IN THE SUPREME COURT OF FLORIDA

CASE NO. 80,278

RONNIE JOHNSON,

Appellant,

vs.

THE STATE OF FLORIDA,

Appellee.

AN APPEAL FROM THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA CRIMINAL DIVISION

ANSWER BRIEF OF APPELLEE

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STATEMENT OF THE CASE AND FACTS

The defendant, Ronnie Johnson, along with three (3) other codefendants, Bobbie Robinson, David Ingraham and Rodney Newsome, was indicted for the March 20, 1989 first-degree murder of Lee Arthur Lawrence, and the attempted first-degree murders of Bernard Williams and Josias Dukes. (R. 1-4). The trials were severed. The defendant and Bobbie Robinson were each tried individually. Ingraham and Newsome were tried jointly. Bobbie Robinson was convicted and sentenced to death at his separate trial. His direct appeal is pending in this Court, Case No. 79,604. Newsome was convicted of second degree murder only, and sentenced to a term of 22 years. His conviction and sentence were affirmed on appeal. Newsome v. State, 625 So. 2d 143 (Fla. 3d DCA 1993). Ingraham was convicted as charged; the jury recommended a sentence of life and the trial court sentenced him to a term of life imprisonment. These convictions and sentences were also affirmed on appeal. Ingraham v. State, 626 So. 2d 1117 (Fla. 3d DCA 1993).

A. Pretrial Suppression Hearing

The defendant filed a motion to suppress alleging, inter alia, that his written and oral statements to the police were not freely

and voluntarily given. (R. 47-48). The motion to suppress was as to all three of defendant's pending homicide and attempted homicide cases.[1] Id. Prior to trial, the trial court conducted a hearing on this motion to suppress. The State presented testimony from all four (4) police officers, who had come into contact with the defendant prior to and during his statements to the police. The defendant also testified at this hearing. The testimony and the trial court's ruling are set forth below.

A1. Evidence Presented

Officer Hull testified that the defendant and two other individuals, Messrs. Ison and Curgil, were arrested during the course of a drug sweep of the housing projects' area in Liberty City, in northern Dade County, on March 30, 1989. (T. 235-36). Curgil was in possession of a .357 Magnum, which was later ascertained to have been the weapon utilized in the instant murder by the defendant, that of Lee Arthur Lawrence in Perrine, southern Dade County, Florida. (T. 236, 259). At the police station, Officer Hull had spoken with the defendant, but not in regard to

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[1] The defendant had also been charged in the attempted first-degree murder of Marshall King, and, the first-degree murder of Tequila Larkins. The conviction and sentence of death in the latter case is pending in this Court, Case No. 79,383.

any offenses. The latter seemed like a "nice guy", and had stated that he "only had a marijuana charge, that he possibly would be out the next day." (T. 237).

On April 1, 1989, at approximately 6:00 p.m., Officer Hull saw the defendant sitting on the front porch of his grandmother's residence in Liberty City, eating a "hot sausage". (T. 237-38). The officer asked, "Ronnie come here for a minute." (T. 238-39). Upon the defendant approaching, the officer stated that some homicide investigators were investigating a murder "down south", that he may have been a witness to. (T. 238). The officer asked if the defendant was willing to go to the police station to answer questions. (T. 239). The defendant responded, "okay". Id. Officer Hull testified that he had neither threatened the defendant, nor made any promises to him. (T. 270).

Officer Hull then contacted his office by radio, and was informed that the homicide detectives would pick up the defendant. (T. 239). A few minutes later, two homicide detectives, dressed in plain clothes, arrived in an unmarked police vehicle to transport the defendant to the police station. (T. 239-40).

Detective Smith testified that upon arrival, he saw the defendant and another suspect, Ison, standing with officer Hull. (T. 240, 248). Neither of the suspects was handcuffed or in custody, in any manner. (T. 248-49).

Smith, too, asked the defendant if he would speak to the detectives about a homicide investigation. (T. 249). There were no threats or promises. Id. The defendant agreed, and was accompanied by suspect Ison during the ride to the station. Id. Neither the defendant nor Ison were handcuffed, nor were they threatened or promised anything during the car ride. (T. 249-50). At the police station, detective Smith turned the defendant over to detective Borrego. (T. 249). Smith then left, driving Ison to the homicide office.

Detective Borrego testified that he met with the defendant at the team police office at approximately 6:20 p.m. (T. 260). Borrego asked the defendant if he would talk with him at the homicide office. (T. 261). There were no threats nor any promises. Id. The defendant freely and voluntarily accompanied Borrego to the homicide office, at approximately 6:45 p.m. Id. He was not handcuffed. (T. 261-62).

Borrego began his interview of the defendant at approximately 7:00 p.m., after deciding with other detectives as to which investigator would interview what suspect. (T. 262-63). Apart from Ison, the detectives were interviewing other suspects, including Rodney Newsome, the Co-defendant in the Lee Arthur Lawrence homicide. (T. 284-85).

Borrego first obtained background information from the defendant. (T. 263-64). He ascertained that the defendant was not under the influence of any drugs, medication or alcohol. Id. The defendant had dropped out of school, having finished the 11th grade. Id. He was then attending a computer program school. Id. He could read English and he understood everything that the detective was asking. Id. Borrego then explained to him the purpose of the questioning, and advised the defendant of his Miranda rights. Immediately prior to advising the defendant of his Miranda rights, Borrego asked detective Romagni to enter the interview room and witness the reading of the Miranda rights. (T. 264, 252-56).

Borrego then showed the Miranda rights form to the defendant, told him what it was, and proceeded to read the form. (T. 264).

After reading each question on the form he would stop and ask for a response. Id. The defendant affirmatively stated that he understood each question on the rights form and placed his initials next to each affirmative answer. (T. 265-66). Borrego had also asked that the defendant read one of the questions back to him, thus ensuring that the defendant could in fact read. Id. The defendant, having affirmatively stated that he understood his Miranda rights, agreed to answer questions with no "threats or promises" having been made to him. Id. The Miranda form was signed by the defendant and witnessed by Borrego and Romagni at 7:30 p.m. Id.

Detective Romagni also testified and corroborated that he had witnessed the defendant having been Mirandized. (T. 254). Romagni testified that the defendant had not been handcuffed, had not been complaining of any physical discomfort, was not under the influence of alcohol or narcotics, had not been threatened or promised anything, and, had understood his rights. (T. 255-56). A copy of the waiver form signed by the defendant in the presence of Borrego and Romagni, at 7:30 p.m., was admitted into evidence. (T. 254-55; R. 222).

Borrego testified that thereafter he had first taken a verbal statement from the defendant. (T. 266-67). The latter had then given a 46 page recorded statement, in the presence of a Steno-Reporter. Id. Borrego testified that during the course of the first verbal statement, the defendant had not been threatened or abused in any way, and, had not been promised anything. (T. 267-68). He had been able to understand Borrego's questions, and he had been coherent. Id. Borrego stated that he had provided the defendant with an opportunity to utilize the restroom and had also offered him food or drink. (T. 268-69).

The formal statement began at 1:43 a.m. and concluded at 3:45 a.m.[2] (T. 270-71). The defendant, however, had not been continuously questioned during these time periods. (T. 268). The police were investigating the defendant's involvement in three separate homicide and attempted homicide cases,[3] and, various investigators were simultaneously questioning various other

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[2] The daylight savings time had changed during the taking of this statement, adding an extra hour to the actual time for taking same. (T. 271).

[3] The murder herein, that of Tequila Larkins (this Court's Case No. 79,383), and, the attempted homicide of Marshall King (T. 270-71).

suspects, including co-defendant Newsome. (T. 268, 270-71, 285, 288). Borrego would thus leave the interview room frequently to talk to other investigators and compare notes with them. Id. The defendant, however, had not been informed of the other suspects' statements. (T. 286, 288).

After initially denying any knowledge, the defendant had begun admitting his involvement within 10-15 minutes during the interview. (T. 287). Borrego had confronted him with truthful evidence of recovery of the revolver utilized in this homicide, and that a witness in the first homicide case, that of Larkins, had positively identified him from a photo lineup. Id. The defendant was specifically not told about information obtained from other witnesses, suspects or codefendants. (T. 289-90). If there were differences between what the defendant was stating and what other suspects had said, Borrego would try to clear up the differences by further questioning. (T. 288). The main inconsistency in the defendant's statement was as to who had hired him for the instant homicide. (T. 296-97). The defendant had maintained that "G" had hired him, whereas co-defendant Newsome had stated that it was Bobbie Lee Robinson. Id.

At the conclusion of the formal statement, the defendant had agreed to take the detectives to the various shooting scenes involved in the three homicide investigations, in Homestead and Perrine, approximately 1 - 1½ hours away from the police station. (T. 272, 291). The parties returned from said scenes, at approximately 6:00 a.m. The defendant then had the opportunity to review his formal statement, which had now been typed. (T. 273-74). The defendant read a copy of said statement. He was alert, found errors, and made corrections on five pages of the statement. (T. 294, 274-77).

The defendant was then taken to jail and photographed. (T. 277; R. 51). The defendant was not threatened, hit or abused in any way during the above interviews, nor was he promised anything. (T. 281). Upon cross-examination by defense counsel, Borrego further, stated that the defendant had not asked to call any of his family members. (T. 294). Borrego also stated that the defendant, towards the end of his statement, had asked what Borrego could do for him. (T. 295). Borrego testified that he had simply told the defendant that, "he was going to be charged with these crimes, and he was going to go to jail and have his day in court, and he would be tried in court." (T. 295). There was no mention of death

penalty. Id.

A copy of the transcribed formal statement was admitted into evidence, and the State requested that the trial judge review same prior to ruling on the motion to suppress. (T. 271; R. 53-99). The formal statement, taken in the presence of a steno-reporter, reflects, at its commencement, that the defendant acknowledged having been previously read his Miranda rights, at 7:30 p.m., and that he had signed a waiver of those rights, at said time, "of my own free will without any threats or promises having been made to me." (R. 56-57). The formal statement also reflects, at its conclusion, that the defendant affirmatively stated that no one had "threatened or coerced" him to give the formal statement, and that he had given same "freely and voluntarily". (R. 97). The photo of the defendant taken at the jail immediately after his having made corrections and signed said statement, and which depicted him being free of any injury, was also introduced into evidence. (T. 277-78, R. 51).

As noted previously, the **defendant** also testified at the suppression hearing. He stated that he was approached by a uniformed officer who wanted to ask some questions, but would not

tell him what the questions were about. (T. 298). The defendant testified that the officer "touched me on the shoulder and the arm," that he did not want to answer questions, but that, "since he [officer] was there, I didn't feel I had nothing to hide. I came with him." (T. 299). The defendant stated that he did not get a chance to call any members of his family, but he admitted that he had not wanted to do so either. (T. 299-300). The defendant added that upon arrival at the police station, he had been handcuffed, but that then, "I took them off". (T. 302).

At the station, according to the defendant, he never saw the Miranda waiver form prior to or during questioning, was not informed of its contents, and did not sign it, until after the stenographer typed up his formal statement and he had made corrections and affixed his signature thereto, on the next morning. (T. 304-305). The defendant testified that even then, he couldn't "remember" the explanation of his Miranda rights, "but it wasn't clear, whatever they were telling me." (T. 305). As noted previously, however, the Miranda waiver form reflecting that the defendant signed same prior to any questioning, at 7:30 p.m., in the presence of two witnesses, was admitted into evidence. (R. 222; T. 254-55). Moreover, the formal statement, taken in the presence

of a court reporter, also reflected that the defendant acknowledged having understood and signed a written waiver of his rights at said time, prior to any questioning:

. . .

Q: **[Detective Borrego]** Are you attending school now?

A: **[Defendant]** Yes, I am.

Q: What type of school are you attending?

A: P.S.I.

Q: What is that?

A: Institute for word processing.

Q: Can you read and write English?

A: Yes.

Q: Do you understand the way that I am talking to you right now?

A: Nuh-uh.

Q: Are you under the influence at this moment--

A: Not--

Q: --of any drugs?

A: --not at the present time.

Q: Are you under the influence of any alcohol at this time?

A: No.

Q: Are you under the influence of any medication at this time?

A: No.

Q: I'm going to introduce into the record a form that we went over earlier today. I'm going to read the form again to you.

"Metro-Dade Police Department Miranda Warning. Before you are asked any questions, you must understand the following rights:

"1. You have a right to remain silent. You do not have to talk to me if you do not wish to do so. You do not have to answer any of my questions. Do you understand that right?" Are these you initials next to the word "Yes"?

A: Uh-huh. Yes.

Q: "2. Should you talk to me, anything which you might say may be introduced into evidence in court against you. Do you understand?"

A: Yes.

Q: Are those your initials next to the word "Yes"?

A: Yes.

Q: "3. If you want a lawyer to be present during questioning, at this time or anytime hereafter, you are entitled to have the lawyer present. Do you understand that right?" Are those your initials next to the word "Yes"?

A: Yes.

Q: "4. If you cannot afford to pay for a lawyer, one will be provided for you at no cost if you want one. Do you understand that right?"

A: Yes.

Q: Are those your initials next to the word "Yes"?

A: Yes.

Q: "Knowing these rights, are you now willing to answer my questions without having a lawyer present?" Are those your initials next to the word "Yes"?

A: Yes.

Q: This statement is signed of my own free will without any threats or promises having been made to me." Did you sign the form?

A: Yes, I signed the form.

Q: And at what date and time did you sign it?

A: 4/1/89, 7:30 p.m.

(R. 55-57).

According to the defendant, however, instead of reading him his rights, the police had told him that codefendant Newsome had implicated him, and, that if the defendant cooperated, he would not get the electric chair. (T. 301). The defendant testified that he

told the police that Newsome had not implicated him, whereupon the police punched and hit him with their elbows. (T. 301-302). On cross-examination, the defendant additionally remembered that the police had also "slammed" telephone books into his body, ripped his shirt, threatened to shoot if he tried to run out of the homicide office, and bruised the outside of his nose. (T. 315-16).

The defendant admitted, however, that upon subsequent entry to jail, he had not gone to "Ward-D" (the jail medical facility). (T. 316). As noted previously, the booking photos of the defendant, taken immediately after the transcription and signing of the formal statement, depicting the defendant without any bruises or ripped clothing, were also introduced into evidence.

In any event, the defendant testified that he did not cooperate with the police after the alleged statements about the codefendant, the electric chair, and the hitting/punching. (T. 301-302). Instead, he testified that he cooperated with the police when the latter told him that there were detectives at his mother's house. Id. There was no claim or testimony that Borrego or other officers had threatened the defendant's family members. Rather, the defendant stated that he was scared, because, on a prior

occasion, the police had kicked in the door to a "wrong house" and arrested his mother. Id. The defendant testified that he was therefore "in fear for my family." Id. He stated that he had only previously come before a judge "for possession of marijuana, but never committed any crimes". Id.

The defendant testified that he had learned the information that he was giving, from "the police report", and, from what the police were saying codefendant Newsome had told them. (T. 303). He stated that he had given the statement in the presence of the court reporter, because he did not know if the police had hurt his family. (T. 305). He also added that he was tired and "sleepy". (T. 304-305). The defendant admitted, however, that he had woken up past noon on the day of his arrest, and had also slept prior to signing the formal statement, on the way back from showing the police the crime scene. Id. The defendant also admitted that he had been arrested and in police custody several times previously, in 1987 through 1989, for several charges of possession of drugs, burglary and grand theft. (T. 308-10). He stated that although there were many charges, he had not been scared previously, "because it was nothing serious". (T. 310). Finally, upon being confronted with the fact that the police reports he had referred to

in his direct examination were written after the date of his statement, the defendant stated that he had not been shown any police reports during his interview. (T. 312). Rather, the defendant claimed that he had said "police records" on his direct examination, and that the police had questioned witnesses at the scene of the crime prior to typing up the police reports. (T. 312-13).

A2. <u>The Parties' Arguments And The Ruling Of The Trial Court</u>

With respect to the voluntariness of the confession, defense counsel stated that the defendant had truthfully testified that he was scared and nervous, that he had been told he could get the electric chair, that the police had given him information as to the details of the crime, that the questioning had been lengthy, and that the defendant had been deprived of sleep. (T. 320-23). The defense argued that the defendant had not understood his rights, and, due to the absence of any tape recording of the prior oral statements reflecting lack of harassment or hitting, the defendant should be given, "the benefit of the doubt,... he did not do this totally freely. This was not a voluntary statement.". (T. 323).

The State argued that the defendant was not credible and had

misrepresented what had transpired, in light of the testimony from all the officers who had come into contact with the defendant, the signed Miranda waiver form, and, the transcribed formal statement. (T. 323-25). The State argued that the "officers were telling the truth and the defendant was not." Id. The prosecutor noted that the defendant had even lied about his criminal history while testifying at the suppression hearing. Id. The State also argued that any mistreatment or other allegations by the defendant could have been mentioned in the formal statement, when the court reporter was present, but were not. Id.

The trial judge, in reliance upon the recorded formal statement, specifically asked defense counsel if there was anything in said statement that would support the defense argument that, "[defendant] didn't do this voluntarily and that there is an insufficient understanding of his rights?" (T. 325). The trial judge had previously reviewed the recorded statement. (T. 281, 271). Defense counsel acknowledged that the statement did not support such claims. (T. 325). The trial judge then denied the motion to suppress, stating:

> All right.
>
> As to the motion, the motion to the

confession, denied.

> This was done at the homicide office. The Miranda warning is sufficient. Nothing suggests a [lack of] waiver (sic) of the constitutional rights."[4] (T. 325).

At the trial of this cause, Officer Hall and Detective Borrego testified, in conformity with their suppression hearing testimony, as to the lack of any threats or coercion, and as to the defendant's waiver of his Miranda rights. (T. 1254-56, 1260-71, 1279-86, 1308-10). Defense counsel, prior to the admission of the defendant's confession, renewed his motion to suppress, specifically on the grounds that said statements were made "involuntarily." (T. 1268). The trial judge "denied" this motion. Id.

B. Trial/Guilt Phase Evidence

Johnnie Williams testified that he lived in Perrine, in southern Dade County. (T. 933). On the night of March 20, 1989, he was visiting his mother's house, at 175th Street and 104th

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[4] The last statement, "[n]othing suggests a waiver ..." is obviously a scrivener's error by the court reporter. The trial judge had already denied the motion to suppress and expressly stated that the Miranda warnings herein were sufficient. Neither party objected or commented in any fashion. (T. 325). The parties immediately commenced scheduling a hearing on another motion. Id.

Avenue. (T. 934). At approximately 10:00 p.m. Mr. Williams walked down the street to Lee's grocery on 104th Avenue. (T. 935). As he walked outside, he observed a Chrysler New Yorker parked on the street, on the swale. (T. 935-37). He approached the car and greeted the driver. Id. The driver rolled up his window. Id. Mr. Williams continued walking towards Lee's grocery store. (T. 939-40). Approximately 100 feet away from the store, he heard gun fire. (T. 940-1). He then saw two (2) men, dressed in Army fatigues, one in possession of a hand gun, the other carrying an Uzi, run out of the parking lot for Lee's grocery store. (940-42). The Chrysler New Yorker pulled up from behind Williams, picked up the two armed men and headed north on 104th Avenue, Id. Mr. Williams went in to Lee's parking lot where he saw the owner of the store, victim Lawrence, laying on the ground with gunshot wounds to his head and back areas. (T. 943-44). A customer, Bernard Williams, was laying inside the store. (T. 944). The latter had been shot in the abdomen area. Id.

Juanita Meyers testified that she had been an employee of the Lee grocery store for approximately two months. (T. 946). She worked the 3:00 to 11:00 p.m. shift with two other employees, "Tyrone" and Valerie Briggs. (T. 946-7). On the night of March

20, **1989**, while she was working, a friend of hers, Bernard Williams, came into the store. Bernard Williams had ridden his bicycle over and brought his dog along. He had left the bike and his dog in the parking lot, while he **was** talking to Ms. Meyers inside the store. (T. 947-8) A little before closing time, Valerie Briggs asked Ms. Meyers to take out the trash. (T. 948). The trash bin was located at the corner of the parking lot, behind a locked gate. (T. 949-51). As Ms. Meyers was getting ready to take out the trash, the owner of the store, Mr. Lawrence, who had been working in his office, went out to the parking lot. (T. 948-9). Bernard Williams **also** went out to the parking lot to check on his dog. Id. Another customer, Josias Dukes, was outside of the store using the telephone. Id.

Ms. Meyers went out to the parking lot, towards the trash bin, but had to lay down on the ground because she heard gun fire, (T. 951). As she looked up, Ms. Meyers saw a man in **a** "camouflage outfit" shooting at victim Lawrence with an Uzi. (T. 952). A second person, dressed in a "green Army suit", was also shooting at Mr. Lawrence with a revolver. (T. 953-4). Ms. Meyers saw the second person with the revolver also shoot at the front of the store. (T. 955-6). She then saw the two shooters run out into the

street and leave. (T. 956). Ms. Meyers got up and went inside the store to check on Valerie Briggs. She found Briggs in the front portion of the store near the counters. (T. 956-7). Bernard Williams was also in the front portion of the store, by the door. (T. 957). He was bleeding and vomiting. Id.

Josiah Dukes testified that at approximately 10:25 p.m. on March 20, 1989, he walked to Lee's grocery store to use the telephone. (T, 962-4). Mr. Dukes saw a young man dressed in "camouflage fatigues", using the telephone outside of the "game room", adjacent to Lee's grocery store. (T. 964-5, 967). Witness Dukes crossed the pathway in front of the game room over to the Lee store's parking lot, and started to use the telephone in front of the store. (T. 968-69). At this juncture, Mr. Dukes saw Bernard Williams on his bike, playing with his dog, in the parking lot. (T. 969-70). He similarly observed Juanita walk into the parking lot and go towards the garbage can. Id. Victim Lawrence was also outside and first went to his van. (T. 970-73). Dukes then saw Mr. Lawrence picking up trash from the parking lot and walking towards the garbage bin. Id. Dukes greeted victim Lawrence. Id.

Dukes then heard some shots. (T. 934). Dukes saw that the

shooter was the same person he had seen using the telephone in front of the game room. (T. 975). This shooter was using an Uzi. Id. Dukes first saw Bernard Williams get shot in the back and fall to the ground in the parking lot. (T. 976). Dukes then saw victim Lawrence get shot. Id. The latter fell on his face in front of the garbage bin. (T. 977).

Dukes then saw a second shooter come out into the parking lot area from inside the grocery store. Id. This second person was wearing "outdated green military fatigues", and was carrying a dark colored revolver. (T. 977-8). Dukes saw the second shooter firing at victim Lawrence while the latter was on the ground. (T. 978-9). The second shooter then told the first one to, "make sure he is dead" . (T. 980). The first shooter with the Uzi then stood over victim Lawrence, and started shooting into the victim's back. (T. 980-1).

Both shooters then looked towards Dukes, and the first one started firing at him. (T. 979, 982). Witness Dukes crouched down in between the telephone and an adjacent ice machine in front of the store. (T. 982-3). At least seven (7) to ten (10) rounds were fired in his direction. Id. The shooters were approximately two

(2) yards to ten (10) feet away during the shooting. (T. 983-4; 992).

Dukes subsequently saw the shooters run away into the street. (T. 985). The ice machine against which he had crouched had bullet holes in it. (T. 984). The lighting and bulbs above his head had also been shot out. (T. 983). Dukes saw victim Lawrence laying "in a bunch of blood". (T. 985). Witness Dukes was able to identify the first shooter, with the Uzi, from a photo lineup, as codefendant David **Ingraham. (T. 987-9).**

Bernard Williams testified that he lives within a half a mile of the West Perrine area, where the instant crimes occurred. (T. 994). At approximately 9:30 to 10:00 p.m. on March 20, 1989, he rode his bicycle to Lee's grocery store to buy a beer. (T. 995). He took his dog with him, and tied the latter to a fence in the corner of the store's parking lot before going in. (T. 995-6). At the store, he talked with his friend Juanita for approximately twenty minutes. (T. 996). The dog then began barking and Mr. Williams went out to the parking lot. (T. 997).

The owner of the store, victim Lawrence, had walked into the

parking lot shortly before Williams. (T. 997) . Victim Lawrence was walking behind Mr. Williams, who was approaching the fence to untie his dog. (T. 997-8).

Bernard Williams testified that he was shot twice in the back, in the parking lot, as he saw victim Lawrence walk ahead of him towards the front of the store. (T. 999-1000). Williams fell to the ground, and then saw Mr. Lawrence get shot and fall to the ground. Id. The shooter then went past Williams, towards Lawrence, while continuing to shoot. (T. 1001). The person who had been shooting at this juncture was wearing camouflage fatigues and carrying an Uzi. (T. 1000).

Williams rolled backwards, and pulled his dog over him for protection. (T. 1002, 1008-9). Within 10 to 15 seconds later, his dog was shot in the lower back. (T. 1002-3; 1009). Approximately 10 seconds thereafter, Williams was again shot a third time, in the abdomen, while using his dog as a shield. (T. 1003, 1009). A second shooter had been present at this juncture, but Williams could not see him as he was holding the dog. (T. 1001-2). When the shooters left, Williams walked inside the store and waited for the paramedics. (T. 1004-05). He spent eleven (11) days in the

hospital recovering from his wounds. (T. 1005-06).

Valerie Briggs testified that on the night of March 20, 1989, she **was** working at Lee's grocery store, as a cashier. (T. 1015). Shortly prior to closing, Valerie asked another employee, Juanita Meyers, to take out the garbage. (T. 1016-17). Bernard Williams, a customer in the store, had just left. Id. Victim Lawrence, who had been working in his office, also went outside, as it was his normal routine to pick out and dispose of any trash in the parking lot prior to closing. (T. 1017-18).

Ms. Briggs then walked to the back of the store for some cleaning supplies. She saw another customer, who she had not previously noticed. (T. 1018-19). This customer was a tall black male who wore "green Army fatigues." (T. 1019). He **was** getting a Corona beer from the cooler in the back of the store. Ms. Briggs and this customer then walked to the front of the store towards the cash register. (T. 1020-21). They conversed about various types of beer. Id. The customer then handed her a twenty ($20) dollar bill.

Before she could finish ringing up the purchase, Briggs heard

gun fire from outside the store. (T. 1021-25). The shots sounded "very close," and Briggs "hit the floor" under the cash register counter. (T. 1025). While looking through the glass in the counter, she saw the customer walk out of the store. (T. 1025-6). She then heard a second series of shots, which sounded different from the first rally. Id. Briggs then began crawling towards the back of the store to protect herself. Id. When the shooting stopped, Briggs went outside, saw victim Lawrence on the ground, and called the police. (T. 1028-29).

The police secured the scene within minutes of the shooting. (T. 1035-39). A total of twenty (20) casings, eight (8) projectiles and five (5) bullet fragments were recovered from the scene. (T. 1222-23, 1068-74). The casings, and the majority of the projectiles and fragments, were recovered from the parking lot area. Id. The store itself, however, had also sustained damage. Aside from the damage to the ice machine and lighting immediately in front of the store, the front double glass door to the store also had "gun shot holes" through it and had been broken. (T. 1076). At least one bullet had penetrated inside the store, and was recovered from inside a food display shelf in the front aisle of the store. (T. 1082-83; R. 172-76).

A projectile recovered from the body of Bernard Williams' dog, and another projectile on the scene, were determined to have been fired from the revolver utilized in the shooting. (T. 1154-55, 1165-72, 1215-20). The revolver had been recovered from Lee Curgil, a/k/a Stephen Reynolds' possession, when he had been arrested, along with the defendant, during the course of a drug sweep.(T. 1087-94, 1104). Mr. Curgil/Reynolds testified that the defendant had given him the revolver for safekeeping; the defendant had also given him a piece of paper with his name and telephone number on it. (T. 1087-94, 1101, 1104). Both items were introduced into evidence. Id. A pair of camouflage fatigues belonging to the defendant was also recovered from his home. (T. 1326-28). An Army camouflage shirt and pants were similarly recovered from Ingraham's girlfriend's house. (T. 1248-50).

The twenty casings and some of the remainder of projectiles and fragments were determined to have been fired from the Uzi; the rest of the projectile fragments were of no comparison value, (T. 1222-25). The Uzi was recovered from under the bed in codefendant Newsome's bedroom. (T. 1246-47, 1107-09). The serial numbers on this weapon had been scratched off when it was originally found. (T. 1110). The firearms examiner, however, was able to "chemically

raise" the serial numbers. (T. 1226). An investigation of the serial numbers led to the Garcia National Guns Inc., a gun store. (T. 1160-65). The custodian of records for this gun store testified that the Uzi had been sold to Valerie Urvy; the latter was codefendant Robinson's wife. (T. 1163-65, 1251-52).

The medical examiner testified that victim Lawrence died of eleven (11) gunshot wounds. (T. 1339-52). One bullet wound, in the victim's chest, was consistent with the victim having been standing when he sustained that shot. (T. 1339-41). The remainder of the wounds were consistent with having been inflicted while the victim was lying on the ground. (T. 1341-52). Said wounds had been inflicted on the back of the head, the shoulder area and arms, the mid-back, hips and back of the legs. Id.

Termaine Tift testified that he is codefendant Newsome's "God brother". (T. 1120). He had known the defendant for a period of two to three years prior to the instant crimes, because the defendant lived across the street from Newsome. (T. 1122-23). Mr. Tift was visiting with Newsome in early March, 1989, when the defendant introduced him to another of the codefendants, Bobbie Lee Robinson. (T. 1124-26). The defendant had stated that Robinson

was his "partner". (T. 1126).

Subsequently, approximately a week prior to the crimes herein, the defendant asked Tift if the latter wanted to make some money fox, "[k]illing an old pop and his son", "[s]omewhere down south." (T. 1133; 1144-5; 1148). Tift had refused. (T. 1133).

The defendant and Newsome, in the mid-afternoon hours of the day of the crimes, asked Tift to drive them to a corner store. (T. 1128-9; 1148). At the store, the defendant and Newsome met with another codefendant, David Ingraham. (T. 1129-30). The latter had arrived in the gold Chrysler New Yorker, which was later utilized in the crimes herein. (T. 1129-30).

Later that same evening, Tift saw the defendant, Newsome, Ingraham and Robinson. (T. 1131-4). The defendant was wearing an Army jacket, and Ingraham was dressed in a "camouflage suit". Id. Tift then saw Robinson leave in his Cadillac; the defendant, Newsome and Ingraham followed Robinson, in the Chrysler New Yorker. (T. 1134).

Yet later that same evening, the defendant, Newsome and

Ingraham returned in the same Chrysler New Yorker. (T. 1134-5). Robinson arrived approximately thirty (30) minutes thereafter. Id. Tift then observed the defendant, Ingraham, and Robinson go to the defendant's home. (T. 1135-6). The defendant was holding a "handful of money", when they subsequently emerged. (T. 1136-7). The defendant and Newsome then asked Tift to drive them to the "Turf Motel". (T. 1137). Tift registered them at the motel under his own name. (T. 1137-39). The motel registration card, reflecting the date of the crime and occupancy by two persons, was introduced into evidence, through the motel's custodian of records. (T. **1058-61; 1137-39; R. 170).**

Gary Duval testified that in March, 1989, he **and** Bob Lee Robinson were, "friends, selling drugs together." (T. 1182). Duval was also known as "G." Duval worked for Robinson. (T. 1183). They sold drugs several blocks away from Lee Arthur Lawrence's store, at a place called the "drug hole". (T. 1182-3). Duval identified the Uzi recovered from the Newsome residence, as the weapon which was normally kept at the "drug hole" and which belonged to Bob Robinson. (T. **1183-4).**

Duval testified that he saw Robinson at the "drug hole" on the

night of the murder herein. (T. **1184).** Robinson asked Duval to take the Uzi back to his home and give it to "Black", the defendant, and "if he [defendant] wasn't home, put it under the sofa". (T. **1184-5).** Duval had known the defendant for approximately 3 years. (T. **1185).** Robinson also asked Duval to give the defendant a bottle of alcohol to clean the weapon with. **(T. 1188).**

Duval took the Uzi to his apartment. (T. **1186).** "Two young kids", Rodney Newsome and David Ingrahm, were present at the apartment when Duval arrived with the Uzi. (T. **1186).** The defendant was not there, but arrived as Duval was leaving the apartment. (T. **1188).** When Duval went back to the apartment approximately 30 minutes later, the trio had left. (T. 1191). Duval then went back to the "drug hole". (T. **1191).** Robinson **was** at the "drug hole", but left after approximately an hour. Id. Shortly thereafter, Duval heard ambulance and police cars in the vicinity of Lee's grocery store. (T. 1196). The next day he heard that Lee Lawrence had been murdered. (T. 1197).

The defendant's confession was also introduced into evidence through Detective Borrego's testimony. (T. 1265-1308). The

defendant, after having been Mirandized, had told Borrego that he had been hired by an individual whom he only knew by the name "G." (T. 1265-66). The defendant stated that he was hired to "spray the store," because of "turf problems" between the owner of the store and "G." (T, 1272-73). Victim Lawrence, "would call the police on drug dealers dealing drugs in front of the store or would hand them up to the police, that he was like a pain in the side of the drug dealers in that area." (T. 1273).

The defendant stated that he had been offered $1500 to be split among him and whoever he decided to take with him. (T. 1273-74). The defendant had asked Rodney Newsome and "Boopie," David Ingraham, to accompany him. Id.

According to the defendant, however, he never actually received any money. Id. The defendant stated that he and Ingraham had worn Army fatigue type outfits; Newsome did not wear such an outfit because he did not have one. Id. The defendant had used a revolver, and Ingraham had used the Uzi machine gun. (T. 1275). According to the defendant, "G" had provided both of these weapons on the night of the crimes. Id. The initial plan was for Ingraham to drive the get-away car and for Newsome to assist with the

weapons. (T. 1245-46). Ingraham, however, "started playing around" with the Uzi and wanted to use it. Id. The plan thus changed and Newsome "became the driver, since he knew the south end better than Boopie [Ingraham] did." Id.

According to the defendant, the trio then drove to the store. Ingraham got out and went to a pay phone right next to the store, and pretended to talk on the phone, so as to not look suspicious. (T. 1276-77). The defendant went inside the store, grabbed a beer, and went to the cashier to pay. (T. 1277). The defendant stated he heard gun-fire in the parking lot, as he was paying. Id. He ran outside, and saw the victim laying on the pavement near the door. (T. 1278). He started shooting, "from behind," while running to the car which Newsome had now pulled up alongside the roadway. Id. He and Ingraham jumped in the car and were driven "straight home." Id.

The guns, according to the defendant, were left in Ingraham's car until the next day. Id. Ingraham subsequently returned both weapons. (T. 1278-79). The defendant gave the Uzi to Newsome. (T. 1279). The defendant kept the revolver, which he subsequently sold to Lee Curgil, who was then arrested with it. Id.

The defendant's sworn and transcribed statement, which was in substantial conformity with the above, was then read to the jury, **(T. 1282-1300).** The defendant, in relevant part, detailed his purpose, plan and actions as follows:

Q: The time that G got in touch with you, where was it at?

A: My house.

Q: He came to your house?

A: Yeah.

Q: What did he tell you this time?

A: He want me to come down there and spray the store.

Q: Speak up.

A: He wanted me to come spray up the store, but he--this time, he wouldn't be able to take me back, so find somebody with a car, okay. So in the--this was a day before, okay. I talked to Rodney about it. He agreed to go with me. We supposed to get a car, okay. So that day---

Q: This store that he told you about, what did he tell you about this store?

A: That Lee Lawrence be there. He worked there and he the big man. That's who--I forgot his son name, but that's his daddy. And them the ones who get everybody knocked off down south through the drug thing. Like the drugs, getting them knocked off.

Q: Did he specifically tell you why he wanted the place shot up?

A: No, he didn't. He say it was--they was having problems with each other over turf, I assume.

. . .

Q: What did G tell you about Mr. Lawrence having people knocked off?

A: He say he was the one like stopping a lot of people from dealing up there because he had the power and his son like--that they shot up where they sell at, like that right. All kinds of stuff that he be stopping people from selling through some way or another. If you--he don't put the Police on some kind of chase.

So what the deal was, spray up, shoot it all up so the cops come investigate. Because thought that when they come and investigate--so when the Police come and investigate, they thought it be like drugs there. So they find drugs, they feel like the shooting from drug related.

Q: This is what G told you?

A: uh-huh.

Q: Yes or no?

A: Yes.

Q: When he told you about this store, did he tell you the man's name or where the store was?

A: No. He told me the store. He had showed me the store at one time, but I remember it, where it was, because I know my way

around, you know, So, he didn't say no name or nothing. He said, "The old man be in the store and the other people be working there."

Q: He said you need to find someone with a car this time because he wasn't going to be able to drive?

A: Uh-huh, yes.

Q: Did he say why?

A: No.

Q: After he told you this, did he tell you how much he was going to pay you?

A: We was supposed to get paid 1500 altogether.

Q: After he told you this, who did you get then?

A: Rodney and Boopie [Ingraham].

(T. 1286-89).

* * *

A: At what time I decided to get someone else with a car? It just came out we had needed a car.

Q: And who did you find to get with a car?

A: Oh, Boopie.

Q: When did you notify Boopie?

A: He rode by and we just asked him.

Q: Did he arrive the same day that you were telling Rodney or was this the day of the

shooting that he arrived?

A: The day of the shooting.

Q: What kind of car did Boopie arrive in?

A: A New Yorker.

(T. 1291). The defendant added that "G" **gave** them the weapons at his apartment. (T. 1294-95). The defendant then **gave** the following account of what happened upon their arrival at the store:

Q: What did he do?

A: Boopie? He just was walking because the Police was driving around, so we didn't want to look suspicious in the car. So, he was just walking, right. And then--then, I say, "Let me go see where he at." I went over there. I seen him, he was talking on the telephone. So then, I went in the store to get a beer.

Q: What telephone was Boopie talking on?

A: One of them telephones out there. He was talking to the telephone,

Q: Pay phone?

A: Yeah.

Q: Do you know who he was talking to?

A: Nuh-uh.

Q: Yes or no?

A: No. I don't know if he was talking. He was flogging by the phone. He could

have.

Q: Flogging on the phone? What do you mean by flogging? Not really talking?

A: Yeah.

Q: You entered the store?

A: Yeah.

Q: What did you do when you entered the door?

A: I went to go get a Corona,

Q: Tell me what---

A: 1 walked to the beer case. I got the Corona, then I went to pay for it. Then I gave the girl the money and that's when the shooting started.

. . .

Q: What did you do?

A: Huh?

Q: What did you do?

A: I got low.

Q: Go on.

A: I got low and then after the shooting, I ran out the store firing the gun.

Q: Where did you have the gun?

A: Oh, in the jacket.

Q: Did you take the gun out as you were running out of the store?

A: When I got out of the store? Not in the store at all, when I got out the store.

Q: What did you see when you got out of the store?

A: A man laying on the ground, a boy over there and a dog.

Q: Did you see where Boopie was?

A: Yeah, he was running like towards right there to get in the car. And then, the car was in the middle of the street and we got in the car and we left,

Q: When you took the gun out, where did you shoot at?

A: Just shooting, running down shooting.

(T. 1298-1300).

The jury commenced its deliberations on May 19, 1992. They returned a verdict of guilt as to the first-degree murder of Lee Lawrence and attempted first-degree murder of Bernard Williams, on May 20, 1992. (T. 1513-14). The jury found the defendant guilty of the lesser charge of aggravated assault with respect to the attempted murder of Josias Dukes. Id.

C. Penalty Phase Evidence

The penalty phase hearing before the jury commenced on May 21, 1992. (SR. 5, et seq.),

C1. State's Case

The State introduced a certified copy of a prior judgment of conviction for the attempted first degree murder of Marshall King. (SR. 10). The State also introduced a certified copy of a prior judgment of conviction for the first degree murder of Tequilla Larkins. (SR. 9).

Termaine Tift testified that, prior to the instant murder, he had again seen Bobbie Lee Robinson, accompanying the defendant, in north Dade County, in the **area** of the defendant's home. (SR. 11-13, 15). Tift, at this time, had seen the defendant holding some money in his hands, (SR. 13). He had asked the defendant how he got the money. Id. The defendant had said by killing "some lady name Sugar Mama", "Down South", in "a wash house." Id. The defendant said that Bobby Robinson had hired him to **do** the killing because he thought that the victim was trying to take over the drug trade or had something to do with Robinson's brother's death. (SR. 14). Mr. Tift had also spoken with the defendant with respect to another shooting. Id. The defendant had stated that he shot a man in the mouth, again in southern Dade County, and because he had "something to do with the drug trade." (SR. 14-15).

Marshall King, the victim of the attempted homicide, testified that he lives in Perrine, southern Dade County. (SR. 17). At the time, King was working for a lawn service and was not involved in any drug trade. (SR. 27-28). On March 5, 1989, between 9:00 and 10:00 a.m., he was going to a neighborhood grocery store. (SR. 18). On his way, he met an old fried. Id. While talking to his friend on the sidewalk, Mr. King **saw** the defendant walking towards him. (SR. 19-20). The defendant was holding a brown paper bag, approached King, asked, "what's up," and then shot King at least four (4) times; once in the mouth. (SR. 20-21). King had only seen the defendant once before, two days prior to being shot. (SR. 21-22). The defendant and another person, "DRED", had been standing across the street from King's house. (SR. 22-23). King approached his house, when "Dred" crossed the street and told him that a "contract" had been issued both on King's and a friend of his, Tequilla Larkins', lives. (SR. 23).

Jerry **Bridges** (sic) testified that on the evening of March 11, 1989, he and his wife, Valerie, were doing laundry at the Sparkle City Laundromat, in Perrine, (SR. 31-32). The owner and operator of the laundromat **was** known as "Sugar Mama." (SR. 33, 91). Sugar Mama closed the laundromat's glass doors at approximately 9:00

p.m., while Mr. and Mrs. Bridges were folding their laundry. (SR. 33-37). An attendant, Eric, and Sugar Mama's stepson were also in the store. Id. The defendant came to the door and Sugar Mama unlocked the door. Id. The defendant then burst inside, punched the victim, pulled out a gun, and started shooting. Mr. Bridges grabbed his wife and laid on top of her, to protect her. Id. Bridges could feel fragments of bullets hitting his foot during the shooting. (SR. 38). He then saw Sugar Mama had a bullet hole in her back. (SR. 38-39).

Detective Borrego testified as to the defendant's confessions to both the above homicide and the attempted murder of Mr. King. (SR. 42-79). The defendant's sworn and transcribed statements were read to the jury. Id.

With respect to the attempted murder of Mr. King, the defendant stated that he had been standing on **a** street corner with "G." (SR. 53-59). "G" had told him, "he was having some problems with this guy and, you know, he wanted the guy to be shot." (SR. 53). "G" pointed out the victim, who had been standing in the street, by a description of his clothing. (SR. 53-54). "G" offered to **pay** the defendant seven hundred dollars. Id. According to the

defendant, "G" then handed him a gun, and the defendant walked past King in the street, turned around and shot him. (SR. 54-59). "G" then took the defendant home in his car, paid him the seven hundred dollars, and took back the gun. Id.

With respect to the Larkins/Sugar Mama murder, the defendant's written statement reflected that he was again contacted by "G", approximately a week after the King shooting. (SR. 67-69). This time, G went to the defendant's house, in the afternoon hours. Id. He told the defendant about a "girl in the wash house." Id. The victim was the owner/operator of a laundromat. "G" wanted her to "take a fall." (SR. 72-73). The victim was to allegedly receive a shipment of drugs, and the defendant was supposed to rob her of both the money and drugs. Id. "G" drove the defendant to his own house, and they stayed there until early evening. (SR. 68-69). "G" then drove the defendant and a "basehead" to the back of the laundromat. (SR. 69-72). They waited for the victim to arrive; the "basehead" was on "stakeout," and, would periodically check and inform them as to the victim's actions and when "its cool to go in." Id. The defendant and the "basehead" then walked to the store. (SR. 74). The "basehead" said something, and Sugar Mama opened the door, Id. The "basehead" then ran off, and defendant

went in, drawing his gun and demanding, "give it up." (SR. 74-75). Sugar Mama started running; "the other girl intercepted", and there was, "a lot of commotion." (SR. 75). Then, according to the defendant:

> There was so many people I just got confused. I was gonna leave and I guess I was trying to shoot my way out of there and then it got jammed the first time, right. After that it just repeatedly shot, boom, boom, boom, boom.

(SR. 75-76). The defendant was paid "three or four" hundred dollars after this shooting. (SR. 77).

The State then requested that the court take judicial notice of the contemporaneous attempted murder and aggravated assault convictions herein. The State thus rested its case at the penalty phase. (SR. 84).

c2. Defense Case

The defendant's cousin, **Wanda Jones,** testified that the defendant was part of a large, close, church-going family. (SR. 84-86). Ms. Jones has known the defendant all of her life; they are very close and used to play together as children. (SR. 85-86). The defendant was always "fun, joyful, always making everyone laugh." (SR. 86). She has never seen the defendant under the

influence of drugs or drunk. (SR. 83-88). He was never violent towards family members. (SR. 86). She could always "consult" the defendant if she had any problems. (SR. 87). She has been in contact and talked with the defendant after the commission of these crimes. (SR. 86-87). The defendant remains the "[s]ame ole Ronnie, joyfully, happy." Id.

The defendant's stepbrother, Lamont Ferguson, testified that the defendant cared for him, and contributed to the family financially, because his father had a drinking problem. (SR. 89-90). The defendant, however, got along well with his stepfather. (SR. 92-93). The latter was loving and had never physically or mentally abused the defendant or any of the other children. Id. The defendant had never been involved with drugs or alcohol, was not violent, and was always joking and happy. (SR. 91, 93-94). The defendant has remained, "the same happy person," after his incarceration. (SR. 91).

Ms. Rose Cooper is the defendant's aunt. (SR. 94). Her mother, the defendant's grandmother, passed away after the instant crimes. (SR. 95). She had Parkinson's disease. Id. Ms. Cooper and the defendant's mother had been taking turns in caring for their

mother, as opposed to leaving her in **a** convalescent home. Id. The defendant would take care of his grandmother when they were at work. (SR. 95-96). The defendant, as a child, had never been violent. (SR. 96). The defendant was a loveable person and loved people. (SR. 96-97). He would always joke and make people laugh. Id. The defendant grew up in a very religious family, and attended church regularly, (SR. 99). Ms. Cooper has never seen the defendant drunk. (SR. 98). She has not seen any changes in the defendant since the commission of the crimes, either. (SR. 96).

The defendant's mother, Ms. Ferguson, testified that the defendant was born in July, 1967. (SR. 100-101). He was twenty-two (22) years old at the time of the instant crimes. His brothers look up to him because he was "the father figure" to them. (SR. 101-02). Ms. Ferguson's ex-husband had a drinking problem and was never around. Id. She could **always** rely on the defendant to contribute financially, and take care of this brothers and his grandmother. Id.

The defendant "always had a joke to make." (SR. 102). The defendant's family, the neighbors, his schoolmates and his co-workers all loved him. Id. The defendant had never been violent

while growing up. (SR. 103-4). He always had good grades in school. (SR. 104). The defendant had a religious upbringing, as his grandmother was a minister. (SR. 105). He was taught respect for life and the elderly. (SR. 106). The defendant never had any problems with drugs or alcohol. (SR. 107-8). The defendant's stepfather hit him once. (SR. 107). Ms. Ferguson does not believe that the defendant committed any murders. (SR. 108).

Finally, the defendant also testified as to his background. (SR. 108-135). He stated that everybody would come to him with their problems. (SR. 109). His advice was to have faith and pray. (SR. 110). He did not accept, and resented his stepfather. (SR. 110-11). He always wanted to be with his natural father but, "I was deprive of that." Id. The defendant stated that he had to help support his family and started working at a young age, because his stepfather had a drinking problem. (SR. 120-21).

The defendant has never had any serious physical injuries which would affect his thinking or actions. (SR. 123). There were "emotional things wrong" with him, (SR. 124). According to the defendant, nobody understood him. (SR. 127). He stated that he would read the Bible and attend church because he was forced to,

and he never knew what the Bible was, or, "what church was all about." (SR. 124-26). The defendant added that, although he had been very involved in the church choir, the community, his school, and the student council, people "didn't care" and he had "no role model in my life." (SR. 126-29) .

The defendant also stated that he had gone through a lot of emotional problems in his life, due to the deaths of his friend and other family members, although his family never knew about these problems. (SR. 114-16, 119-20). His best friend got shot in a "drug situation." (SR. 114-16). In 1978, one of the defendant's cousins got shot by a neighbor. (SR. 119). The defendant's uncle died of AIDS. (SR. 120). Another cousin got killed while robbing a store. Id. His grandmother died after his arrest for these crimes. (SR. 121, 123-24). The defendant also stated that he had smoked marijuana and would drink beer. (SR. 115). His crimes, however, were not because of drugs or motivated by money. (SR. 119).

Finally, the defendant was asked, by his counsel, why the jury should recommend a life sentence. (SR. 122). He responded:

Cause I don't think its right to pay,

> although you made a mistake, I don't think you have to pay for your life-- because you killed someone you should have to pay for your life with your life. It's other **means** of punishment that you should go through and then -- you see what I'm saying?
>
> I got **remorse.** I go through enough **trauma** on **my** own just sitting in prison. A lifetime in prison, that's trauma alone.

(SR. 122-23).

The parties presented their closing arguments. (SR. 140-59). The jury **was** instructed without any objections to **any** of the instructions, and in accordance with the defense requests. (SR. 159-65; 137-40).

c3. **Advisory Sentence And The Trial Court's Findings**

The jury recommended a sentence of death by a majority vote of seven to five. (SR. 165). The sentencing hearing before the trial judge took place on July 16, 1992. (T. 1530-36). The parties were given an opportunity to, but did not, present any evidence or additional arguments. (T. 1532).

The trial judge then sentenced the defendant to **death, having** found four aggravating factors: (1) prior violent felony

convictions (attempted murder of Mr. King and the murder of Tequila Larkins); (2) great risk of death to many persons; (3) the murder was committed for pecuniary gain; and, (4) the murder **was** committed in a cold, calculated manner with no pretense of moral or legal justification. (T. 1532-36; 2SR. 1-3).[5] The trial judge did not find any statutory mitigating factors. (2SR. 3-4). The court did find the defendant's family members' testimony, that he had cared for them and was a good friend, to be nonstatutory mitigation. (2SR. 4). The trial judge, however, concluded:

> But this mitigating circumstance is overwhelmingly outweighed by the aggravating circumstances, After presiding at three trials of this Defendant, this Court has come to the conclusion that he is a man who murders people for money. This Court has searched the record and its conscience to find a reason for not imposing the death penalty and has found none.

(2SR. 5-6).

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[5] The symbol "2SR. " refers to the Second Supplemental Record on Appeal, containing the written sentencing order. The State has simultaneously filed a motion to supplement the record with said order, and attached a copy thereof to its motion, with a label of 2SR. 1 through 2SR. 6, inclusive.

SUMMARY OF THE ARGUMENT

I. and II. The trial court properly denied the defendant's motion to suppress. The record supports the conclusion that the defendant's statements were voluntary, The officers who obtained the statements testified that there were no promises, threats, coercion or physical force. Moreover, the defendant was read his Miranda warnings and he expressly waived them. In the defendant's transcribed, sworn statement, he specifically acknowledges that there were no threats, promises or coercion. Additionally, contrary to the Appellant's argument herein, it was not necessary for the trial judge to specifically state, on the record, his finding that the statements were voluntary.

III. The trial judge did not abuse his discretion in denying the defendant's motion for mistrial. The premature discussion of non-dispositive evidence presented at trial, was not prejudicial.

IV. The trial court properly found the aggravating factor that the defendant knowingly created a great risk of death to many persons. The defendant had planned and executed an indiscriminate shoot out with multiple weapons, including a submachine gun, in the

direction and area of at least four (4) bystanders, in addition to the victim.

V. There was no error in sentencing the defendant to death, while imposing a lesser sentence on other participants, where the evidence supports the sentencing judge's conclusion that the aggravating factors outweigh the mitigating factors. Moreover, the record herein reflects that the defendant was more culpable than codefendants Ingraham and Newsome, as he was the dominant force behind the planning and execution of the murder.

ARGUMENT

I. and II.

THE DEFENDANT'S MOTION TO SUPPRESS HIS CONFESSION WAS PROPERLY DENIED.

The Appellant, in issue I on appeal, contends that the trial judge's denial of the motion to suppress was not supported by the preponderance of the evidence. In related claim II on appeal, the Appellant argues that the trial judge, in violation of McDole v. State, infra and progeny, reversibly erred in failing to make factual findings and to specifically state that the defendant's statements were "voluntary". The Appellant's contentions are without merit. The evidence clearly supports the denial of the motion to suppress, and the trial court was not required to expressly state that the confession was "voluntary" or to make specific factual findings, pursuant to Antone v, State, 382 So. 2d 1205, 1212 (Fla. 1980).

I. The trial judge's rulins was supported bv the preponderance of the evidence.

The prosecution has the burden of proving by a "preponderance of the evidence" that a confession was freely and voluntarily given. Leso v. Twomey, 404 U.S. 447, 92 S.Ct. 619, 30 L.Ed.2d 618, (1972); McDole v. State, 283 So. 2d 553, 554 (1973), modified on

other grounds in Antone v. State, 382 So. 2d 1208, 1212 (Fla. 1980). On appeal of the ruling of a trial court on a motion to suppress, the evidence is considered in the light most favorable to the prevailing party. Owen v. State, 560 So. 2d 207, 211 (Fla. 1990). This Court has noted that the "preponderance of the evidence" burden for a finding of voluntariness is satisfied, in a "typical case wherein the sole question is the credibility of the police and the defendants", and where, "the only evidence is the statements of the police officers that the confessions were not coerced and those of the defendants that they were". McDole at 554-5.[6]

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[6] This Court in McDole found that the preponderance of the evidence standard had not been met, where the defendants' testimony had been corroborated by physical and other reliable evidence, whereas the police officer's testimony had been impeached by the officer's own prior inconsistent sworn statements. The Defendants in McDole had testified that they confessed only after first being beaten by the police and then being told what to say in their statements. This Court noted that the defendants' testimony of coercion was corroborated by a medical doctor who had examined the defendants the day after their confessions, and reported recent injuries and bruises, consistent with the defendants' testimony of how and where they had been hit and kicked. The defendants' testimony was also corroborated by a deputy sheriff who had seen them at the time of their arrest after their confessions, and reported visible signs of injuries. A confidential informer for the State had further testified that he had seen the defendants at the police station at the time of their confession. The defendants had looked "drowsy" and "beat up". This witness had added that the police officers had later admitted to him that they had beaten the defendants into confessing, Furthermore, one of the waiver-of-

The instant **case** involves consistent and corroborated testimony from all four police officers who had come into contact with the defendant, before, during and after his confessions. The testimony of said officers, detailed herein at pp. 2-10, established the voluntariness of the defendant's confessions. Said testimony reflected that, a) the defendant had voluntarily accompanied the officers to the police station, b) the defendant had not been threatened, abused, or promised anything at any time prior to or during his statements, c) the defendant had been read his Miranda rights prior to any questioning, had understood said rights and waived same; d) the defendant was not continuously questioned and had been given the opportunity to eat, drink, use the restroom facilities, and sleep, and; e) the defendant had been alert and cooperative throughout the course of his questioning.

Miranda-rights forms reflected that it had been signed ten minutes after the time reflected on the signed confession; there was no explanation for this discrepancy. Finally, the defense had also impeached the testimony of the police officer who had denied beating the defendants, with the officer's own prior sworn statement. Under these circumstances, this Court held that the trial judge's denial of the motion to suppress, which was devoid of any factual findings or legal reasoning, was not supported by the evidence presented.

The Appellant, in reliance upon the defendant's testimony at the hearing below, which was rife with inconsistencies,[7] has argued that the defendant herein: (a) was promised leniency and misled as to his true position, by allegedly being told that he could avoid the death penalty if he cooperated; (b) that he had signed his confession while not knowing about the safety of his family, and; (c) that he had been physically mistreated and threatened by the police. Brief of Appellant at pp. 23-27. All of said contentions were, however, specifically denied by police officers, as detailed in the summary of said officers' testimony at the suppression hearing, set forth herein at pp. 2-10.

All of the four police officers who had come into contact with the defendant prior to, during or after his confessions, testified that they had neither promised the defendant anything, nor threatened or otherwise abused him in any way. Officer Borrego

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[7] The defendant's testimony, as detailed on pp. 10-16 herein, was internally inconsistent and conflicting as to, a) whether he had voluntarily accompanied the officers to the police station, b) whether he had wanted to call his family members, c) whether he was handcuffed at any time during questioning, d) whether he had confessed as a result of alleged threats about the electric chair, e) the details and frequency of the alleged physical abuse, f) the source of the information allegedly provided him by the police, (g his prior criminal history, and, h) whether he had been sufficiently alert at the time of his statements.

specifically stated that there was no mention of the death penalty at any time. This officer testified that after his arrest, the defendant had asked what would happen to him. The officer had merely responded that the defendant would be charged with the instant crimes, and have his day in court.

Likewise, as to the alleged concern for the safety of his family, it should be noted that the defendant's testimony at the suppression hearing was entirely devoid of any mention that the police herein had actually threatened the safety of his family members. There was no mention or claim that the defendant had communicated any such fear of safety, which allegedly arose out of his family's prior dealings with other police officers, to any of the officers involved herein, either. Additionally, officer Borrego denied that the defendant had asked to call any family members. The state would note that to render a confession inadmissible, any alleged delusion, "must be visited upon the suspect by his interrogators; if it originates from the suspect's own apprehension, mental state or lack of factual knowledge, it will not require suppression." Thomas v. State, 456 So. 2d 454, 458 (1984).

Moreover, the defendant's own prior sworn statements corroborated the police officers' testimony, and, refuted the contentions raised herein. The defendant's transcribed statement reflected that he, in the presence of a court reporter, had stated that he had been read his Miranda rights at 7:30 p.m., prior to any questioning and prior to his oral confession, and, had agreed to answer questions at that time, "of my own free will without any threats or promises having been made to me." (R. 52). At the conclusion of the transcribed statement, again in the presence of the court reporter, the defendant had further stated that no one had "threatened or coerced" him to give the formal confession, and that he had given same "freely and voluntarily." (R. 97). The photograph of the defendant, taken at the jail and immediately after his confessions, in addition to the defendant's own testimony at the hearing below that he had not sought nor been admitted for any medical treatment, further corroborated the officers' testimony that he had not been physically abused, mistreated, or threatened.

In light of the consistent and unimpeached testimony from the police officers herein, which was corroborated by the defendant's own prior sworn statements and other physical evidence, the State met its burden of proving voluntariness by a preponderance of the

evidence. McDole supra.

II. Findings By The Trial Court

The Appellant, as noted previously, has also argued that the denial of the motion to suppress was erroneous because the trial court did not make any specific findings of fact and did not expressly state that the confession was voluntary. The Appellant has relied upon McDole, supra, Green v. State, 351 So. 2d 941 (Fla. 1977) and Rice v. St-ate, 451 So. 2d 548 (Fla. 2d DCA 1984). This Court in McDole, 283 So. 2d at 554, 556, held that, prior to consideration of a confession by the jury, "a specific finding of voluntariness", and **clear** reasons for such a finding by the trial judge, are necessary. In Greene, supra, this Court added that absent such findings, the remedy was a new trial and not merely a remand to the trial judge for specific findings.

This Court has, however, receded from McDole and progeny **as** to the requirement of any specific findings. See Antone v. State, at ***382 So.*** 2d 1212-13, wherein this Court held:

> Antone next asserts that the trial judge's naked denial of the motion to suppress these statements mandates a reversal pursuant to ***McDole v. State, 283 So.*** 2d 553 (Fla. 1973) . This Court, however, has modified the strict

> reffuirement that an express finding must appear in the record. ***See Wilson v. State, 304 so.*** 2d 119 (Fla. 1974); ***Henry v. State, 328*** So. 2d 430, 431 n.1, (Fla.), *cert.* denied, 429 U.S. 951, 97 S.Ct. 370, 50 L.Ed.2d 319 (1976) Ideally, the trial judge should specify his conclusions concerning the voluntariness of a disputed confession or inculpatory statement. However, due process is not offended when the issue of voluntariness is specifically before the judge and he determines that the statements are admissible without using the magic word "voluntary." The record reflects that the only issue before the court was the voluntariness of Antone's statements. The evidence clearly supports the finding that these statements were free from coercion. The resultins denial of the motion to suppress **was** thus not in error.

(emphasis added). See also Sims v. Georsia, 385 U.S. 538, 87 S.Ct. 639, 17 L.Ed.2d 593 (1967) (the trial judge need not make formal findings of fact or write an opinion in concluding that **a** confession is voluntary); Peterson v. State, 382 So. 2d 701, 702 (Fla. 1980) ("when the trial judge admits into evidence a statement or confession to which there has been an objection, on review the record must reflect with unmistakable clarity that he found that the statement of confession was, by the preponderance of the evidence, voluntary and made in accordance with Miranda. . ..The trial judge can make this task easier by reciting his conclusionary findings, but the failure to do so is not fatal where the record,

with unmistakable clarity, demonstrates that he understood his responsibilities and properly fulfilled them).

As previously detailed in the Statement of Facts, at pp. 17-20, with respect to the voluntariness of the confession, defense counsel had argued that the defendant's testimony as to threats, promises, lack of alertness and understanding of his Miranda rights, **was** truthful. (T. 320-23). The defense had thus stated that the defendant should be given, "the benefit of the doubt, . . . he did not do this totally freely, This was not a voluntary statement." (T. 323). The State argued that the defendant was not credible and had misrepresented what had transpired, in light of the testimony from all the officers who had come into contact with the defendant, the signed Miranda waiver form, and, the transcribed formal statement. (T. 323-25). The prosecutor also argued that any mistreatment or other allegations by the defendant could have been mentioned in the formal statement, when the court reporter was present, but were not. Id. The trial judge, in reliance upon the recorded formal statement, specifically asked defense counsel if there was anything in said statement that would support the defense argument that, "[defendant] didn't do this voluntarily and that there is an insufficient understanding of his right?" (T. 325).

The trial judge had previously reviewed the recorded statement, (T. 281, 271). Defense counsel acknowledged that the statement did not support such claims. (T. 325). The trial judge then denied the motion to suppress, stating:

> All right.
>
> As to the motion, the motion to the confession, denied.
>
> This was done at the homicide office. The Miranda warning is sufficient. Nothing suggests a [lack of] waiver (sic) of the constitutional rights.[8] (T. 325).

Moreover, at the trial of this cause, prior to the admission of the defendant's confession, and subsequent to testimony as to lack of any threats, coercion or promises, defense counsel renewed his motion to suppress, specifically on the grounds that said statements were made "involuntarily." (T. 1268). The trial judge "denied" this motion, as well. Id. It is thus abundantly clear that the issue of voluntariness was specifically before the trial judge. The summary denial of this claim without specific findings,

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[8] The last statement, "[n]othing suggests a waiver . , ." is obviously a scrivener's error by the court reporter. The trial judge had already denied the motion to suppress and expressly stated that the Miranda warnings herein were sufficient. Neither party objected or commended in any fashion. (T. 325). The parties immediately commenced scheduling a hearing on another motion. Id.

or utilizing the word "voluntary," was not error. Antone, supra, at 1213 ("due process is not offended when the issue of voluntariness is specifically before the judge and he determines that the statements are admissible without using the magic word 'voluntary'. . . . The evidence clearly supports the finding that these statements were free from coercion. The resulting denial of the motion to suppress was thus not in error."); Sims v. Georsia, Peterson, supra.

Finally, the defendant's reliance upon Rice v. State, supra is also unwarranted. In Rice, 451 So. 2d at 549, the appellate court held that it was not, "unmistakably clear from the record that the trial judge's denial of the motion to suppress was predicated upon his conclusion that the confession was voluntary". The trial judge in that case, had not only failed to specifically state any conclusion, but had affirmatively stated his misunderstanding of the necessity for the court to consider and rule upon the voluntariness of the confession prior to submitting same to the jury. The trial judge, in a dialogue with the attorneys, had raised the issue of "whether or not this [voluntariness of the confession] is a jury question as opposed to the court ruling at this time," and, had denied the motion to suppress, stating, "It is

a matter which **can** properly go before the jury to determine the matter of voluntariness." Rice, 451 so. 2d at 550, n.1. The appellate court held that the record **was** thus unclear, as, "[t]he conclusion could well be drawn- that the matter [of initial determination of voluntariness] was left to the jury. Id.

There were no affirmative statements of misunderstanding the trial court's duty in the instant case. As noted above, the record herein affirmatively reflects that the issue of voluntariness **was** squarely before the trial judge. The parties argued that the sole question before the trial judge was a determination of credibility between the officers and the defendant. The trial judge affirmatively indicated his reliance upon the defendant's sworn and transcribed statement, which reflects the defendant's express acknowledgment that he had understood his Miranda rights and had confessed voluntarily, without any threats or promises. The trial judge then stated that the motion to suppress was "denied". The record herein is thus unmistakably clear that the trial judge concluded that the confession was voluntary, and that his conclusion was supported by the preponderance of the evidence presented. Antone, supra; Peterson, supra.

111.

THE TRIAL COURT PROPERLY DENIED THE DEFENDANT'S MOTION FOR MISTRIAL.

The defendant asserts that this Court should grant a new trial because the jurors improperly discussed the case prior to deliberations. This claim is without merit, as the record reflects that the trial judge did not abuse its discretion in denying the defense motion for mistrial, because there was no prejudice.

The record herein reflects that, after the conclusion of all evidence but prior to closing arguments, two attorneys, who were not at all involved in this case, informed the trial judge that one of the jurors had approached them while they were having breakfast. (T. **1370).** The juror, who was then identified as Ms. Layon, had asked, "how long a defendant would serve on a life sentence." (T. 1370-73). The attorneys had not realized that Ms. Layow was a juror, as she had not worn any juror identification. Id. The attorneys had responded, "it is a 25 year minimum." Id. Ms. Layow then asked about parole, at which time the attorneys asked if she was a juror. Id. The attorneys told Ms. Layow that she should tell the judge about the conversation; they also decided that they would themselves inform the court. Id.

Ms. Layow was then individually questioned by the court and the parties. (T. 1373-75). She admitted having asked the question as to the sentence, because she had been curious.' Id. She further stated that she had not spoken to any of the other jurors about her conversation with the attorneys, and that none of the other jurors knew that she had questioned anyone. (T. 1374). Upon questioning by defense counsel, this juror then added, that she had not heard any jurors having "spoken anything about the case," (T. 1375). Ms. Layow was stricken from the jury with the agreement of both parties. (T. 1375).

Defense counsel nonetheless requested a mistrial at this juncture, which was denied. (T. 1376). The defense then requested that the remainder of the panel be individually voir dired as to whether, "they had ever discussed this or whatever," because defense counsel could not trust Ms. Layow's candor. Id.

The court thus individually questioned all jurors as to whether they had ever had any conversations with Ms. Layon as to anything related to the case, including the penalty. (T. 1378-89). After questions by the Court, defense counsel expanded the questioning as to, "any kind of discussions with other members of

the jury about any matter relating to the case?" (T. 1378). Thereafter, all the jurors were similarly questioned individually. (T. 1378-89). All of the jurors stated that they had not discussed the case with Ms. Layow, or amongst themselves or with anybody else, with the exception of jurors Blanca and Gomez. Id.

Juror Blanca stated that she and Ms. Layow had "talked about names, we were confused about names." (T. 1382). She added, "I mean, anything to apply, no." Id. Upon the court's request for her to elaborate, Ms. Blanca responded, "there was something, Blue, Black, I don't know, Boo, and so many other names. We didn't know who was who." (T. 1383). Ms. Blanca added, "I think they said Boo was this gentleman here, and I don't know the other ones." Id. Nothing further was discussed. Id.

Juror Gomez stated that he had no discussions with Ms. Layow about any matter relating to the case. (T. 1387). He stated, however, that he had talked, with the juror seated next to him, about: "the person that got shot - we said it was pretty traumatic, the bullet wounds on him. We discussed other matters like the doctor's opinion, it was really interesting hearing the way he talked and how he explained things real well." (T. 1387-88). Mr.

Gomez also stated that they were, "trying to discuss the foreperson", but that, "somebody said, I don't think we should be discussing this matter anymore, so everybody stayed quiet." (T. 1387).

Mr. Gomez was then questioned as to any discussions with respect to guilt or innocence. He stated that no one had expressed an opinion of guilt, and that everyone was keeping an "open mind":

> Q: Mr. Gomez, has there been any discussion whatsoever about whether or not the defendant was guilty or not guilty of the charges?
>
> A: There has been a discussion stating that in a way that he had admitted his guilt in a way, with that white paper. so we were like saying the evidence in front of us, it was difficult to sav that the man is suiltv or not suiltv, we have to have an open mind.
>
> Everybody is saying that nobody is admitting he is guilty, but they are confused in a way because no one can ask questions, and everybody is like, I wish we can ask these type of questions, this type of question. There is a little confusion there.
>
> Q: Has, in any of the discussions. anyone made up their minds about the defendant being suiltv or not suiltv?

A: Not at all. I haven't heard anybody say he is guilty.

As a matter of fact, I said, you have to have an open mind as to what we heard, all the evidence.

I didn't know what this part of the trial was going to be.

I haven't heard anybody say he is guilty.

(T. 1388-89). It should be noted that the juror seated next to Mr. Gomez, Mr. Preval, was also subsequently questioned. The latter did not recollect any conversations with the former. (T. 1390-91). Mr. Preval stated that he had had no discussions, with anyone, with respect to any "confusion" in the case, any trauma as a result of victim photographs, or as to whether the defendant was guilty or not. Id.

The defense moved for a mistrial, on the grounds that there had been "discussions about the doctor's testimony, the photographs of Mr. Lee Lawrence, how traumatic that was, who should be the foreman." (T. 1393-95). The State argued that no prejudice had been demonstrated, as the questioning reflected that this was a case of the jurors, "thinking to themselves out loud," rather than having reached any premature decisions. (T. 1395). The trial court

denied the motion for mistrial without prejudice to renew same after further research by the parties. (T. 1397-1400).

Subsequently, a transcript of the above proceeding, a written motion for new trial, and the State's response thereto, were presented to the trial court, (T. 305-5, 306-23). The trial court then heard arguments by the parties. (T. 1522-27). The State, in reliance upon Amazon v. State, 487 So. 2d 8 (Fla. 1986), and Brooks v. Herndon Ambulance Service, 510 So. 2d 1220 (Fla. 5th DCA 1987), argued that the juror comments herein, which were based upon the evidence presented at trial, were not prejudicial and did not influence or reflect any decision as to guilt or innocence prior to deliberations. (R. 306-10; T. 1527). The defense position was that prejudice had been demonstrated by virtue of the verdict of guilt at the conclusion of the case. (T. 1522-27). The trial judge denied the motion for mistrial. (T. 1527).

The Appellee respectfully submits that in light of the foregoing factual scenario, the trial judge did not abuse his discretion, and the ruling below was in accordance with this Court's precedents. The mere fact that the jury has returned a verdict of guilt does not establish prejudice, where jurors have

discussed evidence properly presented at trial, prior to deliberations. The rule in Florida is:

> If the [misconduct is] such that [it] would probably influence the jury, and the evidence in the cause is conflicting, the onus is not on the accused to show he was prejudiced for the law presumes he was. But it should be clearly understood that not all [misconduct] will- vitiate a verdict, even though such conduct may be improper. It is necessary either to show that prejudice resulted or that the [misconduct was] of such character as to raise a presumption of prejudice.

Amazon v. State, 487 So. 2d 8, 11 (Fla. 1986) quoting Russ v. State, 95 So. 2d 594, 600-01 (Fla. 1957). The defendant thus has the burden of establishing a prime facie case that the conduct is potentially prejudicial. Amazon, supra, 487 So. 2d at 11; see also, State v. Hamilton, 574 so. 2d 124, 130 (Fla. 1991) (in Amazon, suwra, "we stated that the defendant must at least allege facts establishing a prima facie argument for prejudice. The Amazon Court factually was confronting some allegations of juror misconduct that had almost no potential to prejudice the defendant."); Lazelere v. State, 676 So. 2d 394, 404 (Fla. 1996) (where the alleged juror contamination "did not expose them to any non record information that was prejudicial," there was no reasonable probability that the incident affected the jury's verdict).

The discussion of evidence or expression of opinion, although improper, does not require a new trial where the discussion or opinion is not based upon outside or extrinsic information or influence. There is no presumption of prejudice in the absence of outside influences. See, Brooks v. Herndon Ambulance Service, 510 So. 2d 1220, 1221 (Fla. 5th DCA 1987), where one of the jurors, prior to deliberations, commented on the evidence and testimony, and, inter alia, stated that, "the boy was dead the minute he hit the ground," although no such evidence was presented at trial. The Court held:

> It was improper for this juror to talk about the case before deliberations began and the juror may have been guilty of contempt of court for doing so. That misconduct does not warrant a new trial or a juror interview by itself. However, if the juror was imparting information from outside the trial evidence then a new trial may be warranted,
>
> Therefore, an interview is necessary here to determine whether the opinion expressed by the offending juror was merely his own based upon what he heard from the trial or whether he said it came from knowledge he gained from outside sources. More precisely the question is what impression his statements made upon the other jurors--were they influenced by his comments in the belief the comments were based upon extrinsic matters. If so, then perhaps the jury was significantly tainted. If not, then all's well. . . .

Brooks, 510 So. 2d at 1220-21. See also, Grooms v. Wainwright, 610 F. 2d 344, 347-48 (5th Cir.), cert. denied, 445 U.S. 953, 100 S.Ct. 1605, 63 L.Ed. 2d 789 (1980) (no abuse of discretion in the trial court's denial of a motion for a new trial where a juror remarked that, "as far as I'm concerned, [from] what I heard already he's guilty." The Court reasoned that the comment, made at the end of the prosecution's case, did not reflect, "serious prejudice, but only an objective evaluation of the evidence presented to date in the trial.") .[9]

In the present case it is clear that the discussions Juror Gomez had with the other jurors, involved only those matters which were properly heard at trial., There was no contention that any juror who served in this cause was exposed to or influenced by any extrinsic matter. Moreover, the jurors who discussed the case agreed that they had to have an open mind and wait until all the evidence was presented. The record as detailed previously, clearly reflects that there were no premature decisions by any juror.

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[9] The Appellant's reliance upon Russ, supra, and Durano v. State, 262 So. 2d 733 (Fla. 3d DCA 1972) is unwarranted, as both of these cases involved situations when either the jurors had personal knowledge of evidence not presented at trial, or had been in contact with third parties and discussed the case.

Indeed, the jurors herein deliberated for more than eleven hours, and convicted the defendant of a lesser included offense on the third count. Finally, none of the evidence commented upon was dispositive of any contested issues. In the instant case there was no question that the defendant had committed the crimes, the issue was the degree of the offenses. The medical examiner's testimony with respect to the cause of death was undisputed, did not resolve any claims as to the degree of the homicide, and had no bearing on the attempted murder counts. Likewise, discussions as to the confession were not prejudicial, as the confessions did not resolve the degree of the homicide either. Finally, the fact that the defendant as also known as "Boo," was undisputed and did not resolve any issues.[10]

The Appellant has thus not shown that the conduct by some of the jurors in prematurely discussing some aspects of the case was potentially prejudicial. The State would note that the instant case reflects even less prejudice than that noted in Amazon. In that case, one juror, after having been exposed to extrinsic matter - a newscast of an expert's testimony at trial commented

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[10] Indeed, the indictment herein refers to the defendant as Ronnie "Boo" Johnson. (R. 1).

to another juror that the testimony of the expert had been "impressive". This Court held that such conduct was not prejudicial and did not warrant a mistrial, This Court noted that the expert in question was "an important state witness", a metallurgist, whose testimony tended to show that defendant had taken a knife to the scene of the crime, thus buttressing the State's case for premeditation, Amazon, 487 So. 2d at 16. The defendant had testified that he had grabbed the knife from the scene, and that the murders were thus second degree killings. Id. This Court noted that whether the defendant had brought the knife or picked it up at the scene, was not dispositive of his state of mind at the moment of the killings. Thus, the "connection between the metallurgist's testimony and the question of first or second degree murder is simply too remote," to conclude a "substantial impact on the outcome." Id. This Court also held that the juror's "impressive" comment did not reflect a premature opinion about the case.

The premature discussion of nondispositive aspects of the instant case, without more, was thus not grounds to grant a new trial. The defendant failed to meet his burden, and as such, the State submits that his motion for new trial was properly denied.

Amazon; Brooks; Lazerlee; Grooms v. Wainwrisht, supra; and so Doyle v. State, 460 So. 2d 353, 356-357 (Fla. 1984) (trial court did not err in denying motion for mistrial where juror said to defense counsel, "Good luck, you're going to need it."); Rembert v. State, 445 So, 2d 337, 339 (Fla. 1984)(trial court did not err in denying motion for new trial where jurors' deliberations on guilt included premature deliberations on the penalty); Hooker v. State, 497 So. 2d 982, 984 (Fla. 2d DCA 1986)(trial court not required to conduct inquiry of jurors after one juror commented to another juror about facts of the case.); United States v. Harris, 908 F. 2d 728, 734 (11th Cir. 1990) (jurors' remarks that, "these guys sitting across from us think they're going to get off on this," and, comment to a government witness to, "do it to him good," although reflecting, "some conclusion adverse to the defendants," did "not suggest serious jury contamination").

IV.

THE TRIAL COURT PROPERLY FOUND THAT THE DEFENDANT KNOWINGLY CREATED A GREAT RISK OF DEATH TO MANY PERSONS.

The Appellant contends that the trial court erroneously found that the defendant had knowingly created a great risk of death to many persons. This claim is without merit, as the trial court's

findings were both supported by the record, and in accordance with this Court's precedents.

The above aggravating factor applies when the defendant puts at least four people, in addition to the victim, in immediate and present risk of death by firing a gun in the area or direction of said people. See, Fitzpatrick v. State, 437 so. 2d 1072 (Fla. 1983), habeas corpus granted on other grounds, 490 So. 2d 938 (Fla. 1986)(factor upheld when defendant engaged in a gun battle with two police officers, one of whom was the murder victim, in the presence of three hostages); Suarez v. State, 481 So. 2d 1201 (Fla. 1985)(firing a gun during the course of flight, in the area of four officers, defendant's accomplices, and a migrant labor camp, constitutes a great risk of death).

The Appellant contends that he only shot at the victim, and, into the front of the store, at a time when it was occupied by one employee, Ms. Briggs. See, Brief of Appellant at pp. 36-39, The Appellant thus argues that the requirement of at least four people at risk has not been satisfied. The Appellant also argues that since he fired at the front of the store while Ms. Briggs was under the counter, there was insufficient probability of any risk of

death. The evidence relied upon by the Appellant, however, is not supported by the record.

The record herein reflects that the defendant, by his own recorded confession, orchestrated a scheme to "spray up the store", to "shoot it all up", with a submachine gun, an Uzi, to give the appearance of a drug-related shoot-out. (T. 1287-89). Again, by his own admission, he knew in advance not only the victim, but other employees would be present at the store. (T. 1289). Once at the scene, in addition to having been aware of the presence of the victim and the employees, the defendant **also saw** both customers Williams (T. 1301) and Dukes. (T. 978-83). The defendant nonetheless continued to direct codefendant Ingraham, who carried the submachine gun, to utilize that weapon, "to make sure he is dead." (T. 979-83). Within seconds, while the defendant was looking on, at least 7 to 10 rounds were fired in the direction of customer Dukes. Id.

Moreover, the defendant, contrary to the contention herein, did not limit his own shooting towards the victim and towards the front of the store. The defendant himself was also shooting across the parking lot to the fenced perimeter where customer Williams was

untying his bicycle and dog. A bullet from the defendant's revolver was recovered from the body of Mr. Williams' dog, which was being used as a shield by that customer at the fenced area, after the first rally of shots from the Uzi. (T. 999-1000; 1002-3; 1008-9; 1154-55; 1165-72; 1215-20). Ms. Meyers, the employee who was also out in the parking lot, in between victim Lawrence and Williams, escaped injury by lying flat on the ground. (T. 951-56). Finally, with respect to the shooting into the store itself, the evidence reflects that the bullets penetrated and broke the front glass door to the store. (T. 1076). At least one projectile penetrated inside and was retrieved from a food shelf inside the store, next to the counter where Ms. Briggs had been crouching. (T. 1082-83; R. 172-76). Ms. Briggs testified that the counter, in the area where she was crouching, was made of glass. (T. 1025-26). She crawled to the back of the store after having heard the second rally of the shots from the revolver, by the defendant. Id.

In light of the foregoing evidence, the trial judge's factual findings, that at least four (4)[11] people, aside from the victim,

[11] The State would note that there was at least one other bystander, John Williams, within 100 feet of the shoot-out. (T. 940-41).

were placed in immediate and present danger, is thus well supported by the record. The trial judge's findings are as follows:

> **GREAT RISK OF DEATH TO MANY PERSONS**
>
> Just prior to the shooting outside Mr. Lawrence's grocery store, Juanita Meyers a store employee, had gone outside to take out the trash. Valerie Bridges, another employee, remained inside the store. Josias Dukes was making a phone call from an outside pay phone and Bernard Williams was in the area with his dog. The Defendant was inside the store and Ingraham was outside. When Mr. Lawrence stepped outside his store, Ingraham opened on him with his UZI. The Defendant came outside and opened fire. Several shots went through the store window where Ms. Bridges was, Several shots were fired at Josias Dukes who managed to escape injury. Bernard Williams sustained serious gunshot wound but survived. Ms. Meyers lay flat on the ground and managed to avoid drawing fire.
>
> Besides Mr. Lawrence, the lives of four people were placed in peril because of the murderous acts of the Defendant.

(2SR. 2-3). The above findings are also in accordance with the precedents from this Court. Fitzpatrick, supra; Suarez, supra.

The defendant's reliance upon Kamsff v. State, 371 So. 2d 1007 (Fla. 1979); White v. State, 403 So. 2d 331 (Fla. 1980); Bello v. State, 547 so. 2d 914 (Fla. 1989); Alvin v. State, 548 So. 2d 1112 (Fla. 1989); Lucas v. State, 490 So. 2d 943 (Fla. 1986); and Diaz v. State, 513 so. 2d 1045 (Fla. 1987), is unwarranted. None of

said cases involved a situation such as the instant case, where there was immediate risk of harm to the murder victim, in addition to more than three (3) other people. See, Kampff, supra (the defendant shot his wife in the presence of two other people); White, supra (the victims had each been shot at close range in the back of the head, and only two other people had been present on the premises; no shots had been fired at the direction of the latter two people); Diaz, supra (the defendant had fired a single shot in the air, towards the ceiling, and over the head of one person); Bello, 547 so. 2d at 917 (the defendant's actions, "created a high probability of death to at most only three people besides the victim. The remaining people considered by the trial court to have been put at risk were too far **away,** separated by several walls, or out of the line of fire."); Alvin, susra (a total of four (4) people, including the murder victim, were present in the vicinity of the shooting and in the line of fire); Lucas, supra (gun battle involved only the victim and two of her friends).

Likewise, the Appellant's reliance upon Williams v. State, 574 So. 2d 136 (Fla. 1991); Francois v. State, 407 So. 2d 885 (Fla 1982) ; Lusk v. State, 446 So. 2d 1038 (Fla. 1984); Jackson v. State, 599 so. 2d 103 (Fla. 1992); and Coney v. State, a 653 So. 2d

1009 (Fla. 1995), is also unwarranted. All of said cases involve situations where the findings as to the probability of great risk of death rested upon mere speculation. See, Williams, 574 So. 2d at 138 (bank guard was shot in the chest. While other customers were present in the bank, "there was no evidence of indiscriminate shooting in the direction of bank customers, but only of an intent to kill the bank guard."); Francois, supra (the capital murder victims had all been shot at point blank range inside a house, and the trial judge speculated as to what may have occurred if other persons had gone to the house); Lusk, supra (the defendant attacked one victim, with a knife, inside a prison cafeteria; the trial court's speculation as to what could have occurred, did not establish high risk of death); Jackson, 599 So. 2d at 108 (the fact that defendant left an automobile aflame, which "might have caused an explosion which might have killed those responding to the fire" was insufficient possibility of great risk); Coney, 653 So. 2d at 1015 (no high probability of great risk, where there was a "relatively small" fire, which "was contained within a single cell, was set in an "area under constant surveillance, and **was** easily extinguished within seconds with several puffs from a fire extinguisher."). In contrast to the above factual scenarios, the instant case involves indiscriminate shooting by multiple weapons,

including a submachine gun, in the direction and area of at least four (4) bystanders, some of whom were in fact injured while others miraculously escaped death.

Assuming, arguendo, that the aggravator herein was erroneously found, any error was harmless beyond a reasonable doubt . The trial judge in the instant case found three (3) other aggravating factors, including the weighty aggravator of two (2) prior murder-for-hire ploys, within a span of weeks, where one victim had miraculously survived multiple shots, and the other victim had died. The trial judge specifically stated that the minimal mitigation herein, that defendant was loving and caring towards his family members, was "overwhelmingly outweighed" by the aggravating circumstances. (2SR. 5-6). Any error was thus harmless beyond a reasonable doubt. Coney, 653 So. 2d at 1015 ("there is no reasonable possibility this error [finding great risk of death1 affected the death sentence where four strong aggravating factors remain and the court specifically stated in its sentencing order that 'there are more than sufficient aggravating circumstances proven beyond a reasonable doubt to justify the imposition of the death penalty'. The error was harmless.").

V.

THE TRIAL COURT DID NOT ERR BY SENTENCING THE DEFENDANT TO THE DEATH PENALTY, WHERE TWO OTHER LESS CULPABLE CODEFENDANTS RECEIVED LESSER SENTENCES.

"When a codefendant (or coconspirator) is equally as culpable or more culpable than the defendant, disparate treatment of the codefendant may render the defendant's punishment disproportionate." Larzelere v. State, 676 So. 2d 394, 406 (Fla. 1996). The Appellant contends that co-defendant Ingraham, who carried the Uzi at the time of the crimes herein, and was sentenced to life, based upon a jury recommendation of life at a separate trial, was equally culpable as the defendant. According to the Appellant, this is because both the defendant and Ingraham had shot at victim Lawrence, but there was no evidence as to which shots killed him. The Appellee would first note that no such argument was ever presented in the court below, and as such has not been preserved for review.

Moreover, this claim is without merit. First, even in a situation where none of the other participants are sentenced to death and where one of these participants is, "also a triggerman," there is no error in sentencing only one defendant to death, when the evidence supports the sentencing judge's conclusion that the

aggravating factors outweigh the mitigating factors. Garcia v. State, 492 So. 2d 360, 368 (Fla. 1986); see also, Ventura v. State, 560 so. 2d 217 (Fla. 1990) (sentence of death affirmed in a murder for hire plot, where one of the two accomplices could not be prosecuted and the other was sentenced to life imprisonment); Larzelere, 676 So. 2d at 407. The State would note that the instant record reflects that co-defendant Ingraham was not involved in the defendant's violent felony convictions for two (2) similar prior murder-for-hire ploys.

More importantly, however, the evidence herein is abundantly clear that the defendant was more culpable than co-defendant Ingraham. The defendant herein, in conjunction with co-defendant Robinson, whom he referred to as "his partner" (T. 1126), orchestrated the scheme to shoot out the victim's store and kill the latter because of his interference with the drug trade.[12] It was the defendant who then recruited Newsome and Ingraham. As specifically noted by the trial judge, it was the defendant who "hired accomplices, arranged to get the murder weapons, and arranged transportation to and from the murder scene." (2SR. 3). At the time of the crimes, the defendant then not only actively

[12] Robinson, as noted previously, was sentenced to death and his appeal is pending in this Court.

participated in the shooting, but he was also supervising and ordering Ingraham to "make sure he [victim] is dead." (T. 980). A defendant who is the "dominant force behind the planning and execution" of a murder and "behind the involvement and actions of the co-participants before and after the murder," is far more culpable than the other participants. Larzelere, 676 So. 2d at 394. See, also, Bolender v. State, 422 So. 2d 833, 837 (Fla. 1982) (disparity between co-defendant's life sentences and the defendant's sentence of death was justified where the defendant "acted as the leader and organizer in these crimes"); Jackson v. State, 366 So. 2d 752, 757 (Fla. 1978) (disparate treatment of co-defendant is justified where the defendant was the "dominating factor") .

The Appellant's reliance upon Jackson v. State, 599 So. 2d 103 (Fla. 1992) and Scott v. Dugger, 604 So. 2d 465 (Fla. 1992), is unwarranted. In Jackson, 599 So. 2d at 109-10, unlike the instant case, the jury had made a recommendation of life. This Court held that there was a reasonable basis for the jury's recommendation, as it could have found that the defendant was less or as culpable as the co-defendant who had received a life sentence. Id. Likewise, in Scott v. Dusser, the sentencing judge noted that not only were a the defendant and co-defendant, "both involved in all aspects" of

the crime, but that it was the co-defendant who had actually "concocted" the method of killing and had been the first to try it. 604 So. 2d at 468. The sentencing judge had then added that, if she had known that the co-defendant received a life recommendation, 'I would have sentenced Mr. Scott to life despite the jury's recommendation." 604 So. 2d at 469. No such observations are present in the instant **case**. The trial judge herein, as noted above, found the defendant to have recruited and hired his accomplices. This is not a case of equal culpability.

Finally, the Appellee submits that the sentence of death in this **case** is proportional to other contract killings where this Court has affirmed the sentence of death, with less weighty aggravators, more mitigation, and, despite the lesser sentences imposed on some of the accomplices. See, Bonifav v. State, 21 Fla. L. Weekly S301 (Fla. July 11, 1996) (defendant was hired by his cousin to kill. He then enlisted two friends to help him. These participants received lesser sentences, while defendant and his cousin were sentenced to death. The trial court found three (3) aggravators: pecuniary gain, CCP, and felony murder. There were two statutory mitigators: age of seventeen and lack of significant history of crime. Non-statutory mitigation included good conduct and deprived background). Downs v. State, 572 So. 2d 895, 901

(Fla. 1995) (contract killing with three (3) aggravators: CCP, pecuniary gain, and prior conviction of violent felony; and, the trial judge had found that the nonstatutory mitigation did not offset the aggravating circumstances. Other participants received lesser sentences); Mordenti v. State, 630 So. 2d 1080 (Fla. 1994) (murder was committed for financial gain and was cold, calculated and premeditated; defendant was a good, caring person to family members and did not have a significant criminal history).

CONCLUSION

Based on the foregoing, the convictions and sentences herein should be affirmed.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **ANSWER BRIEF OF APPELLEE was** furnished by prepaid first class mail to **JOHN H. LIPINSKI, ESQ., 1455** N.W. 14th Street, Miami, Florida 33125 on this 23 day of September, 1996.

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