IN THE SUPREME COURT OF FLORIDA

CURTIS W. BEASLEY,

Appellant,

vs. CASE NO. 93,310

STATE OF FLORIDA,

Appellee.

____________________________/

ANSWER BRIEF OF THE APPELLEE

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CERTIFICATE OF TYPE SIZE AND STYLE

This brief is presented in 12 point Courier New, a font that is not proportionately spaced.

STATEMENT OF THE CASE AND FACTS

Carolyn Monfort's body was discovered by her daughter, Jane O'Toole, on August 24, 1995 (V20/T2618, 2625). Mrs. Monfort was found on the floor of a laundry room in her home in Dundee, Florida (V20/T2618). Jane had last spoken with her mother on August 21, and had tried to contact her repeatedly since then (V20/T2605, 2613-2615). Newspapers from August 22, 23, and 24 were still in their wrappers outside the house (V20/T2616). The doors were locked, there were no signs of any forced entry, and the house was in immaculate condition (V20/T2617-2619). Mrs. Monfort had sustained numerous blunt trauma injuries to her hand, arm, face and head (V20/T2710; V25/T3428-3434). Police discovered a drinking glass with a wedge of lime, and a hammer head wrapped in two rags or towels, a broken hammer handle, and a great deal of blood in the laundry room (V20/T2705, 2708-2710).

Mrs. Monfort worked in real estate and was last seen around 5:30 p.m. on August 21, when Tomas Rosario met with her about renting an apartment (V17/T2137, 2146). Rosario gave her $800 in eight $100 bills for the rental, and also gave her $100 in five $20 bills for some furniture Mrs. Monfort was selling (V17/T2139). There were several men and a woman working around the apartment when Mrs. Monfort met Rosario; Rosario was later shown photographs, but could not identify the workers (V17/T2216-2218, 2221-2222).

Rosario, like Jane O'Toole, had been unsuccessfully trying to contact Mrs. Monfort between August 21 and August 24, 1995 (V17/T2147-2149; V20/T2613-2614).

The appellant, Curtis Beasley, had been working for Mrs. Monfort for several months, painting, and had been living in her home for about a week (V20/T2609). On August 21, 1995, he asked Jane O'Toole for money, and told her that he would be going to Alabama the following week in order to get an inheritance (V20/T2612, 2631). He had also, on August 20, told a police officer in Lake Hamilton that he was getting ready to leave town, mentioning kinfolk in Alabama (V23/T3214). However, the police found clothes, toiletries, and business cards in the room where Beasley had been staying during their search of Mrs. Monfort's home after her body was discovered (V20/T2689, 2692).

Around August 21, Beasley appeared in Haines City, Florida, driving a light colored car, and told Roger Dale Robinson that the car belonged to a woman Beasley worked for; Beasley was there to repay Robinson part of a $600 loan Robinson had made to Beasley about a month earlier (V22/T3047, 3048, 3057). Beasley showed Robinson a $100 bill and Robinson told Beasley to go buy them something to smoke with it (V22/3048, 3049). Beasley left a few minutes later and Robinson did not see him again (V22/T3049). Robinson recalled that this visit took place three to seven days

before Det. Cash came to ask Robinson if he'd seen Beasley, which was August 28 (V22/3046). Robinson's brother, William, recalled that this was probably about four or five days, possibly as many as ten, before Det. Cash spoke with them (V22/T3067, 3070).

On August 22, 1995, Beasley arrived in Miami on a bus, wearing new clothes and telling an old friend, Gloria Malcolm, that he was on vacation (V18/T2372, 2376, 2383). Beasley told Malcolm that the bus company had lost his luggage, including his traveler's checks, and he had no money (V18/T2373). Beasley left Miami around late September or early October, 1995, after fighting with Gloria's husband, Harold (V18/T2408, 2410). While in Miami, staying at Harold's mother's house, Beasley had made a number of long distance phone calls, including some to a number in the United Kingdom which had also been called from Mrs. Monfort's house on the night of August 21 (V18/T2356-2357, 2411; V19/T2538).

Beasley was ultimately arrested in Ozark, Alabama, in January, 1996 (V22/T3002-3002). Beasley had been living in Alabama and working under a false name since December, 1995 (V22/T2992-2993). After being advised that he was wanted for murder, Beasley told the arresting officer that he knew he was in trouble because he'd gone back to the house, and it was surrounded by FBI agents (V22/T3010, 3014).

Mrs. Monfort's car was discovered, abandoned, in Orlando,

Florida, in May, 1996 (V23/T3240). The car was near a busy intersection between the bus station, a law office that had been called from Mrs. Monfort's house on August 21, and a residence that had also been called from Mrs. Monfort's house on August 21 (V19/T2541, 2542; V23/T3245-3246). The tag was expired and Mrs. Monfort's receipt book was still inside (V21/T2738-2739; V23/T3240). Saliva from cigarette butts found in the ashtray of the car were consistent with Beasley's DNA (V23/T3111).

Beasley was convicted as charged of first degree murder, robbery, and grand theft. Following a ten to two jury recommendation, he was sentenced to death. This appeal follows.

SUMMARY OF THE ARGUMENT

There was substantial, competent evidence presented below to establish that Beasley killed Carolyn Monfort, and that her murder was premeditated and committed during the course of a robbery. Beasley was at the murder scene the evening Mrs. Monfort was killed, and seen a short time later in possession of her money, driving her car. He showed up unexpectedly in Miami the next day, after leaving his personal belongings at Mrs. Monfort's home, and telling his friends that the bus company had lost his luggage. He was ultimately arrested in Alabama, living under an assumed name.

The appellant's argument that the family members should not have been allowed to remain in the courtroom during the trial has not been preserved for appellate review, since there was no objection to Jane O'Toole's testimony, and she appears to be the only witness to which this issue relates. In addition, no abuse of discretion has been demonstrated with regard to the trial court's ruling, since no potential prejudice from Jane's testimony has been identified by the defense and her testimony was entirely consistent with her multiple pretrial statements.

The trial court properly found and weighed the aggravating factors of heinous, atrocious or cruel; pecuniary gain; and during the course of a robbery. The judge's findings are supported by the evidence and the correct legal standard was applied.

No error has been established in the trial court's rejection of four proposed mitigating factors. The court's factual findings that three of these factors had not been reasonably established in the evidence is consistent with the record. The legal ruling on the fourth factor, that the death of Beasley's father occurred after the murder and therefore was not mitigating, was proper.

The appellant's proportionality argument must be rejected. A review of factually similar cases supports the propriety of the imposition of the death penalty on the facts of this case.

ARGUMENT

ISSUE I

WHETHER THE JUDGMENT OF GUILT IS SUPPORTED BY COMPETENT, SUBSTANTIAL EVIDENCE.

Appellant Beasley initially challenges the sufficiency of the evidence presented below to establish that he was the person that killed Carolyn Monfort. As the trial court found in denying Beasley's motion for judgment of acquittal, there was substantial, competent evidence admitted to support the jury's verdict of guilt against the appellant. Therefore, he is not entitled to relief on this issue.

A court should not grant a motion for judgment of acquittal unless there is no view of the evidence which the jury might take favorable to the opposite party that can be sustained under the law. DeAngelo v. State, 616 So. 2d 440, 441-442 (Fla. 1993); Taylor v. State, 583 So. 2d 323, 328 (Fla. 1991), cert. denied, 115 S. Ct. 518 (1994); Lynch v. State, 293 So. 2d 44, 45 (Fla. 1974). In moving for judgment of acquittal, a defendant admits the facts in evidence as well as every conclusion favorable to the State that the jury might fairly and reasonably infer from the evidence. If there is room for a difference of opinion between reasonable people as to the proof or facts from which an ultimate fact is to be established, or where there is room for such differences on the inferences to be drawn from conceded facts, the court should submit

the case to the jury. Lynch, Taylor.

While this Court has recognized that circumstantial evidence may be deemed insufficient where it is not inconsistent with a reasonable theory of defense, this Court has also recognized repeatedly that the question of whether any such inconsistency exists is for the jury, and this Court will not disturb a verdict which is supported by substantial, competent evidence. Orme v. State, 677 So. 2d 258 (Fla. 1996), cert. denied, 117 S.Ct. 742 (1997); Barwick v. State, 660 So. 2d 685, 694-695 (Fla. 1995), cert. denied, 516 U.S. 1097 (1996); Spencer v. State, 645 So. 2d 377, 380-381 (Fla. 1994), cert. denied, 118 S. Ct. 213 (1997); Cochran v. State, 547 So. 2d 928, 930 (Fla. 1989); Heiney v. State, 447 So. 2d 210, 212 (Fla.), cert. denied, 469 U.S. 920 (1984); Williams v. State, 437 So. 2d 133, 134 (Fla. 1983), cert. denied, 466 U.S. 909 (1984); Rose v. State, 425 So. 2d 521 (Fla. 1982), cert. denied, 461 U.S. 909 (1983). It is not this Court's function to retry a case or reweigh conflicting evidence; the concern on appeal is limited to whether the jury verdict is supported by substantial, competent evidence. Crump v. State, 622 So. 2d 963, 971 (Fla. 1993) (question of whether evidence fails to exclude any reasonable hypothesis of innocence is for jury to determine, and if there is substantial, competent evidence to support jury verdict, verdict will not be reversed on appeal); Tibbs v. State, 397 So. 2d

1120 (Fla. 1981), aff'd., 457 U.S. 31 (1982) (concern on appeal must be whether, after all conflicts in the evidence and all reasonable inferences therefrom have been resolved in favor of the verdict on appeal, there is substantial, competent evidence to support the verdict and judgment). As will be seen, the State clearly presented substantial, competent evidence that Beasley killed Mrs. Monfort, and therefore he is not entitled to any relief on this issue.

The appellant specifically reviews the evidence presented below -- the missing $900 Mrs. Monfort had been given; the phone calls he made from her home the night she was killed; the shirt, worn by Beasley and stained with Mrs. Monfort's blood, found under his bed; the lack of a forced entry; the lack of forensic evidence placing him at the crime scene; the finding of Mrs. Monfort's missing car in Orlando; and Beasley's actions in offering to pay off his debt to Robinson, vacationing in Miami the day after the murder, and later working under a false name in Alabama -- and attempts to explain why the testimony was not inconsistent with his theory that someone else killed Mrs. Monfort. This review would make a nice closing argument to attempt to persuade a jury not to give weight to the State's evidence, but clearly does not dilute the evidence presented.

There appears to be no question that Mrs. Monfort was killed

on August 21, 1995. She was last seen on that day, her August 22 newspaper had never been brought inside the house, and several people had tried unsuccessfully to contact her after August 21. There is also apparently no question that Beasley was in Mrs. Monfort's house until sometime after 7:00 p.m. on August 21, based on telephone calls he made from there. He suggests, however, that he left sometime after 7 and someone else may have killed Mrs. Monfort when she came home from dinner that evening. However, there is nothing to support his hypothesis that she went out to dinner, and the medical examiner testified that the amount of food in her stomach contents was relatively small, suggesting that she had been killed within two to five hours of having eaten (V25/T3463). In addition, he does not explain how Mrs. Monfort was coming in from the garage, with the front door bolt fastened, if she had been out to dinner and he had already left in her car.

Beasley dismissed the testimony from the Robinsons about his having been seen around August 21, driving what Beasley said was a car belonging to the lady he worked for, and showing a $100 in his possession as insignificant since neither of the Robinsons could testify with certainty that he was actually seen on August 21. However, both Robinsons stated that they had seen Beasley within several days to a week of when they were first questioned by Det. Cash about it on August 28, and since other testimony established

that Beasley was in Miami from August 22 on, there is more than a reasonable inference that it was August 21 when Beasley visited Dale Robinson.

Finally, Beasley's "reasonable conclusion" with regard to his bloodstained shirt, that it was planted by a family member or members after the crime scene was released back to the family, was clearly refuted by the evidence. The circumstances of the finding of the shirt were thoroughly explored at trial, and Bud Stalnaker, who found the shirt, directly denied having planted it under the bed (V24/T2317). Beasley does not explain how whoever may have planted the shirt knew to put it under the bed where, coincidentally, none of the crime scene technicians or detectives had looked or taken any pictures. Since the guest room in Mrs. Monfort's house was otherwise exhaustively searched and the rest of Beasley's belongings had been collected from the room, apparently the mysterious planter was just incredibly lucky.

Thus, the evidence clearly demonstrated that Beasley was present in Mrs. Monfort's home until after 7:00 p.m. on the night she was killed, August 21, 1995; that his shirt, stained with her blood, was found under his bed; that he was seen shortly thereafter driving her car and in possession of at least one $100 bill; that he showed up in Miami the next day, wearing new clothes, and telling friends that the bus company had lost his luggage and

traveler's checks; that a few months later he moved to Alabama and began living under a false name; and that her car was discovered, abandoned, in Orlando, in very much the same condition as when it had been taken, with cigarettes with Beasley's DNA in the ashtray.

Beasley's hypotheses of innocence, on the other hand, fails to meet the standard of reasonableness, was contradicted by the State's evidence, and is premised nearly entirely on speculation and the stacking of inferences favorable to the defense. His statement to Lt. Jones when arrested in Alabama, that he knew he was in trouble when he went by the house and saw FBI agents, makes no sense because he was in Miami from August 22 on and her body was not even discovered until August 24. Although he claims that leaving town was consistent with his prior statements to Jane and Officer Pierson about plans to go to Alabama, he told Jane he would be going to Alabama the following week; he did not go to Alabama, but to Miami; and he left all of his personal belongings at Mrs. Monfort's house. Once again, his story simply does not add up.

In conclusion, there was substantial, competent evidence presented below to support the first degree murder conviction in this case. Therefore, the appellant is not entitled to relief in this issue.

ISSUE II

WHETHER THE FIRST DEGREE MURDER CONVICTION IS SUPPORTED BY COMPETENT, SUBSTANTIAL EVIDENCE.

Beasley next asserts that even if the evidence established that he was the perpetrator of this offense, his conviction cannot stand because the State failed to prove that Mrs. Monfort's murder was premeditated or that it was committed during the course of a robbery. However, the evidence presented below clearly established a prima facie case of premeditation, as well as felony murder, and therefore his convictions must be affirmed.

Premeditation may be formed in a moment and need only exist for such time as will allow the accused to be conscious of the nature of the act he is about to commit and the probable result of that act. Spencer v. State, 645 So. 2d 377, 380-381 (Fla. 1994), cert. denied, 118 S.Ct. 213 (1997); Asay v. State, 580 So. 2d 610, 612 (Fla.), cert. denied, 502 U.S. 895 (1991); Wilson v. State, 493 So. 2d 1019, 1021 (Fla. 1986); Preston v. State, 444 So. 2d 939, 944 (Fla. 1984), cert. denied, 507 U.S. 999 (1993). There is no prescribed length of time which must elapse between the formation of the purpose to kill and the execution of the intent; it may occur a moment before the act. Provenzano v. State, 497 So. 2d 1177, 1181 (Fla. 1986), cert. denied, 481 U.S. 1024 (1987); Sireci v. State, 399 So. 2d 964, 967 (Fla. 1981), cert. denied, 456 U.S. 984 (1982); McCutchen v. State, 96 So. 2d 152 (Fla. 1957). This Court has characterized the duration of the premeditation as

"immaterial so long as the murder results from a premeditated design existing at a definite time to murder a human being." Songer v. State, 322 So. 2d 481, 483 (Fla. 1975), vacated on other grounds, 430 U.S. 952 (1977).

Whether or not the evidence shows a premeditated design to commit a murder is a question of fact for the jury which may be established by circumstantial evidence. Sochor v. State, 619 So. 2d 285 (Fla.), cert. denied, 510 U.S. 1025 (1993); Bedford v. State, 589 So. 2d 245, 250 (Fla. 1991); Penn v. State, 574 So. 2d 1079, 1081-1082 (Fla. 1991); Asay, 580 So. 2d at 612; Cochran v. State, 547 So. 2d 928, 930 (Fla. 1989); Wilson, 493 So. 2d at 1021; Preston, 444 So. 2d at 944; Spinkellink v. State, 313 So. 2d 666 (Fla. 1975), cert. denied, 428 U.S. 911 (1976). Weighing the evidence in light of these standards it is clear that premeditation was proven beyond a reasonable doubt.

The traditional factors for consideration in determining the existence of premeditation support a finding of premeditation in the instant case. Such factors include the nature of the weapon, the presence or absence of provocation, previous difficulties between the parties, the manner in which the homicide was committed, the nature and manner of the wounds, and the accused's actions before and after the homicide. Larry v. State, 104 So. 2d 352, 354 (Fla. 1958). The nature of Mrs. Monfort's injuries, including being severely beaten about the head with a hammer so viciously that the handle of the hammer broke off, provides a

substantial basis for the finding of premeditation. There is absolutely no evidence of anything that would have provoked a rage or frenzy, and no evidence of prior difficulties between the parties. To the contrary, Beasley concedes that he and Mrs. Monfort were friends.

This Court has consistently upheld a finding of premeditation in cases involving vicious, prolonged attacks with a deadly weapon. In Preston, this Court noted that "[s]uch deliberate use of this type of weapon so as to nearly decapitate the victim clearly supports a finding of premeditation." 444 So. 2d at 944. See also, Kramer v. State, 619 So. 2d 274 (Fla. 1993) (evidence suggested victim was killed during spontaneous fight, with no discernible reason, between a disturbed alcoholic and a legally drunk man, but blood spatter and victim injury provided substantial basis for finding of premeditation).

The cases cited by the appellant do not compel a contrary result. In Coolen v. State, 696 So. 2d 738 (Fla. 1997), this Court rejected a finding of premeditation based on conflicting eyewitness testimony that suggested Coolen and the victim may have been fighting over a beer, or that Coolen may have acted in self-defense. Terry v. State, 668 So. 2d 954 (Fla. 1996), involved a victim that had been shot once while being robbed at gunpoint, with no evidence as to how the murder occurred.

Similarly, in Hoefert v. State, 617 So. 2d 1046 (Fla. 1993), the defendant had a pattern of strangling, but not killing, women

while he sexually assaulted them. The victim's body in that case had decomposed, and no physical evidence of a sexual assault was found, although cocaine was found in the victim's system. Thus, there was strong evidence in that case which affirmatively demonstrated a lack of premeditation, and again no real evidence as to how the murder occurred. Since the evidence in the instant case clearly demonstrated the manner in which the homicide was committed, this case was properly submitted to the jury on the issue of premeditation.

In Kirkland v. State, 684 So. 2d 732 (Fla. 1996), prior friction between the defendant (who had an IQ in the sixties) and the victim apparently led to the attack, where the victim suffered blunt trauma and a severe neck wound. Since there was no evidence of a robbery, there was nothing to explain why the victim was killed. In the instant case, the facts demonstrate that Beasley wanted money, and was willing to kill Mrs. Monfort in order to get it.

Beasley suggests that the choice of a hammer as a weapon, rather than a gun or knife, supports the theory that no extensive planning was involved in this murder. However, while such planning may be necessary for the aggravating factor of cold, calculated, and premeditated, it is not necessary for simple premeditation. As opposed to the heightened premeditation required to prove the aggravating factor, the premeditation required to support a first degree murder conviction can be formed in a moment and need only

exist long enough for an accused to be aware of the nature and probable consequence of his acts. DeAngelo, 616 So. 2d at 441.

There was clearly substantial, competent evidence presented to support a finding of premeditation on the facts of this case, and there is no evidence to support a suggestion that this murder was anything other than premeditated. Furthermore, any deficiency in the evidence of premeditation would be inconsequential, due to the clear proof of a robbery to support the conviction as first degree felony murder. The jury convicted Beasley of robbery and grand theft, and testimony established that Mrs. Monfort had been given $900 hours before the murder, and that her car was taken after the murder.

Beasley maintains that his intent to steal may not have arisen until after completion of the murder herein, and therefore the taking of Mrs. Monfort's money and car was merely incidental to her homicide and presumably without the use of force. He has now fashioned a hypothesis of innocence that because the taking of the money and car was an afterthought by the killer, it cannot be used to support convictions for robbery or felony murder. It must be noted initially that the defense never suggested this version of events to the jury or the judge below, and therefore the State is not required to rebut the argument. State v. Law, 559 So. 2d 187, 189 (Fla. 1989). In addition, the suggestion that a verdict based on felony murder cannot stand unless the State establishes that an intent to commit the underlying felony existed at the time of the

murder is not properly before this Court since it was not directed to the court below for consideration. See, Bertolotti v. Dugger, 514 So. 2d 1095 (Fla. 1987) (argument that general verdict for first degree murder was void could not be considered on appeal where defendant failed to challenge sufficiency of evidence to support felony murder in trial court), cert. denied, 497 U.S. 1032 (1994).

More importantly, however, the appellant confuses the evidence required to support the pecuniary gain aggravating factor with that necessary to support a robbery, and consequently felony murder, conviction. Florida law requires the application of felony murder anytime that a homicide is "committed by a person engaged in the perpetration of, or in the attempt to perpetrate," any of twelve enumerated felonies. Section 782.04(1)(a)2. Fla. Stat. Florida courts have consistently interpreted this language to mean that the statute applies as long as the murder and the felony were part of the same criminal episode. See, Young v. State, 579 So. 2d 721 (Fla. 1991), cert. denied, 117 L. Ed. 2d 438 (1992); Roberts v. State, 510 So. 2d 885, 888 (Fla. 1987), cert. denied, 485 U.S. 943 (1988). There is no requirement that the robbery itself be the motive for the murder, as with the pecuniary gain factor. Compare, Scull v. State, 533 So. 2d 1137 (Fla. 1988) (although property could have been taken as afterthought, thus precluding application of pecuniary gain factor, Scull's robbery conviction was left intact). Since the purpose of the felony murder rule is to protect

the public from inherently dangerous situations created by the commission of the felony, the rule should apply whenever a death occurs during the same criminal episode of a related felony. Parker v. State, 641 So. 2d 369 (Fla. 1994), cert. denied, 513 U.S. 1131 (1995).

By so construing the statute, Florida has recognized the inherent difficulty in determining the relationship between two or more criminal acts committed at the same time. Specifically, the courts look for a definitive break in the chain of circumstances, either by time, place or causation, in determining the applicability of felony murder. Griffin v. State, 639 So. 2d 966 (Fla. 1994), cert. denied, 514 U.S. 1005 (1995); Parker v. State, 570 So. 2d 1048 (Fla. 1st DCA 1990).

The crime of robbery is defined as the taking of money or property, "when in the course of the taking there is the use of force, violence, assault, or putting in fear." Section 812.13(1), Fla. Stat. The phrase "in the course of the taking" is further defined to mean any act that "occurs either prior to, contemporaneous with, or subsequent to the taking of the property and if it and the act of taking constitute a continuous series of acts or events." Section 812.13(3)(b), Fla. Stat. Thus, when a homicide and a related theft occur in an uninterrupted series of events, the force used to commit the homicide is sufficient to aggravate the theft into a robbery.

There is no evidence, or even unsubstantiated suggestion, in

the record before this Court, of any interruption between Mrs. Monfort's murder and the taking of her property. And Beasley does not, and cannot, suggest that the murder and robbery in this case are totally unrelated. Clearly, the murder helped facilitate the robbery, even if the intent to steal did not develop until after Mrs. Monfort was dead. The murder provided the impetus and the opportunity for the appellant to steal, and robbery was sufficiently established in this case.

In Randolph v. State, 463 So. 2d 186 (Fla. 1984), cert. denied, 473 U.S. 907 (1985), this Court noted that sufficient evidence had been presented to support Randolph's murder conviction on either a premeditated or felony murder theory. Randolph's girlfriend was a prostitute, and the victim was one of her regular customers. One night after the girlfriend and the victim had been together, Randolph showed up as the girlfriend was leaving, and pushed her away. The girlfriend ran away, but overheard Randolph tell the victim that he wouldn't shoot if the victim didn't try anything. The girlfriend then heard two gunshots. After the shooting, Randolph asked the girlfriend if the victim had any money. When she said he did, Randolph walked over to the truck, with the victim inside, looked inside the window, got in, and took something. There was testimony that the victim had been given $100 in cash from his father that evening, but the only money found at the scene was $20 that was hidden in the truck. Thus, under the facts as recited in this Court's opinion, the evidence that the

victim was killed and at least eighty dollars could not be accounted for was sufficient to support a verdict based on felony murder.

Of course, intent is usually established by circumstantial evidence, and our courts have consistently held that a motion for judgment of acquittal should rarely, if ever, be granted based on the State's failure to prove intent. King v. State, 545 So. 2d 375 (Fla. 4th DCA), rev. denied, 551 So. 2d 462 (Fla. 1989). The evidence in this case showed that Beasley had financial problems -- he owed money to Robinson and had asked Jane for money earlier on the day of the murder.

On these facts, the appellant is not entitled to acquittal from his robbery conviction. However, even if successful, Beasley's attack on the validity of his robbery conviction could not possibly affect his first degree murder conviction, since there was ample evidence of premeditation as previously discussed. Thus, Beasley has failed to demonstrate any error in the jury verdict rendered against him. He is not entitled to have his conviction reduced to second degree murder.

<u>ISSUE III</u>

WHETHER THE TRIAL COURT ERRED IN EXCUSING CRITICAL FAMILY MEMBER WITNESSES FROM THE RULE OF SEQUESTRATION.

Beasley also challenges the trial court's ruling to allow family members to remain in the courtroom during the trial. Unfortunately, Beasley's argument on this issue is vague and conclusory, never particularly identifying which "family witnesses" should have been excluded from the courtroom, what prior testimony these witnesses should not have heard, or the substance of any particular testimony which conceivably could have been tainted due to a witness' presence in the courtroom. Beasley does not even attempt to identify any possible prejudice from the trial court's ruling to permit family witnesses to remain in the courtroom. Furthermore, since the defense never objected to any witness called by the State for violating the rule of sequestration or interfering with his constitutional rights, he has not presented anything for this Court to review. <u>Steinhorst v. State</u>, 412 So. 2d 332 (Fla. 1982).

In addition, Beasley provides no record cites for support of his accusations that the family members had failed to heed police warnings about conducting their own investigation, and the citations that are provided for his assertion that family members were disruptive during trial does not support the allegation. For example, at V17/T2227-2229 the record reflects that counsel asked the court to instruct spectators to stop whispering; due to the

poor acoustics in the courtroom, the whispering was distracting to counsel. The court complied, asking the spectators to hold it down. The record does not reflect that the particular spectators that were so boldly whispering were, in fact, family members, let alone family members that were later witnesses for the State. At V20/T2599-2600, the court admonished spectators to keep their emotions in check, not because anyone had been disruptive, but merely in anticipation of Jane O'Toole's testimony possibly eliciting emotional responses. See also, V23/T3276; V24/T3318.

A careful review of the record also reflects, although Beasley's brief does not, that this issue can only possibly apply to one witness, Jane O'Toole. This is because Jane's husband, Neal, was not considered "next-of-kin" so as to meet the statutory exclusion for the rule of sequestration under Section 90.616(2)(d) based on the prosecutor's suggestion that the court strictly construe the statutory exclusion (V15/T1788-89, T1793). Another family witness, James "Bud" Stalnaker, left court and waived his constitutional right to watch the proceedings after the judge's strong warning to the family witnesses remaining in the courtroom that any discussion of any testimony would result in the person involved being incarcerated for contempt; Bud Stalnaker did not wish to be jailed for any accidental violation of the court's strict orders to the family (V15/T1796-1799). Another family member, Buddy Hadden, remained in the courtroom because he was not going to be a State witness; Bill Stalnaker was not a witness, and

apparently did not remain in court anyway due to the emotional toll it took on him (V15/T1789; V28/T3950). Thus, Beasley's complaints in this issue could only be directed to Jane O'Toole.

The trial court denied defense counsel's objection to permitting the family witnesses to remain in the courtroom on the reasoning that any danger of prejudice to the defense was offset by the fact that the witnesses' statements had been memorialized in depositions (V15/T1787-1788). In fact, the witnesses had voluntarily given two depositions each, so they could readily be impeached should there be any deviation from their prior statements (V15/T1780-1781). No abuse of discretion has been demonstrated with regard to this ruling.

This Court has frequently acknowledged that the rule of sequestration codified in Section 90.616 is not a strict or absolute rule of law, and that the trial judge has broad discretion with regard to insuring compliance with the rule. Gore v. State, 599 So. 2d 978, 985-986 (Fla. 1992), cert. denied, 506 U.S. 1003 (1993); Wright v. State, 473 So. 2d 1277, 1280 (Fla. 1985), cert. denied, 474 U.S. 1094 (1986); Randolph v. State, 463 So. 2d 186, 191 (Fla. 1984). The purpose of the rule is to prevent a witness' testimony from being influenced by other testimony the witness may have heard. Gore, 599 So. 2d at 986; Wright, 473 So. 2d at 1280; Spencer v. State, 133 So. 2d 729 (Fla. 1961), cert. denied, 369 U.S. 880 (1962). The rule must not be enforced in a manner which produces injustice, and a trial court cannot exclude the testimony

of a witness due to any violation of the rule unless the court first determines that the witness' testimony was affected by other testimony to such an extent that it substantially differs from what it would have been had the witness not heard the other testimony. Wright, 473 So. 2d at 1280; Steinhorst, 412 So. 2d at 336. The burden is on Beasley to demonstrate an abuse of discretion and a resultant injury. Spencer, 133 So. 2d at 731; Dupree v. State, 436 So. 2d 317, 318 (Fla. 1st DCA 1983).

In Knight v. State, 721 So. 2d 287, 293-294 (Fla. 1998), this Court recently rejected a claim of error premised upon the trial court's permitting a critical fact witness, Det. Smith, to remain in the courtroom throughout the proceeding. Noting that Smith was testifying to what others had testified to years earlier, this Court found that his testimony could be carefully checked by comparison with the transcripts of the prior testimony. This is similar to the judge's ruling in the instant case that any danger of prejudice (which Beasley has not even alleged was fulfilled) would be offset by the repeated memorializations of these witnesses' prior statements.

In Sireci v. State, 587 So. 2d 450, 454 (Fla. 1992), this Court noted that Florida's Constitution granted to victims, including the next of kin of homicide victims, the right to be present at all crucial stages of criminal proceedings. Art. I, § 16(b), Fla. Const. Clearly, this right cannot interfere with the constitutional rights of the accused. Although Beasley alleges

that his constitutional rights to a fair trial, due process, effective assistance of counsel, to confront witnesses and to be protected from cruel and/or unusual punishment were not protected by the trial court's ruling in this case, his failure to explain how any of these rights could have been adversely affected and his failure to identify any difference in the testimony of the unspecified family witnesses due to their having been present in the courtroom leaves his argument completely without support. No abuse of discretion has been demonstrated on these facts. Any potential error would clearly be harmless, since no testimony was influenced by the trial court's ruling, and no new trial is warranted.

ISSUE IV

WHETHER THE TRIAL COURT ERRED IN FINDING AND WEIGHING THE AGGRAVATING FACTOR OF HEINOUS, ATROCIOUS OR CRUEL.

Beasley's next issue disputes the trial court's application of the heinous, atrocious or cruel aggravating factor. With regard to this aggravating factor the trial court specifically found as follows:

> 3. The capital felony was especially heinous, atrocious, or cruel.
>
> CAROLYN MONFORT sustained numerous brutal and savage hand, arm, face and head injuries. The "defensive injuries" to her hands and arms clearly indicate attempts by her to protect herself from the hammer being wielded by Defendant. Blood was found in a room adjacent to the room where the victim was found. The blood in the adjoining room indicates that the victim attempted to flee from her attacker but was caught and beaten to death in the next room of her home. Dr. Melamud, the medical examiner, testified that CAROLYN MONFORT sustained over fifteen blows. The injuries were consistent with having been inflicted by a hammer. The head of a hammer with a broken handle was found near the victim's body. The medical evidence supports the conclusion that the victim's head was against the floor in the laundry room and then while in an immovable position was struck at least two times resulting in fracturing her skull and pushing large bone fragments into her brain. The murder of CAROLYN MONFORT was both a conscienceless and pitiless crime and was unnecessarily torturous to the victim. The aggravating factor that the capital felony was especially heinous, atrocious, or cruel has been proved beyond a reasonable doubt. This aggravating factor was given very great weight by this Court.
>
> (V4/R618)

Although the appellant concedes that the victim, Mrs. Monfort, was struck between 15 to 17 times; that her jaw, cheek and skull were fractured; and that the wounds were consistent with hammer blows and the bruises on her arm were consistent with defensive wounds, he contends that the trial court's conclusions regarding the position of the victim's head when it was struck was unsupported by the record and, therefore, the aggravator should be stricken.

To support this position the appellant relies on this Court's decision in Knight v. State, 721 So. 2d 287 (Fla. 1998), wherein this Court rejected the heinous, atrocious or cruel aggravating factor finding that "there simply is no evidence of what took place between the victims and Knight during the trip in the automobile before the execution-style killings took place." 721 So. 2d 299. As the appellant has already conceded, this was not an execution-style killing. Carolyn Monfort was found with her head lying on the laundry room floor, severely bashed in and surrounded by blood (V20/T2618; V21/T2697). Dr. Melamud testified that the severity of the injury and the depressed fracture were consistent with her head being in an immobile position such as being on the floor at the time of the impact with a hammer or other blunt object (V28/T3938). Even absent this conclusion, given the extensive nature of the wounds, *including several defensive wounds,* and the blood found in the dining room, it is apparent that the victim in this case was aware of the brutal beating and would have felt pain as a result thereof. Thus, unlike Knight where this Court found "simply no

evidence" to support the trial court's conclusions, the evidence presented in the instant case supports the heinous, atrocious or cruel aggravating factor. As the judge's findings with regard to this factor are supported by the evidence, and the correct standard of law was applied, the application of the factor should be affirmed. Willacy v. State, 696 So. 2d 693, 695 (Fla. 1997) (in considering propriety of aggravating factor, task on appeal is to review record to determine whether trial court applied the correct rule of law and whether competent substantial evidence supports its finding).

This Court has consistently upheld the application of the heinous, atrocious or cruel aggravating factor in factually similar cases. See, Penn v. State, 574 So. 2d 1079 (Fla. 1991) (beating victim to death with hammer was HAC); Chandler v. State, 534 So. 2d 701 (Fla. 1988) (repeatedly beating victims with baseball bat was HAC), cert. denied, 490 U.S. 1075 (1989); Lamb v. State, 532 So. 2d 1051 (Fla. 1988) (beating victim to death by striking victim on head with hammer six times was HAC); Hannon v. State, 638 So. 2d 39 (Fla. 1994), cert. denied, 513 U.S. 1158 (1995) (beating and stabbing of a screaming victim supported the heinous, atrocious or cruel aggravating factor); Atwater v. State, 626 So. 2d 1325, 1329 (Fla. 1993) (victim beaten prior to or during the stabbing), cert. denied, 511 U.S. 1046 (1994); Randolph v. State, 562 So. 2d 331, 338 (Fla. 1990) (victim repeatedly hit, kicked, strangled, and knifed); Wilson v. State, 493 So. 2d 1019 (Fla. 1986) (victim was

brutally beaten while attempting to fend off blows before being fatally shot).

Recently, in Guzman v. State, 721 So. 2d 1155 (Fla. 1998), cert. denied, 119 S. Ct. 1583 (1999), this Court affirmed the heinous, atrocious or cruel aggravating factor where the defensive wounds and blood trail indicated that the victim was aware of what was happening to him and would have felt pain as a result of the large number of injuries he sustained. The appellant attempts to distinguish Guzman, contending that, unlike Guzman's victim David Colvin, Mrs. Monfort may not have been conscious for a significant portion of the attack. Nothing in Guzman suggests that a victim must be conscious for a "significant portion of the attack." To the contrary, this Court in Guzman only found that the victim was conscious during "at least part of the attack." 721 So. 2d at 1160. Given the number of defensive wounds, the medical examiner's testimony that the victim was alive during the extensive beating and the spattering of blood in two separate rooms, it is apparent that the victim in this case was conscious "during at least part of the attack" and that the aggravator should be affirmed.

This Court in Guzman also rejected the argument now being made by Beasley that the evidence must establish the defendant's desire to inflict a high degree of pain. 721 So. 2d at 1160. Prior cases routinely acknowledged that HAC is consistently applied where the victim is repeatedly bludgeoned, without any specific discussion as to the defendant's mental condition. This is because where facts

demonstrate that a victim suffered a great deal, the reasonable inference is that the defendant either intended or was indifferent to such suffering. For example, in Bogle v. State, 655 So. 2d 1103 (Fla.), cert. denied, 116 S.Ct. 483 (1995), Bogle claimed that the factor could not be upheld because nothing in the case established that he intended to cause the victim unnecessary suffering. Upon rejecting this claim, this Court stated:

> In his last claim regarding the aggravating circumstances, Bogle asserts that the murder in this case was not HAC. According to Bogle, nothing in this case established that Bogle intended to cause the victim unnecessary suffering. Additionally, he asserts that the evidence establishes that the victim was highly intoxicated and that the first blow to the victim's head could have killed her. As noted by the trial judge, Bogle struck [the victim] a total of seven times with such force that her head was so far impressed into a hollow in the ground that the initial impression of the officers at the scene was that the head had been flattened to a considerable degree. The medical examiner testified that the victim was alive at the time of the infliction of most of the wounds but could not testify as to how long she survived, "four breaths, several seconds, or a few minutes." In his opinion, the last blows were those inflicted to the side of her head--the blows which caused her death. The murder was extremely wicked and vile and inflicted a high degree of pain and suffering on the victim, Margaret Torres. The defendant acted with complete indifference to the victim's suffering.
>
> We have found other similar murders to be HAC and likewise find this factor to be supported here.

655 So. 2d at 1109.

Accordingly, the defendant’s state of mind is not a dispositive fact that must be determined and weighed *every time* that HAC is considered. Rather, the relevant facts are typically those showing the manner in which the homicide occurred. Nevertheless, the facts in the instant case clearly show an utter indifference to the suffering of the victim. The evidence presented below, and outlined in the court’s findings on this factor, clearly demonstrate “the defendant acted with complete indifference to the victim’s suffering.” Bogle, 655 So. 2d at 1109.

The trial court properly found the HAC aggravating circumstance. In addition, any possible impropriety in the use of this factor would be harmless in light of the other aggravating circumstance established. No relief is warranted.

ISSUE V

WHETHER THE TRIAL COURT ERRED IN FINDING AND WEIGHING THE AGGRAVATING FACTOR OF PECUNIARY GAIN/DURING THE COURSE OF A ROBBERY.

Beasley next contends that the trial court erred in finding in aggravation that this crime was committed for pecuniary gain. According to the appellant, any financial gain that he obtained by taking the victim's car and money was incidental to the murder, and not the primary motive for it. Thus, he asserts, under Scull v. State, 533 So. 2d 1137 (Fla. 1988), cert. denied, 490 U.S. 1037 (1989), the pecuniary gain factor was not applicable. However, the record reflects that the trial court properly found this aggravating factor. (See also, Issue II, supra.)

In the sentencing order on this matter, the trial judge noted that Mrs. Monfort was murdered to facilitate the theft of her money. Beasley disputes this conclusion, speculating that he may have killed her spontaneously and then taken the money and her car as an afterthought. Based on the evidence presented below, this argument is without merit.

In support of these factors, the trial court found:

> 1. The capital felony was committed while Defendant was engaged in the commission of the crime of robbery.
>
> The defendant, CURTIS W. BEASLEY, was charged and convicted of the crime of robbery. The facts of the case show the crime for which the defendant is to be sentenced was committed while he was engaged in the commission of the crime of robbery. This aggravating circumstance was proved beyond a reasonable

> doubt and this Court gave it some weight.
>
> 2. <u>The crime for which Defendant is to be sentenced was committed for financial gain.</u>
>
> The facts show that the defendant killed the victim to facilitate the taking of her money. Therefore, the capital felony was committed for financial gain. This aggravating factor was proved beyond a reasonable doubt. However, the same aspect of evidence supports the two previously listed aggravating factors. Therefore, this Court has considered this aspect as a single aggravating circumstance and gave it some weight.
>
> (V4/R617-18)

Additionally, the court noted:

> Nothing except as previously indicated in paragraphs 1 - 3 above was considered in aggravation. Aggravators 1 and 2 above were considered and weighed as a single aggravator and given some weight. Aggravator 3 was considered and was given very great weight.
>
> (V4/R618)

This Court has upheld the finding of the pecuniary gain/commission of a robbery aggravating factor on facts similar to those in this case. <u>Finney v. State</u>, 660 So. 2d 674 (Fla. 1995), <u>cert. denied</u>, 116 S. Ct. 823 (1996); <u>Atwater v. State</u>, 626 So. 2d 1325 (Fla. 1993), <u>cert. denied</u>, 114 S. Ct. 1578 (1994); <u>Bruno v. State</u>, 574 So. 2d 76 (Fla.), <u>cert. denied</u>, 116 L. Ed. 2d 81 (1991); <u>Floyd v. State</u>, 569 So. 2d 1225 (Fla. 1990), <u>cert. denied</u>, 111 S. Ct. 2912 (1991). The facts presented below established that Mrs. Monfort received eight $100 bills and five $20 bills prior to the murder, and that the money and her car were missing after the

murder. The record also establishes that Beasley was in possession of a large sum of cash, including at least one $100 bill, and an automobile matching the description of Mrs. Monfort’s car, which Beasley said belonged to the woman he worked for, around the time of the murder (V22/T3044, 3046, 3048, 3065, 3068). Mrs. Monfort’s car was later found in Orlando, abandoned in a motel parking lot between the bus station and attorney Ed Leinster’s Office (V23/T3233-46). Cigarette butts found in the ashtray were consistent with Beasley’s DNA (V21/T2743; V23/3111). This evidence supports a reasonable inference that the money was stolen from Mrs. Monfort. Speculation that the money may have been taken as an afterthought is not supported by the record. Since this Court will view the record in the light most favorable to the prevailing theory as to the existence of an aggravating circumstance, this unsupported theory should be rejected. Wuornos v. State, 644 So. 2d 1012, 1019 (Fla. 1994), cert. denied, 514 U.S. 1070 (1995).

In addition, even if there was no evidence that the appellant possessed money after the murder, the pecuniary gain factor is clearly applicable where the murder is committed in order to obtain the victim’s car. Jones v. State, 690 So. 2d 568, 570 (Fla. 1996); Jones v. State, 612 So. 2d 1370, 1375 (Fla.), cert. denied, 510 U.S. 836 (1993); Medina v. State, 466 So. 2d 1046, 1050 (Fla. 1985). The fact that the appellant abandoned the car does not preclude a finding that the murder was committed to facilitate the taking of the car. Porter v. State, 429 So. 2d 293, 296 (Fla.),

cert. denied, 464 So. 2d 865 (1983).

The trial court is not required to reject this aggravator based on a suggestion that another motivation for the murder existed. Lawrence v. State, 691 So. 2d 1068 (Fla.), cert. denied, 118 S. Ct. 205 (1997); Thompson v. State, 553 So. 2d 153, 156 (Fla. 1989), cert. denied, 495 U.S. 940 (1990). As long as the murder was motivated, at least in part, by a desire for pecuniary gain, the aggravating factor applies. Finney, 660 So. 2d at 680.

Once again, the judge's findings are supported by the evidence, and the correct standard of law was applied; therefore, the application of the factor should be affirmed. Willacy, 696 So. 2d at 695. In this case, no other possible motive for the murder is suggested by the evidence, only by the appellant's unsupported speculation. Thus, the court below correctly found these aggravating factor(s) to apply. In addition, any possible error would be harmless, due to the clear applicability of the HAC factor. Beasley's sentence must be affirmed.

ISSUE VI

WHETHER THE TRIAL COURT ERRED IN REJECTING PROPOSED MITIGATING FACTORS.

Beasley next challenges the trial judge’s findings with regard to the proposed mitigation. Specifically, he claims that the trial court improperly rejected his poor/rural background; the death of his father; his remorse; and his good behavior during the trial as mitigating circumstances. A review of the penalty phase evidence and the sentencing order establishes that this claim is without merit.

In sentencing Beasley to die for the murder of Carolyn Monfort, the trial judge complied with all applicable law, including the dictates of this Court’s decision in Campbell v. State, 571 So. 2d 415 (Fla. 1990). She expressly evaluated the aggravating factors and mitigating circumstances, and insured adequate appellate review of his findings by discussing the factual basis for the aggravating and mitigating factors. Campbell clearly recognizes that the factual question as to whether a mitigating factor was reasonably established by the evidence is a question for the trial judge. No abuse of discretion has been demonstrated with regard to the trial judge’s factual or legal bases for rejecting these factors.

Beasley faults the trial court for rejecting these mitigating factors without even discussing the reasons provided by the court below. As to the rural/poor background, the judge rejected this

mitigator based on Beasley’s mother’s testimony that he had been raised in a modest home in central Florida (V4/R621). The death of Beasley’s father was rejected since it was an event occurring after the murder; the judge did find and weigh Beasley’s being a “good son” (V4/R619, 622). The judge rejected Beasley’s remorse because, although Beasley stated that he was sorry, he also continued to deny killing Mrs. Monfort (V4/R623). Finally, the factor of good behavior at trial was rejected due to testimony about his anger and temper tantrum, and the lack of any “unusually good” conduct (V4/R624). The trial court’s reasons for rejecting each of these mitigating circumstances is well supported by the record.

Finally, even if this Court reaches a different conclusion with regard to the trial court’s rejection of this proposed mitigation, there is no reason to remand this cause for resentencing since it is clear that any further consideration of these facts would not result in the imposition of a life sentence. Despite rejecting a few minimal circumstances proposed by Beasley, the trial court did weigh the following factors in mitigation: failure to complete college; failed marriage; good manners; good personality; good son; good student; extracurricular activities in high school; good athlete; good citizen/military service; good worker; good friend; good brother; good musician; church participation; substance abuse disorder; suicide of friend; self-sufficient; self-reliant; financial responsibility; some periods of financial irresponsibility due to substance abuse disorder; no

prior convictions for violent crimes; maintains contact with children and grandchildren; alcohol problem following first divorce; discrepancy between verbal and nonverbal test scores; memory problems; organic personality syndrome; adequate emotional stability; not psychotic; impulsivity; no psychological propensity for violence; no sociopathic or psychopathic tendencies; no indicator for future dangerousness; model prisoner; good behavior post-incident while not in custody; good behavior during arrest; waived extradition; good behavior in jail; and good relationship with family while incarcerated (V4/R617-624). Any error relating to the sentencing court's failure to consider additional, insignificant mitigation is clearly harmless since the mitigation does not offset the strong aggravating factors found. Therefore, this Court should affirm the sentence as imposed. Lawrence v. State, 691 So. 2d 1068, 1076 (Fla.), cert. denied, 118 S.Ct. 205 (1997); Barwick, 660 So. 2d at 696; Armstrong v. State, 642 So. 2d 730 (Fla. 1994), cert. denied, 115 S.Ct. 1799 (1995); Wickham v. State, 593 So. 2d 191, 194 (Fla. 1991), cert. denied, 505 U.S. 1209 (1992); Cook v. State, 581 So. 2d 141, 144 (Fla.) ("we are convinced beyond a reasonable doubt that the judge still would have imposed the sentence of death even if the sentencing order had contained findings that each of these nonstatutory mitigating circumstances had been proven"), cert. denied, 502 U.S. 890 (1991).

ISSUE VII

WHETHER THE SENTENCE OF DEATH IS PROPORTIONAL.

Beasley's final challenge disputes the proportionality of his death sentence. Of course, a proportionality determination does not turn on the existence and number of aggravating and mitigating factors, but this Court must weigh the nature and quality of the factors as compared with other death cases. Kramer v. State, 619 So. 2d 274, 277 (Fla. 1993). The purpose of a proportionality review is to compare the case to similar defendants, facts and sentences. Tillman v. State, 591 So. 2d 167, 169 (Fla. 1991). When factually similar cases are compared to the instant case, the proportionality of Beasley's sentence is evident.

The court below found three aggravating circumstances: (1) during the course of a robbery (2) pecuniary gain and, (3) heinous, atrocious or cruel.[1] The only statutory mitigating circumstance was the "catch-all" background factor, and the court found various nonstatutory mitigators including impulsivity, family history, and positive character traits (V4/R618-25). The jury recommended death by a vote of 10 to 2 (V4/R617).

After noting that a proportionality review does not involve a counting of aggravating and mitigating factors, Beasley suggests that this Court must find his sentence to be disproportionate because there were two aggravating factors and thirty-eight

[1] The during the course of a burglary and the pecuniary gain factors were merged. (V3/R618)

mitigating factors. In support of his argument on this issue, Beasley cites no factually similar crimes, he only disagrees with the weight assigned by the court below to the aggravating and mitigating factors. However, this Court has repeatedly recognized that the relative weight to be assigned any aggravating or mitigating circumstance is within the broad discretion of the trial judge. Blanco v. State, 706 So. 2d 7, 10 (Fla. 1997), cert. denied, 119 S. Ct. 96 (1998); Cole v. State, 701 So. 2d 845, 852 (Fla. 1997), cert. denied, 118 S. Ct. 1370 (1998); Bell v. State, 699 So. 2d 674, 678 (Fla. 1997), cert. denied, 118 S.Ct. 1067 (1998); Campbell, 571 So. 2d at 420.

The appellant contends that in the event one or other of the aggravating factors is stricken, only one valid aggravating factor would remain. Noting that this Court rarely affirms a death sentence when only one aggravating factor has been upheld, appellant suggests that this sentence would be disproportionate if either factor was disapproved. He also contends that even if both of the aggravators were properly found, the mitigating evidence is so compelling that a sentence of life should have been entered. It is the state's position that both factors were properly found and, as a review of the following cases establishes, the imposition of the death sentence for the merciless bludgeoning of Carolyn Monfort with a hammer is consistent to the sentences upheld in similar cases.

This Court's recent decision in Robinson v State, 24 Fla. L.

Weekly S393 (Fla. Aug. 19, 1999) supports this position. The facts presented at Robinson's trial established that he and Silvia (the victim) had been dating and that prior to the murder he had stolen Silvia's television and VCR to pawn for money with which to purchase drugs. Robinson confessed that he killed Silvia in order to obtain money that his mother had sent Silvia to buy back her property. He told the officers that after Silvia fell asleep on the couch, he hit her in the head with the hammer twice, each time piercing her skull. "Robinson claimed that Silvia never regained consciousness, although she was still breathing and blood poured from her mouth. Robinson then stuck the claw part of the hammer into the victim's skull. Further, to stop Silvia's breathing and heart beat, Robinson stuck a serrated knife into the soft portion of her neck and down into her chest. After Silvia died, Robinson buried her and took the money that she had hidden in her shoes." Id. Comparing the facts of the case to Spencer v. State, 691 So. 2d 1062 (Fla.), cert. denied, 118 S. Ct. 213 (1996), and Foster v. State, 654 So. 2d 112 (Fla.), cert. denied, 516 U.S. 920 (1995), this Court found that despite evidence of mental mitigation, that the death sentence imposed on Robinson was not a disproportionate penalty.

Similarly, in Sliney v. State, 699 So. 2d 662, 672 (Fla. 1997), cert. denied, 118 S. Ct. 1079 (1998), this Court affirmed Sliney's sentence of death where the evidence showed that during the course of a robbery the victim was beaten with a hammer to the

face and was found with a pair of scissors stuck in his neck, with fractured ribs, and with a fractured backbone. As in the instant case, the trial court did not find any statutory mental mitigation. Accordingly, this Court held that Sliney's death sentence was proportionate to other factually similar cases, including Smith v. State, 641 So. 2d 1319 (Fla. 1994), cert. denied, 513 U.S. 1163 (1995); Geralds v. State, 674 So. 2d 96 (Fla.), cert. denied, 117 S.Ct. 230 (1996); Finney, 660 So. 2d at 679.

This Court in Gamble v. State, 659 So. 2d 242 (Fla. 1995), cert. denied, 516 U.S. 1122 (1996), affirmed Gamble's death sentence where the facts showed that Gamble repeatedly bludgeoned his landlord with the claw hammer until he was dead. Gamble then stole the landlord's car, picked up his girlfriend, ate at Kentucky Fried Chicken, forged and cashed an $8544 check on the landlord's account, and drove to Mississippi. This Court found that these facts supported the trial court's imposition of the death sentence.

In Freeman v. State, 563 So. 2d 73, at 75 (Fla. 1990), cert. denied, 501 U.S. 1259 (1991), the defendant beat a man that came in as he was trying to burglarize the man's house. Freeman had prior violent felony convictions of a similar nature that had been committed three weeks prior to this murder, and the trial court also found as one aggravator that it was committed in the course of a burglary/pecuniary gain. In mitigation, the trial court found low intelligence, abuse as a child, artistic ability, and enjoyed playing with children. This Court determined the sentence to be

proportional, noting that the nonstatutory mitigating evidence was not compelling. See also, Guzman v. State, 721 So. 2d 1155 (Fla. 1998)(affirming sentence where victim received nineteen stab wounds to face, skull, back, and chest, and a defensive wound to a finger on his left hand); Gordon v. State, 704 So. 2d 107 (Fla. 1997)(affirming sentence where defendants beat and drowned victim in his apartment); Owen v. State, 596 So. 2d 985, 990 (Fla.), cert. denied, 506 U.S. 921 (1992) (sentence upheld where sleeping victim was bludgeoned); Brown v. State, 565 So. 2d 304 (Fla.) (death sentence for murder committed during the course of burglary was proportionate where there were two aggravating factors balanced against the mental mitigators), cert. denied, 498 U.S. 992 (1990); Cherry v. State, 544 So. 2d 184, 187-88 (Fla. 1989) (sentence proportionate where victim was heinously beaten to death during the course of a burglary for pecuniary gain), cert. denied, 494 U.S. 1090 (1990).

The evidence presented in the instant case established that Beasley repeatedly bludgeoned Carolyn Monfort with a hammer and that she fought off the attack. It was established that this murder happened during the course of a robbery. The evidence established that Beasley stole over $800 and a car from the victim (V4/R617-18). Balanced against this heinous crime was a laundry list of character traits and aspects of the crime which Beasley urged as mitigating evidence. Much of this evidence was completely unavailing and afforded little or no weight (V4/R618-25). It is

notable that there was no evidence that Beasley suffered from any significant mental infirmities, an abused childhood or a dysfunctional family. Based on the foregoing, this Court must find that Beasley's sentence is proportionate.

CONCLUSION

Based on the foregoing arguments and authorities, the judgment and sentence should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Regular Mail to ROBERT NORGARD, P.O. Box 811, Bartow, Florida, 33831, this 13th day of September, 1999.

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COUNSEL FOR APPELLEE