FILED
SID J. WHITE
JAN 19 1993
CLERK, SUPREME COURT
By ______
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

RANDALL SCOTT KNOWLES, Appellant, vs. STATE OF FLORIDA, Appellee.	CASE NO. 79,644

ON APPEAL FROM THE CIRCUIT COURT
OF THE FOURTH JUDICIAL CIRCUIT,
IN AND FOR NASSAU COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

SARA D. BAGGETT
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR NO. 0857238

DEPARTMENT OF LEGAL AFFAIRS
THE CAPITOL
TALLAHASSEE, FL 32399-1050
(904) 488-0600

COUNSEL FOR APPELLEE

TABLE OF CONTENTS

Page(s)

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

PRELIMINARY STATEMENT 1

STATEMENT OF THE CASE AND FACTS 2

SUMMARY OF THE ARGUMENT 19

ARGUMENT 22

ISSUE I

WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN REJECTING TWO OF APPELLANT'S CHALLENGES FOR CAUSE AND IN DENYING APPELLANT'S REQUEST FOR ADDITIONAL PEREMPTORIES (Restated) 22

ISSUE II

WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN ALLOWING THE STATE TO ASK APPELLANT CERTAIN QUESTIONS ON CROSS-EXAMINATION (Restated) 27

ISSUE III

WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN ADMITTING THE TESTIMONY OF TWO WITNESSES REGARDING STATEMENTS APPELLANT HAD MADE TO THEM BEFORE THE MURDERS (Restated) 30

ISSUE IV

WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING APPELLANT'S MOTIONS FOR JUDGMENT OF ACQUITTAL (Restated) 34

ISSUE V

WHETHER THE TRIAL COURT ERRED IN FINDING THE 'AVOID ARREST' AGGRAVATING FACTOR (Restated) 39

TABLE OF CONTENTS (cont.)

ARGUMENT (cont.) Page(s)

ISSUE VI

WHETHER THE TRIAL COURT ERRED IN FINDING THE "FELONY MURDER" AGGRAVATING FACTOR (Restated)......................42

ISSUE VII

WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN INSTRUCTING THE JURY THAT IT COULD FIND APPELLANT GUILTY OF THE MURDER OF HIS FATHER UNDER A FELONY MURDER THEORY (Restated)....................45

ISSUE VIII

WHETHER THE TRIAL COURT ERRED IN USING ONE MURDER AS AN AGGRAVATING FACTOR IN THE OTHER (Restated)....................46

ISSUE IX

WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN OVERRULING APPELLANT'S OBJECTIONS TO THE STATE'S PENALTY PHASE CLOSING ARGUMENTS (Restated).............................47

ISSUE X

WHETHER APPELLANT'S SENTENCE IS PROPORTIONAL TO SENTENCES IN OTHER CASES UNDER SIMILAR FACTS (Restated)..52

ISSUE XI

WHETHER THE TRIAL ABUSED ITS DISCRETION IN REJECTING APPELLANT'S PENALTY-PHASE JURY INSTRUCTIONS REGARDING THE WEIGHT OF THE JURY'S RECOMMENDATION TO THE JUDGE (Restated)..54

TABLE OF CONTENTS (cont.)

ARGUMENT (cont.) Page(s)

ISSUE XII

WHETHER THE TRIAL ERRED IN REJECTING APPELLANT'S EVIDENCE OF MENTAL MITIGATION AND WHETHER IT SUFFICIENTLY EVALUATED HIS NONSTATUTORY MITIGATING EVIDENCE (Restated) 55

ISSUE XIII

WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN REJECTING APPELLANT'S REQUESTED PENALTY-PHASE JURY INSTRUCTIONS REGARDING THE WEIGHING OF AGGRAVATING AND MITIGATING FACTORS (Restated) 62

CONCLUSION 64

CERTIFICATE OF SERVICE 64

TABLE OF AUTHORITIES

CASES PAGES

Arango v. State,
411 So.2d 172 (Fla. 1982),
cert. denied, 474 U.S. 1015 (1983) 63

Armstrong v. State,
399 So.2d 953 (Fla. 1981) 53

Asay v. State,
580 So.2d 610 (Fla. 1991),
cert. denied, 116 L.Ed.2d 218 (1992) 53

Bedford v. State,
589 So.2d 245 (Fla. 1991),
cert. denied, 112 S.Ct. 1773 (1992) 35,38

Bertolotti v. State,
476 So.2d 130 (Fla. 1985) 51

Breedlove v. State,
413 So.2d 1 (Fla. 1982) 48

Brewer v. State,
413 So.2d 1217 (Fla. 5th DCA 1982) (en banc),
rev. denied, 426 So.2d 25 (Fla. 1983) 35

Bryan v. State,
533 So.2d 744 (Fla. 1988),
cert. denied, 490 U.S. 1028 (1989) 40

Buenoano v. State,
478 So.2d 387 (Fla. 1st DCA 1985),
pet. dismissed, 504 So.2d 762 (Fla. 1987) 35,38

Caldwell v. Mississippi,
472 U.S. 320 (1985) 54

Campbell v. State,
571 So.2d 415 (Fla. 1990) 56,60

Capehart v. State,
583 So.2d 1009 (Fla. 1991),
cert. denied, 112 S.Ct. 955 (1992) 41

Cornwell v. State,
425 So.2d 1189 (Fla. 1st DCA 1983) 34

Correll v. State,
523 So.2d 562 (Fla. 1988),
cert. denied, 488 U.S. 871 (1989) 46,53

TABLE OF AUTHORITIES (cont.)

CASES PAGES

Grossman v. State,
525 So.2d 833 (Fla. 1988),
cert. denied, 489 U.S. 1071 (1989) 54

Hitchcock v. State,
578 So.2d 685 (Fla. 1990),
cert. denied, 116 L.Ed.2d 254 (1991) 26

Johnson v. State,
478 So.2d 885 (Fla. 3d DCA 1985),
cause dismissed, 488 So.2d 830 (Fla. 1986) 34

Jones v. State,
18 F.L.W. S11 (Fla. Dec. 17, 1992) 40,46

Jones v. State,
580 So.2d 143 (Fla. 1991),
cert. denied, 112 S.Ct. 221 (1992) 59

Jones v. State,
440 So.2d 570 (Fla. 1983) 33

Kight v. State,
512 So.2d 922 (Fla. 1987),
cert. denied, 485 U.S. 929 (1988),
overruled on other grounds,
596 So.2d 985 (Fla. 1992) 58

King v. State,
545 So.2d 375 (Fla. 4th DCA),
rev. denied, 551 So.2d 462 (Fla. 1989) 35

Lusk v. State,
446 So.2d 1038 (Fla.),
cert. denied, 469 U.S. 873 (1984) 26

Pardo v. State,
563 So.2d 77 (Fla. 1990),
cert. denied, 114 L.Ed.2d 127 (1991) 46

Patterson v. State,
391 So.2d 344 (Fla. 5th DCA 1980) 34

Pope v. Wainwright,
496 So.2d 798 (Fla. 1986),
cert. denied, 480 U.S. 951 (1987) 51

Riechman v. State,
581 So.2d 133 (Fla. 1991) 49

TABLE OF AUTHORITIES (cont.)

CASES PAGES

Roberts v. State,
510 So.2d 885 (Fla. 1987),
cert. denied, 485 U.S. 943 (1988) 58

Robinson v. State,
574 So.2d 108 (Fla. 1991),
cert. denied, 116 L.Ed.2d 99 (1992) 63

Rogers v. State,
511 So.2d 526 (Fla. 1987),
cert. denied, 484 U.S. 1020 (1988) 41

Showers v. State,
570 So.2d 377 (Fla. 1st DCA 1990) 34

State v. DiGuilio,
491 So.2d 1129 (Fla. 1986) ....passim

State v. Law,
559 So.2d 187 (Fla. 1989) 38

Stewart v. State,
549 So.2d 171 (Fla. 1989),
cert. denied, 118 L.Ed.2d 313 (1990) 63

Taylor v. State,
583 So.2d 323 (Fla. 1991) 35,38

Taylor v. State,
557 So.2d 138 (Fla. 1st DCA 1990) 43

Tedder v. State,
322 So.2d 908 (Fla. 1975) 54

Trotter v. State,
576 So.2d 691 (Fla. 1990) 24

Welty v. State,
402 So.2d 1159 (Fla. 1981) 32

Wike v. State,
596 So.2d 1020 (Fla. 1992) 49

CONSTITUTIONS AND STATUTES PAGES

Fla. Stat. § 90.403 (1991) 32

Fla. Stat. § 90.803(3)(a)2 (1991) 30

Fla. Stat. § 90.803(3)(b)2 (1991) 33

TABLE OF AUTHORITIES (cont.)

OTHER SOURCES PAGES

Fla. R. Crim. P. 3.380(b) 34

Fla. Stand. Jury Instr. in Crim. Cases 155 (Oct. 1985) 43

IN THE SUPREME COURT OF FLORIDA

RANDALL SCOTT KNOWLES, Appellant, vs. STATE OF FLORIDA, Appellee.	)	CASE NO. 79,644

PRELIMINARY STATEMENT

Appellant, Randall Scott Knowles, was the defendant in the trial court and will be referred to herein as "Appellant." Appellee, the State of Florida, was the prosecution in the trial court and will be referred to herein as "the State." References to the pleadings will be by the symbol "R" and references to the transcripts will be by the symbol "T" followed by the appropriate page number(s).

STATEMENT OF THE CASE AND FACTS

The State accepts Appellant's statement of the case and facts as reasonable accurate, but extremely incomplete. Therefore, the State presents the following statement of facts:

Appellant was indicted for the first-degree murders of Carrie Woods and Alfred Knowles, his father, which were committed on July 13, 1990. (R 1907-08). Prior to trial, Appellant filed a Notice to Rely on an Insanity Defense. (R 2148-51). Also prior to trial, Appellant filed, among others, a Motion in Limine, seeking to exclude Walter Johnson's testimony regarding statements Appellant made to him prior to the murders (R 2214-15). At a later pretrial hearing, Appellant's motion was denied (T 123-29).

Appellant's case proceeded to trial on February 10, 1992. After two days of jury selection, the State began its case-in-chief by calling Deputy William Anno of the Nassau County Sheriff's Office as a witness. Deputy Anno testified that he was the first officer on the scene and that he found Appellant's dad lying on the ground in front of his trailer. At the trailer next door to Appellant's, Deputy Anno found no one home, but saw blood on the carpet. (T 621-23).

The State's next witness was Evelyn Agricola. Ms. Agricola testified she lived with her boyfriend, Earl Fagin, and her daughter, June Skipper, in a trailer next door to the Knowles. (T 625). On the day of the murders, Friday, the 13th of July, the witness had been preparing for a "New Kids on the Block" slumber party in honor of her daughter's birthday. Carrie Woods

had been staying with them since the previous Wednesday to help them prepare for the party that evening. (T 627-29). Around 5:00 p.m., Ms. Agricola and Mr. Fagin were in the back bedroom with the door closed watching television, while Carrie and June were in the living room dancing to music. In anticipation of the other guests, the front door to the trailer was left standing open, although a glass storm door remained closed.

At some point, Ms. Agricola heard the girls screaming. She ran out to the living room and found Carrie kneeling on the floor, struggling to stand up. Through a window, the witness saw Appellant leaving the porch with gun in hand, walking slowly. She called 911, then the Sheriff's Office. While on the phone, Ms. Agricola heard another shot, then saw Alfred Knowles' truck leaving the trailer park. About that time, Carrie's mother and stepfather drove up. Mr. Fagin, along with Carrie's parents, drove Carrie to the hospital, meeting Life Flight on the way. Ms. Agricola and her daughter ran to the landlord's trailer. (T 631-39).

On cross-examination, Ms. Agricola testified that she did not know Appellant, but often saw him drinking. (T 640-41). She did not think that Carrie Woods had ever met Appellant. (T 645-646). In addition, she testified that the music was not loud enough to be heard outside, and that the dogs were inside (T 642-43). Regarding the truck she saw leaving the trailer park, Ms. Agricola testified that Alfred Knowles drove the truck most of the time, but that Appellant drove it "a couple of times." (T 645).

The State's next witness was June Skipper, Ms. Agricola's twelve-year-old daughter. June testified that, while she and Carrie were dancing in the living room, she heard the glass storm door open. She turned and saw Appellant standing in the doorway, pointing a gun at her, from approximately two or three feet away. Appellant looked "[m]ean, like he was mad at [h]er." In an instant, Appellant turned, and, without saying a word, "[p]ulled his head back," and shot Carrie, who was standing to June's right. June immediately ran to her mom's room screaming. (T 661-67).

On cross-examination June testified that she often saw Appellant drinking beer on the front porch. He would talk to himself and sing at the top of lungs, pretending to be Hank Williams. He would also get mad and bang his head on the porch. June had seen what looked like paint-thinner cans on the porch. (T 670-74).

Next, the State called Linda Brazell, the owner of the Tropic Hotel and Trailer Park, where the murders occurred, as a witness. Ms. Brazell testified that she was standing at a dumpster with her son-in-law, Robert Mullis, and another woman, when she saw Appellant's father come from his trailer and get in his truck. Within a minute or two, she saw Appellant come from the Knowles' trailer and walk to the truck with a rifle in his hand. While standing by the driver's door, Appellant pointed the gun at his father and fired. Appellant then grabbed his father, pulled him out of the truck, and threw his gun in the back of the truck. At that point, Ms. Brazell ran to call the police. (T 683-90).

Robert Mullis testified that he saw Appellant arguing with his father, who was sitting behind the wheel of his truck. "They had a little scuffle." Mr. Mullis saw Appellant tug on his father's shoulder, then say, "No, you won't." Immediately thereafter, Appellant pointed the rifle at his father's head and shot him. Appellant threw the gun in the back of the truck, pulled his father out of the truck and onto the ground, and drove away in a hurry. (T 697-706). Teresa Crosby, who was Carrie's mother, testified that, as she was driving in, Appellant sped past her. His eyes were wide like he was scared. (T 718-21).

After the state presented the testimony of Carl Woodle, an evidence technician with the Nassau County Sheriffs's Office, it called Wayne Johnson as a witness. Mr. Johnson testified that, on June 1, 1990, approximately six weeks before the murders, he went to the Knowles' trailer. (T 761-62). At that point, Appellant objected to his forthcoming testimony regarding statements Appellant allegedly made to him. Appellant's objection was overruled. (T 762-63). Mr. Johnson then testified that he saw Appellant's father, who seemed upset, leave the trailer, get in his truck, and leave. At that point, Appellant came outside and said to him, "[T]hat old man's going to -- got a surprise coming one day. He don't think I'm going to it, but I am going to blow his shit away." (T 763-75). On cross-examination, Mr. Johnson testified that Appellant had a drink in his hand and seemed to be "high" when he made the statement. (T 766-68).

The State's next witness was Earl Fagin, Evelyn Agricola's boyfriend. Living next door to the Knowles, Mr. Fagin noticed that Alfred Knowles normally drove the truck, but Appellant drove it "[a] couple of times." (T 770-73). At that point, Appellant objected to his forthcoming testimony regarding statements allegedly made by Appellant several months before the murders. Appellant's objection was overruled. (T 774-79). Mr. Fagin then testified that, a couple of months before the murders, Appellant came over to his trailer. During their conversation, Appellant said that "the day might come that he just may loose it, whatever, and just go in the trailer park and shoot people." He also said, "I doubt it'd be you all." Mr. Fagin thought Appellant might be serious and asked him to leave. (T 779-80). Mr. Fagin also testified that, on the day of the murders, after finding Carrie shot, he looked out of the trailer window and saw Appellant standing outside his father's truck, where his father was sitting behind the wheel. After briefly turning his attention to Carrie, Mr. Fagin looked again, saw Appellant's father on the ground, and saw Appellant driving away rapidly in the truck. (T 784-87).

Next, the State called the Medical Examiner, Doctor Bonafacio Floro, as a witness. Dr. Floro testified that the cause of death of Carrie Woods was a gunshot wound to the arm and the chest, which penetrated both lungs and the aorta. The fatal shot entered Carrie's upper right arm, traveled through her arm and into her body, passing through one lung, her heart, and her other lung, eventually lodging in her back. In his opinion, she

would have been unconscious within one minute, and dead within five minutes. (T 1814-16). He also testified that he found two nonfatal wounds to her right arm. One bullet entered from the back, traveled downward, and exited the front of Carrie's arm. (T 822-23). The third bullet entered the back of Carrie's forearm, traveled upward, and existed the front. (T 825-28). All three shots were fired from a distance of two feet or more. (T 828).

Regarding Alfred Knowles, Dr. Floro testified that the cause of death was a gunshot wound to the head with perforations of the skull and brain. (T 829-30). Dr. Floro found two wounds on Alfred Knowles. The fatal shot entered the front of Alfred Knowles' head and traveled upward toward the midline of the body. This shot would have caused immediate loss of consciousness. The second shot entered the back of the right side of the head, traveled downward, and exited the left side of the neck. This would have been a nonfatal wound. (T 830-35).

The State's next witness was Parker Quick. Mr. Quick was working as a clerk at a Jiffy Mart between 9:00 and 10:00 p.m. on July 13, 1990. Mr. Quick testified that Appellant filled up his truck with gasoline, parked parallel with the door, came inside, got a 12 pack of Budweiser, and approached the counter. He took out his driver's license, threw it on the counter, and said, "I will be back to pay you." He then said, "Rehabilitation made me do what I did tonight." Appellant grabbed the beer and left. (T 842-47).

Next, the State called Hope Herrin, a dispatcher with the Nassau County Sheriffs's Office, as a witness. Deputy Herrin testified that, on July 14, 1990, she answered a call at approximately 12:10 p.m. on a nonrecorded line. The caller, who identified himself as Appellant, asked if there was a warrant for him. When Deputy Herrin told him to hold on, that she would check, Appellant hung up. (T 853-58).

The State's next witness was Glenn Roberson. Mr. Roberson testified that he used to work with Appellant three or four years prior to the murders, but had not seen Appellant for a year and a half. They used to drink beer and huff together. (T 864-66). About 10:00 a.m. on July 14, 1990, Appellant showed up at Mr. Roberson's house in Mulberry, Florida, which is approximately 256 miles from Jacksonville. He looked "rough. He was shaky. He was haggered [sic]." The witness said to Appellant, "Damn, boy, what's wrong with you . . . did you kill somebody?" Appellant, said, "Yeah. I did." Appellant then said, "I think I fucked up." Roberson said, "What the hell you do, kill someone?" Appellant said, "Yeah. I think I did." Appellant told him that "he kicked in a trailer door and shot a bunch of mother fuckers. He shot one guy, he said, 'right here in this truck. And I think one of them might have been Daddy.'" Appellant showed him some blood in the truck and said, "'It was about that thick (indicating)' and [that] he had a hard time cleaning it out." (T 867-69).

According to Mr. Roberson, Appellant did not know how he got to his house. He said he picked up a girl on the way, but did

not know where. He showed Mr. Roberson a bra and some panties in the glove compartment. He said they had sex. Appellant also told Mr. Roberson that he had sold the gun that he had used in the murders for gas money. (T 869-75).

Mr. Roberson drove with Appellant to a gas station where Appellant called the Nassau County Sheriffs's Office to find out if he was wanted. Later, after Appellant fell asleep on his couch, Mr. Roberson called the police, and Appellant was arrested shortly thereafter. (T 878-79).

Four or five months prior to trial, Appellant called Mr. Roberson collect and told him that he had put Appellant "in the chair." Mr. Roberson told Appellant that he did it to himself. Appellant said that he did not remember doing it and that he would not kill his dad. Mr. Roberson responded, "Well, Randy, you told me you did." (T 879-80). On cross-examination, Mr. Roberson testified that Appellant thought he had dreamed the killings. (T 884-86).

Next, the State called John Hunter, the Chief of Police of Mulberry, Florida, as a witness. Chief Hunter testified that he and several Polk County sheriff's deputies went to Mr. Roberson's house to arrest Appellant. After Appellant had been handcuffed, as they were leaving, Appellant said, "There wasn't anybody in the house guilty but him, that he did it." (T 890-93).

The State's next witness was Captain Charlie Calhoun of the Nassau County Sheriff's Office. Captain Calhoun testified that, after Appellant was arrested, he went to Polk County on July 15, 1990. As he walked into the interview room, Appellant recognized

him and said, "Calhoun, I don't remember anything about the [sic] shooting anybody in Nassau County." (T 907-08). After waiving his Miranda rights, Appellant told him he remembered some things, but not others, because he had been drinking a case of beer a day and huffing lacquer thinner for four days. He remembered shooting, but not shooting anyone. He said he had sold the gun for $10 on the way to Polk County. Appellant also indicated that he picked up a female hitchhiker, but didn't know where, or where he let her off. He remembered leaving his driver's license at a convenience store, but not why. (T 910-11).

The State's final witness was David Barnes, a correctional officer assigned to transport Appellant between the jail and the courthouse. Officer Barnes testified that, on July 25, 1990, on the way back from a court hearing, Appellant said spontaneously that he had done some bad things in his life, "but what he did the other day was the worse he has ever done." (T 915-17).

Thereafter, the State rested its case, and Appellant moved for a judgment of acquittal, which was denied. (T 920, 921-24). Appellant then testified on his own behalf. From what Appellant can remember, he graduated from the seventh or ninth grade. He married twice, the first time at age 18, which lasted three years, and the second time at age 26, which lasted three or four years. He had two children. (T 926-27). He started drinking moonshine at fourteen or fifteen years of age, and started huffing lacquer thinner at fifteen or sixteen years of age, then switched to toluene. Around the time of the murders, he would start drinking at 5:00 or 6:00 in the morning and drink all day,

consuming a case or more. He would also huff about a gallon of toluene a week. To relieve the headaches caused by the toluene, he would consume Goody's headache powders by the box full. Occasionally, he would work construction or odd jobs and give some of the money to his father. He thought his relationship with his father was good. They would fish and camp together often. However, his father would get on to him about huffing and drinking.

On the morning of the murders, Earl Wingate and an unknown hitchhiker came over to the Knowles' trailer and asked Appellant to go buy some beer. When Appellant got back, they played poker with Appellant's father. According to Appellant, he and the hitchhiker went outside to huff. The next thing he remembered was waking up in a parking lot "down Florida." A girl woke him up, and they talked and had sex until the morning. Appellant drove her home. At some point, Appellant sold the rifle for $10 and bought gas and beer and headache powder. He then went to Glenn Roberson's house. He remembered calling the police to see if he was wanted, but he thought Roberson made the phone call. (T 927-48).

On cross-examination, Appellant initially indicated that he did not remember Walter Johnson's testimony the day before, but then changed his mind. He claimed that he did not make the statements to Mr. Johnson six weeks prior to the murders. When asked if he thought Mr. Johnson was lying, Appellant said yes. The State asked why he thought so, and defense counsel objected. The objection was overruled. (T 951-53). Thereafter, Appellant

also claimed that he did not remember making statements to Earl Fagin. When asked if he thought Mr. Fagin was lying too, defense counsel again objected. After the objection was overruled, Appellant stated that he thought Mr. Fagin was lying, but that he did not know why he would do so. (T 954-55). Regarding the gun used to kill the victims, Appellant testified that he had to load the cartridges individually through the stock, then load a round into the chamber in order to fire the weapon. (T 971-75).

Appellant called Earl Wingate as a witness. Mr. Wingate testified that he had known Appellant for two or three years, and that he would huff with Appellant two times a week. On the morning of the murders, Mr. Wingate went to Appellant's trailer with a hitchhiker. Appellant drove to the store in Mr. Wingate's car to get a case of beer. When he returned, they played cards until 10:30 or 11:00 a.m. Appellant did not leave the trailer, except to get beer. They drove the hitchhiker to a truck stop and dropped him off, then Mr. Wingate bought a .22 rifle. While driving around, Appellant indicated that he did not have any toluene, so they huffed Mr. Wingate's. Eventually, they went to Mr. Wingate's house, which is an eighth of a mile from Appellant's trailer. They went out back and test-fired the gun. At some point late in the afternoon, Mr. Wingate told Appellant to leave before his mom got home. Mr. Wingate went inside, found that his mom had come home, and showed her the gun, which she put away. Mr. Wingate showered, ate, and fell asleep on the couch. According to Mr. Wingate, Appellant was "pretty well messed up" when he last saw him. (T 1010-38).

On cross-examination, Mr. Wingate admitted that he had a prior felony conviction. (T 1039). He also admitted that the gun he had bought was not the gun Appellant had used to kill the victims. (T 1050-51). He indicated that, by the time they went to his mother's house around 4:00 p.m., Appellant had had ten beers. (T 1052). Appellant was drunk, but not on a "toluene high." (T 1056-57).

Appellant's next witness was Earl Wingate's mother, Alice Pitts. Ms. Pitts testified that she came home from work between 4:00 and 5:00 p.m. on July 13. She saw Appellant sitting out in the woods behind her house when she got home. After Earl fell asleep on the couch, she went outside and told Appellant that he had to leave. He just sat there and stared at her. This was the worst she had ever seen him. Ms. Pitts went inside, then came back later and told Appellant to leave or she would call the police. She walked off and saw Appellant stumble off into the woods. (T 1061-69).

After Appellant presented the testimony of a nurse who had collected a blood and urine sample from Appellant on July 17, and introduced the corresponding toxicology report, Appellant called Dr. Eileen Fennel as a witness. Dr. Fennel was a clinical psychologist with a speciality in clinical neuropsychology at the University of Florida. (T 1077). She saw Appellant for seven hours at Shands on May 24, 1991. Dr. Fennel testified that Appellant had a history of school problems, family problems, early use of alcohol, abuse of alcohol and solvents, a poor work record, and two divorces. (T 1087-88). She also indicated that

Appellant had an I.Q. in the low 80s, which is low average. (T 1096). In addition, Appellant's performance on memory tests was low. He was particularly impaired on tests that required him to learn new things and retain that information. (T 1098-99). Appellant also showed signs of motor impairment (T 1104). She did not think he was malingering. (T 1100). Dr. Fennel concluded that, in her opinion, Appellant suffered from an organic mental disorder. However, she did not think that Appellant's memory impairment "would account for what happened." (T 1107-08, 1113).

On cross-examination, Dr. Fennel admitted that she had rendered no opinion regarding Appellant's sanity at the time of the offense. (T 1114-15). She also admitted Appellant's MRI was normal. (T 1140).

Next, Appellant called Joseph Palmer as a witness. Mr. Palmer, an investigator for the Public Defender's Office, testified that, on July 16, or July 17, 1990, he went behind Appellant's trailer and found five paint-thinner-type cans and at least a hundred Goody's powder wrappers. However, on cross-examination, Mr. Palmer admitted that only one of the cans was marked "toluene," and that most of them were rusted. (T 1204-1211).

Appellant's next witness was Dr. Harry Krop, a clinical psychologist. Dr. Krop interviewed Appellant on February 4, 1992, for two hours and forty-five minutes. (T 1227-29). At the interview, Dr. Krop found no evidence of psychotic behavior. Appellant was moderately anxious, and moderately to severely

depressed. (T 1230-31). Relying on Dr. Fennel's report outlining her psychological testing, Dr. Krop believed that Appellant had "memory impairment [of] a chronic nature." (T 1233, 1237). There also seemed to be evidence of an organic brain syndrome. In addition, although he did not believe that Appellant suffered from antisocial personality disorder, Appellant exhibited antisocial personality traits. (T 1247-48). Dr. Krop's overall diagnosis was a "psychoactive substance amnestic disorder." However, because Appellant could not recall the details of the murders, it was difficult for Dr. Krop to render a specific diagnosis. (T 1243). Nevertheless, Dr. Krop opined that Appellant was so intoxicated at the time of the murders that he was incapable of forming premeditation. (T 1250-53).

On cross-examination, Dr. Krop admitted that he did not render an opinion regarding Appellant's sanity at the time of the murders. (T 1260-61). Dr. Krop also admitted that Appellant's ability to recall some aspects of the murders twelve hours after them indicated that he knew killing was wrong. (T 1266-67).

Appellant's final witness was Dr. David Sall, a psychiatrist. Dr. Sall testified that he interviewed Appellant on April 9, 1991, and that Appellant showed signs of brain damage from alcohol and solvent abuse. (T 1323-25). In his opinion, Appellant did not know right from wrong and could not have premeditated the murders. (T 1329-30). On cross-examination, Dr. Sall admitted that his interview of Appellant lasted forty-five minutes and that he did not review any information other

than a five page cover letter provided by defense counsel. (T 1347-49, 1407).

Thereafter, Appellant rested and moved for a judgment of acquittal, which was denied. (T 1412-13). In rebuttal, the State presented the testimony of two psychiatrists. Dr. George Bernard testified that, although he found evidence of a memory deficit and some level of organic brain damage from the alcohol and toluene abuse, he found no evidence that Appellant suffered from a gross psychosis or major affect deficit. In his opinion, Appellant was legally sane at the time of the murders. With respect to Appellant's intoxication at the time of the offense, Dr. Bernard agreed that Appellant's capacity to premeditate was decreased, but he simply did not have enough information to determine whether Appellant was capable of premeditating. (T 1414-86). Dr. Wade Meyers also agreed that Appellant suffered from some level of organic brain damage as the result of his drug abuse, and that Appellant was sane at the time of the offense. (T 1491-1509). The State rested and the jury returned verdicts of guilty to first-degree murder on both counts.

At the sentencing hearing on February 21, 1992, the State rested without presenting any additional evidence. (T 1759). On his own behalf, Appellant called Delmar Knowles, his older brother as a witness. Delmar testified that Appellant had four brothers: Maxi, twelve-and-a-half years older than Appellant; Delmar, four-and-a-half years older than Appellant; Greg, thirteen years younger than Appellant; and Anthony, fifteen years younger than Appellant. (T 1761). According to Delmar,

Maxi got into a car accident around 1960 and went into a coma for three months. After emerging from the coma, he then came home for nine to ten months. (T 1762-63). This accident placed a financial burden on the family. Appellant's dad was laid off from work, and his mother began having mental problems.

Appellant's next witness was his younger brother, Anthony. Anthony testified that Appellant had worked with him as an electrician's helper. He also testified that his mom had been hospitalized two or three times for mental problems. (T 1770-73).

Next, Appellant called David Sullivan as a witness. Mr. Sullivan, who grew up with Appellant, testified that Appellant drank heavily at fourteen or fifteen years of age and huffed and did drugs. When he returned from Vietnam in 1973, he discovered that Appellant's mother had suffered a mental illness, and that Appellant's drug abuse had worsened. (T 1775-81). John Sutton also testified that Appellant had worked with him periodically as a laborer over the past ten years. (T 1785-88).

Appellant's next witness was Cindi Doggett, Appellant's ex-wife. Ms. Doggett testified that she met Appellant in 1974, when she was pregnant with her first child. She and Appellant had a daughter two years later. Appellant was a good father when sober, but his drug abuse led to their divorce in 1983. (T 1788-93).

Appellant's final witness was James Sutton. Mr. Sutton testified that, a month or so before the shootings, Appellant went to his farm in Georgia to do odd jobs. He indicated that

Appellant did not drink to excess or huff, and that Appellant was a good worker. (T 1800-06).

Thereafter, Appellant rested. (T 1807). The jury returned recommendations of death on both cases by a vote of 9 to 3. (T 1876). At the final sentencing hearing on March 5, 1992, the trial court followed the jury's recommendation and sentenced Appellant to death. (T 1883-1903). In its written sentencing order, filed contemporaneously with the hearing, the trial court made the following findings: With respect to the murder of Carrie Woods, the trial court found the existence of (1) aggravating factor--Appellant's prior conviction for the murder of his father. (R 2414-15). With respect to the murder of his father, Alfred Knowles, the trial court found the existence of three aggravating factors--Appellant's prior conviction for the murder of Carrie Woods, Appellant's murder of his father during a robbery, and Appellant's murder of his father for the purpose of avoiding or preventing a lawful arrest. (R 2414-17). In mitigation, the trial court found no statutory mitigating factors, but "considered the testimony presented indicating that the defendant, Randall Scott Knowles, had a limited education, had on occasion been voluntarily intoxicated on drugs and alcohol, had two failed marriages, has a low average intelligence, has a poor memory, had inconsistent work habits, and loved his father." (R 2413).

SUMMARY OF ARGUMENT

Issue I - Appellant failed to preserve this issue for appeal. Regardless, the trial court did not abuse its discretion in rejecting two of Appellant's challenges for cause.

Issue II - The State's questions to Appellant fairly established the illogical nature of Appellant's testimony. Regardless, they were harmless beyond a reasonable doubt.

Issue III - The trial court properly decided that the time between Appellant's statements and the murders (six weeks and a couple of months) did not render them inadmissible as evidence of Appellant's state of mind and as admissions.

Issue IV - Since the trial court should rarely, if ever, grant a motion for judgment of acquittal based on the presence or absence of proof of premeditation, and where, as here, the State presented competent substantial evidence from which the jury could have inferred guilt, i.e., premeditation, to the exclusion of all other inferences, the trial court did not abuse its discretion in denying Appellant's motions for judgment of acquittal.

Issue V - There is sufficient competent evidence in the record to support the trial court's finding that Appellant killed his father to avoid or prevent his lawful arrest.

Issue VI - There is sufficient competent evidence in the record to support the trial court's finding that Appellant killed his father during the commission of a robbery.

Issue VII - Since the State presented sufficient evidence to support the trial court's finding of the "felony murder"

aggravating factor, the trial court was justified in instructing the jury on this aggravating factor.

Issue VIII - This Court has previously held that the contemporaneous conviction for a capital offense may qualify as an aggravating factor where the two crimes involved multiple victims or separate episodes. Here, Appellant killed two people.

IX - The first complained-of comment by the State during its closing argument was a legitimate inference that could have been drawn from several witnesses' testimony. The second complained-of comments were not properly preserved for review, since no contemporaneous objection was made. Regardless, the State was not arguing lack of remorse as a nonstatutory aggravating factor; rather, the State was attempting to show that Appellant's actions immediately following the murders tended to prove that Appellant's state of mind was more rational and coherent than he claimed. Even if they were error, they were not so egregious to warrant reversal.

Issue X - Appellant's sentences of death for this double murder were proportionally warranted.

Issue XI - This Court has previously held that the standard instructions correctly state the law regarding the weight the trial court must give to the jury's recommendation. Thus, the trial court did not abuse its discretion in rejecting Appellant's special requested instructions.

Issue XII - There is competence evidence in the record to support the trial court's rejection of Appellant's evidence of mental mitigation as it related to his capacity to appreciate the criminality of his actions and to conform his conduct to the

requirements of the law. Regardless, the trial court considered Appellant's mitigating evidence under the catchall provision.

Issue XIII - This Court has previously held that the standard instructions correctly state the law regarding the process of weighing aggravating and mitigating circumstances. Thus, the trial court did not abuse its discretion in rejecting Appellant's special requested instructions.

ARGUMENT

ISSUE I

WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN REJECTING TWO OF APPELLANT'S CHALLENGES FOR CAUSE AND IN DENYING APPELLANT'S REQUEST FOR ADDITIONAL PEREMPTORIES (Restated).

Prior to trial, Appellant filed a motion for additional peremptory challenges. (R 2037-40). At the hearing on the motion, the trial court deferred its ruling. (T 111-12). During voir dire of the first panel, Appellant sought to excuse jurors Smith and Griffis, and the trial court denied the requests. (T 379-82). Just before the parties began to exercise peremptory challenges on the first panel, the trial court told the parties that, at that point, they only had ten peremptories each, but that it would consider granting more later if necessary. (T 384). Appellant excused jurors Smith and Griffis, along with three others, peremptorily. (T 385). Immediately thereafter, the trial court stated regarding Appellant's request for additional peremptory challenges:

> I told you that I would reserve ruling until I have had an opportunity to see the progress we made and the type of people and the reasons. In fairness to you, and I don't believe you have used but a few of your challenges...
>
> [DEFENSE COUNSEL]: Yes, sir.
>
> THE COURT: I don't think you need additional challenges. I am going to deny that motion.
>
> I am going to tell you that I feel that I have been quite generous in cause challenges, reaching anything that even marginally could be caused [sic]. And in view of my approach to that, I will deny your request for additional challenges.

> And I tell you that now so that you don't get caught down the road without an answer.
>
> [DEFENSE COUNSEL]: All right.

(T 494).

After Appellant had exercised nine of his ten peremptory challenges, he once again requested an unspecified number of additional challenges. The trial court noted:

> For the record thirty-three jurors have been put in the jury box. I have granted eleven challenges for cause, all but I think two of them being defense challenges for cause.
>
> In effect... and I have also excused some nine peremptory challenges, so eighteen of the thirty-three potential jurors have been excused by the defendant, or the defense.
>
> I am going to deny your request for additional challenges.

(T 523-24). Thereafter, Appellant used his final peremptory challenge, and ten more people were called to the jury box to fill the final slot and two alternate slots. (T 524). When the twelfth juror was selected, Appellant once again requested an unspecified number of additional peremptory challenges. At that point, the following colloquy occurred:

> THE COURT: Do you want to put anything on the record as to why you feel that is necessary? You don't have to unless you want to.
>
> [DEFENSE COUNSEL]: First of all, we had to utilize three peremptory challenges because of cause challenges that were denied. That is the primary reason.

> THE COURT: Anything else on that subject?
>
> [DEFENSE COUNSEL]: No, sir.
>
> THE COURT: Sir, I will deny your request for additional challenges. I don't see the need for them.

(T 583).

In this appeal, Appellant claims that the trial court abused its discretion in refusing Appellant's challenges for cause on jurors Smith and Griffis, thereby forcing him to use peremptory challenges to remove the potential jurors from the jury. **Brief of Appellant** at 15-19. The State submits, however, that Appellant has failed to preserve this issue for review.

In Trotter v. State, 576 So.2d 691, 693 (Fla. 1990) (footnotes omitted; emphasis added), this Court enunciated the precise procedural requirements for preserving this kind of issue for review on appeal:

> Under Florida law, '[t]o show reversible error, a defendant must show that all peremptories had been exhausted and that an objectionable juror had to be accepted. Pentecost v. State, 545 So.2d 861, 863 n. 1 (Fla. 1989). By this we mean the following. Where a defendant seeks reversal based on a claim that he was wrongfully forced to exhaust his peremptory challenges, he initially must identify a specific juror whom he otherwise would have struck peremptorily. This juror must be an individual who actually sat on the jury and whom the defendant either challenged for cause or attempted to challenge peremptorily or otherwise objected to after his peremptory challenges had been exhausted. The defendant cannot stand by silently while an objectionable juror is seated and then, if the verdict is adverse, obtain a new trial. In the present case, after exhausting his

> peremptory challenges, Trotter failed to object to any venireperson who ultimately was seated. He thus failed to establish this claim.

As in Trotter, Appellant failed to identify a specific juror or jurors whom he would have struck peremptorily had he been given the opportunity. He claims, however, that he was excused from doing so when the trial court asked him if he had anything he wanted to put into the record regarding his need for more challenges, but that he did not have to if he did not want to. Appellant further claims that "[h]e let the court know that he needed more peremptory challenges to exercise on the remaining cluster of possible jurors. He had, therefore, satisfied this court's 'sandbagging' concerns expressed in Trotter." **Brief of Appellant** at 21. The State disagrees. First, by moving pretrial for additional peremptories, Appellant arguably planned to create this issue for appeal, which is why the requirements established in Trotter should be strictly applied. Second, appellate counsel's claim that, "[a]s to the final group of ten, five were beyond his ability to excuse, and because it was a small, readily identifiable group, it is reasonable to believe that counsel did not want at least one of them on the jury," **Brief of Appellant** at 21, is pure speculation. Finally, this Court specifically found in Trotter that "Trotter's request for an additional peremptory challenge was not made in connection with a particular venireperson; it was a general request for a challenge that could be exercised in the future." 576 So.2d at 693 n.7.

Appellant made absolutely no indication that an objectionable juror had been selected. Even now, Appellant makes no claim that a biased juror was seated. A perusal of the record would defy such a claim. Without a showing of need, the trial court had no reason to grant Appellant's request for an unspecified number of additional peremptory challenges. Thus, by failing to satisfy his burden, Appellant's claim should not be heard.

Were this Court to find, however, that Appellant made a sufficient showing, his argument nevertheless lacks merit. This Court has repeatedly stated that "[t]he test for determining juror competency is whether the juror can lay aside any bias or prejudice and render his verdict solely upon the evidence presented and the instructions on the law given to him by the court." Lusk v. State, 446 So.2d 1038, 1041 (Fla.), cert. denied, 469 U.S. 873 (1984). It is solely within the trial court's discretion to determine whether the juror meets this test. Hitchcock v. State, 578 So.2d 685, 688 (Fla. 1990), cert. denied, 116 L.Ed.2d 254 (1991).

Here, the trial court had a superior vantage point and was able to see and hear not only the challenged jurors' demeanor and responses, but it was also able to assess the entire venire and the interaction among its members. From this vantage point, it determined that jurors Smith and Griffis met the Lusk test. This Court should defer to its conclusions.

ISSUE II

WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN ALLOWING THE STATE TO ASK APPELLANT CERTAIN QUESTIONS ON CROSS-EXAMINATION (Restated).

During Appellant's direct examination, he testified that he did not remember shooting either of the victims. In fact, he testified that he did not remember very much at all about that day. (T 940-48). On cross-examination, the State tried to show that Appellant's memory loss was very selective. At one point, the State asked Appellant if he remembered Wayne Johnson testifying the day before regarding statements Appellant made to him a few weeks before the murders. Appellant at first claimed that he did not remember his testimony, then changed his mind. Thereafter, the following colloquy occurred:

> Q [BY THE STATE] And you remember him saying that you told him you were going to kill your father?
>
> A [BY APPELLANT] I heard what he said, yes, sir.
>
> Q And you don't remember saying that?
>
> A No.
>
> Q Or you believe he is lying?
>
> A I think he is lying.
>
> Q You believe he is lying?
>
> A Yes.
>
> Q Why do you believe he's lying, Mr. Knowles?
>
> A Because I --

(T 952). Appellant objected that the questions were argumentative and "highly improper." (T 952-53). Appellant's objection was overruled. (T 953). Thereafter, Appellant responded that he did not know why Mr. Johnson was lying. The State then asked the same questions and elicited the same responses, over Appellant's objection, regarding Earl Fagin's prior testimony. (T 954-55).

In this appeal, Appellant claims that the trial court abused its discretion in allowing the State to elicit this testimony. **Brief of Appellant** at 25-29. The State submits, however, that the questions fairly established the illogical nature of Appellant's testimony--Appellant could not remember whether he made the statements to Mr. Johnson or Mr. Fagin, but he nevertheless believed that they were lying. The State is not unmindful of the cases cited to by Appellant which hold that such am impeachment technique is improper, but the State maintains that under the circumstances here the questions were proper.

Even if they were not, such error was harmless beyond a reasonable doubt. See State v. DiGuilio, 491 So.2d 1129 (Fla. 1986). The permissible evidence upon which the jury could have relied to find Appellant guilty includes the following: Evelyn Agricola's testimony that she saw Appellant walking away from the trailer after he shot Carrie Woods; June Skipper's testimony that Appellant opened the door to her trailer, pointed the gun at her, then turned it on Carrie Woods, threw his head back, fired, and walked away without ever saying a word; Linda Brazell's testimony that Appellant followed his father to his truck, pointed the gun

at his father, fired, pulled his father out of the truck and onto the ground, threw the gun in the back of the truck, and drove away; Robert Mullis' testimony that Appellant was standing outside of his father's truck arguing with his father, Appellant said, "No, you won't," shot his father in the head, pulled him out, and drove off; Parker Quick's testimony that Appellant filled up with gasoline at the Jiffy Mart shortly after the murders, got a 12-pack of Budweiser, threw his driver's license on the counter, said he would be back to pay for the gas and beer, and then said, "Rehabilitation made me do what I did tonight"; and, finally, Glen Roberson's testimony that Appellant showed up at his house the next morning and told him that he shot some people in the trailer park and shot his father in his truck. Based on this evidence, there is no reasonable possibility that the State's cross-examination of Appellant, if error, contributed to the jury's verdict. DiGuilio. Therefore, this Court should affirm Appellant's convictions.

ISSUE III

WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN ADMITTING THE TESTIMONY OF TWO WITNESSES REGARDING STATEMENTS APPELLANT HAD MADE TO THEM BEFORE THE MURDERS (Restated).

Prior to trial, Appellant filed a motion in limine, seeking to exclude the testimony of Wayne Johnson as it related to statements Appellant had made to him six weeks before the murders, on the grounds that the statements were "vague, ambiguous, and remote from the time of the [murders]." (R 2214-15). Based upon his deposition, Mr. Johnson was prepared to testify that, on June 1, 1990, while he was at the Knowles' residence, Appellant's father, who looked upset, came out of the trailer, got in his truck, and drove off without speaking to Mr. Johnson, which was very uncommon. Shortly thereafter, Appellant came outside and said to Mr. Johnson, "'[T]hat son of a bitch don't know it, but I'm going to blow his shit away one day. Well I'm going to surprise him one of these days.'" (R 2214). At the hearing on the motion, the State argued that Appellant's statement clearly referenced his father and that it was admissible, pursuant to § 90.803(3)(a)2 of the Florida Evidence Code, as evidence of Appellant's then-existing state of mind to prove or explain acts of subsequent conduct. (T 124-25). The trial court denied the motion. (T 129). During Mr. Johnson's testimony in the State's case-in-chief, Appellant renewed his motion regarding the testimony, which was denied. (T 762-63). Thereafter, Mr. Johnson related to the jury the substance of Appellant's statement to him. (T 763-65).

The State's next witness was Earl Fagin, who lived next door to Appellant in the trailer in which Carrie Woods was killed. During Mr. Fagin's testimony, Appellant objected to forthcoming testimony regarding statements that Appellant had made to him a couple of months prior to the murders as irrelevant due to their remoteness, or, if relevant, more prejudicial than probative. (T 774-76). According to Mr. Fagin, Appellant came over to his trailer one day and as they stood around talking Appellant said, "Maybe some day I might start shooting people around the trailer park . . . [b]ut I don't mean you guys." (T 774-75). Again, the State argued that the statement was admissible as evidence of Appellant's state of mind and as a statement against interest. (T 776). The trial court "[couldn't] think of anything more admissible" and overruled the objection. (T 779).

In this appeal, Appellant claims that the trial court abused its discretion in admitting Mr. Johnson's and Mr. Fagin's testimony regarding Appellant's statements to them. Although Appellant concedes that they were relevant to the State's case, he claims that their probative value was outweighed by their prejudicial effect, "considering the very lengthy time between what he said and did as well as his condition when he made the statements." **Brief of Appellant** at 31-32. The State disagrees.

Appellant was charged with two counts of first-degree murder. As such, the State was responsible for proving premeditation. By its nature, however, one's intent is not readily proven with direct evidence; rather, the State must rely on the facts and circumstances surrounding the crime to prove

intent circumstantially. Appellant's statements to Mr. Johnson and Mr. Fagin were highly probative, circumstantial evidence of Appellant's intent. Appellant told Mr. Fagin that he might shoot people in the trailer park one day. A couple of months later he walked to the trailer next door, opened the door, and shot ten-year-old Carrie Woods, whom he had never met before. Appellant also told Mr. Johnson that he would shoot his father one day. After killing Carrie Woods, he shot his father. Appellant did what he said he might do. The fact that he made one statement a couple of months before the killings and another statement six weeks before does not render this highly probative evidence inadmissible.

This Court has repeatedly held that "any fact relevant to prove a fact in issue is admissible into evidence unless its admissibility is precluded by some specific rule of evidence. The trial court has wide discretion in areas concerning the admission of evidence, and, unless an abuse of discretion is shown, its rulings will not be disturbed." Welty v. State, 402 So.2d 1159, 1162-63 (Fla. 1981). Here, Appellant relies solely on § 90.403 of the Evidence Code to sustain his contention that the evidence should not have been admitted. By its nature, however, this rule vests in the trial court the duty to weigh the probative value and prejudicial effect of evidence. Its ultimate conclusion, therefore, must be given tremendous deference.

Appellant complains that, if § 90.803(3)(a)2 "is given its literal impact then we would all have to worry because statements made years ago would come back to haunt us. Instead, there

should be some reasonable limit to admitting prior statements of future intent." **Brief of Appellant** at 31. This statutory provision, however, provides its own safeguard. Subsection (3)(b)2 provides: "However, this subsection does not make admissible: A statement made under circumstances that indicate its lack of trustworthiness." Were the trial court to believe that enough time had passed between the making of the statements and the acts implied by the statements, it has the authority to exclude them as untrustworthy. The trial court here obviously did not find the time period problematic. Appellant's statements of his intention to kill people in the trailer park and to kill his father contained sufficient probative value to draw the inference that the acts were done. See Jones v. State, 440 So.2d 570, 577 (Fla. 1983). Therefore, since the probative value far outweighed its prejudicial effect, the trial court did not abuse its discretion in admitting the statements. Even if it were error, such error was harmless beyond a reasonable doubt in light of the sufficient quality and quantity of permissible evidence upon which the jury could have relied to find Appellant guilty. See State v. DiGuilio, 491 So.2d 1129 (Fla. 1986). Consequently, this Court should affirm Appellant's convictions.

ISSUE IV

WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING APPELLANT'S MOTIONS FOR JUDGMENT OF ACQUITTAL (Restated).

In this appeal, Appellant makes an elaborate nine-page argument regarding the State's failure to prove the element of premeditation, and complains that the trial court erroneously denied his motions for judgment of acquittal. **Brief of Appellant** at 33-41.[1] Initially, the State would note that Appellant's perfunctory, boilerplate motions (T 922-23, 1412-13), which did not include the grounds raised here, hardly satisfy the dictates of well-established law that require specific arguments in order to apprise the trial court of the alleged insufficiency. See **Fla. R. Crim. P.** 3.380(b); Showers v. State, 570 So.2d 377, 378 (Fla. 1st DCA 1990); Cornwell v. State, 425 So.2d 1189 (Fla. 1st DCA 1983); Johnson v. State, 478 So.2d 885 (Fla. 3d DCA 1985), cause dismissed, 488 So.2d 830 (Fla. 1986); Patterson v. State, 391 So.2d 344 (Fla. 5th DCA 1980). Regardless, the trial court properly denied Appellant's motions for judgment of acquittal.

It is well-established that

---

[1] Appellant has apparently abandoned the argument made below regarding felony murder. Curiously, however, after Appellant argues that the felony murder aggravating factor was not supported by the evidence, see Issue VI, infra, Appellant argues as a separate issue that the trial court should not have instructed the jury as to felony murder during the guilt phase, see Issue VII, infra. From this, and from Appellant's lack of argument in this issue regarding felony murder, the State must conclude that Appellant waives any argument regarding the trial court's denial of his motion for judgment of acquittal as it relates to felony murder.

> [a] trial court should rarely, if ever, grant a judgment of acquittal based on the state's failure to prove mental intent. This is because the proof of intent usually consists of the surrounding circumstances of the case. Where reasonable persons may differ as to the existence of facts tending to prove ultimate facts, or inferences to be drawn from the facts, the case should be submitted to the jury. A directed verdict cannot be given if the testimony is conflicting, or lends to different reasonable inferences, tending to prove the issues.

King v. State, 545 So.2d 375, 378 (Fla. 4th DCA) (citations omitted), rev. denied, 551 So.2d 462 (Fla. 1989). See also Taylor v. State, 583 So.2d 323, 328 (Fla. 1991); Buenoano v. State, 478 So.2d 387, 390 (Fla. 1st DCA 1985), pet. dismissed, 504 So.2d 762 (Fla. 1987); Brewer v. State, 413 So.2d 1217 (Fla. 5th DCA 1982) (en banc), rev. denied, 426 So.2d 25 (Fla. 1983). Thus, "whether the evidence proves premeditation to the exclusion of all other reasonable inferences is a question of fact for the jury, whose verdict will not be reversed on appeal, where there is substantial competent evidence to support it." Bedford v. State, 589 So.2d 245 (Fla. 1991), cert. denied, 112 S.Ct. 1773 (1992). Here, the State presented competent evidence from which the jury could have inferred guilt to the exclusion of all other inferences.

As heard by the trial court and the jury, the State's evidence established the following: Several months before the murders, Appellant was over at the trailer where he ultimately shot Carrie Woods and he said to Earl Fagin that "the day might come that he just might lose it, whatever, and just go in the trailer park and shoot people"; six weeks before the murders,

Wayne Johnson was over at the Knowles' trailer when he saw Appellant's father leave as if he were upset, after which Appellant said, "That old man's going to--got a surprise coming one day. He don't think I am going to do it, but I am going to blow his shit away"; Appellant did not know Carrie Woods and had never met her; the murder occurred around 5:30 in the afternoon; the victim and her friend were not playing loud music and her friend's dog was inside, i.e., the victim was not disturbing Appellant; Earl Wingate, Appellant's huffing-buddy, testified that, just prior to the murders, Appellant was drunk, but not on a "toluene high"; sometime after leaving Wingate's house, Appellant walked next door from his trailer to the trailer in which Carrie Woods was playing with her friend, opened the door without knocking or announcing his presence, pointed his rifle at Carrie's friend, then turned the gun on Carrie, threw his head back, fired three shots, and turned and walked out casually without ever saying a word. He then went to his own trailer and followed his father out to his truck. According to one eyewitness, Appellant and his father seemed to be arguing. He heard Appellant say, "No, you won't," then point the rifle at his father's head and fire twice. Appellant then grabbed his father, pulled him out of the truck onto the ground, threw the rifle in the back of the truck, and drove off in a hurry. Realizing that he had done wrong, Appellant drove to a nearby gas station, filled up his father's truck with gas, got a 12-pack of Budweiser, threw his driver's license on the counter, said he would be back to pay for the gas and beer, and then said, "Rehabilitation made me do what I did tonight." Appellant drove

approximately 250 miles to Mulberry, Florida. At some point, he picked up a girl, had sex with her, and drove her home. He also sold the rifle he had used to kill the victims for $10, which he used to buy gas, beer, and aspirin. Eventually, Appellant managed to find a friend's house, where he immediately confessed that he thought he had killed several people, including his father.

In his defense, Appellant presented the testimony of two psychologists and a psychiatrist. Dr. Fennel opined that Appellant had a low average intelligence, showed signs of motor impairment, and had a memory deficit resulting from his long-term abuse of alcohol and chemical solvents. However, Dr. Fennel admitted that Appellant's MRI was normal and that his memory impairment would not account for what happened. Dr. Krop agreed that Appellant had a chronic memory impairment, but further opined that Appellant was in such a state of intoxication at the time of the murders that he was incapable of forming premeditated intent. However, Dr. Krop admitted that Appellant's ability to recall certain aspects of the murders twelve hours after he committed them indicated that Appellant knew the killings were wrong. Dr. Sall, on the other hand, believed that Appellant was legally insane, in that he did not know right from wrong and could not premeditate. Dr. Sall admitted, however, that he had only spent forty-five minutes with Appellant, that Appellant could not relate the events leading up to or following the murders, and that he did not review any of the materials with which he was provided other than defense counsel's five-page cover letter.

In rebuttal, the State presented the testimony of two psychiatrists. Dr. Bernard testified that, although he found evidence of a memory deficit and some level of organic brain damage from the alcohol and toluene abuse, he found no evidence that Appellant suffered from a gross psychosis or major affect deficit. In his opinion, Appellant was legally sane at the time of the murders. With respect to Appellant's intoxication at the time of the offense, Dr. Bernard agreed that Appellant's capacity to premeditate was decreased, but he simply did not have enough information to determine whether Appellant was capable of premeditating. Dr. Meyers also agreed that Appellant suffered from some level of organic brain damage as a result of his drug abuse, but believed that Appellant was sane at the time of the offense.

When, as here, the State produces conflicting evidence, the jury is not required to believe the defendant's version of the facts. Bedford, 589 So.2d at 250; Taylor, 583 So.2d at 328; Buenoano, 478 So.2d at 390. Moreover, when Appellant moved for a judgment of acquittal, he admitted the facts in evidence and all reasonable inferences favorable to the State. State v. Law, 559 So.2d 187, 189 (Fla. 1989). When viewed as a whole, the State's evidence proved beyond a reasonable doubt that Appellant was sane at the time of the murders and that he premeditated them both. Thus, Appellant's convictions should be affirmed.

ISSUE V

WHETHER THE TRIAL COURT ERRED IN FINDING THE "AVOID ARREST" AGGRAVATING FACTOR (Restated).

In its sentencing order, the trial court made the following findings regarding the "avoid arrest" aggravating factor as it related to the murder of Appellant's father:

> FACT:
>
> Randall Scott Knowles murdered his Father, Alfred Knowles, to steal his Father's truck in order to flee a lawful arrest after murdering Carrie Woods.
>
> CONCLUSION:
>
> There is an aggravating circumstance under this paragraph since Alfred Knowles was murdered in order for defendant to steal Alfred Knowles truck, hoping thereby, to avoid lawful arrest.

(R 2417). Appellant claims that the trial court erred in finding this aggravating factor because "Knowles' reason for shooting his father remains unclear;" thus, it cannot be said that the dominate motive for killing his father was to avoid a lawful arrest. **Brief of Appellant** at 42-45. The State disagrees.

The evidence established that, after Appellant shot Carrie Woods, he casually walked back toward the trailer he shared with his father. Linda Brazell, who was standing with Robert Mullis and another woman at a dumpster about 160 yards from the Knowles' trailer, testified that she saw Appellant's father walk from the trailer and get into his pickup truck. Within a minute or two, she saw Appellant walk from his trailer with a rifle in his hand up to the driver's door. (T 685-88). Robert Mullis testified

that he saw Appellant tug on his father's shoulder and say, "No, you won't." (T 700-01). At that point, Appellant raised the rifle, pointed it at Appellant's head, and fired twice. Appellant grabbed his father, pulled him out of the truck and onto the ground, threw the gun in the back of the truck, and drove away hurriedly, swerving to miss Carrie Woods' parents, who were driving into the trailer park. (T 688, 702-04, 720-21). Appellant used the truck to escape to a friend's house 250 miles away, where he was ultimately arrested the following day after his friend called the police.

This evidence supports the trial court's finding that Appellant killed his father to eliminate a witness and to effectuate his escape from the scene. Under the circumstances, the jury could have believed that Appellant's father was leaving to seek help and that Appellant killed him to prevent it. In addition, since the truck was Appellant's only source of transportation, Appellant clearly killed his father to escape from the scene of the crime. After all, Appellant used the truck to flee to a friend's house 250 miles away. Theft of the truck, however, was not the primary goal, since Appellant could have easily forced his father out of the truck without killing him; rather, Appellant killed his father to eliminate him as a witness. Thus, since these logical circumstances established that Appellant's dominate motive for killing his father was to eliminate a witness and to effectuate his escape, the trial court did not err in finding this aggravating factor. See Jones v. State, 18 F.L.W. S11, 12-13 (Fla. Dec. 17, 1992); Bryan v. State,

533 So.2d 744, 748-49 (Fla. 1988), cert. denied, 490 U.S. 1028 (1989).[2]

Even if the trial court did err, Appellant's sentence should nevertheless be affirmed. Without this aggravating factor, there remain two valid aggravating circumstances--prior conviction for a capital felony and felony murder--and minimal nonstatutory mitigating circumstances--limited education, drug abuse, low average intelligence, poor memory, inconsistent work habits, two failed marriages, and love for his father (whom he killed). The two aggravating factors should be accorded great weight. Not only did Appellant murder his own father in order to steal his father's truck to effectuate his escape, but he senselessly murdered a ten-year-old girl whom he had never met before without any motive or provocation whatsoever. Thus, even without the "avoid arrest" aggravating factor, there is no reasonable possibility that the jury would have recommended, or the trial court would have given, a lesser sentence. See Rogers v. State, 511 So.2d 526, 535 (Fla. 1987), cert. denied, 484 U.S. 1020 (1988). See also Capehart v. State, 583 So.2d 1009, 1015 (Fla. 1991), cert. denied, 112 S.Ct. 955 (1992). Consequently, this Court should affirm this sentence of death.

---

[2] Appellant cites to several cases to support his contention that this aggravating factor was not sufficiently proven. These cases are so factually different, however, as to be inapplicable.

ISSUE VI

WHETHER THE TRIAL COURT ERRED IN FINDING THE "FELONY MURDER" AGGRAVATING FACTOR (Restated).

In its sentencing order, the trial court made the following findings regarding the "felony murder" aggravating factor as it related to the murder of Appellant's father:

> FACT:
>
> Randall Scott Knowles murdered Alfred Knowles and then stole ALfred [sic] Knowles' truck.
>
> CONCLUSION:
>
> There is an aggravating circumstance under this paragraph because Randall Scott Knowles murdered Alfred Knowles while attempting to steal Alfred Knowles' truck.

(R 2416). Appellant claims that the trial court erred in finding this aggravating factor because "there is no evidence Knowles was trying to steal his father's truck." In addition, Appellant claims that, since he had a possessory interest in the truck, he cannot steal that which is his. **Brief of Appellant** at 46-48. The State disagrees.

In order to prove a robbery, the State must prove the following four elements beyond a reasonable doubt:

1) Appellant took the truck from the custody of his father,

2) the taking was by force, violence or assault, or by putting his father in fear,

3) the property taken was of some value, and

4) Appellant took the truck from the custody of his father and at the time of the taking intended to permanently deprive his father of the truck.

Fla. Stand. Jury Instr. in Crim. Cases 155 (Oct. 1985). However, "[i]n order for a taking of property to be robbery, it is not necessary that the person robbed be the actual owner of the property. It is sufficient if the victim has the custody of the property at the time of the offense." Id. See also Taylor v. State, 557 So.2d 138, 142 (Fla. 1st DCA 1990) (finding that evidence of robbery sufficient where defendant shot victim while trying to obtain money allegedly belonging to defendant).

Here, although the title to the truck was never introduced into evidence, it was uncontroverted that the truck belonged to Appellant's father and that Appellant was allowed to drive it when he was sober. (T 645, 773, 1030).[3] In other words, Appellant was not a co-owner of the property; he was merely allowed to borrow it on occasion. After Appellant shot Carrie Woods, witnesses indicated that Appellant's father came from his trailer and got into the driver's side of the truck. Within a minute or two, Appellant came from Alfred Knowles' trailer with the rifle still in his hand and approached his father in the truck. According to one witness, there was a "scuffle," with Appellant tugging on his father's shoulder. After Appellant exclaimed, "No, you won't," he shot his father twice in the head, pulled his body out onto the ground, and then drove away. He was arrested 250 miles away at a friend's house. These facts clearly establish beyond any reasonable doubt that the elements of

---

[3] It is interesting to note that when Earl Wingate showed up on the morning of the murders and asked Appellant to go get some beer, Appellant used Wingate's car, instead of his Dad's truck, even though Appellant was sober at the time. (T 1047-48).

robbery were proven. Therefore, the trial court properly found the existence of the "felony murder" aggravating factor. Accordingly, this Court should affirm Appellant's sentence.

ISSUE VII

WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN INSTRUCTING THE JURY THAT IT COULD FIND APPELLANT GUILTY OF THE MURDER OF HIS FATHER UNDER A FELONY MURDER THEORY (Restated).

As discussed in the preceding issue, since the State presented sufficient evidence to support the trial court's finding of the "felony murder" aggravating factor, the trial court was justified in instructing the jury on this aggravating factor.

ISSUE VIII

WHETHER THE TRIAL COURT ERRED IN USING ONE MURDER AS AN AGGRAVATING FACTOR IN THE OTHER (Restated).

In its sentencing order, the trial court found as to each murder that Appellant had previously been convicted of a capital felony based upon Appellant's murder of two people. (R 2414-15). Appellant claims that the trial court erred in applying this aggravating factor to each count, because the two murders arose from the same criminal episode. **Brief of Appellant** at 51-53. The State submits, however, that Appellant's premise is faulty. This Court has previously ruled that "the contemporaneous conviction of a violent felony may qualify as an aggravating circumstance, so long as the two crimes involved multiple victims or separate episodes." Pardo v. State, 563 So.2d 77, 80 (Fla. 1990) (emphasis added), cert. denied, 114 L.Ed.2d 127 (1991). Appellant's belief that the two victims must be murdered in separate episodes is clearly wrong. See Correll v. State, 523 So.2d 562, 568 (Fla. 1988) ("As to each crime, Correll had already been convicted of three capital felonies even though all four murders were committed in one episode. Therefore, this aggravating factor was properly applied to the murders of all the victims."), cert. denied, 488 U.S. 871 (1989); Jones v. State, 18 F.L.W. S11, 13 (Fla. Dec. 17, 1992).

ISSUE IX

WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN OVERRULING APPELLANT'S OBJECTIONS TO THE STATE'S PENALTY PHASE CLOSING ARGUMENTS (Restated).

During the penalty phase, Appellant presented the testimony of several witnesses who testified that Appellant's mother suffered from a mental illness during Appellant's childhood. One witness, David Sullivan, even testified that, when he returned from Vietnam in 1973, Appellant's alcohol and toluene abuse had worsened, as had Appellant's mother's mental illness. (T 1775-81). Based on this testimony, the State made the following comments during its closing argument:

> David Sullivan, a friend, said he has low intelligence. We know that. And when David Sullivan got back from the military the family was all split up. The mother had mental problems. Because of the defendant's abuse.

(T 1816). Appellant objected, claiming that the evidence did not support the State's argument. (T 1816-18). The trial court overruled the objection, finding that "it is not inappropriate to [argue an inference] that might be drawn from the evidence before the jury. I think that is what the state attorney is arguing... an inference that could be drawn. It may not be the only inference. I don't believe that is the requirement." (T 1819).

As Appellant acknowledges, this Court has repeatedly held that

> [w]ide latitude is permitted in arguing to a jury. Logical inferences may be drawn, and counsel is allowed to advance all legitimate

> arguments. The control of comments is within the trial court's discretion, and an appellate court will not interfere unless an abuse of such discretion is shown.

Breedlove v. State, 413 So.2d 1, 8 (Fla. 1982). Here, Appellant has failed to show an abuse of discretion, since it is plain from the record that the State's argument was a legitimate inference that could have been drawn from the witnesses' testimony. Thus, Appellant's request for a new sentencing hearing is totally unwarranted, especially since he requested no relief below.

Appellant's second claim of error relates to the following comment by the State during closing argument:

> It is respectfully submitted, if you remember the testimony from the trial, that the actions of this man were not consistent with substantial impairment or extreme mental disturbance. And recall the testimony.
>
> Was there ever a suggestion when the next morning comes, he knows he shot some people... I don't want to go over all the evidence again, I don't think it is necessary because I know the jury paid very close attention.
>
> Were his acts those of somebody who realized when [sic] he had done, that he had done something wrong, and therefore, he wanted to turn himself in? No, sir.
>
> He wanted to find out if he was wanted.
>
> Were they consistent with remorse or consistent with waking up the next... and just think about this for a minute. I don't know what time he woke with the woman, but obviously it was still dark, so probably some time before 6:30 in the morning.
>
> He came into contact with Glenn Roberson shortly after that, some time later in the morning.

> His memory is good when he talks to Glenn Roberson. The jury doesn't know, and the State couldn't present to you, what he talked to the girl about. But it is clearly obvious that if his memory is fading, it would have been better when he was with the woman.
>
> And what are his actions of committing the murders at the time that he probably remembers them most clearly? The desire to have sexual intercourse, which is a very normal reaction, not consistent with remorse for killing a child and his father, and very respectfully, not consistent with substantial impairment or extreme emotional disturbance [sic], but consistent with logical clear thinking, like the clear thinking described by the witnesses here today.

(T 1835-36). Appellant complains that "any reference to the defendant's lack of remorse, either by the prosecutor or the sentencing court, is improper." **Brief of Appellant** at 56 (emphasis added). In making such a broad statement, Appellant cites to Wike v. State, 596 So.2d 1020, 1025 (Fla. 1992). Wike, however, does not support his contention. This Court stated in Wike that "the use of lack of remorse in this manner was error." Id. (emphasis supplied). Thus, the context of the argument is ever important.

Before reaching the merits of this claim, however, the State would submit that Appellant has failed to preserve this argument for appeal. When the State made these comments, Appellant made no objection. Rather, Appellant waited until a recess after the State's argument to object. (T 1839). And, again, he asked for no relief. Such a dilatory objection did not satisfy the contemporaneous objection rule. Riechman v. State, 581 So.2d 133, 138-39 (Fla. 1991).

Regardless, Appellant's claim has no merit. During the guilt phase of the trial, Appellant presented the testimony of two psychologists and a psychiatrist.[4] His theories of defense were that he was either insane at the time of the offense or so intoxicated that he could not have formed the necessary premeditation for first-degree murder. Testimony regarding his low intelligence, and a memory deficit caused by his alcohol and toluene abuse, was also elicited. In addition, Dr. Krop testified that, when he interviewed Appellant, "[h]e was depressed he could have done such a thing." (T 1231).

In response to this testimony, the State was attempting to show that Appellant's actions immediately following the murders tended to prove that his state of mind was more rational and coherent than he claimed. His ability to manipulate a standard-transmission truck, pump gas, select beer, resolve his inability to pay for the beer and gas, have sexual intercourse, sell the murder weapon, find his way to a friend's rural residence 250 miles from home, etc., were deliberate and reflective actions that negated his claims of mental or emotional disturbance and a substantial impairment of his ability to conform his conduct to the law or to appreciate the criminality of his conduct. The State's comments were not an attempt to argue lack of remorse as a nonstatutory aggravating factor. Rather, they were directly responsive to Appellant's claimed mental mitigation. Thus, Appellant's complaint has no merit. Even if the State's comments

---

[4] Of course, Appellant relied upon this testimony for penalty phase purposes as well.

were error, however, they were not so outrageous as to warrant automatic vacation of the sentences. See Bertolotti v. State, 476 So.2d 130 (Fla. 1985) ("In the penalty phase of a murder trial, resulting in a recommendation which is advisory only, prosecutorial misconduct must be egregious indeed to warrant our vacating the sentence and remanding for an new penalty-phase trial."); Pope v. Wainwright, 496 So.2d 798 (Fla. 1986), cert. denied, 480 U.S. 951 (1987).

ISSUE X

WHETHER APPELLANT'S SENTENCE IS PROPORTIONAL TO SENTENCES IN OTHER CASES UNDER SIMILAR FACTS (Restated).

With respect to the murder of Carrie Woods, the trial court found one aggravating factor and very little in mitigation. With respect to the murder of Alfred Knowles, the trial court found three aggravating factors and very little in mitigation. As this Court has repeatedly held, however, the weighing process is not a numbers game. Rather, when determining whether a death sentence is proportionally warranted, the facts should control. Here, the evidence established that six weeks before the murders, Appellant said to Wayne Johnson, "[T]hat old man's going to -- got a surprise coming one day. He don't think I'm going to it, but I am going to blow his shit away." (T 763-75). Similarly, a couple of months before the murders, Appellant was at the trailer where he would later kill Carrie Woods and he said to Earl Fagin that "the day might come that he just may loose it, whatever, and just go in the trailer park and shoot people," but he also said, "I doubt it'd be you all." (T 779-80). On July 13, 1990, Appellant must have decided that that day had come. He obtained a gun, walked over to the trailer where Carrie Woods was visiting her best friend, June Skipper, opened the glass storm door without knocking or announcing his presence, and pointed the gun at June. For some reason, however, Appellant changed his mind, turned the gun on Carrie, whom had never met, and, without ever saying a word, shot her three times, killing her. He then casually walked back to the trailer he shared with his father.

Within minutes, Appellant followed his father out to his father's truck and began arguing with him. He then shot his father twice in the head, pulled him out of the truck, and drove off. Based on the facts, Appellant's sentences of death for this double murder are proportionally warranted. See Correll v. State, 523 So.2d 562 (Fla. 1988), cert. denied, 488 U.S. 871 (1989); Asay v. State, 580 So.2d 610 (Fla. 1991), cert. denied, 116 L.Ed.2d 218 (1992); Armstrong v. State, 399 So.2d 953 (Fla. 1981).

ISSUE XI

WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN REJECTING APPELLANT'S PENALTY-PHASE JURY INSTRUCTIONS REGARDING THE WEIGHT OF THE JURY'S RECOMMENDATION TO THE JUDGE (Restated).

During the penalty phase, Appellant proposed special instructions which elaborated on the weight that the jury's recommendation would be accorded by the trial court:

> [T]he law requires the court to give great weight to your recommendation. I may reject your recommendation only if the facts are so clear and convincing that virtually no reasonable person could differ.
>
> * * * *
>
> In your deliberations you are to presume that if the defendant is sentenced to life imprisonment, he will spend the rest of his life in prison unless he is released on parole after 25 years. You are to presume that if the defendant is sentenced to death, he will be electrocuted.

(R 2341-42, 2343, 2348). The trial court rejected these proposed instructions in favor of the standard ones. (T 1707-22).

In this appeal, Appellant renews his argument that the standard instructions violate the principles of Caldwell v. Mississippi, 472 U.S. 320 (1985), and Tedder v. State, 322 So.2d 908 (Fla. 1975). Rejecting an identical claim, this Court stated that it was "satisfied that [the standard] instructions fully advise the jury of the importance of its role and correctly state the law." Grossman v. State, 525 So.2d 833 (Fla. 1988), cert. denied, 489 U.S. 1071 (1989). Thus, Appellant's claim must fail.

ISSUE XII

WHETHER THE TRIAL COURT ERRED IN REJECTING APPELLANT'S EVIDENCE OF MENTAL MITIGATION AND WHETHER IT SUFFICIENTLY EVALUATED HIS NONSTATUTORY MITIGATING EVIDENCE (Restated).

In its sentencing order, the trial court made the following findings regarding Appellant's evidence that his capacity to appreciate the criminality of his actions and to conform his conduct to the requirements of the law was substantially impaired:

> FACT:
>
> Randall Scott Knowles was examined by three psychiatrists and two psychologists, who testified at the trial of this case.
>
> The weight of credible testimony and the conduct of the defendant before and after the murders indicate that he appreciated the criminality of his conduct and his ability to conform his conduct to the requirements of law was not substantially impaired.
>
> CONCLUSION:
>
> There is no mitigating circumstance under this paragraph.

(R 2411-12). Appellant claims that the trial court abused its discretion in rejecting this statutory mitigating factor in light of evidence that Appellant (1) had low average intelligence, (2) dropped out of school in the seventh grade, (3) was a chronic drug and alcohol abuser, (4) suffered from an antisocial personality disorder, and (5) had organic brain damage as a result of his drug and alcohol abuse. **Brief of Appellant** at 71-73. For the following reasons, the State submits that sufficient competent evidence in the record supports the trial court's

rejection of this mitigating factor. See Campbell v. State, 571 So.2d 415, 419-20 (Fla. 1990). Moreover, because all of this evidence was considered by the trial court as nonstatutory mitigating evidence, which is due equal weight, Appellant's argument is moot.

As the trial court noted, Appellant was evaluated by three psychiatrists and two psychologists. Appellant presented the testimony of two psychologists and one psychiatrist on his behalf. One psychologist, Dr. Fennel, testified that Appellant had a low average intelligence, a memory impairment (organic brain damage) as a result of his alcohol and toluene abuse, and signs of motor impairment. (T 1096-1108). Another psychologist, Dr. Krop, testified that Appellant had a chronic memory impairment (organic brain damage) as a result of his drug and alcohol abuse and that Appellant was so intoxicated at the time of the murders that he could not have formed premeditation. However, Dr. Krop did not believe that Appellant suffered from an Antisocial Personality Disorder. In addition, Dr. Krop testified that Appellant's ability to remember certain aspects of the murders indicated that he knew they were wrong. (T 1227-53, 1266-67). Dr. Sall, a psychiatrist, not only agreed that Appellant had organic brain damage from his drug and alcohol abuse and could not have formed premeditation at the time of the murders, but Dr. Sall believed that Appellant was insane at the time of the offense. (T 1325-30).

In rebuttal, the State presented the testimony of two psychiatrists. Although Dr. Bernard agreed that Appellant

suffered from some level of organic brain damage as a result of his alcohol and drug abuse, he believed that Appellant was sane at the time of the offense. In addition, although Dr. Bernard admitted that Appellant's capacity to appreciate the criminality of his conduct was decreased, he did not have enough information, due mainly to Appellant's inability to recall details of the murders, to determine whether Appellant could have formed the necessary premeditation. (T 1434-86). Dr. Meyers, on the other hand, diagnosed Appellant with (1) a psychoactive substance amnestic disorder, i.e., organic brain damage resulting in a mild memory deficit, (2) alcohol and toluene dependence, (3) borderline intellectual functioning, and (4) an antisocial personality disorder. Based on Appellant's actions preceding and following the murder, however, Dr. Meyers believed that Appellant was sane at the time of the offense and was not so intoxicated at the time of the murders that he could not have formed the necessary premeditation. (T 1500-09).

In addition to this conflicting expert testimony, the evidence established that, the morning and afternoon preceding the murders, Appellant rode around with Earl Wingate and later test fired a rifle Earl bought. When Earl left Appellant sitting outside of Earl's mother's house an hour or so before the murders, Appellant was not on a "toluene high" (T 1031-38, 1056-57). After shooting Carrie Woods, Appellant walked calmly back to his father's trailer. (T 637). A few minutes later, Appellant followed his father out to his father's truck, argued with him, then shot him twice in the head, pulled his body out of

the truck, and drove away hurriedly. (T 685-90, 696-706, 720-21). Realizing that he had done wrong, Appellant drove to a nearby gas station, filled up his father's truck with gas, got a 12-pack of Budweiser, threw his driver's license on the counter, said he would be back to pay for the gas and beer, and then said, "Rehabilitation made me do what I did tonight." (T 844-47). Appellant drove approximately 250 miles to Mulberry, Florida. At some point, he picked up a girl, had sex with her, and drove her home. He also sold the rifle he had used to kill the victims for $10, which he used to buy gas, beer, and aspirin. Eventually, Appellant managed to find a friend's rural home, where he immediately confessed that he thought he had killed several people, including his father. (T 867-75, 910-11, 940-48). He also called the police to see if he was wanted for the murders. (T 853-58, 876-77). When the police arrested Appellant at his friend's house, Appellant told them, "there wasn't anybody in the house guilty but him, that he did it." (T 893).

It is well-settled that "[a] trial court has broad discretion in determining the applicability of mitigating circumstances urged." Kight v. State, 512 So.2d 922, 922 (Fla. 1987), cert. denied, 485 U.S. 929 (1988), overruled on other grounds, 596 So.2d 985 (Fla. 1992). Regarding the testimony of expert witnesses, "the trial court may accept or reject the testimony of an expert witness just as he may accept or reject testimony of any other witness." Roberts v. State, 510 So.2d 885 (Fla. 1987) (citing to Bates v. State, 506 So.2d 1033 (Fla. 1987) (Expert testimony is not conclusive evidence where

contradicted)), cert. denied, 485 U.S. 943 (1988). Similarly, "'[t]he resolution of factual conflicts is solely the responsibility and duty of the trial judge," and this Court has "no authority to reweigh that evidence.'" Jones v. State, 580 So.2d 143, 146 (Fla. 1991) (quoting Gunsby v. State, 574 So.2d 1085, 1090 (Fla. 1991)), cert. denied, 112 S.Ct. 221 (1992).

Here, the trial court specifically rejected the testimony of Appellant's expert witnesses, which was adequately contradicted by the State's expert witnesses and other evidence. In addition, it found that the evidence of Appellant's actions preceding and following the murders established that Appellant's capacity to appreciate the criminality of his conduct was not substantially impaired. Since the record supports these conclusions, the trial court did not abuse its discretion in rejecting this mitigating factor.

Regardless, the trial court considered all of Appellant's claimed mitigation as nonstatutory mitigating evidence. In its sentencing order, the trial court made the following findings:

> The Court considered the testimony presented indicating that the defendant, Randall Scott Knowles had a limited education, had on occasion been voluntarily intoxicated on drugs and alcohol, had two failed marriages, has a low average intelligence, has a poor memory, had inconsistent work habits, and loved his father[. T]here are no other aspects of the defendant's character or record, nor any other circumstances of the offense, which would mitigate in favor of the defendant or his conduct in this matter.

(R 2413). The only evidence in mitigation not listed by the trial court, but claimed to be valid by Appellant, was Appellant's diagnosis of antisocial personality disorder. However, Dr. Krop, Appellant's own witness, testified that he did not believe that Appellant met the criteria for this diagnosis. (T 1247-48). Thus, Appellant can hardly claim that the trial court erred in failing to consider it. In any event, the trial court considered all of Appellant's mental mitigation. The fact that it did so as nonstatutory mitigation instead of as statutory mitigation is of no consequence since the catchall provision is due no less weight than any of the provisions specifically defining the type of mitigation. Consequently, Appellant's complaint is without merit.

Similarly, Appellant's complaint that the trial court failed to "'expressly evaluate in its written order' the mitigation it recognized," **Brief of Appellant** at 73-75 (quoting Campbell v. State, 571 So.2d 415, 418-19 (Fla. 1990)), is equally unavailing. As quoted above, the trial court recited the mitigating evidence that it considered. Appellant does not allege that the trial court failed to consider any evidence in mitigation; rather, Appellant contends that "it made no evaluation of the mitigation that Knowles had 'on occasion been voluntarily intoxicated on drugs and alcohol.' Nor did it adequately consider how his 'low average intelligence' or his 'poor memory' might mitigate a death sentence." **Brief of Appellant** at 74. In keeping with Campbell, the trial court "expressly consider[ed] in its written order each established mitigating circumstance." 571 So.2d at 420.

However, "the relative weight given each mitigating factor is within the province of the sentencing court." Id. Based on the trial court's ultimate finding that "there are no mitigating circumstances existing which would outweigh or outnumber the statutory aggravating circumstances in this case" (R 2421), it must be assumed that the trial court gave Appellant's mitigating evidence little weight, especially since, with respect to the murder of Carrie Woods, there was only one aggravating factor. Likewise, it must be assumed that the trial court complied with the federal constitutional limitations in capital sentencing and engaged in a serious character analysis of the defendant before imposing these sentences of death. To assume otherwise would denigrate the trial court unjustly.

ISSUE XIII

WHETHER THE TRIAL COURT ERRED IN REJECTING APPELLANT'S REQUESTED PENALTY-PHASE JURY INSTRUCTIONS REGARDING THE WEIGHING OF AGGRAVATING AND MITIGATING FACTORS (Restated).

During the penalty phase, Appellant proposed special instructions which elaborated on the process of weighing aggravating and mitigating circumstances:

> If you determine there are sufficient aggravating circumstances, then you must consider the evidence in mitigation. You must then determine whether the aggravating circumstances are sufficient to outweigh the mitigating circumstances beyond a reasonable doubt.
>
> * * * *
>
> It is your duty to follow the law that will now be given you by the court and render to the court an advisory sentence based upon your determination as to whether sufficient aggravating circumstances exist to justify the imposition of the death penalty and whether sufficient mitigating circumstances exist {to outweigh any} which are not outweighed by the aggravating circumstances found to exist.
>
> * * * *
>
> Should you find sufficient aggravating circumstances do exist, it will then be your duty to determine whether {mitigating circumstances exist that outweigh the aggravating circumstances.} they outweigh any mitigating circumstances you find to exist.

(R 2341-44, 2350-51, 2352, 2357). The trial court rejected these proposed instructions in favor of the standard ones. (T 1707-22).

In this appeal, Appellant renews his argument that the standard instructions impermissibly allocate the constitutionally

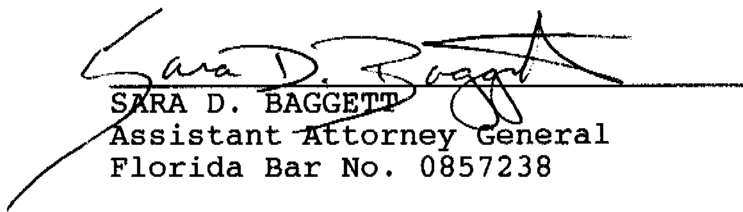
prescribed burden of proof. **Brief of Appellant** at 76-77. Appellant neglects to mention, however, that this Court has previously rejected this claim several times. Arango v. State, 411 So.2d 172, 174 (Fla. 1982), cert. denied, 474 U.S. 1015 (1983); Stewart v. State, 549 So.2d 171, 174 (Fla. 1989), cert. denied, 118 L.Ed.2d 313 (1990); Robinson v. State, 574 So.2d 108, 113 n.6 (Fla. 1991), cert. denied, 116 L.Ed.2d 99 (1992). It should do so once again and affirm Appellants convictions and sentences of death.

CONCLUSION

Based on the foregoing arguments and authorities, the State respectfully requests that this Honorable Court affirm Appellant's convictions and sentences of death.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL



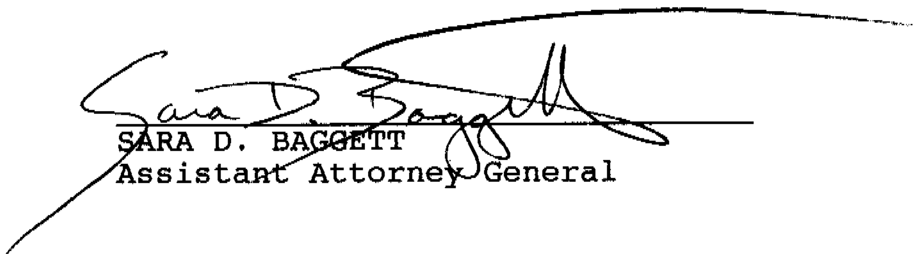
SARA D. BAGGETT
Assistant Attorney General
Florida Bar No. 0857238

DEPARTMENT OF LEGAL AFFAIRS
The Capitol
Tallahassee, FL 32399-1050
(904) 488-0600

COUNSEL FOR APPELLEE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to David A. Davis, Assistant Public Defender, Leon County Courthouse, Fourth Floor North, 301 South Monroe Street, Tallahassee, Florida 32301, this 19th day of January, 1992.



SARA D. BAGGETT
Assistant Attorney General