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IN THE SUPREME COURT OF FLORIDA

AILEEN CAROL WUORNOS,

Appellant,

v. CASE NO. 81,059

STATE OF FLORIDA,

Appellee.
_____/

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

ANSWER BRIEF OF APPELLEE

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STATEMENT OF THE CASE AND FACTS

Appellee accepts appellant's statement of the case and facts subject to the following inclusions and corrections.

The Death of Charles Humphreys

The southwest section of Marion County where the body of Charles Humphreys was found is on Highway 484, just west of I-75 (R 528). It was at the end of a cul-de-sac (R 530). Humphreys was 6'1/2" tall and weighed 200 pounds (R 595). He worked as an investigator for H.R.S., in child protective investigations (R 531). He did not carry a weapon in his job. No weapon was found at the scene (R 535). The day before his body was discovered he was in Wildwood, in Sumter County, conducting an investigation. His family reported him missing (R 532). His supervisor at H.R.S. identified his body (R 531). His body was fully clothed when found (R 535). His pants were zipped and his belt was buckled (R 544). No evidence was found at the scene to indicate he had engaged in sexual activity (R 535). An I.D. case, with the badge missing, was found off Highway 27 (R 536). Police association cards, credit cards and papers concerning Humphreys' Oldsmobile Firenza were also found (R 537). A spent .22 caliber casing was found, as well (R 538). Bullets were removed from Humphreys' body during autopsy and examined (R 541). A cartridge case found with Humphreys' personal property had been fired in Wuornos' 9 shot .22 (R 634). Humphreys' briefcase was reported missing (R 543). It was recovered in a storage facility rented by Aileen Wuornos (R 541). It was opened using Humphreys' social security number (R 542). There was one wound to the upper part

of the right arm (R 587). The other wound was to the right wrist (R 588). There was a donut abrasion on the right side of the abdomen consistent with a gun barrel being shoved into the body (R 591).

The Death of Troy Burress

Burress would have to have come south to go to SR 40, west to Marion County, and then have proceeded north on 19, to get from Seville to Salt Springs (R 547). Burress was approximately fifty years old, 5'6" to 5'8" tall, and weighed around 150 pounds. He was married (R 548). Burress' body had been pulled off the roadway into underbrush. Palm fronds had been placed on and around the body. It was lying face down (R 551). Burress was garbed in jeans, pull-over shirt, and had shoes on. His clothes were fastened and appropriately attached. There was no evidence he had engaged in sexual activity. No condoms were found near the body (R 552). Some receipts which had been thrown into a wooded area were recovered. There was no money in his wallet when it was recovered (R 553). The money he had collected that day was missing (R 554). The body was in an advanced stage of decomposition (R 554). The second wound was to the left of the back, center height. The wound to the middle of the chest had almost a straight trajectory through the body. The back wound had an upward trajectory. Bullets were recovered from his body (R 555). The .22 caliber bullets were not hollow points (R 556).

The Death of David Spears

Spears' body was found on a rutted trail on Blaine Lane off 19. The area was used for dumping trash (R 567). The body was in a very decomposed state and appeared to have been there quite some time (R 568). Spears was divorced (R 569). He was forty-three years old, 6'4" tall and weighed 195 pounds (R 573). Bullets were recovered from the body and examined (R 570). Spears' pickup was found before his body, the day after he was last seen alive. It had a flat tire and had been abandoned (R 572). Spears was found laying face up with his head in a northerly direction and his arms and legs straight out (R 574). He had been shot at least six times. Other shots to fleshy areas could not be detected because of decomposition (R 596).

Seventh Body

There is a seventh body (Peter Siems) no one has found (R 558). Wuornos offered to show authorities where the body was on a map or drive them there. She said it may be in South Carolina. She was informed the authorities could not offer her a deal on a South Carolina murder (R 559). She still said she would help in finding the body. Prior to that she had been asked to help find the body of Peter Siems and refused to help. She said she didn't trust cops. Authorities finally got her cooperation by enlisting Mr. Glazer and Ms. Pralle and allowing her to use the jail phone and bringing her books (R 562).

Wuornos' Confession

Wuornos confessed to Detectives Horzepa and Munster on January 16, 1991. In a taped statement she said that Tyria Moore was not involved (R 550). She was read her rights (R 550). She

first indicated that she needed an attorney but then changed her mind and said she would be willing to talk since it didn't make a difference and she didn't see what an attorney could do (R 551). She then considered whether an attorney could help in avoiding the death penalty. When she learned the detectives could promptly get an attorney, she then stated "Okay, I guess I'll have to have an attorney (R 552). However, without further questioning, she then volunteered that:

> But what I did, I don't understand why I did it. I just don't. I just know that they ... they kinda gave me a hassle. When somebody gave me a hassle, I decided to whip out my gun and give it to 'em. Of course, I didn't really want to kill 'em in my heart, but I knew I had to. Because I knew if I left some witness, then they'd find out who I was and then I'd get caught. (R 553).

She further indicated that Moore had not done anything and only knew things she had told her when she was drunk, which Moore did not believe. She told Moore she had been riding her bicycle and found Mallory's body under a carpet. She later told Moore when she was drunk that she had killed him (R 554). She reiterated that Moore was innocent (R 555). When they wrecked the car of a murder victim and authorities began looking for the two, Moore did not know that the car belonged to a murder victim. Moore was driving. After the wreck Wuornos told her they had to get out of there because she had murdered the man whose car she was driving. Moore was scared. She began to hate Wuornos and wanted to leave. They had been lovers (R 555).

Wuornos described the backdrop for the crimes:

> And if you're a hooker and you get somebody who starts messin' with you then you get pissed off.

> And I'm sorry 'cause I had been raped nine times in life. And I wasn't about to let somebody skip out on my money that I'm working for and I think is very ... kinda clean, 'cause I used rubbers all the time. And I wasn't about to let somebody rape me either. So when they got really huffy with me, which I had gone through 250,000 men, and they got ... I got 6 guys. That's because they got rough with me and I defended myself (R 555).

Wuornos stated that she felt she had killed in self-defense (R 552). It was very easy for the victims to learn that she had a weapon because she kept it in plain view (R 552).

She further stated that one of the victims had attempted anal intercourse, so she started fighting with him, got to her bag, and shot him. He backed away. She felt that he would have beat her or shot her. If she bacame unconscious he would have found her gun. She deliberated as to whether she should help him or just kill him. She concluded that if she helped him he would tell on her and she would be arrested for attempted murder. She also thought "the dirty bastard deserves to die anyway because of what he was tryin' to do to me." She decided to keep shooting (R 552).

Wuornos rifled through one victim's belongings and was surprised to find bibles. She couldn't understand why he would want to do something like that to her if he was "into the Lord." That was another reason she felt very, very guilty (R 557).

Wuornos recounted that she would hitchhike and men would pick her up. She would ask them to help her make rent money and then give prices for various sexual acts. These victims she was describing were the only men who had given her problems and such problems only started last year. She had been staying with an

acquaintance and took his .22 nine shot and carried it while she thumbed around. If the client just gave her money she wouldn't do anything to him but if he started hassling her, she would retaliate (R 557).

Moore knew Wuornos was tricking but did not know she had killed anyone. When Moore found out she went back home. Wuornos asked if any prints had been found on the wrecked car and was informed that both their prints were found. She reiterated that Moore did not know the car belonged to a victim (R 558). Wuornos was informed that she did not have to talk about the case and could wait for an attorney. She responded that she didn't care and wanted to clear Moore, since she had been seen with her in the wrecked car belonging to a murder victim. She indicated she had only told Moore she had killed someone after the car was wrecked. Two paramedics had stopped and Wuornos told them two men had dropped them off and they were on their way back to Daytona (R 562).

Wuornos was reminded she had exercised her right to have an attorney present and shouldn't be talking (R 563). She agreed that she may need an attorney since she felt she acted in self-defense (R 564). Nevertheless, she then stated "I feel very sorry for what I've done. I wish to God I never would've got that gun. And I wish to God I never would've been a hooker." She stated she was being honest and wanted to get it over with (R 566).

Wuornos further indicated that she and the victims were drinking. She felt they were going to take advantage of her

because she was "lit." If she didn't shoot them they would have beat her, found her gun and shot her, or raped her and taken off. She was "basically drunk" (R 567).

Wuornos recognized that she had hurt some families but stated "...these men were older men... another thing... after they were dead that didn't bother me 'cause I thought, well, they're older. They probably don't have anybody hardly anyway so it didn't... me too much."

The attorney that had been called then arrived (R 572). Prior to speaking to him, however, Wuornos discussed another murder. She indicated that after she had shot the victim she found that he had gun, a .45, sitting on top of the hood (R 573).

Wuornos stated that after she committed the murders she would get drunk. She could not remember the victims' names (R 573).

Counsel then spoke to Wuornos privately (R 574). She was subsequently put under oath (R 575). She was again advised of her rights. Counsel was present. Wuornos indicated she would give a statement. Her attorney stated for the record that he had advised her that she didn't have to say anything and that any statements could be used against her, and there was no guarantee her statements clearing Moore would be used (R 576). The attorney indicated it was Wuornos' choice (R 577).

Wuornos began by identifying Richard Mallory from a photo (R 577). She stated that in the beginning of December 1989, she went to Tampa and made a little money hustling. She was hitchhiking on I-4 to return to Daytona. Mallory picked her up

just outside Tampa, underneath a bridge (R 578). She identified his cream colored Cadillac from a photo. He asked her if she wanted to smoke a joint and she declined. He smoked the pot. He offered her a drink. They drank liquor with tonic. They got drunk. She asked him if he would help her make rent money. He was interested. They stopped at a place on U.S. 1 around midnight but passed the time just drinking and talking (R 579). Then they drove to a trail in the woods, off U.S. 1, around 5 o'clock. He gave her the money. He started kissing her. He was wearing jeans and a shirt (R 580). He did not undress. He pushed her down in the front seat. She told him he didn't have to get rough, "this is for fun." He responded "Baby, you know I've been waitin' for this for all night long." The doors were open. He came toward her. He was getting "really heavy." He just wanted to unzip his pants and have sex. She said "Well, why don't you disrobe or somethin', why do you have to have your clothes on?" He started to get violent. They fought "a little bit." Her purse was on the passenger floor (R 581). She thought he was going to roll her, take his money back, or beat her up (R 582). He was still in the car (R 634). In her first version of the incident she indicated that she jumped out of the car with her bag, grabbed the gun, and said "Get outta the car." He said "What's going on?" She responded "You Son-of-a-Bitch, I knew you were gonna rape me." He said "No I wasn't. No I wasn't." She responded "Oh, yes, you were. You know you were gonna try to rape me, man." She jumped out of the car and pulled out her nine-shot .22 revolver, when he started to abuse her (R 582).

She indicated she had the gun either a couple of months or something like two days (R 583). She then remembered that he hadn't given her the money. She said that she always took her money first but Mallory wanted to see the merchandise. In this second version, she told him he seemed like a pretty nice guy and they should "go have fun" (R 583). She asked "Why don't you take your clothes off? It hurt to do that." He said something like "Fuck you, baby, I'm gonna screw you right here and now." She responded "No, no, you're not gonna just fuck me. You gotta pay me." He said "Oh, bullshit." They started fighting. She jumped out. He grabbed her bag. She grabbed for it and the arm busted. She got it back. She took the pistol and shot him in the front seat (R 584). She didn't give him a chance to say anything (R 634). She thought she hit him on the right side. He had started to get out of the car on the passenger side (R 584; 634). He then went to the driver's side and crawled out (R 634-35). He closed the door (R 635). She ran around to the front of the car. He started coming toward her (R 584). She said "If you don't stop, man, right now, I'm gonna continue shooting." (R 634). She shot him again in the stomach or the chest. He fell to the ground. She thought she just kept on shooting him (R 595). She was drunk. They had been drinking from 5 o'clock in the afternoon (R 634). He was the first one that she shot and killed (R 595). It was starting to get light. She found a red rug (R 595). His feet stuck out from underneath it after she had covered him. She got in the car, backed up, and drove away (R 596). She got gas then returned to the motel she shared with

Moore. She told Moore she had borrowed the car. They used it to move to a new place. She then left the car in bushes, off John Anderson Drive, in Ormond Beach. She buried Mallory's wallet, driver's license and cards (R 597-98). She had taken her bicycle to the area where she left the car, then rode it back. She then told Moore she had found a body in the woods, because she thought Moore might have heard something (R 600). She tore up Mallory's clothing and put it in the garbage (R 645). She pawned his radar detector and 35 mm camera at OK Pawn, using Cammie Green's ID (R 598; 645). She had another fake ID in the name Susan Blahovic (R 646). She had also been arrested in 1974, using the name Sandra Beatrice Kretch (R 646). She threw Mallory's Poloroid Instamatic camera in a box in her bin at Jack's Mini Warehouse (R 599). She identified the glasses they drank from, as well as his little blue wallet, from a photo (R 600). She had buried the items in the sand because she was trying to get rid of prints. She tried to wipe the car down with a towel. As she was riding the bicycle she threw the keys to the car in someone's yard on John Anderson (R 601). She gave Mallory's electric razor as a Christmas present to the restaurant owner at the place where she stayed (R 639).

Wuornos' attorney then indicated he would like to speak to her in private again (R 601). After the consultation, the attorney indicated he had again told her that she would be well advised to remain silent. Wuornos said she did not care if he stayed or not. She wanted them to know Moore was innocent (R 602). She stated "I don't care about me. I deserve to die... I took a life." (R 603). She further stated:

> And I am willing to give up my life because I had killed six people, which maybe it was self defense, maybe it was stupid, just off the wall, shoot, maybe I could've got away with it, maybe I ... I mean got away from them and got ran or whatever, but, you know I feel guilty. I am guilty. I'm willing to pay the punishment for that. But Tyria is not guilty. Tyria did not do anything.

During further consultation the attorney asked Wuornos if she realized that these men were cops. She responded "I know and they wanted to hang me and that's cool because, man, maybe I deserve it." (R 606).

Wuronos referred to the second victim (Carskaddon) as "the guy with the .45." She shot him over nine times (R 628). She identified his car, which had been stripped on the interstate (R 628). She was angry when she found the .45 on top of the car, reloaded her gun and shot him some more (R 613). She usually threw the shell casings away somewhere else (R 614). He had a brown car. He told her he was a drug dealer. He picked her up in Tampa. She took him to a spot on 301. After she shot him he crawled into the back seat and laid down (R 614). He said "You fuckin' bitch, I'm gonna die" or something like that, and she responded "I guess you are, you Son-of-a-Bitch, you were gonna kill me anyway." She reloaded and shot him four more times (R 615). She thought someone may have heard the shots. She went to an area off 52 and dumped his body. She didn't care about him. He had been prepared to shoot her. It was 11 or 12 o'clock at night. She remembered putting something over him (R 615). She got rid of the car on I-75 because it had a flat tire (R 616).

She discussed the third murder (Spears). She recalled a man with a pick up truck, who told her he was a mechanic. She described him as "kind of a rough dude." (R 608). He was tall, with a beard (R 607). He was to take her to Homasassa Springs to trick (R 642). They went down Blaine Road off highway 19 (R 642). It was around 11 or 12 o'clock at night (R 642). They were nude. They were getting drunk. He wanted to lie in the back of the truck on a bed with no blankets (R 607; 642). There was a lead pipe there. He started getting vicious (R 607). He grabbed the pipe to fight with her (R 642). She jumped out of the trunk, then he did. She ran to the door, grabbed the gun out of her bag, and shot him by the tailgate. He ran to the driver's side and tried to get into the truck (R 643). She thought "What the hell you think you're doin, dude, you know ... I am gonna kill you 'cause you were tryin to do whatever you could with me." She ran to the passenger's side and shot him through the door (R 607; 643). He fell back. As he walked backwards she went through to the driver's side and shot him again. She may have shot him once more, to make sure he would die (R 643). She got in the truck and drove (R 607). Back at the house, she told Moore she had borrowed another vehicle. She kept some tools that were in the truck. The next morning she drove around then dropped the truck in Orange Lake by I-75. She took the license plate off and put it in a ditch and covered it with grass. Then she "bummed." (R 610). She believes she took the radio out of the truck (R 611).

The fourth victim was "the Christian guy" (Siems) (R 611). He drove a Sunbird (R 616). He picked her up near 100 and I-95. They went ten miles into the wilderness, off I-75, somewhere in Georgia (R 613). He took a sleeping bag into the woods. They "got nude." "He gave her a problem." She whipped out her gun and said "You know I don't wanna shoot you." He said "You fuckin' bitch." She said "No, I know you were gonna rape me." He said "Fuck you, bitch" and tried to get the gun away from her. They struggled. A couple of bullets discharged into the air. She ripped the gun away with her left hand, switched it to her right hand, then immediately shot him (R 611). She really didn't want to but she had to because if she let him live he would reveal who she was. She killed him to silence him, and also out of bitterness over what he was going to do to her (R 640). She always shot to the midsection so she would know they had been shot. This was the victim whose car she and Moore had wrecked (R 612). Prior to the wreck, she, Moore, and Moore's sister had gone to Sea World in the car. Moore's family thought it was rented (R 640). The victim was bald-headed, about 59 or 61 years old. He had bibles under his seat. She found three or four hundred dollars in his suitcase (R 612). She bought beer and partied with the money (R 641). She couldn't reveal the whereabouts of the body in Georgia, since it was way out in the woods, ten miles from the freeway (R 630). They were on 95 when it happened. They had travelled past Brunswick, then Fort Stuart (R 632). She indicated that he was lying out in the open and they might find him by helicopter or plane (R 633).

She next described being picked up by the fifth victim, a "sausage dude" (Burress) on 40 to Ocala. He took her down a road into the woods (R 617). She was nude. He was dressed (R 637). She took her clothes off first so they would know she was not going to take off. He said "I'm gonna get a piece of ass offa you, baby" and called her a whore (R 637). He pulled out a ten dollar bill and told her that was all she deserved, and threw the money down (R 588). He was going to rape her (R 618). She was standing in front of the truck. He had the door open (R 588). He started grabbing her. They fought. She ran to the driver's side, or back, pulled out her gun, and shot him in the stomach (R 588; 617; 636). He turned and started running. She shot him again in the back. She ran up to him, said "You fuckin' bastard," then shot him again. She shot him three times (R 617). She explained that she shot him again because "the bastard, he's gonna rape me." (R 637). She pushed his body into the bushes and tried to cover it with trees. He had a tin clipboard with receipts and money. There was approximately three hundred dollars in it. She said "Shit, you wanted to give me a fuckin' ten dollars and called me a whore." She probably went through his wallet. She went through them all to find out who the victims were (R 617). She checked their pockets for identification. She would find maybe twenty dollars or so in their wallets (R 618). His ID indicated his name was "Troy Brussel" or something like that (R 618). She took off half nude (R 638). She drove the truck in second gear down the road. She couldn't figure out how to drive it (R 618). She stopped and

threw his things away, on the road where he was shot, then got dressed (R 638). When she got to the end of the road on 40 she stopped and hurried out of the truck. She didn't even wipe her prints off (R 618).

The sixth victim (Humphreys) to pick her up drove a blue, four door Firenza (R 619). He picked her up on 44. They went to a spot on 484 (R 590). She indicated that he was really "... kinda gettin' bitchy and everything and he had a real attitude." (R 649). He took out a badge and told her he was going to have her arrested for prostitution unless she performed fellatio (R 591). She refused. He grabbed her arm and pulled her out of the front seat (R 591). She grabbed her gun and shot him. He got back up and started toward her again. She shot him again. When he fell she said "Man, you are an asshole. Why the hell did you ...? I would never hurt you or nothing, man." She felt sorry for him because he was gurgling. She shot him in the head to put him out of his misery. She shot him one more time. She shot him four times. She emptied his pockets to find the car keys. She left one pocket open (R 649). She took his wallet (R 593). She grabbed his briefcase and other items and threw them in the car and drove off. He had opened the briefcase and showed her his badge. She learned that he worked for HRS from items he carried. She flung his things, then got back in the car. She threw the badge away on Spring Hill (R 649-50). She was angry because she did not believe he was a policeman (R 650). She went to the gas station near I-10 (R 619) and dropped the car off. She wiped it, inside and out, for prints (R 620). She threw the license plate

in the woods, near the gas station (R 650). She also removed a bumper sticker with something about "state troopers" on it (R 593). She headed out on I-10 to make more money (R 620).

Her attorney advised her again that she should exercise her right to remain silent. This was the equivalent of pleading guilty (R 620). Despite the admonition, Wuornos continued. She indicated that after Moore left she was constantly drunk, bummed out, lonely, and hitchhiked to make more money.

The seventh victim (Antonio) picked her up in a Grand Prix in November, 1990 (R 613). She was drunk. He was older and short. She asked if she could make some money and he said "sure." They went way out in the woods. They stripped. As he approached her, he took his wallet out of his back pocket (R 621). He said he was a cop and could arrest her but if she had sex for free he would let her go. She responded that she was tired of people telling her they were cops, she didn't think he was, and could get a badge like that from a detective magazine. He insisted on sex. They struggled. She shot him twice. The HRS guy had told her he was a cop. She thought this man was another faker, trying to get free sex. It made her mad. After she shot him, he fell on the ground, then started to run away. She shot him right in the back (R 622). He looked at her and said "You cunt" or something like that. She said "You bastard," then shot him again. She thought she shot him in the back one more time, near the head. She had turned her head. It was a random shot. She drove away nude. She stopped and put some clothes on, then drove on. The car stopped but started back up.

She returned to the Fairview Motel. She took a suitcase out of the car (R 623). She thought she kept it. She threw everything else out, in the woods, miles away, including his teeth, which were in the glove box (R 624). He had a gold chain and a ring. He took the gold chain off and stuck it in the seat. She took the ring off. She thought he was alive when she removed it. She probably would have said "You fuckin' bastard. Let me get somethin outta this." (R 625). The two who pretended to be police officers had called her names. The others didn't say anything. She shot too fast (R 626). The victim's billy club was found in her warehouse. She put the tag in the trunk (R 631). She parked the car in Scottsdale (R 632).

In generically discussing the murders, Wuornos indicated that even though she had the drop on the victims she couldn't just run because she was always nude and would not run like that through the briars in the woods (R 626). She was also afraid because they had fought with her. She didn't think she could hold the gun on them until she dressed. They could run her over when she came out of the woods. She didn't know if they had guns. Once she got her gun, she had to shoot them because she thought they were going to kill her. She didn't know Mallory did not have a gun. She was taking no chances. She didn't know what was in their vehicles. She took their property out of pure hatred, and to get her money's worth, as some of them had either no money or hardly any money. The drug dealer with the .45 had twenty dollars but he wasn't going to give her any more money (R 627). She didn't make a living off the items she took but kept

them so she didn't have to buy those sorts of things. She agreed that taking their property was like a final revenge (R 628). She didn't tell the victims that she was going to kill them. She had no intentions of killing anyone. She dealt with five to ten people a day. She usually took her money and went her merry way. If someone rejected her offer, she told them to have a nice day (R 628). She killed because they either attacked her or were "trying to get a free piece of ass by saying they were cops." She couldn't leave after she shot them once because a description of her would be all over the place. The only way she could make money was to hustle. She knew they would rat on her if they survived. She also felt that they deserved it, because they were either going to rape or kill her. She was hoping she wouldn't get caught. Mallory was the first. She indicated she shot them because "I felt that if I didn't shoot'em and I didn't kill'em, first of all, if they survived, my ass would be gettin' in trouble for attempted murder, so I'm up shit's creek on that one anyway, ...and if I didn't kill 'em, you know, of course, I mean I had to kill 'em... or it's retaliation, too. It's like, you bastards. You were gonna hurt me. So now I'm gonna hurt you." (R 629). All of the men she dealt with were thirty-seven or older. She wanted to deal with people who didn't use drugs. She looked for clean, decent people. The last year she kept meeting men who were ugly to her (R 630). When she pulled the gun, it was because they were fighting or were going to rape or kill her (R 639). She threw clothing and other items away. She kept what would be worthwhile, so she could make some money off it (R 645).

She used the same gun in each of the murders (R 588). She threw the gun, flashlight and some handcuffs in the water, by the bridge, near Fairview (R 647). The gun was recovered from Rose Bay (R 612). She admitted to murdering seven men in all (R 594; 613).

Entry of Plea

On March 26, 1992, the Office of the Public Defender, Fifth Judicial Circuit, moved to withdraw as counsel on the grounds that Wuornos had retained private counsel (R 247). Stephen Glazer filed a notice of appearance (R 248; 658; 680). He had a contract to represent Wuornos on all pending cases in Marion, Citrus, and Pasco County (R 655). Wuornos indicated that the Assistant Public Defenders had the opportunity to write to her on death row but did not get in contact with her, whatsoever. She felt they were not concerned about her (R 681). Mr. Glazer had known Wuornos for about a year and two months. He visited her and received calls from the jail. He knew about the doctors' reports. He was present with one of the psychologists. He was at the trial in DeLand (R 688). He had been counseling and advising her for about eight months (R 708). Just prior to Wuornos entering pleas on March 31, 1992, the trial court granted the Public Defender's motion to withdraw (R 248-49, 655-59).

Wuornos signed a waiver of rights and agreement to enter a plea to two counts of first degree murder and robbery with a firearm for the Marion County murders of Charles Humphreys and Troy Burress and one count of first degree murder and robbery with a firearm in the Citrus County murder of David Spears. The

agreement indicated that "I wish to enter my plea to the offense(s) as set forth above because I do not contest the charge(s) and I have no other reason." (R 256).

On March 31, 1992, with the representation and assistance of Mr. Glazer, Wuornos waived all of her rights and entered nolo contendere pleas to all three murder and armed robbery charges (R 655-746). Judge Thurman had indicated that he had no objection to Wuornos entering a plea in the Citrus County case before Judge Sawaya at the same time she pleaded to the Marion County cases. Mr. Glazer wrote in the Citrus County case number on the waiver of rights (R 659; 679).

At the plea hearing Wuornos indicated she understood she was charged with first degree murder and robbery with a weapon and could be sentenced to life imprisonment or death for a first degree murder (R 660). She was informed that the maximum possibility penalty for the armed robbery charges was life imprisonment and there was a mandatory minimum sentence of three years in which gain time is not calculated (R 685-86). She indicated that no representations had been made to her concerning which sentence she would ultimately receive (R 660). Wuornos was sworn by the court. She acknowledged she had previously entered not guilty pleas in the Marion County cases and indicated she understood that she had the right to persist in such pleas and proceed through jury trial. She was aware that the entire month of May had been reserved for her trial (R 662). She understood that Judge Sawaya would do everything in his power to ensure that a fair and impartial jury was picked and that she got a fair

trial and that no one could take that option away from her (R 663). Judge Sawaya explained to her that since the death penalty was a viable option she had nothing to lose by letting a jury hear the evidence and decide whether or not she is guilty. The judge reiterated he would do everything in his power to ensure that she would get a fair trial (R 663). Wuornos indicated that she understood. The judge asked "Don't you think it would be to your best interest to proceed to jury trial and let them make that decision? There is always that chance..." Wuornos responded that she would read a letter explaining her reasons. She indicated "I'm pretty happy with what I'm doing. I'm very satisfied and I'm very sure of myself." She indicated she understood that by virtue of entering a plea of guilty or no contest she would be giving up the right to a jury trial or a trial before the court (R 665). When asked if that was what she wanted to do, she responded "I've seen enough -- I've seen enough of Daytona. Yes, sir; and I'm very happy with what I'm doing." Judge Sawaya then stated:

> Well, this is Marion County. This is not Daytona-- and I have absolutely no comment to make on what happened in -- in Daytona Beach. All I can tell you is that we are set. We are ready to go and, as I told you before, I will do everything in my power to ensure that you get a fair trial. And I will work as hard as I can to do that; do you understand that? And so what happened in Daytona Beach does not necessarily mean that is what is going to happen here with a jury picked in Marion County under the facts and circumstances of these particular cases.

Wuornos indicated that she understood (R 665). She still wished to change her plea to no contest (R 665). She understood she could be electrocuted on both cases (R 666).

She further understood that by entering a plea of no contest she would be giving up the right to confront and cross-examine state witnesses and to be present for each witness' testimony and that the state would not have to call their witnesses (R 667). When informed that she had the right to subpoena witnesses to come in and testify in her behalf and would waive such right by entering a plea, Wuornos responded "Oh, that's just fine" (R 669). She understood that by entering her plea she was giving up the right to make the state prove each and every element of each offense beyond and to the exclusion of every reasonable doubt. She understood that by entering a plea of no contest she was neither admitting nor denying the allegation but as far as sentencing was concerned the plea had the same effect as a guilty plea; there was absolutely no difference; it is the same as a conviction (R 669). She understood there would be no appeal as to any finding of fact by a jury, since she was giving up her right to a jury trial (R 670). She understood that she had the right to remain silent during the course of a jury trial and the jury could draw no inference of guilt from such silence and that she was giving up such right (R 670-71). She also understood, conversely, that she had the right to testify in her own behalf and would be giving up that right, as well (R 671). She was informed that she had the opportunity to present any legal defense to the charges including but not limited to involuntary intoxication, insanity, and self-defense (R 671-72). She understood that right and the fact she was giving it up (R 672). She also understood she was giving up

the right to have pretrial motions, such as a motion to have confessions suppressed, presented or ruled upon (R 672). She indicated that she understood the legal rights the judge had gone over as Mr. Glazer went through everything with her and made sure she understood it. She had no questions and was not confused about anything (R 673).

She recited to the court that she attended school until the ninth grade then dropped out because she was living in the streets. She has studied such things as archeology, theology, sociology, anatomy, the brain and the nervous system when she was in prison in the early eighties (R 673-74). She taught herself to read and write (R 674). She fully understands the English language. She has held a job and supported herself. She became a prostitute because she had warrants out for her arrest. Before that she had jobs in PVC, quality control, lawn maintenance, painting and she had her own pressure-cleaning business (R 674).

Wuornos indicated that she was not under the influence of any drugs, medications, narcotics or alcohol. She had not used drugs since she was seventeen years old. She stated "I don't touch drugs; I hate drugs." She further indicated that she was not under any medication from the jail (R 675). She further stated "I know what I'm doing. I was just a beer drinker, and that's about it." (R 676). She indicated she had never been adjudicated mentally incompetent or mentally insane. She volunteered, however, that "I have to say in my confession that I was mentally incompetent because I was withdrawing from a fourteen-year alcoholic habit, and so the last four years with

Tyria I was really heavy. So in my confession I was really incompetent and going through D.T.'s and everything so --." The judge explained again she had the right to test the validity of those confessions and have the court decide if they are invalid and should not be heard by the jury. Judge Sawaya pointed out that one of the defenses she might have is the fact that she had an alcoholic drug problem and was not mentally competent at the time she made the confessions (R 676-77). She understood that it was entirely possible the court would suppress those confessions and the jury would never hear them and she was giving up the right to have the court make that decision by entering a plea of no contest (R 677).

Wuornos stated that no one had forced, threatened, coerced or intimidated her to enter these pleas. It was something she was doing of her own free will (R 678). She had thought about it for "a good year and two months or so... after I saw how the law enforcement was working this." (R 679). She later stated

> ...the way I saw the law enforcement work and the system work, I am not very happy with it at all. I am not going to get a fair trial and I am not -- I just don't want to go through any more trials. And I have -- when I read this you'll understand. And I'm very set in my mind with what I'm doing. I'm very happy with what I'm doing, and I'm very content with -- between me and God with what I'm doing (R 683).

It had been emphasized, again, that the death penalty was a possibility and that she had nothing to lose by going to trial before a jury. Wuornos had responded "I know; and I feel like I've got nothing to lose either about the sentences that I might receive. So I'm just -- I'm very set in my mind what I'm doing.

It's something between me and my religion and everything else." (R 682). She acknowledged that she went through a jury trial in Volusia County and was familiar with all the rights the court had just discussed. She further acknowledged she had sufficient time to think about the rights and the consequences of giving them up. She then stated "The way I see it, you can have rights, but when you have the enforcement that are outnumbering you and you're the only one it -- it doesn't matter; it just doesn't matter." (R 683). The judge indicated he wanted to make sure that this was not a spur-of-the-moment thing. Wuornos assured the court "Oh, no; no. I've been thinking about this for the longest time." She was convinced that it was in her best interests. The judge cautioned that it may be in her best interests to let a jury decide, "because if a jury decides that you are not guilty, you are not guilty--- then there is no penalty which can then be imposed." Wuornos responded "This is not just a carnal thing; it's a spiritual thing for me -- that I'm doing, too; so, I feel just fine; and yes, sir; I understand everything you said." (R 684).

Wuornos indicated that no one had promised her anything or made any representations to her as to what sentence she would receive (R 687).

At the behest of the state the court inquired of Wuornos' counsel if he had any reason to believe that Wuornos was incompetent, mentally or otherwise, to enter the plea (R 687). Mr. Glazer indicated that he had known Wuornos for approximately a year and two months; he visited her; communicated with her; and

received calls from the jail. He then stated "I know that she is competent to stand trial. I know about the doctor's reports, and I was present at the DeLand trial." He acknowledged that he was with one of the psychologists. Mr. Glazer further volunteered "I understand and I personally believe that Aileen Wuornos is totally competent to enter this plea. She has never exhibited anything other than competency and is under the full understanding of what she is doing." (R 688).

Judge Sawaya cautioned Wuornos that if he had any doubts that Wuornos did not know or understand what she was doing he would not accept her plea. He then indicated he would proceed to establish a factual basis for the plea in each case (R 689).

In case number 91-463, concerning the murder of Troy Burress, Wuornos acknowledged that she killed him with a .22 caliber firearm, as alleged in the indictment (R 689-90). It happened in Ocala off Highway 19 on 40 (R 697). Wuornos stated "I just straight out killed him." (R 690). Judge Sawaya told her he felt it would be in her best interests to let a jury decide. She indicated that she wanted to go on with the plea. Judge Sawaya then stated "I want you to tell me why you did that then." Wuornos responded:

> Richard Mallory violently raped me and I had a psychological -- through the psychological trauma and the violent way that he raped me each -- before any other -- I mean, I've been raped before, but I've never been violently raped as Richard Mallory did. And I had this set frame of mind that anybody that came along while I was hooking -- made any move -- any attempt, whatsoever, to start to rape me with a weapon or the physical -- or either physically -- I was going to immediately put my best efforts in to

> stop it, and I would basically have to fight, and I would win, and I would shoot them -- immediately -- immediate firing (R 692).

Wuornos stated that this man "showed me signs of attempted rape." Judge Sawaya made her understand that this was a possible defense to put before a jury and that she was giving up that right (R 692-93). She indicated she shot Burress with a .22 nine shot but "the way cops have destroyed the cases and everything else -- I'm not going to get a fair trial. I don't care what. I'm entering this no contest no matter what, and I straight out killed these guys, and that's just the way it is." She stated that there was no robbery (R 693). Then she indicated she took a camera, radar detector, ring, and .45 caliber pistol. She kept some of his things and pawned it off. She took the items after she had killed him (R 694).

The prosecutor indicated that the state would introduce evidence that on July 30, 1990, Troy Burress was last seen alive. He was employed as a driver for a meat company and was collecting cash on his route. His fully clothed body was found on August 4, 1990. The cash was missing from his person and vehicle. The cause of death was multiple gunshot wounds from a .22 caliber revolver with six right twists (R 705).

As to case number 91-304, dealing with the murder of Charles Humphreys, Wuornos indicated that Humphreys had posed as a police officer, with a worn-out badge in a new folder, and had attempted to rape her, so she shot him. They struggled for the weapon, she shot him, then shot him some more, for a total of seven or eight shots. It took place at 484 near Belleview (R

696). She was informed by the judge that, again, she had a possible self-defense claim that could be presented to a jury (R 696). She indicated she wanted to give up the right, stating:

> I -- killed in self-defense but I still can't live with myself -- with it -- and it's just a religious thing I feel that I have to do... because I love the Lord, God. And I just feel that I took a life so it's time for me to go. I took a life so I'm paying for it.

She indicated she took Humphreys' briefcase, handcuffs and billy club and threw everything else away (R 698). She kept the handcuffs and billy club for evidence but the police threw them away (R 698). She took the items after she left him lying and he had died. She took off in the car (R 699).

The state indicated it would introduce evidence that Charles Humphreys was last seen alive on the afternoon of September 11, 1990. His fully clothed body was recovered in Marion County on September 12, 1990 (R 705). He died as a result of multiple gunshot wounds from a .22 caliber revolver with six right twists. His wallet, money, and other personal effects were missing (R 706). A cartridge case from the .22 with six right twists was recovered along with Humphreys' personal property (R 707).

As to case number 91-112, the Citrus County murder of David Spears, Wuornos indicated that Spears had a lead pipe full of cement, attempted to rape her, and she shot immediately. She guessed that he was sexually disordered. It occurred off of highway 19 near Homosassa Springs. She was hitchhiking. She had been a hitchhiking prostitute for six years (R 700). All of

these men were strangers and not her regular clients. She killed Spears with a .22 nine shot (R 701). She threw everything he owned away, including $250.00 in U.S. Bonds. She just took the lead pipe and $100.00. Again, she understood that what she was saying was that she acted in self-defense and would be giving up the right to present that defense to a jury by entering a plea (R 702-03).

The prosecutor indicated that the state would introduce evidence that Spears was last seen alive on May 19, 1990, that he had cashed a payroll check and had money; his body was found on June 1, 1990, in Citrus County; he was killed by multiple gunshot wounds from a .22 caliber pistol which had six right twists in the barrel; when he was found none of the money was on him (R 704-05).

The state would also introduce Wuornos' statements to Volusia County Sheriff's Deputy Larry Horzepa and Marion County Sheriff's Deputy Bruce Munster in which she admitted being the person who had shot each of these individuals and admitted to taking what constitutes a robbery. As a result of Wuornos' statement, as well as the testimony from Tyria Moore, a .22 caliber revolver with six right twists was recovered (R 706).

The state would also introduce evidence of four other homicides committed in a similar fashion in other jurisdictions, which Wuornos also admitted, as proof the murders were not committed in self-defense, were not justifiable homicides, but were committed in the course of a premeditated design to effect the death of the men during the course of a robbery (R 707).

Wuornos also revealed that Mr. Glazer had explained the legal rights she would be giving up (R 708); discussed the entering of the pleas (R 709); possible sentences, ultimate sentence, death; nature of the bifurcated proceedings; and penalty phase aggravation and mitigation (R 710-11). She indicated that she had sufficient time to discuss the plea with Mr. Glazer and that she was satisfied with his services (R 712).

When the judge informed Wuornos she would not be sentenced that day she stated "I just hope I get sent back because Marion County has been doing a lot of abusing me at the County Jail, and I just want to get back to death row." (R 711). She, indicated, however, it was not a factor in her entering her plea. She didn't think they had any idea she was entering a plea (R 712).

Wuornos was finally advised that the convictions resulting from her pleas could be used in aggravation of future sentences in Pasco or Dixie County cases (R 714) or future homicides that may come up anywhere (R 716).

Wuornos was then given the opportunity to read a lengthy statement she had prepared. She indicated she had become a newborn Christian with the help of her newly adopted mother. In order to get herself right with God before she dies, she is coming forward in all honesty (R 718). She indicated she was sorry. God has forgiven her prostitution and the killings she could not avoid because of her hustling (R 719). She indicated she was sorry she had taken the victims from their families but the fact that she is a prostitute does not give anyone the right to rape, injure, or kill her (R 721). She railed against the

"ladderclimbing, limelighting and political prestige" that went on in her cases, as well as a libelous media campaign designed to convict her (R 721-22). She condemned alleged book and media negotiations entered into by investigators before her arrest (R 722). She indicated a movie portrayed her as a man-hating lesbian who only killed to rob but she went through dozens of vehicles a day and if she had not acted in self-defense, there would have been hundreds of victims instead of only seven (R 723). She indicated she wanted to get right with God before she is strapped into the electric chair (R 724). She ravaged her former lover, former suspect, Tyria Moore, labelling her as "materialistic and money hungry" and indicated she was given immunity, police protection, a vehicle and fifty thousand dollars for therapy for help in creating the claim for the movie. She also heard Moore was to receive more money from the profits. She also indicated that her sister, Lori and brother, Barry, had not seen her in seventeen years when they took the stand and were involved with the police in movies and books (R 725). She lamented that she had been set up to confess by Tyria Moore and was then interviewed by two of the investigators involved in the movie and her statements indicating the murders were self-defense went ignored (R 726). She explained that she only pawned four items for food until she could get back out when the coast was clear. Prostitution was all she could do. She didn't want to go to prison and lose Tyria and her animals, so she kept on hooking (R 727). She indicated she didn't come forward after Mallory's death because of society's lack of concern for a whore who would

not be believed (R 728). They also would have distorted everything because she was an ex-con (R 728). They withheld statements from her confession so she could be portrayed as a dangerous female serial killer who killed to rob (R 729). Yet she didn't even withdraw money on the victims' credit cards after finding some of them didn't even have twenty dollars on them (R 730). She met hundreds of guys a month and there was a span in each killing. The bodies were not dismembered as in the case of serial killers. She was the only one tortured (R 733). She stated that a good "Sherlock Holmes" would later crack the conspiracy open and she hoped she would be alive to see it. She hoped the no-good cops see prison, themselves, in the near future (R 733). She complained that during the trial for the murder of Mallory the prosecution had strewn items from the storage bin in a mess across the floor claiming they came from the victims when in fact she and Tyria owned those items long before her first encounter with Mallory (R 731). In a deposition Tyria had admitted all the items were hers (R 732). She complained of false accusations and libel designed to engender bias (R 732). She reiterated Mallory did violently rape her, causing psychological trauma. She decided not to allow it to happen again. Each victim used physical force or a weapon to rape and possibly kill her. She indicated that she pleads "no contest in self-defense" but also to end all trials, which are full of lies by cops and the state (R 734). She concluded "I was a prostitute who only truly defended herself... I plead no contest, with it still in my frame of mind of self defense, but I still want to

plead no contest and end all this 'jazz' because I'm sick of it." (R 735). The court responded "Okay, Mrs. -- Mrs. Wuornos, you will get your wish." (R 735). Wuornos then indicated she hoped she would get the electric chair as soon as possible to get off this "crooked, evil, planet." She wanted no part of a system where the people or workers are like "disciples of Satan." She indicated she didn't even want to live in prison. She wanted to get off this planet and go to God and live in heaven where there is peace and harmony because she has never seen so much evil (R 735-36). She said that law enforcement officers had destroyed her life. She also did not want to put the families through any more stress. She also stated "plus, the state's going to save them a heck of a lot of money now. But that's okay, I'm going to spend a heck of a lot when I find a darn good "Sherlock Holmes." (R 736).

Wuornos indicated she had not changed her mind about entering a plea. She stated "I'd rather find new evidence somewhere down the road and have a totally new trial... even Volusia (R 737). She further indicated that she wanted to proceed with her plea, then stated "and there will probably be a new trial down the road someday if I don't die by then (R 737). I am sure Munster and Horzepa and the state attorneys and all of them are really going to work on my electrocution so --- just to make -- so my little "Sherlock Holmes" won't get involved." (R 738). She clarified that what she meant was that her "Sherlock" would come through some day and the cops would be charged and go to prison. That is what she meant by finding new evidence in the

Volusia County case. She had been told that even if the Volusia County conviction was reversed these three cases would not be affected (R 739). She acknowledged she had no expectation of a trial in these cases (R 740).

The court found that Wuornos was alert, intelligent, fully understood and comprehended the proceedings and the rights she would be giving up. The court further found she did not appear to be under the influence of drugs, narcotics or alcohol and had made a knowing and intelligent waiver of rights (R 740). She understood the consequences of entering the plea, and entered the plea freely and voluntarily and had not been coerced, threatened, forced, or pressured (R 741). The judge also found that there was a factual basis for the plea and that Wuornos felt it was in her best interests to enter the plea (R 742). The judge accepted her plea of no contest and adjudicated her guilty of each of the charges (R 741).

Wuornos indicated that she had, indeed, read the waiver of rights and agreement to enter a plea form in the three cases, and understood everything contained in the document. Her lawyer also went over it with her. She and her attorney acknowledged the signatures as their own. Mr. Glazer saw her sign it (R 744). Mr. Glazer tendered the document freely and voluntarily. The court made it part of the plea colloquy (R 744-45).

Penalty Phase

The details surrounding the murders of Humphreys, Burress, and Spears, previously discussed, were presented in the penalty phase.

The circumstances surrounding the death of Richard Mallory were also presented. Mallory's murder in December 1989, was the first (R 613). His car had been found on December 1, 1989, on a fire trail off John Anderson Drive in Ormond Beach (R 599). It was an isolated area (R 601). The doors to the car were locked and the keys were missing (R 608). Mallory's personal property was found buried in the sand 30 feet behind the car. The items included his wallet, driver's license, business cards, and tumblers. The car had been wiped down for prints (R 608). Mallory lived in Clearwater (R 600). His body was discovered on December 13, 1989, in a wooded area off U.S. 1, a quarter mile north of I-95, five miles from his vehicle (R 601). His front pockets were turned out and his belt was off to the side (R 604). He had been shot four times (R 624). He received one shot to his right side as he was sitting behind the steering wheel. He received three more rounds to his torso (R 625). His body had been covered by a red carpet. A small portion of his hand was sticking out. He was wearing blue jeans, a short-sleeved white shirt and brown loafers (R 602). He was decomposed from the collar bone to the top of the head (R 603). He was fifty-one years old. He was self-employed, repairing VCR's and TV's. He was 5'11" tall, 165 pounds, wore dentures and glasses. Four bullets were recovered from his body (R 606). Mallory's Polaroid instamatic camera was found in Wuornos' bin at Jack's Mini-Warehouse (R 610).

The bullets from the bodies of Humphreys, Burress, Spears and Mallory were fired from a weapon having six lands and grooves with a right-hand twist, the same as Wuornos' 9 shot .22 (R 635).

The videotape of Wuornos' confession was published to the jury by the defense (R 653).

Wuornos indicated that she did not wish to return to the courtroom for the defense case in the penalty phase and continued to waive her presence (R 656).

It is merely Arlene Pralle's "belief" that her relationship with Wuornos was the result of "divine intervention," based on the fact that Jesus told her to write to Wuornos while Wuornos had, prior thereto, implored God to send a Christian woman to befriend her (R 663). Regardless of whether Wuornos was guilty or innocent, Pralle loved her, unconditionally (R 664). It was Pralle, who had not known Wuornos as a child, who testified as to the circumstances of Wuornos' childhood (R 666). Pralle learned about Wuornos' childhood from a friend of Aileen's, Dawn Neiman, who grew up with Wuornos (R 695). Pralle confirmed the facts with Wuornos (R 667). Barry Wuornos had previously denied under oath that any of this ever happened. Dawn and Wuornos both told Pralle that he lied and was in the service at the time (R 696). Pralle did not talk to Lori Grody about what happened (R 696). Pralle also testified that Wuornos' grandmother loved Wuornos and her bother Keith (R 666). Wuornos completed the tenth grade of school (R 670). Pralle stated that Wuornos has a terrible opinion of the Marion County Police Force because of three officers she believed were involved in book and movie deals (R 679). To this day Pralle does not believe that Wuornos was a serial killer. She admitted that, as a Christian, she does not condone the death penalty and there are no circumstances under

which she would find it appropriate (R 706). Pralle screened all entertainment related inquiries for Wuornos. Pralle has appeared on a lot of talk shows and went to New York to appear on several, including both syndicated and nationally broadcast shows. She once received compensation of $7,500 (R 707).

After the jury was removed the judge questioned Ms. Pralle. Judge Sawaya had viewed Pralle on television the night before in an interview where she stated that the proceedings were a waste of time and taxpayer's money, and that Wuornos should be given the death penalty and her wish granted (R 710). Pralle claimed that she was only echoing Wuornos' feelings in the interview but what she had actually testified to was from her heart (R 711). The judge noted that Pralle had heard him explain to Wuornos there has to be a penalty phase. Pralle then indicated she hoped Wuornos would change her mind (R 714).

When Bobby Lee Copas locked Wuornos out of his car Wuornos not only threatened Copas, but indicated that she had killed before. As she tried to open her purse, she told Copas "I'll kill you like I did all them other fat, old, mother-fucker men." (R 779). This encounter took place on November 4, 1990 (R 773).

Dawn Neiman told Investigator Padgett that she did not recall any abuse. She did not tell him Aileen had a "great life." There was no testimony concerning "lack of nurturing" (R 788).

Prior to the three subsequent trips with Lieutenant Laxton in which Wuornos was calm, not only had Wuornos gone to court but Laxton had reported the previous events (R 796).

SUMMARY OF THE ARGUMENT

I. Wuornos' claim that her pleas of nolo contendere were not intelligent and voluntary should have been presented to the trial court on a motion to withdraw the plea. Wuornos knew, at least by the time of sentencing, that her presence could be waived and at that point in time could have moved to withdraw her plea, therefore, this issue is waived. Alternatively, Wuornos had no reason to believe that she would not get a fair trial. The record reveals that Wuornos' motive for entering the plea was to take responsibility for her actions. The lower court was not under a duty to apprise Wuornos of the possible collateral consequences of her plea. Florida Rule of Criminal Procedure 3.172(c)(iii) does not require a trial judge to inform a defendant that she can absent herself from trial.

The failure of the trial judge to advise Wuornos that she must serve no less than twenty-five years of a life sentence before becoming eligible for parole did not render her plea involuntary. Since Wuornos did not plead guilty but instead entered a plea of nolo contendere, the mandatory minimum sentence was not triggered by the plea, as such plea was entered without any agreement at all as to the sentence. Wuornos, therefore, did not choose an alternative sentence without full disclosure. The only choice she made was to avoid a trial.

The trial court's inquiry regarding the factual basis for Wuornos' plea was sufficient. In the instant case the court determined the existence of a factual basis for the plea by receiving evidence, a proffer of evidence by the state, and the

in-court admissions of Wuornos herself. The fact that Wuornos raised a possible defense does not vitiate her plea. A nolo contendere plea does not admit guilt or the allegations of the charges but rather communicates that the defendant simply chooses not to defend against those charges. In any event, Wuornos understandingly waived any right to a claim of self-defense. The trial judge properly determined that Wuornos felt it was in her best interest to enter the plea.

II. No reasonable grounds were present to suspect that Wuornos was incompetent to enter a plea and the trial court had no duty to sua sponte order a hearing. Wuornos' attorney stipulated to her competence, after being present at her previous trial, reading the doctors' reports, and communicating with one of the psychologists. The purpose of a nolo contendere plea is to formally declare that a defendant will not contest the charges. Such a plea is used where an accused is unwilling to confess guilt but does not wish to go to trial. Wuornos' statements regarding self-defense do not indicate any ambivalence in entering her plea. Her statements do not even reflect that she felt she had a legally sufficient defense though she may have felt, in a uniquely personal, moral sense, that she had acted in self-defense. Contrary to appellant's assertions, Wuornos' statement was fairly eloquent and documented her various complaints with the legal system. Her behavior, rather than reflecting a state of incompetence, was merely consistent with an unwillingness to confess guilt attendant to the entering of a nolo contendere plea. The record reflects that Wuornos

understood what was going on, was able to assist in her own defense, consult with counsel and fully understood the ramifications and consequences of entering a plea.

III. Wuornos' complaints as to the admission of similar fact evidence is procedurally barred. She is entitled to no relief in any event. Wuornos' confession was published to the jury by the defense in the penalty phase. It contains statements indicating that she had acted in self-defense. Evidence that she had picked up Bobby Lee Copas, solicited him for sex, then became aggressive when he refused her offer, threatened him and reached for a gun in her purse, is relevant to her claim of self-defense and demonstrates a modus operandi of waylaying travelers with bogus stories of distress then soliciting them for sexual acts whereby they would be taken to an isolated area and robbed and killed. Evidence that Wuornos had a previous religious conversion is certainly relevant to the issue of the genuineness of her present religious conversion, which was offered as the mitigating factor and was the crux of Arlene Pralle's testimony. Since counsel raised no specific objection below as to this evidence any claim of error regarding it is now waived. That Wuornos had threatened prisoner transport personnel with physical violence was relevant to rebut Arlene Pralle's testimony that Wuornos had become less verbally and physically aggressive. Since no objection was interposed below concerning this testimony, the issue is also waived for purposes of appeal.

IV. Only a general objection was interposed when Arlene Pralle was asked in the penalty phase about her knowledge of Barry

Wuornos denying under oath in a previous trial that any childhood abuse of Wuornos had occurred. No objection was made at all to the question regarding Lori Grody. No objection was raised when an investigator testified that he had interviewed Barry Wuornos and Lori Grody and they indicated that no physical abuse had been directed at Wuornos, and that Dawn Nieman had indicated she had seen no abuse directed toward Wuornos and had never discussed it with Wuornos. This issue is procedurally barred for lack of a proper objection.

V. The jury's death verdict was not tainted by evidence of nonstatutory aggravation. It was the defense position that a prior death sentence was a mitigating factor. The prosecutor inquired as to whether such argument would be made by defense counsel and whether he could anticipatorily discuss the prospect of an appeal. Defense counsel indicated that he had no problem with the prosecutor discussing an appeal. Defense counsel did not object to the prosecutor's statement. No motion for mistrial was made before the jury was instructed and retired to deliberate. Any claim that the prosecutor improperly discussed an appeal of a prior death sentence is procedurally barred and waived.

VI. The trial court did not improperly limit appellant's voir dire examination. Defense counsel's statement that if Wuornos were sitting there she would want to find twelve people free from opinion as to her fate and that if any of the jurors were sitting there they would probably want the same thing was, if not a Golden Rule argument, at least irrelevant. Since the aggravating

and mitigating circumstances must be accorded weight by the jury and weighed, defense counsel's statement to the jury that they never have to vote for death if the defense can show any bit of mitigation is a blatant misstatement of the law. A presumption of innocence does not obtain in the penalty phase. The purpose of the penalty phase is to determine the appropriate punishment. In any event, the law applicable to the case should be given to the jury by the court and not counsel.

VII. The death sentences are justified and appropriately based on valid aggravating circumstances and weak mitigation.

The trial court properly found that the crimes were committed during the commission of a robbery/pecuniary gain. Wuornos entered a plea to the armed robberies of these victims. She had no money before the victims' deaths and after their deaths had their property and money known to be in their possession was missing after the murders.

The trial court properly found that all three murders were committed to avoid a lawful arrest. Wuornos' own statement reveals that she felt that if she did not kill the victims she could be arrested for attempted murder if she were caught. Wuornos had a pattern of shooting victims during the commission of robberies and demonstrated a calculated plan to execute all witnesses.

The felonies were committed in a cold, calculated and premeditated manner. Wuornos planned in advance to leave no witnesses to her robberies. In numerous statements she indicated she had to kill the victims because if she left a witness she

would be caught. In furtherance of such plan she indicated that she always shot to the midsection. Wuornos ensured that the victims were dead when she left.

The murder of Charles Humphreys was heinous, atrocious or cruel. Humphreys' suffering was apparent from Wuornos' statement that she shot him in the head to put him out of his "misery." Humphreys clearly suffered mental anguish as he twisted and turned to protect himself as Wuornos shot him multiple times.

The posture of the defense below is that Wuornos was accepting responsibility for her actions and had not committed the crimes because she had been abused, raped, had a baby at thirteen, or was an alcoholic. The claim of abuse in the grandparents' home was not supported by the evidence. The lower court found that even considering such alleged abuse, the aggravating factors outweighed the evidence presented in mitigation. Wuornos' actions in committing murder were not significantly influenced by her childhood. That she was an alcoholic did not mitigate her crime in view of a clearly established robbery motive and planning. What is now offered as direct mitigation was only offered below as historical incidences pertaining to her direct claims of abuse or religious conversion which were fully considered by the trial court. In the event any aggravators were improperly found, considering the weak mitigation, death is still the appropriate sentence and any error is harmless.

VIII. The various attacks now raised on the constitutionality of section 921.141, Florida Statutes (1993) and the jury

instructions were not raised below and are procedurally barred. Such claims have previously been rejected and are without merit, in any event.

ARGUMENT

I. WUORNOS' PLEAS OF NOLO CONTENDERE ARE CONSTITUTIONALLY VALID

The Pleas Were Intelligent and Voluntary

Appellant contends that her motivation in pleading nolo contendere was to avoid another unfair trial. She then states, somewhat incongruously, that her motivation was to leave Marion County and return to her prison cell on death row. She complains that the trial court failed to explain her right to waive her presence at trial. She concludes that she did not have sufficient information to intelligently enter her pleas, ergo, her pleas were involuntary.

Issues concerning the voluntary or intelligent character of a plea must always be presented to the trial court on a motion to withdraw the plea. *Tillman v. State,* 522 So. 2d 14 (Fla. 1988). Wuornos' threat to withdraw her plea if she was not sent back to death row during the penalty phase hardly constitutes a proper motion to withdraw (R 3-36). This issue is not properly before this court.

Appellee would submit, additionally, that Wuornos has waived the right to raise this issue. A trial court, in its discretion, may permit a defendant to withdraw her plea at the sentencing hearing. *Little v. State,* 492 So. 2d 807 (Fla. 1st DCA 1986). Having won the tussle at the penalty phase and having been sent back to Broward, Wuornos knew then, if not before, that she could waive her presence, and could have acted on her threat to withdraw her plea, had she desired to have a guilt phase trial at which she would not be present.

The record reflects, first of all, that Wuornos had no reason to believe she would not get a fair trial. Judge Sawaya assured her he would do everything in his power to ensure that she received a fair trial; just because she felt she had not received a fair trial in Daytona Beach did not mean she would not get a fair trial in Marion County. Wuornos indicated she understood (R 663; 665). While Wuornos obviously had some criticism concerning the manner in which the Volusia County trial proceeded, it is the height of speculation to say that her prime motivation in pleading was to avoid another unfair trial. Wuornos' position below was that the entering of a plea was "between me and God;" "between me and my religion and everything else;" "this is not just a carnal thing, it's a spiritual thing for me -- that I'm doing, too, so, I feel just fine." (R 682; 684). She indicated that although she had killed in self-defense she could not live with herself. It was a religious thing she had to do. She had taken a life so it was time for her to pay for it (R 698). This position is consistent with her confession wherein she made statements such as "I deserve to die ... I took a life," "I feel guilty," "I am guilty," "I'm willing to pay the punishment for that." (R 603; 606). This position is consistent with the waiver of rights and agreement to enter a plea that she signed which indicates that "I wish to enter my plea to the offenses because I do not contest the charges and I have no other reason." (R 256).

Appellant takes a leap in logic by relying on her statements in the later penalty phase to support her reasoning at

the time of the entry of the plea. As previously stated, at the time of entering her plea she had reason to understand, and indicated she understood, that she would be provided a fair trial. There is no indication on the record that she would not sit through a fair trial. The only indication was that she did not wish to contest the charges and, therefore, wanted no trial at all. Appellant comes to a contrary conclusion by citation to her statements in the *penalty phase* where she indicated she wanted to leave Marion County and return to death row. Appellant does not suggest how the trial judge is supposed to have divined this reasoning on her part when she said no such thing at the time she entered the plea. In fact, she indicated that the Marion County jail was not a factor in entering her plea. Her agitation at the later possibility of being housed in the jail simply cannot be catapulted back in time to support counsel's present speculations. Moreover, Wuornos had the wherewithal to willfully absent herself from the penalty phase and nothing indicates that she would not have done the same thing at a trial, had she so desired one.

Wuornos' statements up to the penalty phase indicate a desire to take responsibility for her actions and suffer the penalties for her misdeeds. On appeal, counsel seems to be taking a position inconsistent with that of his own client. Counsel would be hardpressed to demonstrate how any alleged

error could be prejudicial when his client would only plead again in the same fashion.[1]

Wuornos' strategy in the penalty phase reveals a *consistency* with her prior actions and reasons for entering a plea. Arlene Pralle testified that Wuornos took total responsibility for her actions, could not handle the guilt anymore, and had undergone a spiritual rebirth (R 677; 684). The record hardly supports the assertion that Wuornos' entire course of action was dictated by an after-occurring flash of temper concerning the Marion County Jail.

A court is not under a duty to apprise a defendant of all the possible collateral consequences of his plea. *State v. Coban*, 520 So. 2d 40 (Fla. 1988). Likewise, the court is under no obligation to discuss tangential considerations. Florida Rule of Criminal Procedure 3.172(c)(iii) requires that a defendant be advised only of constitutional rights he or she would be giving

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[1] If this is not the case, then alternatively, Wuornos, herself, is manipulating the system. The record reflects a smattering of a contrite, repentive, Christian Wuornos taking responsibility for her deeds and asking the jury to extend equally Christian mercy. The fall-back Wuornos is a bitter victim of not only life's circumstances but the entire justice system. The hope, perhaps, was that if the jury didn't accept her late redemption as mercy-worthy that a higher court would see no harm in finding a hypertechnical violation so that a possible innocent could reconsider her rash decision to plead. The problem with this is that there is no doubt at all of Wuornos' guilt. She had nothing to gain by going to trial. In entering a plea she could appear heroic and repentive. Failing that, now appears the fall back theory, - she was wronged but the system prevented her from having a "technical" day in court, since she would not be there herself, by the failure to advise her of a nonexistent, nonconstitutional, "right" not to avail herself of a constitutional right. This issue has nothing to do with the entry of a plea. It has to do with the sentencing result. What is sought is another bite at the apple.

up upon entry of a plea. Rule 3.172 nowhere implores the court to advise a defendant that she can otherwise waive these same rights by other means, such as absenting herself from jury trial. Wuornos didn't want to just absent herself, in any event, she wanted to dictate where she was housed, which desire hardly embraces any constitutional rights that should be chronicled for her ad nauseam (R 3-36).

Even if there was error, in accordance with the doctrine that the violation of a procedural rule does not call for reversal of a conviction, unless the record discloses that noncompliance has resulted in prejudice to the defendant, a failure to comply with the rule alone is not a sufficient predicate for relief. *Broeck v. State,* 317 So. 2d 100 (Fla. 1st DCA 1975); *Mickens v. State,* 562 So. 2d 856 (Fla. 1st DCA 1990). Wuornos understood the consequences of the plea. Wuornos has shown no prejudice. *See United States v. Stead,* 746 F.2d 355, 356-57 (6th Cir. 1984). There is nothing to indicate Wuornos would not have pleaded nolo contendere had she known she did not have to sit through her trial. Moreover, the grounds presented are insufficient to demonstrate that her plea should even be withdrawn. She has shown neither manifest injustice or an abuse of discretion. *See, Porter v. State,* 564 So. 2d 1060 (Fla. 1990); *Sands v. State,* 126 So. 2d 741 (Fla. 1961). There is no doubt that she is guilty of her crimes. The details of her confession parallel the circumstances surrounding the murders.

Mandatory Minimum Sentence

Appellant next complains that she was not informed that she would be required to serve at least twenty-five years before she was eligible for parole should she receive a life sentence.

In *State v. Coban,* 520 So. 2d 40 (Fla. 1988), this court held that the failure of a trial judge to advise the defendant of the requirement that he serve no less than twenty-five years of a life sentence before becoming eligible for parole rendered the plea involuntary as section 775.082(1) Florida Statutes (1988), provides for an automatic minimum mandatory term of twenty-five years upon an adjudication of guilt.

Coban is distinguishable from the present case, however. Coban pled guilty to first degree murder in return for the state's agreement not to seek the death penalty for the offense. Coban was actually sentenced to life imprisonment. The mandatory minimum sentence was triggered by the plea, and since the courts had no discretion on whether to impose this automatic sentence this court concluded that the mandatory minimum sentence was a direct consequence of the plea and the failure to advise the defendant of this consequence rendered the plea involuntary. 520 So. 2d at 42. Justice McDonald dissented on the basis that the details of parole eligibility are still collateral to the life sentence. *Id.* In the present case, Wuornos pled nolo contendere without any agreement as to sentence at all. She did not choose an alternative sentence without full disclosure. The only choice she made was to avoid a trial. For all intents and purposes Wuornos stood before the court at the penalty phase as though she had pled not guilty and it was a crap shoot as to which sentence

she would receive. Since she made neither a bargain nor a choice between alternatives any sentence she received was not a direct consequence of the entry of her plea. A court is not under a duty to apprise a defendant of all the possible collateral consequences of her plea. *Blackshear v. State,* 455 So. 2d 555 (Fla. 1st DCA 1984). In this case the sentence was not a consequence at all of the plea, except in the sense that upon entry of the plea the case proceeded to the penalty phase.

In *Simmons v. State,* 489 So. 2d 43 (Fla. 4th DCA 1986), a plea of nolo contendere actually resulted in a twenty-five year sentence with an unexpected mandatory minimum sentence of three years. Pursuant to Florida Rule of Criminal Procedure 3.172(1) a plea should not be voided in the absence of a showing of prejudice. Since Wuornos received the death penalty she will never be subject to parole limitations in the first instance and any error was harmless.

Factual Basis for Plea

Appellant contends that the trial court's inquiry regarding the factual basis for Wuornos' plea was insufficient as Wuornos maintained her innocence throughout the plea colloquy and repeatedly explained that she acted in self defense, never acknowledged her guilt, and did not explain how the plea was in her best interest.

A trial court has broad discretion in determining the type of procedure to be utilized for the reception of factual information necessary to establish the elements of the offense for which the defendant has entered a plea of guilty. *Williams v.*

State, 316 So. 2d 267 (Fla. 1975). The court may determine the existence of a factual basis for the plea by receiving evidence, testimony, a proffer of evidence, statements by counsel or the defendant, or reference to the record sufficient to satisfy the court that there is evidence to convict on each element of the charge. *Gust v. State,* 558 So. 2d 450 (Fla. 1st DCA 1990). The court may satisfy itself by statements and admissions made by the defendant, his counsel, and the prosecutor, or by factual evidence heard or filed in the cause. *Williams v. State,* 316 So. 2d 267 (Fla. 1975).

In the instant case, Wuornos made in-court admissions that she had shot the victims numerous times and taken their property (R 689-694; 696-699; 700-703). The state indicated that it would introduce evidence that the victims died of multiple gunshot wounds and that property they had been carrying upon them was missing. The state would also introduce Wuornos' statements to Volusia County Sheriff's Deputy Larry Horzepa and Marion County Sheriff's Deputy Bruce Munster in which Wuornos admitted being the person who had shot each of these individuals and took their property in what amounts to a robbery. The state would also introduce evidence that the .22 caliber death weapon was recovered as a result of Wuornos' statments and the testimony of Tyria Moore (R 706). As evidence that the murders were not committed in self defense the state would introduce evidence of four other homicides committed in a similar fashion during the course of robberies (R 707).

It is clear that this evidence was sufficient for the court to determine the existence of a factual basis for the plea. A nolo contendere plea does not admit guilt or the allegations of the charges, although its effect is to admit the facts well pleaded, but, rather, it communicates that the defendant chooses not to defend against those charges. It is the equivalent of a guilty plea only insofar as it gives the court the power to punish. *Ferris v. State,* 489 So. 2d 174 (Fla. 5th DCA 1986). In such cases, guilt is a legal inference from the implied confession in the plea. *Pensacola Lodge v. State,* 74 Fla. 498, 77 So. 2d 613 (1917). The cases cited by appellant in support of his contention that extensive inquiry into the factual basis must be made before accepting a plea where a defendant raises the possibility of a defense are all applicable in the guilty plea context. Appellant overlooks the fact that the plea entered in this case was a nolo contendere plea in which it is not necessary that a defendant admit his or her guilt. In any event, Wuornos specifically and understandingly waived any right to a claim of self defense (R 693; 696; 698; 702-703). Furthermore, pursuant to Florida Rule of Criminal Procedure 3.172(d), the trial judge determined that Wuornos felt it was in her best interest to enter the plea (R 742). There is no requirement in Rule 3.172(d), that Wuornos explain *how* the plea was in her best interest or that the trial court explain what those "best interests" were. Wuornos' plea cannot be invalidated for a lack of a factual basis simply because appellate counsel, in hindsight, perceives no benefit in Wuornos so pleading. The plea exists. Wuornos had the right to

avail herself of such procedure and enter the plea. The trial court was under no obligation to interrogate her as to what benefit she would be receiving. The most obvious benefit is the avoidance of a trial, which benefit is of the magnitude to entice many other defendants to enter such pleas.

II. **NO REASONABLE GROUNDS WERE PRESENT TO SUSPECT THAT APPELLANT WAS INCOMPETENT TO ENTER A PLEA AND THE TRIAL COURT HAD NO DUTY TO SUA SPONTE ORDER A HEARING.**

The issue of competency goes to the voluntary and intelligent character of a plea and an issue concerning such must always be presented to the trial court for relief on a motion to withdraw the plea, and then an appeal taken to review an adverse ruling. *Tillman v. State*, 522 So. 2d 14 (Fla. 1988). Although a defendant who pleads guilty or nolo contendere may directly appeal matters which would invalidate the plea itself, an appeal from a guilty or nolo plea should never be a substitute for a motion to withdraw the plea. *Robinson v. State*, 373 So. 2d 898 (Fla. 1979); *Keith v. State*, 582 So. 2d 1200 (Fla. 1st DCA 1991). This issue should rightfully be presented to the lower court in a post conviction motion. *Randolph v. State*, 438 So. 2d 1029 (Fla. 1st DCA 1983). Even in the event this claim is properly before this court, no valid grounds for relief have been presented.

The conviction of a legally incompetent defendant or the failure of a trial court to provide an adequate competency determination, violates due process by depriving the defendant of her constitutional right to a fair trial. *Pate v. Robinson*, 383 U.S. 375, 385-86 (1966). Due process is violated if a competency hearing is not held when a certain level of doubt arises

regarding a defendant's competency. *Drope v. Missouri,* 420 U.S. 162, 180 (1975); *Pate v. Robinson,* 383 U.S. 375, 385 (1966). A successful *Pate* challenge requires a showing that the trial judge failed to order a competency hearing when, based on the facts and circumstances known to him, he should have seen the need for a hearing. *United States v. Day,* 949 F. 2d 973, 982 (8th Cir. 1991). The Supreme Court has recognized the futility of attempting to articulate the nature and amount of evidence necessary to establish the requisite doubt and has noted that the states may prescribe such standards. *Drope,* 420 U.S. at 172-73; 180.

Florida Rule of Criminal Procedure 3.210(b) imposes upon the trial court a duty or responsibility to conduct a hearing on a defendant's competency to stand trial whenever it reasonably appears necessary, whether requested or not. *Gibson v. State,* 474 So. 2d 1183 (Fla. 1985). The issue is whether there are reasonable grounds to believe that the defendant may be incompetent, not whether she is incompetent. *Nowitzke v. State,* 572 So. 2d 1346 (Fla. 1990).

In the present case there was absolutely no indicia of incompetence to plea. Wuornos' attorney was present at her previous trial, had read the doctors' reports, and evidently communicated with one of the psychologists. He had known Wuornos for approximately a year. He stipulated to her competence (R. 687-688). *Cf. Pardo v. State,* 563 So. 2d 77 (Fla. 1990).

Other than the borderline personality disorder found in the previous case and referenced by the appellant elsewhere herein, Wuornos lacked a history of mental illness and imcompetence to stand trial.

Despondency or ambivalence about the plea does not constitute reasonable grounds to believe a defendant might have been incompetent to submit a plea. *Trawick v. State,* 473 So. 2d 1235 (Fla. 1985). This is particularly true in the case of a plea of nolo contendere, which is regarded as in the nature of a compromise between the state and the accused under which the accused formally declares that she will not contest the charges. *Hoover v. State,* 511 So. 2d 629 (Fla. 1st DCA 1987). Such a plea is used where an accused, though unwilling to confess guilt, does not wish to go to trial and desires the court immediately to impose sentence. *Vinson v. State,* 345 So. 2d 711 (Fla. 1977).

Wuornos' statements hardly provided a reasonable ground to believe that she was not competent to proceed. Wuornos' self-defense theory had been tested and failed in her previous trial. Appellant would be hard pressed to present a defendant who felt no bitterness that his defense did not work. Her statements do not reflect that she felt she had a legally sufficient defense of self-defense though she may have felt in a distorted moral sense that she killed in self-defense. That she may prefer the conditions at the Broward Correctional Facility over jail hardly demonstrates incompetence. Many convicted murderers would rather be executed than spend their lives in prison. If a belief in heaven is sufficient indicia then, evidently, no Christian would ever be competent to enter a plea. The prior "suicide" attempt was not an attempt at all but referenced to explain a prior charge of armed robbery (R. 46).

The state fails to note the paranoia, delusion and religious ideation that Wuornos' counsel somehow senses. The state would submit that Wuornos' statements were fairly eloquent, as opposed to rambling. She explained her actions, documented her complaints with the functioning of the legal system and complained of occurrences at her previous trial (R. 718-736). Her behavior was consistent with the unwillingness to confess guilt attendant to the entering of a nolo contendere plea.

Wuornos may have pled straight up with no guarantees but she was not without a strategy to escape the death penalty. The prior self-defense theory didn't fly. There was nothing to lose by taking the tack that she was taking responsibility for her actions, had turned to God, had changed, and had merely fallen into such waywardness in the first place because she was forced to become a prostitute because of the sad circumstances of her life and felt she had to defend herself. If this is indicia of incompetence, then Wuornos' lawyer is incompetent, as well. The entry of the plea was hardly a suicide attempt. The "benefit for the bargain" was obviously avoiding another trial. This was keen strategy since she had hopes of getting a new trial in Volusia County (R. 737).

The record in this case reflects that Wuornos understood what was going on, was able to assist in her own defense, was able to consult with counsel, and fully understood the ramifications and consequences of entering a plea. *See, Mikenas v. State*, 460 So. 2d 359 (Fla. 1984).

III. **THE STATE PROPERLY PRESENTED SIMILAR FACT EVIDENCE AND RELEVANT REBUTTAL EVIDENCE AT THE PENALTY PHASE.**

Appellant only objected to the testimony of Bobby Lee Copas on the basis that it didn't have anything to do with rebuttal. Nowhere did defense counsel argue below the grounds now raised on appeal. It is clear that if a defendant fails to make an objection at trial to the admissibility of evidence of collateral crimes, the issue may not be raised on appeal. *Harmon v. State,* 527 So. 2d 182 (Fla. 1988). Also, where a defense objection is overruled, an entirely different ground for the objection will not be considered on appeal. *Hines v. State,* 425 So. 2d 589 (Fla. 3d DCA 1982). This issue is waived.

Wuornos is entitled to no relief even if this issue could be entertained. Similar fact evidence of other crimes, wrongs or acts is admissible when relevant to prove a material fact in issue, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident and is only inadmissible when the evidence is relevant solely to prove bad character or propensity §90.404(2)(a), Fla. Stat. (1992). Similar fact evidence may be admitted to establish a pattern of conduct similar to the pattern of conduct in the crime. *Jones v. State,* 398 So. 2d 987 (Fla. 4th DCA 1981). The test for admissibility is relevance. *Heiney v. State,* 447 So. 2d 210 (Fla. 1984). The fact such evidence is prejudicial does not make it inadmissible. *Sireci v. State,* 399 So. 2d 964 (Fla. 1981).

The videotape of Wuornos' confession was published to the jury by the defense in the penalty phase (R 653). In her many

statements Wuornos contended she acted in self-defense. Pursuing this same theme, Arlene Pralle testified that Wuornos had been raped and impregnated at age thirteen (R 670); had been previously attacked many times by her clients; and on three occasions tried to fend them off with mace, which they ultimately used on her, then raped her and left her in the woods for dead; (R 672) and that Wuornos was actually gang-raped (R 672). Pralle also felt that Wuornos had killed under extenuating circumstances (R 706). The incident involving Copas was relevant to Wuornos' modus operandi of waylaying travelers with bogus stories of distress then claiming they were there to sexually molest her and that she acted in self-defense. Wuornos' encounters clearly demonstrated a plan. She used the ruse of a damsel in distress to obtain rides and, once in the car, propositioned the victims for sex. Her actions with Copas reflect that when such propositions were not accepted she reacted violently, indicating a robbery motive, as opposed to self-defense. The men who were unfortunate enough to encounter her were all taken to isolated areas and shot by the same .22 caliber revolver and robbed. This evidence was clearly relevant to refute any claim of self-defense and went to her robbery motive and general modus operandi.

Any complaint as to the testimony of Investigator Padgett that her brother and sister refuted her claims of an abusive childhood is waived, as discussed in Point IV.

Defense counsel did not raise a specific objection at all, no less raise the ground now argued (R 804) and any complaint as to testimony concerning Wuornos' previous religious conversion is

procedurally barred. *Bertolotti v. State*, 565 So. 2d 1343 (Fla. 1990). While Wuornos may lament the prejudicial effect of such testimony, its relevance can hardly be disputed considering that the crux of Pralle's testimony revolved around Wuornos' religious conversion.

No objection at all was interposed during the testimony of Lieutenant Paul Laxton that Wuornos threatened him with physical violence while being transported and wanted to start a revolution against police officers (R 792-94). Any complaint as to this evidence is also waived. *Harmon v. State*, 527 So. 2d 182 (Fla. 1988). The testimony of Ora Berry was only objected to as cumulative, and not on the grounds now raised so, again, any error is not specifically preserved. *Hines v. State*, 425 So. 2d 589 (Fla. 3rd DCA 1982). Such evidence was relevant, in any event, to rebut Pralle's testimony that not only had Wuornos undergone a religious conversion but she had become less verbally and physically aggressive (R 697-98).

IV. THE CLAIM THAT THE STATE'S USE OF HEARSAY EVIDENCE VIOLATED APPELLANT'S CONSTITUTIONAL RIGHTS TO DUE PROCESS, CONFRONTATION AND CROSS-EXAMINATION OF ADVERSE WITNESSES IS PROCEDURALLY BARRED.

Arlene Pralle, Wuornos' adopted mother testified on Wuornos' behalf in the penalty phase (R 659-708). Prior to that Wuornos recounted her childhood abuse in a statement she read to the court (R 55-58). Pralle only met Wuornos by telephone on January 31, 1991 (R 660; 663). Pralle had absolutely no first-hand knowledge of the circumstances of Wuornos' life up until the time she was arrested. Nevertheless, Pralle was permitted to

testify in great detail as to the circumstances of Wuornos' childhood, teen years and her eventual career as a prostitute. Wuornos had, at this point, absented herself from the penalty phase (R 91). She later testified prior to sentencing that she had been disowned by her brother and sister when she was seventeen years old and had not seen them since. She indicated they worked for the state for monetary favors and were to receive financial interests in the movie "Overkill" and stated vile defamations about her in pursuit of the same (R 760). Aside from Wuornos, the only other person to have any knowledge of such abuse was Dawn Neiman, Wuornos' childhood friend (R 693-94). Neiman did not testify at the penalty phase. Instead, Pralle testified as to what Neiman had told her concerning the alleged abuse of Wuornos by her grandfather (R 693-694). Pralle indicated that she had confirmed Neiman's account of the abuse with Wuornos, herself (R 667). No objection was interposed by the state to this hearsay testimony of Pralle (R 667). In surrebuttal Pralle actually read a letter from Dawn Neiman indicating that Barry Wuornos and Lori Grody had lied (R 818-20).

Appellant now complains that the state elicited on cross-examination of Pralle the fact that she was aware that Barry Wuornos and Lori Grody had denied under oath that such abuse ever occurred (R 695-96) and did not call Wuornos or Grody as witnesses.

The record reflects that only a general objection was interposed when Pralle was asked about her knowledge of Barry Wuornos denying under oath that any abuse had occurred (R 695).

Defense counsel did not object at all to the question regarding Lori Grody (R 695-96). Appellant further incorrectly tells this court that "defense counsel subsequently complained about his inability to cross-examine Barry Wuornos." Initial Brief of Appellant p. 46. The record actually reflects only an off-the-cuff remark of counsel during the cross-examination of homicide investigator Marvin Padgett concerning Barry Wuornos' knowledge of any alleged abuse. Counsel stated "Well, if he was here I might be able to question him about what he saw." Counsel then immediately stated "Excuse me--I withdraw that." (R 788). No objection at all had been raised when Padgett testified that he had interviewed Barry Wuornos and Lori Grody and they indicated that no physical abuse had been directed at Wuornos (R 786). No objection at all was raised when Padgett testified that he had also interviewed Dawn Neiman who revealed that she had seen no abuse directed toward Wuornos and had never discussed such abuse with Wuornos (R 787). Appellant also fails to reveal that as early as the plea hearing Wuornos, herself, told the court that her sister Lori and brother Barry had not seen her in seventeen years when they took the stand and were involved with the police in movies and books (R 725).

In order to preserve an issue for appeal, the specific legal ground upon which an objection is based must be presented to the trial court. *Bertolotti v. State,* 565 So. 2d 1343 (Fla. 1990). Since only a general objection was interposed when Pralle was asked about her knowledge of Barry Wuornos denying under oath that any abuse had occurred, the failure to make a specific

objection precludes appellate review. *Barclay v. State,* 470 So. 2d 691 (Fla. 1985). Also, each error, though similar in kind to others, must be separately objected to by the complaining party. *Mercer v. State,* 83 Fla. 555, 92 So. 535 (1922). Any complaint as to the question regarding Lori Grody or the fact that these parties were not available to cross-examine or that the state was presenting hearsay is also waived. These objections were simply not raised below. Additionally, the right to complain of such evidence is waived by the fact that Wuronos, herself, brought out the fact they had taken the stand and testified when they hadn't seen her in seventeen years. Pralle later read Neiman's letter. A defendant must abide by the same rules of evidence as the state. *Hitchcock v. State,* 578 So. 2d 685 (Fla. 1990). Moreover, if a defendant could, in fact, have rebutted hearsay testimony, the evidence is admissible. *King v. State,* 514 So. 2d 354 (Fla. 1987). That Grody and Wuornos had denied any abuse occurred was no surprise to the defense at the penalty phase. Wuornos discussed it at the plea hearing. Defense counsel sat through the prior trial (R 688). In *Buenoano v. State,* 527 So. 2d 194, 198 (Fla. 1988), this court found that hearsay testimony in the penalty phase was susceptible to fair rebuttal where defense counsel represented Buenoano in the prior felony cases, of which details were solicited. Even if there was error it was harmless and did not result in prejudice to the defendant's case requiring a new sentencing proceeding. *State v. DiGuilio,* 491 So. 2d 1129 (Fla. 1986).

V. THE JURY'S DEATH VERDICT WAS NOT TAINTED BY EVIDENCE OF NONSTATUTORY AGGRAVATION IN CONTRAVENTION OF THE EIGHTH AMENDMENT.

The appellant complains that the prosecutor, during closing argument, in anticipation of a defense argument that Wuornos should be spared from another death sentence because she already has one, told the jury that one of the documents in evidence is a notice of appeal from that death penalty. Appellant contends that such argument, as well as the notice of appeal, constitute impermissible evidence of a nonstatutory aggravating circumstance and Wuornos was thereby denied a fair trial.

Defense counsel did not object to the prosecutor's statement (R 836-836). In fact, defense counsel indicated he had no problem with the prosecutor discussing an appeal (R 741). It was the defense position that a prior death sentence was a mitigating factor (R 740). Since in many cases the effect of improper argument can be removed by an instruction to the jury to disregard it, it is a general rule that if an error is to be predictated on such impropriety, objection must be made at the time the argument is presented. *Paite v. State,* 112 So. 2d 380 (Fla. 1959). No motion for mistrial was made before the jury was instructed and retired to deliberate. Appellate counsel cannot take a different position than trial counsel. This issue is procedurally barred.

Wide latitude should be permitted in regard to prosecutorial comments. *Teffeteller v. State,* 439 So. 2d 840 (Fla. 1983); *Breedlove v. State,* 413 So. 2d 1 (Fla. 1982). Wuornos has not shown the prosecutor's argument to be so inflammatory as to

produce a more severe sentence than otherwise would have been recommended. The record reflects that the defense pointed out at the beginning of oral argument that Wuornos had, in fact, been sentenced to death in the electric chair on January 30, 1992 (R 842). It was argued that she would never see the streets of the State of Florida again because she would either spend the rest of her life in prison or the State would kill her in the electric chair (R 843). It was also argued that Wuornos was saving the State of Florida twenty to thirty million dollars in entering her plea. It was pointed out that there is an automatic appeal and that there was a cost for these appeals (R 846-847). It was further argued that defense counsel would request the judge to sentence Wuornos to three consecutive life sentences so that she would be put away for seventy-five years. Defense counsel then brought out the fact that "you know her case is on appeal in death row. If that case gets overturned, if it's going to come back 'life'. That will be a hundred years she will be serving. I am not familiar with anyone living in prison to the ripe old age of a hundred and thirty-five. And don't forget the possibility of parole is just that, a possibility." (R 863). Defense counsel went on to further describe the conditions of residing within a prison for life. Counsel stated "if she ever gets off death row, they are going to put another person in the room with her. And there are no curtains. That is punishment. If she gets off death row--appeals take ten years, twelve years--she will be off of death row. So in twelve years she's going to live in here (indicating). What that could do to the brain." (R

865). It is clear that defense counsel brought out the same information that present counsel now condemns as injecting nonstatutory aggravation into the penalty proceeding. The state would submit that appellant has waived the right to complain of statements by the prosecution when the same fact was brought out by the defense in support of its argument that Wuornos should remain in prison for the rest of her life.

Pursuant to Florida Rule of Appellate Procedure 9.140(f), this court must review the evidence when a defendant is sentenced to death regardless of whether insufficiency of the evidence is an issue on appeal. Convictions and sentences become final when the United States Supreme Court denies review of this court's affirmance of them on the original appeal. *Tafero v. State*, 524 So. 2d 987, 988 (Fla. 1987). The prosecutor's statement was not an incorrect statement as a matter of law, in any event. Any error was harmless. *State v. DiGuilio*, 491 So. 2d 1129 (Fla. 1986).

VI. THE TRIAL COURT DID NOT IMPROPERLY LIMIT APPELLANT'S VOIR DIRE EXAMINATION AND APPELLANT WAS ACCORDED DUE PROCESS AND A FAIR TRIAL.

The examination of persons called to act as jurors is limited to such matters as tend to disclose their qualification in that regard. *Dicks v. State*, 83 Fla. 717, 93 So. 137 (1922).

The statement "But if she were sitting here, she would want to find twelve people who are free from opinion as to her fate. And if any one of you were sitting here, you would probably want the same thing" was certainly in the nature of a Golden Rule argument. It asked the jurors to put themselves in Wuornos' place. *Cf. Peterson v. State*, 377 So. 2d 179 (Fla. 2nd DCA 1979).

If not "Golden Rule," the statement was at least irrelevant. Any error in sustaining the state's objection was harmless. *State v. DiGuilio,* 491 So. 2d 1129 (Fla. 1986).

The statement that you "never ever have to vote for death if the defense can show you any bit of mitigation" is a blatant misstatement of the law. The aggravating and mitigating circumstances must be accorded weight by the jury and weighed. Fla. Stat. §921.141 (1993).

Appellant cites no authority for the proposition that a presumption of innocence obtains in the penalty phase. There is no presumption as to any sentence in the penalty phase. The purpose of the penalty phase is to determine the appropriate punishment. The law applicable to the case must be given to the jury by the court and not by counsel. *Brownlee v. State,* 95 Fla. 775, 116 So. 618 (1928). The trial court properly curtailed defense counsel's erroneous lecture on jury considerations during voir dire. The jury was properly instructed by the judge and any error was harmless. *State v. DiGuilio,* 491 So. 2d 1129 (Fla. 1986).

VII. THE DEATH SENTENCES ARE JUSTIFIED AND APPROPRIATELY BASED ON VALID AGGRAVATING CIRCUMSTANCES AND WEAK MITIGATION.

A. THE TRIAL COURT PROPERLY FOUND THAT THE CRIMES WERE COMMITTED DURING THE COMMISSION OF A ROBBERY/PECUNIARY GAIN.

An aggravating circumstance exists when the capital felony was committed while the defendant was engaged, or was an accomplice, in the commission of, or the attempt to commit, or flight after committing or attempting to commit, any robbery. F.S. §921.141(5)(d). A contemporaneous conviction for one of the statutorily enumerated felonies warrants a finding of aggravation

for a murder which was comitted during the commission of that crime. *Perry v. State,* 522 So. 2d 817 (Fla. 1988). As the trial court noted, Wuornos entered a plea to the armed robberies of these victims (R 301-2, 457-58; SR 2-3).

That a killing was committed for pecuniary gain also may be established by evidence that the defendant had no money before the victim's death but that after the victim's death had the victim's property, *Hildwin v. State,* 531 So. 2d 124 (Fla. 1988), or that money known to be in the victim's possession was missing after the murder. *Harmon v. State,* 527 So. 2d 182 (Fla. 1988); *Moody v. State,* 418 So. 2d 989 (Fla. 1982). As to the Humphrey's murder, the donut abrasion to the abdomen would be consistent with a gun barrel being shoved into the body pursuant to a robbery (R 591). Humphrey's briefcase was found in Wuornos' storage facility (R 541). Burress and Spears both had cash on them at the time of their disappearance which was later missing (R 553-54; 571). Additionally, a robbery motive is apparent from Wuornos' use of a storage facility to keep the property of her victims (R 609-11). She also tried to wipe everything down (R 593). This is inconsistent with the gathering of valuables as a mere afterthought, especially where there is a pattern of murder accompanied by loss of property. Had the taking of property stopped with the murder of Richard Mallory, Wuornos may have a point, but such point loses vitality with the continued killing and loss of property. The importance of money to Wuornos is apparent from her statement after she killed Burress and took three hundred dollars from his clipboard "Shit, you were going to give me a fuckin' ten dollars ..." (R 617).

This case is distinguished from *Scull v. State*, 533 So. 2d 1137 (Fla. 1988), in that while the victims cars may have been used as an initial means of escape, Wuornos then gained actual use of them. She used Mallory's car to move to a new place (R 597-98). She drove Moore and her sister to Sea World in Siems' car (R 640) then later wrecked it (R 558). She drove Spears' truck home overnight and kept the tools in it (R 610). The fact that these victims' cars were found miles from the bodies is consistent with her continued use of her victims' automobiles.

Finally, Wuornos' behavior, as reflected in the testimony of Bobby Lee Copas, is certainly more consistent with an aggressive robbery motive than the scenario of simply a prostitute defending herself.

B THE TRIAL COURT PROPERLY FOUND THAT ALL THREE MURDERS WERE COMMITTED TO AVOID A LAWFUL ARREST

Direct evidence of an intent to avoid arrest may be based on an express statement by the defendant if that statement indicates a motive that the victim was killed to avoid arrest, *Cook v. State*, 542 So. 2d 964 (Fla. 1989), such as a statement that the defendant did not want to leave any witnesses that could identify him. *Lopez v. State*, 536 So. 2d 226 (Fla. 1988). Here, one does not have to speculate as to Wuornos' motive; she revealed it in terms that could not be more precise: "Of course, I didn't really want to kill 'em in my heart, but I knew I had to. Because I knew if I left some witness, then they'd find out who I was and then I'd get caught" (R 553); "I felt that if I didn't shoot 'em and I didn't kill 'em, first of all, if they

survived, my ass would be gettin' in trouble for attempted murder, so I'm up shit's creek on that one anyway." (R 629).

Even if there is no express statement by the defendant indicating a motive to kill the victim for the purpose of avoiding arrest, there may be sufficient support for such a finding where there is no other apparent motive for the murder, *Harmon v. State,* 527 So. 2d 182 (Fla. 1988), or the defendant shot the victim in order to flee. *Young v. State,* 579 So. 2d 721 (Fla. 1991). Appellant's argument is tenuously based on a self-defense theory. Stopping the camera where it should be stopped, which is at the completion of all the action, reveals the fallacy of appellant's argument. Wuornos had immediately disabled these victims. Beyond that point she had no claim of self-defense. Even if she is correct that no one has the right to abuse even a prostitute, a premise most civilized people could agree upon, conversely, a prostitute has no right to kill as a part of her job description. She had no reason to kill these men other than the dominant motive she revealed. It was also easier for her to flee without the inconvenience of walking through briars in the woods (R 626). Appellant has overlooked the fact that evidence showing a *pattern* of shooting victims during the commission of robberies or showing a calculated plan to execute all witnesses may establish a motive to avoid arrest. *Burr v. State,* 466 So. 2d 1051 (Fla. 1985); *Garcia v. State.* 492 So. 2d 360 (Fla. 1986).

The record does not support appellant's assertion that Wuornos and the men were engaged in prostitution, in the first place. Except for Spears, the men were not even naked or unfastened, and there was no evidence of sexual activity.

C. THE TRIAL COURT DID NOT ERR IN FINDING THAT THE THREE CAPITAL FELONIES WERE COMMITTED IN A COLD, CALCULATED, AND PREMEDITATED MANNER WITHOUT ANY PRETENSE OF MORAL OR LEGAL JUSTIFICATION

This aggravating circumstance is proper where there is a degree of premeditation exceeding that necessary to support a finding of premeditated first-degree murder. *Capehart v. State*, 583 So. 2d 1009 (Fla. 1991). Heightened premeditation will be found when the evidence indicates that the defendant's actions were accomplished in a calculated manner. *Capehart v. State*, 583 So. 2d 1009 (Fla. 1991). Calculation consists of a careful plan or prearranged design. *Farinas v. State*, 569 So. 2d 425 (Fla. 1990). Evidence that a defendant planned in advance to leave no witnesses to a robbery will support a finding that the murder was cold, calculated, and premeditated. *Remeta v. State*, 522 So. 2d 825 (Fla. 1988). That is certainly the case here. In numerous statements Wuornos indicated that she had to kill the victims because if she left a witness she would be caught (R 553; 629). She killed them to silence them (R 640). In furtherance of this plan, she always shot to the midsection so she would know that they had been shot (R 612). Heightened premeditation can be demonstrated by the manner of the killing, such as a killing that is, in effect, an execution where the evidence proves beyond a reasonable doubt that the defendant planned or arranged to commit murder before the crime began. *Asay v. State*, 580 So. 2d 610 (Fla. 1991); *Porter v. State*, 564 So. 2d 1060 (Fla. 1990). That is also the case here. Wuornos took the property of these men, spent it, pawned it, or warehoused it. She planned on leaving no witnesses. She ensured the victims were dead when she left.

Humphreys was not only shot seven times but a final bullet was administered to the back of the head (R 582-84; 588-89). The wound in Burress' back had an upward trajectory (R 555). Spears was shot at least six times (R 596).

The physical evidence is consistent with those parts of Wuornos' confession indicating a pattern of robbery/murder and witness elimination. The turned out pockets, taking and disposing of property, and the sheer number of victims are consistent with Wuornos' plan to eliminate witnesses. Her desire not to leave anyone who could identify her, the number of bullets in the victims, and the shot to the victim's head, is inconsistent with her contention that she acted in self-defense. Wuornos' tangential assertion that she acted in self-defense is irreconcilable with the other facts proven and the lower court was not required to accept this version. *Scott v. State,* 494 So. 2d 1134 (Fla. 1986).

The defendant in *Cannady v. State,* 427 So. 2d 723 (Fla. 1983), was not involved in a pattern or program of robbery/murder with an avowed intent to leave no witness alive. Unlike the situation in *Crump v. State,* 622 So. 2d 963 (Fla. 1993), Wuornos carried a .22 and intended to leave no witnesses to a robbery. *Crump* involved no subsidiary felony. Crump claimed an argument had broken out which was not contradicted by other statements. In *Clark v. State,* 609 So. 2d 513 (Fla. 1992), it was not even the defendant, but another who had invited the victim along. There was no evidence that Clark preplanned the killing or arranged to have the victim accompany the group so he could be taken to an isolated area and murdered.

With the exception of Spears, Wuornos' victims were found fully clothed with no evidence of sexual activity. They were older and not likely to be missed. Their pockets were ransacked and property taken. They were either shot numerous times or shot in a vital area to ensure death. The inescapable conclusion is that the majority of victims were good samaritans like Bobby Copas who had the misfortune to give a lift to a highway woman, determined to leave no witness behind.

D. THE TRIAL COURT PROPERLY FOUND THAT THE MURDER OF CHARLES HUMPHREYS WAS HEINOUS, ATROCIOUS OR CRUEL

What is intended to be included by this aggravating circumstance are those capital crimes where the actual commission of the capital felony was accompanied by additional acts that set the crime apart from the norm of capital felonies, for instance, the conscienceless or pitiless crime that is unnecessarily torturous to the victim. *Douglas v. State,* 575 So. 2d 165 (Fla. 1991).

Evidence of considerable physical pain suffered by a victim is relevant in determining whether the killing was heinous, atrocious and cruel. *Gilliam v. State,* 582 So. 2d 610 (Fla. 1991). Humphreys' suffering is apparent from Wuornos' own statement that she shot him in the head to put him out of his "misery." (R 649). *See, Squires v. State,* 450 So. 2d 208 (Fla. 1984). The only wound that would have quickly incapacitated Humphreys was the one to the back of the head (R 588-89). From Wuornos' statement it is evident that this was the *last* wound inflicted. Before his death Humphreys suffered through six gunshot wounds, none of which

would have been instantly fatal (R 582-84; 588-89). Clearly, this was physical torture. Also, a killing preceded by a battery may be found to be heinous, atrocious and cruel. *See, Mendyk v. State,* 545 So. 2d 846 (Fla. 1989); *Lightbourne v. State,* 438 So. 2d 380 (Fla. 1983). As Judge Sawaya noted, Humphreys had a donut abrasion on the right side of the abdomen consistent with a gun barrel being shoved into the body (R 591). He also had a wound to the upper part of the right arm and wrist (R 587-588). Not to mention he was shot twice in the arm (R 589-90).

The mind set or mental anguish of a victim also is an important factor in determining whether a killing is especially heinous, atrocious, or cruel. *Harvey v. State,* 529 So. 2d 1083 (Fla. 1988). A victim's knowledge of impending death may support a finding that the killing was especially heinous, atrocious, and cruel, even if the death itself was quick. *Bruno v. State,* 574 So. 2d 76 (Fla. 1991); *Douglas v. State,* 575 So. 2d 165 (Fla. 1991). It is known from Wuornos' statements that she always shot to the midsection so she would know they had been shot (R 612) and engaged in "immediate firing" (R 692). It is logical that Wuornos' first strike on Humphreys was at close range in the car and to the chest or abdomen, since she was concerned with immediate incapacitation. Having accomplished that it would have been logical for her to prod Humphreys from the car with the barrel of her gun. Humphreys' actions from that point on evince a great fear of impending death. He either ran or turned from her to have received two bullets to the back. At some point she got him in the torso area again. He was shot twice in the arm.

Most telling is the medical examiner's testimony that his wounds were consistent with someone twisting and turning while either standing or lying on the ground (R 589-90). This is not a case of near instantaneous death by gunfire. *Cf. Watts v. State,* 593 So. 2d 198 (Fla. 1992); *Williams v. State,* 574 So. 2d 136 (Fla. 1991). Humphreys' death was drawn out and the bruises would indicate a prior struggle. Humphreys' twisting and turning indicate a clear apprehension that he was about to be murdered. *Cf. Robinson v. State,* 574 So. 2d 108 (Fla. 1991). This murder by shooting is hardly ordinary and is set apart from the norm of premeditated murders and is heinous, atrocious or cruel. Humphreys was an HRS investigator in child protective services (R 531). He had been in Wildwood on an investigation (R 532). He had a family (R 531-32). Nothing indicated an intent to have sex with Wuornos. It is not hard to envision his horror when by some stroke of misfortune he found himself with a murderous highway woman, intent on killing him, with a small caliber weapon. Such is the fabric of HAC.

The cases cited by appellant involve only single shots or immediately disabling shots. Wuornos indicated she was angry at Humphreys because she didn't believe he was a police officer (R 650). She seemed to reserve her greatest fury for him as evidenced by the large number of rounds extended. It wasn't particularly magnanimous of her to try and put him out of his misery. Wuornos was no angel of death.

E. MITIGATING EVIDENCE

At the outset, it should be noted that appellant concedes that the evidence concerning some of the nonstatutory mitigating circumstances is in conflict and that much of the mitigating evidence was hearsay.

The defense must identify for the court the specific nonstatutory mitigating circumstances it is attempting to establish. *Luras v. State,* 568 So. 2d 18 (Fla. 1990). Defense Counsel argued to the jury that Wuornos was accepting responsibility for her actions and was not saying she committed the crimes because she had been abused, raped, had a baby at thirteen, or was an alcoholic (R 852).

The fact that Wuornos was abandoned by her mother when she was an infant after a neglectful first few months is not mitigating in itself when you consider the fact that she did not go to a home or to strangers but was raised by her own grandparents. The claim of abuse in the grandparents' home was simply not supported by the evidence. Alternatively, the court found that even considering such alleged abuse, the aggravating factors overwhelmingly outweighed the evidence presented in mitigation (R 305-08, 463-64, SR 9-10). The fact that Wuornos was raped and impregnated at the age of thirteen was offered incidentally as part of the history of abuse wherein she was eventually placed in a juvenile home. Should this court take judicial notice of the case of *Wuornos v. State,* Case Number 79,484, as requested by appellant, it will see that Wuornos has a history of claiming rape and had even contended she was raped by a jail transport officer. The connection between her being a young

unwed mother and the murders in this case is too tenuous to form a basis for mitigation, in any event. Grief at the loss of her brother is also too attenuated to form a basis for mitigation. Wuornos stopped taking drugs at age sixteen (R 671). It is clear that when a defendant's actions in committing murder were not significantly influenced by her childhood, a history of abuse or a difficult childhood need not give rise to a mitigating circumstance. *Lara v. State,* 464 So. 2d 1173 (Fla. 1985); *Rogers v. State,* 511 So. 2d 526 (Fla. 1987). That Wuornos had consumed some alcoholic beverages on or about the date of the commission of the offenses was found not to have lead to extreme mental or emotional disturbance, thus, the tangential fact that she was, coincidentally, an alcoholic, hardly mitigates her crimes, especially in view of a clearly established robbery motive.

A review of the record reflects that the thrust of Wuornos' penalty phase defense was her bad start in life and the fact that she had found God, was now taking responsibility for her actions, and had changed. What is now offered as direct mitigation were only historical incidences below pertaining to her direct claims of abuse or religious conversion, which were fully considered by the trial court.

It would be wholly inappropriate for this court to take judicial notice of the mitigation found by another circuit court in a completely different case. Wuornos' penalty phase defense of a borderline personality disorder did not work to relieve her of a death sentence in the Volusia County case, in any event. Such defense was not offered in the present case. A new penalty

phase strategy of taking responsibility for her actions was formulated in this case. Wuornos obviously cannot reap the benefit of combining distinct strategies. That one doctor may have found her borderline does not mean that such diagnosis should obtain in the present case without evidentiary offering or proof. In any event, such diagnosis was insufficient to reach even statutory mitigation level and likewise should not relieve her of the sentence imposed in this separate case.

Even in the event any aggravators were inappropriately found, considering the weak mitigation found, along with any further weaker mitigation now postulated, death is still the appropriate sentence and any error is harmless. *State v. DiGuilio*, 491 So. 2d 1129 (Fla. 1986).

VIII. CONSTITUTIONALITY OF SECTION 921.141, FLORIDA STATUTES.

Heinous, Atrocious or Cruel Jury Instruction

The defense argued below in regard to the murder of Charles Humphreys simply that the heinous, atrocious, or cruel factor was inapplicable to this crime (R 755-765). No attack was made on the heinousness instruction below on the basis of vagueness or that it relieves the state of the burden of proving the elements of the circumstances as developed in case law. Where the instruction itself is not attacked either by submitting a limiting instruction or making an objection to the instruction as worded, this issue is procedurally barred. *Beltran-Lopez v. State*, 18 Fla. L. Weekly S469 (Fla. Sept. 2, 1993). In any event, this court upheld the full *State v. Dixon*, 283 So. 2d 1 (Fla. 1973), instruction in *Preston v. State*, 607 So. 2d 404 (Fla. 1992).

Cold, Calculated and Premeditated Jury Instruction.

Again, the instruction on this factor was argued against on grounds of inapplicability. This issue is also waived. No party may urge as error on appeal the giving of or the failure to give an instruction unless he objects thereto before the jury retires to consider its verdict. Fla.R.Crim.P. 3.390(d). The instruction on this factor is adequate pursuant to *Arave v. Creech*, 113 S.Ct. 1534 (1993), in any event.

Felony Murder.

Neither the circumstance or the instruction was challenged below and this issue is waived. The language of this circumstance could not be more precise, in any event.

Majority Verdicts.

No argument on the grounds now raised was made below. This issue is barred. A simple majority recommendation is sufficient to recommend the death penalty. *Brown v. State*, 565 So. 2d 304 (Fla. 1990).

Aggravating Factors as Elements of Crime found by Majority of Jury.

This issue was never argued and is procedurally barred. The argument that aggravating factors are elements of the crime is without merit. *See, Hildwin v. State,* 490 U.S. 638 (1989).

Advisory Role of Jury.

This claim was not argued below and is barred. It is without merit in any event. The jury was instructed that "the court may impose a sentence of death following a jury's advisory sentence of life only where the facts suggesting a sentence of

death are so clear and convincing that virtually no reasonable person could differ," in accordance with *Tedder v. State,* 322 So. 2d 908 (Fla. 1975) (R 881).

Counsel.

Wuornos hired the attorney of her choice in this case and has no standing to complain of court appointed counsel. This issue is procedurally barred as well.

Trial Judge.

This claim was never argued below and is barred. This judge was aware of the *Tedder* standard and acted in accordance with it. Any error is harmless.

Florida Judicial System.

This claim was never argued below and is procedurally barred. The notion that justice should be suspended for Wuornos until there is parity in the election of judges is ludicrous in any event. She has no entitlement to any particular judge. Society is hardly benefitted when a condemned murderer is utilized as a vehicle for social change.

Appellate Judge.

The specific complaints now raised were not argued below and are barred. Aggravating factors were appropriately applied to Wuornos, despite any evolving case law. Appellate reweighing is not required. *See, Espinosa v. Florida,* 112 S.Ct. 2926 (1992). A harmless error analysis is sufficient to cure errors. Reweighing is also unnecessary where this court undertakes a proportionality analysis.

Procedural Technicalities.

The practice of procedurally defaulting claims not properly raised is authorized by the United States Supreme Court. *See, Wainwright v. Sykes,* 433 U.S. 72 (1977). The purpose is readily apparent in this boilerplate claim raised by appellant. Not even this issue was preserved below.

Tedder.

This issue is procedurally barred. *Tedder* has been consistently applied. Its standard was applied by the judge in this case.

Other Problems with the Statute.

The remaining issues are not properly preserved. In any event, they are either without merit or have been previously rejected.

Appellee would suggest that these claims are not raised in good faith. The practice of raising unpreserved claims under one boilerplate point and not citing to where it was raised or rejected is vexatious and unnecessarily time consuming for the answering party. Appellee requests that this point be stricken.

CONCLUSION

Based on the foregoing arguments and authorities, appellee requests this court affirm the judgment and sentence of the trial court in all respects.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished by Delivery to Christopher S. Quarles, Assistant Public Defender, 112-A Orange Avenue, Daytona Beach, Florida 32114, this 1st day of December, 1993.

Margene A. Roper
Of Counsel