IN THE SUPREME COURT OF FLORIDA

SAMUEL FRANCIS WILLIAMS,

Appellant,

v. Case #: 88,745

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE CIRCUIT COURT
OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR OKALOOSA COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE

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STATEMENT OF THE CASE

The State generally accepts Williams' rendition of the Case as put forth in his initial brief as the "Procedural Progress of the Case," subject to the following additions and/or clarifications.[1] On February 2, 1995, the State filed a motion to transcribe Grand Jury testimony (I 43-44).[2] The motion was granted by the trial court that same day, and filed for the record on February 3rd (I 49). Over a year later, May 1, 1996, Williams, by motion, requested release of the grand jury transcripts (II 382). The trial court granted this motion on May 6, 1996 (II 383). Both Williams' motion and the order were filed on May 8th (II 382-83).

On May 13, 1996, a hearing was held on over 50 motions

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[1]Appellant was the Defendant in the trial court below. Appellee, THE STATE OF FLORIDA, was the prosecution. Henceforth, Appellant will be identified as "Williams" or Defendant. Appellee will be identified as the "State". The Record and Transcript of this case are contained in 14 volumes. Therefore, the reference "II 366-68" is to pages 366 to 368, located in volume II. There is one volume of Supplemental Record. The reference "S/I 22" is to page 22, located in supplemental volume I. "p" designates pages of Williams' brief. All emphasis is supplied unless otherwise indicated.

[2]The significance of the Grand Jury transcripts relates to the memory lapses of 8 State witnesses who had previously provided key evidence relating to Williams and circumstances surrounding the murder of 64-year-old Bobby Burke. See testimony of ***Erin Davis*** (VIII 382-85); ***Paula Wilcox*** (VIII 390); ***Tommy Alford*** (VIII 397-400); ***Bryan Pate*** (IX 481-87, 490); ***Kenneth Bembo*** (IX 495-501, 504-05, 506-07); ***Gearlnette Johnson*** (IX 518, 521-22); ***Nate Moorer*** (IX 546-77, 588-98); ***Geraldine Hutchinson*** (IX 607). At the Grand Jury, at least four witnesses divulged that they had been threatened by Williams or his family, which explains the memory losses, and is the reason for including said matters in the State's rendition of the Case.

submitted by Williams. At the conclusion of this hearing, the prosecutor remarked that neither side had yet received the Grand Jury Transcripts (S/I 50). The trial court remarked that it was its "understanding the transcripts [were] ready or almost ready" (S/I 50-51).

The first witness at the Grand Jury hearing begun on January 26, 1995, to reveal that he had been threatened, was Clinton Dowling:

> GRAND JUROR: When he told you that he did it [shot Mr. Burke], did he say it sarcastically like, you know, sure. Did he sound like he really had done it, you know?
>
> A It was just his -- he knew I was scared.
>
> Q So he could have been sarcastic like, or course, I shot him?
>
> A Right.
>
> MR. MURRAY [Prosecutor]: Okay. Did you believe him?
>
> MR. DOWLING: I did, and I believe it to be true. And I mean, like you know, I was telling the investigator before when all this was going on in my life. I told him it was time I told the truth. [It made] me feel a lot better. I maybe should have come forward earlier, but ***I was scared of him.*** **His** ***family's threatened me. I've been harassed*** to the point of, I mean, to I have just -- until all this is over, I want my mother to move away. My mother has a heart condition, I mean, this is -- ***I've been harassed.*** I'm sick of it.
>
> GRAND JUROR: Are you still being harassed?

> MR. DOWLING: From time to time by his mother.[3] She tried to stop me the other day and I was at the stop sign by my house and I wouldn't stop. ***She said, we haven't forgot. We'll get you one day.*** And then they sent messages through my friends ***saying they are going to get me and stuff.*** But I have police protection that if I would ever need the police department they know what for. (III ***587-88)***

At trial, Dowling testified that Williams told him in July, 1994 [the murder occurred September 27, 1994] that he was involved in a gang in the Crestview area (X 656-57). Williams further related to Dowling that to belong to the gang you had to ***"shoot someone,"*** and "steal something of value" (X 657)

Tommy Alford testified:

> Q I mean is, is that the truth?
>
> A Yes, six, that's the truth.
>
> Q I mean is that what Darren told you?
>
> A That's what Darren told you?
>
> Q But that's not what you just got through telling us just here a minute ago.
>
> A ***I'm really not all there. I got jumped on outside.*** (III 597)

Darren Smith was 14-years-old at the time of the murder, and when he testified before the Grand Jury:

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[3]By the time of Williams' trial, his mother was in the Okaloosa County Jail. Earlier, Dowling testified that after Williams admitted shooting Mr. Burke, Williams said he did not want to hear about it again or he would beat his "f***ing ass" (III ***577).*** Further, Williams had pulled "a gun on [him] in August" (III ***578)***

Q ***You*** had some reason for not going up to the police that night and telling them what you **saw,** I mean, something was going through your head, tell the members of the grand jury.

A ***First of*** **all,** ***I was scared, you know, if they didn't catch Sam, and I told that Sam did it, he would be after me,*** **wanting** ***to kill me.*** So first of all I **was** terrified and the police, when the police came and got me, they said they were going to put me in jail for murder. I asked them why. They said, well, you got witnesses all the people telling me that I murdered Mr. Burke, so I just said, well I would be willing to take lie detector test and see what comes up. Even though I failed the test, a day after that I told them what happened and what I saw.

Q All right. Let's talk about that. In other words, when you first were interviewed by the police, you didn't tell them that you had seen Sam shoot Mr. Burke did you?

A No, sir.

Q Then you failed the polygraph test?

A Yes, sir.

Q And then it was after that you admitted to the -- to Lt. Worley that you had actually seen Sam shoot the man.

A Yes, sir.

Q Is that correct?

A Yes, sir.

Q So, it doesn't come as any surprise to you that you failed that test, does it?

A No, sir.

Q And is what you're telling the grand jury is that you were afraid to tell the police what it is that you saw because of what Sam might do to you?

A Yes, sir, ***I'm still scared now.***

Q ***Well, Sam's in jail.***

A Yes.

Q ***What is it you have to be scared about right now?***

A ***Well his brothers, you know, we don't get*** **along** ***for some reason we don't get along. They always*** **want to** ***fight*** **me and stuff** ***and so I*** **just -- so go** ***ahead I don't want no trouble for nobody.*** (IV 644-**45**)

Finally, Nate Moorer ["Tezzie"] testified:

Q Have you talked to him since you've been in jail?

A No, I haven't talked to him [Williams] personally, but he send [sic] a message like telling me he want to talk and stuff like that.

Q You need to tell the members of the grand jury about this message.

A **He** ***said don't*** **talk.** (III 709-09)

Q Okay. Was that a message that somebody relayed to you by speaking to you or was that a message that you got in written form?

A No, relayed message.

Q Somebody came up and said -- told you Sam says don't talk?

A Yes.

Q Who was the person that relayed that message to you?

A Bryan Pate. (IV 708-09)

Nate Moorer was a key witness for the State who couldn't

remember anything significant at trial (Ix 546-77, 588-98). Before his cross-examination, the court conducted a small hearing in chambers, the purpose of which was as follows:

> COURT: We're on the record. The record should reflect that we are in chambers. The defendant is present, his counsel are present, along with counsel for the state. During our last break the Court was notified by the bailiff that two spectators, two audience spectators, reported to the bailiff during the last break that a particular individual in the audience identified as a black male, heavy set, with a sweatshirt that has "Duke" on the front of it, has been going out of the courtroom and communicating with witnesses in the case, advising those witnesses to testify that they do not remember. At the time I was notified of that situation by the bailiff, I brought counsel into chambers, advised them of that fact, and therefore, we have this hearing that's been convened in chambers for the purpose of finding out the information directly and taking whatever action is appropriate. Bailiff, you may call the first person in here, please, that reported that to you, one at a time. Ma'am, if you would be seated there, please, and raise you right hand. (Ix 580)

Veronica Holloway testified she was "the victim's daughter's niece by marriage" (IX 581). She further testified:

> ...when counsel was at the bench, I stepped out for a second to go get a drink of water, and I just heard, I don't know who the young man was talking to, I just him heard him **say,** they're saying 'I don't remember." I don't know who he was talking to, I didn't look.
>
> COURT: He said to someone, they're saying they don't remember. Did you hear him tell anyone to testify that they don't remember?
>
> MS. HOLLOWAY: No, sir. (IX 581)

Bobby Burke's son, Lewis Burke, testified that his sister had

conveyed to him that Ms. Holloway had said the unidentified black male was telling witnesses not to remember (IX 583). When the trial court advised him of what Ms. Holloway had just said, Lewis testified he "probably misunderstood" (IX *583).*

The prosecutor pointed out that "it's still a problem in the sense that it's a violation of the rule of sequestration" (IX 584). The Court rejoined: "Not if he's not talking to witnesses (IX 584)." The prosecutor further noted that there were other "witnesses out there" (IX 584). The Bailiff reported "...there is another lady out there that said she heard the same thing-the girl heard (IX 584)." Mr. Gontarek, one of Williams' counsel remarked "this is getting out of hand now" (IX 584). The prosecutor suggested the trial court address the audience in the courtroom not to communicate with witnesses outside (IX 585-86). The Court admonished the audience:

> ...if you are going to discuss the nature of any testimony in this case, you must do so outside the confines of the courthouse premises. That means if you want to talk about this case to someone else, then you need to do it across the street or somewhere other than on the courthouse premises. ... (IX 588)

The State filed *Williams* Rule Notices regarding incidents involving various individuals, including Jerry Cain (II 399-400; III 401-06, 419-20). A hearing on said notices was conducted during the trial (X 746-67). At the hearing, the State announced it wanted to elicit testimony from two witnesses from Louisiana who

were victims of two of the "15 or 20 [armed] robbery cases that went out as a package," when Williams was sentenced to the Louisiana Training Institution [LTI], from which he escaped (X 747-54; XIII 1098-99). The trial court granted Williams' motion in limine as to the two Louisiana cases," thereby excluding them from evidence (X 760-61).[4] However, the trial court found as follows regarding the Jerry Cain shooting:

> As to the Crestview case involving Mr. Cain, the Court finds that the similarities as to the material aspects of that case are quite striking to the case at issue. The Court finds that the similarities considered by the Court are that the alleged incident occurred within a very short time period of the case at issue here. The Court also finds that the incident also involved a shooting with a .22 caliber weapon. The incident occurred in Crestview at approximately the same time of evening, nighttime. (X 761)

Despite the trial court's finding of admissibility regarding the Jerry Cain shooting, the State announced later "...we're not going to move forward with the *Williams* Rule evidence" (X 766-67).

Any other matters pertaining to the Case will be provided as they relate to Williams' specific issues on appeal.

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[4]Lt. Worley, Crestview Police Department, traveled to Louisiana and showed these two victims photo lineups which included Williams photograph (X 754). Mr. Gontarek, on Williams' behalf, argued that both victims said photo #4 looked familiar (X 754). Williams was photo #3.

STATEMENT OF THE FACTS

I. Guilt Phase

The State will delineate the facts as they were presented below. Bobby Burke's wife, Freddie, testified her husband, around 10:20, 10:25 p.m., took out the garbage and some cat food scraps (VIII 308-09). She went to their bedroom and turned down their bedspread, when she heard what she thought were firecrackers (VIII 310). She went to the front to meet Bobby, and saw something in the road (VIII 310). The street light directly in front of their house "was very bright" (VIII 309-10). She realized it was Bobby, and thought maybe he had a heart attack (VIII 310-11). When she stepped out on the porch she could see the "red blood across" his white T-shirt and "blood going down the side of his body into the ditch" (VIII 311). She called 911 and told the dispatcher Bobby had been shot (VIII 311). The police responded within a minute (VIII 311).[5] She was met on the porch by an officer who told her not to come out (VIII 311). She never saw her husband alive after he took out the garbage (VIII 311). Under cross-examination, Mrs. Burke testified that her husband did not have his wallet on him when he took the garbage out (VIII 314).

Sergeant [Sgt.] Grandstaff testified he responded to a shooting call at 10:22 p.m. (VIII 317). He observed "a white male

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[5]A review of the diagram of the area contained in the Court exhibits demonstrates the police station was very close to the Burkes' home.

lying on his back with his feet at the curb and his head like towards the middle of the road (VIII 317). When he went up to the victim, he "noticed a hole in the right side of his chest," and he "could hear gurgling, like his lungs were filling up with blood" (VIII 317). The victim "moved a little bit . . . shortly after that rescue had arrived" (VIII 317). Sgt. Grandstaff tried to find a pulse, but could not find one (VIII 317). He cut his shirt off with a knife, and that's when he "noticed four holes in his chest and one in his throat" (VIII 317). At the time of the murder there was a trail that came off Savage Street "went down, across the railroad (RR] tracks and up the other side" (VIII 325). This "dirt path" was on the south side of the victim's house (VIII 325). The area where the victim was lying "was enough to see" (VIII 327).

Jody Smallwood, Fire Rescue, responded to the shooting at approximately 10:26 p.m. (VIII 334). He observed a "gentleman laying in the middle of the street face up with multiple gunshot wounds (VIII 334)." The victim "was unconscious and unresponsive," and had a "weak, shallow pulse" (VIII 334). There was a "street light probably 20 feet away. It was ample enough light for [him] to do what [he] needed to do (VIII 335)." Under cross-examination, Jody testified the victim's front pockets were not turned out (VIII 336).

Laura Rousseau, Senior Crime Lab Analyst for FDLE, testified she did an on-scene investigation and went to the hospital (VIII

337-39). She testified she found 13 shell casings in the street (VIII 347-49). The street light in front of the victim's home allowed her to see details at the crime scene (VIII 349). She witnessed the autopsy and observed 3 bullets removed from Mr. Burke (VIII 349-50).

Dr. McConnell, Medical Examiner, testified: "Mr. Burke had 8 bullet wounds to the body (VIII 371)." The 7 wounds to the chest were all potentially lethal (VIII 372). 2 of the 7 bullet wounds to the chest were lethal as they penetrated the heart and vena cava, "which caused massive bleeding into the chest and around the heart" (VIII 371-72).

Erin Davis[6] was at Paula Wilcox's residence the night of the murder along with Paula, Darren Smith, and Tommy Alford (VIII 379-80). She "was seeing" Darren Smith at the time, while Paula was "seeing" Tommy Alford (VIII 380). Williams walked up around 10 p.m. (VIII 380). She had known him only 2 weeks (VIII 380). He spoke with them "[f]or just a minute" (VIII 381). She did not remember Williams making any statements when he left (VIII 382). In fact, on September 29, 1994, two days after the murder, she gave a sworn statement at the State Attorney's Office, in which she related that Williams ***"said he had to go because he had to take***

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[6]Erin is one of the 8 witnesses that had a memory lapse as to events the night of the murder. Her name, along with those of the other forgetful witnesses, have been italicized to alert this Court to that fact.

care of business" (VIII 382). She testified she did not remember saying that, "but if that's what it says, I'm sure I said that (VIII 385). When Williams left, he headed up Savage (VIII 385). The last time she saw Williams was at the top of the hill (VIII 386). Tommy and Darren left after Williams (VIII 386). Under cross-examination, she testified she did not see Williams carrying a firearm (VIII 387).

Paula Wilcox testified that on the night of the murder she was with Erin, Tommy and Darren at her place, when Williams showed up around 10 p.m. (VIII 389). Before that, she had only spoken with Williams twice (VIII 389) She then testified she did not remember when Williams arrived at her place, but then remarked "it was still daylight" (VIII 390). Williams was at her place a few minutes and then walked off on Savage Street. 5 to 10 minutes after he left, Tommy and Darren left (VIII 391).

Tommy Alford testified he was at Paula Wilcox's place along with Darren, Erin and Paula around 10 p.m. the night of the murder when Williams stopped by for about 5 or 10 minutes (VIII 396). The only thing Alford remembered was that Williams said "he had some business to take care of" (VIII 397). Alford denied seeing Williams with a firearm (VIII 397). Before the Grand Jury he testified: "I can't really describe the gun, what kind it was. The only thing I seen was the handle (VIII 398)." Alford denied any memory of saying this or that he said the handle "looked black"

(VIII 398). He did not remember that he told the Grand Jury: "It was a pistol" (VIII 398). At his deposition given on August ***25,*** 1995, Alford said: "...that same night I seen a gun inside his britches. I seen the handle part of it . . . at Paula's house (VIII 399)." He did not remember at the deposition stating he knew Williams had a gun, "[b]ecause I can tell by the handle of it. He had a hand gun is what he had" (VIII 400). He testified Williams left Paula's place and went straight up Savage, up to the top of the hill (VIII 400).

Alford further testified he and Darren Smith left 5 minutes after Williams did (IX 403). When they got to the top of the hill, Alford ran back to get his cigarettes at Paula's, which took "[n]ot even ***5*** minutes" (IX ***403).*** As he returned to the top of the hill, Darren came running towards him (IX 404). Darren was "scared" and "acted weird" (IX 404). Darren told Alford: ***"Sam shot a guy."*** (IX 405) Under cross-examination, Alford testified Darren was not wearing. his glasses (IX 410). Alford told Lt. Worley at an interview October 6, 1994, that he did not see Williams with a gun the night of the murder (IX 407-08). He told Lt. Worley he did not hear gunshots after he retrieved his cigarettes from Paula's (IX ***408).*** Before the Grand Jury, Alford testified he heard gunshots after he picked up his cigarettes (IX 411-12).

Darren Smith testified he knew of the dirt path people used to cross the RR tracks and had seen Williams use this path several

times (IX 414). On the night of the murder he was at Paula's along with Paula, Tommy Alford, and Erin when Williams stopped by "[a]bout 10:00, 10:15" (IX 414-16). Williams ***"had a handgun . . . in the waistline*** of ***his pants covered with his shirt"*** (IX 416). It was a "***.22*** or ***.25***" (IX 416). Darren admitted he was "kind of upset" with Williams because the latter "had sex with [his] girl friend" (IX 41'6-17). Williams was at Paula's about 10 minutes and then headed "up Savage, up to the top of the hill" (IX 417). Williams was headed "towards the path on Savage," towards the RR tracks (IX 418).

After Williams left, about 10 or 15 minutes later, Darren and Tommy Alford walked up the hill on Savage (IX 419).[7] At the top of the hill, Alford stopped and returned to Paula's place to get his cigarettes (IX 419). As Darren waited for Alford, he saw Williams "[a]bout a block and a half" in front of him (IX 420). Williams "was walking and passed Mr. Burke, ... walked into the trail and he stepped back out" (IX 420). ***After Williams stepped back out from the trail, Darren saw Williams pull out a gun, fire, and Mr. Burke fell*** (IX 421-22). Darren heard ***"several" shots*** (IX 422). Darren took off (IX 422). He "was shocked, scared more than anything else when [he] ran" (IX 422). He was one and a half blocks away from

[7]They were going to Chris Mathis' house to get a board game (423). After the murder, they attempted to get the game, but never did because Chris was asleep (IX 424).

Williams when the murder took place (IX 422). Darren wears glasses on occasion, but he did not have them on that night (IX 422-23). Yet, ***he was positive it was Williams he saw shoot Mr. Burke*** (IX 422-23). After the shooting he ran back down the hill where he met Alford (IX 422). Both of them ran back to Paula's place (IX 423).

Under cross-examination Darren admitted he did not tell Officer Arnold on September 28, 1994, that Williams had shot Mr. Burke (IX 426). Darren explained he did not say anything because he ***"was scared"*** (IX 426). Defense counsel pointed out various inconsistencies in statements Darren had made about the night of the murder (IX 426-36). He also elicited that Darren was "near-sighted" (IX 437). On redirect, Darren testified that from September 28, 1994 to October 1, 1994, he denied any knowledge of the shooting (IX 440). It was only when he was interviewed by Assistant State Attorney Chris Golden on October 7, 1994, that he began to reveal what he knew about the murder (IX 440). ***Darren again testified that he was sure Williams was the one he saw step out of the trail and shoot Mr. Burke*** (IX 444). He further testified that he was not scared like he was the day after the murder, when he was only 14-years-old (IX 445).

Barry Brooke, Investigator [Inv.] for the State Attorney's Office, testified he was called to investigate the Bobby Burke murder, and that he visited the crime scene "[m]any, many times over the course of the next couple of weeks," after the murder (IX

456). There was a street light in front of Mr. Burke's home, and all of the area in front of the pole was "well illuminated" (IX 458). "Mr. Burke's house [was] at the end of Savage Street next to the RR track . .." (IX 460). Savage Street dead ends at the tracks, then picks up on the other side (IX 461). However, "there was a trail that crossed through some vegetation . . . down onto the tracks and up the other side of the tracks," near where Savage Street dead ends (IX 461). The tracks were lower than Savage Street "by several feet," and if you were standing on them you could not see the street (IX 462). There is a hill on Savage Street between the public housing project known as "Pensacola Hill" and the RR tracks (IX 464).

Inv. Brooke, during the course of his investigation, had been on Savage Street at night several times (IX 465). Ten days after the murder, October 7th, at 10:30 p.m., he stood on Savage Street where the hill peaks "and viewed the area towards Mr. Burke's home" (IX 465).[8] Even though that particular evening was "rainy, low visibility, low moonlight, very dark," Inv. Brooke was able to observe an individual standing where Mr. Burke was murdered (IX 465).[9] Inv. Brooke testified that the murder weapon was never

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'This was 14-year-old Darren Smith's vantage point when he witnessed Williams murder Mr. Burke (IX 403-05, 419-22)

'Under cross-examination Brooke testified the individual he observed that night was a fellow investigator, white male, over 6 feet tall and weighing over 200 pounds (IX 475).

recovered, but he obtained a Smith & Wesson .422 pistol and photographed it, which became State Exhibit #6 (IX 468-69). This particular weapon was a semi-automatic 'with a magazine which holds twelve .22 caliber rounds, and one round can be chambered, making it a thirteen round pistol (IX 469-70). Inv. Brooke further testified that this weapon is a "pretty good sized pistol" (IX 470).

Bryan David Pate testified he saw Williams in possession of a firearm during the summer of 1994 at a party at Toya Moore's in Sunset Village (IX 479-80). He did not remember if Kenny Bembo was there (IX 480). Pate told the Grand Jury that he saw Williams with a gun at Bembo's birthday party at Bembo's house (IX 482). Pate also saw Williams with a gun outside "Rachel's Bar" (IX 482). At trial, Pate testified the gun was a revolver (IX 483). Before the Grand Jury, he testified it was a "semi-automatic" (IX 483). Williams' gun was loaded by a "clip in the bottom" (IX 484). In April of 1995, Pate wrote a letter to Assistant State Attorney Elmore, in which he claimed to have seen Williams in possession of a weapon "on two occasions" (IX 485). Pate offered an unsolicited explanation that he was pressured into writing the letter (IX 485).[10] However, he admitted the letter was in his handwriting, and

[10]Under cross-examination, Pate said he was under pressure because ASA Elmore was seeking habitual felony offender status for him, and he said he saw Williams with a gun on 2 occasions in the hope of reducing his sentence (IX 488).

that it was his (IX 485-86). Pate denied relaying a message from Williams to Nate Moorer telling Moorer "*don't talk*" (IX 486).

Kenneth ***Bembo*** testified there was a birthday party for him at his house on August 27, 1994 (IX 492). Moorer and Pate were present (IX 494). He *saw* Williams in possession of a pistol, and he told Williams to put it up (IX 495). He claimed he wasn't paying much attention as to what kind of pistol it was, and then guessed it was a "revolver" (IX 496). Before the Grand Jury, Bembo testified Williams "...took the clip out of the gun, . . . in his hand, and he put it back in the gun, and I told him to put it up" (IX 497). so, Bembo knew the gun Williams had at his party was a semi-automatic (IX 497).

When asked when the murder occurred Bembo replied: "I don't know nothing about that." (IX 498) He then admitted the guys at work were talking about the murder the next day (IX 499). He went home between 10:00 and 11:00 a.m. (IX 499). Williams was present and Bembo described his demeanor as follows: "He seemed calm. He said did I hear about what happened. He said everybody thinks I shot some guy, but I didn't do it. He wanted to tell me about it." (IX 499) Before the Grand Jury, Bembo testified Williams "looked like he had something on his mind" (IX 499). Williams told him an ex-police officer had been shot (IX 500). Bembo told him not to worry about it, if he didn't do it turn himself in (IX 500-01). Before the Grand Jury, Bembo added that Williams "said he couldn't

do it" (IX 501). Bembo admitted that his memory about events surrounding the murder would have been better before the Grand Jury than at the time of trial (IX 501).

More of Bembo's Grand Jury testimony was brought out on redirect (IX 505). Bembo testified:

> Sam had the gun out, and some other guys had picked it up. He let some other guys hold it, and they was the ones that was flashing it, and that's when I told them to put the gun up. (IX 505)

He further testified:

> . ..[Williams] had a pistol at my birthday party. I seen him with a pistol . . . . I seen glimpses of it like I know he had it showing to him. I told him to put it up. My little boy was in the house. (IX 505)

Bembo saw a pistol and the clip was out of it (IX 506). He admitted that a revolver does not use a clip, and that a semi-automatic does (IX 507).

Deputy Bowman testified as to a burglary of the Silver Mine Fawn Shop, in which a Smith & Wesson .422 target pistol was stolen (IX 508). He interviewed Mario Lee and presented him with a photo lineup containing Williams photograph, and Lee identified Williams. as the person he sold the Smith & Wesson to (IX 510). Under cross-examination, Deputy Bowman testified that Mario Lee and Kevin Siler were arrested for the burglary at the Silver Mine Pawn Shop (IX 512).

Gearlnette Johnson testified Geraldine Hutchinson is her mother and Elizabeth "Liz" Hutchinson is her sister (IX 514).

Williams was Liz' boyfriend (IX 515). She saw Williams in possession of a handgun at her mother's place the summer of 1994 (Ix 516). It was a black gun and there was a clip (IX 517). She testified "[i]t was an automatic . . . something like that" (IX 517). It was not a revolver (IX 517). When asked if Williams said anything about the gun she testified he did not (IX 518). Before the Grand Jury, she testified ***Williams said he always had the gun on him,*** and she saw it once in her sister's room (IX 518). Gearlnette also told the Grand Jury: 'He picked it up, and he tried to hide it from me, so it was his gun." (IX 518)

Under cross-examination, Gearlnette was asked questions related to her Grand Jury testimony in which she said she wished she knew some stuff on him, that Williams had tried to fight her, and she threatened to call the police because he had escaped from somewhere in Louisiana (IX 520). She further testified there were no hard feelings between her and him (IX 520). When Williams tried to fight her, he was protecting Liz (IX 520-21). On redirect, Gearlnette's complete response to the Grand Jury regarding her feelings about Williams was provided:

> No, I wish I did know some stuff on [Williams]. I do, I do because, you know, he talked about me bad in front of my face and my sister and my mom. He always tried to fight me. That's why I know he's a violent person. He seems innocent, but he can get violent, and I know this for a fact. I thought he was innocent. He would never talk, but he went off on me for nothing just because I was arguing with my sister. He just went off on me, and I was, like, I'm, like, I'm calling the police

> on you, and I was this close to calling the police on him that day, because he was -- I just told him I was going to tell the police he escaped from somewhere, I don't know where, and then they just told me a lot of stuff about him. I don't know what's the real deal on him. Was that your complete answer?
>
> A Yes. (IX 521-22).

Kevin Siler testified he was Mario Lee's accomplice in the burglary of the Silver Mine Pawn Shop (IX 524-25). Lee sold the .22 semi-automatic to Williams (IX 524-25). The gun they stole and then sold to Williams "was just like that" depicted in State Exhibit #6, the photo taken by Inv. Brooke of a .22 Smith-& Wesson semi-automatic (IX 526).

Mario Lee testified he sold Williams a "target pistol .22 caliber Smith & Wesson" during the summer of 1994 (IX 531). State Exhibit #6 resembled the gun he sold Williams for $60.00 (IX 531). He also provided ammunition for the gun (IX 531-32). The gun was stolen by Lee and Siler from the Silver Mine Pawn Shop (IX 532). He fired the weapon a few times at a telephone pole near the RR tracks in Crestview (IX 532-33). The .22 fired as fast as he pulled the trigger, and held 12 rounds in a clip with one additional in the chamber (IX 533). Under cross-examination, Lee testified he was interviewed by Deputy Bowman on two separate occasions in March of 1995, and never mentioned he sold the .22 to Williams (IX 533-34). On redirect, Lee explained he did tell Deputy Bowman who he sold the .22 to because he believed it was

used in the murder of Mr. Burke, and he was concerned with being tied to it (IX 536). Eventually, he did admit to Deputy Bowman he had sold the gun to Williams, and what he told him then was the same as what he testified to at trial (IX 536).

Officer Selvage testified he seized a telephone pole near the RR tracks at the direction of Lt. Worley (IX 539). Portions of the telephone pole were removed by chain saw and sent to the FDLE lab to examine bullet fragments (IX 540).

Nate Moorer, "Tezzie", testified he knew Williams through the summer of 1994 (IX 546). When asked if he saw Williams at Bembo's birthday party August 27, 1994, he said he did not know (IX 546). The following testimony came from his appearance before the Grand Jury. Moorer testified he **saw** Williams at that party and he had a pistol in "his shorts pocket" (IX 547-48). Williams showed it to him, and Moorer testified it was a .22 semi-automatic (IX 548). It was loaded by a clip that went into the handle, and the gun was black and grayish-black (IX 549).

On the night of the murder he was in the area of Netta's Beauty Shop around 10:00 p.m., along with Tyrone Morris, Javaris Skinner, Keith Floyd, and Reggie Singletary (IX 550-51). They were getting high when he heard multiple shots, which caused him to drop to the ground (IX 552). About two or three minutes after the shots, Williams was walking fast toward them up Booker Street (IX 554-55). Williams asked Moorer for a ride to "the Hill" [Pensacola

Hill] (IX 555).

The night of the murder, Moorer stayed at Liz Hutchinson's house (IX 557). In an interview with Inv. Brooke on November 3, 1994, he also revealed that he saw Williams the next morning (IX ***557).*** Before the Grand Jury, Moorer testified Williams asked him the morning after the murder to get his pistol down by the RR tracks located in a Pepsi box by an abandoned house with some chairs in the yard (IX 562). Moorer said ***"a white man died" and Williams nodded his head. Williams said he saw it when it hit him and moved his hands to his chest*** (IX ***564, 594, 597).*** -Williams said: ***"I bucked that cracker. I bucked that cracker last night."*** (IX 565, 597) Moorer testified "buck" meant two things, either you shoot somebody, or somebody resists a robbery or shooting (IX 566). Williams told him ***he knew*** Burke ***was dead*** (IX 567). Moorer denied receiving any threats from Williams, but before the Grand Jury he testified that Bryan Pate relayed a message from Williams, who was in jail, ***"don't talk"*** (IX 574, 589).

Geraldine Hutchinson testified that her two daughters, and Willie Mae Williams lived with her in September, 1994 (IX 599). Williams was dating her daughter Liz (IX 600). On the night of the murder, she left her apartment with Netta Moorer, who owned a beauty shop (X 603). Before they got to Netta's Beauty Shop, as they crossed the RR tracks, they heard gunshots (X 604). In front of the shop she saw Nate Moorer, Williams, Bryan Pate, and Jarvis

(X 604). Netta said something to the group (X 604). She and Netta then went around the corner to "the Tree" where Anthony Dortch and John Beasley were hanging out (X 605). She did not remember telling Lt. Worley on November 1, 1994, that she had a conversation with Williams around 7 a.m. the morning after the murder, in which Williams said "they're trying to put that shooting on me" and that he seemed "concerned" (X 607). Under cross-examination, she again testified they were in the car crossing the RR tracks when they heard the gunshots (X 609). When they first arrived at Netta's shop they did not see Williams (X 610). She saw Williams when he was getting into Nate Moorer's car (X 610). On redirect, she testified she did not know how much time elapsed between their arrival and when she saw Williams getting into Moorer's car (X 612).

Willie May Williams testified that on the night of the murder she was living with Geraldine at her place in the projects (X 613). She knew Williams, but only for a few days (X 613). He was Liz' boyfriend (X 614). In the early morning hours of September 28, 1994, Williams came up to her where she was sleeping on the couch "about two or three in the morning" and told her ***"the police were trying to pin that murder on him, that if they asked me did I know him, tell them I didn't know him" (X*** 614-15). Before the Grand Jury, Willie May further testified that when Williams made his request, she answered him: "...well, I really don't know you" (X

616).

Tyrone Morris testified that on the night of the murder he was in front of Netta's Beauty Shop around 10 p.m. along with Nate Moorer, Bryan Pate, Keith Floyd and Reggie Singletary (X 621-22). They were getting high when he heard about seven or eight gunshots (X 622). The shots came from the direction of Mr. Burke's house (X 622). The gunfire "sounded like a .22" (X 624). He hit the ground when he heard the shots because "they sounded pretty close" (X 624). Morris said he stayed on the ground about 10 seconds and 10-20 seconds after he got up he saw Williams approaching (X 625). Williams was "[c]oming out of the railroad around the corner onto Booker Street" (X 625). Before the Grand Jury, Morris testified it was "about forty-five seconds to a minute until [Williams] got to the curve where [he] could see him" (X 625). Morris admitted his memory in January, 1995, could have been better than at trial (X 625-26).

Williams was "about half a football field" away when he saw him, and Williams was "running" toward them (X 626). Williams was sweating "a whole lot, his shirt looked kind of wet" (X 627). Morris saw "something" that "looked like a pistol in [Williams'] pants" (X 627). Morris saw "the handle" (X 627). Williams said something to Moorer: "Yo, Tezzie, protect me." (X 628) Moorer said "okay" (X 628). In the car, Morris said Williams "done shot somebody" (X 628). They took Williams to "The Hill" and dropped

him off (X 629). On the way back, they "were saying to each other, ... Sam done shot somebody." (X 629) This was not said when Williams was in the car (X 629). Moorer asked Williams before he got in the car if he had shot somebody (X 629). Shirley Jackson Sparrow testified that she helped transport Williams to Century, Florida, three times, around September 29, 1994, two days after the murder (X 647).

Clinton Dowling testified he had known Williams since May of 1994, when he met him at their apartment complex on "The Hill" (X 655). He had a sexual relationship with Williams during the summer of 1994 (X 656). In July of 1994, Williams told Dowling he was ***involved in*** a gang in the Crestview area (X 656-57). To belong to this gang you had to "shoot ***someone,"*** and ***"steal something of value"*** (X 657). August of 1994, Dowling saw Williams with a pistol in Dowling's apartment (X 657). This pistol had a push up clip and was dark colored (X 658). Williams had the gun "at the belt line of his pants underneath his shirt" (X 658). Williams' gun was similar to that depicted in State Exhibit #6 (X 658). In fact, Williams had pulled his .22 on Dowling (X 658).

On October 2, 1994, he went to Century with Williams' mother, Barbara, and Shirley Jackson to pick up Williams (X 659-60). Barbara asked Dowling if Williams could stay with him at his apartment (X 660). He was not aware the police were looking for Williams (X 660). On the way back to Crestview, Williams said he

was not going to surrender (X 660-61). Williams stayed at Dowling's apartment until he was arrested (X 661). Williams admitted he killed Bobby Burke (X 662). Williams said: ***"I shot the God d*** mother f***ing man. I shot the God d*** mother f***ing man,*** if that will make you happy" (X 663). Williams told Dowling he did not want to hear anything more about it, and if he did he would ***kill him (X 663-64).***

Dowling admitted he was interviewed, several times before he told the police everything he knew about the murder (X 664). He was scared because he had been threatened, and Williams had pulled a gun on him before (X 665). Under cross-examination, Dowling admitted the reason Williams pulled a gun on him was because they became involved in an argument over the fact that Dowling was telling people he bought him clothes, and Williams was being accused of being a homosexual." On redirect, Dowling testified Williams threatened to kill him after he admitted killing Mr. Burke (X 675-76).

Roman Chadwick Johnson testified he was at that time 21-years-old and housed at the Okaloosa County Jail (X 677). He met Williams in jail where they were housed in the same section (X 678). On October 7, 1994, he had a conversation about the murder of Bobby Burke (X 678). Williams identified the victim by name (X

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[11]Of course, given the fact he had Liz as a girlfriend and had sex with Darren Smith's girlfriend, Erin, he was obviously bisexual.

678-79) . Johnson testified:

A He told me that he went out to rob somebody and he was walking and he went by a house and seen a dog and he seen Mr. Burke come out of his house. He tried to rob him. Mr. Burke bucked.

Q ...What does the term buck mean?

A To resist when you don't want to do something.

Q Okay.

Q He shot at him and then he seen a light come on and a dog was barking and the gun had made some noise, the noise the gun made, so he ran.

Q ...Did he tell you where he shot Mr. Burke. at?

A In the neck and chest. I don't remember how many times.

Q Said he shot him in the neck?

A And the chest.

Q ...You can continue.

A He said after that he ran, ran across some railroad tracks that were close to the house and he hid the gun. That night he spent the night at somebody's house and a boy named Tezzie was there. He said the next morning when they woke up he sent Tezzie to get the gun out of a crate somewhere, some kind of crate. He said that sometime shortly before the murder happened there was a boy named Darren with him. He didn't specify about any time during or after.

Q Did he ever indicate to you that Darren was with him when the murder occurred?

A No, I don't believe so.

Q What did he say about the case that was pending against him or the investigation that was being conducted by the police?

> A He just said he was in there on a gun charge, they were holding him on a gun charge. He said they were trying to build a case on a murder charge. He said that's why they wouldn't give him a bond, he was a fugitive from Louisiana. He said that they didn't have a weapon. He said that they didn't have the gun. He said without the gun, he said, that they didn't have a -- do you want me to say it?
>
> Q If it's the words out of the Defendant's mouth, tell the members of the jury what he said.
>
> A ***He said that without the gun the crackers didn't have shit.*** (X ***6789-80)***

On October 30, 1994, he had another conversation with Williams in which the latter told him the pistol was **a** .22 (X ***681).*** Williams further related that "he was at a party . . . a guy named Bembo's party and several people seen the gun" (X 681). Williams also said Tezzie held the gun (X 682). Johnson testified he was convicted twice on 22 felonies; he was not promised anything in return for his testimony; he was instructed to tell the truth, and he had (X 682-83).

Darrell Barge testified at that time he was housed at Columbia Correctional Institution (X 711). In December, 1994, he was housed at the Okaloosa County Jail and met Williams (X 711). Williams told him he shot somebody in Crestview with the intent to rob them (X 712, 716). He did not mention any names and said he had been accused of murder (X 711). Williams "did a lot of yelling up and down the hall, [a]bout they had no gun so they didn't have a case, [which] was a daily thing." (X 713,)

John Russell was incarcerated at Mayo Correctional Institution, but in October and November 1994, he was at the Okaloosa County Jail, where he shared a cell with Williams (X 718). Williams admitted to him he was in the area the night Mr. Burke was killed (X 719). "He said he didn't do it. He was just in the area looking for someone, a victim to rob." (X 719) Williams said "they didn't have no case. His girlfriend or something had the gun." (X 719-20).

In a sworn statement to State Attorney Investigator Hollinhead, February 24, 1995, Russell related Williams told him "his girlfriend was supposed to have got rid of some kind of gun that he gave her, that you all didn't get the gun." (X 719-20) Williams also told Russell that he was a fugitive from Louisiana (X 720-21). Russell denied Williams said anything to him about a gun, but in the 2/24/95 statement Russell said: "[Williams] say he carry a gun on the streets every day, . . . but he didn't tell me what kind or how big . . . ." (X 721) Williams told Russell "'every time you see me on the street I be strapped,' you know, he would have a gun, he would be strapped." (X 721). "Strapped" meant someone is "packing", carrying a firearm everyday (X 722). Under cross-examination, Russell was asked about a fight he got into with Williams, which Russell attributed to his telling Williams: "Man, you know you do it." (X 723-24) Williams became upset because Russell accused him of the Burke murder (X 724). On redirect,

Russell testified Williams apologized to him after the fight (X 726-27).

Mark Penny testified he was a Correctional Officer at Okaloosa County Jail, and on November 15, 1994, he overheard Williams conversing with another inmate, Thomas Miller (X 737-38). Williams told Miller "he had actually shot somebody" (X 740-41). Ten or fifteen minutes later, Williams was taken up to the front to speak with his Public Defender or attorney (X 741). When he returned, Williams said he told his attorney that a guy named Darnell had done it (X 742).

Greg Scala, FDLE firearms expert in the field of gunshot residue analysis, testified that the tests for residue on Tommy Alford and Darren Smith were "inconclusive" (X 771-76). The victim had gunshot residue in his right palm, which could have come from a .22 being fired at him at close range, under twelve inches (X 777-79). Under cross-examination, Scala testified there was a small amount of residue on Darren Smith's right palm area (X 780). On redirect, Scala explained this residue was "antimony," which had different applications besides gunpowder, such as use as a pigment in paint, an alloy in metal, and in the production of oils, inks, dyes, greases and metal (X 782). He further testified, it was possible to have a positive finding for antimony if someone came in contact with a car (X 782).

Ed Love, Jr., FDLE firearms expert in the field of firearms

and tool mark identification, testified that thirteen shell casings were found at the murder scene, and they were all fired from one gun (X 784-92). Love determined that the murder weapon was a Smith & Wesson .422 pistol like the one portrayed in State Exhibit #6 (X 792-93).

David Williams, FDLE firearms expert in the field of firearms identification and examination, testified as to 43 pellets he extracted from the telephone pole Lee and Siler fired into (XI 803-04). Most of these pellets were .22 bullets (XI 804). David matched two bullets from the telephone pole with two- bullets extracted from the body of the victim (XI 805). In his expert opinion, the same weapon fired all four bullets (XI 805). These bullets were consistent with having been fired by a Smith and Wesson .422 semi-automatic, the same weapon depicted in State Exhibit #6 (XI 806).

Mike Fuhrman, a newspaper reporter who had interviewed Williams after he had been arrested for a concealed weapons charge, but before he was charged with Mr. Burke's murder, testified the interview took place November 11, 1994, at the Okaloosa County Jail (II 339-46; III 430-43; XI 826). Williams told him he was in the area of the victim's house at the time the victim was murdered, heard several gunshots, and ran (XI 827).

Lt. Worley testified he took charge of the Bobby Burke homicide investigation in September, 1994 (XI 829). On October 3,

1994, he interviewed Williams at the Crestview Police Department (XI 832). After a portion of Darren Smith's statement had been played to him, which identified him as Bobby's murderer, Williams said Darren was the murderer (XI 835). Williams claimed to have been by some tree roots on the embankment, south side of the tracks, when he allegedly saw and heard Darren commit the murder (X 835-36).

On October 21, 1994, Lt. Worley interviewed Williams again and informed him that a witness had said that Williams had put a gun in a box (XI 839). Williams responded: 'I don't know anything about a ***Pepsi*** box." (XI 839) Lt. Worley testified that no one said anything to Williams about a ***Pepsi*** box (XI 839). The police looked for the Pepsi box and located it at a vacant house on Railroad Avenue, which would have been on one of the routes the Williams could have taken on his way to Netta's Beauty Shop (XI 840-42). However, the murder weapon was not in the Pepsi box (XI 840-42). Williams admitted to Lt. Worley at the October 21st interview that he had quite a bit knowledge about handguns, and that there was .22 pistol that fired 13 rounds (XI 843). Lt. Worley testified ***a*** fast jog-from the murder scene, past the vacant house, and up to Netta's Beauty Shop could take less than five minutes (XI 859-60).

Inv. Brooke was recalled and testified that he inspected the ravine area where the tracks were on October 7, 1994 (XI 862). He stood where Williams said he was located when he allegedly saw

Darren Smith murder Mr. Burke, and he could not see the front of the victim's house (XI 863). Inv. Brooke's vision was obstructed by the elevation and dense vegetation (XI 864). He also could not hear any discernible words spoken by his partner from Williams' vantage point (XI 865). The State rested (XI 868).

Williams' case consisted of three witnesses (XI 879-908). His private investigator, Eddie Carmichael, testified he measured the distance from where Mr. Burke's body was found going north to the end of Savage and Pine, was "1347 feet, 8 inches" (XI 889). Under cross-examination Mr. Carmichael testified he never timed,- by stop watch and walking, the distance he measured (XI 891-92). Natasha Matthews resided on Mr. Burke's block (XI 896). After 10 p.m. on the night of the murder, she heard gunshots (XI 897). About four seconds after the shots, she saw a black man, not Williams, run to his truck on Martin Luther King Avenue, and take off (XI 899). The truck was aqua-marine (XI 901). She knew Williams through Frances" cousin (XI 900). Juanita Tackett testified she lived a half block from Mr. Burke's house (XI 903). Between 10:00 and 10:15 p.m. she heard what she thought were firecrackers (XI 903). She described the lighting as "very poor" (XI 905). She thought Mr. Burke's body was an "old carpet" (XI 905-06).[12] She saw individuals walking on Savage Street at all hours of the day and night (XI 907). Prior to

[12]The victim's wife, Freddie, testified she first thought her husband lying in the road was a sheet someone had dropped while driving by (XI 311).

the gunshots, she saw three individuals walking on Savage Street south fifteen to twenty minutes before the murder (XI 908).

In rebuttal to Juanita Tackett's testimony regarding the black man who jumped into the aquamarine truck shortly after she heard shots, the State recalled Geraldine Hutchinson (XI 915-18). She testified that after the shots, and after Netta dealt with the guys hanging out in front of her shop, Netta and her went to "The Tree", where they saw Anthony Dortch and John Beasley. (XI 916). Dortch has a two-tone green truck, which could be described as aquamarine (XI 918). Netta talked to Dortch for a minute and they -left (XI 918). When they left, Dortch remained (XI 918). It was Dortch's habit to hang out at "The Tree" maybe three times a week (XI 918).

II. Penalty Phase

A. Aggravation

In addition to that which the State had already proved during the guilt phase, the State called the following witnesses. Freddie Burke, the victim's wife testified as to the impact of her husband's murder upon her, her family, and the community they resided in (XIII 1083-90). Of particular note was her testimony as to the effect upon herself:

> ...when he was killed, for over a year I literally lived out of my car, I couldn't go home. I never went back to my home after the night he was killed except to get my belongings out. I never got to go back to live. I was literally what you might call a bag lady. I would stay with my friends and with my sister and I just couldn't find a peace. I --

> Q I beg your pardon, I didn't mean to interrupt you. Have you gone back home to the house that you and Bobby lived in all those years?[13]
>
> A I've gone back just to get my belongings out but I have only stayed just a matter of -- I think the longest time I stayed was when about four of my friends went with me and we packed my dishes and things. If I had to back it was in and out, and I've never been back by myself. (XIII 1088)

The victim's son, Lewis Burke, also provided victim impact testimony (XIII 1094-97).

Lieutenant Colonel Reese London, Jr., of the Louisiana Department of Public Safety and Corrections, testified that Williams escaped from Louisiana Training Institution [LTI] in May of 1994 (XIII 1098-99). LTI was a "secure facility" (XIII 1098). Williams was 17-years-old, making him an adult in Louisiana, when he escaped (XIII 1099). An adult warrant for his escape was issued (XIII 1099-1100). Under cross-examination, Lt. Col. London testified that LTI was a "juvenile facility" (XIII 1100). At a sidebar, during cross-examination, it was divulged that Williams "was going to be released from LTI on December 8, 1994, to go back and face additional criminal charges in New Orleans, an ***attempted murder*** and some additional robberies." (XIII 1104)

B. Mitigation

Williams began his mitigation by reading a letter James Curry,

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[13]Mrs. Burke testified she and her husband were married 43 years, and that they lived in that house the majority of that time (XIII 1084-85).

Director, Department of Corrections, relating to his "routinely good" behavior while in maximum security at the county jail (XIII 1105-06).

Dr. Larson testified Williams "had normal intelligence," and there were no indications of brain damage (XIII 1117-21). Williams did not have any learning disabilities (XIII 1122). Dr. Larson's opinion regarding Williams' ability to live a productive life in prison was as follows:

> I would expect that he has the basic academic skills, the basic intelligence and basic stability in his personality structure that he could live adequately in an adult population in some type of a state prison. (XIII 1124)

Under cross-examination, Dr. Larson admitted Williams clearly knew the difference between right and wrong; understood the consequences of his actions; and appreciated what the law is (XIII 1132)

Williams testified his mother's name was Barbara Williams, and she was currently housed in Okaloosa County Jail for helping transport him from Crestview to Century after the murder (XIII 1142-44). He had a relationship with Liz Hutchinson, and Liz had a baby girl by him named Tatiana Williams (XIII 1145) He claimed he was blind in his left eye, caused by a virus when he was 12 or 13-years-old (XIII 1145). He's a born-again Christian, and engaged in Bible study with other inmates (XIII 1148-50). He knows the killing of another human being is wrong (XIII 1148).

Under cross-examination, Williams testified he attended Bible

study and church at LTI prior to his escape and learned "Thou shalt not murder." (XIII 1153) He then testified he did not murder Bobby Burke (XIII 1154). He again admitted being in the area, but he did not shoot anybody.

Ozzie Bloxson, Williams' spiritual advisor, testified: "...Sam out of all the inmates that we have dealt with, Sam has sent me back to my [B]ible . . . ." (XIII 1166) Williams "wanted to know the truth" (XIII 1166). Williams was preoccupied with "the tabernacle of Moses" (XIII 1167-68). In his opinion, Williams "will be an instrumental man in prison for sharing the- gospel" (XIII 1169).

C. **Rebuttal of Mitigation**

Lt. Col. London testified as to Williams misconduct at LTI prior to his escape (XIII 1178). Williams fought with another inmate, disobeyed a correctional officer, and stole something from another inmate (XIII 1178-79).

D. Recommendation and Sentence

The jury recommended death by an 8 to 4 vote (XIII 1217).

The trial court found two aggravators: 1. under sentence of imprisonment and 2. pecuniary gain (V 974-75).[14] It found the statutory mitigator of Williams' age of 18 at the time of the murder, which it afforded substantial weight (V 975-76). Of the

[14]The trial court's sentencing order is attached as an appendix hereto.

eleven non-statutory mitigators submitted by Williams in memorandum, the trial court found five were not mitigators, and the remainder except for one which it afforded "some weight", it afforded "little weight".

SUMMARY OF THE ARGUMENT

I.

One cannot "escape" unless one is "imprisoned or confined." The legislature has intended that there are two classes of defendants, those who are unlawfully free and those who aren't. Williams was an escaped adult felon from the State of Louisiana when he murdered Mr. Burke. He was under sentence of imprisonment as the law existed at the time of the murder.

II.

Death is an appropriate sentence in this cause. Mitigation was afforded its proper weight by the trial court as well as the jury, and both determined the aggravation outweighed the mitigation.

III.

Williams concedes he did not object to the prosecutorial comments he now complains of for the first time on appeal. His third issue is procedurally barred. Error, if any, is harmless beyond a reasonable doubt.

ARGUMENT

ISSUE I

THE TRIAL COURT CORRECTLY EXERCISED ITS DISCRETION IN ALLOWING EVIDENCE OF WILLIAMS' COMMITMENT AND ESCAPE FROM LOUISIANA TRAINING INSTITUTE TO PROVE THE UNDER SENTENCE OF IMPRISONMENT AGGRAVATOR.

The State's position, and the trial court's finding regarding this matter, prior to the penalty phase of Williams trial, was as follows:

> MURRAY: Why should an adult defendant at age eighteen who is in escape status, policywise, why should he be provided a windfall from not having to worry about the (a) aggravator because of the fact that when he was initially incarcerated he was incarcerated as a juvenile, but he escaped from the facility as an adult, was in [the] escape statute as a Florida adult? Now why should he be shielded from the (a) aggravator under that particular fact situation? Policywise it doesn't make any sense at all, Your Honor.
>
> COURT: The Court agrees. The Court feels that under this particular set of circumstances that the word "imprisonment" under the (a) aggravator would encompass the situation that exists in this case for the following reasons. The Court finds that under Louisiana law the defendant in this case was incarcerated as a juvenile for various violent felonies; that during the course of that incarceration he reached the age of majority which is seventeen years of age in the state of Louisiana; and that also under Louisiana law he was serving a term of incarceration until his twenty-first birthday, and upon the defendant's reaching the age of majority in Louisiana, i.e. seventeen years of age, he was at that time incarcerated as an adult in a juvenile facility, whereupon it's the Court's understanding the evidence is going to indicate that he escaped that facility as an adult in the state of Louisiana; that a warrant was issued for his arrest as an adult in the state of Louisiana; and the defendant thereafter reached

> adult status in the state of Florida while at large, and thereafter committed the offense of first degree murder as found by this jury. Upon that fact situation, the Court finds that there is no lawful or ethical reason for this Court to prohibit the State from submitting those facts to the jury for determination as to whether the (a) aggravator would apply in this case. This determination is based upon the Court's assumption that the facts as I have stated them on the record in support of this decision will be supported by the evidence to be introduced by the State in that this matter has simply been proffered to the Court by statement of counsel. If any of the facts as related on the record by the Court are not supported by the evidence, at that time the Court certainly would be prepared to rethink this matter. In entering this order I want it to be clear that in offering the testimony of the -- is he a warden -- the man from Louisiana, the Colonel from Louisiana, in offering his testimony the State should be very careful and should warn this witness against any testimony relating to the nature of the offense for which this defendant was incarcerated. The mere fact that he was incarcerated would be the relevant evidence under this aggravator, and I would not allow any testimony as to the nature of the offenses or the circumstances surrounding his imprisonment in that that would perhaps get us into another area of aggravating circumstance that would not be allowed by the Court. (XIII 1061-63)

Previously, the State had argued:

> Now a unique factual situation is before the Court, and something that we need the Court to think about and rule on so that I don't begin to argue something that the Court is later going to sustain an objection to, is admittedly, I can't use the prior violent felonies because he was a juvenile at the time he was convicted." Now he was sentenced to what Louisiana calls juvenile life and he was put into a secure facility in Monroe, Louisiana, behind fences and razor wire and all that, it's a juvenile prison is what it is. When

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[15] *See, Merck* v. *State,* 664 So.2d 939, 944 (Fla. 1995).

> he was seventeen and under juvenile law -- under Louisiana law he's an adult at seventeen -- and this Colonel will testify to that. At age seventeen he escaped by cutting through the fence with other inmates and fled to Florida (XIII 1052).
>
> COURT: Under Louisiana law what is juvenile life?
>
> MURRAY: Juvenile life is in the care, custody and control of the state of Louisiana until age twenty-one. (X 1052-53)

At the *Williams* Rule hearing, Mr. Murray divulged the reason for Williams incarceration in the Louisiana Training Institute [LTI]: "Essentially there were some ***fifteen or twenty robbery cases*** that went out as a package." (X 753) As previously delineated, these robberies were never before the jury because of *Merck v. State, supra.* Further information regarding Williams' status in Louisiana was delineated during a sidebar while Lt. Col. London was being cross-examined (XIII 1102-03):

> MURRAY: Here's what I'm afraid of. That's a term that was used but he was ***going to be released on December 8th of 1994 to go back and face additional criminal charges in New Orleans, an attempted murder and some additional robberies.***[16]
>
> COURT: Oh.
>
> MURRAY: And that's why I'm on the edge of my seat because that's what this witness is about ready to start talking about. (XIII 1104)

The trial court found as follows:

> *1.* The Defendant committed the capital felony while under a sentence of imprisonment pursuant to

[16] It is not unreasonable to infer that was the reason Williams escaped in May of 1994.

> Florida Statute 921.141(5)(a). The evidence presented during the penalty phase proceeding proved beyond a reasonable doubt that the Defendant, while a juvenile, was convicted in the State of Louisiana for the offense of robbery, and that while *incarcerated* in a juvenile facility attained seventeen years of age, the age of majority in Louisiana. ***After* attaining *adult status under Louisiana* law, *the Defendant escaped from said facility.*** Thereafter, the State of Louisiana issued an ***adult arrest warrant*** for the Defendant for the offense of ***escape.*** The evidence is uncontroverted that the Defendant was eighteen years of age at the time of the murder of Bobby Burke and that the Defendant was still a fugitive from justice from the State of Louisiana with ***adult status.*** This aggravating factor has been proved beyond a reasonable doubt. (V 974-75)

Escape is defined in *Black's Law Dictionary,* Fifth Edition, as follows:

> The departure or deliverance out of custody of a person who was lawfully ***imprisoned*** before he is entitled to his liberty by the process of law. The voluntarily or negligently allowing any person lawfully in ***confinement*** to leave. To flee from; to avoid; to get away, as to flee to avoid arrest. The voluntary departure from lawful custody by a prisoner with the intent to evade the due course of justice. (citation omitted)

Imprison is defined in *Black's Law Dictionary,* Fifth Edition, as: "To put in prison; to put in a place of ***confinement.*** To ***confine*** a person, or ***restrain his liberty,*** *in* ***any way.*** ***Confinement*** is defined in part in *Black's Law Dictionary,* Fifth Edition, as: "State of being confined; shut in; ***imprisoned.*** *WEBSTER'S II New Riverside University Dictionary* defines ***escape:*** "1. To break free from ***confinement."*** ***Confine*** in that same source is defined: "1. To

keep within bounds: RESTRICT. 2. To keep shut up: ***IMPRISON."*** ***Imprison*** is defined in *WEBSTER'S II:* "1. To put in prison. 2. To restrain, limit, or ***confine as if in a prison."***

It is the State's position, regarding Williams' first issue on appeal, that one cannot ***"escape"*** unless one is ***"imprisoned or confined".*** Williams, as an adult in Louisiana, escaped from LTI. Therefore, as an adult, he was under sentence of imprisonment because he was confined at LTI and he escaped from that confinement.

A. **Williams Could Not Have Escaped Unless He Was Imprisoned.**

(1) Florida Law

Williams begins his argument at p.25 of his brief: "In Florida, commitment to a secure juvenile facility is not a sentence of imprisonment." He cites no authority for his conclusion because there is none. The State respectfully submits the fact the Florida Legislature enacted Section 39.061, Florida Statutes (1995), which made ***escape*** from any secure detention facility or residential commitment facility a third degree felony, supports the conclusion that a commitment to a juvenile facility does constitute imprisonment. Section 39.061 Florida Statutes (1995) reads:

> **39.061 Escapes from secure detention or residential commitment facility. --** An escape from any secure detention facility maintained for the temporary detention of children, pending adjudication, disposition, or placement; an escape from any residential commitment facility defined in s. 39.01(59), maintained for the custody,

> treatment, punishment, or rehabilitation of children found to have committed delinquent acts or violations of law; or an escape from lawful transportation thereto or therefrom constitutes escape within the intent and meaning of s. 944.40 and is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

The Juvenile Escape Statute's reference to s. 944.40 renders it a "***reference statute***" explained by this Court in State *v. J.R.M.,* 388 So.2d 1227, 1229 (Fla. 1980), an opinion upholding the constitutionality of former s. 39.112, Fla. Stat. (Supp. 1978), a precursor of s. 39.061.[17] "Reference statutes are those:

> which refer to and by the reference wholly or partially adopt pre-existing statutes.
>
> In the construction of such statutes the statute referred to is treated and considered as if it were incorporated into and formed part of that which makes the reference ...

Van Pelt v. Hilliard, 75 Fla. 792, 808-09, 78 So. 693, 698 (Fla. 1918) (citations omitted) ." *Id.; See also, State v. Varela*, *636 So.* 2d 559, 560 (Fla. 5th DCA 1994). In *State v. J.R.M., supra,* at 1229, this Court held that s. 39.112 and s. 944.40 "complement each

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[17]The immediate precursor to the current Juvenile Escape Statute, s. 39.061, Fla. Stat. (Supp. 1990), was found unconstitutional by this Court in *B.H. v. State, 645* So.2d 987, 994 (1994) because it violated both the "nondelegation and vagueness doctrines." s. 39.112 Fla. Stat. (1989) read:

> An escape from any halfway house, training school, boot camp, or secure detention facility maintained for the treatment, rehabilitation, or detention of children who are alleged or found to have committed delinquent acts or violations of law constitutes escape with the intent and meaning of s. 944.40 and is a felony of the third degree.

other and may be read in ***pari materia.***" *See also, State v. Varela, supra*, at 560. ***In pari materia*** is defined in Black's Law Dictionary, Fifth Edition as follows:

> Upon the same matter ox subject. Statutes **in *pari materia*** are to be construed together. "Statutes *in pari materia*" are those relating to the ***same person or thing ox having a common purpose.*** *Undercofler v. L.C. Robinson & Sons, Inc.*, 111 Ga.App. 411, 141 S.E.2d 847, 849.

Florida's Escape statute referred to in s. 39.061 as s. 944.40 reads:

> **944.40 Escapes; penalty.** -- Any prisoner ***confined*** in any prison, jail, road camp, or other penal institution, state, county, or municipal, working upon the public roads, or being transported to or from a place of ***confinement*** who escapes or attempts to escape from such ***confinement*** shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The punishment of imprisonment imposed under this section shall run consecutive to any former sentence imposed upon any prisoner.

In that escape constitutes a departure or deliverance out of custody of a person who was lawfully ***imprisoned or confined*** before he is entitled to his liberty by the process of law, and Florida's s. 39.061 and s. 944.40 are to be read ***in pari materia,*** it follows that in Florida a commitment to a secure juvenile facility is a sentence of imprisonment.

In fact, there is support for this conclusion in various opinions rendered by this Court. In *A.A. v. Role, 604* So.2d 813, 814 (Fla. 1992), Chief Justice Barkett, in writing for the

majority,[18] presented the issue before this Court as follows:

> The issue to be resolved here is not whether juveniles can be found in contempt of court, but whether they can be punished by ***incarceration*** in "secure detention facilities" (footnote omitted) for contempt of court.

The issue was resolved as follows: "We therefore hold that, under chapter 39, juveniles may not be ***incarcerated*** for contempt of court by being placed in secure detention facilities." ***Incarceration*** is defined in Black's Law Dictionary, Fifth Edition, as follows: *"Imprisonment;* confinement in a jail or penitentiary. See **Imprisonment."** *WEBSTER'S II New Riverside University Dictionary* defines incarcerate: "1. To ***jail. 2.*** To ***shut in: Confine."***

In *State v. Ull,* 642 So.2d 721 (Fla. 1994), an opinion written by Justice Shaw, this Court held:

> [W]e hold that a court may discharge a public defender at any time prior to trial on a misdemeanor charge, provided the court first certifies in writing that it will not impose ***incarceration*** upon conviction.

Recently, in *Trotter v. State, 690 So.* 2d 1234, 1237 (Fla. 1996), this Court opined:

> ***Custodial restraint*** has served in aggravation in Florida since the "sentence of imprisonment" circumstance was created, and enactment of community control simply extended traditional custody to include "custody in the community." See s. 948.001, Fla. Stat. (1985). Use of community control as an aggravating circumstance thus constitutes a refinement in the "sentence of

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[18]Justices Overton and McDonald dissented.

imprisonment" factor, not a substantive change in Florida's death penalty law.

The District Court of Florida, Second District, has held that juvenile ***"secure detention closely*** **resembles county** ***jail*** in that [the juvenile] is ***deprived of his liberty,*** and is in the ***total custody and control of the*** **state at all times."** *See, E.R. v. State, 584* So.2d *158* (Fla. 2d DCA *1991); Harvey v. State, 622* So.2d 170 (Fla. 2d DCA 1993). Therefore, detainees had to be given ***credit for time served.*** *Id.* The Second District's sister court, the Third District, has opined: "The commitment of a child to HRS is a ***deprivation of liberty*** which triggers significant due process protection under both the federal and Florida Constitutions." *J.M. v. State,* 677 So.2d 890, 892 (Fla. 3d DCA 1996).

Williams' reliance on *Troutman v. State,* 630 So.2d 528, 531 (Fla. 1993) and *Merck v. State, 664* So.2d 939, 944 (Fla. 1995) serves no purpose because they do not address the issue presented. *Troutman's* basic holding was that a trial court must consider each statutory criteria for imposing adult sanctions on a juvenile before determining his/her suitability of adult sanctions. *Merck* held that a "juvenile adjudication was not a conviction within the meaning of section 921.141(5)(b), Florida Statutes (1993)." *Id.* at 944. Neither opinion supports his introductory conclusion that "[i]n Florida, a commitment to a secure juvenile facility is not a sentence of imprisonment." Based upon the State's cited

authorities, it appears the converse of that conclusion is true. Williams' use of these authorities appears to be for the purpose of arguing juveniles enjoy a "special status" in Florida. However, it is clear from s. 39.061 that when juveniles "escape" their "special status" is forfeit.

(2) Louisiana Law

In State *v. Williams, 301* So.2d 327, 328 (La. 1974), the Supreme Court of Louisiana held that a juvenile committed to the Louisiana Training Institute could not be guilty of the crime of escape, since committed juveniles are not "imprisoned" within the meaning of the escape statute. "Simple escape" was defined by the Louisiana legislature as:

> (1) The intentional departure of a person, while imprisoned, whether before or after sentence, . . . from lawful custody of any officer of the Department of Corrections or any law enforcement officer or from any place where he is lawfully detained by any law enforcement officer . . . . LSA-R.S. 14:110.

Subsequent to *Williams,* the Louisiana legislature amended LSA-R.S. 14:110, redefining "Simple Escape" to read as follows:

> (1) The intentional departure, under circumstances wherein human life is not endangered, of a person imprisoned, committed, detained, or otherwise in the lawful custody of any law enforcement officer or officer of the Department of Corrections from any place where such person is ***legally confined*** . . .

Given this new definition of "Simple Escape" the Supreme Court of Louisiana determined "a juvenile committed to the Louisiana Training Institute is ***legally confined*** there within the meaning of

LSA-R.S. 14:110." *State v. Emerson,* ***345*** So.2d 1148, 1151-52 (La. 1977). Therefore, it concluded that said statute "clearly encompasses the escape of a person committed to the Louisiana Training Institute."

Thus, Louisiana law regarding "Simple Escape" appears to parallel that of Florida given the relationship between s. 39.061 and s. 944.40 Fla. Stat.. As previously delineated, Florida's juvenile escape statute is read ***in pari materia*** with the adult escape statute. Florida's adult escape statute refers to ***confinement*** as does Louisiana's amended statute.

B. At the Time Williams Murdered Mr. Burke s. 921.141(5) (a) Applied to His Escape from LTI.

The State agrees with Williams' assertion at p.27 of his brief that this issue is one of first impression. It also agrees that s. 921.141(5)(a), Fla. Stat. (1993), was the applicable aggravating circumstance when Williams was sentenced in this cause. It read: "(a) The capital felony was committed by a person under sentence of imprisonment or placed on community control." However, the State does not agree with Williams' assertion that this aggravating circumstance is not applicable to his escape from LTI.

As previously argued under **"Florida Law"** supra, the juvenile escape statute, s. 39.061, is read *in pari materia* with the adult escape statute, s. 944.40. The latter section applies to ***confinement,*** which is defined as ***imprisonment.*** A juvenile cannot

escape unless ***"imprisoned or confined."*** Thus, Williams, while at LTI, where he escaped from at 17, the age of majority in Louisiana, was under a sentence of imprisonment, i.e. confinement, for purposes of s. 921.141(5)(a).[19]

The State does not agree that Merck *v.* State, 664 So.2d 939 (Fla. 1995) contains a similar issue to that posed in this case'. In *Merck,* this Court determined that a ***juvenile adjudication*** was not a conviction within the meaning of s. 921.141(5)(b), and that it could not say that the dramatic testimony concerning the North Carolina shooting it was based upon did not taint the recommendation of the jury.[20] It is the State's position that a juvenile adjudication is distinguishable from an escape from a juvenile facility when the individual has reached adult status.

A juvenile adjudication for serious crimes such as the armed robberies Williams pled to in Louisiana, demonstrates a desire to afford a juvenile a "break", or "the right to be treated differently from adults." See, *Troutman v. State, supra* at 531. However, it appears from the escape statutes, both in Louisiana and Florida, that once a juvenile absconds from the confinement his/her "special status" afforded, said status is ***forfeit,*** and he/she

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[19]The same result would apply if s. 39.112, Fla. Stat. (Supp. 1978) was applicable to Williams' escape. *See B.H. v. State, supra; State v. Varela, supra.*

[20]Subsequently, in *Henyard v. State,* 689 So.2d 239, 251-52 (Fla. 1996), this Court held the inclusion of such a juvenile adjudication was subject to harmless error analysis.

becomes subject to adult punishment for a third degree felony.

The State is aware of s. 921.141(5)(a), Fla. Stat. (1996), which amended the statute to read: "(a) The capital felony was committed by a person previously convicted of a ***felony*** and under sentence of imprisonment or placed on community control or on felony probation." Said statute did not become effective until October 1. 1996. Williams was sentenced August 6, 1996 (V 965-85; XIV 1269-76).

It is the State's position that the law as it existed at the time Williams was sentenced was as applied by the trial court. This is seen through the **inpari *materia*** application of the Florida legislature's escape statutes, in which the legislative intent is clear that there are two classes of defendants, those who are unlawfully free and those who aren't. Williams was an escaped felon from the state of Louisiana when he murdered Mr. Burke. The trial court's finding regarding the "under sentence of imprisonment" aggravator is further supported by this Court's consideration of juvenile detention as ***"incarceration";*** this Court's recent opinion, *Trotter,* as it relates to ***"custodial restraint;*** the Second District's opinion that juvenile secure detention "closely resembles ***county jail;"*** and the Third District's opinion that "commitment of a child to HRS is a ***deprivation of liberty."*** See, s. 39.061 and s. 944.40, Fla. Stat.; *A.A. v. Rolle, supra; State v. Ull, supra; Trotter v. State, supra; E.R. v. State,*

supxa; Harvey v. State, supra; J.M. v. State, supra. Therefore, the trial court cannot be said to have erred.

However, if this Court should find the trial court did error as regards its treatment of this aggravating circumstance, then the State, without admitting such, would argue that it was harmless beyond a reasonable doubt. *State v. DiGuilio,* 491 So.2d 1129 (Fla. 1986). Although one of two aggravators found by the trial court,[21] the evidence presented at the penalty phase regarding "under sentence of imprisonment," provided by Lt. Col. Reese London (XIII 1098-1100), did not rise to the level of the dramatic testimony this Court found prejudicial in *Merck v. State, supra.* The extent of Lt. Col. London's testimony was that Williams escaped from LTI, a secure juvenile facility, in May, 1994, and an adult arrest warrant was issued for his escape. In the absence of this aggravator, the "pecuniary gain" aggravator remains, which in and of itself, when one considers it is a merging of two aggravators [attempted armed robbery and pecuniary gain], outweighed the mitigation found by the trial court.[22]

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[21]The other aggravator was "pecuniary gain", which is not challenged on appeal.

[22]A new statutory aggravator enacted by the Florida Legislature potentially applicable to this cause, effective October 1, 1996, is s. 921.141(5)(n): "The capital felony was committed by a criminal *street* gang member, as defined in s. *874.03."* A review of the definition comports with Williams status in this cause. This matter will be addressed in more detail in the State's next argument on proportionality.

ISSUE II:

DEATH IS A PROPORTIONATE SENTENCE IN THIS CAUSE.

In conducting a proportionality review "this Court must consider the particular circumstances of the case on review in comparison to other decisions [it has] made, and then decide if death is an appropriate penalty in comparison to those other decisions." ***Hunter v. State, 660*** So. 2d 244, 254 (Fla. 1995), *cert. denied,* ***116*** S.Ct. 946 (1996). Such a review in this cause demonstrates death is the appropriate sentence.

The State does not agree with Williams' assertion on p.30 of his initial brief that "[t]his case was prosecuted as a shooting death during an attempted robbery after the victim resisted the robbery attempt." The trial court's findings regarding the "pecuniary gain" aggravating circumstance was as follows:

> ***2.*** ...On the night of the murder, the victim, Bobby Burke, had left his residence and walked outside after dark with a pan of scraps in his hand in order to feed some stray cats in the neighborhood. A few minutes thereafter his wife heard what later proved to be gunshots, and Mr. Burke lay dying in the street in front of his residence. ***The Defendant,*** subsequent to his arrest, ***made statements*** indicating that his intention was to rob the victim, ***the victim "bucked him"*** and that he therefore had to kill him. Although the evidence indicates that Mr.-Burke left his residence without his wallet, and without any money on his person, the fact that this murder was committed for the purpose of attaining financial gain is quite obvious from the totality of the circumstances in addition to the Defendant's personal statements. This aggravating circumstance has been proved beyond a reasonable doubt. (V 975)

The evidence adduced at trial regarding the murder is as follows. Nate Moorer testified before the Grand Jury that Williams told him the morning after the murder: *'I bucked that cracker. I bucked that* cracker *last night."* (IX 565, 597) Moorer further testified *"buck"* meant two things, either you *shoot somebody,* or *somebody resists a robbery or shooting* (IX 567). The only other time the expression "buck" came up was during Roman Chadwick Johnson's testimony:

> A He told me that he went out to rob somebody and he was walking and he went by a house and seen a dog and he seen Mr. Burke come out of his house. He tried to rob him. *Mr. Burke bucked.*
>
> Q ...What does the term *buck* mean?
>
> A *To resist* when you don't want to do something. (X 679)

Darren Smith, who witnessed Williams shoot Mr. Burke, testified Williams walked past Mr. Burke's house, walked into the trail and then stepped back out (IX 420). After Williams stepped back out from the trail, Smith saw Williams pull out a gun, fire, and Mr. Burke fell (IX 421-22). Smith said nothing about Mr. Burke resisting.

Dr. McConnell testified Mr. Burke had seven (7) bullet wounds to the chest, all potentially lethal, one (1) superficial wound to the hand, and one (1) to his back, which was consistent with him lying face down or on all fours when shot (VIII 371-77). Although it was not elicited at trial, a safe inference can be made from the

Superficial hand wound that Mr. Burke was attempting to protect himself from being shot. Whether Mr. Burke resisted or not, Williams was ***armed*** with a .22 caliber semi-automatic pistol, and Mr. Burke was ***unarmed.*** The State did ***not*** prosecute this case "as a shooting death during an attempted robbery ***after the victim resisted the robbery attempt,"*** as conveyed by Williams in his brief.

Williams' argument regarding proportionality assumes the "under sentence of imprisonment" aggravator is invalid. The State respectfully submits the trial court found two (2) aggravating circumstances: (5)(a) "under sentence of imprisonment," and (5)(f) "pecuniary gain" (V 974-75). When one considers that Mr. Burke was murdered during the course of an attempted armed robbery, (5)(d) was also applicable to this murder, except for this Court's precedent that pecuniary gain and attempted robbery merge.

As statutory mitigation, the trial court gave substantial weight to Williams age at the time of the murder, eighteen (V 976). The trial court considered and weighed each nonstatutory mitigator requested by Williams:

> 1. The trial court found that Williams did ***not*** cooperate with law enforcement after his arrest, rather he attempted to blame someone else, and continued to do so until his sentencing (V 976).
>
> 2. Williams failure to permanently flee the Crestview area was ***not mitigation*** because Williams had no transportation or money of his own. Further, he did flee the area immediately after the

murder to Century, and remained in hiding until arrested (V 976).

3. Williams one-year-old daughter was not a ***mitigating factor*** because there "was no evidence offered to indicate that [Williams] has ever had any type of meaningful relationship with this child." In addition, "[t]he evidence established the child was produced from a casual relationship with the mother at a time when [Williams] had other sexual relationships both heterosexual and homosexual." (V 976)

4. ***Little weight*** was given to Williams' lack of disciplinary problems awaiting trial because he was housed in maximum security (V 976-976A).

5. ***Slight weight*** was given to Williams obtaining his G.E.D. (V 976A).

6. Dr. Larson's testimony regarding Williams' potential productive life in prison was only given ***some weight*** because Dr. Larson did not consider Williams' conduct at and escape from LTI. (V 976A)

7. "The Court attaches very ***little weight*** to the Defendant's claim of 'jailhouse religion."' (V 976A)

8. Williams' intent to further his education and become involved in a prison ministry if given a life sentence was given ***little weight.***

9. Williams' blindness in one eye and deteriorating vision in the other did "***not constitute a mitigating factor."*** (V 976A)

10. Williams was a good worker when he worked, but this did not indicate that Williams had a "capacity" for hard work. This was given ***slight weight.*** (V ***977)***

11. The State's "solid gold liars" constituted "no more than argument by counsel as to credibility of witnesses and [did] ***not constitute a valid mitigating factor."*** (V ***977)***

Therefore, the only real mitigation on Williams behalf was the fact he was 18-years-old when he committed the murder. Yet, he was under an ***adult arrest warrant*** for ***escape*** from Louisiana Training Institute [LTI], where he was sentenced after pleading to 15 to 20 ***armed robberies*** he committed at 15-years-old, when he murdered Mr. Burke. In addition, he was going to be released from LTI in December of ***1994, so*** he could face an ***attempted murder charge*** and other robbery charges in ***New*** Orleans. In short, Williams was already a ruthless criminal by the time he murdered Mr. Burke.[23] Given these facts, and the two aggravators found by the trial court, death was proportionate in this cause.

Based upon his assumption that only the "pecuniary gain" aggravator applies to his senseless murder of Mr. Burke, Williams cites several cases where this Court found death was a disproportionate statute. These cases offer an appearance of an "armed robbery" exception to imposition of the death penalty.[24]

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[23]On June 18, 1994, Williams shot Jerry Cain several times as Mr. Cain ran, instead of obeying Williams' order to exit his car and spread eagle on the car (X 748). As with Mr. Burke's murder, this happened after dark, in front of Mr. Cain's home (X 748). The same weapon used to shoot Mr. Cain also murdered Mr. Burke (X 748, 759). The State did not charge Williams for the Cain shooting "because of the pending first degree murder indictment" (X 759). The trial court ruled that the Cain shooting could come in as *Williams'* Rule evidence, finding the ballistics evidence to be one of its primary considerations, but in an abundance of caution the State elected not to use it (X 761-63, 766-67).

[24]In *Spencer v. State,* 21 Fla. L. Weekly *S366, S367* (Fla. September 12, 1996, this Court stated it "has never approved a 'domestic dispute' exception to imposition of the death penalty."

Yet, robbery with a firearm, in and of itself, is a first degree felony, punishable by up to life imprisonment. See, s.s. 812.13, 775.082, 775.083, 775.084, Fla. Stat. (1992). Therefore, one who murders during the commission of a robbery, like Williams, commits two very serious crimes.

Armed robbery is a serious crime against the peace arid tranquility of the community, particularly in circumstances such as found in this cause where the victim was murdered in front of his own home while taking out the garbage. Murders which occur during armed robberies tend to be amongst the most cold-blooded of killings, because they are committed against someone the defendant does not even know, and who has given the defendant not even a pretense of moral or legal justification to kill. As the United States Supreme Court has opined: "the possibility of bloodshed is inherent in the commission of any violent felony and this possibility is generally foreseeable and foreseen; it is one principal reason that felons arm themselves." *Tison v. Arizona,* 481 U.S. 137, 151, 107 S.Ct. 1676, 95 L.Ed.2d 127 (1987). Further:

> A narrow focus on the question of whether or not a given defendant "intended to kill," however, is a highly unsatisfactory means of definitively distinguishing the most culpable and dangerous of murderers. Many who intend to, and do, kill are not criminally liable at all -- those who act in self-defense or with other justification or excuse. Other intentional homicides, though criminal, are often felt undeserving of the death penalty -- those that are the result of provocation. On the other hand, some nonintentional murderers may be among the most dangerous and inhumane of all -- the

> person who tortures another not caring whether the victim lives or dies, **or *the robber who shoots someone in the course of the robbery, utterly indifferent to the fact that the desire to rob may have the unintended consequence of killing the victim as well as taking the victim's property. This reckless indifference to the value of human life may be every bit as shocking to the moral sense as an 'intent to kill.'*** Indeed, it is for this very reason that the common law and modern criminal codes alike have classified behavior such as occurred in this case along with intentional murders.

Tison, supra, 481 U.S. at 157. Williams' "reckless indifference to the value of [Mr. Burke's] life" is rendered even more morally outrageous when one considers that he killed Mr. Burke so he could join a local ***gang***.[25]

It is the State's position that the two aggravating circumstances found by the trial court in this cause outweighed the mitigation presented by Williams. Further, even if the aggravator Williams challenges is invalid, without admitting as much, given the totality of the circumstances, including a potential third aggravator, death is proportionate in this cause. See, *Porter v. State, 564* So.2d 1060, 1064 (Fla. 1990). Mr. Burke was gunned down in front of his home while taking out the garbage and feeding some stray cats prior to retiring for the night. Williams shot him at least 8 times, once in the back, on his alleged pretext that Mr.

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[25]As previously delineated, a new aggravator was created, effective October 1, 1996, s. 921.141(5)(n): "The capital felony was committed by a ***criminal street gang member . . . .***"

Burke resisted his robbery attempt. However, the evidence was clear Mr. Burke had no money on him and he was unarmed.

It can be reasonably inferred from the evidence that Williams' real motivation for the murder was his desire to make a name for himself so he could pass some initiation right for gang membership. If such were the case, the aggravating circumstance cold, calculated and premeditated would arguably apply, given the fact that Williams told Clinton Dowling about the gang at least two months before the murder (X 656-57).[26] Based on the totality of the circumstances, the State respectfully submits, this cause is analogous to *Bonifay v. State, 680 so.* 2d 413 (Fla. 1996). Williams' mitigation was afforded the appropriate weight by the trial court as well as the jury, and both determined that the

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[26]The State's argument for CCP to the trial court prior to the Penalty Phase was that Williams' told:

> one . . . of the witnesses [Clinton Dowling] that he was gang-associated and in order to be a member of the gang you have to shoot somebody and steal something of value. I ... would say there is sufficient evidence there for the jury to consider whether or not this defendant had about a month to think about whether or not he was going to go out and shoot somebody, and the evidence is clear that he did, in fact, shoot and kill the victim in this case and therefore he had time to reflect about shooting and stealing something of value, that there's sufficient evidence before the jury for the State to argue the CCP aggravator . . . . (XIII *1065)*

However, the trial court found "there is insufficient evidence to support the CCP aggravator." (XIII 1066) Again, the ***criminal*** *gang* member aggravator was not available to the State at that time.

aggravation outweighed the mitigation surrounding Mr., Burke's murder. Id. (decision as to whether a mitigating circumstance has been established, and the weight to be given to it if it is established, are matters within the trial court's discretion); *Fotopolous v. State, 608 So.* 2d *784, 792* (Fla. 1992), *cert. denied, 113* S.Ct. *2377* (1993), *citing Sochor v. Florida, U.S.* . 112 S.Ct. 2114, 2122, 119 L.Ed.2d 326 (1992) ("...[W]e can presume that the jury disregarded the factor[s] not supported by the evidence."). Death is a proportionate sentence.

ISSUE III

WILLIAMS DID NOT OBJECT TO THE ALLEGED IMPROPER PROSECUTORIAL COMMENTS DURING VOIR DIRE, WHICH DEPRIVED THE TRIAL COURT OF THE OPPORTUNITY TO CORRECT ANY POTENTIAL ERROR, AND ANY ERROR IS HARMLESS BEYOND A REASONABLE DOUBT.

Williams argues at p.36 of his initial brief that the prosecutor made improper comments during voir dire [and closing argument], in which he told the prospective jurors of four out of [nine] groups that were individually voir dired in chambers they were required to return a death recommendation if the aggravating circumstances outweighed the mitigating ones (VII 91, 158, 194-95; VIII 227-231; XIII 1200-01).[27] However, he concedes "defense counsel did not specifically object to these comments." The State respectfully submits Williams' third claim is procedurally barred.

"The proper procedure to take when objectionable comments are made is to object and request an instruction from the court that the jury disregard the remarks." *Duest v. State,* 462 So.2d 446, 448 (Fla. 1985). "A failure to object to improper prosecutorial comment will preclude review, unless the comments were so prejudicial as to constitute fundamental error." *Pacific0 v. State,* 661 So.2d 1178, 1182 (Fla. 1st DCA 1994); *Accord, Pangburn v. State,* 661 So.2d 1182, 1187 (Fla. 1995); *Suggs v. State, 644* So.2d 64, 68 (Fla. 1994); *Wyatt v. State,* 641 So. 2d 355, 359 (Fla.

[27]Williams says four out of seven groups. The State's reading of the record is that nine groups were formed (VII 78-86).

1994). Fundamental error exists only if any "error committed was so prejudicial as to vitiate the entire trial." *State v. Murray,* 443 So. 2d 955, 956 (Fla. 1984).

Williams correctly observes that it was improper for the prosecutor to comment as he did during voir dire based upon this Court's holding in *Henyard v. State,* 689 So.2d 239, 250 (Fla. 1996): "In this case, we agree with Henyard that the prosecutor's comments that jurors must recommend death when aggravating circumstances outweigh mitigating circumstances were misstatements of law." However, this Court further held: "But, contrary to Henyard's assertions, (footnote omitted) we do not find that he was prejudiced by this error." *Id.* at 250. It is the State's position that Williams was not prejudiced by this error either.

Had Williams voiced contemporaneous objections to each complained of comment, the trial court would have been afforded the opportunity to rectify the problem by ordering the prosecutor to rephrase his comment. That a contemporaneous objection could have cured what this Court has determined is a misstatement of the law, is reflected in the following exchange occurring during the defense voir dire directly after the prosecutor's first comment:

> AMMON (Defense): Do you all understand that if Sam Williams is convicted of first degree murder that the only sentencing alternatives are either death or ***life in prison:*** Those are the two alternatives.
>
> ALL JURORS: Yes.
>
> MURRAY (Prosecutor): Judge, can I be heard for

> just a minute? I believe this was prior to the enactment of the statute, and I think it's life with a minimum mandatory of twenty-five as opposed to natural life. This is a 1994 case.
>
> COURT: Oh, '94?
>
> MURRAY: Yes, sir. I know Mr. Ammon is not misleading, but I don't want the jurors to be misled. I think this is life with a minimum mandatory twenty-five. (VII 96-97)

The trial court recognized the State was correct, and instructed the jury that life meant "life in prison without the possibility of parole for twenty-five years," to which the defense agreed (VII 97). If Williams had objected to the prosecutor's commen-ts, they could have been dealt with in similar fashion. His failure to do so constitutes a procedural bar to his third claim, and *Henyard v. State, supra*, demonstrates that these comments are not per *se* fundamental error.

The State will not include each complained of remark, such was sufficiently accomplished by Williams in his initial brief at pp.37-41. The State does take exception with Williams' assertion at p. 39 that "the court improperly confirmed the prosecutor's misstatement of the law as a correct statement." Seen in context, the trial court was trying to determine if Ms. Rogers and Ms. Kozar ***could set aside their personal views against the death penalty*** and vote for death if the aggravating circumstances outweighed the mitigating circumstances, which is the law, not that they must vote for death as presented by Williams in his brief:

COURT: ***Now,*** assuming that you are in that penalty phase, okay, and assuming that you hear evidence that you feel that the aggravating factors in this case outweigh the mitigating factors, ***can you vote for the death penalty, yes ox no?***

ROGERS: In theory I believe in the death penalty, but when it gets right down to it, I'm not sure that I can say that in all honesty.

COURT: Well, I don't want to embarrass you or hurt your feelings in any way, but let me tell you this. The words I'm not sure, I think so or maybe or perhaps, they --

ROGERS: --They don't count.

COURT: They don't count. We spend a lot of time in these proceedings getting through words such as that, so --

ROGERS: -- Okay, I would have to weigh the mitigating, and the other the thing I would have to weigh, and it would have to be very strong, because I do fundamentally, you know, theoretically believe in the death penalty.

COURT: Well, I think to be fair to both sides, and that's what we're looking for in this case is jurors that tell us, yes, if I find a defendant guilty in a case such as this, then I can go in there, and I can listen to aggravating factors and mitigating factors, and if I find that the aggravating factors justify the death penalty, and the mitigating factors don't mitigate it down below the death penalty, then I'll vote for the death penalty. On the other hand, you know, a juror says, well, I'll listen to it, and if I think the mitigating factors outweigh the aggravating factors, I'll vote for the life sentence. We understand that some people have a very very tough time voting for the death penalty in a case, just as Miss Kozar there sitting there to your left has indicated. In all murder cases she'd have a hard time voting for anything other than the death penalty. Well, that's what we're really getting at right here. I need you to try to answer for us as she has. ***Do you feel like that in most first***

degree murder cases that you'd vote for a life sentence over a death penalty without regard to aggravating and mitigating factors?

KOZAR: I guess I can't say no, because I would have to hear -- 1 think the death penalty should only be used in very, very extreme murder case. I don't think I should be used maybe as frequently as it is. Yes, I could vote for the death penalty if the evidence was strong enough, if the mitigating factors didn't -- but it would have to be very very strong.

COURT: Let me go through it one more direction. There's no instruction that this Court's going to give you that says that it has to be very, very strong. ***There's no such instruction. The instructions that I'm going to give you as a juror are that you must follow the law, and in order to be on this jury, you must agree to follow the law. The*** **law is** ***as we have explained it to you.*** There's nothing in any of the instructions that's going to say that your feelings must be very, very strong. That's not part of the legal instructions you'll receive.

KOZAR: Well, okay, I should rephrase that and say -- I'm sorry, I have difficulty with this.

COURT: ***If you feel like that you can't honestly follow the*** *law* ***as it's spelled out and vote*** *for a* ***death penalty in a murder case, there's nothing*** wrong ***with you telling us that.*** That's where we want to try to get with the questions.

KOZAR: ***I probably couldn't.*** I said probably again. Okay, no, that's it.

COURT: ***You couldn't vote for the death penalty in*** *following* ***the instructions the Court will give you as we have explained*** **it** ***to you. Is that your answer to that question?***

KOZAR: Yes. (VIII 228-231)

Clearly, the trial court was trying to determine if the

prospective jurors could follow the law pursuant to its instructions. As this Court is aware, jurors whose views on the death penalty would "prevent or substantially impair the performance of his duties as a juror in accordance with [their] instructions and [their] oath," are subject to be stricken for cause. See, *Darden v. Wainwright, 477 U.S. 165 (1986); Wainwright v. Witt, 469* U.S. *142* (1985); *Adams v. Texas, 448* U.S. 38 (1980).

The trial court's reference to the instructions as they were explained to the prospective jurors, relates to the preliminary instructions he provided at the outset of the general vdir dire, which included the following correct statement of the law concerning the weighing of aggravators and mitigators:

> If, in the guilt phase of the trial the defendant is found guilty of first degree murder, there are only two possible penalties or punishment alternatives. The first alternative is death. The second alternative is life without the possibility of parole. The law requires that in cases of first degree murder, ***the death penalty is resexved for those very special cases with sufficient aggxavating circumstances to justify the imposition of a penalty of death, and without sufficient mitigating circumstances to outweigh any aggravating*** *circumstances* ***found to*** *exist.* It is the burden of the state to present evidence in that second phase of the trial of aggravating circumstances, and each aggravating circumstance presented by the state in the second phase of the trial must be established beyond a reasonable doubt. The defense may, if they choose, present evidence of mitigating circumstances. A mitigating circumstance need not be proved beyond a reasonable doubt by the defendant. If you are reasonably convinced that a mitigating circumstance exists, then you can consider it as established. (VII 13-*14)*

Further, the jury was correctly instructed upon the law during the penalty phase charge (XIII 1211-14).

As previously delineated, the circumstances of this cause are analogous to those in *Henyard* v. State, *supra*, at 250:

> But, contrary to Henyard's assertions, (footnote omitted) we do not find that he was prejudiced by this error. Initially, we note the comments occurred on only three occasions during an extensive jury selection process. Moreover, the misstatement was not repeated by the trial court when instructing the jury prior to the penalty phase deliberations. In fact, the jury was advised that the statements of the prosecutor and defense lawyer were not to be treated as the law or the evidence upon which a decision was to be based. Further, Henyard does not contend that the making an advisory sentence recommendation in the penalty phase of his trial. In this context, we find the prosecutor's isolated misstatement during jury selection to be harmless error. *State v. DiGuilio*, 491 So.2d 1129 (Fla. 1986).

The comments in this cause were made on only four occasions. The only difference between *Henyard* and this cause is that a comment was also made during closing argument. None of the comments were objected to. The trial court in this cause did not repeat the misstatement while instructing the jury prior to penalty phase deliberations (XIII 1211-1214). As in *Henyard*, the jury was instructed that statements of the prosecutor and defense lawyer were not to be treated as the law or the evidence upon which a decision was to be based (VIII 253; XI 929; XII 1036; XIII 1212-13). Williams does not argue that the jury was improperly instructed before delivering its advisory recommendation during the

penalty phase of his trial. Rather, he argues at p.42 of his brief that the taint of the prosecutor's unchallenged comments was not removed by the standard instructions. Therefore, the prosecutor's comments were harmless error. *Henyard v. State, supra,* at 250; *State v. DiGuilio, supra.*

CONCLUSION

Based upon the foregoing facts, authorities and reasoning, the State respectfully requests this Honorable Court to affirm Samuel Francis Williams' convictions and sentences.

Respectfully submitted,
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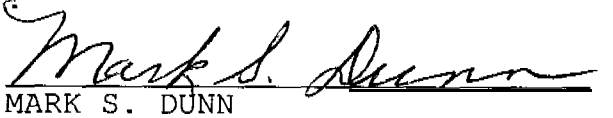
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **ANSWER BRIEF** has been furnished by U.S. Mail to, W.C. McLain, Assistant Public Defender, Counsel for Appellant, Leon County Courthouse, Suite 401, 301 South Monroe Street, Tallahassee, FL, 32301, this 25th day of July, 1997.



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Assistant Attorney General

IN THE SUPREME COURT OF FLORIDA

SAMUEL FRANCIS WILLIAMS,

Appellant,

v.

CASE NO. 88,745

STATE OF FLORIDA,

Appellee.

APPENDIX

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INDEX TO APPENDIX

IN THE CIRCUIT COURT IN AND FOR OKALOOSA COUNTY, FLORIDA
CRIMINAL DIVISION
CASE NO. 95-109

STATE OF FLORIDA

VS

SAMUEL FRANCIS WILLIAMS

SENTENCING ORDER

The Defendant was tried before this Court on June 10,1996, through June 14, 1996. The jury found the Defendant guilty of First Degree Murder. The same jury reconvened on June 27, 1996, and evidence in support of aggravating factors and mitigating factors was heard. The jury returned a penalty phase recommendation by a vote of 8 to 4 that the Defendant be sentenced to death in the electric chair. On that same date, the Court requested memoranda from both counsel for the State and counsel for the Defendant. Defendant's memorandum was received on July 3, 1996, and on July 15, 1996, the Court received a proposed Sentence and Findings of Fact from the State which the Court has interpreted as a sentencing memorandum. On July 16, 1996, the Court held a further sentencing hearing where each side was offered the opportunity to present any additional evidence and/or argument in support of their respective positions. Upon conclusion of the final argument of counsel for the State and Counsel for the Defense, the Court set a final sentencing for this date, August 6, 1996.

This Court, having heard the evidence presented in both the guilt phase and the penalty phase, having had the benefit of legal memoranda and further evidence and argument both in favor and in opposition of the death penalty, finds as follows:

A. AGGRAVATING FACTORS

1. The Defendant committed the capital felony while under a sentence of imprisonment pursuant to Florida Statute 921.141(5)(a). The evidence presented during the penalty phase proceeding proved beyond a reasonable doubt that the Defendant, while a juvenile, was convicted in the State of Louisiana for the offense of robbery, and that while incarcerated in a juvenile facility attained seventeen years of age, the age of majority in Louisiana. After attaining adult status under

Louisiana law, the Defendant escaped from said facility. Thereafter, the State of Louisiana issued an adult arrest warrant for the Defendant for the offense of escape. The evidence is uncontroverted that the Defendant was eighteen years of age at the time of the murder of Bobby Burke and that the Defendant was still a fugitive from justice from the State of Louisiana with adult status. This aggravating factor has been proved beyond a reasonable doubt.

2. The Defendant committed the capital felony for pecuniary gain pursuant to Florida Statute 921.141(5)(f). On the night of the murder, the victim, Bobby Burke, had left his residence and walked outside after dark with a pan of scraps in his hand in order to feed some stray cats in the neighborhood. A few minutes thereafter his wife heard what later proved to be gunshots, and Mr. Burke lay dying in the street in front of his residence. The Defendant, subsequent to his arrest, made statements indicating that his intention was to rob the victim, the victim "bucked him" and that he therefore had to kill him. Although the evidence indicates that Mr. Burke left his residence without his wallet, and without any money on his person, the fact that this murder was committed for the purpose of attaining financial gain is quite obvious from the totality of the circumstances in addition to the Defendant's personal statements. This aggravating circumstance has been proved beyond a reasonable doubt.

None of the other aggravating factors enumerated by statute are applicable to this case and none other was considered by this Court.

Nothing except as previously indicted in paragraphs 1 and 2 above was considered in aggravation.

B. MITIGATING FACTORS.

Statutory Mitigating Factors:

In its sentencing memorandum, the Defendant requested the Court to consider the following statutory mitigating circumstance:

1. That the Defendant was eighteen years of age

at the time of the offense. This mitigating factor was proved by the evidence and the Court has given this statutory mitigator substantial weight in consideration of the sentence to be imposed upon the Defendant.

Nonstatutory Mitigating Factors:

In its sentencing memorandum, the Defendant has requested the Court to consider the following nonstatutory mitigating factors:

1. That the Defendant fully cooperated with law enforcement after his arrest. The Court finds that this requested mitigating factor has not been established by the evidence. To the contrary, the evidence indicates that the Defendant, following his arrest, attempted to blame another individual for the murder and has continued to do so until this date.

2. That the Defendant did not permanently flee the Crestview area after the crime, although he had numerous opportunities to do so. The Court finds that this fact, as worded in Defendant's memorandum, was established by the evidence. However, the Court further finds that this fact does not constitute a mitigating factor since the Defendant had no transportation and no money of his own, and he did flee the Crestview area immediately following the murder and stayed with a friend in Century, Florida, for several days. Upon his return to Crestview, he remained in hiding until involuntarily apprehended by law enforcement.

3. That the Defendant has a one year old daughter with whom he intends to maintain a relationship through his term of imprisonment. The evidence established that the Defendant does have a one year old daughter, but there was no evidence offered to indicate that the Defendant has ever had any type of meaningful relationship with this child. The evidence established that the child was produced from a casual relationship with the mother at a time when the Defendant was involved in other sexual relationships both heterosexual and homosexual. This is not a mitigating factor.

4. That the Defendant has had virtually no disciplinary problems in the jail over the last

twenty months while awaiting his trial. The Court finds that this mitigating factor was established by the evidence but is given little weight in that the evidence further indicated that the Defendant has been housed in the maximum security section of the Okaloosa County Jail under extremely intense supervision and observation.

5. That the Defendant obtained his G.E.D. while incarcerated. This mitigating factor was established by the evidence and given slight weight by the Court.

6. That the defense expert, Dr. James Larson, testified that the Defendant could live a productive life in prison and was capable of being rehabilitated. The Court finds that Dr. Larson's testimony was sufficient to establish this mitigating factor. However, his testimony further indicated that he was not aware of the Defendant's conduct, including escape, while incarcerated in the State of Louisiana. Accordingly, this mitigating factor is given some weight by the Court.

7. That the Defendant has been participating in Weekly Bible meetings and has routinely corresponded with Rev. Ozzie Bloxson regarding Biblical questions. This fact was established by the evidence. However, there was no evidence tending to establish any particular religious or Biblical interests prior to his arrest for this murder. The Court attaches very little weight to the Defendant's claim of "jailhouse religion."

8. The Defendant testified that he intends to further his education and become involved in a prison ministry should he receive a life sentence. This fact was established by the Defendant's testimony, but once again, it's given very slight weight by the Court.

9. The Defendant is legally blind in one eye and is beginning to lose his vision in the other eye. This fact was established by the evidence. However, it does not constitute a mitigating factor.

10. That the Defendant has a capacity for hard work

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and worked well when employed as he maintained employment at various furniture stores while residing in Crestview, Florida. The Court finds that this mitigating factor has been established to some extent. The evidence indicated that the Defendant, when employed, is a good worker and did indeed maintain employment at various times at various furniture stores. However, there was no evidence indicating that the Defendant had a "capacity" for hard work. To the extent that this mitigating factor has been accepted by the Court, it has been given slight weight.

11. The level of credibility of many of the State's key witnesses shows that they were sold gold liars. This so-called mitigating factor appears to constitute no more than argument by counsel as to credibility of witnesses and does not constitute a valid mitigating factor.

The Court has very carefully considered and weighed the aggravating and mitigating circumstances found to exist in this case, being ever mindful that human life is at stake and in the balance. The Court finds, as did the jury, that the aggravating circumstances applicable to this case outweigh the mitigating circumstances.

Accordingly, it is

ORDERED AND ADJUDGED that the Defendant, Samuel Francis Williams, is hereby sentenced to death for the murder of the victim, Bobby Burke. The Defendant is hereby committed to the custody of the Department of Corrections of the State of Florida for execution of this sentence as provided by law.

DONE AND ORDERED in Shalimar, Florida, this 6th day of August, 1996.

G. ROBERT BARRON
CIRCUIT JUDGE

Copies to:
James R. Murray, State Attorney
Jay Gontarek, Esq.
Reed Ammon, Esq.

Newman C. Brackin
clerk of Court
BY_____
Deputy Clerk