- IN THE SUPREME COURT OF FLORIDA

MARSHALL LEE GORE,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

CASE NO. 86,249

ON APPEAL FROM THE CIRCUIT COURT
OF THE ELEVENTH JUDICIAL CIRCUIT,
IN AND FOR DADE COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE

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STATEMENT OF THE CASE AND FACTS

Officer Norman Shipes found a woman's body beside the road while on patrol in rural Dade County on March 16, 1988. (T2 397-400).[1] The medical examiner found a belt wrapped around the body's neck (T3 410) and a white cloth around the left ankle. (T3 411). The body was nude. (T3 412). There were two stab wounds to the chest (T3 412-13) and abrasions on the neck under the belt. (T3 419). The victim was alive when strangled (T3 422), and the cause of death was stab wounds associated with mechanical strangulation. (T3 426). The victim was identified as Robyn Novick.

In the early hours of March 12, 1988, Coral Gables Patrolman James Avery heard the sounds of a car wreck. (T3 513). He followed gouge marks and leaked fluid on the road (T3 514) and found a wrecked yellow Corvette with license tags reading "Robyn." (T3 515). Inside the car Avery found a gold cigarette case with the victim's initials along with her driver's license and several credit cards. (T3 517). Another officer also searched the car and found a power of attorney executed by Marshall Gore. (T3 527).

The state indicted Gore for the first-degree murder and armed robbery of Robyn Novick on March 21, 1990. (R1 1-2). Gore's trial

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[1] "T2 397-400" refers to pages 397 through 400 of volume 2 of the transcripts in this case. There are seven volumes of transcripts, numbered 1 through 7. There are also two volumes of record, numbered 1 and 2. References to these volumes will be "R" followed by volume and page numbers. The three volumes of supplemental record are numbered I, II, and III. They will be referred to as "SR" followed by volume and page numbers.

ran from May 3, 1995 (T2 218) through May 11, 1995. (T7 1259). The jury convicted Gore as charged. (R2 265; T7 1259). The penalty phase was held on May 5-6, 1995. (T7 1265 et seq.). The jury unanimously recommended that Gore be sentenced to death. (T7 1386). The trial court agreed with that recommendation and sentenced Gore to death for the first-degree murder conviction and to life imprisonment for the armed robbery conviction on June 30, 1995. (T7 1400-01). The court found that two aggravators had been established, i.e., prior conviction of violent felonies and felony murder (robbery)/pecuniary gain. (R2 332-35). After considering the proposed mitigators, the court found that none had been established. (T2 336-38).

The state presented the following evidence at trial: Linda Williams testified that she saw the victim at a tavern about 9:00 p.m. on March 11, 1988; that, when the victim left, she got into the driver's side of a yellow Corvette with "Robyn" on the tag; and that a white male resembling Gore was in the passenger's seat. (T3 437-44).

David Restrepo testified that Gore awakened him in the early hours of March 12, 1988; that Gore was driving a yellow Corvette with "Robyn" on the tag; that they drove to a strip club where he waited in the car while Gore went into the club; that Gore told him he wanted to be called "Robyn" from then on and that he had borrowed the car from a girlfriend; that Gore wrecked the Corvette;

and that, while they were running away from the wrecked car, Gore told him that it was stolen. (T3 452-63).

Jessie Casanova testified that Gore moved into her home in February 1988; that he drove a black Mustang at that time, but wrecked it in February; that her mother asked Gore to leave in March 1988; that, when Gore left in a taxicab on March 11, 1988, she lent him $100; that Gore came back about 2:00 a.m. on March 12, 1988, driving a light-colored Corvette; that Gore returned the following afternoon by taxicab and said the Corvette belonged to a friend; and that Gore gave her keys to a Corvette. (T3 485-93).

Mark Joy testified that he worked at a strip club called the Organ Grinder and that Gore showed up at the club early on March 12, 1988, driving a yellow car with “Robyn” on the tag. (T3 499-501).

Frank McKee testified that Gore can to his home between 11:00 p.m. and midnight on March 13, 1988; that Gore told him that the police were looking for him; that he had been driving a Corvette and wrecked it; and that Restrepo had been with him in that car. (T3 531-33).

Among other things Mike Decora of the Metro-Dade Police Department testified that Jessie Casanova gave him a key that fit the victim’s Corvette (T3 545-46) and that, when he showed Linda Williams a photographic lineup, she said that Gore’s photograph showed the same features as the man she saw with the victim on

March 11, but that she could not be positive because the hair and mustache were different. (T3 548-51).

David Simmons of the Metro-Dade Police Department testified that he and Officer Parr interviewed Gore on March 24, 1988 (T4 711-12) and that Gore denied ever driving a yellow Corvette or knowing the victim. (T4 738-39). Gore asked to see a photograph of the victim (T4 739), but said: "Just make sure it's not a gory one, my stomach can't take it." (T4 741). To that point, no one had said that the victim was dead. (T4 741). When given the photograph, Gore covered his eyes with his hand and turned away, and then said he did not recognize the victim. (T4 742). The officers then told Gore he was a suspect in the victim's murder and that a paper with his name on it had been found in her car. (T4 744). Gore then stated: "If I did this, I deserve the death penalty." (T4 745).

After a pretrial hearing (SR III 136 et seq.), the court ruled that the state could introduce evidence of similar crimes committed by Gore. The state introduced evidence that, in late January 1988, Gore killed a young woman, left her nude body in a rural area in north Florida, and stole her car and personal property. See Gore v. State, 599 So.2d 978 (Fla.), cert. denied, 506 U.S. 1003 (1992). The state also introduced evidence that, on March 14, 1988, Gore raped, beat, choked, and stabbed a young woman, after which he stole her car and personal property. See Gore v. State, 573 So.2d 87 (Fla. 3d DCA), review denied, 583 So.2d 1035 (Fla. 1991). The

second victim, Tina Corolis, survived and testified against Gore in this trial. (T4 624 et seq.).

SUMMARY OF ARGUMENT

ISSUE I.

The trial court properly admitted evidence of similar crimes Gore committed on two of his other victims.

ISSUE II.

The state presented competent substantial evidence to support Gore's conviction of first-degree murder.

ISSUE III.

Gore's robbery conviction is supported by competent substantial evidence.

ISSUE IV.

The prosecutor's conduct during cross-examination and argument did not deprive Gore of a fair trial.

ISSUE V.

The trial court did not err when it allowed the state to introduce photographs of one of Gore's other victims.

ISSUE VI.

The trial court correctly refused to admit certain items submitted by Gore because Gore violated his duty of reciprocal discovery.

ISSUE VII.

The record supports finding the felony murder (robbery)/pecuniary gain aggravator. Gore's death sentence is proportionately warranted and should be affirmed.

ISSUE VIII.

Gore has demonstrated no judicial vindictiveness, and the trial court did not err in imposing a death sentence after Gore rejected the state's plea offer.

ARGUMENT

ISSUE I

WHETHER THE TRIAL COURT PROPERLY ADMITTED SIMILAR FACT EVIDENCE OF OTHER CRIMES COMMITTED BY GORE.

Gore argues that the trial court erred by allowing the state to present evidence that Gore had been convicted of committing similar crimes on two of his other victims. There is no merit to this claim.

The state filed written notice that it would rely on evidence that Gore committed crimes similar to those in this case against Tina Corolis (R1 44) and Susan Roark. (R1 59). The trial court held a hearing on the admissibility of this evidence on March 10, 1995. (SR III 136 et seq.). The prosecutor set out the facts of the Corolis and Roark cases, noting the similarities to each other and to the instant case. (SR III 139-44). Defense counsel pointed out the dissimilarities among the three criminal episodes. (SR III 145-52). After hearing argument, the trial judge stated that he was "satisfied that the evidence presented by the proffer of the State is similar enough in nature that it meets the test for admission in" Gore's trial. (SR III 154). The court noted "at least one of the victim's was raped" as a primary dissimilarity. (SR III 154). After defense counsel mentioned that, besides being raped, Corolis was the only victim whose child was kidnapped (SR III 155), the court stated that

> the court is going to allow the State to present evidence, if they can, of rape involving Tina as part of the similar fact evidence. However, it exclude any reference to the fact that the Defendant travels after the taking of the child and left here. That clearly would be prejudicial and outweighs any probative value.

(SR III 156).

At trial the state presented eleven witnesses[2] who testified about the facts of the murder of Robyn Novick. Four witnesses then testified about Susan Roark. Michelle Hammons identified Gore as the person who came to a party with Roark on January 30, 1988 and testified that Roark had a black Mustang and that she never saw Roark again after Roark and Gore left the party together. (T3 561-63). Ken Griffin, a Miami police officer, testified that he found a black Mustang with Tennessee license tags abandoned after it had been involved in an accident. (T3 567-68). William Maples, a forensic anthropologist, testified that he received a body from Lake City on April 7, 1988; that he identified the body as Roark's; that the body was nude when found; that the cause of death was homicide; and that, looking at the damage done to the body, it was likely that there had been one or more penetrating wounds to the left side of the chest. (T3 577-83). The trial court gave the

[2] Shipes (T2 396); Mittleman (T3 403); Williams (T3 436); Restrepo (T3 452); Casanova (T3 482); Toledo (T3 495); Joy (T3 499); Avery (T3 511); Robkin (T3 523); McKee (T3 530); and Decora (T3 536).

jury the so-called Williams[3] rule instruction before each of these witnesses testified. (T3 559, 566, 575). Neal Nydham of the Columbia County Sheriff's Office testified that he was the lead investigator on the Roark homicide (T4 606) and that he obtained a ticket written by the Florida Highway Patrol on Roark's black Mustang. (T4 614).[4] The defense cross-examined each of these witnesses. (T3 565, 569, 587, T4 615).

Tina Corolis, Gore's surviving victim, then testified.[5] Corolis testified that Gore called her for a ride the evening of March 14, 1988 and told her that his Corvette had broken down. (T4 625). She took her two-year-old son and picked Gore up in Ft. Lauderdale. (T4 626). After driving around looking for Gore's friend's house, Gore pulled a knife on her and drove off with Corolis unable to see where they were going. (T4 628-33). When he stopped the car, Gore raped her at knife point, then pulled her out of the car, hit her in the face with a rock, and choked her. (T4 633-35). When she regained consciousness, she was naked, and Gore her car, and her son were gone. (T4 635-36). Her jewelry was also missing (T4 640), and, when she awoke again in a hospital, she discovered she had been stabbed. (T4 643). Defense counsel cross-

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[3] Williams v. State, 110 So.2d 654 (Fla.), cert. denied, 361 U.S. 847 (1959).

[4] The defense did not ask that the Williams rule instruction be give regarding Nydham's testimony.

[5] At defense counsel's request the court gave the Williams rule instruction regarding Corolis' testimony. (T4 631).

examined Corolis extensively (T4 647-60) and asked her several questions about who was her child's father. (T4 647-48).

After Corolis, the state's last two witnesses, Louis Pasaro and David Simmons, both from the Metro-Dade Police Department, testified. (T4 664, 710). Pasaro testified that Novick's body was found four to five blocks from the homes that Corolis managed to reach (T4 667); that Casanova gave him a Mustang key and a Corvette key that Gore gave to her (T4 668-69); that the Ford key fit Roark's Mustang (T4 675);[6] and that he found some of Corolis' jewelry at a shop where Gore pawned it on March 15, 1988. (T4 681-83).

Simmons testified that he and Officer Parr questioned Gore on March 24, 1988, when FBI agents returned Gore to Miami. (T4 711-12). Gore denied driving a black Mustang with Tennessee tags[7] (T4 728), denied driving a red Corolla[8] (T4 731-32), and denied driving a yellow Corvette.[9] (T4 738). Gore also denied knowing Roark (T4 729), Corolis (T4 730), and Novick. (T4 739-42).

This Court has long held that "[s]imilar fact evidence is generally admissible, even though it reveals the commission of another crime, as long as the evidence is relevant to a material

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[6] Office Decora had testified previously that the Corvette key Casanova gave the police fit Novick's Corvette. (T3 545-46).

[7] Roark's car.

[8] Corolis' car.

[9] Novick's car.

fact in issue and is not admitted solely to show bad character or criminal propensity." Gore v. State, 599 So.2d 978, 983 (Fla.), cert. denied, 506 U.S. 1003 (1992) (citing Williams v. State, 110 So.2d 654 (Fla.), cert. denied, 361 U.S. 847 (1959)). In Gore this Court found "that the Corolis crime does have the required pervasive similarities" with the Roark homicide. Gore, 599 So.2d at 983. The same is true of the Novick homicide. All three criminal incidents have striking similarities: All three women were small -- 5 feet three inches tall or less, 100 pounds or less; Gore did not have his own automobile; he was with each victim for at least several hours before he attacked each one; he used or threatened to use binding on each victim; each attack had at least a pecuniary motive; each victim suffered stab wounds and trauma to the neck; each victim was transported in her own car to a rural area and dumped; Gore stole each victim's car and personal property; Gore told others that each car was a gift or loan from a girlfriend or relative. Cf, Wuornos v. State, 644 So.2d 1000 (Fla. 1994), cert. denied, 514 U.S. 1069 (1995); Schwab v. State, 636 So.2d 3 (Fla.), cert. denied, 513 U.S. 950 (1994); Duckett v. State, 568 So.2d 891 (Fla. 1990); Chandler v. State, 442 So.2d 171 (Fla. 1983); Randolph v. State, 463 So.2d 186 (Fla. 1984), cert. denied, 473 U.S. 907 (1985).

"This Court has never required the collateral crime to be absolutely identical to the crime charged." Gore, 599 So.2d at 984. The dissimilarities among the three crimes are more "a result

of differences in the opportunities with which Gore was presented, rather than differences in modus operandi." Id. When considered collectively the common points of these three criminal episodes are sufficiently unique to identify Gore as Novick's killer.[10] The trial court, therefore, did not err in allowing the state to introduce evidence of the crimes Gore committed against Roark and Corolis.

There is also no merit to Gore's claim that the similar fact evidence impermissibly became a feature of his trial. The state introduced only that evidence showing the unique similarities between the three crimes to prove Gore's identity as the perpetrator of each. That there are so many similarities, with the consequent need to present evidence to prove them, is due to the manner and method in which Gore committed these crimes. This case is a far cry from and factually distinguishable from the cases Gore relies on in his argument.[11] (Initial brief at 34-40).

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[10] Gore's reliance on Drake v. State, 400 So.2d 1217 (Fla. 1981), is misplaced. Unlike the instant case there were too few similarities in the crimes in Drake's case to establish his identity as the killer.

[11] In Long v. State, 689 So.2d 1055 (Fla. 1997), this Court reversed because, under the terms of Long's plea agreement, his prior convictions could not be used in subsequent proceedings. See also Long v. State, 610 So.2d 1276 (Fla. 1992). Henry v. State, 574 So.2d 73 (Fla. 1991), was reversed because the state presented excessive evidence, including a photograph, about a child Henry also killed. Excessive evidence of Sexton's mistreatment of his children prompted the reversal in Sexton v. State, 697 So.2d 833 (Fla. 1997). In Stevenson v. State, 695 So.2d 687 (Fla. 1997), this Court reversed because evidence of Stevenson's attempted murder of a police officer, including the

Any prejudice that Gore may have suffered regarding his treatment of Corolis' child was caused by the defense. During cross-examination of Corolis, counsel asked if Gore were the child's father, which Corolis denied. (T4 647). On direct examination Gore testified that he was the child's father. (T6 1134). The prosecutor's cross-examination about the child was proper. Geralds v. State, 674 So.2d 96 (Fla.), cert. denied, 117 S.Ct. 230 (1996); Coco v. State, 62 So.2d 892 (Fla. 1953).

Gore has failed to demonstrate any reversible error in the state's presentation of similar fact evidence. Therefore, this issue should be denied.

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introduction of twelve photographs, overwhelmed the case. The district court reversed in Turtle v. State, 600 So.2d 1214 (Fla. 1st DCA 1992), because more than half of the state's evidence pertained to sexual batteries on two children, crimes Turtle was not being tried for. In State v. Zenobia, 614 So.2d 1139 (Fla. 4th DCA 1993), the court denied common law certiorari to review the trial court's pretrial exclusion of evidence and commented in passing that the state's notice of collateral crime evidence was insufficient.

ISSUE II

WHETHER THE STATE PRODUCED SUFFICIENT EVIDENCE TO SUPPORT GORE'S CONVICTION OF FIRST-DEGREE MURDER.

Gore argues that the state's evidence did not prove his identity beyond a reasonable doubt as Novick's killer. Therefore, according to Gore, the evidence is insufficient to support his conviction of first-degree murder. There is no merit to this claim.

After the state rested its case (T4 774), Gore moved for a judgment of acquittal, arguing that the state's evidence did not show that he killed the victim. (T4 775-77). The trial court denied the motion. (T4 777).

As this Court has long recognized, an accused "'is presumed innocent until proved guilty beyond and to the exclusion of a reasonable doubt.'" Cox v. State, 555 So.2d 353, 354 (Fla. 1989) (quoting Davis v. State, 90 So.2d 629, 631 (Fla. 1956)). If the state uses circumstantial evidence to support its charges, "'such evidence must not only be consistent with the defendant's guilt, but it must also be inconsistent with any reasonable hypothesis of innocence.'" Cox, 555 So.2d at 354. Moreover, "the concern on appeal must be whether, after all conflicts in the evidence and all reasonable inferences therefrom have been resolved in favor of the verdict on appeal, there is substantial, competent evidence to support the verdict and judgment." Tibbs v. State, 397 So.2d 1120, 1123 (Fla. 1981), aff'd, 457 U.S. 31 (1982) (footnote omitted);

Spinkellink v. State, 313 So.2d 666 (Fla. 1975), cert. denied, 428 U.S. 911 (1976). Judgments of conviction come to reviewing courts with a presumption of correctness. Orme v. State, 677 So.2d 258 (Fla. 1996), cert. denied, 117 S.Ct. 742 (1997); Terry v. State, 668 So.2d 954 (Fla. 1996); Spinkellink. Therefore, any conflicts in the evidence must be resolved in the state's favor. Holton v. State, 573 So.2d 284 (Fla. 1990), cert. denied, 500 U.S. 960 (1991); Cochran v. State, 547 So.2d 928 (Fla. 1989); Williams v. State, 437 So.2d 133 (Fla. 1983), cert. denied, 466 U.S. 909 (1984); Tibbs.

The state produced competent substantial evidence that proved that Gore and no one else killed Novick. The medical examiner testified that the cause of death was stab wounds associated with mechanical asphyxia (T3 426) and that Novick was the victim of a homicide. (T3 427). A witness placed Novick at the Redlands Tavern around 9:00 p.m. on March 11, 1988, and saw Novick get into her yellow Corvette; a white man resembling Gore was in the car's passenger seat. (T3 437-44). David Restrepo testified that Gore woke him in the early hours of March 12 and that they drove around in the victim's car until Gore wrecked it, after which Gore told Restrepo that the car was stolen. (T3 453-62). Police officers found items belonging to both Novick and Gore in the wrecked automobile. (T3 517; 527). As explained in issue I, supra, the state also presented similar fact evidence that positively identified Gore as Novick's murderer.

Gore testified that he did not kill the victim. (T5 998; see also T7 1346). As this Court has acknowledged many times, however, the finder of fact can reject a defendant's self-serving statements. See Wuornos v. State, 644 So.2d 1000, 1008 (Fla. 1994), cert. denied, 514 U.S. 1069 (1995); Walls v. State, 641 So.2d 381, 387 (Fla. 1994), cert. denied, 513 U.S. 1130 (1995); Pardo v. State, 563 So.2d 77, 80 (Fla. 1990), cert. denied, 500 U.S. 928 (1991); Bertolotti v. State, 534 So.2d 386, 387 (Fla. 1988); Burch v. State, 478 So.2d 1050, 1051 (Fla. 1985); Cirak v. State, 201 So.2d 706, 709-10 (Fla. 1967). The jury may also reject a defendant's version of the facts when the state produces conflicting evidence. Finney v. State, 660 So.2d 674 (Fla. 1995), cert. denied, 116 S.Ct. 823 (1996); Pietri v. State, 644 So.2d 1347 (Fla. 1994), cert. denied,, 115 S.Ct. 2588 (1995); Taylor v. State, 583 So.2d 323 (Fla. 1991). The state established to a "moral certainty" that Gore killed this victim. Richardson v. State, 604 So.2d 1107, 1109 (Fla. 1992). Gore presented no reasonable hypothesis of innocence, and his conviction of first-degree murder should be affirmed.[12]

There is also no merit to Gore's contention that the evidence did not establish a premeditated murder. (Initial brief at 48-54).

[12] The cases Gore relies on (initial brief at 42-45, 48) are factually distinguishable because of their lack of evidence identifying the killer.

Regarding the premeditation necessary for conviction of first-degree murder, this Court stated that premeditation

> is a fully-formed conscious purpose to kill, which exists in the mind of the perpetrator for a sufficient length of time to permit of reflection, and in pursuance of which an act of killing ensues. Premeditation does not have to be contemplated for any particular period of time before the act, and may occur a moment before the act. Evidence from which premeditation may be inferred includes such matters as the nature of the weapon used, the presence or absence of adequate provocation, previous difficulties between the parties, the manner in which the homicide was committed and the nature and manner of the wounds inflicted. It must exist for such time before the homicide as will enable the accused to be conscious of the nature of the deed he is about to commit and the probable result to flow from it insofar as the life of the victim is concerned.

Sireci v. State, 399 So.2d 964, 967 (Fla. 1981), cert. denied, 456 U.S. 984 (1982) (citations omitted); Spencer v. State, 645 So.2d 377 (Fla. 1994). The state's evidence met these standards and demonstrated premeditation. Gore both stabbed and strangled the victim. Using two weapons -- a knife to stab and the victim's belt to strangle -- shows that Gore intended that the victim die. His past history with Roark, who suffered similar injuries and died from them, shows that he knew the nature of his actions and the consequences that would flow from them.[13] This murder was fully premeditated and should be affirmed as such.

[13] Gore attacked Corolis, the victim who survived, after he killed Novick.

The cases that Gore relies on are factually distinguishable and should not control this case. In Smith v. State, 568 So.2d 965 (Fla. 1st DCA 1990), the district court found insufficient evidence of premeditation because the killing may have been done in the heat of passion. Gore has never made such claim in this case, and heat of passion is not a reasonable hypothesis here. This Court relied on, among other things, Kirkland's low intelligence and lack of a preconceived plan to reduce his first-degree murder conviction to second degree. Kirkland v. State, 684 So.2d 732 (Fla. 1996). Here on the other hand, Gore "possesses above average intelligence," Gore, 599 So.2d at 987, and had already successfully killed a victim, stolen her car, and escaped detection[14] -- all evidence of a preconceived plan and intent to kill. In Hoefert v. State, 617 So.2d 1046, 1048 (Fla. 1993), the state could not "prove the manner in which the homicide was committed and the nature and manner of any wounds inflicted." Such was not the case here. The cause of death, which was a homicide; was stab wounds and strangulation. The evidence is sufficient for this Court to affirm Gore's conviction of first-degree murder on the basis of premeditation. Sliney v. State, 699 So.2d 662 (Fla. 1997); Finney.

Even if this Court were to find insufficient evidence of premeditation, Gore's conviction of first-degree murder should be affirmed. The state charged Gore with both premeditated and felony

[14] Roark's body was not discovered until April 1988, well after Gore killed Novick on March 11.

murder. (R1 1). The jury convicted Gore of armed robbery, as charged, as well as first-degree murder. (R2 265). As set out in issue III, infra, the evidence was sufficient to support that robbery conviction and, in turn, supports Gore's first-degree murder conviction under a felony-murder theory. Mungin v. State, 689 So.2d 1026 (Fla. 1995).

Gore has failed to demonstrate that his conviction of first-degree murder is not supported by the evidence. This issue, therefore, should be denied, and Gore's first-degree murder conviction should be affirmed.

ISSUE III

WHETHER THE EVIDENCE IS SUFFICIENT TO SUPPORT GORE'S ROBBERY CONVICTION.

Gore argues that the evidence was insufficient to support his conviction of armed robbery. This claim has no merit.

After the state rested, Gore moved for a judgment of acquittal (T4 774-77), and the trial court denied that motion. (T4 777). The defense renewed its motion for judgment of acquittal after closing its case, and the court again denied the motion. (T6 1165).

Moving for a judgment of acquittal "admits not only the facts stated in the evidence adduced, but also admits every conclusion favorable to the adverse party that a jury might fairly and reasonably infer from the evidence." Lynch v. State, 293 So.2d 44, 45 (Fla. 1974); Orme v. State, 677 So.2d 258 (Fla. 1996), cert. denied, 117 S.Ct. 742 (1997); Taylor v. State, 583 So.2d 323 (Fla. 1991). A judgment of conviction comes to a reviewing court with a presumption of correctness. Terry v. State, 668 So.2d 954 (Fla. 1996). Any conflicts in the evidence must be resolved in the state's favor because the state "is entitled to a view of any conflicting evidence in the light most favorable to the jury's verdict." Cochran v. State, 547 So.2d 928, 930 (Fla. 1989); Holton v. State, 573 So.2d 283 (Fla. 1990), cert. denied, 500 U.S. 960 (1991); Williams v. State, 437 So.2d 133 (Fla. 1983), cert. denied,

466 U.S. 909 (1984); Tibbs v. State, 397 So.2d 1120 (Fla. 1981), aff'd, 457 U.S. 31 (1982).

The state charged that Gore "did unlawfully by force, violence, assault or putting in fear, take certain property, to wit: Jewelry and/or credit cards and/or keys and/or an automobile" from the victim in violation of section 812.13, Florida Statutes. (R1 2). The state produced competent substantial evidence at trial to support this charge. A Coral Gables Police Department officer testified that, when he found the victim's car after Gore wrecked it, the victim's gold cigarette case and her credit cards were in the car. (T3 515, 517). Jessie Casanova testified that Gore was driving a light colored Corvette when he awakened her about 2:00 a.m. on March 12, 1988 (T3 490) and that, on the following day, he gave her a Corvette key. (T3 493). Another police officer testified that the key Gore gave to Casanova was to the victim's Corvette. (T3 545). David Restrepo testified that, as they were leaving the Corvette after Gore wrecked it, Gore told him that the car was stolen. (T3 462). The victim died a violent death from stab wounds and manual asphyxiation. (T3 426).

The evidence presented by the state is sufficient to support Gore's robbery conviction. Sliney v. State, 699 So.2d 662 (Fla. 1997); Finney v. State, 660 So.2d 674 (Fla. 1995), cert. denied, 116 S.Ct. 823 (1996); Jones v. State, 652 So.2d 346 (Fla.), cert.

denied, 116 S.Ct. 202 (1995). There is no merit to Gore's argument to the contrary.[15] This issue, therefore, should be denied.

[15] The cases cited by Gore (initial brief at 57) either do not support his argument or are factually distinguishable. Allen v. State, 690 So.2d 1332 (Fla. 2d DCA 1997) (evidence supported grand theft conviction); Butts v. State, 620 So.2d 1071 (Fla. 2d DCA 1993) (evidence did not support armed robbery conviction); McConnehead v. State, 515 So.2d 1046 (Fla. 4th DCA 1987) (attempted robbery conviction not supported by the record); Gomez v. State, 496 So.2d 982 (Fla. 3d DCA 1986) (evidence supported armed robbery conviction); Fowler v. State, 492 So.2d 1344 (Fla. 1st DCA 1986) (evidence did not support grand theft conviction).

ISSUE IV

WHETHER THE PROSECUTOR COMMITTED REVERSIBLE ERROR.

Gore claims that the prosecutor committed reversible error during his guilt-phase cross-examination of Gore and during his guilt-phase closing argument. If any error occurred, it was harmless, and this issue should be denied.

A. Cross-Examination

Cross-examination is allowed "(1) to weaken, test, or demonstrate the impossibility of the testimony of the witness on direct examination and, (2) to impeach the credibility of the witness, which may involve, among other things, showing his possible interest in the outcome of the case." Steinhorst v. State, 412 So.2d 332, 337 (Fla. 1982). To meet these objectives, "'cross-examination is not confined to the identical details testified to in chief, but extends to its entire subject matter, and to all matters that may modify, supplement, contradict, rebut or make clearer the facts testified to in chief.'" Coco v. State, 62 So.2d 892, 895 (Fla. 1953) (quoting 58 Am. Jur. Witnesses, §632 at 352 (1948)); Geralds v. State, 674 So.2d 96 (Fla. 1996), cert. denied, 117 S.Ct. 230 (1997); Roberts v. State, 510 So.2d 885 (Fla. 1987), cert. denied, 485 U.S. 943 (1988). The scope of permissible cross-examination is within the trial court's discretion. Geralds; Bryan v. State, 533 So.2d 744 (Fla. 1988), cert. denied, 490 U.S. 1028 (1989). Under these standards it is obvious that no

reversible error occurred during the prosecutor's cross-examination of Gore.

Gore's first complaint is that the prosecutor violated the trial court's ruling on the scope of the similar crimes evidence, quoting a single question. (Initial brief at 60). When this quotation is put into context, however, it is obvious that the court did not abuse its discretion by overruling the defense objection.

Tina Corolis testified that she took her two-year-old son with her to pick up Gore (T4 626) and that, when she regained consciousness after being raped, beaten, and stabbed, Gore, her son, and her car were gone. (T4 635-36). The defense objected that the questioning appeared to be headed toward the child's kidnapping, a subject ruled inadmissible at the Williams rule hearing. (T4 636). The court disagreed and asked the prosecutor if he had spoken with Corolis about the limits on her testimony. (T4 636). The prosecutor responded affirmatively (T4 637), and the child was not mentioned again during direct examination. Cross-examination, however, started with guestioning over the first four pages about the child's parentage. (T4 647-50). During this questioning, Corolis denied that Gore was the child's father. (T4 647). During his own testimony, Gore claimed to be the father of Corolis' child, but also stated "we have claimed several other people also" to "get more money out of other people." (T6 1134).

The following exchange took place on cross-examination:

Q. Now, let's talk about your son Jimmy for a moment, who you say is your son?

A. Yes. Tina says it too.

Q. By the way, would you tell the Ladies and Gentlemen of the Jury why on the 16th of March of 1988, after leaving Tina on the side of the road, you left two-year-old, who you say is your son, Jimmy, locked in an abandoned house in Georgia, naked in 30 degree weather?

MR. GENOVA: Objection.

THE COURT: Overruled.

A. There were federal agents surrounding my mother's house where he was going.

BY MR. ROSENBERG:

Q. So because of federal agents you were willing to leave your son totally naked in 30 degree weather, locked in an abandoned house in a kitchen cabinet?

A. I took him to the hospital to leave him in a day care at the hospital. The hospital would not accept him because I would not leave identification.

Q. And of course at the time you left him in this abandoned house, you're driving Tina Corolis' red car?

MR. GENOVA: Objection.

THE COURT: Overruled.

MR. GENOVA: I didn't hear the end of his answer.

THE COURT: He's giving run-on answers that never end. I can't control that, but I'm not going to allow him to ramble endlessly and not answer any of the questions. So your objection is overruled.

THE DEFENDANT: I'm answering the questions if I can.

MR. GENOVA: I'm just asking, if I can, that he be allowed to finish.

THE COURT: There is no finish. That's the point.

MR. GENOVA: But if the Prosecutor speaks over him, we're not even going to have a record.

THE COURT: If the Prosecutor doesn't speak over him, we'll be here foreover.

BY MR. ROSENBERG:

Q. Now, when you left Jimmy Corolis in this kitchen cabinet with a cinder block in front of it, totally naked in 30 degree weather, whose car were you driving? Tina's, right?

MR. GENOVA: I don't belive my client testified to that.

THE COURT: Overruled.

BY MR. ROSENBERG:

Q. You were driving Tina's red Corolla, weren't you?

A. Yes.

Q. Now --

A. I saved that child's life, okay. I done what I had to do.

Q. You done what you had to do to Tina; you done what you had to do to Robyn; and you done what you had to do so Susan, right?

A. I done what I did to save that child's life.

(T6 1143-45).

This questioning never really touched on the kidnapping. Instead, it was designed to test Gore's credibility as to how he would treat a child that he claimed to be his. See Geralds.

The above quotation also contains the area where Gore claims that the prosecutor failed to permit him to answer questions. (Initial brief at 62). As the court stated, Gore tended to give run-on answers. (T6 1144). Gore also tended to answer the questions he wanted to answer instead of the questions he was asked. (E.g., T5 945; T6 1027). The prosecutor committed no error in trying to keep Gore on track, and Gore has shown no abuse of discretion in the court's overruling his objection.

Gore also complains that the prosecutor improperly asked him about other possible victims. (Initial brief at 61 (Casanova), 63 (Dominguez)). The full context of these questions is as follows:

> Q. Are you one of those LDs you told us about yesterday? Are you?
>
> A. One second.
>
> MR. GENOVA: Judge, I'm going to object to that big time.
>
> A. What did he say?
>
> BY MR. ROSENBERG:
>
> Q. Are you one of those LDs you testified to the Ladies and Gentlemen about yesterday?
>
> A. Am I an LD?
>
> Q. Yeah. Are you?
>
> MR. GENOVA: What?

A. If I was --

MR. ROSENBERG: I don't know, Judge. Maybe he was.

A. If I was, if I was, if I was, it, it would be just about as easy to prove that I'm not a rapist like you think because I have not -- you have not even put any serological evidence against me.

Q. Let's talk about that for a minute.

A. You have none because you have, you have controverting evidence that --

Q. You wouldn't want to have sex with 13-year-old girls?

THE COURT: Please. This is difficult enought. Please. I understand the rambling nature of the responses, but you can't talk over him and expect her to get both people.

MR. ROSENBERG: I apologize, Judge. I'll wait.

BY MR. ROSENBERG:

Q. It seems to me that being an LD would sort of be consistent with you having sex with 13-year-old girls.

A. That's another crime and that's an objection right there.

MR. GENOVA: Objection.

BY MR. ROSENBERG:

Q. You know Jessie? Didn't you live in the house with her?

A. That's a crime. That's other crime evidence.

THE COURT: Objection is overruled.

BY MR. ROSENBERG:

Q. Let's talk about Jessie Casanova, 13-year-old girl you lived in a house with.

You had sex with her, right?

MR. GENOVA: There's no evidence to that.

THE COURT: Objection overruled.

A. She was being groomed.

BY MR. ROSENBERG:

Q. She was being groomed by you? So part of that job, by you maybe being an LD, is having a little sex with her first, right?

A. If I'm an LD, I can't have sex, can I.

Q. Maybe you didn't. She's only 13. How do you know she even knows what sex is, right? Let's go on.

(T6 1152-54).

BY MR. ROSENBERG:

Q. Did you hear, see Maria Dominguez just prior to the accident you had in the Mustang on February of 1988?

A. I said I'm not going to make any statements whatsoever to you in relation to any other criminal cases, okay.

Q. You don't want to talk about any other cases?

A. I have a right not to answer that and I take it --

MR. GENOVA: Judge, I don't believe it's appropriate to say, by the Prosecutor, to say, you don't want to talk about your other cases.

THE DEFENDANT: He's trying to --

THE COURT: Objection is overruled.

THE DEFENDANT: -- use inflammatory argument to prejudice the Jury against me.

(T6 1158-60).

The questioning about having sex with a thirteen-year-old girl is troubling. In light of Gore's direct testimony that he was a pimp (e.g., T5 929) and that the girl's mother worked as a prostitute for him (T6 1057) and his cross-examination testimony that the girl was being groomed (T6 1154), it would appear that any error was harmless. As to Dominguez, Gore could have simply answered "no" to the first question. Instead, he, not the prosecutor, mentioned other criminal cases. Again, if any error occurred, it was harmless.

Contrary to Gore's allegation (initial brief at 62), the prosecutor did not tease Gore about his name.[16] The prosecutor's asking Gore what he wanted to be called was understandable in light of: the style of this case refers to Gore as "Marshall Lee Gore AKA, Anthony Carlucci, AKA Tony Carlucci;" defense counsel referred to Gore as "Marcel" (e.g., T5 802); Ana Fernandez testified that Gore went by "Marty," "Marshall," "Mars," and "Tony." No reversible error occurred.

The prosecutor did not comment improperly on Gore's occupations. (T6 1146). Besides claiming to be a dancer and cook

[16] The prosecutor's first question on cross-examination was: "Should I call you Marty, Marshall, Marcel, Tony, Toby? What names should we call you today?" (T6 1142).

on cross-examination (T6 1146), Gore testified that he was: a construction worker (T5 929), a pimp (T5 929), a male prostitute (T5 930), and an extortionist. (T6 1138). Gore did not object to the prosecutor's question, and this claim has not been preserved for appeal. In any event, however, the question, if error, was harmless in light of Gore's other testimony.

The alleged racist remark (initial brief at 62) occurred in the following context while the prosecutor questioned Gore about Corolis:

> A. She went -- she went to my attorney, who was given to me by the State. She told her story to that attorney. He gave me his notes of that.
>
> Q. What's his name?
>
> A. Steven Potolsky.
>
> Q. Oh, you mean he was a defense lawyer, not a prosecutor?
>
> A. He was part of your team.
>
> Q. Oh, okay. Everybody is out to get you?
>
> A. That's why I fired him.
>
> Q. The Mafia -- is it the Gambinis or the Gady (phonetic) family? Which one?
>
> A. He was trying to cover Daniel Heller's involvement in this, okay. He was trying to cover all that.
>
> Q. Let's talk about --
>
> A. He was tying to cover the semitic influence.

Q. So it’s sort of semitic influence? Potolsky is what? What’s Mr. Potolsky? Jewish? Is that your claim?

A. Mr. Potolsky is Jewish. He called me an anti-Semitic puke when I was Jewish myself at the time.

Q. Maybe you are. I would imagine --

A. I was Jewish myself at the time, so I couldn’t --

Q. Oh, Gore is a Jewish name? What did you have for Passover, a bunch of Matzo this year?

A. Listen to me. Listen to me.

MR. GENOVA: This is nothing more than badgering.

MR. ROSENBERG: No, it’s not.

MR. GENOVA: It’s like to juveniles.

MR. ROSENBERG: No, Judge. I’m attempting to ask questions and -- you know, what I don’t appreciate is Mr. Genova saying it’s two juveniles. If he had any control over his client, he could answer a simple question of yes or no.

THE COURT: Okay. Ask a question, Mr. Rosenberg.

MR. GENOVA: Judge, I don’t have control over him.

THE DEFENDANT: If he had control over me like you do by taking my evidence and my proof to prove all your witnesses lied, all the prior inconsistent statements and the false evidence you have admitted into this court --

(T6 1156-58). Gore did not make the same objection at trial that he makes now, so this claim has not been preserved. In light of all the testimony, however, any error was harmless.

The prosecutor did not improperly comment on appellant's character (initial brief at 64) by asking about insurance rates. The question came up as follows:

> Q. And let's look at Robyn Novick's Corvette for a moment. When you crashed that car, you also leave that scene, right?
>
> A. Of course.
>
> Q. Now --
>
> A. Do you know what happens to a person's insurance when they get into an accident?
>
> Q. Most likely --
>
> A. My stuff was already costing me 7500 a year.
>
> Q. I didn't realize how good a guy you were. You were concerned about their insurance rates. Is that your testimony?
>
> A. No. I was concerned about my own.

(T6 1160-61). Gore did not object to the complained-about question. It was, however, a fair question in light of Gore's testimony.

Gore also complains that the prosecutor improperly commented on his credibility (initial brief at 62) and expressed his personal animosity toward Gore. (Initial brief at 63). The complained-about statements occurred as follows:

BY MR. ROSENBERG:

Q. During that testimony, do you remember testifying about when you first met Tina Corolis?

A. I remember saying the first time I met her after I left federal prison or something like that, but yeah, that's what I was talking about. And if you look at my face, when you look at my face you'll see I'm angry with my attorney for asking me that question, and I tell him.

Q. You're right. I have a video of it, so we can look at your face and see what the question was.

A. Thank you.

Q. Because of course you knew her in '85?

A. Can we have Tina Corolis' face and how she laughed on the stand before through her testimony in that trial? Can we use that?

Q. Mr. Gore, you can use whatever you want. You've made up every other story.

A. Will you give it to us, please? I've been trying to get it from the federal courts, from you for the past seven or six years.

(T6 1149)

BY MR. ROSENBERG:

Q. I don't think I need to use anything, Mr. Gore.

A. Then why do you keep doing all these things you know are illegal and will cause reversal on this case if I do get convicted? Why would you do that? Just to obtain a conviction and hang my skin on the wall?

Q. Your claim is --

A. You're the only Prosecutor that keeps taking cases on me, you know, the only Prosecutor that keeps taking cases on one particular defendant. Normally your office knocks it around to other attorneys so they can all get a shot if there's more than one case. You've taken out a vendetta on me, okay, and why?

Q. Because I don't like people who kill women. How's that? You want to know why? Because I don't like people preying on women.

A. You want to hide how I got Mr. Heller out of the federal prison.

(T6 1159-60).

BY MR. ROSENBERG:

Q. Let's talk about Robyn Novick's yellow Corvette.

A. Why didn't you give us the evidence for this case for two years?

Why didn't you give us the evidence until one month before that trial when you knew that that trial wasn't going to be going?

Why didn't you give me my phone -- why didn't you release my telephone book?

Why did you rip out the seven pages you ripped out of my phone book?

Q. Why don't you go on for as long as you want?

A. Is there a reason you ripped those pages out?

Q. I don't ever remember ever seeing any of your stuff that you've made up from yesterday for four hours so far.

A. Your testimony isn't good unless you take the stand.

Q. I didn't kill three women, you did. You see, Mr. Gore, you killed women. That's why you're on the stand.

A. Your testimony isn't good unless you take the stand.

Q. I'm asking you questions.

A. I challenge you to take the stand.

Q. I didn't kill three women, you did. You see, Mr. Gore, you killed women. That's why you're on the stand.

A. And you're trying to kill me.

Q. I didn't kill anyone.

A. But you're trying to kill me.

Q. Well, you know what, you're right, I am, because somebody who does what you do deserves to die.

MR. ROSENBERG: I'm done.

THE DEFENDANT: You're done. I figured.

(T6 1161-62). Some of the prosecutor's comments are inartful, and it is unfortunate that he allowed Gore to goad him into making them. They were, however, fair comment when Gore's testimony is considered in its totality. The unobjected-to comments have not been preserved, and Gore has shown no abuse of discretion as to the others. See Bryan. Gore, himself, caused many of the comments and questions that he now complains about. He should not be allowed to profit from his misbehavior.

B. Closing Argument

Closing argument "must not be used in inflame the minds and passions of jurors." Bertolotti v. State, 476 So.2d 130, 134 (Fla. 1988). Rather, the purpose of such argument "is to review the evidence and explicate those inferences which may reasonably be drawn from the evidence." Id. To that end, wide latitude is allowed; counsel may advance all legitimate arguments and draw logical inferences from the evidence. Bonifay v. State, 680 So.2d 413 (Fla. 1996); Breedlove v. State, 413 So.2d 1 (Fla.), cert. denied, 459 U.S. 882 (1983). Furthermore, a prosecutor "is the advocate for the State and has the duty, not only to present evidence in support of the charge, but likewise the duty to advocate with all his talent, vigor and persuasion, the acceptance by the jury of such evidence." Robles v. State, 210 So.2d 441 (Fla. 1968).

Gore's first complained-about comment (initial brief at 64) comes from the following portion of the prosecutor's initial argument:

> You listened to the evidence and you heard it. You must now evaluate all of it.
>
> You see, when I started with you I told you I have the burden of proof and I always have the burden of proff. But you see, now you consider all the evidence presented to you and decide whether I met not just the evidence I presented, but the evidence they presented, you see, because I'll make it really simple for you: If you believe he did not tell you the truth, that he made up a story, that's it, he's guilty of First Degree Murder --
>
> MR. GENOVA: I'm going to object.

> MR. ROSENBERG: -- because his testimony --
>
> THE COURT: Objection is overruled.
>
> MR. GENOVA: He doesn't have to prove his innocence.
>
> THE COURT: Overruled.
>
> MR. ROSENBERG: -- his testimony has nothing to do with proving innocence. His testimony is treated like every other witness in a case. You see, once you take the witness stand you are just like everybody else. And you know what? As a witness you have a responsibility to each and every one of you because, you see, as every person in this case, other than the Defendant, took the stand, what were they required to do for you? They were required to answer questions. They were required to answer cross examination questions of the Defense attorney, all except the Defendant. All except him.

(T6 1171-72). The prosecutor did not mistate the law. Instead, he merely submitted to the jury a conclusion that he argued the jury could draw from what occurred during the proceedings. This argument was not error. Davis v. State, 698 So.2d 1182 (Fla. 1997); Whitney v. State, 132 So.2d 599 (Fla. 1961).

The second part of this complained-about argument (initial brief at 64) comes from the prosecutor's final closing argument:

> You know, instead of standing up here for the next however much time I have left, 25 minutes, and just talking about ridiculous statements which I don't want to anymore, okay, we've all listened to everything, I can't, I can't give you anything else that you haven't heard. I can't make this anymore simpler than it is, because that's what it is. It's simple and it comes down to this in simplicity: If you believe his story, he's not guilty. If you believe he's lying to you,

> he's guilty. It's that simple. And each one --
>
> MR. GENOVA: Objection, Judge.
>
> MR. ROSENBERG: -- that I spoke to --
>
> THE COURT: Overruled.
>
> MR. ROSENBERG: Each one when I spoke to you during voir dire said one thing to me, that you would use your common sense. And I'm not making anything up. Use it. Shouldn't take long. Shouldn't be hard. You all learned one thing: Don't let a scam artist scam us.

(T7 1236). During his closing argument, defense counsel stated:

> Mark Joy was called and he confirmed that my client was at the Organ Grinder. He corroborates part of the Defendant's testimony.
>
> The Defendant, this is one of the people that he threw the gauntlet down to Gary [Rosenberg] and said hey, you call Mark Joy, go ahead, call him back in rebuttal, he'll tell you about that white Mercedes and the three guys. But did they? Did they call any rebuttal witness?

(T7 1206-7). The prosecutor's complained-about comment occurred after he responded to the above-quoted defense argument. (T7 1235-36). The comment was, therefore, fair reply, not reversible error. Ferguson v. State, 417 So.2d 639 (Fla. 1982); Henderson v. State, 94 Fla. 318, 113 So. 689 (1927); Brown v. State, 420 So.2d 916 (Fla. 1st DCA 1982); Lynn v. State, 395 So.2d 621 (Fla. 1st DCA), review denied, 402 So.2d 611 (Fla. 1981); Pitts v. State, 307 So.2d 473 (Fla. 1st DCA), cert. dismissed, 423 U.S. 918 (1975); Broge v.

State, 288 So.2d 280 (Fla. 4th DCA), cert. denied, 295 So.2d 302 (Fla.), cert. denied, 419 U.S. 845 (1974).

As his second area of complaints about the prosecutor's argument, Gore argues that the prosecutor improperly commented on his demeanor. (Initial brief at 65). In the first instance the proescuor interrupted his argument and asked: "Am I boring you, Mr. Gore?" (T6 1175). Commenting on a defendant's demeanor when he or she is not on the stand is improper. Although counsel objected to this question, he did not request a curative instruction, which is required to preserve the issue. Rodriguez v. State, 609 So.2d 493 (Fla. 1992), cert. denied, 510 U.S. 830 (1993). Even if preserved, however, any error was harmless. See Pope v. Wainwright, 496 So.2d 798 (Fla. 1986).

The second complained-about instance arose as follows:

> MR. ROSENBERG: So again whose picture isn't up there? The Defendant's.
>
> THE DEFENDANT: Correct.
>
> MR. ROSENBERG: Now -- I'm sorry? Maybe he wants to testify now, Judge. I'm not sure.
>
> THE COURT: What happened?
>
> MR. ROSENBERG: He sort of wants to answer "that's right" to what I'm saying.
>
> THE DEFENDANT: No, I didn't.
>
> THE COURT: Please refrain from responding to Counsel.

(T6 1182). Gore did not object, so this claim has not been preserved for review. Gudinas v. State, 693 So.2d 953, 959 (Fla.

1997); Kilgore v. State, 688 So.2d 895, 898 (Fla. 1996); Allen v. State, 662 So.2d 323, 331 (Fla. 1995), cert. denied, 116 S.Ct. 1326 (1996); Rose v. State, 461 So.2d 84, 86 (Fla. 1984), cert. denied, 471 U.S. 1143 (1985).

Gore next complains that the prosecutor ignored the court's pretrial ruling. (Initial brief at 65). The comment in total is:

> Now, you have to remember here -- and I can really be quiet, because I'll tell you what, if you believe his story, there's nothing I can say to you because that's what you have to believe through this entire thing. You have to believe that he has a reasonable hypotheses for everything: They're escorts. They work for me. I give them to other men. Other men kill them. I just use their cars, you know. Well, when did you meet her, in '85? No, it's really '87. And when you took her car, why did you take her son? Well, he was really my son and I was saving him and that's why I left him locked up in a kitchen cabinet, because I was helping him.
>
> MR. GENOVA: Objection.
>
> THE COURT: Overruled.

(T7 1229-30). The state does not concede that the objection was specific enough to preserve this complaint for review. Even if preserved, however, this statement was a fair comment on the evidence.

As his last alleged error, Gore claims that the prosecutor improperly expressed his personal opinion. (Initial brief at 66). Gore did not object to the complained-about comment (T7 1228), however, and the claim is, therefore, procedurally barred. Gudinas; Kilgore; Allen; Rose.

Gore has failed to demonstrate reversible error,[17] and this issue should be denied.

[17] The cases that Gore relies on (initial brief at 64-66) are factually distinguishable and should not control this case.

ISSUE V

WHETHER THE TRIAL COURT PROPERLY ALLOWED CERTAIN PHOTOGRAPHS INTO EVIDENCE.

Gore complains that the trial court erred in allowing the state to introduce four photographs of Tina Corolis that showed the wounds inflicted on her by Gore because they were unduly prejudicial. There is no merit to this claim.

During Corolis' testimony, the state sought to introduce a composite exhibit of four photographs (T4 641) showing the slash marks on her throat, the damage done to her face where the rock smashed her, and the stab wound to her shoulder. (T2 642).[18] Defense counsel objected to the photographs because "they're repetitive and they're gruesome. It's not to assist anybody." (T4 641). The trial court overruled the objection. (T4 642).

The medical examiner testified that Novick's cause of death was stab wounds associated with mechanical asphyxia. (T3 426). Corolis testified that, after being hit in the head with a rock and choked, she woke up in the hospital with stab wounds. (T4 643).

The test for the admissibility of photographs is relevancy, not necessity. Pope v. State, 679 So.2d 710 (Fla. 1996); Bush v. State, 461 So.2d 936 (Fla. 1984). The state relied on similar fact evidence from Gore's attack on Corolis and murder of Roark to establish his identity as Novick's murderer. See issue I, supra.

[18] The photographs are in the record as state's exhibit 23 and are located at R2 202, 204, 206, and 208.

The photographs of Corolis were necessary as well as relevant. Corolis testified seven years after Gore attacked her, and her wounds had healed. The photographs were the only way to demonstrate her injuries to the jury. The cases that Gore relies on are factually distinguishable,[19] and Gore has not shown that these photographs were unduly prejudicial.

Moreover, as this Court has recognized, "[t]he admissibility of photos is within the trial court's discretion and will not be disturbed on appeal absent a showing of clear error." Lockhart v. State, 655 So.2d 69, 73 (Fla.), cert. denied, 116 S.Ct. 250 (1995); Preston v. State, 607 So.2d 404 (Fla. 1992), cert. denied, 507 U.S. 999 (1993); Jackson v. State, 545 So.2d 260 (Fla. 1989); Wilson v. State, 436 So.2d 908 (Fla. 1983). Gore has demonstrated no abuse of the trial court's discretion regarding these photographs. This issue, therefore, has no merit and should be denied.

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[19] In Steverson v. State, 695 So.2d 687 (Fla. 1997), this Court held that excessive collateral crime evidence, including twelve photographs of the victim, of Steverson's conviction of attempted murder of a police officer improperly prejudiced Steverson's trial for murder. This Court found the admission of a gruesome photograph of a prior victim error, but harmless, in Duncan v. State, 619 So.2d 279 (Fla. 1993). In Henry v. State, 574 So.2d 73 (Fla. 1991), this Court found the introduction of excessive collateral crime evidence of Henry's killing his wife's young son, including a photograph of the child, was reversible error. Finally, in Czubak v. State, 570 So.2d 925, 929 (Fla. 1990), this Court held that photographs of the victim's body did not assist the medical examiner in testifying and that the condition of the body "was the result of the length of time she had been dead and the ravages of the dogs." The instant photographs were simply not in the same league as those in the cases Gore relies on.

ISSUE VI

WHETHER THE TRIAL COURT PROPERLY EXCLUDED EVIDENCE THAT GORE SOUGHT TO INTRODUCE.

Gore argues that the trial court erred in refusing to admit the following evidence: 1) a photograph of Tina Corolis (initial brief at 68, 69); 2) Ana Fernandez's affidavit about a ring (initial brief at 69); 3) a business card with names on the back of it (initial brief at 69); 4) Fernandez's testimony about what Corolis told her at a mall (initial brief at 70); and 5) testimony from unnamed "witnesses sought to be put on the stand by the defense." (Initial brief at 70-71).

The state indicted Gore on March 21, 1990. (R1 1). Gore's trial ran from May 3, 1995 (T2 211) through May 11, 1995. (T6 1117). The defense requested two weeks to prepare for the penalty phase (T7 1261), and the court scheduled that phase to begin on June 5, 1995. (T7 1262). The only defendant's witness list in the record is dated May 24, 1995 and contains the names of only two people. (R2 268).[20]

Louis Pasaro of the Metro-Dade Police Department was the state's next-to-last witness. During his testimony, he stated that most of the jewelry Gore took from Corolis was recovered from a Dade County pawnshop. (T4 681-87). On cross-examination defense counsel asked Pasaro if Corolis said a gold ring with a man and

[20] Lee Norton and Merry Haber. On June 5, 1995 counsel announced that neither would be called to testify. (T7 1274-77).

woman embracing had been taken from her and then tendered such a ring to the witness. (T4 692). The prosecutor remarked that the ring was not in evidence (T4 692) and later asked to look at the ring. (T4 693). When asked what was not recovered from the pawnshop, Pasaro responded: "The gold ring with the man embracing a woman." (T4 700).

After the charge conference on May 8, 1995, the prosecutor, in talking about future scheduling, stated: "I have a very, very small Defense witness list. I don't know who they plan on calling, but I can gather right now that there is no one on the Defense witness list." (T4 648). The prosecutor also told the court that the ring tendered to Pasaro constituted a discovery violation because "[y]ou can't present evidence during trial to a witness -- I don't know where they pulled it from, but I gather it's off the Defendant somewhere --." (T4 748). The prosecutor stated that he was never told about the ring and, under reciprocal discovery, it "should have been brought to my attention prior to the middle of trial." (T4 749). He also stated that he needed "the witnesses that haven't been listed" by that afternoon along with any physical evidence the defense intended to introduce. (T4 749).

Defense counsel responded: "As to the ring, I got that in the middle of my cross, much like all the evidence I've gotten in this case." (T4 749). Counsel complained that he had asked for Gore to be present in Dade County before trial because he wanted to prevent Gore's unanticipated actions. (T4 750). The trial court then

stated: "I'm not going to let him [Gore] take advantage of the State by sandbagging the State by withholding information from you [defense counsel]. That's his fault." (T4 750). Gore denied withholding information (T4 750) and stated: "The ring has been with one of the witnesses." (T4 751). The court directed the defense to have all unlisted witnesses and evidence to the prosecutor by 3:00 p.m. "otherwise they're not testifying and otherwise they're not coming into evidence." (T4 751).

Defense counsel then called Alberto Fuentes, a defense investigator, who testified about trying to locate Ana Fernandez. (T4 751-52). Fuentes stated that he had finally contacted Fernandez by phone that day and that Fernandez was "in fear for her life." (T4 752-53). The prosecutor stated that "Fernandez is one of only two witnesses listed by the Defense, by Mr. Alter, a long time ago," but added that the defense had never provided her to the state for deposition.[21] (T4 753). The prosecutor also stated that, as of April 29, "I gather there are affidavits concerning Ana Fernandez" (T4 753-54), and that, as he told the court on May 1, the affidavits were discovery material.[22] (T4 754).

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[21] The defense witness list mentioned by the state does not appear to be in the record. The trial court allowed Alter, one of Gore's former attorneys, to withdraw on November 3, 1992, after Gore filed a complaint against Alter with the Florida Bar. (R1 98-99).

[22] The record contains no transcripts dated April 29, 1995 or May 1, 1995.

Defense counsel stated: "So this was a witness listed. The Court (sic) knew back two weeks ago." (T4 754). The court, however, countered that knowing who a witness was did the state no good "if he doesn't know where she is." (T4 755). Counsel then stated that Gore was returned to Dade County "on Thursday night and then I get the affidavit Saturday at four in the morning from England," after which the defense tried to locate Fernandez. (T4 755). In response to the court's inquiry defense counsel agreed that Fernandez could be brought to his office for the state's deposition. (T4 755). The prosecutor said that he needed all the affidavits before the afternoon, to which defense counsel agreed. (T4 755-56). The court then stated: "I'm withholding judgment if there's anything more, whether it's admissible or not." (T4 756).

The next morning the prosecutor announced that he attempted to depose Fernandez the previous afternoon. (T4 760). The prosecutor also stated that "[a]t the same time I was provided with nine copies of affidavits apparently signed by Ms. Fernandez in 1992, which the Court will recall on the record were explained to the Court that the Defendant had in his possession the entire time until last Friday when he provided them to Defense Counsel." (T4 760). He attempted to do a background investigation, but Fernandez refused to answer his questions and he "was unable to complete a deposition in the middle of trial of a Defense witness who I was supplied affidavits of yesterday at three." (T4 761). The prosecutor then went through the questions Fernandez refused to

answer (T4 761-66), and the court stated that she would be ordered to answer. (T4 766). The prosecutor stated that the state would rest when its last witness' testimony was finished and that "there are a number of Discovery violations included in Ms. Fernandez's affidavits provided to me yesterday at three in the afternoon." (T4 766). The court agreed that the discovery violations would be addressed later. (T4 767). Following the cross-examination of Sergeant Simmons, the state's last witness, the court took a half hour recess so that the state could finish questioning Fernandez. (T4 778-79; 767-69).

Prior to the resumption of proceedings before the jury, defense counsel called Carlos Fuentes, another defense investigator. (T4 782). Fuentes testified that Gore gave the defense a list of 120 possible witnesses, but, when Fuentes went to death row to discuss witnesses, Gore did not give him their addresses or tell him what they could testify to. (T4 782-83). After the trial began, Gore gave Fuentes a list of eight names. (T4 783). These names were for four people in Tennessee, with the rest from Dade County; Fuentes located all but two of those people. (T4 784). When the court asked if any of those people would be called, defense counsel answered that he had not spoken to them and that he "would not put somebody on the stand cold based upon what my client represented to me. So I'd want to speak to them and, of course, have them deposed." (T4 784). When Fuentes said the witnesses would be for the guilt phase, counsel asked to be allowed

to find them and asked that a Richardson[23] inquiry be done while Fuentes was present. (T4 785).

The court then stated: "We at least have to find out if these witnesses are in fact witnesses." (T4 786). The prosecutor responded that he agreed

> with the Court if in fact Defense Counsel knew about it, and that's a problem. That is not the problem in this case, you see, because I don't care how many more days we continue this for because tomorrow there'll be more names supplied and we'll have to continue this.
>
> It's clear the Defendant hoards these names and at times purposely during trial provides them so they can be located.
>
> They can list whoever they want, I'm not taking any more depositions of people who have not been listed. Those are clear Discovery violations. They can find a hundred new people, I'm moving to exclude every one.
>
> This case has been filed since 1990. He's had six lawyers. He's known about these names. The Appellate Court remedy is he has the same rights as every defendant does, and he must supply these [names] to his Counsel, which he's decided not to.

(T4 786-87). The trial court then told the parties: "As long as you're satisfied that is not going to be an issue on appeal that's reversible, I'm going to order this trial to go forward right now with every witness you have. If you don't have them, too bad." (T4 787-88).

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[23] Richardson v. State, 246 So.2d 771 (Fla. 1971).

Gore then mentioned a package that had not been delivered to him (T4 789) that, apparently, would contain the original of Gore's business card, among other things. (T4 790). The state objected to copies of the business card and a photograph of Corolis (T4 791, 793) and also objected to having to wait until the originals arrived. (T4 795-96). The court asked what the defense excuse was for not producing the material in a timely manner. (T4 797). Defense counsel blamed Gore's not being in Dade County and available and that, when Gore arrived, he did not have his "legal materials." (T4 797-98). The prosecutor responded:

> During the course of the proceedings Mr. Gore has been in Dade County a number of times back and forth. On none of these occasions did he inform, since 1992 when these affidavits were signed, Mr. Genova about them.
>
> Again, it is not my fault. It is not Mr. Genova's fault. All the times he's been here, it is the Defendant's fault. He's the one that refused even to tell his own investigator when he visited him on death row -- because . . . Judge Glick signed an order that as many times as it took, as may trips to talk to the Defendant would be allowed, and he refused to tell his investigator about these materials.
>
> Again, under Richardson there is no excuse for this, period.

(T4 798-99). Defense counsel attempted to excuse Gore's failure to produce the affidavits because they were created for another case that defense counsel was not involved with. (T4 799-800). Counsel agreed that the affidavits were hearsay and then stated that he was not seeking to introduce them; he only wanted Fernandez to identify

a photograph. (T4 800). The court the ruled that Fernandez could testify, but stated: "I will not permit you to admit the photograph nor the card nor the copies of it." (T5 801).

During Fernandez's testimony, she stated that the "Tina" on the back of the business card was Corolis (T5 809-10) and described a photograph taken of Corolis. (T5 810). Although Fernandez stated that she knew Robyn Novick (T5 812), she could not identify her in a photograph. (T5 813). Fernandez testified that Susan Roark was with her, Gore, and another woman when Gore wrecked the black Mustang the evening of February 14, 1988. (T5 813-17). When asked about seeing Corolis at the Broward County Mall and if she recalled a conversation, Fernandez responded affirmatively. (T5 821-22). The court sustained the state's hearsay objection to Fernandez's being asked to relay the substance of that conversation. (T5 822). Fernandez could not identify photographs of Corolis. (T5 822-23).

During Fernandez's testimony, the court recessed proceedings because the package Gore had been expecting arrived. (T5 828-29). After discussing the material in the package (T5 829-33), the court held several photographs to be inadmissible. (T5 833). The court also refused to admit the business card, stating: "The ruling is that it's extremely prejudicial to the State and too late." (T5 834). The prosecutor then made sure that, even though the affidavits were hearsay, they were sworn documents and could be used to impeach Fernandez's testimony. (T5 835-36).

On cross-examination Fernandez could not identify a photograph of Susan Roark. (T5 850-51). The prosecutor impeached Fernandez about being with Roark late on February 14. (T5 853-62). Fernandez was also impeached about the testimony that Corolis and Novick left the Organ Grinder in a white Mercedes with several men on March 11, 1988. (T5 863-65; 868-73). Fernandez could not identify photographs of Corolis and Novick. (T5 867-68).

After Fernandez testified, the prosecutor stated that he had just been given a handwritten subpoena for Mark Joy and Linda Williams. (T5 894). Defense counsel said that, since Joy and Williams were state witnesses, he needed their addresses from the state. (T5 890). The court told the defense to get any other names to the prosecutor by 3:00 p.m. (T5 896). The next morning, however, the defense announced that it would not call Joy or Williams. (T5 901). Counsel also stated that he released a Barbara Brown (T5 902-03) and that two other unnamed persons would not be called to testify because "I don't believe that these witnesses are in his best interest." (T5 903). Throughout this, counsel stated that Gore wanted to call these unnamed witnesses but that such would be against his advice. (T5 901-03). Counsel also brought up Gore's testifying, again against counsel's advice. (T5 903-04). Thereafter, the court questioned Gore about whether he wanted to represent himself, (T5 905-12) and held that Gore was not competent to represent himself, that Genova would continue to represent Gore, and that Genova could decide not to call the

witnesses. (T5 912). The court also questioned Gore about testifying against his attorney's advice. (T5 913-18).

Before proceedings began the next morning, defense counsel announced that Gore had just handed him a photograph that Gore wanted admitted into evidence. (T6 1120). The state objected that the photograph was a discovery violation and, after Gore explained the content of the photograph, argued that the state could not check its authenticity and would be prejudiced by its admission. (T6 1121). The court sustained the state's objection. (T6 1121).

During Gore's testimony, he identified and talked about the ring that he gave to defense counsel during Pasaro's testimony. (T5 938-45). Gore also testified about the alleged photograph of Corolis attached to one of Fernandez's affidavits (T5 951-54), but the court adhered to its earlier ruling that the photograph was a discovery violation when the defense tried to introduce it. (T5 954-56). He testified about the business card (T5 985-86), but the card, itself, was not allowed into evidence. (T5 986).

At the beginning of the penalty phase counsel announced that two defense witnesses would not be called. (T7 1277). Counsel also recalled Alberto Fuentes, who testified that Gore refused to cooperate and, in fact, hindered the defense investigation. (T7 1288-89). Gore then interrupted and asked that his attorneys be removed for incompetence. (T7 1289-90). He also stated that Fuentes was lying. (T7 1290). Gore also alleged that counsel failed to call unnamed defense witnesses. (T7 1291-92). Defense

counsel again explained Gore's refusal to cooperate and the list of 120 names. (T7 1293-95). The court then conducted a Faretta[24] hearing (T7 1295-1301) and found Gore not competent to represent himself. (T7 1301). During Gore's testimony at the penalty phase, he complained about not being able to call unnamed witnesses. (T7 1356). The defense called Jessie Casanova to testify at the penalty phase. (T7 1357). The state objected to her testifying about an alleged incident because it would go to lingering doubt, which is not mitigation. (T7 1358). The court sustained the objection. (T7 1359).

When a discovery violation occurs, the trial court must conduct a Richardson hearing "to ferret out procedural prejudice occasioned by" that violation. Smith v. State, 372 So.2d 86, 88 (Fla. 1979). The inquiry should determine "whether the violation was inadvertent or willful, whether it was trivial or substantial, and what effect the violation had on the ability of opposing counsel to prepare for trial." Brazell v. State, 570 So.2d 919, 921 (Fla. 1990). These requirements apply to both the state and the defendant. Id. Here, the trial court held several Richardson inquiries, and Gore had demonstrated no error in the court's refusal to admit the now complained-about testimony and evidence.

Fernandez's affidavit about the ring was not admissible. Rodriguez v. State, 609 So.2d 493 (Fla. 1992), cert. denied, 510

[24] Faretta v. California, 422 U.S. 806 (1975).

U.S. 830 (1993). Moreover, Gore's argument ignores counsel's acknowledgment that the affidavits were all hearsay and that he did not want to introduce the affidavits. (T4 800). This claim also ignores Gore's abandonment of the affidavits when he told counsel that counsel should not have tried to introduce them. (T5 836).

The trial court properly held that the alleged photograph of Corolis and the business card could not be introduced. As the prosecutor pointed out, Gore, not his attorneys and not the state, had control over these items and willfully chose to withhold them until the last minute. (T4 798-99). Gore has shown no error here. See Boynton v. State, 577 So.2d 692 (Fla. 3d DCA 1991); see also Brazell.[25]

The trial court refused to let Fernandez testify as to a conversation she allegedly had with Corolis because of the state's hearsay objection. Gore did not show then and has not shown now any hearsay exception that would permit introducing the substance of that alleged conversation. In both King v. State, 684 So.2d 1388 (Fla. 1st DCA 1996), and Fields v. State, 608 So.2d 899 (Fla. 1st DCA 1992), the appellate court found the excluded testimony not to be hearsay. The same is not true here, however, and Gore has demonstrated no error.

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[25] Gore relies on Moreno v. State, 418 So.2d 1223 (Fla. 3d DCA 1992), and Estano v. State, 595 So.2d 973 (Fla. 1st DCA 1992) (initial brief at 69), but those cases are factually distinguishable. Holley v. State, 328 So.2d 224 (Fla. 2d DCA 1976), does not support Gore's argument because the evidence Gore sought to introduce was not competent, as required by Holley.

Gore has failed to identify what witnesses the court should have allowed him to call. (Initial brief at 70-71). As set out above, very few of them were identified at trial. Gore's reliance on Coffey v. State, 421 So.2d 49 (Fla. 2d DCA 1982), Roberts v. State, 370 So.2d 800 (Fla. 2d DCA 1979), and Wilson v. State, 220 So.2d 426 (Fla. 3d DCA 1969), is misplaced. Coffey was reversed because the trial court failed to hold a Richardson hearing. That did not happen here. In both Roberts and Wilson the appellate courts reversed because the courts would not hold the appellant's responsible for discovery violations committed by defense counsel. Here, on the other hand, Gore, not counsel caused the discovery violations. See Brazell; Boynton.

Gore has failed to show that the trial court erred by refusing to allow him to present certain evidence. This issue, therefore, should be denied.

ISSUE VII

WHETHER THE TRIAL COURT CORRECTLY FOUND THAT THE FELONY MURDER (ROBBERY)/PECUNIARY GAIN AGGRAVATOR HAD BEEN ESTABLISHED.

Gore argues that he should be resentenced because the trial court erred in finding the felony murder (robbery)/pecuniary gain aggravator. There is no merit to this claim.

The trial court made the following findings:

> b. The capital felony was committed while the defendant was engaged, or was an accomplice, in the commission of, or an attempt to commit, or flight after committing or attempting to commit any robbery, sexual battery, arson, burglary, kidnapping, or aircraft piracy, or the unlawful throwing, placing or discharging of a destructive device or bomb. Section 921.141(5)(d), Florida Statutes.
>
> The defendant was convicted of Armed Robbery as well as First Degree Murder. The evidence established that on March 11, 1988 at about 9:00 p.m., the victim, Robyn Gayle Novick, was seen at the Redlands Tavern getting into her yellow corvette with a white male who resembled the defendant. In the early hours of March 12, 1988, the defendant was seen driving Robyn Gale Novick's yellow corvette. Later that morning the defendant was involved in an accident with the corvette. Once again he abandoned the car. Robyn Gayle Novick's body was found on March 18, 1988, [sic] with a belt around her neck and two stab wounds, one in her chest, in a decomposed condition, in a vacant, overgrown dump site in the Redlands area of South Dade County.
>
> The evidence established beyond a reasonable doubt that Robyn Gayle Novick was killed while the defendant was engaged in a robbery. The defendant used force, i.e. the death of Robyn

> Gayle Novick in order to steal her car. These were the same actions committed by the defendant in the murder of Susan Marie Roark and the attempted murder of Tina Corolis. The Court gives great weight to these aggravating circumstances.
>
> c. The capital felony was committed for pecuniary gain. Section 921.141(5)(f), Florida Statutes.
>
> As set forth above, the evidence established beyond a reasonable doubt that the victim Robyn Gayle Novick was killed in order for the defendant to steal the victim's car. This aggravating factor refers to the same aspect of the aggravating circumstances that the homicide was committed during the course of a robbery. This Court does not consider this factor separately. Provence v. State, 337 So.2d 783 (Fla. 1976).

(R2 334). Gore challenged the sufficiency of the evidence to support his robbery conviction. As set out in issue III, supra, the evidence supports that conviction and also supports the trial court's findings.

When the state produces sufficient evidence to support conviction of a felony, that evidence also supports the felony murder aggravator. Sliney v. State, 699 So.2d 662 (Fla. 1997); Jones v. State, 652 So.2d 346 (Fla. 1995), cert. denied, 116 S.Ct. 202 (1996); Perry v. State, 522 So.2d 817 (Fla. 1988). Moreover, as this Court stated, "every robbery necessarily involves pecuniary gain." Toole v. State, 479 So.2d 731, 733 (Fla. 1985). Gore has shown no error in the trial court's findings, and the felony murder (robbery)/pecuniary gain aggravator should be affirmed.

Gore does not challenge the other aggravator found by the trial court, i.e., conviction of prior violent felonies. (R2 332-34). The prior convictions are well documented. E.g., Gore v. State, 599 So.2d 978 (Fla.), cert. denied, 506 U.S. 1003 (1992); Gore v. State, 573 So.2d 87 (Fla. 3d DCA), review denied, 583 So.2d 1035 (Fla. 1991). The prior violent felony aggravator, therefore, should be affirmed. See Summers v. State, 684 So.2d 729 (Fla. 1996); Duest v. Dugger, 555 So.2d 849 (Fla. 1990).

The defense asked for the consideration of only one mitigator in its sentencing memorandum, i.e., the murder was committed while Gore "was under the influence of extreme mental or emotional disturbance." (R2 326). The trial court fully considered that proposal as both statutory and nonstatutory mitigation (R2 336-38) and found that mental impairment had not been established because Gore "refused to have his lawyer call mental health experts who had previously been appointed in his behalf." (R2 336).[26] Gore does not challenge the court's findings regarding proposed mitigation. Any complaint about them, therefore, has been waived, and those findings should be affirmed. See Summers; Duest.

Gore also does not challenge the proportionality of his death sentence. Comparing his case with others with two aggravators,

[26] The trial court appointed two confidential mental health experts and a forensic social worker to assist the defense. (R1 20, 29, 77). Gore's refusal to cooperate with his attorneys regarding the presentation of mitigating evidence is well documented in the record. E.g., T7 1273-79; T7 1288-1305; T7 1336-43.

including cases with substantial mitigation, demonstrates that Gore's death sentence is both proportionate and appropriate. E.g., Kilgore v. State, 688 So.2d 895 (Fla. 1996) (two statutory and several nonstatutory mitigators); Pope v. State, 679 So.2d 710 (Fla. 1996) (same), cert. denied, 117 S.Ct. 975 (1997); Orme v. State, 677 So.2d 258 (Fla. 1996) (both statutory mental mitigators), cert. denied, 117 S.Ct. 742 (1997); Geralds v. State, 674 So.2d 96 (Fla.) (one statutory and several nonstatutory mitigators), cert. denied, 117 S.Ct. 230 (1996); Hunter v. State, 660 So.2d 244 (Fla. 1995) (ten nonstatutory mitigators), cert. denied, 116 S.Ct. 946 (1996); Gamble v. State, 659 So.2d 242 (Fla. 1995) (one statutory and several nonstatutory mitigators), cert. denied, 116 S.Ct. 933 (1996); Windom v. State, 656 So.2d 432 (Fla.) (three statutory and several nonstatutory mitigators), cert. denied, 116 S.Ct. 571 (1995); Smith v. State, 641 So.2d 1319 (Fla. 1994) (one statutory and several nonstatutory mitigators), cert. denied, 115 S.Ct. 1125 (1995); Melton v. State, 638 So.2d 927 (Fla.) (nonstatutory mitigators), cert. denied, 513 U.S. 971 (1994); Lucas v. State, 613 So.2d 408 (Fla. 1992) (nonstatutory mitigators), cert. denied, 510 U.S. 845 (1993); Freeman v. State, 563 So.2d 73 (Fla. 1990) (nonstatutory mitigators), cert. denied, 501 U.S. 1259 (1991); see also Lowe v. State, 650 So.2d 969 (Fla. 1994) (insignificant mitigators), cert. denied, 116 S.Ct. 230 (1995); Brown v. State, 644 So.2d 52 (Fla. 1994) (same), cert. denied, 115 S.Ct. 1978 (1995); Clark v. State, 613 So.2d 412 (Fla.

1992) (no mitigators), cert. denied, 510 U.S. 836 (1993); Jackson v. State, 502 So.2d 409 (Fla. 1986) (same), cert. denied, 482 U.S. 920 (1987); Blanco v. State, 452 So.2d 520 (Fla. 1984) (same), cert. denied, 469 U.S. 1181 (1985); White v. State, 446 So.2d 1031 (Fla. 1984) (same).

This issue has no merit. The trial court's findings and Gore's death sentence should be affirmed.

ISSUE VIII

WHETHER GORE'S REFUSAL TO PLEAD GUILTY PRECLUDED HIS BEING SENTENCED TO DEATH.

Gore argues that the trial court sentenced him to death in retaliation for his refusal to plead guilty and his insistence on being tried by a jury. There is no merit to this claim.

Prior to beginning the voir dire of prospective jurors, the assistant state attorney brought to the court's attention Gore's rejection of a plea offer. (T2 215). The court then asked Gore if a plea had been offered, and Gore responded affirmatively. (T2 215). When the court asked what plea was offered, defense counsel responded: "One life concurrent with the first of five lifes given out in the '88 case with credit for seven years to close out all remaining cases, which I believe number ten."[27] (T2 215). When the court addressed him again, Gore stated: "I'm not guilty. He knows it. I'm not going to plead to anything." (T2 215-16). Gore confirmed that counsel relayed the plea offer to him and that he rejected it. (T2 216). The following exchange then occurred:

> THE COURT: So you reject that plea?
>
> THE DEFENDANT: Of course.
>
> THE COURT: All right. That's all we need to know.

---

[27] The 1988 case referred to is Gore v. State, 573 So.2d 87 (Fla. 3d DCA), review denied, 583 So.2d 1035 (Fla. 1991). After Gore was sentenced in the instant case, the state attorney nolle prossed seven other Dade County cases against Gore. (R2 362 et seq.).

(T2 216).

When a defendant voluntarily rejects a plea offer, he or she assumes the risk of a harsher sentence being imposed. Frazier v. State, 467 So.2d 447 (Fla. 3d DCA), review dismissed, 475 So.2d 694 (Fla. 1985). If the given sentence is greater than that offered, the reasons for the more severe sentence should appear on the record. Fraley v. State, 426 So.2d 983 (Fla. 3d DCA 1983); see North Carolina v. Pearce, 395 U.S. 711 (1969); Weathington v. State, 262 So.2d 724 (Fla. 3d DCA 1972). In the cases relied on by Gore,[28] comments by the trial judges made it apparent that the defendants were penalized for rejecting the plea offers. Here, on the other hand, the trial court made no such comments, and there is absolutely no record support for this claim. Instead, death is the appropriate penalty here where the jury unanimously recommended death and the trial court found two aggravators that outweighed any proposed mitigators.

Gore has failed to produce any support for his claim of judicial vindictiveness. This claim has no merit and should be denied.

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[28] Stephney v. State, 564 So.2d 1246 (Fla. 3d DCA 1990); Gillman v. State, 373 So.2d 935 (Fla. 3d DCA 1979); Cavallaro v. State, 647 So.2d 1006 (Fla. 3d DCA 1994). (Initial brief at 74-75).

CONCLUSION

For the foregoing reasons the State of Florida asks this Court to affirm Gore's convictions of first-degree murder and armed robbery and his sentence of death.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer Brief has been furnished by U.S. Mail to John H. Lipinski, 1455 N.W. 14th Street, Miami, Florida 33135, this 9th day of January, 1998.

_____
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