Filing # 22064467 E-Filed 12/30/2014 08:16:34 PM

RECEIVED, 12/30/2014 20:18:49, John A. Tomasino, Clerk, Supreme Court

IN THE SUPREME COURT OF FLORIDA

HENRY LEE JONES,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Case No. SC14-990

ON APPEAL FROM THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT, IN AND FOR BREVARD COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE

PAMELA JO BONDI
ATTORNEY GENERAL

JAMES D. RIECKS
ASSISTANT ATTORNEY GENERAL
Florida Bar No. 0142077
Office of the Attorney General
444 Seabreeze Blvd., Suite 500
Daytona Beach, Florida 32118
Primary E-Mail:
capapp@myfloridalegal.com
Secondary E-Mail:
james.riecks@myfloridalegal.com
(386)238-4990
(386)22-0457 (FAX)
COUNSEL FOR APPELLEE

TABLE OF CONTENTS

PAGE#

CONTENTS

TABLE OF CONTENTS i

TABLE OF CITATIONS iii

PRELIMINARY STATEMENT 1

STATEMENT OF THE CASE 1

STATEMENT OF THE FACTS 8

SUMMARY OF ARGUMENT 53

ARGUMENT 58

ISSUE I: WHETHER THE TRIAL COURT BELOW ERRED IN RULING THAT EVIDENCE OF COLLATERAL CRIMES WAS ADMISSIBLE UNDER THE WILLIAMS RULE. 58

ISSUE II: WHETHER THE TRIAL COURT BELOW COMMITTED FUNDAMENTAL ERROR BY NOT *SUA SPONTE* INSTRUCTING THE JURY ABOUT *WILLIAMS* RULE EVIDENCE PRIOR TO ITS ADMISSION OR OFFERING APPELLANT, WHO WAS *PRO SE*, AN OPPORTUNITY TO REQUEST A *WILLIAMS* RULE JURY INSTRUCTION PRIOR TO THE ADMISSION OF *WILLIAMS* RULE EVIDENCE 69

ISSUE III: WHETHER A TRIAL COURT SHOULD BE REQUIRED TO APPOINT SPECIAL COUNSEL TO PRESENT MITIGATION EVIDENCE WHEN A DEFENDANT WAIVES THE PRESENTATION OF MITIGATING EVIDENCE. 75

ISSUE IV: WHETHER THE TRIAL COURT ERRED BY NOT APPOINTING SPECIAL COUNSEL TO PRESENT MITIGATION EVIDENCE TO THE JURY DURING APPELLANT'S PENALTY PHASE. 78

ISSUE V: WHETHER FLORIDA'S DEATH PENALTY STATUTE IS UNCONSTITUTIONAL UNDER *RING V. ARIZONA* 87

ISSUE VI: WHETHER A SUBSEQUENTLY VACATED CONVICTION WHICH SUPPORTED A FINDING OF AN AGGRAVATING FACTOR REQUIRES A NEW SENTENCING HEARING. 89

ISSUE VII: WHETHER APPELLANT'S DEATH SENTENCE WAS PROPORTIONATE. 94

CONCLUSION 97

CERTIFICATE OF SERVICE 97

CERTIFICATE OF COMPLIANCE 98

TABLE OF CITATIONS

CASES **PAGE#**

Alvord v. State,
396 So.2d 184 (Fla. 1981) 74

Bevel v. State,
983 So. 2d 505 (Fla. 2008) 89

Bottoson v. Moore,
833 So. 2d 693 (Fla. 2002), *cert. denied*, 537 U.S. 1070 (2002) 87

Chandler v. State,
442 So. 2d 171 (Fla. 1983) 62, 65, 72

Clemons v. Mississippi,
494 U.S. 738 (1990).....90

Conde v. State,
860 So. 2d 930 (Fla. 2003) 72, 73

Crump v. State,
622 So. 2d 963 (Fla. 1993..... 62, 72

Downs v. Moore,
801 So. 2d 906 (Fla. 2001) 71

Duest v. Dugger,
555 So. 2d 849 (Fla.1990) 93

Evans v. State,
946 So. 2d 1 (Fla. 2006) 87

Evans v. Sec'y, Dept. of Corr.,
699 F.3d 1249 (11th Cir. 2012) 88

Faretta v. California,
422 U.S. 806 (1975).....*passim*

Farr v. State,
621 So. 2d 1368 (Fla.1993) 77, 78

Hamblen v. State,
527 So. 2d 800 (Fla. 1988) 75, 77, 78

Hayward v. State,
24 So. 3d 17 (Fla. 2012) 95

Hodges v. State,
55 So. 3d 515 (Fla. 2010) 72

Jackson v. State,
127 So.3d 447 (Fla. 2013) 69

Johnson v. Mississippi,
846 U.S. 578 (1988).....89

Kopsho v. State,
84 So.3d 204 (Fla. 2012) 59

Larkins v. State,
739 So. 2d 90 (Fla. 1999) 93

McKenzie v. State,
--- So.3d ----, 2014 WL 1491501 (Fla. 2014)..... 73, 74

Mansueto v. State,
148 So. 3d 813 (Fla 4th DCA 2014)..... 70, 71

Martin v. State,
-- So.3d --, 2014 WL 4724564 (Fla. Sept. 24, 2014) 58, 95, 96, 97

Mohammad v. State,
782 So. 2d 343 (Fla. 2001) 78

Peterson v. State,
94 So. 3d 514 (Fla. 2012) 88

Preston v. State,
564 So. 2d 120 (Fla. 1990) 90, 91, 92

Ring v. Arizona,
536 U.S. 584 (2002)..... *passim*

Robinson v. State,
865 So. 2d 1259 (Fla. 2004) 89

Rodriguez de Quijas v. Shearson/American Express,
490 U.S. 477 (1989)..... 88

Russ v. State,
73 So. 3d 178 (Fla. 2011) 76, 78

Spann v. State,
857 So.2d (Fla. 2003) 76

Spencer v. State,
615 So. 2d 688 (Fla. 1993) ..... *passim*

State v. DeGuilio,
491 So. 2d 1129 (Fla. 1986) 67

State v. Jones,
2014 WL 4748118 (Tenn. Sept. 25, 2014)..... 2, 58, 59, 60

Tillman v. State,
471 So.2d 32 (Fla.1985) 66

Wilcox v. State,
143 So.3d 359 (Fla. 2014) 74

Williams v. State,
110 So. 2d 654 (Fla. 1959) ..... *passim*

Wuornos v. State,
644 So.2d 1000 (Fla.1994) 73

Zant v. Stephens,
462 U.S. 862, 879 (1983) 94

PRELIMINARY STATEMENT

This case presents a direct appeal from the Circuit Court for Brevard County, Florida, following the Appellant's convictions and death sentence for first degree murder. This brief will refer to Appellant as such, Defendant, or by proper name, e.g., "Jones." Appellee, the State of Florida, was the prosecution below. This brief will refer to Appellee as such, the prosecution, or the State.

Unless indicated otherwise, bold-typeface emphasis is supplied. Cases cited in the text of this brief and not within quotations are italicized. Other emphases are contained within the original quotations.

STATEMENT OF THE CASE

On October 18, 2011, the grand jury of Brevard County, Florida indicted Henry Lee Jones for the first degree murder of Carlos Perez. (V5, R691-92).[1] On April 26, 2012, Defendant was arrested and committed to the Brevard County Jail after being transferred from Riverbend Maximum Security Institution, Nashville, Tennessee, where Defendant was incarcerated and serving two death sentences for the August 22, 2003, murders of Lillian and Clarence James of Shelby County, Tennessee.[2] (V5, R696-97; V24, R1058).

---

[1] Cites to the record are by volume number, "V_" followed by "R_" for the page number.

[2] *State v. Jones*, 2013 WL 1697611 (Tenn. Crim.App. Apr. 18, 2013); *remanded*, (for the entry of appropriate judgments reflecting the merger of Appellant's conviction of felony murder of Mr. James into his conviction of first degree

A. CHRONOLOGY OF *FARETTA*[3] HEARINGS

Defendant's first *Faretta* hearing was held on May 11, 2012. (V1, R1-29). Defendant wanted a *Faretta* hearing although he "was not sure exactly" what the hearing entailed. (V1, R4-5). Defendant had "five or six" prior felony convictions and had not represented himself in any of those cases. (V1, R5). Defendant disagreed with Mr. Moore who advised Defendant to waive speedy trial. Defendant requested to be tried within "120 days" under the "Detainer Act." (V1, R6). Defendant had been represented by counsel at two prior trials and was found guilty.[4] (V1, R8-9). Defendant said Moore explained that he had been practicing law for 38 years and that Defendant's constitutional rights had not been violated. (V1, R11). Defendant claimed Moore "told me straight up that he don't have time to prepare for trial." (V1, R13). Nonetheless, Defendant wished for Moore to be

---

premeditated murder of Mr. James for a single judgment of conviction and the merger of Appellant's conviction of felony murder of Mrs. James into his conviction of first degree premeditated murder of Mrs. James for a single judgment of conviction; *reversed, State v. Jones*, 2014 WL 4748118 (Tenn. Sept. 25, 2014) ("Because the out-of-state murder [Perez] did not qualify as a signature crime and, under these circumstances, the danger of unfair prejudice outweighed the probative value of the evidence, the trial court erred by allowing the proof of the third murder. Because the error does not qualify as harmless, the convictions must be reversed and a new trial must be granted. On remand, the State may again seek the death penalty for each offense.")

[3] *Faretta v. California*, 422 U.S. 806 (1975).

[4] Robbery with a firearm-sentenced to thirty (30) years (Florida case); two counts of first-degree murder-two death sentences (Tennessee case). (V1, R8-9).

removed from his case and he wanted to represent himself. (V1, R10, 14). Defendant stated, "Myself - - myself, I can prepare for trial within 120 days." (V1, R13). Defendant wanted discovery materials from Tennessee to which the trial court informed Defendant, "I have no control over that." (V1, R14, 16). The trial court further explained "… you're going to trial only on the discovery that's applicable in this case and this case only." (V1, R15-6).

Defendant was 48 years old and had a 10th grade education. He had not taken any legal courses but had watched a complete criminal trial other than his own and had "the knowledge that I've gained."(V1, R16, 17). Defendant was mentally alert, had no history of mental illness, and was not taking any medications. (V1, R17-8).

The State filed a *Williams*[5] Rule notice. (V1, R19). Due to the enormous amount of discovery, research that was required, expert witnesses, equipment, and depositions that needed to be taken, the State informed the court that Defendant would not have the access needed to effectively represent himself due to extreme limitations for Defendant as a result of his incarceration. (V1, R19-22). The court informed Defendant of the severe limitations that affected Defendant. (V1, R24). Jones was adamant that he would not waive speedy trial rights. (V1, R23). The court informed Defendant that it would "fast track" Jones's case if he did not waive speedy and the court would not be able to "stop the entire system to make

[5] *Williams v. State*, 110 So. 2d 654 (Fla. 1959).

accommodation[s]" for Defendant if he was not ready to proceed to trial. (V1, R25). The court asked Defendant to "re-think it" and scheduled a *Faretta* hearing for the following week. (V1, R26).

At the May 17, 2012, *Faretta* hearing, Defendant requested to represent himself and requested Mr. Moore's dismissal from his case. (V1, R36, 37). Defendant and Moore had discussed the indictment to which Moore advised no grounds existed to move for a dismissal of the indictment. (V1, R38).

Defendant claimed he was being discriminated against at the Brevard County jail by being placed on "suicide watch" for no reason and also claimed he was not granted access to legal materials. He further claimed Mr. Moore was not helping with his alleged discrimination matters. (V1, R38, 53). The court reminded Defendant that his movements were restricted due to incarceration, and, as a result, he would not receiving up-to-date materials. (V1, R40). Further, Mr. Moore was a seasoned, highly-experienced attorney who needed time to go through all of the material in order to present a defense. (V1, R42). Due to the Interstate Agreement of Detainers, the State indicated a trial date had to be set for August 24, 2012. (V1, R44-5).

Mr. Moore had received some discovery material, the *Williams* Rule notice, had spoken with Jones's Tennessee defense attorney, and requested Jones' Tennessee discovery. (V1, R45-6, 47, 55). After conducting a *Faretta* colloquy, the trial court found Defendant was competent, and knowingly, voluntarily, and intelligently, exercised his right to represent himself. Mr. Moore was appointed as stand by counsel. (V1, R69). A trial date as set for July 16, 2012. (V1, R73).

At the June 1, 2012, *Faretta*/Status hearing, stand by counsel Moore alerted the court that a trial date of July 16 might conflict with a first degree trial he was defending the week of July 23. (V1, R79). The court conducted a *Faretta* colloquy. Defendant indicated he would continue to represent himself. (V1, R81-86).

At the July 9, 2012, *Faretta*/Motion hearing, Defendant stated he had filed pre-trial motions and was ready for the July 16 trial. (V1, R101). The court conducted a *Faretta* colloquy at which time Defendant was deemed competent, and knowingly, voluntarily, and intelligently, exercised his right to represent himself. (V1, R102-22). Defendant made a motion to remove Mr. Moore as standby counsel. (V1, R131). The court scheduled a pre-trial motions hearing for July 16 with the trial starting July 17. (V1, R164).

At the July 16, 2012, *Faretta*/Motion hearing, the court conducted a *Faretta* colloquy at which time Defendant was found competent, and knowingly, voluntarily, and intelligently, continued to exercise his right to represent himself.

(V2, R174-78, 183-92, 200). The court indicated its attempt to get other standby counsel was unsuccessful as there were no capital qualified attorneys available. Mr. Moore was also unavailable as standby counsel. Defendant was informed, "you're on your own." (V2, R178-79).

The trial court then conducted a *Williams* Rule hearing. Defendant objected on the grounds that the instant case was different than the other cases. (V2, R200-60, 207). The court found that the crimes were similar but not inextricably intertwined and granted the State's motion. (V2, R253, 262-63).

On the morning of July 17, the court conducted a *Faretta* colloquy and determined Defendant was competent, and knowingly, voluntarily, and intelligently continued to exercise his right to represent himself. (SR, V2, R7-27). Defendant was also advised that standby counsel was not available. (SR, V2, R27).

Defendant again objected to the *Williams* rule evidence and the trial court denied his objection. (SR, V2, R38-9). Jones also filed a motion for discovery to which the State replied that it had provided all available documents/evidence to Defendant. (SR, V2, R39, 50, 52). The proceedings continued to July 18. (SR, V2, R53). After the court conducted a *Faretta* colloquy, Defendant requested the assistance of an attorney and waived speedy trial. The court re-appointed Mr. Moore. (SR, V2, R53, 73, 75, 76). The veniremen were dismissed and the case was set for future docket soundings. (SR, V2, R77, 78).

At the December 11, 2012, status hearing, APD Moore stated that he attempted to meet with Defendant several times but Defendant refused to meet him. (SR, V1, R4). Jones's case was re-assigned to APD Timothy Caudill. (SR, V1, R5).

At the August 2, 2013, status hearing, Defendant again waived his right to counsel and said he was "releasing" APD Caudill and APD Pirolo. Counsel had attempted to meet with him but he refused to come out of his cell. (V2, R274, 275, 300-01). After conducting a *Faretta* colloquy, the court appointed standby counsel and set the trial date for September 23, 2013. (V2, R293-97, 314). APDs Caudill and Pirolo were relieved as trial counsel but Caudill remained as standby counsel. (V2, R315).

At the August 27, 2013, *Faretta*/Motions hearing, the court conducted a *Faretta* colloquy. Defendant elected to represent himself. (V2, R322-38, 360).

B. Trial Proceedings

Jones's trial commenced on September 26, 2013. Jones proceeded *pro se*. On October 8, 2013, the jury found Defendant guilty of first degree murder as charged in the indictment. (V36, R2774). Following the guilty verdict, the trial court conducted a *Faretta* hearing at which time Defendant requested appointment of counsel for the penalty phase. (V36, R2778). APD Timothy Caudill was appointed as counsel. (V36, R2783). The penalty phase began on

October 9, 2013. The jury returned an advisory sentence of death by a unanimous vote of twelve to zero (12-0) for Perez' murder. (V37, R2917). The trial court held a *Spencer*[6] hearing on January 10, 2014, where Defendant presented additional mitigation evidence and the State presented rebuttal evidence. Defendant also spoke on his own behalf. (V4, R473-664). On May 2, 2014, the trial court followed the jury's recommendation and imposed a death sentence for Perez' murder. (V5, R679). Defendant filed a notice of appeal on May 6, 2014. Appellant filed his *Initial Brief* on September 29, 2014. This answer follows.

STATEMENT OF THE FACTS

The Guilt Phase

Family member(s)

William Perez

William Perez[7] is Carlos Perez's father. (V21, R680). Carlos moved back and forth between his mother's home in Pennsylvania and William's home in South Florida before settling with William in July 2003. (V21, R680, 683-84). Carlos was 19-years-old when he moved into William's Wilton Manors, Florida, home. (V21, R685). Carlos had a valid driver's license but did not have a car. (V21, R689-90). He was within walking distance of Dependable Temps, a job placement

[6] *Spencer v. State*, 615 So. 2d 688 (Fla.1993).

[7] For clarity, family members will be referenced by their first names.

agency. (V21, R686, 690). Carlos reported to the agency every morning at 5:00 a.m. as assignments to jobs were on a first-come, first-serve basis. Carlos returned home if he did not get a job assignment for the day. (V21, R687, 688).

William last saw Carlos the night of August 25, 2003. The following day, William brought dinner home during his dinner break at about 5:00 p.m.,[8] but Carlos never came home. (V21, R690, 692-93). William returned to his job and then went home after his shift. (V21, R694). He was concerned when Carlos did not come home. Carlos had a cell phone and typically let William know if he was running late or not coming home for dinner. (V21, R694, 695). William called several of Carlos' friends as well as his cell phone. (V21, R695). When none of Carlos' friends said they had not seen him and Carlos did not answer his phone,[9] William went to the police and reported him missing. (V21, R695-96, 705-06). Due to Carlos' age, however, William was told there was nothing they could do. (V21, R695-96). William called area hospitals and several police departments, to no avail. (V21, R697). He also checked with Carlos' mother to see if she had bought a ticket for Carlos to return to Pennsylvania. The Wilton Manors police eventually filed a missing person report. (V21, R698).

William's family had no ties to the Melbourne area. There was no reason why

[8] William worked at L.A. Fitness in Ft. Lauderdale from 1:00 p.m. to 10:30 p.m. He took his dinner hour between 5:00-6:00 p.m. (V21, R688, 693).

[9] Perez' phone was never located. (V21, R705).

Carlos would have been in a Melbourne motel in August of 2003. (V21, R701-02). On August 27, 2003, William was notified by police that Carlos "had been killed." (V21, R702, 707).

In 2012, William was shown photographs of items found in Jones' Lincoln town car subsequent to Jones' arrest. William identified a Puerto Rican flag as seen in one of the photographs as being to Carlos. (V29, R11695, 1714). William had given the flag to Carlos as a souvenir in 2002. (V29, R1694-95, 1696, 1698). He bought three flags and had given one to each of his three sons. After he saw the photograph of the items from Jones' car, William brought the other two flags to police. (V29, R1697, 1708). All three flags had the same distinctive dye marks. (V29, R1705, 1709). There was "no question" that the flag found in Jones' car belonged to Carlos. (V29, R1718).

Employer

Carol Semus

Carol Semus was the regional sales manager for Dependable Temps in Ft. Lauderdale in 2003. (V24, R971). Perez filed an application for employment with the agency on July 9, 2003. Jones began employment with the agency on August 25, 2002. (V24, R977-78, 978-79). Every person who was looking for work through the agency was required to sign in on a log sheet every day. On August 12-14, 2003, Jones signed the log sheet. Perez signed the log sheet on August 14,

2003. (V24, R980, 981). The sign-in sheet also indicated whether or not the prospective employee had a car. If so, then they were paid extra to drop other employees off at job sites. Jones occasionally indicated that he had a car. (V24, R981-82). Because she strictly worked in the sales division, Semus did not interact with the prospective employees and did not know whether or not they were assigned to jobs. (V24, R985). Semus also did not know which employees were paid to transport others to their respective job sites or what kind of cars the employees drove. (V24, R987, 988).

On August 26, 2003, Perez signed the sign-in sheet. (V24, R983). Jones signed in on September 4, 2003. (V24, R985).

Motel Staff

Ronda Tolivert

Ronda Tolivert was a desk clerk at the Super 8 motel in Melbourne in 2003. (V20, R509, 511). Carlos Perez checked into the motel alone around midday on August 26 and was registered for room 217. (V20, R514-15, 519, 530, 543). Tolivert did not see if Perez arrived in a car or walked in but she recalled he entered the motel from the back side. (V20, R541). He laughed and joked with Tolivert and was not upset or distressed in any way. Perez seemed to be "a normal college student." (V20, R524, 525). There was a fee to activate the phone in the room but Perez did not request to do so. (V20, R525). There was no one else with

Perez. (V20, R530).

At about noon the following day, housekeepers called Tollivert to Perez' room because "the room didn't look right." Lampshades were lying on a table and the comforter was rolled up and placed at the bottom of the bed. (V20, R527, 528). Tolivert immediately called the motel manager and then called 911. (V20, R529).

Tolivert recalled Deborah Williams was a frequent guest who stayed at the motel. Williams preferred to stay in room 223 but stayed in other rooms when that one was not available. (V20, R535, 537, 539).

Ravindra Patel

Ravindra Patel was the motel's general manager in 2003. (V21, R552-53). At about noon on August 26, Patel was working in the parking lot area when he saw a white male get out of a white, mid-sized, four-door, car and walk into the motel toward the lobby. (V21, R556, 575, 581). The car parked in the center of the lot; not in the normal place under the canopy when guests check in. (V21, R557). After the white male returned to the car and got back in, he then got back out of the car along with a black male. (V21, R556, 559, 576-77). The black male was about a foot shorter than the white male. (V21, R562). The two men entered the motel without any luggage. (V21, R560, 566). They both looked young—between 19 to 22 years old; Patel could not see the men's faces. (V21, R578, 580).

Housekeepers notified Patel after they checked on Perez' room. Patel went to

room 217 and saw blood on the bed, suspected a body was covered up with the comforter, and called 911. (V21, R567, 568).

Maria Monterrosa and Fatina Torres[10]

Maria Monterrosas and Fatima Torres were housekeepers at the Motel 8 in 2003. (V21, R586-87, 627). Their co-worker, "Flor," also worked with them but had subsequently returned to her native county after Perez' murder. (V21, R589, 609-10, 618). The housekeepers worked together in a group of four—the three housekeepers and their supervisor. (V21, R607-08, 617, 627, 630-31). They all cleaned the rooms together at the same time. (V21, R636). Bathrooms were thoroughly cleaned after a guest checked out. (V21, R598-600, 601).

On August 27, Flor went into room 217 to use the bathroom before the three maids planned on eating their lunch together in an adjoining room. (V21, R589, 590, 610, 615). Flor discovered Perez dead in room 217 and alerted Monterrosas and Torres because their supervisor was on vacation. (V21, R588-89, 614, 630). Monterrosas and Torres only stepped inside room 217; they did not go in the bathroom. (V21, R590-91, 595, 605, 632-33).

The room was very messy. Lamps were out of place, lampshades were on a table, and Perez' body was underneath the comforter. (V21, R590, 591, 595). There was blood "splashed" on the walls. (V21, R606). The room was not cleaned

[10] Monterrosas and Torres testified via an interpreter. (V21, R585, 627).

by anyone once the motel staff discovered Perez' body. (V21, R600). All three housekeepers were interviewed by police subsequent to Perez' murder. (V21, R619, 622, 642).

Blankets and comforters in each room were not washed after each guest's use. The comforters were only washed when they got "really dirty" and the supervisor decided when it was time to do so. A number of people could sleep in a bed before the comforter was washed. As a result, guests could be exposed to other guests' body fluids. (V21, R603-04, 605, 616, 638). A maximum of three comforters were washed together and were not put back on the same beds after they were washed. (V21, R616, 620-21). The staff could not tell which comforter came from each room after they were washed. As a result, they were switched from room to room. (V21, R621-22). The mattress cover was only occasionally washed. (V21, R640). The sheets were changed when a guest checked out. (V21, R602, 640). Their supervisor was in charge of the laundry duties. (V21, R638-39). The maids wore tennis shoes but the supervisor wore comfort shoes—flip flops. (V21, R610, 611).

Deborah Williams Bello

Bello was called to the stand because her DNA was found on Perez's body. Bellow lived at the Super 8 motel for almost four years and had been living at the motel for about a year and a half before Perez's body was discovered. (V32, R2038). Bello knew everybody at the motel but had never seen or met Perez.

(V32, R2139). Bello knew the housekeepers and tipped them all the time despite the fact that they did a horrible job. (V32, R2040). Bello testified that she had a sexual affair at the motel with Harry Pope but said her husband did not know about it. (V32, R2043-4). Housekeeping moved the comforters from room to room "all the time." They only changed the bedspreads once a month. (V32, R2044). During cross examination, Jones pointed out that Bello's DNA was found on Perez's penis and asked if she had sex with Perez. Bello responded, "He was a child….My kid is 31 years old. Why would I mess with a kid? No." (VR32, R2055).

Law Enforcement

Sergeant Randy Young

Sergeant Randy Young and Officer Sprankle arrived at the Motel 8 at about 12:20 p.m. on August 27, 2003. (V21, R645-46, 661). Perez was found on the bed covered with a comforter. They struggled to unwrap Perez because he was tightly "rolled up" in the comforter. There was blood on the comforter and the headboard. A pillow was over Perez' head. (V21, R647-48, 652). The amount of blood in Perez' hair, head, and on the pillows "was extreme." (V21, R655).

There were no towels, washcloths or personal items in the motel room. (V21, R656). The room looked "staged - - cleaned up" based on Young's long career in law enforcement. (V21, R656). Young and Sprankle secured the crime scene

before detectives and crime scene investigators arrived. (V21, R658).

Officer Scott Dwyer

Officer Scott Dwyer assisted in processing the crime scene at the Super 8 motel. (V23, R819-820, 822). The room was processed during a three-day period. (V23, R903). The motel was known for drug and prostitution activity—'it is not the best hotel in the city." There were many people coming and going leaving hairs, fibers, and DNA in the rooms. The rooms were not cleaned daily. (V23, R827).

Room 217 did not contain any of Perez' personal items. The lampshades were place on a side table and there was a broken floor lamp. All of the towels, washcloths, and pillow cases were missing. The phone cord had been cut and a section of it was missing. (V23, R830, 831, 837, 856, 891). Dwyer opined that the phone cord was consistent with something that could have been used as a ligature. (V23, R857). Perez was found wrapped up in a comforter lying sideways across the bed, face-down into a pillow, with another pillow over his head. (V23, R831-32, 839).

Shoeprints were located in the bathroom. Lifts were obtained[11] and photographs were taken. (V23, R839-40; 841-42). None of the footwear impressions matched the maids, police officers, or the crime scene technicians.

[11] Crime Scene Technician Jason Danielle obtained the lifts. (V23, R851).

(V23, R918-19, 955). There was evidence of an attempt to clean up the crime scene as wipes marks were found on several surface areas and the walls. A smear on the bathroom floor was consistent with someone dragging their foot. (V23, R846). Samples were collected from the sink drain and trap and a section of carpet in the room was obtained, as well. (V23, R888, 889). The bed sheets, blanket, comforter, pillows, and top half of the mattress were collected. (V23, R890-91, 892). Swabs was obtained from the comforter and the mattress top. (V23, R893). Dwyer assisted in vacuuming the room for evidence. (V23, R836).

Hairs were collected from the bed, comforter, bathroom, and the carpet sweepings. (V23, R922). Of all the hairs collected, two were identified. (V23, R923, 954). A hair obtained from the comforter matched the DNA of Harry Pope, a prior guest at the hotel. (V23, R895, 922, 925, 951). A hair collected from the carpet sweepings—the carpeted area where the lampshades were found on a table—contained a mitochondrial match to Jones' DNA. (V23, R904-05, 922-23, 924, 955). Two swabs collected from the comforter contained unidentified semen stains from two different people. (V23, R895-96). No swabs from the comforter or the mattress matched the DNA profiles of Perez or Jones. (V23, R896). 27 latent fingerprints lifts were obtained from room 217. (V23, R949). Latent fingerprints obtained from the window ledge belonged to Howard Williams, a guest who had previously stayed in that room. (V23, R898, 899, 922, 946, 948).

A sexual battery kit was performed on Perez during the autopsy. (V23, R899). A swab obtained from Perez' penis contained the DNA of Deborah Williams—a frequent guest at the motel on many occasions. Williams had also stayed at the motel the day of Perez' murder as well as the day after. (V23, R899-900, 950-51).

Three cigarette butts located in an ashtray in room 217 contained Perez' DNA. (V23, R900-01, 933-34). Two cigarette butts found on the floor and underneath the bed contained unidentified female DNA. Those butts, however, appeared to have been there for some time. (V23, R902, 933-34, 935).

Jones's two cars—a Lincoln Town Car, and a Dodge Aries-K Car, were seized and impounded in 2003 subsequent to Perez' murder. (V23, R858, 863, 864, 868, 952). The Florida Department of Law Enforcement processed the vehicles with the focus being on the Tennessee murders. (V23, R952-53). Car title documents and a Puerto Rico Territory flag were obtained from the Town Car. (V23, R862, 866, 868). Yellow swim trunks were found in the Aries K-car and submitted for DNA testing. (V23, R946-47). Subsequent to processing the cars for the Tennessee case, the cars were also processed for evidence relating to Perez' murder. (V23, R953). A pair of tennis shoes similar to size 10 ½ Men's Nike shoes were found in the town car. (V23, R957). There was no blood on those shoes. (V23, R941-42, 956).

Dwyer obtained two Puerto Rican flags from Perez' father, William, which he bought during a prior trip to Puerto Rico. William had also given a flag to Carlos.

Dwyer compared the flags William gave him to the flag found in Jones' car. (V23, R871, 872). Dwyer obtained buccal swabs from Jones as well as several items of evidence used in Jones' Tennessee trial.[12] (V23, R873, 876). Room 217 was processed from the threshold to the end of the room … "we processed every inch of that room." (V23, R903).

Detective Johnny Lawson

Detective Johnny Lawson investigated Perez' murder. (V24, R989, 991). After the doorway of room 217 was processed, Lawson photographed and vacuumed the room. (V24, R993). Perez' identification was made via his Pennsylvania driver's license which was used to check into the motel under the name Carlos Perez. (V24, R997). A command center was set up in an adjoining room and another was used for interviews. (V24, R1001). Perez's Ft. Lauderdale home was located and both his parents were notified of his death. (V24, R1002). Lawson had no initial clues as to why Perez was found murdered in a motel in Melbourne. (V24, R1003).

Perez moved from Pennsylvania to South Florida in July 2003. (V24, R1004). Lawson was informed that two murdered Tennessee victims' stolen credit card had

[12] Items included Lillian (Wilson) James' credit card (Jones' female victim in the Tennessee); James' ring; a Brevard County traffic citation issued to Tevarus Young; and cash register receipts from Batesville, Mississippi. (V23, R876-77). The court admitted the evidence on the premise that the State's was connecting the evidence to the Tennessee case. (V23, R878-85).

been used on August 24 in the Melbourne area.[13] (V24, R1005, 1050, 1127). As a result, Lawson called law enforcement in Bartlett, Tennessee, and inquired about its ongoing investigation. (V24, R1007). He was subsequently provided with a surveillance video and photographs that had captured images of the person's car who used the stolen credit card—a 1993 Lincoln Town car. (V24, R1008, 1011, 1051).

Detectives learned from Perez' father that Perez had been working out of the Dependable Temps agency in Ft. Lauderdale. (V24, R1013). Early in the morning on September 4, 2003, Lawson and several Melbourne detectives went to the Temp agency in Ft. Lauderdale in an attempt to re-trace Perez's last few days. (V24, R1014-15). Perez' photograph was shown to several workers and people walking by the Temp office. (V24, R1015-16). Perez was described as "a good kid." (V24, R1016). Lawson encountered the Defendant and asked him if he knew Perez to which Jones replied, "I don't know." (V24, R1031-32).

A white, Lincoln Town car was parked in front of the Temp office with the license plate "69 BAM." (V24, R1016-17, 1030). Initial information did not reveal what vehicle that tag was assigned to, only that that license tag was assigned to Jones. (V24, R1033, 1037).

Lawson and his partner returned to the Temp office later in the day on

[13] The James murders occurred on August 22, 2003. (V24, R1058).

September 4 and obtained the VIN from the vehicle. They attempted to contact Jones at his Ft. Lauderdale address. Jones was not home so Lawson left a business card with a local detective's name and requested Jones contact him. (V24, R1033, 1035, 1038). Detectives combed through Dependable Temp records to determine whether or not anyone had suddenly stopped coming in to obtain work. Detectives also continued to maintain contact with Bartlett, Tennessee, Police. (V24, R1040).

State records indicated Jones was issued two traffic citations when he was in Rockledge, Florida, in August 2003. One ticket was issued on August 15 when Jones was driving a Dodge Aries K car with a suspended driver's license. Jones's 17-year-old passenger, Tavarus Young, had a valid license and was allowed to take over the driving. The other citation was issued on August 25 when Jones was driving the Lincoln Town car.[14] (V24, R1042-43, 1044, 1048-49, 1-64-65). Jones gave police identification that indicated his home address was in Ft. Lauderdale. (V24, R1050). When Jones was issued the citation on August 25, Young was arrested at that time while driving the Aries K car due to an outstanding warrant from Bartlett, Tennessee. (V24, R1064-65). Jones owned both the Aries K car and the Lincoln Town car. (V24, R1066-67).

Lawson's investigation revealed that Jones had filed a domestic harassment complaint against his girlfriend with the Bartlett, Tennessee, police department in

[14] FDLE obtained a search warrant for both of Jones's vehicles. (V25, R1164).

July 2003. Jones' address at that time was one mile from the murdered Tennessee victims. (V24, R1051, 1052). Lawson met with a Bartlett detective and together they determined the Tennessee and Florida murders were similar. (V24, R1054). A timeline indicated the Jameses were murdered in Bartlett, Tennessee, on August 22. Jones bought the Lincoln Town car that evening. The James' stolen credit card was used that afternoon and thereafter along the I-10 corridor toward Florida for the next several days. (V24, R1058-62).

Lawson interviewed Tavarus Young in September 2003, subsequent to his August 25 arrest. Young had remained in custody since August 25 and was housed at the Brevard County detention center. (V24, R1064-65). Subsequent to interviewing Young, search warrants were issued for both of Jones' vehicles which were located in South Florida. The vehicles were seized and processed by the Florida Department of Law Enforcement. (V25, R1100). An arrest warrant was issued for Jones as a suspect for the Tennessee murders. (V25, R1103).

Lawson contacted Howard Pope and Deborah Williams after information revealed Pope's hair/DNA was found in room 217 and William's DNA was found on Perez' penis. Pope and Williams admitted to frequently meeting at the motel because they were having an affair. Williams admitted she had stayed in several different rooms. (V25, R1104-09, 1134, 1168-69). The DNA found on Perez was transferred touch DNA. (V25, R1135-36).

On April 27, 2004, Lawson obtained a search warrant, travelled to the Tennessee detention center holding Jones, and obtained hair samples from Jones. (V25, R1109, 1112, 1115). Lawson also participated in an interview with Jones in August of 2003. (V25, R1171). Jones acknowledged that he knew Perez but initially denied having any contact with him. Jones eventually admitted that he and Perez smoked Marijuana and used cocaine together.[15] Jones admitted that Perez had been inside his Lincoln town car.[16] (V25, R1171-72, 1173-74, 1177).[17]

Agent Carlos Reyes

Agent Carlos Reyes, BCSO homicide investigator, performed a traffic stop on Jones' Aries-K car on August 25, 2003. Although he does not perform a traffic stop for every traffic infraction, he does so for those that endanger the public. (V28, R1484-85). Jones' car caught his attention because it advanced toward him at a high rate of speed, tailgated other vehicles, went lane to lane without signaling, and followed others too closely in violation of State statute. (V28, R1486, 1487).

[15] The toxicology report indicated there was no cocaine in Perez' system. (V22, R800; V25, R1178).

[16] Evidence showed the Lincoln Town car was bought on August 22, had repair work done in Ft. Lauderdale on August 24, and was in Brevard County on August 25 of 2003. Accordingly, Perez could have only been inside the car on August 26, 2003, sometime after 5:00 a.m. (V25, R1176-77).

[17] Jones's police interview was recorded and played for the jury. During his interview, Jones also admitted that he only wore Nike shoes. (V31, R1957). Jones also admitted that he known as "Bam" by his friends and that his license plate "69BAM" had significance because Jones is "a freak" sexually. (V30, R1830-31).

Reyes alerted the call center, pulled over Jones' car, and approached the driver. (V28, R1488). The driver, Tavarus Young, stated that he was following his stepfather in a Lincoln Town car and was attempting to catch up to him. (V28, R1489). However, a few minutes later, Jones drove up in the Lincoln town car and pulled up behind Reyes' vehicle, which "for any officer, that is a dangerous situation … he's stopping for what reason." Reyes called for backup. (V28, R1489).

Reyes approached the passenger side of the Aries. Young told Reyes that Jones had paid him to drive the Aries car to Ft. Lauderdale because Jones had just purchased the Lincoln. (V28, R1490-91). Jones attempted to get out of the Lincoln but Reyes ordered him to get back inside. Jones gave his identification to Reyes upon request. He also gave Reyes the purchase invoice for the Lincoln. (V28, R1490-91, 1492). Reyes told Jones to leave the site and to return later. He left his business card on the Aries window but Jones did not return. (V28, R1493). He left his card for Jones to call him because Reyes took the Aries' car keys after Young was arrested. (V28, R1493).

Reyes suspected there was "something bad" going on when Young did not give him his correct name. Reyes told him that Jones admitted he was not Young's stepfather. At that point, Young gave his real name. Reyes' backup officer issued Young a traffic citation. (V28, R1494, 1495). After Reyes learned of a warrant out

of Broward County for Young, he arrested him. (V28, R1497). Reyes searched the passenger compartment of the Aries but did not find anything that raised his suspicions. (V28, R1500). Young was initially held in the Brevard County jail and eventually transferred to the Broward County jail. (V28, R1497).

Agent Tom Davis

Agent Tom Davis was a special agent profiler for the Florida Department of Law Enforcement "FDLE" in 2003. (V28, R1501-02). Davis assisted in obtaining search warrants for Jones' vehicles. (V28, R1501-04). Pursuant to the warrants, both vehicles were flatbed transported to the FDLE crime lab in Orlando for processing. (V28, R1506). Upon cross examination, Davis recalled seeing an inventory of the vehicles which indicated that a firearm, a lot of dirty clothes, a bandanna and a Puerto Rican flag was found among other things which he couldn't recall. (V28, R1508)

Davis was later recalled to the witness stand to proffer his findings and opinions as a criminal profiler regarding the three murder scenes involved in Jones's case. Davis explained that profilers study three areas when investigating multi-jurisdictional crime scenes, modus operandi "MO", personalization, and staging. (V32, R2193) MO, or selection of a type of victim, is only dependable to a slight degree because MO's evolve by need or circumstance. (V32, R2193-4). Signature, or the way a murder is carried out, rarely changes because there are

certain needs serial offenders have, psychologically in their makeup, which requires them to go beyond just committing the crime to fulfill those needs. (V32, R2195-6). Staging is the way the offender changes the crime scene to send the police on a wild goose chase. (V32, R2195).

Davis found that the MO of the Gross Perez murders was "quite common" while the MO changed in the James murders because personal gain was the primary motive. (V33, R2206) The reason Mr. James was not disrobed and left in a degrading position was because the offender had an urgency to exit to avoid detection. (V33, R2207). However, the fact that an offender goes beyond what is necessary to carry out a crime results in signature events. (V33, R2201). As an example, Davis cited Jones's, use of multiple ligatures and multiple cuttings and throat slashing of the elderly Mr. James who recently had pacemaker surgery. This was clearly "overkill" in light of fact that Jones was in possession of a loaded firearm. (V33, R2202-3). All victims had, to some extent, unnecessary ligatures. (V33, R2214). Further the unnecessary multiple superficial cuts on all of the victims, known as "pickery," only served to give psychological gratification and was also part of the offenders signature. (V33, R2218-9). Further, the positioning of the bodies post mortem was done to degrade the decedents and shock anyone who discovered the bodies. Most victims were left stripped, face down with buttocks up in the air. Perez was wrapped in a comforter so the maids wouldn't

notice when they first walked in, but would be shocked upon discovering the body. (V33, R2208, 2215). Davis opined that the signature of these murders was almost "textbook" and that the same person committed all four murders. (V33, R2220).

Agent Vicky Bellino

Agent Vicky Bellino, crime lab analyst, FDLE, processed evidence for possible DNA. (V28, R1510). She examined the Puerto Rican flag and a Nautica swim suit found in Jones' car but was unable to obtain a DNA profile on these items. (V28, R1511, 1512, 1513-14).

Agent Patti Orta

Agent Patti Orta, crime lab analyst, FDLE, photographed Jones' cars and collected evidence. (V28, R1515-16, 1517). Evidence collected from both cars included clothing, a handgun, a knife, work boots, a pair of Nike tennis shoes, a ring, a dictionary, photos, miscellaneous papers, disposable cameras, and a checkbook. (V28, R1523-54, 1563). The license tag for the Lincoln town car was 69BAM. (V28, R1543). In processing the Town Car, Orta got a positive reaction for blood but could not say whether or not it was human or animal. (V28, R1560-61).

Special Agent Craig Henderson

Special Agent Craig Henderson was a supervisor in the forensics lab of the FBI in 2003. (V29, R1577-78). He conducted hair and debris analyses on evidence

collected in this case which included debris from the victim's upper right hand; debris from the victim's lower and pubic abdominal region; vacuumed debris; and debris from various parts of the motel room where the victim had been found. (V29, R1584, 1588, 1589, 1590-91, 1592). Hair evidence was compared to the known samples of both Jones and Perez. (V29, R1590). Two Negroid pubic hairs found in the vacuumed debris from the motel carpet exhibited the same microscopic characteristics of hairs collected from Jones. (V29, R1592, 1595-96, 1616). In addition, one of the two hairs was also submitted for mitochondrial DNA analysis. (V29, R1592, 1595, 1604-05). On cross examination, Henderson stated that he had previously testified about the hair analysis results in Jones' Tennessee trial. (V29, R1614-15).

Agent Catherine Theisen

Agent Catherine Theisen, currently the Chief of the Quality Assurance and Training unit for the FBI, was formerly a mitochondrial DNA[18] analyst and she examined the hair evidence in this case. (V29, R1624, 1625). Mitochondrial DNA testing is used when nuclear DNA testing might not yield enough information for an identification. (V29, R1632).

Theisen examined one of the hairs found in the vacuumed debris from the motel room and determined there was a mitochondrial DNA match to Jones'

[18] Mitrochondrial DNA is only maternally inherited. (V29, R1633).

known buccal sample. (V29, R1637, 1638, 1640). In Theisen's opinion, there was less than 1 % chance of the world's population that the DNA sequence found in the hair sample from the vacuumed debris and the DNA sequence found in Jones' buccal sample belonged to someone else. (V29, R1640-41).

Theisen also testified during cross examination that she had previously testified about the mitochondrial DNA hair analysis results in Jones' Tennessee trial. (V29, R1642).

Analyst Emily Strickland

Emily Strickland is formerly an FDLE latent print and footwear examiner. She examined a pair of mens' Nike tennis shoes that were submitted as evidence in the Tennessee murders and compared the shoes to evidence collected in Perez' murder which included several 35-millimeter photographs and lifts obtained from the floor of the motel floor/crime scene. (V29, R1644, 1648, 1649, 1651-52, 1660). In Strickland's opinion, the footwear impressions left on the motel floor/crime scene were most likely made by the Nike shoes found in Jones's vehicle. (V29, R1661-63, 1668, 1671-1677).

Analyst Christina Sanders

Sanders is a trace evidence analyst for the Florida Department of Law Enforcement. (V32, R2008). Sanders scientifically compared the flag found in the trunk of Jones's vehicle to the two flags law enforcement obtained from Perez's

father and determined that all three flags were identical and could be linked back to the same source. (V32, R2013). The flags had no manufacturer's tag; however the dimensions of the flags, including the exact measurements of the star, blue triangle, and stripes on the flags were identical. (V32, R2015). Sanders analyzed the construction of the flags, focusing on the yarn and sewing threads used and microscopically analyzed the fibers, noting that all had the same amount and distribution of a de-lustering additive. (V32, R2017-8). Sanders also subjected the flags to chemical tests and determined that the fibers all behaved the same way. Dye concentrations in the cotton fibers of the flags were also consistent. (V32, R2018).

Medical Examiner

Dr. Sajid Qaisar

Dr. Sajid Qaiser, medical examiner, performed the autopsy on Perez[19] on August 28, 2003. (V22, R728, 732). There were eight separate incised wounds to Perez' neck, some of which were superficial but three of which were "significant." The wounds ranged from one-quarter of an inch to three inches in length. (V22, R739, 760, 763). Qaiser could not testify the order in which the "multiple" wounds

[19] Based upon liver mortis, Qaiser opined that Perez had been deceased a few hours before his body was found although there are "so many factors and the morphology of the dead person" to consider. (V22, R797, 803). A sample of Perez' blood was taken for DNA analysis. Several pubic hairs were collected from Perez' body surface and swabs were obtained from body cavities. (V22, R777, 788-89, 798). There was evidence of marijuana in his system. (V22, R800).

were inflicted but, "logically the larger one is the last one. The larger and deeper one … would end the life of the person." (V22, R740, 763-64, 765). This larger slice severed veins and arteries in Perez' neck. The larynx and multiple skeletal muscles were severed. (V22, R746, 767). It takes some force to actually sever the larynx. (V22, R768). The body of four cervical vertebrae was severed, as well. (V22, R769, 770).

There was a linear ligature wound around Perez' neck. Two of the incised wounds were above the ligature mark. (V22, R760-61). These incised wounds were superficial to slightly deep. In Qaiser's opinion, "they … cause the bleeding and pain." (V22, R761). The ligature wound pattern was typical of a homicidal nature—"circumferentially around the neck." It measured a quarter of an inch, was red, and completely circled Perez' neck. (V22, R763, 764). Neck ligatures in suicides have a different pattern. (V22, R763).). In Qaiser's opinion, petechiae in Perez' eyes indicated the tightness on the neck ligature was tightened and released several times. (V22, R771-72, 773). Qaiser explained the medical phenomenon, "auto erotic phenomenon or auto eroticism" occurs when a person applies a ligature to oneself and then lets it go. In Perez's case, however, this type of "sexual gratification" was a "sadism type of thing." (V22, R773, 791).

There were ligature marks around Perez' wrists and ankles along with remnants of adhesive residue from some type of tape. (V22, R740, 747, 795-96).

At least two loops of a ligature were wrapped around Perez' ankles. (V22, R750). There were contusions on his ankles and forearms near the ligature marks. (V22, R752-54, 755). The contusions formed, however, when the ligatures were removed in a hurried manner after Perez' death. There were no ligatures found on Perez' body when he was discovered. (V22, R757). The depressions indicated ligatures had been applied for a prolonged period of time "with severe severity" due to the lesions on Perez' body surface. The pattern and color indicated the ligatures had been applied before Perez' death. (V22, R741). The large slice incision to Perez's neck caused labored breathing. As a result, Perez sucked blood into his lungs. (V22, R745, 746).

Perez' anus was dilated and filled with secretion "most likely" due to manual sexual abuse, penial insertion, or by finger insertion. "Anything is possible."[20] (V22, R747, 749, 781). In Qaiser's opinion, the dilation was not cause by the dying act—something was inserted. (V22, R747-48, 775). In addition, there was a significant amount of a mucus-like substance inside the rectal area. The anal glandular structure normally secretes a small amount of mucus for lubrication and assist in normal bodily functions. However, "excessive manipulation" caused an excessive amount to be present in Perez' inner anal canal, which, in Qaiser's

[20] Qaiser did not opine whether or not Perez had consensual or non-consensual sex. Qaiser said the number of people that he knew that consent to having their hands and feet tied up, throats cut all the way through to the vertebrae, and strangled on and off several times is "zero." (V22, R807-08).

opinion, was not caused by the act of dying. (V22, R748, 774-75).

Based on Qaiser's extensive education, training and experience, he opined the following:

> "… on the basis of my studies, my training, my experience I have that conclusion that in the shortest scenario of what happened in this case was, the body was laid in the face down position, the hands were tied along the wrists, the legs were tied along the ankles, then the sexual manuals were done on the body. And then to enhance the sexual excitement the ligature was applied which was manipulated and tightened and released multiple times. And then after that when the more excitement came up to the perpetrator, the perpetrator inflicted multiple incised wounds initially with the release of the small blood and pain and suffering to the victim. Then it went on deeper and deeper cuts and finally into the slashing of the neck with the injury to the windpipe, cutting of the windpipe, in depth and the cutting of vertebral bone and cut of the internal and also a cut of the multiple muscles in the neck, including the thick muscles called the sternocleidomastoid and all the strap muscles between the hyoid bone and the sternhyoid."

(V22, R779-80).

It was possible that any DNA previously deposited on the bedding where Perez died could have transferred onto him. (V22, R780). Nonetheless, Qaiser opined the acts perpetrated against Perez were sadistic acts; Perez' facial expression at the time of death was one of "pain or suffering." (V22, R776, 780). In Qaiser's opinion, the cause of death was ligation strangulation and incised wounds of the neck. The manner of death was a homicide. (V22, R734, 735).

The Bartlett, Tennessee Murders

Family member(s)

Margaret Coleman

Margaret Coleman was Lillian (Wilson) James' daughter and Clarence's step-daughter. (V26, R1287-88, 1289). Lillian was 62 years old when she was murdered. (V26, R1288). Coleman was very familiar with her mother's signature and identified it on Lillian's stolen credit card. (V23, R886; V26, R1288, State Exh. 88). On August 23, 2003, Coleman called the police to her parents' home after discovering their bodies. (V26, R1290).

Law Enforcement

Captain Tina Schaber

Captain Tina Schaber, Bartlett Tennessee police department, supervised the investigation of the August 22, 2003, murders of Bartlett residents, Lillian and Clarence James. (V26, R1197-99, 1215-16). Everyone in town knew Clarence James. It was well-known that he sat outside daily and wave to people as they went by his home. (V26, R1205-06). Jones lived in an apartment complex near the James residence. (V26, R1207).

Schaber conducted an initial walk-through the James residence after being notified of their murders. The house had been thoroughly ransacked. (V26, R1209). Closets and cabinets had been thoroughly rummaged through. Linens were thrown on the floor; closet and cabinet doors were left opened. (V26, R1209). Several ladies' purses had been searched through and items were left scattered.

(V26, R1210, 1211). Lillian James was found in the master bedroom while Clarence James was found in the laundry room. (V26, R1211-12). Clarence had marks on his arms that appeared to be from being bound. (V26, R1213). Stains in the bathroom indicated someone had attempted to wash off blood. 9V26, R1214). After the medical examiner was contacted, Schaber and other detectives processed the crime scene and investigated the murders. (V26, R1215, 1228).

Credit card statements found in the James residence led to the discovery of the James' stolen credit card. (V26, R1218, 1230-31).

Lay Witnesses

Clay Barnett

Clay Barnett, investigations manager for First Tennessee Bank in Memphis, Tennessee, investigating the August 2003 transactions of Lillian James' stolen credit card. (V26, R1276-77, 1279). Records indicated the card was used to purchase fuel several times on August 22, 2003, at 7:56 p.m., 11:41 p.m., and on August 23, 2003, at 2:21 a.m., in Mississippi. The card was next used on August 24, 2003, at 8:12 a.m., in Melbourne, Florida. (V26, R1279-85).[21]

Co-Defendant-Bartlett, Tennessee Murders

[21] The specific locations where the stolen card was used were Madison, Mississippi; Gulfport, Mississippi; and Melbourne, Florida. (V26, R1292).

Tavarus Young[22]

Co-Defendant Tavarus Young was unable to testify at Jones' Florida trial due to mental inability. (V26, R1294-95, 1296). As a result, the trial transcript containing Young's testimony from Jones' Tennessee murder trial was read in to the record by Assistant State Attorney Ray Shackleford. (V26, R1296, 1308-10).

Tavarus Young, 26 years old, had completed eleventh grade, and was incarcerated at the Shelby County Detention Center. His attorney was present while he testified at Jones' Tennessee trial. (V26, R1310-11).

Young was living on and off with a girlfriend in Hollywood, Florida, in August 2003. After they argued, Young was homeless for a few days and sleeping in a park in the Ft. Lauderdale area. He met Jones shortly thereafter. (V26, R1312; V27, R1393-94). Young was sleeping in a park, woke up one morning, and Jones "was standing in front of me." Jones offered Young money for sex. "He wanted me to give him oral sex for $20." (V26, R1313, 1314; V27, R1396). Young wanted the money and told Jones, "yeah." Jones asked Young if he was hungry so they went to a McDonald's. Jones drove them in his Dodge Aries-K car. (V26, R1315-16; V27, R1438-39).

Jones then drove them to a female's house where Jones made a phone call.

[22] Tavarus Young entered a plea to the James murders with the agreement to testify against Jones. (V26, R1294). At the time of Jones' Florida trial, Young was incarcerated in a Tennessee prison facility that caters to defendants with severe mental health issues. (V26, R1296).

They then drove to a pawn shop where Jones pawned a necklace. Jones drove to a different pawn shop and pawned a ring. Jones explained that he needed the money to pay for tickets. They drove to a Miami courthouse where Jones paid for the tickets. (V26, R1316-17). While at the courthouse, the car ran out of gas. (V26, R1317). While Young remained with the car, Jones took a gas can out of the trunk and walked to a nearby gas station. After returning and filling the car with some gas, Jones got more gas at the gas station before droving both of them to a warehouse. (V26, R1318; V27, R1397). After Young performed oral sex on Jones at the warehouse, Young argued with Jones about payment until Jones paid him $20. (V26, R1319; V27, R1397-98).

Young performed oral sex because he needed money. (V26, R1319). Jones asked Young, "do you like girls?" After Young responded that he did, Jones said he knew "some girls in Daytona." Although Young thought it was too far to drive, Jones said "it ain't nothing … but a couple hours." (V26, R1319-20). Young had nowhere else to be and rode with Jones. (V26, R1320; V27, R1398).

Jones drove Young to Young's grandmother's house in Boca Raton to get some clean clothes. (V26, R1320). They drove to Daytona and met up with two females, Toosie and Tawana. Tawana's two children were at the residence, as well. (V26, R1321). The adults talked and drank a little. Young drank, smoked marijuana, and spent the night with Tawana. Jones had left with Toosie. (V26,

R1321-22; V27, R1400, 1404). Jones returned the following morning with Toosie but they were arguing. Jones stated, "I'm ready to go." (V26, R1322; V27, R1401). Young went with Jones because he was his only means of getting back to where his family lived. (V26, R1323). Jones, however, drove to Tennessee. (V26, R1324-25; V27, R1405). Although Young tried to talk to Jones, Jones would not respond. (V27, R1412).

Jones paid for gas along the way. They drove all day and night and eventually stopped at a gas station that contained a Burger King. (V26, R1325-26; V27, R1407). Jones ate and then drove them to an apartment complex. Although Jones parked near the complex, he got out of the car and walked away from the complex toward a nearby house. Young followed him. Young asked Jones why he had parked by the apartment complex but was walking in the other direction. Jones said, "Why you asking so many questions?" So Young stopped asking questions and followed Jones to a nearby house. (V26, R1329; V27, R1418).

Young and Jones arrived at a home where an old man was sitting out front. (V26, R1331). Jones said, "Hey Pops, how you doing." The older man stated that he had just gotten out of the hospital after having a pacemaker put in and was waiting outside for a lawn serviceman. Young offered to cut the grass but the older man said no. However, he told Young that he could bring the lawnmower into his backyard. (V26, R1332). Young took the mower into the backyard and put it in a

shed. He drank some water from the hose, returned to the garage area where Jones and the older man had been, but no one was there. (V26, R1332, 1333; V27, R1419).

Young knocked several times on the front door. (V26, R1333-34). When no one answered, he entered the home and heard a television on in the background. Jones came around a corner holding rags and a rope that "had blood on it." Young followed Jones to see what he was doing. (V26, R1334; V27, R1419). He did not leave "because I didn't really know what was going on." (v27, R1420). Young saw Lillian James laying on the floor. Jones asked her, "Old lady, do you know what time it is?" Jones took the rope and tied Lillian's hands behind her back. Jones asked Lillian where her purse was. She told Jones it was in the other room. (V26, R1334).

Jones told Young to sit in a chair near Lillian. Lillian asked Young, "are you going to kill me?" Young responded that Jones had said Mr. and Mrs. James were his relatives but Lillian said they were not. (V26, R1335; V27, R1421-22). Jones returned with Lillian's purse. Jones told Young to get out of the chair then Jones dumped the contents of Lillian's purse onto the chair. Lillian claimed her son was coming by soon to which Jones replied, "And if he come, he is going to get the same thing you are going to get." (V26, R1335; V27, R1423).

Jones picked Lillian up off the floor and shoved her into Young to move

Young out of the way. Jones threw Lillian into another room where he proceeded to put the rope around her neck. Jones "puts his foot on the back of the neck, and then he was strangling the old lady." Jones took a knife out of his side area and cut Lillian's neck. The knife was a hook-bladed knife. (V26, R1336, 1346). Young saw Jones cut her several times. (V26, R1337). Young asked Jones why he killed Lillian to which he replied, "she seen my face." Young then realized the elderly couple was not related to Jones. (V26, R1337).

Jones went into the kitchen, rummaged through the cabinets, and returned with a plastic bag. Jones told Young to hold the bag while Jones removed the rope from Lillian, put it in the bag, along with the rags. Jones told Young to follow him to the laundry room where Young saw Clarence James' tied-up, dead body. (V26, R1337-38). Jones removed a rope from Clarence, put it in the plastic bag and went in to the bathroom. Young heard the water running into the bag. Jones also put the contents of Lillian's purse in the plastic bag. Young followed Jones around the James' home. (V26, R1338, 1339). Young saw Jones remove rings from Lillian's fingers and put them in the bag. (V26, R1339-40). They exited the house through the door that Young had entered, got into Jones' car, and left. (V26, R1340).

Jones drove to a nearby gas station. Jones removed a billfold from the plastic bag that he had put in the backseat. Jones removed a credit card and paid for the gas with the card. Jones took a receipt from the gas pump, threw it away, and got

back into the driver's seat. (V26, R1340, 1341-42). The knife was in the center console. (V26, R1346). Jones told Young, "This knife been with me a long time." (V26, R1347). Jones told Young to touch the knife and told him to "swear to me you won't tell nobody." Young promised he would not tell anyone anything. Jones threatened that he would kill Young and cut off his penis if he ever told anyone. (V26, R1347). Jones threw billfold papers, Lillian's credit cards, identification cards, and the bloody ropes out the window as they drove along the highway. (V27, R1470, 1472). Young did not recall what Jones did with the bloody towels. (V27, R1472). They drove to a nearby mall where the two men went into a Footlocker store. Jones purchased shoes for the two of them and clothes at a J.C. Penny's store. (V26, R1343, 1344, 1345). They changed clothes in the car. (V26, R1349-50). Jones then drove to a car dealership. (V26, R1346, 1348).

Jones bought another car at the dealership—a Lincoln Town car. (V26, R1348, 1350, 1352). Jones told Young to follow him in the Dodge Aries-K car while he drove the Lincoln town car. (V26, R1352). They stopped at a store and bought screws for a license tag. Jones moved a tag from the truck of the Aries and screws the tag into the Lincoln. (V26, R1353, 1354). They drove off, stopping for gas at several places. Jones paid at the gas pump with a credit card. (V26, R1354). Young continued to following Jones to a rest stop on the highway. (V26, R1355). After getting some food, Jones locked the Doors to the Aries. After Young and

Jones both got into the Lincoln, Jones "forced hisself on me" and anally assaulted Young. (V26, R1355-56; V27, R1439).

Young and Jones left the rest stop and each drove a car back to Toosie and Tawana's home. (V27, R1364). Young started using drugs while Jones and Toosie left. (V27, R1364). They left after Jones returned. (V27, R1365). Young continued to follow Jones while driving the Aries-K car and Jones drove the Lincoln. (v27, R1366). Young eventually gathered the courage to get away. (V27, R1366, 1385). He started speeding and was eventually pulled over. Jones pulled up behind the police officer and asked what was going on. (V27, R1366-67, 1368, 1380). The officer learned that Young had an outstanding warrant for a misdemeanor offense and arrested him. (V27, R1369, 1379, 1381, 1424). Young had Lillian James's rings on his fingers upon arrest as Jones had given them to him. (V27, R1369, 1382, 1453). Young was eventually transported to the Ft. Lauderdale jail where he was questioned by police. (V27, R1370). Initially Young lied but eventually he told police what Jones had done. (V27, R1370, 1371-72, 1425, 1435-36).

Medical Examiner

Dr. O'Brian Smith

Dr. O'Brian Smith, medical examiner, reported to the James residence home on August 23, 2003. He observed the position of the bodies and their respective locations within the home. (V26, R1233, 1235). The bodies were transported to the

forensic center where Smith performed their autopsies. (V26, R1232-33, 1235-36).

The victims' bodies were photographed prior to their autopsies. (V26, R1239, 1241). Mr. and Mrs. James died of sharp force trauma and blunt force trauma—especially on Clarence's neck which was fractured. (V26, R1242). Both victims had sharp force injuries to the extremities and anterior surfaces—head, neck, chest, face, hands, arms, and legs. (V26, R1243). There were linear, ligature marks on both victims' necks. (V26, R1243-44, 1247). There was a severe incised wound to Lillian's neck, several superficial incised wounds under her chin, and blunt force trauma to both her eyes. (V26, R1245, 1246, 1248-49, 1250, 1251).

Lillian James had a compression on her left hand ringer finger as well as an avulsion, "a heavy scrape" on the middle knuckle. In Smith's opinion, a ring had been forcibly removed from Lillian's finger. (V26, R1253-54, 1255-56, 1260).

Clarence James had bruising on his forearm which occurred before death. He had a postmortem incised wound on his left arm. In Smith's opinion, this wound was consistent with a sharp object removing some type of ligature. (V26, R1257, 1258). There was a massive incision wound on Clarence's neck. Smith opined that the wound was made from the left to the right across his neck. His neck was also fractured. (V26, R1258-59, 1270-71). In Smith's opinion, the manner of death for both victims was homicide. (V26, R1237).

The Keith Gross Murder

Brandy Collins

Collins is the mother of Jones' child and is Jones's former fiancée. Collins met Gross through Jones and had been to Gross's Ft. Lauderdale apartment with Jones about five times. (V33, R2264-5). Jones met Gross while serving time in jail for battering Collins. (V33, R2266). Jones became upset with Gross because Gross owed Jones $1,600.00 for household items Gross purchased from Jones. (V33, R2267). Jones told Collins on multiple occasions, "That cracker going to make me kill him if he don't give me my money." (V33, R 2268). Jones told Collins how to kill a person saying "You got to make sure you cut the throat front and back, because it only takes a second for them to call 911." (V33, R2269). During the weekend before the Monday when Gross's body was found, Jones came to Collins' bedroom window around 10p.m. and asked Collins to bring Jones a shirt. Jones had blood on his shirt. When asked about the blood, Jones told Collins that something happened over at Keith's house. (V33, R 2271-2). Jones also told Collins he had to get rid of one of her blankets, which he kept in his car, because it had blood on it. Jones also said he had to wash his car. (V33, R 2274). Jones came back to Collins house around midnight and put his knife under her mattress. Jones kept a knife and a gun. (V33, R 2276). Jones slept restlessly and missed work the next morning to watch the news coverage of the Gross murder. Upon

watching, Jones said, "I told somebody I was going to kill that cracker. That's what he get." (V33, R 2277). After the murder was discovered, Jones returned to Gross's apartment to recover the items he had sold to Gross but Jones could not get inside the apartment. (V33, R 2279).

Det. Mark Shotwell

Shotwell is a detective for the Ft. Lauderdale police department who was called to investigate the murder of Keith Gross. (V32, R 2057). Shotwell found no signs of forced entry which indicated that Gross knew the perpetrator and granted him entry into Gross's home. (V32, R2061). There were no signs of a struggle, no signs of ransacking. (V32, R2063). Gross's body was found with his wrists and ankles bound with the ankles bound loose enough to allow the legs to be spread. (V32, R2066). There were indications that the body had been moved around, a pillow was placed under the victim's head and a blue sheet partially covered the upper body and neck. (V32, R2066-7). The injuries were "devastating." Savage cutting wounds, although on multiple sides of the neck, were primarily to the front and to the left side. (V32, R2070). Shotwell discovered Jones's name and phone number on Gross's dresser and in his kitchen. (V32, R2073). Shotwell interviewed Jones who admitted that he sold Gross a T.V. and that Gross still owed him money for it. Jones also told Shotwell that he saw the news coverage of the murder and stopped by Gross's apartment while the scene was still taped up and secure. (V32,

R 2074-5). Jones remains the primary suspect of Gross's murder. (V32, R2075).

Det. Juan Cabrera

Cabrera is a detective for the Ft. Lauderdale police department who assisted in processing the murder scene at Gross's apartment. Cabrera found four bloody foot/toe prints and a pair of bloody socks that appeared to be turned inside out. (V32, R2106-10). Diluted blood was found on the water faucets and in the sink in the kitchen, showing signs of an attempt to cleanup. (V32, R2112).

Det. Thomas Hill

Hill is a detective with the Broward County Sheriff's office who is an expert in blood stain pattern analysis, footwear comparison, and digital imaging. (V32, R2117). Hill assisted Cabrera in analyzing the print evidence found in Gross's apartment. Hill determined that the foot/toe prints were made by someone wearing socks that only partially stepped in blood. The socks were taken off and bare sole impressions were left behind. (V32, R2127). Ridge detail was only able to be recovered on the linoleum flooring in the kitchen. (V32, R2123). The flooring was removed and submitted for processing.

Alice Benitez

Benitez is a latent print examiner for the Ft. Lauderdale police department. (V32, R2135). Benitez compared the prints found at the murder scene with known footprints taken of Jones on September 18, 2003. (V32, R2139). Benitez

conducted an extensive ridge detail analysis and identified the left toe of Jones to be the contributor to the bloody latent prints found at the scene of Gross's murder. (V32, R2155).

Dr. Craig Mallak

Mallak is the chief medical examiner for Broward County. (V32, R2084). Mallak reviewed Dr. Perper's autopsy report. Dr. Perper was the medical examiner for Broward County in 2002. (V32, R2086). Gross's cause of death was homicide by cutting or incise wounds to the neck. (V32, R2087). Gross also suffered a subarachnoid hemorrhages and conjunctive hemorrhages, which can be caused by ligature strangulation. (V32, R2091-92). Gross also suffered severe lacerations of the rectum and anus, likely caused by penetration by an object. (V32, R2093-94). Mallak was unable to determine an exact number of incise wounds to the neck, but "there were numerous wounds, some of them intersected and cross lapped." (V32, R2097). Some cuts were deep enough to chip or cut into cervical vertebrae. (V32, R2098). Petechial hemorrhages indicated Gross suffered changes in pressure from repeat strangulation and bruising was discovered beneath the areas where bindings were found. (V32, R2099-2100).

Penalty Phase

The trial court appointed assistant public defender Caudill to the case at the conclusion of the guilt phase of trial, however, at the onset of Jones's penalty

phase proceedings, Jones refused to have anything to do with any attorney the public defender's office. (R37, V2797). In response, the State asked Caudill to advise the Court and Jones about the results of Caudill's mitigation investigation and advise as to Caudill's plan for presenting mitigation to the jury. Caudill stated that his investigation led him to believe there "are mental health issues with Mr. Jones and/or organic brain dysfunction with him." (V37, R2805). Caudill retained the services of forensic psychiatrist Dr. Danzinger to evaluate Jones, but believed Jones would not cooperate with the evaluation. *Id.* Caudill also explained how he planned to find witnesses who could let the jury "know about the Defendant and how he got to the point where he is." (V37, R2806-7) Caudill had contacted several of Jones' family members and Caudill believed he would find even more people who were willing to cooperate, testify or provide additional information to Dr. Danzinger. (V37, R2809-10). Caudill believed Jones was abused and subject to torture as a child. Caudill also discovered that Jones was hit in the head with a hammer while incarcerated, but Caudill was unable to obtain records of such because Jones' prison records were destroyed seven years after his release. (V37, R2811). Had Jones cooperated with Caudill, Caudill would also have sought a brain scan. *Id.*

After Caudill described how he would investigate and present mitigation on Jones' behalf, the trial court made the following inquiry:

THE COURT: Mr. Jones, you heard Mr. Caudill go into quite detail what he thinks ought to be done in this case. What are your thoughts about that?

THE DEFENDANT: Mr. Caudill helped violate constitutional rights and I don't want to have nothing to do with him.

THE COURT: Okay. So everything that Mr. Caudill had advised that he could investigate regarding the issues which he presented would be gathered from family members, you don't want him to present? Is that what I am hearing?

THE DEFENDANT: I am waiving. I don't want nothing to do with him.

. . .

THE COURT: . . . it sounds like you have a hardened view that you do not want Mr. Caudill to represent you or to present anything to the jury? Is that what I am hearing?

THE DEFENDANT: Yes, sir.

THE COURT: I am sorry to hear that, sir. Because I think Mr. Caudill – the limited time that he had with you, he did an anomalous job, that means extraordinary job, in my mind. . . So what do you want me to do, sir? Do you want me to go forward with the jury this morning?

THE DEFENDANT: I want to continue. Yes, sir.

THE COURT: But you know you are not going to have any mitigation to present?

THE DEFENDANT: It is what it is.

(V37, R2814-6) The trial court than made yet another effort to convince Jones to accept Mr. Caudill's representation, pointing out the Mr. Caudill "is trying to make a difference," however Jones would not reconsider his position. (V37, R2816-17)

Caudill renewed his request to be appointed, over Jones' objection, to investigate and present mitigation to the jury. (V37, R2828-33). The Court then decided to appoint Caudill to present mitigation at the *Spencer* hearing but otherwise decided to "defer to what [Jones] want[ed]" by proceeding with the penalty phase with Jones appearing *pro se*. (V37, R2833-34).

The State called William Perez to testify regarding victim impact and called Dr. Qaiser to establish facts necessary to establish HAC and CCP. (V37, R2861, 2877). Jones did not call witnesses, present evidence, or make a closing argument. The jury by vote of 12 -0 recommended the imposition of the death penalty. (V37, R2917).

Sentencing and Trial Court Findings

The trial court held a sentencing hearing on May 2, 2014, to announce its findings and sentence as to the murder conviction. The defendant did not make a statement at this hearing.

Aggravation

The trial court found the following aggravating circumstances and supported each with findings of fact.

1. The capital felony was especially heinous, atrocious, or cruel. (Great Weight)
    a. Doctor Qaiser, medical examiner, testified about the torture inflicted upon Carlos Perez and the high degree of pain and suffering he would have felt.

b. Mr. Perez died with an expression of agony. He was choked in and out of consciousness, anally violated, and then restlessly slashed deeper and deeper while breathing in his own blood. (V5, R669-71).

2. The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence. (Great Weight)

    a. The State entered certified copies of Defendant's two previous convictions for capital murders of Clarence and Lillian James, along with a certified copy of a conviction for robbery. (V5, R671).

3. The capital felony was a homicide and was committed in a cold, calculated and premeditated manner without any pretense of moral or legal justification. (Great Weight)

    a. Carlos Perez checked into the motel, not the Defendant. The phone cord was cut. The Defendant methodically stripped the victim, bound him, annually penetrated him, chocked him, and slashed him.

    b. The victim had no defensive wounds. The Defendant cleaned the crime scene, even removing the room's linens. Such careful attention to detail shows the killing of Carlos Perez was a product of cruel and calm reflection, and not the result of some emotional frenzy, panic or fit of rage.

    c. The Defendant choked the victim in and out of consciousness. The planning involved demonstrates the Defendant's carefully designed plan to kill the victim.

    d. The Court finds heightened premeditation was established by the Defendant's actions and by the fact that the motel room did not reflect signs of an intense struggle or of defensive wounds.

    e. There was no pretense of moral or legal justification. (V5, R671-73).

Statutory Mitigation

The Defendant requested the Jury be instructed on no statutory mitigating factors. (V5, R673).

Non-Statutory Mitigation

The trial court made the following findings regarding non-statutory mitigation:

1. The Defendant was the victim of severe depravation, abuse and poverty at a very early age. (Some Weight)

    a. The Defendant and his brothers all testified that they lacked basic necessities of life throughout their childhood.

    b. The testimony showed that the Defendant was victimized and abused by an older brother from a young age. (V5, R673-74).

2. The Defendant did not grow up with a father figure. (Little Weight)

    a. Neither the Defendant nor his siblings testified to a father figure in the household. (V5, R674).

3. The Defendant was abandoned by his mother. (Some Weight)

    a. The Defendant and his brothers testified that their mother abandoned them to the care of older brothers, although she did return a few years later to take them to Florida. (V5, R674).

4. The Defendant had no father/son relationship. (Some Weight) (V5, R674-75).

5. The Defendant had no mother/son relationship. (Some Weight)

    a. The Defendant and his siblings testified that his mother abandoned all but the youngest when she left home. The Defendant testified that he did not realize she had left until a few days after she was gone. (V5, R675).

6. The Defendant's biological father was a patient in a mental health facility on more than one occasion. (Little Weight) (V5, R675-76).

7. The Defendant was left in the custody and care of an older sibling who inflicted physical and emotional abuse onto the Defendant. (Some Weight)

    a. The Defendant's brothers testified they were beaten and abused by an

older sibling. The Defendant testified that his older brother would beat him, bind him, and burn him with cigarettes. (V5, R676).

8. The Defendant was discriminated against because of his race as a young child. (Little Weight) (V5, R676).

9. The Defendant suffered from auditory hallucinations. The trial court found that this mitigator was not established by the greater weight of the evidence. Dr. Danziger testified that a family member said Defendant had a history of hearing things, but the Defendant did not testify that he had any mental problems and Defendant's brother, Eddie Jones, testified that he remembered Defendant having ear problems. (V5, R676-77).

10. The Defendant suffered a head injury while incarcerated in his late teens or twenties. (Little Weight) (V5, R677).

11. The Defendant exhibited good behavior during trial. (Little Weight) (V5, R677).

Sentence

The trial court found that there were insufficient mitigating circumstances to outweigh the aggravating circumstances, adjudged the Defendant guilty of first degree murder for the unlawful killing of Carlos Perez and imposed a death sentence. (V5, R678-79).

SUMMARY OF ARGUMENT

Issue I: Jones' argument that the trial court erred in admitting *Williams* rule evidence during trial relies strongly upon the Tennessee Supreme Court's decision to overturn his Tennessee murder convictions because the Tennessee Court found that the admission of collateral crime evidence concerning Jones' Florida crimes during his Tennessee murder trial was improper. While this decision would

generally constitute persuasive authority, in this instance, this Court should disregard this Tennessee Supreme Court opinion because its analysis is critically flawed. The Tennessee Supreme Court mistakenly determined that the Perez murder involved an "unidentified female" and inaccurately characterized Tevarus Young as a murder accomplice when conducting its similarity analysis regarding the admission of collateral crime evidence. Furthermore, long standing case law from this Court firmly supports the trial court's rulings regarding the admissibility of the *Williams* rule evidence admitted over Appellant's objection and Appellant otherwise failed to preserve a claim regarding evidence to which he failed to object during trial. Any error in admitting Williams rule evidence was also harmless. Notwithstanding the *Williams* rule evidence admitted, the non-collateral circumstantial and scientific evidence of Perez' murder, including Jones' footprints and DNA at the murder scene, were wholly sufficient to support his first degree murder conviction.

Issue II: Jones' claim that the trial court committed fundamental error when it failed to *sua sponte* instruct the jury regarding *Williams* rule evidence or to offer Jones an opportunity to request a *Williams* rule jury instruction contemporaneously with the admission of such evidence lacks legal support. Further, Jones' argument within this claim that *Williams* rule evidence impermissibly became a feature of his trial was not preserved below by contemporaneous objection and is procedurally

barred. The *Williams* rule evidence admitted below did not transcend the bounds of relevancy to the charge being tried and the State did not devolve from development of facts pertinent to the main issue of guilt or innocence into an assault on the character of the defendant. This case uniquely required the State to submit a considerable amount of collateral evidence in order to establish the unusual pattern of criminal activity involved in these serial crimes. Ultimately, this claim asks this Court to enact new trial procedures which would require trial courts to take a more active role in assisting *pro se* defendants with matters of law or procedure during trial – a request this Court has steadfastly and appropriately denied.

Issue III: Jones' contends this Court should recede from its prior precedent and require the appointment of special counsel to present the case for mitigation in all cases where the defendant declines to do so. Jones lacks standing to assert this claim because he did not waive the presentation of mitigation. Further, this Court has wisely refrained from requiring trial courts to force counsel upon defendants during penalty phase proceedings out of respect for individual defendants as well as other considerations set forth in *Faretta*. While the State recognizes society's interest in ensuring that death sentences are not improperly imposed and the importance of a thorough evaluation of the aggravating and mitigating factors involved in a death penalty case, this Court has already provided trial courts with

wholly sufficient mandates and options to ensure that potential mitigation evidence is presented to and considered by the trial court whenever a defendant waives mitigation. This claim should be denied.

Issue IV: Jones' claim that the trial court committed error and an abuse of discretion when it granted his request to proceed *pro se* at his penalty phase while Jones was unprepared to present mitigation evidence lacks merit. At the onset of Jones' penalty phase proceedings, Jones' appointed attorney, Caudill, advised the trial court that a continuance was necessary to further develop mitigation evidence Caudill had discovered. While the Court was inclined to grant Caudill's request, Jones vehemently contented that he wanted "nothing to do" with Caudill and that he wanted to continue with his penalty phase proceedings *pro se*. Caudill informed the Court and Jones about the results Caudill's mitigation investigation and advised as to Caudill's plan for presenting mitigation to the jury, but Jones adamantly refused to allow Caudill to have any involvement in his case despite the trial court's best efforts to convince him otherwise. Jones had also refused to speak to the mental health expert Caudill had retained. Ultimately, the procedures followed by the trial court ensured that that all possible mitigation was presented and weighed, particularly in light of Jones' unwillingness to cooperate with his court appointed counsel and mental health expert. Jones' claim fails to demonstrate that the trial court erred or abused its discretion.

Issue V: Jones' *Ring* claim is procedurally barred because it was not properly preserved for appellate review. Even if Jones' *Ring* claim was properly preserved, long standing precedent from this Court dictates its denial, particularly in light of the fact that Jones has multiple prior violent felony convictions and received a unanimous death recommendation from the jury.

Issue VI: The trial court's consideration of subsequently vacated prior violent felony convictions did not constitute reversible error. This Court conducts a harmless error analysis whenever an aggravating circumstance has been improperly considered and the United States Supreme Court has specifically approved this procedure. This error was clearly harmless in light of the fact that: a) three prior violent felony convictions remained on Jones' record even after the Tennessee murder convictions were vacated; b) the HAC and CCP aggravators also applied to the instant murder, which are two of the weightiest aggravators in our statutory scheme; and c) the jury's death recommendation was unanimous.

Issue VII: The proportionality of Jones death sentence is particularly similar to a death sentence this Court recently affirmed in *Martin v. State*, -- So.3d --, 2014 WL 4724564 (Fla. Sept. 24, 2014). In both *Martin* and the instant case, the trial court found three aggravating circumstances: prior violent felony, HAC, and CCP. This Court has repeatedly identified HAC and CCP as two of the most serious aggravators set out in the statutory sentencing scheme. Similarly, the prior violent

felony aggravator is also considered one of the weightiest aggravators. Although the aggravators involved in these cases are very similar by comparison to those found in *Martin*, Jones actually has the same or slightly more aggravation - three applicable prior violent felonies (aggravated battery, robbery, and kidnapping) and HAC and CCP. Jones' death sentence was clearly proportionate.

ARGUMENT

ISSUE I: WHETHER THE TRIAL COURT BELOW ERRED IN RULING THAT EVIDENCE OF COLLATERAL CRIMES WAS ADMISSIBLE UNDER THE WILLIAMS RULE.

Appellant's claim that the trial court erred in admitting *Williams*[23] rule evidence against him relies heavily upon the reversal of his Tennessee murder convictions due to the admission of evidence at trial regarding the Florida murders involved in this case. However, the Tennessee Supreme Court's decision to reverse Jones' murder convictions was "based upon [its] extensive review of prior decisions of [the Tennessee Supreme Court] over a number of years…" *State v. Jones*, 2014 WL 4748118 (Tenn. Sept. 25, 2014) at 32. In the instant case, the trial court below properly considered *Florida's* viewpoint regarding the admissibility of collateral crime evidence, and prior decisions of this Court over a number of years firmly support the trial court's ruling and the denial of this claim. "The admission or exclusion of evidence is subject to an abuse of discretion standard of review."

[23] *Williams v. State*, 110 So. 2d 654 (Fla. 1959).

Kopsho v. State, 84 So.3d 204, 217 (Fla. 2012) (citing *San Martin v. State*, 717 So.2d 462 (Fla. 1998).

While the Tennessee Supreme Court opinion would generally constitute persuasive authority, in this particular instance, this Court should disregard the cited Tennessee Supreme Court opinion when analyzing the instant claim because the Court's analysis was critically flawed. Most significantly, when conducting its similarity analysis concerning the Tennessee trial court's admission of evidence concerning the Perez murder, the Tennessee Supreme Court mistakenly determined that "…**the [Perez] murder . . . involved a young male victim and an unidentified female**." *See Initial Brief* at 54 (citing *Jones*, 2013 WL1697611 at 57 (McMullen, J. dissenting) (emphasis added).[24] In fact, while female DNA found on Perez's penis was initially unidentified, subsequent police investigation identified the DNA as belonging to Deborah Williams Bello ("Bello"). The reason Bello's DNA was found on Perez's body was explained at trial when Bello testified that she had been a regular guest at the hotel for years and that she had been having a sexual affair at the hotel with Harry Pope, who's DNA was also found at the Perez murder scene. (V15, R2037-2044). Additionally, expert witness testimony about transfer DNA and hotel employee testimony about the hotel's

[24] This excerpt from Judge McMullen's dissenting opinion was cited by and adopted in the Tennessee Supreme Court's opinion that overturned Jones' conviction. *See State v. Jones*, 2014 WL 4748118 at 32.

inconsistent cleaning regiment, particularly with their comforters, amounts to extremely compelling evidence that there was no female involved in the Perez murder whatsoever.

All of these factual oversights were significant in light of the unique circumstances of the instant case. The fact that the unrelated female DNA happened to transfer onto the victim's penis makes Tennessee's misunderstanding regarding the implications of this fact even more problematic. Due to the sexual nature of Perez's murder, any mistaken belief that an unknown female was involved in the events leading to Perez's murder would create a wildly different image of the circumstances of the murder. Since Tennessee's view of the Perez murder is critically flawed, it's "distinctiveness" analysis is equally as flawed.

Appellee also takes exception with Tennessee's finding that the James murders were "perpetrated by two individuals an accomplice, Young, and the Defendant." *See State v. Jones*, 2014 WL 4748118 at 32. Although Young was at the James' residence during their murders, Young appeared to be an unwitting accomplice. According to Young's testimony, Young met Jones for the first time a few days before the James murders. While on the way to the James' house, Young believed the James' were related to Jones and had no idea that Jones planned to kill and rob them. After Young and Jones met Mr. James, who Jones greeted by referring to James as "Pops," Young complied with Jones' request that he move Mr. James'

lawnmower into a shed located in the backyard. When Young could not find anyone when he returned to the front yard, Young entered the house to find Jones in the act of killing Mrs. James. By this time, Jones had already killed Mr. James in the garage. Young testified that Jones later showed Young the knife he used to kill the James' and threatened to cut off Young's penis if he ever told anyone about the murders. (V26, R1347).

Young testified that he feared Jones and disassociated himself with Jones shortly after the James murders. Young testified that Jones raped Young at a rest area while they were driving Jones' two cars back to Florida from Tennessee. Young subsequently "got up the courage" to get away from Jones. After they resumed driving, Young tried to lose Jones' by speeding away from him, driving over one hundred miles per hour. When Jones came upon a police car, he was stopped and arrested for driving with a suspended license. In light of these facts, Tennessee's characterization of Young as an "accomplice" to the James murders, particularly for the purposes of a *Williams* Rule analysis, also seems flawed.

Under the circumstances, Appellee respectfully contends this claim is better analyzed through an extensive review of the prior decisions of this Court over the years, which supports the trial court's rulings concerning the *Williams* rule evidence admitted during trial. Jones' claim focuses on the contention that the three murder scenes lacked sufficient "uniqueness" or "signature" arguing that the

differences "so overcome the purported similarities as to preclude the "signature" or "distinctive" finding necessary to allow this evidence under *Williams Rule*" *Initial Brief* at 55. However, in Florida a *Williams* rule analysis is not limited solely to a determination that a defendant has committed "signature" crimes. "This Court has upheld the use of collateral crime evidence when the common features considered in conjunction with each other **establish a sufficiently unusual pattern of criminal activity**. *See Chandler v. State,* 442 So. 2d 171, 173 (Fla.1983)." *Crump v. State*, 622 So. 2d 963, 968 (Fla.1993) (emphasis added).

The following analysis in *Chandler v. State*, 442 So. 2d 171, 173 (Fla.1983) directly applies to the instant case:

> The common points shared by Chandler's Texas crime and the crime charged below may not be sufficiently unique or unusual, when considered *individually*, to establish a common modus operandi. We find, however, no error in the trial court's determination that these points, considered one with another, establish a sufficiently unique pattern of criminal activity to justify admission of evidence of Chandler's collateral crime as relevant to the issue of identity in the crime charged.[FN2]
>
> > FN2. The significant common features of Chandler's previous crime and those charged here, as found by the trial court below, included:
> >
> > 1) In each, a victim's hands were bound behind him with an item belonging to the victim—in one case, a necktie, in the other, the victim's dog leash;
> >
> > 2) In each, the victims were first forcibly abducted to a relatively remote location;

> 3) The victims of each crime were beaten repeatedly about the head with a blunt instrument;
>
> 4) The victims in both instances were robbed;
>
> 5) The defendant utilized, to some extent, both a knife and a blunt instrument. The apparent difference that the Steinbergers were stabbed repeatedly may be explained by the fact that Chandler's previous victim, who was not stabbed, had survived the beating to testify against Chandler.

The trial court below also evaluated the common features of Jones' alleged Tennessee murders to the Perez murder finding even more similarities than those found in *Chandler*. Specifically, the trial court noted: 1) the victims had suffered the same or similar knife wounds and strangulation; 2) the multiple knife wounds were done from behind; 3) strangulation was done first prior to the knife wounds; 4) the bodies were found face down; 5) hands were bound from behind; 6) ligatures and bindings were removed; 7) the killer took time to clean up the area as far as removal of various items. (V2, R260-263). The trial judge noted, "I've dealt with homicides for numerous years, close to 20 years now, maybe 25 years" and found each of these features individually to be "unique" or "kind of unique" *Id.* Clearly, these common unique features considered in conjunction with each other established a sufficiently unusual pattern of criminal activity to support the trial court's ruling.

The State also submitted additional evidence that was consistent with Jones' unique pattern of criminal activity, including his murder and sexual battery of Keith Gross and his forcible sexual battery upon Tavarus Young. Jones' sexual batteries upon Young and Gross are relevant to Jones' pattern of criminal activity because Young, Gross, and Perez all fit the same profile. All three victims were young men whose lives were unstable at the time they met Jones. Young was in his early twenties, had recently broken up with his live in girlfriend, and had been sleeping overnight in a park when he met Jones. Perez was nineteen years old, working at a day labor pool and had residing between his father's house in Florida and his mother's house in Pennsylvania when he met Jones. Gross, who was in his twenties, met Jones while serving time in county jail. All three young men were befriended by Jones before Jones ultimately anally raped them and/or killed them. While Jones' motive for killing Gross, revenge for failing to pay a debt, was unique to Gross, the method of killing was nonetheless strikingly similar to the Perez and James murders. Although the James' were not sexually abused, they were an elderly couple who did not remotely match the profile of the young men who were sexually abused. Jones' motive for killing the James' was also unique to the James' because they were a well-known and easy target for Jones' need for pecuniary gain.[25]

[25] The James' were an elderly couple who lived in a house that was nearby an

As this Court has held, variations can be expected in an otherwise consistent and unusual pattern of criminal activity; particularly variations that have a logical basis like Chandler adding knife wounds to his latest victim after a prior victim survived Chandler's customary beating and testified against him. *See Chandler*, 442 So. 2d at 173. In the instant case, the pattern evidence submitted demonstrated that Jones killed for various reasons such as revenge, pecuniary gain, etc., but always sexually abused his young male victims, and always killed his victims in the same methodical fashion noted by the trial court during its analysis. The killing method was not only unique but also deliberate and purposeful. As Collins testified, Jones "[had] to make sure [he] cut the throat front and back, because it only takes a second for them to call 911." (V33, R2268-2270).

Appellee also disagrees with Jones' contention that the murder scenes lacked sufficient "uniqueness" or a "signature." All of the murders were committed with the same choice of weapon. All murder victims were killed by incision wounds to both the front and back of the neck, which were inflicted from behind the victims and were designed to induce certain death. All three murder scenes involved the use of ligatures which were removed from the victims post mortem. All three murder scenes were cleaned up after the murders, and all young, male murder

---

apartment complex in which Jones lived for some time. Although Jones was not personally acquainted with them, Mr. James regularly sat outside in his front yard and waived to anyone who passed. (V26, R1205-06).

victims were anally abused. The trial court's finding that the James and Perez murders were both similar and unique and relevant for the purposes of establishing identity was not error. Furthermore, the evidence concerning Jones' Tennessee crimes was not only relevant to establish identity but also relevant to track Jones' location and place him in the vicinity of the murders by virtue of his use of the James' stolen credit cards.

Although the trial court did not make a specific finding regarding the similarities of the Gross murder, the trial court did not do so because Jones did not raise this argument through contemporaneous objection during trial. Accordingly, any argument concerning the admissibility of the Gross murder was abandoned and not preserved for purposes of this appeal. "[T]o be preserved for further review by a higher court, an issue must be presented to the lower court and the **specific** legal argument or ground to be argued on appeal or review must be part of that presentation if it is to be considered preserved." *Tillman v. State*, 471 So.2d 32, 35 (Fla.1985) (emphasis added). Even if Jones had preserved this argument, this Court should reject it. The Gross and Perez murders scenes were nearly identical, a fact that becomes starkly apparent when comparing the crime scene photos. (See V14, R2303-16; V15, R2553-61; V16, R2619-28).

Harmless Error and Sufficiency[26]

[26] The following harmless error argument is based on the sufficiency of the non-

Any error in admitting *Williams* rule evidence under the circumstances of the instant case was harmless beyond a reasonable doubt. *See State v. DeGuilio,* 491 So. 2d 1129 (Fla. 1986). Extensive and highly credible evidence other than Jones' collateral crime evidence supports Jones' murder conviction independently. Jones admitted to police that he knew Perez, having met him at the labor pool. Jones also told police that Perez had been in both of Jones's cars. Eyewitness testimony placed a single man matching Jones' description with Perez when Perez checked into the motel. The hotel manager, Ravi Patel ("Patel") testified that he observed a car matching the description of Jones' car at the motel the day before Perez's body was found. Patel testified that a young white male got out and entered the lobby check in area. (V21, R555-557). The driver, a black male, moved the car to a parking spot and waited there. *Id*. The white male returned to the car after checking in, spoke with the black male, and both men then entered the side access to the motel. (V21, R559-560).

Substantial forensic evidence linked Jones to Perez's murder. Four shoe impressions found at the murder scene matched Jones' shoes[27] and Appellant could

---

Williams Rule evidence admitted, which the State contends independently supports Jones' conviction. The State further relies on this argument to support its contention that this Court should find that the evidence was sufficient to support the conviction, generally, noting that consideration of the additional *Williams* rule evidence admitted would only further support a sufficiency finding.

[27] Three shoe impressions matched based on shoe size, shape and tread design. One impression was of sufficient quality to additionally match based on wear

not be scientifically excluded as being the contributor to mitochondrial DNA found from a pubic hair discovered at the murder scene. (V29, R1638). Expert witness Catherine Theisen, ("Theisen") testified that she would not expect to see this mitochondrial DNA type in more than .26 percent of the African American population, .17 percent of the Caucasian population, or .39 percent of the Hispanic population. *Id*. Further, a Puerto Rican flag found in the trunk of Jones' automobile was identified by Perez's father, William Perez, as belonging to his son. William Perez testified that he bought three flags, one for each of his sons, during a recent trip to Puerto Rico. (V29, R1694-95). William Perez submitted the other two flags to the State for comparison to the flag found in Jones' car. FDLE tested the flags and concluded that all three flags could have originated from the same source; there was nothing found that distinguished one from the others. (V32 R2014-2019).

This Court should deny this claim. Long standing precedent from this Court firmly supports the trial court's rulings regarding the admissibility of the *Williams* rule evidence that was admitted over Jones' objection and Jones otherwise failed to preserve any claim regarding evidence to which he failed to object during trial. Furthermore, irrespective of the collateral crime evidence submitted, the totality of all of the other evidence submitted to prove Jones' guilty of Perez's murder renders

---

pattern. (V29, 1662).

any error in admitting *Williams* rule evidence harmless beyond a reasonable doubt.

ISSUE II: WHETHER THE TRIAL COURT BELOW COMMITTED FUNDAMENTAL ERROR BY NOT *SUA SPONTE* INSTRUCTING THE JURY ABOUT *WILLIAMS* RULE EVIDENCE PRIOR TO ITS ADMISSION OR OFFERING APPELLANT, WHO WAS *PRO SE*, AN OPPORTUNITY TO REQUEST A *WILLIAMS* RULE JURY INSTRUCTION PRIOR TO THE ADMISSION OF *WILLIAMS* RULE EVIDENCE.

Jones' next claim was not preserved by contemporaneous objection below. Accordingly, Jones argues the trial court committed fundamental error when it failed to *sua sponte* instruct the jury regarding *Williams* rule evidence or offer Jones an opportunity to request a *Williams* rule jury instruction contemporaneously with the admission of such evidence. *Initial Brief* at 56. This Court has described a fundamental error analysis as follows:

> This Court engages in a fundamental error analysis when the alleged error was not objected to and therefore preserved for appeal. *See Conahan v. State,* 118 So.3d 718, 733–35 (Fla.2013); *Valle,* 837 So.2d at 908. Fundamental error is identified as that which reach[es] down into the validity of the trial itself to the extent that a verdict of guilty could not have been obtained without the assistance of the alleged error." *Harrell v. State,* 894 So.2d 935, 941 (Fla.2005). We have also defined it as "error which goes to the foundation of the case." *Ray v. State,* 403 So.2d 956, 960 (Fla.1981) (quoting *Sanford v. Rubin,* 237 So.2d 134, 137 (Fla.1970)). We have cautioned appellate courts to "exercise their discretion concerning fundamental error 'very guardedly.' " *Id.* "[F]undamental error should be applied only in the rare cases where a jurisdictional error appears or where the interests of justice present a compelling demand for its application." *Id.*

Jackson v. State, 127 So.3d 447, 477 (Fla.2013) (citing *Farina v. State,* 937 So.2d

612, 629 (Fla.2006)). Jones' claim utterly fails to meet this onerous standard.

Jones concedes[28] that he is unable to find case law to support the notion that a trial court is, or should be, obligated to *sua sponte* instruct the jury regarding *Williams* rule evidence or counsel a *pro se* defendant about the possibility of requesting a *Williams* rule jury instruction prior to the admission of *Williams* rule evidence. As a result, much of Jones' argument regarding this claim is aimed at buttressing his evidentiary claim (Claim I) by arguing that *Williams* Rule evidence impermissibly became a feature of his trial. However, this specific legal argument was not preserved.

While Jones did make sporadic objections to the admission of *Williams* rule evidence at times, he never specifically objected to this evidence becoming a feature of his trial. This argument is distinct from the objections Jones raised regarding the factual differences between the Perez murder and the collateral crime evidence submitted and should have been raised in the lower tribunal. "Issues not properly raised in the lower tribunal are typically waived on appeal save for unpreserved issues that constitute fundamental error." *Mansueto v. State*, 148 So. 3d 813, 815 (Fla 4th DCA 2014) (citing *Steinhorst v. State*, 412 So.2d 332, 338 (Fla.1982)). The Fourth District Court of Appeals' following analysis concerning a defendant's failure to preserve this same issue illustrates this point:

[28] See *Initial Brief* at 57.

> [T]o be preserved for further review by a higher court, an issue must be presented to the lower court and the **specific** legal argument or ground to be argued on appeal or review must be part of that presentation if it is to be considered preserved." *Tillman v. State,* 471 So.2d 32, 35 (Fla.1985) (citations omitted). Below, Mansueto objected and asserted, "It's the ultimate issue for the jury." Because the "ultimate issue" ground alleged as the legal basis of the objection during trial is distinct from the error now alleged on appeal (improper vouching for a witness's credibility), Mansueto's issue on appeal was not preserved for our review.
>
> **As to Mansueto's issue on appeal alleging that the trial court erred in permitting the *Williams* rule evidence to become a feature at trial, Mansueto likewise failed to lodge an objection at the time the evidence was being presented below. The contemporaneous objection rule requires a party to object during trial at the time of the alleged error. *Overton v. State,* 976 So.2d 536, 574 (Fla.2007).**

Mansueto v. State, 148 So. 3d at 815 (emphasis added). Like the defendant in *Mansueto,* Jones never advised the trial court about his concern that the *Williams* rule evidence submitted was becoming a feature of his trial. Clearly, this argument has not been preserved for appellate review. *See also Downs v. Moore*, 801 So. 2d 906, 912 (Fla.2001) (request for a jury instruction on principals deemed abandoned by *pro se* defendant where, during the jury instruction conference, defendant's proposed instructions did not include an instruction on principals).

Even if Jones' feature of the trial argument was preserved, it lacks merit. In support of his feature of the trial claim, Jones points to the number of witnesses who testified about *Williams* rule matters and the number of transcript pages which

contain these witnesses' testimony.[29] *Initial Brief* at 57. However, a review of the case law concerning "feature of the trial" claims demonstrates that: a) there is no bright line limit concerning the admissibility of *Williams* rule evidence and b) the constitutional limits of such evidence is both case and fact sensitive. While only two points are required to establish a line, numerous points are required to establish a **pattern.** This truism demonstrates why the amount of *Williams* rule evidence submitted below was appropriate in light of the unique circumstances of the case. Since this Court has consistently approved the use of collateral crime evidence "when the common features considered in conjunction with each other establish a sufficiently unusual pattern of criminal activity," *Crump v. State*, 622 So. 2d 963, 968 (Fla.1993) (citing *Chandler v. State*, 442 So.2d 171, 173 (Fla.1983), the trial court accordingly did not err in admitting the collateral evidence involved in this case.

Evidence of collateral crimes impermissibly becomes a feature of the trial only when the evidence "transcends the bounds of relevancy to the charge being tried and the prosecution devolves from development of facts pertinent to the main issue of guilt or innocence into an assault on the character of the defendant." *Hodges v. State*, 55 So. 3d 515, 539 (Fla.2010) (citing *Conde v. State*, 860 So. 2d 930, 945 (Fla.2003)). As this Court's decision in *Conde* demonstrates, this determination is

[29] Jones' 400 page calculation did not include a breakdown as to how many of these pages involved Jones' cross examination, which at times was extensive.

not simply based upon the quantity of the collateral evidence submitted. *See Conde*, 860 So. 2d at 946-47 (admission of three days of testimony concerning five collateral murders during the prosecution of a sixth murder affirmed and found to be unavoidable given the fact that five collateral crimes were involved.); *Wuornos v. State*, 644 So.2d 1000, 1006-07 (Fla.1994) (affirming trial court's admission of evidence concerning six collateral murders) The facts of this particular case required the State to submit a considerable amount of collateral evidence in order to establish the unusual pattern of criminal activity involved in these serial crimes. The State's presentation of the collateral crime evidence involved was limited to the facts that were necessary to establish the identification of Perez's killer, which was the main issue of guilt or innocence at trial and Jones fails to identify any evidence or argument that was developed for the sole purpose of assaulting Jones' character.

Nonetheless, Jones' feature of the trial argument does little to support his claim that the trial court committed fundamental error by failing to *sua sponte* read a Williams rule instruction to the jury or by failing to advise Jones of his option to request such an instruction because his claim lacks any cognizable legal support generally. None of the cases Jones cites within this claim specifically address Jones' claim and long-standing precedent supports its rejection. This Court has often noted the inherent perils of self representation, most recently in *McKenzie v.*

State, --- So.3d ----, 2014 WL 1491501 (Fla. 2014). In *McKenzie*, this Court noted public policy considerations which support the denial of the requests Jones makes within this claim:

> The fact that McKenzie may have made ill-advised decisions while he represented himself does not establish that he is entitled to a "do-over" of his penalty phase or any phase of his underlying trial in the postconviction context. **If this approach was adopted, many competent capital defendants would elect to represent themselves during trial as a delaying tactic.** Instead, the cautionary statement in *Behr* applies with equal force here: "**[A] defendant who represents himself has the entire responsibility for his own defense,** even if he has standby counsel."

McKenzie v. State, WL 1491501 at 12 (citing *Behr v. Bell*, 665 So. 2d 1055, 1056-1057 (Fla.1996) (emphasis added).

Said cautionary statement is wholly inconsistent with Jones' contention that this Court should require trial courts to assist *pro se* defendants during trial by proposing jury instructions on their behalf. This Court has aptly refused to require trial court to assist *pro se* defendants concerning their inability to understand or comply with matters of law or procedure. *See Wilcox v. State*, 143 So.3d 359, 382 Fn19 (Fla.2014) ("the trial court had no obligation to assist [a pro se defendant] in securing the attendance of witnesses."); *Alvord v. State*, 396 So.2d 184, 190 (Fla.1981) (**death sentenced defendant's claim that the trial court erred by failing to *sua sponte* instruct the jury about a defendant's past history of mental illness rejected, holding, "the trial court is only required to instruct the**

jury on issues properly raised.") (emphasis added). Jones has failed to meet his difficult burden of showing that the trial court committed fundamental error regarding this jury instruction issue, particularly because any such error, if error at all, would be harmless beyond a reasonable doubt in light of the compelling non-*Williams* rule evidence introduced at trial, as discussed in the harmless error analysis, *supra*. Long standing case law, procedural deficiencies, and sound public policy all dictate the denial of this claim.

ISSUE III: WHETHER A TRIAL COURT SHOULD BE REQUIRED TO APPOINT SPECIAL COUNSEL TO PRESENT MITIGATION EVIDENCE WHEN A DEFENDANT WAIVES THE PRESENTATION OF MITIGATING EVIDENCE.

Jones sets forth another call for judicial activism in his next claim, arguing that this Court should require appointment of special counsel to present mitigation in all cases where the defendant waives the presentation of mitigating evidence. *Initial Brief* at 66. In support, Jones reviews the long line of cases wherein this Court has decided issues related to a death sentenced defendant's waiver of the presentation of mitigation evidence. Jones' contends this Court should "recede from *Hamblen*[30] and require the appointment of special counsel to present the case for mitigation in all cases where the defendant declines to do so." *Initial Brief* at 80.

The State questions Jones' standing to assert this claim because Jones did not

[30] *Hamblen v. State*, 527 So. 2d 800 (Fla.1988).

waive the presentation of mitigation. While Jones's adamant desire to proceed *pro se* at his penalty phase resulted in no mitigation being presented to the jury, Jones nonetheless presented mitigation evidence to the trial court during his *Spencer* hearing. Accordingly, Jones appears to lack standing to assert this claim.

Nonetheless, Jones bases this claim on the following premise: "while a defendant has a right to waive mitigation, a defendant does not have a right to choose his sentence…" *Initial Brief* at 78. However, a waiver of the presentation of mitigation to the jury is *not* tantamount to choosing a sentence, be it death or otherwise, and the State is aware of no authority that would support such a proposition. In fact, "[i]t is well established that a competent defendant may waive the right to present mitigation during the penalty phase of a capital trial. *See Spann v. State*, 857 So.2d at 853 (Fla. 2003), (citing *Durocher v. State,* 604 So.2d 810, 812 (Fla.1992))"; *Russ v. State*, 73 So. 3d 178, 188 (Fla.2011). Certainly a defendant involved in penalty phase proceedings could hope for a life sentence yet not wish to testify about or be faced with testimony about matters which may be humiliating or otherwise emotionally painful to the defendant and the defendant's family. As the United States Supreme Court has held:

> It is undeniable that in most criminal prosecutions defendants could better defend with counsel's guidance than by their own unskilled efforts. But where the defendant will not voluntarily accept representation by counsel, the potential advantage of a lawyer's training and experience can be realized, if at all, only imperfectly. To force a lawyer on a defendant can only lead him to believe that the

> law contrives against him. Moreover, it is not inconceivable that in some rare instances, the defendant might in fact present his case more effectively by conducting his own defense. Personal liberties are not rooted in the law of averages. The right to defend is personal. The defendant, and not his lawyer or the State, will bear the personal consequences of a conviction. It is the defendant, therefore, who must be free personally to decide whether in his particular case counsel is to his advantage. And although he may conduct his own defense ultimately to his own detriment, his choice must be honored out of "that respect for the individual which is the lifeblood of the law."

Faretta v. California, 422 U.S. 806, 834, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975) (quoting *Illinois v. Allen*, 397 U.S. 337, 350–51, 90 S.Ct. 1057, 25 L.Ed.2d 353 (1970) (Brennan, J., concurring)). Out of respect for the individual and the other considerations set forth in *Faretta*, this Court has wisely refrained from *requiring* trial courts to force counsel upon defendants during penalty phase proceedings.

The State concurrently recognizes societies' interest in ensuring that death sentences are not improperly imposed and further recognizes the importance of thoroughly evaluating the aggravating and mitigating factors involved in a death penalty case. *See Hamblen* 527 So.2d at 804. However, this Court has provided trial courts with wholly sufficient mandates and options to ensure that potential mitigation evidence is presented to and considered by the trial court whenever a defendant waives mitigation. For instance, in *Farr v. State*, 621 So. 2d 1368 (Fla.1993), a PSI that was conducted despite the defendant's steadfast intent to waive mitigation succeeded in disclosing for the record relevant details of the defendant's seriously troubled childhood. This procedure allowed the trial court to

discover such without forcing Farr and his family, against Farr's will, to endure testimony about Farr's numerous suicide attempts, the murder of Farr's mother, or the sexual abuse Farr suffered in the past. The *Farr* decision led to this Court's subsequent requirement that a comprehensive PSI be conducted whenever a defendant waives presentation of mitigation during the penalty phase. *See Mohammad v. State*, 782 So. 2d 343, 363-365 (Fla. 2001).

In *Mohammad*, this Court explained that the trial court also has discretion to call witnesses on its own to determine whether mitigation circumstances apply or to appoint special counsel to assist in the presentation of mitigation. This Court wisely left the option of forcing counsel upon a defendant to present evidence that is potentially disturbing to the defendant and his family to the trial court's discretion, where such a decision can be made on a case by case basis depending on whether the PSI alerts the trial court to the probability of significant mitigation. *See Russ*, 73 So.3d at 191 (citing *Barnes v. State*, 29 So.3d 1010, 1023 (Fla.2010). The procedures set forth by this Court in *Hamblen* and *Mohammad* sufficiently protect society's interest in ensuring that death sentences are not improperly imposed while balancing a defendant's right to have input into how the defendant's penalty phase proceedings are conducted. This claim should be denied.

ISSUE IV: WHETHER THE TRIAL COURT ERRED BY NOT APPOINTING SPECIAL COUNSEL TO PRESENT MITIGATION EVIDENCE TO THE JURY DURING APPELLANT'S PENALTY PHASE.

Jones next claims that the trial court committed error and an abuse of discretion when it granted his request to proceed *pro se* at his penalty phase while Jones was unprepared to present mitigation evidence. Jones' request was made against the advice of counsel, APD Caudill, who had previously been appointed to investigate and present mitigation. At the onset of Jones' penalty phase proceedings, Caudill advised the trial court that a continuance was necessary to further develop mitigation evidence Caudill had discovered. Jones advised the trial court that he wanted "nothing to do" with Caudill and that he wanted to continue with his penalty phase proceedings *pro se*. The specific ruling Jones cites as error follows:

> …there are two conflicting areas here. One is what your attorney wants and is requesting. And, of course, the other conflict is what you want.
> And I am going to tell you this, I am going to defer to what you want. Because the case he cited states that the mitigation to be presented to the Court, the Court, and I am going to address the issue just as you requested, Mr. Jones, to proceed with the jury.

(V37, R2833-4) *Initial Brief* at 82. Jones' claim that this ruling was an abuse of discretion lacks merit.

As the following excerpt demonstrates, Jones adamantly refused to allow assistant public defender Caudill to have any involvement in his case whatsoever despite the trial court's best efforts to convince him otherwise:

> THE COURT: . . . I am inclined to appointment of Mr. Caudill as a court attorney and to do any – present whatever mitigation is possible, however large or however small it might be.

> THE DEFENDANT: I don't want to have nothing to do with him.
>
> THE COURT: Well –
>
> THE DEFENDANT: Don't even want to talk to him. Don't even want to see him doing.
>
> THE COURT: I understand, sir. But he will be doing it on your behalf as a representative of the Court.
>
> THE DEFENDANT: Not – not – not – not if I have anything to do with it he won't.
>
> THE COURT: Okay, sir.
>
> THE DEFENDANT: I am waiving my counsel. I don't want nothing to do with him.

(V37, R2799-2800).

The State then suggested that Caudill inform the Court and Jones about the results Caudill's mitigation investigation and advise as to Caudill's plan for presenting mitigation to the jury. Caudill stated that his investigation led him to believe there "are mental health issues with Mr. Jones and/or organic brain dysfunction with him." (V37, R2805). Caudill retained the services of forensic psychiatrist Dr. Danziger to evaluate Jones, but believed Jones would not cooperate with the evaluation. *Id.* Caudill also explained how he planned to find witnesses who could let the jury "know about the Defendant and how he got to the point where he is." (V37, R2806-7). Caudill had contacted several of Jones' family members and Caudill believed he would find even more people who were

willing to cooperate, testify or provide additional information to Dr. Danziger. (V37, R2809-10). Caudill believed Jones was abused and subject to torture as a child. Caudill also discovered that Jones was hit in the head with a hammer while incarcerated, but Caudill was unable to obtain records of such because Jones' prison records were destroyed seven years after his release. (V37, R2811). Had Jones cooperated with Caudill, Caudill would also have sought a brain scan. *Id.*

After Caudill described how he would investigate and present mitigation on Jones' behalf, the trial court made the following inquiry:

> THE COURT: Mr. Jones, you heard Mr. Caudill go into quite detail what he thinks ought to be done in this case. What are your thoughts about that?
>
> THE DEFENDANT: Mr. Caudill helped violate constitutional rights and I don't want to have nothing to do with him.
>
> THE COURT: Okay. So everything that Mr. Caudill had advised that he could investigate regarding the issues which he presented would be gathered from family members, you don't want him to present? Is that what I am hearing?
>
> THE DEFENDANT: I am waiving. I don't want nothing to do with him.
>
> . . .
>
> THE COURT: . . . it sounds like you have a hardened view that you do not want Mr. Caudill to represent you or to present anything to the jury? Is that what I am hearing?
>
> THE DEFENDANT: Yes, sir.
>
> THE COURT: I am sorry to hear that, sir. Because I think Mr. Caudill – the limited time that he had with you, he did an anomalous

> job, that means extraordinary job, in my mind. . . So what do you want me to do, sir? Do you want me to go forward with the jury this morning?
>
> THE DEFENDANT: I want to continue. Yes, sir.
>
> THE COURT: But you know you are not going to have any mitigation to present?
>
> THE DEFENDANT: It is what it is.

(V37, R2814-6). The trial court than made yet another effort to convince Jones to accept Mr. Caudill's representation, pointing out the Mr. Caudill "is trying to make a difference," however Jones would not reconsider his position. (V37, R2816-17).

Before proceeding with the penalty phase, Caudill presented case law from *Muhammad* and *Klukoc* to the trial court and renewed his request to be appointed, overt Jones' objection, to investigate and present mitigation to the jury. (V37, R2828-33). The Court then decided to appoint Caudill to present mitigation at the Spencer hearing but otherwise "defer to what [Jones] want[ed]" by proceeding with the penalty phase with Jones appearing *pro se*. (V37, R2833-34).

While Jones did not waive mitigation, his unyielding desire to proceed with his penalty phase *pro se* resulted in Jones waiving his opportunity to present mitigation to the jury. The following excerpt illustrates that Jones made a knowing and voluntary decision in this regard:

> THE DEFENDANT: I did not waive my mitigation factors. I just want to continue the court. I did not waive. But I heard him say that I waived. I did not waive anything.

. . .

THE COURT: . . . he is going to be presenting [mitigation], but he is not going to be presenting it to the jury. He is going to be presenting it to me in what we call a Spencer Hearing. It is a separate hearing after the jury has given their recommendation of whatever that recommendation is. Okay?

THE DEFENDANT: All right.

THE COURT: Because that is exactly what Muhammad was talking about. **Because you are in a sense waiving mitigation to the jury by going and taking the procedure you are doing, sir**.

THE DEFENDANT: I am not waiving.

THE COURT: You didn't hear me. **You are waiving it to the jury. You are not waiving it to me**, because I want to hear it as the Court.

THE DEFENDANT: (Nods head.)

THE COURT: Because you insist on going through this today with the jury, and we are going to go forward today.
Alright?

DEFENDANT: (Nods head.)

(V37, R2834-5). The trial court then made sure it was "very clear" that that this was what Jones wanted to do, and Jones again verified that he wanted "nothing to do with [Caudill]" (V37, R2835-36).

Within this claim, Jones notes the following procedure this Court requires whenever a defendant waives or refuses to present mitigation: a) counsel must inform the trial court on the record of defendant's decision, indicate whether counsel reasonably believes mitigating evidence exists, and identify what that

evidence might be and b) the trial court should confirm on the record that that counsel has discussed mitigation evidence with the defendant, and despite counsel's recommendation, that the defendant wishes to waive presentation of penalty phase evidence. *Initial Brief* at 84-85 (citing *Koon v. Dugger*, 619 So. 2d 246, 250 (Fla.1993). However, Jones does not specifically allege that the trial court failed to comply with these procedures and the colloquies cited *supra* demonstrate that any such claim would be meritless. However, Jones also notes that the trial court has a responsibility to "affirmatively show that all possible mitigation has been considered and weighed" and to "order a comprehensive PSI in all cases where the defendant waives mitigation." *Initial Brief* at 85 (citing *Robinson v. State*, 684 So. 2d 175 (Fla.1996), *Mohammad v. State*, 782 So. 2d 343, 363-64 (Fla. 2001)). While Jones' does contend that the trial court failed to meet these responsibilities, this contention is also refuted by the record.

Jones argues that the trial court ordered a "perfunctory standard DOC PSI" that "did not meet the *Mohammad* standard." *Initial Brief* at 92. However, the record verifies that the trial court did nothing to limit the scope of the PSI that would support a finding that the trial court abused its discretion or otherwise committed error. In fact, the trial court verified that a "full PSI" was to be conducted when the clerk asked for clarification. (V4, R190). The record also demonstrates that the trial court met its responsibility to consider and weigh all possible mitigation.

Notwithstanding Jones' unyielding desire to proceed *pro se* throughout his trial proceedings, the trial court appointed Caudill to investigate mitigation prior to Jones' penalty phase. Despite the fact that Jones refused to cooperate with or speak to Caudill prior to or during his penalty phase, the trial court nonetheless reappointed the public defender's office to continue investigating mitigation and to present such during Jones' *Spencer* hearing. Consistent with the trial court's orders, APD Michael Pirolo, presented mitigation evidence to the court during Jones' Spencer hearing. The mitigation Pirolo submitted was consistent with the results of Caudill's mitigation investigation, which Caudill had proffered to the trial court during Jones' penalty phase proceedings.

These procedures ensured that that all possible mitigation was presented and weighted in light of Jones' unwillingness to cooperate with his court appointed counsel and mental health expert. Despite Jones' lack of cooperation with his court appointed professionals, the trial court ultimately considered and weighed eleven mitigating factors finding that ten of the eleven factors had been established. (V5, R9-14). These factors included Jones' difficult childhood, including his history of poverty, depravation, abuse, and parental abandonment, his mental health issues, particularly his auditory hallucinations, his father's mental health issues, his history of being a victim of racial discrimination, his prior head injury, and his behavior during trial. *Id*. Given Jones' lack of cooperation with his

court appointed counsel and psychiatric expert, the record clearly demonstrates that trial court did all it could to ensure that all **possible** mitigation was considered and weighed. If any additional mitigation existed, be it mental health mitigation or otherwise, Jones' lack of cooperation rendered such mitigation **impossible** to present or consider.

Jones claims on appeal that the "lack of development of statutory mental mitigation was fatal" and that "the trial judge's failure to see to it that mental mitigation was properly developed . . . was error." *Initial Brief* at 92, 94. However, other than pointing to novel procedures that have not been ratified by this Court, Jones fails to show how the trial court erred in this regard. The trial court saw to it that mental mitigation was developed by appointing Caudill, over Jones' objection, to develop mitigation. Caudill, in turn, retained Dr. Danziger to psychiatrically evaluate Jones. Dr. Danziger visited Jones to conduct an evaluation, but Jones refused to speak with Dr. Danziger. Tellingly, Jones' proposed procedure does not address how a trial court should handle a defendant who refuses to speak with psychiatric experts assigned to develop mental health mitigation. Equally revealing is the fact that Jones is unable to provide any legal support for his claim that the trial court committed reversible error by failing to appoint special mitigation counsel to present mitigation to the jury during penalty phase over a competent defendant's objection. Accordingly, the trial court cannot be found to

have committed reversible error. This claim should be denied.

ISSUE V: WHETHER FLORIDA'S DEATH PENALTY STATUTE IS UNCONSTITUTIONAL UNDER *RING V. ARIZONA*

Finally, Jones claims that Florida's death penalty statute is unconstitutional under *Ring v. Arizona*, 536 U.S. 584 (2002). The constitutionality of Florida's death penalty statute is a question of law reviewed by this Court de novo. *Bottoson v. Moore*, 833 So. 2d 693 (Fla. 2002), *cert. denied*, 537 U.S. 1070 (2002).

From a review of the record on appeal, it appears that Jones failed to preserve this claim by raising it with the trial court and obtaining a ruling on the issue. Accordingly, Jones' *Ring* claim is procedurally barred. *See Evans v. State*, 946 So.2d 1, 15 (Fla. 2006) (*Ring* claim procedurally barred because Evans did not preserve this claim by challenging the constitutionality of Florida's sentencing scheme both at trial and on direct appeal.)

Assuming this claim was preserved for appellate review, it is nonetheless meritless. In *Bottoson*, this Court declined to interpret the *Ring* decision as a finding that Florida's capital sentencing statute is unconstitutional, specifically noting that the "United States Supreme Court has reviewed and upheld Florida's capital sentencing statute over the past quarter century." *Bottoson*, 833 So. 2d at 695. Consistent therewith, the United States Supreme Court has held that "[i]f a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the [other courts] should follow

the case which directly controls, leaving to this Court the prerogative of overruling its own decisions"). *Rodriguez de Quijas v. Shearson/American Express*, 490 U.S. 477, 484 (1989). *See also Evans v. Sec'y, Dept. of Corr.*, 699 F.3d 1249, 1252 (11th Cir. 2012) ("when a Supreme Court's decision with direct application to a case appears to rest on reasons rejected in a more recent line of decisions, we must follow the directly applicable decision and leave to the high Court the prerogative of overruling its own decisions").

Death sentenced defendants have consistently challenged this Court's decisions regarding the applicability of *Ring* to Florida's capital sentencing statute and, as the following excerpt demonstrates, these challenges have been consistently rejected:

> Peterson asserts that Florida's death penalty scheme is unconstitutional under *Ring v. Arizona*, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002), because *Ring* requires a jury determination of facts relied upon to increase maximum sentences in the capital sentencing context and Florida's death penalty statute does not provide for such jury determinations. Specifically, he asks that this Court reconsider its decisions in *Bottoson v. Moore*, 833 So.2d 693 (Fla.2002), and *King v. Moore*, 831 So.2d 143 (Fla.2002). We have consistently rejected claims that Florida's death penalty statute is unconstitutional. *See, e.g., Baker v. State*, 71 So.3d 802, 823–24 (Fla.2011), *cert. denied*, —— U.S. ——, 132 S.Ct. 1639, 182 L.Ed.2d 238 (2012); *Darling v. State*, 966 So.2d 366, 387 (Fla.2007); *Frances v. State*, 970 So.2d 806, 822 (Fla.2007). Peterson has not presented any argument that requires us to reconsider this precedent. Thus, we deny relief.

Peterson v. State, 94 So. 3d 514, 538 (Fla. 2012).

Jones fails to present any argument that should encourage this Court to

reconsider what is now relatively long standing precedent on this issue. Furthermore, even after his Tennessee murder convictions were vacated, Jones still has three violent felony convictions on his record, a fact which renders his death sentence in compliance with *Ring*. *See Robinson v. State*, 865 So. 2d 1259, 1265 (Fla. 2004) (holding that the prior violent felony aggravator "involve[s] facts that were already submitted to a jury during trial and, hence, are in compliance with *Ring*"). Finally, the jury's death recommendation was unanimous in this case, another factor which places it outside of those cases for which *Ring* might conceivably apply. *See Bevel v. State*, 983 So. 2d 505, 526 (Fla. 2008) (noting that "we have previously rejected *Apprendi/Ring* claims in other direct appeals involving unanimous death recommendations.") (citing *Crain v. State*, 894 So. 2d 59, 78 (Fla. 2004)). This claim does not merit relief.

ISSUE VI: WHETHER A SUBSEQUENTLY VACATED CONVICTION WHICH SUPPORTED A FINDING OF AN AGGRAVATING FACTOR REQUIRES A NEW SENTENCING HEARING.

Jones contends that the sentencing jury and trial court's consideration of the James' murders, which were subsequently vacated by the Tennessee Supreme Court, constituted reversible error pursuant to *Johnson v. Mississippi*, 846 U.S. 578 (1988). While the fact that the James murder convictions were subsequently vacated certainly warrants this Court's consideration, Respondents respectfully contend that this fact should not vitiate Jones' death sentence or otherwise result in

a finding of "reversible error," particularly in light of the facts of the instant case. This Court conducts a harmless error analysis whenever an aggravating circumstance has been improperly considered during trial and the United States Supreme Court has specifically approved this procedure as follows:

> As the plurality in *Barclay v. Florida, supra,* opined, the Florida Supreme Court could apply harmless-error analysis when reviewing a death sentence imposed by a trial judge who relied on an aggravating circumstance not available for his consideration under Florida law:
>
> > ". . . [T]he Florida Supreme Court does not apply its harmless-error analysis in an automatic or mechanical fashion, but rather upholds death sentences on the basis of this analysis only when it actually finds that the error is harmless. There is no reason why the Florida Supreme Court cannot examine the balance struck by the trial judge and decide that the elimination of improperly considered aggravating circumstances could not possibly affect the balance.... 'What is important ... is an *individualized* determination on the basis of the character of the individual and the circumstances of the crime.' *Zant,* [462 U.S.], at 879 [103 S.Ct., at 2744] (emphasis in original)." *Id.,* at 958, 103 S.Ct., at 3429.

Clemons v. Mississippi, 494 U.S. 738, 752-53 (1990). In the instant case, there is little doubt that the character of the individual and the circumstances of the crime warranted the death sentence imposed regardless of the prior violent felony aggravator.

In support of his claim of reversible error, Jones cites to *Preston v. State*, 564 So.2d 120 (Fla.1990). However, in *Preston*, this Court noted other decisions of this Court wherein death sentences were affirmed despite the fact that an improper

prior violent felony conviction aggravating circumstance had been found during trial. See *Preston* 564 So. 2d at 123 (noting that *Duest v. Dugger*, 555 So. 2d 849 (Fla.1990); *Bundy v. State*, 538 So. 2d 445 (Fla.1989), and *Daugherty v. State,* 533 So. 2d 287 (Fla. 1988), were distinguishable because in each of these cases **there remained at least one valid prior felony conviction on the defendant's record even though another had been set aside**.) (emphasis added). In Jones' case, not just one, but three prior violent felony convictions remain on Jones' record, in particular an aggravated battery conviction, a robbery conviction and a kidnapping conviction. (V37, R2859-60). Clearly, this well-established distinguishing factor directly applies to the instant case.

In addition to the long standing precedent distinguishing Jones from *Preston*, the application of this Court's harmless error analysis to the trial court's consideration of the improper aggravating circumstance also dictates the denial of the instant claim. Jones accurately cites the factors this Court considers when conducting a harmless error analysis where improper aggravating circumstances have been considered during death penalty trial proceedings. The following excerpt from *Preston*, which is also cited by Jones, demonstrates how this Court applies its harmless error analysis under these circumstances:

> [W]e note that the prosecutor emphasized the importance of the prior violent felony in his closing argument to the jury. In addition, only two of the four aggravating circumstances remain because this Court has previously eliminated the finding that murder was committed in a

> cold, calculated and premeditated manner. Further, there was mitigating evidence introduced at trial, even though no statutory mitigating circumstances were found. Finally, the jury only recommended death by a one-vote margin.

Preston, 564 So.2d at 123. Because the instant case is significantly distinguishable regarding these factors, the application of this analysis can only lead to the opposite result.

While the State did discuss the James murders during his penalty phase argument, it did not emphasize its importance like the State did in *Preston*. In fact, the State's entire argument regarding Jones' prior conviction for the James murders, which did not exceed one page of trial transcript, reads as follows:

> …the Defendant has, in fact, previously been convicted of two capital felonies. Those were the ones in Tennessee, Mr. and Mrs. James. And you have seen the judgment and sentence, the official court documents, certified that Henry Lee Jones, the Defendant in this case, has already been sentenced to death twice, one for each murder in Tennessee.
>
> And that is an aggravating factor that you can consider in this case. And the Judge is going to tell you that. He is going to tell you that the crime of first degree murder is, in fact, the definition of a capital felony, All right?
>
> So, have we shown in part of this, number one, the number one aggravating factor, the Defendant has been convicted of a capital felony? And the answer is yes. You now know. We couldn't tell you in the guilt phase because it wasn't appropriate to talk about that. But in the penalty phase you now know this Defendant had received the death sentence in two counts in Tennessee. And that is an aggravating factor for you to consider in this case.

(V37, R2887-88). Clearly, the State did not place any more emphasis on this

aggravating factor than any other aggravator involved in the instant case.

Further, while half of the aggravating factors originally found by the trial court in Preston were subsequently invalidated, including the extremely weighty CCP aggravator, only one of three aggravating factors found below have been invalidated, leaving Defendant with two of the weightiest aggravators in our statutory scheme, HAC and CCP. (V5, R669-673). *See also Larkins v. State,* 739 So. 2d 90, 95 (Fla.1999). In *Duest v. Dugger*, this court specifically noted as follows that a death sentence could be upheld on appeal under similar circumstances (where HAC and CCP applied):

> Finally, it should be noted that there were three other valid aggravating circumstances applicable to Duest's sentence. As we stated in our opinion on direct appeal, **"even if we were to find that one or two of the aggravating circumstances found by the trial judge, was inapplicable, it would still be appropriate to maintain the death penalty.**

Duest v. Dugger, 555 So. 2d 849 (Fla.1990) citing *Duest v. State*, 462 So. 2d at 450 (citations omitted) (emphasis added).

Furthermore, while this Court noted in *Preston* that "there was mitigating evidence introduced at the trial," as argued *supra*, Jones knowingly waived the presentation of mitigation to the jury during his penalty phase. Further, while Preston's jury only recommended death by a one vote margin, Jones' jury rendered a **unanimous** death recommendation. This particular distinguishing factor could

not, mathematically speaking, be any more inconsistent with the case Jones cites in support of his argument against the application of the harmless error doctrine.

"There is no reason why the Florida Supreme Court cannot examine the balance struck by the trial judge and decide that the elimination of improperly considered aggravating circumstances could not possibly affect the balance.... 'What is important ... is an *individualized* determination on the basis of the character of the individual and the circumstances of the crime.'" *Zant V. Stephens*, 462 U.S. 862, 879 (1983). An examination of the balance struck by the trial judge of the aggravating and mitigating factors of the instant case can only lead to a determination that the elimination of the improperly considered prior violent felony convictions could not possibly have altered the results of the trial court's final balancing point. The particularly heinous, atrocious, and cruel nature of Perez's murder and the cold, calculated and premeditated fashion with which it was carried out was more than enough to support an individualized death sentence determination based of the Jones' character and the circumstances of his crime. Clearly, the trial court's finding and consideration of a third aggravating circumstance based on Jones' subsequently vacated prior violent felony conviction was harmless error. This claim should be denied.

ISSUE VII: WHETHER APPELLANT'S DEATH SENTENCE WAS PROPORTIONATE.

While Jones does not claim his death sentence was disproportionate,

> "[This Court] review[s] every death sentence for proportionality regardless of whether the issue is raised on appeal. *England v. State*, 940 So.2d 389, 407 (Fla.2006); *see also* Fla. R.App. P. 9.142(a)(6). In reviewing proportionality, the Court follows precedent that requires that the death penalty be "reserved only for those cases where the most aggravating and least mitigating circumstances exist." *Terry v. State*, 668 So.2d 954, 965 (Fla.1996). Therefore, in deciding whether death is a proportionate penalty, the Court makes "a comprehensive analysis in order to determine whether the crime falls within the category of both the most aggravated and the least mitigated of murders, thereby assuring uniformity in the application of the sentence." *Anderson v. State*, 841 So.2d 390, 407–08 (Fla.2003) (citations omitted). Accordingly, the Court considers the totality of the circumstances and compares the case with other similar capital cases. *See Duest v. State*, 855 So.2d 33 (Fla.2003). This analysis "**is not a comparison between the number of aggravating and mitigating circumstances.**" *Porter v. State*, 564 So.2d 1060, 1064 (Fla.1990). **Rather, this entails "a *qualitative* review by this Court of the underlying basis for each aggravator and mitigator rather than a quantitative analysis**." *Urbin v. State*, 714 So.2d 411, 416 (Fla.1998).
>
> Further, in a proportionality analysis, this Court will accept the weight assigned by the trial court to the aggravating and mitigating factors. *See Bates v. State*, 750 So.2d 6, 12 (Fla.1999). We "will not disturb the sentencing judge's determination as to 'the relative weight to give to each established mitigator' where that ruling is 'supported by competent substantial evidence in the record.' " *Blackwood v. State*, 777 So.2d 399, 412–13 (Fla.2000) (quoting *Spencer v. State*, 691 So.2d 1062, 1064 (Fla.1996)).
>
> *Hayward v. State*, 24 So. 3d 17, 46 (Fla.2012) (emphasis added).

Jones' death sentence is both proportionate to and similar to the death sentence this Court recently affirmed in *Martin v. State*, -- So.3d --, 2014 WL 4724564 (Fla. Sept. 24, 2014). In finding Martin's death sentence proportionate, this Court noted:

> The trial court found three aggravating circumstances in this case: prior violent felony, HAC, and CCP. Each of these aggravating circumstances is among the weightiest in Florida's death penalty scheme. This Court has repeatedly identified HAC and CCP as "two of the most serious aggravators set out in the statutory sentencing scheme." *Larkins v. State,* 739 So.2d 90, 95 (Fla.1999). "Similarly, the prior violent felony aggravator is considered one of the weightiest aggravators." *Silvia v. State,* 60 So.3d 959, 974 (Fla.2011) (citing *Sireci v. Moore,* 825 So.2d 882, 887 (Fla.2002)).

Although the aggravators involved in these cases are very similar by comparison, Jones actually has the same or slightly more aggravation (three applicable prior violent felonies, HAC and CCP) and less overall mitigation than the defendant in *Martin*. In light of the striking similarities between the aggravators and mitigation involved in *Martin*, the following proportionality analysis which this Court conducted in *Martin* applies equally herein:

> This Court has upheld death sentences with comparable findings of aggravating and mitigating factors. For example, in *Lynch,* we affirmed the defendant's death sentences where the trial court found three aggravating circumstances as to each murder. Similar to the present case, in *Lynch,* the trial court's finding of one statutory mitigating circumstance and multiple nonstatutory mitigating circumstances did not render either death sentence disproportionate. *Lynch,* 841 So.2d at 377.
>
> We have also affirmed death sentences with less aggravation than the present case. For example, in *Heath v. State,* 648 So.2d 660 (Fla.1994), the trial court found two aggravating circumstances: "Heath was previously convicted of second-degree murder; and the murder was committed during the course of an armed robbery." *Id.* at 663 (footnote omitted). In addition to two nonstatutory mitigating circumstances, the trial court also found one statutory mitigating circumstance, that Heath was under the influence of extreme mental or emotional disturbance. *Id. . . . See also Hayes v. State,* 581 So.2d

> 121, 123–24 (Fla.1991) (upholding the death penalty where the trial court found two aggravating circumstances, one statutory mitigating circumstance, and nonstatutory mitigating circumstances including that the defendant "is of low intelligence" and "developmentally learning disabled"). Although the trial court in Martin's case found the existence of more nonstatutory mitigating circumstances than the trial court in *Heath*, we conclude that Martin's sentence is nonetheless proportional to *Heath* in light of the relatively slight weight given to Martin's mitigation.
>
> Moreover, we have affirmed death sentences in cases where, unlike Martin's case, the sole aggravating circumstance was a prior violent felony conviction for second-degree murder. *See Ferrell v. State*, 680 So.2d 390 (Fla.1996); *Duncan v. State*, 619 So.2d 279 (Fla.1993). In this case, not only did the trial court find the existence of Martin's prior violent felony conviction for second-degree murder, the court properly found the existence of HAC and CCP. Thus, the especially weighty aggravating circumstances and the relatively slight mitigating circumstances render Martin's death sentence proportional to other cases where this Court has upheld a sentence of death.

Martin, 2014 WL 4724564 at 12. Like Martin, the especially weighty aggravating circumstances when compared to the relatively slight mitigation Jones presented render Jones' death sentence proportionate. Accordingly, this Court should find Jones' death sentence to be proportionate.

CONCLUSION

Based on the foregoing analysis, the State respectfully requests this Honorable Court affirm Appellant's convictions and sentences of death.

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished by e-portal to the following: George D.E. Burden, Assistant Public Defender, burden.george@pd7.org, John

M. Shelden, Assistant Public Defender, selden.john@pd7.org, appellate.efile@pd7.org, 444 Seabreeze Blvd., Suite 210, Daytona Beach, Florida 32118on December 30th, 2014.

CERTIFICATE OF COMPLIANCE

I certify that this brief was computer generated using Times New Roman 14 point font.

Respectfully submitted and certified,

PAMELA JO BONDI
ATTORNEY GENERAL

/s/ JDR

By: JAMES D. RIECKS
ASSISTANT ATTORNEY GENERAL
Florida Bar No. 0142077
Attorney for Appellee, State of Fla.
Office of the Attorney General
444 Seabreeze Blvd., Suite 500
Daytona Beach, Florida 32118
E-Mail:
James.Riecks@myfloridalegal.com
Secondary E-Mail:
CapApp@myfloridalegal.com
(386)238-4990
(386)226-0457 (FAX)