator when it started getting warm and drank some of the beer that was at the house (R 441). Barrett's fingerprints were only found on one can of Bud Dry (R 887-897). Barrett was able to help with construction (R 419). There is no evidence that Barrett was actually drunk at the time of the murders or that the alcohol impaired his reasoning. Cf. Koon v. State, 513 So.2d 1253, 1257 (Fla. 1987). On the contrary, the evidence reflected a carefully planned confrontation with the victims. Barrett bought an assault pistol, fashioned a silencer and facilitated his entry by feigning car trouble and established a relationship of sorts with the intended victims and glad-handed them with a twelve-pack. No person in an intoxicated state could have so successfully dispatched four adult men without the slightest glitch. The very fact that he changed weapons reflects a steady

focus on his pursuit. An inebriate would probably have used the gun without the silencer or have simply left. Barrett made efforts at concealment as well, stopping the flow of blood with a towel and stuffing a body in the closet so that further contemplated murders could be expeditiously carried out. Barrett's actions were too reflective and stealthy to have been contemplated by the maudlin intoxicate he now attempts to portray himself as.

Barrett's admissions to Campbell belie the argument that the sentencing court should have found in mitigation in sentencing him for murder that he was only an accomplice to the triggerman Burnside. See, Teffeteller v. State, 439 So.2d 840 (Fla. 1983).

Barrett's claim that the jury could have reasonably convicted him of the first-degree murders based on a principal theory and in doing so considered his lack of intent that four people be killed is without merit. This claim of lack of intent is evidently based on Burnside again being the triggerman, of which there is no evidence and Barrett's supposed fear of Burnside. Again, Barrett's admission to having actually committed the murders to Campbell is ignored. Barrett cites no authority for the proposition that coercion causing or contributing to a murder, is or can be a per se bar to imposition of the death penalty, even assuming Burnside committed the murders. Tison v. Arizona, 481 U.S. 137 (1987), does not support that proposition, as it refines the rule of Enmund v. Florida, 458 U.S. 782 (1982), to provide that the Eighth Amendment does

not prohibit the imposition of the death penalty on one who does the killing, intends the killing, participates in the killing or demonstrates a reckless indifference to the welfare of the victims. The Tison rationale would permit the imposition of the death penalty on Barrett even if Burnside committed the actual murders. The jury could hardly have found a lack of intent that four people be killed. Barrett bought a multi-round pistol which would be extremely odd if Burnside was to do the deed. Barrett was hardly a minor participant in the crime. He was a major actor in crimes in which he knew a death was likely to occur.

Every criminal chooses his first crime. In view of the carnage that was before the jury it would hardly have recommended life because Barrett had not been convicted of any crime prior to these four quasi-contract murders. The lack of a prior criminal record was certainly eclipsed by this endeavor as the trial court properly found. The trial court properly rejected the notion that these brutal contract murders were consistent with a nonviolent character. Cf. Echols v. State, 484 So.2d 568, 576 (Fla. 1985).

"One of the unfortunate side effects of admitting any and all nonstatutory mitigating evidence is that it encourages the introduction of evidence which, in the context of the case, carries very little weight." Echols v. State, 484 So.2d 568, 576 (Fla. 1985). The remaining nonstatutory mitigation that Barrett was a Christian, a model prisoner, a good father and provider and had served his country and had a continuing allegiance to it was properly accorded little weight. Much of

this offered mitigation was even contradicted by other evidence. Barrett's statement to Campbell was more than a confession of guilt. Barrett bragged that he was a "Golden Boy" and had more stuff now than he had ever had in his life and by virtue of his criminal activity, his old lady was wearing diamond rings and his kids were wearing British Knight shoes (R 1117). He coldly recalled how this fortune befell him: "I was contracted to go do this one, I went there to do one, the other ones come in and I had to do those, too." (R 1107-1110). Such statements reflect the offered mitigation as little more than a surface character created for the penalty phase. Caring about one's children is not the equivalent of being a good father. It is not likely the children would view Barrett as a good father and provider when they learn as adults that the athletic shoes they wore were the product of four brutal murders. Barrett received less than an honorable discharge so he did not even serve his country as well as the average man (R 1708-1712). His proclaimed allegiance to God and Country is virtually worthless. Beliefs that are not acted upon have no value in themselves. The trial court properly found that his lack of a prior criminal record, Christian beliefs, good character of providing for his family, having served his country and his good jail record was eclipsed by this endeavor, could not set off the vileness of his deeds and was minuscule compared to the evil he unleashed (R 4926).

There was no testimony that these murders were committed while Barrett was under the influence of extreme mental or emotional disturbance or that his capacity to appreciate the

criminality of his conduct or to conform his conduct to the requirements of the law was substantially impaired. With five valid aggravating circumstances as to Wilson and Clark and four valid aggravating circumstances as to Johnson and Hemingway balanced against minimal mitigating circumstances and no mental mitigating evidence, the override of the jury recommendation with respect to these killings was legally justified. Any alleged concern that the jury may have been recognizing some disparate treatment accorded Sanders is unwarranted. Sanders had a quarrel with his ex-wife. He never bargained for the deaths of these men.

While a jury's recommendation of life imprisonment must be given great weight, Florida law requires the judge to make the final decision to ensure that there is a reasoned judgment. Reilly v. State, 17 F.L.W. S321, 322 (Fla. May 28, 1992) (GRIMES, J. concurring in judgment of guilt but dissenting from the reduction of the sentence to life imprisonment). It is evident from the sentencing order that the trial judge in this case did not lightly undertake this responsibility. It seems obvious that the jurors simply felt sorry for Barrett based, most likely, on the impassioned plea of his mother to "take her instead" and not to "take her baby's life." (R 1701). His sister also cried while on the stand in the penalty phase and testified she "loves him so much and he loves her" (R 1692-1693). The jury bore witness to an emotional Barrett clan. The state was at a disadvantage because the jury was not permitted to view the other side of the coin: the havoc Barrett wreaked on the lives of the victims'

families. The jury never knew how much Larry Johnson would be missed by his nephews (R 1721-1723) or how the death of Robert Hemingway broke the hearts of his failing elderly parents and left his sister financially strapped with the sole responsibility of caring for those parents (R 1727-1728). Such evidence would have been a legitimate means of informing the sentencer about the specific harm caused by the defendant's acts and should have been considered by the jury and judge under Payne v. Tennessee, 111 S.Ct. 2597 (1991), and Hodges v. State, 595 So.2d 929 (Fla. 1992), in which this court held that evidence regarding the impact of a victim's death on the victim's family was admissible so long as the victim's family members did not characterize or give an opinion about the crime, defendant or appropriate sentence. 595 So.2d at 933. Instead, the judge was presented with a jury recommendation based solely on sympathy, which, he could not, in good conscience follow, even not crediting the Payne evidence. Sympathy for Barrett was not a reasonable basis for the recommendation of life imprisonment. This case falls squarely within the ambit of Zeigler v. State, 580 So.2d 127 (Fla. 1991), in which the death penalty was imposed. Zeigler murdered his wife to obtain insurance proceeds and murdered three other people in an elaborate plan to cover up his guilt. Barrett, likewise, murdered these four men in an effort to escape criminal responsibility for the contemplated murder of JoAnn Sanders. In Zeigler, this court found the evidence of mitigation to be minuscule. Zeigler had attempted to demonstrate a good compassionate character but the court found that the testimony at

best established his character to be no more good or compassionate than society expects of the average individual. Such is also the case with Barrett. As this court indicated in Zeigler, "A judge's override is not improper simply because a defendant can point to some evidence established in mitigation." 580 So.2d at 131. The sentencing court in this case properly found that the evidence of mitigation was minuscule in comparison with the enormity of the crimes committed. This is simply not a case where a defendant has presented overwhelming evidence in mitigation that provided a reasonable bases for the jury's recommendations. Cf. Ferry v. State, 507 So.2d 1373 (Fla. 1987), and Carter v. State, 560 So.2d 1166 (Fla. 1990). In contrast, the potential mitigating evidence presented in the instant case is of little weight and provides no basis for the jury's recommendation. Cf. Coleman v. State, 17 F.L.W. S375 (Fla. June 25, 1992); Robinson v. State, 17 F.L.W. S389 (Fla. June 25, 1992); Thompson v. State, 553 So.2d 153 (Fla. 1989); Bolender v. State, 422 So.2d 833, 837 (Fla. 1982); White v. State, 403 So.2d 331 (Fla. 1981).

IV. THE TRIAL COURT PROPERLY FOUND THAT TWO MURDERS WERE COMMITTED IN A COLD, CALCULATED AND PREMEDITATED FASHION WITHOUT PRETENSE OF MORAL OR LEGAL JUSTIFICATION.

There was no pretense of moral or legal justification for the two murders. Barrett's defense that he reluctantly participated in Burnside's plan because of threats to his wife and children is the only pretense. Barrett relished his deeds and described himself as a "Golden Boy" (R 1107-1110). He single-handedly dispatched four adult men yet this court is asked to conclude that he was in dread of smaller Scott Burnside (R 1443-1444). If any threats were directed at Barrett he certainly had reason to doubt they would be carried out. John Withers also had a family. Barrett knew that Withers had backed out of the plan with no repercussions and Barrett could have done so, himself (R 1367-1369). His testimony that he was protecting Paula is particularly suspect since he accused her, at the same time, of having a relationship with Burnside and being present at the time of the murders [7] (R 1335; 1313-1318; 1332-1333). Barrett borrowed money to allegedly pay off the loan to Sanders and Burnside and could simply have used that money to remove his children from the state and any danger (R 1286-1287). Barrett's version is not only contradicted by competent evidence it is preposterous. This court is presented with only the incongruous persona of a man too timid to resist the commands of others, including his controlling wife, who could, nevertheless,

[7] Barrett also fails to explain why such a seemingly hen-pecked husband controlled by his stronger weight-lifting wife would feel that she needed protection.

fearlessly slay four adult men in one murderous marathon to protect the wife he portrayed at trial as veritable puppetmaster and possible murderess and the children he could easily have put on a bus to Ohio, in lieu of going there himself and hiding in a corn field.

It is simply not enough, pursuant to Banda v. State, 536 So.2d 221 (Fla. 1988), to raise a claim of justification or excuse; it must actually rebut the cold and calculating nature of the homicide and such claim must be supported by competent proof.

V. THE FINDING THAT THE MURDERS WERE COMMITTED FOR THE PURPOSE OF AVOIDING A LAWFUL ARREST IS SUPPORTED BY SUBSTANTIAL COMPETENT EVIDENCE.

The trial court properly concluded that the murders were committed for the purpose of avoiding a lawful arrest. This factor may be proved by circumstantial evidence from which the motive for the murder may be inferred, without direct evidence of the offender's thought processes. Swafford v. State, 533 So.2d 270, 276 n.6 (Fla. 1988). There is no evidence that Barrett "panicked." Cf. Perry v. State, 522 So.2d 817 (Fla. 1988). The evidence reflects a calculated plan to execute witnesses by a defendant with the training to carry it out. By his own admission, Barrett had surveilled JoAnn Sanders and would have known she was in the constant company of Jerry Lee Clark and Roger Wilson.[8] He expressed an intent to harm more than just one person to his former teacher (R 1033). He purchased a multi-round assault pistol (R 1009-1010). He fashioned a silencer for it (R 1078-1082). He had also previously expressed an intent to John Withers to kill JoAnn at a time when Clark and Wilson were with her (R 952-953).[9] See, also, Garcia v. State, 492 So.2d 360 (Fla. 1986). It is clear that the dominant motive for the murders was the elimination of witnesses who could place Barrett at the murder scene and identify him. Barrett admitted to

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[8] This is not a case where an unexpected witness simply appeared and was murdered for an unknown motive which could include self-defense. These witnesses were known to the defendant; their presence at the time of the murder anticipated; and preparations made for their speedy dispatch.

[9] This is obviously the "statement to Withers" that the trial court was referring to in its sentencing order.

Campbell that he had killed the four men and no evidence was presented connecting Burnside to the murder scene (R 1107-1119).

Even if this aggravator were struck, there is no reasonable likelihood that the trial court would conclude that the mitigating evidence outweighed the remaining aggravators. Any error was harmless. Coleman v. State, 17 F.L.W. S375, S377 (Fla. June 25, 1992); Holton v. State, 573 So.2d 284 (Fla. 1990).

VI. THE FINDING THAT THE MURDERS WERE COMMITTED TO DISRUPT OR HINDER THE LAWFUL EXERCISE OF A GOVERNMENTAL FUNCTION AND ENFORCEMENT OF LAWS IS SUPPORTED BY SUBSTANTIAL COMPETENT EVIDENCE.

Barrett takes exception with the finding in aggravation that the murders were committed to disrupt or hinder the lawful exercise of a governmental function and enforcement of laws because 1) JoAnn Sanders was not killed 2) the deaths of the four men were not intended to interfere with a governmental function or prevent the enforcement of laws 3) the jury concluded that Barrett's primary motivation for participating in the plan was to protect himself and his family 4) to apply this factor the state must prove that the primary or dominant motive was to interfere with the function of government or prevent the enforcement of laws where the victim is not a law enforcement officer or participant in a trial or administrative action 5) the motives of Doc and Burnside should not be automatically imputed to Barrett and 6) the evidence is legally insufficient to support this aggravating factor and it was error for the trial judge to justify imposition of the death penalty on the basis of this factor.

It is clear that had JoAnn Sanders returned she would have been killed. Had her death not been intended that night there would have been on need to kill those close to her so they would not reveal Barrett's presence at the crime scene or possibly identify him. The very purpose of her death was to prevent the effectuation of the terms of a final judgment. It is not

necessary that the goal actually be achieved. Section 921.141(g) Florida Statutes (1991) speaks in terms of intent: "the capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws." (Emphasis added). It does not require that the capital felony actually result in disruption or hindrance of a governmental function or exercise of a law. The fact that JoAnn wasn't killed in no way lessens Barrett's intent to interfere with the effectuation of the terms of a final judgment.

The deaths of the four men became necessary to prevent the execution of a final judgment. They were more than simply witnesses. Their presence with JoAnn was constant. The clock was running. Payment was to be made forthwith unless JoAnn died. Had the clock not been running a more appropriate time could have been chosen in which JoAnn could simply have been killed after being cornered alone. But there was no time left. It was an "all of them or none of them" situation. They stood in the way of Barrett's goal. To achieve his goal he bought an assault pistol which would shoot fifteen to thirty rounds. As the number of targeted victims grew so too was the means of killing aggrandized in this murder for hire scheme. If the deaths of the four men became necessary in order to actually interfere with the effectuation of the final judgment it can hardly be said that they were not killed with an intent to interfere.

The jury could hardly have concluded that Barrett's primary motivation for participating in the plan was to protect himself and his family. Barrett had no problem protecting himself and

was able to quickly dispatch four adult men single-handedly. The jury could hardly have envisioned him cowering in the face of threats by smaller Scott Burnside or older Doc Sanders. He claimed he was able to borrow money to pay off the debt. He could have used the money, instead, to leave. He bragged to Donald Campbell about his worldly possessions and described himself as a Golden Boy. He hardly had to protect his wife Paula when she was portrayed by the defense as a weight-lifter, stronger than Barrett, who was willing to commit the crime herself.

Barrett cites no authority in support of his argument that the state must prove that the primary or dominant motive was to interfere with the function of government or prevent the enforcement of laws where the victim is not a law enforcement officer or participant in a trial or administrative action. Witnesses provide cause for an arrest; officers effectuate an arrest. No one else need be killed to avoid an arrest. If the victim is not a law enforcement officer then it stands to reason that a primary motive to eliminate a witness must be shown. But there are many ways to interfere with the functions of government or to prevent the enforcement of laws. There are as many actors as there are ways. In Provenzano v. State, 497 So.2d 1177, 1183 (Fla. 1986), this court described a trial as "one of the most basic government functions." A final judgment is the fruit of that most basic function and is not self-effectuating. Tampering with its effectuation is clearly interfering with a government function. For six thousand dollars Barrett agreed to step into

the shoes of Doc Sanders. There was a common goal. If JoAnn could not collect under the judgment, Barrett would receive money and Doc would be able to keep his money. Barrett did not have the same motive as Doc but he made his goal his own.

The evidence is legally sufficient to support this aggravating factor. Barrett simply contracted to kill JoAnn Sanders by August 8, 1990, with the goal of hindering a government function in order to be paid by Doc Sanders and such killing could not be carried out and the goal accomplished without other necessary murders.

VII. THE TRIAL COURT PROPERLY DENIED BARRETT'S MOTION TO DECLARE FLORIDA'S DEATH PENALTY STATUTES UNCONSTITUTIONAL ON THEIR FACE AND AS APPLIED.

Barrett contends that the statutory aggravating factors as written are unconstitutionally vague and overbroad. This court has rejected the premise that Florida's especially heinous, atrocious and cruel statutory aggravating factor is unconstitutionally vague based on Maynard v. Cartwright, 486 U.S. 356 (1988), because the working definition of the terms set forth in the HAC factor are provided by this court through a limiting construction of that factor. Barrett contends, however, that this court does not constitutionally have the power to provide definitions of the statutory aggravating factors as pursuant to Article III, Florida Constitution (1976), the Florida Legislature is charged with the responsibility of passing substantive laws and this court cannot promulgate substantive law in violation of the separation of powers under Article II, Section 3 of the Florida Constitution. Thus, the limiting definitions provided by this court in State v. Dixon, 283 So.2d 1 (Fla. 1973), and subsequent cases cannot be considered. Barrett cites Chiles v. Children A,B,C,D,E, and F, etc., 589 So.2d 260 (Fla. 1991), in support of his argument that Section 921.141, Florida Statutes (1989), must be declared unconstitutionally vague and an impermissible delegation of authority to this court to substantively define the operative terms of the statute. Barrett claims that the factors listed in that statute are open windows through which unlimited facts may be put before the sentencer to

achieve a death sentence in violation of equal protection and due process under the Eighth and Fourteenth Amendments, Article I, Section 17 of the Florida Constitution and the holding in Furman v. Georgia, 408 U.S. 238 (1972). Barrett complains that this court has permitted the state to establish the full details of a defendant's prior conviction for a violent felony so that weight can be accorded the factor while at the same time recognizing that such testimony is presumptively prejudicial. He contends that this rationale applies to other statutory aggravating factors. He concludes that because the statutory aggravating factors fail to adequately channel the sentencer's discretion in imposing the death penalty, the factors are unconstitutionally vague and overbroad in violation of the Eighth and Fourteenth Amendments to the United States Constitution and Article I, Sections 9 and 17 of the Florida Constitution.

Nowhere below did Barrett ever argue that this court does not constitutionally have the power to provide limiting definitions of all the statutory aggravating factors, (R 3334-3342; 5213-5215) rather Barrett simply attacked the especially heinous, atrocious or cruel aggravating circumstance as being vague, overbroad, arbitrary and capricious on its face and as applied (R 3334). This issue should be deemed to be waived. An appellate court should not reverse a trial court on the basis of facts or arguments which were not presented to the trial court and are not part of the record on appeal, see, Patterson v. Weathers, 476 So.2d 1294 (Fla. 5th DCA 1985), or consider a question of constitutionality that has not been raised by the

pleadings. Ellis v. State, 74 Fla. 215, 76 So. 698 (1917). In any event, the separation of governmental powers into legislative, executive, and judicial is abstract and general, and is intended for practical purposes. State v. Coast Line Railroad Company, 56 Fla. 617, 47 So. 969 (1908). There has been no complete and definite designation of all the particular powers that appertain to each of the several branches, and perhaps there can be no absolute and complete separation of all the powers of a practical government. 10 Fla.Jur.2d., Constitutional Law §138. There are areas in which executive, legislative, and judicial powers overlap. State ex. rel. Caldwell v. Lee, 157 Fla. 773, 27 So.2d 84 (1946). Although the Florida Constitution defines three separate branches of power, there is no attempt to compartmentalize them. Petition of Florida State Bar Assoc. etc., 155 Fla. 710, 21 So.2d 605 (1945). The fact that one department is clothed with inherent power does not necessarily mean that all others are excluded. The powers of one department of government have always depended on or have been aided in some way by those of another. Id. Generally, the legislature is the only branch of government authorized and empowered to make laws. Foley v. State, 50 So.2d 179 (Fla. 1951). Generally speaking, the legislative function is to prescribe rules for the control of others as distinguished from the judicial function, which is to follow rules made by itself or some superior authority. McNealy v. Gregory, 13 Fla. 417 (1870). It is the function of the judiciary to declare what the law is and to interpret the law. Jackson Lumber Company v. Walton County, 95 Fla. 632, 116 So. 771

(1928). In the performance of this function judicial interpretation itself becomes a part of the law. Id. The Constitution does not provide a definition of judicial power any more than it does of legislative or executive power. 16 Am.Jur.2d, Constitutional Law §220. The question of what constitutes a judicial power is determined in the light of the common law and what such powers were considered to include at the time of the adoption of the Constitution. Petition of Florida State Bar Association, etc., 155 Fla. 710, 21 So.2d 605 (1945). The judicial power vested in the courts includes authority in adjudicating litigated rights to determine what is the controlling law applicable to the rights being adjudged. Getzen v. Sumter County, 89 Fla. 45, 103 So. 104 (1925). This power includes the determination in litigated cases of the meaning and intent of pertinent provisions of the Constitution, as well as whether state laws accord with the Constitution. Id. The judicial power under the Constitution includes the power to declare whether a legislative act is or is not unconstitutional and it is the duty of the court to effectuate the policy of the law as expressed in valid statutes.[10] Cotten v. Leon County, 6 Fla. 610 (1856); State ex. rel. Johnson v. Johns, 92 Fla. 187, 109 So. 228 (1926). The Supreme Court of Florida simply carried out such power in State v. Dixon, 283 So.2d 1 (Fla. 1973), and subsequent cases in which constitutional attacks were lodged

[10] This is not a case such as Chiles v. Children A,B,C,D,E and F, 589 So.2d 260 (Fla. 1991), where constitutional provisions clearly indicate that the power to appropriate state funds is legislative and is to be exercised only through duly enacted statutes.

against section 921.141 Florida Statutes (1973), in determining that the definitions of the crimes intended to be included were reasonable and easily understood by the average man and interpreting the terms heinous, atrocious and cruel and stating that "What is intended to be included are those capital crimes where the actual commission of the capital felony was accompanied by such additional acts as to set the crime apart from the norm of capital felonies -- the conscienceless or pitiless crime which is unnecessarily torturous to the victim." 283 So.2d 9. For two decades Dixon has rightfully been part of capital punishment law. The court has clearly been exercising its interpretative powers to effectuate the policy of the law and has hardly been acting in defiance of the legislature. In fact, the very constitutionality of the state's capital sentencing procedures is contingent on the Florida Supreme Court's role of reviewing each case to ensure uniformity in the imposition of the death penalty. See, Witt v. State, 387 So.2d 922 (Fla. 1980).

It is interesting to note the absence of a hue and a cry upon reversal of an override in Tedder v. State, 322 So.2d 908 (1975), where the Supreme Court of Florida held that the legislature intended in the choice of language used in 921.141 something especially heinous, atrocious or cruel in order to authorize the death penalty for a first-degree murder, after applying the interpretations contained in Dixon. Tedder v. State, 322 So.2d 908, 910 n.3 (Fla. 1975). No complaint was lodged when this court interpreted the factor as only applying to torturous murders, i.e. murders that evince extreme and

outrageous depravity as exemplified either by the desire to inflict a high degree of pain or utter indifference to the enjoyment of the suffering of another. See, Williams v. State, 574 So.2d 136 (Fla. 1991). Thus, it is clear that it is not the court's actual interpretative authority that is being challenged. Appellant merely dislikes the court's constructions in cases other than his own. Unless appellee's cross-appeal point is successful appellant has no standing to even raise this issue as to any aggravating factor since the sentencing judge did not find that any of the murders were especially heinous, atrocious or cruel and this argument was not made as to the remaining factors in aggravation below. A court should not gratuitously consider a question of the constitutionality of a statute which it finds is not involved in a case pending before it. Wooten v. State, 24 Fla. 335, 5 So. 39 (1888).

Barrett next complains that Section 921.141(2) and (3), Florida Statutes (1989) require that the aggravating factors outweigh the mitigating factors but subsection (2)(b) places the burden on the defendant to prove that "sufficient mitigating circumstances exist which outweigh the aggravating circumstances found to exist" in violation of the Fifth and Fourteenth Amendments, Article I, Section 9 of the Florida Constitution and the holding of Mullaney v. Wilbur, 421 U.S. 684 (1975). He demands that this court declare Florida's death penalty to be unconstitutional and accuses the court in the past of deviating from the clear language of the statute and promulgating substantive legislation through judicial fiat by holding in such

cases as Arango v. State, 411 So.2d 172, 174 (Fla. 1982), and Alvord v. State, 322 So.2d 533, 540 (Fla. 1975), that the burden is on the state to prove that the aggravating factors outweigh the mitigating factors. Barrett also complains that by only being required to show that the aggravation outweighs the mitigation the death penalty can be imposed by a mere preponderance of the evidence standard in violation of In re: Winship, 397 U.S. 358 (1970) and Mullaney v. Wilbur, 421 U.S. 684 (1975) rather than the state being required to prove beyond and to the exclusion of every reasonable doubt that the death penalty is warranted. He also complains that the standard instruction requires only that the state show that the death penalty is warranted by a mere preponderance of the evidence resulting in a violation of due process under Cage v. Louisiana, 111 S.Ct. 328 (1990), Francis v. Franklin, 471 U.S. 307 (1985) and Sandstrom v. Montana, 442 U.S. 510 (1979).

This court has previously rejected this burden-shifting claim. See, Arango v. State, 411 So.2d 172 (Fla. 1982). Moreover, appellant did not object to the jury instruction paraphrasing the statutory language, so such issue is waived (R 1782; 1786). Jones v. Dugger, 533 So.2d 290, 293 (Fla. 1988). Nowhere below was any argument made that his court had promulgated substantive legislation and such issue is, likewise, waived (R 1638).

Barrett further complains that the state failed to provide adequate notice prior to trial as to which aggravating factors the state would attempt to prove which denied due process and

violated the notice requirement of the state and federal constitutions. In the penalty phase the state relied on the evidence presented in the guilt phase to prove the existence of statutory aggravating factors beyond a reasonable doubt and he was denied a meaningful opportunity to address that evidence by the lack of notice.

It is well-settled that a defendant has no right to a statement of particulars as to the aggravating circumstances upon which the state will rely to support its request for the death penalty. Ruffin v. State, 397 So.2d 277 (Fla. 1981); Sireci v. State, 399 So.2d 964 (Fla. 1981). Since the statutory language setting out the aggravating factors to be considered in determining the propriety of the death sentence limits the aggravating factors to those listed, there is no reason to require the state to notify the defendant of aggravating factors that the state intends to prove. Hitchcock v. State, 413 So.2d 741 (Fla. 1982).

CROSS-APPEAL

I. THE SENTENCING COURT SHOULD PROPERLY HAVE FOUND THAT THE MURDERS WERE COMMITTED IN A HEINOUS, ATROCIOUS, OR CRUEL MANNER.

Originally, the state sought only to have the heinous, atrocious, or cruel aggravating factor applied to the murder of Larry Johnson, since he had defensive wounds on his hands (R 1618). The autopsy photos also reflect that he had wounds on his shoulders (R 1618). He had been struck in excess of nine times (R 1618). His head injuries were more extensive than any of the other victims (R 1619). The sentencing judge indicated that the defensive wounds on the hand were evidence that he wasn't rendered instantly unconscious (R 1619). The jury was instructed on the HAC factor in accordance with the definitions contained in State v. Dixon, 283 So.2d 1 (Fla. 1973), and told that "the kind of crime intended to be included as heinous, atrocious or cruel is one encompassed by additional acts that showed the crime was conscienceless or pitiless or was unnecessarily tortuous to the victim" (R 1781-1782). The defense subsequently waived confidentiality and made their defense expert, Dr. Dee, available to the state. From Dr. Dee the state learned that Barrett had told Dr. Dee that Scott Burnside had committed the murders, that all of the victims were there, and since they were moaning and still alive he used a knife to slash their throats (R 1731-1741). The state then indicated a desire to call Dr. Dee itself as such testimony would be relevant to the HAC aggravating factor, residual doubt of guilt, and Barrett's character of nonviolence. The state was precluded from calling Dr. Dee to the stand.

As previously argued, the jury's life recommendations were clearly based on mere sympathy. The jury was instructed on the HAC factor and could well have found that it applied. The sentencing court refused to find this factor because even though the defensive wounds on Johnson would seem to indicate that he had knowledge of his impending death and fought back, the state did not establish what "length" of time he suffered. The court evidently felt that such suffering must be of long duration. It also felt that any contemplation of death could not occur between rapid blows leading to unconsciousness (R 4924). Appellee submits that this was clear error and, at the least, the HAC factor should have been applied to the murder of Larry Johnson. Although the state did not initially argue the applicability of the HAC factor to the other murders, it put the court on notice that it felt such factor was applicable by expressing a desire to call Dr. Dee. The trial court, in any event, has a statutory duty under Section 921.141 Florida Statutes (1991) to make an independent determination of the applicability of such factors. Appellee would submit that this factor should have been applied to the murders of Clark and Hemingway, as well.

Larry Johnson suffered more blows than the other victims. He had defensive wounds. This court has upheld the finding of the heinous, atrocious or cruel factor under very similar circumstances. In Lamb v. State, 532 So.2d 1051 (Fla. 1988), the victim was struck six times in the head with a claw hammer, had a defensive wound, and moaned while the defendant kicked him in the face. In Roberts v. State, 510 So.2d 888 (Fla. 1987), the victim

was killed as a result of numerous blows to the back of the head and the evidence indicated that the victim attempted to fend off further blows. In Wilson v. State, 493 So.2d 1019 (Fla. 1986), the victim was brutally beaten while attempting to fend off blows before being fatally shot. In Heiney v. State, 447 So.2d 210 (Fla. 1984), there were injuries to the victim's hands which were probably defensive wounds caused by the victim holding his hands up to try to protect himself. In Scott v. State, 411 So.2d 866 (Fla. 1982), the victim sustained six blows to the head with a blunt instrument, one of which caused a compressed skull fracture. In Adams v. State, 341 So.2d 765 (Fla. 1976), the victim was brutally beaten with a fire poker until the body was grossly mangled. The HAC factor is no less applicable in this case. The sentencing court was wrong in attempting to quantify the length of suffering and time of contemplation of death. Johnson clearly had to know when he attempted to fend off blows that his life was in jeopardy. This cognition did not have to be repeated. The very existence of defensive blows indicates that he was not relieved of his trauma by the blessed occurrence of unconsciousness. This factor should surely have been found as to at least Johnson.

It is apparent from Dr. Schutze's testimony that Bob Hemingway was not hit in the head by a cement block or baseball bat or any other weighty object that would render him immediately unconscious. The circular wounds to his face indicate that he was, at least initially, battered by the homemade silencer. The weight of logic is against the creation of a factual scenario

whereby he was rendered unconscious by one blow from a small pipe with holes in it. The very existence of another such blow precludes such construction. A more logical factual scenario is that he was repeatedly battered with the silencer until he fell and then his head was pummeled into the carpeting. Logic dictates that he too, was not relieved of his anguish through the blessing of immediate unconsciousness. There would have been no need to use such force when he was already in a down posture.

Clark, along with the other victims, had his throat slit, after suffering numerous traumatic blows to the head. The testimony of Dr. Dee as to the fact that their throats were slit because they were alive and moaning should have been allowed since the defense waived the privilege of confidentiality by allowing Dr. Dee to talk to the state. This evidence was clearly relevant to the HAC factor. Even without Dr. Dee's testimony, however, it is obvious that the knife was used to quiet still living victims rather than as a means of simply ensuring their death. The killing of JoAnn had never been accomplished. After killing four men to achieve such purpose it is clear that Barrett would hardly have given up his plan to kill her. Thus, he was forced to wait for her return. Since she was tending her mother at a hospital an imminent return certainly could not have been contemplated. The victims would certainly have died before her return. It is apparent from the circumstances that Barrett did not want the next victim to hear the sounds of the last, still living victim. In any event, logic dictates that in a case like this where there are multiple blows to the head, the very fact

that there were multiple blows indicates that the victim was not taken out with one fell swoop, or the next blows would not be necessary. It would also be unnecessary to pummel the head of a prostrated victim into the floor. If they were not conscious or moving, he could simply have killed them one by one with his knife rather than by fracturing their skulls with repeated blows. Hypothesizing unconsciousness in such a situation defies logic. Appellee would submit that the trial court erred by not applying the HAC factor to the murders of Hemingway and Clark, as well.

Respectfully submitted,

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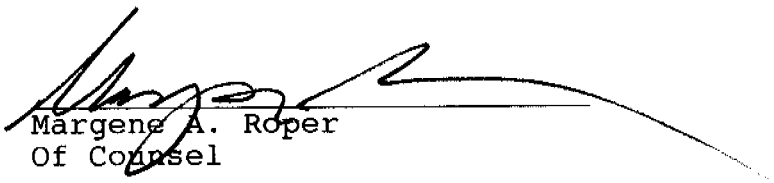
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Answer Brief of Appellee has been furnished by U.S. Mail to opposing counsel, Larry B. Henderson, Assistant Public Defender, 112 Orange Avenue, Suite A, Daytona Beach, Florida 32114, this 4th day of August, 1992.



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