IN THE SUPREME COURT OF FLORIDA

JOHN STEVEN HUGGINS,
Appellant,

v. CASE NO. SC02-2364

STATE OF FLORIDA,
Appellee.
_____/

ON APPEAL FROM THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE

CHARLES J. CRIST, JR.
ATTORNEY GENERAL

KENNETH S. NUNNELLEY
SENIOR ASSISTANT ATTORNEY GENERAL
Fla. Bar #0998818
444 Seabreeze Blvd., 5th Floor
Daytona Beach, Florida 32118
(386) 238-4990
Fax # (386) 226-0457

COUNSEL FOR APPELLEE

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

STATEMENT OF CASE 1

STATEMENT OF FACTS 3

SUMMARY OF THE ARGUMENT 40

ARGUMENTS

I. THE HEARSAY/CONSCIOUSNESS OF GUILT CLAIM 43

II. THE "STATEMENT OF INTENT" TESTIMONY WAS PROPERLY ADMITTED 47

III. THE "*NEIL/SLAPPY*" CLAIM 49

IV. THE "REVERSE-*WILLIAMS* RULE" CLAIM 51

V. THE PREJUDICIAL EVIDENCE CLAIM 56

VI. THE MOTION FOR JUDGMENT OF ACQUITTAL WAS PROPERLY DENIED. 61

VII. THE CIRCUMSTANTIAL EVIDENCE JURY INSTRUCTION CLAIM 64

VIII. THE "DISQUALIFICATION OF THE PROSECUTOR" CLAIM 66

IX. THE AGGRAVATING CIRCUMSTANCE CLAIM 68

X. HUGGINS' DEATH SENTENCE IS NOT DISPROPORTIONATE . 77

XI. THE *APPRENDI/RING* CLAIM 81

CONCLUSION 83

CERTIFICATE OF SERVICE 84

CERTIFICATE OF COMPLIANCE 84

TABLE OF AUTHORITIES
CASES

Alston v. State,
723 So. 2d 148 (Fla. 1998) 68

Anderson v. State,
28 Fla. L. Weekly S731 (Fla. Sept. 25, 2003) . . . 82

Apprendi v. New Jersey,
530 U.S. 166 (2000) 81

Banks v. State,
732 So. 2d 1065 (Fla. 1999) 61, 73

Barnhill v. State,
834 So. 2d 836 (Fla. 2002) 59

Bates v. State,
750 So. 2d 6 (Fla.1999) 80

Batson v. Kentucky,
476 U.S. 79 (1986) 49, 50

Bedford v. State,
589 So. 2d 245 (Fla. 1991) 70

Belcher v. State,
851 So. 2d 678 (Fla. 2003),
petition for cert. filed, No. 03-6522 (Sept. 17, 2003) 77

Blackwood v. State,
777 So. 2d 399 (Fla. 2000) 77

Bogle v. State,
655 So. 2d 1103 (Fla. 1995) 67

Bowen v. Keen,
154 Fla. 161, 17 So. 2d 706 (1944) 48

Bowles v. State,
804 So. 2d 1173 (Fla. 2001), *cert. denied,*
536 U.S. 930 (2002) 77

Bradley v. State,

787 So. 2d 732 (Fla.2001) 55, 79

Brooks v. State,
787 So. 2d 765 (Fla. 2001) 48

Bruno v. Moore,
838 So. 2d 485 (Fla. 2002), *cert. denied*,
124 S.Ct. 100 (2003) 57

Bryant v. State,
785 So. 2d 422 (Fla.2001) 80

Carroll v. State,
815 So. 2d 601 (Fla. 2002) 57

Castro v. State,
644 So. 2d 987 (Fla. 1994) 49

Chambers v. Mississippi,
410 U.S. 284 (1973) 55, 56

Chavez v. State,
832 So. 2d 730 (Fla. 2002), *cert. denied*,
123 S.Ct. 2617 (2003) 57

Clark v. State,
609 So. 2d 513 (Fla. 1992) 70

Cole v. State,
701 So. 2d 845 (Fla. 1997) 48

Conahan v. State,
844 So. 2d 629 (Fla. 2003), *cert. denied*,
124 S.Ct. 240 (2003) 70

Conde v. State,
28 Fla. L. Weekly S669 (Fla. Sept.4, 2003) . . 54, 55, 77

Cummings-El v. State/Crosby,
28 Fla. L. Weekly S757 (Fla. Oct. 9, 2003) 82

Darling v. State,
808 So. 2d 145 (Fla.) *cert. denied*,
537 U.S. 848, 123 S. Ct. 190,
154 L. Ed. 2d 78 (2002) 62, 66

Davis v. State,
28 Fla. L. Weekly S692 (Fla. Sep. 11, 2003) . . . 58, 82

Davis v. State,
2003 WL 22722316 (Fla. Nov. 20, 2003) 81

Donaldson v. State,
722 So. 2d 177 (Fla. 1998) 61

Doorbal v. State,
837 So. 2d 940 (Fla. 2003), *cert. denied*,
123 S.Ct. 2647 (2003) 74

Drake v. State,
400 So. 2d 1217 (Fla.1981) 53

Edmonson v. Leesville Concrete Co.,
500 U.S. 614 (1991) 50

Farina v. State,
679 So. 2d 1151 (Fla. 1996) 67

Farina v. State,
801 SO. 2d 44, 52 (Fla. 2001) 60

Finney v. State,
660 So. 2d 674 (Fla.1995) 73

Floyd v. State,
850 So. 2d 383 (Fla. 2002) 60, 66

Franqui v. State,
699 So. 2d 1312 (Fla. 1997) 67

Gore v. State,
784 So. 2d 418 (Fla. 2001) 55

Gudinas v. State,
693 So. 2d 953 (Fla.1997) 57, 59

Guzman v. State,
2003 WL 22722404 (Fla. Nov. 20, 2003) 81

Hannon v. State,

638 So. 2d 39 (Fla. 1999), *cert. denied,*
513 U.S. 1158, 115 S.Ct. 1118, 130 L.Ed 2d 1081 (1995) 75

Happ v. State,
618 So. 2d 205 (Fla. 1993) 77

Hartley v. State,
686 So. 2d 1316 (Fla.1996) 73

Henry v. State,
28 Fla. L. Weekly S753 (Fla. Oct. 9, 2003) 82

Hertz v. State,
803 So. 2d 629 (Fla. 2001), *cert. denied,*
536 U.S. 963 (2002) 46, 59, 60

Hildwin v. State,
727 So. 2d 193 (Fla.1998) 73, 77

Hitchcock v. State,
578 So. 2d 685 (Fla. 1990) 77

Holland v. United States,
348 U.S. 121, 75 S. Ct. 127,
99 L. Ed. 150 (1954) 65

J.E.B. ex rel. T.B. v. Alabama,
114 S. Ct. 1419 (1994) 50

James v. State,
695 So. 2d 1229 (Fla. 1997) 65

Jeffers v. Ricketts,
832 F.2d 476 (9th Cir. 1987) 60

Jent v. State,
408 So. 2d 1024 (Fla. 1981) 46

Johnston v. State,
28 Fla. L. Weekly S779 (Fla. Oct. 16, 2003) . . . 62, 82

Jones v. State,
440 So. 2d 570 (Fla. 1983) 48

Kearse v. State,
770 So. 2d 1119 (Fla. 2000) 49, 67, 81

Kormondy v. State,
28 Fla. L. Weekly S135 (Fla. Apr. 13, 2003), *cert. denied,* 124 S.Ct. 392 (2003) 82

Larkins v. State,
655 So. 2d 95 (Fla.1995) 57

Lightbourne v. State,
438 So. 2d 380 (Fla. 1983) 74

Looney v. State,
803 So. 2d 656 (Fla. 2001) 60

Maharaj v. State,
597 So. 2d 786 (Fla. 1992) 60

Mansfield v. State,
758 So. 2d 636 (Fla. 2000) 59, 77, 81

Marquard v. State,
850 So. 2d 417 (Fla. 2002) 57

Medina v. State,
466 So. 2d 1046 (Fla. 1985) 46

Meggs v. McClure,
538 So. 2d 518 (Fla. 1st DCA 1989) 67

Melton v. State,
638 So. 2d 927 (Fla.1994) 80

Monlyn v. State,
705 So. 2d 1 (Fla. 1997) 65

Morris v. State,
811 So. 2d 661 (Fla. 2002) 79

Murray v. State,
838 So. 2d 1073 (Fla. 2002) 47

Mutual Life Insurance Co. v. Hillmon,
145 U.S. 285 (1892) 48

Ocha v. State,
826 So. 2d 956 (Fla. 2002) 77, 79

Orme v. State,
677 So. 2d 258 (Fla. 1996) 62

Overton v. State,
801 So. 2d 877 (Fla. 2001), *cert. denied,*
535 U.S. 1062 (2002) 77

Owen v. State,
28 Fla. L. Weekly S790 (Fla. Oct. 23, 2003) 82

Pagan v. State,
830 So. 2d 792 (Fla. 2002), *cert. denied,*
--- *U.S.* ----, 123 S.Ct. 2278, 156 L.Ed.2d 137 (2003) 61

Peek v. State,
395 So. 2d 492 (Fla. 1980), *cert denied,*
45 U.S. 964, 101 S.Ct. 2036, 68 L. Ed. 2d 342(1981) 70

Philmore v. State,
820 So. 2d 919 (Fla. 2002) 73, 79

Pope v. State,
679 So. 2d 710 (Fla.1996) 80

Porter v. State,
564 So. 2d 1060 (Fla.1990) 79, 80

Powers v. Ohio,
499 U.S. 400 (1991) 50

Preston v. State,
607 So. 2d 404 (Fla. 1992), *cert. denied,*
507 U.S. 999, 113 S.Ct. 1619, 123 L. Ed. 2d 178 (1993) 74

Ray v. State,
755 So. 2d 604 (Fla. 2000) 48

Rembert v. State,
445 So. 2d 337 (Fla. 1984) 66

Ring v. Arizona,
536 U.S. 584 (2002) 43, 81, 82

Rivera v. State/Crosby,
28 Fla. L. Weekly S704 (Sept. 11, 2003) 82

Rogers v. State,
783 So. 2d 980 (Fla. 2001) 67

Rutherford v. Moore,
774 So. 2d 637 (Fla. 2000) 57

San Martin, v. State,
717 So. 2d 462 (Fla. 1998) 60

Schwab v. State,
636 So. 2d 3 (Fla. 1994) 77

Sias v. State,
416 So. 2d 1213 (Fla. 3d DCA), *review denied,*
424 So. 2d 763 (Fla.1982) 53

Spann v. State,
28 Fla. L. Weekly S784 (Fla. Apr. 3, 2003) 73

State v. Clausell,
474 So. 2d 1189 (Fla. 1985) 67

State v. Dixon,
283 So. 2d 1 (Fla 1973) 74

State v. Law,
559 So. 2d 187 (Fla.1989) 62

State v. Maisto,
427 So. 2d 1120 (Fla. 3d DCA 1983) 53

State v. Savino,
567 So. 2d 892 (Fla. 1990) 54

Stewart v. State,
28 Fla. L. Weekly S700 (Fla. Sept. 11, 2003) . . . 78, 79

Straight v. State,
397 So. 2d 903 (Fla.1981) 47

Taylor v. State,
855 So. 2d 1 (Fla. 2003) 79, 80

Terry v. State,
668 So. 2d 954 (Fla. 1996) 61

Thomas v. State,
748 So. 2d 970 (Fla. 1999) 46, 47

Thompson v. State,
648 So. 2d 692 (Fla.1994) 73

Townsend v. State,
420 So. 2d 615 (Fla. 4th DCA 1982) 55

Trease v. State,
768 So. 2d 1050 (Fla. 2000) 81

Trepal v. State,
621 So. 2d 1361 (Fla. 1993) 66

Urbin v. State,
714 So. 2d 411 (Fla.1998) 80

Walls v. State,
641 So. 2d 381 (Fla. 1994) 70

Warner v. State,
638 So. 2d 991 (Fla., 3d DCA 1994) 65

Werley v. State,
814 So. 2d 1159 (Fla., 1st DCA 2002) 45

Willacy v. State,
696 So. 2d 693 (Fla. 1997), *cert. denied, 522 U.S. 970 (1997)*
69

Williams v. State,
110 So. 2d 654 (Fla.), *cert. denied,*
361 U.S. 847, 80 S.Ct. 102,
4 L.Ed.2d 86 (1959) 41, 52, 53, 54, 55, 56

Williams v. State,
437 So. 2d 133 (Fla. 1983) 66

Wright v. State,
28 Fla. L. Weekly S518 (Fla. July 3, 2003) 50

Wuornos v. State,
644 So. 2d 1000 (Fla.1994) 55

Zack v. State,
753 So. 2d 9 (Fla. 2000) 48

Zakrzewski v. State,
2003 WL 22669486 (Fla. No. 13, 2003) 81

MISCELLANEOUS

Florida Statutes § 90.402 54

Florida Statutes § 90.403 54

Florida Statutes § 90.806 . . . . . 40, 41, 44, 45, 48

Florida Statutes § 90.806 . . . . . 44, 45

Florida Statutes § 990.803(3)(a)2 48
Florida Statutes § 921.141 83

Standard Jury Instructions in Criminal Cases,
431 So. 2d 594 (Fla. 1981) 65, 66

STATEMENT OF THE CASE

This appeal is from the retrial for the convictions and sentence of death imposed upon the defendant, John Steven Huggins, on September 19, 2002, for the murder of Carla Larson in Orange County, Florida. Huggins pleaded not guilty and was tried by a jury in a trial presided over by Ninth Circuit Judge Belvin Perry, Jr.[1]

On May 28, 1998, the Orange County, Florida, Grand Jury returned a four-count indictment charging the defendant, John Steven Huggins, with Murder in the First Degree, Carjacking, Robbery, and Kidnapping, arising from the murder of Carla Larson, which occurred on or about June 10, 1997. (Vol.12-R468-70). Huggins waived any conflict with the Public Defender's Office (SR1-22) and the court granted Huggins' motion for change of venue from Orange County, Florida, to Osceola County, Florida. (Vol.12-R472, 486). An Amended Order on Defendant's Motion for Change of Venue moved the trial from Osceola County, Florida, to Hillsborough County, Florida. (Vol.13-R760). The case proceeded through the pre-trial stages, and on July 17, 2002, the jury was impaneled and sworn (Vol.22-R760). On July

[1]On April 10, 2002, the court granted an oral motion to change venue after an unsuccessful attempt to select a jury in Osceola County, Florida, from April 8-10, 2002. (Vol.18-R406-8). The Amended Order on Defendant's Motion for Change of Venue moved the trial to Hillsborough County, Florida. (Vol.13-R760).

25, 2002, the jury found the defendant guilty of murder in the first degree, carjacking, petit theft, and kidnapping of Carla Larson. (Vol.27-R1779).

This case proceeded to the penalty phase with respect to the capital conviction. On July 26, 2002, the jury returned an advisory sentence of death by a vote of nine to three. (Vol.28-R1900). A *Spencer* Hearing was conducted on August 26, 2002. (Vol.10-R340-432). On September 19, 2002, the Circuit Court of Orange County, Florida, sentenced Huggins to death for the murder of Carla Larson. (Vol.11-R464, Vol.15-R1188). The court found the following five aggravating circumstances:

> (1) The capital felony was committed by a person previously convicted of a felony and placed on felony probation. (2) The defendant was previously convicted of a felony involving the use or threat of violence to a person. (3) The capital felony was committed while the defendant was engaged in the commission of the crime of kidnapping. (4) The capital felony was committed for pecuniary gain. (5) The capital felony was especially heinous, atrocious, or cruel.

(Vol.11-R439-50, Vol.15-R1175-80).

The defense did not request nor argue the presence of any statutory mitigating factors. After reviewing the presentence investigation report and the mitigation evidence presented in the previous penalty phase proceeding, the court did not find that the record supported the finding of any statutory mitigating factors. (Vol.11-R451-2, Vol.15-R1181).

> The court considered and weighed the following as mitigation: (1) alcohol abuse, broken marriages, good Samaritan - given some weight. (2) positive attitude toward people of other races - given some weight. 3) contribution to the prison community if given a sentence of life without parole - given very little weight. (4) suffered continuous violence at the hands of his father - given very little weight. (5) witnessed violence toward his mother - given little weight. (6) endured difficult family separation as a child - given slight weight. (8) is a caring parent and loving stepfather - given some weight. (9) active participant in religious functions - some weight. (10) contributed his inheritance and more to the church - given some weight. (11) active in the "Love a Child" ministry in Florida - given some weight. (12) served the sick, the poor, and ministered to the children in Haiti - given some weight. (13) served the homeless through contribution and labor - given some weight. (14) good conduct during trial proceedings - given very little weight.

(Vol.11-R453-63, Vol.15-R1180-87).

Notice of appeal was duly given on September 19, 2002. (Vol.15-R1195). On February 3, 2003, the record was certified as complete and transmitted. (Vol.15-R1216). Huggins' initial brief was filed on or about August 25, 2003.

STATEMENT OF THE FACTS

The Statement of the Facts set out in Huggins' Initial Brief on pages 6-16 is argumentative and incomplete. The State does not accept Huggins' statement of the facts and relies on the following facts.

Gary Wilson worked with Carla Larson on the Coronado Springs Resort Project at Disney World while employed by Centex Rooney

Construction Company in June 1997. (Vol.22-R784). On June 10, 1997, he, along with three co-workers, was returning from lunch and noticed a "white Ford Explorer coming out of the woods, and it was bouncing quite high" as their own vehicle crossed over the I-4 overpass on the Osceola Parkway located in Orange and Osceola Counties. He said that it was not usual to see vehicles driving in this particular area. (Vol.22-R785-6). The Explorer entered the parkway "in the slow lane" and their vehicle, which was in "the fast lane" caught up to the Explorer. (Vol.22-R786, 788). As they passed by the Explorer, Wilson noticed "only one person" in the car, the driver, "a white man, flushed, like he was hot ... skin was real red ... dark hair." (Vol.22-R789). At that point, he did not know that this vehicle was Carla Larson's. Subsequently, he learned that Larson had not returned after lunchtime. He stated, "It wasn't like Carla to do that." (Vol.22-R790, 791).

Bradley Wilson was employed by Centex Rooney and also worked on the Coronado Springs project in June 1997. (Vol.22-R793). He, and two other employees accompanied his father, Gary Wilson, to lunch on June 10, 1997. (Vol.22-R793). He observed a vehicle "to be traveling inappropriate speed for the terrain it was on ... it had immediately emerged on the highway, really without stopping. It just didn't seem normal." (Vol.22-R794). As this

vehicle entered the highway, the car he was in continued to "gain on it" and he observed a male driver, "caucasian." (Vol.22-R795). In addition, he thought he saw "some facial hair" on the other driver that appeared to be "a growth of hair on the face." (Vol.22-R797, Vol.23-R808). Upon his return to work, he learned that Carla Larson "never came back from lunch." (Vol.22-R797, Vol.23-R799). A few days after this incident, Wilson gave the police a description of the person he saw driving the other vehicle. (Vol.23-R799-800).

Barry O'Hearn was a foreman for Dora Landscaping working at the Celebration Health Hospital in June 1997. (Vol.23-R810). On June 10, 1997, he and his crew were eating lunch in an area "off Osceola Parkway" and he saw a whitish-colored "Ford Bronco" drive by the area. (Vol.23-R812-13, 816).[2] He saw "one person driving ... it appeared to be a guy, a man." (Vol. 23-R814). He recalled that it was "about 12:30, 12:45." (Vol.23-R815, 816). The following day, he realized his observation might have significant meaning in a criminal matter. Subsequently, he gave a statement to police. (Vol.23-R815, 817).

James Larson was Carla Larson's husband. He and Carla were living in Orlando with their one-year-old daughter, Jessica, in

---

[2]Upon redirect examination, he clarified that his original statement to police described the vehicle as a "Ford Explorer." (Vol.23-R818).

June 1997, at the time of Mrs. Larson's death. (Vol.23-R839-41). Mr. Larson testified that it was routine for Carla to drop their daughter off at day care before she left for work. He stated that she drove a "white Ford Explorer." (Vol.23-R842). He said that his wife wore "a pear-shaped diamond ring ... three quarter carat ... a wedding band ... and a necklace." He stated that the chain was "unique" like a "snake type braid." (Vol.23-R845). She also had a "pendant," or a "Centex Rooney pin ... and it had ... a diamond in it." The pendant also had a logo with a large "C" and large "R" representing the company Carla Larson worked for, Centex Rooney. (R853). She wore this pendant on her chain. (Vol.23-R845-6). Larson stated that it was routine for him to pick up their daughter at day care after he got off work. (Vol.23-R846). On June 10, 1997, he received a phone call from Centex Rooney at approximately 4:00 p.m., that there was concern for his wife's whereabouts, that she had not returned to work after her lunch. (Vol.23-R846-7). He stated, "Carla was not like that. She always let you know where she was." (Vol.23-R847). Subsequently, he picked his daughter up at daycare, returned home, and called the police. (Vol.23-R846, 847). He stated that, "he never did hear from her again." (Vol.23-R848). Approximately three days later, he and his brother-in-law left the house with his dog "to go to this lot and start looking." He thought his

dog "could sniff something out." He said that when they arrived at the location, "the police were already there." He told them who he was, and was informed that a body had been found. (Vol.23-R848). He never saw his wife's vehicle again, including the infant car seat, beach towels, and stroller that were kept in it. (Vol.23-R849).

Cynthia Garris was an office manager with Centex Rooney in June 1997. (Vol.23-R854). She had known Carla Larson for approximately three years and was working at the Coronado Springs Project on June 10, 1997. (Vol.23-R855). On that day, she and Carla had a conversation around 12:00 noon, and Carla told her she was going to the Goodings Grocery Store to pick up food for a meeting and was going to get some lunch at that time. (Vol.23-R855-6, 857). She suggested that Carla go to the Publix Supermarket located approximately three miles away from the job site in order to avoid a longer drive. (Vol.23-R856). She gave Carla directions to the store and subsequently never saw her again. (Vol.23-R857, 858).

Floyd Sparks worked as a Superintendent for Reedy Creek Energy Services, a part of the Disney Development, in June 1997. On June 10, 1997, he was working on the Disney property and saw "a vehicle in the woods" off of Osceola Parkway. (Vol.23-R866). He stated that it was an "SUV" and it had a white top. (Vol.23-

R870). A few days later, he was notified that there was "a person missing from Disney Property and to be on the lookout ..." (Vol.23-R871). Sparks said there were a significant number of construction projects going on in that area at that time. (Vol.23-R876).

John Ricker was a Superintendent with Centex Rooney in June 1997 and worked with Carla Larson. (Vo.23-R885). On June 10, 1997, he, along with two co-workers, was driving to lunch on the Osceola Parkway as Carla Larson passed by their vehicle. (Vol.23-R886). He saw her vehicle exit the parkway onto the Highway 192 exit. He learned later that day that Mrs. Larson never returned from lunch. (Vol.23-R887). He participated in searching for her over the next few days. Two days after Carla Larson's disappearance, Ricker and a co-worker, Mike Munson, encountered Floyd Sparks on the back side of the Disney Property. (Vol.23-R887). Sparks told them that he had seen a car in an unusual area -- a field over there off Osceola Parkway." Ricker thought this was an area that had previously been searched for the missing Carla Larson. (Vol.23-R888). Subsequently, Sparks showed Ricker and Munson where he had seen the vehicle. (Vol.23-R888-9). Both Munson and Ricker exited their vehicle and Ricker stated he smelled something like "decaying flesh." (Vol.23-R889). He followed the smell and

"found a partially nude body covered up with some sort of debris ... behind the back side of a palmetto bush." (Vol.23-R890). Ricker stated that this was an area that had been searched before but Mrs. Larson body had not been found because "it was behind a palmetto bush, and a tree. She was hidden." (Vol.23-R890, 891, 893). After finding Carla Larson's body, Ricker went to his office, "the closest phone available," and told his vice-president, who subsequently phoned police. (Vol.23-R891).

Jeffrey Shrader was employed in landscaping by Walt Disney World in December 1997. (Vol.23-R895). On December 24, 1997, he was working on roadways north of Osceola Parkway, clearing some of the brush in the median. (Vol.23-R895-6). On that day, he found a purse containing Carla Larson's driver's license in a billfold. (Vol.23-R896-898). He realized he had heard "some stuff" about Mrs. Larson and thought that her purse might be evidence. He called his supervisor who notified the police. (Vol.23-R899). On cross examination, Shrader stated that he found purses "about once a week" while on the job. (Vol.23-R903-4). Regarding Larson's purse, he stated, "Well, all I did was just set it back down ... because of the name we read on the driver's license, Carla Larson. I set it down. I knew something happened with her. I heard it on the news a long time ago." (Vol.23-R905). Although he could not tell how long the purse had

been in that location, he said "it had been there for a while, I know that." (Vol23-R-905).

Christopher Smithson was employed as a subcontractor "rigging, setting poles on precast bases" on the Coronado Springs Project in June 1997. On June 10, 1997, he left work for the day between 2:30 and 3:30 p.m. (Vol.23-R911). As he was traveling down Osceola Parkway, he saw "a white Ford Explorer exiting the north side of the road at fifteen to twenty miles per hour, coming out of the woods ... I figured they were out playing in the woods ... tearing it up ... or just exploring or something." (Vol.23-R913). As the Explorer pulled out of the woods across the westbound lane of Osceola Parkway, Smithson said that he got a good look at the driver as he is "just observant of things around me ... I'm always observant." (Vol.23-R915). At a later point in time, he saw that same driver "in the media ... in the newspaper." He identified that person as the defendant, John Huggins. (Vol.23-R917). After he saw the picture in the newspaper, he told his wife, Angela Smithson, and notified the Osceola County Sheriff's Department that he had "information in the investigation." He left his name and number with the department but no one called him back. (Vol.23-R918). On cross examination, he stated that he did not have any contact with any officials until 2001, the year before this trial.

(Vol.23-R920).

Angela Smithson was married to Christopher Smithson in 1997. Sometime during that year, he told her he had seen "a white Ford Explorer coming out of some woods" in the vicinity of Osceola Parkway. (Vol.23-R928-9). They discussed reporting to police what he had seen because they thought it might relate to the disappearance of Carla Larson, but she discouraged her husband from doing so. (Vol.23-R929-30). At approximately the same time of this event, her husband told her that he saw someone on TV that he recognized as the driver of that vehicle. She said "the person he saw on TV, there was evidence the person he saw driving the truck - - he very confidently told me that this was the same person that he had seen driving out of the woods." (Vol.23-R931).

Jonathan Huggins is the son of the defendant, John Huggins. (vol.23-R935). In the summer of 1997, he testified that his family went together on a vacation to Gatorland.[3] (Vol.23-R935). After their trip, they went to Angel Huggins' mother's house in Brevard County, Florida.[4] In 1998, he gave a statement regarding these events but could not recall stating that his father

[3]Gatorland is an attraction located in Osceola County, Florida. (Vol.23-R936).

[4]Angel Huggins was his stepmother at the time. (Vol.23-R935).

arrived at the house at a different time in a car he had never seen. (Vol.23-R938, 940). He said that he was "not even sure" if his original statement given in 1998 (after Carla Larson was murdered) was truthful. (Vol.23-R938).[5] Although he thought his 1998 statement was true, he might have changed his recollection when he made the statement due to his stepmother, Angel Huggins. (Vol.23-R941).

During his proffered testimony, Jonathan Huggins said he gave a different version of events during his 1998 deposition because his stepmother told him "it would help my Dad. She told me to change some things." (Vol.23-R943-4, 947). Angel Huggins told him "to say that my father was driving the car ... told me things about it."[6] (Vol.23-R944, 945). He stated that the testimony he gave in his December 30, 1998, deposition was a lie. (Vol.23-R947).

He said that he talked to his father about his false statements "over the phone, during visits." (Vol.23-R949).

In his December 30,1998, deposition, which was read into the record, Jonathan stated that he was twelve years old and was living with his grandmother, Joann Hackett, in Lake Panosoffkee,

---

[5]These statements were made during his deposition dated December 30, 1998. (Vol.23-R944).

[6]The witness referred to the car ride to Angel Huggins' mother's house in Brevard County, Florida. (Vol.23-R935, 945).

Florida. (Vol.23-R972-73). During the summer of 1997, he recalled visiting Gatorland (see footnote 3) with his father, John Huggins, his stepmother Angel Huggins, and his four siblings. (Vol.23-R973-75). He recalled staying in "a nice hotel ... small ... everyone stayed in one room" but he could not recall its location. (Vol.23-R977, R979). They had all traveled in Angel's car, a "white car ... small." It was very crowded, "all the kids in the back ... except for Little Sara" who was a baby. (Vol.23-R980). His father did not own a car at that time. (Vol.23-R981). He remembered his father "rented a dark car" during that summer but did not recall the make nor the size, in comparison to Angel's. (Vol.23-R891). While at the hotel after the Gatorland outing, no one visited them, it was "just all of us," his father, stepmother and siblings. (Vol.23-R981). After they left the hotel, they returned to Angel's house, "six of us," as his father did not return with them. (Vol.23-R983). He said, "he rented a car ... a dark car." (Vol.23-R983). He thought his father had rented it because, "it was clean and everything ... there is nothing in it ... it was just clean." (Vol.23-R984). Although he could not recall if there were any gadgets installed, he said, "the seats were weird. They lifted up and down like with air compressors or something." (Vol.23-R984). In addition, there were air vents in the back of the

vehicle. (Vol.23-R985). When he was initially interviewed by police back in 1997, he described the vehicle to police as, "black or dark green in color, shiny metal wheels, four doors, a black dashboard, a gray leather interior, and a roof rack. Interior had an overhead console that had a temperature direction devices ... directly below the overhead controls was a radar detector mounted on the windshield. The front seats air cushions ... spare tire mounted inside the vehicle. From the back seat you could adjust the air conditioning, fan and radio volume ..." (Vol.23-R986). He did not currently remember all of these details, only, "I remember controlling the radio" (from the back seat), and "the black leather interior, and the wheels." (Vol.23-R987). He recalled being in the vehicle approximately three times the summer of 1997. (Vol.23-R988). His father subsequently returned him to his grandmother's house, and Huggins took a trip to Maryland with his wife's sister, Tammy. (Vol.23-R988).

Charlotte Green owned Cindy's Excavating and Landscaping, Inc., in June 1997, and lived in Melbourne, Florida. (Vol.23-R991). During that time period, she learned that a woman from Orange County, Florida, had been killed, and that a car might also be involved, - - she thought she had seen that car after hearing about the murder. (Vol.23-R991-2). She testified, "I was

coming back from Orlando from work, and Mr. Huggins was driving the vehicle. He passed me, and then proceeded to jump in front of me and get off at Suntree Exit." (Vol.23-R993). She described the vehicle as "a white Ford Explorer, and the back of it was painted black." She thought that the back of the vehicle had been "spray painted" with black paint. (Vol.23-R994). Approximately two days later, she saw that same vehicle in Cocoa Beach, Florida, at a "little fishing place ... on the river ... on the Banana River." (Vol.23-R995). She stated, " ... the doors were all open ... the back was - - back hatch was up. I could see the black on it." (Vol.23-R995). She said she saw a person standing at the back of the vehicle "he just had his hand on the top ... " She testified that this person was the defendant, John Huggins. (Vol.24-R999-1000). Subsequently, she notified the Brevard County Sheriff's Office and reported what she had seen. (Vol.24-R1000, 1011). After Huggins had been arrested, Mrs. Green saw a television report on him and recognized him as the driver she had seen in the vehicle. (Vol.24-R1000-1). On a later occasion, she saw the same vehicle, "it was completely burned up ... it was sitting in the same place that it had been before." (Vol.24-R1001, 1007).

Ronald Weyland is employed by the Orange County Sheriff's Office and had been assigned to the forensic unit for four and

a half years in 1997. (Vol.24-R1013-4). His duties included going to crime scenes to "document them in writing, take photographs, collect any physical evidence, process evidence that we could." In June 1997, he was "called to respond to the scene at Osceola Parkway. Initial scene where the body was recovered." (Vol.24-R1014). Upon arrival, he was advised of the situation by a detective, and he walked to where the body was located. He took measurements ("because it was getting dark") and photographs and called for additional personnel. (Vol.24-R1015). He searched the immediate area for evidence "physically just eye, looking ... we also had a metal detector." (Vol.24-R1015-6). In addition, law enforcement searched the area using "canine ... mounted patrol ... an agricultural unit ... all terrain vehicles ... a dive team ..." but no other evidence was located. (Vol.24-R1016). On June 27, 1997, he was informed "that a burned Ford Explorer had been recovered by Brevard County Sheriff's Office. And that it was possibly the victim's vehicle."[7] The next day, he went to the Brevard Sheriff's Office garage where the vehicle had been taken, took photographs, and made arrangements for the vehicle to be transported back to the Orlando area. (Vol.24-R1021, 1078). Weyland stated that a search

[7]Huggins never made pre-trial objections to evidence though the Court asked him to do so. (Vol.24-R1017-18).

of the "burned scene" was conducted by Brevard County Deputies and a "dive team" searched the Banana River where the vehicle was located. In addition, "a tractor ... cleared away some heavy brush ... they also had people searching the grounds ... they took aerial photographs of the area." (Vol.24-R1022). Weyland was given a "passport radar detector" by Brevard County employee, Virginia Casey. (Vol.24-R1027-8). On July 8, 1997, Weyland and five other Orange County Deputies searched the residence of Angel Huggins, owned by Mrs. Elms, Huggins' mother-in-law. (Vol.24-R1031, 1089).[8] Weyland said that he personally "searched the children's bedroom, part ... of Mrs. Huggins' bedroom ... the closet of her mother's bedroom." He and three other detectives searched an "outbuilding," a shed that was not attached to the house. (Vol.24-R1032). He testified that the shed "was very cluttered ... there was not any organization ... two, three feet high of things ... it was not new in appearance ... hadn't been renovated or cleaned up ... the paint wasn't shiny ... things piled along the shelves ... underneath the shelves ... there was a tub ... a bicycle ... it was smaller than a single car garage would be." (Vol.24-R1033, 1085). Weyland said there was a second room in the back, "a laundry

[8]Mrs. Elms and Paula Fay Blades are the same person. (Vol.25-R1341).

room," that they also searched. During the search, he removed electrical covers, looked inside boxes and opened "small things where something could be hid." He was aware that some jewelry had subsequently been found in a switch plate located on the right-hand wall. (Vol.24-R1034). The search of the shed lasted for approximately two hours. (Vol.24-R1088, 1101). James Larson, the victim's husband, identified the jewelry as that worn by Carla Larson on the day she disappeared. (Vol.24-R1037, 1092). On December 24, 1997, Weyland was called to "the intersection of World Drive and Osceola Parkway on Disney World property." He was told "the victim's purse had been recovered by a Disney employee clearing crew, and I was told to photograph, document the scene, collect the evidence. Take additional photographs." (Vol.24-R1047-8, 1093). Items located near the purse belonged to Carla Larson. Weyland subsequently took the purse into his possession at that time. (Vol.24-R1052, 1093).

Deputy Todd Howard of the Brevard County, Florida, Sheriff's Office responded to a report of a burning vehicle on June 26, 1997. (Vol. 24-R1110). Although the vehicle was not "actively burning" when he arrived, it was smouldering and there was heat coming from it, indicating it had been burning very recently. Howard said he could tell the vehicle "was a sports utility vehicle ... it had a specific type of ... magnesium type

rims ... it was fully engulfed and basically destroyed." He had previously been given information to be on the lookout for a sport utility vehicle involved in a crime in another county, "the investigation of Carla Larson." (Vol.24-R1112-3).

Virginia Casey is a crime scene investigator with the Brevard County Sheriff's Office. On July 3, 1997, she gave Ronald Weyland (a criminalist with the Orange County Sheriff's Office) a radar detector which was evidence she had collected regarding this case. (Vol.24-R1119-20).

Dr. Shashi Gore is the Chief Medical Examiner for Orange and Osceola Counties. (Vol.24-R1143). On June 12, 1997, he was notified by the Orange County Sheriff's Office that they "found a suspicious dead body" and his presence was required for a full investigation. (Vol.24-R1145, 1146). When arriving at any homicide scene, Dr. Gore stated "we identify who is the lead investigator ... we start taking pictures without touching the body ... the body itself and the surrounding area is photographed ... under my direct supervision." Based upon his initial examination, Dr. Gore testified "this body must have been lying there for a considerable amount of time" based on "skin slippage, swelling, and disfigurement of the body ... this body has been there for almost two to three days." (Vol.24-R1147). These findings were consistent with a report of Carla

Larson last being seen at around noon on June 10, two days before finding her body. (Vol.24-R1148).

In addition, a "bluish towel" was covering Larson's torso and head and her body was unclothed. (Vol.24-R1147, 1148). She was removed from the scene and taken to Dr. Gore's facility for a through examination where he photographed various aspects of the autopsy. (Vol.24-R1148). Dr. Gore stated that there was a significant amount of decomposition on Larson's head and face and her body could not have been identifiable by "visual means." (Vol.24-R1150). There was "significant swelling of the face, the eye balls popping out, and what you see, small, these are the maggots that, the activity of the maggots because the flies lay the eggs, bust open, you get the maggots." (Vol.24-R1150-51). There was "skin completely taken off from both of the breast area." In "the area of the buttocks and the anus, and perianal region ... you can see considerable discoloration, maggot activity, swelling, and changes of decomposition." In the "front part of the thighs, and the genitalia ... you can see considerable discoloration in those areas." In the "upper part of the thigh ... this is marbleization ... you can see the streaks." (Vol.24-R1153-54). On Larson's left leg, "left ankle area ... you can see a sore-like lesion ... activity of small rodents or animals wandering the area. It could be possums, rats

... even the tendons are exposed. So that part had been chewed by these animals." (Vol.24-R1154-55.) Due to the condition of her body, Dr. Gore determined Larson had been "lying there for almost two to three days." Her identification was determined through dental comparison. (Vol.24-R1151). During his examination, Dr. Gore determined "there was infliction of injury" to the larynx, "a squeezing type of injury, rubbing type of injury, or even strangulation ... in the area of the neck." (Vol.24-R1155-56, 1158). He did not find any indication that Larson was not conscious when she was strangled. He did not see "any injury to the scalp, cranial bones or the brain." (Vol.24-R1160-61). In a conscious victim, Dr. Gore stated, "strangulation involves ... suffocation ... you close the air passage with pressure to the extent the person does not get enough oxygen supply to the various organs of the body, which are the vital organs. When that person knows that someone is going to strangle or injure the areas of the neck, there is always a constant fear that the death is soon, impending death. The person is conscious at that time. That is, there is frightening fear." (Vol.24-R1161). He said, " ... it's intense pain, initially, on the neck." "Psychological pain is there always. Suffering ... that death is coming ... "(Vol.24-R1163, 1164). Based upon a complete examination of Carla Larson's

entire body, Dr. Gore testified, "the cause of death was asphyxiation due to severe neck injury, or trauma, and strangulation." (Vol.24-R1160, 1165). In addition, there was trauma to Larson's thighs and vaginal area. (Vol.24-R1171, 1172).

Susan Hempfield is a detective with the Sex Crimes Unit of the Orange County Sheriff's Office. (Vol.24-R1180). In the summer of 1997, she assisted in searching for evidence regarding the murder of Carla Larson. During her career, she had never worked as a crime scene technician, but assisted in searching the "outbuilding" (the shed) of a home in Brevard County.(Vol.24-R1181, 1182, 1183). She recalled mainly searching "the boxes" in the shed, not the "electrical boxes" or "electrical outlets." (Vol.28-R1183). She explained, "I announced fairly early in it when they were doing as I don't touch electricity. I'm scared of it. I've seen too many times where the - - you take something off, wires touch, I just wouldn't touch anything to do with electricity." (Vol.24-R1184, 1185, 1186). She did not search a "junction box" in the shed, nor did she recall anyone else searching that area at that time. (Vol.24-R1184, 1187).

Sandra Cawn is a detective in the Crime Scene Unit with the Orange County Sheriff's Office. Her duties include photographing

crime scenes, attempting to identify a perpetrator, and collecting evidence. (Vol.24-R1194). On July 17, 1997, she went to the home of Fay Elms, in Melbourne, Florida, Huggins' mother-in-law.(Vol.24-R1031, 1089, 1195). Upon arrival, Mrs. Elms, who was standing in her driveway "speaking with a couple of homicide detectives" handed her "a ball of tissue" that contained jewelry, a "ring, a necklace and a pair of earrings." (Vol.24-R1195). Detective Cawn subsequently retrieved a box from her car trunk. She explained, "I laid out the box with the blue lid on it for contrast. I opened up the tissue paper, unraveled the jewelry, laid it out flat on the blue box and photographed it." (Vol.24-R1195, Vol.25-R1197). After photographing, she put the jewelry in an envelope and "sealed it right in front of everyone present at the scene." (Vol.25-R1197). Mrs. Elms took Detective Cawn "into a wooden storage shed in the yard ... and she showed me electrical box to the right of the door ... down low near the floor ...and said that's where she recovered the jewelry and tissue." (Vol25-R1198-99). Detective Cawn said she did not lift any latent fingerprints off any area of the shed. (Vol.25-R1202, 1203).

Charles Lacorte is a Lieutenant Supervisor with the Division of State Fire Marshall, Bureau of Fire, Arson Investigation and he investigates fires and explosions in Florida. (Vol.25-R1204,

1205). On June 27, 1997, he was contacted by the Orange County Sheriff's Office to investigate the cause of a vehicle fire in Cocoa Beach, Florida. (Vol.25-R1207). The fire began at approximately 10:52 p.m., on June 26, 1997. (Vol.25-R1220). On the morning of June 28, he went to the Orange County Sheriff's Office Forensic garage, where the vehicle had been towed and secured. (Vol.25-R1220). He stated, "I did a visual observation of the vehicle itself. I walked around. Photographs were taken ... I observed the hood to the engine compartment had been forced open ... I attributed that to be done by the fire department while ... extinguishing the fire. Burn patterns ... showed the right front door was open at the time of the fire. I observed the remains of white paint, the original white paint ... was covered with black paint ... the rocker panels ... had the remains of white paint and partially covered with black paint. The four wheels ... almost totally consumed ... contained the remains of black paint. On various parts of the vehicle ... was sort of like drip marks ... caused by an accelerant at the time of the fire." (Vol.25-R1207-08). The heaviest concentration of black paint was located on the right front door, the frame around the window, and the rims of the vehicle. (Vol.25-R1222). Lacorte visited the scene where the vehicle had been burned, along with Cocoa Beach fireman Jason Perrigo, and his accelerant

detection dog, Rah. (Vol.25-R1209-10). The dog alerted them to an area that indicated the presence of an accelerant. Lacorte subsequently "removed the sandy soil, placed it in the one gallon metal container." (Vol.25-R1210-11). In addition, he removed debris from the inside of the vehicle, and placed it in various metal containers. (Vol.25-R1211). Samples of the debris were tested at his department's forensic lab for analysis. (Vol.25-R1211). The results showed "an intentionally set fire with the use of gasoline." (Vol.25-R1212).

Annette Moore was a neighbor of Fay Elms in June 1997.[9] She testified that she saw a "white Ford Explorer" at Elms' house between June 10, 1997, and June 12, 1997, "two days in a row," - - she had never seen that vehicle there before. (Vol.25-R1227, 1228). She did not see it at that location after June 12, 1997. (Vol.25-R1228).

Derek Hilliard lived with Annette Moore in June 1997. (Vol.25-R1230). He recalled seeing a "white sport utility vehicle" at his neighbor's home - - he only recalled seeing that vehicle there once. (Vol.25-R1231). Within a couple of days, he saw a "similar vehicle, that appeared to be the same thing, but it was a different color ... " It was located at the "same

[9]Fay Elms was Huggins' mother-in-law at that time. (Vol.24-R1031, 1089, 1195).

location, same position as the previous white utility vehicle." He recalled that the vehicle "appeared to be painted with spray cans in a fast way ... just barely covering it ... you can still see the previous color coming through." (Vol.25-R1235, 1236). Although this vehicle appeared to be the same one he had seen on a previous occasion, he was not "one hundred percent sure" if they were one and the same. (Vol.25-R1236). He recalled the spray paint was "either a dark gray, like a primer color, or a black, and white underneath could have made it look gray." (Vol.25-R1238, 1239).

Norman Scott Henderson was a crime scene investigator with the Orange County Sheriff's Office in 1998. On May 12, 1998, he received a request, pursuant to a court order dated May 5, 1998, to obtain hair samples from the defendant at the Orange County Jail. (Vol.25-R1247-8). Henderson said his presence was needed to observe the removal by Doctor Blakey, who would place them in a container, and hand the samples over to him. (Vol.25-R1248-9.) However, when the doctor attempted to obtain pubic hair samples from Huggins, he was not able to do that because "that region of his body was completely bare of hair. It was absent of hair." (Vol.25-R1249). Henderson said, "we were only able to obtain head hairs. That was it." (Vol.25-R1250). The head hairs were "fairly short ... less than a half, around a half inch or a lot

shorter." (Vol.25-R1252). A photograph of Huggins depicting his appearance at that time was admitted into evidence. (Vol.25-R1254).

Steve Olson, a reporter with WFTV Inc., Channel 9, Orlando, Florida, conducted a taped interview with Huggins on July 25, 1997, at the Seminole County jail. The videotape was published for the jury. (Vol.25-R1262-63). During the interview, Huggins told Olson " ... I don't think I am the person that did anything to Carla Larson. I've been suffering from alcoholism for a long time, drug abuse for a long time. I suffer from blackouts." (Vol.25-R1263). When Olson asked him, " ...can you categorically say, say that you did not without any doubt in your mind?" (kill Larson), Huggins replied, "I can say that I don't believe I killed Carla Larson ... I had had blackouts. In the hospital, I just recently stayed there. Sometimes I knew where I was, sometimes I didn't ... I started taking a drug called coumadin ... I think that has enhanced the effects of my drug, alcohol problem." Huggins said his wife told him "she saw me driving a white truck ... I come to her house in a white truck." He said, "I don't remember doing that. No. I don't think I did." (Vol.25-R1264, 1265, 1266). He did not remember ever driving a white truck. (Vol.25-R1266). He recalled staying at a Days Inn Suites with his wife, Angel, and their children. He did not recall

going to the Publix Supermarket. (Vol.25-R1266).[10] He said that his wife and his doctors would tell Olson that " ... sometimes I don't remember my name." (Vol.25-R1266). Huggins stated, " ... At this point, I feel like ... I'm being focused on because there is nobody else to focus on. I'm the top suspect. Whether or not I actually did it, I don't think so. I really don't think so. I was there in the vicinity. I got a wife saying I was driving a white truck, which is common for me to have many different vehicles." (Vol.25-R1267). Huggins felt that the medication coumadin, seemed to "enhance the effects of alcohol and the drugs." (Vol.25-R1268).

Kevin Smith lived in Crescent Beach, Florida, just outside of Cocoa Beach, in June 1997 with his girlfriend, Kim Allred. (Vol.25-R1270). He knew John Huggins at that time and Huggins came to see him on June 12, 1997, at his home. (Vol.25-R1271, 1273). Huggins was driving "a white SUV," a vehicle he had never seen Huggins drive before and which Huggins denied ever driving in video interview. (Vol.25-R1275, R1266). He recalled the vehicle "had blue pinstriping ... was a newer vehicle ... in

---

[10]As stated above, witness Cynthia Garris gave Carla Larson directions to the Publix Supermarket and never saw her again. (R854-858). A Publix receipt signed by Carla Larson showed a purchase at that Publix Supermarket and was entered into evidence. (R883). The hotel records for the Days Inn across the street from the Publix Supermarket were also entered into evidence by the State. (R882).

good condition ..." In addition, the interior was "tan ... the radar detector mounted on the hood (sic) liner area ... hard wired in ... across the head liner moulding ... nicely done." (Vol.25-R1276-7). Huggins told Smith the vehicle was a "rental" and asked Smith if he could leave it at his place "for a little while." He told Huggins, "no problem." (Vol.25-R1278, 1283). The vehicle remained there for "about two days" but Smith said, "I never actually saw it leave." (Vol.25-R1284). On June 12, Smith and his family ran errands and, upon their return, the vehicle was gone - - he did not hear from Huggins again. (Vol.25-R1286, 1287). Eventually he found a radar detector in a plant tray on the top of the exterior water heater on his property. Smith said, " ... in reaching up to get my sprinklers ... the radar detector was in the basket ... tumbled out." Subsequently, he "stuck it in the kitchen ... a little shelf area." (Vol.25-R1290).

Detectives contacted Smith regarding the vehicle that had been on his property. He told them it had been there for a couple of days and he told them who had parked it there. (Vol.25-R1292). Smith did not tell them about the radar detector. He said, "... it had not occurred to me. After they left, very much it occurred to me what that radar detector was, where it came from, then I realized in my own mind ... it's not

a rental vehicle. A little nervous. I didn't want any part of what these men were looking for ... a murder case, grand theft auto." (Vol.25-R1293). His immediate reaction was "Protecting me, my kids, and what was going on at my house." Consequently, he said, "I walked up the normal walk-up to the street, convenience store, and as I was walking up there I tossed it in some bushes so it wouldn't be on my property." (Vol.25-R1294, 1320). Although his girlfriend knew about the radar detector, he said, " ... I didn't tell anybody about it. I didn't say anything." He called the police the next day, "because they needed to know about it ... the radar detector." He told them he had hidden it in some bushes, that he had gotten rid of it, but that it might be important to their investigation. The detectives returned the following day and subsequently retrieved the radar detector. (Vol.25-R1295, 1314).[11]

On cross examination, Smith stated that Angel Huggins came to his house on June 15, 1997, (Father's Day) "to pick up some marijuana from me." (Vol.25-R1306).

Paula Fay Blades is Angel Huggins' mother, defendant's former mother-in-law. (Vol.25-R1341).[12] In June 1997, her

---

[11]Jim Lason identified the radar detector as Carla's. (Vol.23-R844).

[12]Paula Fay Blades and "Mrs. Elms" are the same person. (Vol.24-R1031).

daughter Angel Huggins and her children lived with her in Melbourne, Florida. (Vol.25-R1342). On June 10, 1997, Blades returned home from work shortly after 5:00 p.m., and saw a "white sports utility vehicle" parked in her carport, a vehicle she had not seen before. (Vol. 25-R1343, 1344). She did not see that vehicle again after that day. (Vol.25-R1345). During the rest of that week and the following week, her daughter Angel and her children resided at Blades' home. (Vol.25-R1345). A few weeks after this time period, Blades' other daughter, Tammy, came for a visit along with a friend and their children. (Vol.25-R1345, 1356). She recalled going out to dinner with her daughter, Angel, and John Huggins, while her other daughter, Tammy, babysat for all the children. (Vol.25-R1346, 1355). Eventually she believed that there might be some evidence of a crime hidden somewhere in her house, and, with her permission, the police came to search on several occasions. (Vol.25-R1347). In addition, she searched the house herself. She said, "When we found that possibly something was hidden, you kind of get obsessed and you want to look for it. Not all the time, but you look. And we did. We looked under sinks, places the police had already looked." She searched " ... every time we were - - I was home." (Vol.25-R1348). Eventually she searched the shed behind her house, even though the police had searched the house "a good

three, four times ..." as well as searching the shed. (Vol.25-R1348-49). She had another shed behind the garage that had a washer and dryer. She said, " ... I went out to do the wash ... I noticed a screwdriver sitting right on top of a box, sitting out ... I'll just check an outlet ... you get a little obsessed, you think something is hidden in your house. So I opened it up, and there was a paper napkin or a paper towel in there ... I pulled it out ... it had jewelry in it." (Vol.25-R1349-50). The jewelry consisted of " ... round diamond earrings ... chain ... ring ..." (Vol.25-R1353). After she found the jewelry, she said, "... I didn't touch it ... I just kept it in the napkin, put it on top of my refrigerator and called Cameron Weir ... one of the detectives that had been to the house several times." (Vol.25-1354).

During her proffered testimony, Blades said Angel told her that her sister Tammy had had a "sexual relationship" with Huggins, although Tammy told her they did not. (Vol.25-R1358, 1359, 1360). Although there was never a "physical fight" between the sisters, "Angel quit talking to Tammy for a while." She was aware "that John Huggins traveled up north with Tammy and Lil because Tammy still had Lil and the kids with her." (Vol.25-R1358). The State's objection to the testimony was sustained. (Vol.25-R1361).

On re-direct examination, Mrs. Blades said that John Huggins stored items in her shed that included a "tackle box, fishing rod" for occasions "when he took the kids fishing." In addition, she had seen him out in that shed. (Vol.25-R1363).

James Larson was recalled as a witness. He said that he had driven his wife's Explorer in the past and recalled having had an accident in that vehicle and subsequently filed an insurance claim.(Vol.25-R1364). In addition, he recalled that the Explorer had a "very light blue pinstripe" and a "clear see-through plastic ... bug-reflectory thing ..." that was installed by the dealer at his request. (Vol.25-R1367, 1369).

Pamela Abramson is a gemologist in Winter Park, Florida, who appraises and evaluates jewelry "for insurance companies, trust officers, attorneys, whoever needs evaluation on jewelry." In addition, she has also assisted law enforcement and the State Attorney's Office in identifying pieces of jewelry.(Vol.25-R1375).

In 1997, she examined jewelry and documentation that had been provided to her regarding Carla Larson's case. (Vol.25-R1375-6, 1377). The appraisal documents had been provided to her by James Larson, the victim's husband. The stones in the jewelry (the engagement ring and earrings) were subsequently removed and examined by Ms. Abramson. (Vol.25-R1377). After a thorough

examination, she determined that the stones matched the appraisal documents "exactly." (Vol.25-R1377, 1378).

The defendant called Debbie Demers as his first witness, a deputy sheriff with the Brevard County Sheriff's Office. (Vol.25-R1407). On June 27, 1997, she received a call from the communications center to respond to a location in Cocoa Beach regarding a burned vehicle. (Vol.26-R1408). Although she did not "take custody" of the vehicle, she followed it when it was transported to the Brevard County Sheriff's shop at approximately 5:30 a.m. (Vol.26-R1409, 1410).

Heather Kensey is the records clerk for the Osceola County Sheriff's Department. (Vol.26-R1411). She was directed to research the records of the Osceola County Sheriff's Office to determine whether or not a call was received from Christopher Smithson in June 1997. She was not able to locate any record of a call but had limited her research to the week of June 10 through June 17, 1997. (Vol.26-R1411, 1412). The information available to her through the computer system would only include "calls that come in through complaint lines or 911." Kensey stated, "if they spoke directly through - - to a detective, I wouldn't know about it ..." (Vol.26-R1414).

Virginia Casey was recalled as a witness for the defense. (Vol.26-R1417). She remembered taking a photograph of Kevin

Smith on July 2, 1997. (Vol.26-R1418). She recalled that he had very long hair, in a pony tail, down the middle of his back. (Vol. 26-R1422). In addition, she took a photograph of a black, spray-painted vehicle, a van, "very old," parked behind Smith's residence and she scraped the paint for testing purposes. (Vol.26-R1420, 1423). She said the van had "holes where it had rusted through the metal." (Vol.26-R1424).

Cameron Weir, currently employed with the Orange County Sheriff's Office, was a detective in June 1997, with the same agency. (Vol.26-R1425). On July 11, 1997, he met with Huggins when he was incarcerated in a Maryland facility and retrieved cigarette butts for DNA testing. (Vol.26-R1426).

Ronald Weyland was recalled as a witness. (Vol.26-R1427). He was the custodian for the physical evidence collected in this case, including biological samples collected from the victim after the autopsy. (Vol.26-R1428). He also assisted in the release of evidence for other testing. (Vol.26-R1429). Although he was "the coordinator for the paperwork flow" regarding the evidence, he was not able to determine exactly how samples were collected from Carla Larson during the autopsy or what parts of her body they were collected from as he was not in attendance. He testified, "I didn't pick everything up at its first point of recovery" but Weyland maintained that he had no concerns about

the integrity of the evidence collected in this case. (Vol.26-R1430, 1431).

Mark Thornton has been an Orange County correctional officer for twelve years - - his duties include the "care, custody, control of the inmates, or arrestees ..." (Vol.26-R1462, 1463). In 1997, there was no air-conditioning at the Orange County jail on the second floor where inmates were housed - - he did not recall if there were any fans on that floor in the summer of 1997. (Vol.25-R1464-5). Over the years, there were outbreaks of "crab lice" in the jail. During the summer months of 1997, he recalled " ... having to go get blues or medication for ... lice ... on occasion." (Vol.26-R1466). In order for inmates to rid themselves of lice, Thornton said, " ... the inmate would need to let the correctional staff or a nurse ... know that they had the crab or body lice, and that medication or shampoo would be retrieved for the inmate. Blues, linen would be changed also to prevent reinfestation." (Vol.26-R1467). He did not remember if Huggins ever directly contacted him indicating that he had crabs nor did he recall an inmate complaining of crabs on Huggins' behalf. In addition, he did not recall obtaining the medication required for treatment of crabs or lice for Huggins. (Vol.26-R1468). He said that Huggins had shaved his pubic region, but, "It wasn't something that every inmate would do, but on occasion

it has been known to happen." (Vol.26-1469). Thornton said Huggins told him he shaved his pubic region because he had crab lice. He did not recall "specific dates" when he saw Huggins' shaved body. (Vol.26-R1471). However, Huggins' had shaved "just about everything." (Vol.26-R1472).

Robert Kopeck is a Forensic Scientist with his own company, Morris Kopeck Forensic. His company analyzes " ... drugs, hair, glass, soil, serological work, blood alcohol ..." He has been in this field for approximately thirty-two years and in private practice for ten years. (Vol.26-R1473). On November 11, 1998, he went to the Orange County Jail to " ... take hair samples from Mr. Huggins ... samples from his scalp and pubic area." After first having Huggins "comb his scalp hair first ... to remove any loose hairs that might simply be attached, any hairs that didn't belong to him," he said Huggins " ... forcibly pulled out hairs from his head in different areas ... the front ... the side ... the back ... after he tugged out a clump of hair, he placed them in an envelope I was holding. I watched him ... very, very carefully ... he put his hair samples into the envelope after each pull ... then we sealed the envelope ... put a piece of tape on it ... he then signed the envelope ... I signed it also, for security purposes." They repeated this procedure in the pubic area, using a different comb.(Vol.26-

R1475-76, 1477, 1480, 1484). Kopeck said it was important to " ... get the entire hair, including the root, and the lower part of the shaft." (Vol.26-R1479). The sealed envelopes were brought to his laboratory, put into a safe, and microscopically analyzed. (Vol.25-R1482). The envelopes " ... were maintained in the laboratory until they were introduced into evidence at a later time." (Vol.26-R1482).

On cross examination, Kopeck stated, "We like to get the complete hair, would be the ideal circumstances ... that's what we look for." He said there is no length of hair that he looks for as a minimum. (Vol.26-R1485). He did not measure the length of any of the hairs collected from Huggins, his job " ... was simply to collect, preserve the items of potential evidence." In addition, he did not take any photographs of the hairs collected. (Vol.26-R1486).

John Kilbourne has been a forensic scientist for thirty-three years. His company provides " ... services to law enforcement agencies ... attorneys ... in civil and criminal cases ... insurance companies ... private investigators ... various types of commercial or industry type agencies ..." (Vol.26-R1500-01). He examined hair samples that had been collected from the blue towel that was located on Larson's upper torso when found, as well as head and pubic hairs collected from

Carla Larson's body by the medical examiner. (Vol.26-R1508). In addition, he examined hair samples that had been collected from John Huggins. (Vol.26-R1509). He determined that the "unknown hairs" collected from the blue towel and the pubic combings, "all these were light blond hairs, whereas those of Mr. Huggins were dark brown." (Vol.26-R1514). In doing further analysis to determine "mitochondrial DNA," Kilbourne selected four additional hairs, ("unknown hairs"), two from the pubic combings of Larson, and two from the blue towel. He "decided to select the darkest hair that I could find in the pubic combings. Even though it was only light brown, this was the darkest of hair ..." At defense counsel's request, two hairs from the blue towel, two hairs from the pubic combings, and a known standard (from Larson) were sent off for DNA testing. (Vol.26-R1515). He concluded that these hairs were all "consistent with the structure and the coloration and the physical characteristics of Carla Larson." (Vol.26-R1516).

On cross examination, Kilbourne testified that he "would want a hair at least three quarters of an inch ... to make a comparison ... on color. We could make a general comparison on diameter, race ... to do a comparison between a question and unknown ... one inch would be as short as I would feel comfortable with. And even then, ... due to the limited amount

... the evidentiary value would be less than if we had a longer hair." (Vol.26-R1517). If the hair was less than half and inch, Kilbourne said it would be difficult to make a comparison. (Vol.26-R1518). Kilbourne said the absence of hair at a particular location does not indicate that the person was not there. (Vol.26-R1519). Kilbourne further stated that if a person was concerned about leaving trace evidence behind, the person could "remove any - - either clean the clothing or remove the clothing. Take the clothing." (Vol.26-R1520). Altering hair color, cutting hair, or shaving hair, would also thwart efforts by law enforcement to identify hairs left at a location. (Vol.26-R1521, 1522). Kilbourne said that in order to destroy useable hair evidence that may be left in a vehicle, a "complete detailing or cleaning of the vehicle" was common, or, "the car, automobile, or truck was burnt." (Vol.26-R1526). Kilbourne concluded, " ... there may have been hair that was deposited by the perpetrator and never found. Or perhaps there was not any hair deposited at all. Or if it was deposited, it could be destroyed. It could be lost in several manners. Removal of clothing. Cleaning up after a crime scene. Mishandling of evidence by law enforcement agencies." (Vol.26-R1529). In his opinion, none of the hairs submitted to him that were recovered from Carla Larson or the blue towel belonged to John Huggins.

(Vol.26-R1530).

Dr. Kimber Lynn Nelson does forensic mitochondrial DNA testing in State College, Pennsylvania. (Vol.26-R1530-01). She was provided with four questioned hair samples to compare with three known samples for mitochondrial DNA testing. The three known hair samples were from Carla Larson, Jim Larson, and John Huggins. (Vol.26-R1544, 1545). The "four questioned hair samples" belonged to Carla Larson and excluded both Jim Larson (Carla Larson's husband) and the defendant, John Huggins. (Vol.26-R1546).

On July 25, 2002, the jury found the defendant guilty of murder in the first degree, carjacking, petit theft, and kidnapping of Carla Larson. (Vol.27-R1779).

The penalty phase of this trial began on July 26, 2002. (Vol.27-R1796).[13] The State presented the testimony of Christie Lovell, Carla Larson's friend. Ms. Lovell read a statement to the jury regarding her long-term friendship with Larson. (Vol.28-R1825). She and Larson went to school together and shared an apartment. She described Larson as "that All-American girl" who "loved her family, her sweetheart Jim, hard work, and most of all she loved life." (Vol.28-R1826).

---

[13]Huggins represented himself at the penalty phase of his capital trial. The *Faretta* hearing appears at Vol.27-R1716-1738.

The State also presented the testimony of Phyllis Thomas, Carla Larson's mother. (Vol.28-R1830). Mrs. Thomas described her daughter as "a joy to raise." (Vol.28-R1830). In addition, Carla was "a daughter, sister, aunt, wife, mother, and friend to many, and a gifted professional." (Vol.28-R1834).

James Larson, Carla's husband, was the State's final witness. (Vol.28-R1835). Larson described his wife as "my first love and I was hers ... Carla and I were a team." (Vol.28-R1837). He said Carla was " ... always a unique person. She never complained about anything." (Vol.28-R1838).

The defendant, who represented himself during the penalty phase, called Sandra Huggins, his sister, as his only witness. (Vol.27-R1796, Vol.28-R1843). Ms. Huggins testified that John Huggins helped take care of their father during his illness from colon cancer, prior to his death in a fire. (Vol.28-R1845, 1849).

The jury returned a recommended sentence of death by a vote of nine to three on July 26, 2002. (Vol.28-R1900). A *Spencer* Hearing was duly conducted on August 26, 2002. (Vol.10-R340-432). On September 19, 2002, the court followed the jury's advisory sentence and imposed a sentence of death on John Steven Huggins for the first degree murder of Carla Larson. (Vol.11-R464, Vol.15-R1188). In aggravation, the court found that the

capital felony was committed by a person previously convicted of a felony and placed on felony probation, the defendant was previously convicted of a felony involving the use or threat of violence to a person, the capital felony was committed while the defendant was engaged in the commission of the crime of kidnapping, the capital felony was committed for pecuniary gain, the capital felony was especially heinous, atrocious, or cruel. (Vol.11-R439-50, Vol.15-R1175-80). The defense did not request nor argue the presence of any statutory mitigating factors. After reviewing the presentence investigation report and the mitigation evidence presented in the previous penalty phase proceeding, the court found that the record did not support finding any statutory mitigating factors. (Vol.11-R451-2, Vol.15-R1181). The court found several nonstatutory mitigating factors were proven. The court gave slight weight to the following nonstatuory mitigating factor: 1)endured difficult family separation as a child. The court gave little weight to the following nonstatutory mitigating factors: 1) contribution to the prison community if given a sentence of life without parole 2) suffered continuous violence at the hands of his father 3) witnessed violence toward his mother 4)good conduct during trial proceedings. The court gave some weight to the following nonstatutory mitigating factors: 1)alcohol abuse,

broken marriages, good Samaritan 2) positive attitude toward people of other races 3) is a caring parent and loving stepfather 4) active participant in religious functions 5) contributed his inheritance and more to the church 6) active in the "love a Child" ministry in Florida 7)served the sick, the poor, and ministered to the children in Haiti 8) served the homeless through contribution and labor.(Vol.11-R451-63, Vol.15-R1180-7). The court found that the aggravation outweighed the mitigation, and imposed a sentence of death. (Vol.11-R463-4, Vol.15-R1188).

SUMMARY OF THE ARGUMENT

The hearsay issue that is combined with the "consciousness of guilt" claim is a non-issue because the complained-of statement was properly admitted to challenge the credibility of an out-of-court statement made by the defendant. Under § 90.806, there is no error. The "consciousness of guilt" component is likewise meritless because Huggins' actions in shaving off his body hair after having been ordered by the Court to submit hair samples is a circumstance from which consciousness of guilt can be inferred -- the credibility of any explanation offered by Huggins was a credibility choice for the jury to make. The trial court did not abuse its discretion with respect to either component of this claim

Likewise, the trial court did not abuse its discretion in admitting a statement by the victim stating her intention to pick up items of food over her lunch hour and return to work for an afternoon meeting. Under § 90.803(3), a declaration of intent such as this one is admissible to infer the future act of the declarant.

The jury selection issue attempts to extend the ***Batson-Neil-Slappy*** line of cases (which by definition apply to peremptory challenges) to apply to a challenge for cause which is granted by the trial court. Under the facts of this case, the trial court did not abuse its discretion in granting the State's challenge for cause as to a juror who would have suffered serious financial harm if required to sit as a juror in a two-week trial.

The trial court properly sustained the State's objection to "similar fact" (reverse-***Williams*** Rule) evidence because the evidence that Huggins sought to introduce would not have been admissible if the party to whom Huggins sought to shift blame had been on trial for the murder of Carla Larson. Because that is so, the trial court did not abuse its discretion in refusing to allow the "similar fact" evidence.

The trial court did not abuse its discretion in admitting crime scene photographs, testimony by the medical examiner

concerning death by strangulation, or by admitting victim impact evidence. The photographs were relevant to the time of death issue, as well as being relevant to explaining why the medical examiner could not identify petechial hemorrhages or defensive wounds on the victim's body. The medical examiner was qualified to testify about the mechanism of death in a strangulation murder, and that testimony was clearly relevant to the heinousness aggravator. Finally, victim impact testimony is admissible evidence during the penalty phase of a capital trial.

Huggins' motion for judgment of acquittal was properly denied. The evidence presented by the State excluded every reasonable hypothesis of innocence, and was sufficient to withstand a motion for judgment of acquittal.

Florida law does not require the court to instruct the jury on circumstantial evidence. The jury in this case was properly instructed, and the trial court did not abuse its discretion in refusing to give an additional "circumstantial evidence" instruction.

The trial court did not abuse its discretion by denying Huggins' motion to disqualify a particular Assistant State Attorney from prosecuting his case. Huggins cannot demonstrate prejudice as a result of the prosecutor's actions, and is not entitled to relief.

The trial court properly found that Huggins' murder of Carla Larson was committed for pecuniary gain; was committed during the course of a kidnaping, and was especially heinous, atrocious, or cruel. Competent substantial evidence supports each of those aggravating circumstances.

Huggins' sentence of death is not disproportionate -- that sentence is supported by five aggravators, and the mitigation (none of which is statutory) was properly given little weight by the sentencing court. This case is both more aggravated and less mitigated than other cases in which this Court affirmed the sentence of death -- that sentence is the one that Huggins deserves, and it should not be disturbed.

The *Apprendi/Ring* claim is meritless because, as this Court has repeatedly held, those cases do not invalidate Florida's death sentencing scheme. To the extent that Huggins complains about the trial court's use of "special verdict forms," Huggins had requested that procedure before *Ring* was decided, but later changed his mind. In any event, the "special verdict form" did no more than set out the jury's vote with respect to finding aggravating circumstances and mitigating factors. Those verdict forms indicate that the jury unanimously found five aggravators and no mitigators.

ARGUMENT

I. THE HEARSAY/CONSCIOUSNESS OF GUILT CLAIM

On pages 21-38 of his brief, Huggins raises a two-part claim containing a hearsay issue and a "consciousness of guilt" issue. The hearsay issue is a non-issue under § 90.806 because the hearsay complained of by Huggins was properly admitted to challenge the credibility of Huggins' out-of-court statement. The "consciousness of guilt" issue is, likewise, meritless because the complained-of evidence is, on its face, not susceptible of any explanation other than consciousness of guilt. There is no error.

The Hearsay Issue.

The State obtained an order on May 5, 1998, to collect head and pubic hair samples from Huggins, and, on May 12, 1998, an investigator went to the county jail to obtain those samples. (Vol.25-R1246-48).[14] No pubic hair samples were collected because Huggins' pubic area had been completely shaved. (Vol.25-R1249-50). In attempting to explain the complete absence of pubic hair (which, on its face, is certainly consistent with a desire to evade prosecution by depriving the State of potential evidence), Huggins presented evidence that he had shaved his pubic area

[14]Huggins was in Court when the State's motion was granted, and was obviously aware that the hair samples were going to be collected. (Vol.25-R1246).

after complaining of an infestation of body lice. The specific questions and answers were:

> Q To your knowledge, did Mr. Huggins ever shave his pubic region **after complaining of lice**?
>
> . . .
>
> A Yes, I did.
>
> Q Okay. And do you know whether he did, in fact, shave himself?
>
> A Yes, he did.

(Vol.26-R1469). Those answers came after the State's hearsay objection had been overruled, and were clearly based on out-of-court statements made by Huggins to the testifying witness -- the effect was to allow Huggins to testify without being subject to cross-examination, and, moreover, placed his credibility in issue and triggered the impeachment provisions of § 90.806.

In subsequent direct examination, the witness was asked whether Huggins "relied solely to [sic] shaving his body to rid himself of crab lice?" (Vol.26-R1470). During cross-examination by the State, when asked how he **knew** that Huggins had shaved his pubic area because of body lice, the witness responded (without objection), "That's what he said." (Vol.26-R1471). The witness went on to explain that the direct examination answers set out above were "pretty much" based on what Huggins told him. (Vol.26-R1471). When that happened, Huggins' credibility became

subject to attack under § 90.806. *See, Werley v. State,* 814 So. 2d 1159, 1163 (Fla., 1st DCA 2002).

Huggins seems to believe that the fact that the State elicited some of the testimony he characterizes as hearsay makes a difference to the § 90.806 analysis. The Rule contains no such limitation, and Huggins cites no case law in support of that proposition. Moreover, it is axiomatic that one of the basic purposes of cross-examination is to test and inquire into the basis of a witness's knowledge.[15] It was entirely proper for the State to ask the witness how he knew that Huggins had shaved his pubic area because of body lice (especially since Huggins had presented testimony that that was the reason) -- the fact that the answer to that question revealed that Huggins had succeeded in placing hearsay before the jury is not a basis for reversal. Huggins' nine prior felony convictions were properly admitted under the rules of evidence, and there is no basis for reversal.

The Consciousness of Guilt Issue.

The second component of this claim is Huggins' assertion that the fact that he had shaved his pubic area after being

[15]Contrary to Huggins' assertion, the State was not "responsible for eliciting the hearsay." The State conducted a proper cross-examination, and revealed that Huggins had placed his own out-of-court statement before the jury without being subject to the oath or to cross-examination. Impeachment of that testimony by use of Huggins' multiple felony convictions was proper.

ordered to provide hair samples was improperly admitted as evidence of "consciousness of guilt." The admission of evidence of consciousness of guilt is within the trial court's discretion and will not be reversed unless defendant demonstrates an abuse of discretion. See *Medina v. State,* 466 So. 2d 1046 (Fla. 1985); *Jent v. State,* 408 So. 2d 1024 (Fla. 1981). *Hertz v. State,* 803 So. 2d 629 (Fla. 2001), *cert. denied*, 536 U.S. 963 (2002); *Thomas v. State,* 748 So. 2d 970, 982 (Fla. 1999).[16] The Circuit Court did not abuse its discretion in the admission of this evidence, and there is no basis for reversal.

In *Murray v. State*, 838 So. 2d 1073, 1085 (Fla. 2002), this Court stated:

> The law is well established that "[w]hen a suspected person **in any manner** attempts to escape or evade a threatened prosecution by flight, concealment, resistance to lawful arrest, or other indications after the fact of a desire to evade prosecution, such fact is admissible, being relevant to the consciousness of guilt which may be inferred from such circumstance." *Straight v. State,* 397 So. 2d 903, 908 (Fla.1981); *accord Thomas v. State,* 748 So. 2d 970, 982 (Fla.1999).

[emphasis added]. The fact that Huggins was found to have shaved all of his pubic hair when investigators arrived to collect hair samples that had been ordered a week earlier is a circumstance

---

[16]Huggins incorrectly asserts that this is an "issue of law." *Initial Brief*, at 33 n. 25.

from which consciousness of guilt certainly may be inferred, as the precedent of this Court allows. While the credibility of Huggins' body lice explanation was a matter for the jury to decide, the fact that he chose to offer a hearsay explanation for his actions did not foreclose the State from presenting evidence from which the jury could infer consciousness of guilt. There was no error, and there is no basis for reversal based upon this issue.

II. THE "STATEMENT OF INTENT" TESTIMONY WAS PROPERLY ADMITTED

On pages 39-42 of his brief, Huggins argues, without citation to authority, that a statement by the victim of her plans and intentions made to Cindy Garris shortly before Carla Larson left her job was improperly admitted over a hearsay objection. The law is settled that the admissibility of evidence is within the discretion of the trial court, and the trial court's rulings on evidentiary matters will not be reversed unless there is a clear abuse of discretion. *Ray v. State*, 755 So. 2d 604, 610 (Fla. 2000); *Zack v. State,* 753 So. 2d 9, 25 (Fla. 2000); *Cole v. State*, 701 So. 2d 845 (Fla. 1997). The trial court did not abuse its discretion in admitting testimony concerning Carla Larson's lunch-hour plans, and there is no basis for reversal.

Under § 90.803(3), a declarant's statement of intent is admissible to infer the future act of the declarant. § 990.803(3)(a)2, *Fla. Stat*; *Mutual Life Insurance Co. v. Hillmon*, 145 U.S. 285 (1892); *Brooks v. State*, 787 So. 2d 765, 771 (Fla. 2001); *Jones v. State,* 440 So. 2d 570, 577 (Fla. 1983); *Bowen v. Keen,* 154 Fla. 161, 171, 17 So. 2d 706 (1944). The testimony of Cindy Garris falls squarely within the scope of § 90.803(3), and Huggins' claim that no "exception to the hearsay rule" allows admission of that testimony is simply incorrect. The testimony was admissible as an exception to the hearsay rule, and was relevant to the issues at trial. Because that is so, the testimony was properly admitted. There is no basis for relief.

III. THE "*NEIL/SLAPPY*" CLAIM

On pages 43-48 of his brief, Huggins argues that "the trial court erred in allowing the state to illegally exclude an African-American juror" from Huggins' jury. While drafted in terms of an "illegal exclusion" of a juror, and prominently citing to *Batson v. Kentucky*, 476 U.S. 79 (1986), and other cases dealing with racially motivated **peremptory** challenges, Huggins' brief does not acknowledge until well into his argument that this is **not** a peremptory challenge situation at all. The true facts, which Huggins reluctantly admits on page 46 of the *Initial Brief*, are that the juror at issue here was challenged

by the State **for cause** based upon *voir dire* answers which established beyond doubt that jury service would be a financial disaster for this prospective juror. (R177-84; 197-200). The trial court did not abuse its discretion in excusing this juror for cause. *Kearse v. State,* 770 So. 2d 1119 (Fla. 2000); *Castro v. State*, 644 So. 2d 987 (Fla. 1994) (excusal of juror for cause is reviewed under abuse of discretion standard because trial court has the opportunity to observe and evaluate the prospective juror's demeanor and credibility").

While clothed in pretensions of *Batson, Neil,* and *Slappy*, this claim is, in fact, an attempt to force the square peg of this case into the round hole of the *Batson-Neil-Slappy* line of cases which prohibit the racially motivated use of peremptory challenges. The fatal defect with Huggins' claim is that juror Coley was excused for **cause** rather than peremptorily. (Vol.20-R204). Despite the hyperbole of Huggins' brief, the facts established during *voir dire* demonstrated that juror Coley would be financially devastated if selected to serve as a juror in a two-week trial because he would receive a total of $5.00 per day from his employer while serving on the jury. (Vol.19-R197-8). With the fee paid for jury service by the county (which did not begin until the third day of service), juror Coley would have received a total of $20.00 per day with which to pay his bills.

(Vol.19-R182-3). The trial court correctly noted that the fee paid to jurors was not within his control, and, moreover, properly refused to financially damage juror Coley by forcing him to serve on the jury. The trial court did not abuse its discretion, and this frivolous issue does not provide a basis for relief. *Wright v. State*, 28 Fla. L. Weekly S518 (Fla. July 3, 2003).

To the extent that further discussion of this issue is necessary, the foundation of the *Batson-Neil-Slappy* line of cases is the right of the individual juror to serve, **not**, as Huggins apparently believes, the right to have a particular juror sit on a particular case. *J.E.B. ex rel. T.B. v. Alabama*, 114 S.Ct. 1419 (1994); *Powers v. Ohio*, 499 U.S. 400 (1991); *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614 (1991); *Batson v. Kentucky*, 476 U.S. 79 (1986). Under these facts, it is the height of irony for Huggins to argue that he is entitled to a new trial because the trial court granted a challenge for cause and did not compel a juror to serve after the issue was discussed at length with the juror, who contacted his employer to determine the adverse financial impact that jury service would have on him, and who had made it clear that he would prefer not to serve. (Vol.19-R198-9). That “strategy” amounts to an offensive use of *Batson-Neil-Slappy* for no purpose other than

appellate reversal when the factual circumstances between those cases and this one bear no similarity whatsoever. Juror Coley's rights were not violated, and it is inhumane to suggest, as Huggins did at trial and as he does now, that jury service should have been forced on that individual despite the financial hardship that it would have caused for him. That argument is spurious, does not implicate any constitutional right accruing to Huggins, and should be rejected out of hand.[17]

IV. THE "REVERSE-*WILLIAMS* RULE" CLAIM

On pages 49-53 of his brief, Huggins argues that the trial court abused its discretion in excluding what Huggins describes as "evidence [that] was simply relevant evidence that the defense had a right to present to the jury in order to establish reasonable doubt." *Initial Brief*, at 49. As Huggins points out, trial counsel did not concede that this is "similar fact" evidence (*ie.*: reverse *Williams* rule evidence), and, given that Huggins never sought admission of the evidence under that theory, it makes little sense to argue for reversal on appeal

[17]To the extent that Huggins argues, on page 48 of his brief, that his "similar" cause challenge to juror Napier was rejected, Huggins admits that the problems that would result from juror Napier's service on the jury would fall on his **employer**, not directly on the juror. Attempting to equate the effect on juror Napier's employer with the effect on juror Coley's ability to pay rent, utilities and groceries is, quite simply, ridiculous. The two jurors cannot be rationally compared.

based upon a theory that was expressly repudiated at the time of trial.[18] Regardless of whether the evidence is viewed as reverse *Williams* rule evidence, or merely as "evidence that the defense had a right to present," the trial court did not abuse its discretion in denying admission of the evidence at issue.

In granting the state's motion *in limine* to bar presentation of the "Calvin Rewis" evidence, the trial court made the following findings:

> The basic law here in the State of Florida is that where there is the issue of relevancy of a past act, to identify the perpetrator of a crime as being tried you must have a close similarity of facts, or a unique fingerprint involving that particular case for the evidence to be relevant. The defense intends to introduce evidence of a homicide that was committed in Duval County. I believe the defendant in that case was Mr. Calvin -- what's his last name, Mr. Wesley?
>
> Mr. Wesley: Rewis, R-E-W-I-S.
>
> The Court: Mr. Rewis. When you compare the two murders, the victim in the Rewis case, the victim was a man. In this particular case, the victim is a woman. In that case, the defendant and the victim in the Rewis case had a prior relationship. That is, they knew each other, in this case, the Larson case, there is no evidence whatsoever that the defendant or the victim knew each other, in the Rewis case, the victim was found clothed, and wrapped. In the Larson case, the victim was found nude. In the Rewis case, the victim died as a result of blunt force trauma. In this particular case, the victim died as a result of strangulation, asphyxiation. In the Rewis case, the victim was killed in his home. In this particular

[18]At trial, counsel stated that this evidence was offered "under three recognized areas of 404." (Vol.8-R298).

> case, the evidence is that Ms. Larson was kidnapped and killed outside of her home. Either in a wooded area, or inside of her car. Thus, this evidence is not unique, nor are there similar factors. Nor is there any evidence pointing to the similarity of these two crimes that show that Mr. Rewis in the murderer of Carla Larson. Therefore, the State's motion *in limine* will be granted, prohibiting any evidence of that particular homicide.

(Vol.19-R21-22). That result is not an abuse of discretion because the evidence Huggins propounded did not meet the standard for the admission of similar fact evidence:

> The test for admissibility of similar-fact evidence is relevancy. *Williams v. State,* 110 So. 2d 654 (Fla.), *cert. denied,* 361 U.S. 847, 80 S.Ct. 102, 4 L.Ed.2d 86 (1959). When the purported relevancy of past crimes is to identify the perpetrator of the crime being tried, we have required a close similarity of facts, a unique or "fingerprint" type of information, for the evidence to be relevant. *Drake v. State,* 400 So. 2d 1217 (Fla.1981); *State v. Maisto,* 427 So.2d 1120 (Fla. 3d DCA 1983); *Sias v. State,* 416 So. 2d 1213 (Fla. 3d DCA), *review denied,* 424 So. 2d 763 (Fla.1982). **If a defendant's purpose is to shift suspicion from himself to another person, evidence of past criminal conduct of that other person should be of such nature that it would be admissible if that person were on trial for the present offense**. Evidence of bad character or propensity to commit a crime by another would not be admitted; such evidence should benefit a criminal defendant no more than it should benefit the state. Relevance and weighing the probative value of the evidence against the possible prejudicial effect are the determinative factors governing the admissibility of similar- fact evidence of other crimes when offered by the state. These same factors should apply when the defendant offers such evidence.
>
> The district court suggests that the similarity of conduct should be less when a defendant seeks to introduce *Williams* rule evidence because there is a

> lessened chance of prejudice. Section 90.402, *Florida Statutes* (1987), provides that all relevant evidence is admissible except as provided by law. Section 90.403, *Florida Statutes* (1987), however, provides that relevant evidence is inadmissible when outweighed by prejudice, confusion of issues, misleading the jury, or presenting of cumulative evidence. One does not reach prejudice until relevancy is established; to be relevant similar- fact evidence of other crimes must be of such nature that it would tend to prove a material fact in issue. Thus, we disagree that the degree of similarity for such crimes to be relevant should be modified when identity is sought to be proved, even though it is less likely that prejudice would occur when evidence of other crimes is sought to be introduced by a defendant. Only after the relevance requirement is satisfied is prejudice or confusion determined.

State v. Savino, 567 So. 2d 892, 894 (Fla. 1990). [emphasis added]. Applying the standard set out above, there is no abuse of discretion -- if Rewis were on trial for the murder of Carla Larson, evidence of the Duval County homicide would not be admissible against him because the two murders are wholly dissimilar, as the Circuit Court found. Huggins has not shown an abuse of discretion by the trial court, and this claim is not a basis for relief.

To the extent that further discussion of this issue is necessary, the evidence at issue is not relevant to the murder of Carla Larson. In upholding the admission of similar fact evidence in *Conde v. State,* this Court stated:

> As the first step of our analysis, we conclude that the collateral crimes evidence established the fact that Conde had committed substantially similar crimes on five prior occasions, which in turn was relevant to

> numerous material issues, such as identity, intent, and premeditation. See, e.g., ***Bradley v. State,*** 787 So.2d 732, 741-42 (Fla.2001) (***Williams*** rule evidence of prior crime relevant to proving intent and premeditation); ***Townsend v. State,*** 420 So.2d 615 (Fla. 4th DCA 1982) (admission of ***Williams*** rule evidence upheld where defendant was on trial for strangulation of two prostitutes and State introduced six other murders as relevant to identity and motive). Although Conde argues that identity and intent were largely uncontested issues, we note that premeditation, defined as a "fully formed conscious purpose to kill," was the single most contested issue at trial and that the pattern of these crimes, together with the message Conde wrote on the back of his third victim indicating that she was the "third" and "[see] if you can catch me," was evidence of premeditated intent to kill. This evidence was clearly relevant given Conde's theory of defense that he killed in an "instantaneous combustion" of unexpected and unplanned emotions. ***See Wuornos v. State,*** 644 So.2d 1000, 1006 (Fla.1994) (finding evidence of six prior murders relevant to premeditation where accused's testimony portrayed her as the actual victim). Additionally, we note that even if lack of premeditation was the primary focus of Conde's defense, the State also had the burden of proving the material issues of identity and intent. Therefore, any evidence tending to prove those issues was relevant.

Conde v. State, 28 Fla. L. Weekly S669, 673(Fla. Sept.4, 2003); ***see also, Gore v. State,*** 784 So. 2d 418, 431 (Fla. 2001). The Rewis evidence does not meet that standard (and would be inadmissible if Rewis were the defendant here), and was properly excluded because it was not relevant.

Finally, to the extent that Huggins' claim is based on some legal theory other than reverse ***Williams*** Rule, he has completely failed to establish the relevancy of the "evidence" at issue

beyond his own speculation. It is true that *Chambers v. Mississippi*, 410 U.S. 284 (1973), does not allow application of technical evidentiary rules to preclude the presentation of a defense, *Chambers* did not abrogate the requirement that evidence be relevant, material, and competent. While Huggins has attempted to describe the Rewis evidence as something other than similar fact evidence, that attempt to escape from the admissibility standards applicable to reverse *Wiliams* Rule evidence fails -- no matter how Huggins chooses to describe the Rewis evidence, it is subject to the *Williams* Rule standard, and Huggins has not met it.[19] There is no basis for relief, and the conviction and sentence should be affirmed in all respects.

V. THE PREJUDICIAL EVIDENCE CLAIM

On pages 54-65 of his brief, Huggins complains about the admission of photographs of his victim, about testimony from the medical examiner concerning death by strangulation, and about "victim impact evidence." The trial court did not abuse its discretion in admitting any of this evidence, and should be affirmed in all respects. *See, Ray, supra; Zack, supra; Cole, supra.*

---

[19]Strangely enough, Huggins describes the Rewis evidence as "reverse *Williams* rule evidence" in another part of his brief. *Initial Brief*, at 56.

The crime scene photographs.

This Court has stated the standard for evaluating the admission of photographs of murder victims in the following way:

> The admission of photographic evidence of a murder victim is within the sound discretion of the trial court and its ruling will not be disturbed on appeal absent abuse. *See Gudinas v. State,* 693 So. 2d 953, 963 (Fla.1997). "While a trial court should exercise caution in admitting particularly gruesome photographs, and in limiting their numbers, such photographs may still be relevant." *Larkins v. State,* 655 So.2d 95, 98 (Fla.1995). This Court has upheld the admission of photographs where such photographs were relevant to "explain a medical examiner's testimony, to show the manner of death, the location of wounds, and the identity of the victim."*Id.* at 98.

Bruno v. Moore, 838 So. 2d 485 (Fla. 2002), *cert. denied*, 124 S.Ct. 100 (2003); *Marquard v. State*, 850 So. 2d 417 (Fla. 2002) (“We have consistently upheld the admission of allegedly gruesome photographs where they were independently relevant or corroborative of other evidence."); *Chavez v. State,* 832 So. 2d 730 (Fla. 2002), *cert. denied,* 123 S.Ct. 2617 (2003) (“As stated by the Court in *Henderson v. State,* 463 So. 2d 196, 200 (Fla. 1985), ‘[t]hose whose work products are murdered human beings should expect to be confronted by photographs of their accomplishments.’”); *Carroll v. State*, 815 So. 2d 601 (Fla. 2002) (“This Court has upheld the admissibility of photographs where they are relevant to explain a medical examiner's testimony, to show the manner of death, the location of wounds,

and the identity of the victim." [citations and internal quotations omitted]); *Rutherford v. Moore*, 774 So. 2d 637, 647 (Fla. 2000).

During the trial of this case, the parties relied on the prior proceedings in this case with respect to the admission of the photographs. (Vol.24-R1139).[20] The medical examiner testified that the photographs showing decomposition of Carla Larson's body, and the effects of insect and animal activity on her body (including her face) were relevant to establishing the time of death, which, of course, is significant given that a period of time passed between Carla's disappearance and the time that her body was found. (SR 732; 733; 734; 735; 736-39). Likewise, the photograph of the victim's vaginal area suggests the possibility of pre-mortem injury, as well as demonstrating the decomposition of the victim's body. (SR739). The victim's left hand showed possible traumatic injury, while the right hand did not. (SR744-45). Likewise, the photographs of the victim's neck were relevant to show the effects of Huggins strangling her to death. (SR741-43). And, the photographs were relevant to demonstrate for the jury why the medical examiner could not determine the presence of petechial hemorrhages or definitively state that

[20]The pertinent portion of the record from the first trial begins on R729 thereof, and is found in Supplemental Record Volume 5.

defensive wounds were present on the victim's hands, both being matters that were suggested by Huggins on cross-examination. (Vol.24-R1165-67). The photographs, however distasteful they may be, were relevant to the issues before the jury, were necessary to fairly and accurately explain the medical examiner's testimony, and the trial court did not abuse its discretion in admitting them. *Davis v. State*, 28 Fla. L. Weekly S692 (Fla. Sep. 11, 2003); *Mansfield v. State*, 758 So. 2d 636, 648 (Fla. 2000); *Gudinas v. State*, 693 So. 2d 953, 963 (Fla. 1997)(Test for admissibility is relevance, not necessity). There is no basis for reversal.[21]

The "testimony regarding strangulation."

On pages 60-62 of his brief, Huggins complains that the medical examiner was allowed to testify about the effects of strangulation on a victim murdered in that fashion. As this Court has recognized, "[b]ecause strangulation of a conscious victim involves foreknowledge and the extreme anxiety of impending death, death by strangulation constitutes prima facie evidence of HAC. *See Mansfield v. State,* 758 So. 2d 636, 645 (Fla. 2000); *Orme v. State*, 677 So. 2d 258, 263 (Fla. 1996)." *Barnhill v. State,* 834 So. 2d 836 (Fla. 2002). However, unless

[21]While not conceding any error, if there was error, it was harmless. *Hertz v. State*, 803 So. 2d 629, 642-43 (Fla. 2001).

the defendant is willing to stipulate that murder by strangulation is heinous, atrocious, and cruel for penalty phase purposes, the State is entitled to present evidence concerning the mechanism of death when strangulation is the means by which a murder is carried out. The Court did not abuse its discretion in admitting this testimony which, despite the characterizations of Huggins brief, was **not** "over repeated defense objections." *Initial Brief*, at 61. In fact, during this portion of the medical examiner's testimony, **Huggins made only one objection**, and that objection was to the description of initial intense pain in the victim's neck. (Vol.24-R1163). Huggins has preserved nothing for review. *San Martin, v. State*, 717 So. 2d 462, 470 (Fla. 1998); *Maharaj v. State*, 597 So. 2d 786, 790 (Fla. 1992). In any event, Huggins has not demonstrated that the court abused its discretion in allowing the unobjected-to testimony.

Moreover, there is no basis for the assertion that the medical examiner would be "unqualified" to testify about the physiological and emotional effect of murder by strangulation. Such matters are within the expertise of a medically trained person, and was proper testimony in all respects. There is no basis for relief.[22]

---

[22]Obviously, Huggins is the one who chose to murder Carla Larson by strangling her. He should not be heard to complain

The "victim impact evidence" claims.

On pages 63-65 of his brief, Huggins raises separate claims that fall generally into the category of "victim impact" evidence claims. The law is settled in this state that victim impact evidence is admissible in the penalty phase of a capital trial. *Floyd v. State,* 850 So. 2d 383, 407 (Fla. 2002); *Looney v. State,* 803 So. 2d 656, 675-76 (Fla. 2001); *Hertz v. State,* 803 So. 2d 629, 647 (Fla. 2001)*; Farina v. State*, 801 SO. 2d 44, 52 (Fla. 2001). To the extent that Huggins complains about "the contents of the victim's purse and her status as a young mother," those complaints are frivolous. Huggins took his victim as he found her, and should not now be heard to complain that the truck that he stole from Carla Larson had a baby seat in it or that her purse contained a Toys-R-Us credit card. That evidence is relevant to the *res gestae* of the offense, and was properly admitted.

VI. THE MOTION FOR JUDGMENT OF ACQUITTAL WAS PROPERLY DENIED.

On pages 66-70 of his brief, Huggins argues that the trial court should have granted his motion for judgment of acquittal

---

when the jury is fully informed about the effects of his chosen method of murder. "Murder is a grisly affair," *Jeffers v. Ricketts*, 832 F. 2d 476, 484 (9th Cir. 1987), but Huggins is the one who made the decision to commit murder by strangulation.

because the "circumstantial evidence failed to rule out the reasonable hypothesis" that Huggins did not kill Carla Larson.[23] This Court has explained the standard of review in the following way:

> In reviewing a motion for judgment of acquittal, a de novo standard of review applies. *See Pagan v. State,* 830 So.2d 792, 803 (Fla. 2002), *cert. denied,* --- U.S. ----, 123 S.Ct. 2278, 156 L.Ed.2d 137 (2003). Generally, an appellate court will not reverse a conviction that is supported by competent, substantial evidence. *See Pagan,* 830 So. 2d at 803 (citing *Donaldson v. State,* 722 So. 2d 177 (Fla. 1998); *Terry v. State,* 668 So. 2d 954, 964 (Fla. 1996)). There is sufficient evidence to sustain a conviction if, after viewing the evidence in the light most favorable to the State, a rational trier of fact could find the existence of the elements of the crime beyond a reasonable doubt. *See Banks v. State,* 732 So. 2d 1065 (Fla. 1999). "A motion for judgment of acquittal should be granted in a circumstantial evidence case if the state fails to present evidence from which the jury can exclude every reasonable hypothesis except that of guilt." *Orme v. State,* 677 So. 2d 258, 262 (Fla. 1996).
>
> "The question of whether the evidence fails to exclude all reasonable hypotheses of innocence is for the jury to determine, and where there is substantial, competent evidence to support the jury verdict, we will not reverse." *Darling v. State,* 808 So. 2d 145, 155 (Fla.) (quoting *State v. Law,* 559 So. 2d 187, 188 (Fla.1989)), *cert. denied,* 537 U.S. 848, 123 S.Ct. 190, 154 L.Ed.2d 78 (2002). In meeting its burden, the State is not required to "rebut conclusively, every possible variation of events" which could be inferred from the evidence, but must introduce competent

---

[23]Huggins' brief focuses solely on first degree premeditated murder -- he says nothing at all about the evidence supporting a conviction under a "felony-murder" theory.

> evidence which is inconsistent with the defendant's theory of events. *Darling,* 808 So. 2d at 156 (quoting *Law,* 559 So.2d at 189). Once the State meets this threshold burden, it becomes the jury's duty to determine whether the evidence is sufficient to exclude every reasonable hypothesis of innocence beyond a reasonable doubt. *Id.*

Johnston v. State, 28 Fla. L. Weekly S779 (Fla. Oct. 16, 2003). The State carried its burden in this case, and the jury's verdict, which is supported by competent substantial evidence, should not be disturbed.

The Circuit Court's sentencing order summarizes the evidence against Huggins, which is inconsistent with any "hypothesis of innocence" advanced by Huggins. The order, in pertinent part, reads as follows:

> On the morning of June 10, 1997, Carla Larson left her home in the College Park area of Orlando to take her daughter to day care and to go to work. Mrs. Larson was employed as an engineer by Centex Rooney at the Coronado Springs Resort work site located at Walt Disney World. At the time, she was driving her white Ford Explorer. Prior to noon Mrs. Larson left her job, driving her white Ford Explorer, and drove to the Publix supermarket on Highway 192 in Osceola County. She went to Publix for the express purpose of picking up some food items for a meeting to be held later that afternoon in her office. The evidence establishes that Mrs. Larson purchased the food items at Publix during the noon hour. A Discover card charge slip showed the purchase occurred at 12:12 p.m. on June 10, 1997. After this purchase, Carla Larson never returned to work as scheduled. Subsequently, Carla Larson's nude body was found in a wooded area approximately two miles from the Publix.
>
> On that same morning of June 10, 1997, John Steven

Huggins and his family were staying at the Day's Inn Suites located across the street from the Publix at which Carla Larson had shopped. That morning, Mr. Huggins unexpectedly left the Day's Inn, leaving behind his family and their automobile. He did not return until approximately 3:30 p.m. that same afternoon.

Mr. Huggins returned to the Day's Inn and reunited with his family. His family then left Mr. Huggins at the hotel and returned home to Melbourne, Florida. Later that day, Mr. Huggins arrived in Melbourne, driving the white Ford Explorer that belonged to Carla Larson.

It was uncharacteristic for Carla Larson not to return to work or to return home at the end of a work day. She had an excellent relationship with her husband and child. There was absolutely no reason for Carla Larson not to return to work or home. Additionally, there was absolutely no reason for her to go to the wooded area where here body was eventually found. The only credible reason for her failure to return to work or home and to be in the wooded area her body was subsequently located, was that she had been kidnapped by the defendant.

. . .

The evidence in this case showed that the defendant was in possession of the victim's white Ford Explorer within hours after her disappearance. The victim's vehicle was seen during the noon hour being driven by a white male in the area where her body was subsequently found. The evidence also established that around 3:30 p.m. on June 10, 1997, the defendant returned to the Day's Inn, across from the Publix where the victim was last located. The evidence established that when the defendant left the Day's Inn that morning around 9:30-9:45 a.m., he left the family vehicle behind. When the defendant returned that afternoon, his family returned to Melbourne without him. However, the defendant returned to Melbourne that same afternoon, driving Carla Larson's white Ford Explorer. The evidence clearly showed that the defendant was in possession of the Explorer from June

> 10, 1997, until June 26, 1997, when it was discovered burning in a field.
>
> Further, when the victim's nude body was found, her diamond ring, diamond earrings and necklace were missing from her person. These pieces of jewelry were worn by the victim when she left that morning to go to work. It should be noted that her purse was found some distance away from the body.
>
> The evidence established that during the evening hours of June 10, 1997, the defendant went to the home of his mother-in-law, Paula Fay Blades, in Melbourne. He drove Carla Larson's white Ford Explorer. In the back of Mrs. Blades' home was a shed where the defendant kept his fishing gear. In July of 1997, Mrs. Blades four, hidden behind an electric outlet in the shed, a diamond ring, earrings and a necklace that were later identified as belonging to the victim, Carla Larson.

(R1176-77).

Against that overwhelming evidence of guilt, Huggins offers, as a reasonable hypothesis of innocence, that Carla was "killed in the heat of passion," or that her death was "accidental." While those theories may represent "hypotheses of innocence," they do not represent a **reasonable** hypothesis of innocence, which is what the law requires before any relief is possible. The State met its threshold burden of proof, and there is no basis for reversal. There was sufficient evidence to withstand a motion for judgment of acquittal, and Huggins' motion was properly denied.

VII. THE CIRCUMSTANTIAL EVIDENCE JURY INSTRUCTION CLAIM

On pages 71-74 of his brief, Huggins argues that the trial court erred in refusing to instruct the jury on circumstantial evidence. In general, the decision to give or deny a particular jury instruction is reviewed under the abuse of discretion standard. *James v. State,* 695 So. 2d 1229, 1236 (Fla. 1997). However, this Court has specifically addressed the necessity (or lack thereof) of a circumstantial evidence instruction:

> We find that the circumstantial evidence instruction is unnecessary. The special treatment afforded circumstantial evidence has previously been eliminated in our civil standard jury instructions and in the federal courts. *Holland v. United States,* 348 U.S. 121, 75 S.Ct. 127, 99 L.Ed. 150 (1954). The Criminal Law Section's criticism of this deletion rests upon the assumption that an instruction on reasonable doubt is inadequate and that an accompanying instruction on circumstantial evidence is necessary. The United States Supreme Court has not only rejected this view but has gone even further, stating:
>
> > [T]he better rule is that where the jury is properly instructed on the standards for reasonable doubt, such an additional instruction on circumstantial evidence is confusing and incorrect....
>
> *Id.* at 139-40, 75 S.Ct. at 139 (1954). The elimination of the current standard instruction on circumstantial evidence does not totally prohibit such an instruction if a trial judge, in his or her discretion, feels that such is necessary under the peculiar facts of a specific case. **However, the giving of the proposed instructions on reasonable doubt and burden of proof, in our opinion, renders an instruction on circumstantial evidence unnecessary.**

In re Standard Jury Instructions in Criminal Cases, 431 So. 2d 594 (Fla. 1981); *Warner v. State*, 638 So. 2d 991 (Fla., 3d DCA

1994). This Court has more recently held:

> As we observed in *Monlyn v. State,* 705 So.2d 1 (Fla. 1997):
>
> > We have in fact expressly approved courts which have exercised their discretion and not given the instruction:
> >
> > > In *In re Standard Jury Instructions in Criminal Cases,* 431 So. 2d 594 (Fla.1981), we found the instruction on circumstantial evidence to be unnecessary and deleted it from the standard instructions. A trial court can, of course, give such an instruction if, in the court's discretion, it finds it necessary due to the particular facts of any case.
>
> *Williams v. State,* 437 So. 2d 133 (Fla. 1983); *Standard Jury Instructions in Criminal Cases.* The trial court did not find the circumstantial evidence instruction necessary in this case, and we find no abuse of discretion in his refusal to give such an instruction. *Id.* at 5 (quoting *Rembert v. State,* 445 So. 2d 337, 339 (Fla. 1984)). We find no abuse of discretion in the trial court's refusal to give the requested instruction.

Darling v. State, 808 So. 2d 145 (Fla. 2002), *cert. denied*, 537 U.S. 848 (2002); *Floyd v. State*, 850 So. 2d at 400-401; *Trepal v. State*, 621 So. 2d 1361, 1366 (Fla. 1993). The jury in Huggins' case was properly instructed, and there was no abuse of discretion in refusing to give an additional "circumstantial

evidence" instruction to the jury.[24] (Vol. 27-R1703-04). There is no basis for relief.

VIII. THE "DISQUALIFICATION OF THE PROSECUTOR" CLAIM

On pages 75-77 of his brief, Huggins argues that the trial court improperly denied his motions to disqualify Assistant State Attorney Jeff Ashton from serving as prosecutor in this case.[25] Huggins has demonstrated no prejudice as a result of ASA Ashton's actions (as he must to even make the preliminary showing necessary), and the trial court did not abuse its discretion in denying these motions. There is no basis for reversal.

This Court has established a "specific prejudice" standard for disqualification of a prosecutor:

> Disqualification of a state attorney is proper only when specific prejudice demonstrated. *See Farina v. State,* 679 So. 2d 1151, 1157 (Fla. 1996), *receded from on other grounds by Franqui v. State,* 699 So. 2d 1312, 1320 (Fla. 1997); *State v. Clausell,* 474 So. 2d 1189, 1190 (Fla. 1985). Furthermore, "[a]ctual prejudice is

---

[24]Huggins' comment, in footnote 45 to his brief, that the trial court "apparently thought it had no discretion to give" the circumstantial evidence jury instruction reads too much into the Court's comments, which follow this Court's language in *In re Standard Jury Instructions, supra.* There is no error, nor is there even a legitimate issue.

[25]Three motions to disqualify were filed pre-trial by counsel. (Vol.12-R480-81; Vol.12-513-15; Vol.12-568-70). A fourth motion to disqualify was filed *pro se* on August 22, 2002, after Huggins was found guilty. (Vol.15-R1130-36).

> something more than the mere appearance of impropriety." *Meggs v. McClure,* 538 So. 2d 518, 519 (Fla. 1st DCA 1989). Under this standard, we conclude that the trial court properly denied Kearse's motion to disqualify the prosecutor.

Kearse v. State, 770 So. 2d 1119 (Fla. 2000); *Rogers v. State,* 783 So. 2d 980, 991 (Fla. 2001) (specific prejudice as result of participation in prosecution required); *Bogle v. State,* 655 So. 2d 1103, 1106 (Fla. 1995). Despite Huggins' complaints about ASA Ashton in the various motions to disqualify, **no issues based upon any of those complaints are raised as issues in this appeal**. Standing alone, the absence of any claim arising out of the motions to disqualify is a concession that the claims contained in the motions were either groundless to begin with, or (to the extent that the claims concerned discovery or similar matters), were resolved to the defendant's satisfaction by the trial court. In either case, there is no showing of prejudice to the defendant, and, because that is so, no basis for disqualification of the prosecutor.[26] The trial court did not abuse its discretion in denying the motion to disqualify.

IX. THE AGGRAVATING CIRCUMSTANCE CLAIM

---

[26]Huggins makes much of the grievance he filed against ASA Ashton, but makes no mention of the final resolution of that proceeding. If the matter had been resolved adversely to ASA Ashton, that fact would undoubtedly be mentioned in Huggins' brief, and its absence is, to say the least, significant.

On pages 78-85 of his brief, Huggins argues that the trial court erred in finding that his murder of Carla Larson was: 1) committed for pecuniary gain; 2) was committed during the course of a kidnaping; and 3) was heinous, atrocious, or cruel. ***Initial Brief***, at 78. Whether an aggravating circumstance exists is a factual finding reviewed under the competent substantial evidence test. When reviewing aggravators on appeal, this Court in ***Alston v. State***, 723 So. 2d 148, 160 (Fla. 1998), reiterated the standard of review, stating that it "is not this Court's function to reweigh the evidence to determine whether the State proved each aggravating circumstance beyond a reasonable doubt -- that is the trial court's job. Rather, our task on appeal is to review the record to determine whether the trial court applied the right rule of law for each aggravating circumstance and, if so, whether competent substantial evidence supports its finding," *quoting Willacy v. State,* 696 So. 2d 693, 695 (Fla. 1997), *cert. denied,* 522 U.S. 970 (1997).

The "during the course of a kidnaping" aggravating circumstance claim is a non-issue because Huggins was convicted of the kidnaping of Carla Larson.

On pages 79-80 of his brief, Huggins argues that the "during the course of a kidnaping" aggravator was not proven beyond a reasonable doubt, and that the trial court's finding "regarding

this particular aggravating factor is filled with rampant speculation." This claim overlooks the fact that Huggins was convicted of kidnaping Carla Larson by the same jury that convicted him of her murder. **Huggins does not challenge the sufficiency of the evidence to support his kidnaping conviction -- that is a concession as to the validity of that conviction, and is a tacit concession to the validity of the during the course of a kidnaping aggravator.** It stands reason on its head to suggest that this aggravator was not proven beyond a reasonable doubt when Huggins has not even challenged the separate conviction for kidnaping.

While the State does not concede that it is even necessary to address the claim contained in Huggins' brief, the findings by the trial court (which are set out at pages 62-64, above) set out competent substantial evidence to support the existence of the during the course of a kidnaping aggravator. *see, Conahan v. State*, 844 So. 2d 629 (Fla. 2003), *cert. denied* 124 S.Ct. 240 (2003); *Walls v.* State, 641 So. 2d 381 (Fla. 1994); *Bedford v. State*, 589 So. 2d 245 (Fla. 1991).

Competent substantial evidence supports the pecuniary gain aggravating circumstance.

On pages 80-83 of his brief, Huggins argues that the trial court erroneously found the pecuniary gain aggravating

circumstance. Competent substantial evidence supports the finding of that aggravator, and the trial court's order should not be disturbed.

In the sentencing order, the trial court made the following findings with respect to the pecuniary gain aggravating factor:

> In order to establish this aggravating factor, the State must prove beyond a reasonable doubt that the murder was motivated, at least in part, by a desire to obtain money, property or other financial gain. ***Clark v. State***, 609 So. 2d 513 (Fla. 1992); ***Peek v. State***, 395 So. 2d 492 (Fla. 1980), ***cert denied***, 45 U.S. 964, 101 S.Ct. 2036, 68 L. Ed. 2d 342 (1981).
>
> The evidence in this case showed that the defendant was in possession of the victim's white Ford Explorer within the hours after her disappearance. The victim's vehicle was seen during the noon hour being driven by a white male in the area where her body was subsequently found. The evidence also established that around 3:00 p.m. on June 10, 1997, the defendant returned to the Day's Inn, across from the Publix where the victim was last located. The evidence established that when the defendant left the Day's Inn that morning around 9:30-9:45 a.m., he left the family vehicle behind. When the defendant returned that afternoon, his family returned to Melbourne without him. However, the defendant returned to Melbourne that same afternoon, driving Carla Larson's white Ford Explorer. The evidence clearly showed that the defendant was in possession of the Explorer from June 10, 1997, until June 26, 1997, when it was discovered burning in a field.
>
> Further, when the victim's nude body was found, her diamond ring, diamond earrings and necklace were missing from her person. These pieces of jewelry were worn by the victim when she left that morning to go to work. It should be noted that her purse was found some distance away from the body.

The evidence established that during the evening hours of June 10, 1997, the defendant went to the home of his mother-in-law, Paula Fay Blades, in Melbourne. He drove Carla Larson's white Ford Explorer. In te back of Mrs. Blades' home was a shed where the defendant kept his fishing gear. In July of 1997, Mrs. Blades found, hidden behind an electric outlet in the shed, a diamond ring, earrings and a necklace that were later identified as belonging to the victim, Carla Larson.

Were these items -- the Ford Explorer, the diamond ring, diamond earrings and necklace –just taken as an afterthought and merely to facilitate the defendant's escape? Or rather, were they purposely taken as a means of improving his financial worth and providing a benefit to the defendant?

The evidence showed that the body was found in a wooded area some two miles away from where the defendant and his family were staying during their visit to the Orlando area. If the taking of this vehicle was merely an afterthought, then it would seem logical that the defendant would have simply abandoned the vehicle after facilitating his escape from the scene of the murder and returning to his family where ready transportation was awaiting him. But the defendant did not abandon the vehicle. Instead, he kept the Explorer and used it until it was no longer feasible to openly drive it. The defendant's actions clearly indicate that he intended to benefit by taking the Explorer and its subsequent use by him.

Further, the evidence established that when she left home that morning, Carla Larson was wearing a diamond ring, diamond earrings and a necklace. When her body was found, she did not have her purse nor was her diamond ring on her hand, nor were her diamond earrings on her ears, nor was her necklace around her neck. Not only were these items removed from her person, but they were taken and hidden in Melbourne. These items were not simply discarded some distance from the body like the victim's purse.

Why were these items not discarded like the purse? The answer is simple – - they were taken because of their

> financial worth. It is not an afterthought to take a diamond ring from the finger of the dead body of Carla Larson. It is not an afterthought to take diamond earrings from the ears of the dead body of Carla Larson. It is not an afterthought to take a necklace from around the neck of the dead body of Carla Larson. Nor, would it be an afterthought to take those items from a living Carla Larson. The defendant had to make a conscious decision to take those items of jewelry for his own pecuniary benefit.
>
> The record supports the finding that the murder was committed for pecuniary gain. The Court finds this aggravating factor is present.

(Vol.15-R1177-78).

In a case remarkably similar to this one, this Court upheld the finding of the pecuniary gain aggravator:

> In support of the pecuniary gain aggravator, the trial court considered the facts which demonstrated that during the series of events, Spann and Philmore stole the vehicle the murder victim had been driving. After Perron was forced to drive to an isolated location, the defendants took her vehicle. After they snatched $1000 from a customer in a bank, Spann and Philmore used Perron's Lexus to pick up their female companions. They were in the Lexus when they were spotted by the police. The murder was in fact committed for pecuniary gain of the vehicle.
>
> The testimony is clear that Spann told Philmore they needed to kill the victim of the carjacking so that she could not identify them and they would have enough time to get away with the car. The evidence was unrebutted that the elimination of the witness was the dominant motive for the murder. The victim's body was found in a remote area, and she was shot in the forehead, which is consistent with an execution-style killing. Philmore, who was also found guilty of first-degree murder and sentenced to death, also challenged the avoid arrest aggravator. Based on the same evidence, this Court upheld the trial court's finding that the sole or dominant motive for the killing was to eliminate the witness. *See Philmore v. State,* 820 So. 2d 919, 935 (Fla. 2002) (finding competent, substantial evidence of witness elimination existed

> where the defendant confessed that he killed the victim to eliminate her as a witness; he drove the victim for approximately thirty minutes looking for a remote location; and there was no indication that the defendant wore a mask or gloves to conceal his identity). It is clear that the facts in support of these three aggravating factors overlap. However, *Banks* does not prohibit the use of the same facts to support multiple aggravating factors so long as they are separate and distinct aggravators and not merely restatements of each other.
>
> We have previously upheld the finding of the "pecuniary gain and committed during the course of a kidnaping" aggravators. *See Hartley v. State,* 686 So.2d 1316, 1323 (Fla.1996) (noting that the assertion that the pecuniary gain and in-the-course-of-a-kidnapping aggravators are improperly doubled has been consistently rejected). Where other factors indicate that the defendant did not act with the absolute, sole motive of pecuniary gain, it is not error to find the pecuniary gain and in-the-course-of-a-kidnaping aggravators. *Id.* Spann's sole motivation for these crimes was not pecuniary gain; he clearly wanted the victim dead to prevent her from identifying him. Therefore, these two aggravators were properly found. We also reject the argument that the pecuniary gain aggravator is inconsistent with a concurrent finding of the avoid arrest aggravator. *See Thompson v. State,* 648 So.2d 692, 695 (Fla.1994) (holding that it is proper for a trial court to utilize both the pecuniary gain and avoid arrest aggravators in the same case); *see also Hildwin v. State,* 727 So.2d 193, 195 (Fla.1998) (holding "in order to establish this aggravator the State must prove beyond a reasonable doubt only that 'the murder was motivated, at least in part, by a desire to obtain money, property or other financial gain'") (quoting *Finney v. State,* 660 So.2d 674, 680 (Fla.1995)). The evidence is clear that the murder was motivated by Spann and Philmore's desire to obtain a car so they could leave town in an unsuspicious car after they robbed a bank.

Spann v. State, 28 Fla. L. Weekly S784 (Fla. Apr. 3, 2003); *see also*, *e.g., Doorbal v. State,* 837 So. 2d 940 (Fla. 2003), *cert. denied* 123 S.Ct. 2647 (2003); *Lightbourne v. State*, 438 So. 2d 380 (Fla. 1983) (jewelry stolen after burglary and sexual

battery). The findings by the trial court are consistent with the law, and should not be disturbed.

The trial court properly found the heinousness aggravating factor.

On pages 84-85 of his brief, Huggins asserts that the trial court should not have found his strangulation murder of Carla Larson to be heinous, atrocious, or cruel. Competent substantial evidence supports the trial court's finding of the heinousness aggravator, and there is no basis for relief.

In finding that Huggins' murder of Carla Larson was especially heinous, atrocious, or cruel, the sentencing court stated:

> In *State v. Dixon*, 283 So. 2d 1, 9 (Fla 1973), the Supreme Court of Florida stated:
>
> "It is our interpretation that heinous means extremely wicked or shockingly evil; that atrocious means outrageously wicked and vile; and, that cruel means designed to inflict a high degree of pain with utter indifference to, or even enjoyment of, the suffering of others. What is intended to be included are those capital crimes where the actual commission of the capital felony was accompanied by such additional acts as to set the crime apart from the norm of capital felonies - the conscienceless or pitiless crime which is unnecessarily torturous to the victim.
>
> Was the murder of Carla Larson a conscienceless or pitiless crime and unnecessarily tortuous to her? In evaluating the evidence, the Court may consider the victim's fear and emotional strain as contributing to the heinous nature of the murder. *Preston v. State*, 607 So. 2d 404 (Fla. 1992), *cert. denied*, 507 U.S. 999, 113 S.Ct. 1619, 123 L. Ed. 2d 178 (1993); *Hannon v. State*, 638 So. 2d 39 (Fla. 1999), *cert. denied*, 513 U.S. 1158, 115 S.Ct. 1118, 130 L.Ed 2d 1081 (1995).

Dr. Shashi Gore, the medical examiner, testified that the victim, Carla Larson, was killed as a result of asphyxiation due to severe neck trauma and strangulation. When asked to explain what happens during strangulation Dr. Gore stated the following:

> When the first thing, of course, as we all know, that strangulation involves, in layman's terms, suffocation. What it means, really, is that you close the air passage with pressure to the extent that person does not get enough oxygen supply to the various organs of the body, which are the vital organs. For example, the brain, kidney, liver, and the heart. now, when person knows that somebody is going to strangle or injure the areas of the neck, there is always a constant fear that the death is soon, impending death. The person is conscious at that time. That is, there is frightening fear. Then the second thing, of course, the person, as being strangled, tries to struggle with that. Even the person is conscious at that time, maybe irregular vocal voices might come out from the person. The victim. And the later stage, within a minute, or two, or maximum of three, depending upon how tight is the grip on the neck, and how long it is, there is intermittal or continuous, if there is intermittal, because of the struggling of the person, it becomes slightly protracted. But otherwise, suffocation might kill a person within a matter of one or two minutes.
>
> . . .
>
> Well, it's, of course, terrible pain on the neck area, when somebody is being - putting pressure on the neck, so there is a sense of impending death, fright, and different systems of the body, they start working. For example, heart will start beating more. It is adrenalin type of reaction, when adrenaline is pumped into your system. Pulse rate. Sweating starts, and the heart starts pumping fast.

Dr. Gore also indicated there was no evidence that Carla Larson was unconscious when she was strangled.

> Henry David Thoreau said, "Nothing is so much to be feared as fear." Carla Larson was more than likely abducted in the parking lot of Publix and was driven more than two miles to a dirt road tat led to a wooded area. One can only imagine the alarm, the anxiety, the apprehension, the fright, and the terror that she felt as she was forced to ride to her demise. What fear and horror she must have felt when she was forced to walk from her vehicle into the wooded area - - Carla Larson's own march to Bataan. No one can truly know the emotional strain and physical pain she had to endure as she struggled to breathe as the defendant strangled her to death. No one can truly know the dread and terror that she endured when she was no longer able to breathe, knowing that her life was slipping away.
>
> During her last moments on earth, Carla Larson knew what Thoreau meant by the statement that " nothing is so much to be feared as fear." The horror, the agony, the emotional strain and the fear she must have felt knowing of her impending death is beyond comprehension.
>
> This crime meets the definition of heinous, atrocious, or cruel. The Court finds this aggravator present.
>
> None of the other aggravating circumstances enumerated by statute is applicable to the case and none other was considered by this Court.

(Vol. 15-R1178-79).

Those findings are well-supported by the evidence, and, in fact, Huggins does not dispute them -- his complaint is with the trial court's finding that "there was no evidence that Carla Larson was unconscious when she was strangled." (Vol.15-R1179). Huggins does not dispute that fact, either, choosing instead to respond to it with the statement that "Nor is there any evidence that she was conscious." *Initial Brief,* at 85. However, the medical examiner testified that there was no injury to Carla's "scalp, cranial bones, or the brain," and that there was no

indication that she was unconscious when she was strangled to death by Huggins. (Vol.24-R1160-61). If there is no evidence of an injury which would cause loss of consciousness (other than as a result of the strangulation itself), it is an appropriate inference from the evidence tat Carla Larson was conscious when Huggins began strangling her. Any other conclusion makes no sense, given that, when last seen, Carla was in apparent good health, was self-mobile, and was discussing her afternoon work plans with a colleague. Concluding that Carla was unconscious when Huggins strangled her is a conclusion that finds no support in the evidence -- the evidence supports the conclusion that this murder was a strangulation perpetrated against a conscious victim, which, as Huggins recognizes, is *per se* heinous, atrocious, or cruel. *Conde v. State,* 28 Fla. L. Weekly S669 (Fla. Sept. 4, 2003); *Belcher v. State,* 851 So. 2d 678, 683-84 (Fla. 2003), *petition for cert. filed,* No. 03-6522 (Sept. 17, 2003); *Ocha v. State,* 826 So. 2d 956, 963 (Fla. 2002); *Bowles v. State,* 804 So. 2d 1173, 1177-79 (Fla. 2001), *cert. denied* 536 U.S. 930 (2002); *Overton v. State,* 801 So. 2d 877, 901 (Fla. 2001), *cert. denied*, 535 U.S. 1062 (2002); *Blackwood v. State,* 777 So. 2d 399, 408-09 (Fla. 2000); *Mansfield v. State,* 758 So. 2d 636, 645 (Fla. 2000); *Hildwin v. State,* 727 So. 2d 193, 195-96 (Fla. 1999); *Schwab v. State,* 636 So. 2d 3, 7-8 (Fla. 1994); *Happ v. State,* 618 So. 2d 205, 206-07 (Fla. 1993); *Hitchcock v. State*, 578 So. 2d 685, 692-93(Fla. 1990).

X. HUGGINS' DEATH SENTENCE IS NOT DISPROPORTIONATE

On pages 86-89 of his brief, Huggins argues that his death sentence is disproportionate. In sentencing Huggins to death, the trial court found five aggravating factors -- that the capital felony was committed by a person previously convicted of a felony; that the defendant had previously been convicted of a felony involving the use or threat of violence to the person; that the murder was committed during the course of the commission of a kidnaping; that the murder was committed for pecuniary gain; and, that the murder was especially heinous, atrocious, or cruel. (Vol.15-R1174-1180). Huggins did not argue for the finding of any statutory mitigating factors, and the trial court, after reviewing the record, found that no statutory mitigators were present. Huggins advanced some 19 non-statutory mitigators -- the trial court found 13 of those matters to be mitigating, giving some weight to 8, very little weight to 4, and slight weight to one. (Vol.15-R1181-87). The court concluded that the aggravating circumstances greatly outweighed the mitigators. (Vol.15-R1188).

The law is settled that the weighing of aggravators and mitigators is not a comparison of the numbers on each side of the equation. In *Stewart v. State,* a case both less aggravated and more mitigated than this one, this Court stated:

> We find that Stewart's sentence of death is proportional. The aggravating factors were: that Stewart had been convicted of a prior violent felony (great weight); that he was under a sentence of imprisonment when the crime was committed (modest weight); and that the capital felony was committed for pecuniary gain (great weight). The previous violent

> felony aggravator comprised several crimes, including another murder, two attempted murders, armed robbery, attempted armed robbery, and aggravated assault. The mitigating factors consisted of the two statutory mental mitigators, i.e., extreme mental disturbance at the time of the murder and inability of Stewart to conform his conduct to the requirements of the law at the time of the murder. The trial court also found 23 nonstatutory mitigating circumstances. [footnote omitted] However, as we have repeatedly held, proportionality "is not a comparison between the number of aggravating and mitigating circumstances." *Porter v. State,* 564 So.2d 1060, 1064 (Fla.1990); *see also Ocha v. State,* 826 So.2d 956, 965 (Fla.2002); *Philmore v. State,*820 So.2d 919, 939-40 (Fla.2002); *Morris v. State,* 811 So.2d 661, 668 (Fla.2002). Rather, it is a qualitative review of each aggravating and mitigating circumstance. *Ocha,* 826 So.2d at 965. This qualitative analysis is then compared with other capital cases to ensure that the death penalty is being applied uniformly across the State. *Bradley v. State,* 787 So.2d 732, 745 (Fla.2001).

Stewart v. State, 28 Fla. L. Weekly S700 (Fla. Sept. 11, 2003). Likewise, in *Taylor v. State*, this Court affirmed the death sentence under the following circumstances: “(1) Taylor was previously convicted of another violent felony; (2) the crime was committed while Taylor was engaged in the commission of a robbery; (3) the murder was committed for pecuniary gain; and (4) Taylor was under sentence of imprisonment at the time the murder was committed. The trial court merged the murder in the course of a felony and pecuniary gain aggravators and considered them as a single aggravator.” *Taylor v. State*, 855 So. 2d 1, 13 n. 9 (Fla. 2003). This Court went on to state:

> Taylor argues his death sentence is disproportionate.

> Due to the uniqueness and finality of death, this Court addresses the propriety of all death sentences in a proportionality review. *See Porter v. State,* 564 So.2d 1060, 1064 (Fla.1990). In conducting this review, this Court considers the totality of the circumstances in a case as compared to other cases in which the death penalty has been imposed, thereby providing for uniformity in the application of the death penalty. *See Urbin v. State,* 714 So.2d 411, 416-17 (Fla.1998); *Porter v. State,* 564 So.2d at 1064. This Court's function in a proportionality review is not to reweigh the mitigating factors against the aggravating factors; that is the function of the trial court. *See Bates v. State,* 750 So.2d 6, 14-15 (Fla.1999). The death penalty is reserved for only the most aggravated and the least mitigated of first-degree murders. *See Urbin,* 714 So.2d at 416.
>
> We find that the death penalty is not disproportionate in this case when compared with other similar cases this Court has reviewed. *See, e.g., Bryant v. State,* 785 So.2d 422, 437 (Fla.2001) (holding death sentence in armed robbery and murder was proportional where three aggravators outweighed one nonstatutory mitigator); *Pope v. State,* 679 So.2d 710, 716 (Fla.1996) (holding death sentence was proportional in murder and robbery where two aggravators, pecuniary gain and prior violent felony, outweighed two statutory mitigating circumstances and several nonstatutory mitigating circumstances); *Melton v. State,* 638 So.2d 927, 930 (Fla.1994) (holding death penalty proportional where two aggravating factors of murder committed for pecuniary gain and prior violent felony outweighed some nonstatutory mitigation).

Taylor, supra.

To the extent that Huggins asserts that the under sentence of imprisonment and prior violent felony aggravators are “garden variety” aggravating circumstances, the record indicates, and Huggins does not dispute, that he has nine prior violent felony convictions, and had been on felony probation for less than a year at the time he murdered Carla Larson. (Vol.15-R1175). These aggravators are hardly *de minimus*, and any suggestion to the

contrary, under these facts, is meritless. Moreover, Huggins' position is that the remaining three aggravators are inapplicable to his case -- for the reasons set out in connection with claim IX above, that argument has no merit. In any event, even assuming *arguendo* that both the heinousness and the pecuniary gain aggravator were found not to apply, the murder during the course of a kidnaping aggravator remains, as do the prior violent felony and under sentence of imprisonment aggravators.[27] Even under that scenario, death is still the proper sentence.

To the extent that Huggins' brief can be interpreted as arguing that the trial court gave insufficient weight to various mitigation, Florida law is well-settled that the determination of whether particular mitigation exists, and what weight should be given to it, is a matter within the discretion of the trial court. *Kearse v. State,* 770 So. 2d 1119, 1134 (Fla. 2000); *Trease v. State*, 768 So. 2d 1050, 1055 (Fla. 2000) (while court must consider all mitigation, it may assign "little or no" weight to a mitigator); *Mansfield v. State,* 758 So. 2d 636 (Fla. 2000). Huggins' death sentence for the murder of Carla Larson should be affirmed in all respects.

XI. THE *APPRENDI/RING* CLAIM

On pages 90-98 of his brief, Huggins argues that *Apprendi*

[27]The state does not concede that any aggravator was improperly found.

v. New Jersey, 530 U.S. 166 (2000), and *Ring v. Arizona,* 536 U.S. 584 (2002), operate to invalidate Florida's death sentencing scheme. This claim has been repeatedly rejected by this Court, and Huggins' case provides no basis for modifying settled Florida law. *See, Guzman v. State,* 2003 WL 22722404 (Fla. Nov. 20, 2003); *Davis v. State,* 2003 WL 22722316 (Fla. Nov. 20, 2003); *Zakrzewski v. State*, 2003 WL 22669486 (Fla. No. 13, 2003); *Owen v. State,* 28 Fla. L. Weekly S790 (Fla. Oct. 23, 2003)*; Johnston v. State,* 28 Fla. L. Weekly S779 (Fla. Oct. 16, 2003); *Cummings-El v. State/Crosby,* 28 Fla. L. Weekly S757 (Fla. Oct. 9, 2003)*; Henry v. State,* 28 Fla. L. Weekly S753 (Fla. Oct. 9, 2003)*; Anderson v. State,* 28 Fla. L. Weekly S731 (Fla. Sept. 25, 2003)*; Rivera v. State/Crosby,* 28 Fla. L. Weekly S704 (Sept. 11, 2003); *Davis v. State,* 28 Fla. L. Weekly, S692 (Fla. Sept. 11, 2003); *Kormondy v. State*, 28 Fla. L. Weekly S135, 139 (Fla. Apr. 13, 2003), *cert. denied*, 124 S.Ct. 392 (2003). In any event, Huggins' death sentence is supported by three aggravating circumstances which fall outside of *Apprendi/Ring*: Huggins was on felony parole at the time of the murder, Huggins had been previously convicted of **nine** prior felonies involving the use or threat of violence, and Huggins was separately convicted of the kidnaping of Carla Larson, thereby establishing the during the

course of a felony aggravator beyond a reasonable doubt. *See, e.g., Kormondy, supra. Apprendi/Ring* has no applicability to the facts of this case, and is not a basis for relief.

To the extent that further discussion of this claim is necessary, it is true that the trial court utilized special verdict forms which reflected the jury's vote with respect to the aggravating circumstances and mitigating factors. (Vol. 14-R1024-1026). As Huggins notes, **he requested this procedure early in the course of this case.** (Vol.6-R171-2). However, after *Ring* was decided, Huggins apparently changed his mind about the advisability of a special verdict form, and now argues for reversal because the trial court did what he originally requested. However, contrary to Huggins' position, the special verdict forms did not "rewrite" the death penalty statute -- no modifications, additions, or deletions to § 921.141 are found therein, because the verdict forms do no more than set out the particular jury vote with respect to the findings of aggravators and mitigators.[28] While the State does not concede that this procedure needs to be adopted in all cases, Huggins certainly has no argument available to him that the jury did not unanimously find that five aggravators were applicable to his

[28]The jury unanimously found five aggravating circumstances, and no mitigating circumstances. (Vol.14-R1024-26).

case. This issue is not a basis for relief, and the death sentence should be affirmed in all respects.

CONCLUSION

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

Respectfully submitted,

CHARLES J. CRIST, JR.
ATTORNEY GENERAL

KENNETH S. NUNNELLEY
SENIOR ASSISTANT ATTORNEY GENERAL
Florida Bar #0998818
444 Seabreeze Blvd., 5th Floor
Daytona Beach, FL 32118
(386) 238-4990
Fax No. (386) 226-0457

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above has been furnished by U.S. Mail to Christopher S. Quarles, Esquire, Assistant Public Defender, 112 Orange Avenue, Daytona Beach, Florida 32114, this 1st day of December, 2003.

Of Counsel

CERTIFICATE OF COMPLIANCE

This brief is typed in Courier New 12 point.

KENNETH S. NUNNELLEY
SENIOR ASSISTANT ATTORNEY GENERAL