IN THE SUPREME COURT OF FLORIDA

CASE NO. SC96127

MARSHALL LEE GORE,

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 TYPE SIZE AND STYLE

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STATEMENT OF THE CASE AND FACTS

On Friday, March 11, 1998, Linda Williams went to the Redlands Tavern, as she did every weekend. (T. 1112-15)[1] Between 9:00 p.m and 9:30 p.m., she noticed a woman in her twenties enter the bar. (T. 1115-16) The woman was later identified as Robyn Novick. (T. 1119-21, 1221-22, 1367-68) Ms. Novick was dressed in a nice black outfit with a silver belt. (T. 1115-16, 1220) Ms. Novick went to the pool tables and talked to some guys in the corner. (T. 1117) Among the guys shooting pool were Curtis Roberson and a man Mr. Roberson later identified as Defendant. (T. 1216-20, 1222-25) Ms. Novick spoke to Defendant at the pool table. (T. 1220) Ms. Novick appeared to know Defendant. (T. 1227)

After about a half hour, Ms. Novick left the bar with Defendant. (T. 1117, 1221) Shortly thereafter, Ms. Williams left the bar and noticed Ms. Novick get into a yellow Corvette in the parking lot. (T. 1117-18, 1221) Ms. Novick entered the driver's side of the Corvette, and Ms. Williams noticed the shadow of a man in the passenger's side. (T. 1118, 1221) Defendant resembled the man. (T. 1121, 1368-72) Defendant and Ms. Novick drove across the street to a convenience store, got gas and drove away. (T. 1221)

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[1] The 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.

Between 10:00 p.m and 11:00 p.m., Rosa Latsinger saw a yellow Corvette parked in front of her house. (T. 1248, 1258) Around 2:00 a.m., Defendant tapped on Jesse Casanova's window at the house she shared with her mother and Ms. Latsinger and at which Defendant had been staying and sought to retrieve his clothing. (T. 1284-89) Ms. Casanova went outside with him and saw that Defendant was driving a yellow Corvette. (T. 1286-87)

Around 3:00 a.m., Defendant arrived at David Restrepo's home. (T. 1131) Defendant asked Mr. Restrepo, who had been sleeping, to get up and go to the Grove with him. (T. 1131) Mr. Restrepo agreed to do so. (T. 1132) Upon exiting his home, Mr. Restrepo noticed that Defendant was driving a yellow Corvette, which Mr. Restrepo had never seen before. (T. 1132) Defendant claimed that he had borrowed the car from a girlfriend. (T. 1132) The car had a vanity tag that said Robyn on it, and Defendant instructed Mr. Restrepo to call him Robyn. (T. 1135-36)

Defendant then drove Mr. Restrepo to a strip club, where Defendant went inside for ten minutes while Mr. Restrepo waited in the car. (T. 1133) Mark Joi, a bouncer at the club, had known Defendant as a teenager. (T. 1327-31) He saw Defendant with the yellow Corvette with the Robyn N tag at the club that night. (T. 1327-31) After leaving the strip club, they stopped for cigarettes and then started toward Coconut Grove, along U.S. 1. (T. 1135-39)

As they approached the area of Rivera Drive in Coral Gables, Defendant lost control of the car. (T. 1140) The car flipped over

several times and landed right side up. (T. 1140) During the accident, Mr. Restrepo was ejected from the car and lost consciousness. (T. 1141, 1155) After the accident, Mr. Restrepo regained consciousness and ran back to the car. (T. 1141, 1156) Defendant, who was not ejected, told him to get back into the car. (T. 1141) Defendant tried to drive away from the scene but could not because two of the tires had blown. (T. 1142) They parked the car, heard the sound of brakes and saw a marked police car coming toward them. (T. 1142-43) Defendant told Mr. Restrepo to run because the car was stolen. (T. 1143)

They ran in different directions, and Defendant carried a brown bag with him as he ran. (T. 1143-44) Eventually, they met up, and by that time, Defendant no longer had the bag. (T. 1144) After meeting, they proceeded to a convenience store and called a cab. (T. 1145) They rode past the scene of the accident in the cab and noticed that the police were there. (T. 1145) Defendant mentioned that he had left Robyn's jewelry in the car. (T. 1145-46)

Detective James Avery, who was working patrol, was parked on a side street off U.S. 1 between Lejeune and Riviera when he heard the sound of a car accident. (T. 1334-37) He proceeded to the area of Riviera and U.S. 1. (T. 1336-37) When he got there, he saw dirt and debris in the air and gouges and tire marks leading into an alley. (T. 1337-38) He followed the marks, parked his car and found a yellow Corvette with Robyn N on the tag. (T. 1338-39) The car appeared to have been flipped, and the tires were blown. (T. 1339)

No one was in or around the car. (T. 1340) Detective Avery impounded a gold cigarette case with the initials “RGN” on it, credit cards in the name of Robyn G. Novick and Ms. Novick’s driver’s license from the car. (T. 1340-44)

Defendant and Mr. Restrepo went back to the house where Mr. Restrepo was staying. (T. 1147) They decided not to go inside because people were awake and Mr. Restrepo did not want them to see him hurt. (T. 1147-48) Instead, they went to Mr. Restrepo’s cousin Juan Torres’ house. (T. 1148, 1173)

Once there, Defendant asked Mr. Torres to drive him to pick up his bag. (T. 1149, 1174-76) Mr. Torres agreed, and Defendant, Mr. Restrepo and Mr. Torres drove back to the area where the car accident had occurred. (T. 1149-50, 1176-78) Defendant directed Mr. Torres to stop near some houses in the area in which Defendant had run after the accident. (T. 1150, 1178) Defendant got out of the car, went between the house and returned with the bag. (T. 1150, 1178)

Mr. Torres then drove them back to Mr. Restrepo’s house. (T. 1151, 1178) Mr. Restrepo and Defendant stayed outside the house until the occupants left. (T. 1151) Defendant stayed at the house for 15 to 20 minutes and then left in a cab. (T. 1152)

On March 14, 1988, Detective R.G. Robkin, who was head of the crime scene unit of the Coral Gables Police at the time of the crime, received a call that Ms. Novick had been reported missing. (T. 1349-50) On March 16, 1988, he went to the towing yard where

the Corvette had been taken. (T. 1350-51) He processed the car and found various pieces of jewelry and a power of attorney in Defendant's name in it. (T. 1351-54)

On March 16, 1988, Officer Norman Shipes was assisting in a search of the Redlands for a child. (T. 1051-54) As Officer Snipes drove south on Southwest 214th Place in the area of 244th Street, he noticed a blue tarp between six and ten feet from the side of the road in a underbrush covered area in which trash had been dumped. (T. 1055, 1061, 1302-04) Officer Snipes got out of his truck, went over to the tarp and lifted the edge. (T. 1057-59) He observed a human body under the tarp, call for assistance and roped off the area. (T. 1059-60)

Dr. Roger Mittleman, the medical examiner, arrived at the scene and observed the body in the condition in which it was found. (T. 1065-70) He then directed the removal of the tarp and found the partially decomposed body of a female, which had been attacked by animals. (T. 1070-72) The body was subsequently identified through dental records as that of Robyn Novick. (T. 1072-77)

As a result, Defendant was charged by indictment, filed on March 21, 1990, with the first degree murder of Robyn Novick and the armed robbery of her car, jewelry, credit cards and keys. (R. 1-3) The first degree murder count was charged alternatively as premeditated and felony murder. (R. 1)

At a pretrial hearing, Defendant stated that he wished to fire his attorney and represent himself. (R. 114) Defendant complained

about the way counsel was proceeding on a number of issues. (R. 114-23) Counsel explained that he either felt that the issues Defendant wanted raised were meritless or that proceeding in another manner was better strategically. (R. 114-23) The trial court ordered counsel and Defendant to discuss their difference and either settle them or be prepared for a colloquy. (R. 123-25) After they had conferred and the reasons for Defendant's dissatisfaction had been discussed with the trial court, the trial court found that counsel was acting appropriately. (R. 60-66)

The trial court then inquired if Defendant wanted to represent himself, conducted a *Faretta* inquiry and permitted Defendant to represent himself. (R. 66-99) After further inquiry with Defendant, counsel and the trial court, counsel agreed to do some of the things Defendant wanted and was reappointed to represent Defendant. (R. 173-232)

Prior to trial, the State moved in limine to prevent Defendant from mentioning the death of Pauline Johnson. (R. 45-46) The State asserted that such testimony from Defendant was hearsay and did not met the standard for admissibility as reverse *Williams*[2] rule evidence enunciated in *State v. Savino*, 567 So. 2d 892 (Fla. 1990). (T. 45-46)

During the hearing on this motion, the State argued that at the last trial Defendant had claimed that Ms. Johnson could

[2] *Williams v. State*, 110 So. 2d 654 (Fla. 1959).

establish a relationship between Defendant and the victims. (T. 325) He asserted that he had seen a newspaper article that a Paulette Johnson had been found murdered in Tennessee in 1989 or 1990. (T. 326) Defendant assumed that this person was the same person as the Pauline Johnson who would allegedly have testified on Defendant's behalf. (T. 326) As there was no actual evidence to support Defendant's claims, the State asked that he be precluded from making them. (T. 326-27) Defendant admitted that such testimony from Defendant without corroboration would be improper, but requested that the trial court reserve ruling until he could find certain new witnesses. (T. 327-28) The trial court granted the motion but offered to revisit the ruling if other evidence was found. (T. 328)

Immediately after the State's opening statement during trial, counsel informed the Court that Defendant was unhappy with the manner in which counsel was representing him and wished to represent himself. (T. 1040-41) The trial court excused the jury, and conducted an inquiry with Defendant. (T. 1042-50) Defendant complained that his counsel, the State and trial court were meeting in private and colluding against him. (T. 1044-46) The trial court informed Defendant that this was not true. (T. 1045-46) Defendant then complained that counsel had not objected to mentioning what occurred in Georgia and other *Williams* rule evidence. (T. 1046-49) The trial court assured Defendant that objections had been made.

(T. 1047-49) As Defendant affirmatively stated that he did not wish to represent himself, the trial court resumed the proceedings. (T. 1044, 1050)

Dr. Mittleman testified that Ms. Novick's body had no clothes on it and a silver belt wrapped around the neck. (T. 1078-79, 1094) There was also a nylon binding, consistent with a stocking, on the left ankle. (T. 1079) The nail on Ms. Novick's right thumb had been broken. (T. 1096)

There was a large stab wound to the center of the chest and a smaller stab wound next to it, both of which were consistent with having been caused by the same knife. (T. 1079, 1086) Because of the nature of the wound, there was not a large amount of external bleeding, and Dr. Mittleman would not have been surprised if the assailant had not had blood on him. (T. 1094-95, 1095-96) The condition of the body was consistent with death having occurred between 9:30 p.m. on March 11, 1988 and 1:30 a.m. on March 12, 1988. (T. 1083)

Dr. Mittleman also testified that he performed the autopsy on Ms. Novick's body. (T. 1088-89) On external examination, Dr. Mittleman noted an abrasion to the neck under the belt and scratches to the hand, in addition to the stab wounds. (T. 1089) In order for the belt to have caused the abrasion to the neck, it would have had to have been pulled tightly. (T. 1092)

On internal examination, a large amount of blood was found in Ms. Novick's chest cavity. (T. 1095) The stab wound to the center

of the chest penetrated 3 3/4 inches in the body, injuring the heart and right lung. (T. 1090) This injury was suffered while Ms. Novick was alive and was fatal. (T. 1090)

Internal examination of the neck revealed a fractured cartilage in Ms. Novick's trachea. (T. 1092) As blood was present at the site of this injury, it had to be inflicted while Ms. Novick was alive. (T. 1092) In order for this injuries to have occurred, the belt had to have been pulled tight enough to have strangled Ms. Novick to death. (T. 1093)

Tests of Ms. Novick's blood showed no evidence of drugs. (T. 1097) Some alcohol was present in the blood, but Dr. Mittleman could not tell if this was caused by ingestion of alcohol, as alcohol is produced during decomposition. (T. 1097) Dr. Mittleman opined that the cause of death was the stab wound to the chest associated with manual ligature strangulation. (T. 1096)

On cross examination, Dr. Mittleman stated that it was possible that Ms. Novick died before 9:30 p.m. on March 11, 1988 or after 1:30 a.m. on March 12, 1988. (T. 1098) He indicated that he found no blood associated with the small stab wound. (T. 1099)

Dr. Mittleman noted a milky white substance in Ms. Novick's vagina. (T. 1101) He took samples of this substance and submitted it to the crime lab for testing. (T. 1101)

David Restrepo testified that he first met Defendant in late 1987, when Defendant came to house where Mr. Restrepo was staying. (T. 1125-28) In January 1988, Defendant again came to the house,

driving a black Mustang. (T. 1128-29) In February 1988, Defendant told Mr. Restrepo that he had wrecked the Mustang and started driving a gray Chevrolet. (T. 1130)

After Mr. Restrepo had testified, a sidebar was conducted. (T. 1160-64) During the sidebar, counsel informed the trial court that Defendant had stated that Mr. Restrepo was going to die after trial. (T. 1164)

At the beginning of one trial session, counsel informed the trial court that on his way up to the courtroom, he was stopped with a juror behind him as Defendant was escorted to the courtroom. (T. 1211-12) Defendant was wearing a white T-shirt and handcuffs. (T. 1212) Counsel identified the juror and stated that Defendant saw two other jurors at that time. (T. 1213) Counsel asked that trial court inquire of the jurors. (T. 1214) The trial court found that Defendant was not prejudiced because he was dressed in street clothes and the jury would naturally assume that Defendant was in custody. (T. 1214-15)

Rosa Latsinger testified that in 1988 she lived in the Coto's home at 21420 SW 240th Street and worked at a car dealership in Miami. (T. 1229-32) On February 4, 1988, Defendant, who she had met through a mutual friend, came to see her at work. (T. 1232-35) Defendant wanted to trade a black Mustang for a new car. (T. 1232-35) However, Defendant did not have the title for the car so it could not be traded. (T. 1236)

Defendant then asked Ms. Latsinger if she knew anywhere he

could stay. (T. 1236) Ms. Latsinger arranged for Defendant to stay at Marisol Coto's home. (T. 1236-37)

During the period when Defendant was staying there, Ms. Latsinger was riding in the Mustang with Defendant when they were stopped by the police. (T. 1237-38) Defendant gave Ms. Latsinger his wallet and pocket knife to hold. (T. 1238) Defendant told Ms. Latsinger that he might be arrested if his ex-girlfriend "Karen" had reported the car stolen. (T. 1238) Previously, Defendant had claimed that the car was owned by his mother. (T. 1238)

Around 3:00 a.m. on February 14, 1988, Defendant called Ms. Latsinger. (T. 1239) Defendant stated that he had wrecked his car and asked her to come and give him a ride. (T. 1239) When Ms. Latsinger came to pick him up, she could not find Defendant. (T. 1240) Just as she was about to leave, she heard a whistle and saw Defendant hiding between two buildings. (T. 1240) She stopped, Defendant came out of hiding and entered the car, and they left. (T. 1240)

After wrecking his car, Defendant would borrow Ms. Latsinger's gray Chevrolet. (T. 1240) However, on March 9, 1988, Defendant and Ms. Latsinger had an argument about Defendant's claims that the police were after him. (T. 1241-46, 1253) Ms. Latsinger asked Defendant to leave, which Defendant did the next morning. (T. 1241-46) The next day, Defendant returned to the house and asked to stay another day. (T. 1246-47) Defendant stated that he had wrecked a Corvette that he claimed belonged to his mother. (T. 1248) The

following day, Defendant accompanied Ms. Latsinger and the Coto family to the Calle Ocho festival, which occurred on March 13, 1988. (T. 1249, 1676-77) After the festival, they dropped Defendant, who was carrying a bag of clothes, at a Metrorail station. (T. 1249)

Jessie Casanova testified that she is the daughter of Marisol Coto and lived with her mother and Ms. Latsinger in 1988. (T. 1266-67) In 1988, Defendant came to stay at the house. (T. 1270) While he was staying there, Defendant gave Ms. Casanova a box of cassette tapes, a necklace, a bracelet and an engagement ring. (T. 1271, 1278)

At one point when Defendant was living there, he and Ms. Casanova had gone for a drive in the Mustang. (T. 1274) As they were driving, Defendant saw some police officers in the distance. (T. 1277) Defendant asked Ms. Casanova, who was 13 at the time, to drive the car because he was paranoid about police officers. (T. 1276-77) Ms. Casanova agreed, and drove the car past the officers. (T. 1277)

During the question of Ms. Casanova, the State asked about the nature of her relationship with Defendant. (T. 1278) She stated that it was a good relationship. (T. 1278) When the State then asked if it was an intimate relationship, Defendant objected. (T. 1278) Defendant argued that the word intimate was synonymous with sexual and therefore indicated that Defendant was guilty of statutory rape. (T. 1279) Defendant moved for a mistrial. (T. 1280)

The trial court sustained the objection but denied the motion for mistrial. (T. 1280) At the request of Defendant, the trial court instructed the jury:

> Okay. The last objection was sustained. I'm going to strike from the record the last response made by the witness.
>
> You must disregard it in your deliberations. Are you able to follow that instruction? Is in there anyone at all who would be influenced in any way by the last responses you just heard from the witness? If so, just raise your hand.
>
> For the record, I see no hands. All jurors said they could follow that instruction.

(T. 1281-82)

Ms. Casanova also testified that Defendant returned to the house during the evening hours of the day she had seen him with the Corvette. (T. 1287) Defendant was injured and stated that he had wrecked the Corvette. (T. 1287) Thereafter, Defendant gave Ms. Casanova the keys to the Corvette. (T. 1289-90) Defendant had previously given Ms. Casanova the keys to the Mustang because she had a key collection. (T. 1282-83)

Technician Louis Toledo, a crime scene technician, testified that he found a silver belt around the victim's neck and impounded it. (T. 1300-07) He also recovered a lace tied to the victim's left ankle and a similar piece of lace across the street from the body. (T. 1305)

The victim's body had insect bites, maggots and ants on it. (T. 1311) It was slightly decomposed and the skin was coming off of

it. (T. 1311) The fingernail on one of the thumbs was missing, and the nail was not found. (T. 1311-12) No attempt was made to obtain fingernail scrapings because of the condition of the body. (T. 1312)

Carl Lowery, who was an FBI agent at the time of the crime, testified that he heard a radio call on March 16, 1988, and went to the area of the body. (T. 1319-20) While he was there, he was approached by Ms. Latsinger. (T. 1320) He accompanied Ms. Latsinger to the Coto's house, which was only a few hundred feet from the body. (T. 1320-23) While at the house, he received two Ford keys and a General Motors key from Ms. Casanova. (T. 1323-25) The General Motors key was later matched to Ms. Novick's car. (T. 1372-73)

Frank McKee testified that he was friends with Defendant when they were both teenagers. (T. 1394-95) In 1988, Mr. McKee saw Defendant, and Defendant borrowed $10 for him and gave him a ring. (T. 1395-98)

On March 13, 1988, Defendant arrived at Mr. McKee's home in Coconut Grove between 11:00 p.m. and midnight. (T. 1398-99) Defendant stated that the police were looking for him and asked if he could stay at the house. (T. 1399) Mr. McKee refused to allow Defendant to stay with him. (T. 1399) Defendant had a large bruise on his back and told Mr. McKee that he had been in a car accident while driving a yellow Corvette and being chased by the police. (T. 1399-1401) Defendant stated that he had lost a bunch of jewelry as

a result. (T. 1401) Mr. McKee called a cab for Defendant, and he left. (T. 1401-02)

When Mr. McKee knew Defendant, Defendant worked as a carpenter. (T. 1402) Mr. McKee never knew Ms. Novick, Ms. Coralis or Ms. Roark. (T. 1402-03)

Michelle Hammon testified that she was Susan Roark's best friend and spoke to her every day. (T. 1406) Ms. Hammon described Ms. Roark as being five feet tall, weighing about 90 pounds and having brown hair. (T. 1478) In January 1988, both Ms. Hammon and Ms. Roark lived in Cleveland, Tennessee, and Ms. Roark was going to school. (T. 1405-06) On a Saturday night at the end of January 1988, Ms. Hammon and Ms. Roark had plans to get together at Ms. Hammon's home. (T. 1407-08) Ms. Roark was supposed to arrive around 8:00 p.m. with a blind date. (T. 1407) Ms. Roark was expected to spend the night at Ms. Hammon's home and leave the next morning to attend church with her grandmother. (T. 1409)

Instead, Ms. Roark arrived at 10:00 p.m. with Defendant who she called Tony. (T. 1407-08, 1410) Ms. Hammon had never seen Defendant before. (T. 1407-08) They came in Ms. Roark's black Mustang. (T. 1409) During the evening, Defendant told Ms. Hammon that he was from Florida and had been going to school. (T. 1410-11) Defendant claimed that he had had a ROTC scholarship, which had been cancelled because he had not done his active duty. (T. 1411) When the evening was over, Ms. Roark left with Defendant, stating that she was going to drive Defendant back to his mother's home.

(T. 1411) Ms. Hammon fell asleep on the couch and awoke the next morning to find that Ms. Roark was not in the house. (T. 1411-12) Later that day, Ms. Hammon received a call from Ms. Roark's grandmother, asking if Ms. Roark had stayed there the night before. (T. 1412) Ms. Hammon attempted to locate Ms. Roark through mutual friends and eventually met with Ms. Roark's father and uncle. (T. 1412-13) Ms. Hammon never heard from or saw Ms. Roark again. (T. 1414)

Ms. Hammon testified that Ms. Roark kept a wooden crate of cassette tapes in her car. (T. 1414) She identified Ms. Roark's Mustang and stated that it was not damaged when she last saw Ms. Roark. (T. 1414-15)

Detective Dewey Chastain testified that he became involved in the investigation of the disappearance of Susan Roark on January 31, 1988. (T. 1417-19) As part of his investigation, he went to an address that Ms. Hammon had provided him. (T. 1425) The address was for the home of Brenda Gore, Defendant's mother. (T. 1425)

Detective Chastain also had the license tag number of Ms. Roark's Mustang entered into the computer at the National Crime Information Center (NCIC). (T. 1419) In February 1988, Ms. Roark's father came to Detective Chastain with a postcard he had received, which indicated that the Mustang had been involved in an accident in Miami. (T. 1420-23) Detective Chastain then learned that the tag number had been entered incorrectly into the NCIC computer. (T. 1423-24)

From the information on the postcard, Detective Chastain contacted Officer Griffin with the Miami Police Department. (T. 1424) Officer Griffin had investigated the accident involving Ms. Roark's Mustang. (T. 1427-29) He had sent the postcard to Ms. Roark's father. (T. 1430) After receiving a call from Detective Chastain, he had the Mustang processed by the crime scene unit. (T. 1431-32)

Technician Rafael Garcia processed the Mustang and found fingerprints, Ms. Roark's school books, a gold chain, and a speeding ticket issued to Defendant on February 2, 1988 in Punta Gorda, Florida. (T. 1556-61)

Captain Neal Nydam, formerly of the Columbia County Sheriff's Office, testified that on April 2, 1988, his office was searching a rural area of the county for an elderly black male when they uncovered a set of skeletal remains. (T. 1658-61) The remains were found in an area used as an illegal garbage dump under a discarded set of bedding. (T. 1661-62) The remains were face up with the legs spread apart and the arms out. (T. 1665-66) The body appeared to have been there for several months. (T. 1664) In the area of the body, there were Old Milwaukee beer bottles and woman's clothing, including a pair of underwear that appeared to have been cut. (T. 1663-65) A hair was found in the fist of the remains. (T. 1669) The hair did not match Defendant but appeared to be an animal hair. (T. 1669-76)

Dr. William Maples, a forensic anthropologist, testified that

he examined skeletal remains found in Columbia County, Florida. (T. 1438-43) Based on his examination of the remains, the medical examiner's report and Susan Roark's dental records, Dr. Maples determined that the remains belonged to Ms. Roark. (T. 1444-45, 1668) Ms. Roark's body was nude and had a boot lace around her left wrist. (T. 1445-46) The remains were found face up with the legs spread apart. (T. 1447) There was an area of dried mummified skin covering the torso. (T. 1445, 1447) The skin on the back was badly damaged by insects. (T. 1447) The skin on the left side of the front of the torso was gone but the skin on the right side was intact. (T. 1448) However, there was a circular defect in the skin around the right breast. (T. 1448) The areas in which the skin had deteriorated would have been the areas in which recent stab wounds had occurred. (T. 1448-49)

There was also a defect at the base of the back of the skull that was consistent with a knife mark. (T. 1449-52) This injury was consistent with an attempt to sever the spinal cord from the skull, a type of wound that would have been fatal. (T.1452-53) This type of defect to the skull could have been caused by the medical examiner. (T. 1454) However, Dr. Maples discounted this possibility because the injury had dark brown material consistent with decomposition products on it that would not have occurred if the mark had been caused after the body had decomposed. (T. 1454-55)

Tina Coralis testified that she met Defendant because he was a customer at a club where she worked. (T. 1563-66) Once, she went

to lunch with Defendant outside of work and would speak to him on the phone occasionally. (T. 1566-67) During the lunch, Defendant took pictures of Ms. Coralis and her son next to a car he was driving. (T. 1585-86)

Around 9:00 p.m. on March 14, 1988, Defendant called Ms. Coralis, stated that his Corvette had broken down and asked her for a ride to another car. (T. 1567-68) Ms. Coralis, who was planning to stop at work to pick up her check, agreed to give Defendant a ride. (T. 1568-69) Ms. Coralis put her son in the backseat of the car, and met Defendant at a restaurant near her house. (T. 1569)

After returning to her house briefly to return a phone call, Ms. Coralis drove Defendant up and down Biscayne Boulevard, looking for the car he was he was supposed to pick up. (T. 1569-70) After driving around for 45 minutes to an hour, Defendant asked Ms. Coralis to stop so that he could call a friend and determine the address at which the car had been left. (T. 1570) Defendant appeared to use the phone, returned to the car and directed Ms. Coralis to Aventura Road. (T. 1571) After driving around some more, Defendant asked Ms. Coralis to stop by a rock pile so that he could go to the bathroom. (T. 1571)

When Ms. Coralis stopped, Defendant exited the car with a duffle bag he had brought with him. (T. 1572) Upon returning to the car, Defendant pulled a knife on Ms. Coralis, pointed it at her throat or stomach and ordered her out of the driver’s seat and into the passenger’s seat. (T. 1572-73) Defendant then got into the

driver's seat and ordered Ms. Coralis to get underneath the dashboard. (T. 1573) Defendant then drove Ms. Coralis to a secluded area in what appeared to be an orange grove, ordered her to remove her clothes and raped her. (T. 1573-75) After the rape, Ms. Coralis attempted to convince Defendant to leave her and her son and take the car. (T. 1574) However, Defendant responded by dragging Ms. Coralis from the car, hitting her in the had with a rock and chocking her into unconsciousness. (T. 1574)

Hours later, Ms. Coralis awoke to find her car, which she had just bought that day, and son missing. (T. 1574-76) Ms. Coralis walked to a car in the area and requested assistance to no avail. (T. 1575) The next thing Ms. Coralis remembered, she was in the hospital. (T. 1576)

Ms. Coralis was interviewed in the hospital by Detective Lou Passaro, who showed her a photographic array. (T. 1582) From the array, Ms. Coralis identified Defendant as her attacker. (T. 1582-83) She informed Detective Passaro that earrings, a necklace, a bracelet and rings were taken from her during the attack. (T. 1584)

Ms. Coralis testified that she did not meet or know Susan Roark, Robyn Novick, Ana Fernandez or Paulette Johnson. (T. 1585, 1593) The father of Ms. Coralis' son is Ronald Rinalska. (T. 1586)

Detective Otis Chambers testified that he went to the Cash Mart Pawn Shop in 1988. (T. 1466-68) He retrieved and impounded a gold bracelet, two rings, a pair of earrings and a pendant. (T. 1468-71) Ms. Coralis identified this jewelry as that taken from

her. (T. 1584) Carmen Garcia, the owner of the pawn shop, identified the pawn ticket for this jewelry, which showed that the jewelry was pawned on March 15, 1988 at 10:30a.m. and had Defendant name and driver's license number on it. (T. 1511-21) Leonard Brewer, a fingerprint examiner, identified the fingerprint on the pawn ticket as belonging to Defendant. (T. 1471-76)

During a sidebar conference, defense counsel asked the trial court to admonish Defendant to allow counsel to hear the proceedings. (T. 1476) At the next recess, counsel informed the court that Defendant was continually talking to him when witnesses were being questioned and refusing to speak to him between witnesses, claiming that the court had ordered him to behave this way. (T. 1503-04) The trial court informed Defendant that he should talk to counsel during recesses and not during questioning. (T. 1504-05) The trial court even agreed to ensure Defendant had time to speak with his counsel during recesses. (T. 1505) Defendant then complained that he had not have sufficient conferences with his attorneys. (T. 1506-07) The trial court informed Defendant that it had received affidavits from counsel and the investigator showing lengthy and numerous conference with Defendant. (T. 1506-07)

Detective Louis Passaro testified that he became involved in the investigation of the crimes committed against Tina Coralis on March 15, 1988. (T. 1522-23) Detective Passaro interviewed Ms. Coralis at the hospital, and she provided the first name and a description of the person who had attacked her. (T. 1524-30) After

conducting further investigation, Detective Passaro determined that Defendant could be Ms. Coralis' attacker and that Defendant had lived or could be found in Cutler Ridge, Kentucky and Tennessee. (T. 1530-31) Detective Passaro sent teletypes to the FBI and other agencies and broadcast the information over the news media. (T. 1531)

On March 17, 1988, Detective Passaro prepared a photographic array and showed it to Ms. Coralis. (T. 1531-32) Ms. Coralis identified Defendant as her attacker. (T. 1532) During this interview, Detective Passaro saw that Ms. Coralis had a stab wound to her neck, bruising and swelling of the top and side of her head and the left side of her face, cuts and abrasions on her back and legs and a slice wound to her shoulder. (T. 1534-35)

Detective Passaro interviewed Ms. Casanova and recovered a box of cassette tapes from her. (T. 1536-37) He also received the keys that Ms. Casanova had received from Defendant. (T. 1537-38) He matched the Ford keys to Ms. Roark's Mustang. (T. 1538-39) Detective Passaro also received the jewelry from the pawn shop. (T. 1540-41) All of this jewelry matched the description of jewelry taken from Ms. Coralis during the attack. (T. 1541)

L.V. McGinty testified that in March 1988, he was an FBI agent in Paducah, Kentucky. (T. 1599-1600) On March 17, 1988, he received a teletype about locating a red Toyota and an individual associated with that car. (T. 1600) Agent McGinty found the car at the home of Rex Gore, Defendant's uncle. (T. 1601-02) Agent McGinty met and

spoke to Rex Gore and his wife. (T. 1602) As a result, Agent McGinty called for backup and proceeded to the home of Shannon Gore, Rex Gore's son. (T. 1602-03) Agent McGinty entered the home, found Defendant and arrested him. (T. 1604) In the pocket of Defendant's jacket, Agent McGinty found a bank card and a credit card in the name of Tina Coralis. (T. 1605-07)

Susan Brown Lastra testified that she met Defendant between 1980 and 1982 and would see him periodically over the next six to eight years. (T. 1612-13) In 1987 and 1988, Ms. Lastra was attending college in Tampa. (T. 1612-13)

On January 31, 1988, Defendant came to the store where Ms. Lastra was working and asked her for a place to stay. (T. 1613-14) At the time, Defendant was driving a black Mustang, which he claimed to have received from his grandmother. (T. 1614) Ms. Lastra did not allow him to stay with her, and Defendant stated that he had no money for a hotel. (T. 1614-15) As such, Defendant enlisted Ms. Lastra's assistance in pawning some rings he claimed to have received from his sisters. (T. 1615-16) Ms. Lastra had some concern over the source of the rings because one was a high school class ring with the initials "S.M.R." on it, which was inconsistent with being from any of Defendant's sisters. (T. 1617) After Ms. Lastra assisted in pawning the rings, Defendant left. (T. 1617)

Detective David Simmons testified that he became aware that Defendant was arrested in Paducah, Kentucky and that Defendant was

transported by the FBI back to Miami. (T. 1677-79) Detective Simmons met Defendant at the U.S. Marshall's Office in Miami on March 24, 1988. (T. 1678) At that time, Detective Simmons took Defendant into custody and transported him to the Metro-Dade Police Homicide Office. (T. 1679)

Once there, Detective Simmons found a place to interrogate Defendant, read Defendant his rights, and informed him that he could use the phone or the bathroom and have food or drinks through the interview. (T. 1681-90) Defendant agreed to speak to the police but refused to execute a written waiver of his rights. (T. 1687-90)

During the interview, Defendant stated that he had completed more than a year of college, was literate in English, was not under the influence of drugs or alcohol and had no learning or psychological impairments. (T. 1684-85) Detective Simmons encountered no difficulty in communicating with Defendant throughout the interview. (T. 1685) Defendant was given four breaks, totaling almost two hours during which he was permitted to use the restroom and given food and drinks. (T. 1690-91) He was not threatened, and no promises were made to him. (T. 1722)

Defendant told Detective Simmons that he could not remember ever driving or riding in Ms. Roark's black Mustang. (T. 1692-93) Defendant claimed that he did not know and had never met Ms. Roark. (T. 1693) Defendant also denied having ever met Ms. Coralis or her son Jimmy or having ever driven Ms. Coralis' red Toyota. (T. 1693-95) Defendant stated that he had never been to the Cash Mart Pawn

Shop. (T. 1695) Defendant asserted that he had never been a passenger or driver of a Corvette of any color. (T. 1697)

When asked if he knew Ms. Novick, Defendant stated that he was unsure and asked to see a photograph. (T. 1697) When Detective Steven Parr, who was assisting in the interview, reached into his file for a photograph, Defendant stated, “Just don’t show me a gory one. My stomach can’t take it.” (T. 1698) At the time this statement was made, Defendant had not been told that Ms. Novick was dead or any of the facts of her killing. (T. 1698-99) Detective Simmons assured Defendant that the picture would not be gory and showed him a picture of Novick when she was alive. (T. 1699-1700, 1702) Upon seeing the picture, Defendant’s eyes welled up with tears, he stared at the picture silently for several seconds and then he denied knowing Ms. Novick. (T. 1700) Defendant then stated, “If I did this, I deserve the death penalty.” (T. 1701) Again, Defendant had not been told anything about the murder of Ms. Novick. (T. 1731)

During the course of the interview, a public defender appeared at the police station and asked to speak to Defendant. (T. 1717-18) When Detective Simmons became aware of this, he informed Defendant, who declined the opportunity to consult with the public defender. (T. 1718)

After the State rested its case, Defendant moved for a judgment of acquittal and mistrial, claiming that the *Williams* rule

evidence had become a feature of the trial. (T. 1731, 1734-35) The State responded that this was not grounds for a judgement of acquittal and that the number of *Williams* rule witnesses had been caused by Defendant's insistence on having complete chains of custody and the need to show the similarities. (T. 1735-37) The trial court found that the *Williams* rule evidence had not become a feature and denied the motions. (T. 1737-43)

The trial court then attempted to colloquy Defendant on his decision to testify. (T. 1743-60) During the colloquy, Defendant claimed that he was being forced to testify because his counsel had not located witnesses. (T. 1743-44) Defendant claimed that counsel had not secured the testimony of James Avery, who was dead, that he had found a business card with Ms. Novick's name on it. (T. 1745) The trial court found that Defendant's testimony would be necessary to explain the relevance of this evidence anyway. (T. 1745)

Defendant next claimed that Otis Chambers' testimony was necessary, and the trial court informed Defendant that Detective Chambers would be available. (T. 1746) Defendant also claimed that he needed the testimony of: Dr. Maples; Linda Henley, a FDLE technician in the Roark case; Karen Cooper, another FDLE technician in the Roark case; Randall Roberts, another witness from the Roark case; Dixie who allegedly knew both Ms. Novick and Ms. Coralis; Dennis who worked at a club with Ms. Coralis; Dave who was a deejay at another club were Ms. Coralis worked; and an investigator from

McMann County, Tennessee who worked on the Paulette Johnson case (T. 1746-55) Defense counsel added that he was attempting to secure the testimony of Ms. Refner and that he had spoken to Pat Pruitt of Pruitt Bail Bonds, who had no useful testimony. (T. 1757-60)

The State then renewed its motion in limine to prevent Defendant from discussing the alleged Johnson murder. (T. 1763) The trial court admonished Defendant not to mention the alleged Johnson murder since no one had shown that it was the same person or that the testimony was relevant. (T. 1764-65)

Defendant then took the stand in his own behalf. (T. 1770) Defendant claimed that at the time of his arrest, he was asleep and wearing a pair of bike shorts. (T. 1771-73) Defendant asserted that the FBI agents removed him from his cousin’s home without allowing him to dress and took him to the sheriff’s office. (T. 1773) Defendant denied making any statements to the FBI officers. (T. 1774)

Defendant also alleged that he had heard that Ms. Novick was dead from reporters in Tennessee. (T. 1775-77) Defendant asserted that he assumed any photograph of Ms. Novick would be gruesome because one wall of the office in which he was interviewed was covered in gruesome photographs. (T. 1776-77)

Defendant claimed that he was kept in a cell, stripped naked, handcuffed, shackled and hogtied when he was arrested. (T. 1778) He stated that he believed that he was kept this way for two to three weeks but later learned that it was only seven or eight days.

(T. 1778) He asserted that he was given Haldol, Thorazine and Vistaril four times a day as tranquilizers. (T. 1778-79) Defendant stated that this medication caused him to be visibly intoxicated. (T. 1788-89)

Defendant contended that Detective Passaro and other police officers from Dade County visited him in Tennessee and told him if he passed a polygraph he would be freed. (T. 1779-81) He alleged that he passed, that the officers refused to release him and that instead they had him medicated again. (T. 1780) Defendant claimed he was then beaten, hogtied and returned to the cell. (T. 1784) When the State requested to know when Defendant was incarcerated in Tennessee, Defendant claimed that he was confusing Tennessee and Kentucky. (T. 1785-86)

Defendant asserted that after he was transported from Kentucky, he was placed in federal detention at MCC. (T. 1789) Defendant alleged that the medication continued while he was at MCC but that he was not restrained. (T. 1789-90) Defendant stated that he was taken to federal court, where he was represented by Allen Schwartz. (T. 1790) Defendant alleged that Detective Simmons, Detective Parr and Ellen Christopher were in the federal courtroom and that he asked his attorney to prevent them from questioning him. (T. 1790-92) Defendant asserted that Mr. Schwartz asked the federal court to prevent Defendant from being interrogated, and that the federal judge had admonished the officers not to do so. (T. 1792)

Defendant claimed that he was then taken to a holding cell and that an attorney name Robert Bruger was there with him. (T. 1792-93) Defendant asserted that five officers got him and transported him to the police station. (T. 1793-94) Defendant alleged that they began to interrogate him in the holding cell. (T. 1793-94)

He claimed that he continued to ask for Ron Guralnik, who he considered to be his attorney, and that the police refused to allow him to contact Mr. Guralnik. (T. 1794-96) According to Defendant, Detective Simmons remarked that Defendant must be in the mafia because Mr. Guralnik only represented mafia members and Detective Parr stated that if Defendant insisted on having an attorney, he would be placed in "the house of pain," allegedly a cell where inmates are allowed to torture others. (T. 1796-98)

Defendant contended that Judy Alves and Michael Melinek, attorney friends of the Cotos, obtained court orders to allow them to have access to him but were not allowed to do so. (T. 1799-1800) He also alleged that the entire interview was videotaped and audiotaped. (T. 1800-01) He contended that he had executed a *Miranda* rights waiver form, refusing to waive his rights. (T. 1801-02) Defendant also alleged that Detective Parr offered him cocaine and marijuana during the interview and that he did take some marijuana. (T. 1806) Defendant asserted that the officers were aware that he was taking tranquilizers because they had his jail card from MCC. (T. 1806-07)

Defendant alleged that he was shown a crime scene photograph of the body of Robyn Novick. (T. 1812-13) He asserted that he vomited and cried at the sight of this picture. (T. 1813) Defendant admitted that he denied knowing anyone during the interview but claimed that this was just his standard response. (T. 1813-14)

Defendant claimed that the police seized three address book from him when he was arrested and took dozens of others from his mother's home. (T. 1814-16) Defendant claimed that one book was a trick book, which listed information about people who arranged dates. (T. 1816)

Defendant alleged that he worked for several different construction companies in 1987 and 1988. (T. 1817-18) Defendant also contended that he had several of his own businesses, including an escort service named The Exchange. (T. 1818-19) Defendant asserted that Tina Coralis, David Restrepo, Robyn Roark, Paulette Johnson, Susan Brown Lastra and Rosa Latsinger worked as escorts for him. (T. 1819) Defendant claimed that he had business cards for The Exchange that listed escorts on the back. (T. 1819)

Defendant contended that he and Ms. Novick had used one another's cars for years. (T. 1822) He alleged that Ms. Novick was an exotic dancer at a club called Solid Gold, that he had met her between 1981 and 1984 and that she and Ms. Coralis knew each other. (T. 1843) Defendant admitted that he had an accident in Ms. Novick's car and claimed that there was a phone in the car that both he and Ms. Novick had used on the night she disappeared. (T.

1822-23) He acknowledge that he left the power of attorney in the car and claimed that he also left his business cards. (T. 1920-22) Additionally, Defendant claimed that Ms. Novick left a business card showing her affiliation with another escort service. (T. 1922-23)

Defendant acknowledged that he was at the Redlands Tavern with Ms. Novick on that night. (T. 1823-25) He claimed that they regularly met there when he had escort jobs for her and that the meeting that night was prearranged. (T. 1823-25) He alleged that Raul Coto had asked him to set up the date. (T. 1825) According to Defendant, Ms. Novick hugged and kissed him upon entering the bar, and they then proceeded outside to use the pay phone. (T. 1828) Defendant admitted that they proceeded to get gas but claimed that he was driving at the time. (T. 1829-30)

Defendant claimed that Ms. Novick accompanied him to the club where Mark Joi saw him. (T. 1880-81) Defendant asserted that Ms. Coralis worked at this club. (T. 1880) He alleged that he made calls in a pay phone near the club and Ms. Novick made calls from her car phone to find another girl to join her on her escort assignment. (T. 1881-82) According to Defendant, he, Ms. Novick, Ms. Coralis and possibly Ms. Fernandez all met at the club, and Mr. Joi and a person named Dan Kaye were keeping Raul Coto and two clients busy inside the club while they gathered. (T. 1881-88)

According to Defendant, Ms. Novick, Ms. Coralis and another girl left the club with Mr. Coto and the other two men in a

Mercedes. (T. 1890) Defendant claimed that he followed this group to a warehouse in Homestead in Ms. Novick's car. (T. 1890-91) Defendant claimed that he obtained the phone number to this warehouse and that he tried to call this number. (T. 1923-26) Defendant alleged that the phone was answered by a member of a pro-Castro group with which Mr. Coto was affiliated. (T. 1926)

Defendant claimed that after following the group to the warehouse, he left and picked up David Restrepo to go to the Grove. (T. 1928) He denied having asked Mr. Restrepo to call him Robyn. (T. 1929) He claimed that the reason they were going to the Grove was to meet Mr. McKee and conduct a drug transaction. (T. 1929-30) He averred that the reason he had Mr. Torres take them back to the scene of the accident was to recover the drug and that Mr. Restrepo is the one who recovered the bag. (T. 1930) The drugs were allegedly taken to Mr. Restrepo's house and hidden in the attic. (T. 1931)

Defendant contended that he then called Ms. Novick at the warehouse and told her about the accident and to report the car stolen. (T. 1923-24, 1931-32) He alleged that Ms. Novick told him that Ms. Coralis had left the warehouse in the middle of the night and that there was a trouble with Mr. Coto and his friends because of some missing drugs. (T. 1933, 1935)

According to Defendant, he spoke to Ms. Coralis a couple of days later, and she was in a panic because someone was looking for her. (T. 1953) Defendant claimed to know that Ms. Coralis had sold

some of the drugs and used the money to buy a new car. (T. 1952, 1954-55) Defendant asserted that he arranged a meeting with Ms. Coralis on the pretext of assisting her in selling the remainder of the drugs. (T. 1955)

Defendant claimed that Mr. Coto was a violent person. (T. 1926) He asserted that on one occasion Mr. Coto had beaten his wife and held an infant daughter hostage. (T. 1927) Defendant claimed that he broke up the fight and that Ms. Casanova and Ms. Latsinger were present. (T. 1927)

Defendant stated that Mr. Coto was not living in the house where he was staying but kept the house under surveillance. (T. 1825) Defendant admitted that he and Jessie Casanova, who was 13 years old at the time, were having an affair. (T. 1825-26)

Defendant admitted to having been in Cleveland, Tennessee in January 1988. (T. 1830) He claimed that he arranged escort dates for Susan Roark and Paula Johnson when he was there. (T. 1830-31) Defendant admitted that he was driving a black Mustang but claimed that it was a car that was reported stolen as part of an insurance scam. (T. 1832-33) He asserted that he had known Ms. Roark for 15 years and had met her at a Coca-Cola company picnic. (T. 1833-34) He claimed to have known Ms. Roark’s family before Ms. Roark was born and to have been taught in second grade by Ms. Roark’s mother. (T. 1834)

Defendant acknowledged that he was with Ms. Roark on the last night she was seen alive and claimed that they regularly went out

together. (T. 1834-35) He claimed that he had a prearranged meeting with Ms. Roark, Paula Johnson and Nathan Kaywood. (T. 1835-36, 1838-42) He alleged that Mr. Kaywood was a bodybuilder with underworld connections whom Defendant planned to hire as a bodyguard for his escorts. (T. 1836-37) Defendant claimed that Ms. Johnson had urged Ms. Roark to come to Miami and that Ms. Roark initially refused but eventually agreed. (T. 1845-46)

Defendant admitted to accompanying Ms. Roark to Ms. Hammon's home but claimed that they just went to get Ms. Roark's belongings. (T. 1846-47) Defendant claimed to have known Ms. Hammon for years as well. (T. 1860) According to Defendant, Ms. Roark told Ms. Hammon that she was going away for a couple of days, not to worry if she was not around the next day and not to tell her mother anything. (T. 1847)

Defendant alleged that he last saw Ms. Roark between one and three weeks after his arrest. (T. 1848) He claimed that Ms. Roark and Ms. Johnson visited him in jail. (T. 1848) He asserted that he told Ms. Roark to contact her grandmother and Mr. Melinek, his lawyer. (T. 1849, 1852) Defendant claimed that he did this because someone had called his father and told him that Ms. Roark's family was looking for her. (T. 1850) He alleged that his father knew Ms. Roark was in Miami but refused to name his father. (T. 1850-51) When defense counsel attempted to ask more questions about Defendant's father, Defendant threatened to fire him. (T. 1853)

Defendant asserted that Dr. Maples could testify that Ms.

Roark had only been dead for three weeks when her remains were found and that he had been in jail for six months at that time. (T. 1854) He also asserted evidence found at the site where Ms. Roark's body was found did not match him. (T. 1854-56)

Defense counsel then attempted to discuss Ms. Johnson's role in the jailhouse meeting. (T. 1856) The State objected to any testimony about Ms. Johnson being listed as a witness. (T. 1856-57) The trial court sustained the objection on relevance grounds. (T. 1857)

Defendant claimed that he, Ms. Roark, Ms. Johnson and Mr. Kaywood left Tennessee together. (T. 1858-59) He alleged that Ms. Roark and Ms. Johnson accompanied him to Miami but that Mr. Kaywood left them in Panama City. (T. 1858-59) Defendant contended that the group traveled in two black Mustangs. (T. 1861) He claimed that the second Mustang was sold through Frank McKee because Mr. McKee owed Defendant $1,000. (T. 1862-63) Defendant claimed that a person named Sherry Analred, who lived next to an apartment Defendant allegedly rented for his escort service, saw Defendant with the second Mustang. (T. 1864-65)

Defendant admitted that he wrecked Ms. Roark's Mustang. (T. 1865-66) He claimed that Ms. Roark, Ms. Johnson and Ana Fernandez were with him at the time of the accident. (T. 1867) Defendant asserted that it was a two car accident and that no one stayed at the scene because of things unrelated to Ms. Roark that he could not discuss. (T. 1869-70) He claimed that he sent the women in a

cab to Frank McGinty's home. (T. 1870-71) He averred that he stayed behind to remove some money from the car and give it to a friend in Coral Gables. (T. 1871) He alleged that he was in this friend's apartment when Ms. Latsinger came to pick him up; not hiding behind a building. (T. 1871) He also claimed that Ms. Latsinger lied when she stated that she drove past the scene and did so more than once. (T. 1871-73)

Defendant admitted that he drove Ms. Novick's car to the area of the Coto's home the night of Ms. Novick's murder. (T. 1874-75) He claimed the car was parked behind some bushes such that Ms. Casanova and Ms. Latsinger could not have seen it. (T. 1874-76) He averred that he had brought Ms. Novick's car to the Coto's home on two other occasions at least two weeks before the murder. (T. 1876)

Defendant alleged that Ms. Novick assisted him in obtaining cars through her employment with GMAC. (T. 1877-78) He claimed that Ms. Novick had also helped him get a Chrysler Lebaron, which he had also wrecked. (T. 1877-78)

Defendant denied seeing Susan Lastra on Super Bowl Sunday of 1988. (T. 1903) Instead, Defendant claimed that he was in Louisiana to visit a friend who was in town for Mardi Gras. (T.1903-04) According to Defendant, Ms. Lastra had called his mother and stated that she had an emergency so Defendant went to see her a day or two after the Super Bowl. (T. 1904-05) Defendant claimed that he visited her at a dormitory called Smiley Hall. (T. 1906) Defendant denied have ever given Ms. Lastra any rings or having requested her

assistance in pawning any rings. (T. 1906-07)

Defendant claimed that he had met Tina Coralis between 1981 and 1984. (T. 1843-44) He asserted that Ms. Coralis had told him that he was the father of her son and that he had paid child support for him. (T. 1910) He averred that the boy was named Stanley Ronald Rinalska but was called Jimmy after him. (T. 1915-16)

He alleged that he owned the jewelry that was recovered from the Cash Mart Pawn Shop. (T. 1908-15) However, Defendant asserted that he only pawned the bracelet and claimed that the remaining items were added to the pawn receipt by the police. (T. 1908-15) He claimed that the police destroyed several of the rings to hide inscription that showed that they were his. (T. 1915) He also asserted that the police had placed a false address on the pawn slip. (T. 1917-18)

During a recess in Defendant’s testimony, Defendant asked the trial court to issue an order for the payment of the costs of transporting a Freddy Schultz to Miami to be a witness. (T. 1941-42) Defendant claimed that Mr. Schultz was the detective who investigated a murder involving a Paulette Johnson. (T. 1942) When the trial court inquired how Defendant would show that person killed was the person Defendant was claiming to have been with him, Defendant responded that he would identify a picture. (T. 1943-45) The State then objected to this testimony on relevance grounds. (T. 1945-46) Defendant responded that it was relevant because it showed

that she was killed after she had been listed as a witness in another of Defendant's cases. (T. 1946-48) The trial court ruled that this was not relevant. (T. 1948) Defendant then claimed that it was relevant because Ana Fernandez claimed not to remember anything after learning of Ms. Johnson's death. (T. 1948-49) The trial court inquired if this would be Ms. Fernandez's testimony, and when Defendant responded that he was unsure, the trial court deferred ruling until it could be determined. (T. 1949)

Defendant admitted that he attended Calle Ocho with Ms. Casanova. (T. 1962-63) He claimed that the two men who approached Ms. Casanova were the men with whom he had left Ms. Novick. (T. 1962-63) He asserted that they told him Ms. Novick had been picked up from the warehouse. (T. 1963)

Defendant admitted giving keys to Ms. Casanova. (T. 1969) However, he claimed that the Mustang key he gave her was to the other Mustang and that the Corvette key he gave her was not the key introduced as such. (T. 1969)

On cross examination, Defendant initially claimed only to have two prior felony convictions but later testified that he had fifteen. (T. 1976-79) Defendant refused to explain how he had traveled to Kentucky prior to his arrest or how Ms. Coralis' car and property ended up at his relatives home there. (T. 1980) He denied trying to kill Ms. Coralis and claimed that her injuries were the result of having jumped from a car. (T. 1981-82) He also refused to state whether he had attempted to claim a reward on her

beeper after the crime. (T. 1983-84) He declined to answer questions about whether he had attempted to use Ms. Coralis' ATM card and whether he stopped anywhere before going to Kentucky. (T. 1984-86)

Defendant claimed that all of the witnesses against him had lied and that the State had placed Ms. Casanova in a mental hospital for refusing to press statutory rape charges against him. (T. 1982, 1994) Defendant refused to explain why he was in possession of the property of people who were killed or attacked. (T. 1993-94)

Defendant denied having testified that he met Ms. Coralis until 1984. (T. 1987) He claimed that at the time they met, Ms. Coralis was a street prostitute and that he gave her work. (T. 1987) He refused to state how long he had been working as a pimp, stated that he came up with the idea for the exchange with in Eglin Federal Prison and refused to explain how he came up with the idea. (T. 1988-89)

Defendant insisted that Ms. Coralis' son was his child and that Ms. Coralis had told him so. (T. 1989-90) However, Defendant refused to state when Ms. Coralis had allegedly done so. (T. 1991) He did testify that the child was born in June of 1985 or 1986. (T. 1992) Defendant claimed that the child's birthday was listed differently on three different birth certificates that he had manufactured. (T. 1992)

Defendant stated that he lived with Ms. Lastra in Tampa at her

dorm for a while. (T. 1996) He claimed that he was thrown out after having an altercation with a school security guard. (T. 1996) He denied having had a problem with Ms. Lastra's roommate and first said that the roommate wanted to date him and then said that the roommate was a lesbian. (T. 1996-97)

Defendant admitted that he had read many depositions and statements in his cases. (T. 1998-2000) He also acknowledged that he had heard people's testimony in court. (T. 1998-2000)

Defendant claimed that he had lied in prior proceedings about his relationship with Ms. Coralis. (T. 2000-03) Defendant first asserted that he had never testified that he met Ms. Coralis at a club in October or November 1987 and then claimed that his prior testimony was being misread. (T. 2003-08)

Defendant admitted that he went to court in Kentucky and had a lawyer there. (T. 2013) He stated that he never told the lawyer about the alleged mistreatment and forced medication while incarcerated. (T. 2013) He claimed that this was because the lawyer would not talk to him. (T. 2013) Defendant insisted that he was in Kentucky for a week or two. (T. 2014) When the State attempted to ask about Defendant's lawyer in federal court, the lawyer friend from the holding cell and the alleged order to the local police not to question Defendant, Defendant became evasive and did not answer the questions. (T. 2015-18) Defendant also became evasive when the State tried to ask about Raul Coto. (T. 2019-23)

Defendant stated that his father owned a horse farm in the

Redlands and that he was very familiar with the area. (T. 2023) However, Defendant then stated that he had not spoke to his father in years and that the State had convicted his father to prevent him from testifying. (T. 2024-25)

Defendant denied having grown up in Dade County. (T. 2039-40) Instead, Defendant claimed that he merely spent months in Dade County over the years. (T. 2039-40) Defendant claimed that he lived in Cleveland, Tennessee during the time he was in the second, fifth, sixth, seventh and eighth grades. (T. 2042-43)

During cross examination, Defendant twice blurted out that Paulette Johnson had been killed. (T. 2029-30, 2057) On the second occasion, the trial court excused the jury and held Defendant in direct criminal contempt for violating the in limine order. (T. 2057-63)

Defendant claimed to have known Ms. Hammon for years, and asserted that her testimony that she had just met Defendant was caused by drug intoxication on the night Ms. Roark disappeared. (T. 2064-65) Defendant asserted that Ms. Lastra was lying because she was jealous of Defendant’s sexual relationship with Ms. Casanova and because she was afraid Defendant would turn Ms. Casanova into a prostitute as he had allegedly done to her. (T. 2075-79)

Defendant refused to answer questions about who he was with the night he wrecked Ms. Roark’s Mustang. (T. 2080-84) When asked if he had been at an apartment five blocks from the site of the accident immediately before the accident, Defendant claimed not to

remember and not to remember when he met Ms. Roark, Ms. Johnson, Mr. Restrepo and Ms. Fernandez that evening. (T. 2084-92) Defendant refused to answer questions about where he allegedly went after the accident. (T. 2093-96) Defendant then claimed that the money delivered to the person in Coral Gables was to be used as bribes to avoid prosecution. (T. 2101-06)

Defendant asserted that he first met Ms. Novick at a restaurant in South Miami. (T. 2110) He claimed that he had not planned to meet her there but could not remember how they met. (T. 2110-16) He asserted that Ms. Novick was working in a strip club as a dancer and invited him to the club. (T. 2117) Defendant stated that Ms. Novick then came to work for his escort service but did not work as a prostitute. (T. 2117-18)

Defendant denied having called his uncle Rex Gore on March 12, 1988, to say he was coming to Kentucky. (T. 2176) He also denied calling Rex Gore on March 14, 1988. (T. 2177) Instead, Defendant insisted that Rex Gore had called him and invited him to Kentucky. (T. 2176-77)

Detective Otis Chamber testified that one of the rings he recovered from the Cash Mart pawn shop was bent while in police custody. (T. 2206-07) However, he denied that the ring was bent beyond recognition or that ring was inscribed. (T. 2207)

Ana Fernandez testified that she grew up with Defendant. (T. 2211) She claimed that she started working for Defendant when she was 15 years old. (T. 2212) She asserted that her job was to answer

phone and schedule escort dates for The Exchange. (T. 2212-14) She alleged that she remembered girls named Robyn, Susan and Tina being employed as escorts. (T. 2213-14)

On cross examination, Ms. Fernandez stated that she would have started working for Defendant in 1984 or 1985. (T. 2220-21) She claimed that she answered the phone at Defendant's family's home, where Defendant had his own suite. (T. 2221-23) She admitted that she signed an affidavit in 1992, stating that she visited "fuck shacks" with Defendant. (T. 2224-28) However, she could not remember where these places were or what they looked like. (T. 2224-28) She stated that Defendant's attorney asked her to execute the affidavit, and that a woman named Priscilla Perez from California, who Defendant claimed to be his wife, drafted the affidavit. (T. 2229-32)

Ms. Fernandez claimed not to remember doing any other work for Defendant. (T. 2232-34) She stated that her prior statements that she had transcribed tapes for Defendant only vaguely refreshed her recollection. (T. 2233-34)

Ms. Fernandez stated that she met Susan through Defendant but could not remember when, where or how many times she had seen her. (T. 2235) She stated that she suddenly recognized Susan from a photograph but could not describe her. (T. 2235-36) Ms. Fernandez acknowledged that she previously testify that the photo looked familiar but that she was unsure of where she knew the person from. (T. 2237-45)

Ms. Fernandez claimed not to remember having been in a car accident with Defendant and Ms. Roark or to having testified to having been in an accident with them. (T. 2254-57) She was also unable to explain why her prior testimony had placed the accident the day after it actually occurred. (T. 2256-57)

Ms. Fernandez averred that she had met Ms. Novick. (T. 2258-59) However, she again could not state when, where or how many times she had met her and was unable to describe her. (T. 2259-60) Ms. Fernandez gave the same testimony regarding Ms. Coralis. (T. 2260-61) She stated that if she had previously testified that she had baby-sat for Ms. Coralis at Ms. Coralis' home, it was true but could not remember anything about it. (T. 2261-62)

Ms. Fernandez testified that on March 11, 1988, she was in the hospital giving birth. (T. 2267-68) She claimed that she must have been mistaken about the date that she claimed to have been at the club with Defendant, Ms. Novick and Ms. Coralis. (T. 2268-69)

During the redirect examination of Ms. Fernandez, Defendant attempted to introduce a document about the murder of Paulette Johnson. (T. 2294-96) Defendant claimed that it was relevant because Ms. Fernandez allegedly received the document in the mail. (T. 2294-96) Further, the trial court found that Ms. Fernandez could not identify the Paulette Johnson mentioned as the person who allegedly was with Defendant unless she had seen the body. (T. 2295-96)

Stephanie Refner testified that she lived in Cleveland,

Tennessee and had worked with Susan Roark. (T. 2364-65) At some point in time, she saw a newspaper article, indicating that Ms. Roark was missing. (T. 2365-66) The following day, Ms. Refner called Detective Chastain and informed him that she had seen Ms. Roark during the period of time that the article stated that she had been missing. (T. 2365-69)

Ms. Refner stated that one Saturday night, she had been coming home from choir practice and had stopped at a red light next to a black Mustang. (T. 2367-68, 2370) She looking into the Mustang, saw Ms. Roark was the driver of the Mustang and waved to her. (T. 2370) Ms. Refner stated that she saw the Mustang in the area of the intersection of Keys and 25th Streets. (T. 2377) Ms. Refner stated that Ms. Roark did not acknowledge her and proceeded to turn into a gas station and get out of her car. (T. 2370-71) Ms. Refner stated that she did not recall the length of time between when Ms. Roark was reported missing and when she allegedly saw Ms. Roark. (T. 2371) However, she stated that if she had previously testified that it was two to three weeks, that was true. (T. 2371)

On cross examination, Ms. Refner stated that she did not know Defendant and had never seen or heard of his family living in Cleveland, Tennessee. (T. 2373) She admitted that she had only worked with Ms. Roark one day. (T. 2374-76) However, she claimed to have seen Ms. Roark around town on 10 to 12 occasions and had seen her in a black Mustang some of these times. (T. 2376-81) Ms. Refner stated that her prior testimony that she saw the article on

February 14, 1988 was correct. (T. 2382-95)

Linda Hensley, whose prior testimony was read, stated that she was a hair analyst and compared hairs found in the hand of the remains of Ms. Roark, which did not match Defendant. (T. 2446-48) She also testified that she was unable to compare the hairs to Ms. Roark's own hair because of the lack of a suitable sample of her hair. (T. 2246-49)

Prior to resting the defense case, counsel informed the trial court that Defendant had asked that he be recalled for further testimony. (T. 2451-54) Counsel stated that he had discussed the matter with his client and that Defendant wanted to present irrelevant testimony. (T. 2451-54) As such, counsel had decided not to recall Defendant. (T. 2451-54)

In rebuttal, Detective Steven Parr testified that he met Defendant at the federal courthouse and had been accompanied there by Detectives Simmons and Passaro and Donna Mesmerites. (T. 2301-02) Detective Parr stated that he and the other officers met Defendant in a holding cell and never entered the courtroom. (T. 2309)

Detective Parr stated that gory pictures of murder victims were never displayed on the walls of the homicide office or the room where Defendant was interviewed. (T. 2303-07) He denied giving Defendant drugs during the interview. (T. 2307) He stated that the interview was not recorded by either audio or video tape. (T. 2308) He identified a photograph of Ms. Novick, taken while she was

alive, as the photograph he showed Defendant. (T. 2308)

Detective Passaro testified that he never traveled to Kentucky to see Defendant and first met him at the federal courthouse in Miami. (T. 2323-24) He stated that he never interviewed Defendant and never offered Defendant a polygraph examination. (T. 2324)

Rex Gore, Defendant's uncle, whose prior testimony was read to the jury, stated Defendant was known by the name Marty. (T. 2331-32) On March 12, 1988, he received a message on his answering machine that said it was from Marty and that he would be coming to Kentucky shortly. (T. 2331-33) Later that day, Defendant called, spoke to Mr. Gore and stated that he was in Atlanta and would be arriving in Kentucky the following evening. (T. 2333-34) Defendant did not arrive as scheduled but the following morning, Defendant called and stated that he had returned to Miami to get some money and had been in an accident. (T. 2334-35)

On March 16, 1988, Mr. Gore received a message from his wife while he was at work that Defendant had arrived at his home in Kentucky. (T. 2336-37) When Mr. Gore got home, Defendant was there, as was a Red Toyota. (T. 2337) Defendant told Mr. Gore that a woman had bought the Red Toyota for him. (T. 2338) Defendant also informed Mr. Gore that he had made a unique ring he was wearing. (T. 2347)

On March 17, 1988, FBI Agents McGinty and Foust came to Mr. Gore's home looking for Defendant. (T. 2341-42, 2344-45) Mr. Gore informed the agents that Defendant was at his son's trailer and

gave them personal property that Defendant at left at his home. (T. 2345-47)

Harold Roark, Ms. Roark's father, testified that he had never known Defendant and that Ms. Roark's mother had never taught second grade. (T. 2455-56) He stated that he learned his daughter was missing on Sunday, January 31, 1988, and received the postcard indicating that her car had been involved in an accident in Miami either February 18th or 19th of 1988. (T. 2458-59)

Each Friday and Saturday night between the disappearance and the receipt of the postcard, Mr. Roark parked at the intersection of 25th and Keys Streets in Cleveland, looking for a black Mustang. (T. 2460-61) One night, he observed a black Mustang driven by a person who looked like Ms. Roark and followed it into a gas station. (T. 2461) However, when the driver got out of the car, he realized it was not his daughter. (T. 2461)

After the State rested its rebuttal case, Defendant renewed his judgment of acquittal without further elaboration. (T. 2464) The trial court denied the motion. (T. 2464)

Immediately before the commencement of closing arguments, Defendant announced that he wished to proceed *pro se*. (T. 2466) When the trial court attempted to colloquy Defendant, he claimed that he had to represent himself because he had not been allowed to testify. (T. 2466) The trial court then conducted an extensive *Faretta* inquiry with Defendant, reviewed the transcript of the

pretrial *Faretta* inquiry and permitted him to represent himself. (T. 2466-74) In the middle of the State's closing argument, the trial court called the parties sidebar, informed defense counsel that he was being disruptive by talking to Defendant without having been asked for assistance and had counsel move to the first row of seats. (T. 2479-80) After the jury retired, Defendant asked that counsel be reinstated, and he was. (T. 2696)

After deliberating, the jury found Defendant guilty of first degree murder and robbery with a deadly weapon. (R. 389-90, T. 2699-2700) The jury did not specify under which theory Defendant was found guilty of the murder. (R. 389-90, T. 2699) The trial court adjudicated Defendant in accordance with the jury's verdict. (R. 479-80, T. 2704)

At a hearing between the guilty and penalty phases, it came to light that Defendant had twice refused to meet with the defense mental health expert, Merry Haber. (T. 2708-25) An attempt was made to schedule another appoint with Dr. Haber but she could not do so before the penalty phase. (T. 2740) Counsel then struck Dr. Haber. (T. 2740-41) Defendant refused to be reevaluated by any of the doctors who had previously examined him and who were available. (T. 2741-58, 2830)

During the hearing, Defendant stated that he did not wish to speak about his sisters. (T. 2722) Defense counsel then indicated that he was striking Defendant's sisters as witnesses because he

had determined that they were not favorable witnesses after speaking to them. (T. 2722-23) Counsel also indicated that he had contacted the witnesses Defendant had requested and chose not to call them because he did not believe they were favorable. (T. 2732-33)

Defendant then asked to represent himself, claiming that counsel was refusing to call any witnesses. (T. 2760-69) Counsel explained that he had spoken to witnesses who either refused to testify or could offer no favorable testimony. (T. 2768-69) After an inquiry, Defendant was permitted to represent himself. (T. 2760-69)

At the penalty phase, Detective Passaro testified about the discovery of Jimmy Coralis in Georgia. (T. 2971-84) As a result of Defendant's actions toward Tina and Jimmy Coralis, Defendant was convicted of burglary, two counts of kidnapping, two counts of sexual battery, attempted murder, and robbery. (T. 2984-91) The State also introduced a certified copy of Defendant's convictions for first degree murder, robbery and kidnapping in the Roark case. (T. 3027-28)

Defendant called Ms. Casanova in his behalf, who testified that her mother and stepfather had a fight during the time Defendant lived at the Cotos' home. (T. 3035-37) During the fight, Ms. Casanova's stepfather ended up holding a gun to his wife's head and trying to get Ms. Casanova's sister as well. (T. 3037) Defendant calmed Ms. Casanova's stepfather down, took the gun away

and removed the stepfather from the home. (T. 3036)

The perpetuated testimony of Ana Fernandez was read to the jury. (T. 3066-67) Ms. Fernandez stated that she had known Defendant for 20 years and had never known him to be violent. (T. 3068-69) She had heard that Defendant had once helped a neighbor who was being blackmailed. (T. 3069-73) However, Ms. Fernandez admitted that Defendant had once been aggressive with her sexually. (T. 3092-95)

Defendant testified in his own behalf and confirmed Ms. Casanova's testimony about the fight between her mother and stepfather. (T. 3119-22) Defendant claimed that he was not a violent person. (T. 3134) He asserted that he left Jimmy Coralis five minutes from his mother's home. (T. 3136)

On cross examination, the State inquired if a group of women would believe he was not violent. (T. 3144-47) Defendant stated that he did not know most of the women. (T. 3144-47) Defendant also stated that all of these cases had been thrown out of court. (T. 3146) He also admitted that the police had been called to his house many times because he had been violent toward his mother and brother. (T. 3149)

The State attempted to call Maria Dominguez in rebuttal of Defendant's claim that he was never violent. (T. 3185-86) The trial court found that the evidence was proper rebuttal but unduly prejudicial and excluded it. (T. 3187-88)

After deliberating, the jury unanimously recommended that

Defendant be sentenced to death. (R. 408, T. 3285) After the penalty phase was completed but before the *Spencer* hearing, Defendant filed a *pro se* motion for new trial, claiming, *inter alia*, prejudicial preindictment delay and ineffective assistance of counsel. (R. 433-41) With regard to the delay, Defendant did not assert that any evidence was lost but did claim that the State gained a strategic advantage by being able to introduce the *Williams* Rule evidence. Instead, Defendant asserted that evidence was lost after he was indicted because of his attorney's alleged ineffectiveness.

The trial court sentenced Defendant to death in accordance with the jury's recommendation. (R. 459-78, 483-85) The trial court found three aggravating circumstances: prior violent or capital felonies, including the first degree murder, kidnapping and robbery of Susan Roark, the attempted first degree murder, armed burglary, armed robbery and armed kidnapping of Tina Coralis and the armed kidnapping of Jimmy Coralis - very great weight; during the course of a robbery and for pecuniary gain, merged- great weight; and cold, calculated and premeditated (CCP) - great weight. (R. 460-68) The trial court found no statutory mitigating circumstances. (R. 469-72) The trial court found three non-statutory mitigating circumstances: Defendant's hearing loss - minimal weight; Defendant's migraine headaches - minimal weight; and Defendant stopping an altercation between Raul and Marisol Coto - minimal

weight. (R. 473-78) The trial court also imposed a life sentence for the armed robbery, to be served consecutively to all other sentences in this case and all other cases. (R. 478, 483-85)

SUMMARY OF THE ARGUMENT

Double jeopardy does not bar retrial after reversal of a conviction on appeal. Thus, there was no double jeopardy violation here.

The trial court did not abuse its discretion in denying Defendant's motion for mistrial based upon the State's question to Ms. Casanova. The trial court sustained the objection, gave a curative instruction and the issue was not mentioned again by the State.

Any issue regarding the question about Ms. Dominguez was not preserved. Further, Defendant opened the door to the question by claiming that he was not violent.

Defendant did not preserve the issues claimed regarding the sufficiency of the evidence. Moreover, the evidence was sufficient to show that Defendant robbed and killed Ms. Novick and that the killing was premeditated. The trial court also properly applied CCP, and the sentence is proportional.

The claim that Paulette Johnson was allegedly killed in the same manner as Ms. Novick was not preserved. Moreover, Defendant never proffered any evidence to show that the requisite similarities existed between this case and the alleged killing of

Ms. Johnson.

The trial court properly permitted Defendant to represent himself as his waiver of counsel was voluntary. Further, the claim that counsel was ineffective at the penalty phase is not cognizable, waived and meritless.

ARGUMENT

I. DEFENDANT'S CLAIM THAT HIS RETRIAL IS BARRED BY DOUBLE JEOPARDY IS WITHOUT MERIT.

Defendant first contends that his retrial should have been barred by double jeopardy because this matter had previously been reversed because of prosecutorial misconduct. However, this claim is without merit.

As early as 1896, the United State Supreme Court ruled that a reversal of a conviction on direct appeal did not create a double jeopardy bar to retrial. *United States v. Ball*, 163 U.S. 662 (1896). In *Burks v. United States*, 437 U.S. 1 (1978), the Court recognized a limited exception to this general rule and held that retrial was barred by double jeopardy where the appellate court reversed because of the insufficiency of the evidence. Even in recognizing this limited exception, however, the Court reaffirmed that double jeopardy would not bar retrial if the reversal was caused by prosecutorial misconduct. *Id.* at 15. Indeed, even *Oregon v. Kennedy*, 456 U.S. 667 (1982), the cases relied upon by Defendant, the Court stated "[i]f a mistrial were in fact warranted under the applicable law, of course, the defendant could in many instances successfully appeal a judgment of conviction on the same grounds that he urged a mistrial, and the Double Jeopardy Clause would present no bar to retrial." *Id.* at 676. As such, the trial court would have properly denied a motion to dismiss based on a double jeopardy violation, had one been raised. The conviction

should be affirmed.

The cases relied upon by Defendant do not support his argument. The courts rejected the defendants' double jeopardy claims in all of them. *Fugitt v. Lemacks*, 833 F.2d 251 (11th Cir. 1987); *Ruiz v. State*, 743 So. 2d 1 (Fla. 1999); *Keen v. State*, 504 So. 2d 396 (Fla. 1987), *overruled on other grounds by Owen v. State*, 596 So. 2d 985 (Fla. 1992). As such, they do not support Defendant's assertion that retrial should have been barred here.

II. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING A MOTION FOR MISTRIAL BASED UPON A QUESTION ASKED TO JESSIE CASANOVA.

Defendant next contends that the trial court abused its discretion in refusing to grant a mistrial based upon a question asked of Jessie Casanova. However, "[a] motion for mistrial is addressed to the sound discretion of the trial judge and '. . . should be done only in cases of absolute necessity.'" *Ferguson v. State*, 417 So. 2d 639, 641 (Fla. 1982)(citing *Salvatore v. State*, 366 So. 2d 745, 750 (Fla. 1978), *cert. denied*, 444 U.S. 885 (1979)). Here, there was no necessity, and the trial court did not abuse its discretion in denying the motion.

During the direct examination of Jessie Casanova, the State asked Ms. Casanova about the nature of her relationship with Defendant. (T. 1278) The trial court sustained an objection to this question and instructed the jury to disregard it. (T. 1279-82) The State did not mention this further. Instead, Defendant himself

repeatedly informed the jury of his affair with Ms. Casanova. (T. 1825-26, 1982, 2075-79) Given the brief nature of this comment and the curative instruction given by the trial court, there was no absolute necessity for a mistrial, and the trial court did not abuse its discretion in refusing to grant one.

III. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN PERMITTING THE STATE TO IMPEACH DEFENDANT'S CLAIM THAT HE WAS A NONVIOLENT PERSON.

Defendant next asserts that the trial court abused its discretion in permitting the State to question Defendant about a series of women during the penalty phase and in precluding Defendant from discussing the failure to introduce further evidence about these women. However, this issue was not preserved. Moreover, Defendant opened the door to these questions during the penalty phase by claiming to be nonviolent. The trial court also properly refused to permit Defendant to comment on the failure to present these women as the trial court had precluded the State from doing so.

During Defendant's penalty phase testimony, Defendant claimed that he was not a violent person. (T. 3134) On cross examination, the State asked whether a number of named women would agree that he was not violent. (T. 3144-47) Defendant did not object to the mention of Ms. Dominguez. (T. 3144) Instead, Defendant waited until the State mentioned a second woman, Teresa Warren, and then objected on the grounds that the State had no basis for its

questions and that it assumed facts not in evidence. (T. 3145) Defendant now claims that the questions elicited improper *Williams* rule evidence. As this was not the basis of the objection in the trial court, this issue is not preserved. *Steinhorst v. State*, 412 So. 2d 332, 338 (Fla. 1982)(objection must be based on same grounds raised on appeal for issue to be preserved).

Even if the issue had been preserved, the questions were proper. Defendant had claimed that he was not a violent person. (T. 3134) This opened the door to questioning about other acts of violence he had committed, as the trial court ruled. (T. 3202) *Jackson v. State*, 530 So. 2d 269 (Fla. 1988); *Smith v. State*, 515 So. 2d 182 (Fla. 1987); *Collier v. State*, 681 So. 2d 856 (Fla. 5th DCA 1996)

In *Washington v. State*, 362 So. 2d 658, 666-67 (Fla. 1978), this Court was confronted with a similar situation. There, the defendant asserted that he did not have a significant history of prior criminal activity. The trial court rejected this claim based upon testimony regarding crimes for which he had not been convicted. This Court found that the admission of such evidence was proper rebuttal. *See also Walton v. State*, 547 So. 2d 622, 625 (Fla. 1989)(same). Here, Defendant claimed as mitigation that he was not a violent person. As such, the trial court properly permitted the State to question Defendant about Ms. Dominguez and the other women, since the State had evidence that Defendant had

stabbed, choked, raped and robbed Ms. Dominguez. (T. 3188-89)

Defendant also appears to contend that the trial court realized it had erred in permitting the questions but refused to take any corrective action. However, the record reflects that what occurred was that the State sought to present Ms. Dominguez as a rebuttal witness. (T. 3164) Defendant objected on the grounds that Ms. Dominguez had not testified during the trial in the Roark case, had spoke to the media, had been in the courtroom and was not present to testify when Defendant rested his case. (T. 3164-75, 3185) The trial court considered argument and a proffer of Ms. Dominguez's testimony and found that Defendant had opened the door but that the evidence was unduly prejudicial. (T. 3185-3200) as such, the trial court precluded the State from introducing her testimony. (T. 3200)

The trial court initially offered to give the jury an instruction regarding the questions about the women. (T. 3200) However, the State objected on the grounds that the trial court had found the questions proper and that an instruction would imply that the State had acted improperly, and the trial court decided not to give an instruction. (T. 3200-03) The State then moved in limine to prevent Defendant from commenting on the failure to call Ms. Dominguez in closing. (T. 3200, 3203) After hearing argument, the trial court determined that it would preclude reference to Ms. Dominguez in closing. (T. 3203-08) Under these circumstances, the trial court's ruling struck the proper balance between the parties

and was not error. *See Haliburton v. State*, 561 So. 2d 248 (Fla. 1990)(unless party has particular ability to produce witness, other side may not comment on the failure to call the witness).

Further, even if the trial court had erred in permitting the questions, any error was harmless. *State v. Diguilio*, 491 So. 2d 1129 (Fla. 1986). The State's questioning did not reveal the nature of Defendant's other criminal activity, were brief and were not addressed in closing. The jury had already heard of the crimes Defendant committed against Ms. Novick, Ms. Roark, Ms. Coralis and her son. The jury had also heard that Defendant had been violent toward his own mother and brother. (T. 3149) They knew that he had been sexually aggressive toward Ms. Fernandez when she was young. (T. 3092-95) As such, no reasonable person would have believed that Defendant was not a violent person regardless of any questions about Ms. Dominguez. Moreover, Ms. Novick was killed during a robbery, for pecuniary gain and in a cold, calculated and premeditated manner. No evidence of any statutory mitigating factors was presented, and the evidence in support of alleged nonstatutory mitigation was extremely weak. As such, the questions regarding Ms. Dominguez did not affect the determination that death was an appropriate sentence in this matter.

IV. THE TRIAL COURT PROPERLY DENIED DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL, WHERE THE EVIDENCE WAS SUFFICIENT TO PROVE THAT DEFENDANT COMMITTED BOTH FIRST DEGREE MURDER AND ARMED ROBBERY.

Defendant next asserts that the evidence was insufficient to prove that he robbed and killed Ms. Novick. Defendant contends that the evidence was not inconsistent with his hypothesis that Ms. Novick was killed by men with whom she had left on an escort assignment. However, this issue is unpreserved and meritless.

In order to preserve a claim that the evidence was insufficient, a defendant must move for judgment of acquittal on the grounds asserted on appeal. *Woods v. State*, 733 So. 2d 980, 984-85 (Fla. 1999); *Archer v. State*, 613 So. 2d 446, 447-48 (Fla. 1993). Here, Defendant moved for a judgment of acquittal but did so on the grounds that the *Williams* rule evidence had become a feature of the case. (T. 1731-35) Now, Defendant contends that the evidence was insufficient to rebut his hypothesis of innocence. As this was not the grounds raised below, this issue is not preserved.

Even if the issue had been preserved, it is meritless. The State presented evidence, and Defendant admitted, that he was with Ms. Novick at the Redlands Tavern between 9:00 p.m. and 10:00 p.m. on the night she was killed. (T. 1115-21, 1216-1225, 1227, 1367-68) At that time, Defendant had been asked to leave the Coto home and no longer had access to Ms. Latsinger's car. (T. 1240-46) Ms. Novick was seen leaving the bar and driving away with Defendant.

(T. 1117-21, 1221, 1368-72) Between 10:00 p.m. and 11:00 p.m., Ms. Novick's car was seen parked in the area where her body was found. (T. 1248, 1258, 1055, 1061, 1302-04, 1229-32) Defendant was seen with the car in this location around 2:00 a.m. (T. 1266-67, 1284-89) The medical examiner determined that Ms. Novick died from manual strangulation and a stab wound to her chest between 9:30 that night and 1:30 the following morning. (T. 1096, 1098)

Around 3:00 a.m., Defendant picked up David Restrepo in Ms. Novick's car and drove with him to a strip club, where they were seen by Mark Joi, the club's bouncer who had known Defendant since he was a teenager. (T. 1131-33, 1327-31) Defendant then wrecked the car and told Mr. Restrepo that the car was stolen. (T. 1140-43) In the car, Ms. Novick's credit cards, driver's license, jewelry and cigarette case were found, as well as Defendant's power of attorney. (T. 1340-44, 1351-54)

When Defendant was questioned by the police after his arrest, he denied knowing Ms. Coralis or having ever been a passenger or driver of a Corvette. (T. 1693-95, 1697) Before Defendant had been told that Ms. Novick had been murdered or how she had been murdered, Defendant asked not to be shown any gory photographs of her. (T. 1698) Upon seeing a photograph taken when Ms. Novick was alive, Defendant started to cry and stated that if had been responsible for her murder, he deserved the death penalty. (T. 1700-01)

Moreover, Defendant killed Susan Roark, who was approximately

the same height, weight and age as Ms. Novick. Defendant took Ms. Roark's car and jewelry and left her body in a similar rural area used for dumping trash. Defendant also attempted to kill Tina Coralis, who again was approximately the same height, weight and age as Ms. Novick, by strangling and stabbing her. Defendant again took his victim's car and jewelry and left Ms. Coralis for dead near where he had dumped Ms. Novick's body. As this evidence was sufficient to show that Defendant robbed Ms. Novick of her car and other property and killed her, the trial court properly denied Defendant's motion for judgment of acquittal. *Finney v. State*, 660 So. 2d 674 (Fla. 1995); *Jones v. State*, 652 So. 2d 346 (Fla. 1995).

Defendant contends that the State did not rebut his reasonable hypothesis of innocence. However, to survive a motion for judgment of acquittal, "the state is not required to 'rebut conclusively every possible variation' of events, but only to introduce competent evidence which is inconsistent with the defendant's theory of the events. Once that threshold burden is met, it becomes the jury's duty to determine whether the evidence is sufficient to exclude every reasonable hypothesis of innocence beyond a reasonable doubt." *State v. Law*, 559 So. 2d 187, 189 (Fla. 1989).

Here, the alleged reasonable hypothesis of innocence presented by Defendant was that he and Ms. Novick met at the bar, as they usually did when she was working for him as an escort. (T. 1823-25) Defendant asserted that he and Ms. Novick proceeded to the strip

club, where they met Tina Coralis, Ana Fernandez and another girl, possibly Paulette Johnson. (T. 1880-88) According to Defendant, Mr. Joi assisted him by keeping three customers of his escort business busy while he found girls to accompany them. (T. 1881-88) Defendant claimed that Ms. Novick, Ms. Coralis and the other girl then left with the three men for an escort assignment and that Ms. Novick gave him her car to use. (T. 1890-91) Defendant alleged that he spoke to Ms. Novick the morning after she was murdered. (T. 1923-24, 1931-35) As such, Defendant asserted that she was killed either by the three men or by the person who picked her up from the escort assignment.

The State presented ample evidence that was inconsistent with this claim. While Defendant claimed that he regularly met Ms. Novick at the Redlands Tavern, Curtis Roberson, who frequented the bar, testified that they had never seen them there. (T. 1823-25, 1218-19) Mark Joi testified that only one person was with Defendant at the strip club; not the group Defendant claimed to be with. (T. 1327-31) Tina Coralis testified that she never met Robyn Novick.(T. 1585, 1593) Ana Fernandez stated that she was in the hospital giving birth on the night in question; not at a meeting in the strip club. (T. 2267-68) While Defendant asserted that he had Ms. Novick’s permission to use the car, he told Mr. Restrepo that the car was stolen at the time of the accident. (T. 1143) Further, the medical examiner placed Ms. Novick’s time of death between 9:30 p.m. and 1:30 a.m. (T. 1083) As such, she could not have spoken to

Defendant the following morning, as Defendant claimed. Moreover, Defendant's knowledge that photographs of Ms. Novick taken after he death would be gory and his reaction to seeing a picture of her taken before she was killed before he was told of her death is also inconsistent with his claim that he did not see her after dropping her off at the strip club. (T. 1698-1702) As the State presented evidence to contradict Defendant's story, the trial court properly denied Defendant's motion for judgment of acquittal.

Instead of addressing the evidence presented, Defendant discusses evidence that was not presented and inferences from the evidence that were favorable to him. However, in ruling on a motion for judgment of acquittal, a court is required to look at the evidence presented and all inferences therefrom in the light most favorable to the State. *Spinkellink v. State*, 313 So. 2d 666, 670 (Fla. 1975).

Moreover, Defendant ignores the evidence in making his claims. First, Defendant asserts that he only had from 9:30 p.m. to 10:00 or 11:00 p.m. to have killed Ms. Novick because he was at the Coto residence with Ms. Novick's car by that time. However, the evidence showed that the car was seen at the residence between 10:00 and 11:00 p.m. but that Defendant was not seen with the car until 2:00 a.m. (T. 1248, 1258, 1286-87) Further, the area were Ms. Novick's body was found was only a few hundred feet from the area where the car was seen. (T. 1320-23) As such, Defendant actually had from

9:30 p.m. to 2:00 a.m. to commit the murder, which covered the entire period in which the medical examiner estimated that death occurred. Moreover, Defendant was not at the strip club until after 3:00 a.m. (T. 1131-33) Thus, the time of death does not show that the alleged escort clients could have killed Ms. Novick.

Defendant also appears to claim that evidence of his alleged innocence was lost because of preindictment delay. Defendant claims that records of telephone calls he allegedly made on a cellular phone in Ms. Novick's car would have supported his claim that Ms. Novick was working for him as an escort on the night of her murder had been destroyed by the time of his 1995 trial. However, the issue was not preserved. Defendant did not move to dismiss the indictment on these grounds prior to trial. Defendant did claim preindictment delay in his motion for new trial. (R. 433-41) However, the basis of this claim was not the loss of evidence. As such, this issue is unpreserved. *Steinhorst v. State*, 412 So. 2d at 338.

Even if the claim had been preserved, it would still have properly been denied. In *Rogers v. State*, 511 So. 2d 526, 531, this Court outlined the test to be applied to claims of preindictment delay:

> When a defendant asserts a due process violation based on preindictment delay, he bears the initial burden of showing actual prejudice.. . . If the defendant meets this initial burden, the court then must balance the demonstrable reasons for delay against the

> gravity of the particular prejudice on a case-by-case basis. The outcome turns on whether the delay violates the fundamental conception of justice, decency and fair play embodied in the Bill of Rights and fourteenth amendment.

Here, the indictment was filed on March 21, 1990, approximately two years after the crime. (R. 1-3) Defendant has not even alleged that the purported phone records could not have been obtained at that time. Instead, Defendant has claimed that the records were unavailable years later but has not even substantiated this claim with any documentation that the alleged phone records had been destroyed. As such, Defendant has not carried his burden of establishing actual prejudice and any motion he might have made regarding this issue would have properly been denied.

Next, Defendant claims that the State failed to preserve potentially exculpatory evidence. The evidence consists of a white fluid found in Ms. Novick's vagina during her autopsy. However, this issue is unpreserved. During a pretrial hearing, Defendant stated that he wished to raise a motion to dismiss on the ground that the evidence had not been preserved. (T. 203) However, the motion was never actually made. As such, this issue is not preserved. *Castor v. State*, 365 So. 2d 701 (Fla. 1978).

Moreover, the issue is meritless. To prevail on a claim that the State failed to preserve evidence, a defendant must show that the police acted in bad faith in failing to do so. *Arizona v. Youngblood*, 488 U.S. 51 (1988); *Merck v. State*, 664 So. 2d 939, 942

(Fla. 1995); *Kelley v. State*, 569 So. 2d 754, 756 (Fla. 1990). Here, there was no evidence presented regarding the alleged loss of this evidence or the circumstance of the alleged loss. As such, Defendant did not show that the State acted in bad faith in failing to preserve the evidence, and any motion to dismiss the indictment on these ground would have properly been denied if it had been made[3].

Defendant also appears to contend that the evidence of the Roark Murder and the Coralis attack were improperly admitted. Again, this issue was not preserved. Defendant decided that the ruling on the *Williams* rule evidence issued before the first trial was correct and did not relitigate the issue. As such, this issue is not preserved. *Waterhouse v. State*, 596 So. 2d 1008, 1016 (Fla. 1992).

Even if the issue had been preserved, it was meritless. In *Gore v. State*, 599 So. 2d 978, 983-84 (Fla. 1992), this Court addressed the similarity of the Coralis and Roark cases:

> Similar fact evidence is generally admissible, even though it reveals the commission of another crime, as long as the

[3] Moreover, the record reflects that the State did have the evidence tested, had provided a copy of the report of the testing in 1992 and provided another copy of the report pretrial. (R. 266, T. 11-12) The report does not appear to support Defendant's claim that this substance was the result of Ms. Novick's alleged work as an escort. The report shows that vagina swabs and smears were tested for the presence of semen with negative results. A motion to supplement the record with a copy of this report has been filed simultaneously with the filing of this brief.

evidence is relevant to a material fact in issue and is not admitted solely to show bad character or criminal propensity. *Williams v. State*, 110 So. 2d 654, 662 (Fla.), *cert. denied*, 361 U.S. 847, 80 S. Ct. 102, 4 L. Ed. 2d 86 (1959). Here, the State submitted evidence of the crimes committed against Tina Corolis in an effort to establish the identity of Roark's murderer, as well as to show Gore's intent in accompanying her that evening.

Gore argues that this case is comparable to *Drake v. State*, 400 So. 2d 1217 (Fla. 1981), in that the collateral crime is not sufficiently similar to the crime at issue and the claimed similarities are not unique enough to qualify as evidence of identity. In *Drake*, the only similarity between the murder for which Drake was being tried and the collateral evidence of two sexual assaults was that in each case the victim's hands were bound behind her back and the victim had left a bar with the defendant. In rejecting the collateral crimes evidence as evidence of the identity of the murderer, we noted that "[a] mere general similarity will not render the similar facts legally relevant to show identity. There must be identifiable points of similarity which pervade the compared factual situations." *Id.* at 1219.

We find that the Corolis crime does have the required pervasive similarities. The significant common features of the two crimes include the following: The victim was a small female with dark hair; Gore introduced himself as "Tony"; he had no automobile of his own; he was with the victim for a lengthy amount of time before the attack began; he used or threatened to use binding; the attack had both a sexual and pecuniary motive; the victim suffered trauma to the neck area; Gore transported the victim to the site of the attack in the victim's car; the victim was attacked at a trash pile on a dirt road, where the body was then left; Gore stole the victim's car and jewelry; he pawned the jewelry shortly after the theft; he fled in the victim's automobile, leaving the state where the victim was apprehended and staying

with a friend or relative for a period of time after the crime; and he represented the car to be a gift or loan from a girlfriend or relative.

Gore argues that there are dissimilarities between the two incidents as well. In cases where there are significant dissimilarities between the collateral crime and the crime charged, the evidence tends to prove only two things--propensity and bad character--and is therefore inadmissible. *See, e.g., Peek v. State*, 488 So. 2d 52, 55 (Fla. 1986); *Drake*, 400 So. 2d at 1219. Here, however, the similarities are pervasive, and the dissimilarities insubstantial. This Court has never required the collateral crime to be absolutely identical to the crime charged. The few dissimilarities here seem to be a result of differences in the opportunities with which Gore was presented, rather than differences in modus operandi. *See Chandler v. State*, 442 So. 2d 171, 173 (Fla. 1983). For example, the most significant difference between the two crimes--that Roark was murdered while Corolis was not--seems to be more of a fortuitous circumstance than a reflection of Gore's intent in the Corolis crime, since he beat her, stabbed her, and left her for dead in an isolated area.

Gore also argues that the similar features of the two crimes are not sufficiently unique to serve as evidence of identity. *See Drake*, 400 So. 2d at 1219 (similar features of the crimes, binding of the victim's hands and meeting the victim at a bar, "not sufficiently unusual to point to the defendant in this case," and therefore irrelevant to prove identity). However, this Court has upheld the use of evidence of a collateral crime where the common points, when considered in conjunction with each other, establish a pattern of criminal activity which is sufficiently unique to be relevant to the issue of identity. *Chandler*, 442 So. 2d at 173. While the common points between the Corolis assault and the Roark murder may not be sufficiently unique or unusual when considered individually, they do establish a

> sufficiently unique pattern of criminal activity when all of the common points are considered together. The cumulative effect of the numerous similarities between the two crimes is the establishment of a unique modus operandi which points to Gore as the perpetrator of the Roark homicide. We find no error in the admission of evidence of Gore's attack on Corolis.

Most of the same similarities this Court noted between the Roark and Coralis cases are also present in this case. Ms. Novick was also a small woman. Defendant did not have a car of his own since Ms. Latsinger had just revoked her permission for Defendant to use her car. Defendant was with Ms. Novick for a period of time before she was killed. A binding was found on the body. Ms. Novick had trauma to her neck. Defendant took Ms. Novick to the area in her car and the area was a trash pile on a dirt road. He stole Ms. Novick's car and jewelry. Defendant initially claimed to have gotten the car from a girlfriend.

While Defendant here did not pawn Ms. Novick's jewelry or leave the State, this appears to have been "more of a fortuitous circumstance than a reflection of [Defendant's] intent." *Id.* at 984. Defendant wrecked Ms. Novick's car shortly after her murder and left the jewelry in the car. The police were at the scene of the accident almost immediately after the accident. As such, Defendant was unable to pawn the jewelry and use the car to flee. Given the fact that this matter shares the same similarities and minimal differences as the Roark and Coralis cases, the trial court

would properly have ruled the *Williams* rule evidence under *Gore*.

Further, this evidence did not become a feature of the case. The State presented 17 witnesses regarding the Novick case[4]. The witnesses presented regarding the Roark and Coralis cases was limited to those necessary to show the similarities between the cases. As this Court relied on the number of similarities between the crimes in order to find the evidence admissible, it was necessary for the State to present evidence of these similarities. Further, every time any evidence about the Roark or Coralis case was admitted, the trial court instructed the jury on the proper use of *Williams* rule evidence at Defendant's request. (T. 1053, 1129, 1233, 1271-74, 1323-24, 1366, 1405, 1417, 1432, 1440-41, 1523, 1539-40, 1557-58, 1567, 1605, 1616, 1662-63, 1678, 1691-92) As such, the trial court properly found that the *Williams* rule evidence had not become a feature of the case. *Schwab v. State*, 636 So. 2d 3, 7 (Fla. 1993).

V. THE TRIAL COURT PROPERLY DENIED DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL, WHERE THERE WAS SUFFICIENT EVIDENCE OF PREMEDITATION.

Defendant next contends that the trial court erred in denying his motion for judgment of acquittal, claiming that there was

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[4] Ten witnesses discussed the Novick case exclusively. Shipes - T.1051, Mittleman - T. 1064, Williams - T-1112, Restrepo - T. 1125, Torres - T. 1172, Roberson - T. 1216, Joi - T. 1326, Avery - T. 1334, Robkin -T. 1349, Decora - T. 1357. Seven other witnesses testified about this case and mentioned the others. Latsinger - T. 1229, Casanova - T. 1266, Lowery - T. 1319, McGee - T. 1394, Simmons - T. 1671, Foust - T. 1608, McGinty - 1599.

insufficient evidence of premeditation. In making this claim, Defendant confuses the level of premeditation necessary to sustain a conviction of first degree premeditated murder with that necessary to sustain a finding of CCP. Moreover, the claim is unpreserved and meritless.

Defendant did not move for a judgment of acquittal because the evidence of premeditation was insufficient. (T. 1731-43) As such, this issue in not preserved. *Woods v. State*, 733 So. 2d 980, 984-85 (Fla. 1999); *Archer v. State*, 613 So. 2d 446, 447-48 (Fla. 1993).

Even if the issue had been preserved, it is meritless. As this Court has stated:

> Premeditation is a fully formed conscious purpose to kill that may be formed in a moment and need only exist for such time as will allow the accused to be conscious of the nature of the act about to be committed and the probable result of that act. *Asay v. State*, 580 So. 2d 610, 612 (Fla.), *cert. denied*, 502 U.S. 895, 112 S. Ct. 265, 116 L. Ed. 2d 218 (1991); *Wilson v. State*, 493 So. 2d 1019, 1021 (Fla. 1986). Whether a premeditated design to kill was formed prior to a killing is a question of fact for the jury that may be established by circumstantial evidence. 580 So. 2d at 612; 493 So. 2d at 1021. Where there is substantial, competent evidence to support the jury verdict, the verdict will not be reversed on appeal. *Cochran v. State*, 547 So. 2d 928, 930 (Fla. 1989). Moreover, the circumstantial evidence rule does not require the jury to believe the defendant's version of the facts when the State has produced conflicting evidence. *Id.*
>
> Premeditation may be established by circumstantial evidence, including the nature of the weapon used, the presence or absence of adequate provocation, previous difficulties

> between the parties, the manner in which the homicide was committed, and the nature and manner of the wounds inflicted.

Spencer v. State, 645 So. 2d 377, 381 (Fla. 1994).

Here, Defendant both stabbed and strangled Ms. Novick to death. (T. 1096) The strangulation was accomplished by wrapping a belt Ms. Novick had been wearing earlier around her neck and pulling it until it crushed a cartilage in her neck. (T. 1092) There were two stab wounds in the center of Ms. Novick's chest. (T. 1079, 1086) The larger stab wound was three and three quarters inches deep, penetrating the heart and lung. (T. 1090) As such, it is clear that he intended to kill Ms. Novick. There were no defensive wounds on Ms. Novick's body and evidence that she was bound. (T. 1079) The people who saw Defendant and Ms. Novick together before her murder indicated that there appeared to be no hostility between them. As such, there was no evidence that Ms. Novick resisted or provoked Defendant. Further, Defendant had already killed Ms. Roark in a similar manner and knew what the consequences of these actions were. As such, the evidence was sufficient to show that Defendant killed Ms. Novick from a premeditated design. *See Crump v. State*, 622 So. 2d 963, 971 (Fla. 1993)(sufficient evidence of premeditation, where defendant hit and strangled bound victim and had engaged in a pattern of similar crimes); *Holton v. State*, 573 So. 2d 284, 289-90 (Fla. 1990)(sufficient evidence of premeditation, where victim died from

ligature strangulation).

Defendant did not offer any reasonable hypothesis of innocence regarding premeditation below and has not done so here. Instead, Defendant refers this Court to *Fisher v. State*, 715 So. 2d 950 (Fla. 1998), *Cummings v. State*, 715 So. 2d 944 (Fla. 1998) and *Thompson v. State*, 647 So. 2d 824 (Fla. 1994). However, none of these cases show that Defendant lacked premeditation in this case.

In *Fisher* and *Cummings*, the defendants shot into a home where a person who had been in a fight with one of them earlier stayed. One of the bullets entered the home and killed a child. The Court found that the firing of the bullets at the house may have been merely to frighten the occupant with whom one of the defendants had fought or to damage that person's property. Here, Defendant removed Ms. Novick's belt, wrapped it around her neck, pulled it with great force and stabbed Ms. Novick twice in the chest. He had previously killed Ms. Roark in a similar manner and therefore knew that this would kill his victim. As such, it is not possible that Defendant was merely attempting to frighten Ms. Novick or damage her property.

In *Thompson*, the Court did not even address the issue of the sufficiency of the evidence of premeditation necessary to sustain a conviction for first degree murder. Instead, the Court addressed the issue of the heightened premeditation necessary to sustain a finding of CCP. As this Court has previously noted, the heightened

premeditation necessary to sustain a finding of CCP is not necessary to sustain a conviction for first degree murder. *Valdes v. State*, 728 So. 2d 736, 738 (Fla. 1999)[5]. As such, this case is inapplicable.

Moreover, Defendant's conviction for first degree murder should not be vacated, even if this Court finds the evidence of premeditation was insufficient. Ms. Novick was killed while Defendant was robbing her of her car, jewelry and credit cards. As such, the conviction for first degree murder could still be sustained under a felony murder theory. *See Mungin v. State*, 667 So. 2d 751 (Fla. 1995).

VI. THE TRIAL COURT PROPERLY FOUND THAT THE MURDER WAS COLD, CALCULATED AND PREMEDITATED.

Defendant next asserts that the trial court erred in finding that the cold, calculated and premeditated (CCP) aggravating factor applied. However, the trial court applied the correct law and its factual findings are supported by the record. As such, it should be affirmed. *Willacy v. State*, 696 So. 2d 693, 695 (Fla. 1997); *see also Cave v. State*, 727 So. 2d 227, 230 (Fla. 1998), *cert. denied*, 1999 WL 73704 (U.S. 1999).

Here, the trial court's findings with regard to CCP were:

> The State has proven beyond a reasonable doubt that the murder of Robyn Gayle Novick was committed in a cold, calculated and

[5] The issue of whether the evidence was sufficient to sustain the finding of CCP will be discussed in issue VI, *infra*.

premeditated manner without any pretense of moral or legal justification.

The requisite heightened premeditation is clearly present. The evidence established that the Defendant targeted young, attractive women who drove new sporty automobiles. Robyn Gayle Novick was twenty years old when she was murdered by Defendant. Ms. Novick was 5'3" and weighed eighty-five pounds and drove a yellow Corvette. Susan Roark was a 5'0", ninety-pound nineteen year-old driving a black Mustang when the Defendant, a blind date, murdered her. Tina Corolis was also a small, thin woman and was the oldest of the Defendant's victims. She was twenty-one years old and had just purchased a brand-new red sporty model Toyota within a day of the Defendant's attack upon her.

Susan Roark went out with the Defendant, a blind date, in Cleveland, Tennessee on January 30, 1988 and was never seen again. The Defendant stabbed Ms. Roark to death, took her car and drove to Florida, dumping Ms. Roark's body just north of Gainesville. The Defendant then continued on to Miami, stopping on the way in Tampa to pawn Ms. Roark's jewelry. When the Defendant arrived in Miami, he had no place to stay, so Rosa Lastra [sic] allowed him to stay in her house. The Defendant continued to use Ms. Roark's car until he crashed it and abandoned it on February 14, 1988.

Ms. Lastra [sic] let the Defendant use her car after he crashed the Mustang. On March 10, 1988, however, they argued and she told the Defendant that he could no longer stay at her house or use her car. The Defendant therefore, went in search of another car. This is when the Defendant decided to take Robyn Novick's fancy yellow Corvette. While theft of a vehicle was one of the motivating factors, it was clearly not the Defendant's sole plan. Had he just wanted a car, he could have stolen one. Instead, he decided to kill. We know, from the evidence surrounding the murder of Robyn Novick, that he intended to kill her when he went out with her that night and we know this based upon his actions in the Susan Roark case and Tina Corolis case.

The circumstances surrounding the murder of Robyn Novick include the fact that the Defendant no longer had access to a vehicle and had no place to stay. When the Defendant picked up Ms. Novick at a tavern in the Redlands and took her to a rural deserted area nearby he was armed with a knife, the same instrument he used to murder Susan Roark and he used to attempt to murder Tina Corolis. While Robin Novick was stabbed and strangled to death, she had no defensive wounds, indicating a well-thought-out attack, taking the victim either totally by surprise, or holding her at knife-point until the Defendant was able to either incapacitate her or render her defenseless as he murdered her. The field/grove area he took Ms. Novick to was an area which was unpopulated, deserted, overgrown and the home of animal predators. This specific area was one the Defendant was familiar with since he lived only blocks away, and one which he reasonably believed would hide the body until nature, insects and other predators would erase any identifying evidence of the victim. It must be remembered that the Defendant had already killed Susan Roark and had dumped her body in a similar location two and a half months earlier and she had not been found. When Ms. Roark's body <u>was</u> discovered, she had essentially been reduced to bones and mummified skin on her back and was identified only through dental records. Clearly, the longer it took for the body to be found, the more distance the Defendant would have been able to place between him and the victim and the less likelihood that the police would be able to determine the cause and manner of death as well as the perpetrator.

All of Ms. Novick's clothes had been removed and were not located even after the body was found, thereby exposing the body further to the elements. This fact also shows thought and planning, especially when the Defendant did the exact same thing to Susan Roark and Tina Corolis.

The evidence surrounding the murder of Susan Roark and the attempted murder of Tina Corolis also supports a finding of heightened premeditation. The Defendant used the same

modus operandi in all three cases. The murder of Susan Roark preceded that of Robyn Novick. The Defendant therefore knew from experience that his plan could be executed and he had learned from the Roark murder that he could avoid detection, use the victim's vehicle openly and with impunity without being caught. After killing Susan Roark, the Defendant was actually stopped in Ms. Roark's car, was issued a citation and was not held, questioned or otherwise treated as a suspect.

We also know that when the Defendant wrecked Ms. Novick's Corvette later that evening, he sought out Tina Corolis, another young, tiny, pretty woman with a new fancy car; lured her to a deserted area, abducted her, took her to the same area he had left Ms. Novick's body, sexually assaulted her, stabbed her, strangled her, and left her for dead. The fact that he used the same plan, same strategy and same execution demonstrates that the Defendant was not acting on impulse, but instead upon a well-thought-out plan, a plan he had used successfully before and used again days later.

The attempted murder of Tina Corolis just days after the murder of Robyn Novick in fact provides us with a window into the murder of Ms. Novick, since the Defendant used the sam modus operandi and Ms. Corolis did not die and could tell us exactly how the Defendant committed these crimes. She testified how the Defendant was smooth and charming and so easily able to gain the trust of the women he was with, even when they hardly knew him. She explained how he was able to lead his victims into a deserted area where he could make his move undetected and where the victim would be unable to summon help. In her case, he made her drive all over town until he directed her to a deserted rock pile. He then exited the car under the pretense that he had to relieve himself. After he exited the car, he armed himself with a knife he had brought with him, returned and held the knife to Tina Corolis' throat. The Defendant then ordered Ms. Corolis to the same deserted rural area in the Redlands where he had taken Robyn Novick. Once there, he sexually assaulted her and then

dragged her out of the car at knife point. After removing Tina Corolis from her vehicle, he savagely attacked her, hit her in the head with a rock, strangled her and stabbed her in the throat.

What we know of Robyn Novick's death reflects the same or similar chain of events. Ms. Novick went with the Defendant willingly. When they left the Redlands Tavern at 9:00 or 9:30, Robyn Novick was driving. They went almost immediately, stopping first to get gas, to the area in the Redlands where Ms. Novick's body was found and Ms. Corolis was found. We know this because Rosa Lastra [sic] saw the yellow Corvette parked near her house at round 10:00 or 11:00. The Defendant's actual attack of Ms. Novick, however, took place outside the vehicle so the Defendant obviously forced or dragged Ms. Novick out of her car at knife-point as he did Tina Corolis and almost certainly did Susan Roark. We can reasonably conclude this since Ms. Novick was stabbed in the chest but no blood was found in her car. Ms. Roark was stabbed in the chest and no blood was found in her car, and Ms. Corolis was stabbed in the neck but no blood was found in her car and she told us the Defendant dragged her out of the car and then attacked her.

What these facts reflect is a well thought-out plan or modus operandi in which the Defendant targeted small, young, pretty women with new sporty cars. The Defendant selected his women for slaughter as carefully as he selected the types of cars he wished to possess. He lured them to deserted areas, stabbed and strangled them, discarded their bodies, took their jewelry and their cars and continued to use their cars until they were no longer operable.

The Defendant's actions clearly exhibit heightened premeditation. The facts surrounding the killing of Robyn Gayle Novick also reflect that "the killing was the product of coll and calm reflection and not an act prompted by emotional frenzy, panic, or a fit of rage," as is required pursuant to Jackson v. State, 19 FLW S 215 (Fla., April 21, 1994).

The Defendant did not panic or act

hastily and attack any of these women in their cars. This would have made the attacks much more difficult to commit due to the confining nature of a vehicle. To attack the victim in the car would also almost certainly have left physical evidence of foul play in the car and also would have "spoiled" the Defendant's enjoyment of his new and flashy acquisitions by leaving unsightly stains. The Defendant, therefore, acted calmly and with deliberation when he removed each victim from her vehicle prior to stabbing her.

There is no evidence to suggest any of the victim resisted or struggled with the Defendant. Tina Corolis testified that she did not, and there was no defensive wounds on her body. Robyn Novick's body had no defensive wounds. Susan Roark's body was too decomposed to know whether she struggled with the Defendant or not. The Defendant was clearly in control of the situation, either by incapacitating his victims or by rendering them incapable of resistance. Robyn Novick was found lying nude in the field with her belt wrapped around her neck and a binding of some sort around her left wrist. Tina Corolis was hit in the head with a rock and then strangled until she lost consciousness. The evidence supports a finding that the Defendant acted calmly and deliberately when he took Robyn Novick's life.

The injuries themselves also demonstrate that the killing of Robyn Novick was not prompted by an emotional frenzy, panic or fit of rage. Dr. Roger Mittleman, a forensic pathologist in the Medical Examiner's Office, testified that his external examination of Robyn Novick's body revealed two stab wounds to her chest and injury to her neck, abrasions caused by the belt used by the Defendant to strangle Ms. Novick. One of the chest wounds penetrated 3 3/4 inches into the heart and lung, which caused hemorrhaging into the lung and chest cavity. Dr. Mittleman testified that Ms. Novick was strangled with her belt, which was firmly compressed against her throat when she was found. Dr. Mittleman testified that the pressure applied to the neck was extensive as the internal examination revealed that the

> cartilage around Ms. Novick's trachea was broken. Dr. Mittleman testified that while Ms. Novick was strangled to death, she was alive while being strangled and alive when she was stabbed. This testimony suggests that the Defendant stabbed Ms. Novick twice in the chest and while she lay there, literally bleeding to death, looked her in the eye (since she was lying on her back, facing upward) and strangled the last bit of life out of her.
>
> After a careful examination of all of the evidence, this Court finds beyond all reasonable doubt that the murder of Robyn Gayle Novick was committed in a cold, calculated and premeditated manner without any pretense of moral or legal justification.

(R. 465-68) These findings are supported by the testimony of Ms. Coralis, Dr. Mittleman, Ms. Hammon, Ms. Lastra, Ms. Latsinger, Dr. Maples, and Ms. Williams. Moreover, this Court has affirmed findings of CCP under similar circumstances. *See Wike v. State*, 698 So. 2d 817, 822-23 (Fla. 1997)(evidence that defendant took victim to a remote area to kill her and could have committed other crimes without doing so, sufficient to support CCP); *Wuornos v. State*, 644 So. 2d 1000, 1008-09 (Fla. 1994)(evidence that defendant lured victim to an isolated area, killed him and stole his property sufficient to support CCP, particularly where defendant had killed multiple victims in this manner); *Huff v. State*, 495 So. 2d 145, 153 (Fla. 1986)(evidence that defendant took victims to a secluded area and had to have taken weapon with him sufficient to support CCP). As such, the trial court's finding of CCP should be affirmed. *Willacy*.

Defendant claims that several of the trial court's findings were not supported by the evidence. However, Defendant is incorrect. While Defendant claims that he was able to borrow a car and did not need to kill for one, Defendant ignores the fact that Ms. Latsinger, whose car he had been able to borrow had revoked permission for Defendant to do so on the day of the murder. (T. 1240-46) As such, the trial court's finding that Defendant killed Ms. Novick to get her car was supported by the evidence.

Defendant next contends that there was no evidence that he had a knife. However, Dr. Mittleman testified that the stab wounds to Ms. Novick were caused by a knife. (T. 1086) Moreover, Ms. Coralis saw Defendant was a knife. (T. 1572-73) As such, the trial court's conclusion that Defendant had a knife is supported by the evidence.

Defendant also asserts that trial court's conclusion that the site at which the body was left was selected to prevent detection of the body. However, the evidence showed that the area were the body was left was isolated and that the body was covered. Defendant had previously left Ms. Roark's body in a similar area. The only reason the body was found was that the police were looking for Jimmy Coralis after Defendant had committed a similar crime on his mother in the same area. While dumping the body in the Everglades may have been an even better location, it does not mean that the site was not selected as part of a plan. As such, the evidence supports the conclusion that Defendant chose this site because he expected the body not to be discovered.

Next, Defendant alleges that the trial court should not have relied upon the *Williams* rule evidence in finding CCP. However, this Court has previously relied upon such evidence to uphold a finding of CCP. *Wuornos*, 644 So. 2d at 1008-09. Moreover, the minor difference in the time spend with the victims did not render the evidence irrelevant but appears to be more a product of the fact that Defendant met with Ms. Novick closer to where he intended to kill her. *See Gore*, 599 So. 2d at 984. The lack of blood in the car also supports the finding that the killing occurred outside the car, as the crime scene technician noted blood near the body. (T. 1304) As such, the trial court's findings were supported by the record, and should be affirmed.

The cases relied upon by Defendant are inapplicable. In *Hardy v. State*, 716 So. 2d 761 (Fla. 1998), the evidence showed that the defendant was confronted by a police officer while he was carrying a gun he had stolen during a previous burglary and used in two drive-by shootings. When the officer started to frisk the defendant's companions, the defendant panicked and shot the officer. Here, the evidence showed that Ms. Novick was incapacitated and bound at the time she was killed in a rural area. Her body was not found until several days later. As such, there was no evidence to suggest that Defendant acted out of panic.

In *Mahn v. State*, 714 So. 2d 391 (Fla. 1998), the defendant killed his father's live-in girlfriend and her son impulsively out

of hatred for his father, jealousy and depression. Here, there was no evidence that the murder was emotionally based or impulsive. Defendant lured Ms. Novick into a remote area because he needed a car and money. The only allegation of a prior relationship between Ms. Novick and Defendant was Defendant's own self-serving testimony in which no ill feelings between them were claimed. As such, neither *Hardy* nor *Mahn* is applicable to this matter.

VII. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN REFUSING TO PERMIT DEFENDANT TO ELICIT EVIDENCE REGARDING THE MURDER OF PAULETTE JOHNSON, WHERE THE ISSUE WAS NOT PRESERVED AND THE EVIDENCE WAS NOT RELEVANT.

Defendant next asserts that the trial court abused its discretion in refusing to permit Defendant to present evidence about the murder of Paulette Johnson. However, this issue is unpreserved and meritless.

Prior to trial, the State moved in limine to prevent the introduction of the evidence of Ms. Johnson's murder because the murder was insufficiently similar and there was no evidence that the person who had been killed was the same person Defendant alleged would have been a witness on his behalf. (R. 45-46, T. 325-27) Defendant agreed that he could not presently lay a proper predicate for the admission of this evidence, and the trial court granted the motion in limine. (T. 328-29)

When the issue was revisited during the defense case, Defendant asserted that the evidence was relevant because Ms.

Johnson was allegedly killed after having been listed as a witness. (T. 1946-48) Defendant also claimed that it was relevant to Ms. Fernandez's credibility. (T. 1948-49) Defendant now contends that this evidence was admissible as similar crimes evidence to show that someone other than Defendant committed the crimes. However, as this was not the ground on which Defendant sought to elicit the evidence below, this issue is not preserved. *Steinhorst v. State*, 412 So. 2d at 338.

Even if the issue had been preserved, the evidence would still not have been admissible. "If a defendant's purpose is to shift suspicion from himself to another person, evidence of past criminal conduct of that other person should be of such nature that it would be admissible if that person were on trial for the present offense." *State v. Savino*, 567 So. 2d 892, 894 (Fla. 1990); *see also Crump v. State*, 622 So. 2d 963, 969 (Fla. 1993); *Rivera v. State*, 561 So. 2d 536, 539-40 (Fla. 1990). In *Savino*, this Court held that "a close similarity of facts, a unique or "fingerprint" type of information" was necessary for a defendant to introduce evidence of another crime to show that someone else committed the instant crime. Here, the facts underlying the Johnson murder were not presented. As such, it is not possible to say that the Johnson murder met the requirements to be admissible. The trial court, therefore, did not abuse its discretion in refusing to admit this evidence.

VIII. THE TRIAL COURT PROPERLY PERMITTED DEFENDANT TO REPRESENT HIMSELF DURING CLOSING ARGUMENT AT THE GUILTY PHASE AND THROUGHOUT THE PENALTY PHASE.

Defendant next asserts that the trial court erred in permitting him to represent himself during closing argument in the guilt phase and throughout the penalty phase. Defendant contends that his decision to represent himself was involuntary because counsel was not properly representing him. Further, Defendant contends that the right to self representation should not apply to cases in which the death penalty is sought. However, this issue is unpreserved and meritless.

With regard to the claim that Defendant's waiver of his right to counsel was involuntary because he was given a choice between allegedly incompetent counsel and self representation, this claim is without merit as the record demonstrates that all of the grounds now raised were not presented to the trial court. As such, this issue is not preserved.

When Defendant decided to represent himself during the guilt phase closing argument, Defendant only claimed that his counsel had failed to recall him as a witness. (T. 2466) Defendant did not claim that counsel had failed to call other witnesses. As such, any claim that Defendant had to represent himself because counsel did not call other witnesses is unpreserved. *Steinhorst v. State*, 412 So. 2d at 338.

Moreover, the issue is meritless. While Defendant claims that he had other essential testimony to present, counsel had already informed the trial court that he had discussed the issue extensively with Defendant and had determined not to recall Defendant because the additional testimony Defendant proposed to present was irrelevant. (T. 2451-54) Defendant did not proffer any additional relevant testimony he would have presented. Thus, the trial court properly determined that counsel was not ineffective for failing to raise this meritless issue. *Kokal v. Dugger*, 718 So. 2d 138 (Fla. 1998)(counsel not ineffective for failing to raise meritless issue); *Groover v. Singletary*, 656 So. 2d 424 (Fla. 1995); *Hildwin v. Dugger*, 654 So. 2d 107 (Fla.), *cert. denied*, 516 U.S. 965 (1995); *Breedlove v. Singletary*, 595 So. 2d 8, 11 (Fla. 1992). As such, Defendant was not forced to represent himself by the incompetence of counsel.

Even if the issue related to the failure to call other witnesses had been preserved, it again would be meritless. When Defendant asserted that his counsel was not attempting to present witnesses that Defendant thought were necessary, counsel explained what he had done to procure the attendance of some of the witnesses and what witnesses he did not plan to call for tactical reasons or because they were dead. (T. 1743-60) Counsel did in fact present several of the witnesses Defendant claimed were essential: Otis Chambers, Ana Fernandez, Stephanie Refner and Linda Hensley. (T.

2206-07, 2211-96, 2364-95, 1446-49) Further, the trial court precluded Defendant from calling one witness, finding the testimony irrelevant. (T. 1941-49) As counsel either presented the witnesses, could not do so or had a tactical reason for not doing so, the trial court properly found that counsel was not ineffective for failing to call witnesses. *Strickland v. Washington*, 466 U.S. 668 (1984). Thus, the trial court would have properly found that Defendant was not forced to represent himself for this reason had it been raised.

When Defendant elected to dispense with counsel at the penalty phase, the record again reflects that the proper inquiry was made. Counsel explained that he was not presenting any mental health evidence because Defendant refused to cooperate with Dr. Merry Haber and because counsel did not feel that any of the prior experts would be helpful. (T. 2708-25, 2740-59, 2830) Counsel also stated that he was not calling Defendant's family members or other lay witnesses because he did not believe they would provide any beneficial testimony. (T. 2722-23, 2732-33) As counsel made strategic decisions regarding what evidence to present, he cannot be deemed ineffective. *Haliburton v. State*, 691 So. 2d 466, 471 (Fla. 1997)(quoting *Palmes v. Wainwright*, 725 F.2d 1511, 1521 (11th Cir. 1984)(quoting *Adams v. Wainwright*, 709 F.2d 1443, 1445 (11th Cir. 1983))). Thus, the trial court properly determined that Defendant was not forced to present himself.

While Defendant also appears to contend that his decision to represent himself was precipitated by counsel's actions throughout the course of the proceedings below, the record indicated that Defendant's prior requests to represent himself were resolved. When Defendant first asked to discharge his counsel during a pretrial hearing. The trial court inquired of Defendant why be felt that counsel was incompetent and spoke to counsel who stated that he either believed that the issues Defendant wanted to be raised were meritless or had made a tactical decision to proceed in another manner. (R. 114-23) Counsel, in fact, filed a motion outlining why he was not pursuing certain issues that Defendant wanted pursued. (R. 106-08) Further, counsel agreed to pursue certain other issues, and Defendant asked that counsel represent him. (R. 173-232)

When Defendant again raised the issue of self representation after the State's guilt phase opening statement, the trial court again held an inquiry with Defendant. (T. 1040-51) After hearing Defendant's complaints and counsel's explanations for his actions, the trial court again determined that counsel was acting properly. (T. 1040-51) When Defendant complained about inadequate contact with his attorneys, the trial court relied upon affidavits from counsel regarding conference with Defendant and found the claim to be false. (T. 1503-07) As these prior instances were resolved, they do not provide a basis for finding Defendant's decision to waive counsel later involuntary.

With regard to the claim that a defendant should not be

permitted to represent himself in a capital case, this issue is unpreserved. Defendant never claimed that there was no right to self representation in a capital case. In fact, Defendant repeatedly requested that he be permitted to represent himself. As such, this issue is not preserved. *Castor v. State*, 365 So. 2d 701 (Fla. 1978).

Even if this issue was preserved, it is meritless. The United States Supreme Court has recognized a constitutional right to self representation at trial. *Faretta v. California*, 422 U.S. 806 (1975). As such, the trial court had to permit Defendant to represent himself after he made a knowing and intelligent waiver of his right to counsel.

Defendant's reliance on *Martinez v. Court of Appeal of California, Fourth Appellate District*, 120 S. Ct. 684 (2000), is misplaced. In *Martinez*, the Court determined that there was no federal constitutional right to self representation on appeal. The Court based this decision on the fact that the Sixth Amendment did not apply to appellate proceedings and thus, the Sixth Amendment right to self representation recognized in *Faretta v. California*, 422 U.S. 806 (1975), did not apply. However, the Court recognized that the Sixth Amendment right to self representation at trial did still exist. As Defendant's argument here implicates the Sixth Amendment right to self representation at trial, *Martinez* is inapplicable.

Defendant's further contention that this Court should overrule his Sixth Amendment right to self representation on state law grounds is entirely specious. As this Court has acknowledged, "[u]nder our federalist system of government, states may place more rigorous restraints on government intrusion than the federal charter imposes; they may not, however, place more restrictions on the fundamental rights of their citizens than the federal Constitution permits." *Traylor v. State*, 596 So. 2d 957, 961 (Fla. 1992). In *Faretta*, the Court recognized that the Sixth Amendment right to self representation at trial was a fundamental right. 422 U.S. at 817. As such, this Court is not free to restrict its exercise in a trial, even a capital one. Thus, Defendant's claim that this Court should deny Defendant this fundamental right on state law grounds should be rejected.

IX. DEFENDANT'S CLAIM THAT HIS COUNSEL WAS INEFFECTIVE DURING THE PENALTY PHASE IS NOT COGNIZABLE ON DIRECT APPEAL, WAIVED AND MERITLESS.

Defendant next contends that his counsel rendered effective assistance during the penalty phase. However, this issue is not cognizable on direct appeal. Moreover, Defendant waived any claim of ineffective assistance of counsel at the penalty phase by representing himself. Finally, the record shows that counsel's decisions about the penalty phase were strategic.

"A claim of ineffective assistance of counsel is generally not cognizable on direct appeal. *See Kelley v. State*, 486 So. 2d 578,

585 (Fla. 1986). An exception to this general rule is recognized where the claimed ineffectiveness is apparent on the face of the record." *Mansfield v. State*, 25 Fla. L. Weekly S245, S246 (Fla. 2000); *see also Consalvo v. State*, 697 So. 2d 805, 811 n.4 (Fla. 1996); *Lawrence v. State*, 691 So. 2d 1068, 1074 (Fla. 1997); *Wuornos v. State*, 676 So. 2d 972, 974 (Fla. 1996). Here, the claim of ineffective assistance is not apparent from the face of the record. Instead, the record reflects that counsel interviewed Defendant's family, reviewed existing mental health evaluations and sought additional evaluations. (T. 2708-25, 2732-33, 2740-58, 2830) Counsel decided not to use the family members and other witnesses suggested by Defendant because he did not believe they had any favorable evidence to offer. (T. 2722-23, 2732-33) Counsel made a similar decision regarding the existing mental health evaluations.[6] (T. 2754-59) Defendant refused to cooperate with Dr. Haber, and counsel did not feel that having a doctor who had only seen Defendant once would be helpful. (T. 2708-25, 2740-58, 2830) Under these circumstances, it is not apparent on the face of the record that counsel was ineffective, and this claim is not cognizable.

Moreover, Defendant chose to represent himself at the penalty phase. By doing so, Defendant waived any claim of ineffective assistance of counsel. *Faretta v. California*, 422 U.S. 806, 834

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[6] Contrary to Defendant's allegation, the record reflects that counsel's memorandum about the existing doctors was filed with the trial court under seal. (T. 2761-62)

n.46 (1975). Thus, Defendant is not entitled to any relief on this claim.

Finally, as detailed above, counsel did evaluate the potential mitigating evidence. He decided not to present the evidence for strategic reasons. Strategic choices made by a criminal defense counsel after thorough investigation of law and facts relevant to plausible options are "virtually unchallengeable." They may only be overturned if they were "so patently unreasonable that no competent attorney would have chosen it." *Haliburton v. State*, 691 So. 2d 466, 471 (Fla. 1997)(quoting *Palmes v. Wainwright*, 725 F.2d 1511, 1521 (11th Cir. 1984)(quoting *Adams v. Wainwright*, 709 F.2d 1443, 1445 (11th Cir. 1983))). As counsel made strategic decisions not to present mental health and other potential mitigation, this claim is without merit.

X. DEFENDANT'S SENTENCE IS PROPORTIONAL.

"Proportionality review compares the sentence of death with other cases in which a sentence of death was approved or disapproved." *Palmes v. Wainwright*, 460 So. 2d 362, 362 (Fla. 1984). The Court must "consider the totality of circumstances in a case, and compare it with other capital cases. It is not a comparison between the number of aggravating and mitigating circumstances." *Porter v. State*, 564 So. 2d 1060, 1064 (Fla. 1990), *cert. denied*, 498 U.S. 1110 (1991). "Absent demonstrable legal error, this Court accepts those aggravating factors and

mitigating circumstances found by the trial court as the basis for proportionality review." *State v. Henry*, 456 So. 2d 466, 469 (Fla. 1984).[7]

Here, the trial court found three aggravating circumstances: prior violent or capital felonies, including the first degree murder, kidnapping and robbery of Susan Roark, the attempted first degree murder, armed burglary, armed robbery, armed kidnapping of Tina Coralis and the armed kidnapping of Jimmy Coralis - very great weight; during the course of a robbery and for pecuniary gain, merged- great weight; and cold, calculated and premeditated (CCP) - great weight. (R. 460-68) The trial court found no statutory mitigating circumstances. (R. 469-72) The trial court found three non-statutory mitigating circumstances: Defendant's hearing loss - minimal weight; Defendant's migraine headaches - minimal weight; and Defendant stopping an altercation between Raul and Marisol Coto - minimal weight. (R. 473-78)

In Defendant's other case, this Court found that death was appropriate. There, the aggravating factors were prior violent felony based on the Coralis case alone, during the course of a

[7] Defendant does not challenge the trial court's findings as to the mitigating and most of the aggravating circumstances. The only finding regarding aggravating that had been challenged is CCP. However, for the reasons asserted in Issue VI, *supra*, this claim should be rejected. The trial court's thorough discussion of the factors argued in aggravation and mitigation and findings thereon, (R. 459-78), are well-supported by the record and should be accepted.

kidnapping and for pecuniary gain.[8] Here, the aggravating was more compelling because the prior violent felony aggravator was supported not only by the Coralis crimes but also by the murder of Ms. Roark and the offenses associated with that murder. Moreover, Defendant presented greater mitigation in that case. As these cases are strikingly similar, death is also appropriate here.

Moreover, this Court has upheld death sentences in cases where similar aggravation and greater mitigation was found. *See, e.g.*, *Franqui v. State*, 699 So. 2d 1312 (Fla. 1997)(aggravation: prior violent felonies, during the course of a robbery & for pecuniary gain - merged, and CCP; mitigation: childhood hardships and caring husband, father, brother and provider); *Jones v. State*, 690 So. 2d 568 (Fla. 1996)(aggravation: prior violent felony, CCP and for pecuniary gain; mitigation: no significant criminal history, good military service and good family background); *Hunter v. State*, 660 So. 2d 244 (Fla. 1995)(aggravation: prior violent felonies and during the course of a robbery; mitigation: fetal alcohol syndrome, separation from siblings, lack of motherly love, physical abuse, emotional abuse, unstable environment, violent environment, death of adoptive mother and narcissistic personality disorder). Moreover, the prior violent felony aggravator in each of these cases was not supported by a prior murder, as is true here. As this case was more aggravated and less mitigated then other cases

[8] This Court struck CCP. *Gore*, 599 So. 2d at 986-87.

in which this Court has upheld death sentence, the sentence here is proportional.

CONCLUSION

For the foregoing reasons, the judgment and sentence 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 William M. Norris, 3225 Aviation Avenue, Suite 300, Coconut Grove, Florida 33133, this _____ day of August, 2000.

_____
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