COPY

IN THE SUPREME COURT OF FLORIDA

TAVARES WRIGHT,

Appellant,

vs.

Case No: SC05-2212
L.T. Case No.: CF00-02727A-XX

STATE OF FLORIDA,

Appellee.
_____/

APPEAL FROM THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR POLK COUNTY

APPELLANT'S INITIAL BRIEF

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STATEMENT OF THE CASE

Defendant, **Tavares Jerrod Wright** was charged by Indictment with one count of Carjacking, two counts of Kidnaping, two counts of First Degree Murder and two counts of Robbery on May 11, 2000. [R. Vol. 2 T. 341-351]. **Mr. Wright** was found indigent and the Public Defender was appointed, but then withdrew. [R. Vol. 2 T. 340, 355-357]. Byron P. Hileman, Esquire, was appointed as private conflict counsel, first chair, on July 17, 2000. [R. Vol. 2 T. 357]. David Carmichael, Esquire was appointed second chair private conflict counsel on November 20, 2001. [R. Vol. 3 T. 478].

A Jury Trial was held before the Honorable Dick Prince, Circuit Court Judge, from March 3, 2003 which resulted in a mistrial on March 27, 2003. [R. Vol. 1 T. 67-84]. A second Jury Trial was held before the Honorable Dick Prince, Circuit Court Judge, from September 9, 2003, until October 10, 2003, which resulted in a mistrial due to a hung jury on October 12, 2003. [R. Vol. 1 T. 108-123]. A third Jury Trial was held before the Honorable Dick Prince, Circuit Court Judge, from October 18, 2003 until November 12, 2004. **Mr. Wright** was convicted by the jury of one count of Carjacking, two counts of Kidnaping, , two counts of First Degree Murder, and two counts of Robbery with a Firearm on November 13, 2004. [R. Vol. 4 T. 707-715].

The Appellant waived his right to jury recommendations on November 16, 2004. [R. Vol. 2 T. 219]. A Spencer Hearing was held on May 10 and May 11, 2005 before the Honorable Dick Prince. [R. Vol. 5 T. 903-930 and Vol. 6 T. 931-962]. The Court sentenced the Defendant to death as to the two counts of First Degree Murder and a term of life imprisonment as to the other counts of Carjacking, Kidnaping, and Robbery with a Firearm on October 12, 2005. [R. Vol. 6 T. 963-983]. This appeal followed and was filed on November 4, 2005. [R. Vol. 6 T. 1001]. The Court appointed private appellate counsel, Byron P. Hileman, Esquire, on December 20, 2005, after weeks of delay due to nonavailability of qualified capital appellate counsel.

STATEMENT OF FACTS

OVERVIEW OF CASE:

According to the state's theory of the case, in the early evening of Friday, April 21, 2000, two young white men, victims **David Green** (21), then living in Virginia, and his cousin, **James Felker** (19) of Plant City, came together for a family wedding in Plant City. After the rehearsal dinner, the cousins decided to go bowling or to shoot pool. They went to Lakeland at about 8:00p.m. and they were in **Green's** car, a white Chrysler Cirrus. [See Testimony of **Joy Scriven** R. Vol. 24 T. 3414-3422] and **Francis Green** [R. Vol. 24 T. 3476-3481]. They are believed based on the testimony of **Shaikeda Faison** and **Latasha Jackson** and others to have arrived in the parking

lot of a Winn-Dixie store on Highway 98 in North Lakeland where there is also a McDonald's.

The state believes that at that point the two men, **Green** and **Felker**, were forced at gunpoint into their own car's backseat and taken by **T.J. Wright** and **Sammy Pitts** to a grove in a rural area near Polk City where they were robbed. In the grove each young man was shot several times and killed. **Green** was shot three times with a .380 pistol in the chest, forehead, and back of the neck. **Felker** was shot three times, once in the forehead with the .380 and twice by a shotgun in the back of head. The bodies were left in the grove. **Green's** car was taken by the assailants and several items were stolen from it which were later pawned and recovered by police. The next day, their families reported the two young men missing.

The state at an early stage gave notice it intended to utilize evidence of multiple collateral crimes by defendant **T.J. Wright** because it was evidence "inextricably intertwined" with the evidence relating to the murders. The court below permitted this evidence over defense objection at all three jury trials.[R. Vol. 21 T. 2846-2847].

COLLATERAL CRIME ONE: THE SHANK BURGLARY

On Thursday, April 20, 2000, the home of **Mr. & Mrs. Mark Shank** at 2429 Coral Way, Lakeland, Florida was burglarized. It is near the "Timberlane area" which is a high drug activity, high crime area in Southeast Lakeland. **Mark Shank** testified

that the house was broken into during daylight hours and that it was ransacked. Coins in a piggy bank, a VCR, jewelry, a .380 handgun and a 12 gauge shotgun were stolen. [R. Vol. 21 T. 2809-2820]. **Detective Aaron Campbell** investigated the burglary, dusted for latent prints, and found some on a plastic baby bottle piggy bank. He did not dust for prints in the closet where the stolen guns had been located. [R. Vol. 21 T. 2873-2910]. A palm print of **T.J. Wright** from the plastic baby bottle piggybank was identified. **Shank** gave police a serial number for the .380 handgun which was later matched to one of the murder weapons. The shotgun was never found.

Susan Dampier, a fingerprint identification technician for the Polk County Sheriff's Department testified. [R. Vol. 25 T. 3591-3622]. She stated that she was later asked to compare fingerprints of **T.J. Wright** with prints recovered by **Deputy Campbell** from a plastic bottle at the **Shank** residence at 2429 Coral Way in Lakeland. She identified the print from that item [Exhibit 186] as the right palm print of **T.J. Wright.** [R. Vol. 25 T. 3594-3601]. She did not compare prints from that scene to the known prints of **Sammy Pitts, Aaron Silas** or others involved in the case. [R. Vol 25 T. 3612]. Witness **Herman Moulden**, a former Supervisor of Fingerprint Identification Section of the Polk County Sheriff's Department, testified that he checked and confirmed **Susan Dampier's** identification of the **T.J. Wright** palm print.[R. Vol. 25 T. 3623-3627].

COLLATERAL CRIME TWO: THE LONGFELLOW DRIVE-BY SHOOTING:

The .380 handgun used later to kill **Green** and **Felker** and which it was later learned was also fired at the victims of the Taco-Bell carjacking was also used at a drive-by shooting at 439 Longfellow Boulevard in Lakeland. Sometime before 9a.m. Friday, April 21, 2000, **Aaron Silas** agreed to give **T.J. Wright** a ride to Providence Reserve Apartments in North Lakeland in **Silas's** car. During that ride which takes them onto Longfellow Boulevard, **T.J. Wright** saw three men outside in the yard of a home and told **Silas** those are my "homeboys" and directed **Silas** to turn around and pull up there. The men are **Carlos Coney, Bennie Joiner** both of whom testified they knew **T.J. Wright** from school, and a man named **Mike**, who lived nearby. **Bennie Joiner** had had fights with **T.J. Wright** several years before in high school. From the drive-way, according to the witnesses, **T.J. Wright**, using a handgun, without saying a word or giving any warning, fired multiple shots at the men hitting one of them, **Carlos Coney** in the leg. Both witnesses, **Joiner**, and **Coney** , identified **T.J. Wright** in the courtroom as the shooter in this incident. [R. Vol.21 T. 2915-2935; Vol. 22 T. 2936-2939 (**Bennie Joiner**); R. Vol.22 T. 2939-2966 (**Carlos Coney**)]

Crime Scene Technician Supervisor, Laurie Ward, testified she processed the scene at 439 Longfellow Boulevard. [R. Vol. 22 T. 3048-3089]. She took photos

showing the home and placement of markers where items of evidence were recovered. She found two bullet holes inside the home on a wall and in a table. **Laurie Ward** recovered a spent .380 casing from the roadway. [Exhibit 224]. **Ward** recovered a second spent .380 casing from the roadway [Exhibit 225], a third .380 casing from the driveway itself [Exhibit 226], and yet another .380 casing from north of the driveway [Exhibit 227]. Finally, **Ward** recovered from inside the home in the table a projectile [Exhibit 230]. **Laurie Ward** also found a spent .25. caliber casing in the driveway. R. Vol. 22 T. 3077-3079].

Crime Scene Technician, **Laurie Ward** also testified to recovering a projectile from hospital personnel at Lakeland Regional Medical Center taken from the leg of **Carlos Coney** [Exhibit 232]. She also photographed and processed the black Toyota Corolla owned by **Aaron Silas** used in the Longfellow drive-by shooting. From that vehicle she lifted 46 latent print cards and she vacuumed it for trace evidence. [R. Vol. 22 T. 3079-3085].

Shakeda Faison, is a close friend of **Sammy Pitts'** sisters **Vontrese Anderson**, **Sandrea Allen** a.k.a. "Booby", and **Darlitha Jones**. She is also close to **Pitts'** girlfriend, **Latosha Jackson**. **Faison** testified that she gave **T.J. Wright** a ride to Winn-Dixie on the evening of Friday, April 21, 2000. On that ride **Shakeda** stated that **Wright** told her out of the blue that "I ain't gonna lie I did shoot that boy in the leg

yesterday" R. Vol. 27 T.3931; 3942]. [Of Course all the evidence shows the Longfellow Boulevard shooting to have been at around 9:00a.m. the same day, April 21, 2000]

FDLE Firearms Examiner, **John Romeo**, testified he examined five exhibits from the drive-by shooting of **Carlos Coney** on Longfellow Boulevard. Exhibit 224 a casing was chambered and extracted from Exhibit 136, the .380 handgun, but could not be positively identified nor eliminated as having been fired from it. The same was true of Exhibit 225, another casing found at the scene. A projectile, Exhibit 230, recovered from the home of **Carlos Coney** was positively identified as having been fired from Exhibit 136, the .380 handgun. Finally, **Romeo** examined a projectile taken from **Mr. Coney's** leg at the hospital [Exhibit 232], and stated it could be positively identified as having been fired from Exhibit 136, the .380 handgun. [R. Vol. 29 T. 4344-4350].

Aaron Silas had testified at the previous jury trials and called as a witness in this trial. However, in a proffer his lengthy serious mental health problems were probed and the state ended by not calling him as a witness. [R. Vol. 23 T. 3306-3315; Vol. 24 T. 3316-3332].

THE DOUBLE CARJACKING, KIDNAPING AND DOUBLE HOMICIDE:

The capital crime which is the subject of this Brief is believed to have happened between 7:00p.m. and 10:00p.m. Friday, April 21, 2000, beginning in a Winn-Dixie shopping center on Highway 98 North in Lakeland and ending with the shootings in a grove on Barfield Road near Polk City. The bodies were discovered after police were led to the area by **Sammy Pitts** on April 26, 2000.

COLLATERAL CRIME THREE: THE LAKELAND CAR CHASE

Later on the night of Friday, April 21st at about 10:30p.m. **Officer David Lay** of the Polk County Sheriffs' Department saw two young black males in a newer model white Chrysler car driving near Providence Reserve Loop in North Lakeland, and observed them travel through a stop sign and at high speeds. The driver had little nubs in his hair. **Officer Lay** ran the Virginia tag YTA8099 and it came back to an unassigned tag. A high speed chase ensued, but was called off shortly thereafter pursuant to Departmental policy and the car escaped. **Officer Lay** could see two black males only in the car and nobody in the back seat. However, **Rodnei Ruffin** testified that **T.J. Wright** said the two white guys were in the back seat during the police chase. [R. Vol. 28 T. 4260-4261]. Later it is learned that the vehicle, a white Chrysler Cirrus, belonged to missing person **David Green**. A day or so later the vehicle is discovered abandoned in an orange grove near Lake Alfred. [R. Vol. 25 T. 3553-3579].

On Saturday evening, April 22, 2000, at about 5:30p.m. **Lieutenant Howard Lashley** of the Auburndale Police Department traveling on Bolender Road near Lake Alfred discovered the white Chrysler Cirrus abandoned in a grove near Lake Alfred. There were footprints in the sand running away from the vehicle. They turned the scene over to a deputy sheriff **[Dominguez]** who was told of the tire tracks and footprints. [R. Vol. 24 T. 3375-3398].

Crime Scene Technician Paula Maney of the Polk County Sheriff's Department was called to the scene of the recovered Chrysler Cirrus on Bolender Road by **Deputy Dominguez**. It was nighttime on April 22nd . **Maney** knew nothing at the time of the possible connection of the vehicle to any missing persons. It was merely an abandoned vehicle call at that time. **Maney** observed tire tracks, shoeprints, and apparent blood on the vehicle. She photographed, but took no samples . **Maney** did not cast apparent tire tracks nor footprints. [R. Vol. 23 T. 3282-3284, 3256-3291 generally].

Sergeant Alyn Marler of the Polk County Sheriff's Department was called to the Bolender Road site of the abandoned car by **Deputy Dominguez**. **Marler** later learned that it had been involved in a chase by **Deputy Lay** on the night of April 21st, and that it was a car owned by a **David Green** of Virginia who had been reported a missing person on the 22nd. **Marler** called crime scene technicians to the scene to

fingerprint and photograph the vehicle. Blood spatter was also found on the vehicle. **Marler** does not recall **Dominguez** telling him of the footprints in the sand. **Marler** also called the detective on call that night **Lawrence Cavallero**. [R. Vol. 24 T. 3398-3414]. The **Green/Felker** family members soon came to the Bolender Road scene to identify the car and tell police about a tool kit of computer tools [used by **Green** in his employment] and a polaroid camera and other items which were missing from the car. There was blood on the car which was later identified through DNA as being that of **Mr. Felker**.

Lieutenant Lawrence Cavallaro of the Polk County Sheriff's Department took over the scene of the recovery of the white Chrysler Cirrus. He had monitored the Lakeland car chase by **Officer David Lay** the night of April 21st. [R. Vol. 24 T.3424-3425; 3438]. **Cavallaro** also made the decision to call out the crime scene technicians to the Bolender Road site of the recovered vehicle and had it towed to the crime scene office in Bartow [R. Vol. 24 T. 3424-30; 3435-3448. He knew the men were missing, but the bodies of the two men had not yet been discovered so the fact of the murders was unknown. [R. Vol. 24 T. 3426]. **Cavallaro** was at the site at least twice. He was called back Sunday morning because the Green/Felker family members were on that site and he solicited their assistance. [R. Vol. 24 T. 3427-3429]. Thereafter, after the missing items from **Green's** car were described, **Cavallaro** began searching for

information on them at pawn shops. He called and learned of the pawning of the black leather satchel of computer tools by **Sammy Pitts.** He also learned the pawn shop had surveillance video cameras. [R. Vol. 24 T. 3429-3433].

The Polk County Sheriff's Department **Crime Scene Technician Linda Raczynski** was called to the Bolender Road scene of the recovery of the white Chrysler Cirrus at 5:26p.m. on April 23, 2000. Members of the **Green and Felker** families were on site looking for items belonging to the missing men. The car itself had earlier been towed to crime scene headquarters. She photographed various items which had been found by family members in the surrounding area. These included a jacket belonging to **Mary Bloomer's** child [**Mary** was **Green's** fiancee] and other miscellaneous items. [R. Vol. 20 T. 2673-2680]. **Green's** employer and prospective father-in-law, **John Bloomer** and his daughter, **Green's** fiancee, **Mary Bloomer** each testified on the various items of property which were missing from the car or found on the bodies and which they described extensively and many items they identified from among the state exhibits. [R. Vol. 26 T. 3795-3812, 3813-3825].

On Monday, April 24, 2000, **CST Raczynski** processed the white Chrysler Cirrus and dusted for fingerprints, took samples of apparent blood from the car, and vacuumed for trace evidence. She photographed various features of her procedure. [R. Vol. 20 T. 2756-58, 2683-2707].

CST Raczynski was also lead Crime Scene technician at the scene in an orange grove on Barfield Road near Polk City where the bodies of **Mr. Green** and **Mr. Felker** were discovered on Wednesday, April 26, 2000. She did aerial and on-ground photos of the scene, measurements and sketches of the scene, and photographed the victim's bodies and the locations of shell casings, projectiles and other evidence found at the scene. [R. Vol. 20 T. 2707-2749].

Crime Scene Technician Jean Gardner assisted **Raczynski** at the Barfield Road scene of the recovery of the bodies and did back-up photos. [R. Vol. 21 T. 2849-50]. **Gardner** also attended the autopsies to the two murder victims on April 27, 2000, took hair, fingerprint, nail scrapings, and blood standards and recovered clothes from the victims, as well as projectiles and shotgun wadding and pellets. [R. Vol. 21 T. 2850-2884 generally]. **Gardner** took autopsy photos which were admitted, some over objection. [R. Vol. 21 T. 2852-56, 2857-73].

Later, Polk County Sheriff's Department **Fingerprint Identification Examiner Patty Newton** examined latent prints lifted from the Chrysler Cirrus by **Raczynski.** At trial **Newton** identified one palm print of **T.J. Wright** as a match to a latent from the exterior left door frame, and a second palm print lifted from the left rear panel of the car also matched that of **Mr. Wright**. She also identified a latent from the exterior of

the front door as matching one of the index fingers of **T.J. Wright**. [R. Vol. 25 T. 3664-3668].

COLLATERAL CRIME FOUR: THE TACO BELL CARJACKING

Later the same night, now early Saturday morning, April 22, 2000, at about 1:30a.m. there is a armed carjacking at the Taco Bell on 3rd street in Winter Haven. **Adam Granados** [who is deceased at the time of all the trials herein due to an unrelated vehicle accident], his girlfriend, **Sonja Martinez**, and his friend, another young Latin male, **Ernesto Mendoza**, were hanging out with others in the parking lot of Taco Bell when **Granados** discovered his battery was dead. The two men were jump starting **Granados'** car in the Taco Bell Parking lot. A young black male walked up and pointed a gun at them and took the car. **Granados** and **Mendoza** gave chase in the latter's car a 1995 white Jimmy. They pursued the carjacker north on 6th Street NW through the streets of Northwest Winter Haven and up Highway 17 to the intersection of Highway 17 N and Highway 92 in Lake Alfred. The stolen car was abandoned by the carjacker, who fired a handgun several times at the pursuers before running away. [**Ernesto Mendoza** Testimony and that of **Mary Cook,** Winter Haven Police Department, who investigated the incident and sent out a BOLO on the stolen vehicle. [R. Vol. 22 T. 2976-3020; 3021-3036].

Officer Michael Teague of the Lake Alfred Police Department, investigated the carjacking and shooting incident involving **Adam Granados'** Caprice at about 1:40a.m. April 22, 2000. **Teague** secured the scene of the abandoned stolen car. He interviewed **Mr. Mendoza** and **Mr. Granados**. **Teague** did not search their vehicle [Mendoza's Jimmy]. [R. Vol. 23 T. 3189-3205].

Sergeant Danny Monroe of Lake Alfred Police Department photographed the abandoned stolen car on scene and the **Mendoza** "chase car." **Monroe** recovered several bullet casings. **Monroe** photographed an apparent bullet hole in the Jimmy vehicle **Granados** and **Mendoza** used to chase the carjacker. He also processed the stolen **Granados** vehicle and obtained latent prints mostly from the steering wheel and the inside driver's window. [R. Vol. 22 T 3090-3113]. Later ballistics test show that casings found in the roadway area were fired from the .380 handgun which was used to shoot **Green** and **Felker**.

T.J.'s Wright's fingerprints were found on the stolen **Granados** vehicle. **FDLE Fingerprint Examiner Charles Faville** testified that two fingerprints lifted from the steering wheel and left inside driver's window respectively of **Adam Granados'** 1985 Chevrolet Caprice were those of **T.J. Wright**. [R. Vol. 25 T.3691-3695; Vol. 26 T. 3696-3715]. Also, a few days later the victims went down

to the Winter Haven Police and told them they could identify **T.J. Wright** as the carjacker from a picture in the local newspaper in a story about the murders.

FDLE Firearms Examiner John Romeo testified that he made comparisons with standards taken from the .380 handgun stolen from the **Shanks** which was recovered near the place where **T.J. Wright** was apprehended by the Lakeland Police as he ran from the Providence Reserve Apartments on April 22, 2000, with two .380 casings recovered by **Sgt. Monroe** from the roadway of Highway 17/92 the site of the abandonment of the Taco Bell stolen car. **Romeo** positively identified the two casings as having been fired from state Exhibit 136, the Jennings/Bryce Arms .380 handgun. R. Vol. 29 T. 4333-4341; 4352-4253].

James Hogan testified **T.J. Wright** told him he had a fight with some Mexicans on the night of the 21st. [R. Vol. 27 T. 3985-88].

WITNESS JAMES HOGAN:

James Hogan a friend of **T.J. Wright** lived in Lake Alfred, Florida. **Hogan** offered testimony including evidence of admissions by **T.J. W right** and certain circumstantial evidence relating to the murders and to collateral crimes including the Longfellow Boulevard shooting, Taco Bell incident, and the police car chase in Lakeland. **Hogan** testified that **T.J. Wright, Sammy Pitts** , and **Aaron Silas** came by his home in Lake Alfred [owned by his grandmother] in the **Silas'** car, a dark

Toyota, on the morning of Friday, April 21, 2000. **Silas** showed **Hogan** a 12 gauge in the trunk of the car. **T.J. Wright** also pulled a handgun from under a floor mat that he then showed **Hogan.** The men went for a ride in **Hogan's** car, a purple Chevy Caprice, to Winter Haven. **Hogan** wanted to show off the car because he wanted to sell it. The three men then left in **Silas'** black Toyota. [R. Vol. 27 T. 3969-75, 3993-3999].

Later that day, **Hogan** saw **T.J. Wright** at the E-Z Food Store in Lake Alfred. **T.J. Wright** stated that he needed a ride to Lakeland and **Hogan** gave him the ride to an apartment off Combee Road [**Silas'** Apartment] and dropped him off. [R. Vol. 27 T. 3976].

Later in the early morning hours of Saturday , April 22nd, **T.J. Wright**, then on foot, showed back up at about 1:00a.m. at **Mr. James Hogan**'s grandmother's home near the site the stolen Taco Bell car was abandoned in Lake Alfred. [R. Vol. 27 T. 3975-4979]. **T.J. Wright** was with Hogan's grandmother and was on the phone when **Hogan** arrived home from a visit to a club. [R. 3979-84].

T.J. Wright got another ride from **Hogan** back to Providence Reserve in North Lakeland. **Hogan** testified that on that ride **T.J. Wright** told **Hogan** that he had shot these two white boys at an orange grove in Polk City, one shot in the head, one in the chest. **T.J. Wright** also said that he got into a fight with two Mexicans. **Wright** also

said he got in a high speed chase with police in Lakeland. **Wright** told **Hogan** the shooting was done with a pistol and 12 gauge shotgun. [R. Vol. 27 T. 3984-3988].

On cross-examination **Hogan** admitted that in his initial interview with police two months after the events that he had said **Wright** had only told him "they" had shot somebody in the leg. But in a second statement shortly thereafter and after being told by police "he could be a witness or a suspect" in the murder case and after being asked by police specifically about the shootings of the two boys and about **Hogan** having seen a shotgun that day, that he added the statements attributed to **Wright** about the shootings of the two white boys and the incident with the Mexicans [R. Vol. 27 T. 4014-4019]. **Hogan** had earlier testified that he told police basically what they wanted to hear to avoid being arrested. [R. Vol. 27 T. 4022-4023].

THE TESTIMONY OF THE SAMMY PITTS' PHALANX

The state's case-in-chief relied, in addition to massive amounts of collateral crime evidence, upon the testimony of a whole phalanx of relatives and close friends of co-defendant **Sammy Pitts.** The defense at trial argued that **Pitts** in his statements to the police and his family orchestrated a "cover story" the purpose of which was to blame the murders almost entirely on **T.J. Wright** and deny or at least minimize **Pitts'** involvement. The phalanx consists of 15 year old **Rodnei Ruffin**, a close friend and associate of **Pitts** who lived in a neighboring apartment building in Providence Reserve.

Also included are **Shakeda Faison** a close friend to **Pitts** and to **Pitts'** three sisters: **Sandrea Allen** a.k.a "Booby", **Vontrese Anderson,** Pitts' sister and estranged girlfriend of **T.J. Wright**, and **Darlitha Jones.** Another member of the phalanx is **Latasha Jackson**, live-in girlfriend of **Sammy Pitts.**

Witness **Shakeda Faison** offers testimony, as did **Hogan** and **Rodnei Ruffin** and **Latasha Jackson**, that included evidence of admissions by **T.J. Wright** and other evidence both as to the murders, but also to the Longfellow Boulevard drive-by shooting, the Lakeland Police car chase, and the foot chase at Providence Reserve. **Shakeda Faison** testified she owned a car in April, 2000, so did her friend **Vontrese Anderson.** [R. Vol. 27 T. 3922, 3926-3927]. **Ms. Faison** frequented Providence Reserve because she had close friends living there including **Sandrea Allen**, **Vontrese Anderson**, **Latasha Jackson**, and **Sammy Pitts.** **Faison** identified **T.J. Wright** in court and stated that he lived in the apartment with the others around April, 2000, but that she had known him only a short time. [R. Vol. 27 T. 3922-3924, 3947-48]. **Shakeda** also stated she was close friends with third **Pitts** sister, **Darlitha Jones,** and the mom of **Pitts** and the girls, **Ms. Doll Hall**. [R. Vol. 27 T.3935-3937].

Shakeda Faison testified that she went over to Providence Reserve on the early Friday evening of April 21, 2000, to plan a barbecue she was holding the following day. She arrived about 5:15-5:30p.m. [R. Vol. 27 T. 3925-3927]. Present were

Sandrea Allen, **Vontrese Anderson**, **Latasha Jackson**, **Sammy Pitts**, and **T.J. Wright**. [R. Vol. 27 T. 3943-3944].

When **Shakeda** began to drive home that evening at about 7:00 or 7:15p.m. she encountered **T.J. Wright** walking along the road toward the exit from Providence Reserve. She asked where he was going and he answered "Winn-Dixie." She offered him a ride. [R. Vol. 27 T. 3928-3930]. According to **Shakeda**, during the ride just "out of the blue" **T.J.** said: "I ain't even going to lie, I did shoot the boy in the leg yesterday." [R. Vol. 27 T. 3931, 3942-43, 3946-47]. [It is undisputed that the Longfellow drive-by shooting of **Carlos Coney** occurred earlier that same day at about 9:00a.m.]

The point of **Shakeda's** testimony inter alia is that **T.J. Wright** went alone to Winn-Dixie where **Green** and **Felker** were believed to have been carjacked and kidnaped. Thus, **Sammy Pitts** remained at Providence Reserve. This version of events dovetailed with the story **Pitts** told police in 2000, which while not in evidence at this trial, was placed in evidence at **Pitts'** own trial and penalty phase in 2007, [in which he avoided the death penalty with the story], i.e. that **T.J.** carjacked the two men by himself at gunpoint at Winn-Dixie, drove with them in the back seat of the Cirrus to Providence Reserve where he picked up **Pitts,** who of course claimed to have no idea

of what **Wright** was up to. Further, that **Wright** was out of control and did all the shooting. Thus, it was partial alibi testimony and exculpatory of **Pitts.**

Shakeda Faison admitted under cross-examination that after **Sammy Pitts** was arrested on April 26th for the murders that she spoke to his sisters, **Vontrese** and **Sandrea,** both of whom believed **Pitts'** innocent, and that **Vontrese** asked her to testify about giving **T.J.** a ride to Winn-Dixie and about **Sammy** staying at Providence Reserve. **Vontrese** asked **Shakeda** to help "save her brother from the electric chair". [R. Vol. 27 T. 3948-50, 3951-52, 3956]. However, **Shakeda** did deny making up the story. [R. Vol. 27 T. 3956-57].

Shakeda was back at Providence Reserve on Saturday, April 22, 2000, and she saw **T.J. Wright** running with the Lakeland Police chasing him. She stated that she noticed as he ran that **T.J.** had no shoes on. [R. Vol. 27 T. 3933-35, 3945, 3955-3956].

The next phalanx witness was **Sammy Pitts'** live-in girlfriend, **Latasha Jackson,** who stated that in April, 2000, she lived in the apartment in building 885 of Providence Reserve with **Sammy Pitts.** She said that **Pitts'** sister **Vontrese Anderson** lived there too with her toddler daughter **Kira. T.J. Wright** stayed there with **Vontrese,** but not all the time. [R. Vol. 27 T. 4053-4055; Vol. 28 T. 4084-87].

Latasha testified that on the night of Friday, April 21, 2000, at about 10:00p.m. **Sammy Pitts** called her and asked her to pick him up at an apartment at Timberlane.

Later, she was driven by **Vontrese** in the latter's car with **Kira**, and friend **Rodnei Ruffin** to pick up **Sammy**. [R. Vol. 27 T. 4056-58, 4059].

When they arrived at Timberlane, **Latasha Jackson** says she got out of **Vontrese's** vehicle and went up and knocked on the apartment door. **Sammy** came out of the apartment and got in the car. **Latasha** identified **T.J. Wright** in court and testified that when they picked **Sammy** up, **T.J.** was outside standing by a white car and appeared to have just gotten through washing it. They were there only five minutes, and as they began to drive back to Providence Reserve, **T.J.** also pulled out in the white car. [R. Vol 27 T. 4059-4063].

Latasha said she saw **T.J.** again later that night when he knocked on their apartment window and asked to stay there. **Vontrese** would not let him stay there. [R. Vol. 27 T. 4063-4066].

Latasha confirmed there was a Friday afternoon "meeting" to plan **Shakeda's** Saturday barbecue. She contradicts **Shakeda Faison** in important details however. **Latasha** stated that she was there with **Sammy** and a guy named **"Twin."** She testified, unlike **Shakeda**, that neither **Vontrese Anderson**, nor **Sandrea Allen**, nor **Darlitha Jones** were present. [R. Vol. 27 T. 4058-4059].

Strangely, **Sandrea Allen** testified contrary to all of this, when she stated at trial that she was there Friday evening with **Darlitha** for the get together and that when the

gathering broke up she was driven home by **Vontrese Anderson** and that they passed **Shakeda Faison** on the road and saw her picking up **T.J. Wright.** [R. Vol. 28 T. 4130-4132, 4137-4139]. Even more strangely, **Sandrea** testified she recalled no discussion that night of any barbecue at all. [R. Vol. 28 T. 4132-4133]. To confuse things even more **Latasha Jackson** testified that **T.J. Wright** had already left when the Friday evening meeting occurred and that she thinks he left just as **Shakeda Faison** was arriving. [R. Vol. 28 T. 4088-4094]. **Latasha** also said that **Sammy** did not leave Providence Reserve until about 7:00p.m. well after **T.J.** left, and that **Sammy** was going to Timberlane and was probably driven over there by **Rodnei Ruffin**. [R. Vol. 28 T. 4096-4098].

Finally, **Latasha Jackson** testified she was sitting with **T.J. Wright** on a balcony at Providence Reserve talking with him on Saturday afternoon April 22, 2000, when the foot chase by the Lakeland Police began. [He was arrested that day on other charges not on the murders which were not yet known]. **Latasha** said after he ran she found a pair of Nike shoes **T.J.** had been wearing. She identified state's exhibit 5 as the pair of shoes. She stated she placed them on the apartment steps and later turned them over to police. **Latasha** also identified a polaroid camera [state exhibit 117] belonging to victim **David Green** and said she saw it at **Rodnei Ruffin's** apartment. [R. Vol. 27 4069-4076]. **Latasha** also identified in court state exhibit 135 a black

satchel of computer tools belonging to **Mr. Green** and admitted she saw it in the possession of **Sammy Pitts**. **Latasha** also admitted going with **Sammy** and **Rodnei Ruffin** a couple days after **T.J.'s** arrest to try to pawn the satchel and camera. [R. Vol. 27 T. 4073-75; Vol. 28 T. 4076-77, 4106-09].

The third phalanx witness is **Pitts'** sister **Sandrea Allen** a.k.a "Booby" some of whose testimony was just related. **Sandrea** testified she did not live in Providence Reserve, but she stayed there on weekends. She lived in Timberlane. [R. Vol. 28 T. 4129-4131, 4135]. She confirmed **Shakeda's** testimony that the latter picked up **T.J. Wright** on Friday evening [see above for contradictions as to participants and timing], but her main testimony was that she saw **T.J.** on Saturday, April 22, 2000, sitting on the third balcony alone at Providence Reserve holding a small handgun and repeatedly "clicking it." **Sandrea** left before the police chase and arrest of **T.J.** She stated that while **T.J.** was dry-firing the gun on the balcony, **Sammy** and **Tasha** were on the first floor. [R. Vol. 28 T. 4133-34, 4139-40, 4142-43].

Later that Saturday April 22, 2000, **T.J. Wright** allegedly talked to **Latasha Jackson** [R. Vol. 27 T. 4067-68], and **Rodnei Ruffin**, [R. Vol. 28 T. 4261-4262], both of whom he saw at Providence Reserve in Lakeland. They each testified that **Wright** talked about and admitted the killing of the two white guys.

The fourth phalanx witness was **Rodnei Ruffin**. He testified that he was a neighbor to the other group at Providence Reserve and a close friend of **Sammy Pitts**. [R. Vol. 28 T. 4239-4241] **Ruffin** is a three time convicted felon. [R. Vol. 28 T. 4238-39].

Rodnei said that on the night of Friday, April 21, 2000, he was home and **Latasha Jackson** came over and said **Sammy** left with **T.J. Wright** and they were not home yet and she was worried. Then later she came back a second time about midnight and said **Sammy** had just called and asked to be picked up at an apartment at Timberlane. **Rodnei** agreed to ride with **Vontrese, Latasha** and **Kira** to pick up **Sammy**. [R. Vol. 28 T. 4244-46, Vol. 29 T. 4271]. Contradicting **Latasha's** version, **Rodnei** testified that no one got out of **Vontrese's** car because **Sammy** was already outside waiting at the curb and he walked directly over and got in the car. [R. Vol 28 T. 4246-47]. **T.J.** was there, but not washing a car as **Latasha** stated. Instead T.J. walked over and brought a teddy bear and pampers which he tried to give to **Vontrese,** but she did not want them. Then as they left **T.J.** pulled out in a white car from the side of the apartment [it was out of view until it pulled out]. **Sammy** had with him a polaroid camera and a black bag. **T.J.** also had another item with him when he walked over to **Vontrese's** car, a cell phone later identified as **Green's** which he gave to **Rodnei.** [R. Vol. 28 T. 4247-4251].

Rodnei Ruffin testified that he saw **T.J. Wright** the day before the latter got arrested at Providence Reserve and that **T.J.** told him he got the cell phone from a "lick", i.e. a robbery. **Rodnei** stated he never saw **T.J.** with a gun. [R. Vol. 28 T. 4254-55]. **Rodnei** said **T.J.** told him Saturday, April 22nd that the previous day he had gotten a ride from "**Keda**" up to Winn-Dixie. **T.J.** said he saw these two white guys in a car and asked them for a light. Then **T.J.** grabbed and opened the back door and jumped into the car. **Rodnei** is not sure whether **T.J.** was armed with a .38 caliber pistol or not. **T.J.** said he was alone and that he gets them to drive to Providence Reserve where he picks up **Sammy Pitts**. **T.J.** says as they were leaving the police chased them. Then **T.J.** told **Rodnei** that they took the white guys to a grove where he shot them. **T.J.** claimed to have done all the shooting. [R. Vol. 28 T. 4256-4262; Vol. 29 T. 4293-4297].

Rodnei admitted going with his stepdad **Darryl Stanton** to pawn the polaroid and with **Sammy** and **Latasha** to pawn the black satchel of computer tools. He got some of the money resulting from the pawns. **Rodnei** reluctantly acknowledged that **T.J.** told him of the murders and the blood on the white car before he went to pawn the stolen items. [R. Vol. 28 T. 4262-4264; Vol. 29 T. 4271-4274, 4286-88, 4290-4292].

Rodnei contradicted **Latasha** in that he testified that **Sammy Pitts** told him in the car Friday night coming from Timberlane that the black bag came from a "lick" they

pulled off and then "things was getting crazy," and that there was blood on the white car. **Latasha** had said **Sammy** told them nothing until much later. [R. Vol. 28 T. 4264-4265, R. Vol. 29 T. 4266-4270].

Rodnei denied being with **Sammy Pitts** and committing the carjacking, kidnaping, and double homicide. He denied that he devised a "cover story" with **Sammy** to blame everything on **T.J. Wright**. [R. Vol. 29 T. 4298-4303].

COLLATERAL CRIME FIVE: ASSAULT AND POSSESSION OF GUN-PROVIDENCE RESERVE

On the afternoon of Saturday, April 22, 2000, the Lakeland Police are called to Providence Reserve on a report of a man with a gun. There had also been an earlier report by **Vontrese Anderson** of an aggravated assault against her and two men there at the apartment earlier by **T.J. Wright**. When Lakeland Police go to investigate they find **T.J. Wright**, who runs away from them. A chase ensued. When **Wright** is finally apprehended and arrested he has no gun, but does have loose .380 shells and a box of .380 shells in his pocket. A little later the .380 handgun is found by a lady, **Monica Barnes**, a resident of the area in the seat of her car which was parked near the path **T.J. Wright** used to flee from police.[R. Vol. 24 T. 3364-3375]. It proves to be the murder weapon. The police also say a pair of slides or shoes came off **T.J.'s** feet as he fled, but when they went back to look for them they were gone.

The first of the two Lakeland Police officers to answer the call to Providence Reserve was **Officer Johnnie Sikes.** He testified that the call was on a disturbance involving someone pointing a gun at someone. [R. Vol. 22 T. 3116-3120]. **Sikes** was accompanied by **Sgt. John Thomason** of LPD whom he was to meet before approaching Building 885 in Providence Reserve. They left their patrol vehicles a ways out and proceeded together on foot. They had been given a description of a black male wearing a bright yellow shirt with white stripes sitting on the stairwell. They spotted such a person and approached. **Sikes** was to go up one stairwell toward the balcony while **Thomason** went up the other. But as **Thomason** approached the top of the stairwell the suspect ran down the stairwell **Sikes** was on and jumped to the ground to avoid **Sikes.** **Sikes** gave chase almost touching the suspect's shirt as he grabbed for him, and as he ran the suspect's tennis shoes came off and **Sikes** tripped on them. [R. Vol. 23 T. 3147-3152]. Other officers took up the chase. **Sikes** identified **T.J. Wright** in court as the suspect he encountered on the stairwell that day.[R. Vol. 23 T. 3126-3136]. After the suspect was apprehended, a police search of the entire area produced no gun. However, maybe 30 minutes later, the search seemingly over, **Sikes** left the scene. Then **Sikes** heard over the radio that someone had found a gun in the front seat of their car near the chase route. **Sikes** returned to the scene to recover the gun. He identified in court a photo of the vehicle and the gun recovered that day. [R. Vol. 23

T. 3 137-3140; 3 156-3162, 3 184]. See renewal of Objection to Collateral Crimes evidence and motion for mistrial. [R. Vol. 23 T. 3141-3147; 3167-68].

Lakeland Police Officer **Ryan Back** was dispatched to assist in the foot chase of **T.J. Wright** in Providence Reserve on April 22nd. When he arrived **T.J. Wright** had already been apprehended. **Officer Back** patted **Wright** down and was given a box of .380 ammunition Federal brand and some live .380 loose rounds of Winchester manufacture earlier recovered from **T.J. Wright's** pockets and placed it in evidence. **Back** also took from **Sikes** the .380 handgun and magazine recovered from **Monica Barnes'** vehicle and placed it in evidence. [R. Vol. 23 T. 3171-3188].

Lieutenant **John H. Thomason** , is commander of a squad of patrol officers of the Lakeland Police Department. **Thomason** testified that someone called the police reporting a man with a gun at Building 885 Providence Reserve and **Thomason** received that information from dispatch about 6:36p.m. April 22, 2000. [R. Vol. 23 T. 3206-3212]. **Thomason** described his approach to the Building and the suspect coordinated with **Officer Sikes**. He saw a black male with a black female seated beside him on the landing. As the suspect saw him he appeared to become alarmed, and **Thomason** tried to calm the situation by speaking to him. The man ran down on **Sike's** side and jumped to the ground, **Sike's** chased but tripped over some dark tennis shoes the suspect was wearing. **Thomason** described in detail the course of the foot chase,

the capture of the suspect, the unsuccessful police search for a gun, and the ultimate discovery of the gun by **Mrs. Barnes**. **Thomason** took a polaroid picture of **T.J. Wright** right after his capture. [R. Vol. 23 T.3221-3255] **Thomason** later looked for the shoes the suspect had been wearing and they were not there. [R. Vol. 23 T. 3244-46].

The state presented two more Lakeland Police Officers involved in the foot chase. These officers provided some additional details of the chase, but will not be quoted due to a high degree of repetition. **Detective Derek Gulledge** and Officer **Joseph A. Pillitteri**. [R. Vol. 24 T. 3335-3348, 3349-3364].

Supervisor of the Crime Scene Section of the Lakeland Police Department, **Tracy Grice** testified that she utilized the superglue method of discovering latent prints on the ammunition found in **T. J. Wright's** pants pocket and on the shells still in a box found in the same place. [R. Vol. 25 T. 3644-46]. She also attempted to process the .380 handgun found by **Monica Barnes** for prints. **Tracy Grice** was unsuccessful in raising prints except that she discovered a fingerprint under the plastic grips of the gun, but there was no match to **T.J. Wright** nor **Sammy Pitts.** [R. Vol. 25 T. 3647-3660].

THE PAWNSHOP EVIDENCE:

In checking pawnshops the police learned that co-Defendant **Sammy Pitts** pawned the computer tool kit at a Lakeland pawn shop on April 24th. They also learn

that **Darryl Stanton, Rodnei Ruffin's** stepfather, pawned a polaroid camera identified as that of **David Green**. on April 25th . After talking to Sammy's sister, **Vontrese Anderson**, police located and questioned **Pitts** on April 26th. The latter made some admissions that he was involved in the murders and led police to the general area of groves near Polk City where **Green** and **Felker** were killed. A helicopter spotted the bodies nearby in a grove off Barfield Road.

State witness **Michael McDermott** testified that he is the manager of the Value Pawn Jewelry store on U.S. Highway 98 North in Lakeland. **McDermott** identified Exhibit 119, a pawn ticket for a Polaroid One Step camera which was pawned on April 25, 2000, by one **Darryl Stanton**, stepfather to **Rodnei Ruffin** who later admitted to being with **Stanton**. [R. Vol. 27 T. 3908-3910].

McDermott stated that there was a second individual with **Stanton** who was very young [now known to be [**Rodnei Ruffin** who was 15 at the time]. He testified that this second individual approached another employee and tried to pawn a black satchel containing computer tools. **McDermott** spoke to the individual and when he did not like the answers to his questions about the tools declined to buy them. **McDermott** identified both the polaroid camera [Exhibit 117] and the black satchel of computer tools [Exhibit 135] as being the ones he saw on that day, April 25th. Both the Polaroid camera and the black satchel of computer tools were later determined to have

belonged to **David Green** and to have been in his vehicle, the white Chrysler Cirrus, on the day of the murders. [R. Vol. 27 T. 3910-3916].

State witness, **Donald E. Culpepper,** testified he is the owner/manager of the 98 North Pawnbrokers in Lakeland. **Culpepper** identified a black leather satchel or bag containing computer tools [Exhibit 135] as being one bought by his pawn shop for $40 on April 24, 2000. He testified that it was pawned by **Sammy Lee Pitts, Wright's** co-defendant in the murders. **Culpepper** said **Pitts** was accompanied by perhaps two other young males. R. Vol. 24 T. 3464-3476]. It is known from other testimony that **Rodnei Ruffin, Darryl Stanton**, and **Latasha Jackson** accompanied **Pitts** on his trip to the 98 North Pawn Shop on April 24th.

On April 26, 2000, **Detective Vickie Callahan** of the Polk County Sheriff's Department testified she retrieved the black leather satchel containing computer tools from the 98 North Pawn shop. She also spoke to **Mr. Bloomer**, who was murder victim **David Green's** employer about the tool kit and a Nextel cell phone that was issued to **Green** by him for business purposes and which was recovered from the apartment in Providence Reserve in which **Rodnei Ruffin** and **Darryl Stanton** lived. **Bloomer** gave her the serial number for the phone. [R. Vol. 25 T. 3579-3589].

On April 27th **Pitts's** girlfriend, **Latasha Jackson**, gave police a pair of shoes she says **T.J. Wright** left in the apartment the night before he was arrested. The

testimony of the police was that his shoes came off during the foot chase which led to **Wright's** arrest on late afternoon, April 22nd. Samples from the shoes were DNA tested and traces of blood on the shoes match that of **James Felker.** Polk County Sheriff's Department Crime Scene Technician, **Andee Kendrick**, recovered the shoes from the apartment in which **Latasha Jackson** , **Vontrese Anderson** and **Sammy Pitts** still lived. **Kendrick** also took blood samples from a stairway and photos. [R. Vol. 21 T. 2830-2846].

In February, 2003, **Detective Scott Rench** of the Polk County Sheriff's Department conducted a session involving a fitting of the pair of Nike shoes size 11, state's exhibit 5A and 5B, at the Polk County Jail. **Rench** tried on the shoes on the feet of **T.J. Wright** and **Sammy Pitts**. A second pair of shoes, leather size 12 wide, was also tried on [state's exhibit 130]. The session was videotaped and was played for the jury [state's exhibit 170] and photos were also admitted and shown. Both counsel were present at the fitting. The shoes were very snug, but after some effort **Rench** got them on **T.J.'s** feet. The shoes were small on **Pitts** and could not be completely gotten on his feet. **Rench** stated **Wright** is about 6' tall while **Pitts** is 6"5". [R. Vol. 28 T. 4147-4165].

Lieutenant Brian Rall, Polk County Sheriff's Department on April 25, 2000, interviewed **Darryl Stanton** at 870 Providence Reserve after it was learned the latter

had pawned the polaroid camera. **Rall** also interviewed **Kathy Ruffin** and **Rodnei Ruffin** there. {R. Vol. 28 T. 4169-4171]. He also discovered a cell phone in the kitchen with a serial number that demonstrated it belonged to missing person, **David Green**. **Rall** seized the phone and did a consent search of the Stanton/Ruffin apartment. **Rall** identified in court the camera, state's exhibit 70, as the one he took into evidence. [R. Vol. 28 T. 4171-4175]. **Rall** indicated he did not seize any clothing nor shoes or other evidence. [R. Vol. 28 T. 4176-79].

THE INEVITABLE JAILHOUSE "SNITCHES":

The first of this seemingly obligatory category of witnesses in every death penalty case was **Wesley Durant**. The witness is 43 years old and has ten felony convictions and two petty theft convictions. [R. Vol. 26 T. 3719]. He was a trustee and worked as a barber and laundryman at the Polk County Jail in April, 2000. **Durant** testified that twice he cut **T.J. Wright's** hair and he identified **T.J.** in court. [R. Vol. 26 T. 3720-21]. During the haircut, as a guard listened from close by, **Durant** says **T.J. Wright** told **Durant** that he was "the person in the news." When **Durant** said he had not seen the news, **T.J.** said that he was in for a double murder. **Durant** asked **T.J.** "Did you do it?" **T.J.** replied: "Yeah", and then asked: "what he should do?". **Durant** replied "come up with a good story and stick to it." [R. Vol. 26 T. 3722-3724].

Then **T.J.** volunteered to **Durant** that they took the people to a grove in North Polk County. **T.J.** said that they had met them at Winn-Dixie, that he asked the guy for a cigarette and one thing led to another, then they went out to North Lakeland where it happened . They [the victims] did not cooperate so they took them out there and "did what they had to do". **T.J**. did not give **Durant** many details of the shooting, except that they "put them on their knees or something" and that they were shot. The people killed had a car that was taken. **Durant** said **T.J.** called the victims "crackers.".[R. Vol. 26 T. 3725-28].

Durant claimed that the entire conversation was overheard by **Corrections Officer Faulkner** who afterward told **Durant** "you need to talk to the detectives or you can lose your position." **Durant** spoke to **Detective Davis**. He admits that he had pending charges at the time and asked **Davis**, "what are you going to do for me?" But he states that in the event nothing was done for him and he got a 30 year sentence. **Durant** on cross examination did admit that he refused to give a taped statement to police until 2003, because he did not get a deal, and that once he committed himself to this story under oath he had to stick with it or face perjury charges. **Durant** denied getting all the information he attributed to **Wright** from **Sammy Pitts,** or from the news. [R. Vol. 26 T. 3728-2730; 3736-3739, 3740-3767].

The second "Snitch" witness was **Byron Robinson**. He testified he was in the same cell in the Polk County Jail as **T.J.** for a couple months and he identified **T.J. Wright** in court. He is a ten times convicted felon. [R. Vol. 28 T. 4188-89, 4222]. **Robinson** first learned of **T.J.'s** murder charges when talking to **Wright's** co-defendant **Sammy Pitts** in a holding cell at the courthouse. **Robinson** says that **Sammy Pitts** told different stories, including versions that asserted that he was not involved at all and simply just knew about it ,or in another version that he was only marginally involved. In one version **Sammy** admitted to being at the McDonald's for the carjacking and going into his apartment while **T.J.** held the two guys in the car at gunpoint to get extra clothes and a shotgun. [R. Vol. 28 T. 4201, 4208-4213, 4229-4231]. **Robinson** told **T.J.** he had discussed the case with **Sammy** and **T.J.** was upset. **T.J.** said **Sammy** was lying trying to put the whole thing on him. [R. Vol. 28 T. 4190-93].

Then **T.J. Wright** according to **Robinson** told the latter what had happened. **T.J.** stated he and **Sammy** were together at McDonald's and he came to the driver's side and **Sammy** went to the passenger side and they both got in and left with the two white guys who owned the car. He got in the car with a gun, a .380, to commit a "lick." **T.J.** said the car had Virginia plates. They then drove to **Sammy's** to get some clothes and a shotgun. [R. Vol. 28 T. 4193-4196]. **T.J.** related that he asked the two

men if they had anything [to steal], they said "no" so he figured they were trying to "buck the jack", i.e. resist the robbery. Then they took the men to the grove which **Robinson** believes was in Mulberry or Bradley. **Durant** relates that **T.J.** told him that at the grove one of the men got out of the car and **T.J.** shot him. Then **T.J.** went around to passenger side and the other guy got out. The second guy was trying to talk them out it. But **T.J.** shot him too, both were shot with the .380 handgun. One of the men **[Felker]** was still breathing and **T.J.** told **Sammy** to pop the trunk and get the shotgun. **Sammy** did and **T.J.** shot the second man with it. [R. Vol. 28 T. 4198-4201, 4220-4221]

Robinson said that **T.J.** said that when they got back to tenth street in Lakeland the police got behind him. According to **Robinson**, **T.J.** said he got away by jumping out of the car. [R. Vol. 28 T. 4202]. **Robinson** claims he spoke to guards about **T.J.'s** revelations without any expectation of any favors. [R. Vol. 28 T. 4203-4206].

Another "snitch" witness was brought forward, **Reginald Walter**. Although **Mr. Walter** had testified in the two prior trials he raised potential 5th Amendment issues and the state ended by not offering his testimony. [R. Vol. 29 T. 4396-4399].

PHYSICAL EVIDENCE OF THE MURDERS:

Chief Medical Examiner, Dr. Stephen J. Nelson, testified and discussed the findings of the autopsy which had actually been performed by Assistant Medical

Examiner **Dr. Alexander Melamud.** This was over defense objection and the subject of argument. [R. Vol. 26 T. 3834-3857].

Dr. Nelson subsequently described the injuries to both victims with the use of autopsy photographs. [R. Vol. 26 T. 3858-66]. **Nelson** opined that the cause of death to **David Green** multiple gunshot wounds, any one of three of which would have been fatal. The cause of death of **James Felker** was gunshot wound, with plural wounds to the head. [R. Vol. 26 T. 3866-67, 3869-70]. **Dr. N elson** on cross examination admitted that with one exception [a chest wound] all of the gunshot wounds to both victims would have rendered them unconscious instantaneously. [R. Vol. 26 T. 3874-75].

Brian Higgins, forensic DNA examiner for the Army Criminal Investigations Lab and previously employed by FDLE testified at trial on serology evidence. [R. Vol. 26 T. 3881-3885; Vol. 27 T. 3886-3905]. **Mr. Higgins** stated that he had performed serology tests on items designated state Exhibits 5A and 5B, the Nike shoes attributed to **T.J. Wright** by **Latasha Jackson**. **Higgins** said that a presumptive test, i.e. a phenolpthalein test for the presence of blood, was positive for each shoe.

Higgins also examined a pair of green shorts [exhibit 139] and a yellow shirt [exhibit 140] taken from **T.J. Wright** at the time of his arrest on April 22, 2000. He found chemical indication of the presence of blood on the shorts not the shirt.[R. Vol.

27 T. 3886-87, 3894-3903]. **Higgins** also tested clothing worn by **Pitts** at his arrest on April 26, 2000, and not surprisingly there were no indications of blood. [R. Vol. 27 T. 3887-88]. **Higgins** also received blood swabings taken from an automobile [the Cirrus], most of which were positive for blood when tested. [R. Vol. 27 T. 3889-3893].

Lead **Detective Malcom Kneale**, of the Polk County Sheriff's Department was the lead homicide investigator of the double homicide. **Kneale** and **Det. Britt Williams** viewed the recovered Chrysler Cirrus. **Kneale** testified that thereafter they treated this missing persons case as a homicide and arranged to obtain toothbrushes etc. from the families of the two victims so that DNA comparisons with the blood on the car could be effected. [R. Vol. 30 T. 4405-4408].

Det. Kneale said **T.J. Wright** became a suspect in the murders on April 25th when **Vontrese Anderson** stated she had seen him driving a white vehicle on Friday night, April 21, 2000. Then with the mounting interviews and fingerprint evidence he became a prime suspect. [R. Vol. 30 T. 4458-60].

Kneale also learned of the pawning of the polaroid camera, and he talked to **Darryl Stanton**, who had pawned it, and his stepson **Rodnei Ruffin**. Those discussions led the detective to **Sammy Pitts**, whom he interviewed in the early morning hours of April 26, 2000. **Kneale** stated the interview with **Mr. Pitts** led him and other detectives with **Pitts** guiding them to a orange grove near Polk City. At that

time **Kneale** also learned that **T.J. Wright** had been staying on and off with **Pitt's** sister **Vontrese Anderson** earlier in April, and that **Wright** had been arrested on other charges on April 22nd and was being held in jail. [R. Vol. 30 T. 4409-4412]. **Kneale** had the clothing **T.J. Wright** was wearing at his arrest recovered as evidence. [R. Vol. 30 T. 4412-4414]. **Pitts** was arrested April 26th. The distance from the Winn-Dixie store on Highway 98 North to the grove where the bodies were found was about 10 miles. [R. Bol. 30 T. 4415-4417].

As the investigation proceeded, **Kneale** began to inquire into the **Taco Bell** shooting incident starting from Winter Haven ending up in Lake Alfred and noted in his testimony the juxtaposition of that site with the home of **James Hogan** on Lake George Road, Lake Alfred about two blocks away. [R. Vol. 30 T. 4418-4421] Defense objection was renewed to collateral evidence. [R. Vol. 30 T. 4420-21].

Kneale interviewed **Hogan**. He also learned of the .380 handgun recovered after the foot chase of **T.J. Wright** and the latter's arrest by Lakeland Police Department personnel on April 22, 2000. He sent the gun to the FDLE lab for ballistics comparisons. **Kneale** also personally notified **T.J. Wright** at the jail that he was charged with the double homicide on April 27, 2000. [R. Vol. 30 T. 4421-4424].

On cross-examination, **Kneale** admitted that the Nike shoes attributed to **T.J. Wright** were provided to his CST by **Latasha Jackson**. [R. Vol. 30 T. 4425-26].

Kneale requested that **Green/Felker** family members come in to identify the polaroid camera, cell phone and black bag of computer tools. **Kneale** admitted that no one ever saw the second cell phone found by the defense counsel at trial in the black bag. Accordingly, no cell phone records for it were obtained. [R. Vol. 30 T. 4431-4136]. **Kneale** also admitted on cross that despite the heavy involvement of **Rodnei Ruffin** in the pawning of the victim's property and the discovery of Green's cell phone in his apartment, no search warrant or formal processing of his apartment by crime scene technicians was ever undertaken. There was only a cursory walk through search by **Lt. Rall**. Likewise despite the admissions and arrest of **Sammy Pitts** for the murders his residence in Providence Reserve apartment in Building 885 was never the subject of a search warrant and never processed by crime scene technicians, although a cursory consent search was performed after **Pitts'** arrest. [R. Vol. 30 T. 4437-4455; Vol. 31 T. 4456-58].

DNA evidence for the state was presented by **Terri Hunter, Ph.D.** of the Moffitt Cancer Center & Research Institute, formerly employed by FDLE. [R. Vol. 24 T. 3488-90]. **Dr. Hunter** was given toothbrushes identified as coming from **James Felker** and **David Green**, as well as their fingernail clippings. She was given blood stain cards from **T.J. Wright** and **Sammy Pitts**. **Dr. Hunter** developed DNA profiles

at the standard 13 STR loci for all such items and these became standards used for comparison. [R. Vol. 24 T. 3491-3501].

Turning to "suspected items" **Dr. Hunter** was given eleven swabs of blood coming from an automobile [submission three: exhibits 42, 43, 44, 46, 47, 49, 50, 52, 54, 56, 58]. **Hunter** testified she got a DNA profile from four of them, exhibits 44, 50, 52 and 56. On 50 and 52 she got a match to the DNA profile of **James Felker** at all 13 loci. On 44, and 56 she got a match at less than all 13 loci. **Hunter** stated that those latter two she matched to **Felker** at eight and six STR loci respectively.[R. Vol. 24 T. 3502-3505; Vol. 25 T. 3506-3512]

Dr. Terri Hunter also received swabs of blood from the pair of Nike shoes [State's Exhibits 5A and 5B] said to have belonged to **T.J. Wright**. A drop of blood from the left Nike shoe matched the DNA profile of **James Felker** at all thirteen STR loci. [R. Vol. 25 T. 3512-3514, 3528-29]. **Hunter** also did a DNA profile from blood found **T.J. Wright's** shorts which matched **Mr. Wright's** own DNA profile. No DNA profiling was done on the bright yellow shirt.[R. Vol. 25 T. 3532-3536].

Testimony of FDLE ballistics examiner, **John Romeo**, has been presented above in relation to various collateral crimes in which a handgun was used. **Romeo** also testified as to ballistics evidence directly relating to the double homicide. First was state's exhibit 76 a .380 projectile found underneath **Mr. Felker's** head. **Romeo** could

neither identify nor eliminate that projectile as having been fired from the .380 handgun [exhibit 136]. [R. Vol. 29 T. 4354-55]. Exhibit 84 [at marker 7], a casing from the scene of the recovery of the two bodies was found to have been fired in the handgun in question at trial [exhibit 136]. **Romeo** came to same positive conclusion concerning four other casings from the grove murder scene. These included [exhibit 85 at Marker 8], casing [exhibit 86 at marker 9], casing [exhibit 87 at marker 10], and casing [exhibit 88 at marker 11] all fired from exhibit 136. [R. Vol. 29 T. 4355-58].

John Romeo identified exhibits 100A and 100B taken from the body of **Mr. Felker** as shot gun wadding and pellets respectively. [R. Vol. 29 T. 4358-59].

Romeo examined exhibits 101, 111, 112, and 113. These were all projectiles or fragments of projectiles recovered from the bodies of **Green** and **Felker** at autopsy. None of them could be either identified nor eliminated as having been fired from exhibit 136 the .380 handgun. He did state two of the projectiles were .380 caliber. [R. Vol. 29 T. 4359-63, 4372-93].

THE DEFENSE CASE-IN-CHIEF:

The defense in its case-in-chief called defendant, **T.J. Wright**, who testified as he had done at both previous trials. **T.J.** testified he was 19 year old in 2000. **T.J.** admitted committing the Shank burglary with **Aaron Silas**. He said that **Aaron** found and took the guns from a bedroom. **Aaron** put the shotgun in his trunk and traded **T.J.**

the .380 pistol for some weed. [R. Vol. 30 T. 4518-21]. **T.J.** testified that at the time he kept his clothes and personal belongings at the house of a friend, **Corey Hudson,** on Combee Road in Lakeland, where he spent most nights. That was because he and **Vontrese Anderson** were fighting and not getting along. [R. Vol. 30 T. 4521-22]. **T.J.** knew all of the residents at the Providence Reserve apartment and neighbor **Rodnei Ruffin.** [R. Vol. 30 T. 4522-25].

T.J. testified there had been a long history of conflicts between himself and **Bennie Joiner** and his friend **Carlos Coney** and their friends. **T.J.** admitted riding with **Silas** early Friday morning, April 21st and pulling up to the Longfellow Boulevard house where **Joiner** and **Coney** were seen. **T.J.** saw **Coney** moving his way and at first thought he wanted to talk. He says that as **Carlos** came at him he moved aggressively and began reaching into his waist band and **T.J.** thought he was going for a gun. **T.J.** fired at him first to try to back him up, not intending to hit him. **T.J.** testified he was convicted as a result of this incident and got two life sentences. [R. Vol. 30 T. 4525-4532, 4584].

T.J. Wright testified that after the Longfellow incident **Silas** carried **T.J.** to Providence Reserve and from there he and **Sammy Pitts** rode with **Aaron Silas** to go see "Little Cool", who is **James Hogan** ,in Lake Alfred because **Aaron** wanted to sell the shotgun. In the event when they arrived and **Aaron** showed **Hogan** the shotgun,

Hogan wanted no part of a gun at his grandma's house. **Hogan** took them in his car for a drive. After about 30-40 minutes they left **Hogan's**. During the ride over to Lake Alfred, **T.J.** testified he told **Sammy Pitts** about the drive-by shooting at Longfellow because **Sammy** was the leader of the gang that **T.J.** was in and thus his superior. **Sammy** was upset with **T.J.** and took the .380 handgun from **T.J.** so he "would not wind up getting in trouble for it." They returned to Providence Reserve and smoked some weed. [R. Vol. 30 T. 4532-4538, 4572-4576, 4588-89].

T.J., **Silas**, and **Pitts** smoked weed until **Vontrese** came home and then **T.J.** left and went to other side of the apartments. He received a page from one of his marijuana customers , **Craig**, who needed to buy some weed. **T.J.** borrowed a phone and returned the call. **Craig** was at Winn-Dixie with his girl and wanted **T.J.** to meet him there. **T.J.** began walking toward Winn-Dixie. **T.J.** admits **Shakeda** did give him a ride. He met **Craig** and sold him two 20 sacks of marijuana. Then **T.J.** walked to the Hotel 8 [sic] and sold some more weed to a couple of female customers there. Then **T.J.** walked over to a development called Crownview or Crownpoint off of Griffin Road. There he hung out and smoked a blunt with a guy named **Mike.** Then after staying there a while , **T.J.** walked back to Providence Reserve. [R. Vol. 30 T. 4538-4546, 4589-99, 4608-4609].

T.J. testified that as he walked back into Providence Reserve he saw a white car pulling up and it was **Sammy. T.J.** leaned against the car and saw there was blood on the car. He asked **Sammy** about it and **Sammy** replied that he and **Rodnei** had just gotten into a fight with some other people. **Sammy** invited **T. J**. to get in the car and he asked **T.J.** to drive and he did. They went to Timberlane to the apartment of a girl **T.J.** knew to wash the car. When they got there **T.J.** began washing the car and **Sammy** went into the apartment. Then **Sammy** came back out and started getting stuff out of the white car, including a camera and a black bag and put them in **Vontrese's** car which had just arrived. **T.J.** did not know **Vontrese** was coming to get **Sammy,** nor why she did. Before leaving **Sammy Pitts** told **T.J.** to get rid of the white car by burning it. **Sammy** also handed him the .380 handgun and told him to throw it in a lake. **Sammy** told **T.J.** the white car was a "baser car", i.e. one which belongs to a drug addict who allows the drug dealer to use it in exchange for some dope. **T.J.** on cross stated that he had the shells in his pocket when arrested because he forgot they were there. Sammy had told him to get rid of them too. [R. Vol. 30 T. 4547-4553, 4609-4613].

T.J. said he took the car and went back to meet with "Little Cool" i.e. **Hogan**. He asked **Hogan** for help in dumping the car. **Hogan** suggested an orange grove nearby, and followed **T.J.** to the grove where he abandoned the car. Then **Hogan** gave

T.J. a ride to **Corey Hudson's** house in Lakeland where he stayed the night. When asked if he went to Taco Bell in Winter Haven, **T.J.** replied: "I don't want to talk about that case. I ain't charged with that case or nothing." The next morning "Little Cool" came back over to **Hudson's** place saying he had some rims. **T.J.** got a ride to Providence Reserve from **Hogan**. [R. Vol. 30 T. 4553-4556, 457645-4583, 4601-4605].

Saturday morning, April 22nd **T.J.**, stated that after returning to Providence Reserve, he talked to **Sammy** and "**Tasha**" throughout the day. Then the police came and he was arrested. In court **T.J.** was asked to identify the Nike tennis shoes [exhibit 5A and 5B] and he denied they were his shoes or that he wore them that day. **T.J.** admitted to continuously wearing the clothes he was arrested in for two or three days prior to his arrest, and said his own blood got on the shorts when he cut his hand jumping over a fence in the police chase. [R. Vol. 30 T. 4557-4560]. **T.J.** denied carjacking, kidnaping, and murdering **David Green** and **James Felker**. [R. Vol. 30 T. 4561].

T.J. admitted lying to **Detective Kneale** when first interviewed at the jail by telling him that he was in Tampa on Friday night. He stated he was worried about being charged in the drive-by shooting on Longfellow Boulevard because there was a newspaper clipping on it Saturday with his name in it. [R. Vol. 30 T. 4561-62,].

T.J. flatly denied he had ever told **Mr. Durant** or **Mr. Robinson** he had committed these murders. [R. Vol. 30 T. 4563].

T.J. admitted driving the white Cirrus Friday night after being picked up by **Sammy** and said that he ran when chased by police. He said he ran because he figured the car might be stolen. [R. Vol. 30 T. 4563-4565, 4568-4572].

The defense formally rested its' case at that point. [R. Vol. 30 T. 4640-4643].

STATE'S REBUTTAL:

The state called in rebuttal **Detective Daniel Jonas** of the Lakeland Police Department. He is assigned to the gang intelligence unit. [Vol. 30 T. 4644-45; Vol. 31 T. 4646-4668]. **Jonas** stated that he had never heard the names of **Sammy Pitts** nor **T.J. Wright** in connection with local gangs. He does not know of an African-American gang based in Polk County with 700 members. [R. Vol. 31 T. 4669-4671; 4683-85]. **Jonas** described the nature of gangs, their practices, tatoos, colors etc. [R. Vol. 31 T. 4673-80]. **Jonas** also identified a tatoo on **T.J. Wright's** chest as indicating the well known gang "Folk Nation." [R. Vol 31 T. 4680-82]

The state also called **Detective Malcolm Kneale** in rebuttal. **Kneale** stated that when he interviewed **T.J. Wright** on April 24th he did not know **Green** and **Felker** were dead. **Kneale** says neither he nor **Detective Williams** told **T.J.** they were investigating a murder, but that **T.J.** spontaneously said " I didn't do no murder." [R.

Vol. 31 T. 4686-4688]. However, **Kneale** admitted on cross that he told **Wright** he was a homicide detective and that he was there on a missing person report which he suspected may be a homicide. [R. Vol. 31 T. 4692-4694, 4702]. **Wright** told **Kneale** he was in Tampa on Thursday and Friday nights, that he went with **Aaron Silas**, and stayed at a Holiday Inn. **Kneale** found no record of **Wright** being registered at the hotel. **Kneale** also testified that **Silas** did not corroborate **Wright's** story. [R. Vol. 31 T.4688-90]. **Kneale** also mentioned an aggravated assault charge which was specifically forbidden by court order due to **Wright's** acquittal on those charges. A motion for mistrial followed. [R. Vol. 31 T. 4694-4699, Vol. 32 T. 4988].

The defense's Motion for Judgment of Acquittal at the close of the evidence in the state's case-in-chief was denied and its' renewed Motion was denied also at the close of all the evidence. [R. Vol. 30 T. 4488-4489; Vol. 31 T. 4731-4732]. The parties each presented closing arguments. [R. Vol. 31 T 4766-4818, 4819-4835, Vol. 32 T. 4836-4854, 4855-4872]. After multiple charge conferences, the jury was instructed and began deliberations. [R. Vol. 31 T. 4716-4769, 4741-4765; Vol. 32 T. 48854963]. The jury returned a verdict of "guilty" as to all seven counts of the Indictment on the verdict form. [R. Vol. 32 T. 4968-4987; R. Vol. 4 707-715].

THE PENALTY PHASE:

After the verdict was returned, 2nd chair defense counsel, Mr. David Carmichael, moved on the defendant's behalf *to waive his right to a jury recommendation in the penalty phase.* There was lengthy discussion of the case law and the Court took the matter under advisement. [R. Vol. 33 T. 5047-5058].

Later, after further research, the Court found that the waiver created a question of law that was a case of first impression. The issue presented was: *what is the Court's duty when the defendant waives his right to a jury recommendation in penalty phase and defendant states that if the Court exercises its' discretion to require a jury be impaneled to make a penalty phase recommendation that the defendant will instruct his counsel to present no mitigation before the jury?* [R. Vol. 33 T. 5064-5068].

The Court after a far-ranging recitation of the case law in this matter, ruled that it would accept defendant's waiver of a jury recommendation provided it was knowingly, intelligently, and voluntarily given. [R. Vol. 33 T. 5068-5082]. The Court then conducted a thorough colloquy between the Court and the defendant, **Tavares J. Wright,** and then granted the motion to waive a jury recommendation in penalty phase. [R. Vol. 33 T. 5082-5099, 5111-5112]

The Court then acceded to a defense request via a recommendation by defense witness, **Dr. Waldman,** for one further medical test on the defendant [a special type

of EEG], also ordered was a comprehensive P.S.I., and the Court agreed to defer the **Spencer Hearing-Penalty Phase Hearing**. pending the test. [5099-5123]

At the inception of the Penalty Phase hearing on May 10, 2005, the state submitted four written victim impact statements. [R. Vol. 1 T. 134-36]. The State then called witness, **Walter B. Connelly**. Mr. Connelly was employed on September 29, 2001, as a detention deputy at the Polk County Jail and had been so employed for 14 years. He described an altercation with the defendant in which, he says, the defendant without provocation sucker-punched him as he was delivering food to the cell. Then, he testified, as he lay unconscious on the floor, defendant kicked and stomped his head over 50 times. Photos of **Mr. Connelly's** injuries were admitted. **Mr. Connelly** testified he has permanent injuries for which he is still being treated both for physical problems and by a psychiatrist. [R. Vol. 1 T. 141-145].

On cross-examination **Mr. Connelly** admitted to having seen newspaper articles in which defendant's attorney alleged defendant was being mistreated by guard personnel in the jail, and another in which it was alleged guards took away without cause defendant's boxes of discovery and legal papers on his case. [[R. Vol. 1 T. 146-148].

The state presented witness, **Patty Newton**, a latent print examiner, who testified she examined the fingerprints on four Judgment affidavits and compared them

to the known prints of defendant, **T.J. Wright**. Exhibit P4 represented a judgment and sentence for a conviction of aggravated battery in case number **CF01-06529** [Walter B. Connelly]. Exhibit P8 presented a judgment and sentence for the conviction of aggravated battery by a jail detainee in case number **CF01-06850** [Preston Cassada]. Exhibit P9 represented a judgment and sentence for the conviction of battery on a law enforcement officer in case number **CF03-001449.** Exhibit P10 consisted of a judgment and sentence showing convictions of attempted second degree murder with a weapon, attempted felony murder, and a second count of attempted felony murder on case number **CF00-02653** [The Longfellow Drive-By Shooting]. All these exhibits were admitted without objection and **Ms. Newton** testified in each case that she compared the prints on the documents in each exhibit to the known prints of defendant **T.J. Wright** [Exibit P1] and that they matched in each case. [R. Vol. 1 T. 148-158].

Next, the state called witness, **Preston Cassada**. [R. Vol. 1 T. 159-160]. **Mr. Cassada** is 55 years old and is imprisoned on a conviction of attempted 1st degree murder. He testified that on June 28, 2001, he was beaten unconscious in the Polk County Jail by a group of inmates. He has no memory of the incident since he was in a coma for 30 days and does not know if **T.J. Wright** is one of the men who beat him. Photos of **Mr. Cassada's** injuries were admitted. [R. Vol. 1 T. 160, Vol. 2 T. 161-163].

The state finally presented victim-impact statements. One of three pages by **Dennis Felker** [P11], the father of victim **James Felker**. They also proffered a 3 page statement [P12] from **Kimberly Felker**, the victim's stepmother. Each was admitted without objection. The state called **Joy Scriven**, sister-in-law to victim **David Green**, and she read a statement [P13] into the record. **Ms. Joy Scriven** added a few remarks. [R. Vol. 2 T. 165-171]. The state called **Ms. Ivy Scriven**, the mother of victim **David Green**. **Ms. Ivey Scriven** read a prepared statement into the record [P14]. [R. Vol. 2 T. 171-176]. The state then rested its' penalty phase case. [R. Vol. 2 T. 176].

The defendant began his penalty phase presentation with a detailed opening statement outlining the mitigation case. [R. Vol. 2 T. 177-200]. The first defense witness was **Dr. Joseph J. Sesta, PhD**. **Dr. Sesta** was received as an expert in his fields by stipulation. He described the scope of his expertise in that he is a licensed clinical psychologist, a board certified forensic neuropsychologist, and has earned a post-doctoral master of science degree in psychopharmacology. [R. Vol. 2 T. 201-202].

Dr. Sesta was retained in 2003 prior to the first trial of this cause and did a psychological evaluation including intelligence testing and a neuro-psychological examination of the defendant to measure the functional integrity of his brain. He recommended further neurological medical testing of the defendant which was undertaken by a second expert more recently. [R. Vol. 2 T. 201-206].

Dr. Sesta was asked to detail his findings. He stated that the defendant had a verbal I.Q. of 84 and a performance I.Q. of 74. **T.J. Wright** has *a full-scale I.Q. of 77* which he explained was in the *borderline area* between low normal intelligence and retardation. [R. Vol. 2 T. 206-208]. **Sesta** also explained that while *socio-cultural factors* such as education and environment have some affect on his I.Q. scores, but in **T.J. Wright's** case there were also definite *biological factors* contributing to his impairment. Those biological factors include *several head injuries* and being *exposed in utero to cocaine and alcohol.* In the case of the latter exposure **Wright** suffered from *fetal alcohol syndrome* which in turn caused *microcephaly*, a small brain caused by the premature closure of the skull [*craniostenosis*]. The *Microcephaly* affects a person's ability to think and reason and impairs intellectual functioning. [R. Vol. 2 T. 208-211].

Dr. Joseph Sesta said that his neuro-psychological testing of **T.J. Wright** detected such *functional brain impairments* which led him to recommend further medical tests including a neurological evaluation, MRI, EEG and perhaps a PET scan. [R. Vol. 2 T. 211-213].

Dr. Sesta was asked his opinion as to certain medico-legal questions concerning the defendant. He concluded that the defendant was not legally insane at the time of the offense. [R. Vol. 2 T. 213] .

Dr. Sesta was then asked about the *statutory mental mitigator* applied to the defendant. That is the question as to *whether the defendant at the time of the offense was substantially impaired in his ability to appreciate the criminal nature of his conduct and/or whether his ability to conform his conduct to the requirements of the law was substantially impaired.* At the time of his report, **Dr. Sesta** said **Mr. Wright** did not fully meet the criteria of the statutory mitigator. This appears to be because the indicators he detected were "mild."

However, **Dr. Sesta** further said that after the neurological medical tests were completed and confirmed organic brain dysfunction that they bolstered his opinion to the point that "his [Mr. Wright's] *neurological status does approximate the standard of [Fla. Stat. Sec.] 921.0026(c).*" In explaining that conclusion, **Dr. Sesta** stated that while the indicators of impairment in this case were mild. They consisted nonetheless in part of *borderline intellectual functioning*, and *impairment of frontal lobe function* affecting things like reasoning, judgment, and abstract reasoning which in turn have *an etiology in brain pathology* which is beyond **Mr. Wright's** control. According to **Dr. Sesta**, this condition would also *affect impulse control and reduce his ability to inhibit sexual and aggressive feelings.* **Mr. Wright** also has *impairment of his attention and concentration* and his ability to *modulate his emotions*. [R. Vol. 2 T. 213-223, 244-247].

Dr. Sesta stated that he did diagnose, in addition to *microcephaly*, that **T.J.** suffered from *prenatal alcohol syndrome.* [R. Vol. 2 T. 221-222]. These impairments would tend to cause the defendant to be *unable to handle complex issues* and *render him vulnerable to the influence of people who are not mentally impaired.* [R. Vol. 2 T. 223-227].

Dr. Sesta was asked if the fact that **T.J. Wright's** natural father, **Jesse Box**, [under a state sentence for homicide] is currently housed in the state mental hospital at Chattahoochee and that there has been criminality in the family history would affect the son. He stated that there was *a real possibility there was an inheritable component in T.J.'s case.* **Sesta** stated that **Mr. Wright** is going to have impaired judgment in two ways. **One** is the *neurological impact of the low I.Q., and brain impairment or dysfunction.* **A second** is his *antisocial personality disorder* which likewise indicates an underlying impairment of judgment. [R. Vol. 2 T. 227-229]. The latter, Antisocial Personality Disorder, is one part of the explanation for criminality, but so are the pathological neurological factors. **Dr. Sesta** made an effort to explain the integrative the effects of these two very different influences.

Sesta elaborated on this when he testified that for example when people do bad things some may do them because they do not care to conform their behavior to the standards of the law. But in the cases like that of **T.J. Wright**, they often additionally

cannot conform their behavior to the requirements of the law because of the medical, neurological, or psychiatric problems or impairments. Such impairments predispose them toward or are causal elements in creating their inability to conform their conduct to the law. In **T.J. Wright's** case, **Sesta** says, we have established both types of influences are involved. [R. Vol. 2 T. 228-233; 252-57].

Dr. Sesta found school records of **T.J. Wright** supporting the diagnosis of "*emotionally handicapped*", and of *S.L.D., a specific learning disorder.* **Sesta** opined that such diagnoses are problematical when the individual has as low an I.Q. level as **Mr. Wright.**

Dr. Sesta stated **T.J. Wright** indulged in substance abuse in his early adolescence and adult life including *use of cocaine and alcohol.* This and his *childhood head injuries* would exacerbate the brain dysfunction already present due to genetic or congenital brain deficits. [R. Vol. 2 T. 236-238].

Counsel asked **Dr. Sesta** in light of his other findings what significance he gave to a brief period of violent episodes over a five day period by defendant which encompassed this double homicide and other separate incidents. **Sesta** replied that as people move into late adolescence their frontal lobes are completing their physiological development. Young people in the teens and early twenties need that additional developmental capacity to "brake" or inhibit their violent and sexual impulses more

than at earlier periods of their lives. **Mr. Wright** [at 19 years of age in April, 2000] would be at an age where he was exposed to things like peer pressure, drugs, and criminal activity and would require more brain function [to avoid impulsive behavior including violence]. Because of his brain injuries **T.J.** is lacking that additional developmental capacity. [R. Vol. 2 T. 239-241].

Counsel explored with **Dr. Sesta** the applicability of the second mental health statutory mitigator, i.e " *committed while the defendant was under the influence of extreme mental or emotional disturbance." [Fla. Stat. 921.141(6)(b) 2005.]* **Dr. Sesta** stated that **T.J. Wright** had numerous mental and emotional problems which had been "elevated to the level of diagnoses" including *cognitive disorder NOS, polysubstance abuse, borderline intellectual functioning, anti-social personality disorder.* They are medically classified as mild, but whether that translates into an extreme disturbance in legal terms he could not say. [R. Vol. 2 T. 242-243]. As to statutory mitigator *"participation was relatively minor" [Fla. Stat. 921.141(6)(d) 2005]* **Dr. Sesta** could only say that **T.J. Wright** was far more likely to be a follower than a leader. [R. Vol. 2 T. 243].

The second witness presented at penalty phase was **Cynthia Ann Wright McClain**, the defendant's maternal aunt. [R. Vol. 2 T. 277]. **Mrs. McClain** is married and has three children and four stepchildren all now grown. She is the sister of **T.J.**

Wright's mother, **Patricia Ann Wright Brooks Anderson**. She has known **T.J.** all his life and saw him regularly.

Ms. McClain testified ***T.J.*** *did not have a stable parental home life.* They stayed with the maternal grandmother and **T.J.'s** mother, **Patricia Anderson**, would frequently leave him there for months at a time. Once she married a man from New York, went there with the man, and *left* ***T.J.*** *with the grandmother indefinitely.* The Grandmother tried to spend time with him, but she worked during the nights and could not be with him. *His grandmother was to all intents and purposes the only mother figure* ***T.J.*** *ever had.* **T.J.** *lost all of his support system when his grandmother died* in 1996 when he was 15 years old. **T.J.** *had no contact at all with his father,* ***Jesse Box,*** *now in a state mental hospital, whom never played any role in* ***T.J.'s*** *life.* She knows of *no other positive role models* in **T.J.'s** life. [R. Vol. 2 T. 277-282, 295-296, R. Vol. 3 T. 323-328]

After his grandmother died, **Cynthia MCClain** tried to help **T.J.** by buying him clothes, but she had so many responsibilities she could not help him as much as he needed. **Cynthia** said at that time when he was 15 **T.J.** *was pretty much on his own.* He hung out on the streets with others and was always a follower. **Cynthia** knows for a fact *her sister used alcohol during her pregnancy with* ***T.J.*** Later **T.J.** was *in ESE classes in school* and later was *declared disabled for social security purposes due to*

having learning problems, but his mother never got him needed counseling nor regular medical care. **T.J.** *felt picked on in school* cause the kids would tease him about always wearing the same clothes. **T.J.** was usually quiet and withdrawn, but sometimes manifested frustration and anger. *His mother was not there for him.* They did not know what to do for him. [R. Vol. 2 T. 282-292, R. Vol. 3 T. 323-328].

Cynthia McClain has maintained contact with **T.J.** over the five years he has been in jail. She believes he has changed. *He is more interested in religion.* He is calmer and *has expressed regret and that he was sorry for the wrongful things he did that when he was younger.* **T.J.** did not admit he was sorry for killing the two victims in this case, but told Cynthia he was "set up." [R. Vol. 2 T. 318-319]. **T.J.** has tried to *improve his reading and writing skills.* Earlier when he was sent to boot camp, **T.J.** did well for a while, but there was not any follow up and he drifted back to the same group of people with whom he had gotten into trouble initially. [R. Vol. 2 T. 292-301, R. Vol. 3 T. 322-323]

The defense next called **Carlton L. Barnaby**. **Mr. Barnaby** is **T.J.'s** first cousin and has known him all his life. They are about the same age and attended schools together, and lived near one another. [R. Vol. 3 T. 328-331].

Carlton testified **T.J.'s** mom, **Patricia Anderson**, was very young when she bore him [17]. *She was not a warm or loving type of mom to* ***T.J.,*** *but was often harsh*

with **T.J.** . *She did not have time for him.* She was married three times and involved with numerous other men. **Carlton** stated unlike **T.J.** he was fortunate to have had a father, supportive uncles, and other family, and a loving attentive mother. **T.J.** saw **Carlton** as a role model to some extent. [R. Vol. 3 T. 331-337].

Carlton said **T.J.** was embarrassed not to have new clothes for school and that **T.J.** *had very low self-esteem*. When he was picked on or teased, **T.J**. reacted by fighting. **Carlton** believes that **T.J.** was really crying out for help, but could not express himself.

Carlton told the Court the version of events in the **Connelly** incident that **Mr. Connelly** failed to present in his testimony. **T.J**. told **Carlton** that he had been previously beaten by several corrections officers and was constantly taunted by them about facing the death penalty. They regularly called him "Nigger." **Carlton** stated **T.J.** told him that day that he was being fed and the officer kept saying over and over "Nigger, you're going to die." Then **T.J.** told the officer to "leave me alone." The officer kept on taunting him about "Nigger, you're going to die [by lethal injection]. **T.J**. got ticked off and beat the man up. [R. Vol. 3 T. 342-347, 353-355, 374-375]

John Aguero, the prosecutor in this case, in his cross-examination of **Carlton** injected himself into the case by accusing the defendant of threatening his [Aguero's] life. [R. Vol. 3 T. 371-378, 378-385].

Carlton said **T.J.'s** life was so limited as a child living in Winter Haven/Auburndale that, even though only 45 minutes away, he has never been to Disney World nor Sea World, nor Universal Studios although he did go fishing once. [R. Vol. 3 T. 347-348]. **Carlton** said at some point **T.J.** became vulnerable to being easily influenced negative influences in his mid to late teens. After boot camp he slowly went back to the negative influences. **Carlton** thinks **T.J.'s** *judgment is very impaired.* [R. Vol. 3 T. 350-355, 385-387]. But he has *adjusted well to the prison setting.* [R. Vol. 3 T. 356-57].

The defense finally called expert witness **Alan J. Waldman, M.D.** [R. Vol. 3 T. 390]. **Dr. Waldman** is a psychiatrist. He practices and is board certified in the fields of general psychiatry, forensic psychiatry, and neurology. His experience included being chief resident of the V.A. Hospital and the University of Florida affiliated hospitals, and a full-time faculty member of the University of Florida Medical School.

Dr. Waldman also served as medical director of the North Florida Forensic and Treatment Center. [R. Vol. 3 T. 392-94]. **Waldman** undertook a medical neurological examination of **T.J. Wright** including a "higher cortical functions examination." He also performed on **Mr. Wright** an M.R.I. and an EEG, designed to provide information on frontal lobe damage in the brain. [R. Vol. 3 T. 395-397].

Dr. Alan Waldman made a provisional diagnosis of **T.J. Wright** upon his initial meeting as a person afflicted with *Fetal Alcohol Syndrome*. That diagnosis was confirmed by later testing. **Mr. Wright's** facial features alone are diagnostic of that syndrome. **Dr. Waldman** explained that **T.J.** had all *the facial indicators of fetal alcohol syndrome* inlcuing (1) a flat philtrum (2) low set ears (3) small palpebral fissures where the eye meets the nose (4) broader than normal nose and retracted chin (5) wide-set eyes (6) fibrous lamboidal sutures at the occiput. [R. Vol. 3 T. 413-416].

Dr. Waldman explained that *fetal alcohol syndrome* caused **Mr. Wright** to exhibit *microcephaly,* a condition wherein the brain is about one third smaller than a normal person would have. That in turn truncates the normal process of the development of the brain which in a normal person continues until the late teens or early twenties. **Dr. Waldman** calculated from the testing data that **T.J. Wright's** brain is about 900 cubic centimeters while the average normal person's brain is around 1500 cubic centimeters. [R. Vol. 3 T. 397-399, 402-403, 413-415, 437].

Waldman stated that the arrested development of **T.J.'s** brain causes abnormalities and deficiencies (1) in the speech and language processing centers of the brain, (2) the "switchboard" or limbic center which is the emotional center of the brain, (3) the frontal lobe which permits planning, cause and effect and learning from past experience, (4) the corpus callosum which permits left side-right side communication

in the brain, and finally (5) the connections of the axons and dendrites which are the wiring of the brain. (6) the myelinating process of the neurons in the brain. [R. Vol. 3 T. 399-402].

Dr. Waldman testified that the *microcephaly* causes the brain to stop developing normally in size and function. It causes **T.J.** to have a low intelligence level but it also creates *a deficient level of functioning in everyday life.* **T.J.'s** brain essentially stopped developing at about the age of twelve. Thus, the *prefrontal and frontal areas of T.J.'s brain never fully developed.* This in turn caused **T.J.** to be *arrested in his social development and adaptation* so that he suffers *demonstrable emotional immaturity.* This arrested development of these parts of the brain would leave T.J. *socially immature, impaired with regard to insight, judgment and impulsivity.* [R. Vol. 3 T. 402-411]. **T.J.'s** history of several *blows to the head* causing loss of consciousness at 10-13 years of age would exacerbate his brain abnormalities. [R. 407-408].

Dr. Waldman's opinion was that **T.J. Wright** *is profoundly impaired* not mildly so, and that he *is retarded,* He stated that impairment cannot be defined by I.Q. test numbers alone, but must factor in functional ability. **Waldman** said that **T.J.** exhibits "parroting" behavior to mask his impairment. [R. Vol. 3 T. 403-406, 411-412, 417-421, 429, 432]. **Dr. Waldman** testified that **T.J. Wright** at the time of the murders *exhibited substantial impairment of his ability to appreciate the criminality of his*

conduct or to conform his conduct to the requirements of law and that he was *under the influence of extreme mental or emotional disturbance.* Consequently, **Waldman** found that **Tavares Wright** has decreased culpability due to his having a profound brain injury to the cellular level. **T.J.** is impaired in his ability to make decisions and judgments. Due to his lack of mature prefrontal and frontal lobe capacity and the deficiencies in the thalmus and singular gyrus, **T.J.Wright** is *incapable of controlling impulsive and aggressive behaviors* like a normal person could. He probably is *incapable of premeditation* in any meaningful sense. **Waldman** believes that the combination in **T.J.**of congenital brain damage, some traumatic brain injury, social deprivation, abandonment by his parents, lack of structure, and substance abuse have *a synergistic effect* so that the whole picture of impairment is greater than the sum of the parts.[R. Vol. 425-432, 454-468, 472-477, 477-483]

Dr. Waldman differed completely and strongly with **Dr. Sesta** on the issue of whether **T.J. Wright** exhibited *anti-social personality disorder*. **Waldman** stated that the DSM IV-TR which is used for diagnosis is purely descriptive and does not address causality. Even that authority does indicate, however, that a person does not have a personality disorder if they have a brain injury. The etiology of the anti-social behaviors in **T.J. Wright's** case is brain damage not a personality disorder. [R. Vol. 3 T. 422-

425, 465-468, 472-477]. After the questioning of **Dr. Waldman** by defense, the state and the Court was complete, the defendant rested his penalty phase case.

The Trial Court in its sentencing order found **four aggravating circumstances,** to wit: (1) previous conviction of another capital felony and other violent felonies; (2) that the capital felonies were committed for pecuniary gain; (3) that the homicides were committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification; (4) that the capital felony was committed for the purpose of avoiding or preventing a lawful arrest. The Court also found **statutory mitigation** including: (1) defendant under influence of extreme mental or emotional disturbance; (2) the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired; (3) the age of the defendant (19 years of age) at time of crime. The Court found **several non-statutory mitigators** including: (1) troubled and deprived childhood; (2) the defendant's low I.Q. affecting his judgment and perceptions; (3) neurological impairments which affect defendant's impulse control and reasoning ability; (4) defendant's low self-esteem; (5) defendant's lack of capacity to maintain healthy mature relationships; (6) the defendant has been frustrated because of his learning disability; (7) defendant lacks mature coping skills. [R. Vol. 6 P. 963-982] . The Trial Court then found that "the aggravating circumstances far outweigh the statutory and non-statutory mitigating factors." The

death penalty was imposed on the Appellant for each of the two homicides. This appeal followed. The Public Defender conflicted off. After weeks spent by the trial court trying to find appellate counsel, the undersigned private conflict counsel was appointed.

SUMMARY OF THE ARGUMENT

The trial court erred and abused its discretion when it denied defendant's Motion in Limine to exclude collateral crimes evidence included in the state's Notice and Supplemental Notice of Use of Evidence of Other Crimes, Wrongs, or Acts. The state in its notice indicated that it intended to use a total of 55 witnesses of other crimes or wrongful acts by defendant at the homicide trial. The admission of the mass of collateral crimes evidence herein together with its inflammatory nature became a feature of the trial and caused the prejudicial effect of such evidence to substantially outweigh its probative value. The trial court should have carefully evaluated all of this evidence witness by witness by a thorough analysis under the 90.403 balancing test. Over half of the entire trial testimony and more than half the witnesses relate in whole or in part to collateral crimes. Even assuming that some of the extensive collateral crimes evidence used here would be admissible based on relevancy and the need by the state to show the context of other facts related to the charged crimes herein, the state is nonetheless prohibited from "piling on" by going so far as it did here to make the collateral crimes a feature and primary focus of the trial. The court should have limited

that evidence carefully to insure that did not happen and that the use of collateral crimes evidence remained only an incident of the trial. It thereby erred by failing to do that here. The Appellant demands a new trial.

The trial court further erred in denying defendant's motions that the Florida death sentencing statutes are unconstitutional under the Fifth, Sixth, and Fourteenth Amendments of the Untied States Constitution as shown in Ring v. Arizona, and corresponding provisions of the Florida Constitution. While Appellant recognizes that his claim herein may not be cognizable due to legal insufficiency since he waived his right to a jury recommendation in penalty phase, that waiver was predicated upon the Appellant's belief that the trial court erroneously permitted overwhelming amounts of collateral crime evidence at trial such that the trial jury was contaminated and would, Appellant felt, more or less automatically recommend death due to the bias created by that evidence.

Nevertheless, Florida's capital sentencing procedure is unconstitutional under ***Ring v. Arizona*** and under Florida law which requires elements of an offense to be alleged in the charging document and found by a jury unanimously and beyond a reasonable doubt. Florida's death penalty statutes requires that the judge make factual findings as to the aggravating factors before a defendant may be sentenced to death. Should the trial judge fail to make these specific findings, the maximum sentence to

which the defendant is exposed in life imprisonment. Because the trial judge makes these findings and not the jury, Florida's capital sentencing procedure is unconstitutional.

Additionally, Appellant's indictment violated the Sixth and Fourteenth Amendments because it failed to charge the aggravating circumstances as elements of the offense for which the death penalty was a possible punishment. Because aggravators are circumstances of the crime and the defendant's mental state, they are essential elements of a crime for which the death penalty may be imposed and must be noticed. In capital cases, Florida permits jury recommendations of death based upon a simple majority vote, and does not require jury unanimity as to the existence of specific aggravating factors. It would have been impossible, if Appellant's case had been submitted to a jury for penalty phase, for Appellant to determine whether a unanimous jury found any one aggravating circumstance. In light of the fact that aggravators are elements of a death penalty offense, the procedure followed in the sentencing phase must receive the protections required under Florida law and require a unanimous verdict. Appellant demands a new trial and/or a new penalty phase trial before a new jury.

The trial court also erred in finding it proven beyond a reasonable doubt that these murders were aggravated by the circumstance that they were committed in a cold,

calculated, and premeditated manner. The trial court found the killings were the product of cool, calm reflection based on the fact that some period of time elapsed in the drive from the carjacking site to the grove and that the defendant therefore had a significant period of time to contemplate and consider his alternatives. However, the trial court made this finding without any supporting evidence that the defendant planned anything in advance as opposed to just making sequential decisions based on impulse. Further, there is only the most vague and conflicting evidence of what happened at the scene in the grove leading up to the murders, including testimony that the victims were shot because they "bucked the jack." The evidence of when the intent to kill was formed is also minimal and subject to conflicting interpretations.

Additionally, the trial court found that the defendant exhibited heightened premeditation. However, other than inferring such heightened premeditation from the bare circumstances of the crime itself, that is the drive to the grove and execution style shooting, there is simply no evidence of defendant's mental state at that time, no evidence of the defendant's involvement in making any kind of plan, no evidence of the defendant's intent to kill or time of its formulation, and no evidence of the defendant's interaction with the co-defendant or with the victims. There is simply insufficient evidence to determine or infer all of the elements of CCP from the facts of the drive to

the grove and execution-style shooting, let alone to prove them beyond a reasonable doubt. The Appellant demands a new penalty phase and sentencing.

Finally, the trial court erred in finding it proven beyond a reasonable doubt that these murders were aggravated by the circumstance that they were committed for the purpose of avoiding or preventing lawful arrest. The only circumstantial fact that is in this record that supports the trial court's stacked inferences that witness elimination is the dominant motive is the transporting of the victims to a remote location and that, by itself, is not enough. The evidence supporting the trial court's inferences is entirely circumstantial. When there are as here two alternative inferences that may be drawn from the evidence, in order to satisfy the requisite burden of proof, the circumstantial evidence must be inconsistent with any reasonable hypothesis which might negate the aggravator. The Appellant's hypothesis that the victims "bucked the jack" and that their murders occurred in a confrontation of some kind. That has not been rebutted. The state did not prove this aggravating circumstance beyond a reasonable doubt and the trial court erred in finding and weighing it. Appellant demands a new penalty phase and sentencing.

ISSUE ONE:

WHETHER THE TRIAL COURT ERRED AND ABUSED ITS' DISCRETION WHEN IT DENIED DEFENDANT'S MOTION IN LIMINE TO EXCLUDE COLLATERAL CRIMES EVIDENCE INCLUDED IN THE STATE'S NOTICE AND SUPPLEMENTAL NOTICE OF USE OF EVIDENCE OF OTHER CRIMES, WRONGS, OR ACTS? AND... WHETHER THE ADMISSION OF THE MASS OF COLLATERAL CRIMES EVIDENCE HEREIN TOGETHER WITH ITS INFLAMMATORY NATURE BECAME A FEATURE OF THE TRIAL CAUSED THE PREJUDICIAL EFFECT OF SUCH EVIDENCE TO SUBSTANTIALLY OUTWEIGH ITS PROBATIVE VALUE AND REQUIRE A NEW TRIAL?

ARGUMENT:

The state gave its **Notice of Intent to Use Evidence of Other Crimes, Wrongs or Acts** on September 13, 2002. [R. Vol. 3 P. 486-489]. In that Notice the state advised its' intent to use a total of 55 witnesses of other crimes or wrongful acts by defendant at the homicide trial. On February 20, 2003, the state filed a **Supplemental Notice** adding an additional witness. [R. Vol. 4 P. 608]. Defendant responded with a **Motion in Limine** to prohibit the use of some or all of these collateral crimes witnesses. [R. Vol. 4 P.613-616].

The Defendant also filed on August 11, 2003, an **Amended Motion in Limine** adding the additional grounds *that the Defendant had chosen to testify in his first murder trial* [a six week trial resulting in a mistrial after the last state

rebuttal witness testified] and *had admitted to his possession of the firearm* prior to and after the homicide thus admitting the *only material fact* which the collateral crimes evidence was relevant to prove, i.e. the identity of Defendant as participant in the homicides by means of his being in possession of the murder weapon before and after the murders. Thus, Defendant argued the probative value of the collateral crimes evidence was substantially diminished relative to its prejudicial effect. [R. Vol. 4 P. 628-631].

On February 24, 2003, before the first trial, then sitting Judge, Charles E. Brown, heard argument on the state's **Notice of Intent to Use** the collateral crimes evidence and the Defendant's original **Motion in Limine** opposing its' use. The state also had the Court take judicial notice of its' **Memorandum of Law** supporting the admission of most of the same collateral crimes evidence in another of the Defendant's cases that was tried earlier [Case No. CF00-02653A-XX -the drive-by shooting on Longfellow Boulevard] in which the state rehearsed the testimony it intended to use and the case law supporting its' use. [R. Vol. 1 P. 84].

The state in its' **Memorandum** stated the facts that it expected the witnesses to testify to and the relevance thereof to the murder case in summary form. [R. Vol. 1 P. 85-111]. The state in its **Memorandum of Law** relied upon the

inextricably intertwined exception to the inadmissibility of collateral crime evidence. The defense argued under **Fla. Stat. 90.403** that the quantity of separate serious criminal acts, the inflammatory nature of those crimes, and the sheer numbers of witnesses contemplated made the state's assertion that such evidence would not become a *feature of the trial* meaningless. The defense recited that the mere overwhelming quantity and cumulative impact of such prejudicial evidence makes the overall prejudicial impact of this evidence "overwhelming" and makes it a feature of the case, and causes its prejudicial impact to substantially outweigh any probative value. [R. Vol. 1 P. 111-116].

The trial court denied the Defendant's **Motion in Limine** and ruled that all of the proposed collateral crimes evidence was admissible because it was "inextricably intertwined with or inseparable from" the facts of the murder case. [R. Vol. 1 P. 116-122].

Everyone agrees in this matter that the collateral crimes evidence complained of by Appellant was admitted *not as "William's Rule" or "similar fact evidence" under* ***Fla. Stat. Section 90.404(2)***, but as evidence *inextricably intertwined with and inseparable from the evidence of the murders and relevant to some issue of fact at trial* under **Fla. Stat. Section 90.402** and applicable case law, e.g. ***Griffin v. State,* 639 So.2d 966, 968 (Fla. 1994)**. The lawyers may have

loosely used the term "William's Rule" as shorthand in discussions on record, but none of them actually asserted that the evidence was admitted under that rule per se.

The defense argues that trial court erred in its' ruling and abused its' discretion in that it should have at the very least excluded under ***90. 403*** a portion of the detailed collateral crimes evidence or witnesses which were clearly cumulative and duplicative as to proof of facts at issue. The prejudice from not doing so is patent, e.g. the evidence of the Taco Bell carjacking and shooting incident was altogether unnecessary to show Defendant's possession of the murder weapon hours after the murders. Other evidence also used clearly demonstrated that fact as did defendant's own testimony.

The thrust of Appellant's argument is that *the trial court should have carefully evaluated all of this evidence witness by witness by a thorough analysis under the 90.403 balancing test.* Appellant asserts that over half of the entire trial testimony and more than half the witnesses relate in whole or in part to collateral crimes. Even assuming that some of the extensive collateral crimes evidence used here would be admissible based on relevancy and the need by the state to show the context of other facts related to the charged crimes herein, the state is nonetheless prohibited from "piling on" by going so far as it did here to

make the collateral crimes a feature and primary focus of the trial. ***Thomas v. State*, 959 So.2d 427 (Fla. 2d DCA 2007).** The court should have limited that evidence carefully to insure that did not happen and that the use of collateral crimes evidence remained only an *incident of the trial* . It thereby erred by failing to do that here. See generally: ***Randolph v. State*, 463 So.2d 186, 189 (Fla. 1984) cert den. 473 U.S. 907, 105 S. Ct. 3533, 87 L. Ed. 2d 656 (1985); *Rhodes v. State,* 547 So.2d 1201, 1204-05 *(Fla. 1989); Duncan* v. State, 619 So.2d 279, 282 (Fla. 1993).**

The same **Motion in Limine** was argued before the first trial before Judge Prince and denied. Defendant's original motion and his **Amended Motion in Limine** were re-argued again after the mistrial entered in the first jury trial before the successor judge, Dick Prince. The same arguments were made with the one exception, i.e. that Defendant argued that *the Defendant's sworn testimony in the first trial admitting most of the collateral crimes including the possession of the .380 handgun could be used to prove those facts* and therefore reduced the probative value of the collateral crimes evidence itself. Again the Motion was denied. Collateral crimes evidence was used in the second trial too, over continuing objection. The second trial resulted in a hung jury after an "Allen charge " failed.

The Appellant renewed all pretrial motions prior to the third and final trial at issue here. [R. Vol. 20 T. 2567-2580]. A portion of that argument dealt directly with the **Motion** and **Supplemental Motion in Limine** aimed at collateral crimes evidence. [R. Vol. 20 T. 2570-2580]. The argument therein was truncated because it referenced and encompassed by reference all previous arguments on those motions. The motions were again denied. During the trial, Appellant objected again at least twice just to secure on the face of the record the court's ruling that he had *a standing and continuing objection to all collateral crimes testimony.* [R. Vol. 21 T. 2846-47; Vol. 22 T. 2976].

The careful analysis and scrutiny required by **90. 404(2)** applied to similar crimes evidence, with the **90. 403** analysis as an essential part of it, should also be applied when collateral crimes evidence comes in under the inextricably intertwined exception. The prejudice and inherent risk of contamination threatening the fairness of the trial and reliability of the jury's verdict is virtually identical. Ultimately, we are back to **90.403.** Even when collateral crimes evidence is relevant and otherwise admissible, it must be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, or needless presentation of cumulative evidence. That is the foundation of the Appellant's argument here. **Fla. Stat. Section 90.403,**

***Bryan v. State*, 533 So.2d 744, 747 (Fla. 1988) , cert den. 490 U.S. 1028, 109 S. Ct. 1765, 104 L. Ed. 2d 200 (1989);** see application of test **: *State v. McClain*, 525 So.2d 420 (Fla. 1988).**

Thus, even clearly relevant collateral crimes evidence should not be admitted when they become a feature of the trial as it did here. To admit evidence of such a character and in such quantity as was done in this case is tantamount to allowing the state to admit such evidence for the sole purpose of inflaming the jury against the defendant and showing the defendant's bad character and propensity to commit violent crimes.

In this case the state was permitted to admit the evidence that Defendant participated in the Shank burglary wherein the murder weapon was stolen. [3 witnesses]. Thus committing the crimes of armed burglary and grand theft.

The state also was allowed to admit evidence that Defendant shot at and wounded Carlos Coney and shot at two others at the Longfellow Boulevard drive-by shooting with the same firearm that was used in the murders. [5 witnesses]. Thus, the state presented detailed evidence that Defendant had committed attempted murder in the 2nd murder, and two counts of attempted felony murder.

The state was permitted to admit evidence of the Defendant's involvement in a car chase in Lakeland involving the murder victim's vehicle and the recovery

of that vehicle. [10 witnesses] . Thus, the state presented evidence that the Defendant had committed the crimes of stealing a car and fleeing to elude.[1]

The state was allowed to admit evidence of the carjacking at the **Taco Bell** thus presenting an uncharged set of offenses including armed carjacking and two counts of attempted first degree murder, and fleeing to elude. [6 witnesses]. This was the only collateral crime the Defendant failed to admit on the stand at trial. Even then he did not deny it. [R. Vol. 30 T. 4518-4572].

The ostensible purpose of all of this evidence was to show that the Defendant was in possession of and used the murder weapon in this incident after the murders. However, it is cumulative to the other collateral crimes evidence of **the Lakeland Foot Chase** which occurred hours later the same day and also shows the possession of the pertinent gun by Defendant hours after the murders.

Finally, the state was permitted to adduce evidence of the Defendant brandishing a gun, sitting on the landing dry-firing the gun, and then running from police on Saturday, April 22, 2000 leading to his arrest. [6 witnesses].

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[1] Admittedly the evidence concerning the recovery of the vehicle overlaps as some of it is evidence of the Defendant's participation in the carjacking, kidnaping and murder herein at issue, but some of it is extraneous and was admitted in detail. Also, Mr. Hogan, Detective Kneale and many of the "phalanx witnesses" cited in the statement of facts gave minor details about some of the collateral crimes and are not enumerated in the sections above. Appellant has not cited Record cites to the various witnesses in this section relying upon those summaries and record cites set forth in the statement of facts.

The collateral crimes evidence adduced and used by the state herein was evidence that was particularly inflammatory because it portrayed the Defendant as a very violent man who used a gun in at least 5 attempted murders other than the murders herein as well as other serious crimes over a three day span. The state used at least 32 witnesses whose testimony in whole or in part related to the collateral offenses. At least some of that evidence has only the most tenuous intertwined relationship with this case. ***Ruffin v. State*, 397 So. 2d 277 (Fla. 1981) cert. den. 454 U.S. 882, 102 S. Ct. 368, 70 L. Ed. 2d 194 (1981); *Curry v. State*, 839 So.2d 887 (Fla. 3d DCA 2003).**

The probative value of that testimony was only to establish *the identity of one of the murderers in this case as being the defendant* by tying him to the use and/or possession of one of the murder weapons before and shortly after the murders. Even that probative value was much reduced by the testimony of the defendant at the first two trials and in this trial in all of which he admitted all of the collateral crimes, except the **Taco Bell incident**, but denied the murders. As explained by this Court in ***Craig v. State*, 510 So.2d 857, 863-64 (Fla. 1987) cert den. 484 U.S. 1020, 108 S. Ct. 732, 98 L. Ed. 2d 680, (1988)**, collateral crime evidence is given:

> "special treatment because of the danger of prejudicing the jury against the accused either by depicting him as a person of bad character or by influencing the jury to believe that because he committed the other crime or crimes, he probably committed the crime charged."

The foregoing is the bottom line here. In this case the state was allowed to use overwhelming amounts of inflammatory evidence not merely to poison the well with collateral crimes evidence in order to influence this jury to convict the Appellant of a double murder, but also in order to influence their recommendation at penalty phase that Appellant be given the death penalty [albeit that was avoided by Appellant in a tactical move necessitated by the perceived attitude of the jury in large part because of the collateral crimes evidence].

Appellant would urge the Court that both the quantity of collateral crimes evidence and the heinousness of the offenses encompassed in it in this case resembles the facts albeit without any graphic photographs of ***Henry v. State*, 574 So.2d 73 (Fla. 1991)** in which this Court held that the collateral crime evidence of another murder should have been excluded under **Fla. Stat. Section 90.403**. This Court has also held that while some evidence may be necessary [because of being inextricably intertwined] the great detail in which an inflammatory collateral crime was portrayed was not. Consequently, this Court has recognized

that *such detail could cause the probative value to be substantially outweighed by the prejudicial effect of the evidence.*

Similar emphasis can be seen in other cases in which inextricably intertwined circumstances existed and this Court has repeatedly emphasized that only limited necessary facts , but *not the irrelevant or inflammatory details* of collateral crimes should be admitted both to avoid it becoming *a feature of the trial* and to limit its prejudicial impact. ***Conde v. State*, 860 So.2d 930, 947-48 (Fla. 2003)**; ***Long v. State*, 610 So.2d 1276, 1281 (Fla. 1992); *Consalvo v. State*, 697 So.2d 805, 812-13 (Fla. *1996); Henry v. State, id. at 75; Steverson v. State, 695 So.2d 687 (Fla. 1997); Duncan v. State*, 619 So.2d 279 (Fla. 1993); *Rhodes v. State*, 547 So.2d 1201, 1204-05 (Fla. 1989).**

Collateral crimes evidence is presumptively prejudicial. ***Goodwin v. State*, 751 So.2d 537, 547 (Fla. 1999)**; ***Czubak v. State*, 570 So.2d 925, 928 (Fla. 1990).**

The Appellant asserts that while the admission of this evidence was not technically under the scrutiny required under the **"William's Rule"** nonetheless the court below should be required to determine *"whether the defendant committed the prior crime?"* See also on burden of proof: ***State v. Norris*, 168 So.2d 541, 543 (Fla. 1964)** ; ***Acevedo v. State*, 787 So.2d 127, 129 (Fla. 3d DCA**

2001). It should also be required to ascertain *the relevance of the collateral crimes to the offenses charged, i.e whether it is probative?*, and finally under *90. 403* the court must *weigh the relative probative value of the evidence of collateral crimes against its obvious prejudicial effect.* [2]

The Appellant also asserts that even when after all the foregoing scrutiny the court finds it should admit the evidence on grounds of being inextricably intertwined *the court must nonetheless still take care to limit such admissible evidence in quantity and inflammatory content in order to insure that collateral crimes evidence does not become a feature of the case* . In fact, saying that collateral crimes evidence became a feature of the trial is just another way of saying that its prejudicial effect clearly and substantially outweighed any probative value it may have had. None of foregoing types of specific scrutiny was applied by the court below in this case. ***Conde v. State,* id. at 948-49.**

The facts of this case [although the collateral crimes evidence herein is more extensive] likewise resembles in some respects [inflammatory nature] those in ***Steverson v. State,* 695 So.2d 687 (Fla. 1997).** As in ***Steverson***, the collateral

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[2] The Appellant relies here conceptually on the very thoughtful analysis of Justice Pariente and Chief Justice Anstead in a partial concurrence and partial dissent in ***Smith v. State*, 866 So.2d 51, 68-74 (Fla. 2004),** which while factually a much different situation from that herein, nonetheless provides reasoning to support the application of all the facets of the William's Rule case law to collateral crimes evidence even if not admitted under 90.404(2)(a).

crimes evidence in this case, by virtue of the extensive and detailed amount of it and its inflammatory nature, became a feature and primary focus of this trial. Thereby it tainted the reliability of this jury's verdict and denied Appellant a fair trial on the charged offenses. Thus, a new trial is mandated. The error cannot be deemed harmless herein. ***State v. DiGuilio*, 491 So.2d 1129 (Fla. 1986); *Chapman v. California*, 386 U.S. 18, 87 S. Ct. 824, 17 L. Ed. 2d 705 (1967).**

ISSUE TWO:

WHETHER THE TRIAL COURT ERRED IN DENYING DEFENDANT'S MOTIONS THAT THE FLORIDA DEATH SENTENCING STATUTES ARE UNCONSTITUTIONAL UNDER THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION AS SHOWN IN *RING V. ARIZONA*, AND CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION?

ARGUMENT:

Defense counsel filed a **Motion to Dismiss Indictment for Specific Jury Findings as to Penalty Issues, and for Related Relief** on October 2, 2001 [R. Vol. 3 T. 427-460], a **Motion to Declare Section 921.141 Florida Statutes Unconstitutional Because Only a Bare Majority of Jurors is Sufficient to Recommend a Death Sentence** on February 11, 2003.[R. Vol. 3 T. 533-535, a **Motion to Bar Imposition of Death Sentence on Basis that Florida's Capital Sentencing Procedure is**

Unconstitutional Under *Ring v. Arizona* on December 6, 2002 [R. Vol. 3 T. 522-528] which was renewed in **Defendant's Motion to Bar Imposition of Death Sentence on Grounds that Florida's Capital Sentencing Procedure is Unconstitutional Under Ring v. Arizona and Memorandum in Support** on October 22, 2004 [R. Vol. 4 T. 677-702]. A hearing was held on the **Motion to Dismiss Indictment for Specific Jury Findings as to Penalty Issues, and for Related Relief** on September 18, 2002. [R. "Supplement" Vol. 1 T. 1-80] and the court denied the motion in a written order on October 25, 2002 [R. Vol. 3 T. 521]. The court denied **Defendant's Motion to Declare Section 921.141, Florida Statutes Unconstitutional Because it Precludes Consideration of Mitigation by Imposing Improper Burdens of Proof or Persuasion** in a written order on October 25, 2002 [R. Vol. 3 T. 517]. The court denied **Defendant's Motion to Bar Imposition of Death Sentence on Grounds that Florida's Capital Sentencing Procedure is Unconstitutional Under *Ring v. Arizona*** in a written order on October 27, 2004 [R. Vol. 4 T. 703-705]. The defendant renewed and the court denied the aforementioned motions in a hearing on October 27, 2004, preserving them as an issue on appeal. [R. Vol. 20 T. 2567-2570].

The trial court sentenced the defendant to death on October 12, 2005 after finding four (4) aggravating factors were proven beyond a reasonable doubt and finding that the

aggravators outweighed the substantial mitigating circumstances presented. [R. Vol. 6 T. 963-983]

The Appellant *recognizes that his claim herein may not be cognizable due to legal insufficiency, since he waived his right to a jury recommendation in penalty phase.* ***Lynch v. State*, 841 So.2d 362, 366 (Fla. 2003).** It is true that in this case the Appellant chose to waive his right to have the trial jury sit at penalty phase. However, that waiver was predicated upon the Appellant's belief that *the trial court erroneously permitted overwhelming amounts of collateral crime evidence at trial such that the trial jury was contaminated* and would, Appellant felt, more or less automatically recommend death due to the bias created by that evidence.

The Appellant chose to permit the judge to sit at penalty phase as finder of fact and sentencer only because he felt the Court could more likely dispassionately consider the aggravators and mitigation in light of the likely emotional impact of the collateral crimes evidence had on that particular jury.

Appellant also urges that the constitutional deficiencies of Florida's death penalty law as set forth in the motions referenced below made it impossible for there to be an adequate, fair, and reliable jury penalty phase recommendation in any case.

Florida's capital sentencing procedure is unconstitutional under ***Ring v. Arizona*, 122 S.Ct. 2428 (2002)**, and under Florida law which requires elements of an offense to

be alleged in the charging document and found by a jury unanimously and beyond a reasonable doubt.[3]

A. The Florida Statute is Unconstitutional Under *Ring* because it Requires the Trial Judge, not the Jury, Make the Findings Necessary to Impose a Death Sentence.

The United States Supreme Court in ***Ring*** held that Arizona's capital sentencing statute violated the Sixth Amendment , as construed by ***Apprendi v. New Jersey*, 120 S.Ct. 2348, 2355 (2000)** because it required the judge not the jury to make the findings of fact necessary to impose a death sentence. The Appellant concedes that the case law is adverse to his argument. This Court has rejected claims for relief pursuant to ***Ring*** and instead has relied upon its decisions in ***Bottoson v. Moore*, 833 So.2d 693 (Fla. 2002)** and ***King v. Moore*, 831 So.2d 143 (Fla. 2002)** in upholding the constitutionality of Florida's death penalty statute unless and until the United States Supreme Court expressly applies ***Ring*** to Florida. See also ***Duest v. State*, 855 So.2d 33 (Fla. 2003)** and ***Jones v. State*, 855 So.2d 611 (Fla. 2003).** The Court's rationale seems to be that ***Apprendi*** is inapplicable to Florida's death penalty statute because the aggravating circumstances do not increase the maximum punishment authorized for first degree murder under Florida law, which is death. ***See Bottoson*, 833 So.2d at 693.** However,

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[3]Appellant incorporates, in part, the arguments set forth by Nancy A. Daniels, Assistant Public Defender, in her Initial Brief filed with this Court in *Douglas v. State*, SC02-1666 regarding Issue Two [*Ring* issue].

the Supreme Court in ***Ring*** stated that, "[t]he Arizona first-degree murder statute 'authorizes a maximum penalty of death only in a formal sense.'" ***Ring*, 122 S.Ct. at 2440, *quoting Apprendi*, 530 U.S. at 538 (O'Connor, J., dissenting).** In reality, "[a] defendant convicted of first-degree murder in Arizona cannot receive a death sentence unless a judge makes the factual determination that a statutory aggravating factor exists. Without that critical finding, the maximum sentence to which the defendant is exposed is life imprisonment, and not the death penalty." ***Ring*, 122 S.Ct. at 2440, *quoting Apprendi*, 530 U.S. at 538 (O'Connor, J., dissenting).**

Similarly, Florida law requires that the judge make factual findings as to the aggravating factors before a defendant may be sentenced to death. **Section 775.082(1)** states specifically that if, "the proceeding held to determine sentence according to the procedure set forth in **section 921.141** results in findings by the court that such person shall be punished by death, otherwise, such person shall be punished by life imprisonment." **Section 775.082(1), Fla. Stat. (1995). Section 921.141(3), Florida Stat.**, states that *"[n]otwithstanding the recommendation of a majority of the jury, the court, after weighing the aggravating and mitigating circumstances, shall enter a sentence of life imprisonment or death."* The judge must make "specific written findings of fact based upon the circumstances in **subsections (5)** [aggravating circumstances] and **(6)** [mitigating circumstances] and upon the records of the trial and

the sentencing proceedings." Id. If the judge does not "make the findings requiring the death sentence" within a specified period of time "the court shall impose a sentence of life." Id.

Because the trial judge and not the jury makes the specific findings required to impose a sentence of death, Florida's death penalty statute is unconstitutional under ***Ring*** and the Sixth and Fourteenth Amendments.

B. Aggravating Circumstances are Elements of the Offense Under Apprendi and Ring and Must Be Charged in the Indictment and Found Unanimously by the Jury Beyond a Reasonable Doubt.

The United States Supreme Court held in ***Jones v. United States*, 526 U.S. 227, 243, n.6 (1999)**, that "*under the Due Process Clause of the Fifth Amendment and the notice and jury guarantees of the Sixth Amendment, any fact (other than prior conviction) that increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt.*" Subsequently, in ***Apprendi v. New Jersey*, 120 S.Ct. 2348, 2355 (2000).**, the Court held that the Fourteenth Amendment provides the same protections under state law.

In ***Apprendi,*** a New Jersey hate crime sentencing enhancement increased the punishment a defendant could receive beyond the statutory maximum. **See *Apprendi*, 120 S.Ct. at 2365**. The court stated that "the relevant inquiry here is not one of form, but of effect-does the required finding expose the defendant to a greater punishment than

that authorized by the jury's guilty verdict?" ***Apprendi*, 120 S.Ct. at 2356.** Likewise, aggravators under the Florida death penalty sentencing scheme are elements of the offense which must be noticed, submitted to a jury, and proven beyond a reasonable doubt. The state was obligated to prove at least one aggravating factor in the separate penalty phase proceeding before appellant was eligible for the death penalty. **Fla. Stat. s. 775.082 (1995).** If the court sentenced Appellant immediately after conviction, the court could only have imposed a life sentence. **See s. 775.082 Fla. Stat. (1995).** ***See State v. Dixon*, 283 So.2d 1, 9 (Fla. 1973).**

In noncapital cases, Florida courts have treated aggravating factors that cause an offense to be reclassified to a more serious offense or that require the application of a minimum mandatory sentence as elements of an offense that must be charged in the indictment and specifically found by the jury, unanimously and beyond a reasonable doubt. ***See Bottoson v. Moore*, 833 So.2d at 709, n. 21.** However, Florida's current procedures for imposing a death sentence do not require notice of aggravating circumstances, nor that the jury unanimously agree on the existence of any aggravating circumstance much less that the jury unanimously agree whether there are sufficient aggravating circumstances to warrant imposition of the death penalty. This essentially provides capital defendants fewer rights than defendants facing mandatory minimum sentences.

Appellant's indictment violated the Sixth and Fourteenth Amendments because it failed to charge the aggravating circumstances as elements of the offense for which the death penalty was a possible punishment. State law independently requires that:

> *A charging document must provide adequate notice of the alleged essential facts the defendant must defend against.* ***Art. I, §§ 9, 16, Fla. Const.*** *In recognition of this concern,* ***Florida Rule of Criminal Procedure 3.140(b)*** *provides that an "indictment or information upon which the defendant is to be tried shall be a plain, concise and definite written statement of the essential facts constituting the offense."*

***State v. Rodriguez*, 575 So.2d 1262, 1264 (Fla. 1991)**; ***State v. Dye*, 346 So.2d 538, 541 (Fla. 1977)** (*"An information must allege each of the essential elements of a crime to be valid. No essential element should be left to inference."*). Because aggravators are circumstances of the crime and the defendant's mental state, they are essential elements of a crime for which the death penalty may be imposed and they must be noticed.

Appellant's death recommendation also violates the constitution because it would have been impossible if Appellant's case had been submitted to a jury for penalty phase for Appellant to determine whether a unanimous jury found any one aggravating circumstance. **Fla. R. Crim. P. 3.440** requires unanimous jury verdicts on criminal charges. *"It is therefore settled that '[i]n this state, the verdict of the jury must be unanimous' and that any interference with this right denies the defendant a*

fair trial." ***Flanning v. State*, 597 So.2d 864, 867 (Fla. 3d DCA 1992), *quoting* *Jones v. State*, 92 So.2d 261 (Fla. 1956).**

However, in capital cases Florida permits jury recommendations of death based upon a simple majority vote, and does not require jury unanimity as to the existence of specific aggravating factors. **See e.g., *Thompson v. State*, 648 So.2d 692, 698 (Fla. 1994). *Jones v. State*, 569 So.2d 1234, 1238 (Fla. 1990).** In light of the fact that aggravators are elements of a death penalty offense, the procedure followed in the sentencing phase must receive the protections required under Florida law and require a unanimous verdict. **See Fla. Stat. s. 921.141(1), (2) (1999).**

Appellant's death penalty violated the minimum standards of constitutional common law jurisprudence because had it been submitted to the jury it still would have been impossible to know whether the jurors unanimously found any one aggravating circumstance beyond a reasonable doubt. Implicit in the state and federal government requirements that a capital conviction must be obtained through a unanimous twelve person jury, is the idea that "death is qualitatively different from a sentence of imprisonment, h owever l ong." ***W oodson v. North Carolina*, 428 U.S. 280, 304 (1976).** The Sixth, Fourteenth, and Eighth Amendments require more protection as the seriousness of the crime and severity of the sentence increase.

A new penalty phase with a new jury is the remedy in this case because no jury heard and found any one aggravating circumstance in support of the death penalty. Nor could it have been determined that they had done so even if the Appellant had not waived his right to a jury penalty phase recommendation.

The Appellant waived his right to a penalty phase jury recommendation because he understood that the lack of compliance of our statute and procedures with the requisites of ***Ring*** and other requirements of Florida law such as jury unanimity gave him less safeguards than for any lesser serious crime. Appellant waived his right to a jury recommendation because four aggravators were being advocated by the state, and with no safeguards to ascertain whether jury findings were unanimous and beyond a reasonable doubt, nor any standards as to how the weighing process was undertaken the process was futile. Our law makes it impossible to ever know whether the jurors could have found unanimously found one or more aggravators proven beyond any reasonable doubt.

Additionally, informing Appellant's decision to waive a jury penalty phase recommendation was his knowledge that in his case *his jury had already been contaminated with an overwhelming amount of collateral crimes evidence* , much of which would not have been admissible in penalty phase.

Appellant therefore demands that the law requires he receive a new penalty phase before a new jury uncontaminated by massive collateral crimes evidence and a new sentencing pursuant to the findings and recommendation of that new jury.

ISSUE THREE

WHETHER THE TRIAL COURT ERRED IN FINDING IT PROVEN BEYOND A REASONABLE DOUBT THAT THESE MURDERS WERE AGGRAVATED BY THE CIRCUMSTANCE THAT THEY WERE COMMITTED IN A COLD, CALCULATED, AND PREMEDITATED MANNER?

ARGUMENT:

The Trial Court in its' sentencing order found that the state had proven beyond a reasonable doubt that these murders were committed by the defendant in a cold, calculated and premeditated manner, without any pretense of moral or legal justification. [R. Vol. 6 P. 967-68]. The Appellant believes that is error.

The Trial Court set forth the rationale of its finding in the order. The Court argued that the victims were carjacked and kidnaped and driven to an isolated area and out into the middle of an orange grove. That there they were shot execution style while standing side by side and then a coup de grace shot was administered. The Trial Court further reasoned that the victims were compliant and that the shots were fired from behind and at close range. The evidence contradicting that finding. The evidence for

the victims compliance being only that they were killed execution style and were found side by side.

In explaining the law it applied the Court stated that the killings were *the product of cool, calm reflection* and was (sic) not an act prompted by emotional frenzy, panic, or a fit of rage. The Court rests that conclusion on the fact *that some period of time elapsed in the drive* from the carjacking site to the grove and that the defendant therefore had a significant period of time to contemplate and consider his alternatives. That is it! That is the evidence the Trial Court relies on.

The Trial Court anticipates one of the weaknesses militating against its' finding by addressing *the massive amounts of mental health mitigation evidence* also presented and proven . The Court concludes ipso facto that the defendant's mental health issues (low I.Q. learning disability, neurological impairment or other mental defects, even in the aggregate) never reached the level of severity that it interfered with **Tavares Wright's** ability to perceive events, or to coldly plan, and by prearranged calculated design carry out the heightened premeditated murders of **David Green** and **James Felker**. [R. Vol. 6 P. 968].

The Court's argument seems to beg the question. Why are these murders accomplished in a **cold** manner? Because they are driven to a remote area and killed execution style. Why are the killings **calculated**? Because the murderers planned to

take the victims to a remote area and kill them execution style. Why are the murders the product of **heightened premeditation**? Because the murderers planned and did in fact take the victims to a remote area and kill them execution style. By that logic any murder wherein the victim is transported to a remote area and shot is, without more, cold, calculated and premeditated. Appellant would challenge the Trial Court's logic. There is no evidence *supporting the conclusion that the defendant planned anything* in advance as opposed to just making sequential decisions based on impulse and responses to the victim's perceived non-cooperation..

Further, there is only the most vague and conflicting evidence of what happened at the scene in the grove leading up to the murders, including testimony that the victims were shot because they "bucked the jack." The evidence of when the intent to kill was formed is also minimal and subject to conflicting interpretations. [R. Vol. 27 T. 4197, 4220-22].

The Trial Court did apply the law relating to **CCP,** but its' analysis is not always clear and the evidence supporting them is non-existent. The Court was obliged to find that the killings occurred *in a state of cool calm reflection.* The only evidence of that the Trial Court finds is the elapse of time during the drive to the grove. There is no evidence tending to prove defendant's actual state of mind during that time. Cold : i.e

a product of **cool calm reflection** cannot be shown by mere lapse of time alone and reach a level of proof of proof beyond a reasonable doubt.

The Court found that the murders were **calculated** because the defendant *had a careful plan or prearranged design to commit murder before the killings occurred.* Again the Court's only supporting evidence is the drive to the orange grove and the execution style killing. There is a complete absence of any evidence to show any kind of calculated detailed plan to commit the murders was conceived and then executed. The "plan to kill" cannot be inferred solely from a plan to commit , or the commission of another felony. ***Geralds v. State*, 601 So.2d 1157, 1163 (Fla. 1992).** The dearth of evidence that defendant made a careful plan or prearranged design to kill makes the Court's finding of **CCP** unsupportable. ***Rogers v. State,* 511 So.2d 526, 533 (Fla, 1987); *Shere v. State*, 579 So.2d 86, 95 (Fla. 1991).**

Finally, the Court found that *the defendant exhibited* **heightened premeditation**, *i.e. premeditation over and above what is required for unaggravated first degree premeditated murder.* Other than inferring such heightened premeditation again from the bare circumstances of the crime itself, that is the drive to the grove and execution style shooting, there is simply no evidence whatsoever of heightened premeditation. Indeed, there is no evidence of defendant's mental state at that time at all. See applications of the tests for **CCP** in ***Buzia v. State,* 926 So.2d 1203, 1214-15**

(Fla. 2006); ***Lawrence v. State*****, 846 So.2d 440, 450 (Fla.** ***2003); Lynch v. State, 841 So.2d 362, 371-74 (Fla. 2003);*** ***Philmore*** **v. State, 820 So.2d 919, 933-34 (Fla. 2002);** ***Guzman v. State*****, 721 So.2d 1155, 1161-62 (Fla. 1998).**

There is a very weighty amount of mental mitigation in this case and it does tend to negate the concept of cold and heightened premeditation in CCP. ***Maulden v. State*****, 617 So.2d 298,302 (Fla. 1993)** both statutory mental mitigators found as well as domestic situation, See also ***Spencer v. State*****, 645 So.2d 377, 384 (Fla. 1994).** The Trial Court here made no meaningful analysis of the evidence of Appellant's profound mental illness and neurological dysfunction on this issue.

The Appellant does not dispute the Trial Court's finding that there was no evidence of defendant having any pretense of moral or legal justification.

The most telling deficiency of the Trial Court's finding of CCP is that all the of the elements of CCP are inferred *solely from the bare facts of the sequence of events themselves* without any evidence of defendant's (as an individual accompanied by a co-defendant) state of mind, involvement in making any kind of plan, intent to kill and the time of its formulation, or interaction with co-defendant or with the victims. There is simply insufficient evidence to determine or infer all of the elements of **CCP** from facts of the drive to the grove and execution-style shooting, let alone to prove them beyond a reasonable doubt.

A second telling weakness of the Trial Court's finding that **CCP** applies is the fact that there is very extensive evidence of defendant's cognitive impairment, and deficits in his impulse control and ability to control or modulate emotional responses. That evidence is reviewed in the statement of facts at length. The Trial Court ignores this evidence completely and arbitrarily and flippantly asserts the unsupported view that such mental health mitigation did not affect the Appellant's mental state in this crime. While there is precedent that a defendant suffering from mental illness can still have the ability to experience cool calm reflection, to make a careful plan to commit murder, and exhibit heightened premeditation. ***Evans v. State*, 800 So.2d 182, 193 (Fla. 2001).** However, the Court asserts that precedent is applicable here without any reasoned evidentiary basis for that conclusion.

In this case the defendant's mental illness was clearly proven. The Court found that *the two statutory mental mitigators applied.* Yet the Court also finds that the defendant's mental illness *did not interfere with defendant's ability* to have the requisite cool calm reflection, calculated plan to kill, and heightened premeditation. Such diametrically opposed conclusions must be based on some kind of independent evidence. We have nothing here but an unsupported conclusion. And there is no factual foundation again except the bare circumstances of the drive to the grove and execution

style killing. This finding is conclusory in nature and consists of circular reasoning over and over again and of unsupported assumptions, not compelling evidence.

Appellant asserts that the Court below erred and abused its discretion in finding that the **CCP** aggravator was proven and entitled to great weight. Appellant requests a new penalty phase before a new and uncontaminated jury and a new sentencing. The error cannot be said to be harmless beyond a reasonable doubt.

ISSUE FOUR

WHETHER THE TRIAL COURT ERRED IN FINDING IT PROVEN BEYOND A REASONABLE DOUBT THAT THESE MURDERS WERE AGGRAVATED BY THE CIRCUMSTANCE THAT THEY WERE COMMITTED FOR THE PURPOSE OF AVOIDING OR PREVENTING LAWFUL ARREST?

ARGUMENT:

The Trial Court found this aggravating factor [**Fla. Stat. Section 921.151 (5)(e)**] and accorded it "great weight."[R. Vol. 6 P. 968-69]. In so finding the Court explained its' rationale. The Court noted that the victims were carjacked and driven to a remote area and shot execution style. The Court opined that the killing was not necessary to the robbery because the victims could have simply been abandoned out there with no immediate prospect of reporting the crime. There was no evidence the victims posed any physical threat to the perpetrators, and no evidence of violent

resistance. The Court claims that the defense "concedes proof of the apparent motive to eliminate a witness.

First, the Appellant differs as to the state of the evidence. There was testimony of **Byron Robinson** that the defendant told him the victims tried to "buck the jack." [R. Vol. 27 T. 4197,4220-4222]. This "bucking" is unspecified resistance to a robbery. There is no specific information in evidence of what the resistance was. A second witness, **Wesley Durant**, testified that Appellant told him the victims "did not cooperate." [R. Vol. 26 T. 3725-28]. This evidence creates a second alternative explanation [other than witness elimination] that the killings were due to some kind of resistance by the victims.

The Trial Court concedes in its Order that in order to find this aggravator when the victim is not a police officer the evidence supporting it *must be very strong and must show that the sole or dominant motive for the murder was the elimination of the witness*, [citing ***Preston v. State*, 607 So.2d 404 (Fla. 1992); *Urbin v. State*, 714 So.2d 411, 415-16 (Fla. 1998) .]**

Second, *the defense did not concede that the aggravator had been proven beyond a reasonable doubt in its argument.* Whatever was said in argument, there was no stipulation to these facts and there could not have been without the consent of the defendant. The aggravator still has to be proven by evidence in this trial. It was not.

The Trial Court *is making inferences from circumstantial evidence* in order to arrive at its' conclusion about defendant's mental state or intent which is, of course, permitted. ***Philmore v. State,* 820 So.2d 919, 935 (Fla. 2002); *Walls v. State*, 641 So.2d 381, 390 (Fla. 1994) .** However, speculation is not sufficient. ***Farina v. State,* 801 So.2d 44 (Fla. 2001); *Parker v. State*, 873 So.2d 270 (Fla. 2004); *Scull v. State* , 533 So.2d 1137, 1141-42 (Fla. 1988).**

The Trial Court here uses *rank speculation* to come up with its conclusion. For example, the Court states that the killing was not necessary because it would have been a considerable time before the victims (if abandoned there alive) could have summoned help or made the cry of alarm. There is nothing in the record about how many homes were in the area (however rural the setting) or its proximity to busy roads. The Trial Court assumes that fact rather than inferring it from the evidence.

The Court also speculates that the victims posed no physical threat to their abductors. The victims were two young healthy adult males and there was no evidence they were bound or restrained, nor injured before the shooting. The evidence of their possible resistance is referenced above. Thus the Court cannot know that they could pose no threat to the perpetrators had there been a confrontation at some point. It is pure speculation.

The Trial Court in its' Order *does not address the identification issue at all here.* Potential identification of the perpetrator by the victim because he is known to that victim is an important factor to be considered. Here we had two total strangers carjacked by the defendants and there is no evidence in the record of whether the perpetrators disguised their identities in any way. ***Consalvo v. State*, 697 So.2d 805, 819 (Fla. 1996); Geralds v. State, 601 So.2d 1157, 1164 (Fla. 1992); *Hoskins v. State*, 965 So.2d 1, (Fla. 2007); *Schoenwetter v. State*, 931 So.2d 857 (Fla. 2006).**

The only circumstantial fact that is in this record that supports the Trial Court's stacked inferences that witness elimination is the dominant motive is *the transporting of the victims* to a remote location. ***Jones v. State*, 748 So.2d 1012, 1027 (Fla. 1999).** That by itself is not enough.

The state must prove this aggravator beyond a reasonable doubt. Here the evidence supporting the Trial Court's inferences *is entirely circumstantial.* There is no direct evidence of intent or motive beyond robbery and car theft. When there are as here *two alternative inferences* that may be drawn from the evidence, in order to satisfy the requisite burden of proof, the circumstantial evidence must be inconsistent with any reasonable hypothesis which might negate the aggravator. ***Eutzy v. State*, 458 So.2d 755, 758 (Fla. 1984) cert. den. 471 U.S. 1045, 105 S. Ct. 2062, 85 L. Ed. 2d 336 (1985); *Geralds* id. at 1163-64..** The Appellant's hypothesis was that the victims

"bucked the jack" and that their murders occurred in a confrontation of some kind. That has not been rebutted. See by contrast, **Buzia v. State, 926 So.2d 1203, 1210-11 (Fla. 2006),** wherein this aggravator was properly found when the circumstantial evidence relied on by the court was bolstered by direct evidence in the form of statements of the defendant to the investigators.

The Appellant urges that the state simply did not prove this aggravating circumstance beyond a reasonable doubt and the Trial Court erred in finding and weighing it. This error is not harmless and a new penalty phase before a new jury and new sentencing should be required.

CONCLUSION

Wherefore, the Appellant prays this Honorable Court to grant the relief requested above based upon the facts, reasonable argument, and authorities set forth therein. The Appellant seeks to have this Court set aside the verdict of guilty in this cause and grant a new trial and/or reverse the sentences of death in this case and to grant a new penalty phase with a new jury and a resentencing.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this document was furnished by regular U.S. mail to the Office of the Attorney General, Criminal Appeals Division, Department of Legal Affairs, Concourse Center 4, 3507 E. Frontage Rd., Suite 200, Tampa, Florida 33607-7013, on this 13th day of November, 2007.

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CERTIFICATE OF COMPLIANCE

I, the undersigned counsel, BYRON P. HILEMAN, do hereby certify that the local rules regarding the use of fonts, spacing, and format have been complied with in this brief.

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