IN THE SUPREME COURT OF FLORIDA

DONTE JERMAINE HALL,

Case No. SC09-2326

Appellant,

v.

STATE OF FLORIDA,

Appellee.
_____/

ON APPEAL FROM THE FIFTH JUDICIAL CIRCUIT
IN AND FOR LAKE COUNTY, STATE OF FLORIDA

ANSWER BRIEF OF APPELLEE

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STATEMENT OF THE CASE

Donte Hall was indicted on the following charges:

(1) Conspiracy to Commit Armed Robbery;

(2) Armed Burglary;

(3) Robbery with a Firearm;

(4) Attempted Felony Murder of Joshua Daniel;

(5) Attempted Felony Murder of Willie Shelton;

(6) First Degree (Felony) Murder of Anthony Blunt;

(7) First Degree (Felony) Murder of Keson Evans;

(V1, R1-3).[1]

The case was tried by jury from April 13-17 and April 20, 2009. (V6-15). Hall was convicted as charged. (V1, R409-416). On Count 2 through Count 5, the jury made specific findings that Hall both carried and discharged a firearm. (V3, R410-413).

The penalty phase took place April 21-22, 2009. (V16-17). The State presented testimony from: two crime scene investigators, Linda Drescher and Thomas Cushing; victim impact testimony from two family members: Julene Blunt and Eleanor Pursley;

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1 Cites to the record on appeal are by volume number followed by "R" for pleadings, "T" for trial transcripts, and "PP" for penalty phase.

Officer Travis Jicha regarding Blunt's condition when first responders arrived. The defense presented the testimony of Dr. Eric Mings, mental health expert; and Louise Laster, Donte Hall's mother. The State presented rebuttal testimony from a mental health expert, Dr. Ward, and admitted letters from Ashton Oaks, Donte's current girlfriend.

By a vote of eight to four (8-4), the jury recommended a sentence of death for the murder of Anthony Bernard Blunt. (V17, PP222). The jury recommended a life sentence for the murder of Keson Evans. (V17, PP223).

The *Spencer* hearing was June 4, 2009. (V5, T857-931). The defense presented one additional witness: William Ledford Scott.

Sentencing took place December 9, 2000, and Hall was sentenced to death. (V5, T932-947). The judge found four aggravating circumstances:

(1) Prior violent felony;

(2) Great risk of death to many;

(3) Pecuniary gain;

(4) Heinous, atrocious or cruel.

(V3, R522-533).

The judge found as statutory mitigation: capacity to conform conduct substantially impaired. (V3, R533-34). The trial judge rejected age (Hall was 22) as

statutory mitigation. (V3, R535-36). As non-statutory mitigation, the judge found:

(a) Appropriate courtroom behavior;

(b) Family background of generational alcohol and drug use;

(c) Family background of generational criminal behavior;

(d) No role models growing up;

(e) Grew up in dangerous neighborhood that reinforced drug use;

(f) Abused as child;

(g) Different living situations as a child;

(h) Attention deficit disorder and borderline mentally retarded;

(i) History of drug and alcohol abuse.

(V3, R536-545).

STATEMENT OF THE FACTS

Preliminary summary. Because the State presented approximately 50 witnesses, the following short summary is offered: Angel Glenn is a stripper. Donte Hall is her boyfriend. Angel had a strip job at a party, and Hall robbed the men at the party at gun point. A total of four of the men were shot: two died, two lived.

Facts. Angel Glenn dated Donte Hall in 2006 and planned to marry him. (V11, T1150-51, 1153-54). Donte has a twin brother named Dante, and they both use the nickname, "Twin." (V11, T1151; V12, T1317). Glenn can tell the brothers apart:

Donte has gold teeth and a tattoo on his neck, which Dante does not. (V11, T1151-52; V14, T1645). Donte has a deeper voice than Dante. (V11, T1152). Glenn knows the difference between the two and can tell them apart. (V12, T1279).

Glenn lived with her family and infant son during the summer of 2006. (V11, T1152-53). Donte lived with his mother. (V11, T1156). Donte did not have a job or a car. Either Glenn or friends drove Donte around. (V11, T1158). Glenn made a living stripping at private parties every weekend. (V11, T1154).

In September 2006, Glenn met Willie "Jay" Shelton in Orlando. She told him that she stripped for money. (V11, T1158). Shelton told Glenn the girls could make a lot of money. (V12, T1323-24). The two exchanged phone numbers and planned a party in Eustis. (V11, T1159). Glenn kept her phone on speaker mode most of the time when using the walkie-talkie feature. (V11, T1159). Donte, who was within earshot, heard some of the conversation. He asked Glenn who she was talking to and where were they were from. Donte then told Glenn he was going to rob them. Glenn understood Donte's plans to rob the men and did not talk him out of it. (V11, T1162, 1163, 1164, 1177; V12, T1324, 1350).

On September 8, 2006, Glenn got ready for the party. Around 10:00 p.m., Glenn and Donte got gas at an Orlando gas station. (V11, T1166, 1169). A security video from the gas station showed Donte enter and exit the convenience store, with Glenn's

car parked by the gas pumps. (V10, T949-50; V11 T1170).

After getting gas, Glenn and Donte picked up Nikita Jackson. The two women then dropped Donte off at an apartment near the Citrus Bowl in Orlando. (V11, T1166, 1171). Glenn knew Donte had arranged to meet Dante at the apartment. (V11, T1173). After he was dropped off, Donte walked towards a beige Chevy Malibu that Dante had rented. There were other people standing near the open trunk of the car. (V11, T1174; V12, T1354). Glenn and Jackson next picked up their friend, Brittany, and drove toward Eustis. They were running about two hours behind, as they were expected about 11:00 p.m. (V11, T1167, 1179). Glenn did not tell Jackson and Brittany about the planned robbery. (V11, T1179).

Glenn kept her phone on private mode as she drove to Eustis. (V11, T1159-60; V12, T1321). However, Donte's name was displayed when he called her. (V133, T1321). Shelton called Glenn a few times during the drive, wondering why they were taking so long to get to the party. (V11, T1167). Glenn spoke with Donte a few times. (V11, T1180). Donte "chirped" her phone and asked where they were. Soon after, Glenn noticed a car following them, which she had been expecting. (V11, T1181-82).

Shelton continued to call Glenn and give her directions. (V11, T1182). Shelton met Glenn at a gas station, and they followed him back to the party. (V11, T1184-85). Dante's rental car followed the girls to the party house. (V11, T1186, 1187, 1189).

After the girls entered and everyone introduced themselves, the men "were pulling out all types of drugs like marijuana, cocaine, ecstasy, alcohol …" The girls picked out what drugs they wanted. Glenn smoked marijuana, took two ecstasy pills, and drank alcohol. (V11, T1187-1188, 1189, 1222; V12, T1329).

The girls went into a back room, and were "smoking, drinking." They changed clothes, getting ready for the party. (V11, T1190). Glenn called Donte Hall and told him what they were doing. He asked, "How many guys are in the house … Did I see a gun …what's the commotion …on the patio, on the porch … why hasn't the party started." (V11, T1192). Glenn told Donte there was a delay in the dancing as they were waiting for a radio. (V11, T1191). The girls went outside to the car to get a CD from a truck. Glenn could not recall whether or not she used her phone while outside. (V11, T1192).

Glenn said Donte instructed her "to get everyone together." She told Donte there were some guys outside and they were not all in one area together. (V11, T1194). Donte said, "I'm coming in. And that was it." (V11, T1194). Donte entered the room first, followed by, "Shoo-Shoo… Dante … and Pig." (V11, T1196). Glenn testified, "Once he came in, I remember he walked in first and, you know, they was just pointing the guns at everybody. And all of the guys and all of us like got in one spot in the living room." (V11, T1194). Glenn knew two of the gunmen were "Shoo-Shoo" and

"Pig." Shoo-Shoo, who is short, is "the only short guy who I knew that hung out with Donte and do this kind of stuff with him." Pig is bald and weighed over 200 pounds. Dante Hall was the fourth gunman. (V11, T1197).

Donte said, "F--king n---ers, we're going to make this choppa dance, give us, you know everything you got, stuff like that." Glenn thought Donte and Shoo-Shoo were holding AK47 weapons. (V11, T1194, 1195, 1285; V12, T1335). Donte did most of the talking. He was the first gunman to fire his weapon. (V12, T1285). The four gunmen were dressed in black and had scarves on their faces. Glenn could see their eyes and foreheads. (V11, T1195-96; V12, T1338, 1340). Pig walked into the house and went to the back. He was not in the room with the other gunmen and victims. (V12, T1286, 1340). The victims took off their jewelry and gave it to the gunmen. Someone said something "about a back room or a box." Glenn thought it was Dante who went to the back of the house but could not open the door to a back room. (V11, T1199). Someone yelled out that the door was locked and had to be busted open. Glenn could not recall if the door was busted open or not. (V11, T1199). Glenn did not recall any gunshots being fired after the search for the box ended. (V11, T1200; V12, T1338, 1353). Shoo-Shoo was standing next to Donte the entire time (V12, T1336).

Glenn said Pig and Dante did not fire their guns. (V12, T1214, 1285-86). However, Shoo-Shoo did. (V12, T1285, 1347). None of the victims at the party tried to

resist the gunmen. (V12, T1215). When all the shooting ending, "Donte, Shoo-Shoo, Pig, and Dante, they walked out. All of the guys ... ran out after them." The girls stayed behind. (V12, T1214). The gunmen were in the room for "no more than ten minutes." (V12, T1339).

Jackson and Brittany ran to the back room and collected all the girls' clothing. They helped dress Glenn because she "was so nervous." She was shaking and throwing up. (V12, T1216). The victim who was shot while sitting on the couch was trying to talk but "blood was just coming out of his mouth." (V12, T1216).

Nikita Jackson testified that she and Glenn strip danced together on prior occasions. (V10, T830, 890). On September 9, Glenn and Donte Hall[2] picked Jackson up at her Orlando home. (V10, T831, 832). The girls dropped Donte off at an apartment where he met some "Black men" Jackson did not recognize. (V10, T833-34, 881). The men were standing near a light-colored Chevy Malibu car with the trunk lid open. (V10, T881, 882). Jackson and Glenn then picked up Brittany, who was also going to dance with them. (V10, T835). The girls were going to Eustis but were not sure exactly where to go. (V10, T836). Jackson said Glenn was in contact via phone with a guy 'in a brown car" that gave the girls directions. (V10, T837). Glenn was also

[2] Jackson referred to Donte Hall as "Twin." (V10, T832). Jackson clarified that Donte and Dante Hall are both referred to as "Twin." (V10, T885). Donte Jermaine Hall is also known as "Main." Dante James Hall is also known as "James." (V13, T1577-78).

in contact with her boyfriend, Donte Hall, while they drove to Eustis. (V10, T838). Glenn kept her phone in the private mode but Jackson could see "Twin" displayed on the phone. (V10, T838, 886, 887; V12, T1321). The girls stopped at a gas station in Eustis and met up with the guy giving them directions. (V10, T840). Jackson saw people inside the Gottsche house using drugs. (V10, T847, 902). The girls went into a bedroom and discussed what clothes to wear. Glenn talked to Donte on the phone after they arrived at the party house. (V10, T844-45). One of the men gave each of the girls an "Ecstasy pill." Jackson took one half of the pill which did not have any effect on her. (V10, T845-46, 888). Jackson did not drink any alcohol. (V10, T846). The girls went out to the car to get some music CDs. Glenn continued to talk on her phone to Donte about "boyfriend/girlfriend thing." (V10, T847-48).

About ten minutes after the girls started dancing, gunmen came into the house. (V10, T849). There were between one and five men. (V10, T852, 892, 902). The men said, "Get down on the ground and ... take off your clothes … give me the money and your jewelry. There was something about a shoe box … in one of the room in the back." (V10, T850, 854, 891). The men were carrying guns. Donte was carrying "a big one," "a choppa." (V10, T851, 904-05). Before the shooting started, Jackson heard one of the gunmen say, "They were going to make the choppa dance." (V10, T874). Donte was the first gunman to fire his weapon. (V10, T852). Numerous gunshots were

fired. The lights went out after the first shot was fired. (V10, T882, 892). Jackson was scared and could not see anything. (V10, T853, 893). Glenn and Brittany were screaming. (V10, T853). More shots were fired after the attempt to find the shoe box. (V10, T855). Jackson saw that several men had been shot. (V10, T884).

William Robinson went to a party at 940 Gottsche Avenue in Eustis in the early morning of September 9, with his friends, Willie James, and Willie Shelton. (V8, T574-75). Earlier in the evening Robinson heard Shelton speak to girls who planned to attend the party to strip dance. (V8, T575, 588). Robinson and Shelton met the girls at a gas station to give them directions. (V8, T575-76). The girls followed Robinson and Shelton to the house on Gottsche Avenue. (V8, T577). After Robinson, James, Shelton, and the girls went into the house, the girls changed their clothes while the men made drinks. (V8, T578). Eventually, there were about eight other men at the house. (V8, T578-79, 586). James was busy finding music to play so the girls could strip dance. (V8, T579, 587). Before the girls started dancing, they went outside into the middle of the street. One of the girls talked on her phone before they returned to the house. (V8, T579-80). The girls started dancing and entertaining. (V8, T680).

A few minutes later, Robinson saw four armed men with bandannas or ski masks over their faces enter the house through the carport door. Robinson did not know any of the men. (V8, T580, 582, 585-86, 589-90). The masked men hollered, "get down"

and started shooting. The masked gunmen told the others to "give it up." (V8, T580). The girls were screaming. (V8, T585). None of the men resisted the gunmen. (V8, T586, 592).

Robinson dropped to the floor. He pulled a few hundred dollars out of his pants pocket, put it on the floor, and continued to lay face down, facing toward the couch. (V8, T581, 585, 593). One of the gunmen yelled, "Do you think I'm playing? Do you think I'm playing? Give it all up." More shots followed. Robinson heard victim Keson Evans say, "It's in the back, it's in the back," referring to money. (V8, T581, 591). There was a ruckus in the back room. (V8, R582-83). The gunman returned and asked, "Where's the guy who said that?" Robinson heard a few more shots and then nothing further from Keson Evans. (V8, T583). There "was just a lot of shooting." After about five minutes, the shooting stopped and the gunmen left. (V8, T581).

Robinson saw that Willie James was shot in the stomach and shoulder. (V8, T583). He did not see if anyone else had been shot before he ran to a nearby street and told bystanders to call 911.[3] (V8, T584, 585). He called Willie James' aunt and told her James had been shot. Robinson returned to the shooting scene but police did not allow anyone near the house. Robinson returned home and later told police what had happened. (V8, T584).

[3] The first 911 call was made at 2:30 a.m. (V13, T1581).

Willie "Woodie" "Jay" Shelton testified that he met Angel Glenn in Orlando and arranged to have her and her friends strip dance at a gathering with his friends. (V8, T595, 596-97, 622). On September 8, 2006, Shelton spoke with Glenn via cell phone and told her "it's a good chance she'll make some money" at the party. (V8, T598; V9, T630, 631, 632). Shelton assured Glenn that she and her friends would be treated fine. (V8, T598). Shelton verified that he and his friends met Glenn and the other girls at a convenience store in the late evening hours of September 8. They followed Shelton to his aunt's house so he could find a radio, and then went on to the Gottsche Avenue house. (V8, T598-99). The girls changed clothes in a back bedroom. (V8, T599). About five minutes after they started, masked gunmen came into the house through the carport door. (V8, T600).

Shelton testified that everyone followed the gunmen's instructions but "everything just go crazy. They shoot first. There was that one shot and after that, you know, it was just chaos." (V8, T600). Although the shooters shot the lights out, there was a light on in the kitchen area as well as the carport area. (V9, T619, 627, 62-298). There was at least 30 minutes of gunfire. (V9, T619).

Shelton heard Keson Evans tell the men to "stop shooting my partner, please don't shoot my partner no more," referring to Joshua James Daniel ("JD"), who had been shot multiple times. (V9, T614, 615). Evans said there was money in the back

room. When the gunmen did not find any, Evans was shot in the head. (V9, T614-15). The girls were "hollering and screaming for their lives." (V9, T616). The taller, "slim guy," who was using an AK47, gave all the directions. (V9, T616). Shelton saw two tall men and one shorter man. (V9, T617). After Keson Evans was shot, the same man shot Shelton in the stomach and right arm. (V9, T617-18). Shelton heard Anthony Bernard Blunt holler, "please, please, please help me" after Blunt had been shot at close range in the chest. (V9, T618-19). Shelton spent two years in the hospital, but survived. (V9, T618).

Shelton did not know any of the shooters. Two of them were "dark skinned and tall and black." The other one was short and stocky. Shelton could not remember seeing a fourth man. (V9, T620, 626). All of the men were wearing bandanas over their faces. The two tall shooters were carrying AK47 weapons and the shorter man was carrying a handgun. (V9, T626, 627).

Jimmy Rucker went to the party with Keson Evans. (V9, T660, 673). Rucker was sitting next to Blunt on the couch when three masked gunmen, two of them armed and all three wearing bandannas, came in the house. (V9, T658, 662, 663, 671-72). Rucker testified that one of the men had an assault rifle and the other was armed with a revolver. (V9, T672). Two gunmen pushed "Ant" Murray into the room. Keson Evans told everyone to "just be calm, ain't nothing going to happen, you know just do

whatever they say." (V9, T663-64). Joshua "JD" James got down on his knees and told everyone to do what they said. JD was then shot multiple times with an assault rifle. (V9, T664, 670). Rucker said all the men went along with what they were told to do. (V9, T666). "One of the taller slim guys" took Murray to the back room looking for the money that Keson Evans said was in a shoe box. (V9, T666). When the gunman and Murray returned to the front room, Murray was told to remove Evan's jewelry. But the gunman said, "F--k it, and just boom. And then I heard another gunshot 30 seconds after that right there and that was it." Evans had been shot in the head. Rucker did not hear any more gunshots. (V9, T667).

After the gunmen left, Rucker said "everyone was just sitting there looking crazy." (V9, T668). Some of them tried to run out the door. Rucker told them the shooters might be waiting outside for them so he turned off the kitchen light. (V9, T669).

Joshua Daniel was very good friends with Keson Evans. (V9, T677-78). Everyone at the party was just "hanging out." Daniel was smoking marijuana and drinking. (V9, T680, 692). Daniel was standing near a sliding glass door when four masked gunmen came in the house with "Ant" Murray. (V9, T681-82, 690). The gunmen told everyone to get down. As Daniel got down, "one of them shot me." Daniel saw an assault rifle and a few handguns. (V9, T682, 691). The gunman holding

a handgun shot Daniel multiple times. (V9, T682, 693). “I had about 15 or 16 holes in me.” (V9, T693). Daniel thought that everyone at the party had been killed. (V9, T684).

Daniel said the gunmen were wearing dark clothing and gloves, and at least two of them had ski masks. The other two gunmen had something tied around their faces. (V9, T684-85, 689, 690). Daniel had a black Gucci bag hanging around his neck that contained approximately $1600.00 dollars. (V9, T686, 688, 689, 694). He has not seen the bag since the night of the shootings or a necklace, bracelet, and watch that he had been wearing. (V9, T686, 694-95). Keson Evans was also wearing a necklace/chain. (V9, T686-87).

James Weatherspoon attended the party but was not injured. (V13, T1435, 1437). Shortly after he arrived, three gunmen wearing bandanas and/or skull caps entered the home carrying an assault rifle and a handgun. (V13, T1438, 1439, 1444). James could not identify any of the gunmen. (V13, T1446). The gunmen said, “they was going to make (the choppa) dance.” (V13, T1438). The girls were screaming. (V13, T1444). The gunmen said, “give it up.” James put his hands in the air and laid down on a chair. No one resisted. There was “a lot of shooting and ... talking about where the money at.” (V13, T1440). The gunmen shot the lights out. (V13, T1442). After Joshua Daniel was shot, Keson Evans said there was money in a back room.

(V13, T1440-41, 1443, 1449). The gunmen said if there was no money in the back room, "they was going to come back and kill everybody." (V13, T1443). One of the gunmen went into a back room but did not find any money. (V13, T1441). The gunman came out of the back room and shot Keson Evans in the head. (V13, T1441). Although James did not actually see Evans get shot, he did not hear Evans speak again. (V13, T1441-42). [4]

Marcus Weatherspoon attended the party with his cousin, James Weatherspoon. (V13, T1462-63, 1465). Shortly after arriving, three gunmen entered the house. One of them was carrying an AK-47 and the other two men had pistols. (V13, T1467, 1468, 1478-79). The gunman carrying the AK-47 was between five foot nine and six foot and was wearing a black ski mask. (V13, T1468, 1469, 1481). All the gunmen had their faces covered. (V13, T1469). The gunmen told the victims "give it up." They wanted to know where the money was. (V13, T1470). Keson Evans said the money was in a back room in a closet. (V13, T1471). The gunman with the AK-47 told Evans, "If the money ain't back there, I'm gonna kill you." (V13, T1472). One of the gunmen carrying a pistol took Ant Murray to the back room. (V13, T1472). When they

[4] Coincidentally, James Weatherspoon and Donte Hall were subsequently incarcerated at the Lake County jail at the same time. James heard Hall tell other inmates to ask James about the girls that had been at the party on September 8-9. (V13, T1445, 1446-47). Jail officials confirmed that James was housed in the same cell block as Donte Hall. (V13, T1502-03). Inmates occasionally talk to other inmates on their way to or

returned, the gunman told "the dude with the AK" there was no money. At that point, the gunman wielding the AK-47, who never left the front room, shot Evans. (V13, T1473, 1474, 1480). Evans did not speak again. (V13, T1477). The third gunmen remained by the door "like a guard making sure ... nobody come in or out." (V13, T1476). After a few more shots rang out, it got quiet. "Everyone got up and was running around." Marcus and three other friends got in his car and left. (V13, T1477-78).

Police came in the house and ordered everyone on the floor. (V12, T1216-17). After securing the scene, police told the girls to go outside and wait. The girls went outside but drove away. (V12, T1217). Glenn carried a small gun that Donte gave her. She said it was "no bigger than my hand" and she could fit it in her underwear. While she was dancing, she left it in her purse in a bag in a back room. (V12, T1217-18). When police arrived, Glenn put the gun in her underwear so police would not see it. (V12, R1218).

George Davis, paramedic district chief for Lake-Sumter EMS, responded to the shooting scene in the early hours of September 9. (V9, T634). There were four victims with gunshot wounds. It was difficult extracting the injured people from the room due to lack of lighting. (V9, T636). Davis did not recall which victim he pronounced dead

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from a shower. (V13, T1506, 1507).

at the scene. (V9, T637-38). Davis assisted with another victim with multiple gunshot wounds that was brought to one of the ambulances. (V9, T638-39).

Jerry Andrews, paramedic, responded to the shooting scene, and triaged the patients. (V9, T641, 642, 643). The room was not well lit, which made it difficult to locate all the victims. (V9, T649). Andrews saw Blunt lying back on the couch "sweating, heavy breathing." Blunt was in critical condition. He was saying, "help me ... it's hurting." Blunt had been shot in the chest. (V9, T644). Blunt "just kept saying ... I don't want to die." (V9, T646). Medical personnel maneuvered Blunt onto a backboard and removed him from the house. (V9, T647). Andrews removed Willie Shelton and transported him to the hospital. Shelton had been shot in the arm and abdomen. (V9, T644, 645, 646).

Dr. David Bjerken, M.D., performed surgery on Joshua Daniel in September 2006. (V9, T752-53). Daniel had sustained multiple gunshots to his chest, abdomen and extremities. "He was dying from the extent of all the wounds." (V9, T754). Due to the extent of the injuries and location of the gunshots, "it was miraculous" that Daniel survived. (V9, T755). One bullet[5] was turned over to police and some of the other bullets in benign locations were left in Daniel. (V9, T756-57; V10, T950).

After the gunmen left, the strippers went into the back room and got dressed.

[5] This bullet was removed from Daniel's right flank. (V9, T757).

Glenn put a gun in her pants that she had been carrying in her purse. (V10, T856). Jackson told Glenn "she was stupid" because of what had happened. (V10, T857). The police told the girls to leave. (V10, T856, 894). Glenn called Donte and told him Jackson "knew" what had transpired, but she was not "going to say anything about it" and told him not to worry. (V10, T858, 860, 896, 906).

Glenn testified that after the shootings, she got lost driving back to Orlando. (V12, T1219, 1223). Donte called her to ensure the girls were okay. (V12, T1220). Nikita was angry and told Glenn she knew "it was Donte who did it." Glenn told Donte what Nikita had said. (V12, T1221-22).

Glenn arranged to meet Donte at a gas station in Orlando. (V12, T1223-24). When she got there, Dante's rental car was already there. (V12, R1224, 1226, 1276, 1300). Pig was in the driver's seat of the rental car. (V12, T1227). Donte got in Glenn's car and they left. (V12, T1224, 1226). Donte "was mad because … he didn't get enough money." Donte yelled at Glenn "about how I didn't get any money and how it didn't go how he planned it." (V12, T1231, 1232, 1264-65).

Jackson confirmed that after the girls left the shooting scene, they drove to Orlando. Jackson heard Glenn talked to Donte via cell phone on the drive back. (V10, T860, 861, 905). The girls picked up Donte at a gas station. (V10, T863, 901, 906, 908). Donte talked about the shooting "plain as day like it was nothing." (V10, T909).

He had a black Gucci bag with him. Jackson said she had seen it on another guy at the party. “He was kinda big. He had dreads.” (V10, T863-64, 865). The bag contained jewelry, “necklaces, et cetera.” (V10, T866, 896). The necklaces came from a “big guy” at the party. (V10, T896-97). Donte had guns with him, as well. (V10, T866, 872).

Donte and Glenn argued over how much money Donte robbed at the party. “He said he didn’t get enough money.” Further, “He could have gotten more money if the lights wouldn’t have went out.” (V10, T871). Donte told Glenn, “He tried to give her enough time to make money.” He was not concerned that Jackson knew what had transpired. (V10, T873). Donte said that he was the gunman with ‘the big gun.” He called the gun, “Choppa.” (V10, T874).

The girls and Donte drove to Jackson’s house. Jackson went inside and got some liquor. She told her mother what had happened, and that she had been stripping at a party and people had been shot, but her mother did not believe her. (V10, T867, 898-99). They then dropped Donte off at “Little D’s” house so Donte could give Little D the gun. (V10, T911). Glenn then took Jackson home. (V10, T870).

The next morning, Glenn went to Donte’s apartment. (V12, T1233, 1234). Dante showed up a short time later, “pulling like all types of chains and bracelets … out of a Gucci bag.” It was the jewelry from the robbery. (V12, T1235, 1236, 1241, T1343).

The Hall brothers discussed how to make money "off the jewelry." (V12, T1236).

Glenn and Donte went to a hotel to spend the weekend. (V12, T1237-38). Dante arrived the next morning. Dante's girlfriend, Kim, was going to pawn the jewelry for them. (V12, T1239, 1240). Glenn did not know how much money the Halls got for some of the pawned jewelry. Glenn pawned some of the stolen jewelry herself. (V12, T1245, 1246). She got $1000.00 for it and gave the money to Donte. (V12, T1247). Glenn heard Donte, Shoo-Shoo, and Pig discuss how to split up the proceeds from the pawned jewelry. (V12, T1258).

Three days after the shootings, Jackson and her mother went to the Eustis police department. Jackson "felt bad." Jackson's mother found a ski mask and a glove in their garbage. (V10, T880). She retrieved them from the trash and took them to the Eustis police. (V10, T875, 876). Jackson had previously seen the ski mask and glove in Donte's lap while in Glenn's car after the shootings. (V10, T876, 879).

Dana Michelle Griswold, Nikita Jackson's mother, said her daughter and Angel Glenn were very close friends. (V10, T918-19, 920). On September 9, 2006, Griswold was preparing to leave for work at approximately 4:15 a.m. (V10, T920, 923). Nikita called her and said she was on her way home. Griswold was waiting for her when Glenn pulled the car into the front yard. (V10, T921). "Twin" got out of the backseat, where he was sitting directly behind Glenn, and got in the front passenger seat. (V10,

T922-23). Griswold asked Nikita what was wrong as Nikita "was shaking" and "was very upset." Nikita told her, "I can't tell you right now ... I have to go with Angel to drop him off and I'll be back." (V10, T924, 930). After the three left, Griswold saw a "hoodie/ski mask thing and a black glove" in her yard where the driver's door of Angel's car had been parked. She threw these items in the trash. (V10, T925-26, 932). After work, Griswold noticed Nikita was still very upset, "paranoid ...like something was wrong." (V10, T924, 925). After Nikita told Griswold what happened, Griswold spoke with Eustis detectives. (V10, T927, 930). She retrieved the items from the trash. (V10, T926). She and Nikita took the mask and glove to police. (V10, T927).

On September 13, Glenn was worried because the police wanted to talk to her. Donte found out and changed his name in Glenn's phone's address book to "Granddaddy." (V12, T1248). Donte told Glenn to tell police that she was dating his brother, Dante. (V12, T1251). Glenn promised Donte she would not tell police what Donte had done.[6] (V12, T1269). She repeatedly lied to police due to concern for Donte, herself, and her family. (V12, T1357). Glenn told the Hall brothers' mother, Miss Louise, what her sons had done. Miss Louise could not believe "her sons would do something like this." (V12, T1360).

[6] Glenn claimed she was threatened by one of Hall's friends not to tell anyone that Hall "killed them people." (V12, R1356).

Glenn was arrested on September 14. (V12, T1248, 1265-66, 1269). She bonded out of jail in November. (V12, T1270, 1273). Subsequent to her release, she contacted Donte via letters and phone calls.[7] One condition of her release was to not have contact with Donte. (V12, T1270-71, 1311). Nevertheless, Glenn visited Donte in jail and got some money from his jail account. (V12, T1272, 1273).[8]

On December 21, Glenn was arrested for perjury because she lied about not having any contact with Donte subsequent to her arrest. (V12, T1273-74, 1280). Glenn made a deal with the State and agreed to tell the truth about the shootings/robbery in all cases involving these crimes. (V12, T1282-83, 1315, 1348, 1358). In return, all charges against her would be dropped with the exception of conspiracy to commit armed robbery. (V12, T1280-81).

Cpl. Padgett interviewed Donte Hall on several occasions. (V11, T1076-77). On September 18, 2006, Donte told Padgett he "ain't never been to Eustis. I don't know nothing about Eustis."[9] Further, "I stay in Orlando, period." (V11, T1078-79).

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[7] Hall had been arrested by this time.

[8] Adrian Jones, custodian of inmate phone records at the Orange County jail, identified phone records. (V10, T982). The records from November 30, 2006, indicated Donte called Angel Glenn. (V10, T984; V11, T1017, 1019, 1021).

[9] A portion of the recorded statement was published to the jury. (V11, T1079, State Exh. 35).

Ryan Jewell, operations manager for Avis Budget Group, rented a 2006 beige Chevy Malibu to Kim Jones on September 5, 2006. The car was returned on September 9. (V10, T975-76, 977, 978). Kim Jones and co-defendant Dante Jones have one child together and were living together in September 2006. (V11, T1025, 1026).

Jones testified that she rented a beige 2006 Chevy Malibu car or a Kia on September 5, 2006. (V11, T1030, 1031). Dante Hall took the car on September 8, 2006, sometime around dinnertime. (V11, T1032). When Dante came home early the next morning, he told Jones to return the rental car. (V11, T1034, 1035). Jones returned the car and rented a different one. (V11, T1036). A few days after Jones swapped rental cars, Donte Hall asked her to pawn some jewelry that she had never seen before. Jones met Donte in Orlando and he gave her the jewelry.[10] (V11, T1039, 1040, 1041). She pawned "some chains," at Cash America for approximately $1600.00 dollars.[11] Dante Hall went with her. (V11, T1042, 1043). She gave the money to Dante who was to give the money to Donte Hall. (V11, T1043-44). She did not know what the twins did with the money. (V11, T1044).

After Det. Carney interviewed Angel Glenn on February 15, 2007, he went to

[10] Jones said Donte Hall did not have identification and therefore could not pawn the jewelry himself. (V11, T1041).

[11] The jewelry included a necklace, bracelet, ring, charm, and a watch. (V11, T1049, 1054-56).

pawn shops in the Orlando area. He located two pawn shop tickets which listed the stolen jewelry from the victims. He also located the rental car Glenn said had been used the night of the shootings. (V13, T, 1569, 1570-71, 1572, 1575-76; V14, T1642). Angel Glenn had signed one of the pawn slips and put her thumb print on it. (V14, T1642). The pawn shops did not have any of the pawned jewelry as the jewelry had already been sent to be melted. (V13, T1580). Det. Carney took the rental car[12] to the Lake County sheriff's office to be processed. (V13, T1575-76).

Alane Taylor last saw her boyfriend, Keson "Mule" Evans, at approximately 11:30 p.m. on September 8, 2006. (V11, T1057-58). She identified Evans from a photo and the chain he was wearing in the photo as the one he was wearing when he left the house that night. (V11, T1059-60, State Exh. 34).

Corporal Dave Padgett, lead investigator, spoke to Nikita Jackson on September 11. Jackson gave Cpl. Padgett Angel Glenn's name. (V10, T943-44, 952). Padgett interviewed Glenn in Orlando on September 14 and obtained her cell phone. (V10, T945, 946, 952). Padgett examined "hundreds and hundreds" of Glenn's cell phone records and direct connect records. (V10, T947, 953, 956). The records indicated Glenn had called Donte Hall several times. (V10, T947-48; V11, T1084). Donte's

[12] This was the rental car Kim Jones rented and initially lied about keeping at her apartment on the night of September 8-9, 2006. (V13, T1581).

phone's address book and phone records included a number for Kendall "Pig" Starks, Jonathan "Shoo-Shoo" Frasier, and Dante "James" Hall. (V11, T1085, 109-91). The phone records associated with Donte Hall's phone were in the name of "April Glover," which Cpl. Padgett said was not April's real name. (V11, T1093).

April Leaster dated Donte from March to June 2006. (V8, T566, 567). Donte had a cell phone in her name. (V8, T567). April's real last name is "Leaster" but she used the last name "Glover" on the phone records "Because with phones you can put any name, any address." (V8, T568). April also used a fake address for the cell phone. (V8, T569).

Jennifer Scheid, records custodian for Sprint Nextel phones, verified that "April Glover" was the account holder for the phone records associated with Donte Hall. (V11, T1096, 1098). There were no records indicating Donte Hall held his own account. (V11, T1107). Scheid also verified that Iesha Brown was the account holder for phone records belonging to Jonathan "Shoo-Shoo" Frasier. (V11, T1098). In addition, Dante "James Hall" held an account, as well. (V11, T1099). Scheid said only outgoing "walkie-talkie" (direct connect) calls show up on the account records. (V11, T1117). Telephone records indicated what cell phone tower provided service to a particular phone on any given date and time, with the exception of the "direct connect" calls. (V111118-21).

Richard Ewald, information technology development manager for Sprint phones, collects call records off the network and stores them in a database. (V8, T552-53). The company stores phone records for two years. (V8, T555, 563).

Manuel Baldonado, performance engineer for Sprint Nextel, handles customer complaints related to cell phone coverage use. He pinpoints cell tower sites that may have a problem. (V12, T1371). In addition, he determines what cell tower is used in connection with cell phone calls. (V12, T1388-89; 1390-91, 1392; V13, T1431-32).

Lieutenant Shane McSheehy, Eustis Police Department, photographed the cell phone towers in the Eustis area in late 2006,and determined these were the towers used on September 8-9, 2006, as reflected in Donte's and Glenn's phone records. (V12, T1396-99). In February 2009, Dets. Carney and Kolves conducted field tests using cell phones which took place in the vicinity where the shootings had occurred. (V13, T1582-90). Results indicated the calls used the same cell phone towers that were used by Donte Hall, Dante Hall, Pig, Shoo-Shoo, and Angel Glenn on September 9, 2006 ... V13, T1594-97; V14, T1648, 1650-51; 1686-1692; 1695-1698).

Detective David Carney, Eustis Police, assisted in the investigation. (V11, T1142). He and Sgt. Hughes retrieved a video surveillance DVD[13] from a Shell gas

[13] The store manager created the DVD from the hard drive of a recording machine. (V11, T1144, 1145).

station in Orlando, which videotaped the store from 3:15 a.m. to 3:45 a.m on September 9, 2006. (V11, T1143, 1147, 1148). The videotape depicted Angel Glenn's car pulling up to the gas pumps. (V13, T1567-68, 1569).

Linda Drescher and Thomas Cushing, crime scene investigators, Lake County Sheriff's Office, processed the crime scene. (V9, T702-03, 705, 736-37). They diagrammed, photographed, vacuumed, and fingerprinted the scene. They collected evidence, including bullet fragments and shell casings. (V9, T704-09, 737-39, 745-46). The door leading into the house from the carport showed signs of forced entry. (V9, T709-10). Drescher was not successful in obtaining shoe print impressions from inside the house. (V9, T723). Drescher attended the autopsies of Anthony Bernard Blunt and Keson Evans and collected bullets taken from the bodies. (V9, T724-27).

Christine Murphy, FDLE firearms examiner, examined the catridge cases collected at the scene. (V10, T967). She received (4) – 7.62 x 39 caliber cartridge cases and (12)-nine millimeter Luger caliber cartridge cases. (V10, T966). An AK-47 can chamber 7.62 ammunition. (V10, T967). In Murphy's opinion, three different firearms were used in the shootings. (V10, T968). Two of the firearms were nine millimeter pistols. (V10, T971). Murphy was able to connect four of the 9mm cartridge cases with a gun which had been submitted to Orlando police, but not in the present case. (V10, T974).

Dr. Christina Roberts, medical examiner, reported to the crime scene on September 9. She took measurements and photographs of the scene, collected evidence, and performed a cursory external examination of the body of Keson Evans. (V9, T779, 782). Evans had a gunshot wound to his right cheek, which exited his right ear, as well as two gunshot wounds to his right leg. (V9, T783). Dr. Roberts performed an autopsy on Evans[14] the next day. (V9, T784). There was a close range gunshot wound to Evans' right cheek. There was stippling on his face with an abrasion. (V9, T784). In Dr. Roberts' opinion, the distance between the weapon and Evans' face was between inches to less than a foot. (V9, T788). The projectile went through Evan's jaw, through the base of the skull and temporal lobe of his brain, through the cerebellum, and exited through the bone on the right side of his head, which created "a very large exit wound." (V9, T784-85). The gunshot wound to Evans' face would not necessarily have rendered him immediately unconscious. The bullet did not impact the area of the brain that controls the heart and lungs. (V9, T788). The gunshot to Evans' face was a fatal wound. (V9, T787).

Evans had two gunshot wounds to his right leg: one in the back of his upper thigh, and the other through the side of his leg. (V9, T791-92). The bullet that entered

[14] Results from a toxicology screening indicated Evans had a blood alcohol level of .104 and metabolites of cocaine in his system. (V10, T816).

the front side of Evans' leg went through his pants pocket, passed through some keys, and shattered into shrapnel which entered Evans' leg. (V9, T785-86). These wounds were not fatal and would not have rendered Evans immediately unconscious. (V9, T787, 788). Roberts could not determine the distance from which these shots were fired. (V9, T787). In Dr. Roberts' opinion, Evans died as a result of a gunshot to the head. (V9, T794)

Dr. Roberts performed the autopsy on Anthony Bernard Blunt on September 10.[15] (V9, T788). Blunt had a number of wounds. (V9, T789). One bullet entered the right side of the chest, hit the tip of the lobe of the liver, went through the bowels, hit the inferior vena cava, and lodged in the iliopsoas muscle. (V9, T789). Another bullet entered the front of Blunt's right thigh and went at a sharp upper angle that Dr. Roberts recovered where the thigh met the buttocks. (V9, T792). This wound could have been lethal as it perforated the femoral vein. (V9, T794). A third bullet went through Blunt's left hand. (V9, T793). It entered the back of his hand, fractured the bones, then went through the meaty part of Blunt's thumb and fingers. (V9, T793). None of the three gunshot wounds would have rendered Blunt unconscious. Dr. Roberts could not determine the distance with which these shots were fired. (V9, T793). The wounds

[15] Results from a toxicology screening indicated Blunt did not have any alcohol or drugs in his system. (V10, T816).

would have caused serious bleeding and pain. (V9, T800). Blunt would have been hyperventilating. (V9, T814). In Dr. Roberts' opinion, Blunt died as a result of the gunshot wound to the chest that perforated the inferior vena cava and abdomen. The gunshot wound to the femoral vein in his leg "could also have been lethal." (V9, T794).

Norman Babers was incarcerated in the Orange County jail in Summer 2007 at the same time as Donte Hall. (V13, T1508, 1510). Babers had no knowledge of the shootings that had occurred in Eustis on September 9, 2006. (V13, T1513). At some point, Babers met Donte Hall in the Orange County jail. Donte told Babers "what had took place in Lake County." (V13, T1511). Donte told Babers "he had a girlfriend that used to strip and her and another girl was at the residence with the guys ... and he was talking to her on the phone and said it was him and his (twin) brother and another guy named Pig." (V13, T1516, 1520). Further, "the lights went out in the house and there was a lot of shooting going on. And he told me that he had an AK-47 and ... shot one of the guys in the face with it." (V13, T1516, 1522). Donte told Babers "he wasn't really worried" about his girlfriend "Angel" testifying against him. (V13, T1517, 1524). Babers said Donte Hall told him that he and Glenn met at a gas station in Orlando after the shootings. (V13, T1522). Donte did not say one way or the other if Shoo-Shoo was involved in the shootings. (V13, T1524).

Officer Cynthia Corrado maintains inmate housing records at the Orange County jail. (V13, T1538-39). Norman Babers was incarcerated in the Orange County jail from July 11, 2007, to July 17, 2007, in cell block 6B. He was housed in cell number 1, sixth floor. During that time period, Donte Hall was also housed in cell block 6B, in cell number 4, sixth floor. (V13, T1544, 1545-46). In essence, Donte and Babers were "neighbors." (V13, T1546).

Louise Laster, Donte mother, testified that on September 8, 2006, Donte was at home with her, "messing with me." (V14, T1729). Laster said he spent the evening drinking at an apartment across the hall way from them. (V14, T1736-37). He came home at midnight and laid down on the couch. Laster said "he smelled like a brewery." (V14, T1737). Donte frequently went over to the neighbor's apartment. (V14, T1746). To her knowledge, Donte spent the night on the couch. He was sleeping on the couch when she awoke in the morning. He was wearing the same clothes as the previous night. (V14, T1738). Laster heard about the shootings the next day. (V14, T1730-31).

Laster said Angel Glenn came to talk to her subsequent to her arrest. (V14, T1733). Glenn was released on bond from October 15, 2006, through December 21, 2006. (V14, T1757). Glenn told her, "Mom, you don't have to worry about it. Your kids had nothing to do with it." (V14, T1733).

Nakisha Laster is Donte Hall's niece. (V14, T1750). Nakisha heard Angel

Glenn tell Louise Laster that Donte Hall did not have anything to do with this case. (V14, T1751).

Penalty Phase. The State presented testimony from: two crime scene investigators, Linda Drescher and Thomas Cushing; victim impact testimony from two family members: Julene Blunt and Eleanor Pursley; Officer Travis Jicha regarding Blunt's condition when first responders arrived. The defense presented the testimony of Dr. Eric Mings, mental health expert; and Louise Laster, Donte Hall's mother. The State presented rebuttal testimony from a mental health expert, Dr. Ward, and admitted letters from Ashton Oaks, Donte's current girlfriend.

Officer Travis Jicha was on road patrol for the Eustis Police Department on September 9, 2006. (V16, PP88-89). He and Officer Melissa Chapel were the first two policemen at the shooting scene. (V16, PP89). Upon entering the home, Off. Jicha approached Bernard Blunt, who was sitting on the couch. He was bleeding severely, "moaning and groaning and he started to cry." Blunt repeatedly said, "I don't want to die." (V16, PP91). Blunt was afraid. (V16, PP95). He told Off. Jicha he had been shot several times. (V16, PP92). He was obviously in a lot of pain. Blunt said it was difficult to breath. (V16, PP93). Blunt was conscious and told Off. Jicha his name, where he lived, and his birth date. (V16, PP92). Between the time Jicha arrived until the point that the ambulance was about to haul him away, he was awake and in pain.

(V16, PP95).

Dr. Eric Mings, forensic psychologist, conducted an evaluation on Donte Hall. (V16, PP98, 102). Dr. Mings met with Donte on three occasions. Initially, Donte was uncooperative. (V16, PP102). However, he changed his mind and met with Dr. Mings for a second and third time.

Dr. Mings obtained a social history from Donte. (V16, PP103). Donte self-reported that he was raised in the Orlando area primarily by his mother. At times, other relatives assisted with Hall's upbringing. (V16, PP104, 120). Donte was not aware of any mental illness in the family. He was not physically or sexually abused. (V16, PP104). He attended special education classes. At age 17, Donte left high school and was sent to a juvenile justice program. He had a history of fighting, talking back to teachers, and other disruptive behaviors. Donte said he worked a few different jobs for brief periods of time. (V16, PP104).

Donte reported a history of drug abuse. At age 13, he started abusing marijuana. By age 19, he used ecstasy and abused alcohol. Donte said he suffered several blackouts from alcohol abuse. During the time leading up to his arrest, Donte used ecstasy every other day. (V16, PP105). Donte denied any use of Donteucinogens or other illegal drugs. He primarily abused marijuana, alcohol, and ecstasy pills. (V16, PP105).

Dr. Mings reviewed school records and medical records. (V16, PP105-06). Donte was absent from school quite a bit. (V16, PP120). Donte said he was prescribed Ritalin for attention deficit disorder. However, the medical records Dr. Mings reviewed did not contain this information. (V16, PP106, 113). Dr. Mings testified that Donte was placed in a special education program called, "educable mentally handicapped." (V16, PP106). Dr. Mings explained that this meant Donte was "extremely - - compared to most people in school low functioning." (V16, PP106). Mings said emotionally handicapped people have significant behavioral problems. (V16, PP107). The school records that Dr. Mings obtained did not contain IQ testing results. (V16, PP107-08). There is no evidence Donte ever suffered any kind of a brain injury. (V16, PP121).

Dr. Mings administered the Wechsler Adult Intelligence Scale, Third edition. Donte's verbal IQ score was a 73, his performance IQ score was an 83, which resulted in a full-scale IQ score of 76. (V16, PP109-110, 122). This score is "consistent" with Donte's placement in the educable mentally handicapped classes. (V16, PP110). Dr. Mings said the IQ score of 76 was "slightly higher" that he thought it would have been. (V16, PP110). A score of 76 falls in the range of "borderline intellectual abilities." This range is for people considered to be "low average - - have mental retardation." A person with this score is in the bottom fifth percentile of the population. (V16, PP111).

"Educatably mentally handicapped" people have problems controlling their

emotions. (V16, PP113). Donte had two conditions - - "limited intellect and ADHD, attention deficit hyperactive disorder." (V16, PP113). Polysubstance abuse makes these conditions worse. (V16, PP114). In Dr. Mings opinion, Donte has limited intellectual abilities. He said, "It's entirely possible that he may have been diagnosed with mental retardation as a child." But, "I do not know that for a fact." (V16, PP114).

Dr. Mings said Donte denied any involvement in these crimes. There is no indication that Donte did not understand that shooting someone in the face was wrong. (V16, PP119). Donte does not suffer from delusions or hallucinations. (V16, PP120).

In Dr. Mings opinion, Donte understands what is legal and not legal. However, Donte's capacity to conform his behavior to the requirements of the law "is likely impaired as a result of his limited intellect, his history of attention deficit hyperactivity disorder, which then became complicated by polysubstance abuse." (V16, PP115, 118).

Louise Laster, Donte's mother, said Donte lived with her until he was 11 months old. Donte has an identical twin brother, Dante, and three other siblings. (V16, PP129). Donte lived with his father and grandmother from eleven months until he was five years old. He then returned to live with his mother. (V16, PP130).

Laster said Donte attended a school for "emotionally handicapped kids." (V16, PP131). Donte had a learning disability. (V16, PP132). School personnel recommended testing. Donte was diagnosed with Attention Deficit Disorder and

subsequently prescribed Ritalin. (V16, PP132). Donte did not exhibit problems at home. However, the Ritalin did not seem to help him. (V16, PP133). Laster "never had a problem with him." (V16, PP133). As Donte got older, he started skipping school. Laster received supplemental social security benefits as a result of Donte's problems. (V16, PP135-36).

Dr. Patrick Ward, licensed mental health counselor and school psychologist, was qualified as an expert in psychology. (V16, PP147-48). Dr. Ward had been appointed by the court to conduct a competency evaluation on Donte. (V16, PP149). Donte told Dr. Ward that he started abusing ecstasy at age 17 but gave it up after several months "because he really didn't like the effects produced." (V16, PP149). Donte denied having any medical problems. Donte had been in two car accidents that caused head and back injuries; however, he had no history of seizure activity that is sometimes associated with a head injury. (V16, PP150). Donte also denied any history of psychiatric problems. (V16, PP151, 155).

Donte attended school until the 11th grade and said he attended "SLD" classes - special learning disability. SLD classes are different from EMH classes - educably mentally handicapped. SLD classes are for a special learning disability. EMH classes are for the student having an intellectual handicap but who is trainable in certain areas. (V16, PP151). A person with an overall IQ of 76 would not be categorized as mentally

retarded. (V16, PP153). Dr. Ward concluded that Donte was competent. Donte was alert, orientated, lucid, and goal-directed. There was nothing wrong with his memory. (V16, PP161). Included in the competency evaluation are both factual awareness and rational competency. " Rational ability is problem solving, the ability to use abstract reasoning, which is really a higher executive function." (V16, PP159). Part of that is to evaluate "ability intellectually as well as cognitively." (V16, PP159).

Ashton Oaks is Donte's current girlfriend. (V16, PP165-66). Donte wrote her several letters from jail. (V16, Pp166). The letters were admitted into evidence. (V16, PP167). The letters were presented as examples of Hall's ability to write and communicate, as well as vocabulary and intellect. (V16, PP162-163).

SUMMARY OF ARGUMENTS

Point 1. The State proved beyond a reasonable doubt that the murder of Anthony Blunt was heinous, atrocious or cruel. Blunt witnessed a friend shot in the head and die. He was then shot multiple times and bled to death as he begged the police and paramedics not to let him die. The first "911" call was at 2:30 a.m. and Blunt was conscious until he was loaded into the ambulance at approximately 3:04 a.m. During this time he suffered extreme pain and anguish. Error, if any, was harmless where there are three other strong aggravating circumstances, including the contemporaneous murder of Keson Evans and two attempted murders.

The issue regarding the jury instruction was not briefed on appeal and is waived. Even if it were briefed, it has no merit. The State presented evidence of heinous, atrocious, and this Court's case law holds that the jury should be instructed when there is evidence of an aggravating circumstance presented.

Point 2. The sentence of death is proportionate to other death-sentenced defendants. The trial judge found four aggravating circumstances: HAC, prior violent felony, pecuniary gain and great risk of death to many. The aggravators of HAC and prior violent felony are two of the weightiest aggravating circumstances that exist. Hall's argument with the weight given the mitigation is not appropriate. The trial judge followed this Court's instructions and property weighed the aggravating and

mitigating circumstances. The aggravation far outweighs the mitigation, and this compares to other death-sentenced defendants.

Although not raised by Hall, there was sufficient evidence of each crime. There were two eye witnesses – Angel Glenn and Nikita Jackson -- involved with Hall before and after the crimes. Two of the victims survived and were able to recount the robbery and identify items stolen. Additionally, other attendees at the party testified as to the events. Hall and his friends pawned stolen items. The State also presented testimony regarding cell phone calls, videos of Glenn at the gas station meeting Hall after the murder, and the testimony of Jackson's mother to corroborate the testimony of Glenn and Jackson.

Point 3. Florida's death penalty statute is not unconstitutional under *Ring v. Arizona*. The jury unanimously convicted Hall of several contemporaneous violent felonies. Florida does not require unanimous jury findings on aggravating circumstances.

ARGUMENT

POINT I

THE TRIAL COURT DID NOT ERR IN FINDING THE AGGRAVATING CIRCUMSTANCE OF HEINOUS, ATROCIOUS, AND CRUEL. THE ISSUE REGARDING THE JURY INSTRUCTION IS WAIVED.

On pages 28-39 of his brief, Hall argues that the trial court improperly applied the heinous, atrocious or cruel aggravator in sentencing him to death. In the heading of this point and the summary of argument, Hall raises an issue about the jury instruction; however, that issue is not briefed and is waived.

Finding of HAC. Whether an aggravating circumstance exists is a factual finding which is reviewed under the competent substantial evidence standard. When reviewing aggravating factors on appeal, this Court in *Alston v. State*, 723 So. 2d 148, 160 (Fla. 1998), reiterated the standard of review, noting that it "is not this Court's function to reweigh the evidence to determine whether the State proved each aggravating circumstance beyond a reasonable doubt -- that is the trial court's job. Rather, our task on appeal is to review the record to determine whether the trial court applied the right rule of law for each aggravating circumstance and, if so, whether competent substantial evidence supports its finding," quoting *Willacy v. State*, 696 So. 2d 693, 695 (Fla.), cert. denied, 522 U.S. 970 (1997).

In finding that the heinousness aggravator was applicable to the murder of

Anthony Blunt, the trial court said:

> The Florida Supreme Court has held that the heinous, atrocious or cruel (hereinafter "HAC") aggravator applies "only in torturous murders-those that evince extreme and outrageous depravity as exemplified either by the desire to inflict a high degree of pain or utter indifference to or enjoyment of the suffering of another." *Rose v, State*, 787 So, 2d 786, 801 (Fla. 2001) (*quoting Guzman v. State*, 721 So. 2d 1155, 1159 (Fla. 1998)). In *Lynch v. State*, 841 So. 2d 362, 369 (Fla. 2003) the Florida Supreme Court explained that in considering the HAC aggravator, the focus is not on the intent of the assailant, but on the actual suffering caused to the victim. In determining whether the HAC factor was present, the focus should be upon the victim's perceptions of the circumstances as opposed to those of the perpetrator. *See Farina v. State*, 801 So. 2d 44, 53 (Fla. 2001) (citation omitted); *James v. State*, 695 So. 2d 1229, 1235 (Fla. 1997) ("fear, emotional strain, and terror of the victim during the events leading up to the murder may make an otherwise quick death especially heinous, atrocious, or cruel.") (citations omitted); *Swafford v. State*, 533 So. 2d 270, 277 (Fla. 1988) ("the victim's mental state may be evaluated for purposes of such determination in accordance with the common-sense inference from the circumstances.") (citations omitted).
>
> The Florida Supreme Court has repeatedly disapproved HAC for gunshot murders that were unaccompanied by other circumstances showing that the killing was conscienceless or pitiless and unnecessarily torturous to the victim, i.e., committed in a manner exhibiting utter indifference to or enjoyment of the suffering of another. *See, e.g., Diaz v. State*, 860 So. 2d 960, 967 (Fla. 2003) (determining that competent, substantial evidence did not support a HAC finding for murder carried out quickly and without intent to inflict a high degree of pain or otherwise torture the victim); *Rimmer v. State*, 825 So. 2d 304, 328-29 (Fla. 2002) (evidence did not support HAC where the record did not reveal that the defendant tortured the victims or subjected them to pain and suffering); *Ferrell v. State*, 686 So, 2d 1324, 1330 (Fla. 1996) ("Execution-style killings are not generally HAC unless the state has presented other evidence to show some physical or mental torture of the victim,"); *Robinson v. State*, 574 So. 2d 108, 112 (Flag 1991) (holding that the trial court erred in finding HAC because the fatal shot to the victim "was not accompanied by additional acts setting it

apart from the norm of capital felonies, and there was no evidence that it was committed 'to cause the victim unnecessary and prolonged suffering") (citation omitted). The Florida Supreme Court has stated that "a murder by shooting, when it is ordinary in the sense that it is not set apart from the norm of premeditated murders, is as a matter of law not heinous, atrocious, or cruel." *Lewis v. State*, 398 So. 2d 432, 438 (Fla. 1981).

In his Sentencing Memorandum, the Defendant argues that this aggravator posed the only difference between the jury's life recommendation for Keson Evans' death and the jury's death recommendation for the killing of Mr. Blunt. The Court notes that according to the medical examiner, Mr. Evans may not have died immediately due to the gunshot wound to the head, but for sure it rendered him unconscious. The Defendant also argues that the State failed to meet its burden because there is no evidence suggesting that this murder meets the statutory requirements of the HAC definition. Moreover, the Defendant contends that there is no evidence that the actual commission of the murder was accompanied by such additional acts as to set the crime apart for the norm of capital felonies. In addition, the Defendant maintains that there is a complete lack of evidence that he intended that the victim suffer a torturous death by exhibiting a desire to inflict a high degree of pain or an utter indifference to or enjoyment of Mr. Blunt's suffering. He contends that the fact that Mr. Blunt made statements indicating that he was aware that he might die or that there were multiple gunshot wounds cannot establish that the Defendant intended to cause the victim unnecessary and prolonged suffering.

This Court respectfully disagrees and concludes that the circumstances surrounding Mr. Blunt's death support a finding of the HAC aggravator. Although no testimony conclusively established that bullets from the Defendant's AK-47 were recovered from Mr. Blunt's body, the evidence overwhelming established the Defendant's significant role in the crimes committed. Nikita Jackson testified that the Defendant was the first to fire his weapon, Willie Shelton testified that the man with the AK-47, i.e., the Defendant, was the one giving the orders to the other robbers. Jimmie Lee Rucker testified that the man with the AK-47 was the first to shoot JD. Angel Glenn testified that the Defendant was the first robber to enter

the home. She testified that he threatened the people by telling them ". . . we're going to make this choppa [gun] dance. . ." Thus, this Court concludes that: (1) the Defendant was present at the scene of the crimes; (2) he was intimately involved in committing the crimes; (3) he exercised the primary leadership role; (4) he was the primary planner FN13; (5) he was far more than an equal participant; and (6) he fired his weapon at least four times. This Court notes that this is not like the situation in *Omelus v. State*, 584 So, 2d 563 (Fla. 1991) or in *Williams v. State*, 622 So. 2d 456 (Fla. 1993) where the defendant was not present and did not know how the murder would be accomplished. Like the defendant in *Cave v. State*, 727 So. 2d 227 (Fla. 1999), the Defendant was a "ringleader" if not the "ringleader".

> FN13. The evidence demonstrated that the idea of the robbery originated with the Defendant, he recruited participants other than Ms. Glenn, and he developed and carried out the strategy.

This Court must next consider whether the facts of this murder support the finding of HAC. Dr, Christina Roberts, the medical examiner who performed an autopsy on Anthony Blunt, testified that Mr. Blunt had a number of wounds. The first wound entered his chest and severed his inferior vena cava, a major blood vessel. The second wound was in his right thigh, and the third wound was to his left hand. Dr. Roberts testified that none of the wounds would have rendered Mr. Blunt unconscious immediately. She also testified that Mr. Blunt would have suffered significant pain as a result of each of his wounds.

Willie Shelton testified that after Mr. Blunt was shot, he heard him yell many times "Please, please, please help me, please help me." Mr. Blunt also said "Please don't take me, someone help me." George Davis, a Lake County EMS, testified that the victim was conscious when he arrived on the scene. He was moaning and groaning and suffering from shortness of breath. Jerry Andrews, a Lake County EMS, testified that he could tell immediately that Mr. Blunt was critical and exhibited heavy breathing and sweating. Andrews testified that he would classify Mr. Blunt as being in serious distress. He stated that it was hard to understand everything he was saying but he did ask him to help and told him that he was hurting. When asked, Mr. Blunt told the paramedic that he hurt mainly in his

chest.

> This Court finds that the evidence supports the conclusion that the Defendant's actions demonstrated a marked indifference to the suffering of Mr. Blunt. In determining whether this aggravator applies, Mr. Blunt's perceptions are the controlling criteria, The evidence clearly established that the victim suffered extreme physical pain as well as severe emotional distress because of his wounds. Clearly, Mr. Blunt was aware that he might die as a result of his wounds; It is not unreasonable to conclude that he knew he was dying. He likewise was aware that others were shot, thus heightening his terror of the potential result. This Court finds that the State proved this aggravator beyond a reasonable doubt and accords it great weight.

(V3, R529-533). These findings are supported by competent substantial evidence.

Hall argues that a finding of HAC is not appropriate in "gunshot murders". (Initial brief at 33). A HAC finding is proper even if the victim is killed by a single gunshot wound if the entire sequence of events demonstrated that the victim suffered substantial mental anguish, *Henyard v. State*, 689 So. 2d 239, 254 (Fla. 1996), and the victim's fear and emotional strain may be considered as contributing to the heinous nature of the murder even when the victim's death was almost instantaneous. The heinousness aggravator is also supported by this Court's decisions in *Farina v. State*, 801 So. 2d 44 (Fla. 2001), *Wyatt v. State*, 641 So. 2d 1336 (Fla. 1994), and *Hannon v. State*, 638 So. 2d 39 (Fla. 1994). Those cases, like this one, were gunshot murders which were preceded by a period of time in which the victim was terrorized before being murdered and aware of impending death. It takes no imagination to recognize the

terror that Anthony Blunt endured during the last 10 minutes of his life -- those circumstances establish the heinousness aggravator beyond any doubt at all.

Hall argues that he did not intend for Blunt to suffer. (Initial brief at 36). There is no "intent" component required for a finding of HAC. In *Guzman v. State*, 721 So. 2d 1155, 1160 (Fla. 1998), this Court held:

> The intention of the killer to inflict pain on the victim is not a necessary element of the [HAC] aggravator. As previously noted, the HAC aggravator may be applied to torturous murders where the killer was utterly indifferent to the suffering of another.

see also Ocha v. State, 826 So. 2d 956, 963-964 (Fla. 2002); *Bowles v. State*, 804 So. 2d 1173, 1177 (Fla. 2001) (stating that "there is no necessary intent element to HAC aggravating circumstance"); *Hitchcock v. State*, 755 So. 2d 638, 644 (Fla. 2000) (same). It is not the killer's intent, but the actual suffering of the victim. In *Lynch v. State*, 841 So. 2d 362, 369 (Fla. 2003), this Court reiterated that, when analyzing the heinous, atrocious aggravator, the focus is not on the intent of the assailant, but on the actual suffering caused the victim. In determining whether the HAC factor was present, the focus should be upon the victim's perceptions of the circumstances as opposed to those of the perpetrator. *See Farina v. State*, 801 So. 2d 44 (Fla. 2001); *see also Hitchcock v. Stat*e, 578 So. 2d 685, 692 (Fla. 1990). Further, "the victim's mental state may be evaluated for purposes of such determination in accordance with a common-sense inference from the circumstances." *Swafford v. State*, 533 So. 2d 270, 277 (Fla.

1988); *see also Chavez v. State*, 832 So. 2d 730, 765-66 (Fla. 2002). The HAC aggravating factor focuses on the means and manner in which the death is inflicted and the immediate circumstances surrounding the death, rather than the intent and motivation of a defendant, where a victim experiences the torturous anxiety and fear of impending death. *See Barnhill v. State*, 834 So. 2d 836, 849-850 (Fla. 2002); *Brown v. State*, 721 So. 2d 274, 277 (Fla. 1998).

This Court recently addressed a similar case in which the defendant made the same arguments:

> The focus of the HAC aggravator centers on the means and manner in which the death is inflicted upon the victim and the victim's perceptions of the surrounding circumstances. *See Victorino*, 23 So.3d at 104; *Schoenwetter v. State*, 931 So. 2d 857, 874 (Fla.2006). The aggravator is applicable where the murder is "both conscienceless or pitiless and unnecessarily torturous to the victim ." *Victorino*, 23 So.3d at 104 (emphasis omitted) (*quoting Richardson v. State*, 604 So. 2d 1107, 1109 (Fla.1992)). The HAC aggravator is "proper only in torturous murders-those that evince extreme and outrageous depravity as exemplified either by the desire to inflict a high degree of pain or utter indifference to or enjoyment of the suffering of another." *Rimmer v. State*, 825 So. 2d 304, 329 (Fla.2002) (emphasis omitted) (*quoting Shere v. State*, 579 So. 2d 86, 95 (Fla.1991)).
>
> McGirth contends that the fact that there were multiple gunshot wounds inflicted upon Diana and that Diana begged for her life is insufficient to support a HAC finding absent evidence that McGirth intended to cause the victim unnecessary and prolonged suffering. However, as the State correctly notes, the killer's intention to inflict pain on the victim is not a necessary element of HAC. *Ocha v. State*, 826 So. 2d 956, 963-64 (Fla.2002). The killer need not intend to inflict torture where the victim is killed in a torturous manner because "the very torturous manner of the

victim's death is evidence of a defendant's indifference." *Victorino*, 23 So.3d at 104 (*quoting Barnhill v. State*, 834 So. 2d 836, 849-50 (Fla.2002)); *see also Schoenwetter*, 931 So. 2d at 874 (noting that the focus on the HAC analysis is not on the intent of the killer but rather on the victim's actual suffering).

The HAC aggravator generally does not apply to execution-style killings unless the State presents additional evidence that the defendant acted to physically or mentally torture the victim. *See Victorino*, 23 So.3d at 104-05; *see also Rimmer*, 825 So. 2d at 327. However, "fear, emotional strain, and terror of the victim during the events leading up to the murder may make an otherwise quick death especially heinous, atrocious, or cruel." *Hudson*, 992 So. 2d at 115 (*quoting James v. State*, 695 So. 2d 1229, 1235 (Fla.1997)). This includes instances "where the victim is acutely aware of his or her impending death." Id. (*citing Gore v. State*, 706 So. 2d 1328, 1335 (Fla.1997)).

McGirth cites to *Rimmer*, 825 So. 2d 304, to support his contention that the evidence in this case is insufficient to support the trial court's finding of HAC. In *Rimmer*, we found the record devoid of any evidence that the defendant engaged in some action to torture the victims or subject them to pain and prolonged suffering. *Id.* at 328. We concluded that the fact that the defendant forced his victims to lie on the floor with their hands bound behind their backs while he robbed the store they worked in was insufficient to show that the victims knew they would be killed or that they lay in fear of their impending deaths. *Id. (citing Ferrell v. State*, 686 So. 2d 1324, 1330 (Fla.1996)) ("Speculation that the victim may have realized that the defendants intended more than a robbery when forcing the victim to drive to the field is insufficient to support this aggravating factor."). We held in *Rimmer* that while the victims experienced fear, it was not the type of fear, pain, and prolonged suffering that sufficiently supports an HAC finding. *Id.*

The present case is factually distinguishable from *Rimmer*. Here, McGirth shot Diana once in the chest and ignored her pleas for help. She knew the men had taken her daughter hostage and that they had her husband. When Diana asked for water and mentioned that she was cold, Houston, McGirth's codefendant, provided her with some water and wrapped her

> body with a blanket for warmth. McGirth responded to these gestures with a derogatory comment suggesting weakness on Houston's part. Diana crawled back to her daughter's room and lay near her husband James on the floor when he was shot in the back of his head. The evidence upon which the trial court relied establishes that Diana knew of her impending death for some time before her murder.
>
> Any suggestion on McGirth's part that the murder lacked any element of mental or physical torture is belied by this evidence. The medical examiner testified that the first bullet passed through Diana's sternum and lung. About fifteen to thirty minutes passed from the time Diana was first shot in the chest until the time when she was fatally shot in the back of her head. Diana undoubtedly experienced pain and remained conscious and cognizant of her surrounding circumstances. The evidence showed that Diana's lung was collapsing and she experienced increasing difficulty in breathing. As her condition deteriorated, she likely experienced anxiety. Once McGirth obtained access to credit card information, jewelry, and the Miller van, he shot James and then Diana in the back of the head. Diana's murder was both conscienceless or pitiless and unnecessarily torturous, and McGirth exhibited utter indifference to the torturous manner of Diana's death. We thus conclude that competent, substantial evidence supports the trial court's finding of the HAC aggravator.

McGirth v. State, 35 Fla. L. Weekly S651 (Fla. Nov. 10, 2010).

The facts of Mr. Blunt's murder are eerily similar to those of Mrs. Miller. Blunt was shot in the chest and bled extensively. According to Glenn, the gunmen were in the house approximately 10 minutes. The first "911" call after the shootings was 2:30 a.m. (V13, T1581). When the first police officers arrived, Blunt was crying and asking the officers "please don't let me die." (V16, PP91). Blunt was able to answer questions. (V16, PP92). It was obvious to the police officers he was in a lot of pain.

(V16, PP93). Blunt was having a hard time breathing. (V16, PP93). When EMT arrived, the police had already cleared the scene. (V9, T648). Jerry Andrews, EMS, had contact with Blunt, who was begging them to save his life and aware death was imminent. (V9, T644-45). Because of Blunt's size and where he was sitting, and where another gentleman was on the couch, there was no room to move Blunt. (V9, T645). During the time Andrews was with Blunt, the latter did not lose consciousness. (V9, T646). Blunt was "breathing really fast" and in "serious distress", repeatedly stating "I don't want to die" to the paramedics. (V9, T646-47). Once they moved Blunt and got him on the backboard, another paramedic took over. (V9, T647). Davis went to assist Heather Churchwell with a patient in the back of the truck who was "deteriorating quickly on her and it was a large fellow." (V9, T638-39). [16]

Heather Churchwell, paramedic with Lake-Sumter EMS, arrived at the scene at 2:58 a.m. She had contact with Blunt at 3:04 a.m. (V9, T761). Blunt had to be intubated and lost consciousness. (V9, T762). He was taken to the emergency room. (V9, T763). The medical examiner, Dr. Roberts, testified that none of the three gunshot wounds would have rendered Blunt unconscious. The wounds would have caused serious bleeding and pain. (V9, T800). Blunt would have been

16 Andrews ultimately was involved with Willie Shelton and transported him to the hospital. (V9, T645).

hyperventilating. (V9, T814). Blunt saw Evans murdered right in front of him, then was shot multiple times and suffered mental anguish and severe pain for over 30 minutes. He begged the police and paramedics not to let him die.

This murder was heinous, atrocious or cruel. Blunt was accosted by gunmen marching into the house and demanding money. He then witnessed Keson Evans shot in the head and die in front of him. He was shot repeatedly and bleeding to death. He was conscious for approximately 30 minutes during which he was in extreme anguish and begging for help.

Alternatively and secondarily, even without HAC aggravating factor, death is the proper penalty where three other aggravating circumstances would remain: one of which involves a contemporaneous murder and two attempted murders. Under these facts, any error is harmless. *State v. DiGuilio*, 491 So. 2d 1129 (Fla. 1986).

Jury instruction. In the heading of this point and the summary of argument, Hall raises an issue about the jury instruction; however, that issue is not briefed and is waived. *See Coolen v. State*, 696 So. 2d 738, 742 n.2 (Fla. 1997)("failure to fully brief and argue these points constitutes a waiver of these claims"); *Duest v. Dugger*, 555 So. 2d 849, 852 (Fla. 1990).

Even if this issue were properly raised, the HAC instruction was appropriate under the circumstances of this case. *See Floyd v. State*, 850 So. 2d 383, 405 (Fla.

2002). In *Floyd*, the defendant was arguing with the victim, who roused her sleeping grandchildren and sent them to a neighbor's home for safety and help, with instructions to call the police. Floyd chased the victim to both the front and back of the house, causing her to run outside in only her nightgown. Floyd then pursued her further as he made chase and fired two shots at her, which were off target, before firing the third and fatal shot. The third shot killed Ms. Goss instantaneously. This Court held:

> The victim's fear, emotional strain, and terror during the events leading up to this murder may have been properly considered in determining whether the HAC aggravator existed, despite the nearly instantaneous nature of the victim's death. *See Pooler v. State*, 704 So. 2d 1375, 1378 (Fla.1997). Also, "[t]he victim's mental state may be evaluated for purposes of [a determination of the existence of the HAC aggravator] in accordance with a common-sense inference from the circumstances." *Id*. at 1378. Moreover, where competent, substantial evidence supports the trial judge's decision to do so, it is not error to instruct the jury on the HAC aggravator. *See Cave v. State*, 727 So. 2d 227, 229 (Fla.1998) (no error where competent, substantial evidence supported both the instruction on the HAC aggravator and the trial judge's ultimate finding of HAC); *Brown v. State*, 721 So. 2d at 277 n. 7 (no error in instructing jury on HAC aggravator where competent, substantial evidence also supported finding of HAC). It is not illogical to conclude that Ms. Goss was in a significant state of emotional strain and terror as she ran, barely clad, outside her home in an attempt to elude a killer who not only chased her with a deadly weapon but also fired and missed with multiple shots before mortally wounding her by severing her brain stem with the third shot. Thus, we find no error in the trial judge's decision to instruct on the heinous, atrocious, or cruel aggravating circumstance.

Floyd v. State, 850 So. 2d 383, 405 (Fla. 2002).

Even if the trial judge had not ultimately found HAC or even if this Court struck

the HAC aggravating circumstance, the instruction was proper where the State presented evidence of the suffering of Blunt. *See Bowden v. State*, 588 So. 2d 225, 231 (Fla. 1991), in which this Court stated:

> The fact that the state did not prove this aggravating factor to the trial court's satisfaction does not require a conclusion that there was insufficient evidence of a robbery to allow the jury to consider the factor. Where, as here, evidence of a mitigating or aggravating factor has been presented to the jury, an instruction on the factor is required.

See also Stewart v. State, 558 So. 2d 416, 420 (1990). As this Court stated in *Suarez v. State*, 481 So. 2d 1201 (Fla. 1985), *cert. denied*, 476 U.S. 1178 (1986):

> The jury instructions simply give the jurors a list of arguably relevant aggravating factors from which to choose in making their assessment as to whether death was the proper sentence in light of any mitigating factors presented in the case.

Id. at 1209. *See also Hunter v. State*, 660 So. 2d 244, 252 (Fla. 1995). *See also Floyd v. State*, 850 So. 2d 383, 405 (Fla. 2002) (instructed jury on HAC, not found in sentencing order); *Raleigh v. State*, 706 So. 2d 1324, 1327-28 (Fla. 1997) (pecuniary gain).

The trial judge did not abuse his discretion in instructing the jury on HAC. Error, if any, was harmless. *State v. DiGuilio*, 491 So. 2d 1129 (Fla. 1986).

POINT II

THE SENTENCE OF DEATH IS PROPORTIONAL; THE EVIDENCE IS SUFFICIENT

Proportionality. This case involves a double homicide with two additional critically wounded victims and four strong aggravating circumstances. Hall claims his death sentence is not proportional. (Initial Brief at 40). In deciding whether a death sentence is proportionate, this Court must consider the totality of the circumstances and compare the case with other capital cases. *See Sexton v. State*, 775 So. 2d 923, 935 (Fla. 2000).

Hall concedes at page 42 that three valid aggravators were found. His argument assumes this Court will strike the HAC aggravator, an assumption with which the State strongly disagrees. Hall argues that pecuniary gain *and the prior-violent-felony aggravator* are "found in almost every robbery resulting in the death of the victim." (Initial brief at 42). Hall ignores the fact that the prior-violent felony aggravator was based on the murder of Keson Evans and the two attempted murders of Joshua Daniel and Willie Shelton. (V3, R524). As the trial judge noted, Daniel was shot at least ten (10) times and Shelton remained in the hospital for more than one year because of his wounds. (V3, R524). To argue that the prior-violent-felony aggravator is inherent in the robbery is preposterous given the facts of the crime spree.

The HAC aggravator is one of the most serious aggravators set out in the statutory sentencing scheme. *Buzia v. State*, 926 So. 2d 1203, 1216 (Fla. 2006). Similarly, the prior violent felony aggravator is regarded as one of the weightiest

aggravators. *See Jones v. State*, 998 So. 2d573 (Fla. 2008). In the present case, that prior violent felony was murder and two attempted murders.

Hall disagrees with the weight afforded mitigating circumstance and that the trial judge rejected age. (Initial brief at 42-44).

Age. The trial judge held observed that no evidence was presented; however, other information was considered. (V3, R535). Hall was 22 years old at the time of the murders. As this Court recently summarized with regard to the mitigating circumstance of age:

> [W]here the defendant is not a minor, as in the instant case, "no per se rule exists which pinpoints a particular age as an automatic factor in mitigation." [*Shellito v. State*, 701 So. 2d837, 843 (Fla.1997)]. The existence and weight to be given to this mitigator depends on the evidence presented at trial and the sentencing hearing. *See id*. For example, this Court has held that age twenty, in and of itself, does not require a finding of the age mitigator. *See Garcia v. State*, 492 So. 2d360, 367 (Fla.1986).
>
> In *Gudinas v. State*, 693 So. 2d953 (Fla.1997), we held, "Although Gudinas is certainly correct that he had a troubling past and had always been small for his age, there was no evidence presented that he was unable to take responsibility for his acts and appreciate the consequences thereof at the time of the murders." *Id*. at 967. In that case, we found that there was substantial, competent evidence in the record to support the trial court's finding "that Gudinas was mentally and emotionally mature enough that his age should not be considered as a mitigator." *Id*.

Floyd v. State, 34 Fla. L. Weekly S359 (Fla. June 4, 2009), *quoting Nelson v. State*, 850 So. 2d514, 528-29 (Fla.2003). In *Nelson*, this Court upheld the lower court's

rejection of the age mitigator and concluded that evidence demonstrated the maturity of the defendant based on the following considerations:

> [H]e obtained and temporarily held a job; he provided his child's mother with money to buy necessities when she was visiting; Nelson did not have a home of his own, but arranged to stay with [others]; and Nelson did not have a driver's license or a car, yet was able to travel places on his own.

Nelson at 529. This Court has further expounded on the age factor:

> The determination of whether age is a mitigating factor depends on the circumstances of each case, and is within the trial court's discretion. *Scull v. State*, 533 So. 2d1137, 1143 (Fla.1988). Under our review for abuse of discretion, we will uphold the trial court's determination unless it is "arbitrary, fanciful, or unreasonable," so that no reasonable person would adopt the trial court's view. *Canakaris v. Canakaris*, 382 So. 2d1197, 1203 (Fla.1980). This Court has frequently held that a sentencing court may decline to find age as a mitigating factor in cases where the defendants were twenty to twenty-five years old at the time their offenses were committed. *See Garcia v. State*, 492 So. 2d360, 367 (Fla.1986); *Mills v. State*, 476 So. 2d172, 179 (Fla.1985). The court found that Caballero committed the crime at the age of twenty. The court considered Caballero's age in light of the evidence presented, including the results of psychological tests. The court concluded that Caballero did not demonstrate a lack of mental or emotional maturity, nor did Caballero demonstrate that he was unable to take responsibility or appreciate the consequences of his acts. In light of the record below, we conclude that the trial court did not abuse its discretion by rejecting Caballero's age as a mitigating factor.

Caballero v. State, 851 So. 2d655, 661 -662 (Fla. 2003).

The trial judge did not abuse his discretion by considering the evidence and finding age was not mitigating. *See Frances v. State*, 970 So. 2d 806, 819 (Fla. 2007). It is within the trial court's discretion to decide whether a mitigating circumstance is

proven. *Pardo v. State*, 563 So. 2d 77, 80 (Fla.1990); *Scull v. State*, 533 So. 2d 1137, 1143 (Fla.1988); *Teffeteller v. State,* 439 So. 2d 840, 846 (Fla. 1983).

Re-weighing. At pages 42-45, Hall complains about the weight given the mitigating circumstances. The Court's function in a proportionality review is not to reweigh the mitigation against the aggravation, but rather to "consider the totality of the circumstances in a case and compare it with other capital cases." *Bates v. State*, 750 So. 2d 6, 12 (Fla.1999). By considering the totality of the circumstances in an individual case and comparing it to other capital cases, the Court ensures that the death penalty is "reserved for only the most aggravated and least mitigated of first-degree murders." *Urbin v. State,* 714 So. 2d 411, 416 (Fla.1998). This Court "will not disturb the sentencing judge's determination as to 'the relative weight to give to each established mitigator' where that ruling is 'supported by competent substantial evidence in the record.'" *Blackwood v. State,* 777 So. 2d 399, 412-13 (Fla. 2000) (*quoting Spencer v. State*, 691 So. 2d 1062, 1064 (Fla. 1996)). In the present case, the trial judge made complete findings of fact which are supported by the evidence. Hall has advanced no cogent reason for this Court to reweigh mitigation.

Comparable cases. This case is proportionate to other homicides involving two victims and similar aggravating and mitigating circumstances. *See Aguirre-Jarquin v. State*, 9 So. 3d 593 (Fla. 2009); *Buzia v. State*, 926 So. 2d 1203, 1216 (Fla. 2006);

Reynolds v. State, 934 So. 2d 1128 (Fla. 2006); *Lynch v. State*, 841 So. 2d 362, 378 (Fla. 2003); *Smithers v. State*, 826 So. 2d 916, 931 (Fla. 2002); *Morton v. State*, 789 So. 2d 324, 328-29 (Fla. 2001). The State also notes that this Court has upheld death sentences where the prior violent felony aggravator was the only one present. *See, e.g.*, *Rodgers v. State*, 948 So. 2d 655 (Fla. 2006); *LaMarca v. State*, 785 So. 2d 1209, 1217 (Fla. 2001); *Ferrell v. State*, 680 So. 2d 390, 391 (Fla. 1996).

In *Buzia v. State*, 926 So. 2d 1203 (Fla. 2006), the defendant killed one person and attempted to murder another. Buzia had four aggravating circumstances: CCP; HAC; avoid arrest; and prior violent felony (the contemporaneous attempted murder). Buzia had no statutory mitigation; however, the trial judge found both extreme emotional disturbance and substantial impairment as nonstatutory mitigation. Additionally, the trial judge found gainful employment, appropriate courtroom behavior, cooperation with law enforcement, difficult childhood, and remorse as nonstatutory mitigation. In *Diaz v. State*, 860 So. 2d 960, 964 (Fla. 2003), the defendant murdered one person, attempted to murder a second and committed aggravated assault with a firearm on the neighbor. This Court affirmed two aggravating circumstances: CCP; and prior violent felony. Diaz had five statutory mitigating circumstances: no prior criminal activity; extreme mental or emotional disturbance; substantially impaired capacity: age; and "the existence of any other factors in the

defendant's background that would mitigate against imposition of the death penalty:" (a) the defendant was remorseful; and (b) the defendant's family history of violence; *See also Henyard v. State*, 689 So. 2d 239 (Fla. 1996) (two victims shot, aggravators of prior violent felony, during a felony and for pecuniary gain, and HAC; mitigators of age (18), extreme emotional disturbance and impaired ability to conform conduct; numerous nonstatutory mitigators); *Lawrence v. State*, 698 So. 2d 1219 (Fla. 1997) (two murders, aggravators of prior violent felony, CCP; five statutory mitigators plus four nonstatutory factors; co-defendant was actual killer); *Butler v. State*, 842 So. 2d 817, 833 (Fla. 2003) (holding the death sentence proportional for the first-degree murder conviction where only the HAC aggravator was found); *Singleton v. State*, 783 So. 2d 970, 979 (Fla. 2001) (holding the death sentence proportional for the first-degree murder conviction where the aggravators included prior violent felony conviction and HAC); *Mansfield v. State*, 758 So. 2d 636, 647 (Fla. 2000) (death sentence was proportionate where trial court found two aggravating factors, HAC and murder committed during the course of enumerated felony, measured against five nonstatutory factors that were given little weight); *Geralds v. State*, 674 So. 2d 96 (Fla. 1996) (death sentence was proportionate where trial court found only two aggravating circumstances, HAC and murder in course of felony, and some nonstatutory mitigation); *Branch v. State*, 685 So. 2d 1250, 1253 (Fla. 1996) (holding death

sentence proportional in a case where the aggravators were murder committed during the course of enumerated felony, prior violent felony, and HAC, and the following nonstatutory mitigating factors were found: remorse, unstable childhood, positive personality traits, and acceptable conduct at trial.)

Hall's death sentence is proportionate to other death-sentenced defendants.

Sufficiency of the evidence. Although not raised by Hall, this Court will always review the record of a death penalty case to determine whether the evidence is sufficient to support the murder conviction. *Winkles v. State*, 894 So. 2d 842, 847 (Fla. 2005). Hall was convicted as charged of:

(1) Conspiracy to Commit Armed Robbery;

(2) Armed Burglary;

(3) Robbery with a Firearm;

(4) Attempted Felony Murder of Joshua Daniel;

(5) Attempted Felony Murder of Willie Shelton;

(6) First Degree (Felony) Murder of Anthony Blunt;

(7) First Degree (Felony) Murder of Keson Evans;

The State proved each of these crimes beyond a reasonable doubt. There were there two eye witnesses – Angel Glenn and Nikita Jackson -- involved with Hall before and after the robbery. Two of the victims survived and were able to recount the

robbery and identify items stolen. Additionally, other attendees at the party testified as to the events; i.e., Robinson and Rucker. Hall and friends pawned stolen items. The State also presented testimony regarding cell phone calls, videos of Glenn at a gas station after the murders where she said she met Hall, and testimony of Jackson's mother to corroborate the testimony of Glenn and Jackson. "In determining the sufficiency of the evidence, the question is whether, after viewing the evidence in the light most favorable to the State, a rational trier of fact could have found the existence of the elements of the crime beyond a reasonable doubt." *Simmons v. State*, 934 So. 2d 1100, 1111 (Fla. 2006) (*quoting Bradley v. State*, 787 So. 2d 732, 738 (Fla.2001)). There is no question but that Hall's guilt was proven beyond a reasonable doubt, and there is no basis for relief.

POINT III

THE RING V. ARIZONA CLAIM

On pages 47-49 of his brief, Hall argues that his death sentence violates *Ring v. Arizona*, 536 U.S. 584 (2002). This claim is not a basis for relief because, in addition to the murder on which Hall was sentenced to death, he was convicted of robbery, armed burglary, murder, and two attempted murders. Under settled Florida law, Hall has no cognizable *Ring/Apprendi* claim.

Additionally, this Court has repeatedly rejected *Ring/Apprendi* claims when the jury has convicted the defendant for a contemporaneous felony. *Zack v. State*, 911 So. 2d 1190, 1202 (Fla. 2005); *Aguirre-Jarquin v. State*, 9 So. 3d 593, 601 n.8 (Fla. 2009); *Hojan v. State*, 3 So. 3d 1204, 1209 n.2 (Fla. 2009); *Frances v. State*, 970 So. 2d 806, 822-23 (Fla. 2007); *Rodgers v. State*, 948 So. 2d 655, 673 (Fla. 2006). Last, Hall claims that because the jury was not unanimous in finding HAC, *Ring* was violated. He admits that these findings were at Hall's request. (Initial brief at 48). This issue is waived. Further, even if there were error, a defendant cannot invite error then claim error. *Caraballo v. State*, 39 So.3d 1234, 1255 (Fla. 2010). In any case, there is no requirement in Florida for a unanimous jury recommendation either for death or for aggravating circumstances. As this Court recently summarized:

> In *Ring*, 536 U.S. at 609, 122 S.Ct. 2428, the United States Supreme Court held that in capital sentencing schemes in which aggravating factors operate as the functional equivalent of elements of a greater offense, the Sixth Amendment requires that each aggravator must be found by a jury. Under Florida law, in order to return an advisory sentence in favor of death a majority of the jury must find beyond a reasonable doubt the existence of at least one aggravating circumstance listed in the capital sentencing statute. *See State v. Steele*, 921 So. 2d 538, 540 (Fla.2005) (citing § 921.141(2)(a), Fla. Stat. (2004)). The jury must also find that any aggravating circumstances outweigh any mitigating circumstances. *See id*. (citing § 921.141(2)(b), Fla. Stat. (2004)). While the jury's advisory sentence need not be unanimous, a majority vote is necessary for a death recommendation. See id. at 545 (citing Fla. Std. Jury Instr. (Crim.) 7.11, at 132-33). Ault argues that under Ring, Florida's capital sentencing scheme is unconstitutional for (1) failing to require a unanimous jury verdict in favor of death, (2) failing to require a

unanimous jury finding of at least one aggravating circumstance, and (3) failing to require that the jury find beyond a reasonable doubt that the aggravating circumstances outweigh the mitigating circumstances.

As to Ault's first argument-that Florida's death penalty is unconstitutional for failing to require a unanimous recommendation in favor of death-this Court has repeatedly and continually rejected such claims. *See Coday*, 946 So. 2d at 1006 ("This Court has repeatedly held that it is not unconstitutional for a jury to be allowed to recommend death on a simple majority vote."); *Whitfield v. State*, 706 So. 2d 1 (Fla.1997).

Regarding Ault's second claim, an analysis of this argument is unnecessary where the death sentence is based on aggravating circumstances established by facts that have already been found by a unanimous jury. *See Robinson v. State*, 865 So. 2d 1259, 1266 (Fla.2004). In *Jones v. State*, 845 So. 2d 55, 74 (Fla.2003), we rejected a Ring claim where two of the aggravating circumstances were, first, that the defendant had been convicted of a prior violent felony and, second, that the murder was convicted while the defendant was engaged in the commission of a robbery and burglary, both of which were charged in the indictment and found unanimously by the jury at the end of the guilt phase of trial. *See also Davis v. State*, 2 So.3d at 966 (rejecting *Ring* claim where "prior violent felony" aggravator was based on contemporaneous convictions for murder, and "murder in the course of a felony" aggravator was based on felony murder conviction); *Frances v. State*, 970 So. 2d 806, 822 (Fla.2007) (denying relief where "prior violent felony" aggravator was based on contemporaneous convictions for murder and robbery). Here, several of Ault's aggravating circumstances were established by prior and contemporaneous convictions. Sexual battery, aggravated child abuse, and kidnapping were all found by a unanimous jury following the guilt phase of Ault's trial. Ault's contemporaneous convictions for first-degree murder established that Ault was convicted of another capital felony.

Further, we note that we have repeatedly rejected constitutional challenges to Florida's death penalty under *Ring*. *See, e.g., Jones*, 845 So. 2d at 74 (rejecting claim that Florida's death penalty is unconstitutional under *Ring*); *see also Bottoson v. Moore*, 833 So. 2d 693 (Fla.2002)

> (noting that the United States Supreme Court did not direct the Florida Supreme Court to reconsider the defendant's death sentence in light of *Ring*); *King v. Moore*, 831 So. 2d 143 (Fla.2002) (same). We have also directly rejected the claim that *Ring* requires the jury to find specific aggravating circumstances. *See Steele*, 921 So. 2d at 544-48.
>
> As to Ault's third argument-that Florida's death penalty is unconstitutional for failing to require the jury to find that the aggravating circumstances outweigh the mitigating circumstances beyond a reasonable doubt-we rejected a similar claim in *Williams v. State*, 967 So. 2d 735 (Fla.2007). In that case, we determined that a jury did not have to be instructed that it was required to balance aggravating and mitigating circumstances using a "reasonable doubt" standard. Id. at 760-61. Ault points out that at least two states have imposed a reasonable doubt standard on a capital jury's weighing of aggravating and mitigating circumstances. *See State v. Rizzo*, 266 Conn. 171, 833 A.2d 363, 407 (Conn.2003); *State v. Wood*, 648 P.2d 71, 83-84 (Utah), cert. denied, 459 U.S. 988 (1982). However, while the cited cases provide reasons why such a rule might be desirable, Ault has not cited any case which stands for the proposition that a reasonable doubt standard is constitutionally required. Accordingly, we decline to overrule our previous holding in *Williams*.

Ault v. State, 35 Fla. L. Weekly S527 (Fla. Sept. 30, 2010).

Under settled Florida law, there is no basis for relief under *Ring*.

CONCLUSION

WHEREFORE, based upon the foregoing, the State respectfully submits that Hall's convictions and death sentence should be affirmed in all respects.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was furnished to **Chris Quarles**, Office of the Public Defender, 444 Seabreeze Blvd., Daytona Beach, FL 32118, by hand delivery**,** this _____ day of December, 2010.

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CERTIFICATE OF FONT

I hereby certify that a true and correct copy of the foregoing Answer Brief was generated in Times New Roman, 14 point font, pursuant to Fla. R. App. 9.210.

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