

IN THE SUPREME COURT OF FLORIDA

KEITH BRENNAN,

Appellant,

vs.

CASE NO. 90,279

STATE OF FLORIDA,

Appellee.

ANSWER BRIEF OF THE APPELLEE

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TABLE OF CONTENTS

PAGE NO.:

SUMMARY OF THE ARGUMENT 1

ARGUMENT 5

 ISSUE I 5

 WHETHER THE IMPOSITION OF THE DEATH PENALTY ON
 A DEFENDANT WHO WAS SIXTEEN YEARS OLD AT THE
 TIME OF THE OFFENSE CONSTITUTES CRUEL OR
 UNUSUAL PUNISHMENT.

 ISSUE II 10

 WHETHER THE TRIAL COURT ERRED IN PERMITTING
 THE TESTIMONY OF DR. WILLIAM MAPLES.

 ISSUE III 16

 WHETHER THE TRIAL COURT ERRED BY GIVING ADVICE
 TO THE PROSECUTOR.

 ISSUE IV 20

 WHETHER THE TRIAL COURT ERRED IN ADMITTING CO-
 DEFENDANT NELSON'S OUT OF COURT STATEMENTS.

 ISSUE V 26

 WHETHER THE TRIAL COURT ERRED IN ADMITTING DNA
 EXPERT TESTIMONY.

 ISSUE VI 32

 WHETHER THE TRIAL COURT ERRED IN PERMITTING
 THE STATE TO SUBSTITUTE A WITNESS.

 ISSUE VII 34

 WHETHER THE TRIAL COURT ERRED BY GIVING THE
 CURRENT STANDARD JURY INSTRUCTION ON THE
 HEINOUS, ATROCIOUS, OR CRUEL AGGRAVATING
 FACTOR.

ISSUE VIII	35
<p style="padding-left: 40px;">WHETHER THE TRIAL COURT ERRED IN PERMITTING THE STATE TO INTRODUCE EVIDENCE AT THE SPENCER HEARING.</p>	
ISSUE IX	37
<p style="padding-left: 40px;">WHETHER THE TRIAL COURT ERRED IN WEIGHING THE AGGRAVATING FACTOR OF HEINOUS, ATROCIOUS, OR CRUEL.</p>	
ISSUE X	43
<p style="padding-left: 40px;">WHETHER THE APPLICATION OF THE HEINOUS, ATROCIOUS, OR CRUEL AGGRAVATING FACTOR CREATED AN IMPROPER DOUBLING.</p>	
ISSUE XI	45
<p style="padding-left: 40px;">WHETHER THE TRIAL COURT ERRED IN WEIGHING THE COLD, CALCULATED, AND PREMEDITATED AGGRAVATING FACTOR.</p>	
ISSUE XII	48
<p style="padding-left: 40px;">WHETHER THE TRIAL COURT ERRED IN WEIGHING THE AVOID ARREST AGGRAVATING FACTOR.</p>	
ISSUE XIII	50
<p style="padding-left: 40px;">WHETHER THE TRIAL COURT ERRED IN WEIGHING THE DURING THE COURSE OF A ROBBERY AGGRAVATING FACTOR.</p>	
ISSUE XIV	51
<p style="padding-left: 40px;">WHETHER THE APPELLANT'S DEATH SENTENCE IS DISPROPORTIONATE.</p>	
CONCLUSION	55
CERTIFICATE OF SERVICE	55

<u>Chastine v. Broome,</u> 629 So.2d 293 (Fla. 4th DCA 1993)	17
<u>Christian v. State,</u> 550 So.2d 450 (Fla. 1989), <u>cert.</u> <u>denied,</u> 494 U.S. 1028 (1990)	46
<u>Clark v. State,</u> 443 So.2d 973 (Fla. 1983) <u>cert.</u> <u>denied,</u> 467 U.S. 1210 (1984)	50
<u>Cruz v. New York,</u> 481 U.S. 186 (1987)	24
<u>DiGuilio v. State,</u> 491 So.2d 1129 (Fla. 1986)	14, 19
<u>Dougan v. State,</u> 595 So.2d 1 (Fla.), <u>cert.</u> <u>denied,</u> 506 U.S. 942 (1992)	47
<u>Duest v. Dugger,</u> 555 So.2d 849 (Fla. 1990), <u>cert.</u> <u>denied,</u> 507 U.S. 1034 (1993)	48, 50
<u>Duest v. Goldstein,</u> 654 So.2d 1004 (Fla. 4th DCA 1995)	17
<u>Farina v. State,</u> 679 So.2d 1151 (Fla. 1996)	21
<u>Farina v. State,</u> 680 So.2d 392 (Fla. 1996)	8, 23
<u>Florida Power & Light Co. v. Robinson,</u> 68 So.2d 406 (Fla. 1953)	12
<u>Franqui v. State,</u> 699 So.2d 1312 (Fla. 1997)	23, 24
<u>Freeman v. State,</u> 563 So.2d 73 (Fla. 1990), <u>cert.</u> <u>denied,</u> 111 S.Ct. 2910 (1991)	53
<u>Frye v. United States,</u> 293 F. 1013 (D.C.Cir.1923)	26, 28, 30

<u>Gamble v. State,</u> 659 So.2d 242 (Fla. 1995), <u>cert.</u> <u>denied</u> , 116 S.Ct. 933 (1996)	52
<u>Geralds v. State,</u> 674 So.2d 96 (Fla.), <u>cert.</u> <u>denied</u> , 117 S.Ct. 230 (1996)	32, 33
<u>Glendenning v. State,</u> 536 So.2d 212 (Fla.), <u>cert.</u> <u>denied</u> , 492 U.S. 907 (1989)	28
<u>Grossman v. State,</u> 525 So.2d 833 (Fla. 1988)	23
<u>Gudinas v. State,</u> 693 So.2d 953 (Fla.), <u>cert.</u> <u>denied</u> , 118 S.Ct. 345 (1997)	46
<u>Hadden v. State,</u> 690 So.2d 573 (Fla. 1997)	27, 28
<u>Hall v. State,</u> 614 So.2d 473 (Fla.), <u>cert.</u> <u>denied</u> , 510 U.S. 834 (1993)	34, 46
<u>Hammond v. State,</u> 660 So.2d 1152 (Fla. 2d DCA 1995)	12, 13
<u>Hannon v. State,</u> 638 So.2d 39 (Fla. 1994), <u>cert.</u> <u>denied</u> , 513 U.S. 1158 (1995)	38, 39
<u>Hayes v. State,</u> 581 So.2d 121 (Fla.), <u>cert.</u> <u>denied</u> , 502 U.S. 972 (1991)	52
<u>Hayes v. State,</u> 660 So.2d 257 (Fla. 1995)	26, 28
<u>Hill v. State,</u> 688 So.2d 901 (Fla. 1996), <u>cert.</u> <u>denied</u> , 118 S.Ct. 265 (1997)	47
<u>Huff v. State,</u> 495 So.2d 145 (Fla. 1986)	18

<u>Idaho v. Wright,</u> 497 U.S. 805 (1990)	24
<u>In re Amendments to Florida Rule of Criminal Procedure 3.220, 3.202,</u> 654 So.2d 915 (Fla. 1995)	35
<u>Jackson v. Dugger,</u> 633 So.2d 1051 (Fla.), <u>cert.</u> <u>denied,</u> 488 U.S. 1050 (1989)	39
<u>Jackson v. State,</u> 22 Fla. L. Weekly S690 (Fla. Nov. 7, 1997)	47
<u>Jackson v. State,</u> 545 So.2d 260 (Fla. 1989), <u>cert.</u> <u>denied,</u> 506 U.S. 1004 (1992)	18
<u>Jordan v. State,</u> 694 So.2d 708 (Fla. 1997)	27
<u>Kearse v. State,</u> 662 So.2d 677 (Fla. 1995)	39
<u>Kight v. State,</u> 512 So.2d 922 (Fla. 1987), <u>cert.</u> <u>denied,</u> 485 U.S. 929 (1988), <u>disapproved</u> <u>on other grounds,</u> <u>Owen v. State,</u> 596 So.2d 985 (Fla. 1992)	53
<u>Kingery v. State,</u> 523 So.2d 1199 (Fla. 1st DCA 1988)	11
<u>Kokal v. State,</u> 492 So.2d 1317 (Fla. 1986)	52
<u>LeCroy v. State,</u> 533 So.2d 750 (Fla. 1988), <u>cert.</u> <u>denied,</u> 492 U.S. 925 (1989)	6, 7
<u>Lloyd v. State,</u> 524 So.2d 396 (Fla. 1988)	12, 14
<u>McKinney v. State,</u> 579 So.2d 80 (Fla. 1991)	40
<u>McKinney v. State,</u> 579 So.2d 80 (Fla. 1991)	53

<u>Menendez v. State,</u> 419 So.2d 312 (Fla. 1982)	50
<u>Mills v. State,</u> 476 So.2d 172 (Fla. 1985), <u>cert.</u> <u>denied</u> , 475 U.S. 1031 (1986)	50
<u>Morgan v. State,</u> 639 So.2d 6 (Fla. 1994)	8
<u>Orme v. State,</u> 677 So.2d 258 (Fla. 1996), <u>cert.</u> <u>denied</u> , 117 S.Ct. 742 (1997)	40
<u>Perry v. State,</u> 522 So.2d 817 (Fla. 1988)	39
<u>Porter v. State,</u> 564 So.2d 1060 (Fla. 1990), <u>cert.</u> <u>denied</u> , 498 U.S. 1110 (1991)	40
<u>Preston v. State,</u> 607 So.2d 404 (Fla. 1992), <u>cert.</u> <u>denied</u> , 507 U.S. 999 (1993)	34
<u>Privett v. State,</u> 417 So.2d 805 (Fla. 5th DCA 1982)	21, 22
<u>Ramirez v. State,</u> 651 So.2d 1164 (Fla. 1995)	26, 28
<u>Randolph v. State,</u> 562 So.2d 331 (Fla. 1990)	39
<u>Reed v. State,</u> 560 So.2d 203 (Fla.), <u>cert.</u> <u>denied</u> , 498 U.S. 882 (1990)	38
<u>Robertson v. State,</u> 22 Fla. L. Weekly S404 (Fla. July 3, 1997)	53
<u>Rogers v. State,</u> 511 So.2d 526 (Fla. 1987), <u>cert.</u> <u>denied</u> , 484 U.S. 1020 (1988)	46
<u>Rogers v. State,</u> 630 So.2d 513 (Fla. 1993)	16

<u>S.M. v. State,</u> 651 So.2d 208 (Fla. 2d DCA 1995)	14
<u>Sinclair v. State,</u> 657 So.2d 1138 (Fla. 1995)	53
<u>Sliney v. State,</u> 699 So.2d 662 (Fla. 1997)	51
<u>Songer v. State,</u> 544 So.2d 1010 (Fla. 1989)	53
<u>Spencer v. State,</u> 615 So.2d 688 (Fla. 1993)	35
<u>Squires v. State,</u> 450 So.2d 208 (Fla.) <u>cert.</u> <u>denied</u> , 469 U.S. 892 (1984)	44
<u>Stanford v. Kentucky,</u> 492 U.S. 361 (1989)	5-7
<u>State v. Schopp,</u> 653 So.2d 1016 (Fla. 1995)	36
<u>Stein v. State,</u> 632 So.2d 1361 (Fla.), <u>cert.</u> <u>denied</u> , 513 U.S. 834 (1994)	34, 39, 40
<u>Steinhorst v. State,</u> 412 So.2d 332 (Fla. 1982)	11
<u>Stewart v. State,</u> 588 So.2d 972 (Fla. 1991), <u>cert.</u> <u>denied</u> , 503 U.S. 976 (1992)	50
<u>Taylor v. State,</u> 630 So.2d 1038 (Fla.), <u>cert.</u> <u>denied</u> , 513 U.S. 832 (1993)	39
<u>Terry v. State,</u> 668 So.2d 954 (Fla. 1996)	53
<u>Thompson v. Oklahoma,</u> 487 U.S. 815 (1988)	5
<u>Thompson v. State,</u> 507 So.2d 1074 (Fla. 1987)	11

<u>Thompson v. State,</u> 647 So.2d 824 (Fla. 1994)	53
<u>Thompson v. State,</u> 648 So.2d 692 (Fla. 1994), <u>cert.</u> <u>denied</u> , 515 U.S. 1125 (1995)	48, 49
<u>Tillman v. State,</u> 591 So.2d 167 (Fla. 1991)	51
<u>Tresvant v. State,</u> 396 So.2d 733 (Fla. 3d DCA 1981)	21
<u>Trotter v. State,</u> 576 So.2d 691 (Fla. 1990)	39
<u>Vargas v. State,</u> 640 So.2d 1139 (Fla. 1994)	29
<u>Walls v. State,</u> 641 So.2d 381 (Fla. 1994), <u>cert.</u> <u>denied</u> , 513 U.S. 1130 (1995)	43-45, 49, 51
<u>Watts v. State,</u> 593 So.2d 198 (Fla.), <u>cert.</u> <u>denied</u> , 505 U.S. 1210 (1992)	52
<u>Whitton v. State,</u> 649 So.2d 861 (Fla. 1994), <u>cert.</u> <u>denied</u> , 116 S.Ct. 106 (1995)	34
<u>Willacy v. State,</u> 696 So.2d 693 (Fla. 1997)	37, 45, 48
<u>Wilson v. State,</u> 493 So.2d 1019 (Fla. 1986)	39
<u>Z.P. v. State,</u> 651 So.2d 213 (Fla. 2d DCA 1995)	14

OTHER AUTHORITIES CITED

Rule 2.160, Florida Rules of Judicial Administration 16

Section 90.601, Florida Statutes 12

Section 90.603, Florida Statutes 12

Section 90.803(18)(b), Florida Statutes 22

Section 924.051, Florida Statutes (1996) 14, 24, 30

Section 924.051, Florida Statutes (1996) 19

SUMMARY OF THE ARGUMENT

I. The imposition of the death penalty on a defendant that was sixteen years old at the time of the crime does not constitute cruel or unusual punishment. The United States Supreme Court has expressly rejected any claim that the Eighth Amendment forbids the imposition of a death sentence on a sixteen year old offender. To the extent that any question remains about Florida's constitutional prohibition against cruel or unusual punishment precluding the appellant's sentence, legislation about the culpability of juveniles and the fact that the death penalty has repeatedly been imposed on sixteen year old offenders establishes that the appellant's argument has no merit.

II. The appellant's claim that Dr. Maples was not competent to be a witness has not been preserved for appellate review. The only objection to Dr. Maples' testimony below was an allegation that the testimony was tainted due to a discussion Maples had with the prosecutor during a recess, which is not asserted as a basis for error in this appeal. Even if the issue is considered, it is meritless as there is no indication in the record that Maples was not competent to be a witness. In addition, any possible error is clearly harmless, since Maples' testimony was only offered to establish the identity of the victim, which was not contested at trial and which was also proven through other evidence.

III. The appellant's claim that the trial court erred in providing strategy advice to the prosecutor has not been preserved for appellate review. Even if considered, however, his argument is without merit; suggestions made by a trial judge during a bench conference about handling an unexpected situation during trial are not prohibited.

IV. The appellant's argument regarding the admissibility of statements made jointly by the appellant and his codefendant is also not preserved for review. In addition, case law clearly supports the admission of the challenged testimony, since any comments not made by the appellant were affirmative adopted by his failure to dispute the inculpatory statements. Any possible error would be harmless due to the appellant's confession to law enforcement.

V. The trial court did not err in accepting state witness Darren Esposito as an expert. To the extent that the appellant challenges any other aspect of Esposito's testimony, his argument has not been preserved for review. Furthermore, Esposito's testimony was properly admitted and any possible error would clearly be harmless in light of the other evidence presented at trial and the appellant's theory of defense.

VI. The trial court did not err in permitting the testimony of the medical examiner, Dr. Carol Huser. As the appellant

acknowledges, this Court has expressly authorized the use of a substitute medical examiner who did not conduct the autopsy. Any possible error would be harmless since there was no dispute about the victim's cause of death, and Huser's testimony was not inconsistent with the appellant's theory of defense.

VII. The trial court did not err in denying the appellant's requested jury instruction defining the aggravating factor of heinous, atrocious, or cruel. The court gave the current standard instruction, which has been repeatedly upheld by this Court.

VIII. The trial court did not err in failing to conduct a Richardson inquiry when the state called a witness at the Spencer hearing. In addition, any possible error is harmless. No evidence was provided to the court other than information already before the judge in the presentence investigation report.

IX. The trial court properly found and weighed the heinous, atrocious, or cruel aggravating factor. The trial judge applied the correct standard of law, and his findings are well supported in the record.

X. The trial court did not improperly double the aggravating factors of avoid arrest and heinous, atrocious or cruel. These are separate and distinct factors based on different aspects of the offense.

XI. The trial court properly found and weighed the cold,

calculated, and premeditated aggravating factor. The trial judge applied the correct standard of law, and his findings are well supported in the record.

XII. The trial court properly found and weighed the avoid arrest aggravating factor. The trial judge applied the correct standard of law, and his findings are well supported in the record.

XIII. The trial court properly found and weighed the during the course of a robbery aggravating factor. This Court has repeatedly rejected the appellant's claim that application of this factor amounts to an automatic aggravator which renders the statute unconstitutional.

XIV. The death sentence imposed upon the appellant is not disproportionate when compared to factually similar cases in which death has been imposed.

ARGUMENT

ISSUE I

WHETHER THE IMPOSITION OF THE DEATH PENALTY ON A DEFENDANT WHO WAS SIXTEEN YEARS OLD AT THE TIME OF THE OFFENSE CONSTITUTES CRUEL OR UNUSUAL PUNISHMENT.

The appellant initially alleges that, because he was eight days short of being seventeen years old when he killed Tommy Owens, his sentence is constitutionally prohibited.¹ Although the appellant discusses the constitutional consideration of this issue in Thompson v. Oklahoma, 487 U.S. 815 (1988), he neglects to mention that the United States Supreme Court has expressly rejected his claim. In Stanford v. Kentucky, 492 U.S. 361 (1989), that Court held that the execution of a defendant that was sixteen years old at the time of the crime does not violate the Eighth Amendment's prohibition against cruel and unusual punishment. In doing so, the Court recognized that evolving standards of decency permit execution in a case where the defendant was six months younger than the appellant in this case at the time of their respective crimes. The relevant conclusion in Stanford -- that a majority of the states permitting capital punishment authorize it

¹This argument addresses the appellant's claim that execution of a sixteen year old offender is *per se* unconstitutional. To the extent that the appellant is claiming that it is cruel and/or unusual punishment to execute *this* sixteen year old offender, his concerns are addressed in Issue XIV regarding proportionality.

for crimes committed at age 16 or above -- is still true today. Thus, the appellant has failed to meet his "heavy burden" of establishing a national consensus against applying the death penalty to him due to his age at the time of the crime. 492 U.S. at 373. Clearly, the appellant has no meritorious claim in this issue with regard to the federal constitution.

The assertion that Florida's constitutional prohibition against cruel or unusual punishment was violated herein is similarly unavailing. In Allen v. State, 636 So.2d 494 (Fla. 1994), this Court construed this provision to preclude the execution of fifteen year old offenders; in LeCroy v. State, 533 So.2d 750 (Fla. 1988), cert. denied, 492 U.S. 925 (1989), the provision was held to authorize the execution of a seventeen year old offender. The appellant asserts that the rationale of Allen is equally applicable here, yet the rationale of LeCroy is also clearly applicable.

The claim that execution of murderers that were sixteen at the time of the crime is unconstitutional because no sixteen year old offenders have been executed since 1972 is not persuasive. In fact, since 1972, no one that was under the age of twenty at the time of his crime has been executed in this state. Surely this does not mean the death penalty cannot be imposed on anyone nineteen or younger. Nor is the fact that the appellant is

currently the youngest person on death row significant,² since obviously someone must be the youngest. This does not make his sentence unconstitutional.

In fact, the most relevant factors for analysis of Florida's cruel or unusual punishment prohibition are the legislative history with regard to the culpability of juveniles for serious crimes (as discussed in LeCroy) and the frequency with which the death penalty is imposed on sixteen year old offenders in this state (as discussed in Allen). As to the first factor, this Court acknowledged in LeCroy that legislative action through approximately the last 35 years (and now nearly 45) "has consistently evolved toward treating juveniles charged with serious offenses as if they were adult criminal defendants." 533 So.2d at 757. This trend has not changed in the years since LeCroy was decided. Thus, the appellant's constitutional challenge finds no support in legislative enactments, touted in Stanford as the clearest objective evidence of community values. 492 U.S. at 368.

As to the second factor, the appellant represents that only three other sixteen year old murderers were sentenced to death

²The state disputes the appellant's assertion that he is the youngest defendant (at the time of his crime) currently on death row. Department of Corrections records indicate that Jeffrey Farina is still on death row awaiting his resentencing. Farina was only 16 years, 9 months old at the time of his crimes. See, DOC's Death Row Roster, dated 12/10/97, p. 15 (attached hereto as Appendix A).

since 1972, none of whom are still on death row: Henry Brown, (Brown v. State, 367 So.2d 616 (Fla. 1979)); James Morgan, (Morgan v. State, 639 So.2d 6 (Fla. 1994)); and Jeffrey Farina, (Farina v. State, 680 So.2d 392 (Fla. 1996)). It must be noted initially that the state disputes the appellant's assertion that Farina was resentenced to life following this Court's mandate (Appellant's Initial Brief, p. 28). The undersigned has been advised that, in fact, Farina's resentencing is currently scheduled for April 6, 1998, and the state has every reason to believe that Farina will be resentenced to death.

In addition, however, it matters not whether the penalty imposed in these cases is ever carried out; the relevant consideration is how often the penalty is imposed, not how often the defendants are executed. In Allen, this Court noted that, in recent years, "only two death penalties have been *imposed*" on offenders less than sixteen years old, and stated that "the relevant fact we must confront is that death almost never is *imposed* on defendants of Allen's age." 636 So.2d at 497 (emphasis added). Since 1972, the death penalty has been imposed seven times on defendants that were sixteen at the time of their crimes: Henry Brown (1 time), James Morgan (4 times), James Farina (1 time so far), and the appellant. None of the other three sixteen year old murderers previously on death row had their sentences reduced

solely due to their age. Thus, the appellant's assertion that he is "in the onerous position of being the only sixteen year old child that the state of Florida has decided to execute in over 25 years" is simply not true (Appellant's Initial Brief, p. 28).

In conclusion, the appellant has failed to meet his burden of demonstrating that imposition of the death penalty on a sixteen year old offender is cruel or unusual under either the Florida or federal constitutions. Therefore, he is not entitled to relief on this issue.

ISSUE II

WHETHER THE TRIAL COURT ERRED IN PERMITTING THE TESTIMONY OF DR. WILLIAM MAPLES.

The appellant next contends that a new trial is necessary due to the admission of testimony by Dr. William Maples. Dr. Maples was a forensic anthropologist called as a state witness to identify the victim's skeletal remains (T15. 523).³ Dr. Maples suffered from terminal cancer at the time of the appellant's trial, and initially misidentified the dental records as belonging to the appellant rather than the victim. The court below conferred with the attorneys and, commenting that Maples was incapacitated, suggested using prior testimony, to which the defense objected. The judge then determined to proceed and permitted the state to have Maples correct his testimony (T15. 529, 534).

The appellant now claims the court erred in allowing this "incapacitated" witness to testify as to the identity of the victim. According to his argument, Maples was incompetent to be a witness and the trial judge should have made affirmative findings regarding Maples' competence. It must be noted initially that this argument has not been preserved for appellate review. The court conference held below was requested by the state, it was not to

³References to the record on appeal will be designated as "R" followed immediately by the volume number, a period, space, and the page number. For example, (R3. 450) would be a cite to Volume 3, page 450 of the record. References to the trial transcript will be designated with a "T" in place of the "R."

discuss an objection lodged by the defense. Although the defense requested the court to strike Maples' testimony due to Maples' having spoken to the prosecutor during a recess, this is not the basis of the error alleged on appeal.⁴ It is true that over the course of the lengthy bench conference, defense counsel remarked, "I don't know how to say this, but from his testimony up to this point, he may be incompetent to testify" (T15. 532). However, when viewed in context of the entire bench conference, it is clear that defense counsel's statement was not a legal objection but simply an off-hand comment during a discussion of the situation. It was not sufficient to apprise the trial judge of the putative error now asserted on appeal. Castor v. State, 365 So.2d 701, 703 (Fla. 1978). Since there was no request for testimony to be excluded based on any alleged incapacity on the part of the witness, the appellant's current argument is barred. Steinhorst v. State, 412 So.2d 332, 338 (Fla. 1982).

Even if this issue is considered, no error has been demonstrated. The appellant selects isolated comments from the court conference that was held when this issue arose to establish that Maples was incompetent to testify. Clearly, the court's comments were not intended to be factual findings regarding the witness' competency, as no one below had challenged Maples' ability

⁴The prosecutor's discussion with Maples during the recess did not create error. See, Thompson v. State, 507 So.2d 1074, 1075 (Fla. 1987); Kingery v. State, 523 So.2d 1199, 1204 (Fla. 1st DCA 1988).

to testify on that basis. The court was merely describing the situation in the hopes of coming to a mutually agreeable way to handle it.

As the appellant notes, all witnesses are presumed to be competent, although a trial judge may disqualify a witness found to be incapable of accurately perceiving and relating the facts or lacking an appreciation of the need to tell the truth. §§ 90.601, 90.603, Fla. Stat.; see generally, Lloyd v. State, 524 So.2d 396, 400 (Fla. 1988) (discussing test of testimonial competence). There has never been any suggestion that Dr. Maples did not possess the requisite sense of obligation to tell the truth, and neither his testimony nor the comments from the bench conference demonstrate that he was unable to accurately relate the facts. His initial misidentification of the dental remains, which were labeled with the appellant's name rather than the victim's, reflects at the most a momentary confusion. Even a witness that has previously been declared insane may testify "where it is shown that he had a lucid interval, has sufficient understanding to comprehend the nature and obligation of an oath, and that his mental capacity is such that he can understand and intelligently answer questions propounded to him." Florida Power & Light Co. v. Robinson, 68 So.2d 406, 413 (Fla. 1953). No error occurred when Maples was permitted to resume his testimony following the recess.

The appellant's reliance on Hammond v. State, 660 So.2d 1152

(Fla. 2d DCA 1995), to establish error herein is misplaced. In Hammond, the district court reversed a trial after three mentally challenged witnesses were found competent to testify over defense objection. The court noted that the prosecution's entire case rested upon the testimony provided by these witnesses. The judge had not made the specific determinations necessary to support a finding of competency, but permitted the testimony only after asking the boys "extremely leading and suggestive questions." The judge failed to address whether the witnesses were capable of observing and recollecting facts; capable of narrating the facts for the judge and jury; and aware of moral sense of obligation to tell the truth. Noting that the critical facts were totally dependent on these witnesses' ability to recall and accurately recount their observations to the jury, and that their actual trial testimony contained inconsistencies, omissions of details, and incoherence regarding time and sequence, the court reversed for a new trial.

The instant case is wholly distinguishable. Dr. Maples was not a child-like witness with an IQ of 45 or 50; the mere fact that he temporarily succumbed to confusion brought on by his cancer does not establish that he was not competent to be a witness. There has never been any suggestion herein that, like the witnesses in Hammond, Maples did not feel a moral obligation to tell the truth. In addition, the cases cited by the appellant allegedly imposing an

affirmative duty on the trial judge to determine the mental capacity of witness do not mandate a new trial in this case, since those cases all involved situations where the witnesses' competence was challenged and placed in issue by the parties. See, Z.P. v. State, 651 So.2d 213, 214 (Fla. 2d DCA 1995) (holding trial court is required to make findings relating to a child's competency *when the issue is properly raised*); Lloyd, 524 So.2d at 399; S.M. v. State, 651 So.2d 208 (Fla. 2d DCA 1995).

Furthermore, it must be noted that any possible error regarding the admission of Maples' testimony would clearly be harmless beyond any reasonable doubt. Pursuant to Section 924.051, Florida Statutes (1996), the appellant has the burden of proving that any error was prejudicial. Given the strength of the state's evidence, including inculpatory statements the appellant made to law enforcement and to the Porth sisters, he cannot meet this burden.

Even if any alleged error were reviewed for harmfulness under the standards of DiGuilio v. State, 491 So.2d 1129 (Fla. 1986), no relief would be warranted. Due to the unexpected difficulties with Maples, the prosecutor limited the testimony from this witness, and the only significant evidence presented was Maples' conclusion that the remains discovered on March 22, 1995 were those of Tommy Owens. The victim's identity was not a contested issue at trial, and a great deal of other evidence supported the conclusion that the

remains were Owens, including the appellant's statements to the Porth sisters and law enforcement that he and Nelson had killed Owens and hid Owens' body under a bush, covered by a piece of wood. The appellant does not even attempt to explain how Maples' testimony could have prejudiced him.

The appellant cannot gain a new trial by asserting that the trial judge failed to make factual findings which no one below requested the judge to make. And he has clearly failed to demonstrate that Maples was incompetent to testify as a witness, or even if incompetent, that Maples' testimony could have possibly prejudiced his defense. Therefore, he is not entitled to a new trial on this issue.

ISSUE III

WHETHER THE TRIAL COURT ERRED BY GIVING ADVICE TO THE PROSECUTOR.

The appellant next asserts that the trial judge abandoned his cloak of neutrality by giving advice to the prosecutor during a bench conference. It is not clear from the appellant's argument whether he is suggesting that the trial judge should have disqualified himself from any further proceedings, or simply granted a new trial. However, neither argument is preserved for appellate review.

If the claim is that the judge's comments created a fear that the appellant would not receive a fair trial due to the judge's bias toward the state, which was the issue discussed in both of the cases cited in the appellant's brief, such claim is not cognizable because no written or oral request for disqualification was ever presented to the court below. Rule 2.160, Florida Rules of Judicial Administration, provides that when facts giving rise to the motion occur during trial, the motion "may be stated on the record and shall also be filed in writing," and that the trial judge shall rule on the motion immediately. In Rogers v. State, 630 So.2d 513, 516 (Fla. 1993), this Court held that the requirement that a motion for disqualification be in writing "cannot be waived" and where a party discovers facts giving rise to his motion in the middle of trial, "he or she may request a brief recess--which must be granted--in order to prepare the appropriate

documents." In the instant case, defense counsel never even objected to the comments, and certainly never indicated to the judge that he believed the judge had made any inappropriate remarks giving rise to a reasonable fear that the appellant was not getting a fair trial. Thus, disqualification was not required, and the only authorities cited in the appellant's argument on this issue, Chastine v. Broome, 629 So.2d 293 (Fla. 4th DCA 1993) and Duest v. Goldstein, 654 So.2d 1004 (Fla. 4th DCA 1995), are irrelevant.

If, on the other hand, the appellant is suggesting that the judge's comments were so prejudicial that a mistrial was necessary, the lack of a contemporaneous objection forecloses consideration of this issue as well. Castor, 365 So.2d at 703. Defense counsel's failure to object to any of the comments as impartial or prejudicial, or to present any of the allegations asserted in this issue, precludes appellate review.

Additionally, even if the merits of the appellant's claim are considered, no new trial is warranted. The challenged remarks were offered during the course of a bench conference as the parties and the judge engaged in a discussion about how to handle an unexpected situation in the middle of trial. The record is very clear that the jury could not possibly have heard the comments, as a recess had been granted and in fact the discussion did not even take place in the courtroom (T15. 526, 534). The judge was doing his job, making suggestions to both parties as to how to proceed. Defense

counsel was also concerned about how to handle the witness on cross examination (T15. 530, 531). The recitation of the comments in the appellant's brief, taken out of context, fails to show that defense counsel was asking, "The only -- do you wish for him to continue if Steve [the prosecutor] is gonna cut his direct short and see how far we go there, or how do you want to address this?" (T15. 529-30). The prosecutor was concerned that there be "some explanation," but obviously did not want to create prejudicial error (T15. 533). Under these circumstances, it was entirely proper, and in fact obligatory on the judge to provide the parties with some guidance.

In Jackson v. State, 545 So.2d 260, 264 (Fla. 1989), cert. denied, 506 U.S. 1004 (1992), this Court rejected a similar claim. Jackson alleged that his trial judge made improper comments while ruling on various matters during the course of the trial which indicated his bias for the prosecution. This Court held that the comments, "when viewed in the totality of this trial, reveal that the trial judge was properly exercising his responsibility to conduct a fair trial for appellant." The same is true in the case at bar. See also, Huff v. State, 495 So.2d 145, 148 (Fla. 1986) (context of remark challenged as improper showed it was in direct response to legal argument by counsel).

The appellant does not even attempt to explain how any prejudice could have accrued based on comments made outside the

presence of the jury. Any conceivable error would clearly be harmless. § 924.051, Fla. Stat. (1996); DiGuilio, 491 So.2d at 1135. On these facts, he is not entitled to a new trial on this issue.

ISSUE IV

WHETHER THE TRIAL COURT ERRED IN ADMITTING CO-DEFENDANT NELSON'S OUT OF COURT STATEMENTS.

The appellant next asserts that reversible error occurred when Tina Porth was permitted to testify about conversations between Porth, her sister Misty, the appellant, and the appellant's codefendant, Joshua Nelson. Once again, however, the appellant is raising an issue which has not been preserved for appellate review. Although the appellant's brief recites the one hearsay objection which was lodged below, the incriminating testimony elicited following that objection was clearly attributed to the appellant, and by far the most incriminating evidence about the conversation that took place later in the hotel room where the appellant and Nelson discussed the details of Owens' murder was never objected to below. Therefore, consideration of this issue is precluded. Castor, 365 So.2d at 703.

The objection noted in the appellant's brief was made when Tina Porth was asked about comments made as Tina, Misty, the appellant and Nelson left the Cape Coral area in Tommy's car, allegedly heading for Fort Lauderdale. Misty Porth had previously testified, without objection, that she had asked what was going on, as she thought something was wrong since Tommy was not there (T15. 562). Nothing was said in response, so she asked again about half an hour later, and "they" said something like don't worry about it or just imagine. Tina testified, however, over the one hearsay

objection made, that when no one answered Misty, Misty persisted, asking "Well, did you kill him or did you just beat him up?" Nelson then looked at the appellant and said "why don't you answer that," and the appellant stared ahead for a few seconds then said "Well, we killed him," and that was the end of the conversation (T16. 610). Tina then described going to a hotel outside Daytona around 5 a.m., where they all went to sleep for a few hours. There was no objection when Tina later was asked about the conversation between the Porth sisters, the appellant and Nelson in the hotel room later on Saturday (T16. 611-617). There had been no objection when Misty had previously testified about the same conversation (T15. 563-565).

Once again, even if this issue is considered, the appellant has failed to demonstrate that reversible error occurred. There is no question that the statements were properly admitted under Florida's evidence code. A person's silence constitutes admissible evidence of an admission where the circumstances and nature of the statement made by another in the defendant's presence are such that it would be expected that the person would protest the statement if untrue. Farina v. State, 679 So.2d 1151 (Fla. 1996); Privett v. State, 417 So.2d 805 (Fla. 5th DCA 1982); Tresvant v. State, 396 So.2d 733, 738 (Fla. 3d DCA 1981). In Privett, 417 So.2d at 806, the court set out several factors that should be present to show the necessary acquiescence. These factors are: (1) The statement

must have been heard by the party claimed to have acquiesced; (2) the statement must have been understood by him; (3) the subject matter of the statement is within the knowledge of the person; (4) there were no physical or emotional impediments to the person responding; (5) the personal makeup of the speaker or his relationship to the party or event are not such as to make it unreasonable to expect a denial; and (6) the statement itself must be such as would, if untrue, call for a denial under the circumstances.

Applying these factors to the instant case, it is clear that the admission of the statements was not an abuse of discretion. Tina stated that when she and Misty initially questioned Nelson about what had happened while they were in the hotel room, Nelson stated that they would have to wait until the appellant was out of the shower to discuss it; once the appellant got out, Nelson told him the girls wanted to know what was going on, and they all four sat and discussed it (T16. 611). Thus, the appellant was present and participating in a conversation about criminal events in which he had been involved. In Privett, the court noted that Privett was present and heard extensive discussions about the bank robberies and his participation in them, that no claim of physical impediment had been raised, and that the statements implicating him were ones which, if untrue, would call for a denial. Thus, the court concluded the statements were admissible pursuant to Section

90.803(18)(b), Florida Statutes, as admissions by acquiescence. Similarly, the statements challenged herein were admissible against the appellant.

In Farina, this Court examined the admissibility of a conversation between Farina and his brother/codefendant that had been surreptitiously tape recorded as they sat alone in the back of a police car. Noting that neither brother had an incentive to shift the blame based on the circumstances under which the statements were made, and that Farina was present and confronting his brother face-to-face throughout the conversation, this Court held that the circumstances provided sufficient indicia of reliability to survive a challenge that their admission violated the Confrontation Clause. These same factors apply in the instant case, and clearly support the admission of the testimony by the Porth sisters. See also, Grossman v. State, 525 So.2d 833, 839 (Fla. 1988) (discussing a situation similar to that at bar, and noting "the joint statements of [Grossman] and [his codefendant] given in each other's presence would be admissible against both as admissions against penal interest").

Recently, in Franqui v. State, 699 So.2d 1312 (Fla. 1997), this Court receded from Farina and Grossman in part, but reaffirmed that this type of statement is a classic "example of when a codefendant's statements, although implicating the defendant, had a particularized guarantee of trustworthiness so as to be

introduced against him based solely upon the circumstances under which the statements were made." Id. at 1320. The key to assessing the admission of statements under the Confrontation Clause is determining whether the circumstances under which the statements were made establish their inherent trustworthiness and show that the evidence possesses sufficient indicia of reliability to be admitted. Idaho v. Wright, 497 U.S. 805 (1990). As outlined above, it is the circumstances under which these statements were made to the Porth sisters that establish their reliability. Thus, no Confrontation Clause violation has been demonstrated.

The appellant also faults the trial judge for failing to make factual findings to support a determination that these statements were admissible, but he never requested that express findings be stated for the record below. Therefore, this issue has been waived.

Assuming, arguendo, it was error for the trial court to admit the testimony, error, if any, was harmless in light of the extensive confession made to law enforcement by the appellant. The appellant's statements to the police are properly considered in determining the harmfulness of any possible error. Franqui, 699 So.2d at 1321; Cruz v. New York, 481 U.S. 186, 193-94 (1987). Pursuant to Section 924.051, Florida Statutes (1996), the appellant has the burden of proving that any error was prejudicial. Given the strength of the state's evidence unrelated to the testimony of

the Porth sisters, he has not met this burden. Any possible error would be harmless under any standard. Thus, the appellant is not entitled to a new trial on this issue.

ISSUE V

WHETHER THE TRIAL COURT ERRED IN ADMITTING DNA EXPERT TESTIMONY.

The appellant next challenges the trial court's ruling to permit the state to present expert DNA testimony. The record reflects that when the prosecutor tendered Darren Esposito as an expert, the defense invoked the "same objections as in my motion in limine to this testimony" (T16. 693). The court asked if this meant the defense was objecting to Esposito's qualifications, and the defense said yes, based on the grounds in the motion in limine, "in regard to the data bases that he used and things of that nature" (T16. 693-94). The court found Esposito to be an expert in the field of "serology and forensic serology and DNA comparison" (T16. 693-94). Esposito thereafter testified that the victim's DNA matched DNA taken from blood found on the knife and underwear that had been discovered on a residential street near Lake Kennedy in Cape Coral shortly after the date of the murder (T16. 710).

The appellant now contends that the evidence was improperly admitted as violating the mandates of Hayes v. State, 660 So.2d 257 (Fla. 1995), and Ramirez v. State, 651 So.2d 1164 (Fla. 1995), and that the state failed to establish the testimony was based on scientific principles that had gained general acceptance in the scientific community under the Frye⁵ test. Initially, it must be

⁵Frye v. United States, 293 F. 1013 (D.C.Cir.1923)

noted once again that the argument presented to the court below was vastly different than the one currently asserted on appeal. The exchange at the time of the objection to Esposito's qualifications suggests that the trial judge did not recall the motion in limine as presenting a challenge to Esposito's qualifications, and in fact the motion did not (T16. 693; 7R. 879). The only objection in the motion in limine was to Esposito's allegedly substituting his own database. Esposito testified, however, that the database factor he used had been developed by Dr. Martin Tracy, a population geneticist from Florida Atlantic University (T16. 732-33).

In Jordan v. State, 694 So.2d 708 (Fla. 1997), this Court found a similar claim waived in the absence of a specific and contemporaneous objection:

We note that this profile evidence should have been tested for general acceptance within the relevant scientific community. See Frye v. United States, 293 F. 1013 (D.C.Cir.1923). It is this type of new or novel scientific profile evidence for which the safeguards of a Frye test are needed in order to guarantee reliability. The defense did not, however, specifically object on Frye grounds, leaving this issue unpreserved. See Hadden v. State, 690 So.2d 573 (Fla.1997).

694 So.2d at 717.

Similarly, in Hadden v. State, 690 So.2d 573, 580 (Fla. 1997), this Court held that "it is only upon proper objection that the novel scientific evidence offered is unreliable that a trial court must make this determination. Unless the party against whom the

evidence is being offered makes this specific objection, the trial court will not have committed error in admitting the evidence." This Court further noted that in Glendening v. State, 536 So.2d 212 (Fla.), cert. denied, 492 U.S. 907 (1989), where the defendant objected to an expert witness testifying as to her opinion about whether the alleged victim had been sexually abused on the basis that the question called for an opinion on the ultimate issue in the case and that the witness was not competent to make this conclusion and not on the basis that the testimony was scientifically unreliable, that the claim was waived. This Court stated, "As the defendant did not make a Frye objection, the only basis upon which the trial court could rule on this evidence was the relevancy standard for expert testimony as outlined in the evidence code. Accordingly, this was the only basis for the appellate court to rule on the evidence." Hadden, at 690 So.2d 580. Therefore, the only issue before this Court is whether the trial judge erred in accepting Esposito as an expert despite the appellant's challenge to the database he used to determine the frequency with which Owens' DNA would be included in the general population.

Even if the claim now presented was properly before this Court, a review of Esposito's testimony establishes that his conclusions were in accordance with the standards set forth in Ramirez and Hayes. Esposito stated that he had been with the

Florida Department of Law Enforcement for four years, that he had completed over a year's training in DNA analysis and serology and attended several workshops in serology and DNA analysis (T16. 691). He testified that the procedures he uses in DNA analysis at FDLE are generally accepted scientific procedures, commonly used throughout the nation (T16. 694). Those procedures were used in this case, and are routinely followed in all of his cases (T16. 694). He explained the preliminaries chain reaction (PCR) process, noting that it has been around for about fifteen years, and discussed the quality control tests conducted to insure the accuracy of his results (T16. 696, 698).

Even if the lower court's review of this testimony was insufficient, this Court has made it clear that the standard of review in cases such as this should be *de novo*. Brim v. State, 695 So.2d 268 (Fla. 1997); Vargas v. State, 640 So.2d 1139, 1144 (Fla. 1994). This means that the trial judge's ruling will be reviewed as a matter of law rather than by an abuse-of-discretion standard. Accordingly, an appellate court may consider any scientific material that was not part of the trial record in its determination of whether there was general acceptance within the relevant scientific community. For example, in Brim, this Court considered the effect the 1996 NRC report would have on the admissibility of the state's population frequency statistics presented in that case and noted, "[d]uring the course of Brim's appeal, the state of

science has significantly changed." Brim at 270. With regard to the PCR method, the 1996 NRC report concludes that PCR-based systems are ready to be used and should be used. The report also notes that the method is a generally accepted scientific method that has been accepted by courts as satisfying the Frye standard. Id.

Pursuant to Section 924.051, Florida Statutes (1996), the appellant has the burden of proving that any error was prejudicial. He cannot meet this standard on the facts of this case. Furthermore, under any harmless error standard, a review of the evidence clearly shows that any possible error was harmless. Esposito repeatedly noted that the PCR method he used cannot result in an absolute identification; a "match" can only indicate a possible source of the material containing the DNA or, in some cases, exclude sources (T16. 696-698, 711-712, 728). Thus, he concluded that the victim could have been the source of the blood stain on the underwear and knife (T16. 711). The chances of a "coincidental match" would vary depending upon the types seen (T16. 698). The types he obtained from the victim's profile in this case would occur in approximately one in seventeen thousand eight hundred Caucasians (T16. 720).

As for the harmfulness of Esposito's testimony that he consulted a geneticist to supplement the generally accepted database, Esposito explained that applying the test results to the

database provided with the kit he used was too discriminating, because using the given factor of .000 "in essence would have stated that the types from those exhibits matched Mr. Owens and no other Caucasians" (T16. 728). As the use of .000 was too individualizing, he consulted a geneticist who advised him to use .03 instead. (T16. 732-33). Thus, the change in the database factor worked to the appellant's benefit.

Of course, in the overall context of the trial, this evidence was hardly significant. There was never any dispute that the appellant was involved in this killing, as he admitted to cutting the victim's throat with the box cutter and taking turns with Nelson hitting the victim with the bat. In fact, the appellant was able to bring out testimony from Esposito for his own defense: the fact that Esposito had found a blood stain on Nelson's shoes which matched the victim, while the appellant's shoes did not give any chemical indications for the presence of blood (T16. 725-26). Since Esposito's testimony was not inconsistent with the appellant's theory of defense, and in light of all of the other evidence presented at trial, any possible error in the admission of this testimony was clearly harmless. Therefore, the appellant is not entitled to a new trial on this issue.

ISSUE VI

WHETHER THE TRIAL COURT ERRED IN PERMITTING THE STATE TO SUBSTITUTE A WITNESS.

The appellant's next issue contests the ruling of the trial judge which permitted the State to present evidence about the victim's cause of death through a medical examiner, Dr. Carol Huser, that had not actually conducted the autopsy. Although the appellant acknowledges that this claim was rejected in Geralds v. State, 674 So.2d 96 (Fla.), cert. denied, 117 S.Ct. 230 (1996), he attempts to distinguish Geralds by suggesting that Huser did not testify that the records upon which she relied for her conclusions were authentic.

Prior to Huser being called as a witness, the defense stipulated to her qualifications as an expert (T15. 492, 498). Huser testified that she had reviewed the medical examiner's office file, the autopsy report, a report by Dr. Maples, the medical examiner investigator's report, photographs, dental records, depositions, and other miscellaneous papers (T15. 497). She had also consulted with Dr. Maples (T15. 499). She stated that the materials she reviewed are the types of materials normally relied upon in forming opinions in her field; that she had reviewed them thoroughly; and that they were sufficient for her to reach her opinions (T15. 497). On cross examination, the defense did not challenge her statement that these materials were routinely relied

on, and did not contest the authenticity of the documents she reviewed. Because her opinions were based on a wealth of objective evidence available, Geralds establishes the propriety of her testimony.

This Court also upheld the use of a substitute medical examiner in Capehart v. State, 583 So.2d 1009, 1012-13 (Fla. 1991), cert. denied, 502 U.S. 1065 (1992). Noting that the expert was properly qualified, and that she formed her opinion based on the autopsy report, the toxicology report, the evidence receipts, the photographs of the body, and all of the other paperwork filed in the case, this Court ruled that no abuse of discretion in permitting the expert's testimony had been demonstrated. The facts of the instant case are directly on point. Furthermore, any possible error would be harmless since the victim's cause of death was not contested at trial and Huser's testimony was not inconsistent with the appellant's theory of defense. Therefore, the appellant is not entitled to a new trial on this issue.

ISSUE VII

WHETHER THE TRIAL COURT ERRED BY GIVING THE CURRENT STANDARD JURY INSTRUCTION ON THE HEINOUS, ATROCIOUS, OR CRUEL AGGRAVATING FACTOR.

The appellant's next claim challenges the trial court's denial of his requested jury instruction defining the aggravating factor of heinous, atrocious, or cruel. The jury was given the current standard HAC instruction. Thus, this challenge has been repeatedly rejected by this Court as meritless. See, Whitton v. State, 649 So.2d 861, 867 (Fla. 1994), cert. denied, 116 S.Ct. 106 (1995); Stein v. State, 632 So.2d 1361 (Fla.), cert. denied, 513 U.S. 834 (1994); Hall v. State, 614 So.2d 473 (Fla.), cert. denied, 510 U.S. 834 (1993); Preston v. State, 607 So.2d 404, 411 (Fla. 1992), cert. denied, 507 U.S. 999 (1993). The appellant has not offered any reasonable basis to recede from these decisions.

In addition, because the facts of this case demonstrate that Owens' murder was heinous, atrocious or cruel under any definition, any possible error is harmless.

ISSUE VIII

WHETHER THE TRIAL COURT ERRED IN PERMITTING THE STATE TO INTRODUCE EVIDENCE AT THE SPENCER HEARING.

The appellant next claims that the trial judge erred in overruling his objection to an alleged discovery violation during the hearing conducted below pursuant to Spencer v. State, 615 So.2d 688 (Fla. 1993). However, a review of the record clearly demonstrates that no prejudicial error occurred at this hearing.

When the prosecutor called Probation Officer Don Hutta to testify at the Spencer hearing, the defense objected that Hutta had never been listed as a witness by the state (R12. 1661-62). The state responded that Hutta was being offered in rebuttal to mitigation alleged by the defense. The judge ruled that the rules of discovery did not apply at a Spencer hearing, that it was not a penalty phase proceeding, and that he would hear whatever witnesses either party wished to present (R12. 1662).

This Court specifically declined to adopt a rule of criminal procedure which would have made the discovery rules fully applicable to the penalty phase of a capital trial. In re Amendments to Florida Rule of Criminal Procedure 3.220, 3.202, 654 So.2d 915 (Fla. 1995). Thus, although particular discovery rules relating to a defendant's mental state have been adopted for penalty phase proceedings, the general rules of discovery do not apply.

Even if the court below should have conducted a thorough inquiry into the situation, the failure to do so may be harmless. State v. Schopp, 653 So.2d 1016 (Fla. 1995). In this case, every word of testimony presented through Don Hutta was already included in the presentence investigation report before the court. Since the same evidence was properly in the record, any error in presenting this testimony was necessarily harmless. There is nothing to suggest that the court below even considered this evidence. Furthermore, given the four strong aggravating factors, and the lack of significant mitigation, excluding Hutta's testimony would not have made any difference in the appellant's sentence. Thus, the appellant is not entitled to be resentenced on this issue.

ISSUE IX

WHETHER THE TRIAL COURT ERRED IN WEIGHING THE AGGRAVATING FACTOR OF HEINOUS, ATROCIOUS, OR CRUEL.

The appellant's next issue disputes the trial court's application of the heinous, atrocious or cruel aggravating factor. The judge's findings with regard to this factor are supported by the evidence, and the correct standard of law was applied; thus, the application of the factor should be affirmed. Willacy v. State, 696 So.2d 693, 695 (Fla. 1997) (in considering propriety of aggravating factor, task on appeal is to review record to determine whether trial court applied the correct rule of law and whether competent substantial evidence supports its finding).

With regard to this aggravating factor the trial court noted that the appellant and Nelson, armed with a box cutter and aware that Owens carried a metal bat in the back seat of his car, lured Owens to a remote area. The appellant and Nelson got out of the car and, as a subterfuge, the appellant cut a scratch in the car's bumper to get Owens out of the car. Nelson then struck Owens with the bat; the victim ran away but was chased by Nelson and the appellant. Owens, injured and in pain, offered his car and money and to make up a story about the car's disappearance, but Nelson and the appellant decided that if Owens lived, they would be discovered. Nelson again struck Owens with the bat, so that the appellant could cut Owens' throat with the box cutter. The

appellant had admitted in his confession that he had trouble cutting Owens' throat, and had to repeatedly slash and cut Owens' throat. However, Owens was still breathing, so Nelson again struck him with the bat. There were multiple blows to the head over an undetermined period of time, and Owens was at times conscious and aware of his ultimate demise before his throat was cut. The trial judge concluded, "This was a malevolent, unmerciful and ruthless murder involving prolonged torture and unmitigated cruelty" (R12.1720).

A review of factually similar cases demonstrates that this factor was properly applied. In Reed v. State, 560 So.2d 203 (Fla.), cert. denied, 498 U.S. 882 (1990), this Court considered similar facts and held:

On the other hand, the evidence supports the finding that the killing was especially heinous, atrocious, and cruel. Upon first encountering Mrs. Oermann, Reed slapped her and tied her up. He then severely beat her, leaving numerous bruises on her body. Following this, he choked the victim and then raped her. Finally, he slashed her throat more than a dozen times. The medical examiner testified that because the stab wounds were made with a serrated-edge knife, they would have taken more time and effort to inflict. Likewise, Reed told his cellmate, Nigel Hackshaw, that he cut the victim's throat "to keep her from talking," thus proving the aggravating circumstance of committing the killing to avoid lawful arrest.

Similarly, in Hannon v. State, 638 So.2d 39 (Fla. 1994), cert. denied, 513 U.S. 1158 (1995), this Court agreed that the beating

and stabbing of a screaming victim supported the heinous, atrocious or cruel aggravating factor. This Court further noted in Hannon that it has consistently upheld findings of heinous, atrocious, or cruel under similar circumstances. Trotter v. State, 576 So.2d 691, 694 (Fla. 1990); Campbell v. State, 571 So.2d 415, 418 (Fla. 1990). See, also, Jackson v. Dugger, 633 So.2d 1051, 1055 (Fla.) (victim bound as he begged for mercy, beaten, stabbed and choked), cert. denied, 488 U.S. 1050 (1989); Taylor v. State, 630 So.2d 1038 (Fla.) (victim was alive while she was stabbed, beaten, and finally strangled), cert. denied, 513 U.S. 832 (1993); Atwater v. State, 626 So.2d 1325, 1329 (Fla. 1993) (victim beaten prior to or during the stabbing), cert. denied, 511 U.S. 1046 (1994); Randolph v. State, 562 So.2d 331, 338 (Fla. 1990) (victim repeatedly hit, kicked, strangled, and knifed); Perry v. State, 522 So.2d 817 (Fla. 1988) (victim was choked and repeatedly stabbed and was severely beaten while warding off blows); Wilson v. State, 493 So.2d 1019 (Fla. 1986) (victim was brutally beaten while attempting to fend off blows before being fatally shot). Where, as here, the evidence shows that the victim was beaten with a metal baseball bat, managed to escape, was beaten again and again, and begged the appellant and Nelson to just take his car before they sliced his throat, the trial court did not err in finding the HAC factor.

Nevertheless, the appellant argues that this Court's opinions in Kearse v. State, 662 So.2d 677, 686 (Fla. 1995); Stein, 632

So.2d at 1367; and Bonifay v. State, 626 So.2d 1310, 1313 (Fla. 1993), require a clear showing that he intended to cause the victim unnecessary and prolonged suffering. This argument represents a misunderstanding of this aggravating factor. Since the statute uses the disjunctive "or," the factor may apply where the facts are heinous, or atrocious, or cruel. The cruel element may be satisfied by a showing of intent to torture, even where the facts are not otherwise heinous or atrocious. Thus, in a case where the victim begs for his life, or is killed by multiple gunshot wounds -- facts which may not otherwise be encompassed in the definition of HAC -- the factor may still apply where a clear intent to torture is evident. McKinney v. State, 579 So.2d 80, 84 (Fla. 1991) (since facts did not otherwise establish HAC, the lack of evidence of intent to torture precluded application of factor); Porter v. State, 564 So.2d 1060, 1063 (Fla. 1990) (same), cert. denied, 498 U.S. 1110 (1991). No case has ever held that direct evidence of an intent to torture must be provided in order for this factor to apply. See, Orme v. State, 677 So.2d 258, 263 (Fla. 1996) (strangulation provided prima facie evidence of HAC; "defendant's mental state then figures into the equation solely as a mitigating factor that may or may not outweigh the total case for aggravation"), cert. denied, 117 S.Ct. 742 (1997).

Cases routinely acknowledged that HAC is consistently applied where the victim is repeatedly bludgeoned, without any specific

discussion as to the defendant's mental condition. This is because where facts demonstrate that a victim suffered a great deal, the reasonable inference is that the defendant either intended or was indifferent to such suffering. For example, in Bogle v. State, 655 So.2d 1103 (Fla.), cert. denied, 116 S.Ct. 483 (1995), Bogle claimed that the factor could not be upheld because nothing in the case established that he intended to cause the victim unnecessary suffering. Upon rejecting this claim, this Court stated:

In his last claim regarding the aggravating circumstances, Bogle asserts that the murder in this case was not HAC. According to Bogle, nothing in this case established that Bogle intended to cause the victim unnecessary suffering. Additionally, he asserts that the evidence establishes that the victim was highly intoxicated and that the first blow to the victim's head could have killed her. As noted by the trial judge, Bogle struck [the victim] a total of seven times with such force that her head was so far impressed into a hollow in the ground that the initial impression of the officers at the scene was that the head had been flattened to a considerable degree. The medical examiner testified that the victim was alive at the time of the infliction of most of the wounds but could not testify as to how long she survived, "four breaths, several seconds, or a few minutes." In his opinion, the last blows were those inflicted to the side of her head--the blows which caused her death. The murder was extremely wicked and vile and inflicted a high degree of pain and suffering on the victim, Margaret Torres. The defendant acted with complete indifference to the victim's suffering.

We have found other similar murders to be HAC and likewise find this factor to be supported here. Penn v. State, 574 So.2d

1079 (Fla.1991) (beating victim to death with hammer was HAC); Chandler v. State, 534 So.2d 701 (Fla.1988) (repeatedly beating victims with baseball bat was HAC), cert. denied, 490 U.S. 1075, 109 S.Ct. 2089, 104 L.Ed.2d 652 (1989); Lamb v. State, 532 So.2d 1051 (Fla.1988) (beating victim to death by striking victim on head with hammer six times was HAC).

655 So.2d at 1109.

Accordingly, the defendant's state of mind is not a dispositive fact that must be determined and weighed *every time* that HAC is considered. Rather, the relevant facts are typically those showing the manner in which the homicide occurred. Nevertheless, the facts in the instant case clearly show an utter indifference to the suffering of the victim. The evidence presented below, and outlined in the court's findings on this factor, clearly demonstrate "the defendant acted with complete indifference to the victim's suffering." Bogle, 655 So.2d at 1109.

The trial court properly found the HAC aggravating circumstance. In addition, any possible impropriety in the use of this factor would be harmless in light of the other strong aggravating circumstances established. No relief is warranted.

ISSUE X

**WHETHER THE APPLICATION OF THE HEINOUS,
ATROCIOUS, OR CRUEL AGGRAVATING FACTOR CREATED
AN IMPROPER DOUBLING.**

The appellant next contends that the court below erred in finding both the heinous, atrocious or cruel and the avoid arrest aggravating factors. According to the appellant, the trial judge's comment that the appellant and Nelson had decided that if they allowed Owens to live they would be discovered, as part of the judge's recitation of facts to support the HAC factor, precluded the court's ability to find and weigh the avoid arrest aggravator. However, no improper doubling occurred by the court's consideration of both factors.

This Court has acknowledged that the same facts in a given case may support multiple aggravating factors without offending the rule prohibiting improper doubling "so long as they are separate and distinct aggravators and not merely restatements of each other." Banks v. State, 22 Fla. L. Weekly S521, 522 (Fla. Aug. 28, 1997). Clearly, the aggravating factors of heinous, atrocious or cruel and avoid arrest are separate and distinct. The HAC factor focuses on the manner in which the murder was committed, and considers the circumstances "from the unique perspective of the victim." Id., at 522. The avoid arrest factor, on the other hand, pertains to the defendant's motive in committing the murder. Walls v. State, 641 So.2d 381, 390 (Fla. 1994), cert. denied, 513 U.S.

1130 (1995).

Since the application of these factors was based on different aspects of Owens' murder, the appellant is not entitled to be resentenced. Squires v. State, 450 So.2d 208 (Fla.) cert. denied, 469 U.S. 892 (1984) (defendant's prior violent felony convictions and status as an escapee were distinct characteristics). Furthermore, any possible error in this regard would clearly be harmless, in light of the other strong aggravating factors applied. No relief is warranted on this issue.

ISSUE XI

WHETHER THE TRIAL COURT ERRED IN WEIGHING THE COLD, CALCULATED, AND PREMEDITATED AGGRAVATING FACTOR.

The next claim challenges the applicability of the cold, calculated, and premeditated aggravating factor. Once again, the judge's findings are supported by the evidence, and the correct standard of law was applied, compelling affirmance of the use of this aggravator. Willacy, 696 So.2d at 695; Walls, 641 So.2d at 387-88 (outlining four elements which must be proven to establish this factor). The trial judge noted the following facts in support of this factor: the appellant and Nelson planned in advance to lure Owens to a remote place for the purpose of killing him and stealing his car; they discussed methods to entice Owens out of his car; the appellant intentionally cut a scratch in Owens' bumper, knowing Owens would come out to look at the scratch; Owens was hit, tried to flee, and was chased down by the appellant and Nelson; when Owens' offered them his car, the appellant and Nelson determined they would be discovered if they allowed Owens to live; Owens was repeatedly beaten, his throat was cut, he was bound and dragged over to a bush, beaten again, and left to die. The court concluded that "These actions were the product of calm and cool reflection and were not prompted by emotional frenzy, panic, or a fit of rage. The death of victim Thomas Owens was the result of a careful plan made well in advance of the commission of the offense" (R12. 1716).

These facts demonstrate that the defendant had the careful plan or prearranged design to kill required for the application of this factor. Hall, 614 So.2d at 478 (victim killed as part of plan to steal victim's car); Rogers v. State, 511 So.2d 526, 533 (Fla. 1987), cert. denied, 484 U.S. 1020 (1988). The findings were within the trial court's discretion and support the conclusion that the aggravating factor was correctly found. Gudinas v. State, 693 So.2d 953 (Fla.), cert. denied, 118 S.Ct. 345 (1997). The appellant contends, however, for the first time on appeal, that a pretense of moral justification existed based on the testimony of his difficult childhood that was offered below in mitigation. Neither the facts nor the law supports a conclusion that a pretense of moral justification can be established based on such mitigating evidence. Hall, 614 So.2d at 478 (pretense of justification not established based on defendant's mental retardation).

A pretense of justification is typically found where the defendant presents a colorable claim that the murder was motivated out of self-defense, a legal justification for murder, in a form insufficient to reduce the degree of the crime. Christian v. State, 550 So.2d 450 (Fla. 1989), cert. denied, 494 U.S. 1028 (1990); Banda v. State, 536 So.2d 221, 225 (Fla. 1988), cert. denied, 489 U.S. 1087 (1989); Cannady v. State, 427 So.2d 723 (Fla. 1983). Although the appellant has not identified even a subjective belief that Owens' murder was necessary, purely subjective beliefs

ISSUE XII

WHETHER THE TRIAL COURT ERRED IN WEIGHING THE AVOID ARREST AGGRAVATING FACTOR.

The appellant's next issue alleges that the court below erred in finding and weighing the aggravating factor that the murder was committed to avoid arrest. As to this issue and the next, the appellant merely refers to the argument submitted by defense counsel below, without any further argument or elucidation. In Duest v. Dugger, 555 So.2d 849 (Fla. 1990), cert. denied, 507 U.S. 1034 (1993), this Court stated:

Duest also seeks to raise eleven other claims by simply referring to arguments presented in his motion for postconviction relief. The purpose of an appellate brief is to present arguments in support of the points on appeal. Merely making reference to arguments below without further elucidation does not suffice to preserve issues, and these claims are deemed to have been waived.

555 So.2d at 851-52. Thus, this Court need not consider this issue.

Even if the issue is addressed, however, it is clear that the avoid arrest aggravator was properly found and weighed. The judge's findings with regard to this factor are supported by the evidence, and the correct standard of law was applied; thus, the application of the factor should be affirmed. Willacy, 696 So.2d at 695; Thompson v. State, 648 So.2d 692, 695 (Fla. 1994) (avoid arrest aggravating factor applies where State has shown that the

sole or dominant motive for the murders was the elimination of witnesses), cert. denied, 515 U.S. 1125 (1995).

Testimony below established that when Tommy Owens offered to make up a story if the appellant and Nelson just took his car and left him alone, the appellant and Nelson mutually discussed the situation and agreed that Owens would have to be killed, or they would definitely be caught (T16. 612-613). This evidence alone supports the application of this factor. Walls, 641 So.2d at 390. Thus, no error has been presented. In addition, any possible error would be harmless in light of the other valid aggravating factors. Therefore, the appellant is not entitled to be resentenced on this issue.

ISSUE XIII

**WHETHER THE TRIAL COURT ERRED IN WEIGHING THE
DURING THE COURSE OF A ROBBERY AGGRAVATING
FACTOR.**

The appellant also asserts that the trial court should not have applied the aggravating factor that the murder was committed during the course of a robbery. Once again, this issue has not been properly presented to this Court, since the appellant merely recites trial counsel's motion to the court below. Duest, 555 So.2d at 852. In addition, the appellant's claim that reliance on the "during the course of a felony" aggravator amounts to an automatic aggravating circumstance rendering the death penalty unconstitutional has been rejected by this Court many times. Stewart v. State, 588 So.2d 972, 973 (Fla. 1991), cert. denied, 503 U.S. 976 (1992); Mills v. State, 476 So.2d 172, 178 (Fla. 1985), cert. denied, 475 U.S. 1031 (1986); Clark v. State, 443 So.2d 973, 978 (Fla. 1983) cert. denied, 467 U.S. 1210 (1984); Menendez v. State, 419 So.2d 312, 315 (Fla. 1982).

ISSUE XIV

**WHETHER THE APPELLANT'S DEATH SENTENCE IS
DISPROPORTIONATE.**

The appellant's final claim challenges the proportionality of his sentence. The purpose of a proportionality review is to compare the case to similar defendants, facts and sentences. Tillman v. State, 591 So.2d 167 (Fla. 1991). A review of similar cases compared to the facts of the instant case shows that the sentence in the instant case was proportionate.

The court below found four aggravating circumstances: (1) during the commission of a robbery; (2) avoid arrest; (3) heinous, atrocious or cruel; and (4) cold, calculated, and premeditated. In mitigation the court found the appellant's age and lack of significant criminal history (prior offenses limited to property crimes); the court also found various nonstatutory mitigating circumstances based on the appellant's dysfunctional family history and the role he played in the murder (R12. 1716-1729). The jury recommended death by a vote of 8 to 4.

The brutality and senseless nature of this murder place it among those where the death penalty is properly imposed, even on young defendants. See, Sliney v. State, 699 So.2d 662, 672 (Fla. 1997) (nineteen year old offender that beat and stabbed a pawnshop owner to death during robbery); Walls, 641 So.2d at 390 (nineteen year old offender with no significant prior criminal history and

extensive nonstatutory mental mitigation, in case with aggravating circumstances similar to those at bar); Gamble v. State, 659 So.2d 242 (Fla. 1995) (twenty year old offender with childhood abuse and neglect and severe emotional problems killed landlord with claw hammer and choked him with cord during robbery), cert. denied, 116 S.Ct. 933 (1996); Hayes v. State, 581 So.2d 121 (Fla.) (two aggravating factors weighed against minor mitigating factors of age, low intelligence, learning disabled, a product of deprived environment), cert. denied, 502 U.S. 972 (1991); Watts v. State, 593 So.2d 198 (Fla.) (prior convictions, during the course of sexual battery, and pecuniary gain outweighed mitigation of defendant's age and low IQ), cert. denied, 505 U.S. 1210 (1992); Kokal v. State, 492 So.2d 1317 (Fla. 1986) (immature twenty year old offender beat hitchhiker with pool cue to unconsciousness then shot him in robbery). This is particularly true where, as here, there is no significant mental mitigation; the appellant has a superior IQ in the 120 to 125 range (R10. 1338).

A review of factually similar murders compels the imposition of death on this defendant. See, Atwater, 626 So.2d at 1329 (sentence upheld where defendant entered victim's apartment and repeatedly stabbed victim); Bowden v. State, 588 So.2d 225 (Fla. 1991) (sentence affirmed where the evidence shows that the victim was brutally beaten to death with a rebar and the trial court imposed death after finding HAC and prior violent felony balanced

against Bowden's abused childhood), cert. denied, 503 U.S. 975 (1992); Freeman v. State, 563 So.2d 73 (Fla. 1990) (death penalty not disproportionate where two aggravating factors weighed against mitigating evidence of low intelligence and abused childhood), cert. denied, 111 S.Ct. 2910 (1991); Kight v. State, 512 So.2d 922 (Fla. 1987) (death penalty proportionally imposed with two aggravating factors despite evidence of mental retardation and deprived childhood), cert. denied, 485 U.S. 929 (1988), disapproved on other grounds, Owen v. State, 596 So.2d 985 (Fla. 1992).

The cases cited by the appellant do not establish a lack of proportionality in this case. The appellant relies on Robertson v. State, 22 Fla. L. Weekly S404 (Fla. July 3, 1997); Terry v. State, 668 So.2d 954 (Fla. 1996); Sinclair v. State, 657 So.2d 1138 (Fla. 1995); Thompson v. State, 647 So.2d 824 (Fla. 1994); and McKinney v. State, 579 So.2d 80 (Fla. 1991). Of these, Sinclair, Thompson, and McKinney involved only one aggravating factor; in such cases, this Court has approved the death penalty only where there is nothing or very little in mitigation. Songer v. State, 544 So.2d 1010, 1011 (Fla. 1989). The only additional aggravating factor in Terry was a prior violent felony, based on a contemporaneous conviction as a principal for an aggravating assault committed by Terry's codefendant. Although Robertson's second mitigator was heinous, atrocious or cruel, Robertson had a borderline IQ, a long history of mental illness, statutory impairment based on drug and

alcohol use, and an abusive, deprived childhood. Thus, none of these cases are truly comparable to the instant case.

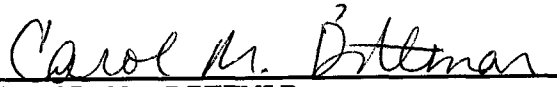
A review of the facts established in the instant case clearly demonstrates the proportionality of the death sentence imposed. The circumstances of this murder compels the imposition of the death penalty. Tommy Owens' murder was the result a totally unprovoked attack by the appellant and Nelson, for no better reason than they wanted Tommy Owens' car. This murder was the result of a cold, calculated plan carried out in a heinous manner. Accordingly, the sentence imposed in the instant was properly imposed.

CONCLUSION

Based on the foregoing arguments and authorities, the judgment and sentence should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Regular Mail to J.L. LeGrande, Esquire, P. O. Box 2429, Fort Myers, Florida 33902-2429, this 2nd day of February, 1998.


COUNSEL FOR APPELLEE

Appendix A

Death Row Roster

This is a complete list of all inmates on Florida's Death Row. This page is updated regularly. Last update was 12/10/97. The table is sorted by the date the inmate was received by the Department of Corrections. This is a very large table (100k), so it may be a little slow loading.

INMATE NAME	DC #	RACE/GENDER	DATE RECEIVED	CRIME	DATE OF OFFENSE	DATE OF SENTENCE	DATE OF BIRTH	COUNTY
Alvord, Gary E.	041482	WM	04/11/74	1ST DEG Mur, Premeditated	06/17/73	04/09/74	01/10/47	Hillsborough
Meeks, Douglas R.	046346	BM	03/21/75	1ST DEG Mur, Premeditated	11/06/74	03/12/75	06/28/53	Taylor
			03/21/75	1ST DEG Mur, Premeditated	10/24/74	06/04/75	06/28/53	Taylor
Elledge, William D.	046625	WM	04/16/75	1ST DEG Mur, Premeditated	08/24/74	08/03/77	07/27/50	Broward
Knight, Thomas	017434	BM	04/23/75	1ST DEG Mur, Premeditated	07/17/74	04/21/75	02/04/51	Dade
			04/23/75	1ST DEG Mur, Premeditated	07/17/74	04/21/75	02/04/51	Dade
			04/23/75	1ST DEG Mur, Premeditated	10/12/80	01/20/83	02/04/51	Bradford
Foster, Charles K.	049546	WM	10/07/75	1ST DEG Mur, Premeditated	07/15/75	10/04/75	10/20/46	Bay
Zeigler, William T.	053948	WM	07/16/76	1ST DEG Mur, Premeditated	12/24/75	07/16/76	07/24/45	Duval
Sireci, Henry P. Jr.	056338	WM	11/16/76	1ST DEG Mur, Premeditated	12/03/75	11/15/76	07/17/48	Orange
Lucas, Harold G.	058279	WM	02/10/77	1ST DEG Mur, Premeditated	08/14/76	02/09/77	10/31/51	Lee
Hitchcock, James E.	058293	WM	02/14/77	1ST DEG Mur, Premeditated	07/31/76	02/11/77	04/05/56	Orange
Rose, James F.	011225	WM	05/13/77	1ST DEG Mur, Premeditated	10/22/76	05/13/77	12/19/45	Hillsborough
King, Amos L.	036275	BM	07/13/77	1ST DEG Mur, Premeditated	03/18/77	07/08/77	08/16/54	Pinellas
				1ST DEG				

Downs, Ernest C.	063143	WM	01/27/78	1ST DEG Mur, Premeditated	04/23/77	01/27/78	08/11/48	Duval
Demps, Bennie	030970	BM	04/19/78	1ST DEG Mur, Premeditated	09/06/76	04/17/78	06/17/50	Bradford
Ferguson, John E.	015110	BM	05/31/78	1ST DEG Mur, Premeditated	07/27/77	05/25/78	02/27/48	Dade
Hall, Freddie L.	022762	BM	06/27/78	1ST DEG Mur, Premeditated	02/21/78	06/01/78	07/21/45	Lake
			06/27/78	1ST DEG Mur, Premeditated	02/21/78	06/21/78	07/21/45	Putnam
Steinhorst, Walter G.	065929	WM	08/09/78	1ST DEG Mur, Premeditated	01/23/77	08/08/78	08/29/31	Bay
			08/09/78	1ST DEG Mur, Premeditated	01/23/77	08/08/78	08/29/31	Bay
			08/09/78	1ST DEG Mur, Premeditated	01/23/77	08/08/78	08/29/31	Bay
Thompson, William L.	053779	WM	09/26/78	1ST DEG Mur, Premeditated	03/30/76	09/20/78	02/19/52	Dade
Booker, Stephen T.	044049	BM	10/20/78	1ST DEG Mur, Premeditated	11/09/77	10/20/78	09/01/53	Alachua
Porter, Raleigh	055640	WM	12/14/78	1ST DEG Mur, Premeditated	08/21/78	12/11/78	12/13/55	Charlotte
			12/14/78	1ST DEG Mur, Premeditated	08/21/78	12/11/78	12/13/55	Charlotte
White, William M.	067048	WM	12/22/78	1ST DEG Mur, Premeditated	06/06/78	12/20/78	05/23/45	Orange
Johnson, Marvin E.	018685	WM	01/15/79	1ST DEG Mur, Premeditated	06/07/78	01/12/79	11/27/42	Escambia
Breedlove, McArthur	067719	BM	03/13/79	1ST DEG Mur, Premeditated	11/06/78	03/05/79	01/01/47	Dade
Sims, Terry M.	032827	WM	07/25/79	1ST DEG Mur, Premeditated	12/29/77	07/24/79	02/05/42	Seminole
Smith, Frank	046920	BM	09/10/79	1ST DEG Mur, Premeditated	12/12/78	09/10/79	08/05/59	Wakulla
Dougan, Jacob J.	046622	BM	10/25/79	1ST DEG Mur, Premeditated	06/17/74	04/10/75	07/11/47	Duval
Scott, Paul W.	071615	WM	01/07/80	1ST DEG Mur, Premeditated	12/04/78	12/14/79	05/09/56	Palm Beach
Mills, Gregory	053673	BM	04/18/80	1ST DEG Mur, Premeditated	05/25/79	04/18/80	05/12/57	Seminole

Waterhouse,Robert B.	075376	WM	09/05/80	IST DEG Mur,Premeditated	01/03/80	09/03/80	12/16/46	Pinellas
Johnson,Terrell M.	010796	WM	10/06/80	IST DEG Mur,Premeditated	12/04/79	10/03/80	04/15/46	Orange
Teffeteller,Robert A.	075785	WM	12/20/80	IST DEG Mur,Premeditated	01/14/79	01/25/85	09/13/53	Volusia
Quince,Kenneth D.	075812	BM	10/22/80	IST DEG Mur,Premeditated	12/28/79	10/21/80	02/10/59	Volusia
			10/22/80	Burglary Assault any per.	12/28/79	10/21/80	02/10/59	Volusia
Routly,Dan E.	076205	WM	11/26/80	IST DEG Mur,Premeditated	06/17/79	11/24/80	06/12/55	Marion
Oats,Sonny B.Jr.	051769	BM	02/11/81	IST DEG Mur,Premeditated	12/20/79	02/10/81	05/25/57	Marion
Mann,Larry E.	077663	WM	04/06/81	IST DEG Mur,Premeditated	11/04/80	03/26/81	06/09/53	Pinellas
Mason, Oscar	060993	BM	04/24/81	IST DEG Mur,Premeditated	03/18/80	04/23/81	10/23/59	Hillsborough
Bottoson,Linroy	078079	BM	05/01/81	IST DEG Mur,Premeditated	10/29/79	05/01/81	02/28/39	Orange
Lightbourn,Ian	078081	BM	05/01/81	IST DEG Mur,Premeditated	01/16/81	05/01/81	12/11/59	Marion
Chandler,Jim E.	078361	WM	05/22/81	IST DEG Mur,Premeditated	07/22/80	05/19/81	08/21/54	Indian River
			05/22/81	IST DEG Mur,Premeditated	07/22/80	05/19/81	08/21/54	Indian River
Valle,Manuel	853220	WM	08/18/81	IST DEG Mur,Premeditated	04/02/78	08/04/81	05/21/50	Dade
Preston,Robert	072593	WM	11/09/81	IST DEG Mur,Premeditated	01/09/78	11/06/81	11/13/57	Seminole
Jones,Leo A.	041468	BM	11/10/81	IST DEG Mur,Premeditated	05/23/81	11/06/81	04/13/50	Duval
Williams,Freddie L.	033405	BM	12/18/81	IST DEG Mur,Premeditated	11/07/80	12/18/81	12/24/45	Orange
Parker,Norman, Jr.	019355	BM	01/19/82	IST DEG Mur,Premeditated	07/18/78	11/18/81	09/29/44	Dade
Card,James A.Sr.	081792	WM	02/01/82	IST DEG Mur,Premeditated	06/03/81	01/28/82	10/16/46	Bay
Herring,Ted	082284	BM	03/02/82	IST DEG Mur,Premeditated	05/29/81	03/01/82	07/02/61	Volusia

Patton,Robert	049448	WM	04/06/82	1ST DEG Mur,Premeditated	09/02/81	03/04/82	04/28/57	Dade
Pope, Thomas D	083040	WM	04/09/82	1ST DEG Mur,Premeditated	01/19/81	04/07/82	01/29/49	Broward
Clark,Larry	020246	BM	04/23/82	1ST DEG Mur,Premeditated	10/30/81	04/20/82	12/21/49	Hillsborough
Craig,Robert P.	083717	WM	05/11/82	1ST DEG Mur,Premeditated	07/21/81	05/11/82	12/21/57	Lake
Blanco, Omar	084582	WM	06/23/82	1ST DEG Mur,Premeditated	01/14/82	05/24/82	07/04/50	Broward
Jones, Ronnie L.	046993	BM	06/29/82	1ST DEG Mur,Premeditated	07/02/80	03/02/81	04/23/56	Dade
			06/29/82	1ST DEG Mur,Premeditated	07/02/80	03/02/81	04/23/56	Dade
Byrd, Milford W.	085488	WM	08/18/82	1ST DEG Mur,Premeditated	10/12/81	08/13/82	09/11/49	Hillsborough
Doyle,Daniel L.	086006	WM	09/22/82	1ST DEG Mur,Premeditated	09/05/81	05/13/82	10/19/59	Broward
Lara,Mario	086671	WM	11/02/82	1ST DEG Mur,Premeditated	07/16/81	08/23/82	04/09/56	Dade
Cave,Alphonso	087429	BM	12/17/82	1ST DEG Mur,Premeditated	04/27/82	12/10/82	11/12/58	Pinellas
Parker, J. B.	789049	BM	01/12/83	1ST DEG Mur,Premeditated	04/27/82	01/11/83	06/11/62	Lake
Hoffman, Barry	088176	WM	02/11/83	1ST DEG Mur,Premeditated	09/07/80	02/11/83	11/08/47	Duval
Groover, Tommy S.	088266	WM	02/21/83	1ST DEG Mur,Premeditated	02/06/82	02/18/83	04/30/58	Duval
			02/21/83	1ST DEG Mur,Premeditated	02/06/82	02/18/83	04/30/58	Duval
Davis, Allen L.	040174	WM	03/02/83	1ST DEG Mur,Premeditated	05/11/82	03/02/83	07/20/44	Duval
Bates, Kayle B.	088568	BM	03/14/83	1ST DEG Mur,Premeditated	06/14/82	03/11/83	02/19/58	Bay
Duest, Lloyd	089061	WM	04/15/83	1ST DEG Mur,Premeditated	02/15/82	04/14/83	10/27/51	Broward
Hill, Clarence E.	089718	BM	05/31/83	1ST DEG Mur,Premeditated	10/19/82	05/27/83	12/02/57	Escambia
Rose, Milo A.	090411	WM	07/14/83	1ST DEG Mur,Premeditated	10/18/82	07/08/83	01/25/50	Pinellas

Wright, Joel D.	749768	WM	09/23/83	IST DEG Mur, Premeditated	02/06/83	09/23/83	08/28/57	Putnam
Stano, Gerald E.	079701	WM	01/18/84	IST DEG Mur, Premeditated	12/14/73	12/09/83	09/12/51	Brevard
			01/18/84	IST DEG Mur, Premeditated	12/20/75	06/13/83	09/12/51	Volusia
			01/18/82	IST DEG Mur, Premeditated	11/11/77	06/13/83	09/12/51	Volusia
Way, Fred L.	092712	WM	02/03/84	IST DEG Mur, Premeditated	07/11/83	01/23/84	01/01/45	Hillsborough
Jackson, Andrea H.	279567	BF	02/13/84	IST DEG Mur, Premeditated	05/17/83	02/10/84	02/26/58	Duval
Phillips, Harry F.	008035	BM	02/15/84	IST DEG Mur, Premeditated	08/31/82	02/01/84	04/21/45	Dade
Peede, Robert I.	093094	WM	03/07/84	IST DEG Mur, Premeditated	03/31/83	03/05/84	06/30/44	Orange
Cooper, Richard M.	087442	WM	03/21/84	IST DEG Mur, Premeditated	06/18/82	03/14/84	09/28/63	Pinellas
Walton, Jason D.	093268	WM	03/22/84	IST DEG Mur, Premeditated	06/18/82	03/14/84	10/09/58	Pinellas
Lambrix, Michael R.	482053	WM	03/23/84	IST DEG Mur, Premeditated	02/06/83	03/22/84	03/29/60	Glades
Kelley, William	093417	WM	04/06/84	IST DEG Mur, Premeditated	10/03/66	04/02/84	12/08/42	Highlands
Glock, Robert D. II	093836	WM	05/14/84	IST DEG Mur, Premeditated	08/16/83	05/04/84	05/22/61	Pasco
Puiatti, Carl	716927	WM	05/14/84	IST DEG Mur, Premeditated	08/16/83	05/04/84	10/03/62	Pasco
Johnston, David E.	084761	WM	06/05/84	IST DEG Mur, Premeditated	11/05/83	06/01/84	03/11/57	Orange
Huff, James R.	075985	WM	06/28/84	IST DEG Mur, Premeditated	04/21/80	06/02/84	10/29/45	Sumter
			06/28/84	IST DEG Mur, Premeditated	04/21/80	06/02/84	10/29/45	Sumter
Marek, John R.	094417	WM	07/06/84	IST DEG Mur, Premeditated	06/16/83	07/03/84	09/17/61	Broward
Muehleman, Jeffrey A.	094506	WM	07/17/84	IST DEG Mur, Premeditated	05/05/83	06/08/84	10/31/64	Pinellas
Provenzano, Thomas H.	094542	WM	07/19/84	IST DEG Mur, Premeditated	01/10/84	07/18/84	06/06/49	Orange

Kight, Charles M.	094718	WM	08/07/84	1ST DEG Mur, Premeditated	12/06/82	08/07/84	10/19/58	Duval
Melendez, Juan	046466	WM	11/02/84	1ST DEG Mur, Premeditated	09/13/83	10/31/84	05/24/51	Polk
Kokal, Gregory A.	072002	WM	11/14/84	1ST DEG Mur, Premeditated	09/29/83	11/14/84	02/27/63	Duval
Rogers, Jerry L.	092118	WM	12/06/84	1ST DEG Mur, Premeditated	01/04/82	12/05/84	08/02/49	St. Johns
Gore, David A.	081008	WM	02/05/85	1ST DEG Mur, Premeditated	07/26/83	03/16/84	08/21/53	Pinellas
Long, Robert J.	494041	WM	05/21/85	1ST DEG Mur, Premeditated	05/27/84	07/25/86	10/14/53	Hillsborough
			05/21/85	1ST DEG Mur, Premeditated	10/15/84	03/02/89	10/14/53	Pasco
			05/21/85	1ST DEG Mur, Premeditated	10/15/84	03/02/89	10/14/53	Pasco
Nixon, Joe E.	910610	BM	07/31/85	1ST DEG Mur, Premeditated	08/12/84	07/30/85	08/23/61	Leon
Rhodes, Richard W.	099269	WM	09/17/85	1ST DEG Mur, Premeditated	02/29/84	09/12/85	10/03/53	Pinellas
Tompkins, Wayne	099350	WM	09/23/85	1ST DEG Mur, Premeditated	03/24/83	09/19/85	03/12/57	Hillsborough
Turner, William T.	099865	BM	11/01/85	1ST DEG Mur, Premeditated	07/03/84	11/01/85	07/02/45	Duval
Swafford, Roy C.	087905	WM	11/12/85	1ST DEG Mur, Premeditated	02/14/82	11/12/85	04/12/47	Volusia
Cook, David	100018	BM	11/14/85	1ST DEG Mur, Premeditated	08/15/84	10/25/85	02/01/64	Dade
Bucnoano, Judias	160663	WF	11/27/85	1ST DEG Mur, Premeditated	09/01/71	11/26/85	04/04/43	Orange
Grossman, Martin E.	089742	WM	12/23/85	1ST DEG Mur, Premeditated	12/13/84	12/13/85	01/19/65	Pinellas
Koon, Raymond	831760	WM	12/24/85	1ST DEG Mur, Premeditated	11/21/79	01/28/83	01/12/32	Collier
Roberts, Ricky B.	100866	BM	01/21/86	1ST DEG Mur, Premeditated	06/04/84	12/31/85	10/05/54	Dade
Diaz, Angel	101061	OM	02/03/86	1ST DEG Mur, Premeditated	12/22/79	01/24/86	08/31/51	Dade
Correll, Jerry W.	101151	WM	02/08/86	1ST DEG Mur, Premeditated	06/30/85	02/07/86	01/09/56	Sarasota

Lopez, Eduardo	094666	WM	03/14/86	IST DEG Mur, Premeditated	01/29/83	02/13/84	10/13/46	Dade
Owen, Duane E.	101660	WM	03/19/86	IST DEG Mur, Premeditated	03/24/84	03/13/86	02/13/61	Palm Beach
			03/19/86	IST DEG Mur, Premeditated	05/29/84	03/13/86	02/13/61	Palm Beach
Hardwick, John G., Jr.	073053	WM	04/24/86	IST DEG Mur, Premeditated	12/24/84	04/24/86	05/29/59	Duval
Jennings, Bryan F.	073045	WM	04/29/86	IST DEG Mur, Premeditated	05/11/79	05/07/80	12/09/58	Brevard
Smith, Frank L.	016296	BM	05/08/86	IST DEG Mur, Premeditated	04/14/85	05/02/86	04/20/47	Broward
Bryan, Anthony B.	102476	WM	05/16/86	IST DEG Mur, Premeditated	08/12/83	05/16/86	03/01/59	Santa Rosa
Williamson, Johnny	096448	WM	05/21/86	IST DEG Mur, Premeditated	06/20/85	05/08/86	10/25/42	Dixie
Remeta, Daniel E.	102704	OM	06/03/86	IST DEG Mur, Premeditated	02/08/85	06/03/86	01/06/58	Marion
Robinson, Johnny L.	102767	BM	06/19/86	IST DEG Mur, Premeditated	08/12/85	06/19/86	07/25/52	St. Johns
Harvey, Harold L., Jr.	102992	WM	06/23/86	IST DEG Mur, Premeditated	02/23/85	06/20/86	12/30/62	Indian River
			06/23/86	IST DEG Mur, Premeditated	02/23/85	06/20/86	12/30/62	Indian River
Jackson, Etheria V.	072847	BM	08/08/86	IST DEG Mur, Premeditated	12/03/85	08/08/86	03/07/59	Duval
Scull, Jesus	104023	OM	09/03/86	IST DEG Mur, Premeditated	11/22/83	05/06/86	01/04/59	Dade
			09/03/86	IST DEG Mur, Premeditated	11/22/83	05/06/86	01/04/59	Dade
Hildwin, Paul C.	923196	WM	09/18/86	IST DEG Mur, Premeditated	09/01/85	09/17/86	03/22/60	Hernando
Stewart, Kenneth A.	479774	WM	10/09/86	IST DEG Mur, Premeditated	04/14/85	10/03/86	08/26/63	Hillsborough
			10/09/86	IST DEG Mur, Premeditated	12/06/84	10/03/86	08/26/63	Hillsborough
LeCroy, Cleo D.	104528	WM	10/14/86	IST DEG Mur, Premeditated	01/04/81	10/01/86	03/07/63	Palm Beach
Rutherford, Arthur D.	105314	WM	12/09/86	IST DEG Mur, Premeditated	08/22/85	12/09/86	03/16/49	Santa Rosa

Holton, Rudolph	829326	BM	12/10/86	1ST DEG Mur, Premeditated	06/23/86	12/05/86	04/20/53	Hillsborough
Reed, Grover B.	105661	WM	01/09/87	1ST DEG Mur, Premeditated	02/27/86	01/09/87	10/15/61	Duval
Davis, Mark A.	106014	WM	02/03/87	1ST DEG Mur, Premeditated	07/01/85	01/30/87	10/03/63	Pinellas
Hudson, Timothy C.	085756	BM	02/09/87	1ST DEG Mur, Premeditated	06/18/86	02/06/87	12/01/64	Hillsborough
Brown, Paul A.	019762	WM	03/05/87	1ST DEG Mur, Premeditated	03/20/86	03/02/87	02/26/50	Hillsborough
Bello, Carlos	107051	OM	04/16/87	1ST DEG Mur, Premeditated	07/24/81	04/14/87	04/21/53	Hillsborough
Rivera, Michael T.	640779	WM	05/08/87	1ST DEG Mur, Premeditated	01/30/86	05/01/87	06/25/62	Broward
Trotter, Melvin	573461	BM	06/18/87	1ST DEG Mur, Premeditated	06/16/86	05/18/87	12/29/60	Manatee
Dailey, James	108509	WM	08/10/87	1ST DEG Mur, Premeditated	05/05/85	08/07/87	06/11/46	Pinellas
Colina, Manuel	108602	OM	08/18/87	1ST DEG Mur, Premeditated	12/18/86	08/18/87	07/30/51	Putnam
Cherry, Roger L.	021641	BM	09/28/87	1ST DEG Mur, Premeditated	06/27/86	09/26/87	06/14/51	Volusia
Bruno, Michael G., Sr.	658761	WM	10/20/87	1ST DEG Mur, Premeditated	08/08/86	09/25/87	04/14/51	Broward
Green, Alphonso	042143	BM	10/26/87	1ST DEG Mur, Premeditated	10/10/86	10/23/87	01/07/51	Hillsborough
Occhicone, Dominick	226426	WM	11/10/87	1ST DEG Mur, Premeditated	06/10/86	11/09/87	08/29/45	Pasco
Mendyk, Todd	109550	WM	11/10/87	1ST DEG Mur, Premeditated	04/09/87	11/10/87	04/18/66	Hernando
Sochor, Dennis	639131	WM	11/16/87	1ST DEG Mur, Premeditated	01/01/82	11/02/87	02/25/52	Broward
Carter, Antonio M.	068601	BM	11/18/87	1ST DEG Mur, Premeditated	04/15/86	11/17/87	02/18/62	Volusia
Maharj, Krishna	109722	WM	12/02/87	1ST DEG Mur, Premeditated	10/16/86	12/01/87	01/26/39	Dade
Freeman, John D.	072746	WM	12/14/87	1ST DEG Mur, Premeditated	11/11/86	11/02/88	11/05/62	Duval
Ventura, Peter	110277	WM	01/21/88	1ST DEG Mur, Premeditated	04/15/81	01/21/88	07/14/35	Volusia

Castro, Edward	110488	OM	02/09/88	1ST DEG Mur, Premeditated	01/14/87	02/09/88	01/26/50	Marion
Young, David	110597	BM	02/19/88	1ST DEG Mur, Premeditated	08/31/86	02/16/88	10/08/65	Palm Beach
Anderson, Richard H.	042115	WM	02/29/88	1ST DEG Mur, Premeditated	05/07/87	02/26/88	04/29/48	Hillsborough
Thompson, Raymond M.	110761	WM	03/03/88	1ST DEG Mur, Premeditated	03/01/82	08/21/86	02/16/30	Broward
Floyd, James	228943	BM	03/03/88	1ST DEG Mur, Premeditated	01/16/84	08/27/84	07/25/59	Pinellas
Porter, George, Jr.	110825	WM	03/09/88	1ST DEG Mur, Premeditated	10/09/86	03/04/88	02/18/32	Brevard
Haliburton, Jerry	046651	BM	04/19/88	1ST DEG Mur, Premeditated	08/09/81	04/11/88	09/19/54	Palm Beach
Johnson, Paul B.	019513	WM	04/28/88	1ST DEG Mur, Premeditated	01/09/81	04/28/88	07/08/49	Alachua
Jones, Randall	111508	WM	05/04/88	1ST DEG Mur, Premeditated	07/27/87	05/03/88	05/07/68	Putnam
Ragsdale, Edward E.	922091	WM	05/13/88	1ST DEG Mur, Premeditated	01/01/86	05/13/88	05/11/60	Pasco
Burns, Daniel, Jr.	111918	BM	06/07/88	1ST DEG Mur, Premeditated	08/18/87	06/02/88	01/29/45	Manatee
Pardo, Manuel, Jr.	111983	WM	06/09/88	1ST DEG Mur, Com of Felony	01/22/86	04/20/88	09/24/56	Dade
			06/09/88	1ST DEG Mur, Premeditated	01/28/86	04/20/88	09/24/56	Dade
Duckett, James A.	112232	WM	06/30/88	1ST DEG Mur, Premeditated	05/12/87	06/30/88	09/04/57	Lake
Derrick, Sanuel J.	097494	WM	07/25/88	1ST DEG Mur, Premeditated	06/24/87	07/25/88	04/05/67	Pasco
Ponticelli, Anthony J.	112967	WM	09/06/88	1ST DEG Mur, Premeditated	11/27/87	09/06/88	04/19/67	Marion
Lewis, Lawrence F.	639093	WM	10/03/88	1ST DEG Mur, Premeditated	05/11/87	09/27/88	09/19/61	Broward
Gilliam, Burley	097234	WM	10/04/88	1ST DEG Mur, Premeditated	06/08/82	02/01/85	08/13/48	Dade
Henry, Robert L.	607497	BM	11/17/88	1ST DEG Mur, Premeditated	11/02/87	11/10/88	05/01/58	Broward
Asay, Mark J.	078387	WM	11/21/88	1ST DEG Mur, Premeditated	07/18/87	11/18/88	03/12/64	Duval

			11/21/88	1ST DEG Mur, Premeditated	07/18/87	11/18/88	03/12/64	Duval
Sanchez-Velasco, Rigobert B.	088795	OM	11/22/88	1ST DEG Mur, Premeditated	12/12/86	09/23/88	01/04/59	Dade
Riechmann, Dieter	113993	WM	11/22/88	1ST DEG Mur, Premeditated	10/25/87	11/04/88	05/17/44	Dade
Espinosa, Hendry J.	113994	OM	11/22/88	1ST DEG Mur, Premeditated	07/10/86	11/04/88	12/19/56	Dade
Beltrain-Lopez, Mauricio	113995	WM	11/22/88	1ST DEG Mur, Premeditated	07/10/86	11/04/88	10/26/59	Dade
Wickham, Jerry M.	504430	WM	12/09/88	1ST DEG Mur, Premeditated	03/05/86	12/08/88	09/05/45	Leon
Vanpoyck, William E.	034071	WM	12/28/88	1ST DEG Mur, Premeditated	06/24/87	12/21/88	07/04/54	Palm Beach
Crump, Michael T.	487671	BM	04/05/89	1ST DEG Mur, Premeditated	12/11/85	03/31/89	03/26/60	Hillsborough
Randolph, Richard B.	115769	BM	04/05/89	1ST DEG Mur, Premeditated	08/15/88	04/05/89	01/03/62	Putnam
Capehart, Gregory	755994	BM	04/11/89	1ST DEG Mur, Com of Felony	02/03/88	04/11/89	08/09/67	Pasco
Taylor, Perry A.	086160	BM	05/15/89	1ST DEG Mur, Com of Felony	10/24/88	05/12/89	06/19/66	Hillsborough
Shere, Richard E., Jr.	116320	WM	05/18/89	1ST DEG Mur, Premeditated	12/25/87	04/17/89	07/07/66	Hernando
Wike, Warfield R., Jr.	116838	WM	07/13/89	1ST DEG Mur, Premeditated	09/22/88	07/13/89	03/07/56	Santa Rosa
Happ, William F.	117027	WM	08/02/89	1ST DEG Mur, Premeditated	05/24/86	07/31/89	01/19/62	Lake
			08/02/89	1ST DEG Mur, Premeditated	05/24/86	07/31/89	01/19/62	Lake
Cruse, William B., Jr.	117051	WM	08/03/89	1ST DEG Mur, Premeditated	04/23/87	07/28/89	11/21/27	Brevard
Hodges, George M.	117157	WM	08/11/89	1ST DEG Mur, Premeditated	01/08/87	08/10/89	08/15/57	Hillsborough
Watts, Tony R.	286020	BM	09/18/89	1ST DEG Mur, Premeditated	02/17/88	09/15/89	08/23/66	Duval
Jones, Clarence J.	117629	BM	09/27/89	1ST DEG Mur, Premeditated	07/08/88	09/26/89	03/09/55	Leon
Robinson, Timothy A.	393789	BM	10/03/89	1ST DEG Mur, Premeditated	09/20/88	09/26/89	08/27/66	Escambia

Coleman, Michael	067457	BM	10/03/89	IST DEG Mur, Premeditated	09/20/88	09/29/89	07/24/61	Escambia
Pettit, Samuel A.	082167	WM	10/17/89	IST DEG Mur, Premeditated	08/17/88	10/13/89	01/26/62	Charlotte
Pace, Bruce D.	084643	BM	11/17/89	IST DEG Mur, Premeditated	11/04/88	11/16/89	12/12/59	Santa Rosa
Marshall, Matthew	648254	BM	12/15/89	IST DEG Mur, Com of Felony	11/01/88	12/12/89	07/23/64	Martin
Smith, Derrick T.	490606	BM	01/07/90	IST DEG Mur, Premeditated	03/21/83	11/29/83	08/07/62	Pinellas
			01/07/90	IST DEG Mur, Premeditated	03/21/83	07/13/90	08/07/62	Pinellas
Davis, Henry A.	358319	BM	01/18/90	IST DEG Mur, Premeditated	03/18/87	01/12/90	04/25/65	Polk
Pierti, Noberto	096867	OM	03/30/90	IST DEG Mur, Premeditated	08/22/88	03/15/90	03/13/63	Palm Beach
Gore, Marshall L.	401256	WM	04/04/90	IST DEG Mur, Premeditated	01/31/88	04/03/90	08/17/63	Columbia
			04/04/90	IST DEG Mur, Com of Felony	03/10/88	06/30/95	08/17/63	Dade
Slawson, Newton C.	119658	WM	04/12/90	IST DEG Mur, Premeditated	04/11/89	04/11/90	10/10/54	Hillsborough
			04/12/90	IST DEG Mur, Premeditated	04/11/89	04/11/90	10/10/54	Hillsborough
			04/12/90	IST DEG Mur, Premeditated	04/11/89	04/11/90	10/10/54	Hillsborough
			04/12/90	IST DEG Mur, Premeditated	04/11/89	04/11/90	10/10/54	Hillsborough
Vining, John B.	929133	WM	04/19/90	IST DEG Mur, Premeditated	11/17/87	04/09/90	03/13/31	Orange
Peterka, Daniel J.	119773	WM	04/25/90	IST DEG Mur, Premeditated	07/12/89	04/25/90	09/09/67	Okaloosa
Rodriguez, Juan D.	394141	OM	06/12/90	IST DEG Mur, Com of Felony	05/13/88	03/28/90	06/26/56	Dade
Lawrence, Michael A.	056903	WM	06/27/90	IST DEG Mur, Com of Felony	09/29/86	06/22/90	07/09/55	Escambia
Atwater, Jeffrey	120467	WM	07/10/90	IST DEG Mur, Premeditated	08/11/89	06/25/90	12/24/63	Pinellas
Gaskin, Louis B.	751166	BM	07/19/90	IST DEG Mur, Premeditated	12/20/89	06/19/90	03/11/67	Flagler

			07/19/90	IST DEG Mur,Com of Felony	12/20/89	06/19/90	03/11/67	Flagler
			07/19/90	IST DEG Mur,Premeditated	12/20/89	06/19/90	03/11/67	Flagler
			07/19/90	IST DEG Mur,Com of Felony	12/20/89	06/19/90	03/11/67	Flagler
Valdez, Frank	072791	WM	08/27/90	IST DEG Mur,Premeditated	06/24/87	07/27/90	10/28/62	Palm Beach
Hunt, Deidre M.	161918	WF	09/13/90	IST DEG Mur,Premeditated	10/20/89	09/13/90	02/09/69	Volusia
			09/13/90	IST DEG Mur,Premeditated	11/04/89	09/13/90	02/09/69	Volusia
Geralds, Mark	729185	WM	09/14/90	IST DEG Mur,Com of Felony	02/01/89	03/26/90	03/29/67	Bay
Fotopoulos, Konstantin O.	616550	WM	11/01/90	IST DEG Mur,Premeditated	10/20/89	11/01/90	07/26/59	Volusia
			11/01/90	IST DEG Mur,Premeditated	11/04/89	11/01/90	07/26/59	Volusia
Power, Robert B.	072550	WM	12/07/90	IST DEG Mur,Premeditated	10/06/87	11/08/90	07/23/60	Lee
Heath, Ronald P.	065145	WM	12/17/90	IST DEG Mur,Premeditated	05/23/89	12/17/90	07/06/61	Alachua
Green, Crosley A.	902925	BM	02/20/91	IST DEG Mur,Com of Felony	04/04/88	02/08/91	09/11/57	Brevard
Clark, Ronald	812974	WM	02/22/91	IST DEG Mur,Com of Felony	01/12/90	02/22/91	04/20/68	Duval
Wyatt, Thomas A.	121892	WM	02/25/91	IST DEG Mur,Premeditated	05/17/88	02/22/91	01/06/64	Indian River
			02/25/91	IST DEG Mur,Premeditated	05/19/88	12/20/91	01/06/64	Indian River
Trepal, George J.	121965	WM	03/08/91	IST DEG Mur,Premeditated	10/15/88	03/06/91	01/23/49	Polk
Thomas, David L.	717466	BM	03/14/91	IST DEG Mur,Premeditated	04/26/90	03/15/91	10/13/65	Lee
Dillbeck, Donald D.	068610	WM	03/15/91	IST DEG Mur,Premeditated	06/24/90	03/15/91	05/24/63	Leon
Arbelaez, Guillermo O.	122079	OM	04/02/91	IST DEG Mur,Premeditated	02/14/88	03/14/91	08/29/57	Dade
Escobar, Douglas M.	122111	OM	04/04/91	IST DEG Mur,Premeditated	03/30/88	02/22/91	09/12/59	Dade

Escobar, Dennis J.	416806	OM	04/11/91	1ST DEG Mur, Premeditated	03/30/88	02/22/91	07/19/60	Dade
Griffin, Michael A.	182543	WM	04/25/91	1ST DEG Mur, Com of Felony	04/27/90	03/07/91	03/27/70	Dade
Pittman, David J.	351997	WM	04/26/91	1ST DEG Mur, Premeditated	05/15/90	04/25/91	12/10/61	Polk
Brown, George W.	300160	WM	05/06/91	1ST DEG Mur, Premeditated	04/22/90	05/03/91	09/11/49	Polk
Farr, Victor M.	541170	WM	05/13/91	1ST DEG Mur, Com of Felony	12/11/90	05/13/91	07/03/61	Columbia
Lowe, Rodney T.	699349	BM	05/14/91	1ST DEG Mur, Premeditated	07/03/90	05/01/91	06/02/70	Indian River
Williams, Ronald L.	076275	BM	06/26/91	1ST DEG Mur, Com of Felony	09/20/88	06/21/91	02/26/63	Escambia
			06/26/91	1ST DEG Mur, Com of Felony	09/20/88	06/21/91	02/26/63	Escambia
Armstrong, Lancelot U.	693504	BM	07/02/91	1ST DEG Mur, Premeditated	02/17/90	06/20/91	07/29/63	Broward
Stein, Steven E.	122551	WM	07/24/91	1ST DEG Mur, Com of Felony	01/20/91	07/23/91	03/06/68	Duval
Garcia, Henry	113069	WM	08/06/91	1ST DEG Mur, Com of Felony	01/14/83	08/19/88	09/26/48	Dade
			08/06/91	1ST DEG Mur, Com of Felony	01/14/83	08/19/88	09/26/48	Dade
Hannon, Patrick C.	500914	WM	08/14/91	1ST DEG Mur, Premeditated	01/10/91	08/05/91	10/24/64	Hillsborough
Gorby, Olen C.	286008	WM	08/30/91	1ST DEG Mur, Com of Felony	05/06/90	08/30/91	11/27/49	Bay
Sweet, William E.	100063	BM	08/30/91	1ST DEG Mur, Premeditated	06/27/90	08/30/91	10/03/67	Duval
Mordenti, Michael	122669	WM	09/09/91	1ST DEG Mur, Premeditated	06/07/89	09/06/91	05/25/41	Hillsborough
Johnson, Emanuel	338043	BM	09/10/91	1ST DEG Mur, Premeditated	09/22/88	06/28/91	09/18/63	Sarasota
			09/10/91	1ST DEG Mur, Premeditated	10/03/88	06/28/91	09/18/63	Sarasota
Duncan, Donn A.	013872	WM	09/10/91	1ST DEG Mur, Premeditated	12/29/90	08/30/91	09/25/45	Orange
Bonifay, James P.	216302	WM	09/25/91	1ST DEG Mur, Premeditated	01/26/91	09/20/91	12/26/73	Escambia

Archer, Robin	216728	WM	09/25/91	IST DEG Mur, Premeditated	01/26/91	09/20/91	10/12/64	Escambia
Larkins, Robert L.	813813	BM	10/21/91	IST DEG Mur, Premeditated	08/30/90	10/16/91	07/01/53	Hardee
Hendrix, Robert E.	104721	WM	11/06/91	IST DEG Mur, Com of Felony	08/27/90	11/04/91	10/21/66	Lake
			11/06/91	IST DEG Mur, Com of Felony	08/27/90	11/04/91	10/21/66	Lake
Kearse, Billy L.	138315	BM	11/08/91	IST DEG Mur, Premeditated	01/18/91	11/08/91	10/26/72	St. Lucie
Taylor, Steven R.	288500	WM	12/10/91	IST DEG Mur, Premeditated	09/15/90	12/09/91	09/25/69	Duval
Willacy, Chadweick	707742	BM	12/13/91	IST DEG Mur, Com of Felony	09/05/90	12/10/91	09/23/67	Brevard
Watson, Kenneth	084224	BM	01/07/92	IST DEG Mur, Com of Felony	10/31/88	11/06/91	02/23/63	Dade
Wuornos, Aileen C.	150924	WF	01/31/92	IST DEG Mur, Premeditated	12/01/89	01/31/92	02/29/56	Volusia
			01/31/92	IST DEG Mur, Premeditated	09/11/90	05/15/92	02/29/56	Marion
			01/31/92	IST DEG Mur, Premeditated	07/30/90	05/15/92	02/29/56	Marion
			01/31/92	IST DEG Mur, Premeditated	05/19/90	05/15/92	02/29/56	Marion
			01/31/92	IST DEG Mur, Premeditated	05/31/90	02/05/93	02/29/56	Pasco
			01/31/92	IST DEG Mur, Premeditated	11/19/90	02/04/93	02/29/56	Dixie
Reaves, William S.	040002	BM	03/09/92	IST DEG Mur, Premeditated	09/23/86	03/06/92	12/30/48	Indian River
Coney, Jimmie E.	018161	BM	04/14/92	IST DEG Mur, Premeditated	04/06/90	03/27/92	04/08/47	Dade
Cardona, Ana M.	162180	BF	04/29/92	IST DEG Mur, Com of Felony	10/28/90	04/01/92	11/26/61	Dade
Melton, Antonio L.	217358	BM	05/27/92	IST DEG Mur, Com of Felony	01/23/91	05/19/92	12/29/72	Escambia
Krawczuk, Anton	721342	WM	05/28/92	IST DEG Mur, Com of Felony	09/13/90	02/13/92	06/08/59	Lee
Carroll, Elmer L.	835908	WM	06/01/92	IST DEG Mur, Com of Felony	10/28/90	04/16/92	08/19/56	Orange

Schwab, Mark D.	111129	WM	07/02/92	IST DEG Mur, Premeditated	04/18/91	07/01/92	12/16/68	Brevard
Suggs, Ernest D.	220267	WM	07/16/92	IST DEG Mur, Com of Felony	08/06/90	07/15/92	08/08/55	Walton
Johnson, Ronnie	440701	BM	08/04/92	IST DEG Mur, Premeditated	03/11/89	12/13/91	02/23/61	Dade
			08/04/92	IST DEG Mur, Premeditated	03/20/89	07/16/92	02/23/61	Dade
Walls, Frank	112850	WM	08/11/92	IST DEG Mur, Com of Felony	07/22/87	07/29/92	10/12/67	Okaloosa
Barwick, Darryl	092501	WM	08/21/92	IST DEG Mur, Com of Felony	03/31/86	01/30/87	09/29/66	Bay
Whitton, Gary R.	936283	WM	09/10/92	IST DEG Mur, Com of Felony	10/10/90	09/10/92	02/04/59	Walton
Washington, Anthony	075465	BM	09/15/92	IST DEG Mur, Premeditated	08/17/89	09/04/92	09/27/56	Pinellas
Henry, John R.	053105	BM	10/21/92	IST DEG Mur, Premeditated	12/22/85	10/18/91	01/16/51	Pasco
			10/21/92	IST DEG Mur, Premeditated	12/22/85	10/21/92	01/16/51	Hillsborough
Jones, Harry	062368	BM	11/23/92	IST DEG Mur, Premeditated	06/01/91	11/20/92	09/04/59	Leon
Windom, Curtis	368527	BM	11/23/92	IST DEG Mur, Premeditated	02/07/92	11/10/92	01/29/66	Orange
Parker, Dwayne	071115	BM	11/25/92	IST DEG Mur, Premeditated	04/22/89	06/14/90	02/12/61	Broward
Finney, Charles W.	516349	BM	12/01/92	IST DEG Mur, Premeditated	01/16/91	11/10/92	01/05/54	Hillsborough
Fennie, Alfred L.	490989	BM	12/02/92	IST DEG Mur, Com of Felony	09/08/91	12/01/92	12/28/61	Hernando
Farina, Jeffrey A.	725254	WM	12/17/92	IST DEG Mur, Premeditated	05/09/92	12/16/92	07/27/75	Volusia
Farina, Anthony J.	684135	WM	12/17/92	IST DEG Mur, Premeditated	05/09/92	12/16/92	11/20/73	Volusia
Thompson, Charlie	476532	BM	12/31/92	IST DEG Mur, Premeditated	08/27/86	12/28/92	09/07/50	Hillsborough
Spencer, Dusty R.	321031	WM	01/04/93	IST DEG Mur, Premeditated	01/18/92	12/21/92	02/13/52	Orange
Merck, Troy, Jr.	118167	WM	01/21/93	IST DEG Mur, Premeditated	10/11/91	12/10/93	01/09/72	Pinellas

Marquard, John C.	122995	WM	02/08/93	IST DEG Mur, Premeditated	06/20/91	02/05/93	10/16/66	St. Johns
Mungin, Anthony	288322	BM	02/24/93	IST DEG Mur, Premeditated	09/16/90	02/23/93	07/22/66	Duval
Robertson, Richard T.	570477	BM	02/24/93	IST DEG Mur, Premeditated	08/28/91	02/23/93	06/28/72	Leon
Bogel, Brett A.	110365	WM	02/24/93	IST DEG Mur, Premeditated	09/13/91	02/15/93	05/01/69	Hillsborough
Cumming-El, F. W.	120190	BM	03/02/93	IST DEG Mur, Com of Felony	09/16/91	02/19/93	01/11/58	Dade
Allen, Lloyd C.	890793	WM	03/04/93	IST DEG Mur, Premeditated	11/13/91	03/03/93	10/25/45	Monroe
Orme, Roderick M.	726848	WM	03/30/93	IST DEG Mur, Com of Felony	03/03/92	03/25/93	11/24/61	Bay
Robinson, Bobbie L.	921704	BM	04/05/93	IST DEG Mur, Premeditated	03/20/89	02/11/92	01/07/60	Dade
Pope, Horace M.	033822	WM	04/28/93	IST DEG Mur, Com of Felony	02/17/92	04/26/93	01/12/47	Polk
Ferrell, Jack D.	083905	BM	04/30/93	IST DEG Mur, Premeditated	04/18/92	04/21/93	08/05/40	Orange
Larzelere, Virginia G.	842556	WF	05/11/93	IST DEG Mur, Premeditated	03/08/91	05/11/93	12/27/52	Volusia
Jones, Victor	420481	BM	06/02/93	IST DEG Mur, Premeditated	12/19/90	03/01/93	05/01/61	Dade
			06/02/93	IST DEG Mur, Premeditated	12/19/90	03/01/93	05/01/61	Dade
Reese, John L.	123069	BM	06/28/93	IST DEG Mur, Com of Felony	01/28/92	06/25/93	03/29/65	Duval
Gamble, Guy R.	123096	WM	08/12/93	IST DEG Mur, Premeditated	12/10/91	08/10/93	08/19/71	Lake
Hunter, James E.	115624	BM	08/19/93	IST DEG Mur, Com of Felony	09/17/92	08/18/93	12/17/70	Volusia
Pomeranz, Stuart L.	187155	WM	09/10/93	IST DEG Mur, Com of Felony	04/19/92	09/09/93	02/08/72	Martin
Monlyn, Broderick W.	086458	BM	11/03/93	IST DEG Mur, Premeditated	10/08/92	11/02/93	10/18/61	Madison
Consalvo, Robert A.	941687	WM	11/19/93	IST DEG Mur, Premeditated	09/27/91	11/17/93	05/25/62	Broward
Hartley, Kenneth	318987	BM	12/10/93	IST DEG Mur, Com of Felony	04/22/91	12/09/93	01/27/67	Duval

Moore, Thomas J.	116335	BM	12/17/93	IST DEG Mur, Premeditated	01/21/93	12/02/93	04/20/73	Duval
Ferrell, Ronnie	092900	BM	12/20/93	IST DEG Mur, Premeditated	04/22/91	12/17/93	03/19/64	Duval
Voorhees, Donald	284611	OM	02/01/94	IST DEG Mur, Premeditated	01/03/92	01/28/94	08/03/67	Pasco
Sliney, Jack R.	905288	WM	02/21/94	IST DEG Mur, Premeditated	06/18/92	02/14/94	12/23/72	Charlotte
Mahn, Jason J.	271907	WM	02/28/94	IST DEG Mur, Com of Felony	04/01/93	02/23/94	04/02/73	Escambia
			02/25/94	IST DEG Mur, Com of Felony	04/11/93	02/23/94	04/02/73	Escambia
Smith, Ronald	187951	BM	03/15/94	IST DEG Mur, Com of Felony	02/04/91	02/10/94	06/24/65	Dade
Morton, Alvin	309066	WM	03/22/94	IST DEG Mur, Premeditated	01/26/92	03/18/94	07/11/72	Pasco
			03/22/94	IST DEG Mur, Premeditated	01/26/92	03/18/94	07/11/72	Pasco
Sims, Merit A.	436015	BM	03/29/94	IST DEG Mur, Com of Felony	06/11/91	03/18/94	08/10/66	Dade
Rolling, Danny H.	521178	WM	04/20/94	IST DEG Mur, Premeditated	08/23/90	04/20/94	05/26/54	Alachua
			04/20/94	IST DEG Mur, Premeditated	08/23/90	04/20/94	05/26/54	Alachua
			04/20/94	IST DEG Mur, Premeditated	08/25/90	04/20/94	05/26/54	Alachua
			04/20/94	IST DEG Mur, Premeditated	08/27/90	04/20/94	05/26/54	Alachua
			04/20/94	IST DEG Mur, Premeditated	08/27/90	04/20/94	05/26/54	Alachua
Kilgore, Dean	029315	BM	04/29/94	IST DEG Mur, Premeditated	02/13/89	07/13/90	10/16/50	Polk
			04/29/94	IST DEG Mur, Premeditated	02/13/89	07/13/90	10/16/50	Polk
Banks, Chadwick	582127	BM	05/02/94	IST DEG Mur, Premeditated	09/24/92	04/29/94	06/15/71	Gadsden
Branch, Eric S.	313067	WM	05/05/94	IST DEG Mur, Com of Felony	01/11/93	05/03/94	02/07/71	Escambia
Jones, Marvin B.	309567	BM	06/01/94	IST DEG Mur, Premeditated	03/03/93	05/31/94	07/21/65	Duval

Williamson, Dana	048606	WM	07/22/94	IST DEG Mur, Premeditated	11/04/88	07/15/94	09/18/59	Broward
Thomas, William G.	311509	WM	07/25/94	IST DEG Mur, Premeditated	09/12/91	07/22/94	07/22/60	Duval
Jordan, Keydrick D.	138294	BM	08/12/94	IST DEG Mur, Premeditated	08/08/92	07/22/94	03/14/72	Orange
Henyard, Richard	225727	BM	08/22/94	IST DEG Mur, Com of Felony	01/30/93	08/19/94	06/26/74	Lake
			08/22/94	IST DEG Mur, Com of Felony	01/30/93	08/19/94	06/26/74	Lake
Foster, Jermaine A.	310094	BM	08/26/94	IST DEG Mur, Premeditated	11/29/92	07/25/94	11/03/73	Orange
			08/26/94	IST DEG Mur, Premeditated	11/29/92	07/25/94	11/03/73	Orange
Walker, James	123731	BM	08/30/94	IST DEG Mur, Premeditated	08/20/93	05/19/94	08/13/60	Dade
			08/30/94	IST DEG Mur, Premeditated	08/20/93	05/19/94	08/13/60	Dade
Sager, Robert	268143	WM	09/16/94	IST DEG Mur, Premeditated	01/03/92	09/15/94	02/02/69	Pasco
Kormondy, Johnny S.	200754	WM	10/14/94	IST DEG Mur, Com of Felony	07/11/93	10/07/94	05/20/72	Escambia
Hazen, James W.	391126	WM	10/14/94	IST DEG Mur, Premeditated	07/11/93	10/07/94	12/28/71	Escambia
Valentine, Terrance	119682	BM	10/18/94	IST DEG Mur, Premeditated	09/09/88	04/12/94	01/21/49	Hillsborough
Franqui, Leonardo	445903	WM	10/18/94	IST DEG Mur, Premeditated	12/06/91	11/24/93	09/26/70	Dade
			10/18/94	IST DEG Mur, Premeditated	01/03/92	10/11/94	09/26/70	Dade
Fernandez, Fernando	430999	OM	10/18/94	IST DEG Mur, Premeditated	01/03/92	10/11/94	06/06/72	Dade
Sanmartin, Palbo	445904	WM	10/18/94	IST DEG Mur, Premeditated	12/06/91	11/24/93	07/23/67	Dade
			10/18/94	IST DEG Mur, Premeditated	01/03/92	10/11/94	07/23/67	Dade
Gonzalez, Ricardo	123763	OM	10/18/94	IST DEG Mur, Premeditated	01/03/92	10/11/94	01/20/70	Dade
Chandler, Oba	056979	WM	11/07/94	IST DEG Mur, Premeditated	06/01/89	11/04/94	10/11/46	Pinellas

			11/07/94	1ST DEG Mur, Premeditated	06/01/89	11/04/94	10/11/46	Pinellas
			11/07/94	1ST DEG Mur, Premeditated	06/01/89	11/04/94	10/11/46	Pinellas
Hoskins, Johnny	962032	BM	11/07/94	1ST DEG Mur, Premeditated	10/17/92	11/04/94	10/31/63	Brevard
Jones, Omar	301015	BM	11/09/94	1ST DEG Mur, Com of Felony	11/04/93	11/23/94	11/27/73	Duval
Hill, Paul	459364	WM	12/06/94	1ST DEG Mur, Premeditated	07/29/94	12/06/94	02/06/54	Escambia
			12/06/94	1ST DEG Mur, Premeditated	07/29/94	12/06/94	02/06/54	Escambia
Kimbrough, Darius	374123	BM	12/19/94	1ST DEG Mur, Premeditated	10/03/91	12/09/94	12/04/72	Orange
Howell, Paul A.	123792	BM	01/11/95	1ST DEG Mur, Premeditated	02/01/92	01/10/95	06/25/65	Jefferson
Marta-Rodriguez, Cruz	113207	OM	02/17/95	1ST DEG Mur, Premeditated	01/12/94	02/17/95	03/20/69	Hillsborough
			02/17/95	1ST DEG Mur, Premeditated	01/12/94	02/17/95	03/20/69	Hillsborough
Meyers, Anton D.	742001	WM	03/20/95	1ST DEG Mur, Premeditated	05/24/87	03/17/95	06/01/60	Seminole
Robinson, Michael L.	713735	WM	04/27/95	1ST DEG Mur, Premeditated	07/24/94	04/12/95	11/28/65	Orange
Miller, Willie B.	094565	BM	05/01/95	1ST DEG Mur, Premeditated	07/15/93	04/28/95	03/27/60	Duval
Lawrence, Gary	039763	WM	05/08/95	1ST DEG Mur, Com of Felony	07/28/94	05/05/95	06/29/57	Santa Rosa
Richardson, Larry D.	618999	BM	06/05/95	1ST DEG Mur, Com of Felony	02/14/91	06/02/95	11/03/58	Volusia
Damren, Floyd W.	061360	WM	06/07/95	1ST DEG Mur, Premeditated	05/01/94	06/02/95	05/27/51	Clay
Hamilton, Richard E.	123846	WM	06/13/95	1ST DEG Mur, Premeditated	04/27/94	06/12/95	02/16/63	Hamilton
Wainwright, Anthony F.	123847	WM	06/13/95	1ST DEG Mur, Premeditated	04/27/94	06/12/95	10/22/70	Hamilton
Gudinas, Thomas	379799	WM	06/19/95	1ST DEG Mur, Premeditated	05/24/94	06/16/95	02/27/74	Collier
Johnson, Tivan	123855	BM	06/28/95	1ST DEG Mur, Com of Felony	05/25/91	06/01/95	11/09/70	Dade

Sanders, Kristopher	268718	WM	01/19/96	1ST DEG Mur, Premeditated	04/25/94	01/18/96	02/13/74	Pasco
Raleigh, Bobby A.	124052	WM	02/19/96	1ST DEG Mur, Premeditated	06/05/94	02/16/96	07/22/74	Volusia
			02/19/96	1ST DEG Mur, Premeditated	06/05/94	02/16/96	07/22/74	Volusia
Hardy, Nicholas	124059	WM	02/23/96	1ST DEG Mur, Premeditated	02/25/93	02/14/96	11/30/74	Palm Beach
Bell, Michael B.	108426	BM	03/04/96	1ST DEG Mur, Premeditated	12/09/93	06/02/95	11/24/70	Duval
			03/04/96	1ST DEG Mur, Premeditated	12/09/93	06/02/95	11/24/70	Duval
Hauser, Dan P.	538283	WM	03/05/96	1ST DEG Mur, Premeditated	01/01/95	03/04/96	07/24/70	Okaloosa
Alston, Pressley B.	709795	BM	03/05/96	1ST DEG Mur, Com of Felony	01/22/95	01/12/96	10/20/71	Duval
Norton, Johnnie L.	482976	BM	04/02/96	1ST DEG Mur, Premeditated	11/03/94	03/18/96	07/17/63	Hillsborough
Hawk, Robert T.	268196	WM	04/03/96	1ST DEG Mur, Premeditated	02/18/93	03/29/96	07/31/73	Pinellas
Zakrzewski, Edward J. II	554000	WM	04/22/96	1ST DEG Mur, Premeditated	06/10/94	04/19/96	01/31/65	Okaloosa
			04/22/96	1ST DEG Mur, Com of Felony	06/10/94	04/19/96	01/31/65	Okaloosa
			04/22/96	1ST DEG Mur, Com of Felony	06/10/94	04/19/96	01/31/65	Okaloosa
Pooler, Leroy	124283	BM	04/30/96	1ST DEG Mur, Premeditated	01/30/95	02/03/96	01/27/48	Palm Beach
Carpenter, David C.	124287	WM	05/07/96	1ST DEG Mur, Premeditated	11/23/94	05/03/96	04/14/62	Pinellas
Donaldson, Charles D.	218192	BM	05/30/96	1ST DEG Mur, Com of Felony	07/09/94	05/28/96	05/21/73	Okaloosa
			05/30/96	1ST DEG Mur, Com of Felony	07/09/94	05/28/96	05/21/73	Okaloosa
Delgado, Jesus	658187	WM	07/17/96	1ST DEG Mur, Com of Felony	08/29/90	06/19/96	04/15/65	Dade
			07/17/96	1ST DEG Mur, Com of Felony	08/29/90	06/19/96	04/15/65	Dade
Keen, Michael S.	900052	WM	08/01/96	1ST DEG Mur, Premeditated	11/15/81	07/15/96	02/13/48	Broward

Williams, Samuel F.	124310	BM	08/07/96	1ST DEG Mur,Com of Felony	09/27/94	08/06/96	08/19/76	Okaloosa
Johnson, Calvin J.	117929	BM	08/23/96	1ST DEG Mur,Premeditated	12/30/94	08/22/96	01/09/71	Duval
Buckner, Perry O.	124314	BM	08/28/96	1ST DEG Mur,Premeditated	06/03/95	08/21/96	07/09/76	Sumter
Bowles, Gary R.	086158	WM	09/09/96	1ST DEG Mur,Premeditated	11/16/94	09/06/96	01/25/62	Duval
Bolin, Oscar R. Jr.	519220	WM	10/09/96	1ST DEG Mur,Com of Felony	01/25/86	07/31/91	01/22/62	Hillsborough
			10/09/96	Kidnap;Comm or Fac Felony	01/25/86	07/31/91	01/22/62	Hillsborough
			10/09/96	1ST DEG Mur,Com of Felony	11/05/86	10/11/91	01/22/62	Hillsborough
			10/09/96	1ST DEG Mur,Premeditated	12/05/86	10/30/92	01/22/62	Pasco
Urbin, Ryan	136597	WM	10/09/96	1ST DEG Mur,Premeditated	12/05/86	10/09/96	01/22/62	Pasco
			10/14/96	1ST DEG Mur,Premeditated	09/01/95	10/11/96	10/24/77	Duval
Benedith, Arturo	703523	BM	10/14/96	1ST DEG Mur,Premeditated	05/05/93	10/09/96	07/29/67	Brevard
Ruiz, Walter M.	335764	WM	11/05/96	1ST DEG Mur,Premeditated	04/07/95	10/07/96	10/08/58	Hillsborough
Almeida, Osvaldo	124330	WM	11/06/96	1ST DEG Mur,Premeditated	10/13/93	11/01/96	11/08/73	Broward
			11/06/96	1ST DEG Mur,Premeditated	11/15/93	11/01/96	11/08/73	Broward
Ramirez, Nathan	124334	WM	11/13/96	1ST DEG Mur,Premeditated	03/10/95	11/08/96	04/22/77	Pasco
Jennings, Brandy B.	721097	WM	12/06/96	1ST DEG Mur,Premeditated	11/15/95	12/02/96	06/30/69	Collier
			12/06/96	1ST DEG Mur,Premeditated	11/15/95	12/02/96	06/30/69	Collier
			12/06/96	1ST DEG Mur,Premeditated	11/15/95	12/02/96	06/30/69	Collier
Nelson, Joshua D.	989102	WM	12/10/96	1ST DEG Mur,Premeditated	03/10/95	11/27/96	01/16/77	Lee
Guzman, James	395352	WM	12/30/96	1ST DEG Mur,Premeditated	08/10/91	12/27/96	04/27/64	Volusia

Trease,Robert J.	124346	WM	01/23/97	IST DEG Mur,Com of Felony	08/17/95	01/22/97	01/21/53	Sarasota
Rinaldo, Richard M.	706732	WM	01/28/97	IST DEG Mur,Premeditated	07/20/95	01/24/97	06/22/73	Broward
Rodriguez, Manolo	073283	OM	02/11/97	IST DEG Mur,Com of Felony	12/04/84	01/31/97	01/13/56	Dade
			02/11/97	IST DEG Mur,Com of Felony	12/04/84	01/31/97	01/13/56	Dade
			02/11/97	IST DEG Mur,Com of Felony	12/04/84	01/31/97	01/13/56	Dade
			02/11/97	Burglary Assault any per.	12/04/84	01/31/97	01/13/56	Dade
Holland, Albert	122651	BM	02/13/97	IST DEG Mur,Premeditated	07/29/90	02/07/97	03/24/58	Broward
Williams, Ronnie K.	645118	BM	02/13/97	IST DEG Mur,Premeditated	01/26/93	11/15/96	06/19/62	Broward
Hess, John	990430	WM	02/18/97	IST DEG Mur,Premeditated	05/11/93	01/29/97	07/10/64	Lee
Brennan, Keith M.	989103	WM	03/26/97	IST DEG Mur,Premeditated	03/10/95	03/20/97	03/18/78	Lee
Lukehart, Andrew R.	391485	WM	04/07/97	IST DEG Mur,Premeditated	02/25/96	04/04/97	04/10/73	Duval
Randall, James M.	124374	WM	04/17/97	IST DEG Mur,Premeditated	10/20/95	04/04/97	08/28/54	Pinellas
			04/17/97	IST DEG Mur,Premeditated	10/20/95	04/04/97	08/28/54	Pinellas
Snipes, David	124376	WM	04/18/97	IST DEG Mur,Premeditated	02/09/95	04/11/97	06/17/77	Lee
Jones, David	914949	WM	04/28/97	IST DEG Mur,Premeditated	01/31/95	04/25/97	03/08/58	Duval
Woods, Terry L.	715473	BM	05/05/97	IST DEG Mur,Premeditated	06/12/96	05/02/97	09/11/71	Lake
Blackwood, Lynford R.	124389	BM	05/30/97	IST DEG Mur,Premeditated	01/06/95	05/16/97	01/28/57	Broward
Thomas, Robert	116421	BM	06/16/97	IST DEG Mur,Premeditated	04/13/96	06/13/97	09/17/71	Duval
				Robbery W/Firearm orD/W	04/13/96	06/13/97	09/17/71	Duval
				Robbery W/Firearm orD/W	04/13/96	06/13/97	09/17/71	Duval

				Kidnap;Comm or Fac Felony	04/13/96	06/13/97	09/17/71	Duval
				Kidnap;Comm or Fac Felony	04/13/96	06/13/97	09/17/71	Duval
Martinez, Joaquin J.	124396	WM	06/16/97	IST DEG Mur,Premeditated	10/27/95	05/27/97	12/02/71	Hillsborough
Rogers, Glen E.	124400	WM	07/14/97	IST DEG Mur,Premeditated	11/05/95	07/11/97	07/15/62	Hillsborough
Thorp, Gary L.	983369	WM	10/21/97	IST DEG Mur,Premeditated	06/23/93	10/13/97	11/28/63	Brevard
Brooks, Fred L.	068676	BM	10/22/97	IST DEG Mur,Premeditated	08/28/96	10/21/97	12/02/63	Duval
Ray, Terry P.	124429	WM	11/14/97	IST DEG Mur,Com. of Felony	09/17/96	11/12/97	09/25/66	Holmes
Zack, Michael D. III	124439	WM	12/05/97	IST DEG Mur,Com. of Felony	06/13/96	11/24/97	12/14/68	Escambia
		Total Black Males		133				
		Total White Males		218				
		Total Other Males		20				
		Total Black Females		2				
		Total White Females		4				
		Total Other Females		0				

12/10/97

These statistics furnished by The Department of Corrections - Bureau of Information Services.

*For more information, call **Debbie Buchanan** at (904) 488-0420, SC 278-0420 or e-mail her at buchanan.debra@mail.dc.state.fl.us*

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