IN THE SUPREME COURT OF FLORIDA

RAY JACKSON,

Appellant,

v. **CASE NO. SC07-1233**
L.T. No. 2005-32590 CFAES

STATE OF FLORIDA,

Appellee.
_____/

ON APPEAL FROM THE CIRCUIT COURT
OF THE SEVENTH JUDICIAL CIRCUIT,
IN AND FOR VOLUSIA COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE

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STATEMENT OF THE CASE AND FACTS

GUILT PHASE

Michael Jansen testified that on April 17, 2005 he was walking with his two sons and a dog in a wooded area off of a dirt road. He observed what appeared to be part of a human leg bone. As they looked at the bone, their dog found what appeared to be a shallow grave with more bones in it. At that point, they went back to the house and, after speaking with his oldest son who researched the issue on the internet, decided that the bones were human. He called the police and agreed to go back out there to show them the bones. (V17, 183-85).

On April 17, 2005, Daytona Beach Police Officer Steven Copsidas testified that he was dispatched to a wooded area behind the Carolina Club Apartments. There, he met Mr. Jansen who pointed out some bones sticking out from the dirt. (V17, 187). It looked like a makeshift grave and they made a call to the medical examiner's office. (V17, 187). The medical examiner arrived and determined the bones were human and they secured the location. (V17, 187).

Senior crime laboratory analyst Kelly May testified that he was employed by the Florida Department of Law Enforcement in the "latent print and crime-scene disciplines." (V17, 193-94). On April 17, 2005, he was called to assist in the documentation and

collection of a partially buried female body. (V17, 195). When May arrived he noticed a shallow grave in a wooded area, with bones unearthed due "to apparent animal activity." (V17, 195). The grave was approximately two and a half feet wide by approximately four and a half feet long. (V17, 197).

May testified that he had been working in the field of fingerprint examination for approximately "29 and a half years." (V17, 208). May attended the victim's autopsy in this case in an attempt to obtain inked prints from one of the victim's hands in order to effect an identification. (V17, 213). He was able to ink prints suitable for comparison. The record prints of Pallis Paulk matched the ridge detail obtained from the body with sufficient points of comparison to make an identification. (V17, 215-17).

Forensic pathologist Dr. Thomas Beaver testified that he has been a medical examiner since 1992 and has conducted some 5,000 autopsies. (V18, 234). In April of 2005 he was the chief medical examiner for Volusia County and responded to a grave found in the woods near Daytona Beach. (V18, 235). The gravesite had bones scattered around it, as if it had been partially dug out by animals. (V18, 238). Some of the bones were scattered. The grave was shallow so the animals were able to scent the body buried there. (V18, 238). He supervised

recovery of the remains, noting that he expected them to be pretty well “disarticulated and altered and decomposed.” (V18, 240). The legs were kind of folded up with the skull separate from the rest of the body. (V18, 241). He estimated that the grave was not more than two feet deep. (V18, 242). Ultimately, they recovered the full skeleton. (V18, 242).

A normal or routine autopsy could not be performed on the body because the body was too “badly decomposed” and most of the “internal organs” were not “identifiable.” (V18, 244). Since most of the soft tissue was “gone” the body had to be sent to “anthropologists.” (V18, 244). Based upon his education and training, Dr. Beaver testified that the level of “decomposition” was consistent with the body being in the grave for approximately six months. (V18, 244). They did not recover any clothing on the body but did find some hair extensions. (V18, 245).

Dr. Beaver did not find any obvious signs of injury. He X-rayed the remains in an attempt to find the cause of death. (V18, 247). Finding no visible signs of injury, he packaged the remains for examination at the CA Pound Laboratory in Gainesville, at the University of Florida, which Dr. Beaver described as world-renowned anthropologists. (V18, 248). Upon examination, they could not determine the cause of death as Dr.

Beaver hoped, but did establish the race and approximate age of the deceased. (V18, 248). The body was identified by a forensic odontologist, Dr. Jan Westberry. (V18, 249).

Dr. Beaver was able to conclude the death was a homicide, explaining:

> It's based on the fact that she's found in a shallow grave. She's gone missing and, therefore, maybe against her will, maybe not.
> And there's no - - there's just – this is just not the way that people - - you know, that death normally comes to people.
> So this would fit the definition of homicide. I think it would be sort of preposterous to think of it as anything else.

(V18, 250). He concluded the death was the result of "homicidal violence of undetermined etiology." (V18, 250).

Dr. Beaver testified that certain kinds of homicidal violence, given the state of decomposition, could not be detected. Such causes include situational asphyxia, placing her into the trunk in a position where she could not breathe, and strangulation. Even in bodies that are not decomposed strangulation can be hard to detect. "So in this case we don't have the eyes to look at, so we can't look for hemorrhages of the eyes because they have decomposed. The soft tissues of the neck are all gone, so we don't have any tissue there to look at for hemorrhage or signs of a struggle or strangulation." (V18, 251).

Dr. Beaver stated that he could pretty much rule out a gunshot wound to the head or blunt force trauma because the skull was intact. (V18, 252). However, "[i]t is possible to shoot or stab her somewhere else in her body that might not – I might not be able to detect." (V18, 252). The bullet would have had to pass through her but no bullet was found at the site. (V18, 252).

Dr. Beaver could provide no time of death. (V18, 253). The interval was too long and Dr. Beaver did not know if the victim was placed in the grave after she was killed or before she was killed. (V18, 262). They recovered more than 90 percent of the skeleton. (V18, 275).

Dr. Beaver stated that it was rare for him not to render an opinion on the manner of death. (V18, 254). He found no evidence of trauma to the body. (V18, 254). However, Dr. Beaver explained: "I think she's up in the small shallow grave for a reason. And – and I think that would have to be violent." (V18, 257). He came to a conclusion on the cause of death based upon information received from law enforcement and information gathered from the grave site. (V18, 261). He did have the option of calling the death undetermined, but, Dr. Beaver explained that those cases should be rare and when you have

information to determine the cause of death, you should mark the manner of death. (V18, 264).

There was no law to suggest that a medical examiner has to use only what he sees during an autopsy. "The medical examiner making the manner of death takes into account all of the circumstances of the death." (V18, 264). Dr. Beaver testified he would not term the cause of death undetermined: "[A] case like this, there is a lot of information. It just doesn't happen to come from the autopsy. And we can use that information to make the manner of death." (V18, 265). Dr. Beaver explained: "But in my experience and doing this a lot of years and – this is a homicide. It just is. And it is because it looks - - you know, if it looks like a duck, walks like a duck, quacks like a duck, it's a duck. And that's the case here. This is a homicide." (V18, 266). It was significant to him that the remains were placed in a shallow grave and in a remote, wooded area. (V18, 278-79). It was not a traveled area yet it was relatively accessible. He applied his experience, common sense, and logic to determine the cause of death. (V18, 279).

A toxicology report from the victim revealed the presence of cocaine metabolite and ethyl-alcohol. (V18, 266). However, Dr. Beaver believed that the alcohol was a product of

decomposition and did not believe it was because she imbibed alcohol. However, the victim did take cocaine "within 48 hours" of her death. (V18, 267). However, there is no way he could find a drug overdose because the cocaine was found in "trace amounts, so it's a very small amount." (V18, 267). Ecstasy was also detected in trace amounts. While that drug was a little less stable, he would expect that if it caused her death they would have found it in amounts that could be "quantified." (V18, 268).

Forensic Dentist Dr. Jan Westberry compared post-mortem X-rays from the remains in the medical examiner's office to those known or represented to be those of Pallis Paulk.[1] (V18, 296). She was able to make a positive identification on the radiographs based upon the shape and contour of the teeth and fillings. (V18, 296-97). Dr. Westberry was confident in her identification of Paulk, testifying: "Oh, I am sure. It is the same individual." (V18, 300).

Larry Paulk testified that he was retired from the Air Force and employed as a computer technician. (V17, 128-29). Paulk was victim Pallis's Uncle and was the guardian of her daughter, Faith. (V17, 129). Pallis did not live with him and Faith, but, Paulk would see her on a regular basis. He was in

[1] Dr. Shirin Rawji identified dental records on his patient Pallis Paulk, which included X-rays. (V18, 287-88).

regular contact with her by phone and would see her every week or "two weeks at the longest." (V17, 130). Once, he did go three weeks without seeing her but he explained that it was too long not to see her daughter. Consequently, they reached an agreement that they would not go more than two weeks without seeing or hearing from her. (V17, 130). She abided by that agreement. Id.

Paulk last saw Pallis on her birthday. It was near Christmas and Pallis brought some Christmas presents for her daughter. Pallis was getting ready to turn herself in on outstanding warrants and wanted her daughter to have Christmas presents from her mother. This was on or around her birthday, October 21st. (V17, 131). When two weeks had expired and he had not heard from Pallis, he just assumed that she had turned herself in. (V17, 131). Pallis led a life out there "on the edge" and had an interest in music. In fact, she made a CD, "so she was trying." (V17, 132).

Fayonna Paulk testified that she was employed as a nursing assistant in Daytona Beach and that Pallis was her cousin. (V17, 140-41). They were very close and she considered her a sister. For part of her life they lived in the same household. (V17, 141). They lived together at the Hillcrest apartments but moved out on November 1, 2004. (V17, 142). She still saw

Pallis on a regular basis even after she moved out. "She would call - - she used to call every day." (V17, 142). In early November they went to a club together in DeLand. (V17, 142). Although prior to that night they had words and stopped talking for a couple of days, that night everything was fine between them. (V17, 143-44). She was sure they were at the night club on a Sunday because that was the only night they would go to that particular club, called "Vibes." (V17, 144). After looking at a calendar, Fayonna testified that it was on the 7th of November. (V17, 145). When Fayonna first talked to the police, she thought the Sunday was November 9th, but after looking at a calendar she observed that the 9th was a Tuesday. (V17, 146). After seeing her that Sunday, November 7th, Fayonna testified that she never spoke to Pallis again. (V17, 146).

After about a week of not hearing from Pallis, Fayonna began worrying about her. (V17, 147). Around Thanksgiving, Fayonna knew something was wrong with Pallis and filed a missing persons report with the Daytona Beach Police Department. (V17, 147).

On cross-examination, Fayonna testified that Pallis had previously been employed as a stripper or a dancer when she lived in Orlando. (V17, 153). Pallis also used drugs, powder cocaine and Ecstasy or "X." (V17, 154). Pallis's mother died

from AIDS and Pallis started a rumor when she was younger that she also had AIDS. However, Fayonna testified that Pallis was tested and "she did not have AIDS." (V17, 154). Pallis was fourteen when her mother died of AIDS. (V17, 155). Pallis, however, was aware that she did not have AIDS. (V17, 156). Pallis had an outstanding warrant for a violation of community control for uttering a forged instrument. (V17, 162).

Jessica Smith testified that Pallis was her cousin and that they were close. In November of 2004 she would have contact with her every day. If she did not see Pallis, she would talk to her on the phone. (V17, 166). She last saw Pallis in the area of what was called "The Bottom" or "South Side Inn" on a Monday evening, around "11." (V17, 166). Pallis was wearing a pink shirt and seemed fine. Id. She never saw or heard from her again after seeing her that Monday night in November. (V17, 168). About a week after not hearing from Pallis, Jessica became worried and had discussions with family members. (V17, 169).

On cross-examination, Jessica acknowledged that Pallis used drugs, marijuana and Ecstasy. (V17, 174). She knew that Pallis had sex with other women. She was also aware that Pallis would have hetero sexual relations for money and worked to procure other women for men to have sex for money. (V17, 175).

However, Pallis was not a street walking prostitute. (V17, 177).

Calvin Morris testified that he and Pallis were cousins and that in November of 2004 he was sixteen and had known Pallis since he was nine-years-old. (V18, 303). Back in October and November of 2004 he and Pallis were very close and he would see her "every day." (V18, 303). He would see her at clubs at night and on the weekends. (V18, 303).

Morris was acquainted with Ray Jackson through "Tisha" Latisha Allen. (V18, 304-05). He saw Jackson at Tisha's who had an apartment in an area called Daytona Village. (V18, 305). Jackson drove a big blue car, a light blue Delta four door. (V18, 306). Morris would, on occasion hang out at Latisha's apartment. He also was acquainted with Fred Hunt or "Buck." (V18, 307).

In early November, Pallis called Morris when he was driving his cousin's car, a grey Intrigue. (V18, 309). Pallis said "I got a lick for you, Cuz" which, Morris explained was a term used for stealing. (V18, 310). As a result, Morris drove to Pallis's location at 304 Keech Street with his cousin Fluker. (V18, 311, 316). He parked the car and went upstairs to the apartment. Pallis answered the door and told him that she was going to get "my stuff and stuff." (V18, 312-13). When he

looked in the apartment door, he could see Ray Jackson, sleeping on the bed, tossing and turning. (V18, 313). Morris went back to the car and he waited for Pallis. (V18, 314). He did not feel comfortable stealing from Jackson. (V18, 314-15). When Pallis came down to the car she was carrying a blue Sponge Bob bag. She also had a bracelet and necklace which he characterized as men's jewelry. (V18, 315). Morris drove off with Pallis and dropped Fluker off before heading to Sanford. (V18, 316).

During the drive to Sanford Morris looked into the bag and observed up to "two ounces of coke" and some marijuana. (V18, 317). In addition, Morris saw about $800 cash in the bag. (V18, 317). Morris also noticed that Pallis had a cell phone with her that was not hers. (V18, 318). He picked up his girlfriend from work in Sanford then drove back to the Daytona Beach area. (V18, 318). During the drive they smoked marijuana.[2] (V18, 319). Pallis gave Morris $100 from the bag. (V18, 323). Pallis called someone named Jimbo to get an X pill or a boot up [Ecstasy]. (V18, 319-20). He drove the car to Loomis street where Jimbo lived but told Pallis that she should instead go to her grandmother's house, "Auntie Margie." Morris was concerned that Pallis had robbed Jackson and worried about

[2] Morris estimated that he smoked like "six joints" that day. (V20, 490).

meeting up with him or one of his friends. (V18, 321-22; V20, 491). Morris knew that Jackson sold drugs. (V20, 523). Despite his concerns, Morris agreed to take Pallis to Jimbo's house on Loomis. (V18, 322). When he arrived at Jimbo's house Pallis got out of the car, telling Morris, "hold on because I be right back." (V18, 324). She entered the house and about two minutes later, a light skinned "dude" came walking out. Morris did not know him and asked him to go get "Pallis for me." (V18, 324). The man replied that she was using the bathroom. (V18, 324-25). Morris identified the light skinned black male in court as Mike Wooten. (V18, 325-26). He had not previously met Wooten.[3] Id.

Pallis and Jackson came walking out of the house. A car, described by Morris as a red hatchback pulled up in front of his car. (V18, 327). The car was driven by a black male with dread locks. (V18, 339). Jackson was walking behind Pallis as they left the house. (V18, 340). He observed a small caliber gun on the side of Jackson, a .25 or .22. (V18, 340). They walked over to Morris's car and Jackson said "Where is my stuff at?" (V18, 340). Morris responded and said "this your weed right here." (V18, 341). He gave it to Jackson. (V18, 341). Pallis

[3] Morris admitted that he was shown a photo lineup with Mike Wooten in it but he failed to identify Wooten's picture. (V20, 520).

retrieved clothes out of the car and Jackson said “Come on.” Pallis acted like she didn’t want to go with Jackson. (V18, 342). Both Pallis and Jackson got into the red hatchback. (V18, 343). He shoved or pushed Pallis a little bit and Wooten got in the front seat, passenger side, with Pallis and Jackson in the back. (V18, 343). Morris described Pallis’s look as she got in the car: “She look like she fixing to cry. She ain’t want to get in that car.” (V18, 343).

Morris followed them in his car as they drove off. However, when they left Loomis street Jackson held a gun out of the car window. (V18, 343-44). Morris described how Jackson held the gun and “aimed it back my way.” (V20, 502). At that point, Morris turned off and stopped following them. Morris drove to his grandmother’s house. (V18. 344). After seeing Pallis get inside the hatchback with Jackson, Morris never saw or heard from Pallis again. (V18, 344).

When he got to his grandmother’s house he told her to call Aunt Margie and tell her to call the police. (V18, 344). Morris did not report what he had seen because to the police because he had outstanding warrants and feared he would be arrested. (V18, 345).

At some point, Morris was arrested and the police came to talk to him at the Greenville Hills Academy, a detention center

for juveniles. He never told the police anything about what happened until 2005. (V20, 503). At some point, he was returned to the Volusia County Branch jail. While there he had contact with Jackson who threatened his life. (V18, 365). Morris testified: "he going to kill me and all that." (V18, 365). Morris also had contact with Wooten at the jail. Wooten told Morris he was sorry with what happened to his cousin but that "he didn't have anything to do with it." (V18, 366).

Sarah Key testified that she was Calvin Morris's grandmother. (V20, 528-29). She recalled that at some point between Halloween and Thanksgiving in 2004, Morris came to the house and told her that "two guys had Pallis." (V20, 530). At some point prior to Thanksgiving she was with Morris at a gas station when Morris pointed out "[t]here go the boy, the car right there, Grandmom." (V20, 532). She understood Morris was referring to one of the individuals that "got Pallis." (V20, 532). Key confronted the boy when he came out of the gas station store, asking if he knew Pallis. He responded, "Something like that." (V20, 532). In response, Key asked him that if he saw her, "tell that her grandmamma and her baby want her – her baby definitely want her." (V20, 532). He just walked away and got back into his car. (V20, 532). She

identified the man she spoke to in court as defendant Jackson. (V20, 534).

Curtis Vreen testified that his nickname was "Jimbo" and that he lived on Loomis Trail in Daytona Beach. (V20, 538). Vreen testified that he and Pallis were friends from "church" and he considered her a good friend. (V20, 539). Back in October and November of 2004 he would see Pallis about every other day. (V20, 539). Pallis was well known in the community and parties all the time. (V20, 539-40). In early November Pallis came to his Loomis Trail house where he lived with his mother and sister at "about three or four in the morning." (V20, 542). She came over to get some Ecstasy pills. (V20, 542). Vreen admitted that if Pallis wanted Ecstasy, he was the one Pallis would call. (V20, 543). When she came over in the early morning, she was in a red hatchback car with another individual in the car. (V20, 544). He only had one pill at the time and gave her half of one. (V20, 543). He could not see who else was in the car. (V20, 545).

Later that same day Pallis called Vreen on the phone looking for more pills. (V20, 545). Before Pallis showed up, he got a call from "Ray or whoever" and he was telling Vreen that Pallis "got his stuff or whatever." (V20, 546). Jackson, who Vreen identified in court, showed up at his house. (V20,

547). When Jackson arrived at Vreen's house, Jackson stated: "Where's Pallis? She robbed me last night, took my pants, took my keys. . . "I'm looking for her." (V20, 548). Jackson made sure that Vreen wasn't hiding Pallis at his house, and, left. (V20, 548).

At some point, Jackson came back that same day when Pallis was standing inside Vreen's room. (V20, 550). Pallis had come over to get some pills. (V20, 550). Vreen let Jackson in the house and he confronted Pallis, stating: "Where's my shit, what you took? Where's my stuff at?" (V20, 550). Pallis kept saying she gave it to her cousin. (V20, 550). They kept going back and forth, with Jackson asking "Where's my shit at?" and Pallis responding, "I gave it to my cousin." (V20, 551). They left the house and Vreen looked out and observed a gray Intrigue and the same red hatchback he had earlier seen Pallis in. (V20, 551). He observed Morris in the Intrigue and saw someone he identified as a "short red guy" who everyone called Jackson's brother. (V20, 552). He identified the individual in court as the defendant Wooten. (V20, 552-53). He said that "red" was a slang term for light skin. (V20, 553-54).

Pallis and Jackson left his house together. (V20, 554). According to Vreen, Jackson did not force her out of the house and they walked together to Morris's car. Once there they got

two or three bags with shoe boxes in them from Morris. (V20, 554). Vreen observed that they left, Pallis got in the back seat, Jackson got in and they drove off. (V20, 554-55). According to Vreen, Wooten was driving with Jackson in the passenger seat. (V20, 555). Morris drove off after them. (V20, 555). Vreen testified that Pallis was wearing a hot pink "barrette" and pink sandals, like high heeled shoes. (V20, 556). After seeing Pallis get into the red hatchback, Vreen testified that he never saw or heard from Pallis again. (V20, 556).

Vreen was a rapper and record producer and Pallis sang on one of his albums. (V20, 556). He thought that Pallis would have signalled him or let him know something was wrong before she got into the car with Jackson, but, she did not. (V20, 582). Consequently, he did not see anything wrong with her getting into the car with Jackson. (V20, 582). Vreen thought that she was going to take Jackson to where his property or money was located. (V20, 587).

Vreen became concerned for Pallis after he did not see her at the "The Classic" a football game between Bethune-Cookman and Florida A & M in November. (V20, 558). He had always seen Pallis at the game. (V20, 558-59). After the game, he made a phone call to a relative of Pallis, Fayonna and later made a

three way call to the police to give them information. (V20, 559). However, he did not want to be involved with police at the time because he was selling Ecstasy. (V20, 589).

Vreen testified that he received threatening phone calls from both sides regarding Pallis. Vreen testified:

> Yes, sir. I was getting calls from whoever. I was getting calls from people telling me I'm going to die from going to court on Ray, and some people telling me they hope I go to jail for doing that to Pallis, for they think I did that to Pallis. Yeah, I was getting it from both sides.

(V20, 583). He actually received phone calls from people saying he would die if he testified against Jackson. (V20, 586).

On cross-examination, Vreen admitted he had been convicted of a felony two or three times and that he had pending cases prior to his testifying, for possession of cocaine and fleeing and eluding. He resolved those cases and received 18 months probation. (V20, 569). The night he was arrested in May 2005 for possession of cocaine and fleeing and eluding is the first time he made a statement about Pallis. (V20, 571). "If I didn't catch that charge, sir, I still would have told about what happened to Pallis." (V20, 572). Vreen was not aware of any "deal" made in exchange for his testimony and he entered his plea in December of 2005. (V20, 589). He was not aware that the judge in his case was even aware that he was a witness in a murder case. (V20, 590).

Vreen knew that Pallis stripped and danced for money but did not see her have sex for money. (V20, 573). Vreen testified that Pallis may have messed around with a boyfriend for money but that she was not a "prostitute" as he understood the term. (V20, 576).

Sergeant Byron Williams of the Daytona Beach Police Department testified that he arrested Dewayne Thomas on November 9, 2004. (V20, 594-95). He testified that the owner of the vehicle, Latisha Allen, was able to come down and take the vehicle. (V20, 597).

Latisha Allen testified that she was 23 and lived in Daytona Beach with her four year-old son. (V20, 602). On November 9, 2004 she lived in a two bedroom, one bath second floor apartment in Daytona Beach. (V20, 603). At the time she was living with her boyfriend DeWayne Thomas and two other individuals, Frederick Hunt and Charles Bush. (V20, 603). Fredrick Hunt was known by his nickname, "Buck." (V20, 603). Prior to that time, another individual by the name of Michael Wooten also lived there. (V20, 604). She also knew Ray Jackson, having met him in February of 2004. (V20, 604). She viewed Jackson as a father figure and they were close, with Jackson having a key to her apartment. (V20, 605). He would provide money to Latisha to help her and her child. (V20, 605).

Although Jackson had a key to her apartment and would come and go, he lived with his wife, Latisha "suppose[d]". (V20, 606). Jackson had a wife and a girlfriend. (V20, 606). Latisha was also aware that Jackson had an apartment on Keech Street, where she would occasionally visit Jackson. (V20, 606). She used to see Jackson every day but they had a falling out. (V20, 607). Jackson and Wooten referred to each other as brothers. (V20, 608). In October or November Wooten left the apartment. (V20, 610). At the end of October, Latisha asked Wooten to leave the apartment because he was doing things she did not like. (V20, 612). When she kicked Wooten out, it caused a rift between her and Jackson. (V20, 613).

On November 9th of 2004 her boyfriend, Thomas was arrested for driving with a suspended license. (V20, 613). She went to the scene and took possession of the car, a blue Buick. (V20, 617). She owned the car and testified she purchased it from Jackson. (V20, 617). She drove off in the car with Hunt. (V20, 618). When she drove back to her apartment she noticed Wooten going up her stairway. (V20, 620). She thought that was odd since she had kicked him out of the apartment. (V20, 620). When she parked Hunt jumped out of the car ahead of her. She noticed a red hatchback car parked by the stairway. (V20, 621-22). Latisha testified that she had previously seen Wooten

driving that car. (V20, 622). Latisha was aware that Jackson drove a sky blue Delta 88 Oldsmobile. (V20, 622).

When she entered the apartment she saw Jackson by the hallway, sitting in a chair. (V20, 623). Jackson was sitting near the bathroom door and Jackson told her to come over. (V20, 624). She sat on Jackson's lap and he told Latisha that he had been robbed.[4] (V20, 624). Jackson told her to look in her son's room. She looked in the room but did not see anyone so she opened the bathroom door to find a "girl sitting in my tub." (V20, 625). She did not know the girl who had her hands tied in the back with "the extension cord." (V20, 626). The girl had long hair with a flower in it. (V20, 627). She appeared calm and Latisha asked for her name. She did not recall her response, but, though it was something that "started with an S." (V20, 627). Latisha asked her what happened and the lady told her. (V20, 628). Latisha asked her if she was "okay" and the girl told her she was "straight." (V20, 629). She interpreted that to mean she was okay. Id. When Latisha was talking to the girl she was sitting on the toilet. (V20, 629). As she was talking to the girl, Jackson walked in and told Latisha to leave the bathroom. (V20, 630). She complied and spoke to Wooten on the way out of the bathroom. (V20, 631). Wooten told her

[4] Jackson first told Latisha that he loved her. (V20, 625).

something about not ending up like the girl in the tub. (V20, 631).

Jackson asked Latisha for a "douche" but did not say why he needed it. She provided Jackson one and admitted that she was concerned. (V20, 632). Latisha called Jackson into her room and told him that she loved him and did not want "him to do anything that would take him away from us." (V20, 632). Jackson said that "he wasn't going anywhere." (V20, 633). Next, Latisha asked Jackson if he was going to kill her. Jackson "nodded yes." (V20, 633). Latisha said that Jackson both nodded his head and said "yeah." (V20, 639). Although it occurred a long time ago, and it was clear that Jackson's response to her question was affirmative. (V20, 639-40).

While in the apartment she noticed some plastic ties possessed by Wooten. (V20, 634). The only people she saw enter the bathroom were Jackson and Wooten. (V20, 634). However, she saw someone called "Hicks" in the apartment and Charles Bush, who was staying at the apartment. (V21, 644).

Latisha left the apartment to bail out DeWayne from jail. (V20, 640). When she left the apartment she was met on the stairs by DeWayne's cousin who told her that he wanted to come bail out DeWayne. (V20, 641). She agreed to let him come along and went to talk to the bail bondsmen. When she was done

talking to the bail bondsmen, DeWayne's cousin told her that he accidently locked himself out of the car with the keys still in the ignition. (V21. 641-42). She called Jackson who told Latisha that "he would take care of it." (V21, 642). Jackson did not show up, but his wife, Tonya did. She was not driving Jackson's sky blue Delta 88. Tonya unlocked the car for Latisha. (V21, 643).

When Latisha returned to her apartment DeWayne, Charles, and Fred were there. (V21, 645). Neither Jackson, Wooten, nor the woman in the tub were there. (V21, 645). She noticed a smell coming from the bathroom: "It just smelled like bleach, like it's been cleaned." (V21, 646).

Latisha did not tell the authorities what she had seen and continued to see Jackson after this incident. (V21, 646). However, she said there was a strain in the relationship: "We would still talk, but, you know, it wasn't the same." (V21, 647). Moreover, Jackson warned her not to talk about what happened in the apartment: "He just told me don't be running my mouth about what I've seen." (V21, 647). At some point, Latisha asked Jackson if he drowned the woman and he replied: "[I]it didn't happen like that." (V21, 648). She did not ask him anymore questions or pry and try to find out what happened. (V21, 648, 649). However, at a later point, Latisha did learn

from Fred some details of what happened after she left the apartment. (V21, 685-86). She was sure the date of the incident was the same as the day DeWayne Thomas was arrested. (V21, 687).

At some point after the incident, Fred Hunt moved out of the apartment to live with Jackson at his Keech Street residence. (V21, 649). Latisha did not want Fred living in the apartment because she thought he was involved in the girl's disappearance. (V21, 682). She was also aware that Charles Bush moved in with Jackson. (V21, 649).

On April 20, 2005, Latisha went to the Daytona Beach Police Department with Mr. Hunt in reference to this incident. (V21, 649-50). She learned that a woman's body had been recovered. (V21, 650). Hunt was the one who told her the body had been found. (v21, 681). And, although she had not seen fliers regarding a missing woman, she did hear talk of a missing woman prior to that day. (V21, 650). Fred Hunt appeared upset the day they went to the police. (V21, 650). Hunt had an argument that morning with Jackson. (V21. 674). Prior to that day, Fred had never said he was afraid of Jackson. (V21, 676). However, the day they went to the police station there was a discussion about threats. (V21, 684).

After she made the statement to the police, she received a couple of calls from Jackson. The calls were made before she took a deposition in this case and Jackson asked her to "help him." (V21, 652). Jackson told her to say "that the guy at the police station told me to say it." (V21, 652). Latisha talked with Jackson on the day of her deposition. He told her again to say the police told her what to say and, Latisha testified: "He just told me good luck and just it will be okay." (V21, 653). In response, Latisha told Jackson that she "would help him." (V21, 653). However, she did not do what Jackson asked her to do in the deposition. (V21, 654).

Jammel McLaury testified that in November of 2004 he owned a red Geo Hatchback. (V21, 690-93). He stated that he considered himself related to Jackson because his cousin married McLaury's aunt. (V21, 691). He also knew Michael Wooten and was not sure but might have let both Wooten and Jackson use his car. "I just don't remember." (V21, 694-95). But, he admitted he probably let both of them use his car, "I just loaned it out because I had other cars."[5] (V21, 695). At some point, McLaury sold the metro to Wooten for $400. (V21, 694). He sold it to Wooten in February 2005. (V21, 698).

[5] McLaury was serving a prison sentence for drug related offenses. (V21, 690-91).

Brentson Thomas testified that he was presently incarcerated but that he previously lived in Daytona Beach. He knew Latisha Allen who was his brother, DeWayne's girlfriend. (V21, 701). In November 2004 his brother and Latisha lived in an apartment at Daytona Village. (V21, 702). He was acquainted with a person named Ray [Jackson] who came around every now and again. He was acquainted with him through Latisha.[6] (V21, 705). He had also met someone who Ray [Jackson] referred to as his brother. (V21, 705). On the date that his brother DeWayne Thomas had been arrested, he went to Latisha's apartment to see if his brother had bonded out and to get a change of clothes. (V21, 706). He entered the apartment through the back door but was not able to go to the bed room. (V21, 710). He walked in to the kitchen but was not allowed to go to the back area of the apartment by "Ray and his brother." Thomas testified that "[t]hey just told me to stay in the kitchen." (V21, 710). Jackson's brother, Michael, got the clothes for him. (V21, 711). Thomas observed Ray standing in the hall way. (V21, 711). While Thomas did not recall hearing a female voice at the time he testified, he admitted that in a previous statement Jackson kept telling the girl to be quiet. (V21, 713). Also, in that statement, Thomas said "She was like she wasn't going to

[6] Thomas failed to identify Jackson in court. (V21, 705).

do it no more. Just let her go. Ain't going to say nothing. She ain't going to do nothing no more." (V21, 713). When asked if that is what he heard, Thomas testified that "I remember telling him that's what I heard people saying. There's a lot of typos in that transcript." (V21, 713).

Later, at a Superbowl party, Thomas heard Ray make a threat about nobody talking. Thomas testified: "I remember, but everybody was drinking. I ain't really take him too seriously. At the same time, I really didn't know what he was talking about." (V21, 715-16). When asked if there were problems about being in prison and being labelled a snitch or testifying for the State, Thomas testified: "Not that I know of, no." (V21, 717). Thomas said that he doesn't "talk to nobody when I'm in prison." (V21, 717).

Frederick Hunt testified that he has been in the Volusia County jail since July of 2005 being held as a principal to the kidnapping of Pallis Paulk back on November 9th. (V21, 722). In November 2004 Hunt was living in Latisha Allen's apartment in the Daytona Village apartment complex. (V21, 724). He was working at that time as a cook at Bethune Cookman College. (V21, 727). Hunt was staying in the front room of the apartment on the couch. (V21, 724). Also, staying there were DeWayne Thomas, his little brother, Brentson Thomas, Charles Bush, and

Latisha's son, Demarcus. (V21, 725). When he first moved in, Wooten and his girlfriend stayed in a bedroom, with Latisha and DeWayne staying in the other. (V21, 726). At some point, Wooten and his girlfriend moved out. (V21, 726). Latisha's apartment was kind of a hangout for a lot of people. (V21, 727). Hunt knew Calvin Morris and saw him every now and then, but did not consider him a friend. (V21, 727). He also knew Curtis or "Jimbo" Vreen, who was his cousin. (V21, 728). Hunt also knew Ray Jackson who "would come in and out of Ms. Allen's apartment." (V21, 728). He saw Jackson about "every day." (V21, 729).

Hunt became close to Jackson and got to know Wooten at Tisha's apartment. (V21, 729). After Wooten moved out, he would still come to the apartment complex, but, would not come in the apartment. (V21, 730). Hunt knew Jackson's wife Tonya, and his girlfriend, Lucinda Wilson, known as "Cindy." (V21, 731). Jackson's wife drove a sky blue Delta 88 Oldsmobile. (V21, 731). On occasion, Jackson would also drive the car. (V21, 732). Around this time frame, Hunt was aware that Wooten was driving a small red geo hatchback. (V21, 732). Wooten and Jackson referred to themselves as "brothers." (V21, 732).

Hunt was acquainted with Pallis Paulk who was fairly well known in the area. (V21, 733). On Tuesday November 9, 2004, he

was riding in a car driven by DeWayne Thomas. He was awakened that morning by Latisha who told him that Jackson and Wooten wanted him downstairs. (V21, 733-34). He went downstairs and saw the red hatchback. Jackson asked Hunt if he knew Pallis. He said oh yes, and, volunteered that she had AIDS. However, Hunt admitted that it was a rumor he heard and had no idea whether or not it was true. (V21, 735). Jackson asked him to call his cousin, Jimbo [Curtis] Vreen to see if she had called him. (V21, 735). Wooten gave Hunt a cell phone and he called his cousin. Vreen told Hunt ["Buck"] that Pallis had indeed called him and Jackson requested the phone number she called from, to be relayed to Vreen. (V21, 737). He received that number and relayed it to Jackson. Jackson and Wooten then drove off and Hunt went back up to the apartment. (V21, 739).

Later that day, Hunt and Latisha visited DeWaynes' sister at the hospital. When they returned to the apartment, Hunt observed Wooten in the parking lot carrying a blue bag. (V21, 745). Wooten went upstairs to the apartment carrying the bag. (V21, 746). Hunt and Latisha followed him to the apartment. Once inside the apartment, he noticed Ray Jackson sitting in a chair in the hallway outside of the bathroom. (V21, 746). Hunt gave Jackson the phone number he had requested earlier, but, said he didn't need it. (V21, 747). Jackson told Hunt to look

in the bathroom. He did as requested, and, saw "Ms. Paulk in the tub." (V21, 747). Pallis was laying there, with her head on the side of the tub. (V21, 747). After he looked in, he shook his head and thought "whatever she was doing, she should have never let these people catch her." (V21, 748). She did not appear to be in any physical distress at that point. (V21, 748). Pallis was wearing pink clothes with a flower in her hair. (V21, 749).

Hunt sat down on the sofa and overheard Jackson speaking to Latisha. Latisha sat on Jackson's lap and after professing love for Latisha, Jackson told her that he had been robbed. (V21, 749-50). And, then Jackson told Latisha to look inside the bathroom. (V21, 750). Hunt observed Latisha go into the bathroom. (V21, 750). Wooten was also in the apartment and observed him near the bathroom. (V21, 750). He overheard Wooten tell Latisha, "Don't be dumb like she is." (V21, 751). He also observed Latisha and Jackson talking privately with one another in the apartment. (V21, 751). He observed Latisha give a "douche" to Jackson. (V21, 751). Although other people were in the apartment, he only observed Latisha, Wooten, and Jackson in the bathroom area. (V21, 752). Latisha left the apartment before Hunt did. (V21, 752-53). As she left, Hunt asked her to take him to Soul City, but she declined. (V21, 753). Hunt then

borrowed a bike and went to Vreen's house and Soul City in search of Ecstasy. (V21, 753).

When he returned to the apartment, Hunt only saw two people in the bathroom area. Jackson was in the hallway with Wooten. They were both going in and out of the bathroom. (V21, 755). Jackson asked if anyone in the apartment wanted to have fun with Pallis, which Hunt interpreted as having "sex" with her. (V21, 756). However, no one took him up on that offer. (V21, 756). Inside the blue bag in the apartment he observed white "stringy things," used by the feds to tie hands. (V21, 756-57). He also saw rubber or latex gloves, a pair of lawn gloves, and two multicoloured towels in the bag. (V21, 757).

Wooten came out of the bathroom with plastic ties and was trying to click two or three of them together. (V21, 757). Hunt explained to Wooten how to put the ties together and Wooten returned to the bathroom. (V21, 758). At some point, Jackson asked someone in the apartment to go to the store to get "some duct tape." (V21, 758). Someone from the apartment, Hunt was not sure who, left the apartment to get the tape. That person returned with tape and handed it to Wooten. (V21, 759-60). Jackson, who had gloves on, then went in the bathroom with Wooten. (V21, 760). Wooten gave Jackson the tape before going in the bathroom. (V21, 760). Hunt heard "rumbling" from the

bathroom and actually heard tape being unrolled. (V21, 761). Wooten and Jackson left the bathroom but were not carrying anything at the time. (V21, 761). Wooten left the apartment carrying the blue bag and returned a short while later. (V21, 762). Jackson asked Hunt to go get a rag out of the car. (V21, 762). He went downstairs and saw a sky blue Delta 88 backed in toward the front door of the apartment. (V21, 763). Hunt opened the trunk and saw the blue bag from which he retrieved the rag. (V21, 763). It was getting dark at that point, and, Hicks went down with him to get the rag. (V21, 765). Jackson then told them to make sure the trunk didn't close all the way. (V21, 765-66). He did as directed and went back upstairs with the rag. (V21, 766). Hicks remained downstairs holding the trunk. (V21, 766). Jackson also sent Bush and Brentson Thomas downstairs to act as lookouts and make sure no one was coming. (V21, 766). Jackson told them: "You'all go downstairs and make sure ain't nobody coming." (V21, 767).

Hunt described how Pallis was taken from the apartment: "Mr. Jackson went in and got her. She had duct tape around her hands, and she had it around her ankles." (V21, 768). Jackson carried her over his shoulders out of the bathroom. (21, 768). Wooten had already gone downstairs when Jackson took Pallis down to the car. Jackson told Hunt to turn off the lights inside the

apartment; Hunt explained that when the lights are on you can see shadows and movement. (V21, 769). Hunt opened the door for Jackson and watched him carry Pallis down the stairs. (V21, 770). Before leaving the apartment, Jackson called out to make sure the coast was clear. (V21, 770). Hunt walked down the stairs behind Jackson and Pallis. (V21, 770). As Pallis was taken down to the trunk, Pallis was pleading with Jackson: "Please , Ray, don't put me in the trunk. Please, Ray, I'm sorry. I'm sorry. Please don't put me in the trunk." (V21, 770-71). Despite her pleas, Hunt observed Jackson put Pallis in the trunk. (V21, 771). When she was laid in the trunk, she shifted her legs straight up. Everybody at that point tried to push down on the trunk. Hunt described everybody as "Wooten, Jackson, myself, Brentson Thomas, Iraee Davis, and Charles Bush." (V21, 771). They did not easily get her legs in the trunk. Jackson punched Pallis in the face with his closed fist. (V21, 772). Hunt admitted that he hit her in the back of her legs. "So her legs can go down." (V21, 772). After he hit the back of her legs, the trunk was able to close. (V21, 773). Once the lid closed, he heard some movement, but not too much. (V21, 773). Jackson and the others then went upstairs, while Wooten went to the passenger side of the car. (V21, 773). Jackson got his car keys and left through the front door. (V21,

774). Hunt looked out the front window and saw the car drive away. (V21, 775). Hunt did not see them again that evening. He never saw or talked to Pallis again after seeing her placed in Jackson's trunk. (V21, 775). Hunt got high on Ecstasy, trying to forget what he had just seen. (V21, 776).

Hunt was called over to see Jackson the next day. Hunt explained that Jackson wanted to know if he was okay, with what happened last night. (V21, 778). Jackson said that if Hunt was going to leave, he had to leave before he went to sleep. If not, he had to stay until he woke up. (V21, 779). Jackson looked tired. (V21, 779). Hunt stayed for a number of hours while Jackson slept. (V21, 779). Hunt and Jackson became very close after this incident and would see each other every day. (V21, 780). A month or two after the incident with Pallis, Hunt moved in to Jackson's apartment. (V21, 780). Hunt described his duties for Jackson: "Sell his coke, weed, answer his telephones. He would take me to the Laundromat, put the clothes in. And I would clean up, I would go to the store for him, run errands for him, stuff like that." (V21, 781). Hunt did, what Jackson asked him to do. (V21, 781).

Hunt acknowledged hearing talk in the community about the fact that Pallis was missing. (V21, 781). At some point, he heard that a body had been found. (V21, 781). He brought this

to the attention of Jackson, because he thought Pallis's body had been found. (V21, 781). In response, Jackson picked up the phone and called someone. He heard Jackson tell this individual: "Well I need you to go to the spizzot." (V21, 782). Hunt explained that spizzot was a slang term for "spot." (V21, 782). Jackson also told the individual on the phone to do the following: "And when you go, step lightly and call me back when you find out." (V21, 782).

At some later point, Hunt said he had Jackson's phone when a family member of Pallis's called and cussed Hunt out. Hunt explained that he had nothing to do with it, but, the person on the other line said "Well, if you see that F nigger, you tell him we know he did something with her." (V21, 783). Hunt told Jackson about the call, and Jackson responded that "he ain't worried about it because they ain't got no body, they ain't got no case." (V21, 784). At some point he recalled seeing a missing persons flier on Pallis Paulk. (V21, 784). When Jackson learned about it, he asked for one. (V21, 784). He eventually found a flyer and took it to Jackson. (V21, 785).

Hunt and Jackson began having problems in their relationship. Hunt explained that they had a falling out over money Jackson owed him. Hunt fronted Jackson some money for drugs and they were supposed to split the profit. Hunt was

upset over how Jackson treated him financially as well as personally. Jackson cussed him out and Hunt did not appreciate being talked to that way. (V21, 786-89). Hunt noted that Jackson always carried a "little pistol with him right here in his little waistband, indicating." (V21, 791).

A couple of weeks after this argument, Pallis's body was found. (V21, 833). Hunt testified that he talked to Jackson's wife and she took him to church. After going to church with Ms. Jackson, Hunt decided to go to the police. (V22, 833-34). He also talked to his brother Freddie Hunt before deciding to go the police. (V22, 834). He went to the police station with his brother, Latisha Allen, and his brother's friend, Gary Harris. (V22, 834). He and Latisha made a statement to the police. (V22, 835). He provided a recorded interview at that time, he believed, on April 20th.[7] (V22, 835). On July 26th, Hunt was arrested for the kidnapping of Pallis Paulk. (V22, 837). Hunt admitted that his first statement to the police on April 20th omitted a few details, such as his role in closing the trunk and hitting Pallis's legs. However, he came back on April 22nd and admitted those things to the police. (V22, 837). Hunt admitted that he omitted some details, such as Brentson Thomas's role, because he "didn't really want to get him involved, but the

[7] Hunt admitted he smoked marijuana before going to make his statement to the police. (V22, 887).

investigators told me that I need to tell them all the names that I remember." (V22, 838). Jackson was arrested on April 22nd. (V22, 839). Hunt testified to what led him to the police: "I heard he threatened to kill me." (V22, 950). Jackson's wife told Hunt that. Id.

After Jackson had been arrested, Police asked Hunt to make a phone call to Wooten. (V22, 839). He made the call from the interview room in the Homicide Investigation Unit. (V22, 840). Hunt had contact with Wooten after the incident, "whenever they would have, like, sales come through - - or how should I say it - - transactions come through --." (V22, 841). Hunt had no detailed plan for the call to Wooten, just "see if I can get him to say anything." (V22, 841). On the tape, Wooten tells Hunt he does not want his name to come up and to not give his number to the police. "I just didn't want my name to come up in that charge. You know me, I try to (unintelligible)" (V22, 848). When told someone could put him in the car, Wooten denied that anyone was around to see it, "[t]hey was inside or whatnot, whatever." (V22, 849). Wooten also acknowledged that Hunt probably had to disclose that Wooten was there, stating: "You know, I was thinking, but I know kind of like in the beginning, when they first started about it, that you probably had to say that I was there, too. You know what I'm saying." (V22, 849).

However, Wooten impressed upon Hunt his desire not to talk to the police and that he should “tell them I ain’t got nothing to do with it and so they don’t need to talk to me.” (V22, 850-51). Wooten added that it was depressing: “That’s why I won’t even keep nobody around that they can’t - - that ain’t trustworthy (unintelligible). Right, but I to keep around positive people, man, positive things, man. This shit’s so depressing, I ain’t - -.” (V22, 853-54). Wooten referred to no one being outside when the car drove off. Hunt testified that other than him looking out the window, nobody else was out there when Jackson and Wooten left with Pallis. (V22, 858).

Hunt admitted he was facing a kidnapping charge, that he was testifying without an agreement, and, that kidnapping was punishable by up to life in prison. He admitted that no promises had been made to him regarding his sentence and that he was not threatened or coerced by law enforcement. (v22, 864). He was hoping that when he entered a plea to kidnapping that law enforcement would go to his sentencing and tell the judge he cooperated in this case. (V22, 864-65). Although Hunt was placed in protective custody, Wooten, housed at the same jail, managed to contact him. (V22, 865). Wooten told Hunt that he could put an end to it, “to say that I lied about everything so they can get inconsistent statements and the case would be

thrown out." (V22, 865-66). Hunt admitted he sent a letter to Charles Bush's attorney, stating that he would not tell everything that Bush did. (V22, 867-68). He did that because he "didn't want him to spend a lot of time in jail." (V22, 866-67). Bush was present when the trunk was closed down on Pallis. (V22, 868). Hunt had been convicted of one felony. (V22, 871).

Hunt admitted that when he was living with Latisha the apartment was a "hangout" where drugs were commonly used. (V22, 871-72). Hunt admitted on cross-examination that he helped Jackson sell his coke, sell his weed, and sell his other drugs." (V22, 904). At an earlier point, Hunt said that Iraee Davis purchased the duct tape. (V22, 918). But, now he testified he didn't remember who purchased the duct tape. (V22, 918-19). Jackson never told Hunt that he killed Pallis.[8] (V22, 936). But, Jackson did tell Hunt, "no body, no case." (V22, 965). Hunt admitted he should have come forward to the police earlier than he did. (V22, 953).

Hunt had conversations with inmate Quintin Wallace at the Volusia County jail, but, denied that any of those conversations related to this case. (V22, 979). He never told Wallace that he did wrong or that he "lied on Mike". (V22, 979). Nor did he

[8] The real reason Hunt went to the police in April, according to Prosecutor Davis, was that Jackson's wife told him "You better watch out because Jackson, he's got a mind to kill you." (V22, 948).

tell Wallace that “Mike ain’t got nothing to do with it.” (V22, 980). Nor, did he ever tell Wallace that he lied on Ray. (V22, 981).

V’Shawn Miles testified that she was 23 and in 2004 she was living in Daytona Beach. (V23, 992-93). She hung out at a place called “The Bottom” which was a place with a couple of bars, the South Side Inn and The Trough. (V23, 993). She met Ray Jackson through a friend at The Bottom. (V23, 993). She accompanied him to an apartment in the Daytona Village and met a female named Tisha, who, Jackson referred to as his daughter. (V23, 994). She was also acquainted with Calvin Morris who she met through a mutual friend. (V23, 994-95). Miles recalled talk in the community about the disappearance of Pallis Paulk. (V23, 995). During this period she would see Jackson with an individual she only knew as “Buck.” (V23, 995).

At some point in 2005, Miles testified that she was sitting in a car with Jackson in the Daytona Beach area when they were smoking “weed.” (V23, 996). When they were in the car, Miles asked Jackson if he killed Pallis. (V23, 996). Jackson told her he wasn’t worried “[b]ecause if they didn’t find the body, they didn’t have a case.” (V23, 996-97). Miles asked Jackson if Pallis robbed him, and Jackson responded: “You shouldn’t fuck with people things.” (V23, 997).

Defense Case

Captain Brian Skipper of the Daytona Beach Police Department testified that he was in charge of an investigation of a so-called serial killer. (V23, 1054). Captain Skipper identified the locations where the bodies of three females were found in the Daytona Beach area. (v23, 1055-58). He learned that each of the women engaged in a "high risk" lifestyle, drug use and prostitution. (V23, 1060).

On cross-examination, Captain Skipper noted that all three victims he mentioned died as the result of gun-shot wounds to the head. (V23, 1063). Moreover, it did not appear that there was any attempt by the killer to conceal the bodies. None of the three bodies were found in a shallow grave. (V23, 1063-64). Pallis Paulk was not considered part of the serial killer investigation:

> When we found her body, it was the Sunday of BCR. That was April 17th. The autopsy was performed on April 18th, the Monday. She was positively identified on the 19th and her identity released to her family that same day. Barely 24 hours later, Latisha Allen and Fred Hunt were in the lobby of the police department wanting to tell us a story. So, very quickly, the direction of the Pallis Paulk homicide moved in the direction of Ray Jackson and Michael Wooten.

(V23, 1065). Captain Skipper also noted that there were "strong evidentiary connections" between the three serial murder cases.

However, there were “no connections whatsoever” to the Pallis Paulk case. (V23, 1065).

Quintin Wallace testified that he was residing in the Department of Corrections, Madison prison. (V23, 1073). He had been convicted of one crime involving a felony or crime of dishonesty. (V23, 1073). He first met Wooten when he moved to the same block, about 6 months ago at the Volusia County Branch Jail. (V23, 1073). He was also acquainted with another individual Fred Hunt, whose nickname was “Buck.” (V23, 1074). He did not know either Wooten or Hunt until he was incarcerated with them. (V23, 1074). He talked to Hunt about “this case.” (V23, 1074). Wallace testified: “He only disclosed that Michael Wooten, that he was - - he lied on Michael Wooten and Ray Jackson.” (V23, 1074). Hunt told Wallace that “he just pretty much said that he wasn’t there at all. He just said that he lied on him.” (V23, 1075). Wallace testified that he only “talked with Fred [Hunt] only, maybe, one time. That’s it.” (V23, 1075). According to Wallace: “He was kind of proud of his work, sort of, what he - - what he had done, but he had some kind of false humility about that. He was sorry, you know, he lied on Ray and Mike.” (v23, 1075). This conversation with Hunt occurred while Wallace was awaiting trial, some “eight” or more months ago. (V23, 1076).

Prior to cross-examining Wallace, the State approached to bring up several areas of potential inquiry. First, Wallace misstated the number of his convictions. Second, the State wanted to inquire about his current conviction, for which he was serving 25 years. The State submitted that Wallace believes he was wrongly convicted on the basis of a snitch's testimony, and, therefore, he has some animosity towards snitches.

In response to a question on cross-examination as to whether he was "good friends" with Michael Wooten, Wallace responded: "I know Mike Wooten." (V23, 1083). Wallace admitted that Wooten would help him with his case, and, was there for him as a friend. (V23, 1083). Wallace also admitted that he considered Hunt to be a "snitch." (V23, 1083). Wallace considered a snitch someone "that gives false information and get a deal for it." (V23, 1083). Wallace admitted that snitches are not treated well in prison: "Not good at all." (V23, 1083). Wallace acknowledged that he was under a 25 year sentence for being convicted of aggravated manslaughter of a child and that he had been prosecuted by the same state attorney's office that was prosecuting Wooten and Jackson. (V23, 1084). In fact, Wallace admitted that he was prosecuted by the very same assistant state attorney that was cross-examining him. (V23, 1084). Wallace felt he was wrongfully

convicted and that a snitch testified in his case. (V23, 1084). Wallace acknowledged that he was "happy" to assist Wooten. (V23, 1084).

Michael Wooten testified that he lived in Jacksonville all his life and in 2004. (V24, 1195). Wooten testified that back in November he spent time in Daytona Beach, "occasionally, like on weekends" because his girlfriend lived in the area. (V24, 1196). Wooten knew Latisha Allen because she stayed in the same building with his girlfriend, Cecilia and her mother. (V24, 1197).

Wooten admitted that he had been convicted of six felonies. (V24, 1198). He pled not guilty in this case because "I am not guilty." (V24, 1198). Wooten testified that on November 9, 2004, he was not in the Daytona Beach area. Wooten testified he remembers the date because his mother's birthday is November 8th. (V24, 1199). Wooten testified that he did not own a red hatchback in November of 2004. (V24, 1200). He bought the car in February of 2005. (V24, 1200). Wooten said that he talked to Hunt on the phone twice, that the earlier call, he guesses a day before the recorded call, they discussed "Ray's cousin getting killed in Melbourne." (V24, 1201). Then, when the recorded call came, Wooten explained he thought Hunt was talking about "the incident with Ray's cousin getting killed in

Melbourne, what happened." (V24, 1202). Wooten denied that he had anything to do with Paulk being held in an apartment and taken off in a car. (V24, 1203-04).

On cross-examination, the prosecutor asked Wooten what he did on November 9th. Wooten said he went to work in Jacksonville at HOPE.[9] (V24, 1204-05). When asked if records from that organization could confirm he worked, Wooten responded, "[t]here should be sir." (V24, 1204). But, Wooten admitted he did not have those records. (V24, 1204-05). When asked why he did not have those records to show he was in Jacksonville on the day he was charged with murder in Daytona Beach, Wooten replied that he was never told the date of the murder. (V24, 1205). But, the prosecutor noted that aside from discovery and talking to his attorneys, he found out the date in opening statement of the trial. (V24, 1206). Asked again about those records, Wooten admitted he did not have them. (V24, 1206). Moreover, Wooten was asked about co-workers who might confirm that he was working that day. Although Wooten said they might be able to look at records to determine he was working that day, he had no people from HOPE to testify. (V24, 1210-11).

[9] According to Wooten, HOPE is a non-profit organization which helps ex-felons.

When asked about Calvin Morris, Wooten volunteered that "They said that's the guy that I was supposed to have threatened the other day in the courtroom." (V24, 1234). Wooten denied using a hand signal to Morris, threatening to "kill him: during jury selection." (V24, 1234). Although Wooten denied knowing sign language, he did know how to sign a manual alphabet, stating that he "pretty much learned it not too long ago." (V24, 1235). Wooten claimed he was signing to Mr. Jackson, "trying to get the attention of Mr. Jackson." (V24, 1235). Wooten admitted that was how inmates communicate between glass and walls. (V24, 1235).

State's Rebuttal Case

Nancy Olbert testified that she was employed as a victim's advocate in the state attorney's office. (V24, 1245). She was present in the courtroom during jury selection and Calvin Morris was seated next to her in the audience. (V24, 1246). She observed Wooten directing sign language in the direction of Morris. (V24, 1246-47). She detected what was known as finger spelling in Morris's direction, however, it was done very fast and she was not able to read it. (V24, 1247). Wooten was attempting to shield the signing with one hand. (V24, 1247).

Calvin Morris was recalled to the stand and testified that he was present in the audience during jury selection. He was in

the vicinity of the victim's family when Wooten signed in his direction. (V24, 1250-51). He was familiar with spelling or sign as a means to communicate in jail. (V24, 1251). Wooten signed to him, "Fuck you, I'm going to kill you." (V24, 1251).

PENALTY PHASE

The State generally accepts the penalty phase facts set forth in appellant's brief, but adds the following:

The State presented brief testimony from the family of Pallis Paulk, who testified that she was aware she had a problem with drugs and wanted to get her life on track. Pallis loved her daughter, Faith, deeply and planned to get her 3 year-old back. (V26, 114). Faith is now seven and feels the loss of her mother. (V26, 116). Faith has a picture of her mother in her Mainland High School band uniform. (V26, 116). Pallis had an infectious smile and personality. (V26, 119). Pallis was a cheerleader, ran track, went to church and was in chorus with her cousin, Fayonna Paulk. (V26, 120). Pallis had a beautiful voice and sang for her church. (V26, 122). She had a sincere desire to straighten her life out and get her daughter back. (V26, 122-23).

Margie Lee Paulk testified that she raised Pallis and that she was a good child who everybody loved in the neighbourhood. (V26, 128-29). Paulk testified: "I just miss her. I know I

can’t get her back, but I miss her, and I just pray to God to help me to be able to overcome this nagging that’s in my heart, because I’m Christian and I raised my child.” (V26, 131). She thought Pallis would turn her life around: “I know children get out of order sometime, but sometime in their life they’ll turn around if they have a chance. And if you just keep teaching them, they’ll turn around. All of this meanness based in our lives and we turned our lives around. She could have did the same thing.” (V26, 131).

Defense witness Dr. Danziger diagnosed appellant with bipolar disorder, which, he agreed, was a mood disorder. (V28, 324-25). Dr. Danziger had no independent evidence to support appellant’s mother’s claim that appellant was diagnosed with schizophrenia. (V28, 326-27). And, Dr. Danziger did not believe the appellant suffers from schizophrenia. (V28, 327). Dr. Danziger agreed that appellant denied he tried to commit suicide when he was eight years old. (V28, 327). Nonetheless, he reviewed the records of appellant’s hospitalization and thought that “something serious happened.” (V28, 328). However, looking at the records, Dr. Danziger admitted that they reflected appellant was admitted because he was “violent,” “aggressive,” “difficult to handle” and “self-destructive.” (V28, 328-29). In fact, the hospital report of a treating

doctor reflecting that appellant at the time described an accident with the rope and concluded that he was not trying to hang himself. (V28, 330). The treating doctor at the time gave credence to appellant's denial of a suicide attempt based upon his lack of suicidal ideations since his arrival. (V28, 330).

Dr. Danziger did not observe any symptoms of bipolar disorder when he saw him in April of 2006 and was not aware when the last "set of active symptoms was." (V28, 335). Dr. Danziger admitted that the last set of symptoms may have been years ago. (V28, 335). When Dr. Danziger saw the appellant his condition was in remission. (V28, 335). He had no evidence to suggest the appellant was in a bipolar state when he kidnapped and murdered Pallis Paulk. (V28, 336). Dr. Danziger agreed that most people with bipolar disorder do not run afoul of the law. (V28, 337). He had no data to suggest that appellant committed this crime while under the influence of any extreme mental or emotional disturbance. (V28, 337).

Dr. Danziger was aware that appellant apparently had the mental wherewithal in November 2004 to be involved in a couple of legitimate businesses as well as dealing or selling drugs. (V28, 338). Dr. Danziger agreed that appellant was "enterprising" in his pursuit of money, whether through criminal or non-criminal activities. (V28, 338-39). Appellant's records

indicate an IQ of 113 which, reflects he is a smart fellow, certainly, at least, in comparison to other inmates. (V28, 339). Dr. Danziger agreed that appellant had choices, to put his energy into legitimate businesses or choose to pursue criminal behaviour, whether it was selling drugs, kidnapping or murder. (V28, 339).

Dr. Danziger was firm in his diagnosis of appellant as having an "antisocial personality disorder." (V28, 339). Dr. Danziger agreed that this behaviour disorder's essential feature is a "pervasive pattern of disregard for, and violation of, the rights of others…" (V28, 340). Another feature of his disorder is the disregard of the wishes, rights and feelings of other people. (V28, 340-41). Appellant has a criminal record with multiple felony convictions and has even had problems with his behaviour in prison. (V28, 341). A person with this disorder may show little remorse for the consequences of their acts. In fact, someone who kidnaps and murders a woman with this disorder might send someone out to find a flyer of the missing person and put it up on his wall. 342-43).

SUMMARY OF THE ARGUMENT

ISSUE I—-The prosecutor's cross-examination of a defense witness was generally relevant to his bias against the State. Consequently, the appellant has not demonstrated a prejudicial abuse of the trial court's discretion.

ISSUE II—-The various evidentiary rulings appellant complains of on appeal were proper and well within the discretion of the trial court below.

ISSUE III—-The trial court was under no obligation to provide a special instruction on circumstantial evidence, particularly where the State's evidence was not entirely circumstantial.

ISSUE IV--The State's evidence was sufficient to overcome appellant's motion for a judgment of acquittal for kidnapping and first degree murder. Appellant stated his intent to kill the victim before taking her, bound and helpless from his apartment to his waiting car. Appellant's admissions, coupled with eyewitness testimony were sufficient to overcome his motion for a judgment of acquittal.

ISSUE V-- The penalty phase instructions given by the trial court were proper and no abuse of the trial court's discretion has been demonstrated.

ISSUE VI--The evidence was sufficient to establish that Pallis Paulk's murder was cold, calculated and premeditated. Appellant had ample time to reflect and coldly plan the victim's fate. Appellant stated his intention to kill the victim before taking her, bound, pleading, and helpless to the trunk of his car. After cramming the struggling victim into the trunk, he and the co-defendant drove her to a remote area where she could be killed and buried.

ISSUE VII---- The death sentence imposed in this case is not subject to reversal on proportionality grounds. The trial court found three aggravating factors, prior violent felonies, and committed during the course of a kidnapping. No statutory mitigating factors were found, and the nonstatutory mitigation was not compelling.

ARGUMENT

ISSUE I

WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN ALLOWING THE PROSECUTOR TO QUESTION A DEFENSE WITNESS ABOUT A RECENT CRIMINAL CONVICTION? (Stated by Appellee)

Appellant first argues that his convictions must be reversed because the State was allowed to cross-examine a defense witness regarding his recent conviction for aggravated manslaughter of a child. The State disagrees.

Although it is true that the general rule limits impeachment by prior convictions to the number of convictions and prohibits exploration into the details, this Court has acknowledged that a witness may be subject to further inquiry if there is any attempt to mislead the jury or delude the jury about the criminal history. Fotopoulos v. State, 608 So. 2d 784, 791 (Fla. 1992). A trial judge, as observer, determines the extent to which testimony may open the door to further questioning and is charged with keeping the parties within reasonable bounds. Lawhorne v. State, 500 So. 2d 519, 523 (Fla. 1986). Consequently, a trial court's ruling on the scope of cross-examination is subject to an abuse of discretion standard. McCoy v. State, 853 So. 2d 396, 406 (Fla. 2003); Jorgenson v. State, 714 So. 2d 423 (Fla. 1998) (trial court's evidentiary ruling is reviewed for an abuse of discretion). "Discretion is

abused only 'when the judicial action is arbitrary, fanciful, or unreasonable, which is another way of saying that discretion is abused only where no reasonable [person] would take the view adopted by the trial court.'" Spann v. State, 857 So. 2d 845, 854 (Fla. 2003).

As appellant notes in his brief, State witness Hunt was asked if he knew prospective defense witness Wallace, who had been convicted of killing a child. Hunt admitted that he did know Wallace and acknowledged he was aware of his conviction. The defense objected, and, the trial court sustained the objection. The trial court told the jury to disregard the last question and answer. (V22, 984-86). The trial court, however, denied the motion for mistrial. The prosecutor argued that this information would be proper impeachment when Wallace later testifies for the defense. The prosecutor argued, in part: "...It's going to be proper cross when Quinton Wallace is testifying. Quintin Wallace, in his deposition, said he was biased or he feels he was wrongly convicted. We feel that he's angry toward the State, and the fact that - - we're setting it up for his question, if he was convicted of killing a baby, if he thinks he was wrongly convicted, he thinks he was, basically, railroaded, he's mad about it, and that's the purpose of the question." (V22, 982). The court agreed that while the

question of witness Hunt was improper, it sounded like the question would become relevant once Wallace testified. (V22, 983-84).

When Wallace later testified, he was cross-examined regarding his motivation for testifying in favor of defendants Wooten and Jackson, the potential animosity he held toward the State Attorney's Office, the length of his sentence, and the fact that he felt he was wrongfully convicted. Wallace was also cross-examined on the fact that a "snitch" testified against him and that snitches are not treated well in prison. (V23, 1082-85). While the State's cross-examination did reveal the nature of Wallace's conviction, the State did not go into any details of that conviction. Under the circumstances, given Wallace's animosity and bias toward the State, and, that one of appellant's prosecutors personally prosecuted his case, it can be argued that the trial court did not abuse its discretion in allowing the State to cross-examine Wallace on his prior conviction, including, the nature of offense. Morrison v. State, 818 So. 2d 432, 448 (Fla. 2002) ("'[T]he decision as to whether a particular question properly goes to interest, bias, or prejudice lies within the discretion of the trial judge.'")(quoting Charles W. Ehrhardt, Florida Evidence § 608.5 (1997 ed.)) Nonetheless, even if the trial court abused its

discretion in allowing the cross-examination to reveal the nature of the offense, such error was clearly harmless under the facts of this case.

With perhaps the exception of the question revealing the nature of Wallace's conviction, the remaining portion of the prosecutor's cross-examination of Wallace was entirely appropriate. The fact Wallace was recently prosecuted by the same State Attorney's Office, and, in fact, the very same prosecutor was certainly relevant. In Wallace's opinion, he was wrongly convicted, which was relevant to his potential bias in favor of the defendants or, his bias against the State. (V23, 1084). Further, the fact that he believes he was wrongly convicted on the basis of a "snitches" testimony was also relevant. Wallace admitted that he considered State witness Hunt a "snitch." (V23, 1083). Finally, Wallace was impeached on the basis of his friendship with Wooten. (V23, 1083).

While naming the specific convictions for which he was serving a twenty five year sentence may have been improper, the length of the sentence was admissible. Wallace's animosity and potential bias against the State is directly related to the length of the sentence he is presently serving on the basis of his allegedly unjust conviction. Gibson v. State, 661 So. 2d 288, 291 (Fla. 1995) ("Our evidence code liberally permits the

introduction of evidence to show the bias or motive of a witness.")(citing Fla. Stat. 90.608(2)(1993)).

Any possible impropriety in the prosecutor's questioning is clearly harmless beyond any reasonable doubt on the facts of this case. As noted above, Wallace's credibility was properly and extensively impeached on the basis of his bias against the State, his dislike of snitches [like Hunt], and his friendship with defendant Wooten. Moreover, despite acknowledging that snitches are not thought well of, or treated well in prison, supposedly, according to Wallace, Hunt, whom he only met and talked to one time, admitted he falsely implicated Wooten and Jackson in the instant case. Wallace's testimony was inherently incredible.

Another factor in favor of finding any error harmless is that Wallace was a limited witness in this case. Wallace's brief testimony was presented to impeach a single State witness, Hunt. Consequently, the allegedly impermissible revelation of Wallace's prior conviction was much less prejudicial to the overall defense case than in the case where the details of a **defendant's** criminal history is impermissibly revealed. See generally United States v. Garber, 471 F.2d 212, 214 (5th Cir. Tex. 1972) ("Instead of limiting its probative value solely to a determination of defendant's credibility as a witness, the jury

may use the prior criminal conduct to draw either or both of two legally impermissible inferences: (1) that the defendant should be convicted because he has committed a previous crime and, therefore, probably committed the crime presently charged; or (2) that any doubts should be resolved against defendant because the evidence of prior criminal behavior demonstrates that he is a 'bad man.'").

Finally, Hunt's testimony was largely corroborated by another State witness, Latisha Allen. Consequently, any impermissible impeachment of witness Wallace simply was not a significant blow to the defense case. Indeed, the State's evidence establishing that Jackson was responsible for the kidnapping and murdering the victim was almost completely uncontradicted at trial.

For all of the foregoing reasons, revelation of the specific nature of defense witness Wallace's convictions was clearly harmless error in this case. State v. DiGuilio, 491 So. 2d 1129 (Fla. 1986).

ISSUE II

WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING APPELLANT'S MOTION FOR MISTRIAL AND ADMITTING EVIDENCE OF APPELLANT'S DRUG DEALING AND A WITNESS'S MOTIVE IN GOING TO THE POLICE? (Stated by Appellee)

Appellant next contends that the trial court erred in making three evidentiary rulings during the trial below. The State disagrees. Each ruling was well within the sound discretion of the trial court below.

A. The Trial Court Did Not Abuse Its Discretion In Denying A Motion For Mistrial When A Witness Revealed That Appellant Carried A Gun

Appellant first maintains that witness Hunt's testimony that appellant always carried a little gun in his pants was so prejudicial that it required a mistrial. The trial court sustained the defense objection to this comment and offered to provide a curative instruction. The defense declined. Under the circumstances of this case, this brief comment did not warrant the drastic remedy of a mistrial.

As appellant recognizes in his brief, a ruling on a motion for mistrial lies within the discretion of the trial court. Ford v. State, 802 So. 2d 1121, 1129 (Fla. 2001) ("A trial court's ruling on a motion for a mistrial is within the sound discretion of the court and will be sustained on review absent an abuse of discretion."); Snipes v. State, 733 So. 2d 1000,

1005 (Fla. 1999) ("A decision on a motion for a mistrial is within the discretion of the trial judge and such a motion should be granted only in the case of absolute necessity."). Under the abuse of discretion standard, the trial court's ruling will be upheld unless the "judicial action is arbitrary, fanciful, or unreasonable . . . . [D]iscretion is abused only where no reasonable [person] would take the view adopted by the trial court." Trease v. State, 768 So. 2d 1050, 1053 n.2 (Fla. 2000) (second alteration in original) (quoting Huff v. State, 569 So. 2d 1247, 1249 (Fla. 1990)).

While the trial court granted a motion in limine prohibiting the State from eliciting evidence appellant carried or possessed a firearm except in reference to the time of the charged offenses, the State maintains that evidence from Hunt placing appellant in possession of a small caliber handgun was simply relevant evidence. Since there was no error below, appellant cannot maintain the trial court erred in denying his motion for a mistrial. See Sanchez-Velasco v. Sec'y, Dep't of Corr., 287 F.3d 1015, 1026 (11th Cir. 2002) ("An appellee may, without cross-appealing, urge in support of a result that has been appealed by the other party any ground leading to the same result, even if that ground is inconsistent with the district court's reasoning.")(citations omitted). Appellant had a .22

or .25 caliber [or, a similar handgun], in his waistband or at his side when he kidnapped Pallis. (V18, 340). Moreover, appellant used a handgun to threaten Morris, when he was following appellant and Pallis in the car after she was taken from Vreen's home. (V20, 502). Consequently, evidence placing appellant in possession of a small caliber handgun either before or after the kidnapping constitutes relevant evidence. See Hunter v. State, 660 So. 2d 244, 251 (Fla. 1995) (evidence of collateral crime properly admitted to show defendant's possession of the gun after the shootings and to establish the context of the criminal transaction); Remeta v. State, 522 So. 2d 825, 827 (Fla. 1988) (upholding admission of collateral crimes evidence because the same gun was used in both crimes and established defendant's possession of murder weapon). In any case, admission of this brief testimony clearly did not warrant the drastic remedy of a mistrial.

In denying the motion for mistrial, the trial court stated, in part: "...So just - - I think, my way of thinking right now, just an incidental comment of Mr. Jackson carrying a gun after the fact does not rise to the level of a mistrial." (V21, 796). The trial court offered to give a cautionary instruction to the jury, but, the defense declined, stating that any cautionary instruction would not remove the "prejudicial taint." (V21,

796). Courts in this State have repeatedly held that evidence placing a defendant in possession of a weapon, even if error, generally do not require a new trial. See Marek v. State, 492 So. 2d 1055, 1057 (Fla. 1986) (evidence that a gun unrelated to the murder was found in appellant's truck when he was arrested did not require a mistrial where the gun's discovery was "not prejudicial" to the appellant under the circumstances and finding that a curative instruction was sufficient to dissipate any potential prejudice); Accord Bryant v. State, 744 So. 2d 1128 (Fla. 5th DCA 1999); Villanueva v. State, 917 So. 2d 968, 972-73 (Fla. 3d DCA 2005)[10].

In conclusion, evidence that appellant carried a small caliber handgun on the day of the kidnapping was properly admitted into evidence. Moreover, given the strong and largely uncontradicted evidence in this case, the trial court was under no obligation to declare a mistrial.

B. The Trial Court Did Not Abuse Its Discretion In Admitting Evidence That Appellant Sold Drugs

First, appellant failed to preserve this issue for review. Appellant failed to make any objection at trial when witness Morris testified that he knew appellant sold drugs. (V20, 523). Further, when witness Hunt testified about his relationship with

[10] These cases should not be distinguished on grounds that curative instructions were provided because in this case the court offered a curative instruction and the defense declined.

Jackson, he described that they were close and that he sold his "coke, weed, [and] answer his telephones." (V21, 780). Again, there was no contemporaneous objection to this testimony. Moreover, on cross-examination of State witness Hunt, defense counsel elicited that among Hunt's duties for Jackson was to sell coke, weed, and other drugs. (V22, 904). The failure to make contemporaneous objections to this evidence clearly waives the issue on appellate review. See Hazen v. State, 700 So. 2d 1207, 1211 (Fla. 1997) (stating that the court "need not reach the merits of this claim" because it was "procedurally barred for lack of a contemporaneous objection.")(citing Lindsey v. State, 636 So. 2d 1327, 1328 (Fla. 1994); Correll v. State, 523 So. 2d 562, 566 (Fla. 1988)); Teffeteller v. State, 495 So. 2d 744, 747 (Fla. 1986) (stating that "[a]ppellant cannot bootstrap this concern over" [revealing the defendant's prior death sentence] in voir dire "to alleviate the requirement of a contemporaneous objection.") (citing Steinhorst v. State, 412 So. 2d 332 (Fla. 1982)).

Appellant has not established error in this case, much less the type of error required to be considered fundamental. Fundamental error is error that "reach[es] down into the validity of the trial itself to the extent that a verdict of guilty could not have been obtained without the assistance of

the alleged error." Archer v. State, 934 So. 2d 1187, 1205 (Fla. 2006) (citing Kilgore v. State, 688 So. 2d 895, 898 (Fla. 1997)); D'Oleo-Valdez v. State, 531 So. 2d 1347, 1348 (Fla. 1988) ("for error to be so fundamental that it may be urged on appeal, though not properly presented below, the error must amount to a denial of due process.") (citing Ray v. State, 403 So. 2d 956, 960 (Fla. 1981)).

Even if this issue had been preserved for review, the trial court did not abuse its discretion in admitting evidence that Jackson sold drugs. The State sought a ruling during voir dire from the trial court authorizing the later admission of Jackson's drug dealing. (V16, 29-30). The State brought it up to avoid having to "walk on eggshells" during the trial. (V16, 29). The State argued such evidence was relevant to what was taken from Jackson, drugs and $800, because you "you can't really discuss the murder without the drug element involved." (V16, 29). Also, witness Hunt had a relationship of trust with the appellant, and in order to explain their relationship this evidence must be brought out. (V16, 31). The trial court agreed that this evidence was relevant, stating:

> I don't think it's really similar fact evidence, not being proffered for similar fact, but it's tied in to possibly motivation and witnesses' knowledge of Mr. Jackson and their dealings, so that is objective.

(V16, 32).

Appellant's drug dealing was relevant to explain the set up, and, context for the kidnapping and murder of Pallis Paulk. Appellant's drug dealing was inextricably intertwined with the relationship between the witnesses and the motive for the kidnapping and murder. Indeed, Pallis stole drugs and some $800 from Jackson. (V18, 317). This evidence was clearly admissible. See Jorgenson v. State, 714 So. 2d 423, 428 (Fla. 1998) (in first-degree murder prosecution, evidence of defendant's **drug dealing** was relevant to support State's theory of motive, where evidence suggested that defendant regularly used victim as delivery person, that victim had stolen from defendant, that defendant was angered by victim's abundant use of methamphetamine) (emphasis added).

Appellant has not established any error in the trial court's ruling below.[11]

C. The Trial Court Did Not Error In Allowing Witness Hunt, On Redirect Examination, To State His Motive For Informing On The Appellant

Appellant next asserts that witness Hunt was impermissibly allowed to state his motivation [Jackson's threat to kill] for coming forward to the police. (Appellant's Brief at 46). The

[11] Indeed, even if this Court were to conclude an error occurred based upon Hunt's testimony as appellant contends, the error would be harmless.

trial court overruled the defense objection to this testimony, stating, in part:

> I feel the door has been somewhat opened in that the witness was questioned extensively on cross-examination as to the sole motive for him going to the police, maybe testifying against Mr. Jackson, is that upset over the money and he felt that Mr. Jackson had promised to pay his, I guess, Stewart-Marchman fees for a drug program and, allegedly, reneged on that, so I think it is relevant if there was another reason.

(V22, 948-49). The trial court made an appropriate discretionary ruling to admit this evidence. McCoy v. State, 853 So. 2d 396, 406 (Fla. 2003) (a trial court's ruling on the scope of cross-examination is subject to an abuse of discretion standard.)

As recognized by the trial court below, appellant challenged the motive for Hunt coming forward to the police. Hunt was cross-examined on the financial falling out he had with Jackson (V22, 905-06) as well as his other potential motives to testify, including the suggestion he was attempting to utilize his cooperation for a reduced sentence. (V22, 902). Since the defense clearly challenged Hunt's motive for coming forward against Jackson, the prosecution could elicit that he finally went to the police when he heard about appellant's threat. This Court has repeatedly held that a witness's motivation for coming forward is relevant, particularly when that witness's motivation has been challenged on cross-examination. See Chandler v. State, 702 So. 2d 186 (Fla. 1997); Penalver v. State, 926 So. 2d 1118,

1135-1136 (Fla. 2006); Pagan v. State, 830 So. 2d 792, 814 (Fla. 2002).

Hunt's testimony regarding the threat was not hearsay because it was not offered to prove the truth of the matter asserted. See Penalver v. State, 926 So. 2d 1118, 1131-1132 (Fla. 2006) (discussing the distinction between hearsay and non-hearsay when the statement is not offered for the truth of the matter asserted when the door is opened by the defense cross-examination of a state witness). It did not matter whether or not the threat to Hunt through Jackson's wife was true or not. It was relevant to Hunt's motive to come forward to the police and implicate Jackson and, himself, in the kidnapping and murder of Pallis. See Foster v. State, 778 So. 2d 906, 914-15 (Fla. 2000) ("A statement may . . . be offered to prove a variety of things besides its truth. A statement may be offered, for instance, to **show motive**, knowledge, or identity.") (emphasis added)(citations omitted).

Finally, assuming, *arguendo*, any error in allowing Hunt to testify regarding Jackson's threat, the error was harmless. The State presented strong and largely uncontradicted evidence of appellant's guilt. Moreover, several witnesses testified that Jackson made threatening remarks to them, or, implied threats, if they cooperated with authorities. (V18, 365; V20, 583; V21,

647). Under the circumstances of this case, reversible error has not been demonstrated.

ISSUE III

WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING THE DEFENSE REQUEST FOR A SPECIAL INSTRUCTION ON CIRCUMSTANTIAL EVIDENCE? (Stated by Appellee).

Appellant next asserts that the trial court erred in failing to give his special instruction on circumstantial evidence. While appellant recognizes that the trial court has wide discretion in instructing the jury, he fails to offer any compelling reasons to find an abuse of that discretion on appeal. Consequently, appellant's claim of error provides no basis for relief from this Court.

This Court has repeatedly stated that the standard instruction on the burden of proof and reasonable doubt are sufficient. Floyd v. State, 850 So. 2d 383, 400 (Fla. 2002) ("We have previously stated that when proper instructions on reasonable doubt and burden of proof are given, an instruction on circumstantial evidence is 'unnecessary.'" See In re Standard Jury Instructions in Criminal Cases, 431 So. 2d 594, 595 (Fla. 1981); Trepal v. State, 621 So. 2d 1361, 1366 (Fla. 1993) (citing In re Standard Jury Instructions)). While a trial court may provide a special instruction on circumstantial evidence, it is not required to do so. Parker v. State, 873 So. 2d 270, 294

(Fla. 2004) ("Although the trial court can give the circumstantial evidence instruction, we have 'expressly approved courts which have exercised their discretion and *not* given the instruction.'") (quoting Monlyn v. State, 705 So. 2d 1, 5 (Fla. 1997)). Accord Huggins v. State, 889 So. 2d 743, 767 (Fla. 2004).

There was certainly no need for a special instruction in this case. The State's evidence was not solely circumstantial, and, included eyewitness testimony establishing the victim's kidnapping and appellant's admission that he intended to kill the victim. See Pagan v. State, 830 So. 2d 792, 803-04 (Fla. 2002).

Appellant's allegation of error is clearly without merit.

ISSUE IV

WHETHER THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTIN FOR A JUDGEMENT OF ACQUITTAL ON FIRST DEGREE MURDER? (Stated by Appellee).

Appellant claims that the trial court erred in denying his motion for a judgment of acquittal and that the evidence is insufficient to support his convictions of first degree murder and robbery. The State disagrees.

A. Applicable Legal Standards

While the trial court's decision denying the motion for a judgment of acquittal is reviewed de novo, the State is entitled to an extremely favorable review of the evidence. Pagan v. State, 830 So. 2d 792, 803 (Fla. 2002). "A court should not grant a motion for a judgment of acquittal unless 'there is no view of the evidence which the jury might take favorable to the opposite party that can be sustained under the law.'" DeAngelo v. State, 616 So. 2d 440, 442 (Fla. 1993) (quoting Taylor v. State, 583 So. 2d 323, 328 (Fla. 1991)). "'As a general proposition, an appellate court should not retry a case or reweigh conflicting evidence submitted to a jury or other trier of fact. Rather, the concern on appeal must be whether, 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 verdict and judgment. Legal sufficiency alone, as opposed to evidentiary weight, is the appropriate concern of an appellate tribunal.'" Crain v. State, 894 So. 2d 59, 71 (Fla. 2004) (quoting Tibbs v. State, 397 So. 2d 1120, 1123 (Fla. 1981), aff'd, 457 U.S. 31 (1982)).

Appellant incorrectly asserts that his case should be reviewed under the heightened standard of review reserved in

cases where the only evidence of the defendant's guilt is circumstantial. As this Court recognized in Orme v. State, 677 So. 2d 258, 261 (Fla. 1996), the first question in a sufficiency case such as this is to determine whether or not the evidence was "wholly circumstantial." Here, in addition to circumstantial evidence, appellant's kidnapping and murder of Pallis Paulk included eyewitness testimony and admissions by the appellant. Since the State's evidence was not entirely circumstantial, he is not entitled to a special or heightened review of his convictions on appeal. Pagan v. State, 830 So. 2d 792, 803 (Fla. 2002) ("Because the evidence in this case was both direct and circumstantial, it is unnecessary to apply the special standard of review applicable to circumstantial evidence cases.")(citing Wilson v. State, 493 So. 2d 1019, 1022 (Fla. 1986)).

In Hardwick v. State, 521 So. 2d 1071, 1075 (Fla. 1988), this Court rejected the defendant's contention that the State's evidence against him was purely circumstantial:

> We disagree that the case was circumstantial, since Hyzer and others testified that Hardwick had confessed to the murder or told others of his plans in advance of the killing. A confession of committing a crime is direct, not circumstantial, evidence of that crime. Dunn v. State, 454 So.2d 641 (Fla. 5th DCA 1984). See McCormick, *Handbook of the Law of Evidence* § 185 (2d ed. 1972).

See also Meyers v. State, 704 So. 2d 1368, 1370 (Fla. 1997) (rejecting a contention that the State's case was entirely circumstantial where the state's evidence included the defendant's confessions to his former cellmates); Orme, 677 So.2d at 261 (evidence not wholly circumstantial where direct testimonial evidence placed defendant at the scene of the crime along with defendant's statement to the police establishing both presence and an altercation of some type with the victim).

B. The Evidence Was Sufficient for the Trial Court to Submit the Issue of Appellant's Guilt to the Jury

The focus of appellant's argument is upon the fact that due to the length of time Pallis's body remained undiscovered, a certain cause of death could not be determined. Consequently, appellant opines that the State did not present sufficient evidence to overcome an argument that her death was somehow accidental due to her "risky" lifestyle and the fact she had or was suspected of having AIDS. (Appellant's Brief at 56). However, appellant discounts the uncontradicted testimony of the experienced medical examiner below, who determined that Pallis's death was indeed, a homicide.

Dr. Beaver was able to conclude the death was a homicide, explaining:

> It's based on the fact that she's found in a shallow grave. She's gone missing and, therefore, maybe against her will, maybe not.

> And there's no - - there's just – this is just not the way that people - - you know, that death normally comes to people.
>
> So this would fit the definition of homicide. I think it would be sort of preposterous to think of it as anything else.

(V18, 250). Dr. Beaver explained: "But in my experience and doing this a lot of years and – this is a homicide. It just is. And it is because it looks - - you know, if it looks like a duck, walks like a duck, quacks like a duck, it's a duck. And that's the case here. This is a homicide." (V18, 266). It was significant to him that the remains were placed in a shallow grave and in a remote, wooded area. (V18, 278-79). It was not a traveled area yet it was relatively accessible. He applied his experience, common sense, and logic to determine the cause of death. (V18, 279).

The jury was certainly entitled to rely upon the medical examiner's testimony. The testimony of the medical examiner alone constitutes competent and substantial evidence on which this Court can conclude Pallis died from homicidal violence. Consequently, the trial court did not err in denying appellant's motion for a judgment of acquittal.

Appellant's suggestion that Pallis might have died from natural causes lacks any evidentiary support. Certainly, Pallis did not walk out to a wooded, isolated area and **bury herself** in the process of dying from natural causes. See Branscum v.

State, 345 Ark. 21, 29 (Ark. 2001) ("This court has held that a jury is not required to lay aside its common sense in evaluating the ordinary affairs of life, and it may infer a defendant's guilt from improbable explanations of incriminating conduct.")(citing Terrell v. State, 342 Ark. 208, 27 S.W.3d 423 (2000); Goff v. State, 329 Ark. 513, 953 S.W.2d 38 (1997)). In addition to the medical examiner's testimony, the State presented competent, substantial evidence to establish that appellant murdered the victim in this case.

Appellant contends that the medical examiner in this case did not rule out any so-called "natural" causes. (Appellant's Brief at 58). To the contrary, assuming, drug use is within this rather broad category of natural or accidental causes, the State did present evidence on this issue. The medical examiner noted some evidence of drug use near the time of death, but his findings eliminated such drug use as the cause of death. The medical examiner testified that the victim did take cocaine "within 48 hours" of her death. (V18, 267). However, there is no way he could find a drug overdose because the cocaine was found in "trace amounts, so it's a very small amount." (V18, 267). Ecstasy was also detected in trace amounts. While that drug was a little less stable, he would expect that if it caused her death they would have found it in amounts that could be

"quantified." (V18, 268). Thus, the State presented substantial, competent evidence, to rebut any suggestion that drug use may have caused the victim's death in this case.

The State is unclear why appellant mentions that the victim may have had full "blown AIDs." (Appellant's brief at 56). In fact, it was shown below that this was merely a rumour. The theory or rumour that Pallis had AIDs was dispelled by the testimony of a State witness. (V17, 155-56). There was simply no competent evidence introduced to even show that Pallis suffered from AIDs, much less that she somehow died of the disease and buried herself in a shallow grave. The State presented substantial evidence to establish that Pallis was never seen or heard from again after appellant took Pallis from Allen's apartment, bound, and, pleading, and forcibly stuffed her into the trunk of his car.

The State presented the testimony of several people who cared about Pallis and who were in regular contact with her, but, who never saw or heard from her after that evening. See Meyers v. State, 704 So. 2d 1368, 1370 (Fla. 1997) (although the victim's body was never found, corpus delicti established by evidence indicating that the victim had no reason to run away from home, was looking forward to high school, none of the victim's things were missing from her room, and defendant had

scratches and another injury which were consistent with having been inflicted by the victim.); Crain v. State, 894 So. 2d 59, 72 (Fla. 2004) ("The corpus delicti of murder can be proven circumstantially, even without any evidence of the discovery of the victim's body."). See also Sochor v. State, 580 So. 2d 595 (Fla. 1991).

The State presented a compelling array of evidence including motive [victim's theft of money and drugs], damaging admissions, including a statement of immediate intent to kill the victim, and, appellant's incriminating statements after the murder. Prior to leaving with Pallis bound and helpless in the trunk of his car, appellant told Latisha Allen he intended to kill her. Latisha asked Jackson if he was going to kill her. Jackson "nodded yes." (V20, 633). Latisha said that Jackson both nodded his head and said "yeah." (V20, 639). "This Court has previously found that statements of intent made prior to the crime are sufficient to establish premeditation." Pagan v. State, 830 So. 2d 792, 804 (Fla. 2002). See Asay v. State, 769 So. 2d 974 (Fla. 2000) (statements made close to the time of the crime demonstrated defendant's motive for committing the homicide); Almeida v. State, 748 So. 2d 922 (Fla. 1999) (statements about the wound that a certain type of bullet would leave were evidence of premeditation); Jennings v. State, 718

So. 2d 144 (Fla. 1998) (defendant's statements that if he ever needed money he would just rob some place and kill the witnesses were evidence of premeditation). Appellant's statements are not only relevant on the issue of premeditation, but, also causation.

In addition to stating his intention to kill Pallis, appellant took steps like tying her hands behind her back, procuring tape and using it to render her helpless[12], using gloves, procuring rags, using bleach to clean up potential evidence, and, ensuring that no witnesses were at the scene outside of the apartment when he took her downstairs and put her in the trunk of his car. Again, Pallis was last seen alive after pleading with appellant and struggling against him in order to prevent the trunk from being closed. Appellant's damaging admissions after the crime establish his consciousness of guilt.[13]

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[12] The prosecutor in closing noted the progression Jackson used to ensure that Pallis was incapacitated: "Extension cords are first on there. And then we have the plastic ties. That didn't work, or couldn't get to figure enough, and so it's go out and buy some duct tape. We've got to make sure, we've got to make darn sure, that Pallis is tied up and bound well enough for us to do what we need to do to take care of her. And that's what they did." (V24, 1270).

[13] Appellant and his co-defendant also made statements evincing their desire to evade or escape prosecution, including threatening potential witnesses. See Sireci v.State, 399 So. 2d 964, 968 (Fla. 1981), cert. denied, 456 U.S. 984 (1982) (evidence of a suspect's desire to evade prosecution or attempt

Appellant told at least two different people that "they ain't got no body, they ain't got no case." (V21, 784; V23, 997). Indeed, when asked if he killed Pallis by V'Shawn Miles, appellant did not respond with a denial, rather he stated he was not worried. "[B]ecause if they didn't find the body, they didn't have a case." (V23, 997). Appellant also added, when asked if Pallis robbed him, "You shouldn't fuck with people things." (V23, 997). These are incredibly damaging admissions which reflect appellant's consciousness of guilt and leave no doubt about Pallis's fate. Indeed, when news that the body of a woman had been discovered, appellant told someone to drive by the "spot" in an obvious attempt to see if the police had found Pallis's body. (V21, 782).

The common threads of consistency, between the witnesses' testimony below created a powerful case establishing appellant's guilt. The trial court heard all of the testimony and considered the arguments of counsel before determining that sufficient evidence was presented to the jury. The jury was able to weigh the evidence, observe the witnesses and evaluate their credibility. The jury found the evidence sufficient to establish appellant's guilt beyond a reasonable doubt.

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to prevent witness from testifying is admissible as relevant to the consciousness of guilt that may be inferred from such evidence)

Appellant has offered this Court nothing on appeal which compels a different conclusion than that reached by the trial court and jury below.

Assuming, *arguendo*, this Court finds some defect in the State's evidence on first degree, premeditated murder, the evidence clearly supports appellant's conviction for first-degree felony murder with kidnapping as the underlying felony. The jury specifically found appellant guilty of both premeditated and first degree felony murder as well as the underlying kidnapping. (V25, 1469). See San Martin v. State, 717 So. 2d 462 (Fla. 1998), cert. denied, 526 U.S. 1071 (1999) (reversal is not warranted where general verdict could have rested upon theory of liability without adequate evidentiary support when there was an alternative theory of guilt for which evidence was sufficient); Griffin v. United States, 502 U.S. 46 (1991) (upholding general verdict even though one of the two possible bases of the conviction failed because of insufficient evidence).

Petitioner does not even contest the evidence supporting the underlying kidnapping conviction. Indeed, overwhelming evidence supports a conclusion that Pallis's death occurred in the course of a kidnapping. Consequently, this Court should affirm the verdict below. See Sochor v. State, 580 So. 2d 595,

600 (Fla. 1991) (victim's removal from "the lounge parking lot to a secluded area facilitated Sochor's acts, avoided detection, and was not merely incidental to, or inherent in, the crime."). The victim's liberty was not restored prior to her murder. See Crain v. State, 894 So. 2d 59, 75 (Fla. 2004) (affirming conviction of first degree felony murder despite "[t]he fact that we cannot pinpoint when the actual bodily harm and subsequent killing occurred in relation to the time Crain first kidnapped Amanda..") and Stephens v. State, 787 So. 2d 747, 754 (Fla. 2001) (finding death of a child left in a car occurred during the course of a kidnapping where the child's liberty had not been restored prior to his death)(citing State v. Stouffer, 352 Md. 97, 721 A.2d 207 (1998)(finding a continuing kidnapping where the victim's liberty was never restored prior to his death)).

ISSUE V

WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN DECLINING TO PROVIDE APPELLANT'S SPECIAL INSTRUCTIONS IN THE PENALTY PHASE? (Stated by Appellee).

Appellant next contends the trial court erred in refusing to provide his special instructions and instead, relied upon the standard penalty phase instructions approved by this Court. (Appellant's Brief at 60). The State disagrees. The

instructions given by the trial court were proper and no abuse of the trial court's discretion has been demonstrated.

Of course, the trial court has wide discretion in determining whether or not to provide a special instruction. Absent "prejudicial error" such decisions "should not be disturbed on appeal." Card v. State, 803 So. 2d 613, 624 (Fla. 2001). Appellant cites to his written specially requested jury instructions, but, only briefly mentions four such instructions in his brief. See Duest v. Dugger, 555 So. 2d 849, 852 (Fla. 1990) ("The purpose of an appellate brief is to present arguments in support of the points on appeal. Merely making reference to arguments below without further elucidation does not suffice to preserve issues, and these claims are deemed to have been waived."). He cites no authority for the proposition that a trial court abused its discretion in failing to provide any specific instruction. And, since the trial court provided the standard penalty phase instructions, he has provided no basis for finding the trial court abused its broad discretion in this case.

Initially, appellant contends the jury should have been reinstructed on the definition of reasonable doubt. The trial court denied that request, stating: "And I realize the two week delay was because of circumstances regarding some of the defense

witnesses or one of the investigators is one of the reasons we did that, because I think one of the defense investigators had a prepaid vacation. Over Defense objections, I'm not going to repeat that because it was given clearly to the jury during the guilt phase. They should remember it, and the attorneys can certainly argue that as a reminder if they wish to. So over defendant's objections, I would not reread the reasonable doubt instruction." (V29, 524).

Since the jury had already been instructed upon reasonable doubt in the guilt phase, there was simply no reason to repeat it in the penalty phase. As the trial court noted, the defense counsel in closing could certainly remind the jury of the definition, if he so desired. Consequently, the appellant was not prejudiced by the lack of such an instruction.[14]

Next, appellant contends that the prior violent felony instruction, which included battery on a law enforcement officer was improper because "[i]t is now questionable whether appellant's prior conviction for battery on a law enforcement officer would even qualify as a prior violent felony in light of this Court's opinion in State v. Hearns, 961 So.2d 211 (Fla. 2007)." (Appellant's Brief at 62). However, appellant never

[14] Similarly, the jury was instructed that appellant had the absolute right not to testify at trial. There was no need to repeat this instruction during the penalty phase as appellant contends.

made this specific argument below to the trial court. Indeed, as noted by the trial court, appellant stipulated to "three violent felonies" including "robbery, battery upon a law enforcement officer, and, resisting an officer with violence." (V4, 697). "Under the contemporaneous objection rule, to preserve error for review a litigant must object at trial." Insko v. State, 969 So. 2d 992, 1001 (Fla. 2007). Appellant clearly cannot complain about battery on a law enforcement officer being included as a prior violent felony when he not only failed to object, but, stipulated to the existence of this felony.

The trial court was under no obligation to provide a separate special instruction on prior violent felonies. The jury was provided the standard instruction on the prior violent felony aggravator. The standard instruction was not misleading and properly instructed the jury on Florida law. Indeed, the manner the trial court read the instruction clearly indicated that the prior violent felony aggravator, although reflecting three offenses, was a single aggravating circumstance. (V30, 631). Consequently, the court properly denied the special instruction on this aggravator. See James v. State, 695 So. 2d 1229, 1236 (Fla. 1997) (a trial court has wide discretion in instructing the jury and that the court's rulings on the

instructions given to the jury are reviewed with a presumption of correctness).

The trial court properly denied a special or enhanced instruction on the cold, calculated, and premeditated "CCP" aggravator. The trial court instructed the jury on the standard, constitutional instruction defining the aggravator. It was neither misleading nor necessary to further refine it to fit the alleged individual characteristics of the appellant. See Card, 803 So. 2d 613, 624 (no error in refusing special instruction on CCP).

Finally, appellant notes that this Court has rejected the contention that the trial court should instruct on individual mitigating circumstances, he nonetheless urges this Court to reconsider its earlier decisions. Appellant has offered this Court no compelling reasons to depart from the well settled precedent of this Court approving of the standard jury instruction. See Finney v. State, 660 So. 2d 674, 684 (Fla. 1995) ("This Court has repeatedly rejected Finney's next claim that the trial court must give specific instructions on the non-statutory mitigating circumstances urged." (citing Jones, supra; Robinson v. State, 574 So.2d 108 (Fla.), cert. denied, 502 U.S. 841, 112 S.Ct. 131, 116 L.Ed.2d 99 (1991))).

In conclusion, the jury was properly instructed during the penalty phase below. Appellant has failed in his burden to demonstrate reversible error, much less prejudicial error requiring reversal of his sentence based upon his proposed instructions.

ISSUE VI

WHETHER THE TRIAL COURT ERRED IN FINDING THE COLD, CALCULATED AND PREMEDITATED AGGRAVATOR UNDER THE FACTS OF THIS CASE?

Appellant contends that the evidence was insufficient to establish the cold, calculated, and premeditated aggravator. The State disagrees. The evidence contains substantial, competent evidence to support the trial court's decision below.

The standard of review on whether the lower court correctly found aggravating factors is to review the record to determine whether the trial court applied the right rule of law for each aggravating circumstance and, if so, whether competent substantial evidence supports its finding. It is not this Court's function to reweigh the evidence to determine whether the State proved each aggravating circumstance beyond a reasonable doubt - that is the trial court's job. Willacy v. State, 696 So. 2d 693, 695 (Fla. 1997); Alston v. State, 723 So.

2d 148, 160 (Fla. 1998); Evans v. State, 800 So. 2d 182, 195 (Fla. 2001).

This Court has noted that with regard to the CCP aggravator, four factors must be established: (1) the killing was the product of cool and calm reflection and not an act prompted by emotional frenzy, panic, or a fit of rage; (2) the defendant had a careful plan or pre-arranged design to commit murder before the fatal incident; (3) exhibited heightened premeditation; and (4) had no pretense of moral or legal justification. Chamberlain v. State, 881 So. 2d 1087 (Fla. 2004). In finding this aggravator, the trial court provided an extensive analysis in the sentencing order. The trial court stated:

> 3. Florida Statutes, Section 921.141(5)(i): The capital felony was a homicide and was committed in a cold, calculated and premeditated manner without any pretense of moral or legal justification.
>
> The case law indicates for this aggravator to be established that (1) the murder was a product of a cool calm reflection and not any act done by someone in any emotional frenzy, panic, or a rage, (2) that the defendant had a careful plan or prearranged design to commit murder before the killing, (3) the defendant showed heightened premeditation, and (4) there was no pretense of legal or moral justification on the part of the defendant. Jackson v State, 648 So 2d, 85 (Fla 1994); Nelson v State, 748 So 2d, 237 (Fla 1998). For the reasons to be stated in the following paragraphs, this Court finds that the murder was committed in a cold, calculated and premeditated manner. There was a significant amount of evidence introduced during the trial touching upon this aggravating factor. The

victim was in the defendant's apartment and while the defendant was sleeping, the victim stole money, drugs, and other items from the defendant and left the apartment in an automobile driven by her cousin. Upon waking, the defendant discovered the theft and began searching for the victim. This included activities such as calling friends and acquaintances to see if they had seen the victim or knew her whereabouts and going to various residences where the defendant thought the victim might be found. During the events of November 9, 2004, the defendant found the victim at a cousin's house. The defendant then was seen placing the victim in the back seat of an automobile and at that time, the defendant was seen to have a handgun on his person. When witness Calvin Morris attempted to follow that automobile in his vehicle, the defendant waived the gun out of the window seemingly to scare the following witness off. The defendant then took the victim to the apartment of Latisha Allen, where he had stayed before. The victim was kept in Ms. Allen's apartment for several hours and was left bound and tied in the bathtub until nightfall came. The defendant at any time could have changed his mind and released the victim, but he chose not to. Because of the above, the "cold" component of this aggravator is established beyond all reasonable doubt and it is clear that the defendant acted coolly and calmly after due reflection and was not being controlled by any emotional frenzy, panic, or fit of rage.

Likewise, the "calculated" component has also been proved beyond all reasonable doubt. The evidence at the trial shows the defendant engaged in a careful plan or prearranged design to commit this murder. The defendant was convinced that the victim had stolen from him. He commenced searching for the victim and found her and took her to Ms. Allen's apartment, a place where he felt he would be safe and secure with the victim. The victim was first placed in a bathtub and her hands tied with an extension cord. The defendant decided he needed more substantial bindings and sent others to a department store to obtain duct tape, plastic ties, and other items. This clearly indicates that the defendant decided he needed to have a better way to secure the victim to prevent her from fighting or getting away once she realized her life was in danger. The evidence shows the defendant waited

until after dark to remove the victim, still bound, from the bathtub and he had the automobile backed up to the bottom of the stairs and utilized some of his friends and associates to act as lookouts while he removed the victim from Ms. Allen's apartment. The defendant carried the victim down the stairs over his shoulder and attempted to place her into the open trunk of the automobile rather than the passenger area. At that point, the victim started struggling and pushing or kicking with her legs to try to prevent the trunk lid from being closed and was pleading for her life when the defendant struck her several times in the face and with the help of the co-defendant got the trunk lid closed. The evidence further indicated that the defendant obtained a douche from Ms. Allen, and the victim's body was located some approximate six months later buried in a remote location without any clothing. The reasonable inference would be that this was a clear intent on the part of the defendant to remove any potential evidence such as DNA or other evidence that may link the defendant to the body. Subsequently, when the defendant was asked about the disappearance of the victim, but prior to the discovery of her body some six months later, he said "no body, no case" indicating that if the body disappeared and was never discovered, then there would be no criminal charges lodged.

As to the "premeditated" component of this aggravator, that also has been proved beyond all reasonable doubt. Over the course of several hours that the victim was bound in the bathtub of Ms. Allen's apartment, the victim was shown many times to others as an example not to do anything that the defendant would not want or appreciate. A reasonable inference would be that the defendant would not show her off if he had not already formed the intent to kill her as showing her off would not be a very good warning to others if he then released her. Most importantly, as to the heightened premeditation, Ms. Allen, after she was shown the victim tied up in the bathtub of Ms. Allen's apartment, spoke directly to the defendant and asked him "are you gonna kill her". Ms. Allen testified at the trial that the defendant nodded his head yes and spoke the word "yes".

As to the "no pretense of any moral or legal justification", this component of the aggravator has

> also been proved beyond all reasonable doubt. There was no evidence whatsoever introduced during the trial from either side as to any moral or legal justification for the crime and the defense did not argue any.
>
> Accordingly, this aggravator has been proved beyond all reasonable doubt and the Court gives it extremely great weight.

(V4, 697-99).

Appellant cites no specific error in the trial court's extensive factual summary. He nonetheless argues that this murder was somewhat less than CCP in that appellant was going to teach Pallis a "lesson" for stealing from him. Apparently, appellant maintains he had something of a justification or pretense for his conduct in this case. (Appellant's Brief at 69-70). However, Pallis's theft of Jackson's money and drugs in no way justifies appellant's, kidnapping, terrorizing, and murdering the victim in this case. The pretense or justification refers to some type of imperfect self-defense situation, clearly not applicable under the facts of this case. See Nelson v. State, 748 So. 2d 237, 245 (Fla. 1999) ("A pretense of legal or moral justification or moral justification is 'any colorable claim based at least partly on uncontroverted and believable factual evidence or testimony that, but for its incompleteness, would constitute an excuse, justification, or defense as to the homicide.'" (quoting Walls v. State, 641 So. 2d 381, 388 (Fla. 1994)).

In this case, appellant had ample time, while the victim was in his complete control, to coolly reflect upon the victim's fate. Thus, the earlier theft simply does not provide any "pretense" of a justification for the victim's murder. This Court's consideration of this factor in Hertz v. State, 803 So. 2d 629, 650 (Fla. 2001) is instructive: "Here the calm and deliberate nature of the defendants' actions against the victims establish this element beyond any reasonable doubt."

Appellant appears to make an improper doubling argument with respect to facts supporting the underlying kidnapping of Pallis with the intent to terrorize her. However, there is nothing wrong with mentioning facts to support the kidnapping offense, when they are also relevant to the CCP aggravator. Naturally, a trial court will look to the facts adduced during the trial to support the finding of an aggravating factor. Appellant has not cited any authority to suggest this practice is improper.[15]

[15] This is a somewhat novel twist on the usual defense tactic of claiming that the same facts cannot support two different aggravators. Regardless, there is nothing improper in overlapping facts to support two aggravators. See e.g. Doorbal v. State, 837 So. 2d 940 (Fla. 2003) (no improper doubling of in the course of a felony (kidnapping) and pecuniary gain aggravators). The United States Supreme Court has held that consideration of an aggravating factor that duplicates an element of the crime is not unconstitutional. See Lowenfield v. Phelps, 484 U.S. 231, 241-46 (1988).

The instant case is similar to the facts presented in Pearce v. State, 880 So. 2d 561, 575-577 (Fla. 2004) where this Court explained:

> This Court has held that execution-style killing is by its very nature a "cold" crime. See Lynch v. State, 841 So. 2d 362, 372 (Fla.), cert. denied, 540 U.S. 867, 157 L. Ed. 2d 123, 124 S. Ct. 189 (2003); Walls v. State, 641 So. 2d 381, 388 (Fla. 1994). As to the "calculated" element of CCP, this Court has held that where a defendant arms himself in advance, kills execution-style, and has time to coldly and calmly decide to kill, the element of calculated is supported. See Hertz v. State, 803 So. 2d 629, 650 (Fla. 2001); Knight v. State, 746 So. 2d 423, 436 (Fla. 1998) (holding "even if Knight did not make the final decision to execute the two victims until sometime during his lengthy journey to his final destination, that journey provided an abundance of time for Knight to coldly and calmly decide to kill"). This Court has "previously found the heightened premeditation required to sustain this aggravator where a defendant has the opportunity to leave the crime scene and not commit the murder but, instead, commits the murder." Alston v. State, 723 So. 2d at 162; see also Lynch, 841 So. 2d at 372 (noting that defendant had five-to seven-minute opportunity to withdraw from the scene or seek help for victim, but instead calculated to shoot her again, execution-style).

See also Parker v. State, 873 So. 2d 270, 288 (Fla. 2004) (CCP can be indicated by facts such as advance procurement of a weapon, lack of resistance or provocation and the appearance of a killing carried out as a matter of course); Anderson v. State, 863 So. 2d 169, 177 (Fla. 2003); Davis v. State, 859 So. 2d 465, 479 (Fla. 2003); McCoy v. State, 853 So. 2d 396, 408 (Fla. 2003).

This Court has also indicated that while the factor applies when the facts showed a particularly lengthy period of thought and reflection by the perpetrator before the murder, it does not require a methodic or involved series of atrocious events or a substantial period of thought and reflection by the perpetrator. Asay v. Moore, 828 So. 2d 985, 993 (Fla. 2002); Philmore v. State, 820 So. 2d 919 (Fla. 2002) (CCP upheld for killing of car owner execution-style where defendant procured the murder weapon on the day before the murder and the defendant drove the owner to a remote location). In this case, appellant clearly had a lengthy period [hours, not minutes] to contemplate the victim's fate.

Appellant took Pallis to a secure location [Latisha Allen's apartment], bound her, and otherwise exercised complete control over her while she was confined in the bathroom. Appellant waited until dark and the coast was clear, to carry her, bound and helpless, to the car he left parked near the apartment. Pallis pleaded with appellant not to put her in the trunk, and, struggled against the appellant shutting it. Prior to leaving with the victim, appellant had told Latisha Allen that he was going to kill the victim. See Alston v. State, 723 So. 2d 148, 160 (Fla. 1998) (This Court has "previously found the heightened premeditation required to sustain this aggravator where a

defendant has the opportunity to leave the crime scene and not commit the murder but, instead, commits the murder.").

This execution style murder was the product of cool, calm reflection. It well planned over a number of hours with steps taken to remove or hide possible evidence. Finally, appellant drove the victim to a remote area where she could be killed and her body would not [he hoped] be recovered. Competent, substantial evidence supports the trial court's finding of the CCP aggravator in this case.

ISSUE VII

WHEHTHER THE DEATH PENALTY IS PROPORTIONALLY WARRANTED IN THIS CASE? (Stated by Appellee).

Appellant finally challenges the propriety of the death sentence imposed in this case. He claims that the murder is not among the most aggravated or least mitigated, and that the sentence is disproportionate compared to other capital cases.

A proportionality determination does not turn on the existence and number of aggravating and mitigating factors, but this Court must weigh the nature and quality of the factors as compared with other death cases. Kramer v. State, 619 So. 2d 274, 277 (Fla. 1993). The purpose of a proportionality review is to compare the case to similar defendants, facts and

sentences, to insure that the death penalty is being uniformly imposed. Tillman v. State, 591 So. 2d 167, 169 (Fla. 1991).

The aggravating factors found in this case are: (1) defendant was previously convicted of a prior violent felony [robbery, battery on a police officer, and, resisting arrest with violence]; (2) murder committed during the course of a kidnapping; and (3) the murder was cold, calculated and premeditated. (V4, 697-98). There were no statutory mitigators found, but the trial court gave varying degrees of weight to nonstatutory mitigation, including neglected and abusive childhood, involuntarily hospitalized as a child and has suffered from bipolar disorder, special bond with children, capable of forming loving relationships with his family, supportive brother and father, has biological children he has bonded with, contributed to his family and society in various employment, was a caring child, and demonstrated appropriate courtroom behavior. The jury recommended the death sentence by a vote of 9 to 3. (V8, 1265; V29, 3133-34). The trial court found that the aggravating factors "**far outweigh** the mitigating factors" and imposed death as the "appropriate sentence." (V4, 702)(emphasis added).

Factually similar cases supporting the death penalty for appellant include the following: Delgado v. State, 948 So. 2d

681, 691 (Fla.) (affirming the death sentences where the three aggravators (HAC, CCP, and prior violent felony conviction) outweighed four nonstatutory mitigating circumstances (non-use of drugs or alcohol, difficult childhood and physical/emotional abuse at the hands of defendant's parents, stepfather, the Cuban government, and neighbors, defendant's love of his family, and good behavior throughout the trial)), cert. denied, ___ U.S. ___, 127 S. Ct. 3016 (2007); Walker v. State, 957 So. 2d 560, 585 (Fla. 2007) (determining that the death sentence was proportionate where three aggravators (during the course of a felony, HAC, and CCP) outweighed four nonstatutory mitigators (defendant's drug use/bipolar personality/sleep deprivation, codefendant's life sentence, defendant's statement to police, and defendant's remorse)); Johnston v. State, 863 So. 2d 271, 286 (Fla. 2003) (affirming death sentence where two aggravators (prior violent felony conviction and HAC) outweighed one statutory mitigator (substantially impaired capacity) and twenty-six nonstatutory mitigators); Shellito v. State, 701 So. 2d 837, 845 (Fla. 1997) (victim shot during robbery, similar aggravating and mitigating factors); Moore v. State, 701 So. 2d 545, 551-52 (Fla. 1997) (defendant robbed and killed a friend); Wickham v. State, 593 So. 2d 191, 194 (Fla. 1991) (defendant and others lured victim into roadside ambush, to rob and kill him).

Appellant's reliance upon Kramer v. State, 619 So. 2d 274 (Fla. 1993) is misplaced. In Kramer, there were only two aggravating factors, prior violent felony and heinous, atrocious and cruel aggravator. Moreover, the court cast doubt on the applicability of HAC under the facts of the case, characterizing the evidence "in its worst light suggests nothing more than a spontaneous fight, occurring for no discernible reason, between a disturbed alcoholic and a man who was legally drunk." Moreover, the trial court found both an extreme emotional disturbance and a substantial impairment in the defendant's capacity at the time of the crime as well as non-statutory mitigation.

In contrast to Kramer, it cannot be said this was a fight between a "disturbed" alcoholic and a man who was legally drunk. This was a coldly planned and executed murder of a bound and helpless victim. Moreover, the mental health mitigation was not compelling. While appellant mentions schizophrenia in his statement of facts (Appellant's Brief at 34-35), the defense mental health expert, Dr. Danziger, found that appellant was not schizophrenic. Moreover, he had no evidence to suggest that either statutory mental health mitigator applied in this case. (V28, 336-38). Thus, Kramer is clearly distinguishable from the instant case.

As non-statutory mitigation, the court credited Dr. Danziger's diagnosis of appellant as having bipolar disorder. However, Dr. Danziger did not observe any symptoms of bipolar disorder when he saw him in April of 2006 and was not aware when the last "set of active symptoms was." (V28, 335). Dr. Danziger admitted that the last set of symptoms may have been years ago. (V28, 335). When Dr. Danziger saw the appellant his condition was in remission. (V28, 335). He had no evidence to suggest the appellant was in a bipolar state when he kidnapped and murdered Pallis Paulk. (V28, 336). Moreover, it appears the most salient characteristic of appellant's psychological makeup was Antisocial Personality Disorder.

Dr. Danziger admitted that his diagnosis of appellant as having this personality disorder was "firm." (V28, 339). Unlike bipolar disorder, Dr. Danziger acknowledged that appellant's demonstrated lack of empathy for the victim, his criminal record, his pursuit of an illegal occupation (drug dealing), and, his actions in this case are all associated with features of this disorder. (V28, 340-43).

The non-statutory mental mitigation was simply not compelling. While appellant had a dysfunctional and abusive childhood, he was thirty at the time he chose to kidnap,

terrorize, and, murder the victim in this case. This sentence is proportionate and should be affirmed.

CONCLUSION

In conclusion, appellee respectfully requests that this Honorable Court AFFIRM the convictions and sentences imposed below.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing ANSWER BRIEF OF APPELLEE has been furnished by U.S. Regular Mail, to Michael S. Becker, Assistant Public Defender, 444 Seabreeze Blvd., Suite 210, Daytona Beach, Florida 32118 and to Ed Davis, Assistant State Attorney, 251 North Ridgewood Avenue, Daytona Beach, Florida 32114-7505, this 18th day of July, 2008.

CERTIFICATE OF FONT COMPLIANCE

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

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COUNSEL FOR APPELLEE