

CASE NO. SC93988

NOEL DOORBAL,

Appellant,

vs.

THE STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-
DADE COUNTY,
CRIMINAL DIVISION

BRIEF OF APPELLEE

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STATEMENT OF THE CASE AND FACTS

Marcello Schiller started his own accounting firm around 1991, which was eventually named Dadima Corporation and branched out into providing medical supplements to Medicare patients. (T. 7278-95, 11601-03, 11636)¹ Jorge Delgado was employed by Schiller, and they became friends. (T. 7290-96, 11597-99) Schiller earned close to \$1 million a year. (T. 7298) Eventually, Schiller decided that the Medicare business was too much work so he sold that portion of his business to Delgado. (T. 7298-99, 11637) The accounting portion of the business that Schiller retained was renamed D.J. & Associates, and the Medicare portion that Delgado got remained named Dadima Corp. (T. 7300, 11638) For a period of time, Schiller continued to consult with Dadima Corp, which was later renamed J&R Medical. (T. 7298-03, 11638, 11641)

In 1993, Delgado and Schiller formed another company together named Jomar properties that was supposed to buy and sell mortgages. (T. 7304, 11642) However, Schiller's involvement was limited because he had also bought a deli and was actively involved with it. (T. 7304)

¹The parties will be referred to as they stood in the trial court. The symbols "R." and "T." will refer to the record on appeal and transcript of proceedings, respectively. The symbol "S.R." will refer to the supplemental record.

Around this time, Delgado started to associate with Daniel Lugo, whom he had met at Sun Gym. (T. 7303, 11639-40) Delgado and Lugo became inseparable, and Lugo would accompany Delgado to Schiller's home. (T. 7303, 11644) Delgado also met John Mese and Defendant through Lugo. (T. 11648-49) Schiller noticed that Delgado had begun to behave like Lugo, whom Schiller considered unsavory, and expressed his concern over this change to Delgado. (T. 7304-06)

In January 1994, Schiller had a business lunch with Delgado and a banker from Central Bank. (T. 7308) The banker kept asking Delgado questions about other bank accounts, Delgado would not answer the questions and he appeared upset by them. (T. 7308-10) As they were leaving the restaurant, Schiller asked Delgado what was wrong, and Delgado abruptly informed Schiller that it concerned a private matter between Delgado and Lugo. (T. 7310) Schiller informed Delgado that he was terminating their business relationship immediately. (T. 7310, 11645) Thereafter, Delgado hired Mese to be his accountant on Lugo's advice. (T. 11649-50)

In 1994, Schiller owned a house, was purchasing a condo, owned two Scholzsky's Deli franchises, had an accounting business and had two \$1 million life insurance policies. (T. 7322-33) His personal bank account was at Sun Bank, and his business account was at NationsBank. (T. 7323-24) Schiller also

had \$1.2 million in accounts in the Cayman Islands. (T. 7324, 7659) Schiller's house had an alarm system, and Schiller had provided his alarm code to Delgado. (T. 7324) When Schiller terminated his business relationship with Delgado, he changed the alarm code. (T. 7324) At this time, Schiller was working between 9:00a.m. and 2:00p.m. each day at the deli. (T. 7325)

In late September 1994, Lugo told Delgado that Schiller had been cheating him regarding Dadima. (T. 11651-52) Delgado confronted Schiller in Lugo's presence, and Schiller denied everything. (T. 11652-53) Lugo then suggested that they kidnap Schiller to get the money. (T. 11653)

Lugo met outside Sun Gym with Stevenson Pierre, the supervisor of the instructors at Sun Gym, and Carl Weekes and told that someone owed money to Lugo and Delgado. (T. 8627, 8847) Lugo wanted to kidnap this person to collect the money. (T. 8847-48) A week later, Pierre was called to a meeting in the Lugo's office with Delgado, Lugo, Weekes and Defendant. (T. 8848, 11655-57) Lugo informed the group that he, Delgado and Schiller had been involved in Medicaid fraud and that Schiller owed them money. (T. 8849-50, 11657-66) He offered Pierre and Weekes \$100,000 to help kidnap Schiller and collect the money. (T. 8849-50)

Two days later, the group met again, and Delgado informed

them about Schiller's home, family and cars. (T. 8852-58) It was then determined that they would stake out Schiller and learn his routine. (T. 8858) During the first two stakeouts, Defendant, Lugo, Pierre and either Weekes or Delgado drove to the area of Schiller's home, his children's school and the deli but did not see Schiller's cars. (T. 8858-64)

The afternoon of the second stakeout, they learned that Schiller had a new car. (T. 8865) They went back to the deli, found Schiller and followed him. (T. 8865) As they were driving, Defendant suggested that they bump Schiller's car and that when he stopped to check the damage, they attack and abduct him. (T. 8866) However, they were unable to catch up to Schiller, so the plan failed. (T. 8867) The group then decided that they needed to purchase equipment, including walkie talkies, stun guns and handcuffs, which they did. (T. 8867-68)

The following Monday afternoon, they again found Schiller at the deli. (T. 8869) This time, they decided to find a remote area, wait for Schiller to drive by, intentionally cause an accident and abduct Schiller when he stopped. (T. 8870-71) However, when Schiller drove by, Pierre, who was driving, did not ram him. (T. 8871) Defendant got mad at Pierre and threatened him and his family. (T. 8871-72) Defendant then tried to pick up Pierre's son from school without authorization, and

Pierre became frightened. (T. 8874-78)

A third attempt was made to take Schiller by parking next to where he parked at the deli and waiting for him to arrive. (T. 8880) When Schiller arrived, got out of his car and started looking in the car for something, Defendant and Weekes started to reach out for him, and Pierre falsely told them that someone was looking, so they stopped. (T. 8880-81) The group then went to a fast food restaurant and decided to invade Schiller's home on Halloween. (T. 8881-83) However, this attempt was called off, and another attempt at invading Schiller's home failed when a person jogged by the house. (T. 8883-89) Another attempt to ambush Schiller when he arrived at the deli failed because a van they were using would not start. (T. 8889-91) After this attempt, Pierre was dropped off at his home while the rest of the group remained together. (T. 8893-94)

On November 15, 1994, Sanchez went to the gym and met Defendant, who asked to speak to him. (T. 8370-71) They went outside to a van Defendant had rented where Weekes was waiting, and Defendant told Sanchez that a drug dealer owed him money and asked for Sanchez's help collecting it. (T. 8371-74) Defendant offered to pay Sanchez \$1,000, but he initially declined and went home. (T. 8375-76) A couple hours later, Defendant arrived at Sanchez's apartment, and Sanchez agreed to help. (T. 8476-79)

However, Sanchez made sure that he was not supposed to hurt anyone and was only expected to be an intimidating presence. (T. 8479-81)

Sanchez got into the van with Defendant and Weekes, and Defendant drove to Schiller's deli, found Schiller's car and parked near it. (T. 8481-94) After 30 minutes, Schiller came out of the back door of his deli, and Defendant and Weekes identified him to Sanchez. (T. 7325-26, 8495-96) Defendant and Weekes got out of the van and grabbed Schiller, and Weekes started zapping him with a stun gun. (T. 7335-27, 7394, 8495-97 7327-28) After a struggle, Defendant and Weekes pulled Schiller to the van, and Defendant told Sanchez to pull him into the van, which he did. (T. 7328, 8497-99)

Once inside the van, Schiller was handcuffed by Weekes, a gun was placed to his head, duct tape was put over his eyes and a blanket was put over his head. (T. 7328, 8499-8500, 8503) Schiller's jewelry and wallet were taken by Weekes. (T. 7328, 8505-06) Defendant drove Schiller to a warehouse where Sun Gym had stored its equipment, which had been rented by Delgado. (T. 7329, 8501, 8506-07) During the 20 minute ride, Schiller was kicked and shocked with the taser repeatedly. (T. 7329-30, 8503-04, 8506) During the drive, Defendant called two people and said "the eagle has landed." (T. 7329-30, 8507, 8524-25) When they

arrived at the warehouse, Defendant made a third similar phone call. (T. 8526) One of these calls was made to Pierre. (T. 8895) About ten minutes later, Lugo and Pierre arrived, Pierre opened the warehouse door, and Defendant drove the van inside. (T. 8526-30) Lugo had called Delgado, who also joined the group at the warehouse. (T. 11668-69)

Once inside the warehouse, Schiller was removed from the van and placed face down on a piece of cardboard. (T. 7330-31, 8532, 8895-96) Schiller's shoes were removed, his feet were manacled and the manacles were attached to his handcuffs. (T. 7331) While in this position, a bat was put in his face and he was told that his face would be broken if he moved. (T. 7331-32) After a while, the manacles were removed, and Schiller was taken into room and placed on another piece of cardboard, which was covered with a blanket. (T. 7331-32)

Sanchez then asked to be taken home, and Defendant got the keys to the car Pierre and Lugo had driven to the warehouse and did so. (T. 8538-40) While Defendant was taking Sanchez home, Lugo and Delgado went to get Schiller's car from the deli while Pierre and Weekes watched Schiller. (T. 8897, 22670)

After Lugo, Delgado and Defendant returned, Schiller was told that someone wanted to see him, was taken back into the other room in the warehouse and was placed in a chair. (T. 7332-

33, 8898) The kidnappers demanded a list of his assets, and when he did not comply, he was slapped, zapped with the taser and beaten with the butt of a gun. (T. 7333) Weekes was speaking based on information provided by Lugo and Delgado, and Defendant was torturing Schiller. (T. 8898, 11670-74) His captors placed a gun to Schiller's head, stated that they were going to play Russian Roulette, spun the cylinder of the gun and pulled to trigger twice. (T. 7334, 8902) As they were doing this, the kidnappers were reading an accurate list of Schiller's assets to him. (T. 7334) Initially, the kidnappers tried to conceal their voices but eventually stopped. (T. 7335-36) At that point, Schiller recognized Lugo's voice. (T. 7336) Schiller was forced to call his wife and tell her that he was going on a business trip. (T. 7336) He was also burned with cigarettes and a lighter. (T. 7337-38, 8902, 11674)

When they finally stopped torturing him after about 90 minutes, Schiller asked to go to the bathroom. (T. 7338-39) He was taken to the bathroom but could not remove his pants as he remained handcuffed. (T. 7338) As a result, he wet himself and was forced to remain in his soiled clothing for two weeks. (T. 7338) At this time, Pierre and Weekes left for the evening. (T. 8899)

When he was returned to the room, the captors told Schiller

that if he did not cooperate, his wife and children would be taken as well and his wife would be raped in front of him. (T. 7338-39) They also continued to torture him. (T. 7339) After about 30 minutes, Schiller agreed to cooperate if they allowed his wife and children to leave the country. (T. 7339) Because of his captors' detailed knowledge of his assets and their knowledge of his old alarm code, Schiller realized that Delgado had to be involved. (T. 7340-41)

The following morning, Defendant, Lugo, Pierre, Weekes and Delgado arranged a schedule to guard Schiller around the clock. (T. 8903, 11670) Schiller was instructed to contact his travel agent and arrange for his wife and children to travel to Columbia to be with her family. (T. 7341-42, 8905, 11674) Schiller was also allowed to contact his wife to instruct her to leave. (T. 7342, 8905) By the third day of captivity, the tape on Schiller's face had loosen enough for him to see the contents of the room where he was being held. (T. 7343-44) However, he did not see his captors because he was afraid that they might notice if he tried to look at them. (T. 7344) When the captors realized that the tape was loosening, they added more tape until Schiller's face was covered from the forehead to the cheeks. (T. 7344-45)

The next afternoon, Lugo came to the warehouse and informed

Schiller that his wife had left. (T. 7346) The captors indicated that they had been to his home and were upset that jewelry, cash and jet skis that they had been expecting to find were not there. (T. 7346-47, 11675) As a result, Schiller was beaten again. (T. 7347)

On November 18, 1994, Schiller was finally given some food. (T. 7343) The next day, the captors began demanding that Schiller sign papers. (T. 7347, 11675-81) Thereafter, Schiller would be chained in a bathroom that was not air conditioned and left without water. (T. 7347-48) On occasion, Schiller would be permitted to use the bathroom, but other times, he was forced to soil himself. (T. 7348) At one point, Schiller reached for a cigarette from a pack that had been left near him and was kicked. (T. 7350) After that, his captors would intentionally walk Schiller into walls periodically to ensure he could not see. (T. 7350-51)

Around Thanksgiving, Manuel Salgar, Schiller's neighbor, noticed that Schiller appeared to have moved. (T. 6931-35) After Thanksgiving, Salgar saw a U-Haul truck in front of Schiller's house and met Lugo, who introduced himself as "Tom" or "Mike." (T. 6935-36, 6939) Lugo told Salgar that he was with the Secret Service, that they had taken over the house and that they were planning to use it to house foreign dignitaries. (T. 6936-37)

Lugo, who was driving a white Toyota, was accompanied by Defendant, who was driving a white Nissan 300ZX. (T. 6937-39)

Lugo also stated that boxes might be delivered to Schiller's home and asked Salgar to accept delivery for him if he was not there. (T. 6939) Salgar agreed to do so and received 10 to 12 boxes in this manner. (T. 6939) These boxes were from mail-order companies and were addressed to Schiller. (T. 6939-40) Lugo and Defendant came to Salgar's house on a couple of occasions and picked up the boxes. (T. 6939-40) When Salgar inquired why the boxes were addressed to Schiller, Lugo claimed that he was shipping them to Schiller in Columbia. (T. 6940)

While they were at the house, they removed money and papers from the safe. (T. 8912) The money from the safe was divided between Weekes, Pierre and Defendant. (T. 8912) The credit cards taken from Schiller were used by Lugo, Delgado and Weekes to order merchandise. (T. 8931-32, 11695-96) Schiller's BMW was taken to the warehouse. (T. 8932) Lugo then had Dan Pace alter the VIN on the car and get it painted black. (T. 8932-33, 11695)

During Schiller's second week of captivity, the captors began having him call his bankers. (T. 7351-52) One of the bankers became suspicious, and Schiller's captors put a gun to his head, spun the cylinder, pull the trigger and told Schiller he was dead if there were any further problems. (T. 7351-52)

Schiller was forced to sign documents including checks. (T. 7353) Schiller also began to befriend the person who was guarding him at night, who started to bring Schiller food. (T. 7355-57) Schiller later identified Carl Weekes as this person. (T. 7523)

The documents Schiller was signing transferred the ownership of his property to D&J International, a company Lugo had established to launder this money, and Lillian Torres, Lugo's ex-wife. (T. 8913-17) Mese was involved in notarizing the paperwork to legitimize these transactions and in laundering the money, for which he was paid. (T. 8915-16, 11679-83)

By this time, the captors had placed a hood over Schiller's head without removing the tape, which had cut into his face and caused it to bleed. (T. 7361) When Schiller complained about the tape, one of the captors took him to the bathroom, removed the old tape, placed a sanitary napkin on Schiller's face and retaped it. (T. 7362) Toward the end of the second week, Schiller was taken to the bathroom, given a pail of dirty water, soap and a toothbrush and allowed to clean himself. (T. 7363) Schiller was then given a clean set of clothes and allowed to change. (T. 7363)

During the third week of captivity, the captors claimed that Schiller had hidden his ownership of a house that he had

previously sold. (T. 7364-65) A gun was placed in Schiller's mouth, and the trigger was pulled. (T. 7364) During this week, Schiller was force to sit in the hatchback of his car for 6-7 hours a day. (T. 7365-66) At this time, Defendant, who had always wanted to kill Schiller, and Delgado, who was afraid Schiller would trace the assets to him, prevailed upon Lugo, who had been wavering, to kill Schiller. (T. 8918, 11686) The plan was to make it look like Schiller had been out on a picnic, gotten drunk and had an accident. (T. 11686)

At the end of this week, Schiller was informed that he had to be drunk to be released. (T. 7366) When Schiller protested that he did not drink, he was told that he had a choice of being drunk or drugged, and he decided to cooperate. (T. 7366) Schiller was then told that Delgado was going to Gene Rosen, Schiller's attorney, and that he was to call Rosen and tell him to give Delgado power of attorney for the deli, which Schiller had previously been forced to close. (T. 7367-68, 11683-85) The captors began to give Schiller shots of liquor to drink, which they described as training. (T. 7370) At the end of the week, Schiller was again given a pail of dirty water and a toothbrush, allowed to clean himself and given a change of clothes because one of the captors had complained that Schiller smelled. (T. 7370-71)

During the fourth week of captivity, Schiller was made to call all of his friends and tell them that he was running away with a new girlfriend, Lillian Torres. (T. 7371-72) After these calls had been made, Schiller was again permitted to clean up and was given clothes that he recognized as having been taken for his house. (T. 7372-73) Bubble wrap replaced the tape around Schiller's head, and he was given two packs of cigarettes. (T. 7374-75) Schiller was then given a bottle of liquor to drink. (T. 7375) Within 10 minutes of drinking this, Schiller was falling off his chair. (T. 7375) Lugo talked to Schiller briefly, and Schiller passed out. (T. 7375)

Schiller was placed in the passenger seat of his car, which Lugo was driving and in which Defendant was riding. (T. 8921-22) Lugo drove the car into a pole, and Schiller was moved to the driver's seat. (T. 8922) Lugo and Defendant got out of the car, poured gasoline on it, and set it on fire. (T. 8922, 11687) They then got into another car Weekes had driven to the scene. (T. 8922-23) As they started to drive away, Weekes noticed that Schiller had gotten out of his car, and Defendant and Lugo ordered Weekes to run Schiller over, which he did twice. (T. 8923, 11688)

Lugo called Pierre and told him to see if there was police activity in an industrial area on 36th Street. (T. 8919) Pierre

went to the area and found Schiller's car crashed into a pole and on fire. (T. 8920) A police officer told Pierre that this was a drunk driving accident. (T. 8920)

When Schiller awoke after having passed out in the warehouse, he was strapped to a board in the hospital, was unable to move his feet and was vomiting blood. (T. 7375-76) His pelvis was broken, his bladder was ruptured, he was covered in cuts, bruises and burns, and he had an incision from his chest to his pubic region. (T. 7376-77) He had lost almost 40 pounds. (T. 7499) Schiller called Rosen, told him what happened and had him contact Schiller's family. (T. 7378-79) Because Schiller was afraid that his captors might try to finish him off if they realized he had survived, he was transferred by air ambulance to New York. (T. 7379-80)

A day or two after they tried to kill Schiller, Lugo contacted Pierre, and Lugo, Pierre, Weekes, Delgado and Defendant met at the warehouse. (T. 8925) Delgado indicated that he had been contacted by Schiller's brother and told that his involvement in the kidnapping was known. (T. 8925-26) Lugo then called hospitals and determined where Schiller was. (T. 8926, 11688-89) The group then planned to go to the hospital and kill Schiller. (T. 8927, 11689) Defendant, Weekes, Lugo and Pierre then went to the hospital but were unable to locate Schiller.

(T. 8927, 11690) That weekend, Lugo and Pierre went to Schiller's house and moved all of the furniture to Delgado's warehouse. (T. 8929-30) Defendant, Lugo and Delgado took the items that they wanted from Schiller's property. (T. 11693-94)

On Christmas Eve, Schiller was released from the hospital in New York but remained there with his sister. (T. 7381) Through Rosen and private investigator Ed Dubois, Schiller learned that his property had been taken. (T. 7381, 7383-84, 7386) Schiller had Rosen contact the police and report the crime after the first of the year. (T. 7381-82) However, the police insisted that Schiller had to return to Miami to be interviewed, which Schiller was unwilling to do. (T. 7382) Schiller had not attempted to contact the police earlier because he was too traumatized. (T. 7382, 7385-86, 7515-16) Instead, Schiller left the country. (T. 7384)

Schiller had Dubois try to negotiate the return of his property and Rosen take legal action to have his house returned. (T. 7385-86) In January 1995, Dubois asked Schiller to provide him with a detailed account of what had occurred, which Schiller did. (T. 7772-75) Schiller also provided a deed and a change of beneficiary form. (T. 7775) He noticed Mese's name on both of these documents. (T. 7775-77) Dubois also received information regarding the transfer of Schiller's property to Sun Fitness

Consultants, Inc., a corporation in which Mese was involved. (T. 7777-80) Dubois then contacted Mese and set up a meeting with him. (T. 7780-82)

At the meeting, Dubois told Mese that he represented Schiller, and Mese denied knowing Schiller. (T. 7782-83) Dubois then presented Schiller's written account of his ordeal to Mese, which Mese read without any reaction. (T. 7784-85) Dubois then confronted Mese with the deed and change of beneficiary form. (T. 7786) Mese responded that he notarized documents all the time and that he had probably notarized these signatures. (T. 7786) Mese acknowledged that he knew Delgado and Lugo because he had represented them and because Lugo worked at Mese's gym. (T. 7787) At Dubois' request, Mese agreed to set up a meeting between Dubois and Lugo and Delgado. (T. 7787-88, 11697-99)

When Dubois arrived for this meeting, Dubois showed Mese a photo of Schiller and asked if Mese recalled notarizing his signature. (T. 7799) Mese responded that he could not recall. (T. 7799-7800) After waiting for 2½ to 3 hours, Dubois was finally led into an office to meet Delgado. (T. 7799-7801) Mese then left the office after informing Dubois that Lugo was unavailable. (T. 7803-04) Dubois confronted Delgado with Schiller's account of the kidnapping, and Delgado nonchalantly claimed that it was just a business deal. (T. 7804-05, 11699-

11700) Dubois angrily inquired if Delgado always conducted business by kidnapping and torturing people and informed Delgado that Schiller was alive. (T. 7805-07) Delgado then stated another meeting at which Lugo would be present was necessary. (T. 7807-08, 11700) As Delgado said this, Dubois noticed that Mese, who had been coming in and out of the meeting, was behind him. (T. 7808-09) This meeting was arranged for the following day. (T. 7809)

When Dubois arrived for the meeting, no one was there. (T. 7812-13) After four hours, Mese arrived, said he would contact Delgado and Lugo, claimed that he had and they were on their way, gave Dubois a file on Sun Fitness to review and led him into a small office. (T. 7817-20) In the trash can in the office, Dubois found a number of documents related to Lugo, Defendant and the corporations associated with Sun Gym and took them. (T. 7822-32, 7837-49, 7855-58)

Later, Mese informed Dubois that Delgado had arrived but that Lugo was unavailable. (T. 7858-60) When Dubois attempted to discuss the Schiller incident, Delgado held up his hand and said that they would not discuss it. (T. 7860-61, 11701-04) However, Delgado stated that they would return \$1.26 million of Schiller's property in exchange for Schiller signing an agreement that this occurred because of a business deal gone bad

and that he would not contact the police. (T. 7861-67, 11701-04) Delgado then dictated the proposed terms of the agreement to Dubois. (T. 7868-69, 11701-04) Dubois agreed to discuss the deal with Schiller and get back to Delgado. (T. 7869) Several revisions to the agreement were made, including the addition of Mese and Lugo at Delgado's request. (T. 7871-79) Thereafter, Schiller executed the agreement, and Dubois informed Mese. (T. 7879)

When the check was not forthcoming, Dubois started a fax campaign to get it and investigated Mese and Lugo's backgrounds. (T. 7880-81) As part of this investigation, Dubois looked into the corporations associated with Sun Gym and found Defendant's name. (T. 7881-82) Dubois then did a background check on Defendant. (T. 7882-83) Eventually, Delgado stated that he had a lawyer named Greenberg working on the agreement, so Dubois got attorney Ed O'Donnell involved. (T. 7388-89, 7890-93, 11705-07) Negotiations continued until March 1995, while Dubois gathered evidence and Schiller expressed his desire to go to the police. (T. 7388) After the exchange of various correspondence between the attorneys, Dubois and Schiller, no payment was forthcoming. (T. 7871-7924)

Finally, in April 1995, Schiller cut off the negotiations. (T. 7388-89) As a result, Dubois had Schiller prepare a

statement regarding what occurred to him for the police and contacted a friend of his with the police to report the crimes. (T. 7924-46) Arrangements were made for Dubois and Schiller to meet with an officer in the Strategic Investigations unit. (T. 7946-47) Schiller flew to Miami and met Dubois and the police. (T. 7388-89) The officer from the Strategic Investigations unit transferred the matter to the robbery unit. (T. 7947) After speaking to the police, who appeared skeptical, Schiller again left the country. (T. 7389-90) Dubois did not believe that the police were actively investigating this matter. (T. 7948-49)

In late April 1995, Lugo then told Delgado that he wanted to kidnap Winston Lee and take his money. (T. 11107-12, 11728-29) Lugo offered to pay Mario Gray to assist him in kidnapping and killing Lee. (T. 11107-12) Lugo told his girlfriend Sabina Petrescu that he had an assignment from the CIA to kidnap a terrorist. (T. 10276-10319, 10365) He took Petrescu and Defendant to do surveillance at Winston Lee's home, claiming that he was the terrorist. (T. 10365-76, 10233-50) Delgado also assisted Lugo in conducting surveillance on Lee. (T. 11729) However, Lee was away too much, so the plan failed. (T. 11730)

Around the end of 1994, Defendant met Beatrice Weiland at a strip club where she worked, and they started to date. (T. 5760-61) While they were dating, Beatrice showed Defendant her

photo album. (T. 5786-87) In the album were three pictures of Frank Griga's Lamborghini. (T. 5787) Defendant was very interested in the pictures of the car and asked about its owner. (T. 5789-90)

Defendant told Delgado that he had found a Hungarian couple with a lot of money to kidnap. (T. 11731-32) They later discussed this with Lugo. (T. 11732-34) In May 1995, Lugo told Petrescu that he was going to kidnap a Hungarian man who drove a yellow Lamborghini or Ferrari. (T. 10395-96) Lugo claimed that he was doing this for the FBI but that he was going to get money from the man by beating him before giving him to the FBI. *Id.* Lugo informed Petrescu that the Hungarian and his girlfriend would be kidnapped and held in a warehouse. (T. 10397) Defendant was supposed to help Lugo with this. (T. 10397-98) Defendant and Lugo had a suitcase with handcuffs, syringes and duct tape to use in the kidnapping and tried to enlist Petrescu to drive them. (T. 10398-10408)

Beatrice introduced Defendant to her ex-husband Attila in April 1995. (T. 5704-17) At the beginning of May 1995, Defendant, who had claimed to be a legitimate businessman, told Attila that he was looking for investors in a business dealing in phone lines and asked Attila to see if Griga might be interested. (T. 5714-15, 5719-20) Attila contacted Griga, who

indicated a willingness to meet Defendant at Griga's home to discuss the business deal. (T. 5721-22)

At the time of the meeting, Defendant and Lugo picked up Attila in Lugo's Mercedes, and they all went to Griga's home. (T. 5722-28) When they arrived at the house, Attila introduced Griga to Defendant and Lugo. (T. 5728-29) Lugo explained to Griga that Lugo had already invested \$5 million in this business, and Attila decided to leave the discussion because it was out of his league. (T. 5729-30) About 15 minutes later, Attila returned, Griga told Attila in Hungarian that he was not interested, Defendant and Lugo were shown the house and Attila, Defendant and Lugo left. (T. 5730-31)

One Sunday in May, Lugo put the bag containing items to use to kidnap someone in his car, and Defendant, Lugo and Petrescu drove to Griga's home. (T. 10409-24) When they got to the house, Defendant and Lugo, who both had guns, got out of the car and took a computer into Griga's house. *Id.* After 15 minutes, Defendant and Lugo came back to the car, and Defendant was angry that they had not followed through on their plan at that time. *Id.* However, after Lugo made a call and told Defendant that they would meet Griga later that day, they quit being mad. (T. 10424-31)

Later that day, Lugo told Petrescu that she was supposed to

accompany him to Defendant's apartment and pretend to be his Russian wife when they arrived. (T. 10432-41) They went to Defendant's apartment around 7:00p.m., Defendant and Lugo left Petrescu there, they returned 5 hours later, and Petrescu and Lugo went home. *Id.* When they got home, Lugo told Petrescu that he could not go through with it. *Id.*

The day after Attila had attended the meeting at Griga's house, Attila spoke to Defendant, who indicated that he had given Griga a computer as a token of appreciation for the meeting and that he would involve Attila in further meetings as a courtesy. (T. 5732-33)

On May 24, 1995, Eszter Lapolla was living at the home of Griga and Krisztina Furton, for whom she worked as a maid. (T. 5661-70) Around 5:00 p.m., Lapolla and Furton went to pick up Lapolla's daughter, and when they returned Griga was there with Defendant and Lugo. (T. 5670-71, 5679-81)

Around 6:00p.m. on May 24, 1995, Attila called Griga, who was busy and ask his to call back later. (T. 5733) When Attila called back around 9:00p.m., Griga indicated that Defendant and Lugo were there talking business. (T. 5733-34)

Between 10:00 and 10:30p.m., Judi Bartusz went to Griga's home. (T. 5597-98) She noticed a gold Mercedes four-door in the driveway of the home. (T. 5598, 5673) When she entered the home,

Griga, Furton, Defendant and Lugo were there and indicated that they were going to Shula's restaurant for dinner. (T. 5598-5600) Furton was wearing a red leather dress, red jacket and red shoes and was carrying a red purse. (T. 5600, 5673) Griga had on jeans, boots and a silk shirt. (T. 5601) Griga and Furton were planning to go to the Bahamas the next day, and they had planned to leave their dog in a kennel. (T. 5607) Bartusz saw Defendant and Lugo leave the house in the Mercedes and Furton and Griga leave the house in Griga's Lamborghini. (T. 5653-64)

A Lamborghini was seen parked in Defendant's apartment complex that evening. (T. 10798-10801) Later, Lugo called Delgado and asked if he knew how to drive a Lamborghini. (T. 11734-35)

Lapolla never heard Griga or Furton return that night. (T. 5675) When Lapolla awoke the next morning, she noticed that Griga, Furton and Griga's Lamborghini were not at the house. (T. 5675) Lapolla took her daughter to school, packed her things to move out of the house as planned, wrote a note for Griga and Furton and left the house. (T. 5676) Lapolla tried to call Griga and Furton for the next two days, but the calls went unanswered. (T. 5675-76)

The day after the kidnapping, Delgado met Defendant and Lugo at Defendant's apartment. (T. 11735-36) Lugo explained that he

and Defendant had planned to lure Griga and Furton to Defendant's apartment. (T. 11739) Once inside, Defendant and Lugo separated Griga and Furton. (T. 11739-40) They had planned to extort money from them before they died. (T. 11741) Lugo said that Defendant had gotten into a scuffle with Griga and had strangled him. (T. 11736-37) When Furton had seen the struggle, she had screamed, and Lugo had subdued and tranquilized her. (T. 11737) Griga's body had then been placed in a tub. (T. 11736)

As Lugo finished explaining what had happened, Defendant came downstairs, carrying Furton, who was bound and was wearing a hood. (T. 11742-43) Defendant laid Furton on the stairs, and she awoke, screaming for Griga. (T. 11743) Defendant got a syringe and injected Furton in the ankle with more horse tranquilizer, which cause her to scream. (T. 11744) Lugo and Defendant then questioned Furton about the codes at the house and the location of a safe. (T. 11746-50) After about an hour, Furton stopped answering the question and began to shake and scream. (T. 11750-51) Defendant then injected her again, which again caused her to scream. (T. 11751) At that point, John Raimondo arrived to kill Furton and dispose of both bodies. (T. 11752-54) Raimondo awoke Furton, pulled her up by the handcuffs on her wrists and started to tape her feet and wrists. (T. 11755-56) This cause Furton to scream again, and she was again

injected. (T. 11756-57) Thereafter, Raimondo left the apartment.
(T. 11758)

At this point, Delgado went into the downstairs bedroom and saw that blood was on the walls, floor and objects in the room. (T. 11759) Lugo then left the apartment. (T. 11761) He took Petrescu to Griga's home and tried to enter a code at the door, which did not work. (T. 10445-47) About an hour after he left the apartment, Lugo called the apartment. (T. 11763) Lugo told Defendant that the numbers did not work, to which Defendant responded "the bitch is cold." (T. 10447-51) Lugo then told Delgado to rent a moving van and buy a wardrobe box, and Delgado left. (T. 11765-66)

On May 26, 1995, Lapolla called Bartusz, indicated that something was wrong at Griga's home and asked her to come. (T. 5608, 5676-77) When Bartusz arrived at the house with Lapolla, she noticed that the dog had been left in the house, two drinking glasses, which were out on May 24, 1995, had been left on the coffee table, plane tickets for a trip to the Bahamas that Griga and Furton had planned to take on May 25, 1995, Griga's passport and Furton's wallet were in house and the bedroom was in disarray. (T. 5609-18, 5648) As this was all unusual, Bartusz notified the police that Griga, Furton and Griga's car were missing. (T. 5618)

That same morning, Delgado rented the van and went to Defendant's apartment. (T. 11767-68) Furton was placed in the wardrobe box, Griga was placed in a sofa, and they were carried to the van. (T. 11768-78) Lugo then drove the van to a warehouse he had rented. (T. 11778-81) When they got to the warehouse, Griga's Lamborghini was already inside it, as were a number of drums. (T. 11781-83) They unloaded the sofa and box. (T. 11782) Defendant and Lugo then went to Home Depot and purchased two rolls of plastic sheeting, a propane torch and everything necessary to use it, windex, shop towels, an axe or hatchet, a fire extinguisher, tar, fans, a chain saw and a gas can (T. 10802-44, 11784-90) The chain saw was later exchanged for a different model chain saw. (T. 10876-92)

When the first chain saw did not work, Delgado left the warehouse. (T. 11792-93) When Delgado returned to the warehouse, the bodies had been laid out on plastic, and Lugo was wiping them off with Windex and shop towels. (T. 11793-95) When the bodies were clean, Defendant tried to cut them up with the chain saw, but it quickly jammed on Furton's hair. (T. 11795-11802) Defendant and Lugo then used the hatchet to dismember the bodies. (T. 11802-03) The bodies were then packed into the drums, tar was added and the drums were soldered shut. (T. 11803-05) Delgado then drove Defendant home, and when he

returned to the warehouse, there was a fire in one of the drums. (T. 11806-08) Lugo stated that he was burning the heads, hands and feet. (T. 11808) After a while, Lugo extinguished the fire, and they left for the night. (T. 11808-10) They then went to Defendant's apartment, took everything out of the downstairs bedroom, including the carpet, and put it in the storage room at Lugo's apartment. (T. 11811-15)

The next day, Delgado went to Defendant's apartment, and Defendant, his wife and Lugo were cleaning it. (T. 11852-53) Delgado helped briefly, then traded cars with Defendant and left. (T. 11853-55) The next day, Defendant came to Delgado's house and said that they had cut the fingertips off the hand and pulled the teeth out of the heads. (T. 11855-56) Lugo had gone to the Bahamas to get Griga's money. (T. 11856-58) They traded cars back, and Defendant left. (T. 11856)

The following day, Bartusz went to Shula's to look for Griga and Furton. (T. 5619-20) As she was leaving, Bartusz noticed the gold Mercedes parked half a block from the restaurant and took down its tag number. (T. 5620)

Sgt. Donna Ganz located Griga's Lamborghini in a wooded area off Okeechobee Road that was used for dumping. (T. 5831-44) The radio had been removed from the car. (T. 5834-35)

On May 28, 1995, Lugo asked Mario Gray to rent a moving

truck for him and meet him at his warehouse, which Gray did. Inside the warehouse were garbage bags, 55 gallon drums, a black sofa and a television. Lugo then asked Gray if he knew of a good dump site, Gray gave Lugo a location, and Defendant, Gray and Lugo drove to this site to look at it. (T. 11121-31) On the way back, they stopped at a gas station, Gray was given a bag of credit cards, jewelry and ID's and told to dump them, which he did. (T. 11139-40) They then went back to the warehouse, loaded four drums into the moving van, drove back to the site and dumped the drums in groups of two about 100 meters apart. (T. 11141-48) They then drove to an apartment, pick up some carpet, drove back to the warehouse, and picked up the trash bags. (T. 11148-52) Gray then disposed of these items in a number of places, as he had been told to do. (T. 11152-53) Gray was then given the sofa and TV from the warehouse as payment. (T. 11153-56)

In late May, Schiller was contacted by Dubois, who stated that someone else had been a victim of a crime similar to the crimes against Schiller. (T. 7390) At the request of the police, Schiller returned to Miami and gave a statement to the police. (T. 7390-91)

On June 9, 1995, Lugo directed the police to the site where the drums had been dumped. (T. 11305-18) Inside the drums, the

police found two bodies from which the heads, hands and feet had been removed and tar. (T. 11319) In July 1995, the police went to an area of the Everglades based upon an anonymous tip and found 3 buckets containing two head, two sets of hands and feet, an axe, a hatchet and a knife. (T. 11330-31) One of the heads had one tooth in it that matched Griga, and the other had no teeth left. (T. 12302-12) Through DNA testing, the torsos and head were determined to be those of Griga and Furton. (T. 12195-12221)

As a result, Defendant was charged by indictment with conspiracy to commit racketeering, racketeering, two counts of first degree murder, two counts of kidnapping, attempted extortion, grand theft auto, attempted first degree murder, armed kidnapping, armed robbery, burglary of an unoccupied dwelling, second degree grand theft, first degree arson, extortion and conspiracy to commit a first degree felony. (R. 61-111) The kidnappings were charged alternatively as being for ransom, to facilitate a felony or with intent to terrorize. (R. 70-71,76)

On August 12, 1996, Defendant filed his Motion to Suppress Evidence in Unlawful Searches and Seizures. (R. 504-08) Defendant asserted that the affidavits upon which the search warrants were issued were insufficient, the warrants were

themselves insufficient, that items were seized that were not covered by the warrants, that the warrants were illegally executed, that the search of the car was not consensual and that the affidavits had not been fully disclosed. (R. 504-08) On November 6, 1997, again moved to suppress evidence based on the same grounds asserted previously. (R. 1121-24) On November 14, 1997, the State filed a written response to the motion, asserting that the affidavits were sufficient, that the warrants were sufficient and that they were properly served. (R. 1181-1332)

At the hearing on the motion, Defendant argued that since the only reference to him by name in the initial affidavits was that he was identified as one of the people with the victims before they disappeared, that he owned a 300ZX, that he listed his occupation as a trainer and that he had recently purchased a home for a large amount of cash, the affidavits were insufficient to provide probable cause to search his apartment or car. (T. 2263-70) The State responded that the totality of the circumstances had to be examined. (T. 2270-71) Overall, the affidavits asserted that a wealthy businessman had been kidnapped by a group including Lugo, that Lugo had been identified as being at Schiller's home in the company of a person matching Defendant's description and driving a car of the

type driven by Defendant, that Defendant was identified as being one of the people to have last seen the victims, and that Defendant was connected through his work at Sun Gym to Lugo, Delgado and Mese, who had all been identified as having been involved in the Schiller kidnapping. (T. 2271-73, 2275-76) The trial court determined that the affidavits had to be read in their totality and that they did establish probable cause. (T. 2276-77) As such, the trial court denied the motion to suppress regarding the initial warrants. (T. 2277)

Defendant then asserted that each of the succeeding affidavits were based on information uncovered during the prior searches and that these warrants were therefore tainted. (T. 2283-84) As the trial court had found the first warrants were properly issued, it denied the motion to suppress regarding the remaining warrants as well. (T. 2284-85)

On November 14, 1997, Defendant moved to declare the avoid arrest aggravator unconstitutional. (R. 1170-80) Defendant asserted, *inter alia*, that the avoid arrest aggravator always resulted in an impermissible doubling counting of the cold, calculated and premeditated (CCP) aggravator. (T. 1175-76) Defendant also moved to declare the pecuniary gain aggravator unconstitutional, again alleging, *inter alia*, that the circumstance resulted in double consideration of the during the

course of a felony aggravator. (T. 1371-78)

At trial, Bartusz testified that Griga owned a phone sex company that earned about \$3 million a year, and that Griga owned a home in Golden Beach that he purchased for \$650,000, a yellow Lamborghini, a red Dodge Viper, a blue Dodge Stealth, a boat, a home in the Bahamas valued at \$275,000, property in Hawaii valued at 200,000, and jet skis. (T. 5580-96, 11039-44) Bartusz also identified Griga's Rolex and Furton's tennis bracelet and rings. (T. 5628-29) Griga also had a life insurance policy valued at \$5 million. (T. 11044) The total value of Griga's estate was approximately \$10 million. (T. 11048-49)

Atilla Weiland testified that he had met Griga through Beatrice and the Hungarian community and believed Griga was wealthy. (T. 5710-11) Attila stated that when he learned that Griga and Furton were missing, he contacted Defendant. (T. 5735-37) Defendant claimed that he had gone to Shula's with the victims on May 24, 1995, found it was closed, went to a dance club and then went to Defendant's apartment. (T. 5737-38) Defendant claimed that he left the victims to go see his girlfriend, that the victims had been speaking to his business partners and that they may have gone to the Bahamas. (T. 5738-39) Attila averred that when he again spoke to Defendant the next week and inquired about the victims, Defendant told Attila

that they were supposed to be friends in a tone that caused Attila to drop the subject. (T. 5739-40)

Beatrice Weiland testified that she met Griga through a mutual friend and dated him for about three months. (T. 5754-58) After they stopped dating Beatrice and Griga remained good friends. (T. 5758-59)

Beatrice stated that Defendant usually came to the strip club she worked at with Lugo, and they always spent a lot of money at the club. (T. 5761-62) Beatrice saw no indication that Defendant was afraid of Lugo. (T. 5769) Instead, Defendant and Lugo appeared to have a brotherly relationship, and Defendant indicated that he was grateful to Lugo for helping him get established in this country. (T. 5768-69)

Beatrice stated that Defendant asked her to stop working and offered to support her. (T. 5782-83) Defendant took Beatrice to a warehouse filled with furniture and allowed her to take whatever she wanted. (T. 5783)

Beatrice testified that Defendant was interested in body building and worked out at a gym owned by a friend of Lugo every day. (T. 5780) Defendant also informed Beatrice that he was taking steroids and showed her containers of steroids. (T. 5780-81) Because Defendant claimed that Lugo worked for the CIA and acted mysteriously, Beatrice decided to break up with him. (T.

5785-86)

Beatrice explained that when she saw Defendant after she had learned that the victims were missing, she asked Defendant to help her find them. (T. 5793-94) Defendant became very upset at this question and claimed not to know anything. (T. 5794)

Agnes Sarisky testified that she lifted fingerprints from the drinking glasses left on the coffee table at the Griga's house and Griga's car. (T. 5845-59) Brett Nichols testified that he lifted additional prints from the car. (T. 5868-73) Nichols also examined Lugo's Mercedes after it was located at Ft. Lauderdale airport. (T. 5937-42) Inside the Mercedes, Nichols found a parking ticket for Miami Airport for May 30, 1995, another parking ticket for June 2, 1995, handcuffs, a fully loaded Derringer .357 handgun, cellular phones, keys, an extra battery for a phone, music CD's, cassette tapes, a gun pouch that fit the Derringer, a pair of nun-chucks, a Berlitz Romanian cassette tape and a number of papers. (T. 5942-58)

Det. Iris Deegan testified that she was assigned to investigate the kidnapping and extortion of Schiller on April 21, 1995. (T. 5873-78) As part of her investigation, she spoke to Schiller and a neighbor Manuel Salgar. (T. 5878-84) Salgar described two men who had been around Schiller's house at the time of the crime. (T. 5884) One of the men was identified as

Lugo. (T. 5884-94) The other person was described a light skinned black man who was shorter and huskier than Lugo and who drove a 300ZX. (T. 5884-94) This man appeared to be Arabian. (T. 5884-85)

Det. Salvador Garafalo testified that he was assigned as lead detective in this matter on May 30, 1995. (T. 6009-15) At that point, the Griga/Furton disappearance was transferred from missing persons, the Schiller kidnapping was transferred from robbery and both cases were consolidated. (T. 6015-16) After speaking to Bartusz, Lapolla, the Weilands and Schiller and showing them photo arrays, Garafalo determined that Defendant, Lugo and Delgado were suspects. (T. 6016-23) Garafalo then discovered the apartments rented to Defendant and Lugo, the home they owned and the cars they drove, as well as the home and cars of Delgado. (T. 6023-34) Garafalo and his team then sought search warrants for each of these dwellings and cars, which were granted. (T. 6034-36) Garafalo then assembled a team of officers, which gathered on the morning of June 3, 1995, to simultaneous execute each of these warrants, which was done. (T. 6034-43) Based on information discovered during these searches, additional warrants were sought, obtained and executed for two warehouses, Sun Gym, Mese's office and his home. (T. 6043-46)

Victor Chaves testified that he conduct the search of

Defendant's car. (T. 6113-15) Inside the car, Chaves found a receipt from NTW tire store, an insurance card, a receipt from Chowder's restaurant, a vehicle registration and three receipts from Dry Clean USA. (T. 6115-19) Defendant did not object to the introduction of this evidence. (T. 6113-19)

Sgt. Luis Alvarez testified that he and Det. Hellman, Fabregas and Chadwick were assigned to execute the search warrant for Defendant's apartment. (T. 6140-49) After the search warrant was read, Defendant left the apartment with Fabregas and Hellman. (T. 6149) Alvarez noticed that a downstairs bedroom was empty, had a spotless carpet that appeared to be new and a closet with boxes in it. (T. 6150) As Defendant's wife Cynthia Eldridge was at the apartment when the warrant was executed, Alvarez was reassigned to interview her while Det. Jim McColman and Lillian Gonzalez were assigned to continue the search. (T. 6151)

McColman continued the search of Defendant's apartment and found a day planner/address book, a receipt for a car tag, a receipt for payment for a pager service, a premium notice for car insurance, a credit card statement, several receipts for the purchase of jewelry, a computer book, two letters from Dubois to Joel Greenberg demanding the return of all property taken from Schiller, computer equipment stolen from Schiller, a VCR, a fax

machine, a typewriter, documents related to the construction on property owned by Schiller, mail addressed to Schiller's residence, several cell phones, a pager, a knife, keys, a phone bill, Defendant's credit cards, Schiller's business card, an airplane boarding pass in Schiller's name, receipts for purchases on Schiller's credit card, a warehouse lease, a receipt for changing the locks at Schiller's home, bank statements, corporate documents, documents regarding Lugo's probation, cancelled checks, photos of Winston Lee's home, several foreign passports and identity cards bearing Lugo's photograph and names other than Daniel Lugo, Lugo's American passport, a statue taken from Schiller, binoculars, handcuffs, jewelry including items taken from Schiller, and cash. (T. 6157-95, 6217-75, 6293-6320, 7406-09) Not only did Defendant not object to the admissibility of any of the evidence regarding the search and the evidence seized during the search, he also affirmatively did not join in the codefendants' objections to evidence seized that related to them. (T. 6140-6320)

After the initial search was concluded, the police learned that new carpeting had been installed in Defendant's apartment and obtained a new search warrant for it. (T. 6392-94) Det. Ray Hoadley executed this warrant and found more documents and checks in the apartment. (T. 6394-95) As a result, this search

was discontinued, the apartment was secured and a third warrant was sought. (T. 6395-96) When the third warrant was executed, Hoadley found Greenberg's business card, brokerage account statements, bank statements, checkbooks, more jewelry receipts, more corporate documents, life insurance information regarding Schiller, correspondence addressed to Schiller, check registers, more cancelled checks, and documents regarding Schiller's home owners' association. (T. 6596-6419) Hoadley also found fresh carpeting in the downstairs bedroom, an area of new padding under this carpeting, an orange dart embedded in the wall of this bedroom, an animal tranquilizer, rope and catalogs addressed to Schiller. (T. 6419-28) Again, Defendant stipulated to the admission of this evidence and raised no objection. (T. 6380-6429)

Alexandra Font testified that she leased Defendant his apartment and saw him sign all the leasing documents. (T. 6089-98) About a week before the police executed the search warrants, Defendant came into the apartment office, said that his cat had soiled his carpeting and requested that the carpeting be replaced and the apartment be repainted. (T. 6098-99)

Joseph Verga testified that he leased a warehouse located on 78th street in Hialeah to Delgado in June 1993 and that Delgado continued to lease the apartment until November 1995.

(T. 6458-74) In November 1994, Delgado placed iron gating on the front window and door of the warehouse and changed the locks.

(T. 6470-71)

Eduardo Abril testified that he rented a warehouse located on 80th Street in Hialeah to Defendant and Lugo on May 19, 1995.

(T. 6481-95) The lease term began on June 1, 1995, but Abril would have permitted the warehouse to be occupied immediately upon the signing of the lease. (T. 6487-88) In fact, Defendant

and Lugo had expressed an interest in immediately occupying the warehouse. (T. 6500) At the time the lease was signed, Abril was

storing tools in the warehouse and was given permission to remove the tool after they occupied the warehouse. (T. 6501)

When Abril went to get the tools several days after the lease was signed, he found a yellow Lamborghini in the warehouse. (T. 6501-03)

When the check given for the initial rent and deposit did not clear, Abril sent a letter to Lugo on May 24, 1995. (T. 6496-98)

Sometime thereafter, Abril noticed a van and several cars at the warehouse and approached it to speak to Lugo. (T. 6498-99)

However, Lugo came out of the warehouse and spoke to him in the parking lot. (T. 6499)

Nichols searched the warehouse leased to Defendant and Lugo on June 7, 1995. (T. 6511-12, 6531-35) Nichols found plastic

lining, a gas can with gas in it, a broom, windex, pliers, a screwdriver, handcuffs, a black leather bag containing duct tape, solder, a hose, a fan, rope, cans, bottles, an owner's manual for a chain saw, a fire extinguisher, flint, goggles, some 55 gallon drums, an air compressor, hair stuck to the ground, a Swiss Army knife, a newspaper dated May 26, 1995, a bag for a propane torch, directions for a mask respirator, a mask respirator, a CD player, gardening gloves, marking tape, a putty knife, industrial strength gloves, batteries, lids to containers of asphalt, a floor scraper, mortar mix, suede gloves, a brass key, orange shop towels, iron grating and a laptop case. (T. 6535-49) Nichols also lifted 33 latent fingerprints. (T. 6547, 6551-53) Nichols also treated the warehouse with luminol and discovered traces of blood. (T. 6549-51) Finally, Nichols found Griga's automobile association card, a number of receipts in Griga's name and a handcart. (T. 6551-53)

Det. Thomas Romagni testified that he executed the search warrant for Sun Gym. (T. 6567-70) He found the ledger for the business, its tax returns, bank statements, a bank reconciliation, annual reports, IRS notices, checks, Lugo's personnel file, a bag containing .380 caliber firearm registered to Mese and three silencers (T. 6574-6603)

Det. John King testified that he executed the search warrant for Mese's accounting office in Miami Lakes. (T. 6639-42) He found a file for Delgado and his wife, an employment file for Delgado, a file for Jomar properties and investments, a client list, a file for Lugo and his wife, a file for Schiller and his wife that included documents regarding an alleged sale of Schiller's home and property to D&J International, Inc. and a change of beneficiary on Schiller's life insurance policies, Mese's appointment book, and documents related to a tax lien on Sun Gym. (T. 6642-71) Hoadley testified that he found a taser gun during the search of Mese's home. (T. 6127-31)

Sgt. Archie Moore testified that he executed the search warrant for Mese's accounting office in Miami Shores. (T. 6697-99) He found Mese's appointment book. (T. 6699-6701) In mid June 1995, Moore also met with Gregory Lewis and received Griga and Furton's credit cards and ID's from him. (T. 6705-10) Lewis had received the credit cards and ID's from a street person, who had found they behind an Amoco station in Allapattah. (T. 6710, 6716)

Det. Charles Pointer testified that he executed a search warrant for Lugo's wife's home, which was owned by Defendant. (T. 6719-22, 6815-16) He found an address book, mail addressed

to Defendant including Smith Barney statements, a box containing a computer that had been shipped to Schiller, computer equipment, clips for a semiautomatic firearm, documents related to Phoenix Trading Company, cards from strip clubs for Defendant and Lugo, documents related to Sun Gym and related corporations, documents related to medical supply companies, driver's licenses for a number of people, a debit slip showing the transfer of \$40,000 from Schiller to Defendant, Schiller's bank statements, checks from Schiller's account to Mese, check registers for Defendant's account and Lugo's account, stock options in Defendant's name for Sun Gym, two-way walkie talkies, bullets, a loaded .38 caliber revolver, passport type photographs of Defendant and jewelry. (T. 6722-70)

Sgt. Mike Santos testified that he executed a search warrant for Lugo's apartment. (T. 7076-84) He found a set of keys for a BMW, computer equipment, brokerage account statements, check registers, receipts for cashier's checks, credit card receipts, checks, bank statements, letters from Schiller to Mese demanding return of his property, a letter related to Schiller's purchase of the condo, a list of overseas accounts, a letter from Frank Fawcett to Lugo accepting employment, an executed deed for Schiller's home, a letter from Blanco to Rosen cancelling the transfer of Schiller's condo to Torres, a final judgment

quieting title in Schiller's home, several sheets of paper with lists of account numbers, alarm codes, names and phone numbers, a letter from Dubois to Greenberg demanding the return of Schiller's property, a letter from Ed O'Donnell to Mese and Delgado regarding the exchange of a contract for a cashier's check, a letter authorizing a wire transfer from Schiller to D & J Associates, a computer printout listing Griga's bank accounts, and a receipt for the purchase of furniture. (T. 7084-7132,7137-40) Santos also discovered a television with blood spatter on it, 30 syringes - some of which were filled, a vial labeled Rompun, a taser gun, a dart gun, duct tape, an eavesdropping device, a police baton, walkie talkies, a cell phone, a computer scanner with blood on it, Griga's driver's license, gloves with blood on them, bloody towels, bloody carpet, bloody carpet padding, bloody clothes, Griga's Rolex, the cowboy boots that Griga was wearing when he was last seen alive, and the red shoes, purse, jacket and jewelry Furton was wearing when she was last seen alive. (T. 7140-65) Santos uncovered binoculars, a night scope, jewelry, a can of tear gas, a bag containing several guns, ammunition and darts for the dart gun, and a letter from Schiller to Delgado demanding return of his property. (T. 7165-72)

Sharon Farugia testified that Schiller purchased a

\$1,006,021 whole life insurance policy from Met Life in July 1990, and a \$1 million whole life insurance policy in November 1992. (T. 6854-60) The beneficiary on both policies was his wife. *Id.* In 1994, Farugia received a call from Rosen indicating that changes had been made to the policies as a result of illicit activities and that Schiller wanted to revoke them. (T. 6860) Farugia researched the policies and found that a change of beneficiary had been filed in November 1994. (T. 6861-62) This change made Lillian Torres the beneficiary, and the form had been notarized by Mese. (T. 6861-62) Rosen then sent a letter confirming the cancellation of the change of beneficiary, the change was voided and the change form was returned to Rosen. (T. 6863-64)

Camilo Blanco testified that he was the chief financial officer for the company that built La Gorce Palace condominiums. (T. 6902-04) Schiller purchased one of the condos in 1993 prior to construction for \$359,000. (T. 6904-06) In November 1994, Blanco received a phone call from Schiller, stating that he wanted to sell his condo. (T. 6906-07) As a result, Blanco informed that Schiller that documents necessary to change the ownership had to be prepared and that a \$1,000 fee would be charged to do so. (T. 6907-08) Blanco then received a letter dated November 28, 1994 signed by Schiller and his wife that

enclosed a \$2,400 check on Schiller's account and stated that he wished to transfer the condo to Lillian Torres. (T. 6908-10) The necessary documents were prepared and returned to Blanco in quadruplicate on November 29, 1994, signed and notarized by Mese. (T. 6911-17) However, Blanco did not execute the assignments because an installment payment was due on the purchase contract for the condo and he could not reach Torres or Schiller. (T. 6917-18)

Subsequently, Blanco received phone calls from Schiller and his attorney. (T. 6918) On February 6, 1995, Blanco sent a letter to Rosen, stating that he had received the documents transferring the condo, that he had later gotten calls indicating that the documents had been executed under duress and requesting that they be cancelled and that they transfer would not be effectuated. (T. 6919)

Ana Delgado testified that she had worked for Mese at his Miami Lakes office. (T. 6970-79) Delgado maintained Mese's appointment book at the Miami Lakes office and coordinated with the person who kept the appointment book at the Miami Shores office. (T. 6980-81) She was never aware of Mese having an appointment with Schiller and did not see Schiller meet with Mese on November 23, 1994. (T. 6981, 7018)

Lugo occupied an office in Mese's office in 1994 and 1995.

(T. 6979-80) Defendant would visit Lugo at this office. (T. 6983)

During trial, Mese's attorney indicated that he wanted the trial court to consider an objection by any attorney an objection as relating to all defendants. (T. 7311) The trial court stated that it would not do so and that each attorney would have to object or join in the objection of the other defendants' attorneys. (T. 7311-14)

Kimberly Sparks of Penguin Pools testified that her company serviced the pool at Schiller's house. (T. 7265-68) At some point, Sparks was informed that Schiller was no longer living at the house and that a person calling himself Dan Thomas was there. (T. 7269) Sparks contacted this person through a beeper number he had provided and entered into an agreement with him, Joseph Thomas and D.J. International to service the pool. (T. 7269-72) The check for the initial payment under this contract was signed by Lugo. (T. 7272-73) In January 1995, Sparks went to the house to repair the heater on the pool and met two black men there. (T. 7273-76)

Schiller testified that he never willing gave any of his property to Defendant, Lugo or Mese. (T. 7407-11) Schiller never met Mese. (T. 7307) As an accountant himself, he never used Mese's accounting services and never provided Mese with any of

his financial documents. (T. 7307, 7411-12) Schiller stated that he was never in Defendant's apartment and did not know how his property got there. (T. 7409-30, 7463-65) Schiller averred that he never knowingly executed the quit claim deed for his house, that his wife was in Columbia on the dated that it indicated that she signed it, that he did not know Lillian Torres and that he did not go to Mese's office to have the document notarized. (T. 7430-31)

Schiller recognized the computer equipment seized for Lugo's apartment as his but did not know how it got into Lugo's apartment. (T. 7432-33) He identified the furniture and furnishing found in Lugo's apartment as his. (T. 7433-35) The BMW keys found in Lugo's apartment belong to his wife. (T. 7435) Schiller recognized pictures of his wife's BMW although it had been repainted black. (T. 7436-38) Schiller did not have the car repainted and had no idea how his property and correspondence came to be in Lugo's apartment. (T. 7441-47)

Schiller never knowingly wrote any checks to Mese. (T. 7447-51) Schiller never saw the documents that were in his file at Mese's accounting office before trial. (T. 7452-53) Schiller never gave Defendant, Lugo or Mese copies of his Columbian residence papers or his passport. (T. 7454-55) Schiller used his driver's license for identification and never used his passport

for that purpose. (T. 7455-56) Schiller did not attend a closing for the sale of his home to Torres, never met Mese, and did not have him prepare his taxes or do any other work for him. (T. 7456-62)

Schiller stated that he never mail ordered a NEC computer. (T. 7466) He did not know why one was delivered to his home and had no idea how it ended up in Lugo's wife's house. (T. 7466-67) Schiller also never knowingly wrote checks to any corporation associate with Sun Gym, and never tried to buy the gym. (T. 7484-87)

Schiller testified that after he was kidnapped, he found that his IRA's and mutual funds, which had contained close to \$100,000 were gone. (T. 7487-88) The entire balance had been removed from his business account. (T. 4788) His home had been emptied of furnishing. (T. 7525-26) Approximately \$70,000 had been charged on Schiller's credit cards during his captivity. (T. 7527-30)

Schiller acknowledged that he had signed a contract with Delgado that stated that Delgado would return Schiller's money. (T. 7505-06) He admitted that the contract stated that the exchange was a result of a failed business deal and that it averred that his account of abduction was false. (T. 7506-07) He also agreed that the agreement provided that he would not go to

the police. (T. 7507) However, Schiller asserted that the statements were untrue and that he always planned to report the crimes. (T. 7507-08) He averred that he signed the agreement, believing it was an easy method of obtaining the return of his property. (T. 7508)

Ed Dubois, a private investigator, testified that he was hired by Rosen regarding Schiller. (T. 7765-68) After speaking with Schiller, Rosen advised him to get out of the area and worry about contacting the police later. (T. 7768-70) However, after Griga and Furton were missing, the police contacted Dubois, who provided the information he had learned, the documents he had found in the trash in Mese's office and documents he had found in Schiller's house. (T. 7948-56)

Freddie Marin testified that he was the general manager of Schiller's deli in 1994, and that Schiller came to the restaurant daily. (T. 8184-88) One day in November 1994, Schiller stopped coming to the deli. (T. 8188) Marin then received a call from Schiller, who asked Marin to close the restaurant because a corporation was taking it over and Schiller was going on a trip. (T. 8188-89) Schiller called again later and asked that the food be cleaned out of the deli. (T. 8190) Finally, Marin received a call asking him to bring Schiller's computer and papers from the deli to the hospital. (T. 8190)

When Marin went to the deli to get these items, it had been broken into and the items were missing. (T. 8191)

Lillian Torres testified that she met Lugo at a gym in New York in 1986 and married him on October 19, 1987. (T. 8202-05) They later moved to Florida and took custody of Torres' siblings' children. (T. 8205-08) Lugo stayed home with the children and claimed to be working in the stock market. (T. 8208) In 1991, they divorced, and Torres later learned that Lugo had gone to jail. (T. 8211) When Lugo got out, he came to visit Torres and introduced her to Defendant and Lucretia Goodridge, who was Defendant's cousin and later married Lugo. (T. 8211-12)

In May 1994, Lugo asked Torres to work for him at Sun Gym, which he claimed to own with Mese, as a babysitter. (T. 8213) After working there briefly, Torres quit but remained friendly with Lugo and went to an office he shared with Mese in Miami Lakes. (T. 8214-15) In November and December of 1994, Lugo began to give Torres a lot of money. (T. 8220) He also took her to a house in Kendall in the last part of November and to hospital in December. (T. 8217-19) Lugo had spy equipment in the car he was driving. (T. 8219) During this time, Lugo came to Torres' home and asked her to sign some papers, claiming that he was having trouble with his wife and did not want to have property in his name. (T. 8220-21) Torres signed the papers, which Lugo kept

covered, without reading them. (T. 8221-22) Torres never met Schiller, was not his fiancé and was not asked to act as such by Lugo. (T. 8222-23) One day, Lugo took her to a warehouse in Hialeah that had furniture and personal effects in it, some of which were given to Torres. (T. 8225)

Off. William Spader testified that he examined a black BMW station wagon at a towing yard and determine that the public VIN had been altered. (T. 8259-68) From the private VIN, Spader determined that the BMW belong to Schiller. (T. 8265-73) Only 500 of this type of BMW were made in this country. (T. 8261)

Loretta Ramsey identified the bank records from accounts at Central Bank of D&J International, Sabina Petrescu, Defendant, Lugo and his wife, Carl Weekes and his wife, Delgado and his wife, Sun Gym, Inc. and Sun Fitness Consultants. (T. 8307-13) Defendant's account was opened on November 29, 1993, and Defendant was the sole signator on that account. (T. 8313, 8341) Defendant and Lugo were the signators on the Sun Fitness Consultants account. (T. 8317-18)

Ilma Avila identified Defendant, Lugo, Mese and Delgado as customers at Central Bank's Palmetto Lakes office. (T. 8320-27) Defendant, Lugo and Delgado used to come into the bank together, so much so that the tellers nicknamed them the three stooges. (T. 8327-28) Avila personally opened the accounts for D&J

International, Petrescu, Defendant, Lugo and his wife and Delgado and his wife and personally observed each of the signators sign the signature cards for each account. (T. 8330-42, 8347-50, 8355-57) The documents regarding the Sun Fitness account showed that Mese was the president and secretary of this company and that the signators on the account were Defendant and Lugo. (T. 8357-61) The Sun Gym account documents also showed that Mese was president and secretary. When this account was opened in April 1994, Mese and Lugo were signators on it, but the signators were changed to Mese and his wife in October 1994. (T. 8368-71) The Sun Fitness account, D&J International account, the Sun Gym account and Defendant's account all had post office boxes at the same mail facility as addresses. (T. 8362-63, 8367-68)

During April 1995, Defendant received two wire transfers from Smith Barney: one in the amount of \$50,000 and the other in the amount of \$80,000. (T. 8345-47) On March 24, 1995, Lugo initiated a wire transfer in the amount of \$2,500 to Frank Fawcett in Boston. (T. 8350-52) On December 13, 1994, Lugo wrote a check from D&J International in the amount of \$45,000 to Sun Fitness, and on December 14, 1994, \$45,000 from the Sun Fitness account was used to purchase a cashier's check payable to Mese's escrow account. (T. 8363-65) On November 28, 1994, two checks

from D&J Associates, one in the amount of \$560,000 and the other in the amount of \$700,000, were deposited into the Sun Fitness account. (T. 8365-67) On February 9, 1995, a check in the amount of \$67,845 drawn on the D&J International account was deposited into the Sun Gym account. (T. 8372-73) That same day, Mese purchased a cashier's check in that same amount payable to the U.S. Courts for the benefit of Lugo. (T. 8373-76) On numerous occasions, Defendant came into the bank and took cash advances in excess of \$100,000 through Visa from his Merrill Lynch account. (T. 8376-81, 8425) In order to accomplish these transactions, Defendant was personally required to speak to the Visa representative on the phone at the bank before the transactions were approved. (T. 8380-81)

Sanchez testified that he became a member of Sun Gym in 1992, and started working there as a weight lifting instructor in March 1994. (T. 8440-48) Sanchez stated that Sun Gym was the type of gym patronize by serious body builders and weight lifters and that people at the gym used steroids. (T. 8449) In 1994, Sanchez was 6'4", weighed 270 pounds and could bench press 475 pounds. (T. 8447-48, 8453) Sanchez obtained his job at Sun Gym by asking Lugo, who he believed owned the gym. (T. 8453-54)

At the time, Sanchez would occasionally train at the gym with Defendant because he believed that Defendant was as strong

as he was. (T. 8455-57) In April 1994, Sanchez quit working at Sun Gym after a heated argument with Defendant, who was managing the personal trainers at the gym. (T. 8458-62) However, Sanchez continued to work out at the gym. (T. 8465) A couple of weeks after the fight, Sanchez ran into Defendant at the gym, Defendant apologized for the fight and Defendant and Sanchez began to train together regularly. (T. 8465-67)

Sanchez stated that Defendant came to his house the night Schiller was kidnapped and paid him the \$1,000 he had promised. (T. 8542) Sanchez stated that he did not report the crime because he was afraid that the gang might hurt him or his family. (T. 8541-42) After the kidnapping, Sanchez quit working out at Sun Gym and started using Gold's Gym. (T. 8543-44) A couple of weeks later, Defendant came to Gold's Gym and asked Sanchez to train with him there. (T. 8544) When Sanchez stated that he could not afford to remain at Gold's Gym, Defendant replied that he would pay the costs and that Sanchez was now his partner forever. (T. 8544-45) Sanchez allowed this to happen and worked out with Defendant because he was afraid of what Defendant would do if he tried to disassociate himself from Defendant. (T. 8547) Sanchez explained that he was afraid of Defendant because Defendant had once threatened to cut someone up with a chain saw over a dispute about the use of gym

equipment and had threatened to go into a house and kill everyone inside. (T. 8547-49) Defendant did not object to this testimony. *Id.*

After the kidnapping, Defendant's life style changed. (T. 8550) He would spend thousands of dollars at clubs, bought a new car and got a \$25,000 Rolex watch. (T. 8550-53)

In April 1995, Defendant approached Sanchez and offered him \$5,000 to assist him again. (T. 8556-57) Sanchez refused to be involved. (T. 8557-58) The next day, Sanchez met Defendant at the gym, Lugo came in, Defendant and Lugo both insisted that Sanchez get involved, and Sanchez again refused. (T. 8558-63)

When Sanchez was in the gym with Defendant thereafter, Defendant stated that he intended to buy a yellow Lamborghini. (T. 8563-64) Later, Defendant changed his mind, and stated that he was getting a Dodge Viper. (T. 8565)

Det. Gregory Smith testified that he searched Schiller's car and found that it had been burned. (T. 9159-76) He impounded a shirt, a melted gas can and carpet samples from the car. *Id.* Vince McBee, a forensic chemist, tested the samples and found that gasoline was present in the carpet but not on the clothes. (T. 9259-68) William McAlister, an arson investigator, testified that the fire in Schiller's car started in the right rear area by the ignition of a flammable liquid with an open flame. (T.

9271-88) McAlister also opined that it is difficult to burn a human body and that attempting to do so with an open fire would not burn the body completely and would result in a smoky fire. (T. 9288-91)

Michael Ovedia testified that he rented three mailboxes at his post center to Lugo, who was using the name Javier Hernandez, on November 19, 1993. (T. 9202-09) The boxes were under the name of Defendant, Phoenix Investments and Regional Medical. (T. 9209-10) Later, Lugo rented an additional mailbox in Schiller's name, at which Torres was also authorized to receive mail. (T. 9212, 9216) Elle Ovedia testified that Lugo had her predate the form to March 1, 1994, but that the Schiller box was rented in November 1994. (T. 9328-37)

Franklin Murphy testified that he met Lugo through Sun Gym, where Lugo was a personal trainer at the time and Murphy's wife was the manager. (T. 9387-92) In April 1993, Lugo, who had stated that he was playing the market, opened a money market account at Merrill Lynch through Murphy, who was a broker there. (T. 9392-98) At the time Lugo stated that he and his wife worked for D&J International and made an initial deposit of \$2,500. In November 1993, Lugo deposited a check draw on Mese's escrow account in the amount of \$142,000 into this account. (T. 9400-01)

In February 1994, Lugo brought Defendant to Murphy to open his own investment account. (T. 9401-02) Defendant represented that he had inherited some money, and an account was opened for Defendant, over which Lugo had power of attorney for the purpose of trading only. (T. 9402-18) However, only Defendant could withdraw funds from this account. (T. 9405) The initial deposit into this account was \$745,000. (T. 9418) Because Defendant had listed Lugo as his cousin, the compliance officer at Merrill Lynch would only authorize the granting of the power of attorney to Lugo if Murphy confirmed Lugo's trades on Defendant's account with Defendant personally. (T. 9419-20)

Lugo also had Murphy open an account in the name of Thomas Lewis, who was allegedly from Haiti, with an initial deposit of \$500,000. (T. 9444-54) When Murphy attempted to contact Lewis, he learned that no such person existed. *Id.*

In December 1994, a \$1 million check drawn on Sun Fitness Consultants was deposited into Defendant's account. (T. 9423-24) Lugo claimed that this money was earned through investment of moneys from a line of credit. (T. 9425) The compliance officer became suspicious of this account, checked into Lugo and Doorbal and ordered that both account be closed. (T. 9430-35) Murphy met with Lugo and informed him that the account had to be closed. (T. 9435-40) The securities from the account were transferred to

Smith Barney and the cash was removed from the account through a series of cash advances in amounts less than \$10,000, many of which were made batches. (T. 9440-44)

Christopher McFarland, a forensic accountant, testified that he reviewed Defendant's brokerage account records, DJ and Associates' accounting records, D&J International's accounting records, Sun Fitness Consultants' records, Mese's escrow account records and banking statement from 46 accounts, including Schiller's accounts. (T. 9535-76) From these records, he traced the money taken from Schiller and determined that it was exchanged in a variety of financial transactions between Defendant, Mese, Lugo and corporations owned by these individuals. (T. 9576-87, 9590-97) In McFarland's opinion, these transactions were conducted for the purpose of laundering this money. (T. 9598-99, 9602-96) Lugo eventually used some of this money for personal expense and made payments to Torres, Petrescu, Weekes, Pierre, Delgado and Lugo's wife. (T. 9636-37) Defendant used part of the moneys he received for personal expense and payments to Torres, Petrescu, Pierre, Lugo's wife, Hector Ramos, Luis Tabalda, Manerva Lugo and Steven Meyerson. (T. 9637-38)

Petrescu testified that she met Lugo at a strip club where she was working, and they became close. (T. 10276-10319) Lugo

offered to pay for her living expenses so that she did not have to strip anymore and rented an apartment for her. (T. 10319-25) Petrescu then began to live with Lugo and Defendant at Lugo's wife's house. (T. 10327) One time, Petrescu found a pair of handcuffs among Defendant's clothes. (T. 10328) Another time, Petrescu saw Lugo with a gun. (T. 10332)

Petrescu stated that Lugo told Petrescu that he worked for Delgado, that Schiller was wealthy and that Schiller had cheated Delgado. (T. 10334) Lugo stated that he was going to fix it. *Id.* Lugo also told Petrescu that he was a stock broker and that he worked for the CIA. (T. 10335-36) Lugo gave Petrescu Schiller's BMW. (T. 10356-62)

Lugo showed her surveillance equipment and told her that he had to travel for the CIA. (T. 10338-39) Lugo claimed that Defendant was going with him on this trip. (T. 10339-40) Lugo asserted that there was a bad CIA and a good CIA. (T. 10346-47) Lugo claimed the Defendant was a killer in his home country. (T. 10348) Defendant did not object to any of this testimony.² (T. 10335-48) Instead, Defendant elicited more of this information on cross. (T. 10538-42, 10555, 10564)

A couple days after the Griga/Furton kidnapping, Defendant

²Mese's counsel later moved for a mistrial based on this testimony. (T. 10373)

came home and told Petrescu that they did not need the warehouse because they were holding Griga and Furton at Defendant's house. (T. 10441-42) Defendant later complained that Defendant's apartment was cold and smelly and asked Petrescu to help him clean up blood there. (T. 10442-45) A couple day later, Defendant and Lugo brought a roll of carpet and other items with blood on them and put it in the storage room at the apartment. (T. 10454-58) During that week, Delgado also came to the apartment and left two bags of clothing. (T. 10458-60)

Frank Fawcett, an investment bank, testified that he was referred to Lugo, who claimed to have between \$2 and \$10 million to invest. (T. 10715-19) Fawcett came to Miami on April 3, 1995, to met with Lugo and Defendant about restructuring their business affairs. (T. 10727-48) At one point during this visit, Defendant came to Fawcett's hotel room. (T. 10741-42) Fawcett went into the bathroom, and when he came out, Defendant was on the phone, threatening to kill someone. (T. 10742) Before he left Miami, Fawcett had reached an agreement with Defendant and Lugo to work for them. (T. 10748) When a formal employment agreement had not been reached by the middle of May, Fawcett called and spoke to Defendant, who stated that he did not know where Lugo was and that he was busy making a bomb. (T. 10752-53) Again, Defendant did not object to this testimony.

Daniel Sumner, a fingerprint examiner, testified that Defendant and Lugo's fingerprints were on the glasses left at Griga's house. (T. 10938-73) Defendant's fingerprints were also found on items recovered from Lugo's warehouse, the bullets recovered from Lugo's apartment and Lugo's Mercedes. (T. 10973-85)

Antonia and Christian Cabaleira testified that they lived next door to Defendant. One night in May 1995, Antonia was awaked by a loud noise, check her apartment and did not find anything that would have caused that noise. (T. 11060-67) Christian also heard the noise, which sounded like a series of poundings. (T. 11068-74) Betty Gonzalez, Defendant's downstairs neighbor, also heard the noise at around 1:00 a.m. (T. 11076-80)

John Rodriguez testified that the dry cleaning receipts found in Defendant's car were for the cleaning of three pairs of jean, which were submitted under the name of Taylor. He also identified the blood denim shirt that was found in Lugo's apartment as something that he previously been given to his company for cleaning under that same name. (T. 11083-94)

Mario Gray testified that he had been Lugo's neighbor at one point and that he had worked for Sun Gym briefly in 1994. (T. 11098-11107) Gray stated that he contacted Lugo in late April 1995, and asked for his help in finding a job. Lugo offered to

pay him to find someone to test a dart gun on. (T. 11107-12) Around May 23 or 24, 1995, Lugo asked Gray to meet him at Shula's restaurant to help him dispose of a Lamborghini. (T. 11112-13) A couple of days later, Gray hired a tow truck and followed Defendant and Lugo toward a warehouse. However, when the tow truck driver would not let Defendant and Lugo take the tow truck to the warehouse alone, Gray was told the job was off. (T. 11113-18)

Franklin Higgs testified that he was in jail with Defendant in June 1995. (T. 11453-57) He overheard Defendant say that his crime was supposed to be the perfect crime and that he had personally dismembered the bodies with a chain saw. (T. 11459) He also saw Defendant demonstrate what Defendant described as the most effective choke hold. (T. 11460-62) Higgs also overheard Defendant saying that if Lugo kept his mouth shut, they would be in the clear. (T. 11477)

Dr. Alan Herron, a veterinarian, testified that xylazine, which is sold under the name Rompun, is an animal tranquilizer. (T. 11545-54) Injection of Rompun is accompanied by a burning sensation. (T. 11555) Rompun slows respiration and heart rates and causes salivation and vomiting. (T. 11556) Herron opined that the presence of Rompun in Griga's brain and liver tissues indicated that he was alive at the time he was injected. (T.

11557-58) The level of Rompun in Furton's tissues was enough to kill several horses. (T. 11558-65) There are no clinical uses for Rompun in humans. (T. 1158)

Delgado testified that he leased a Mercedes for Lugo to use and that Defendant took over the lease on his 300ZX. (T. 11721-24) Defendant, Lugo and Delgado were all living off the money they had gotten from Schiller. (T. 11724)

The blood on the items recovered from Lugo's apartment were matched through DNA testing to Griga. (T. 12222-29) Based on an anthropological examination of the bone, Dr. Tony Falsetti determined that Furton's right hand had been removed with a chain saw and her right foot had been removed with a hatchet. (T. 12231-59) Griga's skull showed signs of blunt force trauma inflicted at or near the time of death. (T. 12260-61) Griga's hands and feet had also been removed with a hatchet. (T. 12261-66) Both heads had been removed with the hatchet. (T. 12266)

Dr. Roger Mittleman, a forensic pathologist, testified that he received the drums containing the torsos of Furton and Griga. (T. 12314-18, 12325-26) As soon as the torsos were removed from the drums, they began to decompose rapidly. (T. 12319, 12326) Breast implants and an IUD were found in Furton's body, which were traced to her medical records. (T. 12321-24) X-rays of Griga's torso were also matched to his medical records. (T.

12327-32) Furton and Griga's torsos showed no signs of trauma other than the dismemberment and no evidence of a cause of death. (T. 12324, 12333)

Mittleman also received the buckets containing the heads, hands and feet. (T. 12333-34) The face and jaw had been removed from Furton's skull, it had been in a corrosive agent, only fragments of teeth remained and the brain was decomposed. (T. 12334-39) The face had also been removed from Griga's skull, and there was evidence of blunt force trauma to the top of the skull. (T. 12339-40) The trauma could have been fatal and would have caused bleeding, that could have been fatal independently. (T. 12341) The fingertips had been removed from the hands. (T. 12343-44)

Xylazine was found in the livers, kidneys and brains of both bodies. (T. 12344-47) Xylazine suppresses respiration, heart rate and blood pressure in humans and has no medical use for humans. (T. 12345) The level of xylazine in Furton's body would have been fatal, and Griga may also have died from xylazine. (T. 12346-48) Because the xylazine was distributed throughout their body tissues, both Griga and Furton were alive when they were given the drug. (T. 12347-48)

Because of the condition of the bodies, Mittleman determined that the manner of death was homicide but was unable to

determine definitively the cause of death for either victim. (T. 12348-52) However, Furton probably died from asphyxia either from an overdose of xylazine or strangulation, and Griga probably died from asphyxia from an overdose of xylazine or strangulation, the effects of the blunt force trauma to his head, exsanguination from the wound to his head or a combination of these factors. *Id.*

During his case, Defendant attempted to introduce letters that Lugo had written to him while they were incarcerated on the basis that they evidenced Lugo's bias against him to impeach Lugo's statement to Delgado during the conspiracy. (T. 12516-74) During this argument, Defendant admitted that these letters were hearsay and claimed that he was only admitting them as impeachment. *Id.* The trial court refused to admit the letters, finding that they did not impeach Lugo's statements. *Id.*

After deliberating, the jury found Defendant guilty as charged on all counts. (R. 2704-08, T. 13681-83) The trial court adjudicated Defendant in accordance with the verdict. (R. 2856-58, T. 13695)

Prior to the penalty phase, the State moved in limine to exclude the letters Lugo allegedly wrote Defendant. (T. 13780) Defendant asserted that they were admissible to show the relationship between Defendant and Lugo, and Lugo's alleged

domination of Defendant. (T. 13781) The State responded that there was no evidence that Defendant acted because of Lugo's domination, that the letters were written after the crime and that they did not show Defendant acted under Lugo's domination as he did not do what Lugo requested in them. (T. 13781-82) Additionally, the State contended that it had no opportunity to rebut the hearsay in the letters. (T. 13782-83) After listening to argument on the ability to rebut and the relevance of the letters given their timing and Defendant's failure to accede to Lugo's requests, the trial court deferred ruling. (T. 13783-13800)

Later, the trial court ruled that the letters were not hearsay because they were not to be offered to prove the truth of the matter asserted. However, the trial court indicated that they would not be admissible, absent the admission of some evidence that the nature of Defendant's relationship with Lugo at the time the crimes were committed was the same as when the letters were written. (T. 13847-50) As Defendant indicated that he intended to offer testimony on this issue, the trial court continued to defer ruling. (T. 13850-52)

Defendant moved in limine to preclude CCP on the grounds that the murders were not committed according to the plan. (T. 13801-06) The trial court denied the motion, finding that simply

because the victims were killed before the plan called for did not make the murders any less planned. *Id.*

During the penalty phase, the State presented victim impact testimony only. (T. 13878-13901) Defendant presented the testimony of his fiancé, who stated that Defendant is a gentle person and that he had helped her to be a better person and Christian, and his fiancé's mother, who reiterated her daughter's testimony. (T. 13909-44) Kathleen Pelish testified that she worked with Defendant from 1990 to 1992, that Defendant was a hard worker, that he was a good friend, that he never raised his voice, that he was very appreciative and that he claimed his parents were dead and rarely spoke of his family. (T. 13945-52) She also admitted that Defendant was capable of making his own decision and running a restaurant. (T. 13953-54) Andrea Franklin testified that she dated Defendant for 6 months in 1993, that he was very interested in body building, that he used steroid and they had no effect on his personality, that he was very inquisitive about business because he wanted to better himself, that he was a spiritual person and that Lugo was a smart, commanding person with a magnetic personality. (T. 13970-95)

Steven Bernstein testified that he met Defendant at the restaurant where Defendant worked in 1990, that they became

friends, that he introduced Defendant to steroids, that the steroids had no effect on Defendant's personality, that Defendant did not have a temper and was a very nice person. (T. 13995-14001, 14013) Bernstein claimed that Defendant was not interested in money when he first met him, that he wanted to become a legal resident in this country, that he wanted to further his education and that he wanted to buy a car. (T. 14001-06) Lugo gave Defendant money to buy a car and offered to give Defendant a place to live, to assist him with his residency and to set Defendant up in business because Lugo could not have a business in his own name. (T. 14007-08) Despite the fact that Bernstein advised against it, Defendant decided to take Lugo up on his offer. (T. 14008-09) After that, Defendant seemed to change and become more interested in having money. (T. 14009) Bernstein described the relationship between Defendant and Lugo as one of brothers and stated that Defendant did not appear to fear Lugo. (T. 14024-25, 14028)

Patsy Hernandez, Defendant's half-sister, testified that Defendant was the product of a liaison between her father and a 13 year old, that he was loved by his father and grandmother, that his mother hated him, and that he was loving, considerate and obedient. (T. 14037-79) She also claimed that Defendant's mother was abusive towards him but never saw any abuse. *Id.*

Jeffery Hernandez, Patsy's husband, confirmed her testimony. (T. 14079-14106)

After this testimony, Defendant renewed his request to admit the letters from Lugo, claiming that Bernstein's testimony about the change in Defendant made them relevant. (T. 14143-44) The trial court indicated that it still had not heard any evidence that the letters were indicative of the relationship during the time the crimes were committed. (T. 14144-49) Defendant then asserted that the letters showed that Lugo thought he could influence Defendant or that Defendant had changed because he did not do as Lugo asked. (T. 14149-60) The trial court rejected this argument because Lugo's beliefs had nothing to do with Defendant's character and because the alleged change was not shown to be due to the removal of Lugo's influence. *Id.* As such, the trial court excluded the letters. (T. 14160)

Petra LaRoche, Defendant's grandmother, testified that her daughter Winifred became pregnant with Defendant at the age of 13 by a man who had children her age. (T. 14163-68) According to LaRoche, Winifred had mental problems, refused to care for Defendant and was jealous of him. (T. 14168-74, 14180-81) LaRoche claimed that Winifred once banged Defendant's head into the wall, broken his hand and would hit him with sticks. (T. 14176-77) LaRoche claimed that because of this mistreatment, she

sent Defendant to live with relatives. (T. 14178-84) Defendant told LaRoche that Lugo was like a brother or father to him. (T. 14185-86) On cross, LaRoche claimed that she had stated that Winifred had never broken any of Defendant's bone because she did not remember the hand. (T. 14203)

During the charge conference, Defendant did not request an instruction on the merger of aggravators. (T. 14109-24, 14134-35, 14160-61, 14209-28) The trial court instructed the jury regarding the limiting construction of the avoid arrest aggravator: "'The purpose of avoiding or preventing a lawful arrest' means where the homicide victim is not a police officer, then the defendant's dominant or only motive in committing the homicide was the elimination of a witness." (R. 2835)

After deliberating, the jury recommended that the trial court impose a death sentence for each murder by a vote of 8-4. (R. 2940-41, 14311-12) In his sentencing memorandum, Defendant did not assert that any of the aggravators were being double counted. (R. 3147-58) The trial court agreed with the jury's recommendation and imposed a death sentence for each of the murder convictions. (R. 3462-85) The trial court found 5 aggravators applicable to both murders: prior violent felonies, including the contemporaneous murder of the other victim and the kidnapping, robbery and attempted murder of Schiller; during the

course of a kidnapping; avoid arrest; for pecuniary gain; and CCP. (R. 3462-72) The trial court also found the heinous, atrocious and cruel (HAC) aggravator applicable to the Furton murder. (R. 3468-71) The trial court accorded great weight to each of the aggravators. *Id.* The trial court found no statutory mitigators and 6 nonstatutory mitigators: difficult childhood - little weight; hard working and loyal employee - little weight; loyal friend and positive influence on others - little weight; religious devotion and ability to help others with their religious beliefs - little weight, appropriate courtroom behavior - little weight; and possibility of life imprisonment - little weight. (R. 3472-81) The trial court stated that each of the aggravators individually, with the exception of during the course of a felony, would have outweighed all of the mitigation. (R. 3483)

The trial court also sentenced Defendant to 30 years imprisonment for the conspiracy to commit RICO, RICO, arson and extortion, life imprisonment for the kidnappings and attempted first degree murder, life imprisonment with a 3 year minimum mandatory provision for the armed robbery and armed kidnapping, 15 years imprisonment for the burglary, grand theft and conspiracy to commit a felony, and 5 years imprisonment for the attempted extortion and grand theft auto. (R. 3484) All of the

sentences were to be served consecutively. (R. 3485) This appeal follows.

SUMMARY OF THE ARGUMENT

Defendant did not preserve any issue regarding the admission of testimony about threats and comments he had made. Moreover, the trial court would not have abused its discretion in admitting this evidence because it was relevant to matters other than Defendant's character. Any error in the admission of this testimony was harmless.

The issue regarding the comments during the State's guilt phase closing argument is unpreserved. Moreover, any error in the comments was harmless, as the evidence was overwhelming and the comments were brief.

The trial court properly denied Defendant's motion to suppress the evidence seized from his home. The trial court properly excluded Lugo's letters in the penalty phase, and any error was harmless.

The issue regarding the comments during the State's penalty phase closing is unpreserved. Further, the comments were proper, and any error was harmless.

Any argument regarding the merger of aggravating factors was not preserved. Further, the aggravators do not in fact merge.

The trial court's findings of CCP and avoid arrest were proper.

ARGUMENT

I. ANY ISSUE REGARDING THE ADMISSION OF TESTIMONY WAS NOT PRESERVED, THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN ADMITTING THE TESTIMONY AND ANY ERROR WAS HARMLESS.

Defendant first asserts that the State admitted improper character evidence at his trial. Specifically, Defendant complains that the State elicited testimony about Defendant's threats to cut people up with a chain saw, to commit a home invasion murder and to kill his girlfriend, a description of Defendant as a killer in his home country, and Defendant's statement that he was making a bomb. However, this issue is unpreserved and meritless.

When Sanchez, Petrescu and Fawcett testified about the threats, statement and description, Defendant did not object. In order to preserve an issue regarding the admission of testimony, it is necessary to object to that testimony. *Castor v. State*, 365 So. 2d 701 (Fla. 1978). As Defendant did not object to any of the evidence about which he complains, this issue is not preserved.

Even if the issue had been preserved, the trial court would still not have abused its discretion in admitting this

testimony.³ Defendant asserts that the State admitted the testimony of Sanchez and Petrescu as character evidence. However, this testimony was not admitted to show that Defendant acted in conformity with the matters asserted in the comments. In *Bryan v. State*, 533 So. 2d 744, 747 (Fla. 1988), this Court made clear that evidence that tended to reflect upon a defendant's character was admissible if it was admitted for some purpose other than to demonstrate that the defendant was of bad character.

Here, the testimony of Sanchez regarding Defendant's statement about the chain saw and the home invasion were admitted to explain why Sanchez did not report the Schiller kidnapping and continued to associate with Defendant. In fact, the question that elicited these statements was, "Did [Defendant] ever do anything or say anything in the gym that made you fearful of him?" (T. 8457) Similarly, the testimony of Petrescu was admitted to show that she accompanied Lugo when he stalked Lee and agreed to assist Defendant and Lugo in the initial unsuccessful attempts to kidnap Griga and Furton because she believed that Defendant and Lugo were government agents

³A trial court's rulings on the admission of evidence is reviewed for an abuse of discretion. *Ray v. State*, 755 So. 2d 604, 610 (Fla. 2000); *Zack v. State*, 753 So. 2d 9, 25 (Fla. 2000).

attempting to apprehend a terrorist and a tax cheat. As these statements were not even elicited for the truth of the matters asserted, they were not admitted to show that Defendant had a bad character. Thus, the trial court would not have abused its discretion in admitting this testimony had Defendant objected. *Bryan*, 533 So. 2d at 747; see also *Trease v. State*, 25 Fla. L Weekly S622, S623 n.5 (Fla. Aug. 17, 2000); *Pittman v. State*, 646 So. 2d 167, 171 (Fla. 1994).

Even if the admission of this evidence was error, it was harmless. *State v. DiGuilio*, 491 So. 2d 1129 (Fla. 1986). The testimony about which Defendant complains was brief, comprising but a page or two of a more than 14,000 pages transcript. During closing, the State portrayed the CIA comment as false. (T. 13088-89, 13186, 13452) The State did not mention any of the other statements about which Defendant complains. (T. 13057-13193, 13437-66) In fact, the only mention of any of these statements was made by Defendant during closing. (T. 13276)

Moreover, the State presented testimony regarding Defendant's participation in the planning of the Schiller kidnapping, the attempt to kidnap Lee and the Griga/Furton murders, eyewitness testimony regarding Defendant's involvement in the Schiller kidnapping, evidence that he was in possession of Schiller's property thereafter, incriminating statements

Defendant made while incarcerated, physical evidence of Griga's blood in Defendant's apartment and on his clothing, and eyewitness testimony and physical evidence regarding his participation in the disposal of Griga and Furton's bodies. Given the brevity of the testimony about which Defendant complains and the wealth of evidence against him, any error in the admission of this testimony cannot be said to have affected the verdicts and was, therefore, harmless. *State v. DiGuilio*, 491 So. 2d 1129 (Fla. 1986).

**II.& III. ANY ERROR IN COMMENTS
DURING THE STATE'S GUILT
PHASE CLOSING ARGUMENT
WAS NOT PRESERVED AND
DOES NOT REQUIRE
REVERSAL.⁴**

Defendant next asserts that the State made improper comments during its closing argument in the guilt phase. However, any error in these comments is unpreserved and does not merit reversal.

During its initial closing argument, the State described the crimes against Schiller:

What happened?

Well, during that time, even in the

⁴Because both issues II and III concern comments during the State's guilt phase closing argument, the State has combined them to avoid repetition.

first couple of hours they beat the living day lights out of him. They beat him. They stuck guns in his mouth. They tortured him.

Remember Detective Hoadley came in and showed you how that Omega tazer work. [sic] Many of you jumped.

Can you imagine how that would feel on your skin right up close? How it felt on Marc Schiller's sweating legs and ankles. But again and again until he signed over everything. Signed over his entire life.

(T. 13068) Defendant did not object to this comment. *Id.* The State later commented on Delgado's testimony:

He tells you about the enterprise. He tells you about what's going on. He tells you the gross details that you need to know it's a first degree murder case. There is a second degree murder case; it's different. It's a first degree murder case, nothing less.

Another thing is that -- listen to the cross examination of George Delgado? Try and recall it. Never once was it anybody else but defendant Doorbal that was the hands-on killer. Lugo, along with the hands-on killer Doorbal. Never once did anybody else get up once to say anything different.

(R. 13180-81) Again, Defendant did not object. *Id.*

In order to preserve an issue regarding a comment in closing, a defendant must interpose a contemporaneous objection to the comment. *See McDonald v. State*, 743 So. 2d 501, 505 (Fla. 1999); *Chandler v. State*, 702 So. 2d 186, 191 (Fla. 1997); *Kilgore v. State*, 688 So. 2d 895, 898 (Fla. 1996). Here, Defendant did not object at all to either of the comments about which he complains. As such, this issue is not preserved.

With regard to the second comment, the trial court would not have abused its discretion in permitting this comment even if the issue had been preserved⁵. While Defendant asserts that the comment impermissibly implicated his right to remain silent, this is not so. The State specifically referred the jury to Delgado's cross examination and was merely pointed out that Delgado had not been impeached regarding who kill Griga or Furton. As such, this comment was not fairly susceptible to being construed as a comment on Defendant's failure to testify. See *Rich v. State*, 756 So. 2d 1095, 1095-96 (Fla. 4th DCA 2000); see also *Wolcott v. State*, 774 So. 2d 954 (Fla. 5th DCA 2001). Moreover, unlike *Rodriguez v. State*, 753 So. 2d 29 (Fla. 2000), upon which Defendant relies, Defendant was not the only person who could have contradicted Delgado's statement: Lugo was present for both murders and Raimondo was present for the murder of Furton. As such, the trial court would not have abused its discretion in permitting this comment had there been an objection.

Moreover, any error in these comments was harmless. *State v. DiGuilio*, 491 So. 2d 1129 (Fla. 1986). The State's initial

⁵An appellate court's review of a trial court's ruling on closing argument is for an abuse of discretion. *Fernandez v. State*, 730 So. 2d 277, 281 (Fla. 1999).

closing argument covered almost 140 pages of transcript, and the comments were brief. Further, the State presented overwhelming evidence of Defendant's guilt. There was abundant testimony of Defendant's participation in the planning and organization of the Schiller kidnapping, the attempt to kidnap Lee and the Griga/Furton murders. Several eyewitnesses testified to Defendant's involvement in the Schiller kidnapping, and Defendant was found in possession of Schiller's property. Independent eyewitnesses placed Defendant with Griga and Furton immediately before they were kidnapped. Griga's blood was found on Defendant's clothing and on carpeting and other items removed from Defendant's apartment.⁶ Defendant was seen holding Furton against her will, attempting to obtain information to get Griga's property from her, injecting her with the xylazine that killed her and assisting in the disposal of the bodies. Defendant made a statement inculcating himself and Lugo. Given the mountain of evidence against Defendant, any error in the brief comments in closing was harmless. *State v. DiGuilio*, 491 So. 2d 1129 (Fla. 1986); *Bertolotti v. State*, 476 So. 2d 130 (Fla. 1985).

⁶Contrary to Defendant's suggestion, this evidence which was not provided by Petrescu or Delgado was inconsistent with him being an accessory after the fact.

**IV. THE TRIAL COURT PROPERLY DENIED
DEFENDANT'S MOTION TO SUPPRESS.**

Defendant next asserts that the trial court erred in failing to suppress evidence seized from his home and car pursuant to search warrants. Defendant contends that the affidavits for the initial warrants did not set forth sufficient evidence to show probable cause and that the subsequent searches were illegal because they were based on evidence found during the execution of the earlier warrants. However, this issue is unpreserved and meritless.

In order to preserve an issue regarding the denial of a motion to suppress, a defendant must move to suppress the evidence pretrial and renew that motion when the evidence is admitted at trial. Here, Defendant moved to suppress the evidence pretrial but did not renew the motion when the evidence was admitted at trial. Instead, Defendant stipulated to the admission of the evidence at trial. As such, this issue is unpreserved. *Terry v. State*, 668 So. 2d 954, 959 (Fla. 1996); *Kokal v. State*, 492 So. 2d 1317, 1320 (Fla. 1986).

Even if the issue had been preserved, the trial court still properly admitted the evidence. In *Illinois v. Gates*, 462 U.S. 213, 238-39 (1983), the Court set out the standard for issuance of a search warrant:

The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. And the duty of the reviewing court is simply to ensure that the magistrate had a "substantial basis for ... conclud[ing] that probable cause existed."

The standard of review "of the sufficiency of an affidavit should not take the form of de novo review. A magistrate's 'determination of probable cause should be paid great deference by reviewing courts.'" *Id.* at 236.

Here, the totality of the circumstances from the affidavits were sufficient to demonstrate probable cause. The affidavits alleged that Schiller, a wealthy businessman, had been kidnapped by three men and tortured into relinquishing all of his property. Lugo and Delgado had been identified as individuals involved in the kidnapping. A person driving a car of the same make and model as that driven by Defendant had been seen with Lugo at Schiller's home, from which Schiller's belongings had been taken during the kidnapping. Documents transferring Schiller's property had been notarized by Mese, the owner of Sun Gym, where both Defendant and Lugo worked. Defendant, who was employed as a trainer at a gym, had recently purchased a house

for \$150,000 in cash. Griga and Furton were missing and their car had been found abandoned. Defendant and Lugo were seen with them immediately before their disappearance at which time Defendant and Lugo had been seen driving a car owned by Delgado. (R. 1186-93) As this evidence showed that Defendant associated with the individuals who had been identified as being involved in the Schiller kidnapping, had unexplainably come into a large sum of money, matched the description of someone involved in the Schiller and was one of the people last seen with Griga and Furton before they were kidnapped, the trial court properly found that the affidavits were sufficient under the totality of the circumstances and properly denied the motion to suppress. *See Dufour v. State*, 495 So. 2d 154, 156-57 (Fla. 1986); *State v. Howard*, 666 So. 2d 592 (Fla. 4th DCA 1996).

Defendant's reliance on *Getreu v. State*, 578 So. 2d 412 (Fla. 2d DCA 1991), *Glass v. State*, 604 So.2d 5 (Fla. 4th DCA 1992), and *Gelis v. State*, 249 So. 2d (Fla. 2d DCA 1971), is misplaced. In *Getreu*, the warrant was sought based on information from a confidential informant but the affidavit for the warrant did not include any information regarding the verity or basis of knowledge for the informant. In *Glass*, the affidavit only contained a conclusory allegation that the entire building was being used to support gambling and a statement that the

defendant, who also ran a grocery store in the building, was seen counting a large sum of cash in the apartment where he lived. In *Gelis*, the affidavit merely stated that the defendant had been arrested based on facts known to the affiant. Here, the warrant was not sought based on information from a confidential informant, and the affidavit contained statements of fact, not conclusions. As such, *Getreu*, *Glass* and *Gelis* are all inapplicable.

Even if the affidavit was insufficient, the trial court would still have properly denied Defendant's motion to suppress because the officers acted in good faith. In *United States v. Leon*, 468 U.S. 897 (1984), the Court held that the exclusionary rule would not bar the admission of evidence if the police reasonably relied in good faith on a warrant that was subsequently found to be invalid. Here, the affidavits are not so lacking in the indicia of probable cause that the police could not have relied upon them in good faith, and the trial court properly denied the motion to suppress. See *State v. Diamond*, 598 So. 2d 175 (Fla. 1st DCA 1992).

Even if the warrant was invalid and the police could not have relied upon it in good faith, the trial court would still have properly denied the motion to suppress, as the evidence would have been inevitably discovered. See *Craig v. State*, 510

So. 2d 857, 862 (Fla. 1987); *State v. LeCroy*, 461 So. 2d 88, 91 (Fla. 1984). The police had every reason to investigate Defendant, as he was one of the people last seen with the victims. That investigation would have revealed that Defendant had recent had his apartment repainted and recarpeted, as it ultimately did. Moreover, Defendant's unexplained wealth and the presence of his banking records at his codefendants' abodes would have led the police to have looked into Defendant's finances, which would have revealed the presence of the proceeds of the Schiller kidnapping. As such, the police would have inevitably been able to search Defendant's apartment, and the evidence located therein would have been inevitably discovered. Therefore, the trial court properly denied the motion to suppress.

V. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN EXCLUDING EVIDENCE THAT RELATED TO A CODEFENDANT'S CHARACTER AND NOT DEFENDANT'S.

Defendant next asserts that the trial court improperly limited his presentation of mitigation evidence when it refused to admit letters that Lugo had written to Defendant after the crime. Defendant asserts that these letters establish Lugo's dominant position in their relationship as nonstatutory

mitigation. However, the trial court did not abuse its discretion in excluding these statements.⁷

While a trial court may not preclude a defendant from introducing evidence of any aspect of his character or record or any circumstance of the offense, *Lockett v. Ohio*, 438 U.S. 586 (1978), a trial court does not abuse its discretion by excluding evidence of alleged nonstatutory mitigation that is not relevant to these issues. See *Hill*, 515 So. 2d at 177-78. The letters here show that Lugo certainly tried to manipulate Defendant after they had been arrested. However, as Defendant did not do as Lugo asked, they do not show that Lugo was actually able to dominate Defendant either before or after their arrest. Thus, the letters are "focused substantially more on [Lugo's] character than on" Defendant's, and the trial court did not abuse its discretion in excluding them. *Id.*

Defendant's reliance on *Gore v. Dugger*, 532 So. 2d 1048, 1049-50 (Fla. 1988), is misplaced. There, the trial court had refused to admit testimony of Gore's mother that his cousin, who was with him when the victims were initially abducted, had a strong influence on Gore's conduct throughout his lifetime

⁷A trial court's decisions regarding the admission of evidence at the penalty phase are reviewed for an abuse of discretion. *Hill v. State*, 515 So. 2d 176, 178 (Fla. 1987).

because of the cousin's dominating personality. Here, the letters were written after Defendant and Lugo had been arrested and discuss an unsuccessful attempt by Lugo to obtain Defendant's cooperation in exculpating him. (SR. 1152-73)

Even if the trial court could be considered to have abused its discretion in excluding the letter, any error would be harmless. *State v. DiGuilio*, 491 So. 2d 1129 (Fla. 1986). Defendant did not do what Lugo asked in the letters, and his own character witnesses testified that he was capable of making his own decisions.

The testimony of Beatrice and Attila Weiland shows that Defendant identified Griga and Furton as victims and sought them out. Delgado testified that Defendant then proposed Griga and Furton as victims to the group. Delgado testified that Defendant initiated the attack on the victims and actually killed both of them. This testimony was corroborated by the presence of Griga's blood on Defendant's clothing.

Moreover, the trial court permitted Defendant to argue to the jury, based on Bernstein's testimony that Defendant changed after moving in with Lugo and his alleged change in personality after his arrest, that Lugo dominated Defendant, and instructed the jury on the statutory mitigating circumstance of under substantial domination of another. (T. 14266, 14269, 14271-73,

R. 2844) The trial court also considered the letters in rejecting Lugo's influence as nonstatutory mitigation:

Doorbal refers to letters that were allegedly written by Lugo while both defendants were in custody as evidence of Lugo's influence over him. Assuming the letters were in fact written by Lugo, they urged Doorbal to participate in an elaborate scheme to subvert the prosecution and warned him not to trust his lawyers. The letters are more indicative of Lugo's mistaken belief of influence over Doorbal than of reality. Doorbal turned those letters over to his attorney and did not follow Lugo's suggestions. One of the best indicators of Doorbal's state of mind with regard to Lugo was his statement while in custody on these charges: "If Lugo will keep his mouth shut, we'll be in the clear."

(R. 3479) The remainder of the mitigation presented by Defendant merely showed that people who did not associate with Defendant at the time the crimes were committed considered him to be a nice person and that while Defendant was loved by the rest of his family, he was not loved by his mother. Moreover, Defendant, who had already kidnapped and tortured Schiller, had planned to kidnap the victims in order to obtain their money and property and to kill the victims thereafter in order to eliminate them as witnesses, and the victims died (Furton in a tortuous manner) in the course of the execution of this plan. Given all of these circumstances, it cannot be said that the admission of these letters would have affected the outcome of the penalty phase,

and any error was harmless.

**VI. ANY ISSUE WITH REGARD TO COMMENTS
DURING THE STATE'S PENALTY PHASE
CLOSING ARGUMENT IS UNPRESERVED
AND MERITLESS.**

Defendant next asserts that the State made an improper comment during its penalty phase closing argument. However, this issue is unpreserved and meritless.

During its penalty phase closing argument, the State commented on Defendant's claim that his family history and having grown up in Trinidad was mitigating:

And he still had a chance to bond with his father. And again, the mitigation in whatever is Ms. LaRoche because of the fact that she was raped at thirteen, you cannot blame his childhood on that. It doesn't mitigate his moral responsibility. The moral responsibility as a human being, as a person that lives in the society, And I don't know, but to say that where I live, if I live in Trinidad or if you live in Trinidad or you live in the United States, you don't do the things that this defendant did.

(T. 14246) Defendant did not object to this comment. *Id.* The State also commented on Defendant's claim that he was not one of the worst of the worst:

The bitch is cold. Those were his words. His words. The bitch is cold.

Not Lugo's words. Is that a value of human life? Does he deserve to spend the rest of his life in prison? See sisters and

going to the library helping others? He deserves nothing. He deserves no mercy and he deserves no leniency. He deserves no respect.

(T. 14238) Again, Defendant did not object. *Id.* After going through the aggravating circumstances, the State discussed the victim impact evidence, stating that Defendant "deserved no mercy" for what he had done. (T. 14259) Again there was no objection. *Id.*

In order to preserve an issue regarding a comment in closing, it is necessary to object to the comment. *See McDonald*, 743 So. 2d at 505; *Chandler*, 702 So. 2d at 191; *Kilgore*, 688 So. 2d at 898. As Defendant did not object to these comments, this issue is unpreserved.

Even if the issue had been preserved, the trial court would still not have abused its discretion in permitting these comments⁸. With regard to the first comment, Defendant contends that the State made an improper "Golden Rule" argument. However, the State was not attempting to appeal to the sympathy of the jury; it was properly commenting on the nature of the mitigation presented. Defendant had claimed that the fact that he had grown up in Trinidad should be considered as mitigation. The State was

⁸An appellate court's review of a trial court's ruling on closing argument is for an abuse of discretion. *Fernandez v. State*, 730 So. 2d 277, 281 (Fla. 1999).

merely pointing out that merely growing up in a different country should not be considered mitigation as stalking people, taking them hostage for the purpose of extorting all their money and property and killing them would not be acceptable behavior anywhere. As such, the trial court would not have abused its discretion in permitting this comment had there been an objection. See *Hooper v. State*, 476 So. 2d 1253, 1257 (Fla. 1985)(comments made to explain conduct and not to inflame the jury did not violate "Golden Rule.").

Defendant's reliance on *Gomez v. State*, 751 So. 2d 630, 632 (Fla. 3d DCA 1999), is misplaced. There, the prosecutor urged the jury to place themselves in the defendant's position in determining whether he had acted in self defense. Here, the State was merely pointing out that Defendant's cultural background should not be considered mitigating because his actions would be unacceptable in any culture. As such, *Gomez* is inapplicable.

With regard to the other comments, Defendant alleges that the State asked the jury to show him the same mercy that he had shown the victims. However, this is not true; the State never asked the jury to show Defendant the mercy he had shown the victims. The State merely pointed out that given the heinous nature of crimes, the strength of the aggravators and the

weakness of the mitigation, imposition of a life sentence was inappropriate. As such, *Urbain v. State*, 714 So. 2d 411 (Fla. 1998), and *Rhodes v. State*, 547 So. 2d 1201 (Fla. 1989), are inapplicable here, and the comments were not improper.

Even if the comments were improper, any error was harmless. The State presented evidence that Defendant planned to kidnap the victims, torture them to obtain their property and kill them to eliminate them as witnesses. Defendant had already kidnapped Schiller, tortured him until he signed over everything that he had and then tried to kill him. Furton was held for hours after seeing Griga killed in front of her and tortured to get access to Griga's property. She was repeatedly given painful injections of a horse tranquilizer, which eventually caused her to suffocate. The only mitigation presented by Defendant was that his mother was uncaring and cruel towards him but that the remainder of his family, including the grandmother who raised him, were loving and that people who had known Defendant before he embarked on his life of crime and after he was arrested thought he was a nice person. Given the strength of the aggravation and the weakness of the mitigation, the State's brief comments cannot be said to have affected the outcome. As such, any error in the comments was harmless, and Defendant's sentences should be affirmed. *State v. DiGuilio*, 491 So. 2d 1129

(Fla. 1986).

**VII.& VIII. ANY ISSUE REGARDING THE MERGER OF
AGGRAVATORS IS UNPRESERVED AND
MERITLESS.⁹**

Defendant next asserts that the trial court erred in failing to merge the for pecuniary gain and during the course of a kidnapping aggravators and the CCP and avoid arrest aggravators. However, this issue is unpreserved and meritless.

In order to preserve an issue regarding the merger of aggravating factors, it is necessary to claim that those specific aggravators should have been merged in the trial court. See *Knight v. State*, 746 So. 2d 423, 434 (Fla. 1998); *Gore v. State*, 706 So. 2d 1328, 1334 (Fla. 1997); *Wike v. State*, 698 So. 2d 817, 821-22 (Fla. 1997). Here, Defendant never claimed that any of the aggravators should have been merged during trial and his pretrial motions asked that certain aggravator be declared unconstitutional, not that they be merged. In fact, the only mention of merger of aggravators at trial was raised sua sponte by the trial court and concerned the possible merger of the prior violent felony and the during the course of kidnapping

⁹Because both issues VII and VIII concern the merger of aggravating circumstances, the State has combined them to avoid repetition.

aggravator.¹⁰ (T. 14251) As such, this issue is not preserved.

Even if the issue had been preserved, the trial court would still have properly considered the aggravators separately. Improper doubling only occurs where one aggravator necessarily encompasses the conduct subsumed in the other. See *Fotopoulos v. State*, 608 So. 2d 784, 793 (Fla. 1992)(citing *Echols v. State*, 48 So. 2d 568, 575 (Fla. 1985)):

There is no reason why the facts in a given case may not support multiple aggravating factors provided the aggravating factors are themselves separate and distinct and not merely restatements of each other as in a murder committed during a robbery and murder for pecuniary gain, or murder committed to eliminate a witness and murder committed to hinder law enforcement.

See also *Trepal v. State*, 621 So. 2d 1361, 1367 (Fla. 1993); *Toole v. State*, 479 So. 2d 731, 733 (Fla. 1985).

This Court has consistently rejected the argument that pecuniary gain and during the course of a kidnaping are duplicative. *Hartley v. State*, 686 So. 2d 1316, 1323 (Fla. 1996)(citing *Preston v. State*, 607 So. 2d 404 (Fla. 1992), *Bryan v. State*, 533 So. 2d 744 (Fla. 1988) and *Routly v. State*, 440 So. 2d 1257 (Fla. 1983)). This is particularly true where, as here, the kidnaping was charged alternatively as kidnaping

¹⁰The State did not rely upon the kidnaping of the murder victims to support the prior violent felony aggravator to avoid this merger.

with intent to terrorize.¹¹ *Foster v. State*, 679 So. 2d 747, 754-55 (Fla. 1996); *Green v. State*, 641 So. 2d 391, 395 (Fla. 1994). Finding pecuniary gain in aggravation is not error when more than one felony, including robbery, has occurred. *Monlyn v. State*, 705 So. 2d 1, 6 (Fla. 1997); *Bates v. State*, 465 So. 2d 490, 492 (Fla. 1985); *Smith v. State*, 424 So. 2d 726 (Fla. 1982). As such, the trial court would properly have refused to merge these aggravators had it been asked to do so.

This Court has also consistently refused to merge the CCP and avoid arrest aggravators. *E.g.*, *Ramirez v. State*, 739 So. 2d 568, 581 n.10 (Fla. 1999); *Cave v. State*, 727 So. 2d 227, 230 (Fla. 1998); *Jennings v. State*, 718 So. 2d 144, 153 (Fla. 1998); *Robinson v. State*, 707 So. 2d 688, 690 n.2 (Fla. 1998); *Gore v. State*, 706 So. 2d 1328, 1334 (Fla. 1997); *Wike v. State*, 698 So. 2d 817, 823 (Fla. 1997); *Morton v. State*, 689 So. 2d 259, 265 (Fla. 1997); *Stein v. State*, 632 So. 2d 1361, 1366 (Fla. 1994). Here, the trial court's findings regarding CCP concerned the level of planning for the victims' killings and was based on such facts as the advanced procurement of a warehouse. It

¹¹As the evidence of the Schiller kidnapping showed, Schiller was terrorized even after he had already agreed to surrender his property. As Defendant planned to do to Griga and Furton what he had done to Schiller, the kidnapping was not mere to facilitate getting their property.

findings regarding avoid arrest concerned the purpose behind that plan and was based on such facts as Schiller's demand for the return of his property. As such, they did not refer to the same aspect of the offense, have distinct facts supporting each, and were properly considered independently.

Moreover, any error in the failure to merge these aggravators would be harmless. See *Durocher v. State*, 596 So. 2d 997, 1001 (Fla. 1992); *Green v. State*, 583 So. 2d 647 (Fla. 1991). As the trial court expressly stated, "the mitigating factors requires an analysis of their relative nature and quality. It is not simply a comparison of the number of each. This Court finds that the aggravating circumstances in this case far outweigh the mitigating circumstances." (R. 3483) The trial court also stated that each of the aggravators, except for the during the course of a kidnapping, independently outweighed the sum total of the mitigation and that it would not have imposed a different sentence unless all of the aggravators other than the during the course of a kidnapping were stricken. *Id.* As such, it cannot be said that the failure to merge these aggravators affected Defendant's sentences, and they should be affirmed.

IX. THE TRIAL COURT PROPERLY FOUND

**THAT THE MURDERS WERE COMMITTED IN
A COLD, CALCULATED AND
PREMEDITATED MANNER.**

Defendant next asserts that the trial court erred in finding that CCP as applicable in this case. However, this issue is meritless.

This Court's review of a trial court's finding regarding an aggravator is limited to whether the trial court applies the correct law and whether its finding is supported by competent, substantial evidence. *Willacy v. State*, 696 So. 2d 693, 695 (Fla. 1997); see also *Cave v. State*, 727 So. 2d 227, 230 (Fla. 1998). As the trial court's finding here did apply the correct law and is supported by competent, substantial evidence, it should be affirmed.

With regard to CCP, the trial court found:

The State proved this aggravator beyond and to the exclusion of every reasonable doubt. The evidence showed that Griga and Furton were selected as the next victims because of their wealth. After Doorbal discovered Griga in Ms. Weiland's photo album, he mentioned to Delgado the possibility of selecting him as the next victim. Thereafter, Lugo and Doorbal carefully sought out Griga and Furton through mutual acquaintances so they could befriend them under the pretext of a business deal. The plan was always the same as with Schiller.

One notable difference existed. Although the defendants eventually attempted to kill Schiller, at the outset they at least took

steps to disguise themselves. As noted above, no such pretense was taken with Griga and Furton since it was clear that they could not be allowed to live and become witnesses against the defendants. This court is convinced beyond and to the exclusion of every reasonable doubt that Griga and Furton were marked for death well before May 25, 1995.

Doorbal and Lugo bought the necessary equipment for surveillance (night scopes and binoculars), materials for the capture (duct tape, handcuffs, animal tranquilizer, syringes) and rented a warehouse for the victims' imprisonment. The murders were planned with much more than the simple "reflection" required for premeditated murder. Doorbal had a significant amount of time to contemplate the eventual murders. These killings were well thought out and well organized.

The implementation of the plan, however, was a blunder as the victims were killed too soon. The fact that Doorbal was unsuccessful in the completion of his mission does not detract, in any way, from the fact that he had a cold, calculated and premeditated plan to kill both victims and dispose of their bodies, completely without legal or moral justification. FN7.

The state has proven this aggravating circumstance beyond and to the exclusion of every reasonable doubt and the court gives it great weight. FN8.

* * * *

FN7. In fact, it was crucial that the victims' bodies not be discovered because they were last seen with Doorbal and Lugo by the victims' housekeeper and their neighbor. It is obvious from the evidence that the victims had to disappear forever and without a trace, The disposal of their bodies was always part of the plan. Lugo commented to Delgado that Raimondo was going to kill Furton and dispose of the bodies. When Raimondo did not do that, Doorbal and Lugo

did it themselves. Their manner of disposal is not important. The fact that they had to do it and planned to do it, is.

FN8. This court is aware that the heinous, atrocious and cruel aggravating circumstance focuses on the nature of the killing and the victim's suffering, while the cold, calculated and premeditated aggravator focuses on the mind, intent and motivation of the murderer. *Stano v. State*, 460 So. 2d 890 (Fla. 1985).

(R. 3471-72) These findings are supported by the testimony of Beatrice and Attila Weiland, Delgado, Petrescu, Pierre, Lapolla, Bartusz and Abril. As the trial court applied the correct law and its findings are supported by competent substantial evidence, they should be affirmed.

Defendant contends that these facts show only that Defendant intended to kidnap Griga and Furton but not to kill them. However, this argument ignores the fact that Defendant had already tried to kill Schiller to prevent him from being a witness, that Gray testified that the plan had been to kidnap and kill Lee before the victims were substituted for Lee, Lugo's statement that the victims died before they were supposed to and the fact that Raimondo came to Defendant's apartment to kill Furton and dispose of the bodies. Moreover, Defendant stated that he had been involved in the "perfect crime," which could only be true if the victims were killed and their bodies disposed of, as Defendant and Lugo were the last people seen

with the victims before they were kidnapped. These facts show that Defendant's plan not only included the kidnapping and extortion of the victims but also their murder and the disposal of their bodies. As such, the trial court properly found CCP. See *Rodriguez v. State*, 753 So. 2d 29, 46 (Fla. 2000)(CCP properly found despite argument between victim and defendant where murder was planned); *Wuornos v. State*, 644 So. 2d 1000, 1008-09 (Fla. 1994)(CCP can be inferred from defendant's prior actions).

Defendant also appears to contend that the trial court erred in finding CCP because the victims died before the plan called for them to do so. However, the fact that the victims died earlier than was planned does not defeat a finding of CCP. *Gore v. State*, 706 So. 2d 1328, 1335 (Fla. 1997); see also *Howell v. State*, 707 So. 2d 674, 682 (Fla. 1998)("The key to this factor is the level of planning rather than the success or failure of the plan."); *Sweet v. State*, 624 So. 2d 1138, 1142 (Fla. 1993)(same). As such, this argument is without merit, and the finding of CCP should be affirmed.

Even if CCP was not properly found, Defendant's sentences should still be affirmed. The trial court expressly found that it would have imposed a death sentence unless the only remaining aggravator was during the course of a kidnapping. Moreover, the

brutal means by which the victims met their demise at the hands of people who previously committed violent crimes because those people wanted money far outweighs the mitigation that was presented. As such, Defendant's sentences should still be affirmed even if CCP is stricken.

**X. THE TRIAL COURT PROPERLY FOUND
THAT THE MURDERS WERE COMMITTED TO
AVOID ARREST.**

Defendant next asserts that the trial court erred in finding that the murders were committed to avoid arrest. However, as the trial court applied the correct law, and its findings are supported by competent, substantial evidence, its finding should be affirmed. *Willacy*, 696 So. 2d at 695; *Cave*, 727 So. 2d at 230.

Regarding the avoid arrest aggravator, the trial court found:

The State proved beyond and to the exclusion of every reasonable doubt that Doorbal's plan was to kill the victims after taking all of their assets in order to eliminate them as witnesses and, thereby, avoid arrest. This court is aware that in order for this aggravator to apply, where the victim is not a police officer, Doorbal's sole motive in committing the homicide must be the elimination of a witness. The evidence has proven that fact beyond a reasonable doubt.

At the time of the murders Doorbal and

his co-defendants were facing a threat of prosecution by Schiller who, having escaped their attempt to murder him and fearing for his life, had fled the country and was demanding - through his lawyer - return of over 1 million dollars stolen from him by the defendants. Defendants were unaware that Schiller intended to report their crime to the police after recovering his money and property, but now knew the risks created when a victim survived their attempt to murder him.

Accordingly, unlike with Schiller, Doorbal made no efforts whatsoever to conceal his identity when kidnaping Griga and Furton. He and Lugo socialized with them under the pretext of a business relationship and made several attempts to kidnap them before succeeding. It is often said that "actions speak louder than words." Doorbal's actions scream out one undeniable truth: Doorbal did not need to conceal his identity from Griga and Furton because they were never going to be allowed to live. Once all of their property was taken, they would be executed and the defendants would dispose of their bodies.

Unfortunately for the victims and for Doorbal, Griga died during his capture. As noted above, the evidence showed that he resisted and struggled when Doorbal attempted to seize him. He was strangled and beaten over the head with a blunt object. His blood stained the walls and sliding glass door of the room where he was subdued. He was injected with horse tranquilizer which was distributed through his system before death. Although the medical examiner could not say whether he died from strangulation or the trauma to his head, it is clear he died before the plan called for him to die. He was to be killed to eliminate a witness after he had signed over his assets.

There was no evidence of any animosity between Doorbal and Griga or Furton. In

fact, to the contrary, Doorbal and Lugo befriended the victims in order to win their trust and lure them to a suitable place for the kidnaping. There was no evidence that Doorbal acted in a fit of rage or in any manner other than according to plan. It was Griga's resistance that resulted in the need for increased force by Doorbal.

In a discussion with co-defendant Delgado the day after Griga was killed, Lugo stated that he was angry because Griga "was not supposed to die at that moment." He explained that they were supposed to get all of his money and property before killing him. After Griga's death, Doorbal and Lugo tried to salvage their plan by attempting to extract security codes for Griga's house from Furton, who remained alive, bound, gagged and was being constantly injected with Xylazine. In the same conversation, Lugo explained to Delgado that another co-defendant, corrections officer John Raimondo, was going to kill Furton for them and dispose of both of the bodies. Obviously they were not going to repeat the Schiller fiasco by allowing another witness to survive.

The evidence overwhelmingly shows that the plan was always to eliminate Griga and Furton as witnesses by killing them. The plan was ruined when Doorbal killed Griga while trying to subdue him and killed Furton with an overdose of Xylazine.

The reason for this aggravating circumstance is that a defendant who is so callous as to plan the murder of another in order to eliminate him as a witness is among the most dangerous individuals in society. Accordingly, in the appropriate case, it is a factor that should be weighed in determining if the death penalty is warranted. Doorbal and Lugo fit that mold completely. Doorbal should not be rewarded for having killed Griga and Furton too soon, when his plan called for the same two victims to be killed in any event in order

to avoid arrest. His plan and motive never changed.

The State has proven this aggravating circumstance beyond and to the exclusion of every reasonable doubt and the court gives it great weight.

(R. 3465-67) These findings are supported by the testimony of Delgado, Dubois, Schiller, Lapolla, Bartusz, Petrescu and Mittleman. Moreover, they apply the correct law and should be affirmed.

Defendant first appears to contend that this aggravator was not proven because there was no direct statement that the victims would be killed for the purpose of avoiding arrest. However, this aggravator can be proved by circumstantial evidence. See *Consalvo v. State*, 697 So. 2d 805, 819 (Fla. 1996); *Swafford v. State*, 533 So. 2d 270, 276 (Fla. 1988); *Routly v. State*, 440 So. 2d 1257, 1263 (Fla. 1983). Here, the evidence showed that Defendant had participated in the Schiller kidnapping and knew that leaving victims alive was dangerous. In fact, Pierre testified that Defendant had always wanted to kill Schiller. Defendant had been involved in the plot to kidnap and kill Lee, and when that did not pan out, Defendant suggested Griga and Furton as victims. These facts, in conjunction with the fact that Defendant did not attempt to conceal his identity, show that Defendant planned to kill the victims to avoid

arrest.¹² Moreover, there was direct evidence that Defendant did intend to kill Furton to eliminate her as a witness. Delgado stated that Raimondo came to Defendant's apartment for the purpose of killing Furton and disposing of the bodies. See *Wike v. State*, 698 So. 2d 817 (Fla. 1997); see also *Gore v. State*, 706 So. 2d 1328, 1334-35 (Fla. 1997); *Beltran-Lopez v. State*, 583 So. 2d 1030, 1032 (Fla. 1991).

Defendant again appears to assert that the murder could not have been for the purpose of avoid arrest because the victims did not die according to plan. However, the avoid arrest aggravator looks at the defendant's motive for committing the murder. See *Jennings v. State*, 718 So. 2d 144, 151 (Fla. 1998); *Riley v. State*, 366 So. 2d 19, 22 (Fla. 1978). As such, the fact that the victims did not die according to plan does not affect the finding that the murders were committed to avoid arrest. See *Howell*, 707 So. 2d at 681-82; *Sweet*, 624 So. 2d at 1138 (Fla. 1993). As such, the trial court properly found that the murder

¹²The fact that there was more evidence of Defendant's motive than simply the fact that the victims could identify him also distinguishes this case from those relied upon by Defendant. See *Davis v. State*, 604 So. 2d 794 (Fla. 1992)(only fact in support of avoid arrest was that victim could identify defendant); *Bruno v. State*, 574 So. 2d 76 (Fla. 1991); *Perry v. State*, 522 So. 2d 817 (Fla. 1988)(same); *Caruthers v. State*, 465 So. 2d 496 (Fla. 1985)(same); *Rembert v. State*, 445 So. 2d 337 (Fla. 1984).

was committed for the purpose of avoiding arrest, and Defendant's sentence should be affirmed.

Even if the avoid arrest aggravator was not properly found, Defendant's sentences should still be affirmed. The trial court expressly found that it would have imposed a death sentence unless the only remaining aggravator was during the course of a kidnapping. Moreover, the brutal means by which the victims met their demise at the hands of people who previously committed violent crimes because those people wanted money far outweighs the mitigation that was presented. As such, Defendant's sentences should still be affirmed even if the avoid arrest aggravator is stricken.¹³

¹³While Defendant has not raised the issue, his sentence is proportionate. *Compare Knight v. State*, 746 So. 2d 423 (Fla. 1998)(Aggravators: prior violent felony, during the course of a kidnapping, pecuniary gain, avoid arrest and CCP; mitigators: childhood abuse, raised in poverty and nonstatutory mental problems); *Rodriguez v. State*, 753 So. 2d 29 (Fla. 2000)(Aggravators: under sentence of imprisonment, prior violent felony, during the course of a burglary, pecuniary gain, avoid arrest and CCP; mitigators: nonstatutory mental problems, drug abuse and loving family member).

CONCLUSION

For the foregoing reasons, the judgment and sentences of the trial court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **BRIEF OF APPELLEE** was furnished by U.S. mail to Scott W. Sakin, 1411 N.W. North River Drive, Miami, Florida 33125, this day of 23rd February, 2001.

SANDRA S. JAGGARD
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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief is type in Courier New 12-point font and is in compliance with Fla. R. App. P.

9.210(a)(2).

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