IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC14-814

DONALD OTIS WILLIAMS,

APPELLANT

VS.

STATE OF FLORIDA

APPELLEE

ON APPEAL FROM THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT,
IN AND FOR LAKE COUNTY, FLORIDA,
(CRIMINAL DIVISION)

ANSWER BRIEF OF APPELLEE

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

PRELIMINARY STATEMENT

Appellant, Donald Otis Williams, Defendant below, will be referred to as "Williams" and Appellee, State of Florida, will be referred to as "State". Reference to the appellate record documents will be by "RR," the transcript will be by "RT," the supplemental materials will be by the symbol "S" preceding the type of record referenced followed by the volume and page number(s). Williams's initial brief will be notated as "IB."

STATEMENT OF THE CASE AND FACTS

On October 19, 2010, Deputy Lori Martinez responded to the Lakes of Leesburg subdivision in response to a call by Olive Suter (RTv3 359). Ms. Suter reported that her friend and neighbor, Janet Patrick, had left to go shopping at Publix the evening before and had not returned. *Id.* Martinez used Suter's key to check Patrick's home and found Patrick's medications (RTv3 360). Her medications for the previous night and that morning were still in the container. *Id.*

Olive Suter had known Janet Patrick for more than 60 years. In addition to being neighbors, they were also best friends. Patrick would run errands for Suter as Suter could not drive anymore (RTv3 378). On October 18, the day that Patrick disappeared, she came by Suter's home around 2 p.m. to pick up her list of groceries on her way to Publix (RTv3 382). She never came back (RTv3 383). Patrick drove a white car- a

Chevrolet (RTv3 378). Suter had never seen Patrick go behind Publix to get a box (RTv3 386). Moreover, Patrick was not the type of person who would go up to a man and strike up a conversation (RTv3 386).

Mark Mohrenne, an assistant manager at Publix, saw Janet Patrick with a man on the day that she disappeared (RTv3 390). The man approached him and asked him about some cheese that Patrick was looking for (RTv3 390). The man did not appear to be crazy (RTv3 395). Mohrenne provided the police with surveillance video of that day and assisted them in locating a western union receipt for a wire transfer which had been left in a cart Williams used a couple of days before the disappearance (RTv3 392).

Surveillance video provided by Publix showed Williams sitting on a bench outside Publix by the ATM. The video also showed Williams leaving a cell phone on the bench before approaching a woman waiting on the ATM. Williams then gets an electric cart and comes into Publix with Patrick on the cart (RTv3 397-405). The surveillance video did not show Williams having a seizure (RTv3 408).

Peggy Sneed, the woman whom Williams initially approached at Publix, saw Williams sitting at a bench when she walked up to the ATM (RTv3 412-413). Williams invited her to sit next to him and she declined. Williams explained that his car broke down

and that he had to use the phone inside to get a tow but by the time he got back outside, his car had already been towed (RTv3 412-413). According to Williams, he was waiting for his wife to come get him from Tampa (RTv3 412-413). When Williams saw Patrick entering the store, he jumped up and started talking to her, offering to get her a scooter (RTv3 413-414). Patrick declined his offer of a scooter (RTv3 415). When Sneed left the pharmacy, she saw Williams walking in with Patrick on a scooter (RTv3 415).

Richard Wegener bagged Patrick's groceries the day she disappeared. He walked Patrick and Williams to the car. He noted that Williams talked too much (RTv3 430). Patrick was very complimentary of how helpful Williams was with her groceries (RTv3 430). As Wegener unloaded the groceries into a Patrick's car, he observed Patrick getting in the driver's seat and Williams getting into the passenger's seat (RTv3 436).

Josephine Buscemi was Patrick's cashier at Publix the day that she disappeared. However, this was not the first time she had seen Williams at the store. A couple of days earlier, Williams was at the store and had flirted with Buscemi while asking about dog food (RTv5 780-784). Later that day, she recognized the cart that Williams had been pushing around left in another aisle, complete with the dog food she recommended (RTv5 780-784). She noticed that a Western Union Receipt had

been discarded in the cart (RTv5 785).

On the day of Patrick's disappearance, Williams and Patrick came through her line. Williams explained that he was Patrick's neighbor and was helping her with her groceries before she gave him a ride to the library (RTv5 788). When she got called in to discuss the disappearance, she knew whom the police were talking about. She subsequently remembered the Western Union receipt and gave that information to police (RTv5 786-787).

Teresa Threlkeld also saw Patrick at Publix. She knew Patrick personally as Patrick was her mother's neighbor (RTv9 1343). Patrick was with Williams and the Publix bagger standing by the trunk. Williams walked Patrick to the passenger side of the car and sat her down. Williams then walked Patrick to the driver's side and he got in the passenger's side (RTv9 1343-1348).

Another of Patrick's neighbors, Lucy Koenig, also remembered seeing Patrick on the day of her disappearance. A little after 5:23 p.m., she saw Patrick's car parked in her carport. After 6:00 p.m., Koenig was in her computer room and heard Patrick's car start up and leave (RTv7 959-961). She looked out and saw Patrick driving but didn't look to see if she was alone. Patrick never came back.

On October 20, 2010, two days after Patrick's disappearance, Deputy Pfiester responded to Patrick's home to

follow up on Martinez's initial report. Nothing appeared disturbed. Pfiester hit the redial button on Patrick's phone and the call went to 911 (RTv7 993-994). The call, however, never made it to the COM center (RTv7 995-996).

Meanwhile, between 10:00 a.m. and 11:00 a.m., on or about October 20, Sam Gill received an odd visit (RTv3 478). On that day, Gill, who owns an isolated five acre property in Davenport, FL, watched as a white Chevy impala came about 400 yards into his driveway and stopped for a few minutes (RTv3 471). Gill was out of sight as he was behind his tractor. Gill approached the car, that was being driven by Williams, and asked him what he needed. Williams explained that he had put a bid on the house several years ago and was just looking around. He also explained that he used to work for a company that dug out the retention on the property and had just come back from Iraq and Afghanistan where he was in the special forces (RTv3 475). Williams stayed about 40 minutes (RTv3 479). A week later, Gill was watching the news and recognized Williams and the car he was in, so he called the police (RTv3 480-482).

At around noon on October 20, 2010, Danny Culverhouse was also visited by Williams whom Culverhouse has known all his life (RTv3 498). Culverhouse lives a little northwest of Davenport (RTv3 501). Williams drove up in a white Chevy and looked overtired. After about an hour of visiting, Williams asked

Culverhouse if he wanted beer, ran out, and came back 20 minutes later with beer. Later on, Williams asked if Culverhouse was hungry, ran out, and came back with Kentucky Fried Chicken. (RTv3 501-508). When Williams was leaving, he dropped a leather pouch with credit cards. Williams asked Culverhouse if he wanted them and Culverhouse declined. The car Williams was driving had a handicap placard on it (RTv3 510).

The next day, October 21, Williams knocked on Culverhouse's door at 8:00 a.m. (RTv3 511). Williams was standing there with Culverhouse's shovel, which he asked if he could borrow, and left (RTv3 511). Later on that day, Culverhouse was watching the news and saw that the police were looking for Williams, Patrick, and the car Williams was in (RTv3 514-515). Two days later, Culverhouse went to the police (RTv3 515).

Culverhouse was not the only person who saw Williams on October 21, 2010. That same day, Williams went to the Lucky Leprauchaun where Allison Henderson is a bartender (RTv5 662-664). Williams was there from 2:25 p.m. to about 7:00 p.m. and was served by Henderson (RTv5 664, 687). During that time, Williams did not seem to have a problem perceiving reality, did not appear to be hurt, had no injuries to his face, and neither mentioned being kidnapped, or pistol whipped, nor inform her he was looking for an elderly woman (RTv5 669, 677, 681-682).

On October 23, 2010, Deputy Harodiz Nunez was driving

southbound on Highway 27 in the area of I-4 when he spotted a vehicle matching the description of Janet Patrick's car parked at a closed down restaurant off the highway (RTv3 447). Nunez drove into the parking area to check the tag and noticed that the tag was obscured by branches sticking out of the trunk (RTv3 448). Williams was sitting in the car reclined in the seat (RTv3 449-450). Although no weapons were found on him, he had Janet Patrick's credit cards in his front pocket (RTv3 451). Williams was not injured and did not ask for treatment for any injuries (RTv3 452). Nunez did not observe any indications that Williams was having mental health problems (RTv3 463).

Various items were collected from the vehicle. Noteworthy items included irrigation type tubing, green and white shorts, two pairs of briefs, and a cane (RTv4 583-589). Nothing seemed to be touched inside the trunk for purposes of prints, however, there were suspicious stains appearing to be blood on various items in the trunk (RTv4 608-611).

Culverhouse's shovel was subsequently found less than a mile away at Evergreen Cemetery in Davenport where Williams's family members are buried. Along with the shovel, tubing similar to the tubing found in Patrick's car was found (RTv6 826-827, RTv7 910-911, RTv7 980-981).

DNA testing was conducted on various items found in Patrick's vehicle and was introduced through Dr. Mohammed Amer.

Dr. Amer testified Patrick was determined to be the major contributor to the blood found on the carpet from Patrick's trunk (RTv5 751-752). Moreover, Patrick's DNA profile matched that on the blood found on the spare tire cover, the spare tire locking device, and the blood stain found on the inside surface of the trunk lid (RTv5 753-756).

Jeans and a belt found in the front of the driver's seat had mixed profile with Williams being the major contributor and Patrick being the minor contributor (RTv5 760-761). Hair taken from the two pairs of black men's briefs found in the car matched both Williams and Patrick (RTv5 762). A semen stain found on the front inside crotch area matched Williams's DNA profile (RTv5 763). Apart from the semen stain, epithelial cells were determined to have mixed profiles matching both Williams and Patrick (RTv5 763-764).

On October 24, 2010, Williams gave the press an interview wherein he recounted the events surrounding Patrick's disappearance (RTv4 547-570). According to Williams, the two of them got into the car at Publix when Patrick explained that she had to go to the rear of Publix to get some boxes. A man reached in the car and got in the back of the car and told him to put his head down on the floorboard and told her to drive. The car stopped and the man forced Williams and Patrick into the trunk of the car. When the car stopped again, the man had

Williams put Patrick in the passenger side and get back in the trunk. Five minutes later, the man stopped the car and beat on Williams for trying to get attention from the trunk. The man tied Williams hands together and had him get back in the trunk.

When the man stopped again, he put Patrick back in the trunk where Williams was able to see that Patrick had been beaten. The man stopped again and had Williams put Patrick back in the passenger seat while he got back in the trunk. The car then stopped again and Patrick was put in the trunk while the man told Williams to get in the passenger's side. The car stopped again and he was allowed out of the car and got Patrick out of the trunk. At that point, he "got away" in the car by throwing a stick at the man to give him enough time to get in the car and drive off (RTv4 557-570). He kept going back to the area to try to find Patrick (RTv4 556-558). He knew where she now was but had to talk to his lawyer about it (RTv4 560). Then again, he did not know where she was (RTv4 560). She was, however, dead (RTv4 561). Williams believed that one of the assailant's stops was to Patrick's home (RTv4 566).

On October 26, 2010 Detective Don Carter was charged with aiding in the search for Patrick's body (RTv3 465-466). He was going down Lake Marion Creek Road towards the search area when he observed car tracks going into a wooded area. As he approached the area, he saw buzzards and smelled an odor. He

observed a body underneath some discarded tires (RTv3 468). A grocery list was found next to the body (RTv4 597). The body was located about a mile and a half from where Williams used to live (RTv4 606). Using the larvae found in the body, entomologist Carlton Findley estimated that Patrick died at some time before sunset on October 20 (RTv6 816).

Medical Examiner Barbara Wolf testified that Patrick's body was badly decomposed upon arrival at the morgue. The body was naked (RTv5 699). According to her medical records, Patrick did not have coronary heart disease and was in general good health (RTv5 696-697). There was no evidence of accidental death (RTv5 720). There were no injuries to her bones which could definitely be determined to have happened at the time of death (RTv5 698). This opinion was shared by anthropologist Katie Skorpinski (RTv5 655). Wolf reviewed all reports, statements, and FDLE findings, including the fact that Patrick's blood was found in the trunk. Patrick's death was ruled a homicide although she could not ascertain the actual cause of death (RTv5 700).

Acting pro se, as he had been doing throughout the trial, Williams introduced testimony from his close friends and family members describing his past head injuries and his changing behavior prior to the murder (See *generally* Shirley Kay Harvey Testimony, RTv7, John Williams Testimony, RTv8, David Williams,

RTv8). Williams went on to introduce testimony from psychologists Dr. Berns and Dr. Gold that he suffered from bipolar affective disorder and post traumatic stress disorder (See generally Dr. Berns Testimony and Dr. Gold Testimony, RTv8). Further, Williams attempted to establish through the testimony of neurologist Dr. Jean Cibula that he suffered from a seizure disorder (RTv10 1404-1457). Dr. Cibula, however, was not able to document objective evidence of a seizure disorder (RTv10 1452).

Additionally, Williams elicited testimony from Detective Steve Keller that he had secured a statement from Williams despite his request for an attorney (RTv10 1492-1493). In that statement, Williams relayed that Ms. Patrick was dead (RTv10 1494). Through his questioning of Keller, Williams also revealed that he, Williams, had informed the media of where to find the body and the shovel (RTv10 1501-1502).

After Detective Williams testimony, and before introducing three more witnesses in his defense case, Williams requested the re-appointment of counsel (RTv11 1532). Counsel moved for a mistrial in order to "properly prepare to represent" Williams which the court subsequently denied (RTv11 1537, 1558). The trial was continued from that day, Wednesday, to the following Monday (RTv11 1567-1568).

In rebuttal, the State introduced a number of witnesses to

testify that, early on in his detention starting October 2010, Williams had denied having seizures (RTv13 1671,1715-1723, 1745, 1820-1823, 1827-1834). It was not until May 7, 2011 that Williams reported having a seizure in his cell (RTv14 1730). He subsequently requested that the jail provide him information on seizures (RTv14 1726, 1735). The State also introduced witnesses to testify that Williams did not appear to be mentally ill (RTv13 1668, 1673-1677).

The State introduced testimony from clinical psychologist Ava Land who disagreed with a bipolar diagnosis (RTv14 1765). Land explained that Williams's past diagnoses of bipolar disorder were based on his own reported symptoms, not on observable behavior (RTv14 1796-1797). Moreover, although Williams did show symptoms of distress, he did not have post traumatic stress disorder (RTv14 1767). Instead, Land opined that Williams has antisocial personality disorder (RTv14 1769). Indeed, Williams had admitted to her that he had invented the story he told the press about being him and Ms. Patrick being kidnapped (RTv14 1773).

This opinion was shared by jail psychiatrist Rafael Perez. In Dr. Perez's view, Williams had antisocial personality disorder, alcohol abuse and symptoms of malingering (RTv14 1881). Perez also took issue with a diagnosis of bipolar disorder because it was based on Williams's own reports (RTv14

1868). Indeed, when Williams stopped taking his bipolar medications after being sentenced in his crime/trial, he functioned fine, which is inconsistent with someone who truly suffers from bipolar disorder (RTv14 1862).

On August 29, 2013, the jury rendered its verdict finding Williams guilty of Kidnapping, Robbery, and First Degree Felony Murder (RR 1781-1783). The penalty phase commenced on October 23, 2012 (RTv20-21).

At the penalty phase, the State presented the testimony of Darla Blackwell. Blackwell testified that on October 28, 2000, she was kidnapped by Williams as she sat outside the Walgreens where she worked waiting for the store to open. Specifically, Williams got into her car, pushed her over, and drove her to what turned out to be a church parking lot. While in the lot, Williams took off her pants and began inserting his fingers into her vagina. Another car drove into the lot and Blackwell was able to jump out of the car and seek help (RTv17 2089-2100). As a result of that attack, Williams entered a plea to carjacking (RTv17 2100). He was on probation at the time of Patrick's murder (RTv20 2418).

The State also introduced Patrick's picture as well as family pictures, a poem that Patrick carried around on her person, as well as testimony that Patrick loved music (RTv17 2112-2117). Moreover, the State introduced testimony that

Patrick loved to travel and going out to eat (RTv17 2127-2128). She was very shy but quick witted and very intelligent (RTv17 2132). Her best friend of 60 years and neighbor, Olive Suter was extremely affected by Patrick's death to the point of developing agoraphobia (RTv17 2128, 2134).

In his press interview, Williams described Patrick's final moments. In those moments, Patrick was very scared. She expressed the fact that she was a Christian woman and was also worried about her dog (RTv17 2122).

In defense's case, Williams introduced testimony from four family members and three doctors. His brother John Williams described their father as both verbally and physically abusive (RTv18 2164). On one instance, when John was about 12 years old, their mother threatened to leave. Their father put a gun to their mother's head and pulled the trigger, however the gun was empty (RTv18 2168). Their mother subsequently left their father and moved with the boys to another county. In response, their father mailed her an ace of spades card, also known as the card of death (RTv18 2170). Their father was arrested as came into the county that night (RTv18 2171).

Once their parents divorced, Williams opted to go live with his father (RTv18 2174). Williams, however, changed when he went to go live with their father. John heard that their father would beat Williams until their father would finally pass out

from his intoxication (RTv18 2175). As far as other physical trauma, Williams was accidentally hit by a bat in the head and suffered a football injury (RTv18 2186-2187). Williams was hit by a car where he suffered a broken leg (RTv18 2187). As their mother had since passed, John Williams introduced letters written by their mother during his last prosecution wherein she described Williams's traumatic upbringing (RTv18 2189).

David Williams corroborated their father's mistreatment of the boys (RTv18 2201-2204). David described their father as a functioning alcoholic (RTv18 2216). David's daughter has been diagnosed with severe bipolar disorder (RTv18 2218).

Williams also introduced his son's, Ron Jon, testimony. Ron Jon testified that he had good memories of his father. Ron Jon further testified that he did not want to see his father die (RTv19 2373-2374). Kay Harvey, Ron Jon's mother, corroborated Ron Jon's testimony. Indeed, Williams was a good father and a good provider for his family (RTv19 2380-2382).

Dr. Steven Gold testified that Williams suffered severe trauma as a child (RTv18 2254). Dr. Gold diagnosed Williams with Post Traumatic Stress Disorder, chronic severe substance abuse, and Bipolar disorder (RTv18 2263). If one suffers from PTSD with disassociative features and bipolar disorder, it compounds the intensity of emotions (RTv18 2265-2271). Williams was under the influence of extreme mental disturbance when the

crime was committed (RTv18 2275). Williams's capacity to appreciate the criminality of his conduct was also impaired (RTv18 2276).

Gold, however, did not talk to Williams about the murder (RTv18 2278). Accordingly, Gold did not know what Williams's state of mind was at the time of the murder (RTv18 2283). Gold also conceded that some stories recounted by Williams could not be confirmed, like his allegation that he was sexually abused or that he witnessed a woman be burned to death (RTv18 2280).

Psychiatrist Dr. Berns also diagnosed Williams with bipolar disorder (RTv19 2313). Williams's MRI showed abnormalities consistent with bipolar disorder (RTv19 2317-2318). Berns opined that Williams would be a good inmate (RTv19 2320). His ability to conform his conduct to the requirements of the law was substantially impaired (RTv19 2321). Berns conceded, however, that he was not a radiologist nor a neuroradiologist. His opinion as to Williams's MRI was just based on basic information (RTv19 2323-2324).

Dr. Mings, another psychologist, was also of the belief that Williams suffered from bipolar disorder. The swelling reported in Williams's MRI was consistent with the clinical symptoms that Williams reported (RTv19 2339). A battery of tests was conducted on Williams which suggested that Williams was mildly impaired in memory abilities (RTv19 2345). In

Mings's opinion, Williams was not malingering and suffered from mild congnitive impairment (RTv19 2349-2350). Mings agreed, however, that his Williams's history was also consistent with antisocial personality disorder (RTv19 2361).

Based on the guilt and penalty phase testimony, the jury recommended death by a vote of 9 to 3 for Patrick's murder (RTv20 2464-2465). The Spencer v. State, 615 So. 2d 688 (Fla. 1993) hearing was held on November 5, 2013 and November 21, 2013.

On February 28, 2014, the trial court entered its sentencing order. In the sentencing order, the court found that the State had proven five aggravating circumstances beyond a reasonable doubt: 1) Williams was on felony probation at the time of the murder (great weight); 2) Williams was previously convicted of a felony involving the use or threat of violence to the person (great weight); 3) The murder was committed while Williams was involved in a kidnapping (great weight); 4) The murder was committed for pecuniary gain (some weight); and 5) The victim was particularly vulnerable due to advanced age or disability (great weight)(RR 1918-1921).

The trial court went on to consider all statutorily enumerated mitigating circumstances, finding that Williams's capacity to conform his conduct to the requirements of the law was substantially impaired (RR 1922). The trial court

specifically explained that Williams had not proven that he had committed the crime while under the influence of extreme mental and emotional disturbance where the mitigator was solely based on Williams's truthfulness (RR 1929).

As for the non-statutory mitigating circumstances, the court made the following findings: 1) Williams manifested appropriate courtroom behavior (slight weight); 2) Williams served in the military (slight weight); 3) Williams was an alcoholic drug user (some weight); 4) Williams's good behavior in jail (some weight); 5) Williams was sexually abused as a child (not proven; no weight); 6) Williams suffered physical, mental and emotional abuse as a child (some weight); 7) Williams was struck by a car which resulted in a broken leg (little weight); 8) Williams's father and grandfather were alcoholics (some weight); 9) Williams witnessed his mother being abused by his father (some weight); 10) Williams suffered head injuries while growing up (some weight); 11) Williams is a good father (slight weight); 12) Williams was a loving companion to Kay Harvey (slight weight); 13) Williams was a hard worker (slight weight) and 14) Williams helped others when he could (some weight) (RR 1930-1939).

The Court independently weighed the aggravating and mitigating circumstances and concluded that the aggravating circumstances outweighed the mitigating circumstances.

Accordingly, Williams was adjudicated guilty and sentenced to death for the first degree murder of Janet Patrick, life for the kidnapping of Janet Patrick, and 15 years for the robbery of Janet Patrick (RR 29). This appeal followed.

SUMMARY OF THE ARGUMENT

Issue I – The trial court did not err in denying Williams's counsel motion for continuance after he was reappointed during Williams's defense presentation. The State had already presented their case in chief and although the public defender's office had not represented Williams during the six months leading up to the trial, they had represented him for two years before that. Moreover, Williams's counsel had various avenues through which they could have familiarized themselves with what had transpired during the proceedings prior to their reappointment.

Issue II – There was no error in the medical examiner's testimony as to the basis of her opinion where her opinion was based on objective and admissible evidence.

Issue III – The trial court did not err in denying Williams's motions for mistrial stemming from State rebuttal witnesses' remarks which could have been construed as suggesting that Williams had a criminal history. In addition to the fact that Williams's defense witnesses had already testified as to Williams's criminal history, the State rebuttal witnesses'

remarks were fleeting and the jury was instructed to disregard the remarks.

Issue IV – Contrary to Williams's position, the State did not commit fundamental error during specific portions of the trial. When the language which form the basis of Williams's complaints are reviewed in context, it is clear that the arguments were appropriate.

Issue V – The trial court properly permitted the State to elicit testimony with regard to the circumstances surrounding his 2000 conviction for carjacking during the penalty phase which included evidence of Williams's sexual battery upon the victim. The State is not limited to simply introducing evidence of the conviction. Contrary to Williams's assertion, this well-settled proposition should not have been disregarded simply because there was evidence of sexual misconduct introduced during the guilt phase portion of his trial.

Issue VI – The jury was properly instructed as to what they may consider as non-statutory mitigation.

Issue VII – The trial court properly admitted evidence of a poem that the victim carried with her at all times where it was certainly relevant to her uniqueness and did not contain improper characterizations of either the crime or Williams, himself.

Issue VIII – The aggravating factors in this case do not fail

to narrow the field of persons eligible for the death penalty.

Issue IX - Williams is not entitled to relief pursuant to Ring v. Arizona.

Issue X - The evidence was sufficient to sustain Williams's conviction for the First Degree Felony Murder of Janet Patrick.

Issue XI - The death sentence is proportional.

ARGUMENT

ISSUE I

THE TRIAL COURT PROPERLY HANDLED SCHEDULING ONCE WILLIAMS OPTED TO BE REPRESENTED BY COUNSEL DURING HIS CASE IN DEFENSE (RESTATED)

As his first point on appeal, Williams contends that the trial court erred in "denying an adequate continuance when counsel was reappointed midway through the guilt phase" (IB 62). Williams goes on to recount that when counsel was reappointed during the second Wednesday of the guilt phase, the public defender sought a continuance which was granted causing the trial to be continued until the following Monday (IB 62). Per Williams, counsel sought continuances on the following Friday and the day of trial, however, his requests were rebuffed. This, Williams contends, was error. Williams is not entitled to relief on this claim.

To begin, in order to address this claim, it is necessary to place the circumstances in context. On the ninth day of

trial, while in the middle of his case in defense, Williams opted to be represented by counsel wherein the Office of the Public Defender was reappointed (RTv11 1536). In response to the reappointment, Michael Graves requested that the trial court enter a mistrial "such that [they] can properly prepare to represent Mr. Williams, both in the guilt phase and in any Phase II that may result." (RTv11 1537). Mr. Graves acknowledged case law against the request but argued:

> But where the State seeks the penalty of death and we have hyper constitutional and procedural protections, I would submit to the Court that the only protection of those due process rights his right to confrontation of witnesses, both his right to present a meaningful penalty phase, mitigation evidence, and more importantly, again, on any level, the right to an effective counsel, but not just merely a lawyer, is to declare a mistrial in this cause.

(RTv11 1542)

When the trial court explained that it would take the motion under advisement, Mr. Graves then requested that, should the Court deny the motion, that counsel be afforded time for preparation of the remainder of the guilt phase as well as additional time between the verdict and the beginning of Phase II (RTv11 1551). The trial court subsequently denied Williams's motion for mistrial and continued the cause to the following Monday explaining:

> All right. Based on all the factors in this particular case, I know that we were -- the Public Defender's Office was representing the Defendant for over two years and we were at the eve of trial when Mr. Williams decided to represent himself, so that had the advantage of getting this case prepared for trial, therefore, I'm going to deny the motion for mistrial and I'm going to resume trial on Monday and I'll entertain motions to determine competency or motions to appoint experts at any time.

(RTv11 1558).

Two days later, counsel for Williams renewed their "motion for a mistrial and [] motion for continuance" (RTv12 1578). The trial court denied the motion for mistrial and noted that the cause was continued until Monday morning and would not be continued further (RTv12 1580-1581). The trial court further noted that it would decide whether there would be a continuance between the guilt phase and any penalty phase at a later date (RTv12 1585). That Monday, counsel again renewed his motions for mistrial and continuance and the motions were again denied (RTv13 1592-1593). A guilty verdict was reached on Thursday, August 29, 2013 and the penalty phase began on Tuesday, September 3, 2013 (RTv16-17).

This Court has repeatedly held that "[t]he denial of a motion for continuance is committed to the sound discretion of the trial judge." Lebron v. State, 799 So.2d 997, 1018 (Fla. 2001), cert. denied, 535 U.S. 1036, 122 S.Ct. 1794, 152 L.Ed.2d

652 (2002). A "court's ruling on a motion for continuance will only be reversed when an abuse of discretion is shown. An abuse of discretion is generally not found unless the court's ruling on the continuance results in undue prejudice to [the] defendant. This general rule is true even in death penalty cases." Israel v. State, 837 So.2d 381, 388 (Fla. 2002) (quoting Kearse v. State, 770 So.2d 1119, 1127 (Fla. 2000), cert. denied, 539 U.S. 931, 123 S.Ct. 2582, 156 L.Ed.2d 611 (2003)). This Court has also explained that "[w]hile death penalty cases command our closest scrutiny, it is still the obligation of an appellate court to review with caution the exercise of experienced discretion by a trial judge in matters such as a motion for a continuance." Cooper v. State, 336 So.2d 1133, 1138 (Fla. 1976).

At bar, the trial court's denial of Williams's motion to continue did not result in undue prejudice. To the extent that Williams's motion for mistrial could be considered a motion for continuance, Williams's counsel sought relief in order "properly prepare to represent Mr. Williams, both in the guilt phase and in any Phase II that may result." (RTv11 1537). Counsel subsequently sought a continuance based on problems with the audio recordings of the trial, including the inability to hear the DNA analyst's testimony. These issues, however, did not direct a continuance.

To begin, the Public Defender's Office represented Williams for two years before being discharged, specifically from February 4, 2011 until February 6, 2013 (RR 26, 418-419). Six months and two pro-se continuances later, Williams went to trial. Having represented Williams for two years, Williams's counsel was not placed in the position of familiarizing themselves with a brand new case. What is more, counsel was not entitled to a continuance based on their difficulties hearing audio from the trial. Having represented Williams for two years, counsel was well versed as to the State's case in chief which included DNA results (RR 78). Moreover, Williams himself was well aware of the testimony elicited during his trial. In other words, counsel was not limited to the audio of the trial in efforts to determine what happened at the trial. Indeed, counsel conceded that he was awaiting transcripts of the testimony that he deemed significant (RTv12 1578). Thus, Williams cannot demonstrate that he was unduly prejudiced by the trial court's decision.

Nor can Williams demonstrate prejudice based on his allegation that, because defense counsel had not heard the DNA analyst's direct examination testimony, he could not object to the State's argument in closing that Williams had sexually battered Ms. Patrick. Assuming that counsel was indeed completely ignorant of the DNA analyst's testimony, this fact

would have not affected the propriety of the argument. It is without dispute that the State has "wide latitude to argue to the jury during closing argument" and is entitled to draw "[l]ogical inferences" and advance "all legitimate arguments". Smith v. State, 7 So. 3d 473, 509 (Fla. 2009). In evidence was the fact that Williams's semen was mixed with the victim's DNA on the front inside crotch area of his briefs found in the victim's car. This evidence yields the logical inference that Williams had engaged in some type of sexual conduct with the deceased victim. Accordingly, the argument was proper.

Although not directly on point, Jones v. State, 449 So.2d 253 (Fla. 1984) is instructive on the matter. In Jones, the record showed that:

> …a public defender, Zenobi, was appointed on July 17, 1980, at defendant's request and that Zenobi continued as a specially appointed counsel at the request of defendant after Zenobi left the public defender's office in August, 1980. Zenobi was actively engaged in discovery and pretrial motions through March, 1981. Starting in late May, 1981, defendant began filing a series of pro se motions, the contents of which indicated that he was personally assuming direction of his defense. During a series of hearings from May through September, 1981, defendant discharged Zenobi and refused to accept other court-appointed counsel. Instead, defendant requested appointment of counsel of his choice or the provision of $25,000 to obtain counsel. During these hearings, the trial court correctly instructed defendant that he was not entitled to appointed

counsel of his choice and that his legal choices were to accept court-appointed counsel, obtain private counsel using his own resources, or represent himself. This impasse culminated at a hearing on September 1, 1981, when trial was set for October 19, 1981. At this hearing, defendant declared he would represent himself but desired the assistance of appointed standby counsel, Kershaw. Defendant advised the court that he would be consulting Kershaw prior to the trial date to obtain assistance in preparing and conducting his defense. The court inquired as to defendant's competence to represent himself and advised defendant that he would be better served if he allowed Kershaw to act as his counsel and to conduct his defense. The court further advised defendant that it was very difficult to conduct a defense, that he was giving up certain rights and would not be able to demand a new trial because of his own ineffectiveness. Nevertheless, defendant insisted, and the trial court having satisfied itself that defendant was competent to exercise his right of self-representation, acquiesced in his decision. This resolution was only temporary. On October 19, 1981, Kershaw appeared before the court to argue that the court had made a Faretta inquiry (Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975)), and determined that defendant could adequately represent himself by proceeding pro se and that he should be permitted to withdraw as standby counsel because defendant had refused to talk to him or to make the case file available, and was adamant that he did not want Kershaw associated with him. Kershaw's argument was supported by defendant who stated, "I don't want Mr. Kershaw around me during my trial." The court refused to permit Kershaw to withdraw as standby counsel at that time despite Kershaw's insistence that he was unable and unprepared to represent the defendant due to defendant's uncooperative

> attitude, but did appoint attorney Wilson to act as standby counsel before the trial commenced the following day.

Jones v. State, 449 So. 2d 253, 256-57 (Fla. 1984)

On appeal, Jones argued that he unequivocally requested the appointment of Zenobi, Kershaw or other counsel and that the trial court erred in not appointing counsel at that time. This Court rejected Jones's argument explaining:

> This request occurred on the second day of trial, after the jury was selected and after the state had commenced its case. The request for counsel was accompanied by a motion for a continuance. The trial court properly advised defendant that he had previously fired court appointed counsel, refused other counsel, and had chosen to exercise his constitutional right to represent himself after a proper inquiry. The court properly exercised its discretion in refusing to permit the defendant to delay the proceedings further by withdrawing from that choice during the course of the trial. As we make clear below, neither the exercise of the right to self-representation nor to appointed counsel may be used as a device to abuse the dignity of the court or to frustrate orderly proceedings.

Jones v. State, 449 So. 2d 253, 257 (Fla. 1984)

This Court further noted:

> The issue is not squarely presented here of whether a defendant in a capital punishment case may elect to proceed pro se in the guilt phase and then obtain appointment of counsel and a continuance of an ongoing trial while the newly-appointed counsel familiarizes himself with the case. We are prepared to say, however, and do so in order to forewarn future defendants, that ***both the***

> ***state*** and the defendant are entitled to orderly and timely proceedings. Florida's capital punishment law, which has been repeatedly upheld, contemplates that the sentencing phase will follow on the guilt phase, using the same jury.

Jones v. State, 449 So. 2d 253, 258 (Fla. 1984)(emphasis added).

In efforts to convince this Court that the trial court abused its discretion in denying his motion for continuance, Williams suggests that Wike v. State, 596 So.2d 1020 (Fla. 1992) directs relief. Wike, however, is entirely distinguishable. In Wike, defense counsel requested a one-week continuance on the day that the penalty phase was to start for the purpose of procuring three specific mitigating witnesses. The trial court denied the request. This Court reluctantly reversed explaining:

> We emphasize that Wike's request for a continuance was for a short period of time and for a specific purpose. It is clear that Wike's family members, specifically, his cousin and ex-wife, could have provided admissible evidence for the jury to consider during the penalty phase had the continuance been granted. Ordinarily, we are reluctant to invade the purview of the trial judge; however, we find that the failure to grant a continuance, if only for a few days, under these circumstances was error.

Wike v. State, 596 So. 2d 1020, 1025 (Fla. 1992).

At bar, counsel urged the trial court to grant a mistrial where it "would take a matter of weeks" to familiarize themselves with the case (RTv11 1538). Counsel then delved into a description of the different avenues they wanted to pursue

during this time (RTv11 1538-1541). Williams was not seeking a short period of time for a specific purpose.

In sum, Williams cannot demonstrate that the trial court abused its discretion in denying his motions for continuance where as aptly described by this Court in Jones, "[t]he inability of counsel to prepare for trial and offer such assistance as defendant might request was not due to any action of the court or of the standby counsel. The fault lies squarely on defendant…". Jones v. State, 449 So. 2d 253, 257 (Fla. 1984). This is especially true where Williams cannot demonstrate prejudice. Indeed, the public defender's office had represented Williams on this cause for two years and had the ability to familiarize themselves with what had transpired at the trial before their reappointment. Williams is not entitled to relief.

ISSUE II

THE MEDICAL EXAMINER'S TESTIMONY WITH REGARD TO CAUSE OF DEATH DID NOT AMOUNT TO FUNDAMENTAL ERROR (RESTATED)

Next, Williams argues that the State committed fundamental error when it relied on opinion evidence outside the medical examiner's expertise (IB, 65). Specifically, Williams takes issue with medical examiner, Barbara Wolf's "concession" that her opinion that Patrick's death was the product of a homicide

was "based solely on how the body was disposed of, the fact traces of the victim's blood were found in the trunk of her car, and the defendant's explanation of events" (IB, 65-66). This testimony, Williams continues, amounted to testimony that invaded the province of the jury on the ultimate question for the jury's determination (IB 69). This argument has no merit.

It is well-settled that unless an error is fundamental, it must have been preserved for review through a contemporaneous objection. State v. Delva, 575 So.2d 643, 644 (Fla. 1991). To constitute fundamental error, "the error must reach down into the validity of the trial itself to the extent that a verdict of guilty could not have been obtained without the assistance of the alleged error." Id. at 644-45 (quoting Brown v. State, 124 So.2d 481, 484 (Fla. 1960)). An error is deemed fundamental "when it goes to the foundation of the case or the merits of the cause of action and is equivalent to a denial of due process." J.B. v. State, 705 So.2d 1376, 1378 (Fla. 1998). "The doctrine of fundamental error should be applied only in rare cases where a jurisdictional error appears or where the interests of justice present a compelling demand for its application." Smith v. State, 521 So.2d 106, 108 (Fla. 1988).

To begin, to the extent that Williams now complains about this testimony, Appellee points that it was Williams himself that elicited the basis of Dr. Wolf's opinion before the jury

(RTv5 701-704). Thus, even assuming that this testimony was in any way erroneous, Williams cannot now cry foul and expect relief. Sheffield v. Superior Ins. Co., 800 So.2d 197, 202 (Fla.2001) (quoting Goodwin v. State, 751 So.2d 537, 544 n. 8 (Fla.1999) and explaining that fundamental error is waived under the invited error doctrine because "a party may not make or invite error at trial and then take advantage of the error on appeal.").

Notwithstanding, Williams is not entitled to relief on this claim wherein it is completely devoid of merit. The determination of a witness's qualifications to express an expert opinion is peculiarly within the discretion of the trial judge, whose decision will not be reversed absent a clear showing of error. Ramirez v. State, 542 So.2d 352, 355 (Fla.1989). An expert is permitted to express an opinion on matters in which the witness has expertise when the opinion is in response to facts disclosed to the expert at or before the trial. § 90.704, Fla.Stat. (1993); see Capehart v. State, 583 So.2d 1009 (Fla.1991) (holding chief medical examiner, who based her opinion on autopsy report, toxicology report, evidence receipts, photographs of body, and all other paperwork filed in case, could testify regarding cause of death and condition of victim's body, although she did not perform autopsy), cert. denied, 502 U.S. 1065, 112 S.Ct. 955, 117 L.Ed.2d 122 (1992); see also

Brennan v. State, 754 So. 2d 1, 4 (Fla. 1999)(holding that medical examiner who reached her conclusions after reviewing, among other things, the autopsy report, a report by another dcotor, depositions, photographs, and dental records, was qualified to testify as to cause of death even though she did not perform autopsy); Geralds v. State, 674 So. 2d 96, 100 (Fla. 1996).

At bar, Dr. Wolf, the medical examiner, who conducted the autopsy, testified as to everything she considered in reaching her conclusion that Ms. Patrick's death was a homicide. To name a few, she considered Ms. Patrick's medical records, photographs from the scene where her body was found, police reports, lab reports, Williams's statements, the lack of injuries to the body's bones, the fact that she was found in a wooded area with no clothes on quite a distance from her home, and the fact that her blood was found in the trunk of her car (RTv5 695-699). If this type of objective evidence can be considered by a medical examiner who did not conduct the autopsy in forming their opinion, it can certainly be considered by the medical examiner who did conduct the autopsy. Accordingly, there was no error in the opinion's admission.

Williams's reliance on Wright v. State, 348 So.2d 26 (Fla. 1st DCA 1977), Hawkins v. State, 933 So.2d 1186 (Fla. 4th DCA 2006) and Fisher v. State, 361 So.2d 203 (Fla. 1st DCA 1978) for

the proposition that he is entitled to relief is entirely misplaced. In Wright, the thrust of the medical examiner's testimony was the deceased's injuries "were consistent with being bulldozed in the hole after injury, that many of her injuries had not come from being run over by the bulldozer after burial or during the effort to dig her out, nor had they been inflicted by the treads of the machine, that the pattern of injuries was inconsistent with appellant's story of the events culminating in her death". Wright, 348 So.2d at 29. In order to reach this conclusion, the medical examiner considered factors such as energy, force, ground moisture, and dozer tread distance to name a few. Id. at 31. The First District Court of Appeal held that this testimony was clearly beyond a medical examiner's training. Id.

The medical examiners' opinions in Hawkins and Fisher were also deemed inadmissible but for reasons completely distinguishable from the case at bar. In Hawkins, the medical examiner's testimony with regard to silicone migration in the body was inadmissible as she did not have the expertise to render that opinion. Although she was definitely qualified to testify that the victim died from an embolism, "her opinion that defendant's act of injecting Lawrence was the cause of her silicone embolism was predicated on a scientific assertion that silicone could migrate through the body with sufficient speed to

cause an acute silicone embolism within hours of a non-intravascular injection of silicone into the buttocks" was not admissible with Frye testing. Hawkins, 933 So.2d at 1189. What is more, the medical examiner's testimony in Fisher that the victim's stab wounds were made by a woman was not even based on objective evidence but on the examiner's general belief – "vague notions of stereotyped characteristics of the men and the women in our culture". Fisher, 361 So.2d at 204.

Finally, Williams is not entitled to relief based on his contention that "Dr. Wolf's testimony also invaded the province of the jury on the ultimate question for the jury's determination" (IB 69). As Williams does not explain what portion of Dr. Wolf's testimony invaded the province of the jury, one can only assume that Williams takes issue with Dr. Wolf's opinion that Patrick's death was the result of a homicide. To that end, Appellee points out that a similar argument was made in Lambrix v. State, 494 So. 2d 1143, 1148 (Fla. 1986). In Lambrix, the appellant objected to the term homicide without a proper predicate. This Court rejected such an argument where "Dr. Schultz never expressed an opinion as to appellant's guilt or innocence nor can such an inference be drawn from his testimony.". Id. At bar, as in Lambrix, Dr. Wolf did not testify that Williams committed the First Degree Murder of Janet Patrick. Indeed, she offered no opinion on

Williams's involvement or intent. Accordingly, the province of the jury was not invaded.

In sum, Dr. Wolf considered perfectly acceptable objective evidence in classifying Ms. Patrick's death as a homicide. Williams's suggestion otherwise is completely devoid of merit and must be patently rejected.

ISSUE III

THE TRIAL COURT PROPERLY DENIED WILLIAMS'S MOTIONS FOR MISTRIAL MADE DURING THE STATE'S CASE IN REBUTTAL (RESTATED)

Before putting on his case in defense, Williams made an opening statement wherein he informed the jury that he had a criminal history. To be sure, he had been to trial once before on a misdemeanor (RTv7 1043). The fact that Williams had a criminal history was reinforced by Williams's brother, John Williams, during Williams's examination of him. Indeed, John was confused by a question that Williams asked him and asked in clarification, "2010, are you speaking about when you were released from prison?" (RTv8 1146). Williams's criminal history was again broached by Williams, himself, when he asked Dr. Berns about admissions made by him. In response, Dr. Berns informed that Williams had admitted being arrested "a few times for DUI, and once, I believe, for a disorderly intoxication" (RTv8 1197).

During the State's case in rebuttal, three State witnesses made statements which suggested that Williams had a criminal history. First, in discussing sociopathy, mental health practitioner Howard Lawrence described it as a characteristic depicting antisocial personality disorder "in a person that's got a lengthy criminal history…" (RTv14 1847)[1]. After a motion for mistrial was denied, the jury was instructed to disregard the response (RTv14 1849).

Next, jail psychiatrist Dr. Perez, in responding to a question by the State, prefaced his response with the term "[b]y looking at the initial interview done in the department of corrections –" (RTv14 1864). The jury was again instructed to disregard the response and a motion for mistrial was denied (RTv14 1866-1867).

During continued questioning of Dr. Perez, the State, seemingly reciting from a record, referred to a follow up medical visit as the "inmate's assessment of his functioning" (RTv14 1872). A motion for mistrial was again denied.

On appeal, Williams argues that the trial court erroneously denied his motions for mistrial where a

[1] As the witness was speaking in general terms, the testimony did not necessarily suggest it was Williams that had a lengthy criminal history. Notwithstanding, the remark will be addressed.

mistrial "was needed to ensure Appellant would eventually receive a fair trial in this case" (IB 74). Williams's position is wholly unavailing and must be rejected.

"A motion for mistrial should be granted only when it is necessary to ensure that the defendant receives a fair trial." Cole v. State, 701 So.2d 845, 853 (Fla.1997). Stated differently, "[a] motion for a mistrial should only be granted when an error is so prejudicial as to vitiate the entire trial.". See England v. State, 940 So.2d 389, 401-02 (Fla. 2006); Hamilton v. State, 703 So.2d 1038, 1041 (Fla.1997) ("A mistrial is appropriate only where the error is so prejudicial as to vitiate the entire trial."). This Court has repeatedly held that it reviews a trial court's ruling on a motion for mistrial under an abuse of discretion standard. Salazar v. State, 991 So. 2d 364, 371-72 (Fla. 2008); England, 940 So.2d at 402 ("A trial court's ruling on a motion for mistrial is subject to an abuse of discretion standard of review."); Perez v. State, 919 So.2d 347, 363 (Fla. 2005) ("[A] trial court's ruling on a motion for mistrial is subject to an abuse of discretion standard of review." Under the abuse of discretion standard, a trial court's ruling will be upheld unless the "judicial action is arbitrary, fanciful, or unreasonable.... [D]iscretion is abused only where no

reasonable [person] would take the view adopted by the trial court." Trease v. State, 768 So.2d 1050, 1053 n. 2 (Fla. 2000) (second alteration in original) (quoting Huff v. State, 569 So.2d 1247, 1249 (Fla. 1990)).

The trial court properly denied the motions for mistrial in these instances where the testimony was not so prejudicial as to vitiate the entire trial. By the time the State put on its case in rebuttal, the jury was well aware of the fact that Williams had a criminal history. That is because that fact was elicited on multiple occasions by Williams himself. Indeed, through Williams as well as Williams's witnesses, the jury was informed that: 1) this is not Williams first trial; in fact he went to trial on a misdemeanor before; 2) he had several arrests for DUIs and perhaps for disorderly intoxication; and 3) he had been in prison. As Williams had been in prison, it logically follows that he was, indeed, an inmate. The State did not inform the jury of anything that it did not already know. Accordingly, Williams cannot demonstrate that he was in anyway prejudiced by the references.

Evans v. State, 800 So.2d 182 (Fla. 2001) is instructive on this issue. In Evans, the defendant claimed that the trial court erred in denying his motion for mistrial after a State witness referred to his prior

criminal record. Specifically, Evans claimed that the witness's reference to "records of the Orlando Police Department" deprived him of a fair trial because the jury could conclude from that statement that he had a prior criminal record. Evans, 800 So.2d at 189. This Court determined that the trial court did not abuse its discretion where the remark was isolated and not focused on. Moreover,

> any possible error resulting from this remark was cured by Evans' own testimony during the guilt phase of this trial. See Hernandez v. State, 763 So.2d 1144, 1145 (Fla. 4th DCA 2000) (where appellant claims the court erred in denying a motion for mistrial when oblique references were made to his prior criminal history, such error is completely harmless since appellant testified and admitted various criminal acts); Peak v. State, 363 So.2d 1166, 1168 (Fla. 3rd DCA 1978) ("As the defendant himself admitted on cross-examination at trial that he did in fact have a prior criminal record, we regard the inadvertent reference to the defendant's prior conviction as harmless."). On direct examination, Evans admitted that he had a prior felony conviction. On cross-examination, it was brought out that Evans was confused and actually had two prior convictions. Thus, in accord with the reasoning in Hernandez and Peak, any error that may have occurred was harmless because Evans himself admitted that he had a prior record.

Evans v. State, 800 So. 2d 182, 189 (Fla. 2001).

Although three references were made by the State's

witnesses, they were innocuous, inadvertent, fleeting references which the jury was instructed to disregard. Moreover, like in Evans, any possible error resulting from these references were cured even before they were committed as Williams had already made the jury aware of the information that the remarks referred to. Williams cannot demonstrate prejudice by these references, especially considering the significant amount evidence of Williams's guilt introduced at trial.

Williams cites to Geralds v. State, 601 So.2d 1157 (Fla. 1992) as well as to a multitude of cases which grant relief where reference was made to the defendant's prior convictions and prison stays (IB 72). These cases, however, do not direct relief. In Geralds, the State embarked on an entire cross-examination of Geralds's neighbor on whether he was aware of Geralds's multiple felony convictions under the guise that the witness had opened the door. Geralds v. State, 601 So. 2d 1157, 1161 (Fla. 1992) aff'd,as revised on denial of reh'g (Feb. 2, 2012) 111 So. 3d 778 (Fla. 2010). This Court determined that the entire line of questioning should never have occurred because the defense had not opened the door to such impeachment on direct examination and reversed for a new penalty phase. Geralds, 601 So.2d at 1162.

In Jones v. State, 128 So.3d 199 (Fla. 1st DCA 2013), the State, and the State alone, informed the jury on four occasions that Jones had a prior felony record. The jury was clearly affected by the information as, during deliberations, the jury wanted to know specifics of his prior history. Id. In Brooks v. State, 868 So.2d 643 (Fla. 2d DCA 2004), the victim, during re-direct examination, suggested that Brooks had previously been sent to prison in relation to a previous incident of domestic violence between the two – he had not. However, this testimony was deemed harmful considering the fact that he was relying on self-defense for his defense. Id.

Finally, in Cornatezer v. State, 736 So.2d 1217 (Fla. 5th DCA 1999), the investigating detective offered that Cornatezer was a convicted felon. The entire cause, however, centered on the credibility of two witnesses, Cornatezer, who provided exculpatory statements, and his roommate, who testified that Cornatezer had committed the crimes. Because the detective's statement went straight to Cornatezer's character, the cause was reversed for new trial.

The instant case, however, is easily distinguishable. The first and most important distinction is the fact that Williams was the first to make the jury privy to his

criminal history before references to it were made by the State's rebuttal witnesses. What is more, the references were innocuous, fleeting and had no affect on any aspect of Williams's defense. Williams is not entitled to relief on this claim.

ISSUE IV

THE STATE'S ARGUMENTS WERE PROPER (RESTATED)

Next, Williams contends that the State committed several instances of fundamental error during voir dire, in its closing argument during the guilt phase, and during the penalty phase. Specifically, Williams alleges that, during voir dire, the State improperly sought justice and suggested that it had more proof than it could adduce at the guilty phase. Further, Williams alleges that, during the guilt phase closing argument, the State inappropriately suggested that he was guilty of an uncharged crime for which there was no evidence, and embellished the victim's final moments. Finally, Williams complains that during the penalty phase, the State inappropriately praised jurors who "have the courage of their convictions" and "do the right thing". This claim, like Williams's others, must also fail.

To begin, as there were no objections raised to any of these claims of error, Williams correctly states that he is only entitled to relief if fundamental error occurred. Thus, he is only entitled to relief if the error "reach[ed] down into the

validity of the trial itself to the extent that a verdict of guilty could not have been obtained without the assistance of the alleged error." State v. Delva, 575 So.2d 643, 644 (Fla. 1991). There was, however, no error committed by the State in these proceedings.

Starting with Williams's allegation that the State improperly sought justice for Ms. Patrick during voir dire, a close reading of the record places the State's comment in context. Early on in the voir dire, the prosecutor asked:

> MR. GROSS: Let me ask you a couple of questions based upon what you just said. You have a person's life if your hands. And if you find him not guilty, obviously that's the end of that. But would you -- we all, we all hear the term, this is the Defendant's day in court. This is his opportunity. This is his trial in this case. It's two weeks of court. Would you agree that it's also the State's day in court?
>
> PROSPECTIVE JUROR AMBROSE: Absolutely.
>
> MR. GROSS: And would you agree that while you have the Defendant's life in your hands, you also have justice for the victim and the victim's family also in your hands? Does everybody see that there are two sides to this process, the scales of justice (indicating) there are two sides to it and that both sides have a right to a fair trial?

(RTv2 220)

Later on, the State began a discussion with a specific juror:

> MR. GROSS: How about your ability to pay attention and not fall asleep on us?

> PROSPECTIVE JUROR KING: Oh, lordy.
>
> MR. GROSS: You doing okay?
>
> PROSPECTIVE JUROR KING: The case itself get my attention.
>
> MR. GROSS: I hope we do.
>
> PROSPECTIVE JUROR KING: Oh, yes, that's what keep my attention, because the person's life is at stake. Cause what you talking about today wasn't nobody's life was at stake.
>
> MR. GROSS: As well as justice for little old lady.

(RTV2 273-274).

A review of the record shows that, contrary to Williams's suggestion, the State did not ask for justice for the victim or appeal to the jurors' emotions. Instead, the remark was simply a reminder that, during the cause, justice was not only a consideration for Williams but for Ms. Patrick as well.

Further, the State did not suggest to the jury that it would provide additional evidence and proof of Williams's guilt which it would provide during the second phase. Again, a review of context and the entirety of what was said is necessary as Williams's cherry picked version is simply misleading. During voir dire, the State gave a quick explanation of the penalty phase portion of the trial in the following fashion:

> As I indicated before, a unanimous verdict will be required for each of the three counts, robbery, kidnapping and murder. And

> after you all have returned verdicts on all three counts, then and only then, if the Defendant is found guilty of murder in the first degree, we will present additional evidence and give additional arguments and additional law to help you to make this life and death decision that we were talking about.

(RTv2 214)

The State then continued:

> So let me tell you real quick how that works. Again, nobody but nobody will have to make that decision if the Defendant is found not guilty or is found guilty of a lesser crime than first degree murder. You'll have options for second degree murder and manslaughter as well. But if and only if the jury unanimously decides he's guilty of first degree murder, additional evidence presented going to the Defendant's background, going to his character, possibly going to additional factors in the crime itself are allowed per the statute, things that you may not be allowed to hear in the first phase of the trial become relevant when you're trying to decide what is a fair sentence. Okay. And then you will hear additional argument and additional law by the Judge, and then you'll go back and base your decision on that law and upon that evidence.

(RTv2 262-263)

As is clear from a reading of the State's comments in their entirety, the State did not suggest "that the State had additional evidence and proof of the defendant's guilt that it had not provided to the jury" as proscribed by Stewart v. State, 622 So. 2d 51, 56 (Fla. 5th DCA 1993). Instead, the State was

clearly explaining to the jury that should a penalty phase be necessary, they would then hear evidence relevant to the sentence – which included factors in the crime that may not have been necessarily admissible during the guilt phase. As the explanation was completely appropriate, it does not amount to error, let alone fundamental error.

Turning to Williams's complaints with regard to arguments made during the State's guilt phase closing, Appellee submits that the parameters of a proper closing argument are well-settled. As a general rule, wide latitude is permitted in arguing to a jury during closing argument. Breedlove v. State, 413 So.2d 1, 8 (Fla. 1982). Logical inferences may be drawn and prosecutors are allowed to advance all legitimate arguments within the limits of their forensic talents in order to effectuate their enforcement of the criminal laws. Spencer v. State, 133 So.2d 729, 731 (Fla. 1961). As the arguments that Williams now takes issue with were both logical inferences drawn from the evidence introduced, they were properly made.

First, despite Williams's argument that "the State's conjecture that an uncharged sexual battery took place was altogether unsupported by the evidence" (IB 77), the record is replete with evidence that sexual misconduct ensued. Hair taken from the two pairs of black briefs found in the car matched both Williams and Patrick (RTv5 762). A semen stain found on the

front inside crotch area matched Williams's DNA profile (RTv5 763). Apart from the semen stain, epithelial cells were determined to have mixed profiles matching both Williams and Patrick (RTv5 763-764). Patrick's body was naked when it was found (RTv5 699). This evidence yields to the logical inference that sexual misconduct occurred. The fact that Williams can advance ulterior explanations to how his DNA arrived on these articles does not negate the logical inference.

Moreover, there was no error in the State's description in the victim's body as having been "tossed like trash in the brush" and its description of Ms. Patrick's final moments where there was factual support for such arguments. Ms. Patrick's body was found in a wooded area by Lake Marion Creek Road underneath some discarded tires (RTv3 468). This evidence certainly supports the argument that Ms. Patrick had been tossed like trash.

Equally as appropriate was the description of Ms. Patrick's last moments – a description that was at one time provided by Williams himself during a press interview. In this interview, Williams described Ms. Patrick as being very scared. Ms. Patrick told Williams that she was a Christian woman and that she was praying for him. She tried to lead Williams to Christ. Moreover, she was afraid that something specific was going to happen to her; it was, however, too personal for him to discuss

with the media (RTv4 554-555, RTv17 2122-2123).

Moreover, Williams described taking Ms. Patrick out of the trunk and placing her in the woods (RTv4 555-556). There were drag marks leading into the woods where Ms. Patrick's body was found, naked (RTv4 595-596, RTv5 699). Again, the evidence supports the description of her final moments.

Just like "[t]hose whose work products are murdered human beings should expect to be confronted by photographs of their accomplishments" Chavez v. State, 832 So.2d 730, 763 (Fla. 2002)(quoting Henderson v. State, 463 So.2d 196, 200 (Fla. 1985)), Appellee submits they should also expect to be confronted with a description of their work. No fundamental error exists. Williams is not entitled to relief based on arguments suggesting otherwise.

Finally, Williams is not entitled to relief based on the apparent contention that the State somehow suggested that it was the jury's duty to recommend death or somehow belittled a life recommendation as was the issue in Urbin v. State, 714 So.2d 411 (Fla. 1998) and Brooks v. State, 762 So.2d 879 (Fla. 2000)(IB 80-81). To be sure, the State began its penalty phase closing in the following fashion:

> At the beginning of the trial, I discussed with you how important your decision at this stage of the proceedings will be. And I think now that you can see exactly what I meant, because only, only if you all return

> the appropriate recommendation to Judge Nacke can he sentence the Defendant to the sentence he so justly deserves.

(RTv20 2404)

The State later concluded:

> Ladies and gentlemen, I'm here to tell you that our system of justice does work because of people who have the courage of their convictions, who are willing to do the right thing, even when it's not the easy thing.

(RTv 20 2428)

These remarks in no way denigrate a life recommendation or suggest that the jury has a duty to recommend death. Instead, it merely reinforces how important the jury was in the penalty phase as, for all intents and purposes, they would decide Williams's fate – a daunting task.

In sum, Williams cannot point to any argument or remark made by the State which would amount to error. As there is no error individually, there can be no error cumulatively. Israel v. State, 985 So.2d 510, 520 (Fla. 2008). Williams is not entitled to relief.

ISSUE V

THE TRIAL COURT PROPERLY ALLOWED THE STATE TO ELICIT FACTS BEHIND WILLIAMS'S 2000 CARJACKING DURING THE PENALTY PHASE. SEXUAL BATTERY DID NOT BECOME A FEATURE OF THE PENALTY PHASE (RESTATED)

In his next claim, Williams contends that the trial court erred in allowing the State to elicit facts surrounding Darla

Blackwell's carjacking "in light of the unwarranted suggestion of forced sexual acts the State had made in its guilt phase closing" (IB 84). Williams goes on to allege that the trial court erred in allowing the State to rely on a previous statement made by him to demonstrate that Ms. Patrick was terrorized, or in fear (IB 85). Williams's claims, are again devoid of any merit.

At the outset, Appellee points out that it is within the sound discretion of the trial judge to determine the admissibility of evidence, and the trial judge's ruling on such an issue will not be disturbed on appeal absent a showing of an abuse of discretion. See Globe v. State, 877 So.2d 663 (Fla. 2004); Johnston v. State, 863 So.2d 271 (Fla. 2003); Zack v. State, 753 So.2d 9 (Fla. 2000); Blanco v. State, 452 So.2d 520 (Fla. 1984). Williams cannot demonstrate that the trial court abused its discretion in any of its evidentiary rulings.

In attempting to preclude the State from presenting the circumstances surrounding Darla Blackwell's carjacking, Williams argued:

> Clearly they are allowed to go into the conviction that Mr. Williams was convicted of, which is the carjacking. However, there is a lot of evidence regarding sexual battery, false imprisonment or kidnapping and/or grand theft that he was never convicted of, pursuant to plea negotiations, I believe at the end of the 2001, he was convicted of carjacking and carjacking

> alone. We believe that allowing any of the other offenses that the evidence presented by the victim in this case regarding a sexual battery and a kidnapping is more prejudicial than it is probative. I understand that the Reynolds case that Mr. Gross gave Your Honor says that you can allow that type of evidence in. However, with this specific case, I believe that it would be more prejudicial than probative because there has already been evidence presented in Phase I and arguments made by Mr. Gross specifically in closing argument at the end of Phase I alluding to the fact that Ms. Patrick was sexually battered during this offense.

(RTv17 2049-2050)

The trial court's decision to allow the circumstances surrounding Darla Blackwell's carjacking was legally sound. This Court has, on numerous occasions, explained that when the State is offering evidence to establish the prior violent felony aggravating circumstance:"[I]t is appropriate in the penalty phase of a capital trial to introduce testimony concerning the details of any prior felony conviction involving the use or threat of violence to the person rather than the bare admission of the conviction." Rhodes v. State, 547 So.2d 1201, 1204 (Fla.1989). That is because "[t]estimony concerning the events which resulted in the conviction assists the jury in evaluating the character of the defendant and the circumstances of the crime so that the jury can make an informed recommendation as to the appropriate sentence." Id.; see also Dufour v. State, 905

So.2d 42, 63 (Fla. 2005).

In Anderson v. State, 841 So.2d 390 (Fla. 2003), during the penalty phase trial the State elicited testimony from the defendant's wife regarding a previous felony conviction for attempted sexual battery which made it clear that the defendant actually completed the crime of sexual battery on the wife's daughter. See id. at 406–07. On appeal, Anderson asserted that "since he pled to attempted sexual battery, it was error to permit [the wife] ... to describe the details of a completed crime." Id. at 407. This Court denied Anderson's claim holding that "[w]hether a crime constitutes a prior violent felony is determined by the surrounding circumstances of the prior crime," and, therefore, "the trial court did not err in permitting the State to present evidence regarding the details of the attempted sexual batteries." Id.

This Court reached the same conclusion in Reynolds v. State, 934 So. 2d 1128 (Fla. 2006). In Reynolds, the State presented the testimony of the victim of Reynolds's prior conviction for aggravated battery. During the victim's testimony, she described the circumstances surrounding the criminal episode underlying this conviction including a description which tended to establish crimes for which Reynolds was not convicted: sexual battery and armed kidnapping. Reynolds v. State, 934 So. 2d 1128, 1149 (Fla. 2006). This

Court affirmed the admission of such testimony explaining that "[the victim's] testimony appropriately provided the jury with details surrounding Reynolds' prior conviction, which were essential in assisting the 'jury in evaluating the character of the defendant and the circumstances of the crime so that the jury [could] make an informed recommendation as to the appropriate sentence.'". Reynolds v. State, 934 So. 2d 1128, 1150 (Fla. 2006).

As in Anderson and Reynolds, there was no error in the trial court's decision to permit Darla Blackwell to describe the entire circumstances of the carjacking, which included a description of the sexual battery that Williams committed during the same episode. The entirety of the circumstances was relevant for purposes of evaluating Williams's character in order to make an informed recommendation as to the appropriate sentence. What is more, considering the extent of the penalty phase and the fact that the actual details of the carjacking only accounted for about 7 pages of it (RTv17 2092-2099), Williams can hardly say that it became a central feature of the penalty phase.

Williams's reliance on Rhodes v. State, 547 So.2d 1201 (Fla. 1989) for the proposition that the evidence was erroneously admitted is unpersuasive. In Rhodes, this Court determined that the trial court erred in permitting the audio

statement of the prior violent felony's victim. In addition to being hearsay and in violation of the confrontation clause, this Court deemed it irrelevant where the testimony amounted to a description of the physical and emotional trauma and suffering of a victim of a totally collateral crime committed by Rhodes. At bar, the State introduced Blackwell's live testimony. Morever, that testimony was solely a description of the crimes committed against her. Nothing more. Rhodes does not direct relief.

Moreover, contrary to Williams's suggestion, this evidence was not overly prejudicial in light of the State's argument that Ms. Patrick fell victim to sexual misconduct during her kidnapping. As discussed above, the argument is well supported by the evidence introduced at trial. The facts surrounding both his prior violent felony and the first degree murder of Ms. Patrick speak volumes on Williams's character. The fact that it is so probative and relevant to the issue at hand does not make it unduly prejudicial.

Nor did the trial court err in allowing the State to not only argue that Ms. Patrick was in fear during the kidnapping but to refer to a portion of Williams's statement in order to support the argument. During the State's penalty phase closing argument, the prosecutor argued:

> The next one the Judge is going to tell you

> about is pretty weighty. He's going to tell you that the capital felony was committed while the Defendant was engaged in the commission of a kidnapping. By your decision last week, it's pretty obvious that you've already concluded this happened during the commission of a kidnapping. The question is not whether that's been proved but how much weight it deserves on your scale. I was thinking about this last night. You know, Mr. Williams over here would have done Janet Patrick a favor if he'd just done what he did there at her house, but he didn't. He had other plans for Ms. Patrick. He wanted to have complete control over her. So he took her 65 miles, at night, to facilitate the crimes that he really wanted to commit and at the same time to terrorize her, didn't he?

(RTv20 2420)

After an objection to this language, the State agreed to confine its language on the victim's fears during the kidnapping to the evidence adduced at the trial (RTv20 2423-2424). Specifically, the State reminded the jury about Williams's description of Ms. Patrick's demeanor during the kidnapping:

> …She talked about praying for the Defendant. You too can be a Christian right now, is what he quotes her as having said that night, the night she was kidnapped. Was she an evangelist? No. She was desperately trying to avoid what was coming. Remember what the Defendant said to the press. Janet told him some rather personal details about herself while the kidnapping was going on….What else did Janet Patrick tell the Defendant? Well, she was worried that something too personal for him to discuss was about to happen to her…If you conclude that this aggravator, during the commission of a kidnapping, has been established, I

suggest you try to lift it. You can't.

(RTv20 2424-2426)

This description was based on the evidence elicited at trial and certainly relevant to describe Ms. Patrick's fear during the kidnapping. There was no error in the State's handling of this argument.

This Court's language in Salazar v. State, 991 So.2d 364 (Fla. 2008) is instructive. In Salazar, Salazar took exception to the State's use of the term "terrorize" in its argument arguing that it referred to nonstatutory aggravation. This Court rejected Salazar's argument explaining that, in context, the argument specifically referred to the burglary statutory aggravator as well as alluded to two other aggravators. Just like in Salazar, there was no error in discussing Ms. Patrick's fear during the kidnapping where the discussion was confined to the evidence and did not include the term "sexual battery" and where fear is a necessary element of the offense of kidnapping.

What is more, there was no error in referring to Williams's own statement to the media in support of the argument that Ms. Patrick was in fear regardless of the fact that Williams later admitted that they were never kidnapped by a random black/Mexican teenager. To the extent that Williams, citing L.E.W. v. State, 616 So.2d 613 (Fla. 5th DCA 1993), argues that the statement cannot be used as evidence because he repudiated,

Appellee respectfully points out that L.E.W. has absolutely no bearing to the case at bar.

In L.E.W., the child victim of a sexual battery recanted her accusation on the stand. Id. There was no other evidence, other than the L.E.W.'s confession, to establish the crime. Id. The Fifth District reversed determining that the child victim's repudiated testimony could not serve as the substantive evidence necessary for purpose of corpus delicti. Id. The instant cause has absolutely nothing to do with corpus. What is more, Williams's statement was far from being the only evidence of guilt introduced at trial.

Be that as it may, although Williams recanted his kidnapping story that does not necessarily mean that he recanted the description of Patrick's final moments or that evidence of the description is automatically excluded. Accordingly, the State was well within its right to refer to it in its closing. In closing argument, counsel is permitted to review the evidence and fairly discuss and comment upon properly admitted testimony and logical inferences from that evidence." King v. State, 130 So. 3d 676, 687 (Fla. 2013), reh'g denied (Oct. 3, 2013), cert. denied, 134 S. Ct. 1323, 188 L. Ed. 2d 336 (2014)(citing Conahan v. State, 844 So.2d 629, 640 (Fla. 2003)).

Finally, even assuming that reference to Patrick's fear of "something too personal for [Williams] to discuss" is in some

way error, Appellee respectfully submits that any error was harmless considering the weightiness of the aggravating factors found by the court compared to the relatively minor mitigation. Although the trial court did find one statutory mitigator and 14 non-statutory mitigators, these mitigators were given at most "some weight". Four of the five statutory aggravators, however, were afforded great weight. One of the statutory aggravators – prior violent conviction – is considered by this Court to be one of "the most weighty in Florida's sentencing calculus". Sireci v. Moore, 825 So.2d 882, 887 (Fla. 2002). Williams is not entitled to relief.

ISSUE VI

THE JURY WAS PROPERLY INSTRUCTED AS TO THE CONSIDERATION OF NON-STATUTORY MITIGATION (RESTATED)

Next, Williams suggests that the trial court erred in issuing the standard jury instruction interrogatory as to non-statutory mitigation. According to Williams, the instruction was error where, he speculates, "the jurors were confused by the verdict form dedicated to mitigation" (IB 88). Williams encourages this Court to find that special interrogatories should have been issued here in order to "give meaningful effect to a defendant's mitigating evidence" (IB 90). Again, Williams is not entitled to relief on this claim.

In sum, Williams encourages this Court to adopt a practice wherein, during the penalty phase, special interrogatories are issued having the jury set forth which non-statutory was found by what number of jurors, if any. This Court has already held that the "catch-all" standard jury instruction on nonstatutory mitigation when coupled with counsel's right to argue mitigation is sufficient to advise the jury on nonstatutory mitigating circumstances. See Downs v. Moore, 801 So. 2d 906, 913 (Fla. 2001)(citing Booker v. State, 773 So.2d 1079, 1091 (Fla. 2000) and Elledge v. State, 706 So.2d 1340, 1346 (Fla. 1997)).

Notwithstanding, Williams argues that Abdul-Kabir v. Quarterman, 550 U.S. 233, 260 (2007) directs relief. Abdul-Kabir is wholly inopposite to this case where in that case, NO INSTRUCTIONS were issued to the jury explaining that they must consider mitigation and how to do so. At bar, not only was the jury instructed to consider mitigation but Williams argued his non-statutory mitigation at length: "Since that third statutory mitigator is so vague, I think it's important to go through each and every single one that there is in this case…" (RTv20 2447-2449). There is no merit to this claim.

ISSUE VII

THE TRIAL COURT PROPERLY ADMITTED VICTIM IMPACT EVIDENCE IN THE FORM OF ONE OF MS. PATRICK'S POSSESSIONS (RESTATED)

Williams further argues that the trial court erred in

admitting a poem that Ms. Patrick always carried around with her. According to Williams, the poem was erroneously admitted where it neither demonstrated her uniqueness nor loss to the community. Again, Williams's position is devoid of any merit.

The State may present victim impact evidence which shows "the victim's uniqueness as an individual human being and the resultant loss to the community's members by the victim's death." § 921.141(7), Fla. Stat. (2006); see Wheeler v. State, 4 So.3d 599, 607 (Fla. 2009); McGirth v. State, 48 So.3d 777 (Fla. 2010). However, the admissibility of victim impact evidence is not limitless. Sexton v. State, 775 So.2d 923, 932 (Fla. 2000). Victim impact witnesses cannot provide characterizations and opinions about the crime. Id. (citing Payne v. Tennessee, 501 U.S. 808, 826–27, 111 S.Ct. 2597, 115 L.Ed.2d 720 (1991)).

In the case subjudice, the evidence showed that Ms. Patrick carried a particular poem with her (RTv17 2116). The Christian like poem depicted an individual acknowledging that life was not a guarantee and asking the Lord to allow her the opportunity to be a giving individual while she still had life. This poem was a clear reflection of what the victim was like in life - a reflection that was shared by those who testified (RTv17 2110-2117, 2127-2130). The poem did not provide a characterization or opinion of the crime. There was no error in its admission.

Moreover, assuming that the admission of this poem amounted

to error, Williams cannot demonstrate that he was prejudiced by this error. Again, considering the gravity of the aggravators found compared to the relatively minor mitigation, error, if any, was harmless.

ISSUE VIII

THE AGGRAVATING FACTORS IN THIS CASE DO NOT FAIL TO NARROW THE FIELD OF PERSONS ELIGIBLE FOR THE DEATH PENALTY (RESTATED)

As his eighth claim, Williams argues that Florida's capital sentencing scheme is infirm where it fails to narrow the field of persons eligible for the death penalty. This Court has rejected such an argument as it pertains to the "in the court of committing a[n enumerated] felony" aggravator, Blanco v. State, 706 So.2d 7 (Fla. 1997). Moreover, it has rejected the argument as it pertains to the under probation aggravator, Ellerbee v. State, 87 So.3d 730 (Fla. 2012) and the prior violent felony aggravator, Squires v. State, 450 So.2d 208 (Fla. 1984).

At bar, both the jury and court found five aggravating factors including the three discussed above. In order to be death eligible in Florida, only the presence one aggravating factor is necessary. State v. Steele, 921 So.2d 538, 539 (Fla. 2005)("In Florida, to recommend a sentence of death for the crime of first-degree murder, a majority of the jury must find that the State has proven, beyond a reasonable doubt, the existence of at least one aggravating circumstance listed in the

capital sentencing statute."). Williams death sentence was lawful and he is not entitled to relief based on his suggestions otherwise.

ISSUE IX

WILLIAMS IS NOT ENTITLED TO RELIEF PURSUANT TO RING V. ARIZONA (RESTATED)

Finally, Williams argues that the trial court erred in sentencing him to death where Florida's death penalty statute is unconstitutional as it is in violation of the Sixth Amendment under the principles announced in Ring v. Arizona, 536 U.S. 584 (2002)(IB 96). As William's position has been consistently rejected by this Court, it is of no merit.

The constitutionality of a statute is a question of law subject to de novo review. See Crist v. Ervin, 56 So.3d 745, 747 (Fla. 2010). This Court has repeatedly held that Florida's capital sentencing scheme does not violate the United States Constitution under Ring v. Arizona. See, e.g., Abdool v. State, 53 So.3d 208, 228 (Fla. 2010)("This Court has also rejected [the] argument that this Court should revisit its opinions in Bottoson v. Moore, 833 So.2d 693 (Fla. 2002), and King v. Moore, 831 So.2d 143 (Fla. 2002), and find Florida's sentencing scheme unconstitutional.").

As this Court explained in State v. Steele, 921 So.2d 538, 545-47 (Fla. 2005):

... the standard jury instructions require the jury to determine whether one or more aggravating circumstances exists, and if so, to weigh any aggravators against any mitigating circumstances. See Fla. Std. Jury Instr. (Crim.) 7.11, at 132-33. The instructions also provide that the jury's advisory sentence need not be unanimous, that a majority vote is necessary for a death recommendation, and that a vote of six or more jurors is necessary for a life recommendation. See id. at 133.

Under the law, therefore, the jury may recommend a sentence of death so long as a majority concludes that at least one aggravating circumstance exists. Nothing in the statute, the standard jury instructions, or the standard verdict form, however, requires a majority of the jury to agree on which aggravating circumstances exist.

...

The requirement of a majority vote on each aggravator is also an unnecessary expansion of Ring. . . . Even if Ring did apply in Florida-an issue we have yet to conclusively decide-we read it as requiring only that the jury make the finding of "an element of a greater offense." Id. That finding would be that at least one aggravator exists-not that a specific one does. But given the requirements of section 921.141 and the language of the standard jury instructions, such a finding already is implicit in a jury's recommendation of a sentence of death. Our interpretation of Ring is consistent with the United States Supreme Court's assessment of Florida's capital sentencing statute. In Jones v. United States, 526 U.S. 227, 250-51, 119 S.Ct. 1215, 143 L.Ed.2d 311 (1999), the Court noted that in its decision in Hildwin v. Florida, 490 U.S. 638, 109 S.Ct. 2055, 104 L.Ed.2d 728 (1989), in which it concluded that the Sixth Amendment does not require

> explicit jury findings on aggravating circumstances, "a jury made a sentencing recommendation of death, thus necessarily engaging in the factfinding required for imposition of a higher sentence, that is, the determination that at least one aggravating factor had been proved."

Moreover, "[t]his Court has repeatedly held that Ring does not apply to cases where the prior violent felony, the prior capital felony, or the under-sentence-of-imprisonment aggravating factor is applicable." Hodges v. State, 55 So.3d 515, 540 (Fla.2010), cert. denied, --- U.S. ----, 132 S.Ct. 164, 181 L.Ed.2d 77 (2011).

At bar, Williams had a prior violent felony conviction. As his position on the constitutionality of Florida's capital sentencing statutes is patently without merit, it must be, again, rejected. This Court should affirm.

ISSUE X

> THE EVIDENCE WAS SUFFICIENT TO SUSTAIN WILLIAMS'S FIRST DEGREE FELONY MURDER CONVICTION

Although Williams has not raised the issue of the sufficiency of evidence to sustain his convictions, Appellee will address this issue as this Court is required to conduct an independent review to determine whether sufficient evidence exists to support the conviction. See Fla. R.App. P. 9.142(a)(6); Phillips v. State, 39 So.3d 296, 308 (Fla.), cert.

denied, --- U.S. ----, 131 S.Ct. 520, 178 L.Ed.2d 384 (2010). The evidence in a capital case is judged to be sufficient when it is both competent and substantial. See Phillips, 39 So.3d at 308. This Court must "view the evidence in the light most favorable to the State to determine whether 'a rational trier of fact could have found the existence of the elements of the crime beyond a reasonable doubt.'" Rodgers v. State, 948 So.2d 655, 674 (Fla. 2006) (citing Bradley v. State, 787 So.2d 732, 738 (Fla. 2001)).

Significant evidence was presented in support of Williams's First Degree Felony Murder Conviction – the felonies being kidnapping and robbery. On October 19, 2010, Olive Suter called the police and reported that her friend and neighbor, Janet Patrick, had left to go shopping at Publix the evening before and had not returned. (RTv3 359-360). Patrick drove a white car- a Chevrolet (RTv3 378).

Mark Mohrenne, an assistant manager at Publix, saw Janet Patrick with a gentleman on the day that she disappeared (RTv3 390). Mohrenne provided the police with surveillance video of that day as well as assisted in locating a western union receipt for a wire transfer a couple of days before the disappearance (RTv3 392).

Surveillance video provided by Publix showed Williams sitting on a bench outside Publix by the ATM. The video also

showed Williams leaving a cell phone on the bench before approaching a woman waiting on the ATM. Williams then gets an electric cart and comes into Publix with Patrick on the cart (RTv3 397-405).

Peggy Sneed, the woman that Williams initially approached at Publix, saw Williams sitting at a bench when she walked up to the ATM (RTv3 412-413). Williams invited her to sit next to him and she declined. Williams explained that his car broke down and that he had to use the phone inside to get a tow but by the time he got back outside, his car had already been towed (RTv3 412-413). According to Williams, he was waiting for his wife to come get him from Tampa (RTv3 412-413). When Williams saw Patrick entering the store, he jumped up and started talking to her, offering to get her a scooter (RTv3 413-414). Patrick declined his offer of a scooter (RTv3 415). When Sneed left the pharmacy, she saw Williams walking in with Patrick on a scooter (RTv3 415).

Richard Wegener bagged Patrick's groceries the day she disappeared. He walked Patrick and Williams to the car. He noted that Williams talked too much (RTv3 430). Patrick was very complimentary of how helpful Williams was with her groceries (RTv3 430). Wegener unloaded the groceries into a Patrick's car, he observed Patrick getting in the driver's seat and Williams getting into the passenger's seat (RTv3 436).

Josephine Buscemi was Patrick's cashier at Publix the day that she disappeared. However, this was not the first time she saw Williams at the store. A couple of days of days earlier, Williams was at the store and had flirted with Buscemi while asking about dog food (RTv5 780-784). Later that day, she recognized the cart that Williams had been pushing around left in another aisle, complete with the dog food she recommended (RTv5 780-784). She noticed that a Western Union Receipt had been discarded in the cart (RTv5 785).

On the day of Patrick's disappearance, Williams and Patrick came through her line. Williams explained that he was Patrick's neighbor and was helping her with her groceries before she gave him a ride to the library (RTv5 788). When she got called in to discuss the disappearance, she knew who the police were talking about. She subsequently remembered the Western Union receipt and gave that information to police (RTv5 786-787).

Teresa Threlkeld also saw Patrick at Publix. She knew Patrick personally as Patrick was her mother's neighbor (RTv9 1343). Patrick was with Williams and the Publix bagger standing by the trunk. Williams walked Patrick to the passenger side of the car and sat her down. Williams then walked Patrick to the driver's side and he got in the passenger's side (RTv9 1343-1348).

Another of Patrick's neighbors, Lucy Koenig, also

remembered seeing Patrick on the day of her disappearance. A little after 5:23 p.m., she saw Patrick's car parked in her carport. After 6:00 p.m., Koenig was in her computer room and heard Patrick's car start up and leaving (RTv7 959-961). She looked out and saw Patrick driving but didn't look to see if she was alone. Patrick never came back.

On October 20, 2010, two days after Patrick's disappearance, Deputy Pfiester responded to Patrick's home to follow up on Martinez's initial report. Nothing appeared disturbed. Pfiester hit the redial button on Patrick's phone and the call went to 911 (RTv7 993-994). The call, however, never made it to the COM center (RTv7 995-996).

Meanwhile, between 10:00 a.m. and 11:00 a.m., on or about October 20, Sam Gill was getting an odd visit (RTv3 478). On that day, Gill, who owns an isolated five acre property in Davenport, FL, watched as a white Chevy impala came about 400 yards into his driveway and stopped for a few minutes (RTv3 471). Gill approached the car, that was being driven by Williams and asked him what he needed. Williams explained that he had a put a bid on the house several years ago and was just looking around. Williams stayed about 40 minutes (RTv3 479). A week later, Gill was watching the news and recognized Williams and the car he was in and called the police (RTv3 480-482).

At around noon on October 20, 2010, Danny Culverhouse was

also visited by Williams who Culverhouse has known all his life (RTv3 498). Culverhouse lives a little northwest of Davenport (RTv3 501). Williams drove up in a white Chevy and looked overtired. After about an hour of visiting, Williams asked Culverhouse if he wanted beer, ran out and came back 20 minutes later with beer. Later on, Williams asked if Culverhouse was hungry, ran out and came back with Kentucky Fried Chicken. (RTv3 501-508). When Williams was leaving, he dropped a leather pouch with credit cards. Williams asked Culverhouse if he wanted them and Culverhouse declined.

The next day, October 21, Williams knocked on Culverhouse's door at 8:00 a.m. (RTv3 511). Williams was standing there with Culverhouse's shovel and asked if he could borrow it and left (RTv3 511). Later on that day, Culverhouse was watching the news and saw that the police were looking for Williams, Patrick and the car Williams was in (RTv3 514-515). Two days later, Culverhouse went to the police (RTv3 515).

On October 23, 2010, Ms. Patrick's car was spotted at a closed down restaurant off the highway (RTv3 447). Williams was sitting in the car reclined in the seat (RTv3 449-450). Although no weapons were found on him, he had Janet Patrick's credit cards in his front pocket (RTv3 451).

Various items were collected from the vehicle. Noteworthy items included irrigation type tubing, green and white shorts,

two pairs of briefs, and a cane (RTv4 583-589). Nothing seemed to be touched inside the trunk for purposes of prints, however, there were suspicious stains thought to be blood on various items in the trunk (RTv4 608-611).

Culverhouse's shovel was subsequently found less than a mile away at Evergreen Cemetery in Davenport where Williams's family members are buried. Along with the shovel, tubing similar to the tubing found in Patrick's car was found (RTv6 826-827, RTv7 910-911, RTv7 980-981).

DNA testing was conducted on various items found in Patrick's vehicle and was introduced through Dr. Mohammed Amer. Dr. Amer testified Patrick was determined to be the major contributor to the blood found on the carpet from Patrick's trunk (RTv5 751-752). Moreover, Patrick's DNA profile matched that on the blood found on the spare tire cover, the spare tire locking device, and the blood stain found on the inside surface of the trunk lid (RTv5 753-756).

Jeans and a belt found in the front of the driver's seat had mixed profile with Williams being the major contributor and Patrick being the minor contributor (RTv5 760-761). Hair taken from the two pairs of black briefs found in the car matched both Williams and Patrick (RTv5 762). A semen stain found on the front inside crotch area matched Williams's DNA profile (RTv5 763). Apart from the semen stain, epithelial cells were

determined to have mixed profiles matching both Williams and Patrick (RTv5 763-764).

On October 24, 2010, Williams gave the press an interview wherein he recounted the events surrounding Patrick's disappearance (RTv4 547-570). According to Williams, the two of them got into the car at Publix when Patrick explained that she had to go to the back of Publix to get some boxes. A man reached in the car and got in the back of the car and told him to put his head down on the floorboard and told her to drive. The car stopped and the man forced Williams and Patrick into the trunk of the car. When the car stopped again, the man had Williams put Patrick in the passenger side and get back in the trunk. Five minutes later, the man stopped the car and beat on Williams for trying to get attention from the trunk. The man tied Williams hands together and had him get back in the trunk.

When the man stopped again, he put Patrick back in the trunk where Williams was able to see that Patrick had been beaten. The man stopped again and had Williams put Patrick back in the passenger seat while he got back in the trunk. The car then stopped again and Williams was put in the trunk while the man told him to get in the passenger's side. The car stopped again and he was allowed out of the car and got Patrick out of the trunk. At that point, he "got away" in the car by throwing a stick at the man to give him enough time to get in the car and

drive off (RTv4 557-570). He kept going back to the area to try to find Patrick (RTv4 556-558). He knew where she now was but had to talk to his lawyer about it (RTv4 560). Then again, he did not know where she was (RTv4 560). She was, however, dead and somewhere in Southeast Polk County (RTv4 561, 564). Williams believed that one of the assailant's stops was to Patrick's home (RTv4 566). Williams subsequently that he made up the kidnapping story (RTv14 1773).

On October 26, 2010 Detective Don Carter was charged with aiding in the search for Patrick's body (RTv3 465-466). He was going down Lake Marion Creek Road towards the search area when he observed car tracks going into a woods area. As he approached the area, he saw buzzards and smelled an odor. He observed a body underneath some discarded tires (RTv3 468). A grocery list was found next to the body (RTv4 597). The body was located about a mile and a half from where Williams used to live (RTv4 606). Using the larvae found in the body, entomologist Carlton Findley estimated that Patrick died at some time before sunset on October 20 (RTv6 816).

Medical Examiner Barbara Wolf testified that Patrick's body was badly decomposed upon arrival. The body was naked (RTv5 699). According to her medical records, Patrick did not have coronary heart disease and was in general good health (RTv5 696-697). There was no evidence of accidental death (RTv5 720).

There were no injuries to her bones could definitely be determined to have happened at the time of death (RTv5 698). This opinion was shared by anthropologist Katie Skorpinski (RTv5 655). Wolf reviewed all reports, statements and FDLE findings, including the fact that Patrick's blood was found in the trunk. Patrick's death was ruled a homicide although she could not ascertain the actual cause of death (RTv5 700).

As the jury could have found the elements of first-degree felony murder (with the underlying felonies being kidnapping and robbery) beyond a reasonable doubt based on these facts, sufficient evidence was presented to support Williams's convictions.

ISSUE XI

THE DEATH SENTENCE IS PROPORTIONAL

Although Williams has also not raised the issue of proportionality, Appellee will nonetheless address it as this Court is required to perform a proportionality analysis in each direct capital appeal. See Fla. R.App. P. 9.142(a)(6); Floyd v. State, 913 So.2d 564, 578 (Fla.2005). At bar, 81 year old Janet Patrick had simply gone to Publix to do some grocery shopping when she was approached by Williams. Several days later, Patrick's body was found discarded in the woods. Williams was found in Patrick's car with Patrick's credit cards. The car was stained with Patrick's blood and Williams's DNA. In sentencing

Williams to death for his crime, the trial court afforded varying degrees of weight to four aggravating circumstances that it found were proven beyond a reasonable doubt: 1) Williams was on felony probation at the time of the murder (great weight); 2) Williams was previously convicted of a felony involving the use or threat of violence to the person (great weight); 3) The murder was committed while Williams was involved in a kidnapping (great weight); 4) The murder was committed for pecuniary gain (some weight); and 5) The victim was particularly vulnerable due to advanced age or disability (great weight)(RR 1918-1921).

The trial court went on to consider all statutorily enumerated mitigating circumstances finding that one had been proven, that is that Williams's capacity to conform his conduct to the requirements of the law was substantially impaired (RR 1922). As for the non-statutory mitigating circumstances, the court made the following findings: 1) Williams manifested appropriate courtroom behavior (slight weight); 2) Williams served in the military (slight weight); 3) Williams was an alcoholic drug user (some weight); 4) Williams's good behavior in jail (some weight); 5) Williams was sexually abused as a child (not proven; no weight); 6) Williams suffered physical, mental and emotional abuse as a child (some weight); 7) Williams was struck by a car which resulted in a broken leg (little weight); 8) Williams's father and grandfather were alcoholics

(some weight); 9) Williams witnessed his mother being abused by his father (some weight); 10) Williams suffered head injuries while growing up (some weight); 11) Williams is a good father (slight weight); 12) Williams was a loving companion to Kay Harvey (slight weight); 13) Williams was a hard worker (slight weight) and 14) Williams helped others when he could (some weight) (RR 1930-1939). In light of the strength of the aggravating circumstances compared to the mitigators provided, Appellee contends that the death sentence is proportional.

It is axiomatic that the death penalty is reserved for only the most aggravated and the least mitigated of first degree murders. Booker v. State, 773 So.2d 1079, 1092 (Fla. 2000); see also Urbin v. State, 714 So.2d 411, 416 (Fla. 1998); State v. Dixon, 283 So.2d 1, 7 (Fla. 1973). This Court has stated: "[t]o determine whether death is a proportionate penalty, we consider the totality of the circumstances of the case and compare the case with other capital cases where a death sentence was imposed". Pearce v. State, 880 So.2d 561, 577 (Fla. 2004); Boyd v. State, 910 So.2d 167, 193 (Fla. 2005); Fitzpatrick v. State, 900 So.2d 495, 527 (Fla. 2005). This Court's function is not to re-weigh the factors, but to accept the jury's recommendation and the judge's weighing of the evidence. Bates v. State, 750 So.2d 6 (Fla. 1999); see also Ellerbee v. State, 87 So.3d 730 (Fla. 2012) (announcing Court will not disturb sentencing

judge's determination as to the weight assigned to aggravators and mitigators where ruling is supported by competent, substantial evidence.).

The death sentence has been imposed in other cases that have had similar aggravators as well as similar mitigation as the present case. For instance, the death sentence was held to be proportionate in Turner v. State, 37 So.3d 212 (Fla. 2010). In Turner, Turner was convicted of (1) first-degree felony murder for the beating death of Renee Howard; (2) attempted first-degree murder; (3) grand theft of a motor vehicle; (4) home invasion robbery with a deadly weapon; and (5) aggravated assault on a police officer. Turner v. State, 37 So. 3d 212, 217 (Fla. 2010). The trial court found five aggravators had been proven beyond a reasonable doubt: (1) the crime was committed while he had previously been convicted of a felony and was under sentence of imprisonment (moderate weight); (2) the defendant had been previously or contemporaneously convicted of a felony involving the use or threat of violence to Stacia Raybon and a law enforcement officer (great weight); (3) the crime was committed while the defendant was engaged in the commission of, or an attempt to commit, the crime of burglary or robbery or both (great weight) (this aggravating factor was merged with another factor: that the crime was committed for financial gain.); (4) the crime was especially heinous,

atrocious, or cruel (HAC) (great weight); and (5) the crime was committed in a cold, calculated, and premeditated manner and without any pretense of moral or legal justification (CCP) (significant weight). The trial court found two statutory mitigating circumstances: (1) the crime was committed while under the influence of extreme mental or emotional disturbance (moderate weight); and (2) the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired (moderate weight). The court also found nine nonstatutory mitigating circumstances: (1) Turner's ability to form loving relationships (some weight); (2) Turner's family problems and mental suffering (little weight); (3) Turner's uncles gave him drugs when he was young (some weight); (4) Turner's cognitive development was impaired due to substance abuse (some weight); (5) Turner's chronic alcohol and drug problem (moderate weight); (6) at the time of the murder, Turner was under the influence of crack cocaine (some weight); (7) Turner was a hard worker and skilled carpenter (little weight); (8) prior to escaping, Turner was a good worker in South Carolina (slight weight); and (9) Turner's appropriate courtroom behavior (some weight). Turner v. State, 37 So. 3d 212, 220 (Fla. 2010). This Court found the death sentence proportionate and noted that it has upheld the death penalty even in the absence of the CCP statutory

aggravating circumstances. Id. at 227.

The facts of this case warrant the same conclusion. Although the trial court did find one statutory mitigator and 14 non-statutory mitigators, these mitigators were given at most "some weight". Four of the five statutory aggravators, however, were afforded great weight. One of the statutory aggravators - prior violent conviction – is considered by this Court to be one of "the most weighty in Florida's sentencing calculus". Sireci v. Moore, 825 So.2d 882, 887 (Fla. 2002). The death sentence here is proportionate.

In support of proportionality, Appellee also relies on Cave v. State, 727 So.2d 227, 229 (Fla. 1998) (affirming death sentence where four aggravators were found-murder in the course of a felony (robbery-kidnapping), CCP, HAC, and avoid-arrest-and one statutory and eight nonstatutory mitigators were found); Blackwood v. State, 777 So.2d 399 (Fla. 2000) (death sentence proportionate for strangulation murder where trial court found HAC aggravator, one statutory mitigator, and eight nonstatutory mitigators); Johnston v. State, 841 So.2d 349 (Fla. 2002) (prior violent felony, kidnapping, pecuniary gain, and HAC versus one statutory mitigator and twenty-six nonstatutory mitigators); Owen v. State, 862 So.2d 687 (Fla. 2003) (finding death sentence proportionate for 23 year old defendant, despite the presence of three statutory mitigators, including both mental mitigators and

sixteen other mitigators); Rose v. State, 787 So.2d 786 (Fla. 2001) (finding death sentence proportionate despite the presence of eleven nonstatutory mitigators where trial judge found four aggravators-murder committed while on probation, prior violent felony, murder committed during a kidnapping, and HAC).

The death sentence imposed upon Williams is proportional.

CONCLUSION

Based upon the foregoing, the State requests respectfully this Court affirm the convictions and death sentence.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email to: Nancy Ryan, Office of the Public Defender, ryan.nancy@pd7.org on January 23, 2015.

CERTIFICATE OF FONT COMPLIANCE

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

Respectfully submitted,

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