IN THE SUPREME COURT OF FLORIDA

DONTAE MORRIS,

Appellant,

v. **Case No. SC14-1317**
L.T. No. 10-CF-010203

STATE OF FLORIDA,

Appellee,
_____/

ON APPEAL FROM THE CIRCUIT COURT
OF THE THIRTEENTH JUDICIAL CIRCUIT,
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE

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STATEMENT OF THE CASE AND FACTS

On June 29, 2010, Appellant Dontae Morris shot and killed two Tampa Police Department officers, David Curtis and Jeffrey Kocab. Morris was a passenger in a Toyota Camry which Officer Curtis had stopped due to the lack of a license tag. Officer Curtis had entered Morris' name into his computer and discovered a pending warrant. Officer Kocab arrived to provide backup and Kocab and Curtis together approached the passenger side of the Toyota in an attempt to take custody of Morris. Morris, armed with a handgun, shot both officers in the head and ran from the scene. The Camry drove away. A dashboard video camera in Officer Curtis's car captured the entire incident, from a minute before the stop of the Camry until first responders arrived at the scene (State Ex. B; V25/1538-40, 1552).

The time stamp on the dashcam video indicates that the Camry was stopped at 2:13 a.m. and the shootings occurred at 2:18 a.m. (V28/2048, 2067) A witness walking near the road and another witness living at an apartment complex near the scene heard the shots and observed a black man run up the sidewalk and through the apartment complex, jumping over a small fence and then a gate (V25/1458, 1463-65, 1470-73, 1510, 1514-18). The apartment resident, Ynalia Keen, identified Morris from a photopack as the man she saw running (V25/1474-76; V26/1700-04).

The Camry was located at an apartment complex 2.8 miles from the scene of the shootings at about 10:00 a.m. that morning, June 29 (V24/1399, 1408; V25/1441). The car was backed into a space in a far corner at the very back of the complex (V24/1409-10). The woman that had been driving the car, Cortnee Brantley, was found in an apartment around a corner and about 500 yards away from where the car was parked (V24/1416-17). Ms. Brantley was interviewed for six and a half or seven hours at Tampa Police Headquarters, but she repeatedly refused to identify who her passenger had been (V26/1601-02, 1606-07).

Morris was arrested when he turned himself in about 10:30 p.m. on July 2, 2010 (V26/1614; V30/2198). His cell phone records from the day of the shootings confirm that he was in the area at the time of the murders (V26/1760, 1763; V28/2013, 2038, 2043, 2048-2079; V29/2085-90). Morris' phone was used for several calls and text messages, communicating with cell phone towers that placed him near the scene (V28/2048-79; V29/2085-90). In addition, he had exchanged text messages with Cortnee Brantley the morning after the shooting, discussing the location of her car and professing their love for each other (V26/1763; V29/2094-2109).

Temika Jones testified that she saw Morris, known to her as "Quelo," around midnight, and then he called her around 2 a.m.

on June 29 (V26/1746-50, 1756). She described the clothes he was wearing that day and identified him in a photograph of the shooter taken from the dashcam video (V26/1746-52, 1771-74).

Another friend of "Quelo" was Ashley Price, who knew Morris through her sister's boyfriend and had been intimate with him once (V27/1780-83). Price testified that on the day of the shootings, Morris called her about 3:30 a.m. and told her that he "did it" (V27/1785). She knew what he was talking about, he had told her to watch the news, and she turned it on and heard about the officers; he was referring to that. He told her he did it because he wanted to get away (V27/1786). An officer had gone back to the car and run his name, and he was afraid he had a warrant (V27/1788). Morris told her that he was already out of the car when he shot them; that he had been a passenger; that he had given the officer his name; that he had gotten the gun from under the seat; that there were two white officers and he had shot them in the head (V27/1788-90). These details are confirmed in the dashcam video and had not been released to the public at the time Price reported Morris's phone call (V/2115-16).

Price went to the police the next day to tell them about the phone call, they did not come to her (V27/1791, 1852, 1856). In March, 2011, Morris arranged a three-way phone conversation from jail, where he demanded to speak with Price and expressed

anger that she was cooperating with the police (V27/1792). He wanted her to come down to the jail and meet with him (V27/1792). She set up an appointment to see him, but didn't go (V27/1792).

Hillsborough County Sheriff's Office Jail Deputy Ruben Clemente testified that he had contact with Morris while Morris was in the Falkenburg Road Jail (V28/2006). He heard Morris make the statement, "I repent for killing" (V28/2007). In addition, several law enforcement officers, familiar with Morris's voice from speaking with him and observing him directly, positively identified his voice as the shooter on the dashcam video (V27/1886-1905). Former Detective Duran, after seeing and hearing Morris for many hours on recorded phone calls and jail visits, also identified Morris's voice and image as the shooter (V26/1627-40).

DNA testing revealed the presence of Officer Curtis's blood on the exterior, passenger-side rear door of the Camry (V30/2258-63). The frequency rate for the profile obtained is one in 5.3 quadrillion people, several times the Earth's population (V30/2263-64). Officer Curtis and Morris were both possible contributors to DNA evidence on a zipper found on the chain link fence where footprints indicated Morris had scaled it; however, the probability of inclusion was low, only one in

ten on Curtis and one in thirteen on Morris (V30/2238-39). Morris could not be excluded from mixed profiles of DNA found inside the Camry (V29/2157).

The defense did not present any witnesses and, following closing arguments, Morris was convicted as charged (V31/2294, 2317-20). At the penalty phase, Sgt. Massucci discussed a homicide on May 31, 2010, where a man had been robbed and shot near a nightclub (V33/2500-07). A witness to the murder described the circumstances, seeing two men robbing a guy at gunpoint, then shooting him when he moved his arm (V33/2587-90). Morris's prior conviction for murder based on that incident was admitted (V33/2510). The jury also heard victim impact testimony from family members of both officers (V33/2515-35).

In mitigation, the defense presented Morris's mother, two cousins, and a family friend. Morris's mother, Selecia Watson, described his life history, from his birth when she was 16 and unprepared to care for him, through hardship and tragedy, his success with school, job, and family responsibilities, being physically abused by a former stepfather, his involvement with sports and church activities, and his positive character traits (V33/2540-85). His cousin, Artis "AJ" Ponds, testified to Morris's positive impact on him, growing up and playing youth football together (V33/2592-97). He described Morris as someone

with a good sense of humor who was fun to be around (V33/2597). AJ's brother, Devon, provided similar testimony (V33/2602-08). Sharlotte Hamilton, AJ and Devon's mother, testified that they were not related by blood to Morris but that she was raised as a sister to Morris's mother, Selecia (V33/2615-16). She described Selecia's struggles in birthing and raising Morris, suffering from postpartum depression and a lack of support (V33/2617-20). She also discussed the family and sports activities they shared as their sons grew and the negative influences of Selecia's former husband (V33/2620-30). The Hamiltons and Mr. Ponds all testified that they had little contact with Morris since about 2002 (V33/2599, 2608, 2634).

The jury recommended that the court impose a death sentence for each murder conviction, by a vote of 12 to 0 (V8/1504-06; V34/2689). A Spencer hearing was held on March 13, 2013 (V36-37). The defense presented the testimony of licensed psychologist Dr. Valerie McClain (V36/2717-47). Dr. McClain had met with Morris three times, and had reviewed a report of neuropsychological testing conducted by Dr. Lamar Ingulli on October 24, 2013 (V36/2722-23).

Dr. McClain diagnosed Morris with major depression with psychotic features, which was situational, due to his current charges and not pre-existing, and had resolved itself over a

period of time (V36/2721-22, 2724). Based on Dr. Ingulli's testing, she found Morris's intellectual functioning to be in the borderline to low average range (V36/2724-26). His greatest deficiencies were in the areas of verbal comprehension and processing speed (V36/2729). She considered whether either of the statutory mental mitigating factors applied in this case and concluded they did not (V36/2731).

In rebuttal, the State presented Dr. Emily Lazarou, a clinical and forensic psychiatrist (V37/2777-2804). Although she was told that she could not evaluate the defendant since he was not presenting any statutory mental mitigation, she was provided with Morris's school records, recording of jail visitations, numerous letters of correspondence written by Morris, Dr. McClain's deposition, and Dr. Ingulli's test score report (V37/2781-86, 2800). She concluded that Morris had an average range of intelligence, at least a 100 I.Q. and probably more like 110 (V37/2783-87). She reviewed specific examples of Morris's higher intellect and executive functioning from the records (V37/2786-97). She opined that Morris was not putting forth his best effort with Dr. Ingulli's tests, noting that the report conveniently failed to mention the effort put into the testing, which should always be documented (V37/2798-99).

On May 30, 2014, the trial court followed the recommendations of the jury and imposed two death sentences for the first-degree murders of David Curtis and Jeffrey Kocab (V9/1602-22; V39/2836). The court found that three aggravating factors applied: Morris had prior violent felony convictions, the capital felony was committed for the purpose of avoiding arrest or effecting an escape from custody, and the victim was a law enforcement officer (V9/1605-07). Each contemporaneous murder served as a prior violent felony conviction for the other murder, and Morris also had prior convictions for first-degree murder and attempted robbery; great weight was given to this aggravating factor (V9/1605). No weight was given to the avoid arrest factor, as the court concluded that it merged with the factor that the victims were law enforcement officers, which was given great weight (V9/1606-07).

All of the mitigation involved Morris's character, life and background (V9/1607-19). As to the Spencer hearing mitigation, the judge found that the State's rebuttal witness did not diminish the weight and quality of the mental mitigation of Morris's depression and low intellectual functioning, and he provided this evidence moderate weight (V9/1609-10). Twenty-six additional mitigating factors were outlined and given mostly minimal weight (V9/1610-19). The court concluded that there were

sufficient aggravating circumstances to support and warrant imposition of the death sentence and that the mitigation evidence did not outweigh the aggravating circumstances (V9/1620). Accordingly, two death sentences were imposed (V9/1621).

SUMMARY OF THE ARGUMENT

The trial court did not err in denying the motion to strike the jury panel after a prospective juror indicated that she considered it a waste of taxpayer money to conduct a penalty phase after a person had been convicted of the same offense. The trial judge who observed the exchange determined that the juror did not, directly or indirectly, comment on Morris or his prior criminal history. Although it was later discovered that the prospective juror at issue was aware of Morris's prior murder conviction, that juror was excused for cause and none of the other prospective jurors were aware of Morris's history. When the relevant comments are put in context, it is evident that the jury panel was not tainted by the remarks, and there was no need to start jury selection over with an entirely new panel.

The trial court did not err in allowing the State to present evidence of Morris's custodial statement, "I repent for killing." The court below properly found the evidence to be relevant and admissible as a statement by a party opponent. The statement did not suggest the commission of collateral crimes, since it was redacted to exclude the reference to the other murders Morris committed. Morris's claim that he was entitled to present expert testimony regarding his state of mind at the time of the statement was not preserved for appellate review. In

addition, the court's ruling to exclude such expert testimony was consistent with this Court's case law and did not deprive Morris of due process.

The testimony from law enforcement officers identifying Morris's voice and image as the shooter in the dashboard camera video was properly admitted. All of the identification witnesses had a particular familiarity with Morris, and were in a position superior to the jurors as far as the ability to make the identifications. The fact that the jury would learn that Morris had been held in custody prior to trial was not prejudicial, and there was other evidence of the length of custody presented to the jury to which no objection was offered.

The prior consistent statements of the contents of Ashley Price's initial statement to law enforcement shortly after the crime were properly admitted. Since the defense attempted to impeach Price by questioning her about a financial benefit she received from the Tampa Police Department, the State was entitled to show that Price had made consistent statements prior to having obtained the benefit. In addition, the prosecutor's question to her about needing the assistance due to "threats" did not warrant a mistrial, as the jury had no basis to conclude that Morris was responsible for the threats, and was

specifically told that, to the contrary, Morris had not been linked to the threats.

Since none of the issues presented in this appeal are meritorious, there is no cumulative error to assess. Even if the court below ruled incorrectly on one or more issues, any combined error would be harmless on the facts of this case, where Morris's identity as the shooter in the dashboard camera video was well established by different sources. In addition, this Court's independent review will confirm the sufficiency of the evidence to support Morris's convictions and the proportionality of the death sentences imposed for the murders of David Curtis and Jeffrey Kocab. This Court must affirm the convictions and sentences imposed.

ARGUMENT

ISSUE I

WHETHER THE TRIAL COURT ERRED IN DENYING THE MOTION TO STRIKE THE JURY PANEL BASED ON A COMMENT DURING JURY SELECTION

Morris initially challenges the trial court's ruling against striking the entire jury panel when a potential juror commented that, in weighing factors for a possible death sentence, she would automatically vote for death if the defendant had been "indicted a second time for murder" (V20/890). This claim is unpreserved and meritless. Appellate courts review a trial court's ruling on issues involving the jury's exposure to comments or evidence that was not presented in the courtroom for an abuse of discretion. Smith v. State, 7 So. 3d 473, 495 (Fla. 2009); Hutchinson v. State, 882 So. 2d 943, 956 (Fla. 2004); Street v. State, 636 So. 2d 1297, 1301 (Fla. 1994); Larzelere v. State, 676 So. 2d 394, 403-404 (Fla. 1996); Occhicone v. State, 570 So. 2d 902, 904 (Fla. 1990) (no abuse of discretion to deny motion for mistrial after spectator told prospective juror that she thought defendant was guilty). The lower court *sub judice* did not abuse its discretion.

Morris presents this issue as one where the jury heard a potential juror remark that Morris had previously been convicted of first-degree murder. In fact, when the relevant comments are reviewed in context, it is evident that the discussion with the

prospective juror was about the death penalty in general and not about Morris in particular, and that the trial court's finding that the prospective jury panel was not tainted by the remark was correct. The court below made a specific factual finding that the comment was not, directly or indirectly, a comment on Morris's prior record or prior conviction (V22/995-97).

Prior to trial, the court granted Morris's request for a change of venue, and jury selection began in Orange County on November 4, 2013 (V6/1090-91; V16/119). After giving some preliminary instructions, the judge introduced the parties and court personnel, and asked if any of the prospective jurors knew anyone in the courtroom (V16/131-34). The court then sought to determine the extent of media exposure, and provided a factual summary then asked the first panel of fifty for a show of hands as to whether anyone had heard anything at all about the case (V16/137-140). Nineteen of the first fifty prospective jurors indicated some familiarity with the case, and individual voir dire was undertaken to determine the specifics (V16/141-280). Several of these individuals were excused for cause (V16/281-87; V17/291-92). The court then assessed whether jury service would be a hardship due to the timing and sequestering in Hillsborough County, and more jurors were excused (V17/292-402). The following day, the court repeated the same questioning process with two other panels of fifty prospective jurors each, weeding

out hardship cases and assessing the impact of any media exposure individually (V18/410, 422-23, 429-30, 524-33, 537-41, 566, 568, 593-94; V19/598, 620, 667-73, 711-15).

On the third day, November 6, there were 74 prospective jurors brought in; this was the panel remaining after cause challenges due to hardships and media exposure had been explored, and the court initially spoke with them about legal and constitutional principles (V20/724-734). The court determined that death qualification should be done next to eliminate prospective jurors that would not be able to follow the law (V20/718-22). The court provided a general outline of death penalty procedures and explained how jurors are required to recommend a sentence based on the weighing of aggravating and mitigating circumstances (V20/735-56). At that point, the prosecutor began asking general questions to determine if any potential jurors felt so strongly for or against the death penalty that they would not be able to sit on the case (V20/757-69). The prosecutor asked the same basic questions of all panel members, seeking to find out how they felt generally about the death penalty and if they could perform the weighing process and vote for life or vote for death based on the outcome.

One of the first prospective jurors interrupted the flow of questioning, asking if she needed to be excused because she had two grandsons that were law enforcement officers (V20/786). The

prosecutor observed that, as had been noted earlier, the victims in this case were also law enforcement officers, and the prospective juror admitted that she would be unable to recommend a life sentence regardless of the mitigation under such circumstances (V20/788-89).

Late in the day, the microphone was handed to Prospective Juror #144, Ms. Kaasa, and the following exchange occurred:

> MR. PRUNER: Okay. Good. Can you tell me, please, your view of the death penalty.
>
> MS. KAASA: I support the death penalty like a number eight.
>
> MR. PRUNER: All right. Do you believe you are personally capable of performing this weighing process I've described, weighing the aggravating circumstances evidence versus the mitigating circumstances?
>
> MS. KAASA: I have a little theory. If you are in court and you have been charged and found guilty of first-degree murder, you are wasting our taxpayer's money to do another performance and another performance. So I would have to hear -- If you are sentenced for one thing and brought in for the same crime, yes, you are wasting taxpayer's money; you're guilty, guilty, guilty.
>
> MR. PRUNER: Okay. What would be before you would be a punishment for the crime for which you have heard evidence of earlier in the guilt phase?
>
> MS. KAASA: And you did a repeat performance, yes.
>
> MR. PRUNER: Well, okay, I understand that. Let's take out of the theory or the idea of a repeat performance so to speak, because the evidence of aggravation may include something absolutely unrelated to that, okay, so that's not necessarily what's involved.
>
> Does that make sense?
>
> Okay. Is your view such that you would automatically vote for the imposition of the death penalty for someone that you voted earlier to convict of first-degree murder?

MS. KAASA: If they were indicted for the second time for murder, yes.

(V20/889-90). The prosecutor was attempting to respond when the attorneys approached the bench. Defense counsel stated his concern that Ms. Kaasa had implied there was a second charge in this case and observed, "I think we need to question her individually if we are going to question her at all" (V20/891). The court noted she appeared confused, the prosecutor indicated the intent to "leave her alone" for fear of what she might say, and a second prosecutor suggested there may be a need for individual voir dire; "[s]he may have some knowledge of another murder." The court directed that the witness be left alone for now and indicated they would talk to her about it later. The prosecutor moved on to ask the same questions of the next prospective juror (V20/891).

Once the prosecutor completed his initial questioning, a recess was taken and the court suggested dealing with "this elderly lady blurting something out" and offered the opportunity to talk to her individually (V20/904). No one at this point had suggested that anything Ms. Kaasa had offered might have tainted the panel against Morris. She was brought in and Mr. Pruner noted that he wanted to continue the conversation they were having about the death penalty (V20/905). Ms. Kaasa stated that she thought she needed to speak to the judge, noting, "[i]f this is the case I think it is, I am familiar with it." She said she

had a daughter that lived in Tampa, and she was trying to get across that she recalled the facts. The court noted that she had not spoken up when they asked earlier in the week about exposure to the case, and Ms. Kaasa responded that until the lady had remarked that morning about the two officers being killed, she just had not made the connection (V20/905-06).[1] She now recalled that the guy had actually committed another murder prior to that (V20/906). She was asked if she had mentioned any of this to any of the other potential jurors, and she was adamant that she had not and would not (V20/906). The State moved to have her stricken for cause, and defense counsel agreed; the court thereafter excused her and instructed her not to mention anything to the rest of the panel (V20/906). Ms. Kaasa apologized and left, and the remaining panel was brought in. The defense did not suggest that any harm had occurred and did not request the court to take any further action. Instead, defense counsel addressed the panel and continued questioning about views on the death penalty (V21/911-60). After the panel was excused for the evening, there was extensive discussion about cause challenges (V21/965-81). The court noted that there were 52 remaining prospective jurors.

[1] Earlier in voir dire, Ms. Kaasa indicated she was having difficulty hearing in the courtroom, as her ears were "plugged with a cold" (V18/592). Other jurors also had difficulty and the courtroom acoustics were noted to be poor (V18/562-65).

At that point, defense counsel moved to strike the jury panel, because Ms. Kaasa "ambiguously twice referred to her view that the death penalty would be appropriate especially if someone had been charged with another crime" (V21/981). The State objected, noting that she had not revealed any information which the other jurors on the panel would interpret to mean that Morris had been convicted in another case (V21/983). The court denied the motion to strike, agreeing that the comments were not sufficient to require starting jury selection over again (V21/983). The next morning, the defense renewed the motion, having obtained the court reporter notes with the specific language at issue (V22/990-93). After further discussion, the court denied the motion, offering the following findings and observations:

> With respect to the cases you cited, they certainly stand for the proposition that any comments of this nature in the presence of the jury would certainly be unduly prejudicial on the require striking the panel.
>
> With respect to the comments made by the prospective juror Ms. Kaasa, I recall hearing them, I recall the exchange, I recall the tenor of the exchange. I will say they did not and I do not perceive the words she uttered in the presence of the other jurors constitute a direct or indirect comment on any defendant's prior charge. In fact, what I perceive she was talking about was the futility if you will of going through a second phase if in fact the defendant is already found guilty of first degree murder. That's how I perceived it.
>
> Now we all know, as counsel's indicated, that this defendant does have a prior conviction and has other pending charges, and we now know from talking to

> this lady after the fact that she later became aware of having heard something about the defendant I think she said serving a life sentence or something. But that information came from her out of the presence of the jury, and we later excused her.
>
> So with respect to the comments made and any impact of that on the balance of the jurors, I do not perceive that they rise to the level of warranting dismissal of this entire panel. In fact, I don't perceive they constitute a direct or indirect comment on his prior conviction.
>
> It's obvious, should be obvious that in her mind she was thinking about that, but the words she uttered in the presence of the other jurors I don't believe conveyed that information. So I'll respectfully deny the motion to strike the panel.

(V22/995-97). This ruling was proper.

Initially, it must be noted that there was no timely objection to Ms. Kaasa's remarks. Although defense counsel eventually made a motion to strike the entire panel, the motion was entered well after the comments were offered and was not contemporaneous with the alleged error to be reviewed. The motion to strike itself may not be sufficient to preserve the issue for review if there is no timely objection. See Thompson v. State, 619 So. 2d 261, 265 (Fla. 1993) (finding claim that trial court erred in denying motion to strike jury panel was not preserved for appeal by a timely objection). Accordingly, this issue should be rejected as procedurally barred.

Even if the issue is considered, however, no relief is due. This Court has repeatedly explained that discretion is abused only when the judicial action is arbitrary, fanciful, or unreasonable, which is another way of saying that discretion is

abused only where no reasonable person would take the view adopted by the trial court. Green v. State, 907 So. 2d 489, 496 (Fla. 2005); White v. State, 817 So. 2d 799, 806 (Fla. 2002); Trease v. State, 768 So. 2d 1050, 1053 n.2 (Fla. 2000). In order to demonstrate an abuse of discretion in the ruling to deny striking the potential juror panel, Morris must show that bias or prejudice occurred. See Smith, 7 So. 3d at 495. Since the offending comments did not inform the jury that Morris had been accused or convicted of other crimes, he cannot establish any bias or prejudice, and his claim must be denied.

The ambiguous comments in this case were less prejudicial than others where this Court has upheld the denial of relief on a similar claim. In Street, 636 So. 2d at 1301-02, this Court addressed a complaint about a comment by an outsider who muttered "guilty" to the jury in the hall, concluding that the jurors were not improperly influenced by the comment. The denial of a mistrial was also upheld in Hutchinson, 882 So. 2d at 957, based on a complaint that three jurors were unable to be impartial after a restaurant patron approached them during a break and said she hoped they would hang the defendant. And in Larzelere, 676 So. 2d at 403, this Court concluded that a mistrial was not required where, after learning of an incident in which a woman had threatened to blow up a juror's car, the trial court questioned the jurors individually in the presence

of counsel and determined the jurors were not prejudiced by the incident.

Here, defense counsel twice referred to the comments as "ambiguous" and did not suggest any untoward influence on the venire panel until well after the fact (V21/981-82). The trial court specifically found the remarks were not a comment on Morris's criminal history, and the jury did not hear anything that suggested Ms. Kaasa was speaking of Morris in particular.

Interestingly, one of the prospective jurors was apparently vigilant, and near the end of jury selection asked to speak with the judge because he was afraid one of the comments by another prospective juror might have been "a little prejudicial," observing, "and I was kind of making sure from my own mental capacity there that we weren't all just going through the paces of maybe somebody coming back later on saying that was a tainted jury pool or something like that because she made such a statement."[2] The parties agreed that the comments noted did not require any action by the court, and defense counsel asked if the prospective juror had heard anything else from that prospective juror or from anyone else that concerned him, and the prospective juror responded that was the only thing, but it just seemed like something that shouldn't have been said in that

[2] Prospective Juror Badgley was concerned about responses given by Prospective Juror Logan, suggesting she had seen information about the case on television, and she thought she might be looking at a guilty man (V23/1160).

setting and might be viewed as prejudicial (V23/1161-64). This exchange confirms that the vague statements uttered by Ms. Kaasa did not imply that Morris had a prior criminal history and would not have been taken in a prejudicial light.

On these facts, no error has been demonstrated. Morris's claim that the jury heard of his prior murder conviction is refuted by a plain reading of the challenged comments in context. Neither the prosecutor nor the prospective juror mentioned Morris, and the exchange reflects only a hypothetical discussion about the weighing of factors for a sentencing recommendation. Accordingly, this Court must reject this issue and affirm the convictions and sentences entered below.

ISSUE II

WHETHER THE TRIAL COURT ERRED IN OVERRULING THE OBJECTION TO THE ADMISSION OF MORRIS' REDACTED STATEMENT

Morris next asserts that the admission of his redacted statement, "I repent for killing," was error compelling a new trial. A trial court's ruling on the admission of evidence is reviewed for an abuse of discretion, as constrained by the rules of evidence and the principles of *stare decisis*. Gregory v. State, 118 So. 3d 770, 780 (Fla. 2013). As Morris has failed to demonstrate any abuse of discretion in the ruling below, this issue must be rejected.

Prior to trial, the defense filed a motion in limine seeking an order to exclude all statements Morris made to detention deputies while monitored in a segregated cell in November, 2011 (V7/1297-98). The motion asserted that all of the spontaneous statements by Morris recorded in the jail's observation log should be excluded, as they were inherently unreliable, irrelevant, the probative value was outweighed by the danger of unfair prejudice, and the statements necessarily referenced uncharged acts and were improper character evidence going only to Morris's propensity to commit crimes (V7/1297-98). The complete observation log from the eleven-day period that Morris was constantly monitored was attached to the motion

(V7/1307-68). The State filed a response, indicating that there were six admissions which Morris offered one evening while being observed in jail (V3/546-48). One statement ("I repent for my sins to God. I accept you God and repent for all I have done. I repent for killing five people") was offered as a direct admission of guilt, and the other statements -- expressing a belief in God, an acceptance of Jesus Christ, an intention of going to heaven, and more on the nature of God and Jesus -- were offered to provide context for the admission (V3/546-47). The response noted that the admission would be redacted and the reference to "five people" would be eliminated (V3/547).

The trial court held a hearing on January 25, 2013 (V12). The defense argued that Morris's admission to "killing" was unduly prejudicial, cumulative, and would cause the jury to speculate about collateral crimes; they maintained the statements were made during a delusional rant while Morris was under a medically required observation period (V12/4-9). Testimony was taken with regard to the circumstances of the statements. In November, 2011, the commander of the Hillsborough County Jail system was advised that Morris had requested to see a psychiatrist, and had made statements indicating that he thought the guards were going to kill him (V12/19-20). He ordered Morris to be placed on direct observation, with 24-hour

monitoring, and that the psychiatric staff be contacted (V12/20-21). At some point while Morris was in custody, the commander had been advised by defense counsel that the family reported Morris had been making irrational, delusional statements, and deputies who monitored the family visitations were asked about that, but they could not corroborate any delusions or irrational statements; if they had, Morris would have been placed on direct observation at that time (V12/22-23).

The detention deputy that heard the statements, Deputy Reuben Clemente, testified that he was observing Morris on November 15, 2011, while Morris was under 24-hour observation (V12/31). He was standing directly in front of Morris's cell and could see and hear Morris clearly (V12/32). He heard Morris make statements about accepting God and repenting for his sins to God (V12/32). Morris made the statement, "I repent for killing five people" (V12/32). He was making other statements about Christian salvation and accepting Jesus Christ (V12/33). Morris was coherent and rational, and his statements made sense and related to each other (V12/33-34). He was kneeling as he talked to God (V12/34). He was speaking in an even tone, not yelling or screaming (V12/35).

Following the hearing, the court ruled that five of the six spontaneous statements which the State sought to admit had no

relevance, as they had a purely religious context and connotation (V8/1452-54). The court directed that Morris's admission be redacted so the reference to "five people" would be removed (V8/1453). However, Morris's statement, "I repent for killing five people," was deemed relevant and admissible (V8/1454).

The defense moved to reconsider, attaching a copy of a discovery deposition of psychologist Dr. Valerie McClain, and asserting that Dr. McClain's findings were relevant to the reliability and voluntariness of Morris's statements (V3/551-53; V4/674-78). In her deposition, Dr. McClain opines that Morris was suffering from major depression with psychotic features, and that her interview and some of the observation log records indicate Morris was delusional and hearing voices (V3/570, 596, 599-600; V4/613). In her interview, Morris told her that he heard voices "all day," but would not say what the voices were telling him (V3/570-71). In the observation logs, she identified specific delusional statements as being: Morris claiming "someone put something on me," as he was pacing; talking about religious themes and repenting of sins while he was pacing and agitated; describing himself as a "young buck child molester;" talking incoherently to himself; flailing his arms and refusing his tray because he thought his food had been poisoned; singing

while walking in circles; and claiming no one could take the part of him that's going to heaven (V3/597-600; V4/604-05).

Dr. McClain admitted that Morris's family background was very religious or spiritually based, and that he spent a lot of time reading spiritual books and in prayer (V3/582). She agreed that her concern was not based on the content of his statements at issue, which could be normal if he was in a church meeting with other people, but she felt since he was in a psychiatric unit under constant supervision, his statements did not suggest a repentant state of a rational mind (V4/605, 612). She noted the observations logs refer to his pacing and agitation, and people also saw him on his knees, kneeling and praying (V4/605, 611). She concluded that anything he said during his period of observation would be of questionable reliability, as there was an assumed break in reality based on the descriptions in the logs (V4/622).

A hearing was held on the motion for reconsideration (V13). The defense argued the involuntary nature of the statements as a new basis for exclusion (V13/52-53). Also, the defense asserted that if the statement was admitted, the defense would need to present a number of witnesses at trial to address the reliability and weight of the evidence, including Dr. McClain and Morris's mother, as well as other jail deputies that could

corroborate other allegedly psychotic statements (V13/53-54). Defense counsel proffered that Dr. McClain would testify that Morris was depressed, irrational, had psychotic features, and was psychotic at the time the statements were made (V13/56-58, 61-63). Morris's mother would testify to the bizarre and irrational behavior which she observed at visitation and reported to the jail (V13/58-59). The defense confirmed they would not be asking Dr. McClain to opine that the statements should not be believed, recognizing that was not her province (V13/61). The defense did not have any legal authority to support the position that an expert should be permitted to speak about a declarant's state of mind, when the declarations are spontaneous statements rather than the result of an interview or interrogation (V13/55-56, 59, 61).

The motion for reconsideration was thereafter denied. The court reaffirmed the earlier ruling, finding that Morris's statements were voluntary, spontaneous, and unsolicited (SV/3). The court noted that Morris was a party to the case, was competent to stand trial, and, although he was in custody, he was not being questioned or interrogated at the time of the statements, and there had been no allegation of coercion or lack of voluntariness (SV/3). Accordingly, the statements could be admitted as either spontaneous statements or as an admission by

a party (SV/3). The court observed that as a spontaneous statement, admission could be denied if the statement was made under circumstances that indicate a lack of trustworthiness, but as an admission by a party, the evidence code did not contemplate exclusion based on any mental state of the declarant (SV/3). The court also determined that any psychological testimony regarding Morris's mental state at the time of his statements would amount to improper evidence of diminished capacity, and would be excluded on that basis (SV/3-4). Because no showing of reliability was required to admit an admission by a party opponent, Morris's statement would not be excluded (SV/4). The court also observed:

> This ruling does not preclude or prohibit defense counsel from offering evidence of any other statements by Morris or observations of Morris' conduct or actions during the time period deputies were observing him. Under no circumstance however, will either party be permitted to offer lay or expert evidence of that portion of his statement wherein he mentions killing of 5 persons or lay or expert evidence of Morris' mental state at the time he made the statement.

(SV/4).

Once again, no abuse of discretion has been shown in this ruling. Morris's appellate argument on this issue is two-fold: he claims that the trial court should not have admitted his statement, "I repent for killing," and, once the statement was admitted, he had a due process right to present expert testimony

regarding his mental state at the time of his admission. Both arguments must be rejected.

A. Admission of Statement

Morris claims that his statement should have been excluded because it was irrelevant, suggested collateral crimes, and the probative value was outweighed by the danger of unfair prejudice. Clearly an admission of killing is relevant when one is on trial, standing accused of having killed. There is nothing unfairly prejudicial about using a defendant's admissions against him. See Section 90.401, Florida Statutes ("Relevant evidence is evidence tending or prove or disprove a material fact"); Compare Gregory, 118 So. 3d at 780 (defendant's statement, eight months prior to shooting his ex-girlfriend and another man, that he would kill them both if he caught her cheating was relevant and admissible); Johnston v. State, 863 So. 2d 271 (Fla. 2003) (admissions of party opponent must have some logical bearing on an issue of material facts; defendant's post-arrest admissions regarding "Dwight," a bad man that lived within him, were relevant and admissible); Swafford v. State, 533 So. 2d 270 (Fla. 1988) (defendant's response to being asked whether it would bother him after he suggested kidnapping and shooting a woman, that "you just get used to it," relevant and properly admitted).

Nor is there any reasonable argument that a collateral crime was suggested; the statement was redacted, so the jury did not know that Morris actually admitted killing five people. Since there is no reason for the jury to have believed that Morris was admitting other crimes, there is no danger of unfair prejudice at all, only the legitimate and necessary prejudice that flows from a defendant admitting a criminal act.

The relevance of Morris's admission was not eliminated or even reduced by the court-ordered redaction. Morris now claims that the statement, as redacted, did not specify that he killed Kocab and Curtis specifically, so his comment was more a statement of general propensity. Morris admits that his unredacted statement ("I repent for killing five people") was a specific acknowledgment of the murders for which he was on trial.[3] The relevance is the same, whether or not the individual victims are identified. As this Court has recognized, an admission is relevant "if it tends in some way, when taken together with other facts, to establish guilt," and admissions

[3] At the time the statement was made, Morris had been indicted for five separate murders. In addition to killing Officers Curtis and Kocab, he was convicted of the first-degree murder of Rodney Jones on March 13, 2013 (Hillsborough County Case No. 11-CF-00896 and he was convicted of the first-degree murder of Derek Anderson on July, 29, 2015 (Hillsborough County Case No. 10-CF-010373). His indictment for the first-degree murder of Harold Wright remains pending in Hillsborough County (Case No. 10-CF-0744).

are relevant even when they merely raise an inference of guilty conduct. Swafford, 533 So. 2d at 274-75.

In Swafford, the statement that "you just get used to it" was made two months after the kidnapping and shooting of the woman for which he was on trial. It was not necessary for Swafford to specifically identify the time he had "gotten used to it" previously, and, as in Morris's case, the fact that it was a comment of general application did not render it irrelevant or inadmissible.

Morris attempts to distinguish Swafford by noting the jury there had "referential details" from which the jury could determine that he was talking about the crime for which he was on trial, but again the jury below would have no reason to believe that Morris's admission related to other killings as well as the charged crimes. Swafford's statement, "you just get used to it," was a general admission, and could have been taken to mean that he that he had killed and shot many women, but it was properly admitted. In Swafford, there was a bigger issue because the "referential details" let the jury know that Swafford had discussed kidnapping and shooting *another* woman after the charged crime, yet even that evidence of an intent to commit a similar collateral crime was properly admitted.

Relevance is a legal question of admissibility for the trial judge. See generally Bearden v. State, 161 So. 3d 1257 (Fla. 2015) (discussing judge as gatekeeper, determining admissibility, and jury as factfinder determining credibility); Palmes v. State, 397 So. 2d 648, 653 (Fla. 1981) (noting question of admissibility of extra-judicial confession is for court to decide, based on all circumstances, but question of weight is for jury). Here, Morris does not dispute the relevance of the specific, unredacted statement, but only the relevancy of the admission as heard by the jury. But the threshold question of relevance is determined based on the statement actually made, not the statement as redacted for a defendant's protection.

The jury's role is to decide credibility and weight, not admissibility. The jury can properly presume that the court would not allow it to hear evidence of an admission that was not sufficiently linked, legally, to be relevant. The redaction of the reference to "five people" from Morris's statement did not impact its legal relevance or admissibility.

In arguing that the danger of unfair prejudice outweighed the probative value, Morris presumes that this Court will agree that the jury necessarily interpreted his statement as evidence of collateral crimes, but again there would be no reason for the jury to assume there were other murders from the statement as

redacted. He relies on cases where the jury heard statements of general criminal activity that was separate and apart from the charged crimes being tried. This is not a case where Morris was boasting about other criminal behavior, which may or may not have been true, as in the cases he cites. See Jackson v. State, 451 So. 2d 458 (Fla. 1984); Armstrong v. State, 931 So. 2d 187 (Fla. 5th DCA 2006); Lee v. State, 737 So. 2d 1116 (Fla. 2d DCA 1999); Delgado v. State, 573 So. 2d 83 (Fla. 2d DCA 1990).

In addition, any possible error in the admission of this evidence would be harmless beyond any reasonable doubt. State v. DiGuilio, 491 So. 2d 1129, 1139 (Fla. 1986). Morris's identity as the shooter in this case was well established by strong evidence, including a videotape of the murders themselves. His direct, specific confession to Ashley Price was independently corroborated, since it included details of the offense that had not been released to the media. He made other admissions to killing Officers Curtis and Kocab and other circumstantial evidence placed him near the scene at the time of the murders. This is not a case, such as Armstrong, which involved essentially a swearing match between the victim and the defendant. Armstrong, 931 So. 2d at 192. There is no reasonable possibility that any error influenced the jury verdicts.

B. Opportunity for Rebuttal

Morris also asserts that, once his statements were admitted against him, he had a due process right to present expert evidence relating to his state of mind at the time the statements were made. However, this argument was waived below when the defense failed to proffer with particularity the evidence which it wanted to present to the jury. Therefore, this claim should be rejected procedurally.

When the court below denied Morris's motion to reconsider the ruling to permit this statement, the court expressly provided that Morris was not prohibited nor precluded from presenting evidence regarding the circumstances of the statement (SV/4). At the hearing on the motion for reconsideration, the defense identified a number of potential witnesses and evidence to present in support of a defense argument that the statement was inherently unreliable (V13/53-54, 56-59). Included in this proffer, the defense submitted the deposition of Dr. McClain, and asserted that she would testify that Morris was depressed, irrational, had psychotic features, and was psychotic at the time the statements were made (V13/56-58, 61-63). The defense submitted that other witnesses would describe bizarre and irrational behavior and statements from Morris, including other detention deputies and Morris's mother (V13/53-54, 58). As much

of this proposed evidence was not precluded by court order, yet was not ultimately presented by the defense, the record suggests that there was a strategic decision by defense counsel to forego presentation of this theory of defense. Compare Armstrong, 931 So. 2d at 193 n.4 (defense counsel reasonably declined to provide the jury with evidence of the context of the statement, since it would reveal the defendant was a suspect in a much more serious case).

Clearly, any defense pursuit of a theory that Morris's statements were offered in the midst of a delusional rant was fraught with peril. The jury would necessarily hear that Morris had also repented for being a child molester, an admission Dr. McClain had to acknowledge could be true (V4/609). The only evidence of Morris ever "hearing voices" was his own, non-specific, self-report, beginning in 2011 (V3/570-71). Morris had no history of mental illness or any psychological issues, had no family history of mental illness or substance abuse, had no significant history of substance abuse himself, had no serious medical history, head injuries, or seizures, and was not on any medication (V3/539-42, 566-69). He had been diagnosed with a personality disorder and was found to be "probably malingering" when evaluated by Dr. Donald Taylor for competency, and the prosecutor below was preparing to counter any defense testimony

as to Morris's mental state, had the trial court ruled Dr. McClain's testimony to be admissible (V3/543; V13/70-75).

The defense would also have to counter the fact that at the time Morris's admission was heard, he was not pacing and agitated but was calm, coherent, speaking with an even tone, kneeling in prayer, reciting the Bible and recounting the path to salvation through Jesus Christ, expressing belief that his soul was going to heaven (V12/32-35, 38). The defense would have to risk that a Christian juror might not want to hear his or her belief labeled a delusion. The defense had determined, long before resting its case without presenting this evidence, that it would not be offering any expert mental mitigation to the jury, should there be a penalty phase (V18/407). The same admission would be offered to the jury and judge as mitigation, based on Morris's acceptance of responsibility and expression of remorse (V9/1619).

With this background, it is not surprising that defense counsel would choose to avoid presenting the theory that Morris made this statement during a psychotic, delusional rant. No doubt that decision will be revisited in postconviction, but in any event the significance in this appeal is that Morris never proffered below specifically what evidence he withheld as a result of the trial court's ruling. His general proffer of

proposed evidence at the hearing on the motion to reconsider is insufficient, since much of what he proposed to offer there could have been admitted but was not. Kight v. State, 512 So. 922, 930 (Fla. 1987), receded from on other grounds, Owen v. State, 596 So. 2d 985, 990 (Fla. 1992) (declining to review testimony from suppression hearing for proffer to determine whether trial court erred in excluding law enforcement officer's testimony about defendant's mental state at time of confession). It was incumbent upon the defense to provide an adequate proffer for this Court to assess the scope of the court's ruling below and the resulting impact on the trial itself. Blackwood v. State, 777 So. 2399, 410-11 (Fla. 2000); Finney v. State, 660 So. 2d 674, 684 (Fla. 1995) (proffer is necessary to preserve issue of exclusion of evidence, as appellate court must be able to assess what effect the error may have had on the result). The failure to provide this proffer compels rejection of this claim as unpreserved.

Even if this issue is considered substantively, no relief is due. The trial court's ruling expressly did not preclude the defense from presenting testimony and evidence regarding the circumstances of the statement. The defense was only denied the opportunity to present expert testimony that would have opened the door to a mini-trial as to Morris's state of mind, in a case

where insanity was not an issue. Thus, the ruling below was consistent with a number of cases from this Court, encompassing several legal considerations. See Palmes, 397 So. 2d at 653 (trial court erred in denying Palmes the opportunity to testify about the circumstances of his statement); Pietri v. State, 885 So. 2d 245, 254-55 (Fla. 2004) (expert testimony of defendant's mental health inadmissible where sanity is not an issue); Zeigler v. State, 402 So. 2d 365, 373 (Fla. 1981) (same).

In Kight, this Court upheld the exclusion of expert evidence as to a defendant's mental capacity at the time of his post-arrest confession. Kight argued that evidence of his mental retardation was necessary for the jury to consider as part of the totality of the circumstances in weighing the credibility of the statements. This Court concluded that Kight's ultimate purpose was to suggest to the jury that Kight was a follower, easily led, to support his claim that his codefendant had committed the murder. The Court held that, in the absence of a plea of not guilty by reason of insanity, "testimony concerning a defendant's mental state is inadmissible during the guilt phase of a trial." Kight, 512 So. 2d at 929. The Court noted that allowing evidence of a mental state in the guilt phase when there is no insanity plea would confuse and create immaterial

issues, observing that nearly all criminals have some psychological issues, but the relevant standard is sanity.

Morris's reliance on McNair v. State, 75 S.W.3d 69 (Tex. App. 2002), is misplaced. In that case, the defendant pled insanity. He asserted that under the Texas evidence code, which required a statement against interest to have been made by a "reasonable" person, his statements should have been excluded as a matter of law due to his mental illness. McNair does not hold that the court must permit a defendant to offer expert testimony as to his state of mind in order for the jury to assess the reliability of the statement, particularly when insanity is not at issue.

The line of cases such as Crane v. Kentucky, 476 U.S. 683 (1986), holding that a defendant has a right to present evidence about the circumstances of a post-arrest confession so that the jury can assess the voluntariness of the statement, does not compel error in this case. The admission of a statement as a party opponent and the admission of a criminal defendant's responses under custodial questioning do not present the same issues and are not governed by the same standards. In addition, Morris was never precluded from presenting any evidence about the circumstances of his statement, he was only prohibited from having an expert provide a mental health diagnosis in response

to admission of his statement. Crane does not address the situation, and Morris has shown no error in the ruling below.

Morris's convoluted argument that he should have been permitted to "impeach" his own admission is also unavailing. This contention was not offered to the court below and has not been preserved for appellate review. Moreover, his reliance on the federal rules of evidence is insufficient.

Even presuming Morris had a right to "impeach" these statements, he cites cases where witnesses were impeached because delusions, drug use, or mental illness impacted their ability to observe, remember, and recount. That is expressly permitted by the evidence code, which allows impeachment of any witness by "showing a defect of capacity, ability, or opportunity in the witness to observe, remember or recount the matters about which the witness testified." Section 90.608(4), Florida Statutes. Here, there has been no claim or showing that Morris's ability to remember or recount the killings rendered his statement unreliable. General character evidence simply suggesting that a witness has a mental illness is not a legitimate means of impeachment. Therefore, Dr. McClain's testimony was not admissible under the theory that Morris was entitled to impeach his own out-of-court statement.

Finally, again, any possible error was harmless. Palmes, 397 So. 2d at 653 (error in denying defendant's testimony as to the circumstances of the confession was harmless); Kight, 512 So. 2d at 931 (any error in denying expert's testimony of defendant's mental state at time of confession was harmless). Morris essentially complains that the court did not let him present an expert that would have revealed that Morris admitted to being a child molester and found Morris to be delusional when offering what otherwise appeared to be sincere statements of religious faith. Morris's identity was well established by the other evidence presented at trial, and any error in this ruling could not have affected the jury's verdict.

Accordingly, this Court must reject this issue as barred and meritless and affirm the convictions imposed below.

ISSUE III

WHETHER THE TRIAL COURT ERRED IN PERMITTING TESTIMONY OF IDENTIFICATION BY LAW ENFORCEMENT OFFICERS

Morris's next issue disputes the ruling to admit testimony by law enforcement officers identifying Morris's voice and image on recordings presented to the jury. Again a trial court's ruling on the admission of evidence is reviewed for an abuse of discretion. Gregory, 118 So. 3d at 780. As Morris has failed to demonstrate any such abuse, this issue must be rejected.

The State presented the testimony of several law enforcement officers to identify the voice of the shooter in the video from the dashboard camera as Morris's voice (V26/1635, 1640; V27/1889, 1896-97, 1900-01, 1905). Former Detective Duran also testified that he recognized the shooter's image as being Morris (V26/1640). Notably, these identifications were made after the witnesses spent a great deal of time with Morris personally and/or observing him in jail recordings (V26/1627-29; V27/1886-88, 1894-96, 1899-1900, 1902-05). Although jurors heard that Morris was in custody since that is where the detention deputies observed him, other evidence presented at trial without objection revealed that Morris had been arrested on July 2, 2010, the Friday after the murders, and that Morris had made telephone calls from the jail in March, 2011 (V25/1580;

V26/1614, 1739; V30/2198). Trial did not begin until November, 2013.[4]

Morris claims that admission of this testimony was improper as it invaded the province of the jury, citing Proctor v. State, 97 So. 3d 313 (Fla. 5th DCA 2012). Proctor was convicted of grand theft and uttering a forged check, and received a new trial because testimony had been admitted from a detective that

[4] While Morris also challenges the testimony of Sgt. Massucci as providing improper identifications, there was no contemporaneous objection to preserve this issue for review as to Sgt. Massucci. Sgt. Massucci did not identify either Morris's voice or image on the dashcam video. He did identify Morris as the speaker on a recorded phone conversation from jail, as well as other speakers in that conversation (V26/1704-07, 1709-10). While defense counsel at that time "renewed" his prior objection "to identifying voice exemplars," the prior objection, lodged during Detective Duran's testimony, claimed that the video recording itself was the best evidence (V26/1631); since Massucci was not testifying about the video, this objection had no basis. The primary objection to Massucci's identifications was the lack of foundation to show his familiarity with the other voices on the recording, and the judge responded to that objection by having the prosecutor "establish that more," which was done (V26/1707-08). After additional predicate questions were asked and answered, there was no further objection to any of Massucci's testimony of identification. Morris's brief also references a motion for mistrial "[a]fter the phone call was played," (Appellant's Initial Brief, p. 73, n.15) but that motion was not simply after the call, but after Massucci was subject to cross-examination, redirect examination, had been dismissed (but retained) as a witness, and a lunch recess was taken (V26/1731, 1733, 1736, 1740). Moreover, the motion for mistrial did not reference Massucci's testimony but alleged error based on "a law enforcement officer making an identification from a video," which was not what Massucci did, so the motion for mistrial was neither contemporaneous nor directed at the appellate claim against Massucci. Accordingly, this Court should hold that Morris's claim is unpreserved and procedurally barred with regard to witness Massucci.

an African American man seen in a bank videotape endorsing the checks was "Eric Proctor" pictured in the state driver's license database, and that the signatures on the checks were the same as Proctor's signature on file with the license database. The detective had no formal training in handwriting analysis, was not otherwise familiar with Proctor's handwriting, and did not know Proctor beyond looking up his name and license number in the database.

The testimony entered below was not comparable to the evidence rejected in Proctor. Unlike the detective in Proctor who had no independent familiarity with the defendant, the identifications admitted below all included a foundation showing a particular familiarity with Morris. Former Detective Duran viewed the dashcam video many times, breaking down every word in every frame, and was very familiar with both the audio and visual features (V26/1594-95). He also knew Morris's voice, which he described as distinctive, from listening to phone calls from the jail and watching tapes of jail visitations (V26/1627, 1629). Duran testified that he recognized the voice of the shooter in the video as Morris and he also recognized Morris's visual image in the video (V26/1635-40).

Deputy Gray became familiar with Morris's voice by monitoring multiple visitations, over hundreds of hours, while

Morris was in jail (V27/1886-88, 1891-92). Deputy Gelis worked in Morris's unit for eight months, and observed Morris conversing with other inmates and speaking with Gelis himself for about half of the days he was in the unit (V27/1894-95). Deputy Estrada saw Morris on a shift he worked for a little over a year, working about seven days every two weeks, and regularly heard Morris talk to him as well as other inmates (V27/1899-1900). Deputy Camara had frequent contact with Morris over a period that lasted close to two years (V27/1903). Morris repeatedly argues that it is error to permit identifications by a law enforcement officer when the officer "has no prior knowledge or special familiarity with the defendant," but the record affirmatively establishes that did not happen here, and this Court must reject this issue.

In Proctor, the court noted that testimony invades the province of the jury when factual determinations are within the realm of an ordinary juror's knowledge and experience. In Proctor and similar cases cited therein and noted by Morris, the courts observe that the witness offering the improper identifications had no special familiarity with the defendants. See Ruffin v. State, 549 So. 2d 250 (Fla. 5th DCA 1989); Charles v. State, 79 So. 3d 233 (Fla. 4th DCA 2012); Edwards v. State, 583 So. 2d 740 (Fla. 1st DCA 1991). This is a critical

distinction, and on this point, the evidence below is more comparable to Johnson v. State, 93 So. 3d 1066 (Fla. 4th DCA 2012). In that case, the court upheld the admission of testimony from a detective identifying Johnson as the person depicted in a surveillance video, based on the detective's special familiarity with the defendant: the detective had an extensive opportunity to observe Johnson in person shortly after the crime was committed. Moreover, the court noted that there was no danger that the jury would infer that the detective's knowledge was based on prior criminal conduct unrelated to the case, since the jury knew that this was one of the officers present at the time of Johnson's arrest. This consideration also applies in Morris's case, as the jury was well aware from other evidence that Morris had been in custody since shortly after the offense. Johnson is directly on point and confirms the propriety of the admission of the identification testimony below. See also State v. Cordia, 564 So. 2d 601 (Fla. 2d DCA 1990) (affirming admission of officers' identification of defendant's voice on recording where officers had worked with defendant in the past and were familiar with his voice); Hardie v. State, 513 So. 2d 791 (Fla. 4th DCA 1987) (finding no error in officers' identification on videotape based on prior knowledge and contacts with the defendant, although a new trial is awarded based on fact that witnesses

identified themselves as law enforcement, suggesting some prior criminal conduct by Hardie).

The jury in this case did not share the officers' familiarity with Morris and were not in the same position as the identification witnesses to assess the identity of the shooter on the dashcam video. Notably, the jury's only opportunity to hear Morris speak was through the playing of an audiotape of a conversation from the jail, which did not provide extensive exposure to compare with the voice on the dashcam videotape. Since law enforcement officers had the opportunity to study Morris's voice and image, they were in a better position to make the identification and their testimony did not invade the province of the jury.

As the jury knew from other unchallenged evidence that Morris had been in jail for more than two years, there was nothing unfairly prejudicial about the fact that the witnesses were law enforcement officers. See Johnson. Morris's concerns that the jury would presume that the officers had special training for voice recognition and that the jury would give more credence to testimony from an officer are unwarranted. Here, the officers acknowledged that there was no special training for this (V26/1644-45; V27/1890-91), and the jury was instructed that the fact a witness is employed in law enforcement does not

mean that his or her testimony deserves any more or less consideration than any other witness (V31/2397). Accordingly, there was no error in the admission of this testimony.

It must also be noted that any possible error in the admission of this evidence would be harmless beyond any reasonable doubt. Jurors heard Morris identified as the shooter repeatedly apart from this evidence, including hearing the shooter himself accurately provide his full name, the spelling of his name, and his date of birth, all of which was recorded by Officer Curtis (V25/1555, V26/1616-17). Temika Jones identified Morris on a photograph taken as a still from the video (V26/1751, 1762, 1772-73). Morris was also identified by Ynalia Keen, who saw the shooter run from the scene and picked his picture out of a photopack shortly thereafter (V25/1474-75; V26/1700-04). Morris was also identified in court by Ashley Price as the person that confessed to having shot two officers that morning (V27/1791). Finally, since the jurors observed the dashcam videotape, they became eyewitnesses and could observe both the shooter and Morris, and make their own identifications.

On these facts, the trial court did not err in permitting law enforcement officers to identify the shooter on the videotape as Morris. This Court must deny this claim and affirm the judgments of convictions entered below.

ISSUE IV

WHETHER THE TRIAL COURT ERRED IN OVERRULING THE OBJECTION TO THE ADMISSION OF PRIOR CONSISTENT STATEMENTS FROM ASHLEY PRICE

In his next issue, Morris claims that testimony from Detective Durkin regarding a prior consistent statement by State witness Ashley Price was improperly admitted. As Morris has failed to demonstrate that the trial court abused its discretion in admitting this evidence, this issue must be rejected.

Initially, the proper standard of review must be addressed. Morris suggests that this issue should be considered *de novo*, claiming that whether evidence is admissible as an exception to the hearsay rule is a question of law, subject to *de novo* review, citing Browne v. State, 132 So. 3d 312, 316 (Fla. 4th DCA 2014) (Appellant's Initial Brief, p. 87). The court in Browne observed specifically that "whether evidence is admissible in evidence under an exception to the hearsay rule is a question of law," and subject to *de novo* review. Thorough consideration of this issue demonstrates that Browne's suggestion of *de novo* review when assessing a trial court's ruling as to the admission of evidence as a hearsay exception is overstated and that *de novo* review is not appropriate for the claim which Morris presents in this appeal.

Any attempt to apply a bright-line rule for the standard of review based entirely on the nature of the ruling as implicating the statutory hearsay definition ignores the complexities of the trial court's role in determining evidentiary rulings. In State v. Saucier, 926 A.2d 633, 638-42 (Conn. 2007), the Connecticut Supreme Court included an extensive discussion and collected case law from many jurisdictions in formulating an appropriate standard of review for hearsay evidentiary questions. In a well-reasoned opinion, the court concluded that the standard of review should be determined by the function actually performed by the trial court in issuing the evidentiary ruling in question. In Florida, district courts have been inconsistent and contradictory in offering bright-line rules, rather than focusing on the function of the trial court in the particular ruling as challenged. Compare K.V. v. State, 832 So. 2d 264, 265 (Fla. 4th DCA 2002) (noting that, while the question of whether evidence falls within the statutory definition of hearsay is a matter of law, the issue of whether evidence should be admitted as an exception to the hearsay rule is reviewed for an abuse of discretion), and Browne, 132 So. 3d at 316 (noting that the question of whether evidence falls within the statutory definition of hearsay is a matter of law, subject to *de novo* review, and therefore the question of whether evidence is

admissible as an exception to the hearsay rule is also a question of law, reviewed *de novo*).

In Bearden v. State, 161 So. 3d 1257, 1263 (Fla. 2015), this Court noted that, while a trial court's ruling on the admissibility of evidence will not be disturbed absent an abuse of discretion, discretion is limited by the evidence code and applicable case law, and a trial court's erroneous interpretation of these authorities is subject to *de novo* review. See also Sheppard v. State, 151 So. 3d 1154, 1169 (Fla. 2014) (applying abuse of discretion review in assessing whether evidence was inadmissible hearsay, after observing that discretion is guided by the rules of evidence and applicable case law). This Court in Bearden appears to follow the Connecticut court in Saucier, by focusing on whether the trial court's presumed error was legal as opposed to factual. Similarly, it is evident that several district court cases properly reviewed *de novo* evidentiary rulings that turn on legal rather than factual bases. See Hardy v. State, 140 So. 3d 1016, 1019 (Fla. 1st DCA 2014) (finding legal question where evidence at issue was asserted to be admissible under Section 90.802(17), regarding market reports and commercial publications, where unpublished document in question was not within the scope of the exception as a matter of law); Chavez v. State, 25 So. 3d 49

(Fla. 1st DCA 2009) (applying *de novo* review to find doctrine of forfeiture by wrongdoing did not apply as a matter of law); Browne, 132 So. 3d at 316 (finding that hearsay exception for "first complaint" recognized in 1953 had been eliminated as a matter of law when it was not incorporated into the Evidence Code adopted in 1976).

The problem is that a bright-line rule of *de novo* review for hearsay exceptions is then applied across the board, even when the ruling at issue appears to be factual rather than legal. See, e.g., Powell v. State, 99 So. 3d 570, 573 (Fla. 1st DCA 2012) (applying *de novo* review to issue of whether testimony was properly admitted as an excited utterance exception to the hearsay rule); Browne, 132 So. 3d at 316 (applying *de novo* review to issues of whether testimony was admissible as excited utterance or as a prior consistent statement). As this Court explained in McDuffie v. State, 970 So. 2d 312, 326 (Fla. 2007), the discretion exercised in evidentiary rulings is limited by the rules of evidence, and the trial court abuses its discretion when the ruling is based on an erroneous view of the law or on a clearly erroneous assessment of the evidence. Thus there may be an element of *de novo* consideration in assessing whether the trial court has committed legal error, but *de novo* review is not

appropriate where the judge's ruling is premised on a factual finding, as in the instant case.

The particular issue presented in the instant appeal concerns whether the trial court properly admitted prior consistent statements under Section 90.801(2)(b), which directs that such statements are not hearsay when offered to rebut a charge of improper influence, motive, or recent fabrication. This Court has previously applied an abuse of discretion standard in resolving this exact issue. Tumblin v. State, 29 So. 3d 1093, 1100 (Fla. 2010). This standard is correct because whether there was a charge of improper influence to be rebutted by prior statements is a matter of fact rather than law, compelling the application of an abuse of discretion standard. Accordingly, this Court should review the issue in this case for an abuse of discretion.

However, no error is presented in this case, regardless of the standard of review applied. Ashley Price testified below that Morris, known to her as "Quelo," called her the day that Curtis and Kocab were shot, admitted to her that he "did it," and provided details of the murders that had not been released to the media (V27/1780-91). She acknowledged that she had three prior convictions, all from the same date, and that she currently had a charge pending against her, but she had not been

promised anything in exchange for her testimony and she was not expecting any kind of favorable treatment (V27/1781-83). On cross-examination, defense counsel attempted to impeach her on several different bases. Price admitted that she was on probation when the officers were killed, but there was no open or pending case (V27/1792-93). She admitted that at the time she testified, she was facing the consequences of violating her probation (V27/1793). Defense counsel used statements from Price's deposition to suggest she had made inconsistent statements about how well she knew Morris (V27/1794-1802). In addition, counsel specifically asked if Price had received some financial benefit from the police, and Price responded that they assisted with funds for relocating her housing (V27/1811-12). Price denied that the police had threatened her with charges or by threatening to call the Department of Children and Families regarding her small children, affirming that the only benefit she received was financial (V27/1812).

Once defense counsel elicited that Price had received a financial benefit from law enforcement, the State was permitted to introduce evidence that Price had made statements, consistent with her in-court testimony, before she had obtained any financial benefit. In order to be admissible as a hearsay exception to rebut the implication of improper influence, the

following conditions must be met: (1) the declarant must testify at trial and be subject to cross-examination, and (2) the prior statements are offered to rebut an express or implied charge of improper influence, motive, or recent fabrication. Taylor v. State, 855 So. 2d 1, 22-23 (Fla. 2003); Chandler v. State, 702 So. 2d 186, 197 (Fla. 1997). As these conditions were met here, Price's prior statements were properly admitted.

Morris asserts that the statements were improper because the "gist" of the cross-examination suggested that it was improbable Morris would have called Price because he did not know her that well, and she was not telling the truth when she initially spoke to the police shortly after the murders. He claims he did not accuse Price of having changed her story and that there must be at least an implication that the story changed, citing Bradley v. State, 78 So. 2d 732 (Fla. 2001); Stewart v. State, 558 So. 2d 416 (Fla. 1990); Rodriguez v. State, 57 So. 3d 961 (Fla. 4th DCA 2011). In Stewart and Rodriguez, prior statements were introduced after, as in this case, there was an implied charge of improper influence on cross-examination.

In Bradley, the prior statements of a non-testifying law enforcement officer regarding statements made by the defendant were admitted after the testifying officer was asked about an

omission in a taped interview with the defendant. This Court questioned whether there had been any insinuation of recent fabrication, but also determined that the requirements for admission were not met since the declarant officer did not testify at trial. Here, there is no question that Ashley Price testified at trial and was subject to cross-examination, so the error committed in Bradley did not occur.

Morris also cites Howard v. State, 152 So. 3d 825 (Fla. 2d DCA 2014), where the court found that the prior consistent statements were improperly admitted on direct examination before any cross-examination had suggested any improper influence. Morris asserts that the same error occurred here, as the prosecutor asked Price on direct examination whether she had told the police the same thing she had told the jury, and she indicated that she had (V27/1791). However, there was no objection to that testimony, and the defense did not raise this issue at all until Detective Durkin was called to corroborate Price's testimony; the objection lodged at that time did not complain that Price had been premature but in fact acknowledged that the specter of a benefit had been raised (V27/1858-61). Thus, the issue of Price acknowledging her prior statements was not preserved for appeal. In addition, Price did not relate the substance of her statements specifically but simply acknowledged

that they had been given, so no hearsay was offered at that time. As the statements challenged below were only admitted after the defense elicited testimony of a financial benefit on cross-examination, the error that occurred in Howard was not repeated here.

This Court does not require an affirmative charge of fabrication, but the mere implication of improper influence is sufficient to permit the admission of prior consistent statements. Taylor, 855 So. 2d at 23; Dendy v. State, 896 So. 2d 800, 804 (Fla. 4th DCA 2005) ("At trial, the defense raised at least the implied charge that Charafardin fabricated a story in return for leniency. The prior statement was therefore admissible as a prior consistent statement"). Therefore, the fact that the defense did not make an express accusation of fabrication below is not significant. When defense counsel objected to Detective Durkin's testimony, he admitted that the defense had raised the issue of a benefit, but argued that shouldn't matter since the defense had not argued that Price's story had changed (V27/1859) ("we did raise the issue of benefit. … All we tried to do was to impeach her in the normal fashion as to whether she was influenced"). In closing argument, defense counsel told the jury that "Price is the only witness who received a financial benefit for her cooperation"

(V31/2317). Clearly, defense counsel believed this was a factor which may have somehow influenced Price's testimony, so it was reasonable to permit the State to demonstrate that Price's earlier statements to the police were consistent.

In Chandler, as in this case, the defense elicited alternative purported motives for the witness to have colored or fabricated her testimony. While one of the motives existed before any statement had been made, another motive occurred after the witness had provided statements to the police, and this Court agreed that the State was not prohibited from rehabilitating the witness by the fact that an earlier motive also existed; "[t]hat was a choice that the defendant made in urging more than one reason to fabricate at trial." Chandler, 702 So. 2d at 198. The same reasoning applies in this case. Just because the defense suggested that Price had a motive to lie before she ever went to the police to offer her statement, the defense also suggested a later motivation based on having received a financial benefit from the police. Here, there is no relevance at all to the financial support provided by the Tampa Police Department unless it was offered to suggest an improper influence. Certainly by eliciting testimony of a financial benefit, the defense at least implied an improper motive for

Price's testimony. Accordingly, this evidence was properly admitted.

In addition, when this Court has found error with the introduction of prior consistent statements, it is frequently harmless by nature. See Taylor; Bradley; Chandler, 702 So. 2d at 198-99 (finding no error, but holding any potential error to be harmless where defendant's daughter's prior consistent statements -- that her father had told her he could not return to Florida because he had killed some women -- were admitted). Here, again, Morris's identity as the shooter on the dashcam video was well-established at trial, and Price's statements simply corroborated the other evidence of identity. The jury had the tools to assess Price's credibility and Detective Durkin did not offer any statements that the jury did not also hear directly from Price. Any possible error on these facts would be harmless. This Court must reject this claim and affirm the convictions.

ISSUE V

WHETHER THE TRIAL COURT ERRED IN DENYING A MOTION FOR MISTRIAL BASED ON THE JURY HEARING ABOUT THREATS AGAINST ASHLEY PRICE

Morris also asserts that a motion for mistrial should have been granted after the prosecutor asked Ashley Price about having to be relocated "because of threats." A trial court's ruling on a motion for mistrial is reviewed for an abuse of discretion. Salazar v. State, 991 So. 2d 364, 371-72 (Fla. 2008). As Morris has failed to demonstrate any such abuse, this issue must be rejected.

In the trial below, Ashley Price admitted on cross-examination that the police had provided her with financial support so that she could relocate her residence (V27/1811). On redirect, the prosecutor wanted Price to explain what support was provided and why; Price indicated that she recently relocated, and Tampa Police Department assisted financially in providing the first and last month's rent and/or security deposit, but she could not recall the amount (V27/1826-27). Price worked with Detective Massucci on this and in the months before the money was provided, the police had been working with local charities to try to relocate Price, to no avail (V27/1827). The prosecutor asked if this was "because of threats made to you and your family," and defense counsel objected

before the witness could respond (V27/1827). Counsel was concerned that the jury would infer that the threats came from Morris or someone acting on his behalf, and requested a mistrial (V27/1828-29). The prosecutor indicated he had no intent to suggest that Morris was behind the threats, and the judge sustained the objection and told the prosecutor to stay away from that line of questioning and to move on (V27/1831-32).

After Price was excused, defense counsel expounded on their motion for a mistrial and asserted that the properly-admitted evidence that Morris had called Price from jail in an attempt to intimidate or influence her rendered the later suggestion of threats irreparably prejudicial and that no curative instruction could dissipate the damage (V27/1833-36). Following discussion, the court outlined observations and findings for the record. The judge noted that Price had received nominal financial assistance, a fact known to the parties, and this was an impeachable subject which defense counsel had appropriately elicited (V27/1839). The judge also noted that an impeached witness may be rehabilitated by the opposing party, and that the fact that there was a reason for the financial assistance was a legitimate area of inquiry (V27/1840). He observed that the prosecutor's question contained the word "threats" which compelled a discussion at the bench, noting that it would be

improper to suggest that any threat had come from Morris (V27/1840). In addition, the court reviewed the court reporter's notes, confirming that the witness had not responded to the question about threats (V27/1842-43). The court concluded that although the question was inappropriate, there was no response, and the motion for mistrial was denied (V27/1845).

The court offered to provide a curative instruction, which the State did not oppose, and defense counsel indicated that, without abandoning the mistrial motion, they would agree to stipulate to a statement indicating that, with respect to the suggestion of any threat against Price, counsel all agree that any such concern had nothing to do with Morris (V27/1846-47). The court suggested, "The attorneys agree that any reference to any suggested threat to Ms. Price has nothing to do with Mr. Morris," and the prosecutor and defense counsel both agreed to this language (V27/1847). The jury was returned and thereafter was instructed that "any reference to any suggested threat to Ms. Price, the witness who was testifying, the attorneys for The State and Defense agree that this has nothing whatsoever to do with Mr. Morris" (V27/1848).

No mistrial was warranted on these facts. In Salazar, this Court reiterated that a mistrial should only be granted when an error is so prejudicial that it vitiates the entire trial, and

that the denial of a mistrial will be upheld unless the ruling is arbitrary, fanciful, or unreasonable. In this case, the fundamental fairness of Morris's trial was not disturbed by this isolated question attempting to explain the witness's need for assistance with relocating. See Johnson v. State, 355 So. 2d 200, 201 (Fla. 3d DCA 1978) (holding that error in admitting evidence that defendant's brother offered money for a witness to testify for the defense was not fundamental and did not deprive defendant of a fair trial); Manuel v. State, 524 So. 2d 734, 736 (Fla. 1st DCA 1988) (holding that the failure to connect the defendant with witness tampering was harmless). This is particularly true since the trial court below expressly advised the jurors that Morris had no connection "whatsoever" to any suggested threat.

Morris relies principally on Koon v. State, 513 So. 2d 1253 (Fla. 1987), and Jones v. State, 385 So. 2d 1042 (Fla. 1st DCA 1980). In Koon, this Court upheld the admission of testimony from a defense witness, admitting that he felt threatened as a result of conversations with Koon's brother and an investigator. This Court noted that threats with respect to testimony may bear on the credibility of a witness, regardless of who made the threat, and held that the testimony was properly admitted as impeachment. However, this Court cautioned that threats against

a witness are generally inadmissible to prove guilt, unless they are shown to be attributed to the defendant. The Court also warned that, even where admissible, some evidence of threats may be excluded where admission would be deemed too prejudicial, citing State v. Price, 491 So. 2d 536 (Fla. 1986) (while evidence of third-party threat to shoot a witness for testifying against the defendant, not linked to the defendant, was admissible to explain witness's prior inconsistent statements, testimony was too prejudicial and should have been excluded).

Koon suggests that the court below should not have sustained the objection to the prosecutor's question, since it was intended to rehabilitate the witness and was not offered as substantive evidence of Morris's guilt. While the court determined that any suggestion of a threat would be too prejudicial if not connected to Morris, this determination was premature since the court did not even hear a proffer as to the nature of the threats. At any rate, the minimal prejudice that might have inured to the defense from the prosecutor's question alone would certainly be cured by the instruction that Morris had nothing whatsoever to do with any possible threats.

In Jones, the First District held that a mistrial should have been granted when the prosecutor insinuated that threats had been made against a witness for testifying, where there was

no evidence that connected the defendant to the threats. Jones does not demonstrate error in this case, because it involved a situation where the jury actually heard evidence that a State witness had been threatened with regard to her testimony, and was permitted to consider the threats as evidence of guilt against the defendant. In this case, the jury did not hear any acknowledgement that Price had been threatened, but even if they assumed such from the prosecutor's question, the evidence was not offered as substantive evidence but as legitimate testimony to rehabilitate Price after she was impeached by the suggestion that the police provided financial assistance.

The hazard posed by the admission of third-party threats that are not specifically linked to the defendant is the danger that the jury will presume that the defendant was ultimately responsible for the threats, and infer guilt. Here, however, any possible inference was negated by the curative instruction. Although Morris challenges the adequacy of the instruction as given below, his complaint is unpreserved and meritless. On appeal, Morris asserts that the particular language provided below was insufficient because the jury was not advised against considering this as evidence of guilt. However, defense counsel had an opportunity to participate in the drafting of the curative instruction, and affirmatively approved of the curative

instruction as offered to counsel and provided to the jury (V27/1846-48). Because counsel did not object to the curative instruction proposed and given, Morris has no basis to assert error in the specific language employed. In addition, since the jury was told any suggestion of threats had "nothing whatsoever" to do with Morris, they could not have considered the prosecutor's unanswered question as evidence of his guilt.

This Court has observed that the power to grant a mistrial should be exercised with great care and done only in cases of absolute necessity. Salvatore v. State, 366 So. 2d 745, 750 (Fla. 1978). In most instances, giving a curative instruction will obviate the need for a mistrial. Tumblin, 29 So. 3d at 1102; Graham v. State, 479 So. 2d 824, 825 (Fla. 2d DCA 1985). In this case, the curative instruction was provided shortly after the question was posed, and was specific as to the improper consideration at issue. Compare Tumblin, 29 So. 3d at 1102 (highly prejudicial testimony of a law enforcement officer, that the only eyewitness to the murder had been telling the truth, was not cured by general instruction which was not provided until days following the error).

Morris's concern that the prosecutor's closing argument would cause the jurors to attribute the question about threats to Morris because the prosecutor emphasized that Morris tried to

pressure or manipulate Price is unfounded. The pressure discussed in closing argument is the recorded telephone call which Morris initiated from jail on March 4, 2011 (V25/1572; V26/1739). The trial, when Price testified that she had relocated "recently," was held in November, 2013. In addition, if the jury were to presume that Morris threatened Price based on evidence of the phone call where he asks why she's "talking like that," there would be no prejudice since the testimony about that phone call was relevant evidence which was properly admitted (V26/1724). The prosecutor's argument never suggested that there were any other threats made to Price.

For all of these reasons, the court below properly denied the motion for mistrial. This Court must reject this claim and affirm the convictions entered below.

ISSUE VI

WHETHER A NEW TRIAL IS REQUIRED DUE TO CUMULATIVE ERROR

Morris's last issue claims that a new trial must be conducted due to cumulative error. As this is an unpreserved due process claim, there is no standard of review. Morris simply asserts that the other six issues raised in this appeal must be considered cumulatively, even if they might be harmless when resolved individually. However, for the reasons previously discussed, none of the pending claims has any merit. Accordingly, there is no harm or prejudice to accumulate. This Court must reject this issue and affirm the convictions imposed below.

STATEMENT REGARDING SUFFICIENCY OF THE EVIDENCE

Morris does not challenge the sufficiency of the evidence to support the jury's verdict, finding him guilty of first degree murder in the deaths of Jeffrey Kocab and David Curtis. Because this Court reviews this issue on direct appeal in every capital case, this statement is offered to assist the Court in that function.

In this case, the killings of Officers Curtis and Kocab were captured on videotape from the camera on the dashboard of Officer Curtis' police car. The video begins prior to the traffic stop of Cortnee Brantley's red Camry, and includes conversations with the car's occupants. In the video, Morris identifies himself, spelling his full name and accurately providing his date of birth. After Officer Curtis runs the identification in his car computer, both officers approach the passenger side of the car, telling Morris about an outstanding warrant and asking him to step out of the car. As Morris exits, he turns quickly and deliberately, raising a gun and shooting both officers in the head at close range, then running off. The video confirms that the shots were not fired accidentally or out of any potential necessity.

Morris's identity as the shooter was corroborated by other independent evidence. Ashley Price testified that Morris called

her the morning of the shootings, and told her that he "did it." He provided specific details about the crime which had not been released to the media at the time Price reported them to law enforcement the following day. A friend of Morris identified him from a still picture taken from the video, and law enforcement officers identified his voice and image as the shooter on the video.

Officer Curtis's DNA was discovered on the outside passenger area of Brantley's car, and phone records provided incriminating text messages which Morris and Brantley exchanged shortly after the murders. Morris's cell phone was tracked by towers, placing Morris in the vicinity of the shootings at the relevant time. Morris negotiated a three-way telephone call from jail, where he expressed frustration that Ashley Price was cooperating with the police and told her he wanted her to come meet with him. While in jail, a detention deputy heard Morris "repent for killing."

The dashboard video alone would provide sufficient evidence to convict Morris of these murders, but the strong corroborating evidence of Morris's identity makes the State's case overwhelming. The direct and circumstantial evidence of guilt easily overcame Morris's reasonable hypothesis that it was not him in the video. This Court must affirm the convictions.

STATEMENT REGARDING PROPORTIONALITY

Morris does not challenge the proportionality of the death sentences imposed on him for the murders of Officers David Curtis and Jeffrey Kocab. Because this Court reviews this issue on direct appeal in every capital case, this statement is offered to assist the Court in that function.

In this case, Morris killed two law enforcement officers. The video of the shootings reflects that Morris was being taken into custody when he calmly and deliberately secured a gun and then shot both officers in the head at very close range. In addition to having prior violent felony convictions for each officer's death, on March 13, 2013, Morris was convicted of the first-degree murder conviction and attempted robbery of Rodney Jones. He offered no statutory mitigation beyond the "catchall" factor based on his low intelligence, background, family history, and positive character traits. The jury recommended both death sentences by a vote of 12 to 0.

This Court has frequently upheld death sentences imposed for the murders of law enforcement officers. In Burns v. State, 699 So. 2d 646, 649-51 (Fla. 1997), the death sentence was upheld with only the single aggravating factor of victim being a law enforcement officer merged with the avoid arrest factor, despite mitigation at least as strong as that presented below.

This Court has also upheld death sentences in many similar cases involving much more mitigation than that found here. See Altersberger v. State, 103 So. 3d 122 (Fla. 2012) (19-year-old with statutory mental mitigation shot officer that pulled him over for erratic driving); Bailey v. State, 998 So. 2d 545, 548 (Fla. 2008) (defendant with brain damage committed spontaneous shooting to prevent his arrest); Wheeler v. State, 4 So. 3d 599, 612 (Fla. 2009); Armstrong v. State, 642 So. 2d 730, 733-34 (Fla. 1994); Reaves v. State, 639 So. 2d 1, 4 (Fla. 1994). Accordingly, Morris's death sentences should be upheld as proportional.

CONCLUSION

WHEREFORE, the State requests that this Honorable Court affirm the judgments and sentences imposed below.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of August, 2015, I electronically filed the foregoing with the Clerk of the Court by using the Florida Courts E-Portal Filing System which will send a notice of electronic filing to the following: Cynthia J. Dodge, Assistant Public Defender, Post Office Box 9000 - Drawer PD, Bartow, Florida 33831; at: **theadodge@gmail.com; appealfilings@pd10.state.fl.us; cdodge@pd10.state.fl.us** and **mjudino@pd10.state.fl.us.**

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CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

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