

IN THE SUPREME COURT OF FLORIDA

ANTHONY J. FARINA,)
)
 Appellant,)
)
 vs.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
 _____)

CASE NO.: 93,050
L.T. CASE NO.: 92-32105 CFAES

An appeal from the Circuit Court of the
Seventh Judicial Circuit, in and for
Volusia County, Florida

INITIAL BRIEF OF APPELLANT

JEFFREY L. DEES
ATTORNEY FOR APPELLANT
1326 South Ridgewood Avenue, Suite 10
Daytona Beach, Florida 32114
(904) 257-9010
Florida Bar No. 167906

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS	i
TABLE OF CITATIONS	iv
CITATIONS TO RECORD	x
STATEMENT OF CASE	1
STATEMENT OF FACTS	5
SUMMARY OF ARGUMENT	18
ARGUMENT	
<u>POINT ONE:</u> THE TRIAL COURT ERRED IN PERMITTING THE STATE TO EXERCISE PEREMPTORY CHALLENGES TO STRIKE TWO BLACK JURORS FOR PRETEXTUAL REASONS.	22
<u>POINT TWO:</u> THE TRIAL COURT ERRED IN DENYING THE APPELLANT'S MOTION IN LIMINE TO PROHIBIT THE INTRODUCTION OF HIS POST-ARREST STATEMENT INDICATING THAT THE OTHER VICTIMS' SHOULD HAVE BEEN KILLED ALSO.	35
i	
<u>POINT THREE:</u> THE LOWER COURT'S FAILURE TO HEAR AND RULE UPON THE MERITS OF THE APPELLANT'S MOTION TO SUPPRESS THE TAPED CONVERSATIONS DENIED HIM DUE PROCESS OF	

	LAW.	42
<u>POINT FOUR:</u>	THE LOWER COURT ERRED IN DENYING THE APPELLANT'S MOTION FOR SEVERANCE, WHICH DEPRIVED HIM OF DUE PROCESS OF LAW AND AN INDIVIDUALIZED SENTENCING PROCEEDING.	50
<u>POINT FIVE:</u>	THE LOWER COURT ERRED IN DENYING THE APPELLANT'S MOTION TO EXCLUDE VICTIM IMPACT EVIDENCE, IMPROPERLY PERMITTED VICTIM IMPACT EVIDENCE TO BECOME A FEATURE OF THE TRIAL, AND FAILED TO PROPERLY INSTRUCT THE JURY WITH RESPECT TO SUCH EVIDENCE.	54
<u>POINT SIX:</u>	THE TRIAL COURT ERRED IN FINDING THE MURDER WAS HEINOUS, ATROCIOUS AND CRUEL.	70
<u>POINT SEVEN:</u>	THE LOWER COURT ERRED IN FINDING THAT THE HOMICIDE WAS COLD, CALCULATED AND PREMEDITATED.	74
	ii	
<u>POINT EIGHT:</u>	THE LOWER COURT ERRED IN FINDING THAT THE HOMICIDE WAS COMMITTED FOR THE PURPOSE OF AVOIDING ARREST.	79
<u>POINT NINE:</u>	THE SENTENCE OF DEATH IS DISPROPORTIONATE PUNISHMENT AS APPLIED TO THE APPELLANT.	82
<u>POINT TEN:</u>	FLORIDA'S DEATH PENALTY IS	

UNCONSTITUTIONAL	92
CONCLUSION	95
CERTIFICATE OF SERVICE	96

iii
TABLE OF CITATIONS

<u>Cases:</u>	<u>Page</u>
<u>Barwick v. State</u> , 660 So.2d 685 (Fla. 1995)	75,78
<u>Benedith v. State</u> , 23 FLW S304 (Fla. June 11, 1998)	91
<u>Booth v. Maryland</u> , 482 U.S. 496, 96 L.Ed.2d 440, 107 S.Ct. 2529 (1987)	68
<u>Bryant v. State</u> , 565 So.2d 1298 (Fla. 1990)	22
<u>Bush v. State</u> , 690 So.2d 670 (Fla. 1st DCA 1997)	67
<u>Cage v. Louisiana</u> , 498 U.S. 39 (1990)	93

<u>Campbell v. State</u> , 571 So.2d 415 (Fla. 1990)	86
<u>Cheshire v. State</u> , 568 So.2d 908, 912 (Fla. 1990)	70
<u>Ciccarrelli v. State</u> , 531 So.2d 129 (Fla. 1988)	42
<u>Derrick v. State</u> , 581 So.2d 31 (Fla. 1991)	36,37,38
<u>Donaldson v. State</u> , 23 FLW S245 (Fla. April 30, 1998)	71
<u>Engle v. State</u> , 438 So.2d 803 (Fla. 1983)	53
<u>Floyd v. State</u> , 497 So.2d 1211 (Fla. 1986)	79
<u>Franqui v. State</u> , 699 So.2d 1332 (Fla. 1997)	53
<u>Fuentes v. Shevin</u> , 407 U.S. 67 (1972)	94
<u>Furman v. Georgia</u> , 408 U.S. 238 (1972)	92,94

iv

TABLE OF CITATIONS (Continued)

<u>Gerals v. State</u> , 601 So.2d 1147, 1163 (Fla. 1992)	75,78,79,80
<u>Grayned v. City of Rockford</u> , 407 U.S. 104, 109 (1972)	94
<u>Griffin v. State</u> , 517 So.2d 669 (Fla. 1997)	45
<u>Haliburton v. State</u> , 514 So.2d 1088 (Fla. 1987)	47
<u>Hartley v. State</u> , 686 So.2d 1316, 1323 (Fla. 1996), cert. den., 118 S.Ct. 86 (1997)	71,72,74,77
<u>Jackson v. State</u> , 575 So.2d 181, 186 (Fla. 1991)	90,91
<u>Jennings v. State</u> , 545 So.2d 945 (Fla. 1st DCA 1989)	23
<u>Calvin Johnson v. State</u> , 23 FLW S563, 565 (October 22, 1998) (Fla. 1995)	89
<u>Kibler v. State</u> , 546 So.2d 710, 712 (Fla. 1989)	22
<u>King v. Dugger</u> , 555 So.2d 355, 358 (Fla. 1990)	45
<u>Kormondy v. State</u> , 703 So.2d 454 (Fla. 1997)	36,37,38,39,40,41

<u>Lanzetta v. New Jersey</u> , 306 U.S. 451 (1939)	94
<u>Livingston v. State</u> , 565 So.2d 1288 (Fla. 1988)	87
<u>Lloyd v. State</u> , 524 So.2d 396 (Fla. 1988)	84
<u>Lockett v. Ohio</u> , 438 U.S. 586, 602-5, 57 L.Ed.2d 973, 98 S.Ct. 2954 (1978)	54
<u>Lowenfield v. Phelps</u> , 484 U.S. 321, 108 S.Ct. 546, 554 (1988)	92
<u>Maharaj v. State</u> , 597 So.2d 786 (Fla. 1992)	70

v
TABLE OF CITATIONS (Continued)

<u>Malone v. State</u> , 390 So.2d 338 (Fla. 1980)	47
<u>Mills v. State</u> , 24 FLW D112 (4th DCA Dec. 30, 1998)	46
<u>Moran v. Burbine</u> , 475 U.S. 412, 467, 106 S.Ct. 1135, 1165, 89 L.Ed.2d 410 (1986)	47
<u>Mullaney v. Wilbur</u> , 421 U.S. 684 (1975)	93
<u>Neil v. State</u> , 457 So.2d 481 (Fla. 1984)	22
<u>Payne v. Tennessee</u> , 501 U.S. 808, 115 L.Ed.2d 720, 111 S.Ct. 2597 (1991)	68
<u>Perry v. State</u> , 522 So.2d 817, 820 (Fla. 1988)	79
<u>Pope v. State</u> , 441 So.2d 1073, 1078 (Fla. 1983)	37
<u>Preston v. State</u> , 607 So.2d 404 (Fla. 1992)	44,45
<u>Rembert v. State</u> , 445 So.2d 337, 340 (Fla. 1984)	80,85
<u>Riley v. State</u> , 366 So.2d 19 (Fla. 1978)	79
<u>Robinson v. State</u> , 574 So.2d 108, 112 (Fla. 1991)	70,71
<u>Roundtree v. State</u> , 546 So.2d 1042 (Fla. 1989)	23
<u>Scull v. State</u> , 569 So.2d 1251 (Fla. 1990)	47

<u>Smith v. State</u> , 699 So.2d 629 (Fla. 1997)	53
<u>Snowden V. State</u> , 537 So.2d 1383 (Fla. 3rd DCA), rev. denied, 437 So.2d 1210 (Fla. 1989)	67
<u>Songer v. State</u> , 544 So.2d 1010 (Fla. 1989)	84

TABLE OF CITATIONS (Continued)

<u>Spaziano v. State</u> , 433 So.2d 508, 511 (Fla. 1983), <u>aff'd.</u> 468 U.S. 447, 104 S.Ct. 3154, 82 L.Ed.2d 340 (1984)	45
<u>Specht v. Patterson</u> , 386 U.S. 605, 87 S.Ct. 1209, 18 L.Ed.2d 326 (1967)	53
<u>State v. Calhoun</u> , 479 So.2d 241 (Fla. 4th DCA 1985)	47
<u>State v. DiGuilio</u> , 491 So.2d 1129 (Fla. 1986)	42
<u>State v. Dixon</u> , 283 So.2d 1 (Fla. 1973)	70
<u>State v. Richardson</u> , 621 So.2d 752 (Fla. 5th DCA 1993)	67
<u>State v. Slappy</u> , 522 So.2d 18 (Fla. 1988), cert. den., 108 S.Ct. 2873, 101 L.Ed.2d 909 (1988)	22,23
<u>Teffeteller v. State</u> , 495 So.2d 744 (Fla. 1986)	45
<u>Terry v. State</u> , 668 So.2d 954 (Fla. 1996)	88,89
<u>Thompson v. State</u> , 548 So.2d 198 (Fla. 1989)	22
<u>Tillman v. State</u> , 522 So.2d 14 (Fla. 1988)	23
<u>Travers v. State</u> , 578 So.2d 793 (Fla. 1st DCA), rev. denied, 584 So.2d 1000 (Fla. 1991)	68
<u>Voltaire v. State</u> , 697 So.2d 1002 (Fla. 4th DCA 1997)	47,49
<u>Walls v. State</u> , 580 So.2d 131 (Fla. 1991)	46,47
<u>Walton v. State</u> , 481 So.2d 1197 (Fla. 1985)	53
<u>Wike v. State</u> , 698 So.2d 817	41

Williams v. State, 547 So.2d 179 (Fla. 4th DCA 1989) 23,33,68

vii

TABLE OF CITATIONS (Continued)

Wyatt v. State, 641 So.2d 1336 (Fla. 1994) 75,78

United States v. Gordon, 817 F.2d 1538, 1541 (11th Cir. 1987) 23

United States v. Henry, 447 U.S. 264, 274, 100 S.Ct. 2184, 2188,
2402, 65 L.Ed.2d 115 (1980) 48

Zant v. Stephens, 462 U.S. 862, 877 (1983) 92

Fifth Amendment, United States Constitution 43,55,60,93,94,95

Sixth Amendment, United States Constitution 43,55,60,93,94,95

Eighth Amendment, United States Constitution 54,55,60,92,93,94,95

Fourteenth Amendment, United States
Constitution 43,55,60,68,92,93,94,95

Article I, Section 2, Florida Constitution 55,59,93,94,95

Article I, Section 9, Florida Constitution 43,55,59,93,94,95

Article I, Section 11, Florida Constitution 43

Article I, Section 12, Florida Constitution 43

Article I, Section 16, Florida Constitution 55,59,93,94,95

Article I, Section 17, Florida Constitution 55,59,92,93,94,95

Article I, Section 22, Florida Constitution 55,59,93,94,95

Article I, Section 23, Florida Constitution 43

Section 39.038, Florida Statutes (1991) 48

Section 921.141, Florida Statutes 46,95

Section 921.141(1), Florida Statutes (1992) 46

Section 921.141(2)(b) and (3)(b), Florida Statutes 92,93

Section 921.141(5), Florida Statutes 92,93

Section 921.141(5)(b), (e), (f), (g), (i), Florida Statutes (1991) 3

Section 921.141(7), Florida Statutes (1992) 55

Rule 3.190(c), Fla. R.Crim.P. 46

Rule 3.220(c) 49

Rule 3.220(c)(1)(C) 48

1997, Florida College of Advanced Judicial Studies, Handling
Capital Cases 67

viii

CERTIFICATE OF FONT

I HEREBY CERTIFY that the size and style of type used in this Brief is proportionally spaced CG Times, 14 pt.

Jeffrey L. Dees
Attorney for Defendant

ix
CITATIONS TO RECORD

The Record on Appeal is not consecutively numbered nor contained in consecutively numbered volumes.

The Record has three distinct sections, and accordingly, citations to the

Record will be as follows:

(1) **Pretrial Hearings**. The pretrial hearings were transcribed by date in separate binders commencing February 11, 1997, and concluding April 1, 1998. However, the clerk numbered all the pages consecutively in these transcripts as pages 1 - 658. References to the pretrial hearings will be denoted by "PTR" followed by a page reference. Thus, **(PTR:200)** refers to page 200 of the pretrial hearing transcripts. A footnote will generally be added specifying the date of the hearing for ease in locating the transcripts.

(2) **Trial Record**. The trial record is contained in trial transcripts Volumes I thru XI (April 6 -), plus the Spencer hearing held on May 1, 1998, and the sentencing held on May 7, 1998. The clerk numbered all of these pages consecutively as pages 1 - 2637. References to the trial proceedings will be denoted by "TR." followed by a page reference. Thus, **(TR.2:200)** refers to Volume II, page 200 of the trial transcripts noted above. A footnote will generally be added specifying the Spencer hearing or sentencing hearing dates for ease in locating the transcript, since these have no volume numbers.

(3) **Document Record**. The pleadings, orders and other documents filed with the clerk below are contained in three separate volumes (One - Three) and with pages consecutively numbered as pages 1 - 383. References to the document record will be denoted by "DR." Thus, **(DR.3:354)** refers to Volume Three, page 354 of the document records.

QUOTATIONS

Unless otherwise indicated, all underlined portions of quoted material has been added.

C:\LIT\98-1247.033