IN THE SUPREME COURT OF FLORIDA

CONNIE RAY ISRAEL,

Appellant,

v. **CASE NO. SC95873**

STATE OF FLORIDA,

Appellee.

_____/

ON APPEAL FROM THE CIRCUIT COURT
IN AND FOR PUTNAM COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE

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STATEMENT OF THE CASE

This appeal is from the conviction and sentence of death imposed upon the defendant, Connie Ray Israel, on May 28, 1999, for the murder of Esther Hagans in Putnam County, Florida. Israel pleaded not guilty, and was tried by a jury in a trial presided over by Seventh Circuit Judge Kim Hammond.

On December 16, 1993, the Putnam County, Florida, Grand Jury returned a four-count indictment charging the defendant, Connie Ray Israel, with Burglary of a Dwelling with Battery, Kidnapping, Sexual Battery with Great Force, and Murder in the First Degree arising out of the murder of Esther Hagans, which occurred on or about December 27, 1991. (R1415). Israel was served with the capias warrant on December 17, 1993. (R17). The defendant was duly arraigned, adjudged insolvent, entered a plea of not guilty, and was appointed counsel on December 22, 1993. (R21). The case proceeded through the pre-trial stages, and, on November 16, 1998, a jury was impaneled and sworn. (R1938). That jury was unable to reach a verdict, and a mistrial was declared. (R2044-45).[1]

Israel's case was scheduled for retrial, and, on February 23, 1999, jury selection began. (R2297). A jury was impaneled and sworn, and, on March 1, 1999, the jury returned a verdict of guilty on all counts charged within the indictment. (R2344-45).

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[1]Israel waived his right to speedy trial following the mistrial. (R2107).

The case proceeded to the penalty phase with respect to the capital conviction, and, on March 2, 1999, the jury returned an advisory sentence of death by a vote of eleven to one. (R2353). A *Spencer* Hearing was duly conducted on May 14, 1999, (R2415) and, on May 28, 1999, the Circuit Court of Putnam County, Florida, sentenced Israel to death for the murder of Esther Hagans. (R2428-37). A notice of appeal was duly given (R2452), and, on February 2, 2000, the record was certified as complete and transmitted. Israel's initial brief was filed on or about September 28, 2000.

STATEMENT OF THE FACTS

The Statement of the Facts contained within Israel's initial brief is argumentative and is denied. The State relies upon the following statement of the facts.

Steve Leary is a Florida Department of Law Enforcement Crime Scene Technician who was involved in the initial investigation of this case which began on December 27, 1991. (R3372-74). Agent Leary testified that the victim was found in her bedroom naked, with her legs spread and her hands tied behind her back. (R3382). Footprints were found on the front porch steps, and in a drainage ditch in front of the house. (R3383). A screwdriver was found outside of a window, and it was determined that the point of entry was a window leading into the victim's bedroom off of the front porch. (R3383-84). Various body fluids were found at the scene, and certain items were submitted to the Serology Department of the

Florida Department of Law Enforcement for analysis. (R3388-89).

Florida Department of Law Enforcement Forensic Serologist Joyce Meadows testified that she found sperm and semen stains on a pillow case collected from the crime scene. (R3394; 3398-3400). Semen was also found on a slip that was found recovered from the crime scene, and that semen tested out the same as that found on the pillow case. (R3408). Human blood was found on a towel recovered from the crime scene, and the blood on that towel was consistent with having come from an elderly person. (R3409-10). Semen was found on the bedspread recovered from the victim's bedroom, and that sample was consistent with the semen found on the slip and the pillow case. (R3411). Likewise, the semen found on the vaginal swabs taken from the victim was consistent with the semen recovered and identified on the other items located at the crime scene. (R3412).

Shirley Bartley lived next door to the victim, Esther Hagans, in 1991. (R3426-27). Ms. Bartley last saw the victim the day before she was murdered. (R3428). Ms. Bartley testified that Esther Hagans worked at the hospital in Palatka, and had been employed there for as long as Ms. Bartley had known her. (R3428-29). On the morning that Ms. Hagans' body was discovered, a hospital employee came to Ms. Bartley's door and asked if she had seen Ms. Hagans. (R3429). Ms. Bartley knew that it was unusual for Ms. Hagans not to report for work, and called over the fence in an

effort to locate her.[2] Ms. Hagans' car was parked in the carport, and Ms. Bartley began to fear that something was wrong. (R3432). When Ms. Bartley's phone call to the Hagans residence went unanswered, Ms. Bartley called law enforcement. (R3433).

Paul McCaffery is presently employed as a Forensic Chemist with the United States Army at the Criminal Investigative Laboratory in Atlanta, Georgia. (R3439). Prior to becoming an Army employee, Mr. McCaffery was a Forensic Serologist with the Florida Department of Law Enforcement who was responsible for performing the DNA analysis in this case. (R3439). Agent McCaffery was involved in this case, and, in the course of his work, received "cuttings" from the items that had been identified and examined by Joyce Meadows. (R3444-48).[3] Agent McCaffery testified that, as a result of his DNA analysis, the male fraction of the sample matches the defendant, Israel, and the female fraction matches the victim, Ms. Hagans. (R3460-61). Agent McCaffery testified that, based upon his analysis and testing, the probability of two people having the DNA profile found at the scene, and matching that of the defendant was one in 289 million.[4] (R3483).

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[2]Ms. Bartley called over the victim's fence because Ms. Hagans had three dogs in her yard. (R3430).

[3]Agent McCaffery received and tested cuttings from the pillow case and the slip, and also tested whole blood taken from the defendant, Israel. (R3448).

[4]The population of the United States is approximately 250 million. (R3483).

Dr. Terence Steiner is the Medical Examiner for District Twenty Three. (R3493). Dr. Steiner is board certified in Anatomic, Clinical and Forensic Pathology -- he is one of 260 pathologists board certified in forensic pathology, and one of less than 100 pathologists in the entire country certified in all three sub-specialities of pathology. (R3494-95). Dr. Steiner was involved in this case, and performed a post-mortem examination of the victim on December 28, 1991. (R3496). Dr. Steiner testified that, as a result of his examination of the victim's body, he could identify trauma to the left side of her head, determined that her right eye was "full of blood", described cuts to the left eyebrow and temple as well as abrasions on the right side of the face. (R3503-04). Dr. Steiner further identified a tear on the right side of the victim's head that resulted from blunt trauma and, moreover, caused major hemorrhage to the brain. (R3505-06). Ms. Hagans exhibited external vaginal injuries which were consistent with sexual assault. (R3507).[5] Dr. Steiner testified that Ms. Hagans was beaten to the extent that stress and shock caused her death. (R3510).

Thelma Hughes has lived in Palatka, Florida, since 1936, and worked in the Food Service Department at Putnam Medical Center since 1967, when she met the victim, Ms. Hagans. (R3518-19). They

[5]The victim's nightshirt was cut and pulled off of her body, and her hands were tied behind her back. (R3507).

worked together until Ms. Hagans' murder in 1991, and Ms. Hagans rarely missed work unless she was very ill. (R3519). When Ms. Hagans did not report for work on the morning of December 27, 1991, Ms. Hughes got a coworker to go to her house and check on her. (R3520). Ultimately, Ms. Hagans' next door neighbor called Ms. Hughes and told her what had happened. (R3520). Ms. Hughes and Ms. Hagans occasionally went to church together, and Ms. Hagans was known to carry large amounts of money on occasion. (R3521).

Laretha Leonard has lived in Palatka for many years, and was an Avon Products Representative. (R3523). In late December of 1991, she learned that Ms. Hagans had been murdered when her husband told her of the incident. (R3523-24). Ms. Leonard had been at the Bartley residence the day prior to Ms. Hagans' murder, and saw her in the yard. (R3524).

In December of 1991, Robin Edwards was a Patrol Sergeant with the Palatka Police Department. (R3527-28). Sergeant Edwards was dispatched to Ms. Hagans' house at 9:54 a.m. on December 27, 1991, to conduct a "welfare check". (R3528). Sergeant Edwards spoke with Ms. Bartley (the victim's neighbor who called the police), and then went to Ms. Hagans' house. (R3529). Sergeant Edwards did not enter the yard because of Ms. Hagans' dogs, but another officer arrived and shooed the dogs away. (R3530). The front door to Ms. Hagans' residence was ajar, and, when Sergeant Edwards called out to the victim, he got no answer. (R3530-31). He entered the house and

found Ms. Hagans dead in her bedroom. (R3531). At that point, Sergeant Edwards called for Palatka Police Department investigators, and secured the crime scene. (R3532).

Keith Riddick is a Sergeant with the Putnam County Sheriff's Office, and was assigned to the Hagans murder investigation to assist the Palatka Police Department. (R3534-35). Sergeant Riddick videotaped the crimescene while waiting on the Florida Department of Law Enforcement to arrive. A "bunch of red spots" were observed on the curtain over the window behind Ms. Hagans' bed (where her body was discovered), and it was determined that the point of entry was a window on the porch. (R3539-42). Sergeant Riddick assisted in the search of the house, and no money was found during that search. (R3545).[6]

Steve Huckleberry was a Patrol Officer/Evidence Technician with the Palatka Police Department in December of 1991. (R3590-91).[7] Officer Huckleberry heard the welfare check at the Hagans' residence dispatched, and, when he did not hear Sergeant Edwards on the radio for about five minutes, proceeded to the scene, which he was familiar with. (R3591-92). Officer Huckleberry testified that

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[6]As is set out later herein, Israel stated that he had come into money by winning the lottery. The parties stipulated that no lottery prize payment was made to the defendant, and further stipulated that the Florida Lottery does not keep a record of prizes of less than $600. (R3547-48).

[7]When he testified in 1999, Huckleberry was employed as a Law Enforcement Officer by the Putnam County Sheriff's Office. (R3590).

the dogs in Ms. Hagans' yard were no threat, and that he was able to shoo them away. (R3592-93). Officer Huckleberry was with Sergeant Edwards when the victim's body was discovered, and both officers backed out of the residence and called for assistance. (R3594). No money was found in the residence, and, while the crime scene was being processed, Ms. Hagans' dogs did not bother anyone. (R3596-97).

Miller Norton was employed by the Palatka Police Department on December 27, 1991, and was assigned to assist the Evidence Technicians in the processing of the Hagans' murder scene. (R3599).[8] Officer Norton was assigned to follow some athletic shoe tracks that were found leaving the scene, and he testified that he was able to follow those tracks for about 125 feet before the soil composition changed and the shoe prints could not be seen. (R3600-3602). Those shoe prints were observed going into the house and back out of it on the porch and steps. (R3606).

Dalerbali Patel was the Manager of the William Penn Motel in Palatka, Florida, in December of 1991. (R3608). Mr. Patel testified that Israel registered in his motel on December 30, 1991, and paid for a week-long stay. (R3609-10). Israel only stayed one night, and was given a cash refund of $91.60. (R3610).[9] Israel

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[8]At the time he testified, Officer Norton was retired from the Palatka Police Department. (R3599).

[9]When he registered, Israel paid $112.36 in cash. (R3610).

signed a receipt for that refund. (R3611).

Andrew Cropley was the Manager of the Palatka Holiday Inn in December of 1991. (R3620). Israel registered at that motel on December 28, 1991, and paid for two nights in cash. (R3621-22).[10]

Maryann Pittman testified at the first trial, which ended in a mistrial, but was unavailable because she could not be located at the time of this trial. (R3574-77). Karen Walters, who is the witness coordinator in the Putnam County Clerk's Office, testified that, at the time of Israel's first trial, Pittman was in prison. (R3581-83). A subpoena for her appearance at the second trial was issued, but service was unsuccessful. (R3583). Ms. Walters spoke with Pittman's probation officer, who had talked directly to Pittman and directed her to report to the probation office. (R3584). Pittman never appeared as instructed. (R3584). Kenneth Williams is the case agent in this case, and is retired from the Florida Department of Law Enforcement. (R3585).[11] He described the unsuccessful efforts that were made to locate Pittman. (R3586-87). At the conclusion of this evidentiary presentation, the court ruled that Pittman's prior testimony was admissible. (R3588).[12]

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[10]Israel paid $99.64 in cash. (R3622). When he checked out, he paid a "television charge" of $7.37 in cash. (R3622).

[11]Agent Williams identified Israel as the defendant in this case. (R3787).

[12]Israel raises no issue in his brief with respect to the admission of Pittman's prior testimony.

Sandy Feltner, a Secretary with the Polk County State Attorney's Office, read the prior testimony given by Pittman in the previous trial. (R3624-25).[13] In December of 1991, Pittman was a prostitute working in Palatka who knew the defendant, Israel. (R3625-26). Pittman met up with Israel and got high on crack cocaine with him. (R3626). Israel had the crack that was being consumed, and Pittman went with him to the Palatka Holiday Inn, where Israel already had a room. (R3626-27).[14] Pittman testified that she and Israel ran into an individual who goes by the street name of "Spook" who was trying to get Israel to give him crack cocaine. (R3627-28). Pittman took a shower in the hotel room, and testified that a pair of pants and a shirt were in the tub, and that the water was red. (R3631). Pittman saw a black purse under the bed in the hotel room, and testified that Israel had money in his wallet that she saw when she looked through his wallet. (R3632-33). Pittman testified that she did not have sexual relations with Israel because he was "too high", and that he told her that he got the money from the Florida Lottery. (R3634-35).

Melvin Shorter lives in Palatka, Florida, and has known Israel for 25 to 30 years. (R3643).[15] Shorter testified that he did not

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[13]Pittman has six felony convictions. (R3636).

[14]Pittman had known Israel prior to this incident. (R3628). Pittman also knew the victim in this case. (R3631).

[15]Shorter has five or six felony convictions. (R3643).

know Ms. Hagans, but that he had heard about her murder. (R3644). Prior to learning about the murder, he saw Israel and Pittman at the Holiday Inn in Palatka where they were using crack cocaine. (R3644). Shorter sold crack cocaine to Israel three or four times "that day", and Israel was paying in cash for it. (R3645). Israel was retrieving his money from under the bed in the hotel room. (R3646). Israel told Shorter that he had "hit the lottery." (R3647).

On December 27, 1991, Ricardo Wright was a Detective Sergeant with the Palatka Police Department who was assigned as the case agent in this investigation. (R3650-52).[16]

Israel, among others, was mentioned as a suspect in this case, and, eventually, the "cold case" investigation led to a blood sample being taken from Israel. (R3655-57). Ultimately, Israel was identified as the source of the semen stains found at the murder scene. (R3658).

Julie Walmsley is employed by the Florida Department of Corrections and is assigned to the New River Correctional Institution in the Inmate Records Section. (R3660-61). The Inmate Records Section keeps track, among other things, of inmate cell assignments. (R3661). The records maintained at New River Correctional Institution indicate that Arthur McComb and Israel

[16]At the time he testified, Wright was a Lieutenant with the Putnam County Sheriff's Office. (R3650).

were in a disciplinary cell at New River Correctional in 1994. (R3662). Israel arrived at New River Correctional Institution on February 18, 1994, and was placed in disciplinary confinement on August 17, 1994. (R3663). Israel was transferred out of New River Correctional on September 9, 1994. McComb came to New River Correctional on July 6, 1994, and was transferred out on September 23, 1994 -- Israel and McComb were in the same cell from August 18 through August 23, 1994. (R3664).

Arthur McComb lived in Tampa, Florida, and was incarcerated in the New River Correctional Institution in 1994, serving time for attempted first degree murder. (R3666-67). McComb initially entered the Florida Department of Corrections in 1988, and, before 1988, had never been to Palatka, Florida, nor did he know Israel prior to 1994. (R3668). McComb was placed in a disciplinary confinement cell because he got into a fight with another inmate, and, while in confinement, he met Israel for the first time. (R3669). McComb was a legal clerk, and, during the course of their confinement together, Israel asked McComb to help him with his case. (R3670-72).[17] Israel stated that he was charged with first degree murder, admitted that he had killed the victim, and "tried to knock her head off." (R3679). Israel stated that he went into Ms. Hagans' house to rob her because he had heard that she had money, and that he went in, tied her up, got the money, and, as he

[17]McComb does not know the victim in this case. (R3678).

was leaving, decided that the victim "looked good", so he sexually battered her, as well. (R3680-81). Israel told McComb about the fence around Ms. Hagans' house, and about her dogs. (R3682). Israel gave three versions about how he dealt with the dogs, and initially tried to blame "Spook". (R3683). However, Israel said that "Spook" did not go into the house. (R3683). Israel said that, during the sexual battery, the "bitch tried to gum me" and called him an animal, so he got mad and beat her to death. (R3685). Israel told McComb that he obtained 7 to 10 thousand dollars and that his story about how he got the money was that he won the Lottery. (R3685). McComb came forward because he "couldn't stomach" Israel's story, and he told the correctional officers that he wanted away from Israel. (R3686-87). Israel's attitude toward the crime was very callous. (R3687). McComb testified that he ended up being incarcerated in the Florida Department of Corrections longer as a result of coming forward with his story, and that he received no sentence reduction. (R3688-90).

Israel testified in his own defense, and testified that he was told, by law enforcement, that the officers had kept some $5,000 and made the scene look like a murder. (R17; 3723). Israel testified that he had nothing to do with the murder, and that he merely allowed McComb to read the accusations against him, but never confessed to him. (R3731-32). Israel insisted that his semen was not present at the crime scene, and that law enforcement

planted his blood at the scene. (R3742; 3744).

On March 1, 1999, the jury returned its verdicts finding Israel guilty of all counts charged in the indictment. (R3828-9).

The penalty phase of this trial began on March 2, 1999. (R3842). The State presented evidence, in the form of a certified copy of a judgment and conviction, that Israel was convicted, on January 27, 1993, of Burglary of a Dwelling with Battery, Kidnapping, Robbery, and two counts of Sexual Battery. (R3875). Viola Britt was the victim in that case, and she testified about Israel's attack on her. (R3876-82).

Wade Priester was a Law Enforcement Officer employed by the Palatka Police Department in November of 1977. (R3883). He became involved in an investigation into a burglary and attack on a woman that occurred on November 4, 1977. (R3884). The victim in that case informed Officer Priester that the suspect came into her house and struck her in the head and held a pair of scissors to her throat and then attempted to tie her up. (R3885). The victim informed Officer Priester that the subject had attempted to sexually batter her, and that she had "put her hands on the subject's genitals and that she had injured him". (R3886). Israel eventually pleaded guilty to the offense of burglary in connection with this attack, and a certified copy of a judgment and sentence was introduced in evidence. (R3883; 3886). Israel's groin area was injured when he was taken into custody in connection with this

offense. (R3887). A judgment and sentence was also introduced into evidence for Battery on a Law Enforcement Officer and Resisting an Officer with Violence, reflecting Israel's conviction for those offenses. (R3887-88).

At the penalty phase, Israel presented the testimony of Harry Krop, who is a Clinical Psychologist. (R3914). Dr. Krop was accepted as an expert in the field of Forensic Clinical Psychology. (R3918). Dr. Krop is familiar with Israel, and testified that his initial contact with him began in 1993 and 1994 in connection with another case. (R3918-19). In the course of his evaluation of the defendant, Krop reviewed the reports and examinations conducted by three other mental state professionals, which ranged in content from reporting no psychiatric illness to diagnosing polysubstance dependence (drug abuse), paranoid personality disorder and antisocial personality disorder. (R3921-22). Dr. Krop testified that he was unable to come up with a determination because Israel would not cooperate with him, and because he would not participate in psychological testing and examination. (R3922). Israel was, however, "responsive" to neuropsychological testing. (R3923). Testing revealed that Israel had a full scale IQ score of 81, with a verbal IQ of 84 and a performance IQ of 81. (R3928). This places him in the low-average range of intellectual ability. (R3928). Dr. Krop testified that his testing suggested that he has "brain damage". (R3929). Israel is not psychotic, but has a personality

disorder with antisocial features and paranoid features as well as probably also having other personality deficits. (R3930). Israel complains, on a recurring basis, of medical problems, and, for that reason, Dr. Krop's diagnosis is "personality disorder with antisocial, paranoid and probably with what we call hypochondriacal" features. (R3930-31). Dr. Krop considered the prior records from other doctors in reaching his diagnosis. (R3931). Israel's judgment was impaired at the time of the offense. (R3932). Dr. Krop testified that Israel is not likely to change the sort of criminal behavior that he engages in. (R3939).

The jury returned a recommended sentence of death by a vote of eleven to one on March 2, 1999. (R3963). A *Spencer* Hearing was duly conducted on May 14, 1999 (R3892), and on May 28, 1999, the court followed the jury's advisory sentence, and imposed a sentence of death on Connie Ray Israel for the first degree murder of Esther Hagans. (R3551). In aggravation, the court found that Israel had previously been convicted of various violent felonies, that the murder in this case was especially heinous, atrocious or cruel, that the murder in this case was committed while Israel was engaged in the commission of a sexual battery, burglary and/or kidnapping (which was merged into one aggravating factor), and that the capital felony was committed for pecuniary gain. (R3556-59). In mitigation, the court found, and gave only some weight, to the two statutory mental mitigating factors. (R3560-61). The court found

that the aggravation outweighed the mitigation, and imposed a sentence of death. (R3562).

SUMMARY OF THE ARGUMENT

Israel's claim that he was "involuntarily excluded" from the jury selection phase of his capital trial is not a basis for reversal because Israel's absence from the courtroom was voluntary. Israel voluntarily absented himself from the courtroom, and he cannot predicate a "wrongful exclusion" claim upon his own actions. This claim has no legal or factual basis.

Likewise, Israel's claim concerning the denial of his motion to continue has no legal or factual basis because the "illness" upon which the motion to continue was predicated did not exist. Israel, who claimed that a continuance was required because he was ill, was examined by medical personnel and found to be in "no distress." The trial court did not abuse its discretion in denying the motion to continue, and there is no basis for reversal.

Israel's claim that the trial court should have, but did not, find certain non-statutory mitigation is foreclosed by settled Florida law because Israel never argued that "non-statutory mitigation" to the advisory jury or to the sentencing court. Israel cannot place the court in error for failing to weigh evidence that was not made known to it. Further, the non-statutory mitigation was subsumed within the statutory mitigating circumstances that were found and weighed by the sentencing court.

In any event, even if the asserted non-statutory mitigation should have been separately considered by the sentencing court, it is weak in character, and, in contrast to the extensive aggravation present in this case, is insufficient to compel a sentence other than death. Any error, and the State does not concede that one occurred, was harmless.

Israel's claim that the trial court erred in denying his motion for mistrial based upon the testimony of the witness McComb has no basis in fact. McComb's testimony cannot be fairly read as being that Israel had more than one murder charge pending against him. The most that that testimony included was a statement of the obvious -- that Israel was incarcerated in the prison system at the time he confessed to McComb. Moreover, in addition to being wholly lacking in factual support, any error, to the extent that one may have occurred, was harmless beyond a reasonable doubt.

Death is the proper sentence in this case. The sentencing court found four aggravating circumstances: that Israel had previously been convicted of numerous violent felonies; that the murder in this case was especially heinous, atrocious, or cruel; that the murder in this case was committed while Israel was engaged in the commission of a sexual battery, burglary, and kidnapping; and the murder in this case was committed for pecuniary gain. In contrast, the sentencing court found both statutory mental mitigating circumstances, but found that they did not warrant more

than "some credence." Moreover, when this case is compared to other, similar cases, death is not a disproportionate sentence under these facts.

Israel's claim that his death sentence is based upon an unconstitutional "split jury vote" is not preserved for review, and, alternatively, is foreclosed by settled precedent.

Israel's claim that "jurors saw appellant in shackles and handcuffs" is not preserved for review, and, alternatively, is meritless. Israel was handcuffed in front, and the fact that he was in restraints was not readily apparent to an observer. Moreover, he had exhibited extremely violent behavior, and, moreover, had threatened further violence. The court is not required to allow such a defendant the opportunity to carry out such threats. There was no abuse of discretion, and there is no basis for reversal.

ARGUMENT

I. THE "INVOLUNTARY EXCLUSION" CLAIM

On pages 31-33 of his brief, Israel argues that he is entitled to relief from his conviction and sentence of death because he was "involuntarily excluded" from the jury selection phase of his capital trial. This claim is not a basis for reversal because, despite the assertions contained in Israel's brief, his absence from the courtroom was voluntary. Because Israel's absence was at his own request, he cannot predicate reversal of his conviction and

sentence on his freely-made choice.

The record demonstrates that Israel voluntarily absented himself from the courtroom on the first day of his capital trial (February 23, 1999). (R2546; 2559; 2584; 2595; 2603). Likewise, Israel requested not to attend the proceedings on the second day of trial. (R2880; 2969; 2995). However, Israel did attend a portion of those proceedings, at his request. (R3049). On February 25, 1999, Israel again expressly stated that he did not wish to attend the proceedings. (R3327; 3336; 3371). In his brief to this Court, Israel claims, without record support, that he complained that he was "wrongfully excluded from jury selection". *Initial Brief,* at 32. At no point in the record did Israel complain of such a "wrongful exclusion", and, consequently, there is no basis for relief because this claim has no basis in fact. Nothing is preserved for this Court's review because there is no factual basis for this claim.

To the extent that this claim deserves further discussion, the law is well-settled that a defendant cannot decline to participate in his trial and then, upon conviction, assign error to his actions. Just as this Court has held that "[t]rial judges must be given sufficient discretion to meet the circumstances of each case where a defendant disrupts the proceedings", *Valdes v. State,* 626 So.2d 1316, 1321 (Fla. 1993), a defendant's voluntary absence from his trial, which is the situation presented here, cannot disrupt

the orderly administration of justice. *See, e.g., Meek v. State*, 474 So.2d 340, 343 (Fla. 4 DCA 1985). *See also, Knight v. State*, 721 So.2d 287, 295-96 (Fla. 1998). In a similar circumstance, the Third District Court of Appeals described the defendant's argument in the following way:

> Finally, in what can only be described as an attempt to expand the parameters of the Yiddish word "chutzpah," the defendant argues that the trial judge erred by repeatedly excluding him from the courtroom during the course of his trial. We disagree.

Wilson v. State, 753 So.2d 683, 689(Fla. 3 DCA 2000). The same can be said of Israel's argument. This claim is not a basis for relief because it has no legal or factual basis. Israel's conviction and sentence should not be disturbed.

II. THE DENIAL OF THE MOTION TO CONTINUE CLAIM

On pages 34-38 of his brief, Israel argues that he is entitled to reversal of his conviction and sentence because the trial court denied his motion to continue based upon his claimed "illness". As is the case with the "involuntary absence" claim addressed above, this claim has no legal or factual basis, and, for those reasons, is not a basis for reversal.

The foundation of Israel's claim is that the trial court abused its discretion when it denied his *pro se* motion to continue the trial. However, unlike the cases cited in Israel's brief, the defendant was not hospitalized, and, moreover, was not ill. The trial court questioned Israel regarding his condition, and observed

that Israel was "doing alright". (R2532; 2594). Moreover, Israel was checked by jail medical personnel (who were familiar with him and his medical history) and found to be in no distress. (R2601; 2614). Because of those findings of fact, which were made following observations in the courtroom, there is no basis on which to base a finding that the trial court abused its discretion in denying the *pro se* motion to continue. *See, e.g., State v. Spaziano,* 692 So.2d 174 (Fla. 1997).

To the extent that further discussion of this groundless claim is necessary, this claim is, in reality, nothing more than a modified version of the "involuntary exclusion" claim addressed above. Just as a trial court must have the discretion to deal with an obstructionist defendant in the conduct of a trial, so too must the trial court have the discretion to deal with a baseless motion to continue which is based on no more than the defendant's desire to disrupt the proceedings. *See, Illinois v. Allen*, 397 U.S. 337, 343, 90 S.Ct. 1057, 25 L.Ed.2d 353 (1970); *Valdes, supra; Knight, supra; Diaz v. State*, 513 So.2d 1045, 1047 (Fla. 1987). In this case, the trial court inquired into Israel's physical condition, and, following that inquiry, denied the motion to continue. That ruling was not an abuse of discretion, given that Israel had been medically examined and found to be in no distress. There is no basis for reversal.

Part of Israel's complaint set out in his brief is that his

"supply" of a medication called Mildrin had run out[18]. The record indicates that he had been given a two-week supply of that medication, and, when that supply had been taken, he was not supposed to have more of that medication. (R2529). Any implication that the defendant was in some fashion deprived of medical attention is baseless. Likewise, the claims of "vision problems and dizziness" were the result of Israel not wearing his glasses, not the result of some untreated medical condition. (R3050; 3060). The trial court did not abuse its discretion in not delaying this trial further. There is no basis for relief.

III. THE NON-STATUTORY MITIGATION CLAIM

On pages 39-41 of his brief, Israel argues that the sentencing court should have found and considered certain non-statutory mitigation. Specifically, Israel complains that the sentencing court did not find drug abuse, "brain damage", and "low intellectual functioning" as non-statutory mitigating circumstances. This claim is not a basis for reversal of Israel's sentence for the reasons set out below.

The first, and most obvious, deficiency with Israel's claim is that this "mitigation" was never argued to the advisory jury or to

[18]The *Physician's Desk Reference* does not list a drug called "Mildrin", but does include a drug named "Midrin". Midrin is used in treatment of "tension and nervous headaches", and it seems likely that this is the drug that was given Israel, especially in light of the fact that Tylenol was substituted for the prescription drug. (R2529).

the sentencing court. Florida law is well-settled:

> In *Lucas v. State*, 568 So.2d 18 (Fla. 1990), we stated: "[T]he defense must share the burden and identify for the court the specific nonstatutory mitigating circumstances it is attempting to establish." *Id.* at 24. Unlike statutory mitigation that has been clearly defined by the legislature, nonstatutory mitigation may consist of any factor that could reasonably bear on the sentence. The parameters of nonstatutory mitigation are largely undefined. This is one of the reasons that we impose some burden on a party to identify the nonstatutory mitigation relied upon. . . . Appellant neither presented these circumstances to the jury nor to the trial court. Therefore, we find no error by the trial court in not expressly considering or finding these as nonstatutory mitigators.

Consalvo v. State, 697 So.2d 805, 818 (Fla. 1996); *see also, Nelson v. State,* 748 So.2d 237, 243 (Fla. 1999) (no error in not finding drug and alcohol abuse as non-statutory mitigation when such not identified to trial court or jury). Israel did not identify the now-alleged non-statutory mitigation to the sentencing court, and that court cannot be placed in error for "failing" to weigh and consider "mitigation" that was not made known to it. Israel's sentence of death should not be disturbed.

The second reason that this claim is not a basis for relief is because the non-statutory "mitigation" set out in Israel's brief was known to the sentencing court from the testimony of Israel's penalty phase mental state expert, Dr. Harry Krop. *See, Nelson, supra,* at 244. Moreover, the sentencing court found and weighed both statutory mental state mitigators. (R2441). In large part, the non-statutory mitigators are subsumed within the statutory mental

mitigators that were found. The sentencing court stated:

> The defendant has presented unrebutted testimony from Dr. Harry Krop, a licensed psychologist in support of two statutory mitigating factors: 1) that the defendant was under the influence of an extreme mental or emotional disturbance at the time the crime occurred, and, 2) that the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was substantially impaired. Clearly, there was some evidence presented as to these two factors. The Court considers them established. However, in determining the amount of weight either should receive in mitigation, the Court considers Dr. Krop's remarks that he felt Mr. Israel to be uncooperative and as a whole, suffered no significant injury or disease that would explain his results on neuropsychological testing. Further, Dr. Krop felt Mr. Israel was just born this way, and that he would likely stay this way. In weighing these mitigating factors the Court assigns some credence to each.

(R2441).

The sentencing court properly weighed the mitigation evidence, and there is no basis for relief.

Finally, even assuming that there was some error, it was harmless beyond a reasonable doubt because, even if the weak, non-specific non-statutory mitigation identified in Israel's brief should have been considered by the sentencing court, it is insufficient to outweigh the extensive aggravation present in this case. At most, any error was harmless. *State v. DiGuilio,* 491 So.2d 1129 (Fla. 1986).

IV. THE DENIAL OF THE MOTION FOR MISTRIAL

On pages 42-46 of his brief, Israel argues that he is entitled to relief based upon the trial court's denial of his motion for

mistrial after, according the Israel, witness McComb testified that Israel had "more than one murder charge" against him. This claim is not a basis for relief because it has no basis in fact.

The testimony at issue, in its entirety, is as follows[19]:

> Q: Okay. Now, did that result in you having some conversation with this other fellow in the cell, Mr. Israel?
>
> A: That's how it started. That's how he and I's conversation started. He seen that I knew legal procedures and stuff like that. So he said, hey, man, can you help me win my case? I said sure, go for it, what's it about?
>
> So he starts to tell me about his case and it was a first-degree murder case. And he told me he had more than one; at the time I can tell you in great detail about two cases --

(R3672). At that point, defense counsel moved for a mistrial on the ground that the testimony set out above could be interpreted by the jury to mean that Israel had more than one **murder** charge. (R3673). However, the trial court, which was in the position to observe the testimony and its effect upon the jury, denied that motion, implicitly finding that McComb had not implied that Israel had another murder charge pending against him, but rather had merely stated the obvious -- that Israel had been convicted of some other charge and was in prison because of that conviction. (R3674-3676). The trial court did not abuse its discretion in denying the motion for mistrial, and its ruling should not be disturbed. *See e.g.,*

[19]This conversation took place in the disciplinary confinement area at New River East Correctional Institution. (R3667; 3669).

State v. Spaziano, 692 So.2d 174 (Fla. 1997).[20]

Further, the jury could certainly infer that Israel had previously been convicted of a felony, given that he was an inmate of the Florida prison system. That is merely a fact, which, in any case, was subsequently placed before the jury in the penalty phase, when they were informed of Israel's prior violent felony convictions. (R3875). Such evidence was properly admitted, and is not a basis for relief. Likewise, the fact that a former inmate testified against Israel, and related inculpatory statements made during incarceration, is not error -- the jury was well aware of the circumstances of the statement, and, in fact, had been so informed, without objection, during the State's opening argument. (R3361-64). The statement at issue here cannot be reasonably interpreted in the manner suggested by Israel, and the trial court did not abuse its discretion in denying the motion for a mistrial[21].

To the extent that Israel complains that no "curative instruction" was given, the record is somewhat unclear as to whether the trial court decided not to give such an instruction, or

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[20]Just as this Court is reluctant to undertake an evaluation of the credibility of a witness, is should not second-guess the trial court's ruling in this instance, which is wholly based upon that court's evaluation of the events that transpired in the courtroom. There is no abuse of discretion.

[21]No motion *in limine* was made to preclude reference to the fact that Israel was in prison when he made the statement to McComb. Such a motion would have been properly denied, in any event.

whether Israel decided not to insist that one be given. (R3677). Regardless, because McComb had not said anything improper, there was no need for a curative instruction. If Israel believed that the answer needed further explanation, he had the opportunity to do just that on cross-examination, but did not. He should not be heard to complain.[22]

Finally, even if it is somehow possible to interpret McComb's testimony as Israel has done, that testimony was, at most, a vague, unclear comment that did not become a feature of the trial and which, in light of the overwhelming evidence against Israel, amounts, at most, to harmless error which had no effect on the outcome of the trial. *See, State v. DiGuilio,* 491 So.2d 1129 (Fla. 1986). Any error was harmless beyond a reasonable doubt, and did not affect Israel's right to a fair trial.

V. DEATH IS THE PROPER SENTENCE

On pages 47-57 of his brief, Israel argues that death is a disproportionate sentence in this four-aggravator case. For the reasons set out below, death is the only proper sentence.

In sentencing Israel to death, the Court found four aggravating circumstances: that Israel had previously been convicted of numerous violent felonies, including Burglary of a

[22]Israel does not have two first-degree murder charges or convictions, nor has he ever had such charges. No one has ever suggested to the contrary -- the meaning ascribed to McComb's testimony is based upon a strained reading of the record, which simply does not bear out that interpretation.

Structure with Assault, Burglary of a Dwelling with Battery, Kidnaping, and Robbery, two counts of Sexual Battery, Battery on a Law Enforcement Officer, and Resisting Arrest with Violence; that the murder in this case was especially heinous, atrocious, or cruel; that the murder was committed while Israel was engaged in the commission of a sexual battery, burglary, and kidnaping; and that the capital felony was committed for pecuniary gain. (R2438-41). Israel does not challenge the applicability of any aggravating circumstance found by the sentencing court.

In mitigation, the court found that "the defendant was under the influence of an extreme mental or emotional disturbance at the time the crime occurred, and [] that the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was substantially impaired." (R2441). The sentencing court went on to state:

> Clearly, there was some evidence presented as to these factors. The Court considers them established. However, in determining the amount of weight either should receive in mitigation, the Court considers Dr. Krop's remarks that he felt Mr. Israel to be uncooperative and as a whole suffered no significant injury or disease that would explain his results on neuropsychological testing. Further, Dr. Krop felt Mr. Israel was just born this way, and that he would likely stay this way. In weighing these mitigating factors the Court assigns some credence to each.

(R2441). The Court found that the aggravation outweighed the

mitigation, and sentenced Israel to death. (R2442).[23]

This Court's proportionality review is not a tabulation of the various aggravation and mitigation, nor is it a direct comparison between various cases in which a death sentence was upheld. Instead, as this Court emphasized in *Hildwin* (which is comparable to this case):

> Based on our review of all of the aggravating and mitigating factors, including their nature and quality according to the specific facts of this case, we find that the totality of the circumstances justifies the imposition of the death sentence. *See Porter*, 564 So.2d at 1064. No two cases are ever identical, but based on our independent proportionality review, we find this case to be proportionate to other cases where we have upheld the imposition of a death sentence. *See, e.g., Davis v. State*, 698 So.2d 1182 (Fla. 1997), *cert. denied,* 522 U.S. 1127, 118 S.Ct. 1076, 140 L.Ed.2d 134 (1998); *Lott v. State*, 695 So.2d 1239 (Fla.), *cert. denied*, 522 U.S. 986, 118 S.Ct. 452, 139 L.Ed.2d 387 (1997); *James v. State*, 695 So.2d 1229 (Fla.), *cert. denied,* 522 U.S. 1000, 118 S.Ct. 569, 139 L.Ed.2d 409 (1997); *Foster v. State*, 679 So.2d 747 (Fla. 1996), *cert. denied,* 520 U.S. 1122, 117 S.Ct. 1259, 137 L.Ed.2d 338 (1997); *Pope v. State*, 679 So.2d 710 (Fla. 1996), *cert. denied,* 519 U.S. 1123, 117 S.Ct. 975, 136 L.Ed.2d 858 (1997); *Rhodes v. State*, 638 So.2d 920 (Fla. 1994).

Hildwin v. State, 727 So.2d 193, 198 (Fla. 1998). In affirming Hildwin's death sentence, this Court had the following to say about the proportionality of that sentence:

> Hildwin does not challenge the trial court's evaluation

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[23]On page 50 of his brief, Israel argues that his case calls for a sentence less than death because the State made a "plea offer" before trial. Under settled law, any plea offer is a nullity, which is meaningless for capital sentencing purposes, since Israel rejected it. *Hitchcock v. State,* 413 So.2d 741 (Fla. 1982); *Hitchcock v. State,* 755 So.2d 638 (Fla. 2000).

> of the evidence relating to the mental mitigating factors. Moreover, the weight assigned to a mitigating circumstance is within the trial court's discretion, and we find no abuse of that discretion here. *See Blanco v. State*, 706 So.2d 7, 10 (Fla. 1997), *cert. denied*, 119 S.Ct. 96 (1998).
>
> "While the existence and number of aggravating or mitigating factors do not in themselves prohibit or require a finding that death is nonproportional, we nevertheless are required to weigh the nature and quality of those factors as compared with other similar reported death appeals." *Kramer v. State*, 619 So.2d 274, 277 (Fla. 1993) (citation omitted). In this case, the trial court found the existence of four statutory aggravators, all of which have been established beyond a reasonable doubt. The murder in this case was heinous, atrocious, or cruel and motivated at least in part for pecuniary gain. In addition, Hildwin had previously been convicted of two violent felonies -- rape and attempted sodomy. Not only did he serve time in prison for these prior violent felonies, but he was on parole at the time of the murder.
>
> Rather than utilizing his freedom to become a productive, law-abiding citizen, Hildwin instead committed this murder.

Hildwin v. State, 727 So.2d at 198.[24] Israel's murder is, if anything, more aggravated and less mitigated than Hildwin's -- the totality of the circumstances surrounding Israel's murder justify the imposition of a sentence of death.

Likewise, the sentence of death in this case is comparable to the sentences of death upheld by this Court in *Jones v. State*, 748 So.2d 1012 (Fla. 1999) (heinous, atrocious, or cruel, prior violent felony, and during an enumerated felony weighed against both mental

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[24]There were four aggravators in *Hildwin*: heinous, atrocious, or cruel, pecuniary gain, prior violent felony, and under sentence of imprisonment. *Id.* The sentencing court found both of the statutory mental mitigators. *Id.*

mitigators), *Zack v. State*, 753 So.2d 9 (Fla. 2000) (during an enumerated felony, pecuniary gain, heinous, atrocious, or cruel, and cold, calculated, and premeditated weighed against three statutory and three non-statutory mitigators), *Brown v. State*, 721 So.2d 274 (Fla. 1998)(prior violent felony conviction, murder committed during robbery and pecuniary gain (merged), heinous, atrocious, and cruel, and cold, calculated, and premeditated, weighed against two nonstatutory mitigating circumstances involving Brown's family background and Brown's drug and alcohol abuse), *Gordon v. State*, 704 So.2d 107 (Fla. 1997)(murder during commission of burglary, pecuniary gain, heinous, atrocious, and cruel, and cold, calculated, and premeditated, and only minimal evidence in mitigation for the drowning murder and robbery of victim), *Cole v. State*, 701 So.2d at 856 (heinous, atrocious, and cruel, prior violent felony for contemporaneous conviction, murder committed during kidnaping, and pecuniary gain, weighed against two nonstatutory mitigating factors of mental incapacity and deprived childhood, where defendant and accomplice killed victim by beating him in head and slitting his throat), *Rolling v. State*, 695 So.2d 278 (Fla. 1997)(heinous, atrocious, and cruel, prior violent felony, murders during commission of burglary or sexual battery and cold, calculated, and premeditated outweighed two statutory mitigators and significant nonstatutory mitigation); *Henyard v. State*, 689 So.2d 239 (Fla. 1996)(heinous, atrocious, and cruel,

prior violent felony, and murder during commission of kidnaping and sexual battery outweighed two statutory mental mitigators and nonstatutory mitigation concerning defendant's stunted emotional level, low intelligence, impoverished upbringing, and dysfunctional family), and *Marshall v. State*, 604 So.2d 799 (Fla. 1992)(heinous, atrocious, and cruel, prior violent felony, defendant under sentence of imprisonment, and murder during commission of burglary outweighed minor mitigation). Death is the appropriate sentence in this case.

VI. THE "SPLIT JURY VOTE" CLAIM

On pages 58-60 of his brief, Israel argues that his death sentence is based upon an unconstitutional "split jury vote". When the claim advanced in Israel's brief is evaluated, what remains is a claim, presented with a different label, that the jury's recommendation of a sentence of death must be unanimous. This claim is not preserved for review, and, even if it had been, there would be no basis for reversal because this claim is foreclosed by settled precedent.

Israel made no argument at trial that the jury must reach a unanimous sentencing recommendation, and it is axiomatic that the failure to make such an objection bars appellate review of the claim. *Steinhorst v. State,* 412 So.2d 332, 338 (Fla. 1982). The "split jury vote" claim is not preserved, and this Court should deny relief on that basis.

In addition to being unpreserved, the "jury vote" claim is foreclosed by settled precedent which has expressly rejected such a claim. *Thompson v. State*, 648 So.2d 692 (Fla. 1994); *Jones v. State*, 569 So.2d 1234 (Fla. 1990); *Brown v. State*, 565 So.2d 304, 308 (Fla.), *cert. denied*, 498 U.S. 992, 111 S.Ct. 537, 112 L.Ed.2d 547 (1990); *James v. State*, 453 So.2d 786, 792 (Fla.), *cert. denied*, 469 U.S. 1098, 105 S.Ct. 608, 83 L.Ed.2d 717 (1984); *Alvord v. State*, 322 So.2d 533, 536 (Fla. 1975), *cert. denied,* 428 U.S. 923, 96 S.Ct. 3234, 49 L.Ed.2d 1226 (1976). The unanimous jury recommendation claim is not a basis for relief because it has no legal basis.

VII. THE "SHACKLING" CLAIM

On pages 61-62 of his brief, Israel argues that he is entitled to a new penalty phase proceeding "because jurors saw appellant in shackles and handcuffs." This claim is apparently directed to the portion of jury selection that Israel attended, during which he was handcuffed in front and the handcuffs were secured to a waist chain. (R3053). This claim is not preserved for review, and, alternatively, is meritless.

Florida law is settled that, when courtroom security recommends restraining a defendant, a specific objection to that action is required, as is a request for inquiry into the need for extraordinary security measures. *Finney v. State,* 660 So.2d 674, 682 (Fla. 1995). Failure to make a specific objection waives review

of the issue. *See, e.g., Steinhorst v. State,* 412 So.2d 332, 338 (Fla. 1982). In this case, the record contains a lengthy discussion of the events leading up to the decision to handcuff the defendant, which included a statements by the defendant

> that he's upset and pissed off at the bailiffs because we charged him with battery on a law enforcement officer, and a very intense sneak attack to one of the bailiffs, if he gets a chance. We don't intend to give him a chance, if at all possible.
>
> Mr. Israel continues to be obnoxious and does everything he can.

(R3049). Courtroom security described the intended security measures as follows:

> We were going to take his handcuffs off, move his hands in front of the waist chain, so his hands will be in front of him as he sits under the table. He'll have his hands in front of him and if he sits there it would not be obvious that he has chains and everything else ...

(R3053). Defense counsel then stated:

> So the record accurately reflects, I would object to him being shackled in this manner.
>
> He's indicated that he will manifest courtroom behavior, but I -- **the fall-back position was to move his hands to the front so he could write messages if he needed to.**

(R3053). The courtroom bailiff then indicated that Israel would be handcuffed in front, and no further objection was made. Based upon the record before this Court, it appears that Israel abandoned any objection to the handcuffs when counsel was assured that the manner of restraint would be in accordance with counsel's "fall-back position". Nothing was preserved for appellate review, and all

relief should be denied.

Alternatively and secondarily, the "shackling" claim lacks merit. The record clearly shows that there was a violent altercation between Israel and courtroom security personnel in the holding cell area near the courtroom. (R2610-14). Subsequently, as set out above, Israel expressed his intent to physically attack another bailiff if he got the chance. (R3049). The Court and counsel then engaged in a lengthy discussion during which the Court stated that because of Israel's recent violent behavior, he would be restrained to protect the safety of the court personnel and counsel. (R3050-51). Moreover, the Court instructed Israel that, so long as he remained properly seated in his chair, it was unapparent that he was wearing restraints. (R3059).

The true facts are that Israel was a proven security threat -- after all, he had already violently attacked a bailiff, causing injuries that required hospitalization. (R2612). This case is more than the security **risk** found present in *Correll v. Dugger,* 558 So.2d 422, 424 (Fla. 1990), and *Derrick v. State,* 581 So.2d 31 (Fla. 1991), where the defendants were found to be in **possession** of objects that could be used as weapons. Israel, on the contrary, had already exhibited extremely violent behavior, and had expressed the intent to do so in the future if he had the opportunity. As this Court stated in *Jones:*

> The record clearly shows the utter lack of merit in defendant's argument. Whatever prejudice defendant

suffered resulted from his own willful attempt to disrupt, indeed stop, the orderly proceedings of the court. The trial court's action in shackling defendant was justified. As the United States Supreme Court said:

> It is essential to the proper administration of criminal justice that dignity, order, and decorum be the hallmarks of all court proceedings in our country. The flagrant disregard in the courtroom of elementary standards of proper conduct should not and cannot be tolerated. We believe trial judges confronted with disruptive, contumacious, stubbornly defiant defendants must be given sufficient discretion to meet the circumstances of each case. No one formula for maintaining the appropriate courtroom atmosphere will be best in all situations. We think there are at least three constitutionally permissible ways for a trial judge to handle an obstreperous defendant like Allen: (1) bind and gag him, thereby keeping him present; (2) cite him for contempt; (3) take him out of the courtroom until he promises to conduct himself properly.

Illinois v. Allen, 397 U.S. 337, 343-44, 90 S.Ct. 1057, 1060-61, 25 L.Ed.2d 353 (1970).

Binding or shackling the defendant is not only a constitutionally permissible method of handling an obstreperous defendant but, under the circumstances here, it was the least restrictive method available to the trial court. Defendant now urges that shackling was not only prejudicial but was inappropriate since defendant could continue to orally obstruct the proceedings. This is the same argument which defendant defiantly made to the trial court. The obvious answer to that argument is that the shackling worked and, had it not worked, the court could have ordered more restrictive measures. After his outburst of song when the jury returned, defendant conducted himself properly during the direct examination and agreed to conduct himself properly thereafter, at which point he was unshackled. Had he not done so, we assume the court would have resorted to the more restrictive methods of binding and gagging or removal from the courtroom.

Jones v. State, 449 So.2d 253, 261-62 (Fla. 1984). Those observations are equally applicable to Israel's case -- the Court was not required to allow a defendant with an established pattern of violence toward courtroom personnel the opportunity to carry out his threat of future violence. The Court did not abuse its discretion in resolving this situation as it did, and, in fact seems to have insured that not only the safety of the personnel in the courtroom but also the rights of the defendant were carefully protected. There is no abuse of discretion, and there is, therefore, no basis for relief.

CONCLUSION

Wherefore, based upon the foregoing arguments and authorities, the State respectfully submits that Israel's convictions and sentence of death should be affirmed in all respects.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above has been furnished by U.S. Mail to George D.E. Burden, Assistant Public Defender, 112 Orange Avenue, Suite A, Daytona Beach, Florida 32114, on this _____ day of December, 2000.

_____
Of Counsel