IN THE SUPREME COURT OF FLORIDA

THOMAS BEVEL,

Appellant,

v. CASE NO. SC05-2213

STATE OF FLORIDA,

Appellee.
_____/

ON APPEAL FROM THE CIRCUIT COURT
OF THE FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY, FLORIDA

ANSWER BRIEF

BILL MCCOLLUM
ATTORNEY GENERAL

RONALD A. LATHAN, JR.
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR NO. 0018477
OFFICE OF THE ATTORNEY GENERAL

THE CAPITOL
TALLAHASSEE, FL 32399-1050
(850) 414-3300, EXT. 3580
COUNSEL FOR THE STATE

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PRELIMINARY STATEMENT

Appellant, THOMAS BEVEL, the defendant in the trial court will be referred to as appellant or by his formal name. Appellee, the State of Florida, will be referred to as the State. The transcript from the trial, penalty phase hearing, and sentencing hearings will be denominated by a “T.” followed by the relevant page number. References to the appellate record, which also encompasses the transcript from the motion to suppress hearing will be denominated by an “R.” followed by the relevant page number.

SUMMARY OF FACTS

In the early morning hours of February 29, 2004, Thomas Bevel used an AK-47 rifle to murder his roommate, Garrick Stringfield. Bevel also shot Feletta Smith who had been laying next to Stringfield. As Bevel was about to leave Stringfield's house with his girlfriend Rohnika Dumas, Bevel shot Stringfield's thirteen year old son, Philip Sims, while he was sitting on a sofa. Bevel remained in hiding until he was arrested on March 27, 2004. Following the recitation of Miranda warnings, Bevel gave law enforcement multiple versions of what had transpired at Stringfield's home. At times during

the interrogation he inculpated others, and, at times he seemed to inculpate himself.

Bevel was eventually charged with the first degree murders of Garrick Stringfield and Philip Sims, as well as with the attempted first degree murder of Feletta Smith. Bevel was found guilty as to all three counts against him and was sentenced to death for the first degree murders Stringfield and Sims; and he was sentenced to life imprisonment for the attempted first degree murder of Smith. This direct appeal followed.

STATEMENT OF THE FACTS AND OF THE CASE

Sojourner Parker was called to testify. Parker had a previous relationship with Garrick Stringfield; the relationship produced a child named Philip Sims (T. 466). Philip Sims was shot and killed in Stringfield's home in the early morning hours of February 29, 2004; Sims was thirteen years old (T. 466) . Parker was aware that Stringfield had a roommate named Thomas Bevel (T. 467). Parker was also aware that Bevel was known by the nickname "Tom Tom" (T. 467). Parker testified that Stringfield referred to Bevel as his "nephew" (T. 467). Parker acknowledged that she observed Bevel and Stringfield together on several occasions (T. 467-68). Parker dropped her son off at Stringfield's home on the

evening of February 28, 2004 (T. 469-70). When the child was dropped off, Stringfield was not in the home – however Bevel was there (T. 470).

Parker was cross-examined. She provided that she would not have allowed her son to stay at Stringfield's home if she believed that it would have been unsafe (T. 472). Parker stated that she had never had any personal problems with Bevel (T. 472).

Kenitra Bonner was then called to testify. Bonner was a neighbor of Stringfield's (T. 475), and had known him for approximately six months (T. 476). Bonner stated that she also knew Bevel (T. 477). Bonner knew Bevel by his nickname "Tom Tom" and was told that Bevel was Stringfield's "nephew" (T. 478). Bonner provided that Bevel would refer to Stringfield as "Unc," short for uncle (T. 478). Bonner stated that she was friendly with both Stringfield and Bevel (T. 479). Bonner testified that she went over to Stringfield's house for a few minutes on the evening of February 28, 2004 (T. 479). Bonner did not sense any animosity between Stringfield and Bevel that evening (T. 480).

On cross-examination, Bonner acknowledged that she was Stringfield's girlfriend; additionally, Bevel had also expressed a romantic interest in Bonner (T. 483). Bonner was

aware that Stringfield possessed both a .45 caliber handgun as well as a rifle (T. 483). Bonner stated that she never saw Stringfield and Bevel angry with one another (T. 484). Bonner stated that Stringfield's home had burglar bars on the doors and windows (T. 484). Bonner testified that she did not believe that Stringfield was a drug dealer (T. 485); and she could not recall her previous deposition testimony wherein she had suggested that Stringfield did indeed sell drugs (T. 486). Bonner also asserted that she had been brought in for questioning regarding the murders (T. 488).

The State called Marie Jones to testify. Jones was Stringfield's neighbor, and she recalled a loud ruckus emanating from the Stringfield's home in the early morning hours of February 29th, 2004 (T. 499). She heard gunshots coming from the home (T. 502-03). Jones testified that she was previously acquainted with Bevel (T. 503). The last time Jones saw Bevel was on the night of the shooting (T. 503-04).

On cross-examination, Jones stated that she was awoken by the shooting and commotion that she heard next door (T. 505).

On redirect examination, Jones stated that the only individuals that she saw on that evening, other than her husband, were Stringfield and Bevel (T. 506).

Feletta Smith was then called to testify. Smith knew

Bevel from her youth (T. 508-09). She stated that Bevel was merely an acquaintance and that he was known by the nickname of “Tom Tom” (T. 510). Smith stated that she also knew Stringfield growing up, and that he was referred to as “Rick” (T. 510). She stated that while she was acquainted with Stringfield prior to February 28, 2004, she had never been out on a date with him before that evening (T. 511). Smith had on occasion previously seen Stringfield and Bevel together (T. 511). Bevel referred to Stringfield as “Unc” and Stringfield referred to Bevel as either “Tom” or “nephew” (T. 512). On February 28, 2004, Smith attended a street parade with some of her family members (T. 512-13). Smith saw Stringfield at the parade; the two exchanged phone numbers and made plans to see one another later that evening (T. 513). Smith also testified that she saw Bevel at the parade and had a brief conversation with him (T. 513). Bevel apparently told Smith that Stringfield was romantically interested in Smith (T. 514). Smith eventually left the parade and went to her grandmother’s house for a few hours until she received a telephone call from Stringfield (T. 515-16). Smith and Stringfield agreed to first meet at a Wal-Greens, and then Smith would follow Stringfield to his home (T. 517). When she arrived at Stringfield’s home, she was introduced to Stringfield’s son

Philip Sims (T. 519). Smith also noted that Bevel and Sims were playing video games on the sofa in the living room; Stringfield joined them shortly thereafter (T. 520). Eventually Stringfield and Smith exited the living room and went to Stringfield's bedroom (T. 523). She noticed a large gun underneath Stringfield's bed; Stringfield called Bevel and asked him (Bevel) to remove the firearm from the bedroom (T. 523). Smith testified that the gun was taken out of the bedroom by Bevel (T. 524). Smith and Stringfield remained in the bedroom, and proceeded to have sexual relations (T. 524). At approximately 2:00 or 3:00 that morning, Smith heard a knock on the door from Bevel (T. 525). According to Smith, Bevel asked Stringfield to open the bedroom door (T. 525). Smith testified that once Stringfield opened the door, Bevel shot him several times; Smith was also shot by Bevel (T. 526). Smith said she began to scream, but stopped and played dead once Bevel told her "Bitch, shut up" (T. 527). She then laid on the bed, and heard a car speed away (T. 527). She felt a burning sensation throughout her body (T. 528). Smith was finally able to call 911 and was taken to the hospital (T. 530). Smith provided that as a result of being shot, her left hip was broken, as was her right femur; and she was still undergoing reconstructive surgeries as a consequence of the

shooting (T. 531). Smith testified that she got a good look at the individual who did the shooting and he was wearing exactly the same outfit as Bevel was wearing (T. 532). She acknowledged that she initially told police that two masked individuals had broken into the home and had done the shooting; she testified that she made up this story because she was fearful for her family – and did not want to get involved (T. 533).

Smith was cross-examined. She affirmed that she was familiar with Bevel because she knew him from the neighborhood (T. 536). She acknowledged that she told officers who had initially arrived on the scene that the shootings had been perpetrated by two masked gunmen (T. 537). Smith stated that she did not remember telling others that she was uncertain as to who shot her (T. 538). Smith testified that when she went into Stringfield's bedroom, he removed a rifle from underneath the bed (T. 540). She also noticed a .45 caliber semiautomatic weapon on Stringfield's nightstand (T. 540). She testified that she did not see Stringfield and Bevel arguing with one another at the block party earlier that day (T. 542). She stated that when she arrived at the house, Stringfield and Bevel were drinking gin, straight with no chaser; Smith stated that she drank a small quantity of gin and pineapple juice (T.

543). Smith testified that Stringfield removed the rifle from underneath the bed and gave it to Bevel, ostensibly because Smith appeared scared on the weapon (T. 545). Smith stated that she had not entirely fallen asleep when the she heard a voice say “Unc, open up” (T. 549). According to Smith, when Stringfield opened the door, Bevel appeared in the doorway (T. 550). Smith testified that she did not remember telling officers that she saw another man along with Bevel (T. 551).

Dr. David Crumbie, an orthopedic surgeon from Shands Hospital in Jacksonville was called to testify (T. 555). Crumbie described the extent of Feletta Smith’s injuries; he had been was responsible for treating her (T. 559). Crumbie described Smith’s injuries in extensive detail, and the measures that were undertaken treat her (T. 560-70).

On cross-examination, Crumbie conceded that Smith’s injuries were not life threatening, but could have been had she not been taken to the hospital (T. 571). Crumbie agreed that Smith’s injuries could have affected her mental state (T. 572).

Frederick Fillingham was called to testify. Fillingham was a patrolman with the Jacksonville Sheriff’s Office (T. 575). Fullingham had been called to respond to the shootings at Stringfield’s residence (T. 576).Fillingham entered the

home in the early morning hours of February 29, 2004 (T. 582). Upon entering Stringfield's home, Fillingham observed an unresponsive black male on the couch (T. 578). Fillingham continued through the house and he observed a large pool of blood coming from Stringfield's bedroom (T. 580). Fillingham then observed another black male laying in a doorway surrounded by blood (T. 580). Fillingham also observed a black female in the bedroom as well; she was screaming for help (T. 580).

Fillingham was cross-examined. He acknowledged that he had not torn off the wrought iron doors on Stringfield's home; and Fillingham was not the only officer who was present in the home (T. 587).

Dr. Jesse Giles was called to testify; Giles was employed as a forensic pathologist (T. 593). Giles worked within the Fourth Judicial Circuit's Medical Examiner's Office (T. 594). Giles estimated to performing more than 3300 autopsies (T. 595). Giles testified that he believed that Philip Sims had been killed by a "high velocity perforating gunshot wound to the head" (T. 596). Sims injuries could have been caused by a high velocity rifle (T. 613). Giles believed that the head wound that Sims suffered would have likely rendered him immediately unconscious (T. 614).

Giles was cross-examined. Giles did not believe Sims endured any pain (T. 615); nor did Giles believe that Sims' wounds were defensive (T. 616).

On redirect examination Giles testified that Sims was conscious while he was shot twice (T. 626).

Aurelian Nicolaescu, an Associate Medical Examiner for the Fourth Judicial District was called to testify (T. 635). Nicolaescu performed the autopsy of Garrick Strickfield (T. 637). Nicolaescu testified that Stringfield had been shot one time in the left cheek (T. 638). Nicolaescu could not give an exact estimate as to how long he believed Stringfield lived after being shot; he estimated that it could have been "seconds to minutes" (T. 643). Nicolaescu did not observe any other injuries to Stringfield (T. 644).

Nicolaescu was cross-examined. Nicolaescu affirmed that Stringfield was felled by a single shot to his left cheek that exited out the back of his neck; this shot hit both an artery and vein (T. 645). Nicolaescu approximated that the weapon was fired between 12 to 18 inches from Stringfield (T. 646). Nicolaescu testified that evidence did not demonstrate any defensive wounds on Stringfield's person, nor was there evidence of a struggle between Bevel and Stringfield (T. 647).

Nicolaescu was again questioned on redirect. He

testified that the presence of defensive wounds would have indicated that Stringfield had forewarning about being attacked (T. 649-50).

Rohnika Dumas was called. Bevel was the father of the youngest of her three children (T. 652). She stated that Bevel went by the nickname “Tom Tom” (T. 654). Dumas testified that she did not know where Bevel had been residing around the time of the murders (T. 652). Dumas stated that she had known Stringfield for about four years (T. 654). She stated that Bevel referred to Stringfield as “Unc”; and Stringfield referred to Bevel as “Tom Tom” or “nephew” (T. 655). On the evening of February 28, 2004 Dumas had gone to nightclub with a friend (T. 656). She stated that she received a telephone call from a friend named “Meka” (T. 656). Meka arranged a three-way telephone call with Bevel; he wanted Dumas to meet him (T. 657). Dumas took a cab and arranged to meet with Bevel at a BP gas station (T. 657-58). Bevel drove up in Stringfield’s car, and Bevel and Dumas drove back to Stringfield’s home (T. 658). First however, Bevel stopped at a bar where he picked up a bottle of gin (T. 660). Bevel and Dumas then drove to Stringfield’s home (T. 660). Dumas stated that when she entered the home she saw a child (Sims) watching television (T. 662). She testified that Bevel and Stringfield

went outside to have a brief conversation, and then came back inside (T. 663). Dumas also became aware that another female (Smith) was inside Stringfield's home; Dumas indicated that she later heard the female and Stringfield having sexual relations (T. 664). Dumas testified that she was aware that Bevel had a rifle with a banana clip, and that Stringfield had a handgun (T. 666). Dumas stated that she and Bevel were in a bedroom that was in relative close proximity to the bedroom Stringfield and Smith were in (T. 666). Dumas provided that Bevel left the bedroom they were sharing, and he was carrying a rifle (T. 667). Dumas then heard Bevel knock on Stringfield's bedroom door and call out "Unc, look here" (T. 667). Dumas then heard multiple gunshots (T. 667). Dumas testified that she then heard a woman screaming, and Bevel yelling "Bitch, shut up" (T. 668). Dumas and Bevel then left the home and went to Dumas' house (T. 668). Bevel was driving and he brought the rifle with him (T. 669). Dumas testified that as she and Bevel were driving away, Bevel tried to kill himself (T. 669) According to Dumas, Bevel placed a gun underneath his chin and stated that he "didn't mean to do it" (T. 670). Dumas further testified that Bevel expressed remorse, and told Dumas that the reason he killed the child (Sims) was because Bevel was fearful that Sims would be a

witness (T. 672). Dumas stated that Bevel locked the burglar bars of Stringfield's home once they exited the home (T. 674). On the morning of February 29, 2004, Bevel stayed in Dumas' apartment (T. 674). She was initially reluctant to cooperate with police because she feared for her family, however she eventually was contacted by the police on March 28, 2004, and she provided a sworn statement to law enforcement (T. 674). Dumas conceded that when she was first interviewed by police, she was not fully truthful; however, she did eventually tell police the truth (T. 675). While he was incarcerated for the shooting deaths of Sims and Stringfield, Bevel wrote Dumas letters (T. 679). In the letters, Bevel addressed Dumas as "Wifie" (T. 679). In one of the letters, Bevel told Dumas not to admit anything, and that Dumas would serve as his alibi (T. 679-80). Dumas conceded that in the letters, Bevel was attempting to get Dumas to lie about what she had witnessed at Stringfield's home (T. 689). Dumas read another letter wherein Bevel pleaded with Dumas to recant her inculpatory statement about Bevel; he urged Dumas to say that some unknown individuals were actually involved in the murders (T. 690). Bevel's letter to Dumas further stated that Dumas' statement to the police was the only evidence that linked Bevel to the shootings, and if she would simply recant her story, the

prosecution would have very little evidence against him(T. 691). Bevel's letter implored Dumas to think about their child (T. 691). Dumas also conceded that subsequent to the shootings, she had been arrested for purchasing marijuana from a law enforcement officer on July 30, 2005(T. 692).

Dumas was cross-examined. Dumas asked about the fact that she

had also been charged with battery on a law enforcement officer (T. 693-94). Dumas admitted that she initially lied to the police about the shootings (T. 696). In Dumas' initial conversations with police she falsely stated that she had not realized that Bevel was a suspect in the shootings until she saw something about it on television (T. 697). Dumas stated that, prior to receiving Bevel's letters from prison, law enforcement had threatened to take away her children (T. 698) She conceded that she was fearful that she would be implicated as an accessory to the murders (T. 699). Dumas believed that had she not eventually made an inculpatory statement regarding Bevel's responsibility for the two murders, she would have been charged and her children would have been taken from her (T. 700). Dumas stated that Stringfield had sold drugs (T. 702). She testified that she did not see Bevel shoot anybody (T. 702). She heard Bevel state, "Unc, open the door" and

then a succession of shots immediately thereafter; after hearing the shots Bevel and Dumas fled (T. 703). Dumas stated that at the time of the shooting, she had consumed a six-pack of beer (T. 704). She testified that her drinking did not compromise her ability to perceive the events that took place on the night of the shooting (T. 705). Dumas also acknowledged that on the night of the shooting she had consumed a cup of gin; and earlier that same evening she had smoked marijuana at the nightclub (T. 706). Dumas affirmed that Stringfield had enemies (T. 710). Dumas stated that when she fled with Bevel, neither she nor Bevel locked the burglar doors attached to Stringfield's house; moreover, Dumas did not notice any blood on Bevel's person (T. 711).

Dumas was queried on redirect. She stated that she when she gave a sworn statement to prosecuting attorney on March 28, 2004, she had not been threatened and her answers were truthful (T. 715). She also testified that she not been threatened when she provided a sworn statement on April 20, 2004 – wherein she had discussed the substance of Bevel's first letter to her (T. 715). She testified that despite being threatened with losing her children, she told law enforcement the truth (T. 722).

Detective Mark Doyle of the Jacksonville Sherriff's

department was called to testify. Doyle testified that for the last fifteen years he has worked in the detective division as an evidence technician (T. 726). He arrived at Stringfield's residence at 5:00 a.m. on February 29, 2004 (T. 727). Doyle stated that he and individuals working under him took approximately 400 pictures of the crime scene (T. 728). Doyle was asked a series of questions regarding photographs that were taken of the crime scene; he was also asked about the manner in which fingerprints were lifted (T. 728-759). Doyle was further asked about the totality of evidence that was recovered from Stringfield's home, including, numerous live gun rounds found in the house (T. 762-63).

Doyle was cross-examined. He was asked about the process for lifting fingerprints (T. 777-79). Doyle was asked about the nature of evidence that was discovered at the crime scene, including shell casings found in the home (T. 782-85). Doyle also acknowledged that there was a great deal of ammunition that was recovered from Stringfield's nightstand (T. 791-92).

Doyle was briefly examined on redirect. He was asked about $1500 that was recovered from an electrical box in Stringfield's home. Doyle stated that he was not the detective that had made the discovery of the cash (T. 796).

Detective Ronald Davidson, an evidence technician with

the Jacksonville Sheriff's Department was called to testify.[1] Davidson had been employed with the Jacksonville Sheriff's Office for fifteen years and his duties included processing evidence at crime scenes (T. 800). Part of his responsibilities entailed looking for latent fingerprints (T. 806). Davidson had responsibility for analyzing latent fingerprints found on Stringfield's 1994 Ford Crown Victoria (T. 807).

Davidson was cross-examined. He acknowledged that he lifted thirteen fingerprint from the automobile (T. 811). Davidson was queried about the fingerprints (T. 812-15). Davidson did not find any bloody fingerprints on the vehicle (T. 818).

Davidson was questioned on redirect (T. 819). He stated that he did not recover any latent fingerprints from within the car, and he was not responsible for any additional investigation that was conducted within the car (T. 819).

The State called Richard Kocik. Kocik was employed by the Jacksonville's Sheriff's Office, in the crime laboratory's latent print unit (T. 821). He testified that he had been employed with the Jacksonville Sheriff's Office for almost six

[1] By stipulation of the parties, Davidson's deposition testimony was read to jury.

years (T. 821). Kocik noted that his responsibilities entailed analyzing crime scene evidence, which includes analysis of fingerprint evidence(T. 821). Kocik was tendered as an expert (T. 825). His testimony incorporated, among other matters, discussion regarding the recovery of fingerprints (T. 830-36).

Kocik was cross-examined. He testified that one of the fingerprints – from the back window passenger side door – had been lifted from the crime scene but could not be identified (T. 843).

On redirect, Kocik stated that the lack of identification for the one latent print simply meant that the individuals with whom he compared the print to, did not match (T. 844).

Charlotte Allen was called. Allen was employed by the Florida Department of Law Enforcement; her duties included analyzing physical evidence for the presence of latent fingerprints; she also wrote reports detailing her findings (T. 846). She was tendered as an expert witness (T. 847). She noted that there were no latent fingerprints on shell casings that had been admitted into evidence (T. 850).

Allen was cross-examined (T. 851). She acknowledged that, nothing had occurred in the handling of the shell casings that caused there to be an absence of fingerprints (T.

852).

Thomas Pulley, a crime laboratory analyst with the Florida Department of Law Enforcement was called to testify (T. 854). His duties included, among other matters, examining fired bullets to determine whether they were discharged from a particular firearm; he testified that he also examined firearms to determine whether they were working properly; and he would sometimes examine clothing to determine if gun residue was present (T. 855). He was tendered as an expert in ballistics evidence (T. 856). Pulley explained the mechanics of how a cartridge is fired from a weapon, such as an AK-47 rifle (T. 859-60, 862-63). Pulley provided that he was able to determine that seven cartridge casings found at the crime scene all derived from the same firearm (T. 864).

Pulley was cross-examined. He stated that the shell casings suggested that they were fired from an AK-47 rifle (T. 873).

Detective David Coarsey of the Jacksonville Sheriff Office was called. Coarsey advised that he was a homicide detective (T. 896). He was the lead detective regarding the murders of Stringfield and Sims, and the attempted murder of Sims (T. 896). Coarsey stated that he first came in contact with Bevel on March 27, 2004 at approximately 10:50 p.m. in an

interview room (T. 898). Bevel was advised of his *Miranda* rights (T. 900-01). According to Coarsey, Bevel did not appear to be under the influence of any narcotics (T. 903). Bevel told officers that he had been staying with Rohnika Dumas in the days preceding his arrest (T. 904). Coarsey testified that during his interview of Bevel, he asked, and Bevel affirmed, that he (Bevel) had been present at the street parade/festival that took place on February 28, 2004; in addition, Stringfield and Bevel left the parade together; Stringfield and Bevel also drove off in Stringfield's White Crown Victoria (T. 906-07). Stringfield and Bevel eventually reached Stringfield's home; Stringfield told Bevel that he had to make a brief stop and wanted Bevel to remain at the house because Stringfield's son, Philip Sims, was due to arrive (T. 908). Sims was dropped off by his mother at Stringfield's home, but because Stringfield was not there, Bevel watched the child and the two played video games (T. 908). Apparently, Stringfield later returned to the house, now accompanied by Feletta Smith (T. 909). Bevel then explained to Coarsey that he called Rohnika Dumas to pick him up at Stringfield's house; according to Bevel, Dumas picked him up in her Oldsmobile (T. 911). Bevel told Coarsey that when he left Stringfield's house, several people remained in the home: Stringfield, Sims,

Smith, and an unknown individual named “Papa” (T. 912). Bevel told Coarsey that “Papa” lived with Stringfield (T. 912). Bevel further informed Coarsey that he called Stringfield “Unc” (T. 912). According to Coarsey, Bevel stated that Stringfield was a paranoid individual who often carried a firearm (T. 913). Bevel told Coarsey that he (Bevel) was not aware that Stringfield possessed an assault rifle; however Bevel did claim to see – what appeared to be – a .9 mm handgun in the house (T. 913). Bevel opined to Coarsey that he did not become aware of Stringfield’s murder until he saw a television news report about it (T. 914). According to Coarsey, he (Coarsey) then told Bevel that Feletta Smith had not died and had implicated Bevel in the shootings (T. 915). Bevel told Coarsey that he was not involved in the shootings and that he had not been in hiding (T. 915). Apparently, Coarsey then informed Bevel that Feletta Smith specifically inculpated him for the murders (T. 917). Later Bevel expressed to Coarsey that he had not committed the murders, but nevertheless believed that he was going to be charged for committing them (T. 919). When Coarsey asked for Bevel’s help regarding the identity of Stringfield and Sims murderer, Bevel stated that he did not know who was responsible for the shootings (T.920). During the interview, Bevel stated that Stringfield had never

handed Bevel an assault rifle on the night of the murders (T. 921). When Bevel was asked what time he had left with Rohnika Dumas' prior to the shootings, Bevel responded that Dumas was not his alibi and that she did not have any knowledge regarding the events that took place at Stringfield's home (T. 921). Bevel was informed that law enforcement was still required to talk with Dumas to determine if she knew anything about the murders (T. 922). Coarsey stated that he first interviewed Rohnika Dumas on March 28, 2004 at 6:30 p.m.; she provided a sworn statement (T. 923).

Coarsey was cross-examined (T. 924). Coarsey provided that Bevel was in continuous police custody for 20 hours, beginning on March 27, 2004 at 10:50 p.m.; a second recap interview of Bevel was conduced by two other detectives on March 28, 2004 at 8:25 p.m. (T. 925). Detective Coarsey conceded that the entirety of the interview was not video recorded (T. 927). The failure to record the entire statement, including his recitation of Bevel's Miranda rights was in accordance with the Jacksonville Sheriff Office's policies(T. 927-28). More specifically, the only statement that had been recorded by law enforcement was the recap interview that took place on the evening of March 28, 2004 (T. 928).Coarsey explained that oftentimes during police interrogations, what

will occur is that if an individual is initially being interviewed, the suspect will not be videotaped – but notes will be taken; thereafter, a recap interview would take place – which would be recorded – and officers would ask questions derived from notes taken during the course of the initial interview (T. 945-46, 948-49). Coarsey did not believe that Bevel was tired during the course of the interrogations (T. 930). Coarsey was present when evidence technicians went through Stringfield's house to take pictures of the crime scene (T. 933). Coarsey was aware that a .45 caliber pistol had been discovered in Stringfield's bedroom(T. 933). Coarsey acknowledged that when he first interviewed Feletta Smith on March 1, 2004, she never stated that she saw Bevel shoot her (T. 935). Coarsey acknowledged that he again went to Smith on March 9, 2004 to clarify some statements she had made to another officer regarding the identity of the individual who shot her and Stringfield (T. 936). Coarsey affirmed that in Smith's call to 911, she did not state that Bevel was the shooter; apparently she was in pain and distraught when the call was made (T. 936-37). Smith told Coarsey that she could not understand why Bevel would have shot both Stringfield and herself (T. 937). Coarsey had determined that the .45 caliber handgun that had been found in Stringfield's home had belonged

to a friend of Stringfield's named Mark Carlton (T. 939).

On redirect examination Coarsey affirmed that on March 1, 2004 during an interview of Feletta Smith, she stated that on the night of the shootings she heard a knock on Stringfield's bedroom door and a voice called out stating, "Unc, open the door" (T. 950). Smith also told Coarsey that she then heard a gunshot and saw Stringfield fall to the ground; Bevel then cursed at Smith and shot her(T. 950). Smith told Coarsey that she was able to see Bevel shooting her, and she could identify what Bevel was wearing on the night of the shooting (T. 951). Coarsey also interviewed Smith on March 9, 2004, to clarify some contradictory statements that she made to another officer; Smith again told Detective Coarsey that Bevel was the perpetrator of the shootings(T. 952).

Detective Mitch Chizik was called to testify. Chizik was employed by the Jacksonville Sheriff Office's Homicide Unit (T. 963). Chizik had been assigned to the Stringfield investigation and first came into contact with Bevel on March 27, 2004 (T. 963). Bevel was advised of his constitutional rights (T. 965). Chizik provided that Bevel had initially stated that he was not involved in the murders; and Bevel used Rohnika Dumas as an alibi (T. 966). Chizik stated that during the course of the interview with Bevel, Chizik established a

better rapport with Bevel than Detective Coarsey had(T. 967). Consequently, Detectives Coarsey and Chizik decided that it would be more prudent to have Chizik interview Bevel one-on-one (T. 967). Chizik testified that he proceeded to ask Bevel questions surrounding the circumstances that took place at Stringfield's house; Chizik recounted his interview with Bevel (T. 968). Bevel expressed remorse for the death of thirteen year old, Philip Sims (T. 968). Bevel then told Chizik another version of events (T. 968). Bevel claimed that two unknown masked gunmen approached him as he was entering Stringfield's home (T. 969). According to Chizik, Bevel claimed that the masked gunmen entered the home and immediately spotted an assault rifle behind the front door, which belonged to Stringfield; the gunmen then looked for Stringfield, saw him in the his bedroom and opened fire (T. 969-70). Chizik had Bevel recount the story again in greater detail (T. 971-75). Bevel told Chizik that after the unknown men committed the murders they jumped into a car that was waiting outside for them – and left; Bevel stated that he exited the home and drove off in Stringfield's car (T. 975). Bevel had no explanation as to why the alleged masked "gunmen" chose to kill a thirteen year old child, Sims, but allowed Bevel to live; moreover Bevel stated that he did not call 911

because he was frightened (T. 978). Bevel admitted that he had lied when he had earlier told detectives that an individual named “Papa” was present at Stringfield’s home (T. 979). Chizik video recorded his recap conversation with Bevel; this was then played for the jury; in the video Bevel explained in significant detail his version of what had transpired at Stringfield’s house on the night of the shooting, including his assertion that two unknown assailants murdered Stringfield and Sims, and shot Smith (T. 982 - 1000,1006-18). Chizik affirmed that his initial interview with Bevel began at 10:53 p.m. and ended approximately four hours later at 3:00 a.m. (T. 1022). Chizik stated that he again came in contact with Bevel later that evening, at about 7:20 p.m. (T. 1023). At that time, Chizik informed Bevel that his girlfriend, Rohnika Dumas, told law enforcement that she had been at Stringfield’s home on the night of the shootings (T. 1024). Bevel then discussed the nature of his relationship with Stringfield (T. 1024). Bevel told Chizik that he had been warned that Stringfield might try to kill him (T. 1025). Bevel conceded to Chizik that he had shot Stringfield; but Bevel asserted that he had not intentionally killed Feletta Smith; and Bevel claimed that Stringfield had threatened Bevel in the hours preceding the murders (T. 1026).

Bevel related that at some point during the evening Stringfield took an AK-47 rifle and placed it on a loveseat (T. 1027). Bevel told Chizik that on evening of the murders, Stringfield and Bevel had engaged in an argument - wherein Stringfield threatened Bevel's life; Bevel further asserted that he and Stringfield got into an argument regarding Rohnika Dumas (T. 1028-29). According to Bevel's account of events, the two men continued to quarrel; Bevel claimed that Stringfield then sought a clip for his .45 caliber handgun and went to his bedroom; according to Bevel's new account he followed Stringfield into bedroom and shot him (T. 1029). Bevel explained that the bedroom was dark, and that it was not his intention to shoot Feletta Smith (T. 1030). Bevel further explained to Chizik that he shot and killed Sims because the child would have been able to identify him (T. 1030). Bevel told Chizik that he then left the home accompanied by his girlfriend, Rohnika Dumas (T. 1031). A video recap of the interview was then played for the jury (T. 1033-1061).

Chizik was cross-examined. Chizik acknowledged that Bevel appeared tired in the second recap interview; he noted that Bevel had been on suicide watch; and Bevel had been in custody from the time of his first interview (T. 1063). Chizik affirmed that during Bevel's first interview with law

enforcement he told them that two masked individuals had committed the murders (T. 1067-68). Chizik testified that he did not purposefully attempt to establish a good rapport with Bevel (T. 1068-70). Chizik did not believe that Bevel had been in contact with any inmates in the period between his first and second interviews, nor did Chizik believe that Bevel had been privy to any police reports about the case in the interim between the first and second interviews (T. 1072). The State of Florida rested.

Bevel called Officer Kenneth Bowen of the Jacksonville Sheriff Office's Canine Unit (T. 1079). Bowen testified that on February 29, 2004, he was dispatched to a home where a shooting had taken place; after some initial difficulty he found the home (T. 1079-80). He spoke with Feletta Smith through a window; she related that she had been shot and that she believed that her boyfriend (Stringfield) was dead (T. 1081). Because burglar bars were affixed to the doors of Stringfield's home, a fire and rescue squad was called in order to open the doors (T. 1081). When Bowen entered the home he saw a black male (Sims) lying on the couch; he appeared to be dead; Bowen continued looking throughout the house and saw another black male (Stringfield), who was slumped over, lying in a back bedroom and was surrounded by

blood (T. 1089). Bowen also observed Smith, who was lying on a bed and had been shot (T. 1082). When Bowen approached Smith and asked her what had occurred, she stated that two masked men were responsible (T. 1083).

Bowen was cross-examined. Bowen stated that he was speaking with Smith as she was being attended to by the fire and rescue squad (T. 1085). Bowen said that Smith sounded as though she was in shock (T. 1087). Bowen testified that because Smith was severely injured, it was somewhat difficult to get her to focus her full attention on Bowen (T. 1087-88).

On redirect examination, Bowen conceded that he had not forced Smith to state that two masked individuals were responsible for the shootings (T. 1088).

Bevel then called Feletta Smith's mother, Francis Smith, to testify. Francis Smith testified that when she was with Feletta while she was recuperating in the hospital, Bevel's brother, Antorio McCray, came to visit and ask about the circumstances of the shootings; Feletta Smith told Antorio McCray that a masked individual had shot her (T. 1091).

On cross-examination, Francis Smith stated that she had not asked Feletta the specifics about what had taken place in Stringfield's home (T. 1092). Francis Smith stated that Antorio McCray visited Feletta's hospital room a day or so

after she had been shot (T. 1093). Francis Smith asserted that both she and her daughter were scared when Antorio McCray was questioning Feletta about the shootings (T. 1093-94).

Bevel next called Kenitra Bonner. Bonner testified that she had a conversation with Feletta Smith during the recess of a federal trial, and Feletta allegedly told Bonner that she (Feletta) was unable to see who had actually shot her (T. 1096).

Bonner was cross-examined. Bonner stated that she had never met Feletta Smith prior to their encounter in the federal courthouse (T. 1099). Bonner testified that Feletta Smith did not know if Bonner was an acquaintance of Bevel's (T. 1099). The defense rested.

On August 26, 2005 the State presented its closing arguments (T. 1112-1145, 1165-1183); as did Bevel (T. 1145-1164).

On August 26, 2005 the jury found Bevel guilty of first degree murder for the deaths of Garrick Stringfield and Philip Sims (T. 1243). The jury also found Bevel guilty of attempted first degree murder as to the shooting of Feletta Smith (T. 1244).

PENALTY PHASE HEARING

Bevel's penalty phase hearing commenced on September 6,

2005. The State called Detective Larry Kuczkowski of the Jacksonville Sheriff's Office (T. 1279). Kuczkowski worked within the Robbery Division. He previously had investigated a crime Bevel had been involved with that occurred on October 20, 2002 (T. 1280). Kuczkowski noted that Bevel apparently was in a drug dispute, pulled a firearm on the victim, and pointed it at his head (T. 1281-82). Police were called; Bevel attempted to flee and was arrested; the firearm that he was allegedly carrying turned out to be a loaded .38 caliber handgun (T. 1283). Bevel was arrested for armed robbery with a firearm (T. 1285).

Kuczkowski was cross-examined. He conceded that the victim of the 2002 attempted robbery and Bevel were acquaintances (T. 1286). Kuczkowski further noted that the dispute involved money, drugs, and a cell phone (T. 1287). The detective noted that there were no fingerprints found on the firearm allegedly used in the armed robbery (T. 1289). Drugs were found in yard of the victim's home (T. 1291). Kuczkowski also observed that the firearm was recovered on top of a shed, and he did not have any personal knowledge as to who placed the firearm there – he had to rely on witnesses (T. 1292).

The State next called Detective Scott Dingee of the

Jacksonville Sheriff's Office. Dingee provided that he was assigned to investigate the Stringfield/Sims murders (T. 1295). Dingee interviewed Bevel on March 28, 2004 (T. 1295). Dingee was present when Bevel was interviewed by Detective Chizik (T. 1296). Dingee noted that Bevel had admitted to shooting Stringfield, Sims, and Smith (T. 1296-97). Bevel also provided that Sims was shot because he potentially would have implicated Bevel (T. 1298, 1302).

Dingee was cross-examined (T. 1304). Specifically, Bevel mentioned that he shot Sims because he was fearful that Sims would have informed his uncle (and Garrick Stringfield's brother), Tyrone Stringfield (T. 1305). Dingee did not have any knowledge regarding whether Sims had attempted to contact law enforcement (T. 1306). Dingee acknowledged a change in Bevel's demeanor when he began discussing the shooting death of Sims (T. 1307). Dingee acknowledged that Bevel had expressed some remorse for Sims' death (T. 1308).

Priscilla Frink, the mother of Garrick Stringfield, and the paternal grandmother of Philip Sims was called to provide a statement; she expressed the tremendous sorrow that she experienced as result of the murders of her son and grandson (T. 1319-20).

Florence Sims, Philip Sims' maternal grandmother was

called to testify (T. 1322). Florence Sims also recalled the loving relationship that she shared with her grandson (T. 1322-24).

Sojourner Parker, Philip Sims' mother also provided a victim impact statement (T. 1325-28).

Bevel called Officer Chuck Fisette, whose duties involved serving as a litigation and record custodian (T. 1332). Specifically, Fisette possessed both the medical and jail records of inmates being housed in the Duval County Jail (T. 1332-33). Fisette noted the Bevel had been incarcerated in the Duval County Jail since March 27, 2004; Fisette noted that Bevel had received disciplinary referrals on July 11, 2004 and September 2, 2004 but had not received any in the preceding year (T. 1335, 1339).

Fisette was cross-examined. Fisette described the daily life of a prisoner in the Duval County Jail; included in Fisette's testimony was a discussion of the prisoners': work schedules, compensation, visiting and telephone privileges (T. 1340-43).

Bevel called Michelle Kalil, who was a Division Chief with the Public Defender's Office (T. 1347). Her duties included assigning cases and assisting with trial preparation (T. 1347). She previously represented Bevel on an armed

robbery charge (T. 1349). Kalil testified that prior to deposing the alleged victim of the armed robbery, the State had made Bevel an offer of a ten year sentence for the crime; following the deposition of the alleged armed robbery victim, the State offered Bevel a one year sentence (T. 1351).

Kalil was cross-examined. She conceded that the overwhelming majority of cases are resolved through plea bargaining (T. 1359). Kalil further observed that although Bevel was sentenced to twelve months, he likely would not have served that much time (T. 1362). She testified that Bevel plead guilty to unarmed robbery – a lesser offense than what he was initially been charged with (T. 1364).

Bevel called his aunt, Barbra Fisher, to testify. Fisher was the sister of Bevel's deceased mother, Yvonne (T. 1371). Yvonne Bevel was unable to care for her first two children because of her lifestyle, and thus her twin boys, Antorio and Mario McCray, were left in the care of Yvonne's mother, Donella McCray (T. 1371-72). According to Fisher, Yvonne drank very heavily while she was pregnant with Bevel (T. 1373-74). Fisher recalled that Yvonne's relationship with Bevel's father was very volatile, and was often abusive (T. 1375). Fisher stated that Bevel had a close relationship with his mother, but following her death – Bevel was twelve when she died –

he appeared to withdraw emotionally; moreover, Bevel never received psychological counseling (T. 1376-78). Fisher noted that Bevel's father was a heroin addict who died of AIDS (T. 1378-79).

Fisher was cross-examined. Fisher spent a great deal of time at Yvonne's house (T. 1383). Fisher believed that Yvonne was overly protective of Bevel and did not discipline him (T. 1383).

Donna Sapp, another of Bevel's aunts, was called to testify. Sapp noted that Bevel would often babysit her grandchildren (T. 1390). Sapp stated that Bevel was heartbroken by the death of his mother (T. 1392-93). Sapp was also aware that Bevel's father was addicted to heroin (T. 1393-94).

On cross-examination, Sapp acknowledged that she was present in Bevel's life and attempted to teach him right from wrong (T. 1394). Sapp also conceded that because Bevel had lost his mother at a young age, he could relate to the pain a mother would feel after losing a child under tragic circumstances (T. 1395).

Theondra Bevel, Bevel's sister, was called to testify (T. 1397). Theondra stated that her parents had a volatile relationship (T. 1400). Theondra testified that Yvonne

Bevel's boyfriend spent more time at their house than did their biological father; Theondra explained that her and Bevel's biological father was addicted to heroin (T. 1405). Occasionally, their father would place heroin needles in the family's refrigerator (T. 1406). Theondra also stated that her mother's intermittent boyfriend was verbally and physically abusive (T. 1407). Theondra stated that Bevel was afraid of their mother's boyfriend because he was so abusive (T. 1409). She stated that the death of their mother had a significant impact on both her and Bevel (T. 1412-13). Following their mother's death Theondra and Bevel went to live with their maternal grandmother Donella McCray (T. 1413).

Donella McCray, Bevel's maternal grandmother, was called to testify. She raised Bevel and his sister Theondra, after their mother was killed in a car accident (T. 1426). McCray stated that Bevel never received formal counseling after his mother died - though he did attend church regularly (T. 1427). She stated that she attended Bevel's trial everyday and would visit him if he was sent to prison (T. 1431).

McCray was cross-examined. She stated that she was a pastor of a church when Bevel was between the ages of twelve through seventeen (T. 1433); when she no longer a pastor she still attempted to keep Bevel involved with church (T. 1434).

Dr. Harry Krop, a psychologist who evaluated Bevel was called to testify. Krop was tendered as an expert in the field of forensic psychology (T. 1439). Krop outlined some of Bevel's longstanding educational problems. Krop did not believe that Bevel exhibited any of the physical characteristics of fetal alcohol syndrome, but Krop did believe that the fact that Bevel's mother drank alcohol while she was pregnant with Bevel had compromised his intellectual abilities (T. 1447). Krop noted that Bevel lacked male role models in his home; and that he began using drugs at an early age (T. 1448). Krop noted that even before Bevel's mother died, he began spending a great deal of time at his maternal grandmother's house because of the permissive environment there (T. 1448).Krop observed that following the death of Bevel's mother, he began to engage in more antisocial activities, particularly criminal escapades (T. 1449). Krop evaluated Bevel and determined that his IQ was 65, which would have placed him the lowest one percentile; however, Krop cautioned that he did not diagnose Krop as being mentally retarded (T. 1449-50). Krop's determination that Bevel was not mentally retarded was based upon Krop's evaluation of Bevel's adaptive functioning (T. 1450). Krop believed that Bevel would do well in the general prison population (T.

1453). Krop determined that Bevel's mental age was that of a 14 or 15 year old (T. 1455). Krop diagnosed Bevel with: antisocial personality disorder, mild mental retardation, attention deficit hyperactivity disorder, and marijuana abuse (T. 1458)

On cross-examination, Krop conceded that the majority of inmates on death row have some type of personality disorder (T. 1461-62). Krop stated that Bevel was reluctant to discuss the shooting death of Sims (T. 1467). Krop acknowledged that as a teenager Bevel had disciplinary issues when was incarcerated within the juvenile justice system (T. 1469). Krop further acknowledged that in 1993, Bevel pointed a firearm at a woman who had attempted to break up a fight between her son and Bevel (T. 1473-74). Krop believed that Bevel became more violent and hostile after his mother's death (T. 1475); though Krop did concede that most individuals who lose a loved one do not resort to criminality (T. 1476). Krop estimated that Bevel's IQ score was consistent with about fifteen to twenty percent of the death row population (T. 1479). Krop testified that on the Wechsler Adult Intelligence Scale, Bevel had a verbal score of 80, performance IQ of 70, and a performance of 73 (T. 1483). Krop did not believe that Bevel exhibited the characteristics of fetal alcohol syndrome

(T. 1492). Krop did not believe that Bevel was insane at the time of the murders (T. 1492); and his conduct was not the result of a major mental illness (T. 1493).

On redirect, Krop reiterated his belief that Bevel would do well in the general prison population (T. 1498). Krop agreed that a lack of structure in Bevel's home contributed to his problems with the law (T. 1500). In Krop's estimation, he did not believe that Bevel was malingering when he was administered intelligence tests (T. 1501).

Both parties rested.

The State commenced its closing penalty phase argument on September 7, 2005 (T. 1572-1600, 1606-1626). Bevel's closing argument followed (T. 1627-1679). The trial court then instructed the jury (T. 1681-1688).

Following approximately two hours of deliberations, the jury rendered its verdict. As to the first count against Bevel, regarding the murder of Garrick Stringfield, the jury recommended by a vote of 8-4, that Bevel should be sentenced to death (T. 1691). As to second count against Bevel, regarding the murder of Philip Sims, the jury recommended death by a vote of 12-0 (T. 1691-92).

The penalty phase hearing recommenced on October 6, 2005. Bevel argued for a new penalty phase hearing (T. 1709-1711).

This motion was denied (T. 1712).

A Spencer Hearing was convened on October 25, 2005. The trial court first enumerated the aggravating circumstances applicable in the murder of Garrick Stringfield; first, the trial court noted that the State had proven beyond a reasonable doubt that Bevel had a prior conviction for a capital offense (the murder of Sims) and two other felony convictions (attempted robbery and attempted murder of Smith). (T. 1743). The trial court assigned the prior violent felony aggravator "great weight" (T. 1743).

As to the murder of Sims, the trial court found that Bevel had previously been convicted of a capital offense or a felony involving a threat or use of force to another individual. The trial court again noted that Bevel had previously been convicted on March 27, 2003 for attempted robbery; moreover, the trial court acknowledged that Bevel had been convicted for the first degree murder of Stringfield, and for the attempted first degree murder of Smith (T. 1744-48). The trial court assigned the prior felony conviction aggravator "very great weight" (T. 1749). The trial court found a second aggravating circumstance: Sims was murdered so that he would not identify Bevel. The avoid arrest aggravator was assigned "great weight" (T. 1753).

The trial court considered several mitigators. The trial court determined that Bevel had neither established that he was mentally retarded nor proven that his "mental age" was that of a fourteen or fifteen year old (T. 1756). The trial court found that Bevel's religious background should only be assigned "minimum weight" (T. 1757). The court also rejected Bevel's contention that he confessed to law enforcement, in fact, the trial court noted that Bevel told a series of elaborate lies to law enforcement and had only indirectly confessed to the crime; thus the trial court assigned Bevel's alleged confession only "little weight" (T. 1759). The court further discounted Bevel's mitigation claim that he exhibited good behavior while he was incarcerated in Duval County Jail – noting he had received two disciplinary reports – and assigned "very little weight" to this mitigation claim (T. 1759). The trial court was unswayed by Bevel's contention that his comportment during his trial warranted mitigation and assigned this claim "little weight" (T. 1760). The trial court further found that Bevel had not established that he would be a well-behaved prisoner; the court noted, among other things, Bevel's long criminal history – wherein he had repeatedly been involved in violent incidents (T. 1760-61). The trial court did note that some evidence was presented suggesting that

Bevel had an IQ of 65; however, the trial court also noted that Bevel had been able to take care of himself since he was 18 years old; moreover, the trial court observed that Bevel was able to write reasonably well and was able to work and provide for himself; therefore the trial court assigned Bevel's IQ mitigation claim "little weight" (T. 1761).

The trial court did not find by a preponderance of the evidence that Bevel had been abused as a child; and assuming *arguendo* that such a finding could have been established the trial court averred that it would have only assigned this mitigator "little weight" given that Bevel presented numerous witnesses who had asserted that he came from a loving family (T. 1763). The trial court was unmoved by Bevel's contention that he had been unable to cope with the death of his mother which occurred when he was only 12 years old; the trial court noted that Philip Sims was only 13 years old when he was murdered by Bevel; and Bevel, perhaps more than most, should have been acutely aware of the pain of the loss of a loved one; therefore the trial court assigned "very little weight" to his mitigation claim regarding any traumatization he may have experienced following the death of his mother (T. 1764). Bevel further argued that he had exhibited remorse for his actions, as evidenced by his threats to commit suicide

immediately following the shootings; the trial court determined however that it could not ignore the fact that Bevel later discarded both his getaway car and the AK-47 rifle that was used in the shootings; additionally the trial court noted that Bevel evaded capture for more than thirty days – therefore the trial court determined that Bevel had not established that he had immediately been remorseful for his crimes (T. 1765). Finally, the trial court rejected Bevel's contention that sentencing him to death would be a disproportionate punishment for his crime (T. 1768).

The trial court determined that the aggravating factors applicable to the murders of both Garrick Stringfield and Philip Sims outweighed any mitigating factors, and consequently sentenced Bevel to death for the murders of both Stringfield and Sims, and sentenced Bevel to a life term for the attempted murder of Feletta Smith (T. 1770-71).

SUMMARY OF ARGUMENT

ISSUE 1: Bevel argues that the trial court erred when it failed to strike for cause, a juror Bevel believed was predisposed towards favoring law enforcement. However, to demonstrate that the trial court committed reversible error for failing to remove a prospective juror for cause, Bevel is required to establish that he was forced to expend a

peremptory challenge to remove the juror; he must further establish that the trial court erroneously failed to strike the juror in question; thereafter, he had to formally object to any remaining "objectionable" juror who was empaneled on the final jury but would have been struck had Bevel any remaining peremptory challenges. Because, Bevel made no specific objection to a jury who was ultimately empaneled, this claim has not been preserved. Moreover, the prospective juror that Bevel wanted struck for cause, told the trial court that he would follow the law as instructed; therefore the prospective juror was not subject to a cause challenge, given the prospective jurors responses to the trial court's inquiries.

ISSUE 2: Bevel makes a generalized assertion that the trial court erred by finding that the aggravating circumstances outweighed the mitigating circumstances. He seems to be arguing, only against the death sentence imposed for the murder of Garrick Stringfield; and that greater consideration should have been given to the fact that more non-statutory mitigators than statutory aggravators were presented. This argument is without merit. The trial court was charged with carefully weighing the applicable aggravators and mitigators. The facts presented in this case involved the

inexplicable murder of a child and his father, and the near murder of an innocent bystander who managed to survive by playing dead. Clearly, the trial court was presented with circumstances that placed this crime amongst the most aggravated and least mitigated.

ISSUE 3: Bevel opines that sentencing him to death for the murders of Philip Sims and Garrick Stringfield, constitutes a disproportionate punishment for his actions. He cites to several cases wherein a death sentence was held to be disproportional. Bevel believes these cases are analogous to the circumstances presented in his case. However, every single case he relies upon is entirely distinguishable from the facts presented in the instant matter. Consequently, the death sentence imposed on Bevel is entirely proportional.

ISSUE 4: Bevel asserts that Florida Statutes §921.141 is unconstitutional because a jury and not a judge must make a determination beyond a reasonable doubt as to applicability of the death penalty. This ground of error raised by Bevel has consistently been rejected by this Court, particularly under the circumstances presented herein given that Bevel has previously been convicted of a violent felony .

ISSUE 5: Bevel opines that the trial court erred in the weighing applicable aggravators and mitigators. Central to

this claim is the fact an expert during the penalty phase presented evidence that Bevel's had an IQ of 65. Bevel contends that in light of *Atkins v. Virginia* – which stands for the proposition that it is unconstitutional to execute a mentally retarded individual – the trial court should have accorded greater weight to his relatively low IQ score. As will be discussed below, in *Atkins* the United States Supreme Court recognized that States would be responsible for establishing its criteria for determining whether an individual is mentally retarded. As such, Florida law requires that an individual asserting that they are mentally retarded must present evidence of, among other things, deficits in adaptive behavior. As the record evidenced, Bevel had lived on his own since he was 18 years old and provided for himself; moreover, countervailing expert testimony was presented during a earlier motion to suppress hearing which suggested that Bevel's IQ was significantly higher than the 65 that was reported during the penalty phase. Consequently, because there was competent substantial evidence supporting the trial court's finding that Bevel was not mentally retarded, this claim should be rejected.

ISSUE 6: Bevel asserts the trial court erroneously permitted unduly prejudicial photographs to admitted into

evidence. This Court has certainly recognized that the admission of photos of the crime scene is permissible. Moreover, this Court has noted that even if it was erroneous to admit certain crime scene photographs, the error would only be harmless. The critical inquiry as to the admissibility of crime scene photos is their relevancy. The crime scene photos that Bevel now challenges were relevant to demonstrate where certain firearm projectiles landed. Consequently, the photos were entirely relevant.

ISSUE 7: Bevel asserts that it was erroneous for the trial court to permit the jury to hear Bevel's inculpatory statement. Bevel appears to suggest that he lacked the intellectual capacity to knowingly and voluntarily waive his right against self-incrimination. A suppression hearing was held to address the propriety of Bevel's waiver. The trial court determined that Bevel's statement to police was made voluntarily and without coercion. Bevel seems to suggest that his low IQ made his waiver a nullity. However, there has been not been any finding that Bevel is mentally deficient; additionally, this Court affords a presumption of correctness to a trial court's ruling on a motion to suppress. The trial court found that Bevel had freely waived his right of sel-incrimination. This ruling should be affirmed.

ISSUE 8: Bevel believes that the trial court's sentencing order failed to independently make its findings of fact and conculsions of law; instead, Bevel opines that the trial court essentially copied the State's proposed findings. This alleged ground of error is wanting. Bevel did not raise an objection to the sentencing order premised on his contention that the trial court failed to make independent findings; therefore, this claim has not been preserved.

ISSUE 9: Finally, Bevel avers that because an expert witness testified that his "mental age" is that of a 14 or 15 year old, sentencing him to death is unconstitutional. This Court has rejected this argument on several occasions because the propriety of a death sentence turns on a capital defendant's chronological age, not his mental age. Accordingly, his claim is without merit.

ARGUMENT

I. THE TRIAL COURT DID NOT COMMIT REVERSIBLE ERROR BY FAILING TO STRIKE A JUROR FOR CAUSE WHO HAD ARTICULATED THAT HE MAY BE BIASED TOWARDS LAW ENFORCEMENT GIVEN THAT THE JUROR ALSO STATED THAT HE WOULD BE IMPARTIAL AND WOULD FOLLOW THE LAW AS INSTRUCTED

Bevel argues that the trial court committed reversible error because a prospective juror, who appeared to articulate during voir dire that he was would be biased in favor of law enforcement, was not struck for cause. Bevel's counsel had

attempted to strike the juror for cause to no avail. Bevel now opines that the trial court failure to strike the prospective juror constituted reversible error.

The State respectfully believes that Bevel's contention is without merit. The trial court took requisite steps to ensure that the prospective juror, Jose Ramos, would follow the law as instructed. Ramos unequivocally indicated that he could set aside any preconceived biases, and would be an impartial juror. The record in this case certainly supports the conclusion that the trial court acted entirely consistent with its mandate to ensure that any prospective jurors could fairly and objectively render a verdict based on the entirety of the evidence. Some understanding of the voir dire proceedings should assist this Court.

The following exchange occurred during jury selection:

> **PROSPECTIVE JUROR RAMOS:** . . . And I have friends and relatives in law enforcement.
>
> * * *
>
> **THE COURT:** Okay. Your friends and relatives in law enforcement, will that affect your verdict one way or the other?
>
> **PROSPECTIVE JUROR RAMOS:** Throughout my career, Your Honor, I have been part of being able to testify in front of the Grand Jury and federal court with the U.S. Attorney's Office. And I am partial to law enforcement because of [sic] my career has led me to work with them.
>
> **THE COURT:** Do you investigate things like insurance fraud

and things like that?

PROSPECTIVE JUROR RAMOS: Yes.

THE COURT: Do you work with elements of the [Jacksonville Sheriff's Office] and U.S. Attorney's Office and so forth?

PROSPECTIVE JUROR RAMOS: I have worked and currently still work with the office of the inspector general, FBI and secret service.

THE COURT: And you think that would influence your verdict in favor of the State?

PROSPECTIVE JUROR RAMOS: Yes.

THE COURT: Could you judge the credibility of the witnesses using the same – police officer witnesses using the same rules we ask you to apply to all witnesses?

PROSPECTIVE JUROR RAMOS: Yes, sir.

THE COURT: And if you felt the State had failed to meet their burden of proof, could you vote for not guilty without worrying about telling your friends about it?

PROSPECTIVE JUROR RAMOS: Yes, sir.

(T. 87-89).

The following day, Bevel's counsel, Refik Eler expressed some concern about whether prospective juror Ramos could be impartial given that he had seemingly articulated that he was predisposed towards favoring law enforcement. Eler sought to challenge Ramos for cause (T. 373). Consequently, the juror was asked additional questions by both the Court and Eler.

THE COURT: Mr. Ramos . . . I wanted to ask you a couple more questions. You had indicated in your answers yesterday that your professional background had caused you

to work with a number of law enforcement agencies, both federal and State, that you had friends and acquaintances within the Sheriff's Office, I think you mentioned the [J]ustice [D]epartment and some different things like that.

PROSPECTIVE JUROR RAMOS: Yes

THE COURT: Would those friendships and connections have any effect on your verdict that you know of?

PROSPECTIVE JUROR RAMOS: No, no, sir.

THE COURT: Would you tend to believe the testimony of police officer witnesses over other witnesses just because they are a police officer?

PROSPECTIVE JUROR RAMOS: No, sir.

THE COURT: Would it give you any trouble to vote for not guilty and maybe have to tell some of your friends about it if you felt that was the right verdict?

PROSPECTIVE JUROR RAMOS: No, it wouldn't give me any problem at all.

THE COURT: You think you can keep an open mind and treat all witnesses the same in terms of --

PROSPECTIVE JUROR RAMOS: Yes.

THE COURT: –– judging their credibility?

* * *

MR. ELER: May I inquire, judge?

THE COURT: Sure.

MR. ELER: Mr. Ramos, my understanding is for some reason I had down yesterday when [Assistant State Attorney Bernardo] De la Rionda or the judge may have asked you about with [sic] law enforcement, that it would influence your verdict, is that true?

PROSPECTIVE JUROR RAMOS: Well I work with them for so long that it may tend to –– I favor them because I work

around law enforcement so long but it wouldn't influence my decision.

MR. ELER: It would not?

PROSPECTIVE JUROR RAMOS: No.

(T. 374-76).

Bevel's counsel then challenged Ramos for cause; the trial court responded by noting that Ramos "seemed conflicted because he did say he favored law enforcement, but on every objective question he answered in a way that was not bias [sic], and I think it's to the objective questions that you have to look to make determinations" (T. 377). Accordingly, the trial court rejected Bevel's cause challenge.

However, a short time thereafter, as the parties were exercising their peremptory challenges, Bevel struck Ramos as a potential juror and requested that the trial court grant an additional peremptory challenge (T. 389). The trial court reiterated that it had denied Bevel's cause challenge, and additionally denied Bevel's request for an additional peremptory challenge.

Bevel opines that he was forced to expend a peremptory challenge on a potential juror that should have dismissed for cause, and as such, the trial court's actions constituted reversible error. The State respectfully believes that

Bevel's generalized argument does not fully encapsulate Florida law.

In *Busby v. State,* 894 So. 2d 88 (Fla. 2004), this Court considered whether a trial court's erroneous failure to strike a juror for cause, which thus required the defense to exercise a peremptory challenge to strike the juror, constituted reversible error. Busby had been charged with first degree murder for killing a fellow inmate. He was found guilty and was sentenced to death. Though he raised several issues on appeal, the only issue confronted by this Court was whether the erroneous denial of Busby's cause challenge constituted reversible error. During *voir dire* it was learned that a prospective juror, Lapan, had previously served as a correctional officer for death row inmates at Florida State Prison. Under questioning, the prospective juror seemingly gave equivocal responses regarding whether he could be an impartial juror; the defense sought to remove the juror for cause on two separate occasions and these motions were denied. *See id.* at 95. This Court found that the denial of the cause challenges were erroneous, and proceeded to consider whether the trial court's rulings constituted reversible error.

This Court recognized that it is reversible error under Florida law, if a party is forced to expend a peremptory

challenge to remedy a trial court's erroneous denial of a cause challenge; and if, as a result, the "defendant exhausts all remaining peremptory challenges *and can show that a objectionable juror has served on the jury*." *Id.* at 96-97 (citing *Trotter v. State*, 576 So. 2d 691 (Fla. 1991)) (emphasis added). As this Court further explained, in accordance with *Trotter*, the allegedly objectionable juror must have been "'an individual who actually sat on the jury and whom the defendant either challenged for cause or attempted to challenge peremptorily or otherwise objected to after his peremptory challenges had been exhausted.'" *Id.* at 97 (quoting *Trotter*, 576 So. 2d at 693).

Busby identified two jurors whom he would have exercised peremptory challenges on –- had he any challenges remaining. Because one of these jurors actually served on the final jury, this Court determined that Busby had satisfied the criteria articulated by *Trotter*. Id. at 97. This Court further expressed that its underlying concern is a scenario wherein "a defendant desires to peremptorily challenge a juror, but is without remaining challenges due to the need to correct the trial court's errors[.]" *Id.* at 103. Accordingly, Busby's conviction was reversed, and remanded for a new trial.

The circumstances presented in *Busby* certainly do not present themselves in the instant case. First, the State would note that Bevel's brief has failed to identify an objectionable juror who was permitted to be empaneled. A necessary predicate to make a showing under *Busby* requires the defendant demonstrate that he was required to use a peremptory challenge on a juror who should have rightfully been dismissed for cause, and as a consequence, the defendant did not have necessary peremptory challenges to dismiss an objectionable juror who ultimately sat in judgment of the accused. Because neither the *voir dire* transcript, nor Bevel's brief, identifies a juror whom he specifically objected to, but who nevertheless was on his final jury, this issue has not been preserved for appeal. *See, e.g., Kearse v. State*, 770 So.2d 1119, 1128 (Fla. 2000) (noting that in order to preserve the issue for appeal "Florida law requires a defendant object to the jurors, show that he or she has exhausted all peremptory challenges and requested more that were denied, *and identify a specific juror that he or she would have excused if possible*").

Moreover, there has been no demonstration that prospective juror Ramos should have been dismissed for cause. This Court reviews the denial of a cause challenge for an

abuse of discretion. *See Singleton v. State*, 783 So. 2d 970, 973 (Fla. 2001). As discussed above, Ramos' job responsibilities required that he work in close conjunction with law enforcement. Under questioning, he did suggest that he might be biased in favor of law enforcement given his working relationships; but when questioned further by the trial court, Ramos stated that he: could keep an open mind, would not give greater credence to law enforcement testimony, would follow the law, and would not be influenced by his friendships with law enforcement. T. 374-76.

While a witness may certainly be dismissed if there is reasonable doubt as to his ability to be impartial, *see, e.g., Price v. State,* 538 So. 2d 486, 489 (Fla. 1989) ("A juror is not impartial when one side must overcome a preconceived opinion in order to prevail"); this Court has also recognized that "[t]he test for juror competency is whether the juror can lay aside any bias or prejudice and render a verdict solely on evidence presented and the instructions on the law given by the court." *Smith v. State*, 699 So. 2d 629, 635 (Fla. 1997) (citing *Lusk v. State*, 446 So. 2d 1038, 1041 (Fla. 1984)). This Court accord's deference to a trial judge's determination regarding the competency of a juror, and the court's determination should not be "overturned absent manifest

error." *Ault v. State*, 866 So. 2d 674, 684 (Fla. 2003).

Notwithstanding Ramos' seemingly supportive statements towards law enforcement, such averments standing alone did not automatically mandate dismissing him for cause. *See, e.g., Kearse v. State,* 770 So. 2d 1119, 1129 (Fla. 2000) (noting that the trial court did not abuse its discretion by refusing to dismiss prospective jurors for cause even though the jurors had "expressed certain biases and prejudices" given that the jurors "also stated that they could set aside their personal views and follow the law in light of the evidence presented"). Instead, this Court must determine whether the juror in question will dutifully abide by the trial court's instructions and weigh all the evidence fairly. *See Singer v. State,* 109 So. 2d 7, 24 (Fla. 1929) (noting that the test to determine whether a juror is impartial is whether the juror can divorce himself from any preconceived biases, opinions, or prejudices "and base his opinion only on the evidence given at trial"). Because Ramos gave unqualified assurances that he would follow the law, he should not have dismissed for cause.

Accordingly, because Bevel has never articulated the name of the objectionable juror who remained on his final jury, this claim of error has not been preserved and should be rejected; however, assuming *arguendo* that his claim is

preserved it is nevertheless without merit, given that prospective juror Ramos should not have been dismissed for cause.

II. THE TRIAL COURT DID NOT ERR IN ITS DETERMINATION THAT THE AGGRAVATING FACTORS OUTWEIGHED THE MITIGATING FACTORS

Bevel argues that the trial court erroneously determined that the aggravating factors presented in the instant case outweighed the mitigating factors. The trial court's allegedly erroneous weighing of aggravators and mitigators resulted in the imposition of the death penalty. This argument is somewhat difficult to fully decipher; Bevel seems to be arguing that the trial court did not give sufficient consideration to non-statutory mitigation that was presented on his behalf; but he only seems to be contesting the propriety of his death sentence for murdering Garrick Stringfield. Moreover, Bevel appears to implicitly suggest that the trial court should have given greater consideration to -- at least as it pertained to the death sentence imposed for Stringfield's murder -- the fact that significantly more non-statutory mitigators (thirteen) were found than were aggravators (one). Appellant's Brief at p. 19. This argument misconstrues Florida law.

Though variations of this same argument are raised in

other portions of Bevel's brief, it is briefly necessary to touch upon what is entailed in the analysis of the proportionality of a sentence. "Proportionality review requires that this Court 'consider the totality of the circumstances in a case and to compare it with other capital cases. *It is not a comparison between the number of aggravating and mitigating circumstances*.'" *Miller v. State,* 770 So.2d 1144, 1150 (Fla. 2000) (emphasis added) (quoting *Terry v. State*, 668 So.2d 954, 965 (Fla. 1996)).

As it pertains to the murder of Stringfield, Bevel takes issue with the fact that only one aggravator – a prior violent felony conviction – was found to outweigh the litany of non-statutory mitigation presented on his behalf. However, the fact that the trial court found only *one* aggravating circumstance and several non-statutory mitigators is not the dispositive consideration that is employed when analyzing the propriety of a death sentence. This Court has specifically noted that "death may be the appropriate recommendation if, and only if, at least *one* statutory aggravator is established. After an aggravator is established, any mitigating circumstances established by the evidence must be weighed against the aggravator(s)." *Dougan v. State*, 595 So. 2d 1, 4 (Fla. 1992) (emphasis added).

It should be noted that this Court accords deference to the trial court's findings regarding the applicability of an aggravator – provided the findings are supported by the record. *See., e.g., Reynolds v. State,* 934 So. 2d 1128, 1153-54 (Fla. 2006). Simply put, this Court assesses whether the trial court correctly applied the relevant law governing the aggravator, and, whether the trial court's findings as to the particular aggravator were supported by competent substantial evidence. *See Alston v. State*, 723 So. 2d 148, 160 (Fla. 1998).

This Court has certainly found a death sentence to be proportional when only one aggravator, a prior violent felony conviction, was deemed applicable. For example, in *Ferrell v. State*, 680 So. 2d 390 (Fla. 1996), this Court had previously affirmed the accused's conviction for the shooting death of his live-in girlfriend, but, remanded the case to allow the trial court to explicate in greater detail regarding its reasons for determining that Ferrell should be sentenced to death. The trial court responded with a more substantive sentencing order which found one statutory aggravator to be applicable: Ferrell had previously been convicted of a prior violent felony. The trial court had also found several non-statutory mitigators including, "that Ferrell was impaired,

was disturbed, was under the influence of alcohol, was a good worker, was a good prisoner, and was remorseful." Id. at 391 n. 2. This Court affirmed Ferrell's death sentence, noting that Ferrell's prior felony conviction was for second-degree murder, and that the earlier crime bore striking similarities to the subsequent murder of Ferrell's live-in girlfriend. Id. at 391-92. Thus, *Ferrell* evidences the fact that a single aggravator predicated on a prior violent felony conviction can support a death sentence.

It appears that Bevel is also actually arguing that the trial court erred when it failed to accord greater weight to his non-statutory mitigation; without more however, this is not a basis for reversible error. *See, e.g., Porter v. State*, 429 So. 2d 293, 296 (Fla. 1983) (noting the "mere disagreement" with the trial court's findings will not support a claim of reversible error). Moreover, Bevel seems to ignore the fact that in evaluating the propriety of a death sentence, this Court is required to look to the totality of the circumstances. *See, e.g., Simmons v. State*, 934 So. 2d 1100, 1111 (Fla. 2006); *Brooks v. State*, 918 So. 2d 181, 209 (Fla. 2005). The prior violent felony aggravator in the instant case was not simply based on Bevel's conviction for attempted robbery; it also encompassed the concurrent felonies that

Bevel committed in the instant case. *See Lugo v. State*, 845 So. 2d 74, 111 (Fla. 2003). For example, as it pertains to Bevel's death sentence for the murder of Stringfield, the trial court was certainly permitted to look to the fact that Bevel had also been convicted for both the first degree murder of Sims, and the attempted first degree murder of Smith. *See, e.g., Pardo v. State*, 563 So. 2d 77, 80 (Fla. 1990) ("We have consistently held that the contemporaneous conviction of a violent felony may qualify as an aggravating circumstance, so long as the two crimes involved multiple victims or separate episodes").

Therefore, as it pertains to Bevel's death sentence, the trial court was well within its discretion when it determined that the non-statutory mitigation that was brought forth during the penalty phase did not outweigh his prior violent felony conviction for attempted robbery, nor his contemporaneous convictions for first degree murder, and attempted first degree murder; and Bevel has certainly not presented any case standing for the proposition that the trial court's determination was in error.

III. BEVEL'S DEATH SENTENCE WAS A PROPORTIONATE PUNISHMENT FOR HIS CRIMES AND SENTENCING HIM TO DEATH IS NEITHER CRUEL AND UNUSUAL PUNISHMENT WITHIN THE UNDERSTANDING OF ARTICLE I, SECTION 17 OF THE FLORIDA CONSTITUTION NOR THE EIGHTH AND FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION

Bevel denominates this claim of error as a challenge to the constitutionality of his death sentence. However, many of the arguments presented actually go to the proportionality of his sentence. He enumerates a number of Florida cases which he believe stand for the proposition that his death sentence is disproportionate. However, an analysis of the circumstances presented in those cases leads to the opposite conclusion: Bevel's sentence is not disproportionate, and its imposition would not be unconstitutional.

The State does not believe that the cases relied upon by Bevel support his averment that his death sentence is disproportional; at the very least, the cases a capital defendant relies upon to argue that his sentence is disproportionate must have reasonably analogous circumstances in order to be instructive. *See generally Taylor v. State*, 855 So. 2d 1, 32 n. 33 (Fla. 2003) (rejecting cases relied upon by *Taylor* in support of his argument that his death sentence was disproportionate, as his most "supportive" cases involved facts that were less egregious, involved less aggravation, and had more mitigation). This Court has often acknowledged proportionality review is a necessary element in Florida's capital litigation jurisprudence so as to insure the death

penalty is imposed only in the most aggravated and least mitigated circumstances. *See Kramer v. State,* 619 So. 2d 274, 278 (Fla. 1993); see also Fla. Const. Art I, § 17. Therefore, any analysis regarding the propriety of the imposition of the death penalty in a particular case entails review of similar cases to insure the death penalty has, or has not, been imposed in like contexts. *See Stewart v. State,* 872 So. 2d 226, 229 (Fla. 2003). The State will explore some of the cases relied upon by Bevel.

To reiterate, any fair proportionality review must look to the means by which the murder at issue in the instant case was effectuated, and thereafter, compare those facts with *analogous* cases. *See Tillman v. State*, 591 So. 2d 167, 169 (Fla. 1991) (observing that proportionality review is necessary so as to prevent imposing a death sentence in similar factual circumstances where this Court previously has not done so). The cases relied upon by Bevel should be construed as unavailing by this Court, as they are readily distinguishable from the circumstances presented in the instant case. For example, Bevel relies on *Fitzpatrick v. State*, 527 So. 2d 809 (Fla. 1988) for the proposition that even when the statutory aggravators outnumber applicable mitigators, a death sentence may be deemed disproportional.

First, the State would again note that proportionality review does not embrace simply counting the number of aggravators and mitigators to arrive at an appropriate sentence. *Miller v. State*, 770 So. 2d at 1150. Secondarily, in the State's estimation, Fitzpatrick is not sufficiently analogous to the circumstances presented in the instant matter. In Fitzpatrick, the accused was sentenced to death for the murder of a police officer during a standoff. Fitzpatrick's capital sentence was deemed disproportionate because *uncontroverted* medical testimony was presented indicating that, Fitzpatrick suffered from a severe mental disturbance, was schizophrenic, and had a mental age of between 9 and 12 years old. 527 So. 2d at 812.

Thus, this Court directly related Fitzpatrick's long-standing mental health problems to the murder he was charged with. Conversely, in the instant case Bevel is unable to point to any expert medical testimony in the record indicating that he suffers from a debilitating mental illness that compromised his ability to understand the wrongfulness of his conduct.

Bevel further contends that the this Court should draw guidance from *Larkins v. State*, 739 So. 2d 90 (Fla. 1999).Larkins was found guilty in the shooting death of a

convenience store employee. At the conclusion of the penalty phase the jury recommended that Larkins should be sentenced to death and the trial court concurred. The trial court also found two statutory aggravators: 1) Larkins had previously been convicted of a violent felony; and 2) the crime had been committed for pecuniary gain.

As for statutory mitigators, the trial court found that: 1) the murder occurred while Larkins was under the influence of extreme mental or emotional disturbance; and 2) his capacity to appreciate the criminality of his actions was severely impaired. Moreover, the trial court found eleven non-statutory mitigators, including that Larkins had experienced problems in school to the extent that he dropped out in either the fifth or sixth grade; generally speaking, he had low intellectual functioning; he had persistent mental problems that were brought about by his drug and alcohol use; and he had consumed alcohol on night of the murder – and, perhaps, was intoxicated.

On appeal, Larkins raised several grounds of error; but, only his assertion that his sentence of death was not proportional was addressed by this Court. Among the factors found most influential was expert medical testimony presented in mitigation during the

penalty phase. The expert discussed that Larkins suffered from organic brain damage; his memory was severely impaired; brain damage impeded his ability to control his emotions; his intellectual functioning was low; and he had a history of drug and alcohol abuse. The expert concluded that *at the time he committed the murder*, Larkins was "under the influence of extreme mental and emotional disturbance and his ability to control his actions . . . [was] impaired." Id. at 94. This Court found the expert's testimony compelling.

To the contrary however, there has been no suggestion that Bevel has any brain damage or did not understand what he was doing. It is also worth remembering that immediately after committing the shootings, Bevel absconded with his girlfriend, and remained in hiding for more than thirty days. Moreover, nothing in the record – such as expert testimony – unequivocally suggests that he was under the influence of an extreme and emotional disturbance which impaired his ability to control his emotions at the time of Stringfield and Sims' murders. Thus again, the consequential factors that influenced this Court in *Larkins*, do not manifest themselves in Bevel's case.

Bevel's reliance on several other cases is somewhat strange, given that in many of the cases he cites to, the

capital defendant was in the throes of severe mental illness at the time of the murder. In *Miller v. State*, 373 So. 2d 882 (Fla 1979), the accused, a paranoid schizophrenic, had been sentenced to death; one of the trial court's rationales for imposing a death sentence was premised on its concern about Miller's future dangerousness; this Court noted however that Miller's "future dangerousness" was an inappropriate consideration given the nexus between his severe mental illness and the crime. As noted, and in contrast to *Miller*, in the instant case there has been no finding made that Bevel was mentally infirm, or that his actions were not volitional.

Another case relied upon by Bevel is *Hawk v. State*, 718 So. 2d 159 (Fla. 1998). In *Hawk v. State*, 718 So. 2d 159 (Fla. 1998), the appellant, who was deaf, was convicted for the murder of one individual, and the attempted murder of another. During the penalty phase evidence was brought forth detailing that Hawk was stricken by meningitis when he was three years old, which eventually resulted in his deafness; moreover, he had been physically abused by his father; and evidence suggested that he had been abusing drugs and alcohol since his was sixteen (Hawk was nineteen at the time of the murders). The jury recommended that Hawk be sentenced to death. During the sentencing hearing, additional evidence was brought forth

drawing a causal nexus between *Hawk's* childhood meningitis and his subsequent mental illness/brain damage. The trial court sentenced Hawk to death as to the murder conviction, and sentenced him to a thirty year term as to the attempted murder conviction.

In reducing his death sentence to life, this Court looked to the uncontroverted medical expert testimony which explained at length the nature of Hawk's mental infirmities, and *directly* related these problems to his childhood meningitis.

In *Urbin v. State*, 714 So. 2d 411 (Fla. 1988), the accused was under the age of eighteen when the murder was committed. Urbin along with two other accomplices planned to commit a robbery; the victim of robbery was killed when he attempted to fight Urbin back. Urbin was ultimately sentenced to death. However, this Court considered, inter alia, Urbin's age (17) at the time of the crime, the fact that he had ingested cocaine on the night of the murder, his difficult home life, and the mitigating factor that Urbin could not appreciate the criminality of his actions; ultimately, this Court held that Urbin's crime did not warrant the death penalty. As noted, in the instant case, Bevel's chronological age at the time of the murders was 22. Moreover, there has been no suggestion that Bevel could not

appreciate the criminality of his conduct.

In *Nibert*, the accused was charged in the brutal stabbing death of an acquaintance. Evidence was presented relating to Nibert's mentally and physically abusive childhood, and his lifelong alcohol problem. Absolutely *no* evidence was presented by the State to refute Nibert's mitigation evidence. The jury recommended Nibert be sentenced to death by a vote of 7 to 5. The trial court followed this recommendation, finding only the HAC aggravator relevant.

On appeal this Court considered an array of mitigating evidence that was presented. Of note, the Court considered the fact that it was uncontroverted that *on the day of the murder*, Nibert had been drinking very heavily; in fact, evidence indicated that Nibert was drinking as he was attacking the victim. The foregoing was found persuasive because in similar circumstances, this Court acknowledged, when an individual is under the influence of intoxicants *at the time of the murder*, this factual circumstance strongly supports two statutory mitigators: "(1)extreme mental or emotional disturbance and (2) substantial impairment of a defendant's capacity to control his behavior." Id. at 1063 (citations omitted). Thus, given the extensive evidence presented which suggested that Nibert was severely impaired by

alcohol on the night of the murder, Nibert's death sentence was deemed disproportionate.

Again, note that in *Nibert* the state failed to bring forth any evidence to rebut Nibert's mitigation claims. Moreover, in the instant case, Bevel was nearly responsible for three murders; and there was no finding made regarding whether Bevel was intoxicated in the time frame contemporaneous to the murders.

Other cases cited to by Bevel are equally inapposite. He relies upon *Smalley v. State*, 546 So. 2d 720 (Fla. 1989). In *Smalley* for example, this Court found that imposition of a death sentence against a capital defendant was entirely inappropriate because Smalley did not have any appreciation for the criminality of his actions. Further, this Court struck the one aggravator that had been found applicable by the trial court, the HAC. Conversely, there is nothing to suggest that Bevel could not appreciate the wrongfulness of his actions. Recall, Rohnika Dumas stated that Bevel threatened suicide immediately after the shootings as they were driving off; moreover, Bevel remained in hiding for nearly a month. Therefore, his reliance on *Smalley* is inappropriate because no applicable aggravator has been called into question, and because Bevel was obviously cognizant of the wrongfulness of

his actions.

In *Robertson v. State*, 699 So. 2d 1343 (Fla. 1997), this Court confronted whether an individual with a long history of mental health problems could permissibly be sentenced to death. Robertson was found guilty of, *inter alia*, premeditated murder in the strangulation death of his female victim. During the penalty phase, the jury recommended that Robertson be sentenced to death by a vote of eleven to one. As for mitigation evidence, the trial court considered his age (nineteen), his impaired capacity, his terrible childhood, his long history of mental illness, and his borderline intelligence. The trial court gave this mitigation evidence little weight and sentenced Robertson to death.

Robertson raised several grounds of appeal, including that his death sentence was disproportionate. This Court found that in light of the substantial mitigation evidence presented, Robertson death sentence was not proportional, finding: 1) Robertson was only nineteen; 2) he was under the influence of drugs and alcohol at the time of the murder; 3) he was raised in an abusive home; 4) he had long history of mental illness; and 5) he possessed borderline intelligence. Id. at 1347. This Court summarized its reasoning regarding the disproportionateness of Robertson's sentence as follows:

"It was an unplanned, senseless murder committed by a nineteen year old, with a long history of mental illness, *who was under the influence of alcohol and drugs at the time.*" Id. (emphasis added).

There has not been any showing that Bevel was mentally ill; nor does the record evidence that Bevel was intoxicated.

Finally, Bevel relies upon *Blakely v. State*, 561 So. 2d 560 (Fla. 1990) for the proposition that his death sentence is disproportionate; however, *Blakely* does not benefit Bevel given that this Court has receded from its central holding. *See, e.g., Evans v. State*, 838 So. 2d 1090, 1098 n. 6 (Fla. 2002) (acknowledged receding from *Blakely* to the extent that the case turned on the "domestic dispute exception").

Accordingly, all of the cases that Bevel relies upon are simply inapposite for the purposes of this Court's proportionality review. His crimes should be construed as amongst the most aggravated and least mitigated, thus warranting the death penalty.

IV. THE TRIAL COURT DID NOT ERR WHEN IT DENIED BEVEL'S MOTION TO DECLARE FLORIDA STATUTES,§ 921.141 UNCONSTITUTIONAL; GIVEN THAT UNDER FLORIDA LAW A JURY IS NOT REQUIRED TO MAKE A DETERMINATION BEYOND A REASONABLE DOUBT AS TO DEATH QUALIFYING AGGRAVATORS – PARTICULARLY WHEN ONE OF THE AGGRAVATORS IS A PRIOR VIOLENT FELONY CONVICTION

Bevel opines that his death sentence is constitutionally

infirm because the jury did not make a determination as to the applicability of the statutory aggravators that were found by the trial court. Bevel relies on *Ring v. Arizona*, 536 U.S. 584 (2002) for the proposition that his death sentence is unconstitutional; in *Ring*, the Supreme Court held that a capital defendant must have any fact which increases his sentence beyond the statutory maximum proven before a jury beyond a reasonable doubt.

Bevel asserts that Florida's death penalty statute, §921.141 *et seq.*, is constitutionally infirm because a trial court rather than a jury is required to make a determination as to death-qualifying aggravators. Bevel's *Ring* argument has been raised on several occasions by other capital defendants – and these claims have always been rejected by this Court.

First, the State would note that Bevel was previously convicted for a prior violent felony – attempted armed robbery. This conviction is uncontroverted and was presented to the jury. This court has repeatedly recognized that *Ring* does not have any applicability if one of the death-qualifying aggravators is a prior violent felony conviction. *See, e.g.*, *Bryant v. State*, 901 So. 2d 810, 823 (Fla. 2005); *Smith v. State*, 866 So. 2d 51, 68 (2004); *Johnston v. State*, 863 So. 2d 271, 286 (Fla. 2003). Therefore, Bevel's claim challenging

the constitutionality of §921.141 is without merit.

Secondarily, Bevel appears to be arguing that his death sentence for the murder of Stringfield is constitutionally infirm because the jury's recommendation was not unanimous, but instead was 8-4. See Appellant's Brief at p. 27. But as this Court has recently reiterated, "under Florida law, the jury need not be unanimous in its recommendation of a death sentence. This Court has repeatedly held that it is not unconstitutional for a jury to be allowed to recommend death by a simple majority vote." *Coday v. State*, 2006 Fla. LEXIS 2533 (Fla. Oct. 26, 2006). Accordingly, this ground of error should be rejected.

V. THE TRIAL COURT DID NOT ERR IN ITS WEIGHING OF AGGRAVATING AND MITIGATING CIRCUMSTANCES; AND SPECIFICALLY, THE TRIAL COURT RULED APPROPRIATELY WHEN FAILED TO FIND BEVEL TO BE MENTALLY RETARDED IN ACCORDANCE WITH FLORIDA LAW

Bevel again argues that the trial court erroneously considered the applicability of aggravators and mitigators. However, he principally relies on United States Supreme Court's pronouncement in *Atkins v. Virginia*, 536 U.S. 304 (2002), wherein it was recognizing that the execution of a mentally retarded capital defendant is proscribed by the Eighth Amendment. Bevel relies on *Atkins* to support his own contention that he is mentally retarded and should therefore

be spared the death penalty.[2] However, *Atkins* does not provide Bevel the support he believes its does; because, although *Atkins'* generalized holding regarding the prohibition against executing mentally retarded individuals is unquestioned, Bevel has not made a demonstration that he is in fact retarded under Florida law.

In *Atkins'* the Supreme Court provided that States were to fashion appropriate procedures to determine whether capital defendants were mentally retarded. 536 U.S. at 317. Florida responded to *Atkins'* mandate by adopting Florida Rule of Criminal Procedure 3.203 et seq., which provides, in order for a capital felon in Florida to be found mentally retarded, he

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[2] The State would note that there was not a hearing exclusively devoted to the question of whether Bevel is mentally retarded. However, the standard of review employed in reviewing a trial court's determination regarding whether a defendant is mentally retarded is well-understood: the record underlying the trial court's conclusion must be substantially and competently supported. *See, e.g., Foster v. State*, 929 So. 2d 524, 537 (Fla. 2006); *see also Sochor v. State*, 883 So. 2d 766, 781 (Fla. 2004). This Court has cautioned that appellate court's should avoid any effort to "'reweigh conflicting evidence submitted to a . . .trier of fact,'" because if "'after all conflicts in the evidence and all reasonable inferences therefrom have been resolved in favor of the verdict on appeal, there is substantial, competent evidence to support the [trial court's decision].'" *Johnston v. State,* 930 So. 2d 581, 586 (Fla. 2006) (quoting *Tibbs v. State*, 397 So. 2d 1120, 1123 (Fla. 1981) (footnote omitted), *aff'd*, 457 U.S. 31 (1982)). Consequently, deference is owed to the Circuit Court's factual findings provided they are fully supported by the record.

must have: "(1)significantly subaverage general intellectual functioning[3] existing concurrently with (2) deficits in adaptive behavior[4] and (3) manifested during the period from conception to age 18."

The foregoing must be analyzed conjunctively, and the absence of but one "prong" would mean the capital felon is not mentally retarded. *See, e.g., Johnston v. State,* 930 So. 2d 581, 586 (Fla. 2006).

As an initial matter, in order for a capital felon to be deemed mentally retarded under Florida law, the felon must score 70 or below on either, *inter alia*, the Stanford-Binet or the Wechler Wechsler Adult Intelligence Scale IQ tests –- which correlates to two standard deviations below the mean on either test. See *id.*; see also *Zack v. State*, 911 So. 2d 1190, 1201 (Fla. 2005)(recognizing that a capital defendant must score 70 or below on a state authorized IQ test in order

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[3] Fla. Stat. § 921.137(1) provides, "[t]he term significantly 'subaverage general intellectual functioning,' for the purpose of this section, means performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the Department of Children and Family Services."

[4] Fla. Stat. § 921.137(1) provides, "[t]he term 'adaptive behavior,' for the purpose of this definition, means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, culture group, and community."

to be classified as mentally retarded under Florida law).

Bevel maintains that sentencing him to death would contravene *Atkins* given that a medical expert testified during the penalty phase hearing that he had an IQ score of 65. Bevel relies on this IQ score to support his contention that he is mentally retarded. However, it is apparent that Bevel misapprehends what is actually required to demonstrate mental retardation within the understanding of Florida law.

During the penalty phase hearing, Bevel called forensic psychologist Dr. Harry Krop to testify. As previously noted, Krop administered an IQ test to Bevel and determined that his overall IQ was 65 – a score which placed Bevel in the lowest one percentile.[5] Bevel's brief avers that this score, standing alone, is sufficient to classify him as mentally

[5] A suppression hearing was held prior to the trial. The central issue of the hearing involved whether Bevel's confession could be construed as voluntary. A secondary issue involved whether Bevel was mentally retarded. The State presented the testimony of Dr. William Riebsame. Riebsame testified that he did not administer a full-scale IQ test to Bevel, in part, because Bevel appeared to be in need of glasses (R. 820-22, 824). On a verbal IQ test Bevel scored a 75 (R. 823); and Riebsame did not believe that Bevel was mentally retarded as he did not exhibit deficits in his adaptive functioning (R. 830). However, the trial court failed to make an explicit ruling on the issue of mental retardation during the suppression hearing so as to allow Bevel additional time to marshal evidence to support his mental retardation claim. The trial court did address Bevel's mental retardation claim in its sentencing order – finding that he was not retarded under Florida law.

retarded.

It is important to recall that Dr. Krop concluded he did not believe Bevel was mentally retarded, in part, because Krop determined that Bevel did not exhibit significant deficits in his adaptive functioning. Because a capital felon's adaptive functioning is a factor that is to be considered in determining whether he is mentally retarded; the absence of any deficits in his adaptive functioning, would signify that the felon is not mentally retarded under Florida law. As this Court has previously noted,

> [Within the understanding of American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* (4th ed. 2000)], [e]ven where an individual's IQ is lower than 70, mental retardation would not be diagnosed if there are no significant deficits or impairments in adaptive functioning. *Id.* at 42. Adaptive functioning refers to "how effectively individuals cope with common life demands and how well they meet the standards of personal independence expected of someone in their particular age group, sociocultural background, and community setting." *Id.* In order for mental retardation to be diagnosed, there must be significant limitations in adaptive functioning in at least two of the following skill areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety. *Id.* at 41.

Rodriguez v. State, 9191 So. 2d 1252, 1266 n. 8 (Fla. 2005).

Thus, an individual with an IQ falling below 70 is not

automatically determined to be mentally retarded; and consistent therewith, this Court has also had occasion to uphold a death sentence even in those instances where there was some evidence that the accused's IQ was less than 70. In *Rodgers v. State*, 2006 Fla. LEXIS 2542 (Fla. Oct. 26, 2006), the accused had been charged with killing his wife, whom he had discovered was unfaithful. During the penalty phase evidence was presented evidence indicating that Rodgers' IQ was 69. Id. at *6. A Spencer Hearing was convened to make a determination regarding whether Rodgers was indeed mentally retarded. Two court-appointed expert found that Rodgers' IQ was 75 and 74 respectively. Rodgers' expert determined that his IQ was 69, and further opined that he was mentally retarded. *Id.* at *25. The trial court ultimately found that Rodgers was not mentally retarded because there had not been any demonstration that he exhibited deficits in his adaptive functioning. The trial court observed that at various points throughout his life Rodgers was an entrepreneur; he was able to keep appointments; he bid on projects; he worked with customers; and he maintained a normal rapport with those he encountered. Id. *26-27. This Court affirmed the trial court's finding that Rodgers was not mentally retarded.

More recently, this Court considered post-conviction

claim from an individual who also alleged he was mentally retarded. In *Burns v. State*, 2006 Fla. LEXIS 2593 (Fla. Nov. 2, 2006), an individual who had been sentenced to death sought to argue that his death sentence was constitutionally infirm because, he averred, he was mentally retarded. Burns' expert found that his IQ was 69; conversely, the State's expert determined that Burns' IQ was 74. The trial court found the testimony of the State's expert to be more credible and found that Burns did not meet the first prong for a determination of mental retardation. Id. *34-35. The trial court's determination was affirmed by this Court. This Court further noted, again relying on the trial court's findings, that even if Burns had clearly demonstrated that his IQ fell below 70, he would still not be considered mentally retarded because he could not demonstrate any deficits in his adaptive functioning. *Id.* at *36-37. The trial noted that Burns' work history (which included running a business) and his familial interactions evidenced that he did not have deficits in his adaptive functioning.

In the instant case, no medical expert has found Bevel to be mentally retarded. Moreover, the trial court noted that Bevel had lived on his own since he was eighteen years old; Bevel was also able to care for himself and attend to his

personal affairs; he was able to drive to places he needed to be; Bevel also performed odd jobs including automotive repair and babysitting. Thus, the trial court was presented with competent substantial evidence that Bevel was not mentally retarded, because no demonstration has been made that he had any deficits in his adaptive functioning.

VI. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION WHEN IT ALLOWED FOR THE ADMISSION OF CRIME SCENE PHOTOGRAPHS; THE PHOTOGRAPHS WERE RELEVANT AND PRESENTING THEM WAS MORE PROBATIVE THAN PREJUDICIAL

Bevel opines that the trial court improperly allowed the State to present photographs of the crime scene that were needlessly gory, and that the photos were more prejudicial than probative. He avers that it was erroneous for the photographs to be shown to the jury.

This Court has acknowledged that the admission of photographs depicting a crime scene "is within the discretion of the trial court, and its ruling will not be disturbed on appeal absent a clear abuse of that discretion." *Rodriguez v. State,* 919 So. 2d 1252, 1286 (Fla. 2005). The Court in *Rodriguez* further commented that although courts should be wary of admitting photographs that are needlessly gratuitous, "[t]he test for the admissibility of such photographs is relevancy rather than necessity." *Id*.

Bevel specifically argues that he "objected to exhibits which were photographs of the dead body of the victim and bloodstains," and "[t]he evidentiary value of these gruesome photographs had no value because the witnesses had already testified to seeing the bodies." Appellant's Brief at p. 32. Because Bevel does not provide much in the way of context, it is briefly necessary to discuss the circumstances surrounding the admission of numerous photographs depicting the crime scene.

During the testimony of Detective Mark Doyle, the State sought to introduce a number of pictures taken by Doyle of the crime scene. One of the pictures, Exhibit DD, depicted a large pool of blood with a bullet fragment. Bevel objected to its admission (T. 736). Bevel believed that the picture was simply cumulative and would be far more prejudicial than probative. Left unstated in Bevel's brief is that his objection regarding Exhibit DD was in fact *sustained* by the trial court (T. 742) ("So I'll sustain the objection to State's [Exhibit] double D at this time."). Bevel also objected to State Exhibit HH which depicted a mattress from Stringfield's home. The photograph of the mattress had evidence of blood stains and some projectile marks which appeared to demonstrate where some bullets had struck. The

photograph depicting the mattress was admitted by the trial court because that particular photograph went towards "identification" (T. 742).

Photographs which serve to assist a witness "explain[ ] the condition of the crime scene when the police arrived" have been held to be admissible. *Zakrzewski v. State,* 717 So. 2d 488, 494 (Fla. 1998). Additionally, the record clearly evidences that the trial court reviewed the photographs at issue prior to their admission; and because the trial court conducted an independent review of the photographs, this militates in favor of their admissibility. *See, e.g., Douglas v. State*, 878 So. 2d 1246, 1256 (Fla. 2004).

Moreover, even if it was erroneous to admit the photographs, this was merely harmless error. See *Dufour v. State,* 905 So. 2d 42, 74 (Fla. 2005) (recognizing that even if it was erroneous to admit photographs, this "would not have provided a basis for reversible error on appeal because the admission was harmless and the photos [did] not create the circumstance that the risk of prejudice outweighed the relevancy"). Accordingly, this claim of error should be rejected

VII. THE TRIAL COURT DID NOT ERR BY ADMITTING BEVEL'S CONFESSION TO LAW ENFORCEMENT

Bevel argues that the trial court improperly permitted his confession to be admitted. Prior to Bevel's trial, a motion to suppress hearing occurred; the trial court ultimately determined that Bevel's confession was freely and voluntarily given. Bevel now opines that his confession was not freely given, and in fact, because he has a low IQ, any consent he may have given should be construed as suspect.

This Court has explained its standard of review following a trial court's grant or denial of a motion to suppress:

> We have stated that "[a] trial court's ruling on a motion to suppress comes to us clothed with a presumption of correctness and, as the reviewing court, we must interpret the evidence and reasonable inferences and deductions derived therefrom in a manner most favorable to sustaining the trial court's ruling." *Connor v. State, 803 So. 2d 598, 605 (Fla. 2001)* (quoting *Murray v. State, 692 So. 2d 157, 159 (Fla. 1997)*). Nevertheless, "mixed questions of law and fact that ultimately determine constitutional rights should be reviewed by appellate courts using a two-step approach, deferring to the trial court on questions of historical fact but conducting a de novo review of the constitutional issue." *Id.*

Taylor v. State, 937 So. 2d 590, 598 (Fla. 2006).

Further, this Court has recognized that the onus is on the State to demonstrate by the preponderance of the evidence that a defendant's confession was voluntary, following an analysis of the totality of the circumstances. *See, e.g., Sliney v. State*, 699 So. 2d 662, 667-68 (Fla. 1997). This Court will evaluate whether a defendant valid waived his

Miranda rights following resolution of two distinct concerns:

> First, the relinquishment of the right must have been voluntary in the sense that it was the product of free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the "totality of the circumstances surrounding the interrogation" reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived.

Ramirez v. State, 739 So. 2d 568, 575 (quoting *Moran v. Burbine*, 475 U.S. 412, 421 (1986)).

The question now before the Court is whether the trial court's ruling was correct. Various detectives from the Jacksonville Sheriff's Office were called to testify during the suppression hearing. They discussed the circumstances of their interviews with Bevel on March 27-28, 2004. The detectives all testified that Bevel affirmed that he understood his *Miranda* rights, and that he read and signed a document to that effect; Bevel was also asked his level of education, and whether he had recently consumed any drugs or alcohol prior to speaking with detectives.

Bevel now opines that his confession was infirm and that his low IQ score should call into question the validity of any admissions he may have made. However, this Court has

previously recognized that it is entirely permissible to admit the confession of a defendant possessing subaverage intelligence, provided the defendant was cognizant of the consequences of doing so, *see, e.g., Roman v. State*, 475 So. 2d 1228, 1232 (Fla. 1985). Moreover, this Court has observed that simply because an individual possesses a low IQ score, a confession will not be deemed inadmissible unless the "subnormality or impairment [is] so severe as to render the defendant unable to communicate intelligibly or understand the meaning of Miranda warnings even when presented in simplified form." *Thompson v. State*, 548 So. 2d 198, 203 (Fla. 1989) (citation omitted). This Court tethered the admissibility of the confession to whether the defendant was cognizant of the rights he was relinquishing by speaking with law enforcement. *Id*. at 204.

Bevel was certainly no stranger to the law given his lengthy arrest record, and therefore he was aware of the significance of signing the Miranda form. *See generally United States v. Watson*, 423 U.S. 411, 424-25 (1976)(observing a determination as to whether a defendant's cooperation with law enforcement was voluntary could include consideration of the fact that the accused was not a "newcomer to the law"). Moreover, the fact that at one point Bevel attempted to use

his child's mother a false alibi also indicates that he knew "he was in trouble and appreciated the consequences of his conversations with police." *Thompson*, 548 So. 2d at 204.

Accordingly, this Court should hold that Bevel's statement to law enforcement was not coerced, and he was certainly aware of hte consequences of speaking with law enforcement.

VIII. THE TRIAL COURT DID NOT FAIL TO MAKE INDEPENDENT FINDINGS OF FACT AND CONCLUSION OF LAW WITHIN ITS SENTENCING ORDER; FURTHER BEVEL DID NOT OBJECT TO THE SENTENCING ORDER ON THIS BASIS, THEREFORE THIS CLAIM HAS NOT BEEN PRESERVED FOR REVIEW

Bevel contends that the trial court's sentencing order was a near verbatim copy of a proposed order that had been submitted by the State. Bevel contends that because a few sentences in the State's proposed sentencing order and the trial court's actual sentencing order are very similar – this constitutes reversible error.

This Court has clearly stated what a trial court's sentencing order in a capital case must entail:

> a trial judge presiding over a capital case must: (1) expressly evaluate in his or her written order each mitigating circumstance proposed by the defendant to determine whether it is supported by the evidence and whether, in the case of nonstatutory factors, it is truly of a mitigating nature; (2) assign a weight to each aggravating factor and mitigating factor properly established; (3) weigh the established aggravating circumstances against the established mitigating circumstances;

> and (4) provide a detailed explanation of the result of the weighing process.

Fennie v. State, 855 So. 2d 597, 608 (Fla. 2003).

The fact that portions of the State's proposed order and the trial court's sentencing order had similarities is not presumptively improper; for while it certainly true that the trial court must not abdicate its responsibility to independently weigh the relevant aggravators and mitigators; the trial court is nevertheless permitted to take into consideration a proposed sentencing order submitted by the State. *See Walton v. State*, 847 So. 2d 438, 446-47 (Fla. 2003).

In addition, Bevel never agues that he objected to the sentencing order, which is a necessary predicate to preserve this claim, therefore his contention is procedurally barred. *See, e.g., Blackwleder v. State*, 851 So. 2d 650, 651 (Fla. 2003). Accordingly, this claim of error should be rejected.

IX. BEVEL'S DEATH SENTENCE IS ENTIRELY APPROPRIATE; THIS COURT ONLY LOOKS TO THE ACCUSED'S CHRONOLOGICAL AGE RATHER THAT HIS MENTAL AGE FOR PURPOSES OF WIEIGHING THE PROPRIETY OF A DEATH SENTENCE

Finally, Bevel relies on *Roper v. Simmons*, 543 U.S. 551 (2005) for the proposition that executing him is improper because one medical expert opined that his mental age was that

of fourteen or fifteen year old. In *Roper*, the Supreme Court held that executing an individual who committed a capital crime while under the age of eighteen contravened the Eighth Amendment's prohibition against cruel and usual punishment. However, this Court has noted that *Roper* implicated one's chronological age, not their mental age. *See, e.g., Hill v. State*, 921 So. 2d 579, 584 (Fla. 2006). Given that Bevel was twenty-two years old when these heinous and largely inexplicable crimes occurred, he does not benefit from *Roper's* pronouncements that the death penalty should not be imposed on a defendant who committed a capital crime while under the age of eighteen. Accordingly, this claim of error must fail.

CONCLUSION

For the foregoing reasons, the State respectfully asks this Court to affirm the trial court's imposition of a sentence of death against Thomas Bevel.

Respectfully submitted,
BILL MCCOLLUM
ATTORNEY GENERAL

_____
RONALD A. LATHAN, JR.
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR NO. 0018477
OFFICE OF THE ATTORNEY GENERAL
THE CAPITOL
TALLAHASSEE, FL 32399-1050
(850) 414-3300, ext. 3580
COUNSEL FOR THE STATE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing ANSWER BRIEF has been furnished by U.S. Mail to Jefferson W. Morrow, 1301 Riverplace Blvd., Suite 2600, Jacksonville, FL 32207 this 5th day of February, 2007.

_____

Ronald A. Lathan, Jr.
Attorney for the State of Florida

CERTIFICATE OF FONT AND TYPE SIZE

Counsel certifies that this brief was typed using Courier New font 12 point.

_____

Ronald A. Lathan, Jr.
Attorney for the State of Florida